

## **THE WEST BENGAL VALUE ADDED TAX ACT, 2003**

### **INTRODUCTION**

#### **WHAT IS VALUE ADDED TAX (VAT)?**

VAT (Value Added Tax) is a multistage tax system for collection of tax on sales. The system envisages levy of tax on the sale at each stage and contemplates allowing set-off of tax paid on purchases. Thus, tax is payable and paid on the value addition only. The process covers the whole chain of distribution i.e. from manufacturers till retailers.

Prior to 1-4-2005, the system for levy of tax in West Bengal, in general, was a single point tax system. As a consequence to the national consensus for introduction of VAT, the earlier West Bengal Sales Tax Act, 1994 has been replaced by West Bengal Value Added Tax Act, 2003 for all goods barring motor spirit, foreign liquor and country liquor. The Act has come into force with effect from 1-4-2005. The Salient features of some of the important provisions of the Act are given below:

#### **(1) DEFINITIONS**

Section 2 gives definitions of various terms. The definitions are almost similar to West Bengal Sales Tax Act, 1994. Some new definitions though have been inserted to cater to the set-off provision of tax paid on purchase with the tax on ultimate sales. Some of the important definitions are:

**Section 2 (5) – “Business”** – The definition of Business includes in its scope any trade, commerce, manufacture, execution of works contract or any adventure or concern in the nature of such trade, commerce, manufacture or execution of works contract, whether carried on with or without profit motive and whether actual profit is earned or not. Further, it also includes any transaction which is incidental or ancillary to such trade, commerce, manufacture, etc. In brief, the purchase of any goods the price of which is debited to business is considered as purchase effected in the course of business. Similarly sale of any goods, the proceeds of which are credited to the business is considered as sale effected in the course of business.

**Section 2(15) – “Goods”** means every kind of movable property. However, it excludes actionable claims, stocks, shares, securities, lottery tickets, country liquor, foreign liquor (whether made in India or not), rectified spirit, Extra Neutral Alcohol (ENA) and motor spirits of any kind..

**Section 2(11)- “Dealer”** – Dealer means any person who carries on business of buying or selling goods in West Bengal including works contract. It also includes-

- i. any person who buys or sells goods in the state for commission, remuneration or otherwise;
- ii. Government departments-Central or State, local authorities, trust, societies etc.

**Section 2(13): “Input tax credit”** means setting off of input tax (i.e. tax paid or payable at the time of purchase of taxable goods within West Bengal) by a registered dealer against his output tax (i.e. tax payable on his sales).

**Section 2(39) – “Sale”** – Sale means transfer of property to the buyer of goods for cash or deferred payment or other valuable consideration. It does not include a

mortgage, hypothecation, charge or pledge. However, following types of transactions are also included in definition of sale. They are referred to as deemed sales.

- i. the transfer of property in any goods, otherwise than in pursuance of a contract, for cash, deferred payment or other valuable consideration;
- ii. a delivery of goods on hire-purchase or any system of payment by installments;
- iii. the transfer of the right to use any goods or any purpose;
- iv. the supply of goods by any association or body of persons incorporated or not, to a member thereof for valuable consideration;
- v. the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service is made or given for cash, deferred payment or other valuable consideration:

The transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract has been considered as a deemed sale in section 14.

**Section 2(41) – “Sale Price”** —Sale price is defined to mean an amount received or receivable for any sale (*other than works contract, which is considered in contractual transfer price*) including any sum charged by the seller in respect of the goods at the time of or before delivery thereof. It shall include the amount of duties levied or leviable on goods under the Central Excise Act, 1944 or the Customs Act, 1962 or the cess leviable under the West Bengal Infrastructure Development Fund Act, 2002. It shall not include service tax. Again, the definition excludes cash discount, commission or commercial rebate allowed at the time of or before delivery of such goods and interest if separately charged. Tax on sales, if any, charged separately under the VAT Act shall not form a part of sale price.

