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Edition : August, 2015

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Price : ₹ 250/-

Published by : The Publication Department on behalf of the Institute of Chartered Accountants of India, ICAI Bhawan, Post Box No. 7100, Indraprastha Marg, New Delhi - 110 002.

Printed by : Sahitya Bhawan Publications, Hospital Road, Agra 282 003
September/2015/350

Foreword

One of the important tax reforms initiated at state level since liberalization was the introduction of Value Added Tax (VAT). Introduction of uniform VAT in the States was a challenging exercise in the federal country like India, where each State Government, in terms of constitutional provision, is sovereign in levying and collecting state taxes.

With the implementation of State Level Value Added Tax (VAT), the main motive to allow input tax credit to the dealer and reduce cascading effect of taxes and price level in general to some extent, has been achieved. This has also lead to increase in collection of revenue of the State Governments due to better compliance of the VAT Law by the dealers. The country is on the verge of most ambitious and largest ever indirect tax reform i.e. introduction of Goods and Services Tax which seeks to create a common national market by bringing down fiscal barriers between the States and reduce the complexities of current tax structure.

Though the broad design of the State-level VAT is uniform across the country but every State has its own VAT legislation and procedures differ on many counts from one State to another. Considering the importance of all State VAT Laws, Indirect Taxes Committee of the Institute of Chartered Accountants of India (ICAI) has taken an initiative to bring out state wise technical guides. In this regard, the Committee has come out with "Technical Guide to West Bengal VAT". The Guide explains the concepts relating to West Bengal VAT laws in a very exhaustive manner.

I congratulate the Indirect Taxes Committee of ICAI for successfully completing the task.

I am sure that members will find this Guide very useful in their day to day practice in respect of West Bengal VAT.

Date: 31st August, 2015
Place: New Delhi

CA. Manoj Fadnis
President

Preface

VAT, considered as a path-breaking reform in the area of indirect taxation, was introduced in majority of the States from April 1, 2005 with the objective of making accounting more transparent, cutting trade barriers, boosting tax revenues and most important of all doing away with the cascading effect of taxes. However, the State of West Bengal introduced VAT with effect from 1st April, 2005.

In order to facilitate in understanding the State level VATs, the Indirect Taxes Committee has taken an initiative to prepare State Wise “Technical Guides to VAT” for all States. One of the products of such initiative is “Technical Guide to West Bengal VAT”. An attempt has been made in this Guide to cover all the aspect of West Bengal VAT provision such as basic principles, procedure for registration, payment, assessment, refund, penalties, input tax credit, import and exports of goods etc., and is intended to give a general guidance to the chartered accountants to address the various issues that may arise in the West Bengal VAT. Of course the various individual's practical issues have to be solved by exercising professional judgment.

I am extremely thankful to President and Vice-President, ICAI and members of the Committee for their support and guidance in this initiative. Further, I thanks to CA. Arun Kumar Agarwal for preparing basic draft of the publication. I must also compliment and appreciate the substantial assistance provided by the Indirect Taxes Committee Secretariat to bring this publication to its being.

I am sure that this publication would help the members and readers to be well equipped in effectively discharging their duties as West Bengal VAT practitioners.

I look forward to receiving feedback for further improvements in this Technical Guide at dtc@icai.in.

Date: 31st August, 2015
Place: New Delhi.

Chairman
Indirect Taxes Committee

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Chapter 1

Introduction to State Level VAT

Background

VAT was introduced primarily to replace the earlier single point sales tax system in most of the States of India on 1.4.2005. [The West Bengal Act came into force on 1.4.2005]. Five more States joined the team of VAT States on 1.4.2006. Value Added Tax is a tax on the value added at each stage of production and distribution process and is one of the ideal forms of consumption tax. The value added by a person is represented by the difference between its receipts from sales and cost of purchases.

The Blue Print of the new tax system in the country was prepared in consensus and put in black and white in the form of a White Paper on VAT, which was unveiled in January 2005. The White Paper basically outlined the roadmap for levying a uniform State-level tax on most of the items, except a few selected ones which continued to be taxed under the traditional sales tax system. The White Paper was an attempt to replace the earlier sales tax regime in States with a two-tier tax structure of 4% and 12.5% VAT [Later on, the rates changed in many States].

The VAT Panel [The Empowered Committee of State Finance Ministers], in the White Paper, had fixed the threshold exemption limit of turnover at a maximum of ₹ 5 lacs, subject to the discretion of the State Governments to fix any limit within the overall limit of ₹ 5 lacs. The threshold limit for small traders under the composition scheme in the VAT regime was set at ₹ 5 lacs to ₹ 50 lacs turnover. Traders within this limit can pay a composite VAT rate of 0.25% ¹[or the fixed amount as mentioned in the table given below] as per his choice but would not be entitled to input tax credit ('ITC' hereafter).

Sl. No	Turnover of sales in the preceding year	Amount Payable (₹)
1	Not exceeding rupees thirty lakhs	Seven Thousand
2	Exceeding thirty lakhs but not exceeding rupees fifty lakhs	Twelve thousand

¹Sub-rule 3A of Rule 38 of The West Bengal Value Added Tax inserted by Notification no. 369-F.T., dated 28-03-2013, w.e.f. 01-04-2013

Technical Guide to West Bengal VAT

States were assured 100% compensation of revenue loss due to switchover to the VAT regime in the first year, 75% in the second year and 50% in the third year by the Central Government.

Basic Principle

The basic principle of VAT is that when raw material passes through various stages of manufacturing process and the final product passes through various stages of the distribution chain, tax should be levied only on the 'value added' at each stage, and not on the gross sale value. This is because the purchased raw material has already been taxed and therefore should not be subjected to tax again. Otherwise, there would be tax on tax, as the same raw material would continue to be taxed repeatedly. This is called the "cascading effect" of taxation. Since under VAT, tax is imposed on the 'Value added' which is basically the difference between the selling price and the purchase price, the same commodity does not get taxed repeatedly, which avoids the cascading effect of multiple taxation.

Impact of VAT vis-à-vis the earlier Sales Tax system

Let us now understand the basic points of difference between the previous sales tax system and the current system of VAT with the help of a simple example.

Under the previous system sales tax was levied as follows:

Item of Cost	Cost (₹)	Sales Tax @ 12.5%	Input Tax Credit	Net cost (₹)
Raw Material	2000	250	--	2250
Packing Material	1000	125	--	1125
Sub-total	3000	375	--	3375
Overheads + Profit				625
Basic Sale Price				4000
Sales Tax @ 12.5%				500
Sale Price				4500
Cash Outflow for Tax	500			

From the above table we understand that under the previous sales tax system, the sales tax paid on purchase of inputs (i.e. raw materials and packing materials) also formed part of the purchase cost. This was again subject to tax at the time of sale of the final product. In the VAT regime the

situation changes and the final sale price come down, as is clear from the following table.

Item of Cost	Cost (₹)	VAT @ 12.5%	Input Tax Credit	Net cost (₹)
Raw Material	2000	250	250	2000
Packing Material	1000	125	125	1000
Sub-total	3000	375	375	3000
Overheads + Profit				625
Basic Sale Price				3625
Sales Tax @ 12.5%				453
Sale Price				4078
Cash Outflow for Tax	453-375	= 78		

Point of Tax

VAT is a multi-point tax and unlike the previous sales tax, which was a single-point tax. The output tax payable by a dealer at each stage however allows set-off (credit) of the input tax paid at the earlier stage. Similarly, the output tax collected by the selling dealer is allowed to be set-off by the subsequent purchasing dealer against his output tax liability. Thus, the burden of tax is passed on to the buyer when the goods are sold. This process continues till the goods are finally consumed. Hence this is also termed as 'consumption tax'.

Imposition of VAT

VAT has to be paid by a registered dealer principally on the value addition of the goods sold by him. It is calculated by deducting tax credit from the tax collected in the payment period.

VAT Credit

Credit is given within the same month for entire VAT paid within the State on purchase of inputs/ supplies for both intra-State and inter-State sales, irrespective of when those are utilised/ sold.

The Vat structure evolved on the basis of a consensus among the States. Because of this, the features of VAT should have been uniform throughout the country but they are not. Except for the Uniform basic principle, the rates of tax, conditions and procedures in different States vary.

Benefits of VAT

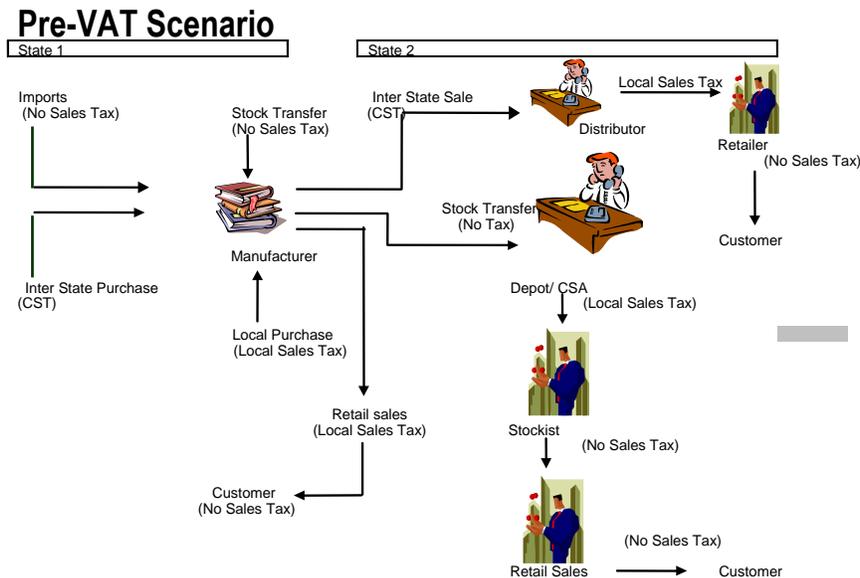
The VAT structure is superior to the earlier sales tax system because it provides certain advantages, which include the following:

- It eliminates cascading effect of the earlier sales tax system by setting off the tax paid at every stage of sales;
- It reduces distortions in the economy and helps industry and trade;
- It is a simpler tax structure and improves compliance;
- It results in minimum interface of market forces.

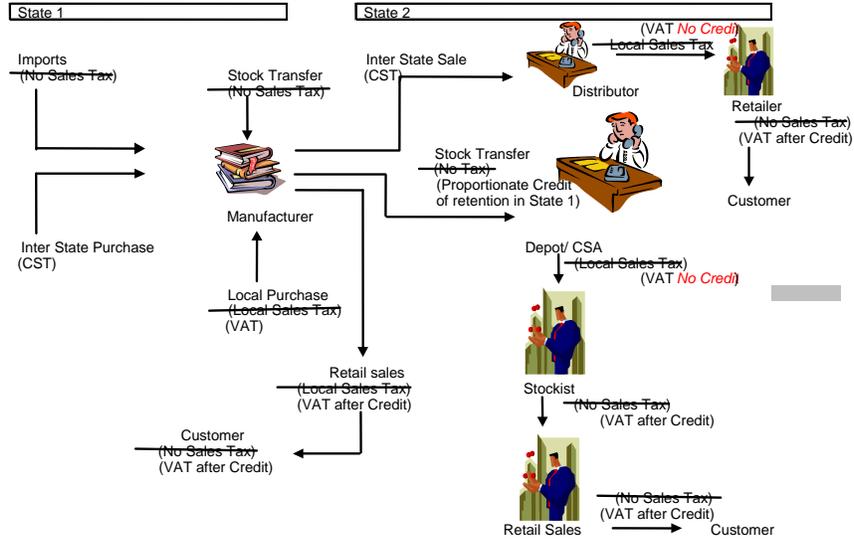
Changes in Tax System in a VAT Scenario

The introduction of the new State Level VAT w.e.f. 1.4.2005 raised a number of crucial issues, which needed to be understood and addressed properly. These arise from the unique features of the VAT law, viz. (i) multi point tax at every stage in the production- distribution chain; (ii) non-availability of input tax credit on inter-State purchases; (iii) restriction on input tax credit in respect of stock transfer; (iv) continuance of CST on inter-State sale.

The total scenario of transactions in the supply-chain and tax implications in the earlier system and in the VAT regime are graphically represented in the following manner:



Post-VAT Scenario



Chapter 2

Some Important Definitions

The following sections and sub-sections deal with important definitions under the West Bengal Value Added Tax Act, 2003.

2.1. Appropriate Government Treasury – Sec. 2(3A)

“Appropriate Government Treasury” means –

- (a) in the case of a dealer in Kolkata,–
 - (i) the Kolkata Branch of the Reserve Bank of India for payments under the Act exceeding five hundred rupees, and
 - (ii) such head office, main office, branch or branches of any bank in Kolkata as may be authorized in this behalf by the State Government for the purpose of accepting deposits for payments under the Act, and
- (b) in other cases, the treasury or sub-treasury of the sub-division where the dealer’s place of business is situated or, in the event of a dealer having more than one place of business, where the chief branch or head office of the business is situated.

2.2. Business – Sec 2(5)

“Business” includes

- (a) any trade, commerce, manufacture, execution of works contract or any adventure or concern in the nature of trade, commerce, manufacture or execution of works contract, whether or not such trade, commerce, manufacture, execution of works contract, adventure or concern is carried on with the motive to make profit and whether or not any profit accrues from such trade, commerce, manufacture, execution of works contract, adventure or concern; and
- (b) any transaction in connection with, or ancillary or incidental to, such trade, commerce, manufacture, execution of works contract, adventure or concern.

2.3. Capital Goods- Sec 2(6)

¹“Capital goods” means plant and machinery ²{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 equipment for use in the manufacture of goods in the State and such other goods as the State Government may, by notification, specify ³~~but shall not include second hand plant and machinery.~~

2.4. Casual Dealer – Sec 2(7)

“Casual dealer” means-

a person, other than a dealer who, whether as principal, agent or in any other capacity, has occasional transaction involving buying, selling, supplying or distributing goods in West Bengal, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration and includes, whether he has fixed place of business in West Bengal or not,—

- (a) a transporter, carrier or transporting agent, as defined in clause (52) who, while carrying any goods in his goods vehicle as defined in clause (16), fails to disclose the name and address of the consignor or consignee in West Bengal or fails to furnish a copy of the invoice, challan, transport receipt or consignment note or document of like nature in respect of such goods, or
- (b) an owner or lessee or occupier of a warehouse who fails to disclose the name and address of the owner of any goods stored at his warehouse or fails to satisfy the Commissioner that such goods are for his personal use or consumption,

and such transporter, carrier or transporting agent, or owner or lessee or occupier of a warehouse, shall be deemed to have purchased such goods on his own account.

¹ Subs. by W.B.Act I of 2008, s.9(1), w.e.f. 01-04-2008

² Subs. by W.B.Act II of 2010, s. 6(1), w.e.f. 01-04-2010

³ Deleted vide The West Bengal Finance Act, 2014 w.e.f. 01.07.2014.

2.5. Dealer – Sec 2(11)

“Dealer” means

any person who carries on the business of selling or purchasing goods in West Bengal or any person making sales under section 14, and includes

- (a) an occupier of a jute-mill or shipper of jute;
- (b) the Government, a local authority, a statutory body, a trust or other body corporate which or a liquidator or receiver appointed by a court in respect of a person, being a dealer as defined in this clause, who, whether or not in the course of business, sells, supplies or distributes directly or otherwise goods for cash or for deferred payment or for commission, remuneration or other valuable consideration;
- (c) a society including a co-operative society, club or any association which sells goods to its members or others for cash, or for deferred payment, or for commission, remuneration, or for any other valuable consideration,
- (d) a factor, a broker, a commission agent, a *del credere* agent, an auctioneer, an agent for handling or transporting of goods or handling a document of title to goods, or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of selling goods and who has, in the customary course of business, authority to sell goods belonging to principals.

2.6. Goods – Sec 2(15)

“Goods” include all kinds of movable property other than

- (a) actionable claims, stocks, shares or securities,
- (b) country liquor,
- (c) foreign liquor, whether made in India or not, including brandy, whisky, vodka, gin, rum, liqueur, cordials, bitters and wines or a mixture thereof beer, ale, porter, cider, perry, and other similar potable fermented liquors,

Some Important Definitions

⁴(cc) rectified spirit and Extra Neutral Alcohol (ENA)

(d) lottery tickets and

(e) motor spirit of any kind.

2.7. Input Tax – Sec 2(18)

“Input tax”, in relation to a tax period on or after coming into force of this Act, means the amount of tax paid or payable under the Act, other than section 11, by a registered dealer, other than those enjoying composition under ~~sub-section (3)~~⁵any of the sub-sections of section 16 or sub-section (4) of section 18, to a registered dealer, or a dealer who has made an application under sub-section (1) of section 24 within thirty days from the date of incurring liability to pay tax under the Act, at the time of purchasing taxable goods, other than such taxable goods as may be prescribed, during that period.

2.8. Input Tax Credit – Sec 2(19)

“**Input tax credit**” or “input tax rebate”, in relation to any period, means the setting off of the amount of input tax, or part thereof, by a registered dealer against the amount of his output tax.

2.9. Manufacture – Sec 2(22)

“Manufacture”, with all its grammatical variations and cognate expressions, means producing, making, extracting or processing any goods and includes ⁶[rearing] of seedlings or plants, and raising of man-made forest or other natural resources like minerals, coal, etc. for sale.

⁴Inserted by W.B. Act of 2008, s 3(1), w.e.f. 01-04-2005.

⁵Subs. For “enjoying composition under sub-section (3), sub-section (3A), sub-section (3B) or sub-section (6) of Section 16” by W.B.Act I of 2013, s. 3(1), w.e.f 1-4-2013.

Earlier, “enjoying composition under sub-section (3)” was subs. with “enjoying composition under sub-section (3), sub-section (3A), sub-section (3B) ^{**}[or sub-section (6)] of Section 16” by W.B. Act XVIII of 2006, s 12(1), w.e.f. 01-08-2006

^{****} Sub-section(6) inserted by W.B. Act XVI of 2010, s.5(1), w.e.f.01-04-2010

⁶ Sub. For “printing, rearing” by *ibid*, s. 12(1), w.e.f. 01-08-2006

2.10. Net Tax – Sec 2(23)

“Net tax”, in relation to any period, means

- (a) in case of a registered dealer, other than those referred to in sub-clause (c) and sub-clause (d), the amount of output tax in excess of the net tax credit, as referred to in sub-section (17) of section 22, claimed by such registered dealer in accordance with the provisions of this Act and the rules made thereunder,
- (b) in case of any dealer other than a registered dealer, the amount of output tax,
- (c) ~~7[in case of a registered dealer who has been allowed to pay tax at a compounded rate under sub-section (3) of section 16 or sub-section (4) of section 18, the amount of output tax.]~~

in case of a registered dealer paying tax at a compounded rate under any of the sub-sections ~~8[sub-section (3), sub-section (3A), sub-section (3B)]~~ of section 16 or sub-section (4) of section 18, the amount of output tax,

- (d) in case of a registered dealer, other than those referred to in sub-clause (a) and sub-clause (c), enjoying deferment of payment of tax, or, tax holiday, or remission of tax under clause (a), clause (b), or clause (c) respectively of sub-section (1) of section 118, the amount of output tax.

2.11. Output Tax – Sec 2(26)

“Output tax”, in relation to any period, means the aggregate amount of tax payable by a dealer liable to pay tax under section 10, section 11, section 12, section 14, sub-section (3) of section 24, and section 27C, and includes tax payable at the compounded rate ~~[under sub-section (3) of section 16 or~~ ⁹~~{sub-section (3A), or sub-section (3B), of section 16}]~~ ¹⁰under any of the sub-sections of section 16 or sub-section (4) of section 18, in respect of any

⁷ Sub-clause (c) was substituted by W.B.Act XVIII of 2006, s.12 (1), w.e.f. 01-08-2006

⁸ Subs. by W.B. Act I of 2013, s.3(1), w.e.f. 01-04-2013.

⁹ Added by Section 12(1)(f) of the W.B.Finance Act, 2006, w.e.f. 01-08-2006

¹⁰ Subs. by W.B.Act I of 2013, s. 3(1), w.e.f.01-04-2013

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sale, or purchase, of goods, or execution of works contract, made by him in West Bengal.

2.12. Place of Business – Sec 2(29)

“Place of business” ¹¹[means] ~~means any place where a dealer has set up a business of selling or purchasing goods or~~ a place from where a dealer sells any goods or where he keeps accounts, registers or documents, including those in the form of electronic records relating to sales or purchases of goods or execution of works contract and digital signature certificate granted under sub-section (4) of section 35 of the Information Technology Act, 2000, relating to his business and includes any place where the dealer processes, produces or manufactures goods or executes works contract and any warehouse of such dealer.

2.13. Prescribed – Sec 2(30)

“Prescribed” means stipulated by rules made under this Act.

2.14. Principal Place of Business – Sec 2(31A)

“Principal place of business” means any place of business where a dealer keeps all accounts, registers, documents, including those in the form of electronic records, and digital signature certificate granted under sub-section (4) of section 35 of the Information Technology Act, 2000, relating to his business and, includes the chief branch or head office within West Bengal.

2.15. Purchase Price – Sec 2(35)

“Purchase price” means the amount of valuable consideration paid or payable by a person for the purchase of any goods, less any sum allowed as cash discount, commission or commercial rebates granted at the time of delivery, or before delivery, of such goods but including cost of freight or delivery or distribution or installation or insurance, or any sum charged for anything done by the seller in respect of goods at the time of their delivery or before delivery thereof, other than interest if separately charged.

¹¹ Subs. for “means any place where a dealer has set up a business of selling or purchasing goods or” by W.B.Act I of 2008, s. 9(1), w.e.f. 1-4-2008

2.16. Return Period – Sec 2(36B)

“Return period” means a period, as may be prescribed, for which a return is due under the Act.

2.17. Reverse Credit – Sec 2(36C)

“Reverse credit” means reversing or returning by a dealer, by way of deduction from the amount of input tax credit or input tax rebate for a period, the amount of input tax credit or input tax rebate availed by him during any period to which he was not entitled or became disentitled subsequent to the enjoyment of such input tax credit or input tax rebate.

2.18. Rules – Sec 2(37)

“Rules” means the rules made under this Act.

2.19. Registered – Sec 2(38)

“Registered” means registered under section 24.

2.20. Sale – Sec 2(39)

“**Sale**” means any transfer of property in goods for cash, deferred payment or any other valuable consideration, and includes

- (a) **any transfer**, otherwise than in pursuance of a contract, **of property** in any goods for cash, deferred payment or any other valuable consideration,
- (b) any delivery of goods on **hire-purchase** or any system of payment by instalments,
- (c) **any transfer of the right to use** any goods for any purpose (whether or not for a specified period) for cash, deferred payment or any other valuable consideration,
- (d) **any 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 for cash, deferred payment or any other valuable consideration,
- (e) **any supply** of goods by any **unincorporated association** or body of

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persons **to a member** thereof for cash, deferred payment or any other valuable consideration, and such transfer, delivery, or supply of any goods shall be deemed to be a sale of those goods by the person or unincorporated association or body of persons making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery, or supply is made, but does not include a mortgage, hypothecation, charge or pledge.

Explanation I— A sale shall be **deemed to take place in West Bengal** if the goods are within West Bengal

- (a) **in the case of specific or ascertained goods, at the time the contract of sale is made**, and
- (b) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller, whether the assent of the buyer to such appropriation is either prior or subsequent to the appropriation:

Provided that where there is a single contract of sale in respect of goods situated in West Bengal as well as in places outside West Bengal, provisions of this *Explanation* shall apply as if there were a separate contract of sale in respect of the goods situated in West Bengal.

Explanation II—The transfer of property involved in the supply or distribution of goods by a society (including a Co-operative Society), club, firm or any association to its members for cash, or for deferred payment or any other valuable consideration, whether or not in the course of business, shall be deemed to be a sale for the purpose of this Act.

2.21. Sale Price – Sec 2(41)

“Sale price” means the amount payable to a dealer or casual dealer as valuable consideration for the sale, other than the sale referred to in section 14, of any goods and includes

- (a) any sum charged for anything done by the dealer or casual dealer in respect of such goods either at the time of delivery or before the delivery of such goods,

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- (b) any sum charged for freight, delivery, distribution, installation by such dealer at the time of delivery or before the delivery of such goods,
- (c) any tax, duty or charges levied or leviable (other than the tax charged separately under this Act subject to the provision as mentioned in the *Explanation*, and ~~cess levied~~¹²[tax levied under the West Bengal Motor Vehicles Tax Act, 1979 (W.B. Act IX of 1979) and cess levied] under the West Bengal Transport Infrastructure Development Fund Act, 2002), in respect of such goods,

but does not include any sum allowed as cash discount, commission or other commercial rebate on the value of such goods either at the time of delivery or before the delivery of such goods, and interest if separately charged.

Explanation— For the purpose of this clause, the expression “sale price” of a dealer, enjoying payment of tax at a compounded rate under sub-section (3) of section 16 or sub-section (4) of section 18, or selling to any person other than a dealer of goods upon which maximum retail price as referred to in clause (22A) is applicable and where such maximum retail price is inclusive of sales tax, shall include any tax payable under this Act, including the tax referred to in section 10, or section 12.

2.22. Tax Due – Sec 2(46)

“Tax due” means the amount of tax which remains unpaid after the expiry of the date specified in the notice of demand issued in this behalf under this Act or the rules made thereunder.

2.23. Taxable goods – Sec 2(47)

“Taxable goods” means goods other than those specified in Schedule A.

2.24. Tax Payable – Sec 2(49)

“Tax payable” means the tax payable under this Act on sales or purchases effected or for execution of works contract by a dealer or casual dealer, but does not include the tax due as defined in clause (46).

¹² Subs. for “and cess levied” by W. B. Act II of 2012, s. 5(1), w.e.f. 01-04-2012.

2.25. Tax Period – Sec 2(50)

“Tax period” means such period, as may be prescribed, for which tax is payable under the Act.

2.26. Turnover of Purchases – Sec 2(54)

“Turnover of purchases”, in relation to any period, means,—

- (a) ~~¹³[in case of an occupier of a jute mill liable to pay tax under section 11, the aggregate of the purchase prices or parts of purchase prices payable by such occupier for the quantities of raw jute purchased by him during such period after deducting the amounts, if any, refunded to him by the seller during such period in respect of any quantity of raw jute returned to the seller within ninety days from the date of its purchase and such other amounts as may be prescribed,]~~
- (b) in case of a shipper of jute liable to pay tax under section 11, the aggregate of the purchase prices or parts of purchase prices payable by such shipper of jute in respect of the quantities of raw jute purchased by him in West Bengal and despatched by him during such period to any place outside West Bengal by any means of transit,
- (c) in case of any dealer liable to pay tax under section 12, the aggregate of the purchase prices or parts of purchase prices payable by such dealer in respect of goods purchased by him during such period for use of such goods in West Bengal, after deducting the amounts, if any, refunded to the seller during such period in respect of any such goods purchased but returned to the seller within six months of such purchase.

2.27. Turnover of Sales – Sec 2(55)

“Turnover of sales”, in relation to any period, means the aggregate of the sale-prices or parts of sale-prices received or receivable by a dealer in respect of sales as defined in clause (39) of the Act and in clause (g) of section 2 of the Central Sales Tax Act, 1956, of goods made during such period after deducting therefrom

- (a) the sale-prices or the parts of sale-prices, if any, in respect of sales of goods during such period, which are shown to the satisfaction of the Commissioner to have been purchased by the dealer in West Bengal,

¹³ Sub-Clause (a) was omitted by W.B. Act XVIII of 2006, s. 12(1), w.e.f. 1-8-2006

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upon payment of tax on the maximum retail price of such goods or, where tax on maximum retail price of such goods was paid in West Bengal on an earlier occasion, and

- (b) the amounts, if any, refunded by the dealer in respect of any such goods returned or rejected by the purchaser within six months from the date of such sales.

2.28. Works Contract – Sec 2(57)

“**Works contract**” means any agreement for carrying out for cash, deferred payment or any other valuable consideration

- (a) the construction, fitting out, improvement or repair of any building, road, bridge or any other immovable property,
- (b) the installation or repair of any machinery affixed to a building or any other immovable property,
- (c) the overhaul or repair of
 - (i) any motor vehicle,
 - (ii) any sea-going vessel, river craft or steamer,
 - (iii) any other vessel propelled by internal combustion engine or by any other mechanical means,
 - (iv) a railway engine,
 - (v) any aircraft, or
 - (vi) any component or accessory part of any of the goods mentioned in items (i) to (v), or
- (d) the fitting of, assembling, altering, ornamenting, finishing, furnishing, improving, ~~processing, treating~~ ¹⁴[processing, photocopying, developing, treating], adapting or printing on, any goods.

¹⁴ Subs. for “ processing, treating” by W.B. Act III of 2007, s. 10(1), w.e.f. 01-04-2007

Chapter 3

Applicability

Principles Laid Down In the White Paper

Coverage of Goods under the VAT: In general, all the goods, including declared goods, will be covered under the VAT and will get the benefit of input tax credit.

The only goods which will be outside the VAT are liquor, lottery tickets, petrol, diesel, aviation turbine fuel and other motor spirits, since their prices are not fully market determined. These will continue to be taxed under the existing Sales Tax Act or any other State Act or even by making special provisions in the VAT Act itself, and with uniform floor rates to be decided by the Empowered Committee.

Provisions in the West Bengal VAT Law

3.1. Categories of Dealers liable to VAT [Sec. 10]

3.1.1 *Dealer liable under West Bengal Sales Tax Act:*

In case of a dealer liable under the erstwhile West Bengal Sales Tax Act, 1994 (other than one who was involved in the execution of works contract) as on 31st March, 2005, **all sales** effected on or after 1st April, 2005 are liable to tax. [Sec. 10(1)]

3.1.2. *Dealer having turnover exceeding the taxable quantum in the previous year:*

In the case of a dealer not covered under the WBST Act and whose gross turnover of sales exceeded the taxable quantum under that Act, which was ₹ 30,000/- for importers, ₹ 1,00,000/- for manufacturers and ₹ 5,00,000/- (excluding items covered under Schedule IV therein) in case of any other dealer, in the previous year, **all his sales** of goods after the date on which turnover exceeds ₹ 10,00,000/- are liable to tax. [Sec. 10(2) Read with Rule 4]

3.1.3. *Dealer of imported goods:*

In case of a dealer not covered above, the sales of **all goods imported** from outside West Bengal are liable to tax. [Sec. 10(3)(a)]

3.1.4. Dealer having turnover exceeding the taxable quantum:

In the case of a dealer not covered above, whose turnover of sales exceeds the taxable quantum of ₹ 10,00,000/- fixed in rule 4 at any time during a financial year, **all his sales** of goods after the date on which turnover exceeds ₹ 10,00,000/- are liable to tax. The State Government, however, can prescribe a different taxable quantum for different goods or for different classes of dealers [Sec. 10(3)(b)]. Earlier, the Govt. was empowered to prescribe a different taxable quantum only for different classes of dealers.

3.1.5. Voluntarily registered dealer:

A dealer registered voluntarily under the Act prior to the date when his turnover exceeded ₹ 10,00,000/- would be liable to pay tax on **all his sales** of goods. [Sec. 10(4)]

3.1.6. Dealer liable on partial transfer of business:

A dealer liable to pay tax under section 27C of the Act would be liable to pay tax on all his sales irrespective of the taxable quantum from the date of transfer of business. [Sec. 10(5)]

3.1.7. Dealer liable to pay tax on works contract:

A dealer liable to pay tax under section 14 of the Act on transfer of property in goods involved in the execution of works contract would be liable to pay tax on all his sales irrespective of the taxable quantum from the date on which he becomes liable to pay tax on the execution of works contract. [Sec. 10(6)]

3.1.8. Dealer liable under the Central Sales Tax Act:

A dealer liable to pay tax under the Central Sales Tax Act 1956 would be liable to pay tax on all his sales irrespective of the taxable quantum from the date he becomes liable under the Central Sales Tax Act, 1956. [Sec. 10(7)]

3.2. Date of Liability

A dealer not liable to pay tax under the erstwhile WBST or CST Act, as referred to in para 3.1.4. above, shall be liable to pay tax from the date immediately following the date on which his turnover exceeds ₹ 10,00,000/-.

¹Subs vide W.B. Finance Act, 2015, w.e.f. 1.4.2015. Earlier this limit was 500000/-

3.2.1. Computation of Turnover Annually

The turnover shall be computed from the commencement of each financial year that is from 1st April.

3.3. Incidence of Tax on 'Turnover of Sales' [Sec. 16]

The tax (VAT) shall be paid by a dealer on his **turnover of sales**.

3.3.1. Meaning [Sec. 2(55)]: Turnover of sales in relation to any period, means

The aggregate of the sale-prices or parts of sale-prices received or receivable by a dealer

- In respect of sales of goods made during such period,
- after deducting therefrom,
 - (i) the sale prices in respect of sales of goods during such period on which tax is already paid on maximum retail price (MRP); and
 - (ii) the amounts, if any, refunded by the dealer in respect of any such goods returned or rejected by the purchaser within six month from date of delivery of such goods.

Thus, turnover of sales is the aggregate selling price less the amount refunded for sales returns within six months of the delivery of goods sold. The turnover of sales in respect of the goods already taxed on MRP will not be added to calculate the turnover of sales for the payment of tax.

3.3.2. Deductions under Section 16(1)

The liability of a dealer is on the **turnover of sales**, subject to certain specified deductions. The net sales on which a dealer has to pay tax shall be computed after deducting the following amounts from the 'turnover of sales' of the dealer:

- (a) **Sale of Tax Free Goods:** Sales of goods declared tax-free and specified in Column (2) of **Schedule A**.
- (b) **Sale in the Course of Inter-State Trade or Commerce:** Sales of goods which have not taken place in West Bengal, or have taken place in the course of inter-State trade or commerce.
- (c) **Sale in the Course of Import or Export:** Sales of goods taken place in the course of import of goods into, or export of goods out of the territory of India, within the meaning of section 5 of the CST Act.

- (d) **Sale of Cotton Yarn in West Bengal:** Rule 26A was inserted vide **Notification No. 1349-F.T.**, dated **5th July 2005** providing for deduction of turnover of cotton yarn in West Bengal from turnover of sales. The deduction is on account of sale of cotton yarn other than those in hank. This deduction is, however, subject to the condition that such sold cotton yarn shall be used by the purchasing dealer in the manufacture of hosiery goods or textile fabrics in West Bengal, or shall be resold in West Bengal to another dealer for sale to a manufacturer of hosiery goods or textile fabrics in the State. The selling dealer has to produce on demand relevant tax invoice or cash memo and other related documents evidencing such sales. Further, in the second instance, the selling dealer is also required to produce a certificate in the Form appended to the rule, duly filled and signed by the purchasing dealer or by a person authorized by the purchasing dealer.

