

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

TRADE CIRCULAR No. 2 /2010

Date: 01.04.2010.

The West Bengal Finance Act, 2010 and subsequent Notifications issued thereafter by State Government have made it imperative for us to issue a trade circular that would contain brief notes on some of the changes in West Bengal Sales Tax Act, 1994 (in short Act, '94) and in W.B. VAT Act, 2003, (in short Act, '03) to be operative from 01.04.2010 unless otherwise mentioned against each. This trade circular is issued with a view to focus on the changes in the substantive provisions of Acts for information of all concerned. For detailed information, the relevant provisions of the Acts may please be consulted. This trade circular is clarificatory in nature and under no circumstances it may be taken as interpretation of the statutes, discussed herein:

The changes effected by amendments are as under :

A. Under the WBST Act, 1994.

(1) Settlement Commission

(a) Upto 31.3.2010, the assesseees were entitled to apply for settlement of pending appeal or revision case under any of the Act or Acts so repealed or appeal or revision case under Act '94 or appeal or revision case under CST Act, 1956, all arising out of assessment order passed on or before 30.6.2000 and pending on 31.7.06. The relevant provision is clause (a) to Explanation below section 8B(2). Now sub-clause (aa) has been inserted to Explanation below section 8B(2) and also another sub-clause (aa) has been inserted to section 8B(1) that ultimately allow an assessee to make application for settlement of appeal or revision case preferred under the Act, '94 but this time those cases should arise out of assessment orders passed on or before 30.6.07 and pending on 31.3.2010 and the subject matter of such appeal or revision is restricted only to the disputed amount of assessed tax, determined on the basis of suppressed sales/purchase/CTP, detected from seized records. Time limit for submission of such application is 120 days w.e.f. 1.4.2010 or subject to the satisfaction of the Chairman within such further time as may be allowed by him.

(b) Under the existing provisions, there was no scope of getting settlement of disputed amount of penalty, imposed u/s. 76 of the Act from the Settlement Commission. But a new clause (f) is inserted to the Explanation below section 8B(2) by virtue of which the dealer would be entitled to make application for settlement of such penalty ,that was imposed upon serving him a demand notice on or before 31.3.2007, as referred to in sub-section (1) of section 76 of the Act, provided the cause of imposition has been removed by him by paying tax which would have been avoided by him.

(2) Withdrawal of certificate in certain special cases and settlement of the amount specified in a certificate and the amount of the interest and charges, recoverable from the certificate-debtor.

(a) Section 54A is a newly inserted section to the Act. Certificate pertaining to an assessment year upto 31.3.1999 would be withdrawn by the assessing authority(A.O) and Tax Recovery Officer (TRO) would be informed of such withdrawal duly by him, if the following conditions are fulfilled:

- i) Certificate debtor has been assessed for 3 consecutive years ex parte including the year in respect of assessment of tax of which the certificate has been sent to the TRO.
- ii) No amount in respect of such certificate has been recovered from the certificate-debtor upto 31.3.2010.
- iii) R.C of the Certificate-debtor had been cancelled on or before 31.3.2009.
- iv) Assessing authority after making enquiry becomes satisfied that certificate-debtor has ceased to exist at his disclosed place of business since the first day of the year of the said 3 consecutive years upto the date, the said enquiry is completed.

(3) Settlement scheme for settlement of the amount specified in a certificate and the amount of interest and charges recoverable from the certificate-debtor.

