

**GOVERNMENT OF WEST BENGAL
DIRECTORATE OF COMMERCIAL TAXES,
14, BELIAGHATA ROAD, KOLKATA – 700 015.**

TRADE CIRCULAR

No : 3 / 2008

Date : 01.09.2008

A big volume of changes had been brought in the WBST Act, 1994, the WBST (SOD) Act, 1999 and in the W.B. VAT Act, 2003 by the introduction of the W.B. Finance Act, 2008. Trade Circular No. 01/2008 dated 29.04.2008 was issued to highlight those changes in a nutshell. This time Notification No. 1163-FT dated 23.07.2008 is issued by Government laying down series of amendments made in the W.B. VAT Rules, 2005. In between these two, Notifications i.e. No. 985-FT dated 18.6.08, 988-FT dated 19.6.08, 989-FT dated 19.6.08, 1030-FT dated 30.6.08 and 1051-FT dated 3.7.08 have been issued by Government and required changes have been given effect to. This Trade Circular is an attempt to bring into focus some salient features of these changes which have not been spelt out in any way in T.C. No. 01/2008. Though this Trade Circular is issued for information to all concerned, for detailed information and better understanding of the laid down procedures, the relevant rules of the WBST Rules, 1995, the WBST (SOD) Rules, 1999 and of the W.B. VAT Rules, 2005 may please be consulted.

A. Changes effected by amendment in WBST Rules, 1995.

- i) Form 56A is the appropriate form required to apply for settlement before Settlement Commission. Change in clause (a) of Explanation below sub-section (2) of section 8B and change in clause (e) of that Explanation are duly accommodated in sub-paragraphs A and E of the form respectively. Both the modifications had come into effect w.e.f. 1.8.06 as was mentioned in Trade Circular No. 01/2008 dated 29.04.08.
- ii) Rates of taxes on sales of Petrol and Diesel have undergone major changes on and from 5.6.08. To arrive at the present applicable rates the following calculation will be helpful.

Sl. No.	Item	Period	Applicable rates of sales tax
1	Diesel	1.4.08 to 4.6.08, 5.6.08 to 30.6.08, 1.7.08 to.....	17% 12.5% 17% advalorem, less Re. 1.36 per litre.
2	Petrol	1.4.08 to 4.6.08, 5.6.08 to 30.6.08, 1.7.08 to	25% 20% 25% advalorem less Rs. 2.09 per litre.

Cess and additional sales tax remain applicable as usual.

B. Changes effected by amendment in WBST (SOD) Rules, 1999.

By amending clause (a) and clause (bb) of rule 2, the date of pendency of appeal and revision cases has been re-scheduled at 31.03.2008. The most notable feature of this amendment is that this time there is no upper cap of the period, though bottom line is rescheduled on 31.3.08. A dealer can now apply for settlement for any appeal lying pending on 31.3.08 irrespective of its date of filing.

C. Changes effected by amendment in the W.B. VAT Act, 2003.

- i) By insertion of entry 33A in the Table in rule 3, CCT., W.B. has been authorized to delegate the power to determine late fee u/s. 53A to the officer not below the rank of Sales Tax Officer.
- ii) The declaration which is required to be submitted before registering authority for getting registration under amended AMNESTY SCHEME has undergone thoroughly changes by this amendment. Now it has become meaningful with the changed rate of tax which is changed from 1% to 0.5%.
- iii) Fresh attempt is made to regularize the issue of certificate of registration to the dealers deemed to have been registered under section 23(3) of the Act. One single page Form 3 i.e. certificate of Registration is also prescribed which will be effective from 1.9.08. Rule 7A is inserted into the rules. By virtue of this newly inserted rule, the assessing authority has been given the power to issue fresh R.C. in Form 3 to a dealer who was deemed to have been registered on the appointed day and whose allotted R.C. has not yet been cancelled by him. Furnishing of information in Form 2 is dispensed with and assessing authority is now empowered to utilize the information contained in Form 2 granted to such dealer under WBST Act, 1994. The only restriction is that such dealer shall have to furnish a return under VAT Act.
- iv) Changes in rule 9, rule 11 and in rule 12 make it mandatory that a dealer registered under the Act shall have to display the R.C. at his principal place of business and the certified copies of R.C. at every other place of business. R.C. and certified copies of R.C. are to be obtained from the assessing authority. Duplicate copy of R.C. can be applied for on payment of court fee stamp of Rs. 50/-. It has also been made mandatory that while a dealer will pray for amendment of R.C., he will furnish R.C. and certified copies of R.C. along with his application for amendment. In case of acceptance of certificate authenticated by a digital signature issued under IT Act, 2000, the assessing authority will only record such acceptance within 7 days from the date of receipt of such information. Assessing authority will also record the information in similar way for opening and/or closing of bank account by any dealer. Amendment of R.C. is not necessary in these two cases.
- v) The term "late fee" which has replaced the term "penalty" vide Finance Act, 2008 with effect from 1.4.2007 has accordingly been reflected in the practice and procedure to be followed under rules 16A and 16B for restoration of R.C. cancelled under clause (e) or clause (f) of section 29(1) of the Act. Not only payment of tax and interest but also payment of late fee is required before restoration of R.C. etc.
- vi) The term "capital goods" has been redefined under clause (6) of section 2 of VAT Act vide Finance Act, 2008 w.e.f. 1.4.08. Claim of ITC or ITR on capital goods u/r. 19(2) required to be clarified under this changed circumstances. It is clarified now. As long as further items are not covered as capital goods by issue of Govt. Notification, only plant and machinery will be treated as capital goods and ITC or ITR shall be claimed on purchase of the same.
- vii) During the period from 1.4.05 to 31.3.2008, there was no specific provision for determination of ITC or ITR for stock transfer of goods to other state u/s. 22(7) of the Act, other than in Explanation III to rule 23. This time rule 20A is inserted in the rules w.e.f. 1.4.08 for this particular purpose only. From 1.4.08, ITC or ITR

