GOVERNMENT OF WEST BENGAL
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TRADE CIRCULAR No : 14/2011 **Date : 24.10.2011**

Finance Act 2011 has brought about certain changes in the West Bengal Sales Tax Act, 1994, and in the West Bengal Value Added Tax Act, 2003.The amendments made in the relevant Acts and made subsequently in relevant rules issued vide Notification No.1537 F.T., 1538 F.T. and 1539 F.T, all dated 17.10.2011 have made it imperative for issue of a trade circular that will focus on salient features of the changes. With this aim in view, this trade circular is issued for information to all concerned. Since salient features of the changes are referred to herein, relevant sections of the Acts and relevant rules may please be consulted for detailed information. This trade circular is clarificatory in nature and under no circumstances it can be accepted as interpretation of law.

A. Changes effected under the WBST Act, 1994 rules thereto.-

1. Changes made in due date for making payment of tax—

(i) Under the existing system, the dealer filing quarterly returns had to pay tax for each month of each quarter within ten days from the expiry of each month before furnishing returns under rule 152 while such dealer dealt in goods specified in Part B of Schedule-IV. Now by amending proviso to rule 163(1) in terms of notification no. 1176 F.T. dt. 01.08.2011, it is made mandatory that such dealer filing quarterly return shall pay tax within five days from the expiry of every month. This has been made effective from 01.08.2011.

(ii) Earlier the dealer filing annual return had to pay tax for each month within ten days from the expiry of each month before furnishing annual return under rule 153(9) while such dealer dealt in goods specified in Part B of Schedule-IV. Now by amending proviso to rule 164(3) it is made mandatory that such dealer filing annual return shall pay tax within five days from the expiry of every month. This has been made effective from 01.09.2011.

2. Changes made in the scheme of settlement of certificate dues which has come into operation on and from 01.09.2011 –

Sub-section (5) of section 56A has been amended. Under the earlier settlement scheme, when certificate amount specified in a certificate was upto Rs.5 lakh, the petitioner was to pay 25% of it or the actual amount paid in respect of certificate whichever was higher. At the same time he had to pay 50% of accrued interest. Further he had to pay charges, recoverable on the date of filing of the petition. When certificate amount specified in a certificate was above Rs.5 lakh, the petitioner had to pay 50% of it or the actual amount paid in respect of certificate whichever was higher. At the same time he had to pay 50% of accrued interest. Further he had to pay charges recoverable on the date of filing of the petition.

As per amended provision, limit of certificate amount (below Rs.5 lakh & above Rs.5 lakh) has been withdrawn. In all cases Certificate-debtor shall have to pay 25% of certificate amount or the actual amount paid in respect of certificate, whichever is higher. At the same time he shall have to pay @ 5%of certificate amount as interest, subject to a maximum of rupees one lakh or the actual amount paid in respect of interest whichever is higher. At the same time he shall have to pay Rs.100 as charges recoverable under rule 5(b) of the rules in Schedule X or actual amount paid towards charges recoverable, whichever is higher.

Necessary amendment has been made in Form No.S.T.C.P.32 to make it compatible with the changes made in the provisions.

Where the dealer has paid, before coming into force of this sub- section, the amount in excess of or equal to the total amount specified in clause (a), clause (b) and clause (c) of sub-section (5) of section 56A, the same shall be accepted as payment made in full of "total amount recoverable". Any amount paid in excess of total amount specified above shall not be refunded under any circumstances.