## (2) REGISTRATION

Section 10 of the Act provides for taxable quantum for liability to pay tax while section 24 deals with registration (compulsory as well as voluntary). The registration number, which earlier used to be referred to as Registration Certification No. (R.C. No.) is now referred to as to TIN (Tax Payers’ Identification Number). The limits for registration are as under:

Threshold Turnover Limit/Taxable Quantum:

Sr. No.	Category of Dealer	Taxable Quantum	Remarks
1	Importer (dealer who has brought the goods from outside the State)	Nil	Liable to pay tax on all his sales
2	Manufacturers	Rs 5,00,000	Liable to pay tax from the following day
2	Others (like resellers, lessors, etc.)	Rs. 5,00,000	Liable to pay tax from the following day
3	Voluntary Registration	*Rs 50,000 *(Commissioner can waive it on prayer)	Liable to pay tax from the date of registration

**Notes:**

- i. Reference to taxable quantum above is with respect to sales only. Sales will include sales of both, tax-free goods as well as taxable goods.
- ii. The dealer who is liable to pay tax is required to apply for registration under the Act within 30 days from the date of incurring liability. If application for registration is made within the given time, then registration certificate will be granted from the date of liability, otherwise from the date of application. One TIN number will be issued for the whole State of West Bengal, which will cover all the places of business of the dealer in the State.
- iii. The dealer can also apply for VOLUNTARY REGISTRATION also. Registration certificate in such case will be granted with effect from the date of application. Apart from the registration fee, a dealer is also required to deposit security in certain cases. The deposit is in the nature of advance tax and is to be adjusted against his future tax liability.
- iv. The above Table does not include works contractors. A works contractor shall be liable to pay tax from the day following day when his contractual transfer price (*i.e. aggregate amount received or receivable in respect of transfer of property in goods in execution of works contract*) exceeds Rs 5,00,000 -section 14.
- v. A dealer who wants to get himself registered has to apply electronically in Form 1 to the registering authority through the Directorate's website [www.wbcomtax.in](http://www.wbcomtax.in). There is no pre-registration inspection of the dealer's place of business for VAT registration. The online registration process collects the mobile phone no. and e mail Id of the applicant and also the PAN. The KYC compliant documents are relied upon and the PAN is verified in real-time through web service . The application for registration shall be disposed of within seven working days of furnishing complete application including security payment.
- vi. Under Trade circular No.10/2015 dt. 27.05.15, it has been decided that for application for registration under WBVAT Act, 2003 and the CST Act, 1956, submitted by dealer using DIGITAL SIGNATURE and under the TATKHANIK SCHEME, The registration shall be granted within ONE WORKING DAY of furnishing complete application including Security payment details.
- vii. Dealers registered under WBVAT, 2003 will use the Trader's Identification Number (TIN) granted under the said act for W.B. Sales Tax Act, 1994, The Central Sales Tax Act, 1956, the West Bengal Sales Tax on entry of goods into Local Area Act, 2012. The Bengal Excise Act, 1909, The Bengal Amusement Tax Act, 1922, the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972, The West Bengal Entertainment- cum-Amusement Tax Act, 1982.
- viii. All refunds under VAT, both for pre-assessment and for post-assessment cases will be made through ECS/NEFT for direct credit to the dealers' bank accounts.
- ix. All types of payments under the Acts administered by the Directorate of Commercial Taxes should be made compulsorily through Government Receipt Portal System (GRIPS).

### **3. LEVY OF TAX**

Under W.B.V.A.T. Act, 2003, sales tax is payable on all sale of taxable goods effected within the State, referred to as turnover of sales on which tax is payable, whether such goods are manufactured or resold or imported from out of the State of West Bengal or purchased from registered or unregistered dealers in West Bengal.

### **4. CHARGING PROVISIONS**

- ✓ Section 10 (liability to pay tax on all sales other than works contract), Section 11 (purchase tax on raw jute payable by a shipper of jute), Section 12 (purchase tax on taxable goods payable by a registered dealer)), Section 14 (Liability on works contract) and Section 15 (liability of a casual dealer to pay tax) are charging Sections.

- ✓ Section 16(2) provides for levy of tax on turnover of goods covered by Schedules B, C, CA and D.
- ✓ As per Section 21, no tax is to be levied on sale of goods covered by Schedule A.
- ✓ Section 16(2A) specifies the rate of tax on packing material. Where any taxable goods are sold and such goods are packed in any material, then the tax on such sale of packing material shall be the same of the goods so packed, irrespective of the fact whether the packing material is charged separately or not.

## 5. SCHEDULES AND RATE OF TAX

All the goods are classified under Schedules A, B, C, CA and D.

**Schedule A** covers goods, which are free from tax. Some of the items covered by Schedule A are agricultural implements, fresh vegetables, rice, wheat, paddy, pulses, *atta*, *maida*, *suji*, *besan*, LPG for domestic use, newspaper, books, milk, sugar, textile fabrics made in India, hosiery yarn, etc.

**Schedule B** covers bullion, gold, silver and platinum jewellery, diamonds, precious stones, etc. Goods covered by Schedule B are subject to tax at 1%.

