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

TRADE CIRCULAR No. 07/2013

#### Sub- Changes made in WBVAT Act, 2003 and in WBVAT Rules, 2005

Date: 01.04.2013

Every year after publication of the West Bengal Finance Act and of corresponding notifications by government effecting the procedural matters connected with the changes made in that Finance Act, it becomes necessary for issue of Trade Circular specifying the important changes made in law that may come to the aid of the dealers as well as of the officers of the Directorate for better understanding of these changes. The West Bengal Finance Act, 2013 and the corresponding notifications bearing Nos 364 F.T. dtd. 28.03.2013 and 369 F.T. dtd. 28.03.2013 have been published. It is therefore felt necessary to issue one Trade Circular clarifying the important changes made this time. This Trade Circular is clarificatory in nature and is not the legal interpretation of the changed laws. For interpretation, the West Bengal Finance Act, 2013 and the notifications may please be consulted. Unless otherwise mentioned in the respective paragraphs, amended provisions have come into force with effect from 01.04.2013.

#### A. Changes effected under the WBVAT Act, 2003—

#### (1) Change in constitution & function of Bureau of Investigation—

So far Bureau of Investigation had been functioning as one unit from 10, Madan Street, Kolkata -700071. Now Bureau of Investigation shall consist of three operational Units having different Zones with jurisdiction over different Circles. Each Unit would be headed by a Special Commissioner or an Additional Commissioner (referred to as Special Officer) for discharging functions under the Act.

#### (2) Change in liability to pay purchase tax by composition dealers –

As per existing provision of section 12, a registered dealer enjoying composition under subsection (3)/sub-section (3A)/sub-section (3B)/sub-section (6) of section 16 or under sub-section (4) of section 18, is required to pay tax on all purchases made from a person or a dealer, other than a registered dealer.

As per amended provision, effective from 1<sup>st</sup> April, 2013, any registered dealer opting to pay tax under any of the sub-sections of section 16 or under sub-section (4) of section 18 shall be liable to pay tax on all his purchases made from a person or a dealer, other than a registered dealer, only when his turnover of sale, or contractual transfer price, as the case may be, in the previous year, exceeded fifty lakh rupees. It means that dealer remaining under composition scheme and having turnover of sale or contractual transfer price upto rupees fifty lakh in the previous year shall not have to pay purchase tax. A newly registered works contractor dealer opting to pay tax under composition scheme shall be liable to pay purchase tax under section 12 from the day next to the day on which his contractual transfer price exceeds rupees fifty lakh in the year in which he is registered.

#### (3) Change in the rate of tax on sale of goods u/s 16 -

As per existing provision, tax payable by a dealer on the turnover of sales representing sale of any goods specified in the schedule C, is levied @ 4%. With effect from 1<sup>st</sup> April, 2013, this rate would be 5%.

Similarly tax on the turnover of sales representing sale of goods covered under schedule CA, is now levied @ 13.5%. This rate would be 14.5% from 1<sup>st</sup> April, 2013.

Dealers enjoying composition of tax as per provision of subsection (3) of section 16, has

been paying tax at compounded rate of 0.25% on the turnover of sales. From 1<sup>st</sup> April 2013, such dealers may either pay tax at the rate of 0.25% of the total turnover of sales or a minimum fixed amount of either Rs.7000/-, if his turnover in the previous year was upto Rs. 30 Lakh, or Rs.12000/-, if his turnover in the previous year was above Rs 30 Lakh, as referred to in table appended to sub-rule (3A) of rule 38 of the WB VAT rule. If a dealer prefers to exercise his option to pay fixed amount, then he shall have to pay the fixed sum (depending on his turnover of sales in the previous year) in one instalment along with Form 16.

A dealer opting to pay fixed amount shall not be required to maintain-books of account prescribed u/r 87 but shall have to maintain those books generally required to be maintained under the accepted accounting principles.

Option to pay tax at compounded rate once exercised for a year or part of a year is final and irrevocable.

#### (4) Change in the rate of tax under section 18–

As per amended provision valid from 1<sup>st</sup> April, 2013 dealers opting for compounding of tax, as per provision of subsection (4) of section 18, have to pay tax @ 3% of the aggregate amount received or receivable in respect of intra-state works contract, in lieu of existing rate of 2%.