[The prescribed format of the certificate is appended in **Annexure 1** to this chapter]

- (e) **Stock Transfer:** Transfer of goods to an agent in West Bengal, for effecting sales of such goods against commission. [Rule 27(1)]
- (f) **Sale of Tea through a Broker:** Sale of tea through a broker who is also a member of the Tea Association in Kolkata or ²the Siliguri Tea Auction Committee or the North Bengal Tea Auction Committee. [Rule 27(2)]
- (g) **Sale by an Exempt Unit:** Sales of goods by a dealer entitled to enjoy the benefit of tax holiday, manufactured in his newly set-up small-scale industrial unit, other than goods so manufactured on franchise or otherwise, using the trade name or brand name or logo of any other industrial unit or commercial organization. [Rule 27(3)]
- (h) **Sales of Gold, Silver, Platinum and Diamond or Precious Stones:** Rule 33A was inserted vide **Notification No. 1349-F.T.**, dated **5th July 2005** providing for deduction from turnover of sales, of sale of (i) gold, silver and platinum and (ii) diamonds or precious stones.

Rule 33A provides for deduction of turnover on account of (i) gold, silver or platinum and (ii) diamonds or precious stones, to a registered dealer in West Bengal.

² Subs by Notification No. 1732-F.T., dated 18.10.2006 (w.r.e.f. 1.4.2005)

Applicability

The deduction is allowed only to a **scheduled commercial bank**, authorised by the Reserve Bank of India to import gold or silver or platinum from outside India (hereafter referred to as '**bank**'); or the **Minerals and Metals Trading Corporation of India Limited**, a Government of India enterprise (hereinafter referred to as **MMTC**), in case of sale of gold, silver or platinum, diamonds or precious stones, to any registered dealer.

The bank or MMTC should sell gold, silver or platinum to a registered dealer in West Bengal for use of such goods by him in manufacturing jewellery to be exported by him or by MMTC out of the territory of India.

Similarly, the registered dealer selling diamonds or precious stones should sell the same to a registered dealer in West Bengal for use in manufacturing jewellery to be exported by him out of the territory of India

For claiming deduction under clause (c) of subsection (1) of section 16 the selling registered dealer shall furnish relevant invoice/cash memo evidencing such sales and a certificate in the Form appended to this rule, duly filled and signed by the purchasing registered dealer or by a person authorized by such purchasing registered dealer for the purpose.

[The prescribed format of the certificate is appended in **Annexure 2** to this chapter]

- (i) ³Certain sales made by M/s Garden Reach Shipbuilders and Engineers Limited, Kolkata [Rule 26B].
- (j) ⁴(Certain taxable goods)⁵ sold to the members of the ⁶(Defence Forces of India or the Royal Bhutan Army) by the Canteen Stores Department or Regimental or Unit-run Canteens attached to military units in West Bengal. The selling dealer has to produce on demand relevant tax invoice or cash memo and other related documents evidencing such

³ Inserted by Notification No 1922-F.T., dated 14.10.2005 (w.r.e.f. 1.9.2005)

⁴ Inserted by Notification No 1922-F.T., dated 14.10.2005 (w.r.e.f. 1.9.2005)

⁵ Substitute by Notification No 1494-F.T., dated 24.9.2009 (w.e.f. 1.11.2009) for 'taxable goods'

⁶ Substitute by Notification No 712-F.T, dated 19.05.2009, (w.r.e.f.1.1.2008), for "the Defence Forces of India"

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sales. Further the selling dealer is also required to produce a certificate in the Form appended to the rule, duly filled and signed by the officer not below the rank of a commanding officer of the unit. [Rule 26D]

[The prescribed format of the certificate is appended in **Annexure 3** to this chapter]

- (k)⁷ Sales made by the Canteen Stores Department to Regimental or Unit-run Canteens attached to military units in West Bengal. The selling dealer has to produce on demand relevant tax invoice or cash memo and other related documents evidencing such sales. [Rule 26DA]
- (l) ⁸Sale of lubricants to aircrafts of countries other than India for operating international air service to or from India and such country is a party to the agreement or convention as referred to in the Foreign Aircraft (Exemption from Taxes and Duties on Fuel and Lubricants) Act, 2002. The selling dealer has to produce on demand relevant tax invoice or cash memo and other related documents evidencing such sales. Further, the selling dealer is also required to produce a certificate in the Form appended to the rule, duly filled and signed by the person authorized for this purpose. [Rule 26E]

[The prescribed format of the certificate is appended in **Annexure 4** to this chapter]

- (m) ⁹Goods sold to certain diplomatic missions for their official or personal use. The selling dealer has to produce on demand relevant tax invoice or cash memo and other related documents evidencing such sales. Further, the selling dealer is also required to produce a certificate in the Form appended to the rule, duly filled and signed by a person authorized in this behalf by the concerned diplomatic mission. [Rule 26F]

[The prescribed format of the certificate is appended in **Annexure 5** to this chapter]

⁷ Inserted by Notification No 1494-F.T., dated 24.09.2009, (w.e.f. 1.11.2009)

⁸ Inserted by Notification No 1922-F.T., dated 14.10.2005 (w.r.e.f. 1.9.2005)

⁹ Inserted by Notification No 1922-F.T., dated 14.10.2005 (w.r.e.f. 1.9.2005); Further substituted by Notification No 377-F.T., dated 16.03.2012, (w.e.f. 19.3.2012)

Applicability

- (n)¹⁰ Taxable goods sold to a registered manufacturing dealer who enjoys the benefit of deferment of tax or remission of tax or tax holiday or uses such taxable goods for export out of the territory of India. The selling dealer has to produce on demand relevant tax invoice or cash memo and other related documents evidencing such sales. Further, the selling dealer is also required to produce a certificate in the Form appended to the rule, duly filled and signed by the dealer purchasing such goods. [Rule 26G]

[The prescribed format of the certificate is appended in **Annexure 6** to this chapter]

- (o)¹¹ Goods sold to any agency of the United Nations in West Bengal for official use. The selling dealer has to produce on demand relevant tax invoice or cash memo and other related documents evidencing such sales. Further, the selling dealer is also required to produce a certificate in the Form appended to the rule, duly filled and signed by a person authorized in this behalf. [Rule 26H].

[The prescribed format of the certificate is appended in **Annexure 7** to this chapter]

- ¹²(p) Taxable goods sold to the West Bengal State Electricity Board and public sector undertakings for use as equipment or material in the construction of rural electrification projects in West Bengal under Rajiv Gandhi Grameen Vidyutikaran Yojana (RGGVY) Scheme for Rural Electricity Infrastructure and Household electrification. The selling dealer has to furnish on demand by the appropriate authority the relevant tax invoice or invoice or cash memo or bill and a certificate from the purchaser in the form appended to this rule, duly filled in and signed by the principal officer or such other officer as may be authorized in this behalf. [Rule 26I]

[The prescribed format of the certificate is appended in **Annexure 8** to this chapter]

¹⁰ Inserted by Notification No. 2249-F.T., dated 14.12.2005 (w.e.f. 16.12.2005)

¹¹ Inserted by Notification No. 185-F.T., dated 06-02-2006, w.e.f. 01-10-2005 and then amended as above by Notification No. 1732-F.T., dated 18-10-2006, w.e.f. 01-10-2005

¹² Inserted by Notification No 1077-F.T., dated 28-06-2006, w.e.f. 01-04-2005 and then amended as above by Notification No. 1732-F.T., dated 18-10-2006, w.e.f. 01-04-2005.

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- ¹³(q) Sale of any pre-used ~~motor cars~~ ¹⁴[motor vehicles including two wheelers like motor cycle, scooter, etc.], to any person, whether a dealer or not, who may deduct from his turnover of sales fifty per centum of that part of turnover of sales. The selling dealer on demand by the appropriate authority has to furnish the relevant tax invoice or invoice or cash memo or bill, and other related documents evidencing such sale. [Rule 26K]
- ¹⁵(r) Sale of recorded cinematography films on or after 1st day of April, 2005. The selling dealer on demand by the appropriate authority has to furnish the relevant tax invoice or invoice or cash memo or bill, and other related documents evidencing such sale. [Rule 26L]
- ¹⁶(s) Sale of furnace oil or lubricants to any foreign going vessels in West Bengal, The dealer may deduct from his turnover of sales seventy per centum of that part of turnover of sales. The selling dealer on demand by the appropriate authority has to furnish the relevant tax invoice or invoice or cash memo or bill, and other related documents evidencing such sale. [Rule 26M]
- ¹⁷(t) Sale by canteens attached to the units of Border Security force of India in West Bengal ~~of any taxable goods~~ ¹⁸[of any taxable goods purchased by it in West Bengal] to its personnel. The selling dealer on demand by the appropriate authority has to furnish a certificate in the Form appended to this rule, duly filled and signed by the officer not below the rank of a commandant of the unit (to which such personnel belongs or belong. [Rule 26N]

[The prescribed format of the certificate is appended in **Annexure 9** to this chapter]

¹³ Rule 26K was inserted by notification No. 1732-F.T. dated 21-8-2006, w.e.f 1-9-2006.

¹⁴Original rule "26K.Deduction from turnover of sales for sale of pre-used motor cars."Was omitted by notification No. 1059-F.T., dated 26-6-2012, w.e.f. 1-4-2012. Thereafter, the present rule 26K was inserted by notification No. 369-F.T., dated 28-3-2013, w.e.f. 1-4-2013.

¹⁵ Rule 26L was inserted by notification No. 1732-F.T. dated 21-8-2006, w.e.f 1-9-2006

¹⁶ Rule 26M was inserted by notification No. 1732-F.T. dated 21-8-2006, w.e.f 1-9-2006

¹⁷ Inserted by notification No. 1772-F.T., dated 30-10-2006, w.e.f. 1-11-2006

¹⁸Subs.By notification No. 1738-F.T., dated 2-11-2012, w.e.f. 2-11-2012.

Applicability

¹⁹(u) Sales of taxable goods made to a developer for use by him in the development of a Special Economic Zone. The selling dealer on demand by the appropriate authority has to furnish a certificate in the Form appended to this rule duly filled and signed by such developer to whom such taxable goods are sold and such appropriate authority is satisfied, upon enquiry or otherwise, that the particulars filled in the Form are correct. [Rule 26O]

For the purpose of this rule

- (i) The expression “developer” means a person or a body of persons, a company, a firm and such other private or Government Undertaking, who/which develops, builds, designs, organizes, promotes finances, operates, or maintains or manages a part or whole of the infrastructure of the Special Economic Zone.
- (ii) The expression “Special Economic Zone” means a geographical area declared and notified as Special Economic Zone by the Government.

[The prescribed format of the certificate is appended in **Annexure 10** to this chapter]

²⁰(v) Sales of sugar imported from outside the territory of India during the period between the 14th day of October, 2009 and the 30th day of November, 2009. The selling dealer on demand by the appropriate authority has to furnish the relevant tax invoice or invoice or cash memo or bill and other related documents evidencing sales of sugar, imported from outside the territory of India into, West Bengal during the period mentioned above. [Rule 26OA]

²¹(w) Sales of sugar imported from outside the territory of India during the period between the 1st Day of January, 2010 and the 31st day of March, 2011 ²²[2012]. The selling dealer on demand by the appropriate authority has to furnish the relevant tax invoice or invoice or cash

¹⁹Inserted by Notification No. 1832-F.T. dated 10-11-2006, w.e.f. 1-12-2006.

²⁰ Inserted by Notification No. 1567-F.T. dated 13-10-2009, w.e.f.14-10-2009 till 30-11-2009.

²¹Inserted by notification No. 2027-F.T., dated 30-12-2009, w.e.f. 1-1-2010 till 31-3-2011.

²²Subs. By notification No. 377-F.T. dated 16-3-2012, w.e.f. 1-4-2012

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memo or bill and other related documents evidencing sales of sugar, imported from outside the territory of India into West Bengal during the period mentioned above. [Rule 26OB]

²³(x) Sale of educational materials by World Wildlife Fund, such as greeting cards, calendars, posters, post cards, picture sets, note pads, gift tags, or any other material which contains its logo and carries messages to educate people about the importance of the conservation of nature. The selling dealer on demand by the appropriate authority shall furnish the relevant tax invoice, invoice, cash memo or bill, as the case maybe. [Rule 26P]

²⁴(y) Sale by West Bengal Industrial Development Corporation Ltd of taxable goods acquired by it under section 29 of the State Financial Corporations Act ,1951. Where any tax has already been paid by it on such sales in accordance with the provisions of the Act before the date of publication of this rule, it shall not, notwithstanding the provisions of this rule, be entitled to refund of such tax.

The selling dealer on demand by the appropriate authority shall furnish the relevant tax invoice, invoice, cash memo or bill and other related documents evidencing such sales. [Rule 26PP]

²⁵(z) Sales of taxable goods in Kolkata SARAS-2009, a national level fair, held at Salt Lake City, Kolkata, from the 18th day of December, 2009 to the 30th day of December, 2009. The selling dealer on demand by the appropriate authority shall furnish the relevant tax invoice or invoice or cash memo or bill. [Rule 26QA]

²⁶(za) Sales of taxable goods in Kolkata SARAS-2010, a national level fair, held at Salt Lake City, Kolkata, from the 9th day of December, 2010 to the 20th day of December, 2010. The selling dealer on demand by the appropriate authority shall furnish the relevant tax invoice or invoice or cash memo or bill. [Rule 26QB]

²⁷(zb) **Deduction from turnover of sales for sale of Superior Grade Kerosene Oil (PDS) to Oil Marketing Companies-** Where sales of

²³ Inserted by Notification No. 2091-F.T. dated 29-12-2006, w.e.f 1-1-2007

²⁴ Inserted by Notification No. 377-F.T. dated 16-3-2012, we.f. 19-3-2012.

²⁵ Inserted by notification No. 251-F.T. dated 15-2-2011, w.e.f. 18-12-2009.

²⁶ Inserted by notification No. 252-F.T., dated 15-2-2011, w.e.f. 9-12-2010.

²⁷ Inserted vide notification No. 13-F.T., dated 05-01-2015, w.e.f. 1-9-2010

Applicability

Superior Grade Kerosene Oil (PDS) are made to each other by the following Oil Marketing Companies as dealers, namely,-

- (a) Indian Oil Corporation Limited,
- (b) Hindusthan Petroleum Corporation Limited,
- (c) Bharat Petroleum Corporation Limited,

such selling dealer may, for the purpose of determining his taxable turnover of sales on which tax is payable, deduct such sales of Superior Grade Kerosene Oil (PDS) under clause (c) of sub-section (1) of section 16, if the purchasing dealer makes purchases of such goods for the purpose of resale by him as Superior Grade Kerosene Oil (PDS).

Provided that the claim for such deduction shall not be allowed unless the selling dealer furnishes, on demand, a declaration in the form appended to this rule, duly filled in and signed by the purchasing dealer or by a person authorised for this purpose.

Provided further that no such claim for deduction shall be allowed, if a single declaration covers sales made during a period exceeding one month. [Rule 26R]

[The prescribed format of the form of declaration is appended in **Annexure 11** to this chapter]

3.4. Incidence of Tax on Purchases

3.4.1 Tax on the Purchase of Raw Jute by ²⁸a Shipper of Jute [Sec 11]

A shipper of jute is liable to pay tax on all his purchases of raw jute in West Bengal. The tax shall be payable on all his purchases of raw jute, after deducting therefrom the following

- (i) Purchases made during the course of inter-State trade or commerce;
- (ii) Purchases of goods in the course of import or export.

3.4.2 Tax on Purchase by Registered Dealers from Unregistered Dealers [Sec 12]

A registered dealer shall be liable to pay Purchase Tax on

- Purchases of goods which are not meant for the purposes specified in

²⁸ Subs by section 12(4)(a) of the W.B. Finance Act, 2006, w.e.f. 1.8.2006, for "as an occupier of a jute mill or a shipper of a jute"

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clause (a) to clause (i), of sub-sec (4) of sec 22 [Raw materials, packing materials, capital goods etc.];

- Purchases ²⁹of goods specified in the negative list where no input tax credit is allowed, except imports;

3.4.3. Deductions in Respect of Purchases from Unregistered Dealers [Sec. 17(2)]: In respect of purchases in West Bengal, the following purchases shall be deducted for calculating the tax payable

- (i) Purchase of tax free goods;
- (ii) Purchases made during the course of inter-State trade or commerce;
- (iii) Purchases from a registered dealer in West Bengal;
- (iv) Purchases from a dealer in west Bengal, who has applied for registration within the due date; [Rule 29A]
- (v) Purchases by a unit in SEZ, which uses such goods in the said unit, from an unregistered dealer. [Rule 29]

3.5. Liability of a Casual Dealer

3.5.1 Definition [Sec. 2(7)]

A casual dealer means-

- a person other than a dealer who, whether as principal, agent or in any other capacity;
- has occasional transactions involving buying, selling, supplying or distributing goods;
- in West Bengal;
- whether for cash or for deferred payment, or for commission, remuneration or any other valuable consideration

and includes the following persons irrespective of whether he has a fixed place of business in West Bengal or not,-

- (i) a transporter, carrier or transport agent who, while carrying any goods in his goods vehicle-
 - fails to disclose the name and address of the consignor or consignee in West Bengal or

²⁹ Subs by sec 12(5) of the W.B Finance Act, 2006, w.e.f. 1.8.2006

Applicability

- fails to furnish a copy of invoice, challan, transport receipt or consignment note or document of like nature in respect of such goods; or
- (ii) an owner or lessee or occupier of a warehouse who
 - fails to disclose the name and address of the owner of any goods stored at his warehouse or
 - fails to satisfy the Commissioner that such goods are for his personal use or consumption;

and such a transporter, carrier or transporting agent, or owner or lessee or occupier shall be deemed to have purchased such goods in his own account.

3.5.2. Tax Liability [Sec. 15]

A casual dealer is liable to pay tax on sales of only those goods which have been procured from outside West Bengal. No tax is levied on the sale of goods purchased in West Bengal.

However, tax is required to be paid on the purchase of such goods in West Bengal, after deducting therefrom the following-

- purchases of tax free goods;
- purchases of goods in the course of inter-State trade or commerce or in the course of import or export;
- purchases from a registered dealer.

Annexure 1

Format of Certificate from Purchaser of Cotton Yarn

FORM OF CERTIFICATE

[See rule 26A(2)]

Serial No. _____ Date

To

.....(Selling dealer)

..... (Address)

..... Registration No.(TIN), if any.

*Certified that the goods purchased from you as specified in the *tax invoice/cash memo Stated below are for the purpose of resale by *me/us of these goods to another dealer of West Bengal for resale by him in West Bengal or for use by him in the manufacture in West Bengal of hosiery goods or textile fabrics and are not intended to be disposed of by *me/us otherwise than by way of such resale in West Bengal.*

<i>Tax invoice/cash memo no. and date</i>	<i>Description of goods</i>	<i>Quantity</i>	<i>Amount</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>

Name and address of the purchasing Dealer

Signature and status of the person

Signing the certificate.

Certificate No. (TIN), if any:

Annexure 2

Format of Certificate from Purchaser of Gold, Silver etc.

FORM OF CERTIFICATE

[See sub-rule (3) of rule 33A]

Serial No. Date

To

.....(bank/ MMTC/ dealer)

..... (Address)

.....(Certificate of Registration No. if any.)

*Certified that the goods purchased from you as specified in the invoice/cash memo Stated below are for the purpose of use in the manufacture of jewellery in West Bengal to be exported by *me/us out of the territory of India and are not intended to be disposed of otherwise by *me/us.*

<i>Invoice/cash memo no. and date</i>	<i>Description of goods</i>	<i>Quantity</i>	<i>Amount</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>

Name and address of the purchasing dealer:

Certificate of Registration No.

Date :

Signature and status of the person signing the certificate

Annexure 3

Format of Certificate from Canteen Stores Department.

FORM OF CERTIFICATE

[See rule 26D]

Serial No.

Date

Certified that the Canteen Stores Department or the regimental or Unit-run canteen sold taxable goods to the member or members of my/our unit in West Bengal/Bhutan the particulars of which are as follows:-

<i>Invoice/cash memo no. and date</i>	<i>Description of goods</i>	<i>Quantity</i>	<i>Amount</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>

Date :

*Signature and status of the person
Signing the certificate*

Annexure 4
Format of Certificate from Purchaser of Lubricants for air crafts.

FORM OF CERTIFICATE

[See rule 26E]

Serial No.

Date

To

.....(Selling dealer)

.....(Address)

.....(Certificate of registration No. under WB VAT Act,2003)

I/We hereby confirm that lubricants purchased from you were filled into receptacles forming part of an aircraft registered in a country other than India operating as a scheduled or non-scheduled international air service to or from India and such country is a party to the Agreement or Convention as referred to in the Foreign Aircraft (Exemption from Taxes and Duties on Fuel and Lubricants) Act, 2002 (36 of 2002). The particulars of the said purchases are as follows:-

1. *Name of the airline company-*
2. *Name of the aircraft and flight No.-*
3. *Registration No of the aircraft –*
4. *Name of the country of registration of the aircraft-*
5. *Seller's bill/invoice/tax invoice No. and date –*
6. *Quantity purchased-*
7. *Value of the goods purchased-*

Date :

*Signature of the authorized person
with seal*

Annexure 5
Format of Certificate from Diplomatic Mission.

FORM OF CERTIFICATE

[See sub-rule (1) of rule 26F]

Serial No.

Date

To

.....(Selling dealer)

.....(Address)

.....(Certificate of registration No. under WB VAT Act,2003)

Certified that the taxable goods purchased from you as specified in the invoice/cash memo Stated below are for use by(Name of the diplomatic mission or office thereof or of the diplomat or person of such mission along with designation, if any)

<i>Invoice/cash memo no. and date</i>	<i>Description of goods</i>	<i>Quantity</i>	<i>Amount</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>

Date :

Signature of the duly authorised person with office seal

Name.....

(in BLOCK Letters)

Address of duly authorized person.....

(in BLOCK Letters)

Annexure 6

Format of Certificate from Purchaser of taxable goods enjoying the benefit of deferment / remission of tax.

FORM OF CERTIFICATE

[See rule 26G]

Serial No.

Date

To

.....(Selling dealer)

.....(Address)

.....(R.C. No. of the selling dealer)

I/We hereby confirm that the taxable goods(name of goods) have been purchased by me/us against tax invoice/invoice/bill/cash memo No... dated.... for Rs..... and that the said taxable goods have been purchased

- a) For use in the manufacture of..... (name of the goods) in my/our unit covered by the certificate of eligibility No..... dated....., or
- b) For export directly or for use in my/our unit for manufacture of goods for export by me/us and that in case the goods are not exported directly or used by me/us in manufacture of goods for export those will be properly accounted for in my/our return and tax paid thereon.

Signature.....

(Proprietor/Partner/Director/Karta/Principal Officer)

Date.....

R.C.No. date

Annexure 7
Format of Certificate from an Agency of the United Nations.

FORM OF CERTIFICATE

[See rule 26H]

Serial No.

Date

To

.....(Selling dealer)

.....(Address)

.....(Registration Certificate. No. under the West Bengal

Value Added Tax Act, 2003)

Certified that the taxable goods purchased from you as specified in invoice/bill/cash memo Stated below, are for official use of this.....(Name of the agency)

<i>Tax Invoice/cash memo no. and date</i>	<i>Description of goods</i>	<i>Quantity</i>	<i>Amount</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>

Date :

*Signature of the duly authorized
person with official seal*

Annexure 8

Form of Certificate from West Bengal Electricity Board and public sector undertaking.

FORM OF CERTIFICATE

[See rule 26]

Serial No.RGGVY/..... Date

To

.....(Selling dealer)

.....(Address)

.....(Registration Certificate. No. under the West Bengal

Value Added Tax Act, 2003)

Certified that the goods specified in cash memo / tax invoice / bill Stated below have been purchased by us from you for use in the construction of rural electrification projects in West Bengal under Rajiv Gandhi Grameen Vidyutikaran Yojana Scheme for Rural Electricity Infrastructure and Household Electrification:

1. Cash memo/tax invoice/invoice/bill No. and date:
2. Description of goods:
3. Quantity of goods:
4. Value of goods:
5. Location of the project:
6. Gross value of the project referred to in item 5 above:

Seal.....

Signature.....

Date.....

Name and designation of
the person signing the certificate

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Annexure 9

Form of Certificate from Border Security Force of India in West Bengal

FORM OF CERTIFICATE

[See rule 26N]

Serial No.....

Date.....

Certified that the Canteen attached to the unit of the Border Security Force of India in West Bengal sold taxable goods to the personnel of my/ our unit in West Bengal the particulars of which are as follows:

Cash memo/bill/ invoice/ tax invoice No. And date	Description of goods	Quantity	Amount
(1)	(2)	(3)	(4)

Signature and status of the officer signing the certificate.

Applicability

Annexure 10

Form of Certificate from the developer of Special Economic Zone

FORM OF CERTIFICATE

[See rule 260]

Serial No.

Date of issue

To

..... (Selling dealer)

..... (Address)

..... (R.C.No., if any)

Certified that the taxable goods purchased from you as per cash memo/ bill/
tax invoice/ invoice Stated below have been used/ are intended to be used in
the development of the Special Economic Zone situated at.....

Bill/ Cash Memo/ Tax invoice/ Invoice No..... date

Amount

Name of the developer

Address

R.C. No., if any

Signature and status of the
officer signing the certificate

Annexure 11

PART A

FORM OF DECLARATION

[Portion to be retained by the issuing dealer]

[See rule 26R]

Serial No.

Date.....

To

..... (Selling dealer)

..... (Address)

Declaration given for the following Purchases of Superior Grade Kerosene Oil (PDS) for the purpose of resale as Superior Grade Kerosene Oil (PDS) during the month.....

(1)	(2)	(3)
Tax Invoice No & date	Quantity	Amount

Name of the purchasing dealer:

Signature and status of the person signing the declaration.

Annexure 11
PART B
FORM OF DECLARATION

[See rule 26R]

Serial No. Date.....

To
..... (Selling dealer)
..... (Address)

Certified that the Superior Grade Kerosene Oil (PDS) purchased from you as per Tax Invoice stated below during the month ending..... are for the purpose of resale by me/us as Superior Grade Kerosene Oil (PDS).

(1)	(2)	(3)
Tax Invoice No & date	Quantity	Amount

Name of the purchasing dealer:

Signature and status of the person signing the declaration.

Chapter 4

Registration

Principles Laid Down In the White Paper

Registration, Small Dealers and Composition Scheme: Registration of dealers with gross annual turnover above ₹ 10 lakhs will be compulsory. There will also be provision for voluntary registration. All existing dealers will be automatically registered under the VAT Act. A new dealer will be allowed 30 days' time from the date of liability to get registered.

Small dealers with gross annual turnover not exceeding ₹ 10 lakhs will not be liable to pay VAT. States will have freedom to fix threshold limit within ₹ 10 lakhs.

Small dealers with annual gross turnover not exceeding ₹ 50 lakhs, who are otherwise liable to pay VAT, shall however have the option for a composition scheme with payment of tax at a small percentage of gross turnover. The dealers opting for this scheme will not be entitled to input tax credit.

Tax Payer's Identification Number (TIN): The Tax Payer's Identification Number will consist of 11 digit numerals throughout the country. First two characters will represent the State Code as used by the Union Ministry of Home Affairs. The set-up of the next nine characters may, however, be different in different States.

Provisions in the West Bengal VAT Law

4.1. Procedure for Registration

4.1.1. Application for Registration [Sec. 23, 24, & Rule 5]

A. Time Limit [Sec. 23(2)]- Every Dealer liable for registration shall be required to make an application within 30 days from the date when he becomes liable to pay tax.

B. Procedure [Rule 5(1)]- Application shall be made in **Form-1** to the appropriate Registering Authority in whose area the principal place of business of the dealer is located, affixing Court Fee stamp of ₹ 100/-.

C. Declarations [Rule 5(3) & 5(4)] - Declaration is to be furnished in

Annexure A - for Individuals, HUFs and Partnership Firms;

Annexure B - for Company, Trusts;

D. Enclosures [Rule 5(3)] – Along with the declaration in Annexure A, a copy of recent passport size photograph of the proprietor, Karta of the HUF, or as the case may be, of each of the partners or directors is to be affixed.

4.1.2. Application for Registration electronically compulsory [Rule 5A]

The application for registration shall be made in Form 1 as available in the website of the Directorate of Commercial Taxes, West Bengal

Firstly, by making such application either under digital signature or without any digital signature electronically through such website; and

Secondly, by sending, by registered post or speed post, the application for registration in paper form, generated from the computer after transmission of the said Form-1 electronically under clause (a), signed and verified as specified therein and accompanied by one copy of the challan referred to in sub-rule (4), or one copy of receipt obtained on payment referred to in sub-rule (5), of Rule 43 evidencing payment of rupees one hundred, to the appropriate registering authority, towards fee for registration, within ten days from the date of making application electronically under clause (a).

4.1.3. Registration of Multi Units of the Dealers in West Bengal

An entity operating within the State of West Bengal requires a single registration in respect of all the units within the State. **Rule 6** provides that the appropriate registering authority shall issue a certificate of registration within ¹[thirty days] from the date of receipt of application for registration, in **Form-3** to the dealer for his principal place of business and also **certified copies** of such certificate for every other place of business. The Act or Rules do not provide for separate registration. **Form-14**, which is prescribed to file the quarterly return, clearly suggests that the information required for filing the return should be computed for the operations of the entity with in the whole State. Only one registration at the principal place of business is required. Quarterly returns also should be furnished at the principal place of business covering all the operations of the entity within the State.

4.1.4. Issue of Certificate of Registration [Rule 6]

A. Registration: The Registering Authority shall-

¹ Subs. by notification No. 1732-FT., dated 18-10-2006, w.e.f. 01-10-2006

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Assign registration number to the dealer;

Issue a *certificate of registration* within ~~twenty-one~~²*[thirty days]* from the date of receipt of such application.

B. **Forms:** The registration certificate shall be given in **Form-3**.

C. **Additional Place of Business:** The registration certificate shall be granted-

for his *principal place of business* and

also *certified copies* of such certificate *for each additional place of business*.

D. **Conditions:** The registration certificate shall be granted subject to the condition that the appropriate registering authority is satisfied that -

the dealer has correctly given all the required information and

that the application in **Form 1** and the Annexures in the declaration in **Annexure A** or **Annexure B**, as the case may be, is in order.

The registration shall be issued after making necessary enquiries as the authority deems fit and proper.

Issue of Registration Certificate Electronically: Where the application for registration is filed electronically, and the concerned authority is satisfied with it, he shall, assign, subject to the conditions, a registration number to the dealer, and issue a certificate of registration either electronically or otherwise, within thirty days from the date of receipt of the application, in paper form, and shall intimate the dealer either electronically or otherwise about the issue of such registration certificate. The dealer shall be eligible to get a printout of the certificate of registration from the website.

4.1.5. Deemed Registration for Earlier Registered Dealers [Sec. 23(3) & Rule 7]

A. **Deemed to be registered:** Any dealer who was

(i) Registered under the erstwhile WBST Act as on 31st March, 2005 and

(ii) Liable to pay tax under this Act as on 1st April, 2005

is deemed to be registered, and will be issued a fresh certificate, which replaces the earlier certificate of registration.

² Subs. by notification No. 1732-FT., dated 18-10-2006, w.e.f. 01-10-2006

B. Information In Case of a Dealer Deemed to be Registered [Sec. 24(1A) & Rule 5(5)]: For a dealer registered or liable to pay tax under the erstwhile WBST Act on 31st March, 2005, who is deemed to be registered under sub-section (3) of section 23, was required to furnish information in **Form-2** accompanied with the declaration in Annexure A or Annexure B as the case may be, the time limit for filing the Form-2 was initially sixty days from the appointed day. This limit was extended to 120 days vide **Notification No1349-F.T., 5th July 2005**. Rule 5(5) did not require Annexure A and Annexure B to be filed along with Form 2, but Rule 7 required such forms to be filed.

C. Issue of Certificate of Registration [Sec. 24(2A)]: After the prescribed authority is satisfied that the information provided by the dealer in **Form-2** is in order, he shall issue a certificate of registration within **90 days** (earlier it was 30 days only, which was extended vide notification no. **1349-FT dated 5.7.2005**) from the date of furnishing such information. The certificate of registration shall be issued to the dealer in the prescribed form which shall be effective from the appointed day.

D. Consequence of Failure to Furnish Form-2 [Proviso to Sec. 24(2A)]: Where a dealer fails to submit such information within the prescribed time without showing any reasonable cause, the following consequences will follow:

- his registration number, if any, allotted, or his certificate of registration granted under clause (f) of section 119, shall be **deemed to have been cancelled** on the expiry of such time;
- the dealer shall, for all purposes of the Act, be **deemed not to have been registered**.

4.1.6. Display of Certificate of Registration [Rule 9]:

³[The certificate of registration issued to a dealer under rule 6 or rule 7 or rule 11 generated electronically under rule 6B, as the case may be, shall be kept and displayed by him at the principal place of business and copies of the same shall be displayed at the additional places of business to which it relates.]

Fine for breach of the provision is up to rupees two hundred for each occasion of such breach.

³ Subs. by notification No. 1171-F.T., dated 01-08-2011 w.e.f. 01-08-2011

4.1.7. Amendment of Registration Certificate [Sec. 27, 27A, 27B, 27C]

A. Occasions for Amendment: A dealer shall inform the prescribed authority within the time allowed, for enabling amendment of the certificate of registration in the following cases:

- (i) Change in the ownership of business;
- (ii) Change in or opening of New Factory, New Branch or New Warehouse of Registered Dealer;
- (iii) Change in a) Name of Business b) Nature of Business including change in constitution/ board of directors;
- (iv) Change in business requiring addition or deletion of certain items specified in the registration certificate;
- (v) Acceptance of digital signature certificate issued under the I T Act;
- (vi) Opening of a new account or closing of an existing account relating to the business;
- (vii) A Registered Dealer
- (viii) selling or otherwise disposing off or transferring his business and the transferee carrying on such business;
- (ix) selling or otherwise transferring any part, division or unit of its business and the transferee carrying on such business;
- (x) discontinuing his business;
- (xi) changing his place of business;
- (xii) discontinuing or changing his warehouse;
- (xiii) effecting any changes in the class or classes of goods in which he carries on his business specified in his certificate of registration;
- (xiv) seeking to include any goods or class of goods in the certificate of registration.