Goods covered by **Schedule C** are subject to tax @ 5% (w.e.f. 01.04.2013). Schedule C has three Parts and it covers items like drugs & medicines, readymade garments, hosiery goods, edible oil, utensils, iron and steel, non-ferrous metal, paper, timber, plywood, IT products, oil seeds, industrial inputs, packing materials etc.

**Schedule CA** covers goods not specified in Schedules A, B, C, CA and D. Goods covered by Schedule CA are subject to tax at 14.5% (w.e.f. 01.04.2013). Some of the items covered by Schedule CA are television, washing machine, refrigerator, motor cars, vacuum cleaners, perfumes, etc

**Schedule D** covers chewing tobacco, cigar, cheroot, cigarettes etc. The rate varies from 14.5% to 35%

There is Schedule AA also which specifies sales which shall be treated as "Zero Rated" (i.e. tax payable on such sales is zero). For example sales by a dealer to a dealer located in SEZ, etc.

## 6. SALES NOT TAXABLE UNDER THE WEST BENGAL VALUE ADDED TAX ACT, 2003

Following transactions of sales are not taxable under the Act:

Sales effected in the course of inter-state trade or commerce commonly known as Interstate sales. It may be liable to tax under C.S.T. Act. [Section 16(1)]

Sales taking place outside the State as determined under Section 4 of the C.S.T. Act. [Section 16(1)]

Sales in the course of import or export [Section 16(1)]

Sales of goods which are zero rated. [Section 21A]

Such sales as specified in the rules. [Section 16(1)]

## 7. INPUT TAX CREDIT

Section 22 of the W.B.A.T. Act provides for allowance of input tax credit to any registered dealer in respect of any tax paid or payable on his purchases under the Act but subject to the provisions contained therein and conditions provided in the rules –Rule 19 to rule 23. The updated position of input tax credit can be summarized as below.

**Important conditions:**

1. To be eligible for set off, a dealer must be registered under W.B.A.T. Act at the time of purchase of goods.
2. The taxable goods purchased must be substantiated by an original tax invoice, and should not be covered by the Negative List.
3. For goods on which ITC is available see the table below. For convenience, dealer wise categorisation has been done.

RESELLERS	MANUFACTURTERS	WORKS CONTRACTORS	MANUFACTURING EXPORTERS	MERCHANT EXPORTERS
I	II	III	IV	V
1. On goods he resells; 2. On goods he uses as Packing Materials; 3. On capital goods.	1. Raw Materials; 3. Packing Materials; 3. On capital goods	1. Goods used <b>In</b> the execution of works contract; 2. On capital goods	1. Raw Materials; 2. Packing Materials; 3. On capital goods	1. On goods he exports; 2. On goods he uses as Packing Materials; 3. On capital goods.
<b>See Note I</b>	<b>See Note II</b>	<b>See Note III</b>	<b>See Note II</b>	<b>See Note I</b>
	<b>No ITC</b> Is available to a manufacturer of Schedule A goods.		ITC is available to a manufacturer of Schedule A goods, who exports those goods	
For I, II and III sales covered for set-off of ITC are- (i) sales effected within the State of West Bengal and (ii) sales effected u/s 3 of the Central Sales Tax Act, 1956				

4. **"Capital Goods"** means plant and machinery including components, spare parts and accessories of such plant and machinery, other than civil structure, for use directly in the manufacture of goods and pollution control equipments for use in the manufacture of goods in the State, and such other goods as the State Govt. may, by notification, specify but shall not include second hand plant and machinery.

*Also check Notification No. 742 FT dated 22.05.2009*

5. **Central Sales Tax**- Unutilised input tax credit of any "tax period" i.e. month under VAT can be adjusted with the tax payable under the Central sales Tax Act, 1956.
6. The excess of input tax credit over the output tax can be carried forward to the next tax period (i.e. month/year).

## 8. COMPOSITION SCHEMES

Under the Act an option has been provided to certain category of registered dealers to pay tax at composition rates i.e. at a rate much lower than the normal VAT rate. Such dealers however have to forego input tax credit, cannot issue tax invoice, cannot engage in inter-State sale, etc. An option once exercised is irrevocable for that year.

New dealers can also apply for composition scheme after getting himself registered. The prescribed form for opting for any of the scheme is Form 16 and have to exercised electronically through the Directorate's website [www.wbcomtax.in](http://www.wbcomtax.in)

<b>Class of dealers</b>	<b>Relevant section and rule</b>	<b>Rate of tax</b>
**Resellers with annual turnover not exceeding Rs 50,00,000	Section 16(3) & Rule 38	0.25%
Club selling goods in West Bengal to its members or others	Section 16(3A)/Rule 38A	4%
Dealers engaged in transfer of right to use any goods	Section 16(3B) & Rule 38B	2%
Manufacturers of cooked food who makes sales from his hotel, restaurant, etc and having annual turnover not exceeding Rs 25,00,000	Section 16(6) & Rule 38C	4%
Works Contractors	Section 18(4) & Rule 39	3%

\*\*Starting from financial year 2013-14, a registered reseller who opts to pay tax under sub-section (3) of section 16, can either pay tax @ 0.25% on turnover of sales or can pay a fixed amount as given in the Table below.