As per the amended provision, in case of works contract, applicable rate would be 5% (instead of present 4%) if such goods represent those specified as declared goods and the ones involved in printing of materials including lamination. In all other cases, such rate would be @ 14.5% in place of 13.5%.

#### (5) Claim of ITC under section 22 –

Sub-section (11) of section 22 has been omitted. As a result, availing of the input tax credit or input tax rebate by a dealer registered under the Act is delinked with maintenance of registers, and books of accounts, as referred to in section 63. Not that those books are not to be maintained by a dealer. Only availing of input tax credit is delinked. Rule 87 is also amended accordingly.

### (6) Change in the system of granting registration including introduction of TATKHANIK scheme-

As per existing provision, a dealer who intends to be registered voluntarily shall have to effect a turnover of sales or contractual transfer price during a year exceeding fifty thousand rupees.

As per amended provision, this limit of quantum of turnover of sales or of contractual transfer price may be waived by Commissioner by an order in writing on prayer of a dealer.

A new Tatkhanik scheme of registration has been introduced. As per amended provision of rule 6B, if the registering authority is satisfied that the applicant dealer is registered under the Companies Act,1956 or is registered for more than a year under the Sales Tax Law in another State or under the Service Tax Law and has voluntarily paid security of rupees ten lakh (adjustable against his immediate future tax liability), then registration number shall be assigned immediately and registration certificates shall be issued in dematerialized form within two working days from the date of filing of application for registration or the date of payment of such security, whichever is later.

#### (7) Change in the provision of transporter's enrolment–

A transporter, carrier or transporting agent, including those who are already in possession of a certificate of enrolment, shall have to make an application electronically for fresh certificate of enrolment in Form 10 under section 25 to the appropriate enrolling authority authorized by the Commissioner: –

- (i) firstly, by making such application electronically either under digital signature or without it through the Directorate's website.
- (ii) secondly, by sending by registered post or speed post, the application for certificate of enrolment in Form 10 in paper form, generated from the computer after transmission of the same electronically under clause (a), signed under and verified therein, along with proof of

payment of fees of one hundred rupees and such other documents within five days of making application for enrolment in Form 10 electronically.

However, Commissioner may allow a transporter, carrier, transporting agent or existing enrolment certificate holder, to apply for enrolment certificate or fresh enrolment certificate manually in Form 10.

Where the appropriate enrolling authority is satisfied that Form 10 submitted is properly filled in and is in order, he would issue a certificate of enrolment or fresh certificate of enrolment within five working days from the date of receipt of application.

Transporter, carrier, or transporting agent may obtain additional copies of enrolment certificates or fresh copy of enrolment certificate on payment of rupees one hundred for each copy of such certificate for displaying at conspicuous place of head office and each of his branch office or warehouse in West Bengal.

Such transporter, carrier, or transporting agent would mention enrolment number on every consignment note and goods receipt issued by him.

Sub section (2) of section 25 has also been amended. As per new provision penalty of a sum not exceeding one thousand rupees may be imposed for each month of default in making application for issue, or fresh issue of enrolment certificate, or for making application for amendment of enrolment certificate.

#### (8) Cancellation of certificate of enrolment—

As per existing provision of section 28A, certificate of enrolment granted to a transporter, carrier or transporting agent under subsection (1) of section 25 could be cancelled, if such transporter, carrier or transporting agent, has either discontinued his business or has ceased to exist. As per amended provision, certificate of enrolment granted to a transporter, carrier, or transporting agent may also be cancelled if such transporter, carrier or transporting agent has obtained such certificate on the basis of false documents or representation or has failed to comply with any requirement under section 66A, i.e, has failed to furnish any information or statement or record on demand for examination.

