

**GOVERNMENT OF WEST BENGAL
DIRECTORATE OF COMMERCIAL TAXES,
14 BELIAGHATA ROAD, KOLKATA-700015**

**Trade Circular No. 06/2012
Dtd. 02.05.2012**

Sub: Changes made in laws w.e.f. 01.04.2012

The West Bengal Finance Act, 2012 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 made in West Bengal Sales Tax Act, 1994 (in short Act, '94) and in W.B. VAT Act 2003, (in short, Act '03), both to be operative from 1-4-2012 unless otherwise mentioned against each . This trade circular is issued to bring the changes in the substantive provisions of Acts to the notice of all concerned. Relevant provisions of the Acts may please be consulted for detailed information. This trade circular is clarificatory in nature and under no circumstance it may be taken as interpretation of the statutes, discussed herein:

The changes effected are noted below:

A. Changes effected under the WBST Act,1994.

(1) Changes made in the modalities of payment of interest.

(I) As per existing provisions i.e. sub-section (1) or sub-section (2) of section 31, where a dealer furnishes return under sub-section (3) of section 30 without making full payment of tax payable or does not furnish any return before assessment in respect of any tax period, he shall pay a simple interest at the rate of one percent for each British calendar month of default upon so much of the amount of tax payable by him according to such return as remains unpaid at the end of each such month of default.

As per amended provision, in above case the dealer shall have to pay simple interest at the rate of twelve per centum per annum for the period commencing on the date immediately following the prescribed date for payment of tax and up to date prior to the date of payment of such tax or, up to the date preceding the date of commencement of proceeding under section 52, or up to the date prior to the date of assessment under section 45, or section 46, as the case maybe , whichever is earlier in respect of such return period upon so much of the amount of tax payable by him according to such return as remains unpaid.

(II) As per existing provision of sub-section (1) of section 32 , where a dealer fails to make payment of any tax payable after assessment by the date specified in the notice issued under section 47 for payment thereof, he shall pay a simple interest at the rate of one percent for each British calendar month of default upon so much of the amount of tax payable by him according to such notice as remains unpaid at the end of each such month of default.

As per amended provision he shall pay a simple interest at the rate of twelve per centum for the period of default commencing from the date next following the date specified in such notice up to the date of full payment of such tax or up to the date preceding the date of commencement of proceeding under

section 52, whichever is earlier, upon so much of the amount of tax payable by him according to such notice as remains unpaid.

2. Limitation for assessment.

Sub-section (4) of section 48 has been amended. A new clause has been added in this sub-section. As per new clause, when the dealer in respect of whom an assessment is required to be made for any period under this Act, is also registered under the Act, '03 and an assessment is required to be made for that period also under that Act, the assessment including a fresh assessment under this Act may be made at any time within the date on which an assessment for that period may be made under the Act, '03 or within the date mentioned in sub-section (2), or sub-section (3), or clause (a) of this sub-section, whichever is later.

B. Changes effected under the WBVAT Act, 2003.

(1) Change in definition of “sale price”-

From 01.04.12 “sale price” will not only exclude “cess levied” under the West Bengal Transport Infrastructure Development Fund Act, 2002, but also, will “tax levied” under the West Bengal Motor Vehicles Tax Act, 1979.

(2) Widening the scope for dealers opting for “compounding” u/s 16(6) of the Act –

As per existing provision, i.e. sub-section (6) of section 16, a dealer making sale of cooked foods, non-alcoholic drinks and beverages, manufactured by him, may opt for “compounding scheme” and pay tax at the rate of four per centum of turnover, if his turnover of sale in the preceding year does not exceed fifteen lakh rupees. Now, as per amended provision this limit has been raised to twenty five lakh rupees.

(3) Change made in negative list–

Dealer purchasing spare parts of motor vehicles for use in repairing was not entitled to claim ITC upto 31.03.2012. Now he can claim ITC on such purchase of spare parts of motor vehicle as per amended entry 2 of negative list.

(4) Changes made in special provision of registration u/s 24A.

As per existing provision, a dealer who was liable to pay tax under section 10, but had failed to apply for registration under the Act, was allowed make an application for registration in the prescribed form to the prescribed authority under section 24, within 31st Dec 2008 along with a declaration by such dealer giving particulars of sales for year or part thereof and proof of payment of tax, at the rate of one-half per centum on turnover of sales on which tax is payable. The provision was inoperative from 01.01.2009 onwards as because no dealer was allowed to apply for registration from that date onward.

Now as per amended provision a dealer who is liable to pay tax not only under section 10, but also under section 14, or both, and has failed to apply for registration under the Act, may make application for registration u/s 24 within 31st Dec 2012, along with a declaration by such dealer giving particulars of

turnover of sales , or contractual transfer price, or both or part thereof and proof of payment of tax at the rate to be presented in rules in lieu of tax payable under sub-section (2) of section 16 or under sub-section (1) of section 18.