B. Amendment on the Basis of Information: The authority may amend the certificate of registration in accordance with the information furnished under sections 27A, 27B and 27C as discussed above. The certificate may even be amended in accordance with the information received otherwise by the authority.

C. Notice before Amendment: The authority must issue due notice to the dealer before making the above-mentioned amendments. Such amendment(s) may be made with retrospective effect, if required.

4.1.8. Cancellation of Registration Certificate [Sec. 29]

A. Reasons for Cancellation

The registration certificate of a dealer may be cancelled under the following circumstances:

- (i) He has ceased to carry on the business with which he was involved;
- (ii) He has ceased to exist at the place of business;
- (iii) He has ceased to be liable to pay tax under section 10(8), section 11 or section 14(8);
- (iv) He has obtained registration on the basis of false or incorrect documents.
- (v) ⁴[He has issued tax invoice to another dealer without entering into a transaction of sale, whether in full or in part, or has issued tax invoice showing tax for an amount in excess of the amount involved but has not deposited the tax in full, or has issued tax invoice in contravention of the provisions of section 64; or
- (vi) He has defaulted in furnishing the return under section 32 together with the receipted challan showing payment of net tax, ⁵[late fee as referred to in sub-section (2) of section 32] and interest payable, if any, according to such return within the prescribed date or the time as extended by the Commissioner; or
- (vii) He has failed to pay the net tax or interest payable or tax due or interest due;]
- (viii) ⁶[He has received a tax invoice from another dealer without entering into a transaction of purchase.]

B. Procedure

The registration certificate may be cancelled on an application by the dealer or suo moto by the authority if it is satisfied that it needs to be done.

⁴ Inserted by *ibid*, s.12(14), w.e.f. 1-8-2006

⁵ Subs. by section 9(7)(a) of the W.B. Finance Act, 2008, w.r.e.f. for "net tax and interest payable"

⁶ Clause (g) was inserted by W.B.Act VII of 2011, s. 5(7), w.e.f. 1-9-2011

⁷[The cancellation of registration shall be deemed to take effect from the date of validity of the certificate of registration granted under sub-section (2) section 24.

The cancellation of registration under any clause other than that mentioned above shall take effect from the date as specified by the appropriate authority in his order.

Provided that the date of cancellation of the certificate of registration referred to in clause (e) or clause (f) of sub-section 1 of section 29 [Sl. No. (vi) and (vii) in A above] shall not be a date prior to the date on which the order of cancellation is passed.]

C. Option for Cancellation by the Dealer of Tax Free Goods

A dealer not being a manufacturer in West Bengal may apply for the cancellation of his registration certificate provided during the year as well as during the previous year he has dealt exclusively in tax-free goods specified in Schedule A.

4.2. Liability for Registration [Sec. 23]

The following dealers are liable to get themselves registered

- (i) Dealers liable to pay tax on sales (under section 10), other than those dealing in **only** goods specified in Schedule A;
- (ii) Dealers liable to pay tax on purchases of raw jute (under section 11);
- (iii) Dealers liable to pay tax on contractual transfers on the execution of a works contract (under section 14); and
- (iv) Dealers liable to pay tax under section 27C(3) on partial transfer of business.

4.2.1. Bar to Carry on Business without Registration [Sec. 23(1) and 23(2)]: No dealer who is liable to pay tax on sale under section 10, 11, 14⁸[or 27C(3)], as discussed in Chapter 3, shall carry on business as a dealer without being registered.

4.2.2 No Registration for Dealers of Tax Free Goods [Second Proviso to Sec. 23(1)]: As per section 10 any dealer having a 'turnover of sales' of more than taxable quantum of rupees Ten lacs is liable to pay tax, and accordingly

⁷ Substituted by W.B. Act VII of 2011 s. 5(7), w.e.f. 1-9-2011

⁸ Sub. By W.B. Act XVIII of 2006, s. 12(10), w.e.f. 01-8-2006

required by section 23 to get registered. The term 'turnover of sales' also include turnover of tax free goods specified in 'Schedule A'. However, a provision section 23(1) provides that if a dealer deals **only** in tax free goods, i.e. goods specified in 'Schedule A', he can carry on business without getting himself registered irrespective of his quantum of turnover.

4.2.3. Voluntary Registration [Sec. 24(1)(b)]

Even where a dealer is not liable to get registered compulsorily under section 23 above, he may get himself registered voluntarily.

4.2.4. Deemed Registration [Sec. 23]

A dealer already registered under the WBST Act as on 31st March, 2005 is deemed to be registered under this Act and need not make a separate application for registration. However, he is required to furnish information in Form-2 within one hundred and twenty days from the appointed day, i.e. within 29th July 2005. [Refer para 4.1.4.]

4.3. Penalty for Failure to get Registration

Where a dealer liable to get himself compulsorily registered fails to make an application for registration within the period of thirty days without any reasonable cause, the Commissioner may impose on him-

A penalty, not less than ₹ 500/- but not exceeding ₹ 1,000/- for each month of default [Section 23(4)].

4.3.1. Sale after Applying for Registration [Proviso to Sec. 23(1)]: A dealer can engage himself in the business as a dealer after making an application for registration within the prescribed time, without waiting for the actual registration certificate, provided such application has not been rejected.

4.4. Enrolment of Transporter, Carrier or Transporting Agent [Sec. 25 and Rule 17]

Every transporter, carrier or transporting agent ⁹[including those who are already in possession of a certificate of enrolment] operating transport business for transporting any consignment of goods into, or outside, or within, West Bengal shall obtain a certificate of enrolment ¹⁰[or a fresh certificate of enrolment as the case may be].

⁹ Subs by W.B.Act I of 2013, s.3(8), w.e.f. 1-4-2013.

¹⁰ Subs by W.B.Act I of 2013, s.3(8), w.e.f. 1-4-2013.

4.4.1. Application: The application for such enrolment shall be made in **Form-10**.

4.4.2. Time Limit: The application for enrolment by the transporter, carrier or transporting agent shall be made to the appropriate enrolling authority as authorized by the Commissioner-

Firstly, by making such application electronically with or without digital signature through the website of the Directorate of Commercial Taxes, West Bengal; and

Secondly, by sending by registered post or speed post, the application for certificate of enrolment in Form 10 in paper form, generated from the computer after transmission of the same electronically under clause (a), signed and verified as specified therein, and accompanied by a copy of the challan or receipt evidencing payment of rupees one hundred and such other documents as are mentioned in the website, to the appropriate enrolling authority towards fee for enrolment within five days from the date of making application for enrolment in Form 10 electronically under clause (a):

Provided that the Commissioner may allow to make such application manually in Form 10 in paper together with the fee referred above.

4.4.3. Certificate: The certificate of enrolment or a fresh certificate of enrolment shall be granted **within five working days from the receipt of application under sub-rule (1)**.

4.4.4. Additional Places of Business:

The transporter, carrier or transporting agent may obtain additional copies of certificate of enrolment, upon application along with a fee of rupees one hundred for each additional copy, as may be required for display in each of his branch offices or warehouses in West Bengal.

The certificate of enrolment shall be **kept and displayed at** a conspicuous place of his head office and each of his branch offices or warehouses in West Bengal].

Chapter 5

Payment of Tax

5.1. Tax Payable on Turnover of Sales [Sec. 16(2)]

Tax is payable on the turnover of sales of a dealer at the rate of

- (a) **one per centum** of such part of his turnover of sales as represents sales of any goods specified in **Schedule B**;
- (b) ~~four per centum~~¹ [five per centum] of such part of his turnover of sales as represents sales of
 - (i) Such capital goods, as the State Government may, by² notification, specify; and
 - (ii) any goods specified in **Schedule C**;
- (ba) at the rate of ~~twelve decimal five zero~~³ [fourteen decimal five zero] *per centum* of such part of his turnover of sales as represents sales of any goods specified in **Schedule CA**;
- (c) at **such rate as may be fixed** by the State Government ~~under section 19~~⁴ [under sub-section (1) of section 19], on such part of his turnover of sales as represents sales of any goods specified in **Schedule D**.
- ⁵(d) at **such rate as may be fixed** by the State Government under sub-section (2) of section 19, on such sales as represents sales of any goods specified in **Schedule D** in respect of which such rate has been fixed.

5.2. Export Shall Be Zero Rated [Explanation to Sec. 16(2)]

The export of the goods out of the territory of India shall be **zero rated, and**

¹ Subs. by W.B.Act I of 2013, s. 3(4), w.e.f. 1-4-2013

² See Notification No. 1216-F.T., dated 10-06-2005, Appendix VI, serial No. 5.

³ Sub. For "thirteen decimal five zero per centum" by *ibid*, s. 3(4), w.e.f.01-04-2013. Earlier, "thirteen decimal five zero per centum" were substituted for "twelve decimal five zero per centum" by W.B. Act XXXIII of 2010, s. 3(1), w.e.f. 15-11-2010.

⁴ Subs vide W.B Finance Act, 2015 w.e.f 1-4-2015 for 'under section 19'

⁵ Inserted vide W.B Finance Act, 2015 w.e.f 1-4-2015

any tax paid under this Act shall be refunded or adjusted, as the case may be, against the output tax payable, if any, by a dealer.

6[5.3. Tax Payable on Turnover of Purchases [Sec. 17]

(1) The tax payable by a dealer under section 11 and section 12 on his turnover of purchases shall be levied-

(a) at the rate of two *per centum* of such part of the turnover of purchases as represents purchases of raw jute under section 11; or

(b) in the case of a dealer liable to pay tax under section 12, at the rate as applicable to a sale of such goods under sub-section (2) of section 16, on his taxable turnover of purchase.

(2) The expression “taxable turnover of purchases’ as Stated in clause (b) of sub-section (1), shall mean, in the case of a registered dealer, that part of his turnover of purchases, which remains after deducting there from

(a) purchases of goods, sales of which are declared tax-free under section 21,

(b) purchases of goods in the course of inter-State trade or commerce within the meaning of section 3 of the Central Sales Tax Act, 1956, (74 of 1956) or in the course of import of goods into, or export of goods out of the territory of India within the meaning of section 5 of that Act,

(c) purchases of goods made from a registered dealer in West Bengal;

(d) such other purchases as may be prescribed.

(3) The burden of proof shall lie on the dealer who claims any purchase not liable to be taxed under sub-section (1).]

5.4. Tax Payable by a Casual Dealer [Sec. 16A]

Tax payable by a casual dealer under section 15(a) shall be payable on the turnover of sales as determined in para 5.1. above. The rate of tax shall also be as per section 16(2).

5.5. Payment of Tax on Maximum Retail Price [Sec. 16(4)]

Any registered dealer, who imports into or manufactures **such goods** in

⁶Subs. By W.B. Act XVIII of 2006, s.12(7), w.e.f. 01-08-2006

West Bengal **as may be notified** by the State Government, may, at his option, pay, **in lieu of the tax payable by him on sale price** of such goods under this section, ⁷[tax at such rate on the maximum retail price of such goods as may be specified in that notification, and different rates may be fixed for different items of such goods]

5.5.1. Purchase of Goods on which Tax Paid on MRP: (Proviso of Section 16(4)): Where a dealer has purchased any goods–

- (a) from an importer or a manufacturer upon payment of tax on the maximum retail dealer where tax on the maximum retail price of such goods was already paid in West Bengal, he, while making resale of such goods in West Bengal, shall be entitled price; or
- (b) from another registered dealer to recover from the buyer the amount of tax paid by him at the time of purchase of such goods, irrespective of whether he is registered or not.

5.6. Time Limit for Payment of Tax [Rule 40 and 41]

5.6.1. In Case of Quarterly Returns

- **For the first two months in the quarter** – Tax along with interest, if any, payable as per the return filed under rule 34, is to be paid within a period of **21 days from the end of the month**.
- **Balance Tax for the Quarter** as per the return – to be paid ⁸[within the last day of the month following the end of the said quarter]

The tax payable by the dealer shall be computed by him based on the accounts maintained by him.

5.6.2. In Case of Monthly Returns

Tax along with interest, if any, payable according to the return is to be paid before furnishing the return under rule 35, i.e. within **twenty one days** (i.e. time period for payment of monthly liability) from the end of the month.

5.6.3. In the Month of March [Rule 42]

As discussed above, the normal provision is that tax for each month is to be paid within the 21st of the following month (or within one month in case of the last month of the quarter).

⁷ Subs. by W.B. Act XVIII of 2006, s. 12(6), w.e.f. 1-8-2006

⁸ Subs. by Notification No. 652-F.T., dated 22.05.2013, w.e.f. 01-04-2013.

However, a special provision has been made for the month of March. Tax payable on sales/ purchases from 1st March to 25th March is to be paid by 28th of March.

The balance tax for the month of March shall be paid according to the normal provisions i.e. before the end of the following month (i.e. within the month of April). The return shall also be filed according to the normal provisions.

5.7. Challan for Payment of Tax [Rule 43]

The challan shall be filled in quadruplicate and signed by the dealer / or his authorized representative and shall be presented to the Reserve Bank of India / appropriate Government Treasury. One copy of such challan shall be retained by the Treasury and one copy shall be sent to the appropriate assessing authority. The rest of the copies shall be returned to the dealer.

5.8. Electronic Payment [Rule 43]

A person may make payment of net tax or any other tax, interest, penalty, security, late fee or any other fees payable under the Act, and the Rules made there under, electronically through the concerned websites of such banks as are authorized by the Government under item (ii) of sub-clause (a), and sub-clause (b), of clause (3A) of sec 2 to accept deposit for payments having provisions for accepting deposits for payments electronically, or through the web-sites of the Kolkata branch of the Reserve Bank of India.

The Govt. of West Bengal, Finance Department vide notification 1239-FT dated 22.07.2014 made payments of all taxes by the taxpayers electronically only through GRIPS Portal w.e.f. 1st October, 2014. For the offline mode, the challan has to be generated through GRIPS and tax deposited in the concerned bank. Payment of taxes are covered under this directive-

- (i) WB VAT Act, 2003;
- (ii) WB Sales Tax Act, 1994;
- (iii) Central Sales Tax Act, 1956;
- (iv) WB State Tax on Professions, Trades, Callings and Employment Act, 1979;
- (v) WB Tax on the Entry of Goods Into Local Areas Act, 2012; and
- (vi) The Bengal Excise Act, 1909.

Chapter 6

Composition Scheme

Principles Laid Down in the White Paper

Small dealers with annual gross turnover not exceeding ₹ 50 lakh who are otherwise liable to pay VAT, shall however have the option for a composition scheme with payment of tax at a lower percentage of gross turnover. The dealers opting for this scheme will not be entitled to input tax credit.

Provisions in the West Bengal VAT Law

6.1. As per the provisions contained in section 16(3), any small dealer registered under VAT, whose turnover does not exceed ₹ 50,00,000/- (Rupees Fifty Lacs) in the preceding year may, at his option, avail the composition scheme under which he would be allowed to pay tax at a **nominal compounded rate of 0.25%** ¹[or the fixed amount as mentioned in the given table]

Sl. No	Turnover of sales in the preceding year	Amount Payable (₹)
1	Not exceeding rupees thirty lakhs	Seven Thousand
2	Exceeding thirty lakhs but not exceeding fifty lakhs	Twelve thousand

²[A dealer to whom a certificate of composition registration in Form 3CR under sub-rule (1A) of rule 6 has been granted shall pay a fixed amount as shown in the table above]

6.1.1. Entitlement to Composition Scheme [Sec. 16(3)]

Every **registered dealer** having liability to pay tax under the Act is entitled to avail this scheme, except the following:

- (i) An importer; or
- (ii) A manufacturer; or

¹Sub-rule 3A of Rule 38 of The West Bengal Value Added Tax inserted by Notification no. 369-F.T., dated 28-03-2013, w.e.f. 01-04-2013

² Sub-rule 3B of Rule 38 of The West Bengal Value Added Tax inserted by Notification no. 652-F.T., dated 22-05-2013, w.e.f. 22-05-2013

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- (iii) A dealer engaged in the execution of a works contract; or
- (iv) A dealer who transfers goods otherwise than by way of sale within or outside the State; or
- (v) A dealer who sells goods in the course of inter-State trade or commerce; or
- (vi) A dealer who sells goods in the course of import into or export out of the territory of India; or
- (vii) ³[A dealer who has purchased tea sold under the auspices of any tea auction centre in West Bengal duly authorized by the Indian Tea Board.]

The turnover of such a dealer should not have been more than ₹ 50 lacs in the previous financial year.

In the case of an **unregistered dealer** who becomes liable to pay tax during the current financial year or who opts for voluntary registration, he can go in for the composition scheme provided his turnover has not been more than ₹ 50 lacs during the period from the commencement of the year in which he gets himself registered to the date of registration. This means that a new dealer can opt for the scheme if his turnover of sales from the first day of April of the financial year to the date of his registration does not exceed ₹ 50 lacs. [Sec. 16(3)(c) inserted by WBTLA Act, 2005]

6.2. Composition Scheme for Works Contract [Sec. 18(4) and Rule 39]

Any registered dealer who is involved in the execution of a works contract can avail the composition scheme under which he would be allowed to pay tax at a compounded rate of ~~two~~ ⁴**[three] per centum** of the aggregate amount received or receivable in respect of such works contract in lieu of tax payable for a year on his taxable contractual transfer price at the rates specified under sub-section (1) of section 18 in respect of the year.

6.2.1. Entitlement to Composition Scheme

Every registered dealer or every dealer seeking voluntary registration or every dealer not registered but carrying on business transferred to him under section 27C, and involved in the execution of a works contract, can avail this scheme.

³ Inserted by section 6(4)(b)(ii) of the W.B. Taxation Laws (Amendment) Act, 2005, w.e.f 01.04.2005

⁴ Subs. by Notification No. 369-F.T., dated 28-03-2013 w.e.f. 01-4-2010

6.2.2. Restrictions [Rule 39]

A dealer engaged in the following activities will not be eligible to avail the composition scheme:

- (i) Making sale as Stated in section 2(g)(ii) of the CST Act;
- (ii) Making sale in the course of import of goods into or export of goods out of the territory of India;
- (iii) Transferring goods outside the State otherwise than by way of sale for execution of a works contract.

The dealer should not have any stock of goods which were brought from outside the State on the day he exercises his option to pay tax by way of composition and shall not use any goods brought from outside the State after such date, ⁵[excepting where such dealer transfers property in sand, and stone chips, brought from outside the State, in execution of works contract within West Bengal and whose contractual transfer price during the year shall not exceed rupees twenty lakhs]. The dealer should not claim input tax credit on stock in hand of goods, as on the date on which he opts for the composition scheme.

6.3. Exercising of Option

It is optional for the dealer to opt for the composition scheme. A dealer who intends to avail this scheme shall **exercise the option** in writing for a year or a part of the year in which he gets himself registered. For this the dealer has to intimate to the Commissioner.

6.3.1. If a dealer avails the scheme, then he need not maintain any statutory records prescribed under the Act. Only normal records for purchase, sales and inventory have to be maintained.

6.3.2. In case he does not avail the scheme, he has to maintain the prescribed statutory records as per the Act.

6.4. Conditions for Availing the Composition Scheme [Rule 38 and 39]

The conditions for availing the composition scheme are:

⁵ Subs. at first by notification No. 1507-F.T., dated 12-7-2010, w.e.f. 1-4-2010. Thereafter substituted as above for "pay tax by way of composition" by notification No. 1539-F.T., dated 17-10-2011, w.e.f. 1-9-2011 as corrected by corrigendum No. 1837-F.T., dated 15-12-2011.

(i) Option for One Year or Part of A Year

A registered dealer shall be eligible to exercise his option to pay tax under the composition scheme for a maximum period of one year. In the case of a new dealer, option can be exercised for part of the year in which he gets himself registered.

Such a dealer can exercise such option again during subsequent years, subject to the terms and conditions laid down in the rules already discussed.

(ii) Intimation

⁶[A dealer ⁷[including a dealer who has been granted certificate of composition registration] intending to opt for the composition scheme has to intimate his option in **Form-16**, either under digital signature or without any digital signature electronically through the website of the Commercial Tax Directorate to the appropriate Additional Commissioner or the Senior Joint Commissioner or the Joint Commissioner duly authorized by the Commissioner. The time limit to intimate the appropriate authority has been increased from 60 days to 90 days from the beginning of the year in respect of which option is exercised. Secondly, a dealer has to furnish a duly signed copy of electronic acknowledgement within fifteen days from the date of electronic submission. If the appropriate authority is of the opinion that the dealer is not eligible to pay tax at the compounded rate then he shall pass the order and inform the dealer accordingly within 15 days from the date of such order.]

(iii) Registration

The purchasing dealer may or may not be registered but the seller should be registered and should also have a certificate of registration.

(iv) Local Purchase

Taxable goods purchased from within West Bengal for sale/ resale in that State only is eligible for the composition scheme. In the case of a works contract, goods should only be purchased locally for use in the execution of a works contract.

As on the date from which he exercises this option, the dealer should not have any stock of goods purchased from outside the State. The dealer under this

⁶Sub-rule (4) of Section 38 Substituted By Notification No. 1171-F.T., dated 1-8-2011, w.e.f. 1-4-2010

⁷ Inserted by Notification no. 369-F.T., dated 28-03-2013, w.e.f. 01-04-2013

Composition Scheme

scheme should not have claimed any transitional credit of stock in hand of goods on the date of commencement of the Act.

(v) No Inter-State Sale

The dealer should not be engaged in the sale of goods in the course of inter-State trade or commerce, or in their export out of the territory of India.

Similarly, in the case of execution of a works contract, the transfer of property in goods should not take place in the course of inter-State trade or commerce.

(vi) Issue of Tax Invoice

The selling dealer shall not be allowed to issue a tax invoice. Hence the purchaser or buyer shall not be allowed to avail any input tax credit on purchases made from a dealer under this scheme.

(vii) No Input Tax Credit

The selling dealer shall not get any tax credit for the input tax paid. Hence he has to bear the burden of tax paid on the purchases, which will thus add to his cost and impact his profits. The dealer may however collect output tax from the buyers by adding the same to his sales price.

6.5. VAT Chain under Composition Scheme

Loss to the seller

If the composition scheme is availed by a dealer then he cannot avail tax credit in respect of input tax paid. So he will lose input tax credit on purchases made by him, which will add to the cost of his goods.

Loss to the purchaser

The purchaser shall not get any tax credit for the purchases made by him from the dealer operating under the composition scheme.

Therefore, as soon as a dealer opts for the composition scheme, the VAT chain is broken, and the benefit of tax paid earlier by him will not pass on to subsequent buyers.

6.6. Rate and Payment of Tax [Rule 38(3) and 39(3)]

The amount of tax payable by a dealer during the relevant quarter is to be paid at the rate of one-fourth of one per centum (0.25%) on the turnover of sales in the State, including the sale of goods exempted under section 21 and covered by

Schedule A. ⁸[for the fixed amount as mentioned in the given table]

Sl. No	Turnover of sales in the preceding year	Amount Payable (₹)
1	Not exceeding rupees thirty lakh	Seven thousand
2	Exceeding thirty lakhs but not exceeding rupees fifty lakhs	Twelve thousand

⁹[A dealer to whom a certificate of composition registration in Form 3CR under sub-rule (1A) of rule 6 has been granted shall pay a fixed amount as per the amount shown in the table]

Works Contract: The dealer under this scheme shall pay tax at the compounded rate of ~~two per centum (2%)~~ ¹⁰three per centum (3%) of the aggregate amount received or receivable in respect of such works contract.

Frequency of Payments: The tax should be paid monthly within 21 days or within 30 days from the end of the month as the case may be, as discussed in chapter 5.

Deposit of Tax: The amount of net tax and interest or any other tax should be deposited in the appropriate Government Treasury.

6.7. Computation of net tax to be paid

Net tax shall be computed in the following manner:

Net tax = 0.25% of the **turnover of sales** in West Bengal, in case of a dealer other than the one involved in the execution of a works contract. [Rule 38(3)]

Turnover of Sales [Sec. 2(55)]: Turnover of sales has been defined to mean aggregate of the sale prices received or receivable in respect of sale of goods made, after deducting there from the sale price of goods taxed at MRP and the amounts refunded in respect of the goods returned or rejected by the purchasers. Therefore, under this scheme, the turnover of tax-free goods as given in Schedule A will also be taxed.

In case of a Works Contract-

Net tax = ~~2%~~ 3% of the aggregate amount received or receivable in respect of such a contract.

⁸Sub-rule 3A of Rule 38 of The West Bengal Value Added Tax inserted by Notification no. 369-F.T., dated 28-03-2013, w.e.f. 01-04-2013

⁹ Sub-rule 3B of Rule 38 of The West Bengal Value Added Tax inserted by Notification no. 652-F.T., dated 22-05-2013, w.e.f. 22-05-2013

¹⁰ Sub. by notification no. 369-F.T., dated 28-03-2013, w.e.f. 01-04-2013

Composition Scheme

There is no bar in the law on charging the tax paid from the purchaser. Therefore, the tax may be charged separately in the bill or it may be included in the bill amount or sale price. However, a Tax Invoice cannot be issued by any dealer under the composition scheme.

6.8. Withdrawal of the Composition Scheme [Rule 38]

6.8.1. Turnover Exceeding the Limit: (Applicable to dealers other than those for works contract)

At any time during a financial year if the turnover of a dealer's sales exceeds ₹ 50 lacs, the composition scheme shall be withdrawn from him. However, this provision is not applicable to a dealer involved in the execution of a works contract.

The dealer has to inform the Assessing Officer within **7 (Seven) days** from the day when his turnover exceeds rupees fifty (50) lacs.

The dealer will be allowed to enjoy the composition scheme for that month, but for the rest of the year he has to pay tax as per sub-section 2 of section 16 or sub-section (1) of section 18 of the Act, as the case may be, that is, at the normal applicable rate.

6.8.2. Non-Payment of Tax [Rule 38(11) and 39(8)]:

If a dealer who has been permitted to pay tax at a compounded rate fails to make payment of such tax for any two quarters of the year, then the option to pay tax at such compounded rate shall be **deemed** to have been withdrawn.

Chapter 7

Rates of Tax

Principles Laid Down in the White Paper

VAT Rates and Classification of Commodities: Under the VAT system, which covers about 550 goods, there will be two basic VAT rates of 4% and 12.5%, plus a specific category of tax-exempted goods and a special VAT rate of 1% for gold and silver ornaments etc. This way the multiplicity of rates in the existing structure will be done away with under the VAT system.

Under the exempted category, there will be about 46 commodities of natural and unprocessed products in the unorganized sector, items which are legally barred from taxation and items which have social implications. Included in this category is a set of 10 commodities flexibly chosen by individual States from a list of goods (finalized by the Empowered Committee) which are of local importance and specific to individual States without having any inter-State implications. The rest of the commodities in the list will be common to all the States.

Under 4% VAT rate category will be the largest number of goods (about 270), common to all the States, comprising items of basic necessities, such as medicines and drugs, agricultural and industrial inputs, capital goods and declared goods. The schedule of commodities will be attached to the VAT Bill of every State. The remaining commodities, common to all the States, will fall under the general VAT rate of 12.5%.

Because of organizational difficulties, the VAT on AED items relating to sugar, textiles and tobacco will not be imposed during the first year of the introduction of VAT, and the existing arrangement will continue. The position will be reviewed after one year.

Provisions in the West Bengal VAT Law

7.1. Turnover of Sales

Two basic rates have been provided for under the VAT Act, 4% ¹[5%] for agricultural products, industrial inputs and packing materials and capital

¹ Subs. by W.B.Act I of 2013, s. 3(4), w.e.f. 1-4-2013

Rates of Tax

goods, which are specified in **Schedule C**, and ~~12.5%~~²[14.5%] for all other products specified in **Schedule CA**. There is one exceptional rate of 1% on the goods specified in **Schedule B**. Sales tax under the West Bengal Sales Tax Act, 1994 will continue at the rate of 20% on country liquor and 50% on foreign liquor, whether made in India or not. The goods in **Schedule A** are tax-free goods, and no tax is payable on their sale. This is however subject to the conditions and exceptions provided in that schedule. [Section 16(2)]

7.2. Turnover of Purchases

In respect of goods purchased by a registered dealer from an unregistered dealer liable for purchase tax, tax is payable by the purchasing dealer at the same rate as is given in the schedules. [Sec. 17]

7.3. The rates prescribed in different schedules are summarized in the table below -

			Rate (%)
Turnover of Sales	:	Schedule A goods	: Exempted
		Schedule AA	: Zero Rated
		Schedule B goods	: 1%
		Schedule C goods	: 4% 5%
		Schedule CA goods	: 12.5% 14.5%
Turnover of Purchases	:	Raw Jute	: 2%
		Schedule A goods	: Exempted
		Schedule B goods	: 1%
		Schedule C goods	: 4% 5%
		Schedule CA goods	: 12.5% 14.5%
Contractual Transfer Price in execution of Works Contract	:	Declared Goods	: 4% 5%
		Printing Materials	: 4% 5%
		Other Goods	: 12.5% ³ [14.5%]

² Sub. For "thirteen decimal five zero per centum" by *ibid*, s. 3(4), w.e.f.01-04-2013. Earlier, "thirteen decimal five zero per centum" were substituted for "twelve decimal five zero per centum" by W.B. Act XXXIII of 2010, s. 3(1), w.e.f. 15-11-2010

³ Sub. For "thirteen decimal five zero per centum" by W.B. Act I of 2013, s. 3(5), w.e.f.01-04-2013.

7.4. Casual Dealer

A casual dealer is also liable to pay tax at the rates given above.

7.5. Rate of Tax for Packing Materials Used

When taxable goods are sold together with containers or packing materials, then the rate of tax applicable to such containers or packing materials shall be the same as is applicable to the goods contained, or packed, and their sale price, whether shown separately or not, and shall be included in the sale price of the goods.[Sec. 16(2A)]

Similarly, where goods, which are exempt from tax, are packed in any container or in any packing material for sale, then the sale of such container or packing material shall also be exempt from tax. [Sec. 16(2B)]

7.6. Composition Scheme

A registered dealer having a gross sales in the preceding year of not more than fifty lac rupees may opt for a composition scheme for the payment of tax. Under this scheme, the dealer is required to pay tax at a nominal rate of 1% of the total turnover of sales ⁴[or the fixed amount as mentioned in the given table] for each tax period of the year in lieu of tax payable under sub-section (2) of section 16. A detailed discussion on the scheme has already been provided in Chapter 6. [Sec. 16(3)]

Sl. No	Turnover of sales in the preceding year	Amount Payable (₹)
1	Not exceeding rupees thirty lakh	Seven thousand
2	Exceeding thirty lakh but not exceeding rupees fifty lakh	Twelve thousand

7.7. Tax on MRP

Any registered dealer who imports into or manufactures **such goods** in West Bengal **as may be notified** by the State Government, may, **at his option**, pay, in lieu of the tax payable by him on the sale price of such goods under

Earlier, "thirteen decimal five zero per centum" were substituted for "twelve decimal five zero per centum" by W.B. Act XXXIII of 2010, s. 3(1), w.e.f. 15-11-2010

⁴Sub-rule 3A of Rule 38 of The West Bengal Value Added Tax inserted by Notification no. 369-F.T., dated 28-03-2013, w.e.f. 01-04-2013

Rates of Tax

this section, ⁵[tax at such rate on the maximum retail price of such goods as may be specified in that notification, and different rates may be fixed for different items of such goods] [Sec. 16(4)]

⁵ Subs. by W.B. Act XVIII of 2006, s. 12(6), w.e.f. 1-8-2006

Chapter 8

Input Tax Credit

Principles Laid Down in the White Paper

The Concept of VAT and Set-off / Input Tax Credit: The essence of VAT is in providing set-off for the tax paid earlier, and this is given effect through the concept of input tax credit/rebate. This input tax credit in relation to any period means setting off the amount of input tax by a registered dealer against the amount of his output tax. The Value Added Tax (VAT) is based on the value addition to goods, and the related VAT liability of the dealer is calculated by deducting input tax credit from tax collected on sales during the payment period (say, a month).

If, for example, input worth ₹ 1,00,000/- is purchased and sales are worth ₹ 2,00,000/- in a month, and input tax rate and output tax rate are 4% and 10% respectively, then input tax credit/set-off and calculation of VAT will be as shown below:

(a)	Input purchased within the month :	₹ 1,00,000/-
(b)	Output sold in the month :	₹ 2,00,000/-
(c)	Input tax paid :	₹ 4,000/-
(d)	Output tax payable :	₹ 20,000/-
(e)	VAT payable during the month : after set-off/input tax credit [(d) – (c)]	₹ 16,000/-

Coverage of Set-Off / Input Tax Credit: This input tax credit will be given for both manufacturers and traders for purchase of inputs / supplies meant for both sale within the State as well as to other States, irrespective of when these will be utilized / sold. This reduces immediate tax liability.

Even for stock transfer / consignment sale of goods out of the State, input tax paid in excess of 4% will be eligible for tax credit.

Carrying Over of Tax Credit: If the tax credit exceeds the tax payable on sales in a month, the excess credit will be carried over to the end of the next financial year. If there is any excess unadjusted input tax credit at the end of second year, then the same will be eligible for refund.

Input Tax Credit

Input tax credit on capital goods will also be available for traders and manufacturers. Tax credit on capital goods may be adjusted over a maximum of 36 equal monthly instalments.

The States may at their option reduce the number of instalments.

There will be a negative list for capital goods (on the basis of principles already decided by the Empowered Committee) not eligible for input tax credit.

Inputs Procured from Other States: Tax paid on inputs procured from other States through inter-State sale and stock transfer will not be eligible for credit.

However, a decision has been taken for duly phasing out inter-State sales tax or Central sales tax. As a preparation for that, a comprehensive inter-State tax information exchange system is also being set up.

Treatment of Opening Stock: All tax-paid goods purchased on or after April 1, 2004 and still in stock as on April 1, 2005 will be eligible to receive input tax credit, subject to the submission of requisite documents.

Resellers holding tax-paid goods on April 1, 2005 will also be eligible. VAT will be levied on the goods sold on and after April 1, 2005 and input tax credit will be given for the sales tax already paid in the previous year. Input tax credit shall be allowed from the first day of the month following the month in which the stock Statement referred to in sub-rule (4) is submitted by the registered dealer while previously it was six equal monthly instalments from the first day of the quarter following the expiry of the preceding quarter commencing on the appointed day. Now, instead of six instalments, the credit will be allowed in a single instalment vide **Notification No. 1349-F.T.**, dated **5th July, 2005**.