#### (9) **Amendment of section 30E**–

As per existing provision of sub section (1A) of section 30E, if turnover of sale or contractual transfer price or both of registered dealer other than Public Limited Company, or Private Limited Company registered under the Companies Act,1956 exceeds rupees three crore in a year commencing from the year 2011-2012, such dealer had to submit within 31<sup>st</sup> December from the end of the year before the prescribed authority a Profit and Loss Account and Balance Sheet for such year along with the audit report in Form 88 from a Chartered Accountant or a Cost Accountant. As per amended provision, this limit of turnover of sales or contractual transfer of price or both, has been raised up to rupees five crore in a year. This amended provision will be applicable from the accounting year commencing from 01.04.2012 and the dealer shall have to file Form 88 and other connected documents for the first year within 31<sup>st</sup> December, 2013.

As a result of such amendment in sub section (1A) of this section a dealer whose turnover of sales or contractual transfer price or both exceeds rupees one crore fifty lakh but does not exceed rupees five crore for any year commencing from 2012-2013, shall have to submit within 31<sup>st</sup> December from the end of the year a copy of profit and loss account and Balance Sheet along with a self audit statement in Form 88A.

#### (10) Penalty payable for failure to make payment electronically –

As per amended section 31 read with clause (c) of sub-rule (6) of rule 43 a registered dealer whose total payment of net tax or any other tax during 2010-11 was more than rupees two lakh is required to make payment of tax, interest, penalty or late fee electronically through the websites of Banks w.e.f. 01.04.2012, and as per clause (d) of that sub-rule any registered dealer whose total payment of net tax or any other tax for any period commencing on or after 01.04.2011 exceeds

rupees two lakh is required to make payment of tax, interest, penalty or late fee electronically through the websites of Banks from the first day of year immediately following such year. Section 31 has been renumbered and a new sub-section i.e, sub-section (2) is inserted to with retrospective effect from 01.04.2012. As per sub-section (2) of section 31 if a dealer, required to pay tax electronically under sub-section (1), makes payment by any other means he has to pay a penalty not exceeding rupees one thousand for each such payment. In terms of rule 43 penalty not exceeding rupees three hundred may be imposed for each manual payment made by such registered dealer after issue of show cause notice in Form 4P followed by a notice in Form 5P.

#### (11) Waiver of Late Fee / interest in some cases –

As per existing provisions of third proviso to sub-section (2) of section 32, a dealer who had furnished a return beyond the prescribed date without making full payment of tax, interest and late fee payable according to such return should be deemed to have delayed in furnishing that return and was required to pay late fee up to the date of full payment or up to the date of assessment, whichever was earlier.

After third proviso to sub-section (2) of section 32 three more provisos, fourth, fifth and sixth, are inserted to w.e.f. 01.04.2013. As per amended provision of fourth proviso no late is payable as per third proviso if total amount of tax, interest and late fee paid in short does not exceed rupees one thousand.

As per inserted provision of fifth proviso to above sub-section, where a dealer having his principal place of business in sub-divisions of Darjeeling, Kalimpong and Kurseong of Darjeeling District has not furnished returns for the period commencing from 01.04.2008 and ending on 30.06.2011, shall be allowed to furnish returns for such period on or before 30.06.2013 without paying any interest and late fee.

At the same time it is also provided by inserted sixth proviso that no refund of interest or late fee shall be made if any dealer mentioned in fifth proviso has already paid any interest or late fee pertaining to the period from 01.04.2008 to 30.06.2011.

#### (12) Waiver of interest payable under sub-section (1) of section 33 in some cases –

As per amended provision i.e. second proviso to sub-section(1) of section 33, where a dealer having his principal place of business in sub-divisions of Darjeeling, Kalimpong and Kurseong of Darjeeling District furnishes returns for the period commencing from 01.04.2008 and ending on 30.06.2011 on or before 30.06.2013, no interest shall be payable by him. But for any contravention of fifth proviso to sub-section (2) of section 32, interest shall be payable as per law.

#### (13) Change made in provisions of tax deduction at source –

In the proviso to sub-section (1) of section 40 another item i.e. item no. (iii) has been inserted to w.e.f. 01.04.2013. As per this inserted provision no deduction at source from payment shall be made by a contractee where the amount mentioned in tax invoice, invoice or bill raised by a contractor, either in a single transaction or in multiple transactions, relating to transfer of property in goods in the execution of works contract during a complete year does not exceed rupees ten thousand.