(5) Change in the provision for restoration of RC u/s 29 (4).

Where an application for restoration of certificate of registration is moved by the dealer after expiry of six months from the date of its cancellation under clause (e) or clause (f) of sub-section (1) of section 29 , and the appropriate authority considering his prayer intends to restore his certificate of registration from the date of cancellation, he shall before passing any order to this effect , obtain the approval of the commissioner. Section 46(i)(ef) and 6th proviso to sub-section (1) of section 49 may please be consulted.

(6) Change in provision for submission of statements, accounts, audit reports or declaration u/s. 30E.

Following the existing provision every registered dealer, other than Public Limited Company or Private Limited Company registered under the Companies Act, 1956, whose turnover of sales or contractual transfer price or both exceeded rupees one crore and fifty lakh in a year, used to submit within prescribed date before the prescribed authority a Profit and Loss Account and Balance Sheet for such year, along with audit report in Form 88 signed by a Chartered Accountant or a Cost Accountant.

As per amended provision, this limit has been raised to rupees three crore in a year or part of a year.

However, if turnover of sale or contractual transfer price or both or turnover of purchase of a registered dealer, other than Public Limited Company or Private Limited Company exceeds rupees one crore and fifty lakh in a year, such dealer shall have to submit within the prescribed time a Profit & Loss Account and Balance Sheet for such year, along with a self-audit statement in form to be prescribed under the rules.

(7) Persons responsible for deducting tax at source shall mean the authorities mentioned in amended section 40(1).

A new explanation has been added as Explanation II. As per this explanation person responsible for paying any sum includes in respect of contract between dealer and agencies mentioned in sub-section (1) of section 40, shall include the proprietor, partner, director, manager, principal, or person in charge at the time of such payment, as the case may be.

(8) Changed procedure of audit and assessment under section 43 –

- (I) As per existing provision the person authorised by Commissioner was to prepare a report after audit for a particular period stating his observation regarding the correctness of returns, admissibility of various claims of the dealer for the period of audit.

Provision stands amended now and the person authorised by Commissioner in addition to preparation of report regarding correctness of returns, admissibility of various claims of the dealer

for the period of audit, would prepare a computation sheet, showing quantification of tax, interest or late fee payable by him.

(II) As per newly inserted sub-section (5A) of section 43,

Where any dealer fails to pay the tax, interest, or late fee stated in computation sheet attached to report drawn under section 43(3), within one month of receipt of such report and computation sheet, then such report would be deemed to be an order of assessment and the computation sheet shall be deemed to be a notice of demand and such amount shall be payable by that dealer within fifteen days thereafter. No fresh assessment proceedings shall be made for the period of audit. 8th proviso to sub-section (1) section 46 may please be consulted in this connection. However, assessment proceedings may be made if any of the clauses of sub-section (1) of section 46 other than clause (ca) is attracted. Further details will be available from the rules.

(9) Scope of making assessment under section 46 is again widened. –

Two new clauses have been inserted to sub-section (1) of this section. As per clause (ed), assessment for any period may be made, where a registered dealer fails to submit the audit report in Form 88 or self-audit statement mentioned in section 30E for that period.

As per clause (ef), assessment for any period may be made, where a certificate of registration of dealer is restored upon an order passed in accordance with provision of sub-section (4) of Section 29, more specifically where a certificate of registration is restored with the approval of the Commissioner. Sixth proviso to sub-section (1) of section 49 may please be consulted.

(10) Change in the date on which assessment shall be deemed to have been made under section 47A –

Section 47A has been amended. Turnover of sales for relevant eligible period and corresponding date of deemed assessment have been amended as per following table –

Eligible period(s)	Total turnover of sales (in rupees)	Date on which it shall be deemed to be assessed
1. Year commencing from the 1 st day of April, 2009 and ending on the 31 st day of March, 2010	Below three crore	15 th day of February, 2012.
2. Year commencing from the 1 st day of April, 2010 and ending on the 31 st day of March, 2011	Below five crore	30 th day of June, 2012.

(11) Limitation for assessment under section 49 –

As per newly added sixth provision, where an assessment under section 46 is required to be made after restoration of certificate of registration of a dealer under sub-section (4) of section 29, such

assessment may be made, within a year from the date of order passed for the restoration of the certificate of registration.

(12) Change under section 76 in the modality of detention and of seizure after interception or search.–

As per existing provision, the appropriate authority has the liberty to first detain any vehicle carrying goods for a period not exceeding forty eight hours, if he has reason to believe that such goods are being carried violating provisions of section 73 or section 81 and would thereafter seize such goods together with container or other materials for the packing of such goods if the person bringing, importing or receiving or carrying such goods fails to furnish such particulars in such form, or such documents, as prescribed u/s. 73 or u/s. 81.