TABLE		
<b>Sl. No.</b>	<b>Turnover of sales in the preceding year</b>	<b>Amount payable p.a. (Rs)</b>
1.	Not exceeding rupees thirty lakh	Seven thousand
2.	Exceeding rupees thirty lakh but not exceeding rupees fifty lakh	Twelve thousand

If he opts to pay tax of fixed amount then he can enjoy the following benefits-

- (i) don't have to maintain books under vat;
- (ii) don't have to furnish any return;
- (iii) will not have to exercise his option in Form 16;
- (iv) will not be selected for audit; and
- (v) will not be assessed.

Dealers who want to apply for registration under this scheme have to apply to the concerned Charge for registration. This registration has been named 'Composite VAT Registration'. Existing registered dealers who fulfill the conditions too can opt for this scheme. If some one who has opted for payment of tax at compounded rate of 0.25% desires to switch to this scheme he too is welcome.

## 9. RETURN

As per the provisions of sub-section (1) of section 32 of the West Bengal Value Added Tax Act, 2003, the following dealers are required to furnish return-

- (i) all registered dealers;
- (ii) a dealer unregistered under the Act but who has incurred the liability to pay tax under the Act; and
- (iii) any other dealer who has been served a notice to furnish return by the Commissioner.

**Time within which the return is to be submitted:** Return is to be furnished within the next English Calendar month from the date of expiry of each quarter.

**Note:** Under the W.B.V.A.T. Act, 2003, interest as per the provision of section 33(1) is payable, in respect of a tax period, on daily basis. In other words, if a dealer instead of paying the tax for the month of April, 2013 on 21<sup>st</sup> May, 2013 pays it on 25<sup>th</sup> May, 2013, he shall be liable to pay interest u/s 33(1) @ 1% p.m. for three days i.e. 22<sup>nd</sup> May to 24<sup>th</sup> May, 2013.

**Provision for furnishing return without payment of tax:** As per the first proviso to sub-section (2) of section 32, where a dealer is unable to make payment of full amount of net tax or interest payable or late fee as per the return for any return period, he shall furnish such return without payment of net tax or interest together with an application adducing reasons for extension of time for making payment of the unpaid amount of net tax or interest as payable.

Where a dealer is unable to furnish the return within the prescribed time he shall become liable to pay late fee in accordance with the provisions of section 32(2), see Table below-

Where the net tax as per return is > Rs 10000	Rs 1000/= for first month or part thereof
	Rs 250/= for every subsequent month or part thereof
Where the net tax as per return is < or = Rs 10000 or is nil	Rs 300/= for first month or part thereof
	Rs 100/= for every subsequent month or part thereof

**Provision for furnishing revised return:** Where a dealer discovers any omission or error in any return furnished by him and which is apparent and honest in nature, he may, furnish a revised return in respect of such return within 6 English calendar months beginning from the month immediately following the month in which the return is due to be furnished. Further with effect from 01.09.2011 a revised return can be furnished only ONCE.

### **Return Form:**

- ✓ **Form 14** - for dealers not enjoying exemption or deferment or remission of tax under section 118(1), and not paying tax under section 16(3), or section 16(3A), or section 16(3B), or section 16(6), or section 18(4)];



- ✓ **Form 14D** - for dealers enjoying exemption or deferment or remission of tax under section 118(1);
- ✓ **Form 15** - for dealers paying tax at compounded rate under section 16(3A), or section 16(3B), or section 16(6), or section 18(4)].
- ✓ **Form 15R** - annual return for dealers paying tax at compounded rate under section 16(3) @ 0.25%. To be furnished within the next English calendar month from the expiry of the year [Rule 34AB].

**Special provision for payment of tax of March:**

In respect of the sales or purchase effected during the period first day of March to twenty-fifth day of March of a year, the full amount of tax must be paid by 28<sup>th</sup> day of March of that year-Rule 42.

