

FIFTEENTH KERALA LEGISLATIVE ASSEMBLY

**COMMITTEE
ON
PUBLIC ACCOUNTS
(2021-2023)**

TWENTY FOURTH REPORT

(Presented on 8th December, 2022)



SECRETARIAT OF THE KERALA LEGISLATURE
THIRUVANANTHAPURAM
2022

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On

**Action Taken by Government on the Recommendations contained in the Fifty
Fourth Report of the Committee on Public Accounts (2014-2016)**

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COMMITTEE ON PUBLIC ACCOUNTS

(2021-2023)

COMPOSITION

Chairman :

Shri Sunny Joseph.

Members :

Shri Manjalamkuzhi Ali

Shri M.V. Govindan Master

DR. K. T. Jaleel

Shri C.H. Kunhambu

Shri Mathew T. Thomas

Shri M. Rajagopalan

Shri P.S. Supal

Shri Thomas K. Thomas

Shri K.N. Unnikrishnan

Shri M.Vincent.

Legislature Secretariat :

Shri A.M. Basheer, Secretary

Shri Reji B., Additional Secretary

Shri P. S. Selvarajan, Deputy Secretary

Smt. Shamy J., Under Secretary.

INTRODUCTION

I, The Chairman, Committee on Public Accounts, having been authorised by the Committee to present this Report, on their behalf present the Twenty Fourth Report on Action Taken by Government on the Recommendations contained in the Fifty Fourth Report of the Committee on Public Accounts (2014-2016).

The Committee considered and finalised this Report at the meeting held on 21st November, 2022.

Thiruvananthapuram,
8th December, 2022.

SUNNY JOSEPH,
Chairman,
Committee on Public Accounts.

REPORT

The Reports deals with the Action Taken by the Government on the recommendations contained in the 54th Report of the Committee on Public Accounts (2014-16).

The 54th Report of the Committee on Public Accounts (2014-16) was presented to the House on 9-7-2014. The Report contained 20 Recommendations relating to Taxes Department

Government was addressed on 1-8-2014 to furnish the statements of Action Taken on the recommendations contained in the Report and final reply was received on 18-1-2019.

The Committee considered and approved the Action taken statements on the recommendations furnished by Government contained in the 54th Report of the Committee (2014-16) at its meeting held on 5-7-2017, 13-12-2017 and 7-10-2020 and decided not to pursue further action on the recommendations in the light of the replies furnished by the Government. The recommendations and Government replies are incorporated in this Report.

TAXES DEPARTMENT

Recommendation

(Sl.No.1, Para No. 25)

The Committee recommends the Taxes Department that earnest efforts should be made to achieve the target fixed by the Government, time to time, without compromising the VAT collection in near future.

Action taken

Difference between target and collection is due to the reason that target was fixed without taking into consideration of the unforeseen exigencies usually prevalent in the 1691/2022.

trading sector. However when considering the past four years, the difference between target and collection is only marginal as below:

Year	Target	Collection	Percentage of Collection
2010-11	15126.69	15833.11	105.67
2011-12	19428.90	18938.83	97.48
2012-13	23450.52	22511.09	95.99
2013-14	28490.00	25376.19	89.07

The target for the year 2013-14 was re-fixed at Rs. 26686.01 crores and when compared with the revised target, the percentage of achievement was 95%. The reason for revising the target for the year 2013-14 was taking into account the prevailing recessionary trends reflected in the sale of motor vehicles, white goods, luxurious items and also stagnation in the construction sector.

Recommendation

(Sl.No.2, Para No. 26)

The Committee advises the Taxes Department to take all measures for the monthly reconciliation of departmental figures with the figures that booked by Accountant General, and ensure to avoid misclassification in future.

Action taken

In view of the seriousness of the matter, the Commissioner of Commercial Taxes as per D. O. Letter No. FIN.A3.11075/2010/CT dated, 25-5-2013 has directed all the Deputy Commissioners to constitute a special team at the department level for the work of verification of all remittance at the place of remittance and reconciliation with the figures of the Accountant General. Besides, a Committee has been constituted consisting of the JC (A&I), AC-1 and the Finance Officer of the Commissionerate to monitor and supervise the

verification and reconciliation State wide. The Committee conducts inspections at the districts, as and when necessary, to give further directions. In addition to this, the committee has instructions to liaison with the officers concerned in the office of AG for the successful completion of the work at the earliest.

With the implementation of the online payment of tax form 1-1-2009 onwards, Treasury reconciliation is being conducted electronically, based on the payment scroll forwarded by the Banks and the Treasury, SBI and SBT are the Banks permitted to collect tax through e-payment. The e-payment made by dealers are received in the Bank portal and the system will debit the amount from the Bank account of the dealers and credit it into the Government pooling account. Then the Bank will provide payment scrolls on a T+2 basis in the Office of the Commissioner of Commercial Taxes and the Treasury. This will be updated in the KVATIS and the tax remittance system. The Treasury Department will generate payment scrolls which will be submitted to CCT. This will also be updated in the KVATIS and subjected to cross verification of missing credit, if any. Besides, the Bank will submit consolidated statement of payment in every month and this is being reconciled with the Treasury figures.

Recommendation

(Sl.No.3, Para No. 27)

The Committee recommends that all the check posts should be computerised without further delay. It urges to develop an audit module and also to take rectifying measures to clear the discrepancies in the currently using software viz. KVATIS after incorporating the suggestions pointed out by Audit.

Action taken

All check posts having the infrastructure such as power supply, permanent building and connectivity are provided with online facility. Accordingly 45 check posts out of 74 are now provided with the facility of online system. Balance 29 offline check posts are not having the above infrastructure facility. Most of them are functioning either in temporary sheds or in container cabin. As per G.O.(Rt.) No.551/14/TD dated 16-7-2014

administrative sanction has been issued by Government to upgrade the hardware system with a view to rectification measures to clear the discrepancies in the currently using software viz, KVATIS. Action is in progress with regard to tendering and procurement.

The Department has incorporated fundamental changes in the e-declaration process whereby the declaration of form 8F for a registered dealer in Kerala is restricted to the dealer's login. A cancelled dealer is not allowed to take e-declaration with registered dealer status.

Necessary checks will be incorporated in the system to prevent transaction of consignments by dealers who have not renewed the registration after 30th of April 2015.