3. Change in rate of tax on sale of foreign liquor –

Item	Schedule	Existing tax rate upto 31.08.2011 u/s 17(1)(g)	New tax rate from 01.09.11 u/s 17(1)(g)
Foreign liquor	VIII	37%	50%
Foreign liquor	VIII	Existing tax rate upto 31.08.11 u/s 22D(on MRP)	New tax rate from 01.09.11 u/s 22D (on MRP)
		23%	27%

B. <u>Changes effected under the WBVAT Act, 2005 and rules thereto</u>:-

1**. <u>New definition of intra-state contractual transfer price</u> –**

After clause (19) of section 2 of the Act, a new clause (19A) has been inserted with effect from 01.09.11. As per this new clause, it has been made specifically clear that section 14 of the Act i.e. the charging section in respect of works contract executed within West Bengal, is concerned with intra-State contractual transfer price and it excludes sale price of goods sold in the course of inter-State trade or commerce, outside the State or in the course of export out of the territory of India as referred to in section 3, section 4 or section 5 of the Central Sales Tax Act, 1956.

2. (i) <u>Change in the procedure of deduction on account of works contract executed by sub-contractor</u>:-

Two new sub-clauses have been added to clause (c) of sub-section (2) of section 18 and proviso to that sub-section has been omitted both with effect from 01.09.2011. As per amended provision, deduction on account of works contract executed by a sub-contractor can be made, provided that sub-contractor shall issue tax invoice to dealer and that there will be no transfer of property in goods (whether as goods or in some other form) from such sub-contractor to the dealer in respect of such works contract. Sub-contractor shall positively declare this transaction in his return furnished by him u/s. 32 of the Act.

ii) <u>Determination of intra-State Contractual Transfer Price where the dealer fails to maintain books of account in a proper manner-</u>

Rule 30 is the appropriate rule by virtue of which taxable contractual transfer price (intra-State) is determined. Heading of the table appended to sub-rule (2) of rule 30 has been amended w.e.f 01.09.2011. By virtue of this amendment intra-State contractual transfer price has now specifically become the subject matter of section 18. Sub-rule (3) which is added to rule 30 w.e.f.01.09.2011 has made the position clear that if the works contractor does not charge VAT separately in the invoice raised by him, it shall be presumed that he has charged and realised the full amount of VAT payable in terms of rule 30(2) on the full amount for which tax invoice or invoice or bill has been issued by him.

<u>iii) Power to withhold the issue of Declaration Form in Form-12A u/r 30H:-</u>

Rule 30H is amended. When a registered dealer applies for declaration form in Form-12A before assessing authority after furnishing return under the Acts and assessing authority finds on scrutiny or

on verification of the return that return contains incorrect particulars of sales or purchases or of contractual transfer price leading to escape of tax etc, the assessing authority has been given the power to withhold the issue of declaration form in Form-12A till the dealer liquidates the escaped tax in full.

iv) Change in the scheme when a works contractor opts for compounding u/r 39-

Rule 39 was last amended by issue of Notification No. 1057 F.T. dated 12.07.2010. As per that amendment any works contractor opting for compounding on or after 01.04.2010 was allowed under the law to use goods brought from outside the State in the execution of works contract. Sub-rule (2) of rule 39 has now been amended which has come into effect from 01.09.2011. This amended rule has made it mandatory that the works contractor opting for compounding u/r 39 will be allowed to use only sand and stone chips, brought from outside the State, in execution of works contract within the State when and only when his contractual transfer price during the year shall not exceed Rs 20 lakhs. He will not be allowed to use any other item brought from outside the State.

3. Inclusion of additional clauses i.e. clause (da) and clause (db) w.e.f. 01.09.2011 under sub-section (12) of section 22 to restrict false claim of Input Tax Credit

As per newly inserted provisions, no Input Tax Credit would be allowed to a registered dealer in case of purchases made by him from another registered dealer :–

a) who obtained registration on the basis of false or incorrect documents or false or incorrect representations and whose certificate of registration has been cancelled as per provision of clause (c) of sub-section (1) of section 29, or

b) who is found upon enquiry not to have existed, at the time of sale of goods, at the address as disclosed in tax invoice produced or, as the case may be, at the address disclosed at the time of registration or in the certificate of registration amended subsequently.

