

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

TRADE CIRCULAR NO. 04/2012

Dated : 21.03.2012

Sub: Assessment of tax under sub-section (2) of section 9 of the Central Sales Tax Act, 1956 read with section 46 of the West Bengal Value Added Tax Act, 2003 for the assessment period 2009-10.

In terms of Rule 12(7) of the CST (Registration & Turnover) Rules, 1957, a dealer is required to furnish declarations in Form C or Form F or Certificate in Form E-1 or E-II to his assessing authority within 3 months from the end of each return period to which the declaration or the certificate relates or within such further time as may be allowed by his assessing authority. It has been observed that in many cases, the dealer is not furnishing such declaration or certificate within the stipulated time or even within the extended time. This has resulted in initiating assessment case every year under the CST Act. As law stands now, such assessment under CST Act mandatorily requires assessment u/s. 46(1)(eb) of the WBVAT Act for the corresponding period. Ultimately when the matter reaches the appellate or revisional stage, most of such dealers produce declaration or certificate and claims are being allowed in such forums making the assessments made under both VAT Act and CST Act a futile exercise on the part of the assessing authority.

In order to avoid such uncalled for assessment, Trade Circular No. 13/2009 and no. 12/2010 were issued on 14.12.2009 and on 11.11.2010 respectively. These two Trade Circulars contained instructions covering the assessment periods 2007-08, 2008-09 and 2009-10. Instructions were issued to assessing officers that for the purpose of assessment under CST Act they should ensure if all these documents i.e. declaration in Form C or F or certificates in E-I or E-II and even declaration in Form H or Form- I had been furnished before them or not and if those were not furnished by a dealer, a letter should be sent to the dealer giving him not more than 21 days time to either furnish the residual forms or to produce challans showing payment of tax on the differential amounts along with interest in which case the assessment should not be proceeded with and if initiated, would be dropped forthwith. And dropping of one assessment under CST Act for a particular period naturally ensured the corresponding dropping of assessment under VAT Act for that period.

Instruction was also there that where assessment case had not been initiated or where case after being initiated had been dropped, the authority should, inter-alia, inform the dealer, identified as not to be assessed, within 60 days from the date as referred to in section 49 (1) of the VAT Act that he had already been assessed u/s. 9(2) of the CST Act read with section 47 of the VAT Act.

The time limit prescribed u/s 49(1) of the VAT Act has already expired for the assessment period 2007-08 and 2008-09. Assessing officer shall have to take step now for the assessment period 2009-10. Meanwhile, one development has come in. Section 47A, inserted to the VAT Act by virtue of West Bengal Finance Act, 2012, has come into operation with effect from 01.09.2011. Assessment of dealers for the period 2009-10, who are registered either as traders or as manufacturers, who have filed returns for 4 quarters, whose turnover of sales during 2009-10 is below Rs. 3 crores and who are not covered u/s. 116(1), of the VAT Act have automatically come under this newly inserted section 47A of that Act and they are to be dealt with accordingly in terms of that section of that Act.

In effect, the assessment of dealers who are works contractors irrespective of their quantum of contractual transfer price and of dealers having turnover of sales of Rs. 3 crore and above for the assessment year 2009-10, would have to be made following the instruction issued hereinabove in this connection.

I want to reiterate that the instructions issued so far is not applicable to the following cases :

- 1) Cases where tax under CST Act, '56 has not been paid monthly but quarterly.
- 2) Cases where central sales or stock transfer to outside states were disallowed to any dealer in earlier years on the ground that such central sales or stock transfer were either fictitious or not supported by necessary transport documents.
- 3) Cases where there are certain adverse findings by Central Section, Bureau of Investigation, VAT Audit, Verification Cell or any other authority relating to a particular dealer in regard to tax liability under the WBVAT Act, or CST Act.
- 4) Cases where refund under VAT Act has been claimed by a dealer.
- 5) Cases where a dealer has claimed refund of CST in return after adjustment of ITC.

I want to make it clear again that where initiation under the WBVAT Act has already been made for Forms etc. u/s 46(1)(eb) and under the CST Act, such initiation have to be dropped in line with the instruction issued in Trade Circular No. 12/2010 only for the dealers not covered u/s 47A of the VAT Act.

Authority shall keep it in mind that assessment made u/s. 47 is always open for reopening where circumstances prescribed under sub-section (3) of that section would demand as such. Such assessment can also be revised u/s 85 of the VAT Act.

(Binod Kumar)
Commissioner,
Sales Tax, W.B

Memo No. 197(500)CT/PRO
3C/PRO/2008

Dated :21.03.2012

Copy forwarded for information and necessary action to :-

- 1) The Principal Secretary, Finance (Revenue) Department, Government of West Bengal.
- 2) Spl. Commissioner, Sales Tax, W.B./Addl. Commissioner, Sales Tax, W.B.
- 3) Spl. Officer, Bureau of Investigation.
- 4) Sr. Joint Commissioner, Sales Tax, (H.Q.).
- 5) Sr. Joint Commissioner, Sales Tax,..... Circle/Range/Central Section.
- 6) Jt. Commissioner, Sales Tax.....Circle/Charge.
- 7) Public Relations Officer, Directorate of Commercial Taxes, W.B.
- 8) Trade Bodies.
- 9) Website HYPERLINK <http://www.wbcomtax.gov.in>.

for Commissioner,
Commercial Taxes, W.B.