will be available on calculation at the applicable rate of tax of the item which exceeds the amount calculated @ 3%. Upto 31.3.08 it was 4%. In the explanation III to rule 23, the same modification is also made.

- viii) The term “consumable stores” is omitted from the VAT Act w.e.f. 1.4.08 vide Finance Act, 2008. Naturally the term should have been omitted from the rules also w.e.f. the same date. This has been done in rule 22(4) and in rule 22(10).
- ix) As mentioned in point (v) above, the term “late fee” has replaced the term “penalty” since 1.4.07. Naturally this affects the following rules which are meant to serve the following purposes:
- (a) Rule 30H(3) – Declaration in Form 12A to a defaulting dealer may be issued on payment of late fee besides the payment of tax and interest. This is effective from 1.4.07.
 - (b) Rule 36 & 110 – Payment of late fee is a must, if payable before submission of return, irrespective of the fact that payment is made physically or electronically. Rule 110(4) has been made amended accordingly.
 - (c) Rule 37 – Where returns are submitted by making part payment, payment of late fee upto the last date of payment has been made mandatory also.
 - (d) Rule 40 – Clause (c) of rule 40 is fully reconstructed and it is divided in two parts, one is effective for the period from 1.4.07 to 31.3.08 and next is operative from 1.4.08 onwards. In the first part, calculation of late fee is linked with 50% of net tax payable in each quarter or Rs. 2000/- whichever is lower. In the second part, calculation of late fee is totally delinked with tax payment in each quarter. It has been provided that whatever may be the tax amount, late fee is payable at Rs. 2000/- for the 1st month and @ Rs. 500/- per month from the second month onwards. Accordingly, late fee of Rs. 2000/- and @ Rs. 500/- per month is payable from August, 2008 and September, 2008 onwards respectively for the quarterly return of the period ending on 30.06.08.

Two provisos are added to rule 40 which are made operative w.e.f. 1.4.07. According to 1st proviso, when quarterly returns are submitted without making full payment of tax and interest, late fee is payable upto the date of final payment or the date of provisional assessment u/s. 45 or the date of general assessment u/s. 46 or u/s. 48. As per second proviso, when quarterly returns are not submitted, late fee is payable upto the date of provisional assessment, u/s. 45 or the date of general assessment u/s. 46 or u/s. 48.
 - (e) Rule 41 – Rule 41 is prescribed for the dealers who submit monthly returns in place of quarterly returns. Rule, as it stands now, lays down the same procedure for payment of late fee as is discussed in (d) above for rule 40. Only return period is to be construed as monthly in place of quarterly.
 - (f) Rule 43 – Modus operandi for payment of any tax, interest & late fee.
 - (g) Rule 52 – Late fee is made the subject matter of scrutiny u/s. 41.