Provisions in the West Bengal VAT Law

Provisions have been made in the Act for allowing credit or rebate of the input tax paid by a registered dealer on any taxable goods used in connection with his business, for being set-off against the output tax payable by him on his turnover of sales. The allowance of input tax credit and the setting off is allowed on a **monthly basis**. This is of course subject to certain conditions and restrictions, which are discussed in the paragraphs that follow.

“**Input Tax Credit**” or “**Input Tax Rebate**” in relation to any period has been defined in **sec. 2(19)** to mean the setting off of the amount of **input tax**, or part thereof, by a registered dealer against the amount of his **output tax**.

“**Input Tax**” [**Sec. 2(18)**] has been defined as follows

“Input tax”, in relation to a tax period on or after coming into force of this Act, means the **amount of tax paid** or payable under the Act, other than section 11, **by a registered dealer**, other than those enjoying composition under ~~sub-section (3)~~¹any of the sub-sections of section 16 or sub-section (4) of section 18, **to a registered dealer**, or a dealer who has made an application under sub-section (1) of section 24 within thirty days from the date of incurring liability to pay tax under the Act, **at the time of purchasing taxable goods, other than** such taxable goods as may be **prescribed during that period**.

2[8.1. Entitlement of Input Tax Credit [Sec. 22]

Every registered dealer is entitled to the credit of input tax paid in a month on taxable goods required in connection with his business.

However, a shipper of jute is not entitled to the input tax credit.

8.2. Amount of Credit [Sec. 22]

Credit allowed shall be the **amount of tax paid or payable** by the registered dealer **at the time of purchasing taxable goods, other than** such taxable goods as may be **prescribed during the** relevant month.

8.3. Conditions for Availing Credit

The conditions for availing input tax credit are:

¹Subs. For “enjoying composition under sub-section (3), sub-section (3A), sub-section (3B) or sub-section (6) of Section 16” by W.B.Act I of 2013, s. 3(1), w.e.f 1-4-2013.

Earlier, “enjoying composition under sub-section (3)” was subs. with “enjoying composition under sub-section (3), sub-section (3A), sub-section (3B) ^{**}[or sub-section (6)] of Section 16” by W.B. Act XVIII of 2006, s 12(1), w.e.f. 01-08-2006

^{**} Sub-section(6) inserted by W.B. Act XVI of 2010, s.5(1), w.e.f.01-04-2010

² Sub-clauses (b) and (c) were omitted by ibid, s. 12(1), w.e.f. 01-08-2006

8.3.1. Purchaser Must be Registered [Sec. 22(1)]

The purchasing dealer who wants to claim input tax credit should be registered. Further, he should not have exercised the option to pay tax under the composition scheme ³[under any of the sub-sections of section 16] or section 18(4) as the case may be.

8.3.2. Seller Must be Registered [Sec. 22(12) and 22(14)]

The seller from whom taxable goods are purchased should be registered and have a certificate of registration, so that he can issue a tax invoice on the basis of which input tax credit can be availed. He should not also be paying tax under the composition scheme as provided for under any of the sub-sections of section 16 or section 18(4), as the case may be. Further, the seller even if has applied for registration within the prescribed time limit of 30 days, should be allowed input tax credit.

8.3.3. Taxable Goods [Sec. 22(4)]

Purchase should be of '**taxable goods**' only. That is, purchase of the tax free goods specified in Schedule 'A' are not eligible for credit. Input tax credit is available only in respect of purchase of 'taxable goods' and not of tax free goods. However, taxable goods covered in the negative list as discussed in para 8.3.5 are not eligible for input tax credit.

8.3.4. Invoice/ Tax Invoice in Original [Sec. 22(5)]

Original Tax Invoice in case of purchase from a registered dealer, evidencing the amount of tax is the document on the basis of which ITC can be availed. However, the selling dealer even if he is not registered, but has applied for registration, can issue tax invoice, which can be the basis for availing credit, as discussed in para 8.3.2 above.

Loss of Original Tax Invoice: In case of loss of original tax invoice, an application should be made to the Commissioner. On the basis of an order issued by the Commissioner under sub-section (5) of section 22, input tax credit can be availed.

³Subs. For "enjoying composition under sub-section (3), sub-section (3A), sub-section (3B) or sub-section (6) of Section 16" by W.B.Act I of 2013, s. 3(5), w.e.f 1-4-2013.

Earlier, "enjoying composition under sub-section (3)" was subs. with "enjoying composition under sub-section (3), sub-section (3A), sub-section (3B) **[or sub-section (6)] of Section 16" by W.B. Act XVIII of 2006, s 12(9), w.e.f. 01-08-2006

** Sub-section(6) inserted by W.B. Act XVI of 2010, s.5(4), w.e.f.01-04-2010

8.3.5. Negative List [Sec. 22(4)]

Purchase of items which are specified in the '**negative list**' appended to section 22 of the Act will not be eligible for input tax credit even if they come in the category of taxable goods.

8.3.6. Purchase in West Bengal [Sec. 22(4)]

Purchase should be made from within the State of West Bengal. Tax paid on goods purchased from outside West Bengal is not eligible for input tax credit.

8.3.7. Use of Purchased Goods [Sec. 22(4)]

For the purpose of claiming input tax credit, taxable goods should be purchased for any one of the following purposes:

- a) sale/resale within the State of West Bengal;
- b) sale to other parts of India in the course of inter-State trade or commerce;
- c) use as
Containers or packing materials; or
Raw materials;
required for the purpose of manufacture of taxable goods or in the packing of such manufactured goods as are intended for sale in the State or in the course of inter-State trade or commerce;
- ca) [use as containers or materials for packing of goods intended for sale in the course of export out of India, as per section 5 of the Central Sales Tax Act, 1956;]
- d) use in the execution of a works contract;
- e) use as capital goods required for the purpose of manufacture or resale of taxable goods or for the execution of a works contract, as the case may be, and capitalized in the books of account;
- f) use as
 - raw materials;
 - capital goods; and
 - packing materials/containers

for manufacturing/packing goods to be sold in the course of export out of the territory of India.

g) making zero-rated sales other than those referred to in clause (f) above.

If purchases are made partially for the above purposes, input tax credit shall be allowed to the extent that they are used for the above purposes.

⁴[Input tax credit or Input tax rebate in respect of capital goods shall be allowed irrespective of whether purchase of such capital goods as components, spare parts and accessories of plant and machinery are capitalized in the books of account of a manufacturer or not.]

8.3.8. Goods Used in the Manufacture of Capital Goods [Rule 19(4)]

Where the taxable goods purchased are used in or in relation to manufacture of capital goods required for manufacture of final products, such goods are eligible for credit.

8.3.9. Common Goods Used for Taxable Goods and Tax-free Goods [Proviso to Sec. 22(4)]

Section 22(4) as discussed in para 8.3.7 says that purchased things should be used for manufacture of taxable goods. Taxable goods has been defined u/s. 2(47) to mean goods other than those specified in Schedule A (i.e. tax-free goods).

Where the purchased goods are used partially for the purpose specified above, input tax credit shall be allowed proportionate to the extent they are used for the purpose specified above.

⁵[Provided also that where a registered dealer purchases any duty credit scrip from another registered dealer and utilizes the same for import of goods to be used for the purpose of manufacturing of taxable goods within the State, input tax credit on the same shall be available to him under clause (d) or clause (h) or both]

⁶8.3.10 Conditions for availing input tax credit by the purchasing dealer [22(4A)]

The input tax credit or input tax rebate in respect of a transaction involving taxable goods shall be available to the purchasing dealer-

⁴ Second proviso to Section 22(4) was inserted by W.B.Act II of 2010, s. 6(4), w.e.f. 1-4-2010.

⁵ Inserted vide W.B. Finance Act, 2015 w.e.f 1-4-2015

⁶ Inserted vide W.B Finance Act, 2015 w.e.f 1-4-2015

- (a) if the amount of tax is actually paid by the selling dealer in respect of such transaction by way of deposit into appropriate government treasury or by way of including such tax in the total amount of output tax shown in the relevant return submitted under section 32 by the selling dealer, and upon payment of the net tax payable as per the return; and
- (b) the amount of input tax credit or input tax rebate shall not exceed the amount of tax so paid by the selling dealer in respect of such transaction.";

8.3.11. Payment Exceeding ₹ 20,000/- by Cheque [Rule 19(8)]

A registered dealer who intends to claim input tax credit or input tax rebate shall make payment by account payee cheque or account payee draft ⁷[or through electronic banking clearance], to the seller, where such payment exceeds rupees twenty thousand in a day.

This provision, however, shall not apply to registered dealers who can prove that banking facility is not available at their place.

8.4. Transfer of Credit in Case of Transfer of Business [Sec. 22(15)]

In case of transfer of a business absolutely by a dealer as per the provisions of section 27B of the Act, the input tax credit accumulated shall be allowed to the transferee. The transfer of credit shall be allowed subject to the condition that the transferee shall continue the business, either in the old name or in a new name.

Similarly, in case of partial transfer of a business (a part or division or unit), where the transferee, lessee, or licensee incurs liability to pay tax under section 27C, such transferee, lessee, or licensee shall be entitled to input tax credit or input tax rebate, lying unutilized in the account of transferor, lessor, or licensor, as the case may be. Such transfer of ITC shall be subject to the following:

- The transferee, lessee or licensee is registered under section 24;
- The Commissioner should be satisfied that such input tax credit has not earlier been availed by such transferor, lessor, or licensor; and
- Reversal of credit, if any, arising out of such transfer is already adjusted.

⁷ Subs. by notification No. 1539-F.T., dated 17-10-2011, w.e.f. 01-09-2011

8.5. Carry Forward of Surplus Input Tax Credit [Sec. 22(6)]

The excess of input tax credit for a year over the output tax for the year will be carried forward to the next year.

8.6. Books of Account [Sec 22(11)]

~~⁸[The purchasing dealers shall maintain such registers, books of account and other accounts as referred to in section 63, as prescribed.~~

~~⁹ Provided that notwithstanding anything contained anywhere in the Act, input tax credit or input tax rebate shall be allowed to a registered dealer whose turnover of sale or contractual transfer price in a year does not exceed rupees two crore where such registered dealer claims input tax credit or input tax rebate on the strength of documents referred to in sub-section (5) notwithstanding that such registered dealer has not maintained such registers and accounts, as are required to be maintained as per the provisions of sub-section (1) of section 63.]~~

The dealer shall maintain a true and up-to-date account of his **input tax, input tax credit** and **output tax**. [Sec. 63]

For the purpose of determining input tax credit, the registered dealer shall maintain-

1. Accounts
2. Evidence and
3. All other relevant records.

Such records shall be maintained in respect of **purchase** and **sale** made in **West Bengal** and in the course of **inter-State trade and commerce**. A detailed discussion on this is in **chapter 13**.

8.7. Cases Where Input Tax Credit is Not Available [Sec 22(12) and Rule 20]

No input tax credit shall be allowed for the following purchases:

⁸ Sub-section (11) was omitted by W.B. Act I of 2013, w.e.f. 01-04-2013

⁹ Proviso was inserted by W.B. Act II of 2010, s.6(4)(b), w.e.f. 01-04-2005 retrospectively.

8.7.1. Purchases Under Composition Scheme

Purchases made from registered dealers who opted for the composition scheme and paid taxes at the composition rate of 0.25% or at the fixed amount.

8.7.2. Purchases at Composition Rate in the Works Contract

Purchases made from a dealer on account of works contract where such seller opted for payment of tax at the composition rate of 2% ¹⁰[3%] under the composition scheme.

8.7.3. Dealers Availing Composition Scheme

Any dealer who avails composition scheme, or the one who pays tax on contractual transfer in case of works contract under the composition scheme, shall not be allowed any input tax credit on -

Purchases: Goods purchased by a dealer working under the composition scheme for payment of tax at 0.25% or at the fixed amount as the case maybe or who opts for payment of tax at the composition rate of 3% in the case of works contract.

¹¹**[Closing Stock:** No input tax credit will be available on the stock of goods held by such a dealer or on the amount standing as unutilized credit on the date from which he opted out of the composition scheme. {Rule 20 (ha) and Rule (hb)}]

8.7.4. Inter-State Trade or Commerce

Purchases made from a dealer outside West Bengal, that is, purchases made in the course of inter-State trade or commerce.

8.7.5. Import

Purchases made in the course of import from outside the country.

8.7.6. Stock Transfer [Sec. 22(7)]

Purchases of taxable goods which are sent as stock transfer outside West Bengal or used as ¹²[raw materials] in **manufacture/packing** of goods which are sent as stock transfer outside the State of West Bengal shall be eligible for input tax credit of tax paid over and above ~~four~~ ¹³[three] per centum.

¹⁰ Subs. by Notification No. 369-F.T., dated 28-03-2013 w.e.f. 01-4-2010.

¹¹ Clauses (ha) and (hb) were inserted by *ibid*, w.e.f.1-8-2006

¹² Subs. for 'raw materials, consumable stores' by W.B.Act I of 2008, s. 9(4), w.e.f. 01-04-2008

¹³ Subs. by *ibid*, s.9(4), w.e.f 01-04-2008

8.7.7. Manufacture of Tax Free Goods [Rule 20(1)(i)]

Purchases of goods which are used in manufacture or packing of tax free goods specified in Schedule 'A'.

Exception: Where the tax free goods manufactured are exported, the input tax credit of tax paid on goods used for manufacture or packing of such export goods would be allowed.

8.7.8. Closure Of Business [Rule 20(1)(h)]

Purchase of goods which remain unsold as stock of goods at the time of closure of business of a dealer.

8.7.9. Goods Lost or Destroyed [Rule 20(1)(d)]

No input tax credit shall be allowed in respect of goods which are-

Lost, destroyed or damaged beyond repair, because of:

- . Any theft;
- . Fire; or
- . Natural calamity,

and cannot eventually be sold.

Reversal: Where input tax credit on such purchase has already been taken, proportionate credit will be reversed at the end of the month in which such goods are lost, destroyed or stolen.

8.7.10. Returnable Containers/Packing Materials [Rule 20(8)]:

Input tax credit is allowed on purchase of containers or materials for packing of goods, supplied with such goods at the time of sale and are returnable to the seller. Initially input tax credit was not allowed on the purchase of such returnable containers and packing materials. This is however subject to the condition that such containers or materials are treated as **capital goods** under clause (6) of section 2.

8.7.11. Original Tax Invoice Missing [Rule 20(1)(c)]:

Purchase of goods in respect of which original tax invoice is either not issued by the seller to the purchasing dealer, or is not available with the purchasing dealer.

8.7.12. Incomplete Tax Invoice [Rule 20(1)(a)]:

Purchase of goods where the tax invoice does not specify the 'details of tax charged' separately.

8.7.13. Items in the Negative List [Sec. 22]:

Purchase of the following goods, as specified in the 'Negative List' appended to sec 22-

1. Air-conditioning units, air coolers, fans and air circulators;
2. All automobiles including commercial vehicles and two and three wheelers and spare parts for repair and maintenance thereof ;
3. Crude oil;
4. Food, beverages and tobacco products;
5. Building materials, namely, bricks, sand, cement, stone-chips, iron and steel as referred to in section 14 of the Central Sales Tax Act, 1956, marble, tiles, doors, windows, sanitary fittings, bathroom fittings, drain pipes and all other materials used in construction, reconstruction or repair of a civil structure or part thereof;
6. Office equipment;
7. Furniture, fixtures including electrical fixtures and fittings;
8. Taxable goods which are used as capital goods and raw materials required in the manufacture of goods specified in Schedule A or used in the packing of goods so manufactured and not sold in the course of export;
9. Goods purchased and accounted for in business but utilized for the purpose of providing facility to the employees, including residential accommodation;
10. Goods used for personal consumption or received as gifts;
11. Taxable goods purchased for use in business other than that as defined in sub-clause (a) of clause (5) of section 2;
12. ¹⁴[Coal ¹⁵{**other than coal used as raw material in the manufacture of goods**}, furnace oil, or any other fuel, used for any purpose;]
13. ¹⁶[Generators and parts and accessories thereof used for captive generation;]

¹⁴ Inserted by W.B.Act XVIII of 2006, s.12(9), w.e.f 1-8-2006

¹⁵ Sub. By W.B.Act II of 2010, s.6(4), w.e.f. 1-4-2010

¹⁶ Inserted by W.B.Act XVIII of 2006, s.12(9), w.e.f 1-8-2006.

14. ¹⁷[Industrial L.P.G.]

Exceptions:

In respect of the goods specified in sl. (1), (2), (4), (5), (6), (7), (12), (13) and (14), when the registered dealer is in the business of dealing in such goods, input tax credit shall be available on purchase of these goods.

In respect of goods specified in sl. (2) and (5), ITC is allowed when the registered dealer is a works contractor and uses such goods in the execution of a works contract.

In respect of crude oil, ITC is also allowed when the registered dealer is in the business of dealing in crude oil or of manufacturing goods taxable under the Act using crude oil as a raw material.

8.7.14. Agent/Auctioneer [Sec. 22(19)]:

An auctioneer, broker or agent, to whom goods are transferred by the manufacturer for effecting sales of such goods against remuneration or commission, are not entitled to input tax credit in respect of such goods.

8.8. Stock Transfer [Section 22(7)]

In case of stock transfer outside the State of West Bengal otherwise than by way of sale, input tax credit is restricted to the extent of input tax paid in excess of three percent (earlier four per cent up to 31.03.2008). This restriction is applicable for goods purchased, which are

Either stock transferred outside the State otherwise than by way of sale; or

Used as ¹⁸[raw materials] or packing materials for goods manufactured and stock transferred outside the State otherwise than by way of sale.

Reversal: Where a registered dealer has already availed input tax credit at the full rate of tax paid on inputs, he is required to reverse the credit to the extent it is not eligible.

Computation of Net Tax Credit [Sec 22(17)]:

The eligible net tax credit shall be computed after deducting reverse credits from the total input tax credits availed. Reverse credits can arise under the following circumstances-

¹⁷ Inserted by W.B. Act III of 2007, s.10(3), w.e.f. 01-04-2007.

¹⁸ Subs. for 'raw materials, consumable stores' by W.B.Act I of 2008, s. 9(4), w.e.f. 01-04-2008

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- (i) Stock transfer of the goods purchased, outside the State, or use of the purchased goods as raw materials or packing materials in manufacture or packing of taxable goods manufactured which are stock transferred;
- (ii) Use of purchased goods for purposes other than those for which input tax credit is allowed as per sub-section (4) of section 22;
- (iii) Use of purchased goods for purposes for which ITC is not permissible;
- (iv) Availing ITC on such purchased goods on which it is not allowed;
- (v) Reversal of credit arising out of transfer of business u/s. 27B or 27C.

Therefore, the net input tax credit for a month shall be computed in the following manner:

Net Input Tax Credit = A+B-C where-

A = Amount of input tax credit allowed to the dealer for the tax period, including any short credit availed earlier during the last twelve English calendar months;

B = Outstanding input tax credit brought forward during the month from previous month

C = Tax Credit Reversal arising under different situations as above.

8.9. Dealer Enjoying Deferment, Remission or Tax Holiday [Sec.22 (8)]

A dealer enjoying deferment of payment of tax, or tax holiday, or remission of payment of tax, as the case may be, shall not be entitled to input tax credit or input tax rebate during this period.

The input tax credit in respect of such period shall be accumulated and carried forward until the expiry of such period of deferment, or tax holiday, or remission, as the case may be.

The ITC shall be thus accumulated in respect of purchases within West Bengal, of taxable goods which are used as raw materials [and consumable stores up to 31.03.2008] in the manufacture of taxable goods or in the packing of goods so manufactured, or which are used as capital goods required for the purpose of manufacture of taxable goods.

However, if the goods manufactured by using such goods have been exported out of the territory of India by any dealer, he shall be entitled to

refund of input tax credit or input tax rebate in respect of such purchases of taxable goods within West Bengal.

Alternatively, instead of accumulating ITC until the expiry of the period of deferment, tax holiday or remission, as the case may be, the dealer may at his option be entitled to a refund of 75% of the accumulated ITC in respect of any quarter of a year. [Sec 22(8A)]

8.10. Debit/Credit Notes and Returns [Sec. 22(16)]

Input tax credit availed by a purchasing dealer may fall short or become excess in the following cases:

1. Issue of Credit Note;
2. Issue of Debit Note;
3. Return or Rejection of goods purchased.

The short or excess input tax credit in such cases would be required to be compensated to/by the dealer adjusting the input tax credit.

Where the goods purchased by a registered dealer from a registered dealer are rejected or returned to the selling dealer, the purchasing dealer shall reverse the input tax credit he has enjoyed for the purchase of such goods [Rule 23(2)].

The input tax credit will be adjusted in the month in which debit/credit note has been issued or goods have been returned.

8.11. Job Work [Rule 19(5)]

Input tax credit is also available in respect of taxable goods received and sent by a manufacturer to a job worker provided the goods are **received back** from the job worker within **90 days from the date of dispatch**. The goods may be sent to the job worker for the following purposes:

- for further processing;
- for testing;
- for repair;
- for reconditioning; or
- for any other purpose.

8.11.1. Goods Not received Within 90 Days: Where the goods are -

- (a) not received within 90 days; or
- (b) not sold,

the input tax credit with respect to such goods is to be reversed.

8.12. Capital Goods

Input tax credit is also available for capital goods purchased, i.e. tax paid on purchase of capital goods is also available as input tax credit to be set off against the output tax liability.

8.12.1. Definition of Capital Goods [Sec. 2(6)]

“Capital goods” has been defined under section 2(6) of the Act in the following manner:

¹⁹“capital goods” means plant and machinery ²⁰{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 Government may, by notification, specify. ~~but shall not include second hand plant and machinery.~~ ²¹

8.12.2. Manner of Availing Credit [Rule 19(2)]

²²[The input tax credit or input tax rebate on capital goods shall be available in one instalment only in the month in which such goods have been capitalized in the books of accounts of such dealer.]

Where the total amount of input tax credit or the input tax rebate in respect of capital goods valued at more than rupees one crore, has not been claimed by a registered dealer till the provision has not come in force, the remaining amount of input tax credit or the input tax rebate in respect of such capital goods may be available in one instalment within three months from the date of coming into force of this provision]

¹⁹ Subs. by W.B.Act I of 2008, s.9(1), w.e.f. 01-04-2008.

²⁰ Subs. by W.B.Act II of 2010, s. 6(1), w.e.f. 01-04-2010.

²¹ Deleted vide WB Finance Act, 2014 w.e.f. 01.07.2014.

²² Substituted by notification No. 1732-F.T., dated 18-10-2006 w.e.f. 01-10-2006

8.12.3. Capital Goods Acquired on Hire Purchase [Proviso to Rule 19(2)]

[The input tax credit or input tax rebate in respect of capital goods acquired by a registered dealer on hire purchase or on instalment or on transfer of right to use, shall be available only on the amount of tax charged by the selling dealer during a tax period.]²³

8.12.4. Non Taxable Goods Subsequently Becoming Taxable [Rule 19(3)]

Input tax credit on Capital Goods is not available when such capital goods are used for manufacturing tax free goods.

However, it has been provided that when such tax free goods become taxable subsequently after the appointed day, the value of capital goods used in their manufacture shall be eligible for input tax credit on the basis of the following formula-

$$Y = A \times B / C.$$

Where 'Y' = Input tax credit or input tax rebate available;

'A' = Input tax paid at the time of purchase of the capital goods;

'B' = Written down value of the capital goods on the date from which the manufactured goods become taxable; and

'C' = Actual cost, as capitalized, of the capital goods.

Explanation- The expression "Written down value" used in the formula means the actual cost less the depreciation till the date prior to the date from which the goods became taxable.

²³ Substituted by notification No. 1732-F.T., dated 18-10-2006 w.e.f. 01-10-2006

Chapter 9

Transitional Credit

9.1 Transitional Credit [Sec. 22(9)]

A registered dealer other than a shipper of jute, auctioneer, broker, or any other agent will get input tax credit for taxable goods other than capital goods lying in stock with him on the date of his incurring liability to pay tax under this Act or the **appointed day**, i.e. **1.4.2005**. The input tax credit will be allowed only if such goods have been purchased on or after the specified date (i.e. 1.4.2004), subject to the condition that the Commissioner is satisfied about the fact. Credit will be allowed if such goods have been purchased for the purposes specified and subject to the conditions, restrictions and manner as may be prescribed in the rules.

No Transitional Credit on Capital goods: Capital goods lying in stock with the dealer on the date of his incurring liability to pay tax under the Act will not be eligible for such transitional credit.

9.1.1 Conditions for Transitional Credit [Rule 19 to 22]

- (i) **Evidence of Tax:** For the purpose of availing such input tax credit a registered dealer shall produce before the appropriate assessing authority, evidence for payment of tax at the time of purchase of those goods.
- (ii) **Transitional Credit On goods Purchased As Second Sale:** In the absence of any proof for payment of tax at the time of purchase, input tax credit or input tax rebate shall be calculated on eighty *per centum* of the aggregate of purchase price of the stock of goods calculated for individual basic tax rates where such individual basic tax rates were less than or equal to ten *per centum*, or on seventy *per centum* of the aggregate of purchase price of the stock of goods calculated for individual basic tax rates where such basic individual tax rates were above ten *per centum*:
- (iii) **Only Local Purchases Eligible:** Input tax credit or input tax rebate will be available only on the stock of those goods that suffered any kind of tax under section 12, section 13, section 16, section 16A,

Transitional Credit

section 16B, or section 17 of the West Bengal Sales Tax Act, 1994 prior to the appointed day and are taxable under the Act.

- (iv) **Purchases After 1.4.2004:** Only purchases made on or after 1st April, 2004 which remain in the opening stock on the appointed day will be eligible for credit. A manufacturer is eligible for credit on these goods as per explanation (1) to Rule 21. The opening stock of goods for a manufacturer shall include stock of, raw materials, consumable stores, semi-finished goods or work in progress, finished goods and, packing materials of finished goods.
- (v) **Method of Accounting:** For ascertaining the value of raw materials, semi-finished or finished goods, the dealer should follow the accepted method of accounting. There must be consistency in the method followed for valuation.
- (vi) **Hire Charges:** No input tax credit or input tax rebate shall be available on tax paid or payable on hire charges that have accrued on or after the appointed day on goods acquired by a dealer on hire purchase before the appointed day.
- (vii) **Amount Eligible for Credit – New VAT Rate or Actual Sales Tax Paid:** Tax rate to be considered for credit will be the actual rate at which taxes were paid at the time of purchase, irrespective of the rate under the Act.
- (viii) **Reversal of Input Tax Credit Wrongly Claimed:** Proviso to Rule 21(8) provides that if a registered dealer has enjoyed input tax credit or input tax rebate in excess of the amount that he is entitled to enjoy upon such opening stock of goods as determined or re-determined under sub-rule (7), such excess amount shall be reverse credited in the month in which the communication about such determination or re-determination is received by him.

9.1.2 Procedure for Claiming Transitional Credit [Rule 21 and 22]

- (i) **Statement of Goods In Stock:** The dealer claiming transitional credit shall submit a list of goods in stock giving all the particulars regarding the nature of goods, bill or invoice details etc. in the following format, within ~~fifteen~~ [forty five]¹ days from the date of registration, or within

¹ Substituted by Notification No. 1732-F.T., dated 18-10-2006, w.e.f. 01-04-2005

~~31st August, 2005~~ [30th day of September, 2005]², to his assessing officer. [Rule 21(4) and 22(4)]

Originally, the stock Statement was required to be submitted within thirty days from the appointed day, and accordingly here was a specific provision for submission of the Statement within the extended period of three months. Subsequently, this provision was amended to allow submission of the stock Statement within ~~31st August~~ 30th September, instead of the original 30th April.

- (ii) **Order Determining the Amount of Input Tax Credit:** Rule 21(7) has been substituted by the **Notification No. 1349-F.T., 5th July 2005**. Now the new sub-rule provides that the appropriate assessing authority may issue an order for determining the amount of input tax credit after submission of stock Statement that the dealer is entitled to enjoy on such opening stock. The order has to be issued by 31st December 2005 in case the amount determined is less than the amount claimed by the dealer in his stock Statement.

The proviso to the sub-rule provides for re-determination of input tax credit in accordance with the provisions of the WBVAT Rules if any mistake or incorrect Statement is found in the Statement submitted by a dealer under sub- Rule (4) or in the order of the appropriate assessing authority, as the case may be, resulting in excess claim or excess allowance of input tax credit or input tax rebate that the dealer is entitled to enjoy upon such opening stock of goods. It is to be noted that the proviso provides for re determination of input tax credit in case excess credit has been claimed by the dealer or excess allowance has been made under the order of the appropriate assessing authority. Nothing has been said in case of short claim of input tax credit by a dealer in the stock Statement due to any mistake or otherwise. However, the author believes that any such instance or mistake determined by the dealer at a later stage can also be rectified under intimation to the appropriate authority, and submitting a fresh Statement, giving reasons for such a short claim by the dealer.

- (iii) **Certificate From a Chartered Accountant:** Where the value of goods declared in the closing stock inventory referred to in sub-rule (4), exceeds twenty lakh rupees in the case of a reseller or ten lakh rupees

² Substituted by Notification No. 732-F.T., dated 16-05-2006, w.e.f. 01-04-2005

in the case of a manufacturer or works contractor, it should be certified by a practicing chartered accountant. [Rule 21(5) and Rule 22(5)]

- (iv) **When Transitional Credit can be claimed:** Input tax credit shall be allowed from the first day of the month following the month in which the stock Statement is submitted by the registered dealer. Earlier, the rules provided for the transitional credit in **six equal monthly instalments** from the first day of the quarter following the expiry of the preceding quarter commencing on the appointed day. This provision has been amended vide **Notification No. 1349-F.T., dated 5th July 2005** w.e.f. 1.4.2005 allowing transitional credit in the following month on submission of the stock statement by the dealer in Statement A, B and C, in a single instalment. The dealer does not need to wait for the order of the respective Authority in this regard. [Rule 21(8)]

9.1.3 Sale of Opening Stock after the Appointed Day

If any opening stock eligible for input tax credit is sold after the appointed day, documents like cash memo, bill or tax invoice evidencing purchase and sale of such stock should be preserved by the registered dealer for inspection and verification by the appropriate assessing officer or any other officer.

9.2 Accounting of Opening Stock

The opening stock will be brought forward from the previous financial year at the same value as it stood on 31.3.2005, i.e. the last day of the previous financial year. As no input tax credit was allowed under the existing sales tax system, tax paid on the purchases is also treated as a part of the cost, and accordingly total amount is debited in the purchase account. The valuation of closing stock is also therefore done inclusive of taxes paid on it. The opening stock as on 1.4.2005 would therefore include the taxes paid on the same. However, since under the VAT regime, tax paid on the same would be allowed as transitional credit, the value would therefore be reduced to that extent to debit the same in "VAT credit receivable account", to be called "**Input Tax Account**" under Rule 87. **Accounting Standard (AS 2)** issued by the Institute of Chartered Accountants of India (ICAI) requires the purchases, sales and inventory to be all valued under the **exclusive method**. The following entry as suggested by the '**Guidance Note on Accounting For State Level Value Added Tax Act**' issued by the ICAI would therefore be passed at the time of claiming transitional credit assuming the opening stock

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of ₹ 330000/- as on April 1, 2005 includes tax paid ₹ 30000/- which is receivable as input tax credit.

9.2.1 Accounting Entry for transitional credit on opening stock on 01.04.2005.

	Amount (Dr)	Amount (Cr)
	₹	₹
VAT Credit Deferred (Opening Stock) A/c	30000	
To Transitional Credit on		
Opening Stock A/c		30000

The transitional credit on the opening stock, being income in the current year would be finally transferred to the Profit and Loss Account. As suggested by the guidance Note, the amount of such transitional credit will be disclosed as a deduction from the opening stock in Profit and Loss A/c as shown below-

Extracts from the Profit and Loss A/c

For the year ended 31st March 2006

Particulars	Amount (₹)	Amount (₹)
Opening Stock	330000	
Less: Transitional Credit on		
Opening stock	<u>30000</u>	<u>300000</u>

9.2.2 Adjustment for Section 145A of the Income Tax Act

The Accounting Standard (AS2) issued by the ICAI requires the financial accounts to be prepared under the exclusive method, i.e. the purchases, sales and inventory should all be accounted for net of tax paid or payable, which is refundable or allowed as credit. However, section 145A of the I T Act requires that purchases, sales and inventory should all be accounted for on the basis of the 'inclusive method', i.e. including the taxes and duties paid or payable, to compute the taxable income under the Income Tax Act. Therefore, purchases, sales, and inventory are all required to be adjusted to compute the taxable income in compliance with sec. 145A of the I T Act. This will require a separate Statement to be prepared, as already mentioned in the 'Guidance Note on Accounting for Cenvat' issued earlier by the ICAI.

9.3 Analysis of Statements A, B and C

The dealer shall prepare the prescribed Statements in Form A, B and C for claiming transitional credit on the opening stock as on 01.04.2005. Statement A requires details of goods lying in stock, where purchase bills show the tax amounts separately, while Statement B requires details of goods lying in stock, where purchase bills do not show the tax amounts separately, other than semi-finished and finished goods stock. Statement C requires the break-up of the value of semi-finished and finished goods lying in stock of the dealer (manufacturer).

The relevance of Statement C is not understood as seen from the format prescribed. It requires the break-up of value of semi-finished and finished goods of a manufacturer. Rule 21(7) and 22(7) and provides that the appropriate assessing authority, shall pass an order determining the amount of input tax credit that the dealer is entitled to enjoy upon such stock of goods and shall communicate it to him. But, the question that arises is how the amount of input tax credit to be determined on such stock of semi-finished and finished goods from the Statements submitted by the dealer, as the Statement C does not show any amount of tax suffered on the inputs consumed in stock of semi-finished and finished goods. Even for a dealer it is very difficult to prepare Statement C, as it does not enable the dealer to determine the amount of tax suffered by him on the inputs consumed in the stock of such semi-finished and finished goods.

Therefore, the author is of the view that the dealer should not be asked to submit Statement C. Rather, he should be asked to provide details of raw materials and packing materials contained in such semi-finished and finished goods, to be reflected in the Statements A and B. Further, to conform to the requirement of section 22(9), i.e. purchase on or after 1.4.2004, the date of purchase has to be determined for the raw materials and packing materials contained in the semi-finished and finished goods, for which the quantity contained therein has to be determined. Then only, the date of purchase can be determined on FIFO basis, and accordingly it can be decided whether it is vatable stock or not, depending on whether it is a local purchase or inter-State purchase.