**10. TAX LIABILITY ON WORKS CONTRACT TRANSACTIONS**

Works Contract transaction consists of supply of material(s) and labour. However, tax under W.B.A.T. Act is leviable on value referred to as 'taxable contractual price' and arrived at after allowing the following deductions from the 'intra-State contractual transfer price':-

- (i) Contractual transfer of Schedule A goods;
- (ii) Charges towards labour, service and other like charges like-
  - ✓ labour charges for the execution of the works
  - ✓ Charges for planning, designing and architect's fees;
  - ✓ Charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;
  - ✓ Cost of consumables such as water, electricity, fuel used in the execution of works contract, the property in which is not transferred in the course of execution of the works contract;
  - ✓ Cost of establishment of the contractor to the extent to which it is relatable to supply of the said labour and services;
  - ✓ Other similar expenses relatable to the said supply of labour and services, where the labour and services are subsequent to the said transfer of property);
  - ✓ Profit earned by the contractor to the extent it is relatable to the supply of said labour and services
- (iii) Amounts paid by way of price for sub-contract, if any, to a registered sub-contractor subject to other conditions.

The tax is levied on taxable contractual transfer price @ 5% where goods involved are declared goods or those involved in printing of materials. In all other cases the rate of tax is 14.5%

**Alternatively**, Rule 30(2) has prescribed the specific percentages for different types of works contracts. A dealer i.e. a works contractor may deduct the prescribed percentage from the total value of contract towards labour, service, etc and pay tax and on the balance amount of percentage at the rate specified therein. In total **22 contracts** are specified in rule 30(2).

**Composition Scheme for works contact:** An option has been provided to a registered works contractor to pay tax at compounded rate of 3% on his contractual transfer price. However, such a dealer cannot claim any input tax credit nor can issue any tax invoice.

Further, he cannot resale any goods in West Bengal, cannot make any inter-State sales, export sales, etc.

## **11. T.D.S PROVISIONS FOR WORKS CONTRACT TRANSACTIONS**

The important ingredients of the provisions are noted as under.

1. Section 40 of the W.B.A.T. Act deals with TDS (i.e. tax deducted at source) in respect of transfer of property in goods in the execution of Works Contract.
2. The list of contractees liable for deduction of TDS is as under:
  - Government;
  - A local authority;
    - A corporation or a body established by or under any law for the time being in force;
    - A company incorporated under the Companies Act, 1956, including a Government undertaking;
    - A co-operative society registered or deemed to be registered under the West Bengal Co-Operative Societies Act, 2006;
    - An educational institution;
    - A promoter;
  - Any bank;
    - Any hospital or nursing home or diagnostic centre;
    - A partnership firm;
  - A joint venture company;
  - A limited liability partnership.
3. The rates of TDS are 3% if the contractor is a registered dealer and 5% if the contractor is an un-registered dealer.
4. The TDS is to be deducted at the time of making payment to the contractor;
5. TDS is not applicable to contracts taking place in course of inter-state trade or in course of import/exports.
6. No TDS is required where there is no transfer of property in goods in the execution of works Contract.
7. No TDS is required when the payment is made as advance prior to the execution of works contract. In all other cases of advance TDS will be applicable.
8. TDS not to deducted at the time of payment to the contractor where the amount involved in the tax invoice, etc in a single transaction or multiple transactions with him during a year is less than or equal to Rs. 10,000.
9. The credit of TDS will be available to the contractor from whose payment the TDS is deducted. The credit will be available in the relevant period in which TDS is deducted and certificate is received.
10. The contractee, together with the person responsible for making payment, failing to deduct or after deduction failing to pay to Government will be personally liable for such contravention and accordingly penal measures may be initiated against him.
11. Total TDS for a month is required to be deposited to the Govt. treasury within 10 days from the expiry of the said month.

12. Within 20 days from the expiry of the said month, the person who made the deduction and deposited the amount have to upload a Monthly Scroll of Deposits (i.e. Form 19A) electronically alongwith details of all deductions during the month and details of STDS payment. Thereafter, the said person has to generate a STDS Deduction Certificates (i.e. Form 18A) for the uploaded scroll and issue it to the respective Contractors within 25 days from the expiry of the said month.
13. Lastly the said person has to get the print-outs of Form 19A and Form 18A as stated above and deposit the hard copies of it and STDS Payment document (i.e. Challan) at the STDS Cell at Beliaghata, Kolkata within 45 days from the end of month of deduction.

For any assistance/clarification on TDS- Visit [www.wbcomtax.gov.in](http://www.wbcomtax.gov.in) → e-STDS → User Manual for the e-STDS services, or Visit HELP DESK OF STDS Cell (Room No 102, 2<sup>nd</sup> Building, First floor); (Phone: 2251-1493, 2251-1494, 2251-0705, Extn. 316/302); e-mail: stds.comtax @gmail.com.

