

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

**TRADE CIRCULAR No. 09/2015
Dated: 27.05.2015**

**Subject: Changes made in the West Bengal Sales Tax Act, 1994 and
the West Bengal Value Added Tax Act, 2003, and the relevant rules**

Every year after publication of the West Bengal Finance Act and corresponding notifications by the State Government effecting the procedural matters connected with the changes made in that Finance Act, it becomes necessary to issue a Trade Circular highlighting 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, 2015 (West Bengal Act III of 2015) and the corresponding notifications bearing Nos. 435-L dated 24.03.2015, 447-F.T. dated 24.03.2015, 448-F.T. dated 24.03.2015, 523-F.T. dated 02.04.2015, 525-F.T. dated 02.04.2015 and 526-F.T. dated 02.04.2015 have been published. This Trade Circular is only for information and is not the legal interpretation of the changed law. For the actual legal provisions the West Bengal Finance Act, 2015 and the connected notifications, which are available in the website of the Directorate, may please be consulted.

Unless otherwise mentioned in the respective paragraphs, amended provisions have come into force with effect from (w.e.f.) 01.04.2015.

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

(1) Tax payable on the basis of weight, volume, measurement or unit on the sale of Schedule IV goods—

A new sub-section to section 18 has been inserted w.e.f. 01.01.2015 so that the amount of tax payable on goods specified under Schedule IV may be fixed by the State Government on the basis of weight, volume, measurement or unit.

As per provision of this new sub-section, different amounts of tax may be fixed for sales of different items of such goods in respect of a specified area or whole of the State.

Consequently, another proviso has been inserted to section 17(3)(b) w.e.f. 01.01.2015 so that the amount of deduction under section 17(3)(b) to arrive at “taxable turnover of sales” shall also include the amount charged and collected by way of tax on sales separately in respect of turnover of sales liable to be taxed at different rates.

(2) Time-limit for disposal of appeal when an application for settlement of dispute is refused or a certificate of settlement is revoked—

When an application for settlement of dispute is refused or a certificate of settlement is revoked, the appellate authority may dispose of such appeal within six months of such refusal or revocation. This provision has been inserted by adding third proviso to section 79(2) w.e.f. 01.04.2015.

B. CHANGES EFFECTED IN THE WEST BENGAL VALUE ADDED TAX ACT, 2003 & THE WEST BENGAL VALUE ADDED TAX RULES, 2005

(1) Taxable quantum for compulsory registration raised—

Section 10 and section 14 have been amended so that the threshold limit of turnover of sales or contractual transfer price for compulsory registration has been raised from rupees five lakh to rupees ten lakh w.e.f. 01.04.2015.

(2) Dealers making online application for registration under digital signature and paying fee for registration and security through Government Receipt Portal System (GRIPS) are no longer required to furnish hard copy of application for registration provided that the duly signed declarations and documents as per rule 5A(2) are uploaded on the Directorate’s website, w.e.f. 01.04.2015.

- (3) **Determination of turnover of sales for hotels, etc., charging a composite sum—**
 New Rule 16C has been inserted w.e.f 01.04.2015 to allow determination of turnover of sales for payment of tax in accordance with the provisions of section 16(2) by a hotel, inn, motel, resort, etc., charging a composite sum for supply of service as well as goods being food or any other article for human consumption as per column (3) of the table below:

TABLE

Serial No.	Nature of supply of goods as stated above	Percentage of composite sum charged to be considered as turnover of sales
(1)	(2)	(3)
(a)	Where the composite sum is inclusive of provision for breakfast,	five <i>per centum</i> of the composite sum;
(b)	Where the composite sum is inclusive of provision for lunch,	ten <i>per centum</i> of the composite sum;
(c)	Where the composite sum is inclusive of provision for dinner,	fifteen <i>per centum</i> of the composite sum;
(d)	Where the composite sum is inclusive of provision for breakfast and lunch,	fifteen <i>per centum</i> of the composite sum;
(e)	Where the composite sum is inclusive of provision for breakfast and dinner,	twenty <i>per centum</i> of the composite sum;
(f)	Where the composite sum is inclusive of provision for lunch and dinner,	twenty <i>per centum</i> of the composite sum;
(g)	Where the composite sum is inclusive of provision for breakfast, lunch and dinner,	thirty <i>per centum</i> of the composite sum.