A new provision has been inserted i.e. sub-section (3A) w.e.f. 01.11.2012. As per this inserted provision if a person who has sent a copy of account statement as per sub-section (3) of section 40, discovers any omission or error he may send a revised statement within six months beginning from the month immediately following the month in which such statement is to be sent. If such revised statement shows greater amount of tax deducted, than what was shown in the original statement, it shall be accompanied by a receipt showing payment of the extra amount of deducted tax.

Provisions of rule 46XA have been amended w.e.f. 01.04.2013. As per the revised provisions the rates of tax to be deducted at source have been increased from two per centum to three per centum where the contractor is a registered dealer and from four per centum to five per centum where the contractor is other than a registered dealer.

#### (14) Changes made in provisions of Special Audit of dealers –

The existing provision of sub-section (2) of section 43A has been substituted w.e.f 01.04.2013. As per new provision, the special audit may be made for any period or part thereof within six years from the end of the year to which such period relates even if assessment as per return u/s 47, deemed assessment u/s 47A and summary assessment u/s 47AA have already been completed for that period or part thereof.

After sub-section (2) of section 43A another sub-section i.e. sub-section (3) has been inserted w.e.f. 01.04.2013. As per this new provision, the provisions of sub-section (3) and sub-section (5A), of section 43 shall apply *mutatis mutandis* in respect of special audit also.

To implement this amended provision the connected rule 54A has also been amended w.e.f. 01.04.2013. Sub-rule (5) to rule 54A has been substituted. As per this substituted provision of sub-rule (5) the provisions of sub-rule (7A) and sub-rule (7B) of rule 54, so far not inconsistent with the provisions of section 43A and rule 54A, shall, *mutatis mutandis*, apply in respect of Special Audit also. It implies that the preparation of an audit report and preparation of computation sheet in Form-27 shall be made in the same manner as is done in case of audit under section 43. The follow up actions will also remain same.

# Changes made in provisions of assessment, after giving notice to a registered dealer, which will be applicable for the assessment periods to be taken up for assessment on or after 01.04.2013 subject to restrictions contained in sub-section (1A) of section 46 –

The existing provisions of assessment of a registered dealer which commences after giving notice to that dealer have undergone thorough change. Sub-section (1) of section 46 has been substituted entirely. As per amended sub-section (1), assessment of net tax or any other tax payable or net tax credit may be made to the best of judgement of the officer assessing a dealer after giving notice to the registered dealer, where –

- (a) no return has been furnished by that registered dealer for all or any of the return periods of such year or part thereof; or
- (b) the commissioner deems it fit and proper to assess the registered dealer, as he is *prima facie* satisfied that there has been short payment of net tax or excess claim of net tax credit by such dealer, or that the State Government has suffered loss of revenue on account of such dealer, or for any other reason to be recorded in writing, including for the purpose of refund of tax.

But assessment shall not be made in the following cases:-

- (1) The period for which a provisional assessment is made under sub-section (2) of section 45 but has not been revoked under sub-section (3) or (4) of that section, or appeal is pending under section 84 or application for revision is pending under section 87 or section 87A, in respect of such provisional assessment. Provided that if on appeal or revision, a provisional assessment order under section 45 in respect of a year or a return period is set aside with a direction to make fresh assessment, that fresh assessment shall be done under sub-section (1) of section 46;
- (2) The return period for which a notice under sub-section (2) of section 43 has been issued for audit of accounts, registers and documents of the dealer for a period containing that return period;
- (3) Where the audit report and the computation sheet arising out of audit under section 43 are deemed to be an order of assessment and demand notice, respectively, under sub-section 5A of that section.;
- (4) Where in respect of any return period starting on or after 01.04.2010 assessment under the CST Act, 1956 is required to be made only for non-furnishing of declaration or certificates prescribed under the said Act, and the Commissioner deems it fit and proper not to make such assessment; and
- (5) Where the Commissioner deems it fit and proper not to make such assessment for any

period starting from 01.04.2010 in respect of a registered dealer who has closed his business.

