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

TRADE CIRCULAR

No. 02/2008 **Date: 01.09.2008**

The West Bengal Taxation Laws (Amendment) Act, 2008 has brought about certain changes both in the West Bengal Sales Tax Act, 1994 and the West Bengal Value Added Tax Act, 2003. Those changes have taken effect from different dates.

The object of the Trade Circular is to highlight, in brief, the important changes made in the provisions of the above-referred Acts. For further information, relevant provisions of the West Bengal Taxation Laws (Amendment) Act, 2008 may please be consulted.

A. CHANGES EFFECTED IN THE WEST BENGAL SALES TAX ACT, 1994

1. CERTAIN RESELLERS OF FOREIGN LIQUOR AND COUNTRY LIQUOR TO PAY TAX WHERE SALE-PRICE EXCEEDS THE MAXIMUM RETAIL PRICE OF FOREIGN LIQUOR AND COUNTRY LIQUOR.

Foreign liquor, whether made in India or not and country liquor are specified in Schedule VIII of the West Bengal Sales Tax Act, 1994 and tax is payable @ 30% on sale of foreign liquor and @ 20% on sale of country liquor. But, according to the provision of section 22C of the said Act, a registered dealer is entitled to set off the amount of tax which has been realized from him in respect of sales to him in West Bengal of those goods against the amount of tax payable by him on resale of such goods in West Bengal.

The said Act provides also an alternative scheme for payment of tax on sale of those goods, i.e., on foreign liquor and country liquor. Under section 22D, a registered dealer, who is an importer of those goods in West Bengal and certain manufacturers of such goods in West Bengal, may, at his option, pay, in lieu of tax payable @ 30% and @ 20% respectively on sale of foreign liquor and country liquor under section 17(1)(g), as stated above, tax @ of 20% on maximum retail price of foreign liquor and @ 15% on maximum retail price of country liquor (vide 2984-F.T., dated the 1st day of September, 2004). Where tax is paid by such importer or manufacturer on maximum retail price under section 22D on the first sale of foreign liquor and country liquor in West Bengal, under the existing provision there is no tax on subsequent sale of such foreign liquor and country liquor at the hands of the reseller of such goods irrespective of whether such sale-price of such goods at the hands of the reseller exceeds the maximum retail price or not. Accordingly, the law provides for deduction from turnover of sales, among other things, the sale-prices, referred to in sub-clause (d) of clause (40) of section 2, at the hands of such reseller.

Now, amendment has been made in the said sub-clause (d) of clause (40) of section 2 on and from 01-09-2008. Under the amended provision, the above deduction of sale-prices from turnover of sales has been withdrawn where the sale-price of such goods on any subsequent sale, as mentioned above, exceeds the maximum retail price of such goods.

Thus any dealer who effects sale of Foreign Liquor exceeding maximum retail price, such dealer will not be able to claim deduction from this turnover of the sale price of such goods, which otherwise all the dealers, irrespective of the sale price exceeding MRP or not enjoyed prior to this amendment. In normal course, such dealers would have, therefore, become liable to tax @ 30% on sale of the Foreign Liquor and would have been entitled to claim set off for the amount of tax which has been realized from such dealers at the time of purchase the Foreign Liquor by such dealers. However, by virtue of insertion of Sub-Section 2 of Section 22(D), such dealers will be liable to pay taxes only @ 20% [as specified in the notification issued under Sub-Section 1 of Section 22(D)] on the sale price of the goods which are sold at a price exceeding MRP after deduction of MRP for the corresponding goods.

For example, where a dealer, owning a bar, sells to its customer foreign liquor packed in a bottle, even in parts, the maximum retail price of which is assumed to be Rs.1200, including opening stock of such goods held, if any, and on prior sale of which tax was paid on maximum retail price of such foreign liquor by an importer or certain manufacturer, registered under the Act, at a sale-price (excluding tax) of, say, Rs.3000, such dealer owning the bar, who has been paying no tax at present on the strength of the existing provision of section 2(40)(d), shall have to pay tax on and from 01-09-2008 @ 20% on sale of foreign liquor under the newly introduced sub-section, (2), of section 22D on the difference of the amount of sale-price (excluding tax) of the quantity such gods and the maximum retail price of the equal quantity of such goods, i.e. in the case of the above example on the amount of Rs.1800 (Rs.3000-Rs.1200).

2. <u>VOLUNTARY DISCLOSURE SCHEME OMITTED</u>

The section 90B provided an opportunity to dealers or persons enabling them to avoid penalty under section 76 or prosecution under section 88 by making a declaration before the Commissioner on or before the 30th day of September, 2003 in respect of any turnover of sales or purchases of goods relating to any return period for which no return had been furnished or where such turnover of sales or purchases were not disclosed in the return, etc. upon making payment of tax according to such declaration and a composition fee. As there was no scope for making the said declaration after the 30th day of September, 2003, the said section 90B is omitted retrospectively from the 1st day of August, 2006.