## 12. TAX LIABILITY ON LEASE TRANSACTIONS

There is no specific schedule of tax on lease i.e. transfer of right to use goods. In case of transfer of right to use of any movable goods, tax is payable on the amount received or receivable at the same rate as applicable to the normal sale of such goods, and as discussed in section 16(2).

## 13. APPELLATE AUTHORITY

Where a dealer is aggrieved against any assessment order he shall have to move an appeal petition before the appropriate authority, as discussed in the Table below, depending on the fact who the assessing authority was:

<b>TABLE</b>		
1	Assessment order passed by STO of a Charge or Audit Wing including CAU (of dealers of a Charge)	<u>1<sup>st</sup> Appeal</u> : To be filed by the dealer before the *DCCT, JCCT or Sr. JCCT of the respective Circle. <i>*In Circles generally DCCTs' are not posted, but there may be some exceptions in Circles located in Moffusuls.</i>
2	Assessment order passed by DCCT of a Charge or Audit Wing including CAU (of dealers of a Charge)	<u>1<sup>st</sup> Appeal</u> : To be filed by the dealer before the JCCT or Sr. JCCT of the respective Circle.
3	Assessment order passed by JCCT of a Charge or Audit Wing including CAU (of dealers of a Charge)	<u>1<sup>st</sup> Appeal</u> : To be filed by the dealer before the Sr. JCCT of the respective Circle.
4	Assessment order passed by JCCT of Corporate Division or Audit Wing including CAU (of dealers of CD)	<u>1<sup>st</sup> Appeal</u> : To be filed by the dealer before the Sr. JCCT of Corporate Division /before the Additional Commissioner.
5	Assessment order passed by Sr. JCCT of Corporate Division or Audit Wing including CAU (of dealers of CD)	<u>1<sup>st</sup> Appeal</u> : To be filed by the dealer before the Additional Commissioner.
6	Dealers aggrieved with the appellate	Will have to file a revision petition (i.e. 2 <sup>nd</sup> )

order (i.e. 1 <sup>St</sup> Appeal), irrespective of which authority passed it.	appeal) before the Appellate & Revisional Board in accordance with the provisions of section 87.
<i>Abbreviations: STO means Sales Tax Officer, DCCT means Deputy Commissioner of Commercial Taxes (i.e. CT), JCCT means Joint Commissioner of CT, Sr. JCCT means Senior Joint Commissioner of CT, CD means Corporate Division and CAU means Central Audit Unit.</i>	

W.e.f 01.04.2013, the dealer who prefers an appeal against any assessment shall not have to file a separate stay petition praying for recovery of net tax, etc. The dealer can pray for such stay in the appeal application form only (i.e. Form 68) by simply stating so in the appropriate column in Serial I in the said form. Thus, acceptance of the appeal petition shall mean automatic stay of the disputed net tax, interest, etc. provided the admitted amount of net tax, interest or late fee has been paid.

#### **14. Transportation of goods into West Bengal, within West Bengal, from West Bengal to outside, and through West Bengal using it as a corridor.**

**Into West Bengal:** To ensure that there is no evasion of tax all dealers including any person who desires to bring any taxable goods including raw jute through railway station, port, airport, steamer station or **post office** into West Bengal have to obtain a waybill. Generally the waybill is to be obtained electronically through the Directorate's website [www.wbcomtax.in](http://www.wbcomtax.in).

**I. Waybill is not needed for import by all dealers/person:** As per sec. 73(3) read with rule 99(2) waybill is not required in the following cases:

- a) Import by Diplomatic personnel;
- b) Import by Organisations & agencies of United Nations;
- c) Import by Khadi & Village Industries Commission;
- d) Import by Embarkation Headquarters/shipping section/Customs group of Ministry of Defence;
- e) Person transporting his personal effects;
- f) Tea being transported by banking co. or on its behalf;
- g) Where consignment is of –
  - ✓ printed materials like diary, calendar, leaflet, etc
  - ✓ gold or precious stones including pearls
  - ✓ pure silk cloth made in india
  - ✓ radioisotope or radio pharmaceutical item
  - ✓ exposed cinematographic film
  - ✓ cotton yarn
- h) Goods consigned by Ministry of Defence;
- i) Bond to bond transfer by Customs Group.

**II.** Other documents that need to be carried during transportation of goods along with waybill are bill, invoice or tax invoice or forwarding note or road challan, consignment note and trip sheet or any other document of like nature in respect of consignment of the goods for the purpose of verification.