- (h) Rule 55 – Late fee is made the subject matter of provisional assessment u/s. 45.
 - (i) Rule 61- For excess payment of late fee, deemed assessment can be re-opened.
 - (j) Rule 68A, 68B & 68C – These rules are prescribed in a fresh way for determination of late fee whose substantive provision is section 53A of the Act. Like determination of interest, allowing opportunity of being heard to the dealer is not prescribed here. But after determination, issue of Form 24 or Form 27 is necessary.
 - (k) Rule 69, 138, 141, 156A, 157 & 158 – As late fee has now become subject matter of provisional assessment, assessment, appeal, revision or review, it has automatically become part of modified demand notice issued in Form 28 and memorandum of appeal/revision in form 68 and stay petition in form 71.
 - (l) Rule 70 and 71 – Payment of tax assessed etc. now includes payment of late fee determined. And copy of such determination shall be sent to the dealer as usual.
 - (m) Rule 73 & Rule 90 – Records connected with determination of late fee shall be preserved for 12 years or more by the assessing authority and for 6 years or more by the dealer, subject to the conditions prescribed respectively.
 - (n) Rule 80, 81 & 82 – Whether occasion will arise for refund or for adjustment against arrear dues, late fee takes the same character as tax and interest hold.
 - (o) Rule 196 – C.C.T.,W.B. can forfeit the amount of security once demanded from a dealer for recovery not only of tax, penalty, interest or any other sum but of late fee also.
- (x) Two provisos are inserted in rule 34, one after sub-rule (1) and another after sub-rule (2). Two days' extension for submission of return for Q.E. September, '07 i.e. extension upto 2.11.2007 are now put under legal frame.
- Annexure B of return form, which is part of sub-rule 5 of this rule, now requires to be signed by the dealer with status and date.
- (xi) Two provisos, 1st and 2nd, are inserted in rule 34A, 15 days' extension of time for submission of return electronically for Q.E. 31.12.07 and for Q.E. 31.3.08 i.e. extension upto 15.2.08 and upto 15.5.08 respectively are now put under the framework of law.
 - (xii) Rule 38 and rule 39 are amended in the same manner. By virtue of this amendment a dealer who has opted to pay tax at compounded rate, but has not paid such tax for any two consecutive quarters will automatically disqualify himself to be a dealer of that category w.e.f. the first day of the quarter following those two quarters.
 - (xiii) Rule 42 is amended so as to compel for payment of tax in the month of March every year by a dealer who submits either physical return or electronic return.
 - (xiv) Sub-rule (1) of Rule 44 is omitted w.e.f. 1.4.08. Registered dealer is not required to submit statement of purchase from the accounting year commencing from 1.4.08. Due to amendment made in sub-rule (2) registered dealer, not being limited company, is required

to furnish form 88 if his turnover/CTP/ turnover clubbed with CTP exceeds Rs. 1 crore in place of Rs. 40 lakh in a year commencing from 1.4.08.

It is pertinent to mention here that Form 88 for accounting year 2006-07 should have been submitted within 31.7.08.

(xv) Rule 45 as it stands amended now makes it mandatory that even for non-submission of audit report in form 88, imposition of penalty is a must.

(xvi) As mentioned in Trade Circular No. 01/2008 dated 29.4.08, the rule 52(1) is amended accordingly and assessing authority after scrutiny of returns shall require w.e.f. 1.4.08 a dealer to furnish certain information and documents for making the returns correct and complete.

(xvii) Rule 53 deals with selection of dealers for audits. As per amended rule C.C.T.,W.B. w.e.f. 1.1.08 shall select certain number of registered dealers by 31st day of March every year in place of existing deadline by 31st day of January every year. For the accounting year ending on 31.3.2007, C.C.T.,W.B. has been given the liberty to select latest by 31.7.08.,

(xviii) Audit team is reconstituted in terms of amended rule 54. W.e.f. 1.4.08 in the audit team headed by DCST, there will be no STO. STO will be constituent of a team headed by ACST.

(xix) New modalities are prescribed for issue of tax invoice u/r. 91. Sub-rule 7 is amended w.e.f. 1.4.07. Serial number of tax invoice, sl. No. and date of challan or date of dispatch of goods should invariably be recorded in a tax invoice in addition to earlier entries. Some irregularities in the existing sub-rules are rectified also.

(xx) In case of issue of invoice or bill or cash memorandum either it is issued by a registered dealer or by a dealer who has applied for registration after incurring liability at their own option or it is issued by an unregistered dealer, amendment is made in sub-rules (2B) and (4) of rule 92 in the manner similar to in rule 91. This will take effect immediately.

(xxi) It was clearly mentioned in point (xvii) of Trade Circular No. 01/2008 dated 29.4.08 that section 80 of the Act was thoroughly amended to modify retrospectively the provisos relating to transport of goods through West Bengal, bound for any place outside West Bengal. Now the rule 121 has got amended w.e.f. 1.4.08. Declaration on the body of consignment Note is replaced by a full-fledged separate declaration which is appended below this rule. With effect from 1.4.05, ASTO is entitled to countersign this declaration at the first checkpost.