The issuance and surrender of transit passes have been made online and system has been facilitated to issue alert notices to the check post officers when the vehicle subsequently approaches the check post. Instruction has already been issued vide Circular No. 27/2014 for assessing the transporter/owner of the vehicle who have not surrendered the transit pass at exist check posts.

In addition to the above, alert message by the district DC's in the case of return defaulters is another facility added to KVATIS to minimize the tax evasion.

Recommendation

(Sl. No. 4, Para No. 28)

The Committee directs the Taxes Department for the speedy publication of the comprehensive Manual on KVAT, which is reported to be in draft stage, specifying the procedures for administration of KVAT Act and Rules made thereunder after incorporating the provision for e-filing.

Action Taken

Publication of VAT manual has no relevance now as GST is getting implemented by July 2017.

Introduction of GST will be a very significant step in the field of indirect taxation. Amalgamation of a large number of Central & State taxes into a single tax would mitigate all the ill effect of present taxation system.

Recommendation

(Sl. No. 5, Para No. 29)

The Committee recommends that the Taxes Department should exercise more control over the completion of assessments of Pre-Vat period to ensure that the assessment under fast track was effective and there was no leakage of revenue. It also directs to furnish a report on the latest position of cases where assessment was pending in Pre-VAT period.

Action Taken

Number of KGST assessment pending as on 1-4-2005 (Pre-VAT period) was 1,45,199. Of this, 1,45,151 assessments were completed by 31-3-2014. Assessments pending to be completed are only 48 numbers. These cases are pending finalisation due to interference of various courts. District wise details of pendency as on 30-11-2014 is given below.

Thiruvananthapuram	0
Kollam	0
Pathanamthitta	0
Alappuzha	0
Kottayam	1
Idukki	0
Ernakulam	7
Mattanchery	0
Thrissur	30
Malappuram	0
Palakkad	0
Kozhikode	10
Wayanad	0
Kannur	0
Kasargod	0
Total	<u>48</u>

Efforts are being taken to get the stay vacated by various Courts and to complete the KGST assessment (Pre-VAT) at the earliest.

Recommendation

(Sl. No. 6, Para No.30)

The Committee also recommends that a mechanism should be adopted to ascertain the veracity of the collectable and non collectable tax arrears and to have a systematic classification of collectable arrears under different categories.

Action Taken

The following mechanism is adopted by the Department to ascertain the veracity of collectable and non collectable arrears.

- a) By ascertaining monthly reconciliation of arrear pending collection with the Revenue Authorities on monthly basis.
- b) Deputy Commissioners conduct monthly meetings on Revenue Recovery in their respective districts to review progress of RR collection by Revenue Authorities & Inspecting Assistant Commissioners.
- c) The Department officials follow up RR collection by attending monthly RR meeting convened by District Collector with relevant reconciled data.
- d) By furnishing details such as Bank Account No., movable and immovable property of the defaulter and sureties/partners etc, to Revenue authorities.
- e) By preparing a list of top priority case in each district to furnish the same to RR authorities for urgent action.
- f) By pressing to dispose urgent appeal petitions and stayed cases relating to cases advised for RR.
- g) By modifying formerly disposed orders as per direction contained in Appellate orders and intimate modified amount to RR authorities in time.

Arrear pertaining to older periods carried over and updated annually. This is done by reconciling the department figures periodically with revenue figures and treasury figures.

Considering the recommendations of the PAC the Department had appointed the following senior level nodal officers to monitor revenue recovery of each district.

1. Joint Commissioner (General) - Palakkad, Pathanamthitta, Alappuzha & Malappuram.
2. Joint Commissioner (A&I) - Thiruvananthapuram, Kollam, Kottayam.
3. Joint Commissioner (Law)-Kozhikkode, Thrissur, Wayanad.
4. Joint Commissioner (IA), Audit - Idukki, Kasargode and Kannur.
5. Deputy Commissioner (I), Ernakulam - Ernakulam and Mattanchery
6. Deputy Commissioner (I), Kozhikkode - Kozhikkode GST Roll out.
7. Deputy Commissioner (I) Thiruvananthapuram-Thiruvananthapuram for GST Rollout.

Accordingly the Department prepared collectable and non collectable tax arrears as detailed below.

Details of Arrear (Rs.in crore)

As on 31-3-2012		As on 31-3-2013	As on 31-3-2014	As on 31-3-2015	As on 31-3-2016
Stay by Court	988.6	779.95	881.29	2330.19	3227.72
Stay by Govt.	112.12	249.85	230.19	222.44	116.43
Stay by others	216.85	273.43	630.15	550.48	708.14
Other State	251.51	239.85	214.95	209.47	412.00
Other action	3426.07	3964.71	3538.39	1726.38	1048.50
Collectable arrear	463.49	652.85	1070.87	1359.35	1371.19
Total	5458.64	6160.64	6565.84	6398.31	6883.98

Recommendation

(Sl.No. 7, Para No.31)

The Committee realizes that in Kerala only five to ten percent dealers were got registered and directs the Taxes Department to initiate steps to ensure that all the dealers are got registered . The Committee observes that unlike CST, there is no provision in KVAT Act insisting a dealer to deposit an amount as security for registration. It also recommends to incorporate necessary provisions in the Act to realise the security charge from major dealers.

Action Taken

As per section 17 of the KVAT Act read with Rule 19 of the KVAT a registering authority may demand security deposit where it has reason to believe that the dealer is likely to default in payment of tax. In the case of dealers effecting first sale in the State, furnishing of security deposit is mandatory. The Registering authority has discretionary powers as far as the quantum of security deposit is concerned. Maximum security that can be demanded is limited to one of the tax payable on the annual turn over of the dealer for the year as estimated by the registering authority.

Proviso to Sub Section (2) of Section 17 states that the registering authority shall have the power to demand at any time additional security if such authority has reason to believe that the turn over estimated under sub section (1)or(2) of Section 17 was too low.

CCT has issued Circular construction vide circular 10/2006 prescribing the amount of security deposit to be furnished by under various categories of dealers as below so as to avoid the disparity in collecting security with respect to different offices under CTD.