As per amended provision, in case of apprehension of transportation of goods in violation of section 73 or section 81, the appropriate authority shall –

- (i) seize the goods forthwith, if no document is filed in respect of consignment of goods at the time of interception, or search of such goods.
- (ii) seize such goods, if he is not satisfied about correctness of particulars furnished in the form, prescribed u/s. 73 or u/s. 81, in respect of descriptions, or quantity or weight or value of such goods.
- (iii) detain the consignment of such goods, whether carried in a vehicle or not, for a period not exceeding twenty four hours, if the documents produced for such consignment are not in same form as prescribed u/s. 73 or u/s. 81, and would seize thereafter, if the person bringing, importing, receiving or carrying such goods fails to submit such document in respect of detained consignment as prescribed u/s. 73 or u/s. 81. It implies that period of detention is reduced from maximum period of 48 hours to a maximum period of 24 hours.

(13) Change in prescription of the sum of penalty to be imposed under sub-section (1) of section 77

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Penalty amount imposed u/s. 77 against seizure of goods u/s. 76 has gone a change, as per following table –

Sl. No.	Nature of seized goods	Amount of penalty
1.	Goods in respect of which the rate of tax leviable under sub-section (2) of section 16 on such goods does not exceed four per centum.	15% of the fair market value of seized goods.

2.	Goods in respect of which the rate of tax leviable under sub-section (2) of section 16 on such goods exceeds four per centum but does not exceed fifteen per centum	25% of the fair market value of seized goods.
3.	Goods in respect of which the rate of tax leviable under sub-section (2) of section 16 on such goods exceeds fifteen per centum	40% of the fair market value of seized goods.
4.	Goods seized are raw jute.	20% of the fair market value of seized goods.

But where there is clerical error in the form prescribed u/s. 73 or u/s. 81, and there is no material discrepancy in the description of goods or the quantity or weight or the value disclosed in such form, imposition of penalty for an amount equivalent to five per centum of the fair market value of the seized goods or rupees twenty five thousand, whichever is lower has got legal sanction.

Further point to be noted here is that where no form as prescribed u/s. 73 or u/s. 81, is furnished even at the time of imposition of penalty u/s. 77, the authority has been given the power to demand for payment of security equivalent to tax calculated on the basis of rate of tax, as specified under sub-section (2) of section 16, computed in respect of sale of seized goods on fair market value of taxable seized goods, whether such goods may be sold or not or whether any tax is payable or not in case of subsequent sale of such goods. Release of seized goods is permissible on payment of penalty amount along with payment of security, if demanded.

(14) Appellate forum u/s. 84 –

Where the total amount of tax, interest, late fee, or penalty in dispute in an appeal filed, is in excess of twenty lakh rupees, then such appeal along with connected appeal case filed under CST Act, 56 may lie before an appellate forum constituted by Commissioner consisting of one or more Special Commissioner or Additional Commissioner or any person appointed under sub-section (1) of section 6 to assist the Commissioner and appellate forum shall act as the appellate authority in disposing of appeal under this section.

As per existing provision “any other assessment” means assessment for tax and imposition of penalty u/s. 46 and u/s. 48.

As per amended provision, “any other assessment” includes assessment under section 47, assessment deemed to have been made u/s. 47A and summary assessment u/s. 47AA. Only the first category i.e. assessment made u/s. 47 has become the subject matter of appeal with effect from 01.04.05.

(15) The West Bengal Finance Act, 2012 has brought about changes in applicable rate of tax with effect from 01.04.2012 of certain items. Due to such changes, some changes have been made in schedules appended to the Act, 2003. These are summarised below –

Sl. No.	Item	Existing schedule	New Schedule	Existing rate	New rate
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1.	Baloon	CA	A (3C)	13.5%	Exempted
2.	Kite sticks	CA	C-Part I (9)	13.5%	4%
3.	All other machinery not specified in items (1) to (XXVII).	C-Part I	CA (w.e.f. 1.4.05)	4%	13.5%
4.	Paneer	CA	C-Part I (58)	13.5%	4%
5.	Wooden Boxes	CA	C-Part III (169)	13.5%	4%
6.	Air conditioner with capacity above one ton.	CA	D (3)	13.5%	14.5%
7.	Motor car, whose price exceeds rupees ten lakh.	CA	D (4)	13.5%	14.5%
8.	Television, whose MRP exceeds rupees twenty five thousand.	CA	D (5)	13.5%	14.5%
9.	Mobile phone, whose MRP exceeds rupees twenty thousand.	CA	D (6)	13.5%	14.5%
10.	Watches, whose MRP exceeds rupees fifteen thousand.	CA	D (7)	13.5%	14.5%

This trade circular is meant for circulation amongst officers of the Directorate and the trade communities for their understanding about the changes now made vide West Bengal Finance Act, 2012. It is expected that everybody concerned with the provision of law will be benefited from clarification issued through this trade circular.

(Binod Kumar)
Commissioner,
Sales Tax, West Bengal.

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Dated : 03.05.2012

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,
Sales Tax, W.B.