

## DISCLAIMER

*While every care has been taken to provide accurate copy of the West Bengal Sales Tax (Settlement of Dispute) Act, 1999 incorporating the subsequent amendments, the Directorate of Commercial Taxes, West Bengal will not be responsible for any typographical or any other error/ inaccuracy in the above Act. For authoritative version of the provisions, reference may be made to the relevant notifications.*

## West Bengal Sales Tax (Settlement of Dispute) Act, 1999

*[Incorporating the changes made in THE WEST BENGAL TAXATION LAWS (AMENDMENT) BILL, 2018(Bill No. 34 of 2018 dated 27.11.2018)]*

WHEREAS it is expedient to provide for enforcement of payment of, and settlement of dispute relating to, arrear tax, penalty and interest under the West Bengal Sales Tax Act, 1994 (West Ben. Act XLIX of 1994), and other laws referred to in sub-section 106 of that Act, and for enforcement of payment of, and settlement of dispute relating to, arrear tax, late fee, interest or penalty under the West Bengal Value Added Tax Act, 2003 (West Ben. Act XXXVII of 2003), the West Bengal Tax on Entry of Goods into the Local Arrears Act, 2012 (West Ben. Act I of 2012) and the Central Sales Tax Act, 1956 (74 of 1956);

It is hereby enacted in the fiftieth Year of the Republic of India, by the Legislature of West Bengal, as follows: –

### **1. Short title, extent and commencement**

- (1) This Act may be called the West Bengal Sales Tax (Settlement of Dispute) Act, 1999.
- (2) It extends to the whole of West Bengal.
- (3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

### **2. Definitions**

- (1) In this Act, unless the context otherwise requires, -
  - (a) “arrear tax, penalty, late fee or interest in dispute” means,—
    - (i) tax, by whatever name called, which is payable by an assessee under the relevant Act, or
    - (ii) penalty imposed or which can be imposed upon an assessee due to late payment or non-payment of tax as mentioned in sub-clause (i), or for default in furnishing return in accordance with the provisions of the relevant Act, or
    - (iii) penalty imposed or which can be imposed upon an assessee in cases other than cases mentioned in sub-clause (ii) in accordance with the provisions of the relevant Act; or
    - (iv) late fee which is payable by an assessee under the relevant Act, or
    - (v) interest which is payable by an assessee under the relevant Act,which, as the case may be, is in dispute in any proceeding including audit, special audit, assessment, appeal, revision or review or for recovery of arrears of dues, in respect of the relevant Act and pending before any authority on the 31st day of October, 2018;

(aa) notwithstanding anything contained in clause (a), the arrear tax, interest, late fee or penalty in dispute relating to the relevant Act referred to in sub-clause (v) of clause (e) of subsection (1) of section 2 means the tax, interest, late fee, and penalty, as the case may be, payable by the applicant under the said Act.

*Explanation.*—Tax referred to in this clause means the tax payable in accordance with the provisions of sub-section (1) of section 4 of the West Bengal Tax on Entry of Goods into Local Areas Act, 2012 (West Ben. Act I of 2012).

- (a) "applicant" means a "dealer", an "occupier of a jute mill" or a "shipper of jute" as defined in the relevant Act, and includes legal heir, successor, assignee or nominee of such dealer, occupier of a

jute mill or a shipper of jute where the business of such dealer, occupier of a jute mill or shipper of jute has ceased to exist or has been discontinued prior to the date of coming into force of this Act, but does not include such dealer, occupier of a jute mill or shipper of jute, if any proceeding for prosecution has been instituted against him for any offence punishable under any of the provisions of the relevant Act:

Provided that the applicant shall also include a dealer and an importer other than a dealer as referred to in clause (g) and clause(k), as the case may be, of sub-section (1) of section 2 of the West Bengal Tax on Entry of Goods into Local Areas Act, 2012.

(b) "designated authority" means the authority appointed under section 3;

(c) "prescribed" means prescribed by rules made under this Act;

(d) "relevant Act" means –

(i) the West Bengal Sales Tax Act, 1994;

(ii) any of the Acts referred to in sub-section (1) of section 106 of the West Bengal Sales Tax Act, 1994;

(iii) the West Bengal Value Added Tax Act, 2003; or

(iv) the Central Sales Tax Act, 1956 ; or

(v) the West Bengal Tax on Entry of Goods into Local Areas Act, 2012,

and includes the rules made, or notifications issued, under the Acts referred to in sub-clause (i), sub-clause (ii), sub-clause (iii), sub-clause (iv) or sub-clause (v).