	Category	KVAT	CST
A. Individual/Proprietorship			
1.	Resident Kerala	5000	15000
2.	Non-Resident Kerala	10000	25000
B. Partnership Firm			
1.	Resident Kerala	10000	25000
2.	Non-Resident Kerala	20000	50000
C. Company			
1.	Resident Kerala	25000	50000
2.	Non-Resident Kerala	50000	75000

As such, provision for insisting security in connection with new registration is already there in the KVAT Act.

Recommendation

(Sl. No.8, Para No.32)

The Committee observes that the amendments made to the KVAT Rules with effect from 31st December, 2007 authorizing AAs to permit petroleum dealers to opt for presumptive tax when turnover in respect of sale of goods below Rs. 50 lakh was null and void, as it is against the provisions contained in the Act, so it recommends that necessary amendment should be made in the KVAT Act in this regard.

Action Taken

Under VAT regime it is necessary to bring more dealers under the tax net so as to increase State revenue. So permission was granted to petroleum dealers to opt for payment of presumptive tax under section 6(5) of the KVAT, Act 2003 if the

total turn over of the dealer in respect of goods to which the provisions of the Act applies is below fifty lakh rupees and the turnover under KGST Act in respect of the goods included in the fourth schedule of the KVAT, Act 2003 shall not be reckoned for the purpose of deciding the eligibility for payment of Presumptive tax under Section 6(5).

For deciding whether a dealer in petroleum products is liable to tax under section 6, the total turnover both under KVAT Act and KGST Act together shall be taken into account. But sale proceeds of goods coming under the 4th Schedule shall not be reckoned for any other purposes of the Act since sub section (3) of section 6 provides that those goods shall be outside the purview of the Act.

Recommendation

(Sl No. 9, Para No. 33)

Regarding the audit paragraph non registration of those liable for registration, the Committee was informed that the certificate issued by the Chartered Accountant is out of order and it directs that a detailed report in this regard should be furnished to the Committee.

Action Taken

The purchase list filed along with the annual return contains only the name of the dealers and place name. Hence it is not an easy task to find out the full address of the dealers by the Assessing Authority.

Moreover, in the GST scenario the turnover limit for taking GST registration is 20 lakhs and none of the 5 unregistered dealers mentioned in the Audit report exceeds this limit. Hence it is not relevant to proceed further in this case. (The detailed report on this case is enclosed in Annexure I).

Recommendation

(Sl. No.10, Para No.34)

The Committee understands that the parcel/courier clearing and transporting agencies would be categorised as dealers and every such agency operating in Kerala should take registration in the circles and even the railway authorities had not obtained registration. Then the Committee suggests the Taxes Department that the matter should be taken up with railway authorities in the light of Audit objection.

Action Taken

As per Clause(XV)of Section 2 of KVAT Act 2003, all Parcel & Courier Services come within the definition of dealer. Section 15 of the said Act requires that they have to take registration under the Act. Section 52 further requires that such agency should submit return in every month in Form 11 A before the assessing authority of the area as prescribed under Rule 13 of the KVAT Rules 2005.

CCT has issued a series of Circular instructions in this regard. As per Circular Nos.33/06 dated 11-10-2006, 32/07 dated 30-7-2007, 50A/07 dated 26-12-2007, 15/08 dated 11-4-2008, the need for registering the Parcel & Courier Agencies and Forwarding Agencies and bringing them under the purview of KVAT Act & Rules has been emphasised.

By virtue of instruction contained in Circular No.32/07 dated 30-7-2007 registration of Parcel agencies were made mandatory. Now the Parcel/Courier/Forwarding agencies having TIN No. only can perform the operation of dispatching goods from other state to Kerala. In short, a person bringing goods from outside State is bound to select a parcel agency which should hold a valid TIN registration.

The Department of Railway, Palakkad and Thiruvananthapuram Divisions have taken separate registrations under VAT Act.

The DRM Palakkad Division is a valid TIN holder on the rolls of CTO, Ist Circle, Palakkad bearing Registration No.32090576141. So also the Controller of Stores, Railway Division, Thiruvananthapuram is holding TIN registration on the rolls of the AC (Assmt) Special Circle Thiruvananthapuram bearing TIN 32010161433.

Besides, facilitation centres are functioning at Thiruvananthapuram Central & Ernakulam South Railway stations to verify the consignments sent through Railway. Steps are being taken to install Facilitation Centres at Kozhikode, Chalakudy and Palakkad railway stations.

Recommendation

(Sl. No. 11, Para No.35)

The Committee strongly recommends that all Local Self Government bodies in the State including Panchayats should mandatorily be registered under KVAT Act with immediate effect.

Action Taken

As per Section 15(2)(x) of KVAT Act, any State Government, Central Government or Government of any Union Territory or any Department there of or any Local Authority/Autonomous body shall get himself registered under the Act irrespective of the quantum of total turn over.

By the implementation of online system of payment of tax and e-filing of return further instruction has been given to them for mandatory registration as per circular instruction.

Data available with the Department reveals that total number of dealers registered under the above category as on 1-4-2014 is 1207 only.

Recommendation

(Sl. No. 12, Para No.36)

Regarding the impropriety in showing opening balance as Rs.9.03 lakh by a dealer in motor vehicles in CTO, Nedumangad whose closing balance was Rs.18.89 lakh, the Committee observes that the Taxes Department had taken

different stance at the time of furnishing note and at the time of witness examination. So the Committee directs the Taxes Department to furnish a detailed report in this regard at an early time.

Action Taken

The department has introduced the system of online uploading of closing stock in KVATIS. Dealers are to upload their closing from 2009-10 onwards.

M/s. Zion Automobiles, a dealer of two wheelers and spare parts, Kattakkada was an assessee on the roles of CTO, Nedumangad. During the year the above dealer had disclosed total and taxable turnover of Rs.1,14,18,877. Regarding the stock record in the Profit and Loss account and the closing stock inventory worth Rs.986409 as pointed out by AG, the assessment records were verified which reveals that the closing stock value shown in the books of the accounts of the dealer is only the actual physical closing stock value. In order to achieve the target given by the company, the dealer issued post dated cheques to the Company and the bills were arised for the stock so as to achieve the targets of vehicles and spares. During the finalisation of accounts post dated cheque amounts were also taken into accounts and hence a stock difference of Rs.986409 had occurred. Hence there is no attempt of evasion of tax. The dealer has reported stoppage of business with effect from 23-9-2009.

Recommendation

(Sl. No. 13, Para No.37)

The Committee recommends the Taxes Department that steps should be taken to fix minimum amount of penalty from the dealers for the default in submitting return in time at the earliest.