One important issue which deserves mentioning here is that to claim Input Tax Credit on a purchase, a dealer is given liberty w.e.f. 01.09.2011 by the amended rule 19(8) to make payment to his seller through electronic banking clearance in addition to through account payee cheque or draft when consideration value per day exceeds Rs. 20000/-.

4. Penalty for false claim of Input Tax Credit or Input Tax Rebate –

As per provision i.e. newly inserted section 22A, applicable with effect from 01.09.2011, where any registered dealer is found to have claimed Input Tax Credit or Input Tax Rebate for a period without entering into a valid transaction of purchase with another registered dealer in West Bengal resulting in claim of a higher amount of Input Tax Credit or Input Tax Rebate than is admissible to him, then by initiating a separate proceedings other than the proceedings initiated in connection with scrutiny, verification, audit, assessment, appeal, revision or review for that period, a penalty of a sum calculated at not less than 25% and not exceeding 150% of the amount of Input Tax Credit or Input Tax Rebate claimed in excess than is admissible to him may be imposed under the Act. Rule 135A is the relevant rule. Authority authorised to act under this rule shall issue show cause notice in Form-66 to the dealer fixing the date of hearing not earlier than 45 days from the date of issue of this notice. If it is decided that penalty would be imposed, then authority will issue notice in Form-67 to the dealer.

When the dealer admits in writing the fact of such ineligible claim of Input Tax Credit or Input Tax Rebate at its correct amount and pays the full amount of tax involved and interest within one month of its coming into surface, the amount of penalty would be imposed @ 25%. However scheme of payment of tax and interest by instalment is provided under the proviso to sub-section (2) of section 22A where penalty @25% would be imposed. In all other cases and also in cases where

the dealer fails to comply with the instalment order granted to him, penalty would be imposed @150%.

5. Penalty for issue of tax invoice without effecting sale or without effecting consequent delivery of goods–

As per provision i.e. newly inserted section 22B, applicable with effect from 01.09.2011, where any registered dealer is found to have issued tax invoice in any period without entering into a valid transaction of sale with another registered dealer or without effecting any consequent delivery of goods, then by initiating a separate proceedings other than the proceedings initiated in connection with scrutiny, verification, audit, assessment, appeal, revision or review for that period, a penalty of a sum calculated at not less than 125% and not exceeding 250% of the amount of tax involved in the tax invoice or invoice may be imposed under the Act. Rule135B is the relevant rule. Authority authorised to act under this rule shall issue show cause notice in Form-66 in a similar way as is done u/r 135A to the dealer fixing the date of hearing not earlier than 45 days from the date of issue of this notice. If it is decided that penalty would be imposed, then authority will issue notice in Form-67 to the dealer. However it is provided u/r 135B(4) that in a case where penalty is required to be imposed both u/s 22A and u/s 22B for the same period upon a dealer, only single notice in Form-66 and Form- 67 would suffice.

When the dealer admits in writing the fact of such issue of tax invoice and pays the full amount of tax involved in such tax invoice within one month of its coming into surface, the amount of penalty would be imposed @ 125%. However scheme of payment of tax by instalment is provided under the proviso to sub-section (2) of section 22B where penalty @125% would be imposed. In all other cases and also in cases where the dealer fails to comply with the instalment order granted to him, penalty would be imposed @250%.

6.Special security provision when a dealer applies for registration u/s 24 after being liable to pay tax under the Act and carrying on business from table space etc.-

Where a dealer who has become liable to pay tax under the Act, applies for registration u/s 24 of the Act and it is found that the dealer claims to carry on business from **table- space** in a room not owned by him or not directly let out to him by the landlord or from **accommodation** not owned or directly let out to him by the landlord, shall have to furnish a security not exceeding Rs. 1 lakh in each case before granting him registration under that section. Section 24(2B) is the relevant section which is inserted to and has come into operation w.e.f. 01.09.2011.