Sub-section (1A) of section 46 has been inserted to w.e.f. 01.04.2013. As per this new provision nothing in sub-section (1) shall be construed to restrict the power of the Commissioner or any assessing officer to make an assessment under section 46 in respect of any return period ending on or before 31.03.2012 where the proceeding for such assessment, or for audit under section 43 for such period, is or has been initiated on or before 30.06.2013.

# (16) Relaxation made in the period of making assessment of dealers of Darjeeling, Kalimpong and Kurseong sub-divisions of Darjeeling District-

The dealers, having their principal place of business in sub-divisions of Darjeeling, Kalimpong and Kurseong of Darjeeling District, who have not furnished returns for the period commencing from 01.04.2008 and ending on 30.06.2011 are allowed under the fifth proviso to sub-section (2) of section 32 to furnish returns on or before 30.06.2013. Assessment for such dealers for such periods may be made, as per provision of seventh proviso to sub-section (1) of section 49, on or before 31.12.2013.

## (17) Modalities of filing revision petition challenging an order passed by the appellate forum to be constituted by Commissioner—

As per provisions of first proviso to sub-section (1) of section 84 the appellate forum to be constituted by the Commissioner will hear appeal cases where dispute amount is in excess of rupees twenty lakh.

After second proviso to sub-section (1) of section 87 another proviso i.e. third proviso is inserted w.e.f. 01.04.2013. In that proviso the modalities of filing revision petition before the Appellate and Revisional Board challenging an order passed by the appellate forum, have been laid down. As per this new provision no order of the appellate forum shall be revised by the Board unless the applicant produces documents relating to proof of payment of ten *per centum* of disputed amount or rupees five lakh, whichever is less, besides proof of payment of admitted tax, interest and late fee.

## (18) Provision for review under section 88 of an order passed by Fast Track Revisional Authority or appellate forum –

A new proviso to section 88 has been inserted w.e.f. 01.04.2012 after the first proviso. As per this new proviso Fast Track Revisional Authority or the appellate forum or any similar authority to whom the matter would be assigned by Commissioner, may review either on its own motion or upon application any order passed by the Fast Track Revisional Authority or by the appellate forum.

#### (19) Change in rate of tax applicable for goods covered in Schedule C –

The existing rate of tax for Schedule C goods is 4%. This rate has been increased to 5% w.e.f. 01.04.2013

#### (20) Change in rate of tax applicable for goods covered in Schedule CA –

The existing rate of tax for Schedule CA goods is 13.5%. This rate has been increased to 14.5% w.e.f. 01.04.2013.

#### (21) Change of rate of tax in Schedule D goods –

The existing rate of tax applicable on chewing tobacco, and pan masala of any type, when sold in a packaged condition is **20%**. Similarly the present rate applicable on cigar, cheroot and cigarettes is also **20%**. But from 01.04.2013 the rate applicable for both categories of goods is **25%**. For all other items rate remains at 14.5%.

#### B. Changes effected in W.B.V.A.T. Rules, 2005.

#### (1) Conditions for claiming ITC on deemed purchase from sub-contractor -

Clause (ca) of sub-rule (1) of rule 20 has undergone some change. After this change, a contractor is not entitled to claim ITC on tax paid by him to registered sub-contractor for the work