Action Taken

For the default of return non filing, assessing officer has the discretion to impose penalty up to Rs.10,000. A provision has been made to make it mandatory through the Finance Act 2004. As per the amendment made in the proviso to

Section 67, if a person has failed to submit the return as required by the provisions of the KVAT Act or the Rules made thereunder a minimum penalty of Rs.1000 shall directed to be paid.

Recommendation

(Sl. No. 14, Para No.38)

The Committee also recommends that more discreatory powers should be assigned to Assessing Authorities, by empowering them to impose more stringent penal action against the defaulters, who failed to submit the annual return in time.

Action Taken

As per Rule 22(2) “Every dealer registered under the Act and every dealer liable to get registered under the Act and every dealer who is required to do so by the assessing authority, irrespective of the quantum of his total turn over, shall, on or before the 30th day of April every year, submit to the assessing authority of the area a return in Form 10 showing details of total turnover, exempted turnover, taxable turnover, OPT, IPT, net tax, etc along with annual statements prescribed therein. Section 67(1) (e) of the Act envisages for the imposition of penalty upto Rs.10000 for non filing of annual return. Inspite of the above express provision in the Act, the assessing authority can estimate the turnover of the return period and complete the assessment to the best of its judgement as per Section 22(3) of the Act and demand the tax due with interest in addition to the imposition of penalty as above. Since there are sufficient provision in the statute as stated above. More discretionary power to the assessing authority may not be needed in respect of penal action.

Recommendation

(Sl. No. 15, Para No.39)

The Committee remarks that after the launching of computerisation, benchmark data can be easily accessed, and recommends that a software should be developed so as to avoid the external inconsistency if any occurred.

Action Taken

After computerisation, e-consignment of declaration has been made mandatory from February 2012 onwards vide Circular No.16/2011 dated 26-8-2011. Accordingly, all dealer details are readily available at check posts for verification. So also, all check post transactions are instantly accessible to the assessing authority concerned. Electronic filing of returns, uploading purchase and sale invoices (own and build from others), e-filing of audit reports, in Form 13 & 13A, closing stock inventory and P & L Account etc has been made mandatory. Cross verification of return with reference to updated details of purchase and sales invoices, closing stock inventory, 13, 13A statements and P & L Account are possible electronically and easily accessible to all assessing authorities. Therefore, the possibility of any external inconsistency is completely avoided.

Recommendation

(Sl. No. 16, Para No.40)

The Committee also recommends that, the procedures for the verification of accounts of dealers should strictly be complied with, as envisaged in the KVAT Act/Rules.

Action Taken

Section 40 of KVAT Act read with Rule 58 of the KVAT Rules prescribes the procedure for the maintenance of true and complete accounts. By a proviso added to Section 40 with the Kerala Finance Act 2008, the dealers are permitted to use electronic billing and accounting subject to certain restrictions and conditions prescribed. Circular No.23/08 dated 16-5-2008 and Rule 58 (20A) has prescribed such restrictions and conditions.

Electronic filing of audit report in form 13/13A has been made mandatory with effect from 1-8-2011. Cross verification of returns with reference to updated details of purchase and sales invoices, closing stock inventory, etc are possible electronically in the case of dealers having turnover of and above Rs.60 lakhs. Besides, online filing of P & L Account has been launched in 2014. So that cross verification of business transaction in respect of dealers failing below Rs.60 lakhs

is also possible electronically. The check posts transaction can be cross verified with the help of MIS reports which is easily accessible to all assessing authorities. Dealer to dealer transaction can be cross verified with the help of updated purchase and sale invoices of both the dealers.

However instructions have already been given to the assessing officers to verify the books of accounts invariably with respect of refund cases, best judgement assessment, etc.

In the VAT scenario the conventional system of assessment by the department has been replaced by self assessment.

Recommendation

(Sl. No. 17, Para No.41)

The Committee observes that registered dealers are not liable to tax and compound tax dealers are not eligible for ITC. Hence it stands for developing a system for allotting a temporary number for compounded tax dealers instead of TIN in order to easily detecting the situation of availing inadmissible ITC on purchase from registered dealers.

Action Taken

Under KVAT Act, compounding is optional. Dealers opted for compounding under Section 8 of the Act in a year may not for compounding next year. In the case of a works contractor, the Contractor is at liberty to opt for compounding either the whole works executed by him or certain works done at his option. Hence allotting separate identification number to the compounded dealer may not be a practicable option.

With respect to the case of availing inadmissible ITC by the compounded dealers already there is a provision for identifying compounded dealers from MIS reports which is easily accessible to the assessing authority. Automated check measures can be introduced in this regard in the course of the proposed up gradation of KVATIS.

Recommendation

(Sl.No. 18, Para No. 42)

The Committee strongly recommends to the Taxes Department that necessary steps should immediately be taken to amend the KVAT Act, so as to strengthen the provision regarding the imposition of penalty for first and subsequent offences.

Action Taken

In view of the recommendation it was decided to fix minimum amount of penalty for non filing of returns and accordingly the Finance Act, 2014 introduced a minimum penalty of Rs. 1000 for non filing of returns (extract of the Finance Act is enclosed as Annexure II.)

The following measures were introduced in the case of continuing offences as subsequent offences.

1. Directions were issued to complete provisional/final assessment in such cases.
2. Blocking of check post transactions in such cases.

Recommendation

(Sl. No. 19, Para No. 43)

The Committee recommends that necessary amendments should be made to the KVAT Rules to ensure that while sanctioning refund of ITC, Assessing Authority should confirm genuineness of the claim by cross-checking the purchase invoices.

Action Taken

The KVAT Rules 46, 47 & 47A, specifically provide the procedure to be completed for the detailed verification of genuineness of refund application. CCT had already issued a Circular instruction to the assessing officers Vide No. 13/2006 by which, it has been instructed that while examining the claim of refund, the aitroutu concerned should verify the invoices shown in Form No. 21 with reference

to the purchases for which input tax credit had been claimed in the return and satisfy the correctness thereof. Since there is already sufficient provision in the rules and circular instruction modification in the KVAT Rules may not be needed.

