

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

Trade Circular No. 9 /2010

Date: 02.08.2010

The West Bengal Finance Act, 2010 came into operation on and from 1.4.10. All the important changes, brought in under the WBST Act, 1994 and the WBVAT Act, 2003 were explained in brief in the Trade Circular No. 2/2010 dated 1.4.10. Barring a few, most changes became operative on and from 01.04.10. After that long list of notifications have been issued by State Govt. and also by Central Govt. just to bring about either changes in existing procedural provisions or insertions of new procedural provisions. Aims and objects of these changes or insertions were to make the respective substantive provisions operative from their relevant dates. This Trade Circular is issued to highlight those important changes in procedural provisions for information of all concerned. What was not said in that Trade Circular is said and clarified in this Trade Circular. For detailed information, the notifications issued by Govts. may please be consulted. This Trade Circular is clarificatory in nature and not an exhaustive one and under no circumstances it may be taken as interpretation of the statutes, discussed herein.

The changes effected are as under :

A. Under the WBST Rules, 1995

(1) Withdrawal of certificate in certain special cases:

Conditions required to be fulfilled for withdrawal of certificate u/s. 54A were laid down in Trade Circular No. 2/2010 dated 1.4.10. Rule 200A has been inserted vide notification No. 1006-FT dated 30.6.10 that has prescribed the "Form of Enquiry" for causing necessary enquiry by assessing authority and Form "63A" for giving information to Tax Recovery Officer about such withdrawal.

(2) Fast track method of revision of certain appellate or revisional order from an order of assessment.

Changes in rule 249 and rule 250 and insertion of rule 251A, 251B have been made vide notification No. 1006-FT dated 30.6.10 to make the fast track method of revision operative on and from 1.7.10.

- (a) Rule 251A has empowered the Commissioner to constitute fast track revisional authority. Commissioner has already constituted 4 Benches, each Bench consisting of 3 Additional Commissioners. What is important to be noted here is that Commissioner may transfer any application for revision from one fast track revisional authority to another fast track revisional authority.
- (b) In terms of rule 251B, the fast track revisional authority shall hear the transferred applications, transferred from the Appellate and Revisional Board, upon issue of notice in Form 54 to the petitioner. As is in practice in the case of Appellate and Revisional Board, revenue may be represented by the Senior Joint Commissioner or the Joint Commissioner before fast track revisional authority. But in absence of revenue representative, revisional authority may hear the transferred applications exparte although in absence of any member of the revisional authority for any reason whatsoever, the authority itself cannot hear a transferred petition.
- (c) Rule 258B has made it mandatory that the Appellate and Revisional Board shall send forthwith the applications for revision together with documents to the fast track revisional authority in accordance with the provisions of section 82A. Stay, if any, granted by Board shall continue till it is vacated by fast track revisional authority.

- (d) Rule 249 has been amended so as to enable fast track revisional authority to review its decision on its own motion within one year from the date of passing of the original order. However, in absence of any member or members Commissioner may name the member or members in place of absentee member or members of the revisional authority. After reconstitution, that authority will be empowered to review the earlier decision.
 - (e) In a similar way, the fast track revisional authority, constituted or reconstituted as above, will be empowered to review, on application, the earlier decision by virtue of amended rule 250.
- (3) Forms amended : Form 54
Form 56A.
- (4) Forms introduced : Form of Enquiry u/s. 200A
Form 63A.

B. The WB VAT Rule, 2005:

1. New compounding scheme u/s. 16(6) read with rule 38C w.e.f. 1.4.2010

A registered dealer shall be eligible to opt for compounding u/s. 16(6) for a maximum period of one year at a time. Newly registered dealers can opt for part of a year in the year of registration.