	done by the sub-contractor only when the contractor claims deduction under section 18(2)(c). The amendment is effective from 01.04.2005. In other words, when a works-contract is executed through a registered sub-contractor, the main contractor has the option to pay tax on total contractual transfer price and claim input tax credit on the deemed purchase from such sub-contractor. But if he claims deduction under section 18(2)(c) for payment to sub-contractor, no
	input tax credit will be available.
(2)	Facilities of making tax free purchase once availed of by CSD Canteen is withdrawn- CSD or Regimental or Unit run Canteen in West Bengal was not allowed to make tax free purchase of goods from local registered dealers since 01.11.2009. Now the relevant rule 26C is omitted permanently and so sales to such canteen remain taxable.
(3)	Exemption of sale of pre-used motor vehicle under section 16(1)(c) -
	Rule 26K which was omitted on 01.04.2012 has again come into operation. This rule was in operation upto 31.03.2012 when dealer making sale of pre-used car could claim reduction in
	turnover upto 50%. This time the scope is made wide enough to include sale of pre-used motor vehicle w.e.f. 01.04.2013 in place of earlier scheme for pre-used motor car only.
(4)	Restriction withdrawn on sale of tea through broker member of Tea Auction Committee etc
	under private treaty sale – Sub rule (2) of rule 27 makes it mandatory that for making sale of tea through broker member of Tea Auction Committee etc under private treaty sale and thereby for claiming exemption u/s 16(1)(c) a dealer was required to manufacture tea in the state of West Bengal. Now this restriction is withdrawn and that too with retrospective effect from 01.04.2005 so that goods resold or brought on stock transfer are also covered.
(5)	Repairing of motor vehicle etc has come within special slab rate u/r 30(2) –
	Till date dealer undertaking repairing of motor vehicle was considered under serial no. 21 of the TABLE appended to rule 30(2) for computation his tax liability. Now one new serial i.e serial no. 20A is introduced. The dealer is now better placed so far 5% rate slab is concerned.
(6)	Goods supplied by a principal to the contractor for execution of a particular works contract
	may be supported by a certificate containing certain particulars- Rule 30B has been amended. Goods supplied by a principal to the contractor for execution of a particular contract and for which deduction is claimed under this rule by the contractor may be certified by the principal by issue of a certificate containing description of goods purchased with quantity, invoice number with date, amount of tax, name of the selling dealer with address and TIN.
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# (7) How a dealer will file return electronically in the current year when his turnover of sale in the previous year was below Rs. 5 crores.-

Rule 34Å is amended which has come into force from the return period due to be filed from 01.04.2013 onwards. As per this amended provision, a dealer having turnover of sales upto Rs.1 crore for the previous year is allowed to file his digitally signed return for each quarter within 15 more days from the end of due date, provided payment is made by him electronically. Similarly dealer having turnover of sales exceeding Rs.1 crore but upto Rs.5 crores for the previous year is allowed to file his digitally signed return for each quarter within 7 more days from the end of due date, provided payment is made by him electronically. Hard copy of return needs not be filed in such cases.

# (8) Stock transfer advise may also be carried by a vehicle owner when consignment of goods are transported from one place in West Bengal to another place in West Bengal or from one place in West Bengal to another place outside West Bengal –

Rule 107 and rule 108 have been amended. When a consignment of goods is carried by a vehicle owner and the consignment is transported as stock transfer, the vehicle owner shall have to carry with the consignment of goods one forwarding note or challan in duplicate along with two

copies of stock transfer advice or document of like nature issued by the consignor.
Automatic stay of the disputed amount of net tax etc –
Rule 141 is fully substituted w.e.f. 01.04.2013. Now intending dealer shall not have to file
separate stay petition while filing appeal petition challenging assessment order. Instead he will
pray for such stay of disputed demand in his appeal petition filed in Form-68. Form-68 has also
been amended to that extent. On acceptance of the appeal petition, the disputed demands would
automatically be stayed. However appellate authority has been given the power to ascertain the
admitted amount of net tax etc.
Revision petition before Board by departmental officers –
As per proviso newly inserted to rule 156(1), an officer intending to challenge an order
passed u/s 84/ 85/ 86/ 88 shall submit application in Form-68. All other conditions shall be
fulfilled by the officer for filing Form-68 excepting payment of admitted tax.
About the C.S.T. Act, 2003—
No changes have been made under the C.S.T., 1956. So the rate of tax payable by a
registered dealer on sale of goods in the course of inter-State trade or commerce effected to a
registered dealer duly covered by 'Ç' Form will remain @ 2 % as usual. However any other sale
in the course of inter-State trade or commerce will attract the State rate of tax applicable as on
date.

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

Sd/- 01.04.2013 (Binod Kumar) Commissioner, Commercial Taxes, West Bengal

Memo No. 306 CT/PRO Date: 01.04.2013 3C/PRO/2008

Copy e-mailed to the Addl.CCT/ISD for information and for taking necessary action for circulating the same through the website of the Directorate, <a href="www.wbcomtax.gov.in">www.wbcomtax.gov.in</a>

Sd/- 01.04.2013 Additional Commissioner Commercial Taxes, W.B.