- (4) **Tax payable on the basis of weight, volume, measurement or unit of Schedule D goods—**

Section 19 has been renumbered as section 19(1) and a new sub-section (2)

has been inserted w.e.f. 25.03.2015 so that amount of tax payable on goods specified under Schedule D may be fixed by the State Government, by notification, also on the basis of weight, volume, measurement or unit. As per provision of this new sub-section, different amounts of tax may be fixed for sales of different items of such goods in respect of a specified area or whole of the State.

(5) **Changes regarding input tax credit—**

(i) **ITC on duty credit scrip for manufacturer-cum-importers introduced—**

Till 31.03.2015, a dealer was not entitled to avail ITC on duty credit scrip other than for the purpose of reselling such duty credit scrip. By inserting third proviso to section 22(4), provision has been made w.e.f. 01.04.2015 so that a registered dealer can avail ITC under clause (d) and clause (h) of section 22(4) on duty credit scrip when such scrip, purchased locally, is used for importing goods for the purpose of manufacturing of taxable goods within the State.

(ii) **Conditions for entitlement of ITC modified—**

As per the new provision of sub-section (4A) of section 22, ITC or ITR shall be available to the purchasing dealer if tax is actually paid on such transaction by the selling dealer by way of deposit in Government account or by including such tax in output tax shown in the return submitted by the selling dealer. Further, ITC/ITR shall not exceed the amount of tax so paid by the selling dealer in respect of such transaction.

Moreover, the ITC availed in excess of eligible amount as per such provision of sub-section (4A) shall have to be reversed.

(6) **Amnesty for registration—**

To give one more opportunity to the dealers who incurred liability to pay tax under the Act but failed to get themselves registered within the prescribed time, the State Legislature has amended section 24A by the West Bengal Finance Act, 2015, w.e.f. 01.04.2015. Under this amnesty scheme, dealers have to pay only a token amount of sum @ 2% on their declared taxable turnover of sales and/or taxable contractual transfer price from the date of incurring liability to pay tax and up to the date prior to the date of filing application for registration under this section. There will not be any penal measure for remaining unregistered. The application has to be filed online for which a separate link has been provided in the website of the Directorate. The last day for availing such amnesty scheme is 31.07.2015.

It may be mentioned here that this scheme is not available to any dealer,–

- (a) if any notice for determination of his liability to pay tax under any of the provisions of the West Bengal Value Added Tax Act, 2003, has been issued to him under section 66; or
- (b) if any accounts, registers or documents, including those in the form of electronic records have been seized from him under section 67 of the Act.

(7) **Change regarding submission of Form 88 and Form 88A—**

By amending sub-section (1A) of section 30E the monetary limit of filing audit report in Form 88 has been raised from Rs. 5 Crore to Rs. 10 Crore with effect from the financial year commencing on 01.04.2015. However, under the amended provisions the amount of stock transfer shall also be taken into account along with the turnover of sales/contractual transfer price for computing such monetary limit.

Further, by substituting sub-section (1C), the provision for filing Form 88A has been done away with. Instead, every registered dealer who is required to get his

accounts audited under the Income Tax Act, 1961, other than those required to file Form 88, will have to file such audit report under the Income Tax Act, 1961, along with Profit & Loss Account and Balance Sheet within the 31st December from the end of the year.

It is pertinent to mention here that a registered dealer, being a Public Limited Company or Private Limited Company, registered under the Companies Act, 1956, shall have to file Form 88 along with Profit & Loss Account and Balance Sheet irrespective of the quantum of turnover of sales or purchases or contractual transfer price or stock transfer.