Recommendation

(Sl. No. 20, Para No. 44)

The Committee expresses its anguish and its concern over the irregularities unearthed by Audit Wing in Commercial Tax office, Changanassery and recommends that the amount of Rs. 2.10 lakh must be realized from the dealer himself mentioned in the report of the Accountant General and the matter should be reported to the Committee.

Action Taken

M/s Changanassery Social Service Society is a registered dealer dealing with Khadi and Village Industries items and furniture and handicrafts

2005-06

M/s Changanassery Social Service Society has filed annual return for the year 2005-06 declaring a total turnover of Rs. 1,36,09,973 and taxable turnover of Rs. 53,68,160. The dealer filed application in Form 25 A for claiming input tax credit on opening stock as on 1-4-2005 for an amounts of Rs.2,73,514. As per Order dated 30-3-2006 the Commercial Tax Officer granted input tax credit on opening stock to the tune of Rs. 2,53,010 The dealer had availed the same in the monthly returns of 03.06 and has excess input tax amounts to Rs. 46,422. Hence the dealer filed Form 21CC for claiming refund of Rs. 2,99,432 (Rs. 2,53,010+ Rs. 46,422). The Commercial Tax Officer sanctioned refund for the same as per Order dated 1-2-2006 and adjusted the same towards the arrears of 2000-01 and 2003-04.

As per the Order dated 26-3-2008 of CTO (AA) the excess remaining for the year 2005-06 is Rs. 85,343 only. The refund already issued was Rs. 2,99,432. Hence the balance amount of Rs. 2,14,089 was demanded with interest.

But in the Order dated 26-3-2008 following payments were not given credit by mistake.

Payment	Chalan No. & Date
Rs.7,026	162/10-9-2005.
Rs.26,456	184/24-11-2005.
Rs.5,106	108/9-12-2005.
Rs.73,974	880/11-2-2006.
Rs.32,055	269/21-2-2006.
Total Rs. 1,44,617	

The dealer paid balance amounting to Rs. 69,472 with interest of Rs.22,926 (Total Rs. 95,880) vide chalan No.98 dated 30-3-2009. So there is no balance due.

2006-07

As per the annual return of 2006-07 the dealer had shown Rs.2,09,774 as excess input tax credit carried forward from previous return period. But on verification, it is understood that this amount is the total of tax payment during the years 2005-06 and excess input tax credit unadjusted in 03-2007.

Total payment for the year 2006-07	-	Rs. 1,63,352.00
Excess input tax credit unadjusted during 03-06	-	Rs. 46,422.00

Total		Rs. 2,09,774.00
		=====

This amount was shown as excess input tax credit carried forward from previous return period mistakenly. The excess input tax credit carried forward

from 03-06, Rs. 46,422 was paid vide chalan No. 453 dated 11-10-2006. The dealer also filed revised annual return for the year 2006-07. Hence there is no short levy in this case. The copies of demand notice, assessment order and challan are enclosed as **Annexure III**.

Thiruvananthapuram,
8th December, 2022.

SUNNY JOSEPH,
Chairman,
Committee on Public Accounts.

Annexure - I - Detailed Report

The C & AG has included the audit case relating to M/s. St. Thomas Wood Industries, Avinissery for the year 2006 - 07 in the audit report for the year ended 31.03.2009 (Vol. II) vide para 4.4.1.1.

As per the observations in the Local Audit Report, the books of accounts of the assessee were called for and verified in detail. On verification, it was found that the entire purchase of packing cases was not effected by the assessee from 5 persons pointed out in the audit note. As per the purchase bills and vouchers produced for verification, the purchases were effected from unregistered dealers numbering to more than 70 persons. As per the records, the above 5 dealers had no turnover exceeding Rs. 5,00,000/- and they were found to be not liable for registration under the KVAT Act. This aspect was confirmed by the Chartered Accountant who had conducted the compulsory audit under section 42 of the Act, a copy of which was already forwarded along with the reply to audit. The observation in audit was that as per the purchase list filed by the assessee, the major share of the purchases is effected from 5 unregistered dealers. The explanation of the assessee was that it was due to the laziness and mistake of the accountant that the purchases were shown as only from 5 persons instead of listing the 70 odd suppliers. He has mentioned that name of only 5 persons in the purchase list. Assessing authority examined the contentions of the dealer with the books of accounts produced including purchase vouchers and on personal enquiry revealed that there is some merit in the contention of the assessee. The verification of accounts also revealed that the five persons have the following turnover only during the year 2006-07 and found that all these five persons have not exceeded the turnover of 5 lakhs to get registered under KVAT Act 2005. The details of their turnover as per books of accounts are given below.

1. Vasu Vallachir	Rs. 479640/-
2. Jose Vallachira	Rs. 287461/-
3. Sunil Perinchery	Rs. 175425/-
4. Davis Perinchery	Rs. 192699/-
5. Unnikrishnan Pattambi	Rs. 193873/-

The contention of the assessee was found to be acceptable as per the books of accounts produced and in the light of the above facts; the objection in audit was found to be unsustainable.

Without prejudice to the above, coming to the quantification of the escape of Registration Fee and Penalty arrived on by the audit, it is also seen that there are some factual mistakes. The registration fee stated to be escaped is fixed at Rs. 1,00,000/- i.e., maximum registration fee of Rs. 20,000/- each from 5 dealers. The maximum registration fee has been estimated solely for the reason that the turnover of the purchasing dealers would be above crores of rupees considering the sales effected by them to other dealers. This observation of the audit is purely based on presumptions and surmises. As per the details of purchases relied on by the audit in estimating the tax due for the purpose of determination of the penalty, the details of sales turnover is as follows:

Vasu Vallachira	Rs. 17,95,680/-
Jose Vallachira	Rs. 19,56,990/-
Sunil Perinchery	Rs. 11,12,890/-
Davis Perinchery	Rs. 12,68,400/-
Unnikrishnan Pattambi	Rs. 10,06,570/-

In order to levy Registration fee of Rs. 20,000/- each from the dealer, they should have turn over above Rs. 4,10,00,000/-

Apart from the above purchase details available in the assessment records, there are no other material evidences either with the assessing authority or with the audit party to show that the turnover of the purchasing dealers have exceeded Rs. 4,10,00,000/- There are no evidences to show that the above dealers have effected sales of packing cases to any other dealers in Kerala. In the absence of such evidences, the observation that the turnovers of the above dealers are above crores of rupees and thereby, they are liable to pay the maximum registration fee of Rs. 20,000/- each is not legally sustainable. The entire findings of audit are based on the purchase details available in the assessment records. If this is to be regarded as the purchase turnover of the above 5 dealers, though no such evidences are revealed on verification of the accounts the estimation of the quantum of penalty is arrived at double the rate

of tax on the turnover conceded in the purchase list, the audit is not justified in estimating another turnover for the purpose of levy of registration fee. Based on the turnover conceded in the purchase list, the registration fee, if any, due from the above 5 dealers as per the table to Section 16(1) of the Act are as follows.

