

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

TRADE CIRCULAR

No : 01/2008

Date : 29.04.2008

Finance Act 2008 has brought about certain changes in the West Bengal Sales Tax Act, 1994, the West Bengal Value Added Tax Act, 2003 and in the West Bengal Sales Tax (Settlement of Disputes) Act, 1999. The amendments made in the relevant Acts have made it imperative for issue of a trade circular that will focus on salient features of the changes in substantive provisions. With this aim in view, this trade circular is issued for information to all concerned. Since salient features of the changes are referred to herein relevant sections of the Acts may please be consulted for detailed information.

A. Changes effected by amendments in the WBST Act, 1994.

- (i) Earlier the time limit for filing application was 120 days. Now, power has been given to the Settlement Commission to condone the delay when petitions are filed beyond 120 days.**
- (ii) Clause (a) of Explanation, below sub-section (2) of section 8B has undergone major changes with effect from 1.8.2006. Commission was not empowered earlier to settle pending appeal or revision cases under the C.S.T. Act, 56. But now Commission can entertain all such cases. The cut-off date for order of assessment has been extended from 30.6.97 to 30.6.2000 against which an appeal or a revision remained pending on 31.7.06. Section 107 of the Act has**

been suitably amended also. Application can be filed on and from 1.4.08.

- (iii) Clause (e) of the said Explanation allowed settlement of assessed dues concerning tax, interest or penalty of a dealer that remained unrealized on the date of its being registered with BIFR. The significant change in this clause is that for settlement of a case, “case” will now mean the amount of demanded tax, interest and penalty (under this Act, all repealed Acts and the C.S.T. Act, '56) unrealised from a dealer already registered under the B.I.F.R. as a sick unit instead of such dues being unrealized on the date of registration with the B.I.F.R. as a sick unit.

B. Changes effected by amendment in the W.B.S.T(SOD) Act, 1999.

- (i) Sub-section (1) of section 2, sub-section (1) of section 4, sub-section (1) of section 4A and sub-section (1) of section 5 are amended to extend once again the benefits of one time settlement of arrear tax, interest and penalty in dispute in respect of any period for which an assessment has been made under the WBST Act, 1994 and other Acts referred to in sub-section (1) of section 106 of that Act and under the Central Sales Tax Act, 1956 and an appeal or revision relating thereto is pending on 31.3.2008. Provisions allow the settlement of court cases as usual. The last date for submission of application to the designated authority for settlement of dispute according to the amendment is 31.3.09.
- (ii) Clause (a) of sub-section (1) of section 7 has been thoroughly amended to provide that in order to settle the arrear tax in dispute, a dealer has to pay an amount as indicated in column 3 of the amount of arrear tax in dispute as mentioned in column 2 against the sl. No. in column 1 of the table below or the actual amount paid in respect of such arrear tax in dispute, whichever is higher.

Table

Serial No. (1)	Amount of arrear tax in dispute (2)	Rate (3)
1	Where the amount does not exceed Rs. 2,00,000	Twenty-five per centum
2	Where the amount exceeds Rs. 2,00,000 but does not exceed Rs. 10,00,000	Rs. 50,000 plus twenty-eight per centum of the amount by which the amount of arrear tax in dispute exceeds Rs. 2,00,000
3	Where the amount exceeds Rs. 10,00,000 but does not exceed Rs. 50,00,000	Rs. 2,74,000 plus thirty-one per centum of the amount by which arrear tax in dispute exceeds Rs. 10,00,000
4	Where the amount exceeds Rs. 50,00,000 but does not exceed Rs. 1,00,00,000	Rs.15,14,000 plus thirty-four per centum of the amount by which the amount of arrear tax in dispute exceeds Rs. 50,00,000
5	Where the amount exceeds Rs. 1,00,00,000 but does not exceed Rs. 2,00,00,000	Rs. 32,14,000 plus thirty-seven per centum of the amount by which the amount of arrear tax in dispute exceeds Rs. 1,00,00,000
6	Where the amount exceeds Rs. 2,00,00,000	Rs. 69,14,000 plus forty per centum of the amount by which the amount of arrear tax in dispute exceeds Rs. 2,00,00,000; or”;

- (iii) Clause (b) of sub-section (1) of section 7 has been fully substituted to provide that in order to get the arrear interest in dispute settled, - the applicant dealer will be required to pay 2% of the arrear interest in dispute if the application for settlement is filed between 1.4.2008 and 30.9.2008. The same will be 3% if the application for settlement is filed between 1.10.2008 and 31.12.2008 and the amount will be 5% of the arrear interest in dispute if the application for settlement is filed between 1.1.2009 and 31.3.2009.