Dealers selling cooked food, non alcoholic drinks and beverages manufactured by him from his hotel/mandap/restaurant/eating house in West Bengal are allowed to pay tax at a compounded rate of 4% subject to the following conditions:

- (a) Turnover of sales of such cooked food etc. shall not exceed Rs. 15 lakh during the financial year 2009 – 2010.
- (b) shall submit his option in form 16 within 120 days from 1.4.2010 for the financial year 2010 – 2011 or within such further time as may be allowed by the concerned Additional/Senior Joint Commissioner.
The newly registered dealers willing to opt for the same shall submit such form 16 within 30 days from the date of receipt of the certificate of registration.
- (c) shall not have any goods in stock which were brought from places outside West Bengal on the day he exercises his option (in form 16).
- (d) Shall not import taxable goods from outside West Bengal for sale.
- (e) Shall not sell in course of inter state trade as described in section 3 of the CST Act, 1956,
- (f) Shall not sell goods in course of export or import as defined u/s. 5 of the CST Act, 1956,
- (g) Shall not transfer goods otherwise than by way of sale within or outside West Bengal;
- (h) Shall not be a dealer engaged in works contract;
- (i) Shall not be a dealer who receives goods otherwise than by way of purchase, where such goods are for direct use in business;
- (j) Shall pay tax u/s.16(2) on sale of goods other than cooked food, non alcoholic drinks and beverages manufactured by him in West Bengal at appropriate rates;
- (k) Shall continue to pay tax at the compounded rate upto the end of the months in which his turnover of sales of such goods (cooked food etc. manufactured by him in West Bengal) exceeds fifteen lakh rupees.

(l) Shall not issue tax invoice.

(m) Shall not be eligible to avail any Input Tax Credit or Input Tax Rebate;

(n) Before opting to pay tax u/s. 16(6), a dealer shall first reverse input tax credit claimed earlier on goods which is lying in stock on the day of submitting such option (in form 16).

Notification No. 1058-FT dated 12.7.10 issued by Govt. has fixed the compounded rate @ 4% on the turnover of sales of such goods on which tax is payable.

2. Input Tax Credit – Availability of –

In terms of proviso added to section 22(11) input tax credit or input tax rebate shall be allowed to a registered dealer, on the strength of documents referred to in section 22(5), whose turnover of sale or CTP in a year does not exceed Rs. 2 crore irrespective of the fact that such dealer has not maintained such registers and accounts, as are required to be maintained u/s. 63(1) of the Act. Inserted proviso to section 22(11) was operative for the accounting year commencing from 1.4.10 as would be evident from Trade Circular No. 2/2010. But by virtue of notification No. 1059-FT dated 12.7.10, the inserted proviso shall be deemed to have come into effect on and from 1.4.05. Hence, eligible dealers under VAT regime may claim ITC or ITR under changed circumstances.

3. Suo-motu cancellation of registration certificate u/s. 29 read with rule 15.

Rule 15 has been retrospectively amended w.e.f. 1.4.05 and in effect, the scope of suo-motu cancellation of registration has been widened. Previously, clauses (a) and (b) of section 29(1) was incorporated in the Rule 15. After the amendment, any of the clauses from (a) to (f) of section 29(1) shall be taken into account for suo-motu cancellation of registration. But it should be remembered that it is the statutory duty of every assessing authority to issue show cause notice before cancellation of any registration certificate as directed by Hon'ble WBTT in unreported case RN-80/2010 [Binod Kr. Kedia –vs- STO, Cossipore charge & others] vide order passed on 22.2.10.

4. Concession allowed to Civil contractors under rule 30(2)

For works contract of the type of civil works like construction of building the entry in serial No. 6 of the table appended to Rule 30(2), for the purpose of determination of tax u/s. 18(3) shall be substituted as under :

20 by 40 and 55 by 35.

This has taken effect from 1.4.2010.

5. Withdrawal of exemption allowed to sales of taxable goods by registered dealers to CSD or Regimental or Unit-run canteen in West Bengal u/r. 26C

Period of withdrawal of such exemption has been extended upto 30.6.2011 vide notification No. 1001-FT and 1002-FT both dated 30.6.10.