7. Cancellation of certificate of registration of a dealer u/s 29 of the Act.-

Under the existing provisions, appropriate authority has the power to cancel the certificate of registration of a dealer for any reason mentioned in clauses (a) to (e) of sub-section (1) of section 29 w.e.f. the date of his order of cancellation. Now one new clause, which may otherwise be called a reason, is added to this long list of reasons and it has come into effect from 01.09.2011. When a registered dealer obtains tax invoice from another dealer without entering into a transaction of purchase, his certificate of registration would be cancelled by the appropriate authority. By virtue of amended section (3) and newly inserted section (3A), authority has the power to cancel the certificate of registration of a dealer from its date of validity who obtained registration on the basis of false and incorrect documents, and in all other cases from the date specified in his order, provided necessary approval is obtained from Commissioner. Rule 15 is amended accordingly.

Sub-section (5) of this section is a new approach taken by legislature in connection with cancellation of certificate of registration. The appropriate assessing authority has been declared competent by operation of law to cancel certificate of registration of a dealer even if that certificate of registration is granted by an authority higher in rank.

8.Furnishing of returns u/s 32 and aspects connected thereto :-

- Existing provisos to sub-section (2) of section 32 give liberty to a dealer to file return for a return period by making part payment of dues or even without making any payment of dues, provided he will seek extension of time from Additional Commissioner, Sr joint Commissioner, Jt. Commissioner, as the case may be. Even if the period is extended by the authority and the return has already been filed by him with part payment or without payment, the dealer can not absolve his liability to pay late fee upto the date of payment of last instalment. Therefore the provisos do not come in aid of a dealer particularly in respect of late fee.

- Now the 3rd proviso is added to this sub-section w.e.f . 01.09.2011 and State Government has been given power to issue notification by specifying the return periods for which the late fees would be payable by a dealer only upto the dates of filing of those returns. However notification in this connection has not yet been issued by Government. But for all other return periods the dealer would be liable to pay late fee upto the date of payment of dues in full and consequent filing of return thereafter or upto the date of assessment whichever is earlier.

- Scope of filing revised return has now been restricted to once only though the period had earlier been extended from 3 months to 6 months. Further restriction is imposed on filing of revised return by putting a rider that a dealer will now be entitled to file revised return for any return period when some apparent and honest error or omission is discovered in the original return.

- Another liberal approach is found taken by amending proviso to sub-section (4) of this section. A contractor dealer can now file return for any return period by enclosing the TDS certificate issued to him by the contractee in respect of any payment received for any transaction effected during the past period while certificate is issued to him during the period for which return is being filed by him provided credit of that certificate amount has not been claimed earlier. Prior to amendment, contractor had to furnish the TDS certificates in support of payment for the return period during which transaction was effected. At the same time scope of filing return without enclosing TDS certificate is withdrawn w.e.f 01.09.2011.

9. Deduction of an amount at source under section 40 towards tax leviable:-

Sub-section (1) of section 40 has undergone thorough changes by the Finance Act, 2011 which is effective from 01.09.2011. It has earlier been made clear in serial no. 1 & 2 of part-B above that subject matter of section 14, section 18 and of rule 30 is the intra-State contractual transfer price. Works contract executed under C.S.T Act, 1956 whose valuable consideration is otherwise defined as sale price under that Act does not come under the ambit of section 14, section 18 and of rule 30. In the same manner and spirit, legislature has amended sub-section (1) of section 40 to make it compatible with those changes. Amended section 40 now specifically deals with Intra-State works contract only.