Another section 56A comprising 14 sub-sections thereto has also been introduced providing the certificate-debtor a scope to avail the benefit of settlement of the amount specified in a certificate and also the amount of interest and charges, recoverable from the certificate-debtor where such amount/amounts remain unrecovered either in part or in full in respect of a certificate for which a notice for recovery had been issued by the TRO on or before 31.3.2004. TRO will settle such certificate if following conditions are fulfilled:

- i) Leave of Courts of law should be taken by Certificate-debtor where the application made by the certificate-debtor in respect of the matter connected with a certificate remains pending on 1.4.2010 before such Court of Law.
- ii) If petition filed before Court of law has been heard partly or has been completely heard but judgment is awaiting on 1.4.2010, no application for settlement can be filed.
- iii) Application for settlement shall be filed before TRO concerned and that too within 31.3.2011 or by such later date as the State Govt. may specify by notification.
- iv) Certificate-debtor shall enclose copy of challan along with application in each case showing the following payments before filing application:

When certificate amount specified in a certificate, is upto Rs. 5 lakh, the petitioner shall pay 25% of it. At the same time he shall have to pay 50% of accrued interest and charges, recoverable on the date of filing of petition.

When certificate amount specified in a certificate exceeds Rs. 5 lakh, certificate-debtor shall have to pay 50% of it. Like earlier case, he shall have to pay in addition 50% of accrued interest and charges recoverable on the date of filing of petition.

Where certificate amount in a particular certificate, has been paid in full on the date of making application for settlement, Certificate Debtor shall pay 50% of accrued interest and other charges, on the date of filing of petition.

If conditions noted in (i), (II) & (III) above are not fulfilled, i.e. where some discrepancy is detected in the application or payments are made in short by the certificate-debtor, TRO shall issue notice to certificate debtor either for rectification of mistake or for payment of unpaid amount as the case may be, and upon fulfillment shall settle the certificate case. Under the scheme, it is also provided that for non-rectification of detected mistake and for non-payment of short

dues, TRO shall reject the application after allowing the Certificate-debtor reasonable opportunity of being heard.

v) TRO at the same time has been given the authority to revoke the certificate of settlement once sanctioned, if it is detected that the Certificate Debtor had suppressed any material information or particulars at the time of filing petition. But he shall have to allow a reasonable opportunity of being heard to certificate-debtor. TRO shall keep the assessing authority or appellate authority or revisional authority, as the case may be, informed of making of an application for settlement by a certificate-debtor, of passing of an order for issue of a certificate of settlement and of revocation of a certificate.

(4) Fast track method of revision of certain appellate or revisional order from an order of assessment.

A new section 82A, has been inserted in the Act '94. Under the new provisions, the applications for revision in which the amount of tax, penalty or interest in dispute is less than rupees one lakh and which are lying pending with the Appellate and Revisional Board(Board) on the 30th June, 2010, shall stand transferred on the first day of July, 2010 to a new authority to be constituted by the Commissioner for disposal of such applications in the manner as provided in the rules.

(5) Change in rate of tax on sale of foreign liquor.

Item	Schedule	Existing tax rate upto 31.3.10 u/s. 17(1)(g)	New tax rate from 1.4.10 u/s. 17(1)(g)
Foreign liquor	VIII	30%	37%
Foreign liquor	VIII	Existing tax rate upto 31.3.10 u/s. 22D (on MRP)	New tax rate from 1.4.10 u/s. 22D(on MRP)
		20%	23%

(6) Change in rate of interest applicable in certificate cases:

Sl. No.	Provision	Existing rate upto 31.3.2002	New rate from 1.4.2002
1	Rule 5(a) in Schedule X	2% per month	1% per month
2	Rule 60(1)(a) in Schedule X	24% per annum	12% per annum
3	Rule 64 in Schedule X	Maximum 24% per annum	Maximum 12% per annum
4	Rule 69(3)in Schedule X	24% per annum	12% per annum

B. Under the WBVAT Act, 2003.

(1) Capital goods re-defined.

Clause (6) of section 2 has undergone a change to incorporate components, spare parts and accessories of plant and machinery besides the items already incorporated there. This amended definition shall be deemed to have come into effect from 1.4.2010. Newly inserted second proviso to sub-section (4) of section 22 which is effective from 1..4.2010 has relaxed the mandatory capitalization of the components, spare parts and accessories of plant & machinery in the books of accounts for availment of input tax credit. Naturally the dealer is now entitled to claim ITC on purchase of the components etc. in his return period and he is not required to capitalize those purchases in his books of account.