	<u>Turnover</u>	<u>Registration fee due</u>
Vasu, Vallachira	Rs. 17,95,680/-	Rs. 1,200/-
Jose, Vallachira	Rs. 19,56,990/-	Rs. 1,250/-
Sunil, Perincherry	Rs. 11,12,690/-	Rs. 1,050/-
Davis, Perincherry	Rs. 12,68,400/-	Rs. 1,075/-
Unnikrishnan, Pattambi	Rs. 10,08,570/-	Rs. 1,025/-

		Rs. 6,600/-
		=====

As per the third provision to section 6(1) of the KVAT Act where the total turnover of a dealer, other than an importer or casual trader or agent of a non-resident dealer or dealer in jewellery of gold, silver and platinum group metals and silver articles or contractor, exceeds ten lakh rupees for the first time during the course of an year, such dealer shall be liable to pay tax under this sub-section only on the turnover in excess of ten lakh rupees. By virtue of the above provisions, the above dealers are liable to pay tax only on the turnover exceeding Rs. 10,00,000/- as the assessment year under question is the first year of their business and their turnover has exceeded Rs. 10,00,000/- for the first time. The audit has no case that the above 5 dealers have done business in the previous years or no such material evidence is available with the assessing authority. The above 5 dealers are liable to pay tax only on the turnover exceeding Rs. 10 lakhs during the assessment year 2006-07. So, the tax liability, if any, of the above 5 dealers has to be worked out as follows.

	<u>Total Turnover</u>	<u>Taxable Turnover</u>	<u>Tax due @ 4%</u>
Vasu, Vallachira	Rs. 17,95,680/-	Rs. 7,95,680/-	Rs. 31,827/-
Jose, Vallachira	Rs. 19,56,990/-	Rs. 9,56,990/-	Rs. 38,280/-
Sunil, Perincherry	Rs. 11,12,690/-	Rs. 1,12,690/-	Rs. 4,508/-
Davis, Perincherry	Rs. 12,68,400/-	Rs. 2,68,400/-	Rs. 10,736/-

Unnikrishnan Pattambi Rs. 10,08,570/- Rs. 8,570/- Rs. 343/-

Total Rs. 85,694/-

The total tax due from the above 5 dealers come to Rs. 85,694/- only and penalty at twice the rate comes to Rs. 1,71,388/-. Hence, it can be seen that the escape of registration fee and penalty amounts to Rs. 1,77,988/- only as against Rs. 8.57 lakhs pointed out in the audit report. It is also pertinent to note that levy of penalty at twice the amount of tax due is not mandatory. The penalty contemplated under section 67(1) of the Act is an amount not exceeding twice the amount of tax sought to be evaded.

Considering the above facts, the observation of the audit is not sustainable.

Joint Commissioner(A&I)

(15) in section 57, to sub-section (3), the following proviso shall be inserted, namely:—

Provided that the power of the Deputy Commissioner to remand a case is limited to ex-parte orders only.”;

(16) in section 67, for the existing proviso, the following proviso shall be substituted, namely:—

Provided that in the case of item (c) above, a minimum penalty of rupees One Thousand shall directed to be paid.”;

(17) in the SCHEDULES,—

(a) in the First Schedule,—

(i) in serial number 4A, item number (2) and the entries against it in columns (2) and (3) shall be omitted;

(ii) after serial number 18 and the entries against it in columns (2) and (3), the following serial number and entries shall, respectively, be inserted, namely:—

“18A. Flour, Sooji

(1) Wheat or meslin flour	1101.00.00
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(2) Maida	****;
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(3) Sooji	*****
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(iii) in serial number 35A, in the entry in column (2), the words “paper cups” shall be added at the end;

(iv) in serial number 42, for the entry against it in column (2), the following entry and Note shall be substituted, namely:—

“Rice issued from Central/State
Government depots or sold by
Food Corporation of India for
sale by authorized ration dealers

Note:—This entry shall be deemed to have come into force on the 1st day of April, 2005”;

(v) after serial number 42A and the entries against it in columns (2) and (3), the following serial number and entries shall, respectively, be inserted, namely:—

“42B. Rice bran oil

*****;

THE KERALA VALUE ADDED TAX ACT, 1987
FORM NO. 41

NOTICE OF DEMAND

(See Rules 22, 39, 47, 53, & 55)

HELP LINE - contact person at the

Registration Certificate No.

27050770

Tax Identification No.

Demand No.

Assessment Period

2005/01

Take notice that on the basis of return in form No. 10 filed by you for the return period 1/10 to 3/06 and on the basis of office proceedings dated 18/3/10 relating to assessment, or otherwise you are liable to pay balance dues as shown below.

Sl. No.	Particulars	Due	Paid	Balance
	Tax	12905	-	12905
	1st	6005	-	6005
	Settlement	18196	-	18196
	7018	5766	-	5766

This balance amount of Rs. 37666/- is payable by you within fifteen days from the date of service of this notice by post to the address on which demand draft in favour of the undersigned or by remittance into the Treasury at Changanassery which the same shall be recovered as a part of arrears of land revenue and/or the amount of a registered demand for imposition of penalty under Section 69 of the Act.

Place: Changanassery

COMMERCIAL TAX OFFICE

Date: 18/3/10

Note: If payment is made by Cheque, the Cheque must be made payable to the Treasury Officer and the dealer shall ensure that the Cheque is deposited in the Treasury.

[Signature]
18/3/10

PROCEEDINGS OF THE COMMERCIAL TAX OFFICE, CIRCLE A
CHANGANACHERRY

Present:- SRI P. C. RADHAKRISHNAN

- Read:- 1. Notice issued U/S 25(1).
2. Reply filed 28.1.2010.

