

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

TRADE CIRCULAR No. 55/2018 (*Circular No. 77/51/2018-GST*)

DATED: 31.12.2018

Subject: Denial of composition option by tax authorities and effective date thereof.

Rule 6 of the West Bengal Goods and Services Tax Rules, 2017 (hereinafter referred to as the “WBGST Rules”) deals with the validity of the composition levy. As per the said rule, the option exercised by a registered person to pay tax under the composition scheme shall remain valid so long as he satisfies the conditions mentioned in section 10 of the West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the “WBGST Act”) and the WBGST Rules. The rule lays down the procedure for withdrawal from the composition scheme by a taxpayer who intends to withdraw from the said scheme and also the procedure for denial of option to the taxpayer to pay tax under the said scheme where he has contravened the provisions of the WBGST Act or the WBGST Rules.

2. In this connection, doubts have been raised as to the date from which withdrawal from the composition scheme shall take effect in a case where the composition taxpayer has exercised such option to withdraw. Doubts have also been raised regarding the effective date of denial of the option to pay tax under the composition scheme where action has been initiated by the tax authorities to deny such option to the composition taxpayer. Further, clarification has been sought regarding the follow up action to be taken by the tax authorities when the composition option is denied to the taxpayer retrospectively. In order to clarify these issues and to ensure uniformity in the implementation of the provisions of the law across field formations (i.e., jurisdictional officers), the Commissioner, in exercise of his powers conferred by section 168 (1) of the WBGST Act, hereby clarifies the issues raised as below.

3. Sub-rule (2) of rule 6 of the WBGST Rules provides that the composition taxpayer shall pay tax under sub-section (1) of section 9 of the WBGST Act as a normal taxpayer from the day he ceases to satisfy any of the conditions of the composition scheme and shall issue tax invoice for every taxable supply made thereafter. Sub-rule (3) of rule 6 of the

WBGST Rules provides that the registered person who intends to withdraw from the composition scheme shall, before the date of such withdrawal, file an application in **FORM GST CMP-04** on the common portal. He shall file intimation for withdrawal from the scheme in **FORM GST CMP-04** within seven days of the occurrence of such event.

4. As per sub-rule (4) of rule 6 of the WBGST Rules, where the proper officer has reasons to believe that the registered person was not eligible to pay tax under section 10 of the WBGST Act or has contravened the provisions of the WBGST Act or the WBGST Rules, he may issue a notice to such person in **FORM GST CMP-05** to show cause as to why the option to pay tax under section 10 of the WBGST Act shall not be denied. Upon receipt of the reply to the show cause notice from the registered person in **FORM GST CMP-06**, the proper officer shall, in accordance with the provisions of sub-rule (5) of rule 6 of the WBGST Rules, issue an order in **FORM GST CMP-07** within a period of thirty days of the receipt of such reply, either accepting the reply, or denying the option to pay tax under section 10 of the WBGST Act from the date of the option or from the date of the event concerning such contravention, as the case may be.

5. It is clarified that in a case where the taxpayer has sought withdrawal from the composition scheme, the effective date shall be the date indicated by him in his intimation/application filed in **FORM GST CMP-04** but such date may not be prior to the commencement of the financial year in which such intimation/application for withdrawal is being filed. If at any stage it is found that he has contravened any of the provisions of the WBGST Act or the WBGST Rules, action may be initiated for recovery of tax, interest and penalty. In case of denial of option by the tax authorities, the effective date of such denial shall be from a date, including any retrospective date as may be determined by tax authorities, but shall not be prior to the date of contravention of the provisions of the WBGST Act or the WBGST Rules. In such cases, as provided under sub-section (5) of section 10 of the WBGST Act, the proceedings would have to be initiated under the provisions of section 73 or section 74 of the WBGST Act for determination of tax, interest and penalty for the period starting from the date of contravention of provisions till the date of issue of order in **FORM GST CMP-07**. It is also clarified that the registered person shall be liable to pay tax under section 9 of the WBGST Act from the date of issue of the order in **FORM GST CMP-07**. Provisions of section 18(1)(c) of the WBGST Act shall apply for claiming credit on inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the date immediately preceding the date of issue of the order.

4. Difficulties, if any, faced in implementation of the above instructions may be brought to the notice of the Commissioner.

Sd/-

(Smaraki Mahapatra)
Commissioner, State Tax,
West Bengal

Memo. – 543 CT/PRO
3C/PRO/2018

Date: 31.12.2018

Copy forwarded to the Additional CST/ISD for information and for uploading it on the official website of the Directorate for information of all concerned.

Sd/-

(Adesh Kumar)
Special CST & PRO