According to this amended provision, deduction from payment made to a contractor would be made by a contractee towards tax leviable on intra-State contractual transfer price arising from works contract executed by that contractor within West Bengal @ 2% or @ 4%, as the case may be, on portion of payment to be decided by the contractee himself following the provisions prescribed under this section and also under newly inserted rule 46XA which has become operative on and from 01.09.2011. Rule 46XA(1) is the pertinent rule here. Contractee will deduct the following amounts from the total payments made to the contractor on any occasion to arrive at the appropriate portion of payment from which he will ultimately deduct the amount towards tax leviable:

(a) First one is the payment made in respect of turnover effected by the contractor under CST Act, 1956 for which tax invoice or invoice or bill showing the price of goods transferred is issued separately by that contractor and payment is made by the contractee particularly in connection with that tax invoice or invoice or bill, and only when –

(i) the contractee does not take delivery of purchased goods from the common carrier ; or

(ii) if the contractee does take delivery of purchased goods from the common carrier, he does not allow those goods to be used by the contractor in the execution of contract under consideration ;

(b) Second one is the payment made as advance before the commencement of execution of contract ; and

(c) Last one is the payment made e.g. on account of labour job portion of a works contract, only where there is no involvement of transfer of property in goods from contractor to contractee and at the same time contractor does not claim deduction in his return on account of that portion of contract executed by any sub-contractor appointed by that contractor.

The portion of payment being decided by the contractee under this section read with rule 46XA(1), he shall deduct @2% of the portion thus decided under rule 46XA(2) when contract is executed by a registered contractor. In case of contract, executed by an unregistered contractor, contractee will deduct @2% of the portion when contract is of the nature of printing of material and @4% of the portion in all other cases.

Another point that should not be lost sight of is that in the long list of contractees mentioned in section 40(1), further addition is made namely, a joint venture company and a limited liability partnership.

10. Scrutiny of returns u/s. 41:–

By amending section 41 of the Act and rules connected thereto, appropriate authority is given the power and authority with effect from 01.04.2010 to scrutinize a return/revised return electronically in addition to its existing manual system just to ascertain whether return/revised return filed by a dealer is complete and self consistent or not. The period within which such scrutiny should be completed is extended upto the last day of the fourth month counted from the month of filing of return/revised return.

11. (i) Scope of not coming within the purview of selection for the purpose of audit u/s. 43 :–

Every year registered dealer, selected by Commissioner, are audited by auditing authority. This time rule 53 is amended with effect from 01.09.2011 by virtue of which some option is given to dealers in the process of such selection. Dealer having a tax growth of 30% with reference to that of earlier year without taking into consideration the growth owing to increase in the rate of tax of goods or to withdrawal of exemption from tax on goods, is kept outside the ambit of such selection, provided nothing adverse is there against him. Here adverse means any adverse report received from any investigating authority who detects evasion of tax.

(ii) Bar on certain assessment proceedings after completion of audit made u/s. 43 :–

Section 43(5) empowers an auditing authority to assess a dealer u/s. 46 after completion of audit for any discrepancy detected in course of that audit or for any other reason even when no discrepancy is detected. Therefore, assessment after audit is made compulsory. Now, sub-section (5)

is amended with effect from 01.09.2011. Proviso added to this sub-section puts an embargo on assessment likely to be made u/s. 46(1)(ca) where a selected dealer admits in writing the observation made in the audit report and pays in full the amount of escaped amount of tax with interest payable by him. Initiation already made shall be dropped forthwith. Where assessment is required to be made for any other reason, it will continue as usual.

12. <u>Special audit of dealers u/s 43A</u> :–

New section 43A is inserted and the system of special audit is introduced under the Act. New rule, i.e rule 54A is also created for this purpose. Under this rule Commissioner or authority authorised by him will select certain dealers for the purpose of special audit. The factors leading to selection of dealers for special audit by the Commissioner or by the person authorised by the Commissioner are enumerated below :

i) They are showing disproportionately high stock of goods at the end of the year ; or

ii) Huge ITC is carried forward by them from one tax period to another tax period ; or

iii) They are showing increase in the volume of purchase having no match with corresponding sales ; or

iv) Who has proved to have effected fictitious purchase during preceding two years ; or

v) Who has issued false tax invoice during the past two years and has not maintained proper proof in respect of transportation and delivery of goods; or

vi) Who is engaged in the manufacture of and resale of iron and steel with the aim of cross utilisation of ITC of one with other.