(2) Settlement Commission

- (a) The new cases which the Settlement Commission established u/s. 8A of the Act'03 can settle, have been provided. The newly inserted clause (e) of the Explanation to section 8B(2) empowers Settlement Commission to take into consideration for settlement of a case in which the demand notice was served to a dealer for realization of tax etc. on assessment made in respect of any period which ended on 31.3.2007 where the dealer had bonafide either not collected and paid no tax or collected and paid tax at a rate lower than the actual rate of tax applicable, on certain sale or on sale of certain goods and where the dealer claims by producing relevant evidences that such non payment of tax or payment of tax at a lower rate than the actual rate is due to mistake of law during such year or part thereof.
- (b) Under the existing provisions, there was no scope of getting settlement of penalty imposed u/s. 96 of the Act 03, from the Settlement Commission. But a new clause (f) is inserted to the Explanation below section 8B(2) by virtue of which the dealer would be entitled to pray for settlement of such penalty imposed within 31.3.07 and remains unpaid as on 31.3.10, provided the cause for imposition of penalty has been removed by him by paying tax which would have been avoided by him.

(3) New compounding scheme u/s. 16

Under section 16 of the Act, registered resellers, registered clubs selling goods to its members or others and registered dealers making sales by way of transfer of right to use goods were allowed to opt for payment of tax at a compounded rate under sub-section 3, sub-section 3A and sub-section 3B respectively. Sub-section (6) is newly inserted to section 16. It allows a registered manufacturing dealer selling cooked foods, non-alcoholic drinks and beverages as are covered in Schedule CA from his hotel, mandap, restaurant or any other eating house, to opt for payment of tax at a compounded rate on his turnover of sales of such goods in the year for which option is exercised by the registered dealer subject to fulfillment of conditions laid down below:

- (a) Turnover of sales of such cooked foods etc.during 2009-10 should not exceed Rs. 15 lakh.
- (b) Turnover of sales of such cooked foods etc. during any year after 2009-10 does not exceed Rs. 15 lakh.
- (c) In the year of registration, the turnover of sales of such cooked foods etc. from 1st April of that year to the date of registration does not exceed Rs. 15 lakh.
- (d) Rate of tax would be 4%.
- (e) The dealer opting for compounding will not issue tax invoice.
- (f) If turnover of sales of such cooked foods etc. during the period of enjoyment of payment of tax at a compounded rate exceeds Rs. 15 lakh, the dealer would automatically be ineligible to enjoy the payment of tax at a compounded rate from the first day of the month immediately following the month during which turnover of sales of such cooked foods etc. exceeded the said sum of Rs. 15 lakh.

(4). Input Tax Credit.

- (a) By addition of a proviso to sub-section (11) of section 22, it has been provided that input tax credit shall be allowed to a registered dealer whose turnover of sale or contractual transfer price in a year does not exceed Rs. 2 crore where such registered dealer claims input tax credit or input tax rebate on the strength of the original tax invoice or on the order of the Commissioner, as the case may be, as referred to in section 22(5), even

though such registered dealer has not maintained such registers and accounts, as are required to be maintained as per the provisions of sub-section (1) of section 63.

- (b) Coal used as raw material in the manufacture of goods has been taken away from the negative list. Negative list is amended accordingly. Hence, industry using coal as raw material can claim ITC w.e.f. 1.4.10.

(5). Special provision for registration u/s. 24A.

Date of filing of application for registration, u/s. 24A, which ended on 30.9.08 has been extended upto 31.12.08.

(6). Submission of Form 88 u/s. 30E.

Other things remaining constant, limit of turnover/CTP has been enhanced from Rs. 1 crore (effective from 1.4.08) to Rs. 1.5 crore (to be effective from 1.4.10).