**Within West Bengal:** For transporting any consignment of taxable goods or raw jute of value exceeding Rs 25000 by any goods vehicle (including load carried by a person)

within West Bengal, the dealer has to ensure that he hands over to the driver (or person in-charge of the road vehicle) a forwarding note or challan in duplicate alongwith two copies of tax invoice or invoice or cash memo or bill issued by the selling dealer. In a case where the dealer is sending the goods on his own account or to his agent, instead of tax invoice or invoice or cash memo or bill he is required to hand over to the said person two copies stock transfer advice or document of like nature - Rule 107.

**From West Bengal to outside:** For transporting any consignment of taxable goods (excluding personal effects/exposed cinematographic films) from West Bengal to any place outside the State, the dealer has to ensure that he hands over to the driver (or person in-charge of the road vehicle) a forwarding note or challan in duplicate alongwith two copies of tax invoice or invoice or cash memo or bill issued by the selling dealer. In a case where the dealer is sending the goods on his own account or to his agent, instead of tax invoice or invoice or cash memo or bill he is required to hand over to the said person two copies stock transfer advice or document of like nature - Rule 108.

**Through West Bengal using it as a corridor:** Where a consignment of goods is being transported through West Bengal (i.e. Origin State is other than W.B. and Destination State is also other than W.B.), the transporter is required to carry a declaration, to be obtained electronically, alongwith other documents.

## ASSESSMENT MADE EASY

### 1) What is ASSESSMENT under THE WBVAT ACT, 2003 ?

Assessment under the WBVAT Act 2003 is a legal proceeding by means of which the net tax payable by a dealer is assessed.

### 2) What is the period for which a dealer is assessed?

A dealer is assessed for a financial year starting from 1st of April of any year and ending with 31<sup>st</sup> of March of the said year or **may be** for part of a financial year, if required.

### 3) What are the different provisions of Assessment?

A dealer can be assessed,-

- 1) **Under section 43-** When a dealer is selected by Commissioner for audit of accounts, registers or documents for any year or part thereof, the auditing authority shall first audit and thereafter shall assess for that year or for part thereof.
- 2) **Under section 45-** When a dealer who is required to furnish return for a period but fails to do so or fails to make payment of tax, interest and late fee he can be PROVISIONALLY ASSESSED.
- 3) **Under section 46(1)-** When no return has been furnished by a registered dealer for all or any of the return periods of a year or part thereof, the assessing authority will make assessment under this section. Hence a dealer who has submitted all the returns of a particular year honestly will, normally, not come under assessment under this section But, if it is prima facie found that there is a short payment of net tax or excess claim of net tax credit by a dealer due to which State Govt. has suffered loss of revenue or if there is proposal for refund of tax or if there is other reason to be recorded in writing, assessment under this section shall be made.
- 4) **Under section 47**—When a dealer is not assessed for a particular year or for a return period under section 46(1) or where provisional assessment made against him has been revoked, the returns are accepted as correct and complete and Assessment is DEEMED to have been completed.
- 5) **Under section 48**---If any dealer becomes liable to pay tax under this Act but fails to get himself registered, the appropriate assessing authority can assess such unregistered dealer. Also if a person other than a dealer who has occasional transaction of buying and selling does not pay due tax in respect of purchases and sales the assessing authority can assess such casual dealers.

### 5) How does an Assessment proceeding start?

An Assessment proceeding is initiated by issuing notice in Form **24/ 25/26** asking the dealer to appear before the appropriate assessing authority with his books of a/cs. **In case of audit cum assessment, Form-21 is to be issued by auditing authority.**

### 6) Who can appear for the hearing?

A dealer or any Advocate appointed by the dealer or any person authorized by the dealer for **this purpose** can appear for the hearing.

### **7) What are the documents that are generally required to be produced for assessment?**

A dealer is generally required to produce his books of accounts, Final Accounts, Registers, supporting documentary evidences relating to his submission made in the returns filed by him, declaration forms in support of concessional claims. A list of such requisites is provided in the initiation notice in Form 21/ 25/26.

### **8) What happens when the dealer or any authorized representative appears on the date fixed for hearing before the assessing/auditing authority?**

When the dealer appears before the assessing/auditing authority, his books of accounts and other relevant documents are examined along with his returns and the dealer asked to explain or reconcile any discrepancy. The dealer may require time to explain and produce further documents to explain his stand, in which case, further time is provided to the dealer.