Thus, on the basis of the above observations a case is taken for examination to explain how the Statement of goods lying in stock as such and as contained in semi-finished and finished goods can be determined and input tax credit on such stock claimed by a dealer. All the figures and values in the case are hypothetical and fictitious.

9.4 Case Study for Calculating Transitional Credit

9.4.1 **ABC Ltd.** a manufacturer in Kolkata has a total closing stock of finished goods of M.S. Ingots of ₹ 123.70 lacs and stock of raw materials as such of ₹ 80.15 lacs as on 31.03.2005. The manufacturer maintains the stock on FIFO basis.

Following are the extracts of purchases during the year, which covers the total stock of raw material as such and contained in finished goods:

- 01.06.04 Purchase of 275 MT of M.S. Scrap @ ₹ 10300/MT at 3% from A Ltd., Kolkata
- 05.09.04 Purchase of 85 MT of M.S. Scrap @ ₹ 10000/MT at 4% from P Ltd., Orissa
- 17.12.04 Purchase of 250 MT of M.S. Scrap @ 10000/MT at 3% from A Ltd., Kolkata
- 01.03.05 Purchase of 66 MT of Sodium Silicate @ ₹ 24800/MT at 5.75% from B Ltd., Kolkata
- 04.03.05 Purchase of 32 MT of Silicon manganese @ ₹ 15750/MT (incl. Tax) from AB Ltd., Asansol
- 07.03.05 Purchase of 100 MT of M.S. Scrap @ 10000/MT at 3% from A Ltd., Kolkata
- 16.03.05 Purchase of 680 MT of Sponge Iron @ ₹ 6700/MT at 3% from C Ltd., Kolkata
- 18.03.05 Purchase of 83 MT of Sodium Silicate @ ₹ 25500/MT (incl. Tax) from AB Ltd., Asansol
- 21.03.05 Purchase of 55 MT of Sponge Iron @ ₹ 7000/MT at 4% from P Ltd., Orissa
- 22.03.05 Purchase of 6 MT of Silicon manganese @ ₹ 15750/MT from S K Co., Kolkata (unregistered)
- 24.03.05 Purchase of 4 MT of Sodium Silicate @ ₹ 26250/MT at 4% from P Ltd., Orissa
- 24.03.05 Purchase of 47 MT of Sodium Silicate @ ₹ 25000/MT at 5.75% from A Ltd., Kolkata
- 25.03.05 Purchase of 26 MT of Silicon manganese @ 15000/MT at 5.75% from B Ltd., Kolkata

Transitional Credit

- 26.03.05 Purchase of 330 MT of Sponge Iron @ ₹ 7000/MT at 3% from C Ltd., Kolkata
- 27.03.05 Purchase of 12 MT of Sodium Silicate @ 26500/MT (incl. Tax) from AB Ltd., Asansol
- 27.03.05 Purchase of 38 MT of Silicon manganese @ 15850/MT (incl. Tax) from AB Ltd., Asansol
- 28.03.05 Purchase of 125 MT of Sponge Iron @ ₹ 7000/MT at 3% from C Ltd., Kolkata

9.4.2 On the basis of the given facts and figures, the detailed calculation for determining the amount of input tax credit available to a dealer has been shown. A dealer should prepare the following Statements to claim the amount of input tax credit on the opening stock.

Name of the dealer: ABC Ltd.

Address: Kolkata

Registration Certificate No.:

[under the West Bengal Value Added Tax Act, 2003].

A. Statement of goods lying in stock as such and contained in semi-finished and finished goods, where purchase invoice or bill shows the tax separately.

ABC Ltd.

Kolkata

(Manufacturer of M S Ingots)

Statement of Opening Stock of Raw Materials, Packing Materials, Consumable Stores, Semi-finished and Finished Goods as on 1.4.2005.

Items	Qty. (In MT)	Amount (₹)	Amount (₹)
A. Finished Goods			
	M S Ingots	720	1,22,10,355
B. Semi-finished Goods		Nil	Nil
C. Raw Materials			
	M S Scrap	330	32,96,000
	Sponge Iron	375	27,03,750
	Sodium Silicate	45	11,90,438
	Silicon Manganese	52	8,24,375
D. Consumable Stores		Nil	Nil
E. Packing Materials		Nil	Nil

Notes:

1. The above figures should tally with the figures in the Final Accounts (audited) of the dealer.
2. The value shown here is not relevant for claim of Input Tax Credit under VAT. This is required only to ensure accuracy and conformity with the stock/inventory actually considered for the finalization of accounts.
3. (i) The quantity shown above is normally not disclosed in the Balance Sheet.
(ii) In the case of companies incorporated under the Companies Act, 1956, such quantitative details are required to be given in the Notes on Accounts.
(iii) In the case of non-corporate dealers having a turnover of over ₹ one crore, such quantitative information is given in Form 3CD attached with the Tax Audit Report u/s 44AB of the Income Tax Act, 1961.

ABC Ltd.

Kolkata

(Manufacturer of M S Ingots)

Statement I

Statement of the Opening Stock of Raw Materials as such and that contained in Semi-finished and Finished Goods as on 1.4.2005

A. Raw Materials contained in Finished Goods

Finished Goods In Stock

M S Ingots 720

Raw Materials contained in above

M S Scrap 395

Sponge Iron 430

Sodium Silicate 106

Silicon Manganese 36

B. Raw Materials Lying As Such

M S Scrap 330

Sponge Iron 375

Sodium Silicate 45

Silicon Manganese 52

C. Total Quantity of Various Raw Materials Lying As Such, as well as that contained in Semi-finished and finished goods.

Item	As Such	In S F Goods	In F Goods	Total
M S Scrap	330	Nil	395	725
Sponge Iron	375	Nil	430	805
Sodium Silicate	45	Nil	106	151
Silicon Manganese	52	Nil	36	88

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Note:

Raw Materials content of the semi-finished and finished goods given above can be verified from the Raw Material Stock Register (containing Receipt, Disposal, Consumption and Inventory) as well as Production Register of the dealer.

ABC Ltd.

Kolkata

(Manufacturer of M S Ingots)

Statement II

Statement of Purchase Details of the Opening Stock of Raw Materials as on 1.4.2005

Sl. Item

1. M S Scrap

Dt of Rect	Bill No./Dt.	Supplier	WB/CST	R/U	Bill Qty.	Prop. Qty.	Vatable Qty.
07.03.05	...	A Ltd.	WBST	R	100	100	100
17.12.04...	Do	Do		R	250	250	250
05.09.04	...	P Ltd.	CST	R	85	85	--
01.06.04	...	A Ltd.	WBST	R	275	275	275
# Prior to 01.04.04Op. Stock			--	--	640	15	----
Total						725	625

Any goods received prior to 01.04.2004 shall not be vatable.

2. Sponge Iron

Dt of Rect	Bill No./Dt.	Supplier	WB/CST	R/U	Bill Qty.	Prop. Qty.	Vatable Qty.
28.3.05	...	C Ltd.	WBST	R	125	125	125
26.3.05	...	Do	Do	R	330	330	330
21.3.05	...	P Ltd.	CST	R	55	55	--
16.3.05	...	C Ltd.	WBST	R	680	295	295
Total						805	750

Transitional Credit

3. Sodium Silicate

Dt of Rect	Bill No./Dt.	Supplier	WB/CST	R/U	Bill Qty.	Prop. Qty.	Vatable Qty.
27.3.05	...	AB Ltd.	WBST	R	12	12	12
24.3.05	...	A Ltd.	Do	R	47	47	47
24.3.05	...	P Ltd.	CST	R	4	4	--
18.3.05	...	AB Ltd.	WBST	R	83	83	83
01.3.05	...	B Ltd.	WBST	R	66	5	5
Total					151	147	

4. Silicon Manganese

Dt of Rect	Bill No./Dt.	Supplier	WB/CST	R/U	Bill Qty.	Prop. Qty.	Vatable Qty.
27.3.05	...	AB Ltd.	WBST	R	38	38	38
25.3.05	...	B Ltd.	Do	R	26	26	26
22.3.05	...	S.K. Co.	Do	U	6	6	--
04.3.05	...	AB Ltd.	Do	R	32	18	18
Total						88	82

Purchase register to be inserted from excel sheet

Name of the dealer: **ABC Ltd.**

Address: **Kolkata**

Registration Certificate No.:

[under the West Bengal Value Added Tax Act, 2003].

A. Statement of goods lying in stock as such and contained in semi-finished and finished goods, where purchase invoice or bill shows the tax separately

Rate of tax under the West Bengal Sales Tax Act, 1994 on the items specified in column (3)	Serial No.	Item	Name and Address of the selling dealer.	Registration Certificate No. (if any) of the selling dealer.	Invoice/Bill No. with date of the selling dealer	Quantity/Numbering in stock (in MT)	Purchase Value(excluding tax, sch. and addl. Sch., if any) of the qty./ no. lying in stock (₹)	Aggregate purchase price for individual tax rates [subtotal]	Input tax credit/ input tax rebate claimed(Tax + Sch.+ Addl. Sch. + eligible TOT, if any)
1	2	3	4	5	6	7	8	9	10
3%	i)	M.S. Scrap	A Ltd, Kolkata	-	-	100	1,000,000		
			-do-	-	-	250	2,500,000		
			-do-	-	-	275	2,832,500	6,332,500	189,975
	ii)	Sponge Iron	C Ltd, Kolkata	-	-	125	875,000		

			-do-	-	-	330	2,310,000		
			-do-	-	-	295	1,976,500	5,161,500	154,845
5.75%	i)	Sodium Silicate	A Ltd, Kolkata	-	-	47	1,175,000		
			B Ltd, Kolkata	-	-	5	124,000	1,299,000	74,693
	ii)	Silicon Manganese	B Ltd, Kolkata	-	-	26	390,000	390,000	22,425
	Total							13,183,000	441,938

Note:

1. The purchases given above are taken from the Purchase/ Stock Register
2. Item-wise vatable quantity is shown in Statement II.
3. The corresponding bill details are taken from Purchase / Stock Register
4. The Purchase price for the purchases are taken from the corresponding bills

Name of the dealer: **ABC Ltd.**

Address: **Kolkata**

B. Statement of goods lying in stock as such and contained in semi-finished and finished goods, where purchase invoice or bill does not show the tax separately.

Rate of tax under the West Bengal Sales Tax Act, 1994 on the items specified in column (3)	Serial No.	Item	Name and Address of the selling dealer.	Registration Certificate No. (if any) of the selling dealer.	Invoice/Bill No. with date of the selling dealer	Quantity/Number Lying in stock (in MT)	Purchase Value of the quantity/number lying in stock (₹)	Aggregate purchase price for individual tax rates [subtotal]	70%/80% of the amount specified in column (9).	Input tax credit/ input tax rebate claimed
1	2	3	4	5	6	7	8	9	10	11
5.75%	i)	Sodium Silicate	AB Ltd,	-	-	12	318,000			

			Asansol							
			-do-	-	-	83	2,116,500	2,434,500	,947,600	111,987
	ii)	Silicon Manganese	AB Ltd, Asansol	-	-	38	602,300			
			-do-	-	-	18	283,500	885,800	708,640	40,747
							TOTAL	3,320,300		152,734

Name of the dealer: **ABC Ltd.**

Address: **Kolkata**

C. Break-up of the value of semi-finished goods and finished goods of a manufacturer

	Raw materials consumed.			Consumable Stores consumed.			Others, if any	Direct Labour	Over- head	Total	
	Purchase from W.B.		Purchase from outside W.B.	Purchase from W.B.							Purchase from outside W.B.
	Tax Charged	Tax not charged		Tax Charged	Tax not charged	Tax not charged					
Finished goodsM.S. Ingots	473,850	94,500	1,393,600				1,250,000		375,000	269,580	3,856,530
Total	473,850	94,500	1,393,600	-	-	-	1,250,000	-	375,000	269,580	3,856,530

Certified that the details given above are true to the best of my knowledge.

Signature:
Name:
Status

Note: Statement 'C' (above) is of no relevance for VAT credit.

Valuation of Finished Goods and Semi-finished Goods is not required at all.

ABC Ltd.

Kolkata

(Manufacturer of M S Ingots)

Statement of the Opening Stock of Raw Materials, Packing Materials,
Consumable Stores, Semi-finished and Finished Goods as on 1.4.2005.

	Items	Qty. (In MT)	Amount (₹)
A.	Finished Goods		
	M S Ingots	720	1,22,10,355
B.	Semi-finished Goods	Nil	Nil
C.	Raw Materials		
	M S Scrap	330	32,96,000
	Sponge Iron	375	27,03,750
	Sodium Silicate	45	11,90,438
	Silicon Manganese	52	8,24,375
D.	Consumable Stores	Nil	Nil
E.	Packing Materials	Nil	Nil

Notes:

1. The above figures should tally with the figures in the Final Accounts (audited) of the dealer.
2. The value shown here is not relevant for claim of Input Tax Credit under VAT. This is required only to ensure accuracy and conformity with the stock/inventory actually considered for the finalization of accounts.
3. (i) The quantity shown above is normally not disclosed in the Balance Sheet.
(ii) In the case of companies incorporated under the Companies Act, 1956, such quantitative details are required to be given in the Notes on Accounts.
(iii) In the case of non-corporate dealers having a turnover of over ₹ 40 lacs, such quantitative information is given in Form 3CD attached with the Tax Audit Report u/s 44AB of the Income Tax Act, 1961.

ABC Ltd.
Kolkata
(Manufacturer of M S Ingots)

Statement I

Statement of the Opening Stock of raw materials as such, and the part contained in semi-finished and finished goods as on 1.4.2005

A. Raw Materials contained in Finished Goods

Finished Goods In Stock

M S Ingots	720
------------	-----

Raw Materials contained in above

M S Scrap	395
Sponge Iron	430
Sodium Silicate	106
Silicon Manganese	36

B. Raw Materials Lying As Such

M S Scrap	330
Sponge Iron	375
Sodium Silicate	45
Silicon Manganese	52

C. Total Quantity of Various Raw Materials Lying As Such, as well as the part contained in Semi-finished and finished goods

Item	As Such	In S F Goods	In F Goods	Total
M S Scrap	330	Nil	395	725
Sponge Iron	375	Nil	430	805
Sodium Silicate	45	Nil	106	151
Silicon Manganese	52	Nil	36	88

Note: Raw Materials content of the Semi-finished and Finished goods can be verified from the Raw Material Stock Register (containing Receipt, Disposal, Consumption and Inventory) as well as Production Register of the dealer.

ABC Ltd.
Kolkata
(Manufacturer of M S Ingots)

Statement II

Statement of Purchase Details of Opening Stock of Raw Materials as on
1.4.2005

Sl. Item

1. M S Scrap

Dt of Rect	Bill No./ Dt.	Supplier	WB/CST	R/U	Bill Qty.	Prop. Qty.	Vatable Qty.
07.03.05	...	A Ltd.	WBST	R	100	100	100
17.12.04	Do	Do		R	250	250	250
05.09.04	...	P Ltd	CST	R	85	85	R
01.06.04	...	A Ltd.	WBST	R	275	275	275
# Prior to 01.04.04Op. Stock	--			--	640	15	----
Total						725	625

Any goods received prior to 01.04.2004 shall not be vatable.

2. Sponge Iron

Dt of Rect	Bill No./ Dt.	Supplier	WB/CST	R/U	Bill Qty.	Prop. Qty.	Vatable Qty.
28.3.05	...	C Ltd.	WBST	R	125	125	125
26.3.05	...	Do	Do	R	330	330	330
21.3.05	...	P Ltd.	CST	R	55	55	--
16.3.05	...	C Ltd.	WBST	R	680	295	295
Total						805	750

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3. Sodium Silicate

Dt of Rect	Bill No./ Dt.	Supplier	WB/CST	R/U	Bill Qty.	Prop. Qty.	Vatable Qty.
27.3.05	...	AB Ltd.	WBST	R	12	12	12
24.3.05	...	A Ltd.	Do	R	47	47	47
24.3.05	...	P Ltd.	CST	R	4	4	--
18.3.05	...	AB Ltd.	WBST	R	83	83	83
01.3.05	...	B Ltd.	WBST	R	66	5	5
Total				151	147		

4. Silicon Manganese

Dt of Rect	Bill No./ Dt.	Supplier	WB/CST	R/U	Bill Qty.	Prop. Qty.	Vatable Qty.
27.3.05	...	AB Ltd.	WBST	R	38	38	38
25.3.05	...	B Ltd.	Do	R	26	26	26
22.3.05	...	S.K. Co.	Do	U	6	6	--
04.3.05	...	AB Ltd.	Do	R	32	18	18
Total				88	82		

Sample Purchase Register
ABC LTD
Kolkata
Item-wise Stock Register/ Details
M.S. SCRAP

Date of Receipt/ Issue	Particulars	Receipt		Issued		Closing	
		Qty. (MT)	Amount (₹)	Qty. (MT)	Amount (₹)	Qty. (MT)	Amount (₹)
01.03.04	Opening Stock	640	6,505,000				
01.06.04	Purchase from A Ltd, Kol (3%)	275	2,917,475				
17.06.04	Issued to Production Dept.			625	6,448,865		
05.09.04	Purchase from P Ltd, Orissa	85	884,000				
17.12.04	Purchase from A Ltd, Kol (3%)	250	2,575,000				
07.03.05	Purchase from A Ltd, Kol (3%)	100	1,030,000				
26.03.05	Issued to Production Dept.			395	4,166,610		
31.03.05	Closing Balance					330	3,296,000

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Transitional Credit

SPONGE IRON

Date of Receipt/ Issue	Particulars	Receipt		Issued		Closing	
		Qty. (MT)	Amount (₹)	Qty. (MT)	Amount (₹)	Qty. (MT)	Amount (₹)
01.03.05	Opening Balance	650	3,310,250				
16.03.05	Purchase from C Ltd, Kol (3%)	680	4,692,680				
17.03.05	Issued to Production Dept.			1035	5,967,135		
21.03.05	Purchase from P Ltd, Orissa	55	400,400				
26.03.05	Purchase from C Ltd, Kol (3%)	330	2,379,300				
28.03.05	Purchase from C Ltd, Kol (3%)	125	901,250				
26.03.05	Issued to Production Dept.			430	3,012,995		
31.03.05	Closing Balance					375	2,703,750

ABC LTD
Kolkata
Item-wise Stock Register/ Details
SODIUM SILICATE

Date of Receipt/ Issue	Particulars	Receipt		Issued		Closing	
		Qty. (MT)	Amount (₹)	Qty. (MT)	Amount (₹)	Qty. (MT)	Amount (₹)
01.03.05	Opening Balance	84	2,112,540				
01.03.05	Purchase from B Ltd, Kol (5.75%)	66	1,730,916				
17.03.05	Issued to Production Dept.			145	3,712,326		
18.03.05	Purchase from AB Ltd, Asansol (incl. Tax)	83	2,116,500				
24.03.05	Purchase from P Ltd, Orissa	4	109,200				
24.03.05	Purchase from A Ltd, Kol (5.75%)	47	1,242,563				
27.03.05	Purchase from AB Ltd, Asansol (incl. Tax)	12	318,000				
27.03.05	Issued to Production Dept.			106	2,726,955		
31.03.05	Closing Balance					45	1,190,438

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Transitional Credit

SILICON MANGANESE

Date of Receipt/ Issue	Particulars	Receipt		Issued		Closing	
		Qty. (MT)	Amount (₹)	Qty. (MT)	Amount (₹)	Qty. (MT)	Amount (₹)
01.03.05	Opening Balance	52	812,540				
04.03.05	Purchase from AB Ltd, Asansol (incl. Tax)	32	504,000				
17.03.05	Issued to Production Dept.			66	1,033,040		
22.03.05	Purchase from S.K. Co, Kol (Unregd)	6	94,500				
25.03.05	Purchase from B Ltd, Kol (5.75%)	26	412,425				
27.03.05	Purchase from AB Ltd, Asansol (incl. Tax)	38	602,300				
27.03.05	Issued to Production Dept.			36	568,350		
31.03.05	Closing Balance					52	824,375

Note: Normally all manufacturers maintain such a stock register. Even if someone has not maintained it, such details can be prepared from his documents and other records

Chapter 10

Stock Transfers

Principles Laid Down in the White Paper

For stock transfer of the output tax paid in excess of 4% will be eligible for tax credit.

Provisions in the West Bengal VAT Law

10.1. Stock Transfer [Sec. 22(7)]

Input Tax Credit is restricted in respect of purchases of taxable goods which are dispatched as stock transfer outside West Bengal otherwise than by way of sale, or are used as ¹[raw materials] in **manufacture**, or in the **packing** of goods so manufactured, which are sent as stock transfer outside the State of West Bengal.

In case of stock transfer outside the State of West Bengal, as above, input tax credit is restricted to the extent of **input tax paid in excess of ~~four~~²[three] percent**.

10.1.1. The provision is contained in section 22 (7) of the Act, which is reproduced below

“(7) Where the taxable goods purchased are-

- (a) dispatched outside the State otherwise than by way of sale; or*
- (b) used as raw materials, ~~consumable stores~~ in manufacture of taxable goods, or in the packing of goods so manufactured, and the goods so manufactured are dispatched outside the State otherwise than by way of sale,*

the registered dealer shall be entitled to input tax credit or input tax rebate of the amount of input tax paid or payable under clause (18) of section 2 calculated at the applicable rate which exceeds the amount calculated at the rate of ~~four~~ three per centum

¹ Subs. for 'raw materials, consumable stores' by W.B.Act I of 2008, s. 9(4), w.e.f. 01-04-2008

² Subs. by *ibid*, s.9(4), w.e.f 01-04-2008

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Provided that no input tax credit or input tax rebate shall be allowed to such dealer unless the amount of input tax calculated at the applicable rate exceeds the amount calculated at the rate of ~~four~~ three per centum:

Provided further that where a registered dealer has already enjoyed input tax credit or input tax rebate at a rate which is more than the rate he is eligible under this sub-section, his input tax credit or input tax rebate shall be reversed to the extent to which he is not eligible."

Sub-section (7) of section 22 is absolutely clear that the credit is restricted to raw materials or packing materials. It is not restricted with respect to capital goods.

10.2. Reversal (Rule 23)

Where a registered dealer has already availed input tax credit at the full rate of tax paid on inputs, he shall be required to reverse the credit to the extent it is not eligible.

Where input tax credit or input tax rebate has been enjoyed by a registered dealer on purchases of such goods or such other purchases or purposes for which enjoyment of input tax credit or input tax rebate is not permissible under section 22 of the Act or these rules, the input tax credit so enjoyed for such goods or part of the goods shall be deducted from the input tax credit of the period in which such an event took place.

Where a registered dealer cannot keep a separate account of purchase of goods for the purpose of determining reverse credit, the input tax credit or input tax rebate already enjoyed will be reversed in the following manner:

$$Y = [A \times B / C] - X$$

Where 'Y' = Input tax credit or input tax rebate to be reversed in the 'tax period';

'A' = Input tax credit or input tax rebate enjoyed in a 'period';

'B' = Aggregate of sale price of goods for which reversal has been made till the 'preceding period' including the sale price of goods for which reversal is to be made in the 'tax period';
and

'C' = total sale price of goods in that 'period'.

'X' = Input tax credit or input tax rebate reversed till the 'preceding period'.

Explanation I to Rule 23 provides that for the purpose of this rule, “period” means the period starting from the first day of the year and ending on the last day of the month when the occasion of reverse credit arises and “preceding period” means the period starting from the first day of the year and ending on the last day of the month preceding the month for which reverse credit is to be calculated.

Explanation II to Rule 23 provides that where the dealer has already reversed input tax credit or input tax rebate in the same year on one or more earlier occasion or occasions, due credit of the same shall be given while determining the reverse credit on a later occasion.

10.3 Computation of Net Tax Credit [Sec 22(17)]

In case of a dealer who uses taxable goods for purposes for which enjoyment of input tax credit or input tax rebate is not permissible under section 22, net tax credit for a month shall be computed in the following manner:

Net tax credit = A + B–C

Where –

“A” represents the amount of input tax credit or input tax rebate, for the tax period, which the dealer is entitled to under section 22. It includes the credit short availed during the preceding tax periods not exceeding twelve calendar months.

“B” represents outstanding input tax credit or input tax rebate brought forward as determined from the previous tax period;

“C” represents reverse tax credit determined under Rule 23 as explained above; including the excess tax credit availed earlier.

Chapter 11

Tax Invoice

Principles Laid Down in the White Paper

Compulsory Issue of Tax Invoice, Cash Memo or Bill: This entire design of VAT with input tax credit is based on the documentation of tax invoice, cash memo or bill. Every registered dealer, having turnover of sales above the specified amount, shall issue to the purchaser a serially numbered tax invoice with the prescribed particulars. This invoice will be signed and dated by the dealer or his regular employee, showing the required particulars. The dealer shall keep a counterfoil or duplicate of such invoice duly signed and dated. Failure to comply with the above will attract penalty.

Provisions in the West Bengal VAT Law

11.1. Issue of Tax Invoice [Section 64 and Rule 91 and 92]

A tax invoice is compulsorily required to be issued **in duplicate** by a registered dealer when he sells taxable goods or tax free goods. The Invoice must be serially numbered, signed and dated by the dealer or his regular employee showing the prescribed particulars.

However, a registered dealer may, on his own, issue serially numbered invoice or bill or cash memorandum in respect of sales of goods by him to any unregistered dealer or to a casual dealer or to the Government or to any person, instead of issuing a tax invoice. The invoice or bill or cash memorandum should be signed and dated by him or his regular employee and should contain the prescribed particulars. [Second Proviso to sec. 64(1) inserted by the WBTLA Act, 2005 which is deemed to have come in to effect from first day of April 2005]

Apart from a registered dealer, the following dealers are also required to issue an invoice or cash memorandum or bill containing the prescribed particulars, even when goods sold by them are exempt from tax–

- (i) A dealer who has become liable to pay tax under any provision of the Act, and sells any goods to any person; [Section 64(2)]

- (ii) A dealer who sells any goods exceeding one hundred rupees in value in any one transaction to any person. [Section 64(3)]

11.2. Definition of Tax Invoice

'**Tax Invoice**' has been defined in **section 2(48)** to mean an invoice containing such particulars as may be prescribed.

Accordingly, the particulars to be contained in the tax invoice are specified in Rule 91(7) for the cases covered by section 64(1).

11.2.1. Copies of Tax Invoice: The tax invoice shall be issued in **duplicate**. The original shall be marked "**Original – Buyer's copy**", which shall be delivered to the buyer and the copy, marked "**Seller's copy**", shall be retained by the seller as a document. On demand, another copy of the tax invoice, marked "**Transporter's copy**", shall be issued to the buyer. On demand, the seller may also issue extra copies to the buyer; each one of them marked "**Extra Copy**".

11.2.2. Dealer having More Than One Place of Business: If a registered dealer has more than one place of business from where sales are effected by him, he shall maintain and issue separate serially numbered tax invoices, assigning separate prefix thereon for each such place of business.

11.2.3. Contents of Tax Invoice: The tax invoice shall contain the words "**Tax Invoice**" in bold letters, at the top or at any other prominent place, and shall also contain the following details-

- (i) Date of sale
- (ii) ¹[serial number of the tax invoice]
- (iii) ²[serial number and date of challan issued/ date of despatch, as the case may be,]
- (iv) Following details of the selling dealer
- Name,
 - Full postal address,
 - E-mail address,
 - Telephone number,
 - Fax number

¹ Inserted by notification No. 1163-F.T., dated 23-07-2008, w.e.f. 01-04-2007

²Subs. by *ibid*, w.e.f. 01-04-2007.

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- Registration certificate number
- (v) Following details of the purchasing dealer
 - Name,
 - Full postal address,
 - Registration certificate number
- (vi) Full description of the goods sold
- (vii) Quantity/ number of the goods sold
- (viii) Value of the goods sold
- (ix) Rate and amount of tax charged in respect of taxable goods;
- (x) Total amount of the bill (taking into consideration all the amount payable under different heads) and
- (xi) Signature of the selling dealer or his regular employee duly authorized by him for such purposes.

11.2.4. **Sale to Unregistered Dealer:** If the goods are sold by a registered dealer to any person who is not registered under the Act, the selling dealer shall categorically mention the words “**UNREGISTERED**” in bold script on the tax invoice and shall delete the space for writing the registration certificate number of the purchasing dealer.

11.2.5. **Format of Tax Invoice:** No prescribed statutory format is given for tax invoice in the rules. Only the contents of the tax invoice are prescribed. However, a suggested format of the same as given in the ‘VAT At A Glance’ issued by the Directorate of Commercial Taxes is given below-

Suggested Format For Tax Invoice

TAXINVOICE

ORIGINAL – BUYER’S COPY

Seller’s Name.....

Address.....

Tax Invoice No.:

Date :

Phone No. :

E-mail :

VAT Registration No.

CST Registration No.

Challan No. and Date:

Buyer’s name and address:

Buyer’s VAT Regn. No., if any

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Sl. No.	Quantity	Description of goods	Price Per Unit	Value (₹)	VAT Rate	Tax Amount	Total (₹)
						Total	

Rupees in figures

E and O.E.

Signature

(of the selling dealer or his authorized employee)

Tax Invoice

Combined Invoice for Central Excise and VAT: In case of a manufacturer, a combined invoice can be issued for Central Excise, as well as for VAT purposes. A suggested format for the same is also given below

**Format of Combined Invoice
(ORIGINAL FOR the BUYER)**

EXCISE INVOICE - CUM -TAX INVOICE	
(Rule 11 of Central Excise Rules, 2002 and Rule 91 of The West Bengal Value Added Tax Rules, 2005)	
Regd. Office and Works:	Pre-Authenticated
Phone and Fax:	
E-mail Address:	

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Name and Address of Factory/Warehouse:	Range:
	Division:
	Commissionerate:
	Date and Time of issue of Invoice:
Central Excise R. C. No.:	Date and Time of Removal of Goods:
Excise Control Code No.:	P. L. A. No.:

PAN No.:				Chapter Heading and Sub- Heading No.:			
VAT Registration No.:							
CST Registration No.:				Exemption Notification No.:			
Consignee/ (Name and Address)			Buyer:		INVOICE NO.		Date
					CHALLAN NO.		Date
					ORDER NO		Date
					Mode of Transport		
Central Regn. No.:		ECC No.:		Serial No of Debit Entry in		PLA NO	RG 23A Part II
Range:		Division					
VAT Registration No.:		CST No:		Due Date of Payments:			
SI No	Description of Goods	No. of Packages	Quantity	Price per unit	Total Assessable Value	Deductions/ Additions u/s 4 (if any)/Discount	Net Assessable value

DECLARATION: Certified that the particulars given above are true and correct and the amount indicated represents the price actually charged and that there is no flow of additional consideration either directly or indirectly from the buyer.		Basic Excise Duty@%	
		CESS on Excise Duty@%	
		CST @%	
		Freight	
		Insurance	
		Total	
CONDITIONS: Interest @% will be charged, if payment is not received within the due date. All disputes are subject to Jurisdiction.		VAT @%	
		Others	
		Total Invoice value(in words)	
		B.E.D(in words)	
Checked by	For Authorised Signatory	VAT(in words)	
		GRAND TOTAL	

E. and O.E.

Printed by :
(Sl. No. From to)

11.3. Penalty for Not Issuing Tax Invoice [Sec 65]

In case a dealer who is required to issue a tax invoice or invoice or cash memorandum in accordance with section 64 fails to issue the same or issues a tax invoice or invoice or cash memorandum which is not in accordance with section 64, he may be liable to a penalty for a sum equal to double the amount of tax, or ~~five thousand rupees~~¹[ten thousand], whichever is higher.

11.4. Composition Scheme [Rule 91(12)]

The provisions relating to tax invoice shall not apply to a selling dealer who has opted to avail the composition scheme. Thus, a selling dealer under the composition scheme cannot issue a 'tax invoice'.

11.5. Input Tax Credit

Input tax credit cannot be claimed by a registered dealer unless he has an original tax invoice for the relevant supply/ purchase.

11.5.1. Cases where original tax invoice is not required

However, in the following cases "Original Tax Invoice" prescribed under Rule 91 is not required to claim input tax credit

- (i) **Input tax credit on transitional stock as on date of incurring liability** – In case of claiming input tax credit in respect of goods lying in stock on the date when the liability to pay tax arises, original tax Invoice is not required. In such case, input tax credit may be claimed on the basis of any evidence of payment of tax. [Rule 22(2)]
- (ii) **Input tax credit on opening stock as on 1st April '2005** – For claiming input tax credit in respect of goods lying in stock as on 1st April '2005, original tax invoice is not required. In such cases, input tax credit may be claimed on the basis of any evidence of payment of tax. [Rule 21(3)]
- (iii) **Loss in fire, natural calamity etc.** – The Commissioner may exempt a registered dealer from furnishing a tax invoice, on an application made by him, if he is satisfied that he cannot furnish the tax invoice on account of loss of the same due to fire, theft or any natural calamity. [Rule 24]

¹ Sub. By W.B.Act VII of 2011, s.5(18), w.e.f 01-09-2011

11.6. Tax Invoice Required for Audit/ Verification/ Assessment [Rule 25]

The dealer needs to furnish the tax invoice against which tax credit is claimed. In case of lost invoices, he needs to furnish the order of the Commissioner/ Additional Commissioner exempting production of tax invoice.

The tax invoice, or the order as above, as the case may be, needs to be furnished before:

- The Appropriate Auditing Authority at the time of audit under section 43.
- The Appropriate Verification Authority at the time of verification under section 42.
- The Appropriate Assessing Authority at the time of hearing for assessment under section 46.
- Any other authority for any purposes of the Act.

11.7. Fraud/Fake Bill or Invoice

Under the Central Excise Law, earlier there was a specific provision that the buyer should take reasonable steps to ensure that duty has been paid on the inputs, before taking credit on the same on the basis of an invoice.

There was a further provision that the manufacturer shall be treated to have taken reasonable steps if the buyer is satisfied about the identity and address of the manufacturer of the inputs.

It was further provided that the buyer can satisfy himself about the identity and address of the manufacturer of inputs, through

- his personal knowledge;
- others' hand writing
- certificate issued by the Superintendent of Central Excise, having jurisdiction over the factory.