3. RECTIFIED SPIRIT AND EXTRA NEUTRAL ALCOHOL (ENA) TRANSFERRED TO THE WEST BENGAL SALES TAX ACT, 1994

Before the introduction of the West Bengal Value Added Tax Act, 2003 on and from 01.04.2005, "rectified spirit" and "Extra Neutral Alcohol (ENA)" were specified in Schedule IV of the West Bengal Sales Tax Act, 1994 and tax was levied under that Act upto 31.03.2005. But, on and from 01.04.2005, rectified spirit and Extra Neutral Alcohol have been brought under the ambit of the West Bengal Value Added Tax Act, 2003 and those goods are specified in Schedule CA of the said Act.

By way of amendment, effective retrospectively from the 1st day of April, 2005, those two goods have been specified again in Schedule IV of the West Bengal Sales Tax Act, 1994 by withdrawing those goods from the ambit of the West Bengal Value Added Tax Act, 2003 and tax shall be levied on sale of those goods @ 20%.

B. CHANGES EFFECTED IN THE WEST BENGAL VALUE ADDED TAX ACT, 2003

1. WITHDRAWAL OF RECTIFIED SPIRIT AND EXTRA NEUTRAL ALCOHOL (ENA) FROM THE AMBIT OF THE WEST BENGAL VALUE ADDED TAX ACT, 2003

The definition of "goods" as provided in clause (15) of section 2 has been amended retrospectively from the 1st day of April, 2005. Rectified spirit and Extra Neutral Alcohol (ENA) were under the ambit of the West Bengal Sales Tax Act, 1994 upto the 31st day of March, 2005. Those two goods were brought under the ambit of the West Bengal Value Added Tax Act, 2003 from the 1st day of April, 2005 when the said Act came into force. Now, by way of insertion of a new sub-clause (cc) to clause (15) of section 2 retrospectively from the 1st day of April, 2005, those two goods have been excluded from the scope of the West Bengal Value Added Tax Act, 2003 and therefore, those two goods have again become goods under the West Bengal Sales Tax Act, 1994 on and from the said date.

2. AMENDMENT MADE IN THE PROVISION RELATING TO VERIFICATION OF RETURNS

By the West Bengal Finance Act, 2008, an amendment was caused on and from the 1st day of April, 2008 in section 42 of the Act providing for verification of return also in the case where upon scrutiny of the return under section 41 or otherwise certain discrepancies are noticed in the return. In order to give clarity to the said amended provision, further amendment is made retrospectively from the above date in the said amended provision.

3. TIME FOR CERTAIN REGISTERED DEALERS TO BRING TO THE NOTICE OF THE COMMISSIONER THE REFUND OF ACCUMULATED INPUT TAX CREDIT EXTENDED

In accordance with the existing provision of section 46(1)(g), a registered dealer who wants refund of the excess amount of input tax credit that has accumulated during a year but which has not been carried forward to a return period in the following year, is required to bring to the notice of the

Commissioner within three months from the end of the following year that he wants refund of the said excess amount of input tax credit which has been accumulated during that year. The said section 46(1)(g) has been suitably amended retrospectively from the 1st day of April, 2005. According to the amended provision, a registered dealer can bring to the notice of the Commissioner the refund of the said excess amount of input tax credit within three months from the end of the following year or subject to the satisfaction of the Commissioner, within such further time not exceeding nine months from the end of the following year as may be allowed by the Commissioner.

4. DEMAND NOTICE AFTER ASSESSMENT TO BE ISSUED ALSO FOR PAYMENT OF LATE FEE DETERMINED AND THE AMOUNT OF INPUT TAX CREDIT CARRIED FORWARD BY THE DEALER TO THE NEXT RETURN PERIOD AS FOUND INADMISSIBLE

In accordance with the existing provision of section 46(3)(b), after the assessment is made under section 46, payment of net tax payable, interest determined and penalty imposed only can be demanded by issuing a notice. The said section 46(3)(b) has been amended to make provision retrospectively from the 1st day April, 2007 for demand of late fee determined and also to make provision retrospectively from the 1st day of April, 2005 for demand of the difference between the amount of input tax credit which the dealer has carried forward in the return for the next return period and the amount of net tax credit over output tax payable, as is found admissible upon assessment, which may be carried forward to the next return period or where no such amount which can be carried forward to the next refund period is found admissible upon assessment, the amount of input tax credit which the dealer has carried forward in the return for the next return period.