### **9) What claims and documents are generally examined during the course of hearing?**

Generally, the assessing authority determines the aggregate sales price after checking his returns along with Final accounts with reference to his books of accounts, Registers, Stock of goods, manufacturing accounts if applicable, and supporting documents. The authority also checks whether claim of Input Tax Credit is allowable, determines Turnover of Purchases and tax payable thereon, examines if transfer of stock of goods has been effected out of goods purchased from registered dealers within West Bengal and whether ITC has been reversed in such case. Any claim of sales **prior to export** effected to any dealer within West Bengal is examined with reference to supporting documents and declarations in Form 12A. Claim of any other exempted sales such as those effected to dealers located in SEZ, is also examined.

### **10) What happens after the process of hearing is over?**

Once the hearing is over, the appropriate assessing authority completes the order of assessment taking into consideration the books of accounts and supporting documentary evidences examined by him and the explanations and reconciliations preferred by the dealer. The Assessment order contains his observations regarding the admissibility or inadmissibility of sales, purchases, input tax credit and claims of the dealer. The Assessing authority then computes the tax payable, input tax credit to be allowed, late fee and interest to be paid, if at all, for the period under assessment. **In the case of audit cum assessment, audit report and computation sheet are prepared by auditing authority.**

### **11) How does the dealer know the outcome of the Assessment process?**

The appropriate assessing authority issues a notice of demand of the amount of tax, late fee and interest payable by the dealer in Form 27 fixing a date on or before which the dealer is asked to complete the

payment of such dues as intimated to him. **In the case of audit cum assessment, audit report and computation sheet shall be sent to the dealer by auditing authority.**

**12) What is the time period within which assessment of a particular period has to be completed?**

An assessment of a particular period has to be completed within 30 th June of any year after the expiry of two years from the end of the year in respect of which or part of which the assessment is made for registered dealers and six years for unregistered dealers. **In case of audit cum assessment, audit shall be completed within six months from the date of selection. If required, this may be extended by another six months.**

**Examples**

Name of the Dealer	Assessment Period	Time Limit ( Assessment to be completed by)
Registered Dealer	4Q.E. 2013(Full Year)	30/06/2015
	Q.E. 30/06/2012(Part of a year)	30/06/2015
Unregistered Dealer	Do	30/06/2019  30/06/2019

**13) What happens when a dealer does not appear even after receiving Notice in Form 25/26 asking him to appear for hearing?**

When a dealer does not appear for the first time even after receiving form 25/26, generally he is provided with an adjournment, or if he prays for some time to produce his books of accounts, Sometimes, more than one adjournment is also provided to enable the dealer to appear for hearing. However, even after repeated adjournments, if the dealer fails to appear, the assessing authority completes the assessment exparte to the best of his judgement and sends the demand notice in Form 27 to the dealer.

**14) What is the action that a dealer is supposed to take after he receives Demand Notice?**

After receiving the Demand Notice, a dealer can pay the assessed dues in full within the stipulated time period. A



dealer can also file an appeal against the impugned assessment order before the Appellate Authority, if he is aggrieved on any or all observations made by the assessing authority in his assessment order, after paying the dues admitted by him. The appellate authority may confirm, reduce, enhance or annul the assessment citing reasons and recording them in writing.

**15) What happens when the dealer does not pay his assessed dues, nor files an appeal against such assessment order?**

If a dealer does not pay his assessed dues or files an appeal against such assessment order, then the appropriate assessing authority may start proceedings for tax recovery.

**16) How does an assessment proceeding start under CST ACT'56?**

The assessment proceeding is initiated by issuing a notice in Form 3V following the same manner as under WBVAT Act, 2003.

**17) What claims and documents are specifically examined in course of hearing under CST Act?**

The claims of sales at concessional rates made to dealers outside West Bengal , sale bills, corresponding documents relating to movement of goods outside W.B., declarations in Form C are examined. Claim of sales prior to export effected to any dealer outside West Bengal is examined with reference to purchase orders, sale bills and consignment noted supported by declarations in Form H. Claim of export sales and related documents such as export invoices, Bill of lading, shipping bills, bank advices, custom's clearance, etc, transfer of stock of goods outside West Bengal, if any, consignment notes and declarations in Form F related to such transfer are also checked. Claim of sales of goods by way of transfer of documents , and related documents proving such transfer of documents in transit, Declarations in Form C, E-1, E-11, etc are also examined.

**18) What happens after the process of hearing is over?**

Once the process of hearing is over, the appropriate assessing authority completes the assessment order noting his observations, computes tax payable, late fee or interest if applicable and issues a notice of demand in Form 4V.

**19) Is the time period of completion of assessment same as that in WBVAT Act 2003?**

Yes, the time period is the same i.e. for registered dealers, within 30<sup>th</sup> June of any year after the expiry of two years, as mentioned in answer to query no 10.

Mousumi Chattaraj Chaudhuri

JCCT/CT