(2) Unless there is anything repugnant in the subject or context, all expressions used in this Act, which are not defined, but defined in the relevant Act, or used in the relevant Act, shall have the same meaning as in the relevant Act.

### **3. Designated authority**

For carrying out the purposes of this Act, the State Government may, by notification published in the Official Gazette, appoint one or more authorities referred to in section 3, section 4 or section 5 of the West Bengal Sales Tax Act, 1994, to be the designated authority, and such authority shall exercise jurisdiction over such area or areas as the State Government may specify in the notification.

### **4. Eligibility for settlement**

Subject to the other provisions of this Act, an applicant shall be eligible to make an application for settlement of arrear tax, penalty, late fee or interest in dispute in a case which is pending on the 31<sup>st</sup> day of October, 2018, before any authority,—

(a) in respect of any period ending on or before the 30<sup>th</sup> day of June, 2017, for which—

(i) an audit, special audit or assessment has been made; or

(ii) an appeal, revision or review petition has been filed; or

(iii) a revision or review proceeding has been initiated; or

(iv) a notice or order has been issued intimating the applicant for payment of tax, interest, late fee or penalty; or

(v) a notice has been issued in any proceeding under the relevant Act proposing payment of tax, interest, late fee or penalty. or

(b) in respect of a proceeding for recovery of arrears of dues which has been referred to a Certificate Officer under the Bengal Public Demands Recovery Act, 1913 or to a Tax Recovery Officer under the relevant Act, on or before the 31<sup>st</sup> day of March, 2014;

### **4A. Eligibility for settlement of dispute pending before the Tribunal or the High Court or the Supreme Court.—**

(1) Where any application is pending before the West Bengal Taxation Tribunal established under section 3 of the West Bengal Taxation Tribunal Act, 1987 (hereinafter referred to as the Tribunal), or the High Court, or the Supreme Court, on the 31<sup>st</sup> day of October, 2018, in respect of—

- (a) a proceeding for recovery of arrears of dues which has been referred to a Certificate Officer under the Bengal Public Demands Recovery Act, 1913 or to a Tax Recovery Officer under the relevant Act, on or before the 31<sup>st</sup> day of March, 2014;
- (b) any case where any tax, interest, late fee or penalty due from any applicant is in dispute in respect of any period ending on or before the 30<sup>th</sup> day of June, 2017, under the relevant Act or any other proceeding has been made relating to any period ending on or before the 30<sup>th</sup> day of June, 2017, other than a proceeding for recovery of arrears of dues which has been referred to a Certificate Officer under the Bengal Public Demands Recovery Act, 1913 or to a Tax Recovery Officer under the relevant Act, after 31<sup>st</sup> day of March, 2014,

such arrear tax, penalty, late fee or interest due shall be deemed to be “arrear tax, penalty, late fee or interest” within the meaning of clause (a) of sub-section (1) of section 2, and such pending application shall be deemed to be a “revision pending” for the purpose of settlement of arrear tax, penalty, late fee or interest in dispute, and such applicant shall be eligible to make an application for settlement of the arrear tax, penalty, late fee or interest in dispute, as referred to in clause (a) of sub-section (1) of section 2, in accordance with the provisions of this Act and the rules made thereunder:

Provided that the provisions of this section shall apply only where, in respect of an application under this sub-section, the applicant obtains the leave of the Tribunal or the High Court or the Supreme Court, as the case may be, for settlement of such dispute under this Act.

(2) Notwithstanding anything contained in sub-section (1), an applicant shall not be eligible to make an application for settlement of arrear tax, penalty or interest in dispute, as referred to in clause (a) of that sub-section, in respect of any period under the relevant Act for which the revision pending, as referred to in clause (b) of that sub-section, has been heard in part, or has been heard but judgement has not been delivered, before the coming into force of this section, by the Tribunal or the High Court or the Supreme Court, as the case may be:

Provided that the above provisions shall not be applicable to any application filed in accordance with the provisions of the proviso to sub-section (1) of section 4.