(7). Submission of revised return u/s. 32(3)

Sub-section 3 of section 32 is amended with effect from 01.04.2010. A dealer is now entitled to file a revised return within six English Calendar months commencing from the month immediately after the month in which his original return is due to be furnished.

(8). Audit of accounts now clubbed with assessment in certain cases u/s. 43

- i) Under the existing provisions of law, audit team was to audit the accounts, registers or documents including those in the form of electronic records maintained or kept by selected dealer for any year or part thereof, selected for audit and was to prepare a report for sending copy of it to the assessee, to A.O and to CCT/WB. In some cases assessing authority makes the assessments u/s. 46(1) or complete assessment u/s. 45 prior to the dealer is selected for audit u/s. 43. Such dealer though selected for audit will now be deemed to have not been selected. Proviso which is added to sub-section (1) to section 43 w.e.f. 1.4.10 is the relevant provision here.
- ii) Sub-section (5) is added to section 43 w.e.f. 1.4.10 and it makes it mandatory that the audit officer to whom the power would be delegated by CCT/WB will assess the selected dealer under section 46 himself for the period for which audit is being made and where some adverse findings like suppression of sales or of CTP or of purchases or false claim of sales claimed u/s. 16(1) or excess claim of ITC etc. etc. is detected and the result of which reduces the actual amount of net tax payable by that selected dealer. Clause (c) of section 46(1) is omitted and new clause (ca) to section 46(1) is inserted to that effect

Proviso added to this sub-section allows the audit authority to get such assessed case which is deemed to have been assessed under section 47(1), reopened in accordance with newly inserted section 47(3A) and thereafter to make fresh assessment under section 46(1) accordingly. Time allowed for re-opening is 6 months from the date of report and that for fresh assessment is 6 months from date of re-opening.

Furthermore, the audit officer to whom the power would be delegated by CCT/WB will assess the selected dealer for the period for which audit is being made in accordance with law for other reasons even if no discrepancy is detected by him in course of audit. Relevant provision is sub-section (6) of section 43.

(9). Assessment after giving notice to the registered dealer.

- i) Pre-amended section 46(1)(g) required that registered dealer other than E.C. holder who did not carry forward the excess amount of ITC to the next year would have to bring to the notice of assessing authority within 3 months from the end of the following year to get his case assessed so as to get refund of that ITC. Refund was allowed after assessment. The clause is amended now. The scheme of bringing the matter to the notice of assessing authority within some time frame is dispensed with. Not to carry forward excess ITC to the next year by any dealer will make room for assessment w.e.f. 1.4.2010.
- ii) First proviso to section 46(1) is substituted by amended proviso w.e.f. 1.4.10. Where notice of initiation is issued to a dealer for making assessment either for the reason that the dealer has filed returns without paying due amounts or for the reason that he has failed to pay the short paid amounts within the specified date mentioned in Form 20 issued to him and , if that dealer voluntarily pays the unpaid amounts in full along with 10% of total unpaid amounts as penalty and furnishes within the time specified in such notice, the receipted challans evidencing full payment of net tax, interest and late fee according to such return, the initiation notice so issued will be withdrawn by assessing authority.
- iii) Fourth proviso which is added now by Finance Act, '10 puts a restriction on all assessing authorities not to initiate any assessment proceedings where notice for audit has been issued by audit officer.
- iv) Fifth proviso which is also inserted now is unique in nature. According to this inserted proviso, if scrutiny of a return is not made by the authority who is under legal obligation to make scrutiny of return and if Form 20 is not issued to the dealer by him within the time specified for that purpose, the assessing authority will not proceed to make assessment of that dealer unless he obtains approval from CCT/WB as regards proceedings with such assessment. However, this will not apply to the case where notice of audit is issued to the dealer u/s. 43(2).