5. DATE WHEN THE ASSESSMENT IS DEEMED TO HAVE BEEN MADE

The sub-section (1) of section 47 provides under what circumstances the assessment in respect of any year or any return period of such year shall be deemed to have been made by the Commissioner. But, the said sub-section (1) does not state the date when the assessment is deemed to have been made.

According to the amendment made retrospectively from the 1st day of April, 2005 in the said sub-section the assessment in respect of a year or any return period of such year in accordance with the provision of section 47(1) shall be deemed to have been made by the Commissioner on the date mentioned in section 49(1) after which no assessment can be made.

6. PROVISION MADE FOR REOPENING OF DEEMED ASSESSMENT WHERE THE EXCESS AMOUNT OF INPUT TAX CREDIT ACCUMULATED DURING A YEAR HAS NOT BEEN CARRIED FORWARD TO A RETURN PERIOD IN THE FOLLOWING YEAR

In accordance with the existing provision of section 47(4), there is scope for reopening of assessment deemed to have been made for making assessment of tax under sub-section (1) of section 46 where,

due to error in fact or in law, an amount of net tax or interest or late fee has been paid by a dealer in excess of what was payable in respect of any return period.

In accordance with amendment made retrospectively from the 1st day of April, 2005 in the said section 47(4), the provision is made also for reopening of assessment deemed to have been made for making fresh assessment of tax under sub-section (1) of section 46 where the excess amount of input tax credit, which has accumulated during a year, at his option, has not been carried forward to a return period of the following year.

A proviso has been added retrospectively from the 1st day of April, 2005 to sub-section (4) of section 47 providing therein that the fresh assessment under sub-section (1) of section 46 for any year or part of a year shall be made, notwithstanding the provisions of section 49, on any date within two years from the date of passing of the order, in writing, for reopening the assessment in respect of such year or such part of a year, which is deemed to have been made in accordance with the provisions of sub-section (1) of this section.

7. LIMITATION FOR ASSESSMENT WHERE REFUND HAS BEEN MADE TO REGISTERED DEALERS UNDER CLAUSE (a), CLAUSE (aa), OR CLAUSE (ab), OF SECTION 61 OR UNDER SECTION 22(8A)

In accordance with the existing provision of section 49(1) no assessment under section 46 shall be made after the 30th day of June next following the expiry of two years from the end of the year in respect of which or part of which the assessment is made.

A new proviso has been added retrospectively from the 1st day of April, 2005 to section 49 providing therein that where an assessment under clause (e), or clause (ea), of sub-section (1) of section 46 is required to be made by the Commissioner, that is, where an assessment is required to be made by the Commissioner, where a refund has been made to a registered dealer under clause (a), clause (aa) or clause (ab), section 61 or under section 22(8A),such assessment shall, notwithstanding the provisions of sub-section (1) of section 49, be made within the prescribed date after which no assessment shall be made as referred to in that sub-section, or at any time within two years from the date of refund, whichever is later. Thus, assessments can be completed within 2 years of expiry from the date of refund, although period prescribed for completion of assessments under Section 49(1) has expired.

8. TIME FOR DISPOSAL OF APPEAL REDUCED

In accordance with the existing provision of section 84(1), if an appeal is not disposed of before the 31st December next following the expiry of two years from the date of its presentation, such appeal shall be deemed to have been disposed of in accordance with law and all the claims of the applicant shall be deemed to have been allowed in full, but where the Commissioner extends the time, such appeal may be disposed of during the period of one year immediately following the above – mentioned period of two years.

In accordance with the amendment made from the 1st day of September, 2008 in section 84(1), if an appeal is not disposed of before the 31st December next following the expiry of one year, in place of the existing provision of two years, from the date of its presentation, such appeal shall be deemed to have been disposed of in accordance with law and all the claims of the applicant shall be deemed to have been allowed in full, but where the Commissioner extends the time, such appeal may be disposed of during the period of six months, in place of existing provision of one year, immediately following the above-mentioned period of one year.

(H.K.DWIVEDI)
COMMISSIONER, SALES TAX,
WEST BENGAL

Memo No. 803-CT(500)/PRO **Date:01.09.2008.**
(3C/PRO/2008)

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 Deputy Commissioner, Commercial Taxes, (HQ)
5) ……Deputy Commissioner, Commercial Taxes/……Circle/Range/Central Section/……
6) ……..Asstt. Commissioner, Commercial Taxes …….Circle/Charge
7) the Public Relations Officer, Directorate of Commercial Taxes, W.B.
8) Trade Bodies……...

for Commissioner,
Commercial Taxes, W.B.