*Explanation.*— For the purposes of this sub-section, no provision pending shall be deemed to have been heard in part only by reason of any interim order having been passed by the Tribunal or the High Court or the Supreme Court, as the case may be, in connection with such revision pending.

#### **5. Application by the applicant.-**

(1) (a) An application for the purpose of section 4 shall be made to the designated authority by an applicant in such form, and in such manner, as may be prescribed, on or before the 31<sup>st</sup> day of January, 2019.

(b) An application for the purpose of section 4A shall be made to the designated authority by an applicant in such form, and in such manner, as may be prescribed, on or before<sup>12A</sup> [on or before the 31<sup>st</sup> day of January, 2019.

(1a) Where an application for settlement has been submitted under sub-section (1) upon payment of amount as referred in sub-clause (B) of clause (ii) of sub-section (1) of section 7, such an application shall be deemed to have been made within the due date only when the applicant furnishes proof of payment of the full amount payable as installments within 10 days from the expiry of three months following the month in which such application was submitted.

(2) A separate application shall be made by an applicant for different periods under each of the relevant Acts.

(3) The applicant shall send a copy of the application made under sub-section (1) to the appellate authority, the revisional authority or the reviewing authority before whom the appeal or revision or review, as the case may be, is pending, within seven days from the date of making such application before the designated authority:

Provided that in a case where the provisions of sub-section (4) apply, the applicant shall also send a copy of the application made under sub-section (1) to the revisional authority before whom the revision is pending for the same period.

(4) Where an appeal is pending before the appellate authority, and a decision is pending before the revisional authority, in respect of one and the same period, an application referred to in sub-section (1) shall only be made in respect of the pending appeal.

(5) Where a certificate of settlement has not yet been issued under sub-section (1) of section 8 in respect of any application under sub-section (1) made before coming into force of this sub-section in respect of any period, the applicant may, on fulfilling the conditions and in the manner prescribed, apply for settlement of arrear tax, penalty, late fee or interest in dispute in respect of such period:

Provided that upon making of an application under this sub-section, the application made before coming into force of this sub-section shall be deemed to have been withdrawn by the applicant.

#### **6. Determination of amount payable by the applicant**

(1) Save as otherwise provided in the proviso to sub-section (1) of section 8, every applicant shall, before making the application under section 5 for settlement of any arrear tax, penalty, late fee or interest in dispute for any period, pay the amount calculated at the rate specified in section 7 into the Reserve Bank of India or any appropriate Government Treasury in such manner as is specified in the relevant Act.

(2) A copy of Julie receipted challan showing payment of the amount payable for settlement shall be furnished to the designated authority along with the application made under section 5.

#### **7. Rate applicable in determining the amount payable. –**

(1) The amount payable by an applicant for settlement of dispute under this Act shall be determined, –

(a) where the dispute relates –

(i) to any arrear tax in dispute which is solely owing to non-furnishing or non-production of any certificate or declaration prescribed under the relevant Act and the applicant is in possession of such certificate or declaration on the date of making an application under this Act in respect of a portion of such arrear tax in dispute, at the rate of hundred *per centum* of the remaining balance amount of arrear tax in dispute, or the actual amount paid in respect of such arrear tax in dispute, whichever is higher;

(ia) to any arrear tax which otherwise is admitted by the assessee in the return furnished, or in writing before any authority, at the rate of hundred *per centum*, or the actual amount paid in respect of such arrear tax in dispute, whichever is higher;

(ii) to any other arrear tax in dispute not covered in sub-clause (i), or sub-clause (ia),–

(A) at the rate of thirty-five *per centum* of the arrear tax in dispute or the actual amount paid in respect of such arrear tax in dispute, whichever is higher, if the application is made along with proof of payment of such amount in full; or

(B) at the rate of forty *per centum* of the arrear tax in dispute or the actual amount paid in respect of such arrear tax in dispute, whichever is higher, if the application is made alongwith the proof of payment of fifteen *per centum* of the arrear tax in dispute together with a prayer for granting instalment for payment of the remaining balance and such balance amount is paid in maximum of three monthly instalments from the month following the month in which such application has been submitted;

(iii) *Omitted*

(aa) notwithstanding anything contained in clause (a), where the dispute relates to the relevant Act referred to in sub-clause (v) of clause (e) of sub-section (1) of section 2—