(10). Re-opening of the deemed assessment u/s. 47(3)

- i) Pre-amended section 47(3) allowed the assessing authority to get one assessed case which was deemed to have been assessed, re-opened where suppression of purchases or of sales or of CTP or false claim of sale claimed u/s. 16(1) or excess claim of ITC were detected by him. Now two more sub-clauses i.e. clause (d) and clause (e) are inserted to this section. Furnishing of incorrect information by the assessee and certain other discrepancies are added to the reasons of re-opening. Time limit for re-opening remains as before i.e. within 4 years from the date of assessment and that for fresh assessment is 2 years from the date of re-opening
- ii) Newly inserted sub-section (3A) to section 47 makes suitable provision for re-opening of a case which is deemed to have been assessed and where re-opening becomes expedient to an audit-cum-assessing authority who is required to assess the dealer after audit. It has already been clarified in para 8(ii) above. Time limit for re-opening is six months from the date of report and that for fresh assessment is six months from the date of re-opening.

(11). Limitation for assessment u/s. 49(1)

It has already been discussed hereinabove that a new dimension is given to the procedure of making fresh assessment of a case after completion of audit of that particular case. Audit officer is now entrusted to make fresh assessment in place of after audit. Three provisos are substituted for the existing second proviso to sub-section (1) to make the limitation commensurate with section 43(5), section 43(6) and section 46(1)(ca) of the Act. It is immaterial whether any discrepancy is detected in course of audit in selected cases or not. Fresh assessment in both the cases is to be made within the date as referred to in sub-section (1) after which no assessment may be made or at any time within 6 months from the date of preparation of audit report whichever is later.

(12). Pre-assessment refund u/s. 61

Existing section 61 is renumbered as sub-section (1) of that section and another sub-section i.e. sub-section (2) is inserted to this section w.e.f. 1.4.10. In the amended sub-section (1), clause (ab) is again modified so as to exclude furnishing of the special declaration which was required to be furnished under that clause and was in vogue since 1.4.07. Now only furnishing of form 12B prescribed under rule 76(2A) will suffice for claiming pre-assessment refund of excess ITC u/s. 61(1)(ab).

As per newly inserted sub-section (2) of this section CCT/WB has reserves the right to withhold any pre-assessment refund with due intimation to the dealer

(13). Change in rates of taxes.

The W.B. Finance Act, 2010 has brought about series of changes in the applicable rates of tax on sale of different items. Due to such changes, there appears change in schedules appended to the Act'03. These are summarized below:

Sl. No.	Item	Existing schedule	New schedule	Existing rate	New rate
1.	Dried Flowers and other parts of dried plants, other than those specified elsewhere in schedule A or in any other schedule	C-Part-I entry 35 & CA	A Entry 11B	4% & 12.5%	Exempted w.e.f. 1.4.10
2	Fuel made from solid waste procured from any local self government or from any person on its behalf.	CA	A Entry-14A	12.5%	Exempted w.e.f. 1.4.10
3	Strings for musical instruments	C-Part-I Entry 77B	A Entry-24A	4%	Exempted w.e.f. 1.4.10
4	Unmanufactured tobacco including unmanufactured tobacco not stemmed or partly or wholly stemmed or stripped for manufacture of biri, specified under heading 2401 of the CET Act, 1985	CA	A Entry 37B	12.5%	Exempted w.e.f. 1.4.07
5	Rhodium	C-Part-I Entry 51	B Entry 4	4%	1% w.e.f. 1.4.10
6	Casing of bearing	CA	C-Part-I Entry 10	12.5%	4% w.e.f. 1.4.10