Subsequently, however, the rule providing for such an obligation of the manufacturer was omitted. In the case of VAT, no such specific provision had been made in respect of the fake bill or invoice being issued by a dealer. The implications under VAT law in respect of a fake bill/invoice is quite serious from the Revenue point of view. However, in the absence of any

Tax Invoice

specific provision, the author does not see any serious implication for the purchasing dealer who has claimed input tax credit on the basis of an invoice issued by a selling dealer, which is found to be fake at a later date. There are a number of judgements of the Hon'ble Tribunal (CESTAT) under the Cenvat Credit law, wherein it has been held that Cenvat credit cannot be denied to the purchasing manufacturer who has legitimately claimed it on the basis of an invoice issued by a manufacturer, which the buyer believed to be genuine and had taken reasonable steps to ensure that duty has been paid, as provided for earlier. As discussed above in the absence of any specific provision, the principle followed in the Cenvat Credit law should also be followed under the VAT Law.

However, w.e.f. 01.04.2015, a new provision [sub-section (4A)] has been inserted in sec 22 of the WBVAT Act, which provides that '*the ITC shall be available to the purchasing dealer if the amount of tax is actually paid by the selling dealer by way of deposit into appropriate government treasury or by way of including such tax in the total amount of output tax shown in his relevant return*'. This provision has put an additional obligation on the buyers to ensure that the seller has paid tax on the same, which may create genuine hardships. The concept of mismatch of returns of the purchasing dealers and selling dealers is now made statutory.

Chapter 12

Works Contract

12.1 History of Works Contract

The term "Works Contract" normally includes any agreement for carrying out for cash, deferred payment or for any valuable consideration, building construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, repair or commissioning of any movable or immovable property.

The 'transfer of property in goods involved in the execution of a works contract' has been included in the definition of 'sale' w.e.f. February 1983. It should be noted here that the sales tax is on 'goods involved in works contract' and *not on* 'works contract' as such. This distinction is vital for deciding aspects of valuation and also whether or not a particular transaction is inter-State sale.

What is works contract - Some contracts are contracts for labour, work or service and not for sale of goods, though goods are used in executing the contract relating to labour, work or service. For example, when a contractor constructs a building, the buyer pays for cost of building which includes cost of building material, labour and other services offered by the contractor. Property in building is passed on to the buyer and there is no contract for supply of building material as such.

The Hon'ble Supreme Court in a landmark judgement in a very old case of *State of Madras v. Gannon Dunkerley and Co.*, reported in **AIR 1958 SC 560 = 1959 SCR 379 = (1958) 9 STC 353 (SC)**, had held that no tax can be levied on works contract, as tax can be levied only on 'sale of goods' as defined in the Sale of Goods Act. In an indivisible works contract, there is no sale of goods as there could be no agreement to sell materials as such and moreover, the property does not pass as movables. The material used therein becomes property of the other party on the theory of accretion and, as such, no sales tax can be levied on such material.

'Works Contract' was looked at as one of the ways of avoiding sales tax. Hence, the Constitution was amended on 2nd February, 1983 (46th amendment). Clause 29A was added to Article 366 to cover 'transfer of

property in goods involved in the execution of works contract'. Because of this, most of the States amended their sales tax laws to cover 'works contract', *but the Central Sales Tax Act was not amended till May 2002*. Thus, till 11-5-2002, CST was not leviable on indivisible works contracts.

12.2. Definition of Works Contract [Sec. 2(57)]

Works Contract basically means an agreement to carry out any work as per the requirement of the customer or client.

The agreement is entered into for carrying out *work of the following nature*:

- (a) construction, fitting out, improvement or repair of any building, road, bridge or other immovable property;
- (b) installation or repair of any machinery affixed to a building or other immovable property;
- (c) overhauling or repair of
 - (i) any motor vehicle;
 - (ii) any sea-going vessel, river craft or steamer;
 - (iii) any other vessel propelled by internal combustion engine or by any other mechanical means;
 - (iv) any railway engine;
 - (v) any aircraft; or
 - (vi) any component or accessory part of any of the goods mentioned in items (i) to (v), or
- (d) fitting of, assembling, altering, ornamenting, finishing, furnishing, improving, ¹[processing, photocopying, developing, treating], adapting or printing on any goods.

The work should be carried out for *cash, deferred payment or any other valuable consideration*.

12.3. Transfer of Property in Works Contract Liable To Tax [Sec. 14(1)]

- (i) The liability to pay tax arises in case of the execution of the works contract *in West Bengal*;

¹ Substituted by W.B.Act III of 2007, s. 10(1), w.e.f. 1-4-2007

- (ii) The tax shall be levied on the *transfer of property in goods* involved in the execution of the works contract. This kind of transfer may be called *works contract* in this chapter of the book;
- (iii) The goods transferred may be in the form of goods or in any changed form;
- (iv) Such transfer of goods shall be deemed to be sale of goods by the transferor and purchase of goods by the transferee.

12.4. Dealers Liable to Pay Tax [Sec. 14]

12.4.1. Dealers Liable Under the Erstwhile West Bengal Sales Tax Act [Sec. 14(2)]: The incidence of tax is liable on every dealer as on 31st March, 2005 to pay tax on any *transfer of property in goods involved in the execution of the works contract* (the 'works contract' hereafter) under section 15 of the erstwhile WBST Act. Such a dealer shall be liable to pay VAT on all the works contracts effected by them on or after 1st April, 2005.

12.4.2. Contractual Transfer Price Exceeding ₹ 2,00,000/- [Sec. 14(3)]: A dealer not covered in point 12.3.1. above is liable to pay VAT if his contractual transfer *price* (i.e. aggregate of valuable consideration for *works contract*) in the year 2004-05 exceeded ₹ 2,00,000/-.

12.4.3. Contractual Transfer Price Exceeding ₹ 210 Lakhs [Sec. 14(4)]: A dealer not covered by the above clauses, but whose contractual transfer price from the commencement of any year in the VAT regime exceeds ₹ 210 Lakhs on any day, shall be liable to tax with effect from the day when it first exceeds ₹ 210 Lakhs.

12.4.4. Any Other Dealer Registered Under VAT Act [Sec. 14(5)]: Any dealer who is otherwise registered under section 24(1)(b) of the VAT Act, shall be liable to pay tax on all the *works contracts* without any threshold limit.

12.4.5. Any Other Dealer Liable To Tax on Partial Transfer of Business u/s. 27C [Sec. 14(6)]: Any dealer who incurs liability to pay tax under section 27C of the Act on partial transfer of a part or division or unit of another registered dealer shall also be liable to pay tax on all the *works contracts* without any threshold limit.

²Subs vide W. B Finance Act, 2015 w.e.f 1.4.2015. Earlier this limit was 500000/-

12.4.6. Any Other Dealer Liable to Tax Under VAT Act [Sec. 14(7)]: Any dealer who incurs liability to pay tax under section 10 or section 11 of the Act, shall be liable to pay tax on all the *works contracts* without any threshold limit.

12.5. Rate of Tax [Sec. 18]

The tax payable by a dealer on *works contracts*, shall be levied on his *taxable contractual transfer price*-

- (a) at the rate of ~~four~~³[five] *per centum*, where goods represents those specified in section 14 of the CST Act; and
- (aa) at the rate of ~~four~~⁴[five] *per centum*,⁵[where goods represents those involved in printing materials including lamination]; and
- (b) at the rate of ~~twelve decimal five zero~~⁶[fourteen decimal five zero] *per centum*, where goods represents other than those specified in clause (a) or clause (aa).

12.6. Valuation [Sec. 18(2)]

The value for this purpose shall be the **contractual transfer price**, which means the aggregate of the amount received or receivable by a dealer in respect of transfer of property in goods in the execution of any works contract. However, the contractual transfer price as reduced by the transfer of tax-free goods, labour charges, charges paid to the sub-contractors etc. shall be chargeable to tax, and shall be called “**taxable contractual transfer price**”.

12.6.1. Deduction For Determination of Taxable Contractual Transfer Price [Sec. 18(2) read with Rule 30]

While calculating the taxable contractual transfer price for any period, the following amounts shall be deducted, if any

- (a) Contractual transfer of tax free goods;

³Subs. by W.B.Act I of 2013, s. 3(5), w.e.f. 01-04-2013.

⁴Subs. by W.B.Act I of 2013, s. 3(5), w.e.f. 01-04-2013

⁵Subs. by W.B.Act II of 2012, s.5(2), w.e.f. 01-04-2012

⁶Subs. for “thirteen decimal five zero per centum” by W.B. Act I of 2013, s.3(5), w.e.f. 01-04-2013. Earlier “thirteen decimal five zero per centum” were substituted for “twelve decimal five zero per centum” by W.B.Act XXXIII of 2010, s. 3(1), w.e.f. 15-11-2010.

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- (b) Charges for labour, service and other like charges;
- (c) all amounts paid to the sub-contractors for the execution of the works contract, whether fully or in part, ⁷[where the dealer claiming such deduction produces proof to the satisfaction of the Commissioner that—
 - (i) The sub-contractor is a registered dealer liable to pay tax under section 14; and
 - (ii) An invoice has been raised by such sub-contractor to such dealer for the amount claimed as deduction; and
 - (iii) The amount of such transaction is included by such contractor in his return furnished under section 32; and
 - (iv) There is 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;
- (d) such other amounts or contractual transfers as may be prescribed.

The deductions under ⁸[clause (b) and clause (d)] shall be provided under rule 30(1) as follows:

- (a) labour charges for execution of works contract;
- (b) Charges for planning and designing and the fee of architects;
- (c) Charges for obtaining on hire or otherwise machinery and tools for the execution of works contract;
- (d) Cost of consumables such as water, electricity, fuel etc. used in the execution of works contract, the property in which (it is not transferred in the course of execution of the works contract;
- (e) Cost of establishment of the contractor to the extent it is related to the supply of labour and services;
- (f) Other similar expenses related to the supply of labour and services; and
- (g) Profit earned by the contractor to the extent it is related to the supply of labour and services ~~subject to furnishing of profit and loss account of the works site.~~

⁷ Sub-section 2 of section 18 substituted by W.B.Act VII of 2011, s.5(3), w.e.f. 01-09-2011.

⁸Subs.By notification No. 1539-F.T., dated 17-10-2011, w.e.f. 1-9-2011.

Deduction under clause (d) of sub-section (2) of section 18 is provided under the rules as follows:

- (1) ⁹[Deduction from total contractual transfer price received or receivable by M/s Garden Reach Shipbuilders and Engineers Limited, Kolkata on or after 1st day of April, 2005 on the construction of vessel that part of such contractual transfer prior which represents contractual transfer of goods involved in the execution of works contract in West Bengal, where the execution of such works contract is undertaken pursuant to a cost plus remuneration contract. (Rule 30A)

- (2) Where a works contractor in the course of the execution of the works contract uses goods supplied by the contractee, deductions from contractual transfer price of cost of goods purchased from West Bengal on payment of tax under the Act, and supplied, by the contractee.

A certificate from the principal (contractee) giving details of purchase, like the description of the goods purchased with their quantity, invoice No. with date, amount and tax, name of the selling dealer with his address and TIN No., if any, produced by the contractor shall be accepted as evidence for allowing such deduction. (Rule 30B)]

- (3) ¹⁰Deduction from total contractual transfer price received or receivable by a dealer that part of the contractual transfer price during that period which represents the contractual transfer of goods involved in the execution of any works contract awarded by the West Bengal State Electricity Board or any public sector undertaking under Rajiv Gandhi Grameen Vidyutikaran Yojana Scheme for Rural Electricity Infrastructure and Household Electrification. (Rule 30BA)

The dealer shall, on demand by the appropriate assessing authority, furnish a certificate from the West Bengal State Electricity Board or the public sector undertaking, as the case may be, in the Form appended to this rule (Rule 30BA), duly filled and signed by its principal officer or such other officer as may be authorized in this behalf:

⁹ Rule 30A and 30B inserted by notification No. 1922-F.T., dated 14-10-2005, w.e.f. 1-9-2005

¹⁰ Rule 30BA inserted by notification No. 1077-F.T., dated 28-6-2006, w.e.f. 1-4-2005 retrospectively.

FORM OF CERTIFICATE

(See rule 30BA of the West Bengal Value Added Tax Rules, 2005)

Serial No. RGGVY/:

Date:

To

..... (Name of the dealer executing the works contract)

..... (Address)

..... (Registration No. under the West Bengal

..... Value Added Tax Act, 2003).

Certified that there has occurred the contractual transfer of the goods as referred to in tax invoice/invoice/bill Stated below to us by you in the course of the execution of the following project in West Bengal under Rajiv Gandhi Grameen Vidyutikaran Yojana Scheme for the Rural Electricity Infrastructure and Household Electrification:

1. Tax invoice/invoice/bill No. and date:
2. Broad description of the goods contractual transfer which has taken place:
3. Quantity of the goods:
4. Contractual transfer price of the goods:
5. Location of the project:
6. Gross value of the project:

Seal.....

Signature.....

Date.....

Name and designation of the person signing the certificate

- (4) ¹¹Deduction from the total contractual transfer price received or receivable by a dealer, owning a silk fabric printing unit that part of the contractual transfer price during such period which represents the contractual transfer of goods involved in the execution of the works contract of dyeing and/or printing, employing manual process instead

¹¹Inserted by notification no. 1891-F.T. dated 4-12-2009, w.r.e.f. 1-4-2005.

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of using any machine, of silk fabrics provided to him by the person who awarded such contract. The dealer on demand by the appropriate assessing authority, will furnish relevant tax invoice, invoice, cash memo or bill evidencing such contractual transfer of goods and a certificate from the person who awarded such contract in the Form appended to this rule, duly filled and signed. Where any tax, has already been paid by such dealer in accordance with the provisions of the Act before the date of publication of this rule, he shall not be entitled to refund of such tax. (Rule 30BB)

CERTIFICATE

[Refer rule 30BB of the West Bengal Value Added Tax Rules, 2005]

To

.....(Name of the dealer executing the works contract)

.....(Address)

.....(Certificate of Registration No. under the West Bengal Value Added Tax Act, 2003)

Certified that there has occurred the contractual transfer of the goods as referred to in tax invoice/invoice/cash memo/bill Stated below to *me/us by you in the course of the execution of the works contract of *dyeing and/or printing of silk fabrics provided by *me/us to you.

Tax invoice/invoice/cash memo/ bill No. and date	Description of the goods transferred in course of execution of the works contract	Quantity of goods, specified in column (2), transferred	Contractual transfer price of the goods, specified in column (2)
(1)	(2)	(3)	(4)

1. Name and address of the person who awarded the works contract of *dyeing and/or printing:

2. Certificate of registration No., if any:

Date:

Seal:

Signature and status of the person signing the certificate

*Strike out whichever is not applicable.

12.6.2 Where No Accounts Maintained or Charges Not Ascertainable [Sec. 18(3)]

Where the works contractor does not maintain proper accounts, or the accounts maintained by him are not found by the assessing authority to be worthy of credence, and the amount actually incurred towards charges for labour and other services, or profit relating to supply of labour and services, or the taxable contractual transfer price for applying proper rate of tax, are not ascertainable, such charges etc. shall be determined on the basis of a certain percentage of the value of the works contract as may be prescribed.

Different percentages have been prescribed for different types of works contracts, based on the principles laid down by the Apex Court in the case of Gannon Dunkerly and Co. under rule 30(2). In the table given in rule 30(2), the **percentage of deduction from the contractual transfer price has been prescribed, as also the percentage of total value of contract taxable at the rate of 5% and 14.5%. For example, in the case of a contract for fabrication and installation of plant and machinery, 25% of the contractual transfer price (CTP) shall be deducted on account of labour and other service charges. 50% of the CTP shall be charged at the rate of 5% and the balance 25% shall be charged at the rate of 14.5% on a compounding basis. [See Appendix – I to this Chapter]**

12.6.3 Composition Scheme [Sec. 18(4)]

Any registered dealer who is liable to pay tax for the execution of the works contract, may, on his own, pay tax at a compounded rate ~~two per centum~~¹²[three per centum] of the aggregate of the amount received or receivable by him for each month of the year in lieu of the amount of tax payable as per para 12.4.

Entitlement: The dealer engaged in the execution of the works contract, shall be entitled to the composition scheme, provided he is not engaged in the following-

- (a) making sale as referred to in sub-clause (ii) of clause (g) of section 2 of the CST Act; or
- (b) making sale in the course of import of the goods into, or export of the goods out of, the territory of India; or

¹² Subs by notification No. 369-F.T., dated 28-03-2013, w.e.f 01-04-2013

- (c) transferring goods otherwise than by way of sale for the execution of the works contract outside the State.
- (d) ¹³[Reselling goods]

No Tax Invoice: Provided that the dealer opting for the composition scheme shall not be entitled to issue tax invoice.

¹⁴[Provided further that an option exercised by a registered dealer under this sub-section shall be deemed to be final and irrevocable for that year or part of that year for which such an option has been exercised.]

12.7 Alternative Options to Choose from

Any dealer involved in the execution of the works contract in West Bengal may therefore choose from any of the above three schemes for payment of tax. He can either go for the normal scheme for payment of tax based on the actual usage of different materials in the works contract, and the applicable rate as per section 18, after deducting from CTP the amount towards labour and other like service charges. Alternatively, in spite of maintaining proper records and documentation for the same, he can pay tax based on the formula given under rule 30(2). Under both these alternatives, input tax credit is available in respect of the taxable goods purchased from within West Bengal, subject to the conditions discussed in chapter 9. Thirdly, the dealer may opt for payment of tax under the composition scheme, without claiming any input tax credit for the taxable goods purchased.

12.8. Returns [Sec. 32(4)]

In the case of a dealer executing the works contract, the certificate of deduction of tax under section 40(1), should accompany the return filed under sec 32(1).

12.9. Deduction of Tax at Source from Payment for Works Contract [Sec. 40]

Any person responsible for paying any sum to any dealer for the execution of a works contract within West Bengal referred to in section 14 (the '**contractor**' hereafter), shall deduct an amount (as stated here in below) towards tax ('TDS' hereafter) in respect of such works contract from the payment made to the works contractor.

¹³ Inserted by W.B.Act III of 2007, s 10(2), w.e.f. 1-4-2007

¹⁴ Second proviso was inserted by W.B.Act I of 2013, s.3(5), w.e.f.01-04-2013

12.9.1. Who is Liable to Deduct TDS

The person making payment to the contractor shall be liable to deduct tax at source, only if the contract is between him and any one of the following:

- (a) Government
- (b) a local authority;
- (c) a corporation or a body established by or under any law that is in force;
- (d) a company incorporated under the Companies Act, 1956, including a Government undertaking;
- (e) a co-operative society registered or deemed to be registered under the West Bengal Co-operative Societies Act, 1983;
- (f) an educational institution;
- ¹⁵(g) a promoter;
- (h) any bank;
- (i) any hospital or nursing home or diagnostic centre;
- (j) a partnership firm;
- ¹⁶(k) a joint-venture company, or
- (l) a limited liability partnership.]

12.9.2. When to Deduct TDS

The amount is to be deducted [rate specified in point 12.9.3 below] at the time of making payment for the execution of the works contract to the contractor in cash or by cheque or draft or any other mode of payment.

12.9.3. Rate of TDS [Rule 46XA]

¹⁷[The amount of TDS to be deducted shall be:

- (a) In respect of payment to a dealer, other than a registered dealer who has exercised his option under sub-section (4) of section 18 to pay tax

¹⁵Subs. For "(g) a promoter", by W.B.Act III of 2007, s.10(6), w.e.f. 01-04-2007.

¹⁶ Sub-section (1) was substituted by W.B.Act VII of 2011, s. 5(9), w.e.f. 1-9-2011.

¹⁷ Rule 46XA inserted by *ibid*, w.e.f. 1-9-2011. Further, sub-rule (2) of rule 46XA was substituted by Notification No. 377-F.T., dated 19-03-2012, w.e.f. 01-09-2011.

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at the compounded rate in terms of rule 39 for the year for which the payment has been made, such per centum as mentioned in sub-column (a) of column (2) of the Table below on the amount of payment to such registered dealer, and in sub-column (b) of that Table for payment to a dealer other than a registered dealer, in respect of execution of works contract in West Bengal which remains after allowing deduction as in sub-rule (1):

Nature of Contract	Per centum of deduction on the total amount of payment after deduction as in sub-rule (1)	
	(1)	(2)
	To a registered dealer	To a dealer other than a registered dealer
(i) Printing of any material	Two ¹⁸ [three per centum	Four five per centum
(ii) All contracts specified in sub-rule (2) of rule 30 excluding the contract for printing on any material.	Two three per centum	Four five per centum]

- (b) In respect of payment to a registered dealer who has exercised his option under sub-section (4) of section 18 to pay tax at the compounded rate in terms of rule 39 for the year for which the payment has been made, at the rate of ~~two~~¹⁹[three] per centum of the total amount of payment to such a registered dealer]

W.e.f. Dec'14, the amount to be deducted from a registered dealer who has furnished certificate of return filing shall be 3% while that from a registered dealer who does not furnish certificate of filing return or an unregistered dealer shall be 5%.

¹⁸ Sub. For "Two per centum Four per centum" by notification No. 369-F.T., dated 28-03-2013, w.e.f. 01-04-2013

¹⁹Subs. By notification No. 652-F.T. , dated 22-5-2013, w.e.f. 1-4-2013.

12.9.4. No TDS in certain circumstances [Sec 40]

No TDS is required to be deducted,—

- (i) where the payment is made as **advance** prior to the commencement of the execution of a works contract; or
- (ii) where **no transfer of property** in goods (whether as goods or in some other form) is involved in the execution of a works contract; ²⁰[and the payment is made by, or on behalf of, or to a dealer who has not claimed deductions under clause (c) of sub-section (2) of section 118 in respect of such works contract.]
- (iii) ²¹[where the amount mentioned in the tax invoice, invoice or bill in a single transaction or multiple transactions with a dealer during a year relating to transfer of property in goods (whether as goods or in some other form) in the execution of a works contract does not exceed rupees ten thousand.]

12.9.5. Deposit of TDS

The amount of TDS is to be deposited in the appropriate Government Treasury. The amount is to be deposited ²²[either manually or electronically] **within 10 days** from the close of each month. The challan shall be prepared in **quadruplicate**.

12.9.6. Scroll of TDS [Section 40(2A) and 40(2B)]

²³**(2A) After the deposit of amount so deducted under sub-section (2), the person who makes the deduction, shall furnish a scroll, within such date, in such manner, and to such authority, as may be prescribed.**

²⁴**(2B) Where the person who makes the deduction under sub-section (2) or a contractee, delays in furnishing scroll referred to in sub-section (2A), he shall be liable to pay late fee and the provisions of sub-section (2) of section 32 shall, *mutatis mutandis* apply.**

²⁰ Sub-section (1) of section 40 was substituted by W.B.Act VII of 2011, s. 5(9), w.e.f. 01-09-2011.

²¹ Item (iii) was inserted by W.B.Act I of 2013, s. 3(14), w.e.f. 1-4-2013

²² Substituted by notification No. 101-F.T., dated 20-1-2012, w.e.f.20-1-2012.

²³ Inserted vide W.B Finance Act, 2015 w.e.f. 2-11-2012

²⁴ Inserted vide W.B Finance Act, 2015 w.e.f. 1-7-2015

12.9.7. TDS Certificate

The deductor shall, ~~within fifteen days from the date of deposit,~~²⁵[within twenty five days from the expiry of English calendar month during which deduction is made] issue to the contractor a **certificate** in Form 18 **for each deduction** separately.

The person will send a copy of the receipted challan to the Commissioner along with the relevant certificate of deduction and such other documents as may be prescribed.

12.9.8. Adjustment of TDS

The amount of TDS so deducted by the person making payment to the contractor shall be adjusted by the Commissioner towards the tax liability of the contractor.

²⁶12.9.9 Interest for failure to deposit the tax so deducted

Where the person who makes the deduction under subsection (2) or a contractee, fails to deposit the amount so deducted towards tax leviable on intra-State contractual transfer price, within the prescribed date, he shall pay a simple interest at the rate specified in section 34B for the period commencing on the date immediately following the prescribed date for payment of such amount and up to the date preceding the date of payment of such amount or preceding the date of commencement of proceeding under section 55, whichever is later. [Section 40(3B)]

Where the interest payable under sub-section (3B) has not been paid, the Commissioner may determine the amount of interest so payable and issue notice to the person for payment of the same in such manner as may be prescribed, and if the amount of interest so demanded is not paid within the date specified in such notice, the amount may be recovered in accordance with the provisions of section 55 or section 60. [Section 40(3C)]

No interest or late fee or penalty shall be payable under this section in such cases, or under such circumstances, and subject to such conditions or restrictions, if any, as the State Government may, by notification, specify. [Section 40(3D)]

²⁵Subs. By notification No. 101-F.T., dated 20-1-2012, w.e.f. 20-1-2012. (Contradictory provisions in Section 40 and Rule 47)

²⁶ Inserted vide W.B. Finance Act, 2015 w.e.f 1-4-2015

12.9.10. Penal Provision

Where the person making payment to a contractor contravenes the provisions of deducting and depositing TDS, he shall be liable to a penalty, not exceeding twice the amount required to be deducted and deposited by him.

12.9.11. Refund of TDS

Where the contractor is not liable to pay tax under section 14 and the amount deducted from him was not wholly or partly payable by him under this Act, the Commissioner shall refund or adjust the amount refundable to the dealer in such manner as may be prescribed.

²⁷12.9.12. Manner of application for certificate of enrolment and issue, amendment and cancellation of such certificate (Rule 46XB)

- (1) Every contractee liable to deduct the amount towards tax under sub-section (1) of section 40, shall have a place of business in West Bengal and shall enrol himself with the appropriate enrolling authority. Save as otherwise provided in rule 46XC, a contractee shall make an application in Form 90 for enrolment with the appropriate enrolling authority within thirty days from the date of coming into force of this rule or within thirty days from the date of commencement of his intra-State works contract whichever is later.

Explanation- Where a contractee has more than one division or branch in West Bengal, he shall make one application DDO-wise for each of his divisions or branches.

- (2) When the appropriate enrolling authority as defined in clause (ddd) of rule 2, is satisfied that the contractee has correctly given all the requisite information in his application required under sub-rule (1) and the application is in order, he shall enrol such contractee and issue in his favour a certificate of enrolment in Form 91 within thirty days from the date of receipt of the application.
- (3) The certificate of enrolment issued under sub-rule (2) to a contractee shall be kept at his place where he is situated.
- (4) When there is any change in the particulars of the contractee or of the Drawing and Disbursing Officer (DDO) requiring an amendment in the

²⁷ Rule 46XB was inserted by notification No. 101-F.T., dated 20-1-2012 w.e.f. 20-1-2012 and then amended by notification No. 1739-F.T., dated 2-11-2012.

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certificate of enrolment issued under sub-rule (2), the holder of such certificate shall make an application for this purpose within thirty days to the appropriate enrolling authority as defined in clause (ddd) of section 2, together with a copy of the certificate of enrolment and evidence of such change and the appropriate enrolling authority may, if he is satisfied that the application is in order, make such amendments in the certificate of enrolment as may be deemed necessary.

- (5) Any contractee may upon application obtain from the appropriate enrolling authority on payment of a fee of one hundred rupees, a duplicate copy of his certificate of enrolment which had been issued to him earlier under sub-rule (2) and which has been lost, destroyed or defaced.
- (6) After being enrolled, if the contractee at any time finds that there is no possibility of any works contract as defined under clause (57) of section 2, to be executed by a contractor in near future, he shall make an application praying for the cancellation of the certificate of enrolment to the appropriate enrolling authority together with the copy of the certificate of enrolment. The authority shall after being satisfied, cancel the certificate within thirty days from the date of receipt of his application.

Provided that where the appropriate enrolling authority does not dispose of such application of the contractee within thirty days from the date of submission of the application, such certificate shall be deemed to have been cancelled immediately on the expiry of the aforesaid period.

- (7) When the appropriate enrolling authority as defined in clause (ddd) of rule 2, is satisfied that the contractee has ceased to exist at his declared place, he shall after giving the contractee an opportunity of being heard, cancel the certificate of enrolment with effect from the date of such order.
- (8) If the contractee, who is required under sub-rule (1) to apply for certificate of enrolment, fails without any reasonable cause to make such application within the time referred to in sub-rule (1), he shall be liable to pay penalty of a sum not exceeding one thousand rupees for each month of default or part thereof

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- (9) Where it appears to the appropriate enrolling authority that a contractee is liable to pay penalty under sub-rule (8) for his failure to make his application for enrolment, he shall serve him a notice in Form 4 directing him to appear in person or through his agent and to show cause on the date and at the time and place specified in such notice as to why the penalty proposed in the notice shall not be imposed on him.
- (10) The appropriate enrolling authority as defined in clause (ddd) of rule 2, shall fix a date for hearing not less than fifteen days from the date of issue of such notice.
- (11) The appropriate enrolling authority as defined in clause (ddd) of rule 2, may after hearing the contractee, by an order in writing, impose such amount of penalty as he deems fit and proper and shall serve a notice in Form 5 upon him to pay the amount of penalty so imposed specifying the date, not less than twenty days after the service of the notice and produce the challan proving such payment before the said authority.]

²⁸12.9.11 Application for enrolment by electronic means, and issue, amendment and cancellation of such certificate (Rule 46XC)

- (1) Every contractee liable to be enrolled under sub-rule (1) of rule 46XB, shall make an application in Form 90 available on the website of the Directorate of Commercial Taxes i.e. www.wbcomtax.gov.in, to the appropriate enrolling authority either under digital signature or without any digital signature electronically through such website within thirty days from the coming into force of this rule, or within thirty days of commencement of the execution of the intra-State works contract, whichever is later, and on such application, such contractee shall be instantly allowed to generate his Certificate of enrolment in Form 91 showing his enrolment number and other details and shall get a print-out of such certificate.
- (2) The provisions of sub-rule (3), sub-rule (4), sub-rule (6), sub-rule (7), sub-rule (8), sub-rule (9), sub-rule (10), sub-rule (11) of rule 46XB, shall mutatis mutandis, apply when the application is made under this rule.

²⁸ Rule 46XB was inserted by notification No. 101-F.T., dated 20-1-2012 w.e.f. 20-1-2012 and then amended by notification No. 1739-F.T., dated 2-11-2012

²⁹APPENDIX – I

Different rates of percentage prescribed under Rule 30(2) for different types of works contracts:

Serial No. (1)	Type of contract. (2)	Percentage of deduction from the contractual transfer price. (3)	³⁰ [Percentage of the balance intra-State contractual transfer price after deductions as in clause (i) above, taxable at the rate of] (4)	
			4% ³¹ [5%]	12.5% 14.5%]
1.	Fabrication and installation of plant and machinery	25	25 50	50 25
2.	Fabrication and erection of structural works of iron and steel including fabrication, supply and erection of iron trusses, purlins and the like.	15 20	45 50	40 30
3.	Fabrication and installation of cranes and hoists.	15	25	60
³² 4.	Fabrication and installation of elevators (lifts) and escalators.	15	20	65]

²⁹ Table (serial Nos. 1,2,11,14,16,17 and 21) amended by notification No. 1732-F.T., dated 18-10-2006, w.e.f. 1-10-2006.

³⁰ This heading was at first substituted by notification No. 940-F.T., dated 21-6-2010, w.e.f. 01-7-2010. Thereafter again substituted as above by notification No. 1539-F.T. dated 17-10-2011, w.e.f. 1-9-2011

³¹ Subs. For “ 4 per centum 13.5 per centum” by notification No. 369-F.T., dated 28-3-2013, w.e.f. 01-4-2013. Earlier, “13.5 per centum” were substituted for “12.5 per centum” by notification No. 869-F.T., dated 13-6-2011, w.e.f. 15-11-2010

³² Serial No. 4 was omitted by notification No. 2104-F.T., dated 29-12-2006, w.e.f. 1-12-2006

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5.	Fabrication and installation of rolling shutters and collapsible gates.	15	45	40
6.	Civil works like construction of buildings, bridges, roads, dams, barrages, canals and diversions.	25	20 ³³ [40]	55 35]
7.	Installation of doors, door frames, windows, frames and grills.	20	10	70
8.	Supply and fixing of tiles, slabs, stones and sheets.	20	Nil	80
9.	Supply and installation of air conditioners and air coolers.	15	5	80
10.	Supply and installation of air conditioning equipment including deep freezers, cold storage plants, humidification plants and de-humidors.	15	5	80
11.	Supply and fitting of electrical goods, supply and installation of electrical equipments including transformers.	15 20	5 50	80 30
12.	Supply and fixing of furniture and fixtures, partitions including contracts for interior decorators and false ceiling.	20	5	75
13.	Construction of railway coaches and wagons.	20	50	30
14.	Construction or mounting of bodies of motor vehicles and construction of trailers.	20 20	30 50	50 30

³³Subs. For " 20 55" by notification No. 1057-F.T., dated 12-7-2010, w.e.f. 01-04-2010.

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15.	Sanitary fittings for plumbing drainage or sewerage.	25	15	60
16.	Laying underground surface pipelines cables and conduits.	30 30	40 30	60 40
17.	Dyeing and printing of textiles.	30 60 ³⁴ [40]	Nil 40 60]	70 Nil Nil
18.	Supply and erection of weighing machines and weigh bridges.	15	30	55
19.	Painting, polishing and white washing.	30	Nil	70
20	Printing ³⁵ [including lamination] other than those mentioned elsewhere in the TABLE	20	80	Nil
³⁶ 20A	Repair or maintenance or servicing of any motor vehicles including two wheelers like motor cycles, scooters, etc. ³⁷ [including transfer of only Schedule C goods.]	20 ³⁸ [10]	40 55	40 35]

³⁴Subs. For "60 40" ny Notification No. 369-F.T., dated 28-03-2013, w.e.f. 01-04-2013

³⁵ Sl. No. 20 was substituted by notification No. 1059-F..T., dated 26-6-2012, w.e.f. 1-4-2012

³⁶ Inserted by notification No. 1059-F.T., dated 28-3-2013, w.e.f. 01-04-2013

³⁷ Serial No. 20A amended by W.B.Finance Act, 2014 and the change is effective from 01-10-2014.

³⁸ Serial No. 20A amended by W.B.Finance Act, 2014 and the change is effective from 01-10-2014.