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

All the changes, unless otherwise mentioned against each, are effective from 1.4.2008.

- i) Clause (6) in section 2 has been amended to redefine capital goods as;-
“Capital goods” means plant & machinery, other than civil structure, for use directly in the manufacture of goods in the state and such other goods as the State Government may, by notification, specify; but shall not include second hand plant and machinery. In the earlier definition the term “plant & machinery” was not specifically mentioned.
- ii) Sub-clause (ba) of clause (11) of section 2 has been *omitted* resultant to which a person merely intending to do business will not qualify to be a dealer under the law. The necessary amendment in clause (29) of section 2 in this regard has been done. Setting up a business of selling or purchasing goods henceforth will not mean a place of business.
- iii) Two new sub-clauses i.e. clause (14A) and clause (30A) have been inserted in section 2 of the Act. “Fair market value” and “Prevailing market price” have been defined. “Fair market value” means the price which such goods would ordinarily fetch on sale in the open market. “Prevailing market price” would mean such wholesale price of any goods in force in the open market as published by the Bureau of Applied Economics and Statistics or any other authorised agency or in the newspaper. Reliance can be placed on the price at which goods are sold by West Bengal Essential Commodities Supply Corporation Ltd. or any other similar agencies on the date of sale of such goods when the aforementioned sources cannot be applied.

iv) Settlement Commission:

a) As per existing provision, Settlement Commission, constituted u/s. 8A of the Act, could entertain an application filed before it for settlement of any case, other than any pending case, and filed within 120 days from the date of receipt of demand notice, from the date of commencement of proceedings u/s. 93 or from the date of registration of a dealer as a sick unit with BIFR, as the case may be. By virtue of amendment made in clause (b) of sub-section (1) of section 8B and made effective from 1.8.06, application can now be filed in the aforementioned cases beyond 120 days, provided it is allowed by the Commission.

(ii) Clause (d) of the Explanation below sub-section (2) of section 8B has been substituted with effect from 1.8.06. As it stood on 31.3.08, clause (d) allowed settlement of assessed dues relating to tax, interest or penalty of a dealer that remained unrealised on the date of its being registered with BIFR. Now after amendment in this clause, registration with BIFR is made one of the criteria for being considered for settlement by the Commission of cases relating to unrealised amount of assessed tax, interest or penalty under this Act or C.S.T. Act, '56. The significant change in this clause is that for settlement of a case, "case" will now mean the amount of demanded tax, interest and penalty under this Act, and the C.S.T. Act, '56 unrealised from a dealer already registered under the B.I.F.R. as a sick unit instead of such dues being unrealized on the date of registration with the B.I.F.R. as a sick unit.

- v) **The term “Consumable stores” is omitted from sub-section 4(d), 4(h), 7(b)(A), 8, 9(d) and 9(g) of section 22 and from negative list appended to that section. Therefore, after amendment, a dealer under no circumstances is entitled to input tax credit on purchase of consumable stores.**
- vi) **Reversal of ITC/ITR @ 3% or conversely entitlement of ITC/ITR in excess of 3% for inter state stock transfer is prescribed by amended sub-section (7) of section 22.**
- vii) **By newly inserted section 13A and 13B input tax credit is restricted to the amount of output tax payable on sale of such goods when per unit sale price of any goods is less than the per unit purchase price of such goods or goods purchased are sold subsequently at a subsidized price. Reversal of input tax credit needs to be made in case of enjoyment of excess input tax credit.**
- viii) **Threshold limit for voluntary registration is prescribed at a value more than Rs. 50,000/- for all categories of dealers and necessary amendment has been made by insertion of a proviso to sub-section (1) of section 24.**
- ix) **Special provision for registration i.e. section 24A has been amended but with certain exception. This time shipper of jute and the dealer engaged in the execution of works contract is excluded from this provision. Subject to certain terms and conditions application for registration may be filed by the intending dealers within 30.9.2008 by paying 0.5% as tax in lieu of applicable rate of tax on the sale of items dealt in by such dealers, irrespective of their liability to pay tax from the appointed date or from any other date after the appointed date.**
- x) **Sub-section (1A) and (1B) are inserted w.e.f. 1.4.05 in section 30E of the Act to require for submission of Profit & Loss account, Balance sheet and audit report in form 88 of a Chartered Accountant for the period from 1.4.2005 to 31.3.2007 and of a Chartered Accountant or a Cost Accountant for the period from 1.4.2007 onwards, within the**

date prescribed under rule 44 of the W.B. VAT Rules, 2005. Moreover, for submission of aforesaid documents the quantum of turnover or CTP of Rs. 40 lakhs has been enhanced from Rs. 40 lakhs to Rs. 1 crore in a year w.e.f. 1.4.2008 for every registered dealer other than a Public Limited company or Private Limited company.