(8) Rate of interest payable by a dealer has been graded—

Under the existing provisions of law, the rate of interest, wherever applicable, is twelve per centum *per annum* for the period commencing on the date immediately following the prescribed date of payment and up to the date prior to the date of payment or assessment. A new section 34B has been inserted w.e.f. 01.04.2015 whereby the rate of interest has been graded into three different rates in the following manner depending on delay in paying tax :-

Sl. No.	Period of delay for which interest is payable	Rate of interest
1.	Up to the first 90 days	1 % per month
2.	After the first 90 days and up to 300 days	1.5 % per month
3.	After the first 300 days	2 % per month

(9) Provision for payment of interest by the Commissioner amended—

Existing provisions of section 36 has been renumbered as section 36(1), and a new sub-section (2) has been inserted w.e.f. 01.04.2015. As per newly inserted sub-section where the assessment order has been passed under section 46, and the Commissioner has to pay interest for delay in making refund under

section 62, he shall pay a simple interest @ 12 % *per annum* from the first day of the English calendar month next following three months after the date of such assessment order or after the date of order under section 62(3), whichever is later, and up to the date on which refund is made, upon the amount of tax paid in excess or excess ITC not carried forward and found refundable according to such assessment order. This provision is applicable for any assessment period starting on or after 01.04.2014.

(10) **Change in provisions of section 40 regarding Sales Tax Deduction at Source (STDS) as well as Tax Collection at Source (TCS)—**

- (i) **Submission of scroll** has been made mandatory w.e.f. 02.11.2012 by inserting sub-section (2A) for a person who deducts tax from a works contractor or supplier, as the case may be, and deposits that amount to Government Treasury within the prescribed date.
- (ii) **Late fee** has been introduced for delay in furnishing scroll, if a person liable to furnish scroll in Form 19A fails to furnish such scroll within the prescribed time and such late fee will be as per section 32(2). This provision has been introduced by inserting sub-section (2B) w.e.f. 01.07.2015.
- (iii) By amending sub-section (3) the date of issue of Form 18A and date for submission of Form 19A, etc., has been fixed as twenty five days from the end of the month during which deduction is made.
- (iv) By substituting sub-section (3A), the Commissioner has been vested with the power to extend the date of filing of revised scroll.
- (v) **Interest payable** for delay in payment of tax deducted at source— Two new sub-sections, namely, sub-section (3B) and sub-section (3C) have been inserted w.e.f. 01.07.2015. As per sub-section (3B), a person making deduction or a contractee shall be liable to pay interest as per

section 34B for delay in making payment of such tax deducted at source. As per sub-section (3C), where the interest payable under sub-section (3B) has not been paid, the Commissioner may determine interest payable and issue notice for making payment of interest, and the amount may be recovered in accordance with the provisions of section 55 or section 60 of West Bengal Value Added Tax Act, 2003. However, the State Government may by notification, waive payment of such interest under sub-section (3D) in such cases or under such circumstances and subject to such conditions as may be specified.

(11) **Adverse findings in assessment / audit to be communicated–**

By inserting provisos under rule 54(7) and rule 57(3) w.e.f. 01.04.2015, communication of gist of adverse findings to the dealer giving him an opportunity to rebut such findings within seven days, has been made compulsory before completion of audit or before passing order of assessment under section 46(1) in cases where short payment of tax or demand of tax exceeds Rs.20,000/-.

(12) **Change regarding summary assessment under section 47AA—**

Provision for automatic revoking of summary assessment, for non-production of books of accounts, or for non-furnishing Form 88, or for seizure of books/goods, or for non-compliance of provisions of the CST Act, 1956, has been done away with by omitting sub-section (3) of section 47AA.

Limitation of time of assessment in reopened cases– Where a summary assessment is reopened for assessment, such assessment may be made within 30th June next following one year of reopening of the summary assessment as per amended provisions of sub-section (4) of section 47AA.

(13) **Provision for pre-assessment refund amended—**

As per existing provision of section 61(1), a dealer is eligible for pre-assessment refund if his turnover of export exceeds fifty per centum of total sales in a quarter. By amending clause (ab) of sub-section (1) of section 61, provision has been made so that dealers whose sum total of turnover of inter-State sales of taxable goods to registered dealers and turnover of export exceeds fifty per centum of total sales in a quarter are also eligible to get pre-assessment refund.