The special feature of this special audit is that audit shall be conducted at the dealer's place of business with or without prior notice. After completion of report the special audit team will not assess the dealer as is done u/s. 43(5) but will send their report to the assessing authority and to the dealer within ten days from its completion.

13. <u>Assessment u/s. 46(1) :–</u>

Amendment is being made from time to time by inserting certain clauses to this sub-section or by omitting certain clauses from this sub-section just to ensure that assessment is made in all deserving cases. A new clause (ec) is brought under this sub-section which makes the assessment mandatory when a dealer is found to have enjoyed tax holiday or remission of tax or deferment of tax during the period under consideration.

It is mentioned earlier in serial no. 11(ii) above that an embargo is imposed on assessment, likely to be made after completion of audit carried on u/s. 43. In that case audit authority is not to take any initiative for assessment where the dealer admits in writing all his faults and pays all the dues arising out of those faults. It implies that that provision will apply for all the periods for which audit is carried on at the present moment. Under this section also one proviso i.e. seventh proviso is added to sub-section (1). Same thing is repeated here. But the period for which this scheme will apply is clearly mentioned here. Assessment period commencing from 01.04.2008 will come under this scheme.

14. Special provision for deemed assessment u/s 47A:-

Section 47A and section 47AA are two new sections which have come into operation w.e.f 01.09.2011 by virtue of Finance Act 2011.Assessments of all dealers under VAT Act have since been captured under sections 46 and 47 and 48. Dealers who are not assessed under 46 and 48 have since been deemed to have been assessed u/s. 47. The special provision for deemed assessment i.e. section 47A has just created a new category of dealers, **in fact who were not works contractors and had not enjoyed tax holiday or remission of tax or deferment of tax,** within the dealers whose assessments are required to be made either u/s. 46 or u/s. 47 of the Act as the law stands now. Periods of assessment for consideration under this section are earmarked as 2009-10 and 2010-11 which are otherwise called eligible periods. Another important criterion is that dealer's turnover of sales must be below Rs.3 crore every year. As it is a special scheme of deemed assessment, to be made upon fulfilment of certain prescribed conditions, the dealers, who are likely to come but are not coming under this scheme for non-fulfilment of conditions, will automatically go for assessment to be made under section 46.

Some more conditions are there under this section, the result of application of which debars a dealer from coming under the scheme for the eligible periods. These are spelt out below:

(a) Where assessment is a must under clause (aa)/(b)/(c)/(d)/(h) of section 46(1); or
(b) Where the dealer has claimed refund of excess ITC / excess payment of tax etc; or
(c) Where the dealer has been selected for audit; or
(d) Where the dealer is seen to have evaded tax during past three years; or
(e) Who has not filed returns under VAT & CST Acts for the periods even within 31.10.2011; or
(f) Who are not in possession of Forms and relevant documents in support of claim of exemption of tax of lower rate of tax, under both the Acts or of stock transfer to outside State under CST Act.

Rule 60A is created for this purpose and under this rule separate declarations, prescribed under this rule, one under VAT Act and one under CST Act are required to be submitted by all eligible dealers to their assessing authorities containing all details and enclosing all enclosures electronically within 31.12.2011. Eligible dealers are required to submit the hard copies of this declaration after being signed by any of the persons mentioned in rule 60A(3), within the same date. Assessing authority shall issue a receipt for it in each case. Before submission of declaration, eligible dealers must have to pay :–

i) Full amount of short payment or non-payment of net tax or interest or late fee;
ii) The interest calculated on the amount of tax payable for non-possession or non-production of declaration forms or certificates or document in support of any claim for deduction from turnover or any claim for exemption under this Act or under CST Act;
iii) The amount of unadjusted excess ITC carried forward in the next period which is in excess of amount admissible.