ORDER NO. 320507A-45.03.16 dtd 18/3/10

M/s Changanacherry Social Service Society is a Khadi Village Industries Unit approved by Kerala Khadi & Village Ind. Board, dealer in honey soap, furniture etc. on the rolls of this office. The assessment for the year 2005-06 was completed on best judgement by including same suppressed turnover and the order issued on 26.03.08. On further scrutiny of the return certain irregularities found are brought to the notice of the dealer as per Notice U/S 25(1) of the following proposals.

Turnover of Sales (Purchased Goods)

Month	Branch	Honey, Soap, Oil	Leather Goods
04/05	I	186264	30596
	II	2302.50	1300
	III	12897	6305
05/05	I	178696.50	43235
	II	2993	1160
	III	12612.20	7580
06/05	I	222696	29049
	II	1596	810
	III	13015.50	9400
07/05	I	238688	30381
	II	3856.50	640
	III	14384.50	7077

08/05	I	296125	50850
	II	2448	740
	III	13159.50	10093
09/05	I	172557	47866
	II	1224	370
	III	5243	0
10/05	I	143000.50	43918
	II	1632	570
	III	12128.50	8140
11/05	I	155019	68100
	II	16635	5797
12/05	I	131631	45094
	II	14574.50	13249
01/06	I	202496	41240
	II	13892	13560
02/06	I	17171.50	17016
	II	11139	7248
03/06	I	293712	16247
	II	12295	5537
		1426901	366778
TOTAL		2629223	591674

Out of the turnover exempted of 50% the turnover of Rs. 2,62,92,23 was exempted. 4% turnover of Rs. 91,074/- was taxable @ 12.5% and 1% turnover relating to sales of own products and exempted goods (Cane, Coal, Wood etc.) are also taxable.

Taxable @ 4% on Rs.26,29,223/-	Rs.1,05,169/-
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Leather goods @ 12.5% on Rs.5,91,074/-	Rs. 73,884/-
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Total	Rs.1,79,053/-
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Above notice served on to the dealer on 25.1.10 assessee filed reply and produced books of accounts on 28.1.10 for the year 2005-06 and verified by me. In the reply the stated that:

1. On 30.11.2007 the Audit Team No. 1 from the office of the Deputy Commissioner (AA) Commercial Tax, Kottayam visited and inspected all the books of accounts for the year 2005-2006 and they issued notice under section 24(1) of the KVAT ACT dt. 13.3.08 and we have replied dt. 19.3.08 by letter No. CS/KH/VAL/07.08/214.
2. The final assmt. order No. 32050774045/2005-2006 dt. 28.3.08 presented by Sri. P.V. Iype, Office of the Deputy Commissioner (AA) Commercial Tax, Kottayam was received by this office on 29.03.08 and we have remitted the entire tax dues for the year 2005-2006 with interest on 30.03.2009.
3. Being an NGO, CHASS is having almost all the production of Khadi & VI items and we have also purchased some items for the sales at our Khadi Emporioms. The list of items sold out of the manufactured and purchased for the year 2005-2006 is enclosed as Annexure No. I (Page No. 1 to 6), reconciliation statement between monthly returns and Ledger Annexure No. II (Page No. 1 to 4) for your information. The same list was already presented and submitted before Sri. P.V. Iype, Office of the Deputy Commissioner (AA) Commercial Tax, Kottayam while conducting the spot verification. Together with this we are also submitting the copy of the Assessment Order as Annexure No. III (Page no. 1 to 10) for your information.

As per this assessment, the sales turnover of honey, soap and oil for the year 2005-06 is Rs. 2,24,795/- only and not Rs. 26,29,223/- as per your cited notice. The total sales effected for Leather goods for the year 2005-06 was Rs. 5,05,769/- out of which Rs. 1,78,885/- was the sales made from the outside purchase and the balance Rs. 3,26,884/- is the own production and assessed by Team No. 1 of the Audit Party in the Office of the Deputy Commissioner (AA), Commercial Tax, Kottayam.

In this regard we may inform you that we have not purchased the finished goods of honey, soap and oil except the raw materials for producing the same and not claimed the input tax for the said raw materials consumed.

In total we have paid Rs. 27.04 lakhs as wages to our Artisans workers for production of various Khadi & VI goods during the year 2005-06 and copy of Form No. 13 & 13A in this regard is also enclosed. Annexure No. IV (Page No. 1 to 16) for your information and necessary action.

On verification of the books of accounts it is revealed that the society running beekeeping Indl. and training centres and the honey processed in these centres was included in the turnover conceded as non taxable items. The society gave remuneration to these trainers against vouchers and these expense were included in trading profit and loss accounts as the direct expenses. The society also purchased raw honey valued Rs. 1,06,500/- for the year 2005-06 from local honey bee farmers and processed this raw honey as honey for sale which is an item coming under Ist schedule to VAT Act as products notified by the Khadi & Village Industries Commission at the point of sale by the manufacturing unit appeared by Khadi & Village Industries Board. Hence the tax levied for the sale of honey, soap and oil for Rs. 26,29,223/- is treated as non taxable sales. Also on verification of accounts it is ascertained that the sales effected for leather goods to the tune of Rs. 1,78,885/- i.e. Which was the purchase made from the external parties pay tax at

The following rate as the purchase was effected from same other dealers and it is assessed as under:

Sl. No.		12.5% taxable	4% taxable	Tax levied
1.	Khadi Grama Udyog Bhavan, Sastri Road, Kottayam	58432	34314	8430
2.	Khadi Grama Udyog Bhavan, Palace Road, Changanacherry	10725	10394	4137
3.	Khadi Bhavan, Near KSRTC Bus Stand, Ettimamoor	140	6500	113
4.	Total	67617	11428	2098

Interest @ 4%

Settlement fee

Total

Rs. 2,000

Rs. 10,196

Rs. 77,109

This should be paid as prescribed in the demand notice issued.

Comptroller of Accounts

To

The Secretary,
Changanacherry Social Service Secretariat,
Arch Bishops House, Changanacherry.

Ccy:-

Received
18/3/10

PROCEEDINGS OF THE COMMERCIAL TAX OFFICER / CHANGANACHERRY

Present - Sri. P.G. Radhakrishnan

Read - 1. Notice Issued US 25(1)

2. Reply filed dt. 27.03.10

ORDER No. 32050774045/06/07

M/s Changanacherry Social Service Society is a Khadi & Village Industries Unit approved by Kerala Khadi & Village Ind. Board, a dealer in honey, furniture etc. on the rolls of this office. On scrutiny of the returns, annual return and (3.13) A certain irregularities are found and brought to the notice of the dealer as per Notice US 25(1) for the following proposal.