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³⁹ 20B	Repair or maintenance or servicing of any motor vehicles including two wheelers like motor cycles, scooters, etc. involving transfer of only Schedule CA goods.	10	0	90
⁴⁰ 20C	Annual Maintenance contract of any equipment including computer	40	20	40
- 24	All other contracts not specified from serial no. 1 to 20	20 20	15 30	65 50
⁴¹ 21	All other works contract not specified elsewhere in the TABLE and involving transfer of declared goods as specified in section 14 of the Central sales Tax Act, 1956 (74 of 1956) and other goods specified under Schedule C, Schedule CA, or Schedule D	20	30	50
⁴² 22	All other works contracts not specified elsewhere in the TABLE and not involving transfer of declared goods as specified in section 14 of the Central sales Tax Act, 1956(74 of 1956).	20	0	80

³⁹Inserted vide W.B.Finance Act, 2014 w.e.f 1.10.2014.

⁴⁰ Inserted vide notification 523 F T dated 02.04.2015 w.e.f 01.04.2015.

⁴¹ Sl. No. 21 substituted vide W.B.Finance Act, 2014 w.e.f 1.10.2014

⁴² Inserted vide W.B.Finance Act, 2014 w.e.f 1.10.2014

Chapter 13

Records and Accounting

13.1. Books of Accounts

The dealer is required (vide **section 63**) to maintain in addition to the books of accounts that he maintains or keeps for the purpose of his business, a true and up-to-date account in respect of the following-

- The quantity and value of the goods purchased;
- The quantity and value of the goods manufactured;
- The quantity and value of the goods sold;
- The quantity and value of the goods used in the execution of the works contract
- The quantity and value of the goods held in stock;
- Such other registers or accounts as may be prescribed, in the prescribed form.

13.2. Records to be kept in the Place Of Business

All the accounts, registers, documents and digital signature certificate shall be kept at the place of business. They shall not be kept or removed elsewhere except in accordance with the requirement of law.

13.3. Prescribed Statutory Records [Rule 87]

13.3.1. Input Tax Account: Every registered dealer, other than the one enjoying composition or a shipper of jute, ¹[may], in his input tax account, record tax paid or payable on purchases referred to in clause (18) of section 2.

13.3.2. Output Tax Account: Every dealer, required to furnish return under sub-section (1) of section 32, shall, in his output tax account record-

- (a) tax paid or payable on turnover of sales under sub-section (2) of section 16;

¹Subs.By *ibid*, w.e.f. 1-4-2005.

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- (b) tax paid or payable on turnover of sales under ~~sub-section (3)~~²[different sub-sections] of section 16;
- (c) tax paid or payable on taxable contractual transfer price referred to in sub-section (1) of section 18;
- (d) tax paid or payable on contractual transfer price referred to in sub-section (4) of section 18;
- (e) purchase tax payable under section 11 and under section 12.

13.3.3. Input Tax Credit Account: Every registered dealer, to whom input tax credit is available, shall, for the purpose of determining net tax credit for a tax period, referred to in sub-section (17) of section 22, record the following in the input tax credit account –

- (a) input tax on which credit is available;
- (b) outstanding input tax credit of the previous tax period;
- (c) credit availed that has to be reversed.

13.3.4. Supporting Documents: The dealer shall also maintain the way bills received and documents, vouchers, tax invoices, invoices, bills or cash memos, counterfoils of way bills issued, in support of any entry in his records.

13.4. Records By Dealers Liable To Pay Tax on Purchase of Raw Jute [Rule 88]:

Every dealer who is liable to pay tax on purchase of raw jute under section 11 shall maintain—

- (a) as an occupier of the jute mill, proper records of purchases in a register in Form 43 and of dispatches in a register in Form 44, or
- (b) as a shipper of jute, proper records of purchases in a register in Form 45 and of dispatches in a register in Form 46.

Receipts for Purchase of Raw Jute: An occupier of jute mill and a shipper of jute shall issue consecutively numbered receipts, even if no sale bill is received from the person from whom raw jute is purchased for every consignment of jute received and whether under contract or otherwise, and shall retain duplicate copies of these receipts and shall enter in the register

²Subs. By notification No. 369-F.T. dated 28-3-2013, w.e.f. 1-4-2010.

in Form 43 or register in Form 45 respectively, the number, date and amount of these receipts serially and chronologically.

13.5. Records by Transporter, Carrier or Transporting Agent [Rule 89]

A true and up-to-date account shall be maintained of every consignment of taxable goods.

- (a) **Form 47:** For goods transported into West Bengal from any place outside it;
- (b) **Form 48:** For goods transported from any place in West Bengal to any place outside it;
- (c) **Form 49:** For goods transported from any place in West Bengal to any other place within it.

13.6. Period of Preservation of Records [Rule 90]

The accounts, books of accounts, prescribed statutory registers and documents as discussed above in respect of any year or part thereof shall be preserved by a dealer

- (i) For a period of **six years** after the expiry of the year to which they relate.
- (ii) Where there is any appeal, review, revision or reference pending, or any case pending before any Court or Tribunal, till such period, as those may be required for final disposal.
- (iii) who enjoys **deferment of tax**, for a period of **four years** after the expiry of the specified period mentioned in the eligibility certificate.

13.7. Production of, And Inspection of Records [Sec 66 and Rule 94]

The Commissioner, a Special Commissioner, an Additional Commissioner or any person appointed under section 6(1) to assist the Commissioner may require the accounts, registers and documents, digital signature certificate, or any information for the purpose of inspection u/s 66(2).

All accounts, registers and documents and all goods kept at the place of business of any dealer, casual dealer or any other person are required to be available at all reasonable time for inspection by the Commissioner, a

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Special Commissioner, an Additional Commissioner or any person appointed under section 6(1) to assist the Commissioner

A notice shall be given in writing to the dealer, requiring him to produce records and documents called for and to furnish information.

While requiring the dealer to produce before him any accounts, registers and documents, digital signature certificates, or any information or to make available accounts, registers and documents and all goods kept at the place of business it shall be ensured that his business or the work of his staff is not disturbed any more than what is necessary for the purposes of the Act.

Powers have been given by West Bengal Taxation Laws (Amendment) Act, 2005 (w.e.f. 01.04.2005) to the Commissioner, a Special Commissioner, an Additional Commissioner or any person appointed under section 6(1) to seek information and order production of documents for levy or collection of any tax imposed by the State or for any other purposes of the Act. Such information or documents can be sought from-

- (i) any authority under the State or Central Government;
- (ii) any local authority;
- (iii) a statutory body;
- (iv) a trust; or
- (v) any other body corporate.

13.8. Accounting Entries in the Books of Account

As per the Accounting Standard (AS 2) issued by the Institute of Chartered Accountants of India (ICAI), accounting for purchases, sales, consumption and inventory should be made under the '**exclusive method**', i.e. excluding duties and taxes, where such duties or taxes are allowed as refund by way of credit or otherwise.

Ex. Following transactions took place in the month of April'2005.

a. Purchase of inputs from within the State	₹ 10,00,000/- + ₹ 40,000/- (VAT).
b. Inter-State Purchase of Inputs	₹ 100000/- + ₹ 4000/- (CST)
c. Purchase of Office Stationery	₹ 5000/- + ₹ 625/- (VAT)

d. Stock transfer during the month	₹ 800000/-
e. Capital Goods purchased	₹ 500000/- + ₹ 20000/- (VAT)
f. Sale during the month (local)	₹ 900000/-
g. Sale Inter-State during the month	₹ 100000/-
h. VAT rate on sale	10%
i. CST rate on Inter-State sale	4%

13.8.1. Accounting for Purchases: The following accounting entries are suggested for purchases of taxable goods required for the purpose of business. Wherever credit is available for purchases, they should be either debited net of VAT at the time of purchase only, or the gross amount may be debited in 'purchase account', and the VAT amount may subsequently be transferred to the 'Input tax credit a/c'.

SI No.	Accounting for Purchase	Amount (Dr)	Amount (Cr)
	For purchase of inputs/inventory (local purchase) (a) If Invoice received with the inputs/inventory		
1.	Inputs/Inventory A/c Input Tax A/c To Suppliers A/c	1000000 40000	1040000
	Alternatively		
	(a) If Invoice not received with the inputs		
2.	Inputs/Inventory A/c To Suppliers A/c	1040000	1040000
	(b) For transfer of Input Tax on receipt of Invoice		
3.	Input Tax A/c To Inputs/ Inventory A/c	40000	40000
	For purchase of inputs/inventory (CST)		
4.	Inputs/Inventory A/c To Suppliers A/c	104000	104000
	For Purchase of Office Stationery		

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5.	Office Stationery A/c Input Tax A/c To Suppliers A/c	5000 625	5625
	*For Purchase of Capital Goods		
6.	Capital Goods A/c Input Tax A/c To Suppliers A/c	500000 20000	520000
	**For Transfer From Input Tax A/c to Input Tax Credit A/c		
7.	Input Tax Credit A/c To Input Tax A/c	60000	60000
	For reversal of credit on stock transfer		
8	Inputs Tax A/c To Input Tax Credit A/c	32000	32000
	For Transfer of the Reversed Credit		
9.	Inputs/Inventory A/c To Input Tax A/c	32000	32000

* In case of Capital Goods, credit is available if the item is capitalized in the dealer's books of accounts.

** Instead of a daily entry a single consolidated entry may be made at the end of the tax period to transfer the eligible amount of Input tax credit from input tax A/c

Notes:

1. Input tax account will be debited with the tax amount only to the extent which has been paid by a registered dealer, other than those who opt to pay tax at the compounded rate.

2. The portion of the input tax on which input tax credit is available shall be transferred to the Input Tax Credit A/c and the portion on which no input tax credit is available is to be transferred to other accounts like Purchase A/c or Office equipment A/c or Office stationery A/c, etc., as the case may be.

13.8.2. Accounting for Sales: Sales should be credited with the net of VAT amount realized. The amount of VAT collected should be credited separately in the liability account.

Records & Accounting

For payment of VAT collected at the end of the month, the 'Input Tax Credit A/c' should be utilized first, and the balance amount should be paid in cash, and adjusted against the liability account.

Sl No	Accounting for Sales	Amount (Dr)	Amount (Cr)
	For sale of output (local)		
1.	Customers A/c To Sales A/c To Output Tax A/c	990000	900000 90000
	For sale of output (Inter-State)		
2.	Customers A/c To Sales A/c To CST Payable	104000	100000 4000
3.	For Journal/Adjustment of Input Tax credit with Output Tax A/c		
4.	Output Tax A/c To Input Tax Credit A/c	28000	28000
	For Payment of CST		
5.	CST Payable A/c To Cash/Bank	4000	4000
	For Payment of Output Tax (at the end of the month)		
6.	Output Tax A/c To Bank A/c	62000	62000

Chapter 14

Returns

Principles Laid Down in the White Paper

Under the VAT, simplified form of returns are to be filed monthly/quarterly as specified in the State Acts/Rules, and will be accompanied by payment challans.

Every return furnished by dealers will be scrutinized expeditiously within the prescribed time limit from the date of filing of the return. (If any technical mistake is detected on scrutiny, the dealer will be required to pay the deficit appropriately.)

Provisions in the West Bengal VAT Law

Every Registered Dealer to File Return [Sec. 32(1)]

Return is required to be furnished by every dealer liable to pay tax or every other dealer, if so required by the Commissioner by a notice in such form, by such dates and with such authority as may be prescribed in the rules.

14.1. Who Shall File a Return?

Every dealer liable to pay tax under the Act shall furnish a return.

Any other dealer may also be required by the Commissioner to furnish returns. For this, the Commissioner shall serve him a notice.

14.2. Return after Payment of Tax

Tax with interest¹ and late fee payable as per the return must be paid before furnishing the return.

The Commissioner may however permit a dealer to furnish the return without payment of such tax or interest or late fee, on the basis of an application made by him in this regard. [Section 32(2)]

¹ Section 32(2) was substituted by *ibid*, s. 9(11), w.e.f. 01-4-2007.

²[Where a dealer has furnished a return beyond the prescribed date without making full payment of the net tax, interest and late fee payable according to such return, he shall pay late fee up to the date of full payment of such net tax and interest, or up to the date of assessment under section 46 or section 48 in respect of such return period, whichever is earlier]

³[No late fee shall be payable, if the total amount of net tax, interest and late fee paid does not exceed rupees one thousand]

14.2. Revised Return

A revised return may also be filed, ⁴[if there was an omission or any other error which is detected by a dealer]. Such return may be furnished ⁵[within six English calendar months beginning from the month immediately following the month in which such return is due to be furnished] [Section 32(3)]

In case the revised return shows a greater amount of tax to be due than what was shown in the original return, it shall be accompanied by a receipt showing payment of the extra amount in the manner provided in section 31. [Section 32(3)]

⁶[Provided that a revised return under this sub-section shall be furnished only once.]

14.3. Periodicity of Return

14.3.1. Quarterly Returns [Rule 34]

⁷[A dealer liable to furnish return under section 32 shall furnish a return on quarterly basis in Form 14, except in certain special circumstances, which demand returns to be furnished annually or monthly.

Provided that where a dealer becomes ineligible to pay tax under sub-section (3) of section 16 i.e. under the composition scheme, in the middle of a quarter, he shall furnish monthly returns for the months in the quarter during

² Third proviso to Section 32(2) was inserted by W.B.Act VII of 2011, s. 5(8), w.e.f. 1-4-2007.

³ Fourth to sixth provisos to section 32(2) were inserted by W.B.Act I of 2013, s. 3(12), w.e.f. 1-4-2013.

⁴Subs. For by *ibid*, s. 5(8), w.e.f. 1-4-2005 retrospectively.

⁵Subs. By W.B.Act II of 2010, s. 6(7), w.e.f. 1-4-2010.

⁶ Proviso was inserted by W.B.Act VII of 2011, s. 5(8), w.e.f. 1-9-2011.

⁷Subs. By notification No. 1732-F.T., dated 18-10-2006, w.e.f. 1-10-2006.

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which he has enjoyed such composition scheme and a consolidated return for the rest of the months in that quarter.

A. Time period: The return should be furnished within a period of one month from the end of the quarter.

B. Form of Return: The returns shall be furnished in the following forms:

Sl.	Nature of Dealers		Prescribed Form
1	Normal registered dealers		Form 14
2	Registered dealers enjoying remission/ deferment of tax or tax holiday.	EC Holders	Form 14D
3	Registered dealers who opted to pay tax at the compounded rate u/s. 16(3A).	Clubs	Form 15
	Registered dealers who opted to pay tax at the compounded rate u/s. 16(3B)	Transfer of right to use	Form 15
	Registered dealers who opted to pay tax at the compounded rate u/s. 16(6).	Hotels/ Mandaps / Restaurants / Eating Houses	Form 15
	Registered dealers who opted to pay tax at the compounded rate u/s. 18(4).	Works Contractors	Form 15
4	⁸ Registered dealers who opted to pay tax at the compounded rate u/s. 16(3).	Turnover of Sales up to ₹ 50 lacs	Form 15R

C. Signing of the Return: Every return shall be duly filled and signed by-

- (a) the proprietor, if the business is a proprietary concern;
- (b) any of the partners, if the business is a partnership firm;
- (c) the Karta, if the dealer is a Hindu undivided family;
- (d) the Principal Officer, if the dealer is a company;

⁸Inserted by Notification no 1057 FT dated 12.07.2010 w.e.f 01.04.2010.

- ⁹(da) the authorized officer, in case of Government or local authority
- (e) any of the trustees, if the dealer is a trust; and
- (f) the President, or the General secretary, for others

D. Annexures to be furnished with the Return: While furnishing the return in Form 14 and Form 14D, every dealer shall furnish along with the return-

- (a) **Annexure-A**, where the tax on sale of goods has been fully paid by him in West Bengal upon the maximum retail price (M.R.P) specified on such goods, manufactured in, or imported into West Bengal by him;
- (b) **Annexure-B Part I, Section 1**, indicating therein details of purchase of taxable goods, for direct use in business, effected by a dealer in excess of ₹ 50,000 from registered or unregistered dealers within West Bengal during the return period;
- (c) **Annexure-B Part I, Section 2**, indicating therein the purchase of goods for direct use in business not exceeding ₹ 50000/- during the return period;
- (d) **Annexure-B Part I, Section 3**, indicating therein the purchase of goods not directly used in business in excess of ₹ 50000/- from registered or unregistered dealers within West Bengal during the return period;
- (e) **Annexure-B Part II, Section 1** indicating therein sale of goods to registered dealers within West Bengal in excess of ₹ 50000/- during the return period;
- (f) **Annexure-B Part II, Section 2** indicating therein sale of goods to registered dealers within West Bengal not exceeding ₹ 50000/- during the return period;
- (g) **Annexure-B Part III, Section 1** indicating therein sale of goods to unregistered dealers within West Bengal in excess of ₹ 50000/- during the return period;
- (h) **Annexure-B Part III, Section 2** indicating therein sale of goods to unregistered dealers within West Bengal not exceeding ₹ 50000/- during the return period;

⁹ Inserted by *ibid*, w.e.f. 1-10-2006

- (i) **Annexure-B Part IV, indicating therein amount of goods dispatched outside and within West Bengal otherwise than by way of sale;**
- (j) **Annexure-D, Part I and Part II, if he is a works contractor;**
- (k) **Annexure-F, indicating the amount of reverse credit; or**
- (l) **Annexure-G, when he enjoys exemption under clause (b), or deferment under clause (a), or remission under clause (c), as the case may be, of sub-section (1) of section 118;**
- (m) Annexure Sales Return, indicating therein deduction claimed on account of sales return within 6 months from the date of sale within West Bengal;
- (n) Annexure TDS, if he is a works contractor;
- (o) Annexure Sub Contract, if he is a works contractor

E. Tax Challan to be attached: The return shall be accompanied by the receipted challan showing the payment of the net tax or any other tax or interest payable as per the return. In case the challans for the first two months have already been submitted, the dealer shall submit photocopies of such challans along with the return. [Rule 36]

F. Electronic Filing of Returns: A registered dealer may exercise his option of furnishing returns in Form 14, electronically, by making an application in Form 13A to the Commissioner electronically through the official website of the Directorate, www.wbcomtax.gov.in. [Rule 34(2A)] {Electronic Filing of return is compulsory now a day}

On the other hand, the Commissioner may, from amongst the registered dealers required to furnish returns in Form 14, Form 14D, Form 15 or Form 15R, select dealers on such consideration as he may deem fit and proper, for filing returns electronically.

14.3.2. Monthly Returns [Rule 35]

A. Contingencies in Which Return Is To Be Furnished Monthly Instead Of Quarterly Basis

A dealer will be required to file monthly returns instead of quarterly returns under the following circumstances:

- (i) When a dealer required to file quarterly returns has failed to make

monthly payment of tax within due dates as provided in rule 40 for more than 3 months in a year;

- (ii) When a dealer required to file quarterly returns has failed to pay tax for the month of March in the preceding year within the due date of 28th of March, for the period commencing from the first day of March to the twenty-fifth day of March every year.
- (iii) When a dealer opts in writing to furnish monthly returns. Only a dealer who owns an industrial unit in Software Technology Park or who owns an export oriented unit (EOU) and holds a Registration-cum-Membership Certificate (RCMC) of an Export Promotion Council may opt for filing a monthly return.

B. Opportunity of Being Heard

The return period shall be fixed on a monthly basis instead of a quarterly basis by the appropriate assessing authority after giving the dealer an opportunity of being heard, and for reasons to be recorded in writing. The return period once changed from quarterly to monthly by the authority shall be effective for the next two years, after which the dealer may apply for permission to file a quarterly return, provided he has complied with the monthly return requirement during the last two years.

C. Form and Time Limit

The provisions of Rule 34 regarding time limit for filing the return, Form of return, Annexures to be filed along with the return and receipted tax challans to be attached therewith, as discussed in para 14.3.1. *supra*, shall apply *mutatis mutandis* in the manner of furnishing monthly returns under this rule.

14.4. Submission of Returns without Payment of Tax [Rule 37]

A registered dealer who wishes to submit the return making partial payment or without making any payment of tax, interest or late fee may make an application to the appropriate authority.

Such application shall be affixed with a court fee of twenty-five rupees, for allowing further time for the payment of tax in full or granting instalment for payment of tax, interest or late fee payable according to such return.

The appropriate authority shall examine such books of accounts or documents as he deems fit and shall also hear the dealer making such application, and pass the necessary order within fifteen days from the date of receipt of such application and inform the dealer accordingly.

14.5. Annual Statement [Sec. 30E and Rule 44]

Every registered dealer is required to submit before the prescribed authority such Statements, accounts or declarations as may be prescribed. Accordingly, it is prescribed that the dealer will submit a Profit and Loss Account and Balance Sheet along with the audit report of a chartered accountant or a cost accountant in Form 88 or a self-audit Statement in Form 88A, as the case may be.

14.5.1. Tax Audit Report ¹⁰[Sec 30E, Rule 44(2), 44(3) and Rule 44(4)]:

- (i) **A Dealer Other Than A Company:** Every registered dealer, other than a Public Limited Company, or Private Limited Company registered under the Companies Act, 1956, ~~whose turnover of sales or contractual transfer price or both, or turnover of purchases exceeds rupees ten crore in a year~~ ¹¹[whose turnover of sales including stock transfer outside the State or contractual transfer price or both or turnover of purchases including stock transfer into the State exceeds rupees ten crore in a year] or part of a year, shall, within the 31st day of December from the end of the year, submit a copy of the audited Profit and loss Account and Balance Sheet for such year, along with the audit report of any Chartered Accountant or any Cost Accountant in Form 88.
- (ii) **A Dealer, Being a Company:** Every registered dealer, being a public

¹⁰ Substituted from time to time as below:-

- (a) "exceeds rupees one crore in a year" were substituted for the words "exceeds rupees forty lakh in a year" by notification No. 1163-F.T., dated 23-7-2008, w.e.f. 1-4-2008.
- (b) "exceeds rupees one crore and fifty lakh in a year" were substituted for "exceeds rupees one crore in a year" by Notification No. 1057-F.T., dated 12-07-2010 w.e.f 01-04-2010
- (c) "whose turnover of sales or contractual transfer price or both, turnover of purchases, exceeds three crore in a year" were substituted for "whose turnover of sales or contractual transfer price or both exceeds rupees one crore and fifty lakhs in a year" by notification No. 1059-F.T., dated 26-06-2012, w.e.f. 01-04-2011
- (d) as above for "whose turnover of sales or contractual transfer price or both, exceeds three crore in a year" by Notification No. 369-F.T., dated 28-03-2013 w.e.f. 01-04-2013.

¹¹ Subs vide W. B. Finance Act, 2015 w.e.f 1-4-2015 for "whose turnover of sales or contractual transfer price or both, or turnover of purchases exceeds rupees five ten crore in a year"

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and private limited company registered under the Companies Act, 1956, shall submit a copy of the audited Profit and Loss Account and Balance Sheet for such year, along with the audit report of any Chartered Accountant, or any cost Accountant, in Form 88.

- (iii) ¹²Every registered dealer, ¹³[who is required to get his account audited under IT Act 1961], shall, within the 31st day of December after the end of the year, submit a copy of the Profit and Loss Account and Balance Sheet for such year, along with a self-audited Statement in Form 88A;

14.5.3. Failure to File Statement: If registered dealers fail to submit Statements, accounts, audit reports or declarations, they shall be liable to penalty not exceeding ₹ 5,000/- for each default. A show cause notice shall be issued to the dealer proposing imposition of penalty, and an opportunity of being heard shall be given before imposing such penalty.

¹²Ins by WB ActII of 2012 w.e.f. 01.04.2011.

¹³Subs vide W. B. Finance Act, 2015 w.e.f 1-4-2015

Chapter 15

Assessment

Principles Laid Down In The White Paper

Procedure of Self-Assessment of VAT Liability: VAT liability will be self-assessed by the dealers themselves in terms of submission of returns upon setting off the tax credit. Return forms as well as other procedures will be simple in all States of the country.

There will be no compulsory assessment at the end of each year as it is at present. If no specific notice is issued to propose departmental audit of the books of accounts of the dealer within the time limit specified in the Act, the dealer will be deemed to have been self-assessed on the basis of returns submitted by him.

Because of the importance of the concept of self-assessment in VAT, provision for “self-assessment” will be Stated in the VAT Bills of the States.

Provisions In The West Bengal VAT Law

15.1. ¹[Scrutiny of Returns [Sec. 41]

Each and every return filed by a dealer shall be subject to ²[scrutiny by the Commissioner either electronically or otherwise] to ascertain that

- (a) the return so furnished is ³[complete and self-consistent] and is accompanied by all the required documents and
- (b) the calculation of input tax credit or input tax rebate, net tax and late fee, including application of proper rate of tax, interest have been done correctly.

¹ As amended by (i) W.B.Act I of 2008, s.9(12), w.e.f. 1-4-2005 and (ii) W.B.Act VII of 2011, s. 5(10), w.e.f. 1-4-2005.

²Subs. For “ shall be scrutinized by the commissioner to ascertain” by *ibid*, s. 5(10). W.e.f. 01-4-2010.

³ As amended by (i) W.B.Act I of 2008, s.9(12), w.e.f. 1-4-2005 and (ii) W.B.Act VII of 2011, s. 5(10), w.e.f. 1-4-2005.

The scrutiny under this section shall be on the basis of the return only, which is filed by the dealer.]

Deficit in Tax Paid: In case of any mistake detected prima facie in the return, the Commissioner shall issue a notice to the dealer requiring him ⁴[to rectify the mistake or to furnish information that is required for correcting and completing the return or to furnish the required documents] or to pay the deficit amount of ⁵[net tax or late fee] along with interest, within the specified date.

Time Limit: Such notice may be issued within ⁶[four months from the date last date of the month] of filing the return by the dealer.

Excess Tax Paid: In case of excess amount ⁷[net tax or late fee] and / or interest paid by the dealer, the Commissioner shall inform him within **one month** from the date of completion of the scrutiny.

15.2. ⁸[Verification of Returns [Sec. 42]

The commissioner may verify the Statement and particulars furnished in the return, with relevant accounts, registers and documents.

Assessment by the Commissioner: In case the Commissioner is not satisfied with the correctness and completeness of the return, he shall proceed to make assessment of the dealer under section 46 or section 48 as the case may be.

He should have reason to believe that the a dealer has-

- (i) furnished incorrect or incomplete Statement of his 'turnover of purchases' or 'turnover of sales' or 'contractual transfer price'; or
- (ii) furnished incorrect or incomplete particulars of his purchases or sales or contractual transfer price; or
- (iii) claimed excess amount of ⁹[input tax credit or input tax rebate; or
- (iv) that there are certain discrepancies as noticed upon scrutiny of the return under section 41 or otherwise] in any return furnished; or

⁴Subs. For "to rectify the mistake" By W.B.Act I of 2008, s. 9(12), w.e.f. 1-4-2008.

⁵Subs. By ibid, s. 9(12), w.e.f. 1-4-2007

⁶Subs. By ibid, s.5(10), w.e.f. 1-9-2011

⁷Subs. By ibid, s.5(10), w.e.f. 1-9-2011

⁸ As amended by W.B.Act I of 2008, s. 9(13) w.e.f. 1-4-2005

⁹Subs. By W.B Act XX of 2008, s.3(2), w.e.f. 1-4-2008.

- (v) has failed to disclose the interest payable under sub-section (1) of Section 33.

The reasons for such verification of the Statement and particulars furnished in the return, with the accounts, registers and documents by the Commissioner should be recorded in writing.]

No verification shall be made after the assessment is initiated u/s. 46 or 48.

15.3. Provisional Assessment [Sec. 45]

15.3.1. Situations When Provisional Assessment Can Be Resorted To [Sec. 45(1)]

Provisional assessment of a dealer may be initiated by the Commissioner or any other person appointed to assist him, in one or more of the following cases:

- (a) the dealer fails to furnish his return within the prescribed date;
- (b) furnishes such return but fails to make an application to the Commissioner for extension of date of payment, of the unpaid amount of ¹⁰[net tax, interest and late fee] if any;
- (c) furnishes such return but fails to make payment of ¹¹[net tax, interest and late fee] thereon as per the terms and within the date specified under first proviso to section 32(2);
- (d) furnishes such return but fails to make payment of the unpaid amount of net tax, interest and late fee and the Commissioner has rejected his application for extension of the date of payment.

15.3.2. Time Limit: Time limit for making a provisional assessment is **six months** from the prescribed date for furnishing such return or the extended date for making payment of net tax, interest and late fee as the case may be. In computing the time limit, any stay given by an order of a tribunal or any court shall be excluded.

15.3.3. Basis of Assessment [Sec 45(2)]: The Commissioner or any other authority appointed under sec 6(1), shall-

¹⁰Subs. By *ibid*, s.9(15), w.e.f. 1-4-2007

¹¹Subs. By W.B.Act I of 2008, s.9(15), w.e.f. 1-4-2007

¹²[(a) where the dealer has failed to furnish return, assess the net tax of the dealer for the relevant return period on the basis of past returns or past records, and where no such returns or records are available, on the basis of information received and determine the interest payable; or

(b) where the dealer furnishes return but fails to make an application to the Commissioner for extension of the date of payment, or fails to make payment of ¹³{the net tax or interest, and late fee as referred to in sub-section (2) of section 32} or fails to make payment of the unpaid amount of net tax or interest, where his application for extension of time has been rejected by the Commissioner, **assess** the net tax on the basis of return furnished and determine the interest payable or unpaid amount of interest, for the relevant period.]

15.3.4. Penalty For Failure To Make Payment Of Tax [Sec 45(2)]: ¹⁴[If the dealer fails to furnish return or fails to pay the net tax, interest and late fee for any tax period or fails to make payment of the unpaid amount of net tax, interest and late fee after his application for extension of time is rejected, a penalty shall be imposed, not exceeding **twice** the amount of **net tax so assessed** or the unpaid amount of net tax as the case may be.]

15.3.5. Hearing of the Case: A date shall be fixed for the production of documentary evidence for removing the cause for making the provisional assessment.

15.3.6. Notice of Demand: A notice shall be issued to the dealer directing him to pay the assessed amount of net tax, with the interest payable and penalty imposed, within such date as may be prescribed.

15.3.7. Closure of the Proceeding [Sec 45(3)]: ¹⁵[If the dealer produces documentary evidence on or before the date fixed for removing the cause for which the provisional assessment has been made, the authority shall close the proceedings initiated under this section and the provisional assessment made shall stand revoked.]

¹² Sub-section 2 of section 45 was substituted by W.B.Act XVIII of 2006, s.12(22), w.e.f. 1-8-2006.

¹³ Substituted for 'net tax or interest' by W.B.Act I of 2008, 9.(15), w.e.f. 1-4-2007

¹⁴ Sub-section 2 of section 45 was substituted by W.B.Act XVIII of 2006, s.12(22), w.e.f. 1-8-2006.

¹⁵ Sub-section 3 of section 45 was substituted by W.B.Act XVIII of 2006, s.12(22), w.e.f. 1-8-2006.

15.3.8. Revocation Of The Provisional Assessment [Sec 45(4)]:¹⁶[Where a dealer fails to produce documentary evidence on the date fixed for such purpose, after the receipt of demand notice as above, but-

- (a) furnishes the return along with the receipted copy of challan showing full payment of net tax according to such return and the interest payable thereon, for the period in respect of which provisional assessment has been made, and also submits receipted copy of challan showing payment of a sum equal to **twenty per centum** of the amount of **net tax** paid, or **five thousand rupees** whichever is **higher**, by way of **penalty**, on or before the date fixed for payment of the amount demanded in the demand notice, shall close the proceedings initiated and the provisional assessment made shall stand revoked; or
- (b) furnishes the receipt of challan showing full payment of the net tax, the interest payable according to the demand notice and fifty per centum of the penalty demanded in such notice, on or before the date fixed for payment of the amount specified in such demand notice without furnishing the return, the provisional assessment made shall stand revoked to the extent of the demand of net tax, interest and balance fifty per centum of penalty.]

15.3.9. Power Of Commissioner To Make Assessment Under Section 46: Nothing contained in this section shall prevent the Commissioner from making assessment under section 46 and any net tax or interest paid, and penalty paid in excess of the fifty *per centum* of the amount of penalty imposed against provisional assessment or assessments, as the case may be, and shall be adjusted against net tax and interest payable on assessment made under that section.

15.4. Best Judgment Assessment by the Commissioner [Sec. 46]

15.4.1. Situations When Such Assessment Can Be Resorted To

¹⁷The **Commissioner can**, after giving a notice to a registered dealer, proceed to **assess to the best of his judgement** the amount of net tax or any other tax payable or net tax credit of such dealer in respect of a year or part there of where-

¹⁶ Sub-section 4 of section 45 was substituted by W.B.Act XVIII of 2006, s.12(22), w.e.f. 1-8-2006

¹⁷Subs by W B Act I of 2013 w.e.f 01.04.2013.

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- (a) no return has been furnished by a registered dealer for all or any of the return periods of such year or part thereof; or
- (b) the Commissioner deems it fit and proper to assess the registered dealer, as he is satisfied that there has been short payment of net tax or excess claim of net tax credit by such dealer, or the State Government has suffered loss of revenue on account of such dealer or for any other reason to be recorded in writing, including for the purpose of refund of tax:

15.4.2. Situations When Such Assessment Cannot be Resorted To

Proviso to sec 46(1) provides for the following situations when the best judgment assessment under this section cannot be resorted to-

no assessment shall be made under this section for which a provisional assessment has been made but has not been revoked, and appeal u/s. 84 or application for revision u/s. 87 or u/s. 87A is pending, in respect of such assessment;

- (a) no assessment shall be made under this section in respect of a return period, where a notice u/s. 43(2) has been issued for auditing the accounts, registers and documents for a period containing that return period;
- (b) no fresh assessment proceedings under this sub-section shall be made, where the report together with the computation sheet arising from an audit u/s. 43, are deemed to be an order of assessment and a notice of demand, respectively, u/s. 43(5A);
- (c) no assessment may be made under this Act in respect of any return period starting from 1st day of April, 2010, if assessment under the central Sales Tax Act, 1956(74 of 1956), is required to be made only for non-submission of declaration and certificates prescribed under the said Act, and the Commissioner deems it fit and proper not to make such assessment;
- (d) no assessment may be made for any period starting on or after 1st day of April, 2010, in respect of a registered dealer who has closed his business where the Commissioner deems it fit and proper:

Provided further that if on appeal or revision, a provisional assessment order of section 45 in respect of a year or a return period is set aside with a

direction to make fresh assessment, no further action shall be taken under section 45 and assessment for the year or part thereof containing that return period shall be made afresh under this section and such assessment shall be completed within two years from the date of order made in appeal or revision.

15.4.3.¹⁸Penalty

15.4.4. Opportunity To The Dealer: The dealer shall be given a reasonable opportunity of being heard for making an assessment, and a notice shall be issued to him after making such assessment directing him to pay the net tax payable, interest, late fee and the difference between the amount of input tax credit which he has carried forward in the return for the next return period.