After fulfilment of above conditions a registered dealer's returns filed for the eligible periods shall be accepted as correct and complete and assessment shall be deemed to have been made u/s 47(1) on 31.12.2011. For reopening of deemed assessment, made under this section, rule 61 will apply with suitable modifications

15. Summary assessment of returns u/s 47AA:-

Section 47AA introduces a fresh concept of assessment under VAT Act with effect from 01.09.2011. Return wise assessment of a registered dealer and that too summarily is prescribed to be made under VAT and CST Acts on the very date of its submission who is obviously not enjoying tax holiday or remission of tax or deferment of tax. Conditions to be fulfilled are that :

i) for the same period, return under CST Act, if required is filed, and
ii) on scrutiny, returns are found correct and self consistent, and
iii) tax etc. are not due as per these returns, and
iv) investigating agency of the department has not started any proceedings in pursuance of seizure of accounts or of goods for three years including the year for which returns are required to summarily assessed.

Once a return for any year is summarily assessed, the dealer can again come under assessment u/s. 46 for the whole year only when purpose of Act requires it and only when it is revoked or reopened. It stands automatically revoked when at least one of the following conditions exist :–

a) Books of accounts are not produced before authority on any occasion.
b) Form 88 and its enclosures, required to be submitted under the law are not submitted.
c) Either records or goods are found seized during two years including the year for which return has been assessed summarily.
d) The dealer fails to comply with any of the provisions under CST Act.

This section comes into operation on and from 01.09.2011. To make any proceedings started prior to 01.09.2011 under the Act valid in respect of return period ending on 30.06.2011, proviso added to sub-section (3) of this section has already revoked by operation of law the summary assessment for that quarter.

If reopening of summary assessment is required to be made for carrying out the purpose of the Act, it should be done within six completed years counted from the end of the year for which return was assessed summarily.

16.Limitation for fresh assessment pursuant to order of higher authority or Court u/s. 49(3):–

As per existing provision, period is counted from the date of order passed by higher forum. Now section 49(3) is amended with effect from 01.09.2011. It is liberally construed now and now period would be counted from the end of the month in which the copy of order is received by the authority who will finally assess the dealer.

17. Pre assessment refund u/s. 61(1)(ab) :–

Exporter dealer was entitled to get pre-assessment refund of excess ITC u/s. 61(1)(ab) when he was capable of exporting at least 75% of his total turnover of sales in a return period. Now to bring more and more exporters within the fold of pre-assessment refund, the limit is reduced to 50% from the return period commencing from 01.10.2011.

18. Post assessment refund u/s. 62 :–

Proviso to rule 59(4) requires that if any amount becomes refundable as a result of assessment made from a particular period, the authority shall first adjust the amount with any unpaid dues for any other period/periods and thereafter will refund the balance amount if found refundable. Now new sub-section (2) of section 62 introduced with effect from 01.09.2011 empowers Commissioner to withhold any refund when he will see that refund has become the subject matter of appeal etc. on the one hand and interest of revenue will be adversely affected if refund is released in favour of the assessee.

19. Penalty for non-issue of tax invoice, invoice etc. u/s. 65 and for non maintenance or non-production of accounts, documents before the authority on demand u/s. 66AA :–

To ensure better fulfilment of the purpose of the Act, issue of tax invoice, invoice etc. by a dealer has been given top priority. Limit of penalty is increased with effect from 1.9.11 u/s. 65 from existing Rs.5000/- to Rs.10000/- on each occasion, when the factor "double the amount of tax involved" will not be applicable.

In a similar way, in terms of newly inserted section 66AA and rule 93A, effective from 01.09.11, a dealer will be liable to pay penalty of Rs.10000 for each occasion when it will be seen that he is not maintaining books of account or though, according to him, it is maintained by him, he refuses or fails to produce such accounts before the authority on demand. Issue of Form 4 and Form 5 are necessary in this case also as is done u/s. 65.