- xi) Finance Act 2008 provides for payment of late fee w.e.f. 1.4.07 not exceeding Rs. 2000/- for each month or part thereof of delay in furnishing return in place of the old provision requiring payment of penalty calculated at such amount not exceeding Rs. 2000/- for each month or part thereof of default. As a consequence the term “penalty” is substituted in various sections by the term “late fee”.
- xii) A sea change has been made in section 41 w.e.f. 1.4.05 with the result that the power to scrutinise the return has been enlarged. Now the appropriate authority shall, in order to scrutinise the return, ascertain that the return furnished is not only correct and complete but also accompanied by all the documents required to be furnished along with such return and also ascertain that input tax credit is correctly calculated, tax is paid at the appropriate rate, net tax and late fee; if payable, are duly paid and liability for interest arising out of delayed or non payment of admitted tax and adjustment of reverse credit by way of deducting input tax credit according to section 31A is duly discharged. Now the appropriate authority is empowered also to issue notice requiring a dealer to furnish such information required for making the return correct and complete or to furnish the necessary documents. A notice generating from the scrutiny of revised return shall not be issued after the expiry of four months from the date of submission of such return. Late fee and interest originating from any revised return have also come under the purview of scrutiny.

- xiii) In consequence of amendment made to section 42 w.e.f.1.4.05 not only submission of incorrect statement but also submission of incorrect statement or incorrect particulars in return wherefrom discrepancies emerge on scrutiny may lead to verification of returns.**
- xiv) Two provisos are newly added to sub-section (1) of section 49 by virtue of which the assessment u/s. 46 or u/s. 47 for the assessment year ending on 31.3.2006 only shall be completed within 30.9.2008 instead of within 30.6.2008 as was prescribed earlier. The limitation for assessment u/s. 46(1)(c) has been made two years from date of audit report u/s.43 or time limit specified in section 49(1) whichever is later in such cases where assessment originates from audit report u/s. 43.**
- xv) By newly introduced section 53A w.e.f. 1.4.07 power is conferred upon the appropriate authority to determine late fee referred to in section 32(2) within the date of assessment u/s. 45, 46 or 48 in respect of that particular period.**
- xvi) One new clause i.e. clause (c) is added to sub-section (1) of section 77 to provide for imposition of penalty where raw jute is despatched to outside West Bengal in contravention of section 81 of the Act. Now penalty @ 20% of the value of seized raw jute becomes imposable for such contravention.**
- xvii) To modify retrospectively the provisos relating to transport of goods through West Bengal where a goods vehicle transporting goods enters into West Bengal and is bound for any place outside West Bengal, section 80 has undergone through major changes. The effect of the amendment is that only the delegated authorities are authorised w.e.f. 1.4.05 to countersign the newly introduced declaration and exercise power conferred by the provisions under this section. The words “whereafter search of a vehicle” have been deleted w.e.f. 1.4.05 in sub-section (6) of this section.**

xviii) Determination of late fee under sub-section (1) of section 53A has now become the subject matter of appeal to be filed u/s. 84 of the Act w.e.f. 1.4.2007.

xix) Changes made in the schedules of the W.B. VAT Act, 2003 :

(a) The following goods have been transferred from part 1 of schedule C or from schedule CA to schedule A and are declared as exempted goods w.e.f. 1.4.2008.

Camphor from part III of schedule C to schedule A.

Harmonium from schedule CA to schedule A.

(b) The following goods have been transferred from schedule CA to part 1 of schedule C with rate of tax being 4% w.e.f. 1.4.2008.

Yeast, Biscuit other than biscuit manufactured in a factory as defined in the Factories Act, 1948 (63 of 1948), Footwear, other than those specified elsewhere in this schedule, the maximum retail price of per pair of which does not exceed rupees seven hundred and fifty, kerosene stove, road roller, tailoring items, that is to say, eyes and hooks, collar band patties and butterfly collar stays, wire mesh, expanded wire mesh and zinc dross.

c) The following goods have been transferred from schedule CA to part III of schedule C with rate of tax being 4% w.e.f. 1.4.2008.

Pre-cured tread rubber, vulcanising solution and cushion gum, pre-sensitised lithographic plate of aluminium.

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

**Memo. No. 340(225) /C.T./PRO
3C/PRO/2008**

Date : 29.04.2008.

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.**