- (i) for any arrear tax in dispute, at the rate of hundred *per centum* of the remaining balance amount of arrear tax in dispute, or the actual amount paid in respect of such arrear tax in dispute, whichever is higher;
- (ii) for any arrear late fee in dispute, at the rate of zero *per centum*, or the actual amount paid in respect of such arrear late fee in dispute, whichever is higher;

(ab) where the dispute relates to any arrear late fee other than the late fee as mentioned in clause (aa), at the rate of zero *per centum* or the actual amount paid in respect of such arrear late fee in dispute, whichever is higher;

(b) where the dispute relates to any arrear interest in dispute for non-payment of any arrear tax in dispute and an application has been made under this Act in respect of such arrear tax in dispute, the arrear interest in dispute shall be waived.

*Explanation I.*— The “remaining balance amount of arrear tax in dispute” referred to in sub-clause (i) of clause (a), shall mean that part of arrear tax in dispute, which remains after deduction therefrom the amount of tax in dispute related to such certificate or declaration for non-furnishing or non-production of which that tax was assessed to be payable and where the applicant furnishes satisfactory evidence of receipt and possession of such certificate or declaration on the date of making an application under this Act and where the relevant claim under the relevant Act is otherwise allowable on the basis of such furnished certificate or declaration.

*Explanation II.*—Where an application under this Act for settlement of tax in dispute covers cases under clause (a), the amount payable for settlement of tax in dispute shall be the sum total of the amounts arrived at in accordance with the provisions of clause (a), determined separately in respect of each case of arrear tax in dispute covered thereunder.

*Explanation III.*—An application under this Act for settlement of arrear tax, penalty, late fee or interest in dispute in respect of a case shall cover all types of disputes pending before any authority relating to that case under the relevant Act and there shall not be any application for settlement of a part of the dispute leaving the other part pending.

*Explanation IV.*— An amount of tax deposited for any period in accordance with clause (b) of the second proviso to sub-section (1) of section 84, or clause (a) of the first proviso or clause (a) of second proviso, to sub-section (1) of section 87 of the West Bengal Value Added Tax Act, 2003, and such amount is not the tax admitted to be payable by the dealer, shall be adjusted against the amount payable under this Act for settlement of dispute for the same period under relevant Act.

(2) Where the dispute relates to—

- (a) any arrear of penalty referred to in sub-clause (ii) of clause (a) of sub-section (1) of section 2 and an application has been made under this Act in respect of such penalty in dispute, the arrear penalty in dispute shall be waived;
- (b) any arrear of penalty referred to in sub-clause (iii) of clause (a) of sub-section (1) of section 2 and an application has been made under this Act in respect of such penalty in dispute, for arrear penalty in dispute, at the rate of fifty *per centum* of the arrear penalty in dispute, or the actual amount paid in respect of such arrear penalty in dispute, whichever is higher;
- (c) notwithstanding anything contained in clause (b) above, any arrear of penalty referred to in sub-clause (iii) of clause (a) of sub-section (1) of section 2 where the dispute relates to the relevant Act referred to in sub-clause (v) of clause (e) of sub-section (1) of section 2 and an application has been made under this Act in respect of such penalty in dispute, the arrear penalty in dispute shall be waived.

## **8. Settlement of dispute and issue of certificate of settlement**

(1) The designated authority shall, within fifteen working days of the receipt of the application under section 5 along with the copy of duly receipted challan showing payment of the amount payable for

settlement, issue a provisional certificate of settlement to the applicant in such form as may be prescribed:

Provided that where no payment is required to be made by an applicant, the designated authority shall issue the provisional certificate of settlement within fifteen working days of the receipt of the application under section 5, notwithstanding that no receipted copy of challan has been furnished along with the application under section 5:

Provided further that the designated authority may, within a period of three months following the month in which the application under section 5 is made, verify the correctness of the declaration made and the amount paid on the basis of such declaration, and if the designated authority finds any discrepancy in the declaration or finds any short payment of the amount payable for settlement, such authority shall issue a notice to the applicant asking him to rectify the discrepancy or to make payment of the amount short paid:

Provided also that, where—

- (a) the notice referred to in the second proviso is not issued, the provisional certificate of settlement issued to the applicant, on the expiry of the period referred to in that proviso, become final and the dispute in respect of which the application has been made shall be deemed to have been settled for the purpose of this Act and the relevant Act;
- (b) the notice referred to in the second proviso is issued, the dispute shall not be deemed to have been settled until the discrepancy, or the short payment, mentioned in that notice is rectified or made to the satisfaction of the designated authority and the designated authority signifies such satisfaction to the applicant in writing:

Provided also that in a case where the provisions of sub-section (4) of section 5 apply and a provisional certificate is issued under this sub-section in respect of the appeal pending for a period, the revision pending for such period shall also be deemed to have been settled under clause (a) of the third proviso, on expiry of the period mentioned in the second proviso.