(xxii) Procedures for imposition of penalty:

- (a) for transporting goods in contravention of section 73 or section 81; or
- (b) on transporter or person for contravention of provisions of second proviso to sub-section (1) or first proviso to sub-section (2) of section 76; or
- (c) on transporter or person for contravention of provisions of section 73 when goods transported are not available;

are laid down in rule 125, rule 126 and in rule 127 respectively. Amendments have been made in these three rules which are made effective from 1.4.2008. According to

the existing rules, the dealer, casual dealer or the person or transporter are directed to produce the catalogue, if any, of the manufacturer of goods seized showing therein the retail sale price fixed by such manufacturer in respect of such goods in West Bengal. Authorities are bound to determine either the approximate saleable value of the goods or the approximate market value of the goods or approximate value of such goods, as the case may be, for imposition of required amount of penalty on the basis of documents and catalogue prices furnished.

Now after amendment in these rules, the authority shall have to consider the documents and catalogue prices furnished by the persons as well as the “prevailing market price” referred to in clause (30A) of section 2 as it stood amended by the W.B. Taxation Laws Amendment Act, 2008, to determine the fair market value defined in clause (14A) of section 2. Where “Prevailing market price” will not be available, “fair market value” shall be determined on the basis of other connected documents.

It has been specifically mentioned in the amended rules that if the determined fair market value becomes lower than the aggregate retail value, the aggregate retail price shall be accepted as fair market value. It is also provided that cost of transport, tax, duty or any other amount charged, the amount of estimated profit will be constituents of fair market value.

(xxiii) Rule 128 is amended to make it compatible with the changed requirements of section 80 of the Act. Now the Deputy Commissioner, Assistant Commissioner or Sales Tax Officer of the last checkpost can start penalty proceedings. Here also authority is to consider the prevailing market price as explained in earlier paragraph besides the documents and evidences produced including the copy of the invoice, consignment note or delivery note, to determine the “fair market value”.

In the similar way where “prevailing market price” will not be available, “fair market value” shall be determined on the basis of other connected documents. When determined “fair market value” will be lower than the “value” determined according to available documents, this “value” shall be accepted as “fair market value”. Similarly, cost of transport, tax, duty or any other amount charged, the amount of estimated profit will be constituents of “fair market value.”

(xxiv) Necessary changes have been made in the following Forms which are made effective from the date noted against each :

(a)	Form 3	1.9.08	Certificate of Registration
(b)	Form 6	1.4.08	Information to be given for sale or disposal of any business
(c)	Form 14, 14D, 15	1.7.08	Return forms
(d)	Form 20	23..7.08	Notice after scrutiny of return
(e)	Form 21	1.10.06	Notice for audit
(f)	Form 24	1.4.05 & 1.4.07	Notice for provisional assessment
(g)	Form 25	1.4.07	Notice calling for production of books etc. for assessment u/s. 46.
(h)	Form 27	20.2.06 & 1.4.07	Demand notice
(i)	Form 28	1.4.07	Memorandum of appeal etc.

At last, it would be worthwhile to mention here that by issue of Resolution No. 747-FT dated 5.5.08, amendment was made in Finance Deptt.'s resolution No. 1460-FT dated 27.5.1994 and by virtue of this amendment eligible SSI units may claim Industrial Promotion Assistance upto 31.3.2009.

Moreover, in terms of Notification No. SO.1277 (E) dated 30.5.2008, published in the Gazette of India, the rate of CST, when goods are sold to outside state registered dealers is reduced from existing 3% to 2% w.e.f. 1.6.2008. In a case where goods are sold to outside state unregistered dealers or others, the applicable rate of CST will be applicable VAT rate of the item.

(H. K. DWIVEDI)
COMMISSIONER, SALES TAXES,
WEST BENGAL.

Memo. No. 804(500)CT/PRO
3C/PRO/08

Date : 01.09.2008

Copy forwarded for information and necessary action :

- 1) The Principal Secretary, Govt. of West Bengal, Finance Department, W.B.
- 2) Spl. Commissioner, Commercial Taxes, W.B./All Addl. Commissioners, Commercial Taxes, W.B.
- 3) Deputy Commissioner, Commercial Taxes, (HQ) _____
- 4) Deputy Commissioner, Commercial Taxes, _____
- 5) Asstt. Commissioner, Commercial Taxes, _____
- 6) Public Relations Officer, Dte. Of Commercial Taxes, W.B.
- 7) Trade Bodies.....

for Commissioner,
Commercial Taxes, W.B.