7	Spare parts including blades, guards, sharks, arms and shafts of an electric fan	CA & C-Part-I Entry-14C	C-Part-I Entry 14C	12.5% & 4%	4% w.e.f. 1.4.10
8	Board made from bagasse	CA	C-Part-I Entry 14D	12.5%	4% w.e.f. 1.4.10
9	Embroidery making machine, whether computerized or not	CA	C-Part-I Entry 27A	12.5%	4% w.e.f. 1.4.10
10	Flush doors of wood	CA	C-Part-I Entry 29A	12.5%	4% w.e.f. 1.4.10
11	Particle Board and similar board of wood or other ligneous materials, whether or not agglomerated with resins or other binding substances	CA	C-Part-I Entry 53AA	12.5%	4% w.e.f. 1.4.10
12	Perforated metal jali, that is to say, perforated metal net	CA	C-Part-I Entry 55E	12.5%	4% w.e.f. 1.4.10
13	Boulders	CA	C-Part-I Entry 75A	12.5%	4% w.e.f. 1.4.10
14	Block board of wood	CA	C-Part-I Entry 81A	12.5%	4% w.e.f. 1.4.10
15	Cellular telephone the maximum retail price of per unit of which exceeds Rs. 3000/-.	C-Part-II Entry 15	CA	4%	12.5% w.e.f. 1.4.10

N.B.

1. Entry 37B of Schedule A is now to be read as *“Biris, and unmanufactured tobacco including unmanufactured not stemmed, or partly of wholly stemmed or stripped, for manufacture of biris, specified under heading 2401 of the Central Excise Tariff Act, 1985”*.

2. Entry 10 of Part-I of Schedule C is now to be read as *“Bearing including Plummer Blocks, housing for bearing, locate rings and covers, adopter withdrawal sleeves, lock nut, lock washers, clamps, casing of bearing and rolling elements”*.

3. Entry 14C of Part – I of Schedule C shall now be read as *“Spare parts including blades, guards, sharks, arms and shafts of an electric fan”*.

4. Entry 35 of Part – I of Schedule C shall now be read as *“Herb, bark, dry plant, dry root, commonly known as jari buti”*.

5. Entry 75A of Part – I of Schedule C shall now be read as *“ Sand, stone chips, boulders and grit”*.

6. Entry 77B of Part – I of Schedule C shall stand *omitted*.

7. Sub-entry (viii) of entry 81A of Part – I of Schedule C shall now be read as *“ Ply wood and block board of wood”*.

8. Entry 15 of Part – II of schedule C shall now be read as *“Transmission apparatus other than apparatus for radio broadcasting or T.V. broadcasting, transmission apparatus incorporating*

reception apparatus, cellular telephone other than cellular telephone the maximum retail price of per unit of which exceeds rupees three thousand”

(14). Change in rate of interest applicable in certificate case.

Sl. No.	Provision	Existing rate upto 20.10.09	New rate from 21.10.09.
1	Rule 5(a) of Schedule F	2% per month	1% per month
2	Rule 60(1)(a) of Schedule F	24% per annum	12% per annum
3	Rule 64 of Schedule F	24% per annum	12% per annum
4	Rule 69(3) of Schedule F	24% per annum	12% per annum

This Trade Circular is meant for circulation amongst officers of the Directorate and the Trade communities for their understanding of the changes now made vide Finance Act, 2010. It is expected that everybody concerned with the provisions of law will be benefited from the clarification issued through this trade circular.

(H.K. Dwivedi)
Commissioner,
Commercial Taxes, West Bengal.

**Memo No. 210(500)CT/PRO
3C/PRO/2008**

Date: 1st April, 2010

Copy forwarded for information and necessary action to:

- 1) the Principal Secretary, Finance (Revenue) Department, Government of W.B.
- 2) Special Commissioner, Commercial Taxes, W.B./
Additional Commissioner, Commercial Taxes, W.B
- 3) the Special Officer, Bureau of Investigation.
- 4) the Sr. Joint Commissioner, Commercial Taxes, (HQ)
- 5) Sr. Joint Commissioner, Commercial Taxes,
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- 6) Joint Commissioner, Commercial TaxesCircle/Charge
- 7) the Public Relations Officer, Directorate of Commercial Taxes, W.B.
- 8) Trade Bodies.....

for Commissioner of
Commercial Taxes, W.B.