The turnover on sales and output tax due for the return period 21XX.07.

Commodity	Total turnover	Exempted turnover	Output tax
Khadi & Village Inds.	1,01,75,332.00	1,01,75,332.00	
Furniture etc.	44,10,259.00	0	5,43,917.00
Leather	75,209.00		9,398.62

You had treated as a non taxable sales of Khadi and Village Industries items for a turnover of Rs. 1,01,75,332/- under entry 55 of the 1st schedule. The exemption is allowable on products notified by Khadi and Village Industries Commission at the point of sale by the manufacturing units (item 1 to 21) under the entry. On further scrutiny of the monthly return it was seen that you had purchased honey, traps, oil, leather goods etc. and the sales was treated as non taxable along with handicraft goods of own produce. Since the dealer was a dealer as well as a manufacturer recognized by Khadi and Village Industries Commission, the exemption was admissible on sales of goods manufactured.

The other item was taxable at the scheduled rate. The turnover exempted by you the turnover of Rs. 27,96,991/- was taxable @ 4%. Turnover of Rs. 5,59,917/- was taxable @ 12.5% and only balance turnover relating to sale of own prod. and exempted goods (cane, coir, window frame etc. are non taxable).

Tax due @ 4% on 27,96,991	
Honey entry 58 of 3 rd schedule	Rs. 1,11,879.64
Hand made soap entry 58 of 3 rd schedule	

were included in the trading profit and loss accounts as the direct expenses. The society not purchased finished goods of honey soap and oil except raw materials for producing the same and not claimed input tax for the said raw materials consumed. Hence tax levied for honey soap and oil for Rs. 27,96,991/- is treated as non taxable sales. Also a verification of the accounts it is ascertained that out of the total sales turnover effected for Rs. 5,59,916/- Rs. 2,45,821/- is @ 4% and Rs. 92,990/- is @ 12.5% taxable and the balance Rs. 2,21,105/- is the own production made from the Unit. This times is assessed as under.

Sl. No.	Name of the sales outlet	12.5% taxable	4% taxable	Tax levied
1	Khadi Gramodyog Bhavan, Sagari Road, Kottayam	85,545.00	1,72,364	17,588.60
2	Khadi Gramodyog Bhavan, Palace Road, Changanacherry	7,445.00	73,457.50	3,869.00
	TOTAL	92,990.00	2,45,821.50	21,457.60
			Interest @ 35%	8,725.16
			Settlement fee	2,175.00
			TOTAL	32,357.76

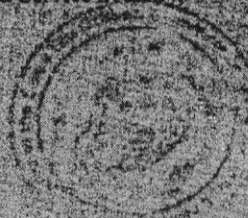
This should be paid as prescribed in the demand notice issued.

Commercial Tax Officer

To

The Secretary,
Changanacherry Social Service Society,
Arch Bishop House,
Changanacherry.

Gey/-



19/5/51

Leather goods @ 12.5%	Rs. 69,989.50
Rs. 5,59,916/- entry 54, 5 th Schedule	Rs. 1,81,869.14
Short levy of output tax amount to	Rs. 1,81,869.00

This should be paid with interest and settlement fee as per rules

Above the notice was served on to the dealer and the assessee filed reply and produced books of accounts for the year 2006-07 and verified by me in the reply was stated that "Being an NGO approved by both Central and State Govt. CHASS is having the production and marketing and almost all Khadi and Village Industries Units. We are having one honey processing centre and its training center at Samrudha Kunmpanadom and also running Leather chappal manufacturing its training programme at Khadi Centre, Aihirampuzha.

In this regard we may inform you that, we have not purchased the finished goods of honey soap and oil except the raw materials for producing the same and not claimed the input tax for the said raw materials consumed. These three items are already comes under the exempted category list of 21 items of khadi and Village Industries Commission.

In total we have paid Rs. 31.70 lacs as wages to our Artisan Workers in the production of various Khadi and VI goods during the year 2006-07 and the same can be confirmed from the books of accounts of this Institution.

As per notice the Sales turnover of leather goods for the year 2006-07 is Rs. 55,59,916/- of which Rs. 24,58,21/- is 4% taxable and Rs. 32,99,90/- is 12.5% taxable items, out of the total sales Rs. 33,88,11/- made from the outside purchase and the balance Rs. 22,11,05/- is the own production made from our unit. Khadi Centre Aihirampuzha, chappals purchased and sold during the year 2006-07 is shown in Schedule I.

Therefore we humbly request your kind self to understand the facts and figures stated above and further action if any for demanding additional tax together

with interest for the year 2006-07 may please be dropped.

Thanking you in anticipation.

On verification of the books of accounts it is revealed that the honey processing bee keeping industries and training centres and the honey products these centres were included in the turnover and concealed as non taxable items.

THE KERALA VALUE ADDED TAX
 RULES 2005
 FORM NO 12

Notice of demand

Sl. Nos. 22, 28 & 31 & 35

Registration Certificate No.

Tax Identification No. 820502-74015

Demand No.

Year Return Period

06-07

To

Chas
 Changanacherry

Take notice that on the basis of return in Form No. 10 filed by you for the return period 2006-07 and/or as per this office proceedings dated relating assessment or otherwise you are liable to pay balance due as shown below.

Sl. No.	Particulars	Due	Paid	Balance
1	Tax	21457		21457
2	Interest			
3	Secured	8159		8159
4	Penalty			
5	Room, Rental fees			
6	Others	24462		24462
	TOTAL	Rs. 54078	Rs. —	Rs. 54078

The Balance amount of Rs. 54078 Rupees, 1/44 paise and 1/44 paise (Rs. 54078) shall be paid within fifteen days from the date of service of this notice by crossed cheque or crossed demand draft in favour of the undersigned or by remittance to the Government Treasury at Changanacherry which the same will be recovered as if it were an amount of land revenue and/or fine imposed by Magistrate besides being proceeded against for imposition of penalty under section 63 of the Act.

Place: Changanacherry

Date: 1/5/10

Signature of the Officer
 Revenue Officer