6. Extension of facility of exemption u/r. 26D

Notification No. 1002-FT dated 30.6.10 has made it clear that not only the CSD of Royal Bhutan Army but the member or members of Royal Bhutan Army would be entitled to make tax free purchases of goods from CSD or Regimental or Unit-run canteen in West Bengal w.e.f. 1.1.2008 on furnishing certificate prescribed u/r. 26D.

7. Annual return, introduced for the first time under VAT regime.

Dealers paying tax @ 0.25% u/s. 16(3) of the VAT Act, 2003 shall pay tax quarterly and submit return annually.

This provision is effective from 1.4.2010. The relevant rule is sub-rule (2C) of rule 34 which is inserted w.e.f. 1.4.10. These dealers will submit return in Form 15R within the next English Calendar month from the date of expiry of each year. If selected u/r. 34AB by Commissioner, they would file returns electronically.

8. Concession allowed to works contractor opting for compounding u/s.18(4) read with rule 39, as amended.

Works contractors opting to pay tax at a compounded rate u/s. 18(4) have been allowed further privilege. Prior to 1.4.2010, they were not allowed to use any goods brought from places outside West Bengal, in execution of works contract. This stipulation has been withdrawn w.e.f. 1.4.2010. The appropriate authority has been authorized to admit the application in form 16 as may be allowed by him filed after the stipulated period (90 days from the date of commencement of the year). These dealers can now opt for compounding for part of a year, particularly for the year of registration Ordinarily within 30 days from the date of receipt of certificate of registration.

9. Late fee reduced for the return periods commencing from 1.4.10.

Rule 40(1)(c) and Rule 41(1)(b) have been amended. At the same time new rule 41A, applicable for the dealers filing returns annually, has been inserted. The terms "tax period" has been re-defined and "quarter" has been defined. Under the changed circumstances late fee has been revised w.e.f. 1.4.10 as following:

A. When net tax payable according to a return exceeds ten thousand rupees, late fee shall be Rs. 1000/- for the first month and Rs. 250/- for every subsequent month of default or part thereof;

B. When net tax payable according to a return is Rs. 10,000/- or less, late fee shall be Rs. 300/- for the first month and Rs. 100/- for every subsequent month of default or part thereof.

10. Statement in Form 88

Rule 44(2) has been amended w.e.f. 1.4.10. As required under the amended rule, for the period commencing from 1.4.10 dealers other than private limited company or public limited company need not submit annual statement in form 88 (along with audit report) if his/their annual turnover of sales or contractual transfer price or of both does not exceed rupees 1.50 crore.

11. Audit of selected dealers:

Rule 54 has been replaced w.e.f. 1.4.10. Appropriate auditing authority has been re-defined. Not only the team of officers but also an individual officer may now conduct audit. Form 22 and 23 have been omitted. They are not required to furnish these forms. Instead, selected dealers having turnover of sales or CTP or both of more than Rs. 10 crore in a year or part of a year shall also furnish a compact disc containing soft copy of the statements as specified in form 21. It is mandatory. Audit report shall be sent to the dealer, to the assessing authority and to the Commissioner as usual. But the only exception is that this time audit authority shall make assessment u/s. 46(1)(ca) in all desirable cases. Rule 56, 57, 58, 59, 61, 62, 63, 64, 67, 68A, 68B & 68C have been amended accordingly to serve this purpose. Second proviso to rule 59(4) is replaced and assessing/auditing authority will now be eligible to dispose the post assessment refund without getting approval of higher authority if refund amount does not exceed Rs. 20,000/-. If refund amount exceeds Rs. 20,000/-, prior approval of Additional Commissioner or Senior Joint Commissioner will be necessary.

(12) Pre-assessment refund of tax etc.