(14) **15 % of the amount of tax in dispute to be paid along with appeal petition under section 84—**

Second proviso to sub-section (1) of section 84 has been substituted w.e.f. 01.04.2015. As per the amended provision a dealer has to pay 15 % of disputed tax in addition to the admitted tax, interest, etc., for filing an appeal on or after 01.04.2015 against an order of assessment made on or after 01.04.2015.

Payment of 15 % of disputed tax for filing appeal is, however, not applicable –

- (i) if the relevant assessment order has been passed, or the audit report has been converted into an order of assessment, before 01.04.2015;
- (ii) if total demand of tax in such assessment exceeds Rs. 20,000/- but no adverse findings were communicated as per rule 54(7) or 57(3) of WBVAT Rules, 2005;
- (iii) in respect of a provisional assessment under section 45.

(15) **Disposal of appeal after refusal or revocation of certificate of settlement under the SOD Act—**

When an application for settlement of disputes under the WBST (SOD) Act 1999 is refused or certificate of settlement is revoked, the appellate authority may dispose of such appeal within 6 months from the date of order of such refusal

or revocation. This provision has been introduced by inserting fourth proviso to sub-section (2) of section 84 w.e.f. 01.04.2015.

(16) Limitation of time for revision by WBST A&R Board-

Due to insertion of sub-section (1C) under section 87, any application for revision filed on or after 01.07.2015 before the Board shall be disposed of within the date mentioned in the table below:-

Sl. No.	Date of filing of application for revision	Date within which the application for revision has to be disposed of
1.	Between 1 st day of April and 30 th day of September of a year.	30 th day of September of the year immediately following the year in which the revision application was filed.
2.	Between 1 st day of October and 31 st day of March of following year.	31 st day of March of the year immediately following the year in which the revision application was filed.

(17) Method of selection for Fast Track Revision amended-

By amending section 87A, the State Government has been vested with the power to select such revision cases pending before the WBSTA&R Board on 31.03.2015 to be transferred to Fast Track Revisional Authority, by notification issued in this regard. This provision has come into effect from 01.04.2015.

(18) Changes effected in rates of tax of some commodity-

- (i) Under Schedule C, Part-I, Entry 54B, item (viii) has been amended as 'machinery for paint industry' w.e.f. 01.04.2015. Sale of this item will attract tax @ 5 % w.e.f. 01.04.2015.
- (ii) Under Schedule C, Part-I, Entry 54B, item (xxii) has been amended as 'pollution control equipment' w.e.f. 01.04.2005. Sale of this item will

attract tax @ 5 % w.e.f. 01.04.2005.

- (iii) Rate of tax on sale of electrical sockets has been reduced from 14.5 % to 5 % w.e.f 01.04.2015 by inserting 'electric sockets' under item (iia) of Schedule C, Part-III, Entry 188.

- (19) **Issue of notice after modification of demand upon appeal/revision/review-** If any demand raised upon assessment is modified in appeal or revision or review, the revised demand notice shall also be issued in Form 27, or Form 27A, as applicable.

Provision has been made for issue of demand notice by the appellate or revisional authorities themselves if the amount of demand is modified in appeal or revision w.e.f. 01.10.2015. However, in respect of demand modified by order of the West Bengal Sales Tax Appellate and Revisional Board, the revised demand notice shall continue to be issued by the appropriate assessing authority.

The earlier provision of issue of notice in Form 28 has been changed as Form 28 will now be issued only in respect of revision of other demands not related to any order of assessment.



(Binod Kumar)
Commissioner,
Commercial Taxes, W.B.

Memo No. 449CT/PRO
3C/PRO/2012

Dated: 27.05.2015

Copy forwarded to the Sr. Joint Commissioner, Commercial Taxes, ISD for uploading it on official as well as internal websites of the Directorate.



(Adesh Kumar)
Sr. Joint Commissioner,
Commercial Taxes & PRO