Provided also that the period of fifteen working days as mentioned in this sub-section shall be counted from the date of submission of proof of payment made in instalments as mentioned in sub-section (1a) of section 5.

(2) The designated authority, for reasons to be recorded in writing, may refuse to settle a dispute, or rectify or amend a certificate of settlement issued under sub-section (1):

Provided that no order adversely affecting the applicant shall be passed without allowing the applicant a reasonable opportunity of being heard.

### **9. Bar on reopening of settled cases**

A certificate of settlement issued under sub-section (1) of section 8 shall be conclusive as to the dispute to which it relates, and no matter covered by such certificate of settlement shall be reopened in any proceeding of review or revision, or in any other proceeding, under the relevant Act.

### **10. Withdrawal of appeal and revision and review**

Notwithstanding anything to the contrary contained in any provision in the relevant Act, the appeal, revision or review for any period pending before the appellate or the revisional or the reviewing authority, as the case may be, in respect of which a certificate of settlement is issued under sub-section (1) of section 8, shall be deemed to have been withdrawn by the applicant from the date of making of the application by the applicant under sub-section (1) of section 5.

### **11. Appellate and revisional authority not to proceed in certain cases**

No appellate authority or revisional authority shall proceed to decide any appeal, revision or both under the relevant Act relating to any period in respect of which an application has been made by an applicant under section 5:

Provided that such authority shall proceed to decide such appeal or revision for such period in accordance with the provisions of the relevant Act, if a certificate of settlement referred to in sub-section (1) of section 8 is refused to the applicant by an order passed by the designated authority in writing under sub-section (2) of section 8.

## **12. Revocation of certificate of settlement**

(1) Notwithstanding anything contained in section 9 or section 10, where it appears to the designated authority that an applicant has obtained the benefit of settlement under this Act by suppressing any material information or particulars or by furnishing any incorrect or false information or particulars, such designated authority may, for reasons to be recorded in writing and after giving the applicant a reasonable opportunity of being heard, revoke the certificate of settlement issued under sub-section (1) of section 8.

(2) If a certificate of settlement is revoked under sub-section (1), appeal or revision or both or review, as the case may be, under the relevant Act, covered by such certificate of settlement, shall, notwithstanding the provision of section 9 or section 10, stand revived or reinstated immediately upon such revocation, and such appeal or revision shall be decided in accordance with the provisions of the relevant Act, as if no settlement of the arrear tax, penalty, late fee or interest in dispute in such appeal or revision or both or review appeal, revision or both has ever been made under this Act.

## **13. Information to be sent to the authorities under the relevant Act**

The designated authority shall keep the assessing authority, the appellate authority, the revisional authority or the reviewing authority, who, for the time being, has jurisdiction over the applicant under the relevant Act, informed, inter alia, of -

- (a) making of an application by an applicant under section 5;
- (b) passing of any order by the designated authority under section 8; or
- (c) revocation of any certificate of settlement under section 12,

in such form and manner, and within such time, as may be prescribed.

## **14. No refund of amount paid under the Act**

Any amount paid by an applicant under section 6 shall not be refundable under any circumstances:

Provided that in the case of revocation of a certificate of settlement in accordance with section 12, the amount paid by the applicant under section 6 shall be treated to have been paid under the relevant Act for the period for which the certificate of settlement has been revoked.

## **15. Power of the State Government to make rules**

The State Government may, by notification published in the Official Gazette, make rules, with prospective or retrospective effect, for carrying out the purposes of this Act, and such rules may provide for all or any of the matters which, under any provision of this Act, is required to be prescribed or to be provided by rules.

## **16. Power to remove difficulties**

If any difficulty arises in giving effect to any of the provisions of this Act, the State Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of two years from the date of coming into force of this Act.