In Trade Circular 2/2010 dated 1.4.10 in clause (12) it was mentioned that under the amended section 61, furnishing of the special declaration required to be furnished under clause (ab) of sub-section (1) was dispensed with and furnishing of Form 12B prescribed u/r. 76(2A) would only suffice. But substituted rule 76(2A) effective from 1.4.10 has ultimately omitted this form 12B. Instead, Form 31A for refund has to accompany the following:

- (a) a certificate for Chartered Accountant or a Cost Accountant regarding purchases and sales, relating to said refund, of goods and correctness of the claim for refund under in the application,
- (b) a copy of the return, authenticated by the dealer, and
- (c) copy or copies of tax invoices, attested by the dealer, for purchases pertaining to the said refund including a statement pertaining to the said refund including a statement in a proforma appended to rule 76(2A)(c).

With effect from 1.4.2010 the amended rule 76 has widened the scope for the dealer to claim refund of ITC at the first instance @ 75% of the eligible amount in place of existing system of claiming it @ 50% of the eligible amount.

Same facility is extended to the dealer by amending rule 79A who is eligible to claim refund u/s. 22(8A). This is effective from 1.4.10.

(13) Central Audit Unit.

In terms of notification No. 918-FT dated 17.6.2010, Central Audit Unit, constituted for the purpose of dealing with audit of accounts u/s. 43 and having its office at 14, Beliaghata Road, Kolkata – 15, shall exercise jurisdiction over the whole of West Bengal on and from 1.7.10. From 1.7.10, Central Audit Unit and audit wing of each circle will run simultaneously.

(14) Major changes have been brought in Annexure B, Annexure D, Annexure F and Annexure Sales Return and Annexure TDS have been introduced by virtue of notification No. 940-FT dated 21.6.10. These annexures are required to be enclosed with form 14 and 14D.

(15) Forms amended: Form 14, 15,16,21,25, 31A, 37A, 37B & 71A.
Forms omitted: 12B, 17C, 22 & 23.

C. Central Sales Tax, 1956

- i) Notification No. GSR 183(E) dated 11.3.2010 was issued by Govt. of India by dint of which Central Govt. made amendment in rule 13 of the CST (R & T) Rules, 1957 and made it effective from 11.3.2010 also. After this amendment, a registered dealer, registered under CST Act, 1956 would be eligible to make interstate purchase of taxable goods at concessional rate of tax u/s. 8(3)(b) intended for use in telecommunication network.
- ii) Section 6A(2), as stood amended by The Finance Act, 2010 and section 6A(3) which was inserted by abovenoted Act, have empowered assessing authority to re-assess the dealer or revisional authority to revise the assessment order in all desirable cases.
- iii) Chapter VA and section 18A, thus created by Finance Act, 2010 have paved the way for constitution of Highest Appellate Authority of the State. Provision is also made for transfer of all pending cases from first appellate authority to this highest appellate authority which were once transferred to first appellate authority.
- iv) As per amended section 22, the highest appellate authority shall have the power to ensure deposit of tax before entertaining appeal and also ensure refund of tax collected by the state or direct the state to transfer any amount to other state.

(H.K. Dwivedi)
Commissioner,
Commercial Taxes,
West Bengal

**Memo No. 487 (500)CT/PRO
3C/PRO/2008**

Date: 02.08.2010

Copy forwarded for information and necessary action to:

- 1) the Principal Secretary, Finance (Revenue) Department, Government of W.B.
- 2) Special Commissioner, Commercial Taxes, W.B./
Additional Commissioner, Commercial Taxes, W.B
- 3) the Special Officer, Bureau of Investigation.
- 4) the Sr. Joint Commissioner, Commercial Taxes, (HQ)
- 5) Sr. Joint Commissioner, Commercial Taxes,Circle/Range/Central
Section/.....
- 6) Joint Commissioner, Commercial TaxesCircle/Charge
- 7) the Public Relations Officer, Directorate of Commercial Taxes, W.B.
- 8) N.I.C., 14, Beliaghata Road, Kolkata – 15.
- 9) Trade Bodies.....

for Commissioner
Commercial Taxes,W.B