20. Period re-scheduled for disposal of appeal u/s. 84 :–

Period for disposal of appeal is re-scheduled by amending the proviso to sub-section (2) with effect from 01.09.11, to be applicable for the appeal petitions filed on or after 01.09.11. As per this prescription, for the petitions filed during the period from 1st April to 30th September of a particular year, cases will be barred by limitation on 30th September of the subsequent year. Similarly for the petitions filed during the period from 1st October to 31st March of a particular year, cases will face limitation on 31st day of March of the subsequent year.

21. Change in the format of Form 50A (way bill):-

Way bill in Form 50A is a self generated way bill which a dealer can generate by himself electronically. It was introduced on and from 01.12.2010. Form 50A consists of Part I and Part II. It is now in operation and it will continue upto 30.11.2011. Rule 103A, 104A and 110B have been amended and as a result of such amendment the format of Form 50A has got changed which would come into operation from 01.12.2011. In this new format there would be no separate Part I or Part II. Therefore, generation of Part II and/or Part I would not be required separately when the new format of Form 50A will be effective. From 01.12.2011 only single time generation of the form would suffice. Amended sub-rule (3) of rule 110B requires that importer will report electronically utilisation of way bill in Form-50A within forty days from the date of its generation.

22. Fast track method of certain appellate or revisional order from an order of assessment u/s. 87A :–

A new section 87A has been inserted to the Act. Under this new provision, the applications for revision filed before Appellate and Revisional Board (BOARD) in which the amount of disputed net tax, late fee, penalty and interest clubbed together was shown below Rs.20 lakh and which relates to the assessment periods 2006-07 and 2007-08 and are pending on 30.09.2011 before BOARD shall stand transferred under rule 164A on 01.10.2011 to this Fast Track Revisional Authority to be constituted by the Commissioner under rule 149A for disposal in the manner as provided under rule 149B.

23. Forms amended:- Form- 4,5,14e,50A,66,67 & 69

24. Forms/ Declarations introduced :- Declaration u/r 60A

25. Change in rates of tax :–

The WB Finance Act 2011 has brought about changes in applicable rates of tax with effect from 01.09.2011 of certain items. Due to such changes, changes become inevitable in schedules appended to the Act,03. These are summarised below :–

Sl. No.	Item	Existing schedule	New schedule	Existing rate	New rate
1.	Cervical spinal collar	C-Part I	A	4%	Exempted
2.	Walking stick, wheel chair, hearing aid.	CA	A	13.5%	Exempted
3.	Bungles made of imitation gold and rolled gold.	A	C-Part I	Exempted	4%
4.	Raw silk imported from outside India.	A	C-Part I	Exempted	4%
5.	Article made from sola or solapith.	CA	A	13.5%	Exempted
6.	Mosquito net fabrics and mosquito net, both imported from outside India.	A	C-Part I	Exempted	4%
7.	Costume jewellery and fashion jewellery.	CA	C-Part I	13.5%	4%
8.	Plates made from paper and plastic	CA	C-Part I	13.5%	4%
9.	Hand pump	CA	C-Part I	13.5%	4%
10.	Washer	CA	C-Part I	13.5%	4%
11.	Generator of all types and diesel engine pump set, when in commercial use.	C-Part I	CA	4%	13.5%
12.	Organic solvent oil	CA	C-Part I	13.5%	4%
13.	Tyres and tubes of tractor	C-Part I	CA	4%	13.5%
14.	Parts of pen of all varieties and descriptions.	CA	C-Part I	13.5%	4%
15.	Chewing tobacco, and pan masala of all types when sold in packaged condition.	CA	D	13.5%	20%
16.	Cigar, cheroot and cigarettes.	CA	D	13.5%	20%

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, 2011. It is expected that everybody concerned with the provision of law will be benefited from clarification issued through this trade circular.

H.K.Dwivedi
Commissioner,
Sales Tax, West Bengal.

Memo No. 568(500)CT/PRO Dated : 24.10.2011
3C/PRO/2008

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.