15.5. Assessment as per Return/ Deemed Assessment [Sec. 47]

The return furnished by a dealer shall be accepted as correct and complete, if the Commissioner does not proceed to assess him after giving notice under **section 46** [Best Judgment Assessment] and in case of provisional assessment under **section 45** if the same has been revoked, and the assessment shall be deemed to have been completed as per return.

However, the dealer shall be informed about such assessment in the prescribed manner and time.

15.6. Re-opening Of Assessment [Sec. 47(3) and 47(4)]

An assessment deemed to be made under section 47 (as referred to in para 15.5. supra) may be re-opened for making a fresh assessment under sub-section (1) of section 46.

15.6.1. Cases for Re-opening

The assessment may be re-opened in the following cases where-

- (a) the sale price or part thereof, contractual transfer price or part thereof, has not been disclosed in such return, or has escaped levy of tax at the appropriate rate, erroneously or otherwise, or
- (b) ¹⁹the purchase price has not been disclosed in such return, or has escaped levy of tax there on erroneously or otherwise,

¹⁸Omitted by WB ActII of 2012 w.e.f 01.04.2012.

¹⁹Inserted by W B ActXVIII of 2006 w.e.f 01.08.2006.

- (c) the deductions from the turnover of sales were claimed under sub-section (1) of section 16 in such return, erroneously or otherwise, in excess of what is admissible, or the deductions so claimed are not supported by evidence, or
- (d) excess amount of input tax credit has been enjoyed, and no reverse credit for such excess amount has been made.
- (e) ²⁰the information furnished is not correct and complete, or,
- (f) ²¹there are some other discrepancies

This has resulted in reduction of the amount of the net tax payable by such registered dealer or the State Government has suffered loss of revenue on any of the above mentioned reasons.

Where an assessment is deemed to have been made relating to any year or part of a year and where the report, prepared u/s. 43(3) stating his observation or findings therein regarding the correctness of returns, admissibility of claims etc. in respect of such year or such part of a year, contains the findings as referred to in section 43(5) [and Stated immediately here in above], the Commissioner shall, within a period of six months from the date of preparing such report, after giving such registered dealer a reasonable opportunity of being heard, reopen such assessment by an order in writing for making fresh assessment u/s. 46(1).

Provided that the fresh assessment under sub-section (1) of section 46 for such year or such part of a year shall be made, notwithstanding the provisions of section 49, on any date within six months from the date of passing the order in writing for reopening the assessment in respect of such year or such part of a year, which is deemed to have been made in accordance with the provisions of subsection (1) of this section.

15.6.2. Time Limit

It may be re-opened within a period of **four years** from the date of assessment deemed to have been made in accordance with the provisions of section 47 (1). The fresh assessment shall be made within **two years** from the date of passing the order in writing for reopening the assessment.

²⁰Inserted by W B Act II of 2010 w.e.f 01.08.2006.

²¹Inserted by W B Act II of 2010 w.e.f 01.08.2006.

15.6.3. Opportunity to the Dealer

The dealer shall be given a reasonable opportunity of being heard, before re-opening of an assessment.

15.6.4. Application by the Dealer for Fresh Assessment [Sec 47(4)]

A dealer can make an application for re-opening of an assessment. The application shall be made within **six months** from the date of assessment deemed to have been made under section 47(1).

Such application can be made if due to his error in fact or in law, excess amount of net tax or interest has been paid by him.

The Commissioner may, within **one year** from the date of receipt of such application, reopen such assessment, for making a fresh assessment under sub-section (1) of section 46.

15.7. ²²Special Provision of Deemed Assessment [Sec 47A]

A special provision of 'deemed assessment' has been made under sec 47A w.e.f 01.09.2011. The returns furnished by a registered dealer, other than those enjoying remission/ deferment of tax or a tax holiday, shall be accepted as correct and complete for the years 2009-10 and 2010-11 ('eligible periods'), and having total turnover of sales below rupees three crores and five crores respectively for such years. The assessment in respect of such eligible periods shall be deemed to have been made u/s. 47(1) on 15.02.12 and 30.06.12 respectively for such years.

Where a registered dealer is eligible and is willing to be assessed under this section for the eligible periods, such registered dealer shall verify the related returns for the periods with his books of account and documents, and shall furnish a declaration on or before the 31st day of December, 2011, in the relevant form along with such documents as may be prescribed.

15.7.1 This **provision will not apply** in respect of-

- (i) a dealer enjoying tax holiday, deferment or remission of tax;
- (ii) a dealer who is engaged in the works contract;
- (iii) any dealer who claims refund of input tax credit or excess payment of tax;

²²Inserted by WB Act VII of 2011 w.e.f. 01.09.2011.

- (iv) any dealer who has been selected for audit;
- (v) a dealer who is found to have evaded any tax during the preceding three years;
- (vi) any year relating to which the dealer has not submitted the return or returns by 31.10.2011; and
- (vii) any dealer who has not produced relevant declarations or certificates or documents in support of his claims or has not paid the relevant taxes or complied with the provisions of this act.

15.8. ²³Summary assessment [Sec 47AA]

A return furnished by a registered dealer (other than those enjoying tax incentives) shall be deemed to have been summarily assessed on the date of submission of such return if:

- (i) the dealer has also submitted the related return under the CST Act, and both the returns are complete and self-consistent;
- (ii) the amount of tax, etc. payable according to such return has been paid and;
- (iii) no proceedings arising from seizure of accounts or goods have been initiated against him in that year or during the preceding two years

~~**²⁴15.8.1. Summary assessment shall be automatically revoked if:**~~

- ~~(i) the dealer has failed to produce books of accounts in response to a notice issued to him;~~
- ~~(ii) the dealer has failed to submit Form 88 according to Sec 30E;~~
- ~~(iii) the books of accounts are seized for that year or the previous year; or~~
- ~~(iv) the dealer has not complied with the provisions of the CST Act~~

15.8.2. The Commissioner may, after allowing a hearing to the dealer, reopen a summary assessment within six years from the end of the financial year if he is satisfied that an assessment is required to be made under sub-section (1) of section 46 in the interest of State revenue or for ~~any other reason~~

²³Inserted by WB Act VII of 2011 w.e.f. 01.09.2011.

²⁴Omitted vide W.B. Finance Act, 2015 w.e.f 1-4-2015

²⁵[any other reason, and such assessment may be made, notwithstanding anything contained in section 47 or section 49, within the 30th day of June next following one year from the date of reopening of such summary assessment.]

15.8.3. No assessment shall be made for a return which is summarily assessed unless it is revoked or reopened.

15.9. Assessment of Dealers Other Than Registered Dealers [Sec. 48]

Assessment of an unregistered dealer can also be resorted to in the following situations:

- A dealer has been liable to pay tax under this Act but has failed to get himself registered;
- Such a dealer has not been registered.

15.10. Assessment of a Casual Dealer [Sec. 48]

Assessment of a casual dealer, in respect of purchases or sales made by him, can also be resorted to in the following situations:

- (a) the commissioner is not satisfied that the Statement and documents submitted under section 30F by a casual dealer provide correct and complete information; or
- (b) the casual dealer has failed to submit the required Statement and documents within the specified time.

15.10.1. Opportunity To The Dealer: The dealer shall be given a reasonable opportunity of being heard, before such assessment is started under section 48.

15.10.2. Notice of Demand: A notice of demand will be issued in the prescribed form after such assessment, directing him to pay the amount of net tax payable upon such assessment.

15.11. Limitation for Assessment [Sec. 49]

15.11.1. Time Limit For Assessment of Registered Dealers : The time limit for any assessment mentioned above is **30th June** after the expiry of **two**

²⁵ Subs vide W.B. Finance Act, 2015 for 'any other reason' w.e.f 1-4-2015

years from the end of the year in respect of which or a part of which the assessment under section 46 or section 47 is to be made.

²⁶Time Limit for Assessment in case of Restoration of Registration Certificate of a dealer is a year from the date of order passed for the restoration of the certificate of registration.

²⁷Assessment shall be made on or before ²⁸31.12.2014 in respect of a dealer having his principal place of business in the subdivisions of Darjeeling, Kalimpong, or Kurseong in Darjeeling district, who was required to furnish the return, but had not furnished it for the period 01.04.2008 to 30.06.2011, or the period before 30.06.2013 under the fifth proviso to sec 32(2). Such dealer shall furnish return on or before 31st day of July 2014.

15.11.2. Time Limit For Assessment of Unregistered Dealers :Time limit for the assessment of unregistered dealers under section 49 is the **30th day of June** following the expiry of **six years** from the end of the year in respect of which or a part of which the assessment is made.

15.11.3. Time Limit For Assessment of Casual Dealers : Time limit for assessment of casual dealers under section 49 is the **30th day of June** following the expiry of **six years** from the end of the year during which sales or purchases were made for which the assessment is required to be made.

15.11.4. Time Limit For Fresh Assessment In Pursuance Of Appeal, Review, Revision Etc: When a fresh assessment is required to be made in pursuance of an order under section 84, section 85, section 86 or section 87, or in pursuance of any order of the Tribunal or any court, such fresh assessment may be made at any time within **two years** from the date of such order.

15.11.5. Period of Stay To Be Excluded: For computing the time limit for making any assessment under section 46, or section 47, or section 48, the period of stay granted by an order of any authority under the Act, or a Tribunal or any court shall be excluded.

²⁶Inserted by WB Act II of 2012 w.e.f 01.04.2012.

²⁷Inserted by WB Act I of 2013 w.e.f. 01.04.2013.

²⁸Subs by WB Act 2014 w.e.f 01.04.2014.

Chapter 16

Demand and Recovery

A notice of demand can be issued by the Commissioner in the following circumstances:

16.1 Provisional Assessment [Sec. 45(2)]

¹In making a provisional assessment under this section, the Commissioner or other authority as referred to in sub-section (1), shall-

- (a) **where the dealer has failed to furnish the return, assess** the net tax for the relevant return period **on the basis of past returns or past records**, and where no such returns or records are available, on the basis of information received by the Commissioner or such other authority, and determine the interest payable by him for the relevant return period; or
- (b) **where the dealer furnishes the return but fails to make an application** to the Commissioner, or fails to make payment of the net tax , interest and late fee as referred to in sub-section (2) of section 32, or fails to make payment of the unpaid amount of net tax, interest and late fee as referred to in sub-section (2) of section 32 as mentioned in clause (b), clause (c) and clause (d), respectively, of sub-section (1), **assess on the basis of return furnished** and determine the interest payable or unpaid amount of interest, for the relevant period,

and **impose a penalty not exceeding twice the assessed amount of net tax** or the unpaid amount of net tax, as the case may be.

Hearing: While making such an assessment, a date shall be fixed for the production of documentary evidence by authority for removing the cause for making the provisional assessment under sub-section (3).

Notice of Demand: The dealer shall be directed by **a notice to pay the assessed amount of net tax** or the unpaid amount of net tax, as the case

¹ Sub-Section 2 was substituted by W.B Act XVIII of 2006, s. 12(22) w.e.f 1.08.2006.

may be, with interest payable or remaining unpaid and penalty imposed, in such manner, and within such date, as may be prescribed.

16.2 Best Judgment Assessment [Sec. 46(3)]

The Commissioner under different circumstances as mentioned in section 46(1) and discussed in chapter 15, shall make assessment to the best of his judgment, of the amount of tax payable by a dealer in respect of any return period.

In making the best judgment assessment u/s. 46(1), the dealer shall be given a reasonable opportunity of being heard.

Notice of Demand: After making such assessment, the Commissioner shall issue to the dealer a notice directing him to pay the net tax payable, late fee and interest, the difference between the amount of input tax credit which the dealer has carried forward in the return for the next return period and the amount of excess of net tax credit over output tax payable, as is found admissible upon assessment, which may be carried forward to the next return period or where no such amount which can be carried forward to the next return period is found admissible upon assessment, the amount of input tax credit which the ²[dealer has carried forward in the return for the next return period. [Sec 46(3)(b)]

16.3 Assessment of Tax Payable By Unregistered Dealers [Sec. 48]

The Commissioner shall make assessment to the best of his judgment, of the amount of net tax payable by any dealer or any casual dealer in the following circumstances:

- (i) Upon information in his possession that any dealer who has been liable to pay tax but has failed to get registered or has not registered himself;
- (ii) He is not satisfied upon verification under section 44A that the Statements submitted by a casual dealer under section 30F are correct and complete,
- (iii) or he has failed to submit the Statements and documents under the said section.

²Subs. By *ibid*, s.5(10), w.e.f. 1-04-2012

The Commissioner shall, in making such assessment, give the dealer a reasonable opportunity of being heard.

Notice of Demand: After making such assessment, the Commissioner shall issue to the dealer a notice in the prescribed form directing him to pay the amount of net tax found to be payable upon such assessment in such manner as may be prescribed.

16.4 Determination of Interest [Section 50(1) and Sec. 50(2)]

Where the Commissioner is satisfied that a dealer is liable to pay interest under section 33 or section 34 or section 34A he shall determine the amount of interest payable by him.

If on such determination-

- Any additional amount of interest is found to be payable by the dealer;
or
- Any excess amount of interest is found to be refundable to the dealer,

the Commissioner shall issue a notice, in the prescribed manner, to such a dealer directing him to pay such additional amount or informing him of the excess amount paid, as the case may be.

16.5 Rectification In Determination of Interest [Sec. 51(1)]

Where the Commissioner finds that there is an apparent mistake in the determination of interest, the Commissioner may, on his own or upon application made by a dealer, within twenty four months from the date of such determination of interest, rectify the amount of interest payable by him or refundable to him.

The Commissioner in such cases shall issue a **fresh notice** for the payment of interest in the manner prescribed under that section.

16.6 Notice of Demand

In all the above cases, the notice issued shall be a notice of demand by the Commissioner, directing the dealer to pay the amount of net tax payable, or interest payable, or penalty imposed, as the case may be.

16.6.1 Provisional Assessment [Rule 55]: In the case of provisional assessment u/s. 45, a notice shall be given in **form 24** to the dealer giving him an opportunity to remove the objections for which such provisional assessment is being made.

In case the dealer fails to do so within the date specified in such notice, the notice shall automatically get converted into a notice of demand after such date.

16.6.2 Best Judgment Assessment [Rule 59]: Before making assessment to the best of his judgment u/s. 46 or 48, as the case may be, as referred to in para 16.2 and 16.3, the Commissioner shall give the dealer an opportunity of being heard, by fixing a date for personal hearing. After hearing the dealer and after passing the assessment order by the appropriate assessing authority, ³[or the appropriate auditing authority] a notice will be served in **Form 27** on such dealer directing him to make payment of the amount of tax and penalty, if any, due from him by such date as may be specified in such notice.

16.6.3 Determination of Interest [Rule 67]: After determining the amount of interest payable by a dealer-

- (a) Where it is required to issue a notice in **Form 24**, the notice in such form shall be served, directing the dealer to pay the amount of interest payable by him by the date specified. A date shall also be fixed on which he shall produce the receipt of the challan in proof of such payment.
- (b) Where it is required to issue a notice in **Form 27**, or Form 27A, the appropriate assessing authority [or to the appropriate auditing authority, as the case may be,] shall serve upon the dealer a notice in such Form, directing him to pay the amount of interest payable by him by the date specified. A date shall also be fixed on which he shall produce the receipt of the challan in proof of such payment.

16.7 Payment of Tax, Interest and Penalty [Rule 70]

The dealer shall pay the amount of tax so assessed and penalty imposed under section 45 or section 46 or section 48, or interest determined or rectified under section 50 or section 51, or late fee determined under section 53A as the case may be, as discussed in this chapter, in the manner as provided in rule 43, that is, by obtaining challans from the Government Treasury or from the office of the Assistant Commissioner.

³ Ins. by notification No. 1057-F.T., dated 12-07-2010, w.e.f 1-04-2010

16.8 Recovery of Tax, Penalty and Interest [Sec. 55]

Any amount of net tax or any other tax, interest or penalty due from a dealer, casual dealer, transporter, carrier or transporting agent, owner or lessee or occupier of warehouse, owner of any goods, or any other person, which remains unpaid after the date specified in a notice of demand, **shall be recoverable as an arrear of land revenue** as if it were payable to the Collector.

Alternatively, the State Government, in respect of specified class or classes of dealers having their places of business in specified area or areas, may direct the Tax Recovery Officer (the 'TRO' hereafter) by general or special order to recover the unpaid amount of net tax or any other tax, interest or penalty due, in accordance with the provisions of sub-section (2) of section 55, section 56, section 57, section 58, or section 59 and the rules.

16.8.1 Modes of Recovery [Sec. 55(2)]: Where any such amount is recoverable by the TRO, the Commissioner may send a certificate to the TRO specifying the amount of such net tax or other tax, interest, or penalty due from the dealer etc. (the 'certificate-debtor' hereafter).

The TRO shall recover the amount from the certificate-debtor by one or more of the following modes:

- (a) attachment and sale of the movable property of the certificate-debtor;
- (b) attachment and sale of the immovable property of the certificate-debtor;
- (c) arrest of the certificate-debtor and his detention in prison;
- (d) appointing a receiver for the management of the movable and immovable properties of the certificate-debtor.

16.8.2 Copy of Certificate and Notice [Sec. 55(5)]: Where a certificate has been sent to a TRO, a notice and a copy of the said certificate shall be served upon the certificate-debtor.

16.8.3 Effect of Service of Notice of Recovery [Sec. 55(6)]: On serving the notice upon a certificate-debtor,—

- (a) any private transfer or delivery of any of his immovable property situated in the area in which the certificate is sent, or of any interest in any such property, shall be void; and
- (b) the amount due in respect of the certificate shall be a charge upon the

immovable property, wherever situated, to which every other charge created subsequently to the service of the said notice shall be postponed.

16.8.4 Petition to TRO [Sec 55(7)]: The certificate-debtor may, within thirty days from the service of the notice, or where the notice has not been duly served, within thirty days from the execution of any process for enforcing the certificate, present to the TRO, a petition denying his liability in whole or in part.

16.8.5 Hearing of Petition By TRO [Sec 55(8)]: The TRO to whom the original certificate is sent shall hear the petition, take evidence, if necessary, and determine whether the certificate-debtor is liable for the whole or any part of the amount for which the certificate was signed.

16.9 Garnishee Notice for Demand [Sec. 60, 60A and Rule 84]

A notice may be issued to the debtors, banks etc. on account of a dealer against whom recovery proceedings have been initiated, requiring them to deposit the money on account of the dealer. A notice for this purpose shall be served upon such a person in **Form 42** directing him to deposit the money.

Chapter 17

Appeals and Revisions

17.1. Appealable Orders [Sec 84]

Any dealer or casual dealer may choose to go for an appeal against a **provisional assessment** or **any other assessment**.

For this purpose, '**provisional assessment**' means-

- (i) Provisional assessment for tax and imposition of penalty u/s. 45;
- (ii) Determination of late fee u/s. 53A(1); or
- (iii) Determination of interest u/s. 50; or
- (iv) Rectification of mistake in the determination of interest u/s. 51.

Similarly for this purpose, '**any other assessment**' means-

- (i) Assessment of tax and imposition of penalty under section 46, or section 48, or deemed assessment u/s. 47(1);
- (ii) Determination of late fee u/s. 53A(1); or
- (iii) Deemed assessment u/s. 47A; or
- (iv) Summary assessment u/s. 47AA; or
- (v) Determination of interest u/s. 50; or
- (vi) Rectification of mistake in the determination of interest u/s. 51.

17.2. Time Limit for Filing Appeal

The appeal can be filed within **forty-five days** from the receipt of a notice of demand in respect thereof. The time limit may be extended by the appellate authority on showing a satisfactory cause.

¹Provided that where the total amount of tax, interest, late fee or penalty in dispute in an appeal is **in excess of rupees twenty lakh**, such appeal may lie before an **appellate forum** as may be constituted by the Commissioner, consisting of one or more Special Commissioner(s) or Additional Commissioner(s) or any other person appointed under sub-section (1) of

¹ Proviso was inserted by W.B Act II of 2012 s.5(15), w.e.f 1-04-2012

section 6 to assist the commissioner, and the appellate forum shall act as the appellate authority in disposing of such appeal under this section:

17.3. Pre-Deposit

~~No appeal shall be entertained unless the amount of tax, penalty, late fee or interest, which, as the case may be, the appellant may admit to be due from him has been paid~~

²[No appeal for any period submitted on or after the 1st day of April, 2015, shall be entertained unless the applicant has produced the documents relating to proof of payment of-

- (a) full amount of tax, interest, penalty or late fee, as the case may be, as the applicant may admit to be due from him, and
- (b) fifteen per centum of the amount of tax in dispute in such appeal. [Second proviso to Section 84(1)]

17.4. Power of Appellate Authority [Sec. 84(2)]

The order-in-appeal may decide any one of the following:

- (a) confirm, reduce, enhance or annul the provisional assessment or any other assessment, or
- (b) ³consider and decide any matter arising out of the proceedings in which the order appealed against was passed,

irrespective of the fact that such matter has not been raised before it by the appellant or that no order has been made in the said proceedings regarding such matter for any reason whatsoever.

17.5. Time Limit for Disposal of Appeal [First Proviso to Sec. 84(2)]

⁴Provided that any appeal, which is entertained under sub-section (1), shall, if not disposed of within the date as referred to in column (2) of the Table below, shall be deemed to have been disposed of in accordance with law and all the claims of the applicant shall be deemed to have been allowed in full

² Second proviso was substituted vide W.B. Finance Act, 2015 w.e.f 1-4-2015.

³ Clause (b) was substituted by W.B Act XVIII of 2006, s. 12(29), w.e.f 1-07-2006

⁴ First Proviso was substituted by W.B Act VII of 2011, s.5(21), w.e.f 1-09-2011.

Table

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

The appellate authority may obtain extension of time as above from the Commissioner. In such a case, the appeal may be disposed of during the period of six months immediately following the period as above.

The period during which the appropriate appellate authority is restrained from disposing of or continuing any proceedings for such appeal by an order of an authority under the Act or a Tribunal or any Court shall be excluded from the computation of such period.

⁵[The appellate authority may dispose an appeal within six months from the date of order of refusing an application for settlement of dispute or revocation of certificate of settlement under the West Bengal Sales Tax (Settlement of Dispute) Act, 1999, relating to the period covered in such appeal] [Fourth proviso to Section 84(2)]

17.6. Stay Petition for Waiver of Pre-deposit [Sec 84(4) and Rule 141]

Pending disposal of an appeal, the appellate authority may at his discretion and subject to conditions and restrictions as may be prescribed, stay realization of the amount of tax, interest or penalty in dispute wholly or in part.

The appellant for this purpose can make a stay petition for stay of recovery of the disputed amount of net tax, penalty or interest arising out of an order appealed against.

17.7. Memorandum of Appeal [Rule 138]

Any dealer intending to make an appeal shall present a memorandum in

⁵ Inserted vide W.B. Finance Act, 2015 w.e.f 1-4-2015

Form 68 in **duplicate** to the appellate authority ⁶in the manner as specified in sub-rule (3).

⁷A memorandum of appeal in **Form 68** shall be presented to the appropriate appellate authority:

- (a) if the appellant is a registered dealer-
 - (i) firstly, upon **transmission** of the particulars and information in respect of the memorandum of appeal, in the website of the Directorate, along with attachments as applicable; and
 - (ii) secondly, upon presenting before such authority, **within seven days** of transmission of the required particulars and information, a **printout** of Form 68 obtained from the said website, duly signed, along with all attachments and accompanying documents duly signed or self-attested by such appellant or agent

and only upon such transmission followed by a presentation of the printout of Form 68 along with all attachments and accompanying documents, it shall be treated as a valid presentation of the memorandum of appeal by the appellant.

- (b) if the appellant is not a registered dealer, then by presentation before such authority, of Form 68 manually and in duplicate, duly filled in signed and verified by him, along with all the attachments and accompanying documents.

⁸If the printout of Form 68 is presented within seven days from the date of transmission, the date of transmission shall be deemed as the date of presentation of the memorandum of appeal if the printout is presented after seven days from the date of transmission, the date of presentation of the printout shall be deemed as the date of presentation of the memorandum of appeal.

17.8. Entertainment of Appeal [Rule 139]

The appeal if it does not suffer from any infirmity may be accepted. If it suffers from any infirmity, the appellate authority can issue notice to the

⁶Subs. By notification No. 377-F.T dated 16-03-2012, w.e.f 1-05-2012

⁷ Sub rules (3) and (5) were substituted and Sub-rule – (4) was inserted by notification No. 377-F.T., dated 16-03-2012, w.e.f 1-05-2012.

⁸ Inserted by notification no 377 FT dated 16.03.2012 w.e.f 01.05.2012.

appellant requiring him to show cause as to why the appeal presented by him shall not be entertained.

The appeal may not be entertained if it appears to the appellate authority that the appellant has-

- (a) not paid the amount that the appellant admits to be due from him, or
- (b) not enclosed a copy of the Order, or
- (c) not affixed the court fee stamp showing payment of fee for the appeal, or
- (d) not filled the form properly including the verification of form; or
- (e) ⁹not complied with the provisions of sub rule (3) of rule 138.

17.9. Proceedings for Disposal of Appeal [Rule 140]

Notice for Hearing: Where an appeal is entertained, a notice in **Form 69** shall be served to the appellant, directing him **to appear and produce** before him such accounts, registers, document (including those in the form of electronic records), or evidence etc. as he wishes to rely on in support of the basis in the memorandum of appeal, **on the date**, time and place specified therein.

Date for Hearing: The appellate authority shall **fix a date for hearing** of appeal within **three days** of entertaining such appeal, or from its date of presentation where the same does not suffer from any infirmity. Ordinarily, the date shall be fixed not less than **thirty days** from the date on which the notice was served.

Adjournment of Hearing: An appellant may make an application for adjournment well in advance so that it may reach the appellate authority on a date prior to the date of hearing fixed in terms of the notice. The period of such adjournment shall not ordinarily exceed more than forty five days at a time.

Amendments in Grounds of Appeal: In the course of hearing, the appellate authority may, on application, allow the appellant to make changes in the memorandum in respect of the grounds of appeal.

Disposal of Appeal: After hearing the appellant and considering accounts, registers, documents including those in the form of electronic records or

⁹ Clause (e) was inserted by *ibid*, w.e.f 1-05-2012

evidence produced before him, the appellate authority shall, by an order, dispose of the appeal to the best of his judgment and send a copy of the order to the appellant and to the appropriate assessing authority whose order forms the subject matter of the appeal.

17.10. Appellate Authorities [Rule 137]

The appellate authorities in respect of the orders of different assessing authorities at different ranks are as follows:

Sl. No.	Assessing Authority (Rank)	Appellate Authority (Rank)
1.	Sales Tax Officer	¹⁰ Deputy Commissioner or Joint Commissioner or Senior Joint Commissioner as authorized by Commissioner
2.	Deputy Commissioner	Joint Commissioner or a Senior Joint Commissioner or Additional Commissioner as authorized by the Commissioner
3.	Joint Commissioner	Senior Joint Commissioner or Additional Commissioner as authorized by Commissioner
4.	Senior Joint Commissioner	Additional Commissioner or Special Commissioner

Appellate Forum: Provided that where the total amount of tax, interest, late fee or penalty in dispute in appeal is in excess of rupees twenty lakh, such appeal, irrespective of the assessing authority, may lie before an appellate forum to be constituted by the Commissioner, and the appellate forum shall act as the appellate authority in disposing of such appeal.

Where an appeal for a particular period lies before an appellate forum, any appeal for that period filed under the CST Act, shall also lie before the said appellate forum.

¹⁰ Substituted at first by Notification No. 68 – F.T dated 15-01-2009, w.e.f 16-01-2009 and then substituted by notification no. 840 – F.T, dated 09-06-2009, w.e.f 16-01-2009.

17.11. Suo Motu Revision by Commissioner [Sec 85]

The Commissioner may, for reasons to be recorded in writing, on his own revise a **provisional assessment** u/s. 45, or **any other assessment** u/s. 46, 48, 47(1) or order passed by a person appointed u/s. 6(1) to assist him.

17.11.1: Functional Jurisdiction [Rule 142(1)]: In the interest of revenue, any assessment made or order passed may be revised suo motu as follows:

Sl. No.	Assessing order passing Authority (Rank)	Revisional Authority (Rank)
1.	Assistant Sales Tax Officer/ Sales Tax Officer	Deputy Commissioner or Joint Commissioner or Senior Joint Commissioner, who has jurisdiction over Assistant Sales Tax Officer/ Sales Tax Officer.
2.	Deputy Commissioner	Joint Commissioner or a Senior Joint Commissioner or Additional Commissioner who has jurisdiction over Deputy commissioner.
3.	Joint Commissioner	Senior Joint Commissioner or Additional Commissioner who has jurisdiction over Joint commissioner.
4.	Senior Joint Commissioner	Additional Commissioner or Special Commissioner.
5.	Additional Commissioner	Special Commissioner.
6.	Any Predecessors-in-office of the Commissioner	The Commissioner.

Any revision of an assessment order passed by the appropriate auditing authority in respect of a dealer shall be revised suo motu by the Revisional authority who has Revisional jurisdiction over the appropriate assessing authority in respect of that dealer.

17.11.2: Proceedings for suo motu revision [Rule 143]:

Show Cause Notice: Where it appears to the Revisional authorities that an assessment order or any other order is required to be revised by him, on his

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own motion, such revisional authority shall serve a **notice upon the dealer** in **Form No. 70** with a gist of the proposed order directing him to appear before him and **show cause** on the **date** and at the **time** and **place** specified in such notice as to why the order referred to therein shall not be revised.

Provided that the revisional authority shall not revise an assessment order or any other order, on his own motion

- if the time for presenting an appeal from such assessment order or the application for revision of such order has not expired, or
- if the assessment order, or any other order has been passed six years before the date of revision;

Date of Hearing: Ordinarily, the revisional authority shall fix the date of hearing not less than **fifteen days** from the date of issue of the notice.

Adjournment: The appropriate revisional authority either upon application or on his own may adjourn the hearing. The period for such adjournment shall not exceed more than 30 days at a time.

Revise the order: After considering the objection(s), if any, and examining any account, document or evidence produced in support thereof and also considering the evidence or information which the revisional authority has in his possession, he shall, by an order in writing, revise the order to the best of his judgment.

Ex parte order: Where a dealer fails to appear and show cause against the proposed revision, the revisional authority shall revise the order ex parte to the best of his judgment;

Service of Order: A copy of the order shall be sent to the dealer and to the authority whose order has been revised.

17.12. Revision by Commissioner upon Application [Sec 86]

The Commissioner or the prescribed authority **may**, for reasons to be recorded in writing, **upon application, revise any order** other than an order referred to in sec 87 (for revision by the Appellate and Revisional Board) and an order of **provisional assessment** or **any other assessment** against which an appeal lies u/s. 84, **passed by a person** appointed u/s. 6(1) to assist him.

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For this purpose, 'any order' also includes the following-

- (a) An order of seizure of accounts made u/s. 67;
- (b) An order of sealing any house, room, warehouse, almirah, cabinet, safe, locker, drawer, box or any receptacle, made u/s. 69;
- (c) An order of seizure of account of a transporter, carrier or transporting agent made u/s. 71;
- (d) An order of seizure of goods of any person, made u/s. 76.

17.12.1. Functional Jurisdiction [Rule 142(2) and (2A)]: An application for revision of an order shall be made at the first instance to the specified authorities mentioned below:

Sl No.	Order passed by the authority	Revision by the authority
1.	Assistant Sales Tax Officer	Deputy Commissioner or Joint Commissioner or Senior Joint Commissioner, having jurisdiction, as authorized by the Commissioner.
2.	Sales Tax Officer	Deputy Commissioner or Joint Commissioner or a Senior Joint Commissioner, having jurisdiction, as authorized by the Commissioner.
3.	Deputy Commissioner	Joint Commissioner, having jurisdiction, as authorized by the Commissioner.
3A	Joint Commissioner	Senior Joint Commissioner or Additional Commissioner, having jurisdiction, as authorized by the Commissioner.
4.	Senior Joint Commissioner	Additional Commissioner or Special Commissioner, having jurisdiction, as authorized by the Commissioner.
5.	Additional Commissioner	Special Commissioner having jurisdiction.

17.12.2. Manner of making Application [Rule 144]: A dealer who is aggrieved by an order referred for revision u/s. 86, shall, within **forty five**

(45) days from the **date of receipt** of the order, or within such further period as may be allowed, make an application in **Form 68**.

Provided that where an applicant seeks a stay of realization of penalty or stay of operation of an order, he shall present the application for revision together with the application for such stay.

The procedure of presentation of the application is similar to that provided for in Rule 138, and discussed in para 17.7 herein above, i.e. firstly to be submitted online and followed by hard copies.

17.12.3. Rejection of Application: Where it appears to the revisional authority that the applicant has not complied with the provisions, he may reject the application after giving the applicant an opportunity of being heard.

17.12.4. Proceeding for Disposal of Application for Revision [Rule 145]: The procedure for disposal of the application is similar to the one for disposal of an appeal as provided for in Rule 140, and discussed in para 17.9 here in above, briefly involving the following steps-

- (i) Issue of Notice for hearing in Form 69;
- (ii) Fixation of a date for hearing;
- (iii) Adjournment of the date, on application, for not more than thirty days;
- (iv) Disposal of the revision application by an order.

17.12.5 Stay of realization of Penalty and any order pending disposal of the application for revision [Rule 146]:

If an **application for stay** of realization of any amount of penalty or for stay of an order passed, has been presented along with the application for revision before the revisional authority, such authority may, after giving the applicant a reasonable opportunity of being heard, **dispose of** such application for stay within **one month** from the date of its presentation.

The revisional authority may, in his discretion, stay realization of the penalty in part or whole or stay the operation of the order sought to be revised, as the case may be, on such terms and conditions as he may deem fit and proper in the facts and circumstances of the case.

Stay shall be allowed on compliance of the said order by the applicant.

Where the applicant fails to pay the amount of penalty or furnish the security as required by the stay order by the date specified therein, such stay order

shall stand automatically vacated on the expiry of the date specified in such order or such further date may be allowed by the revisional authority.

17.13.Revision by Appellate and Revisional Board [Sec 87]

The Appellate and Revisional Board may, for reasons to be recorded in writing, upon application, revise a final appellate or revisional order from an order of provisional assessment or any other assessment.

17.13.1. ¹¹Power of Appellate and Revisional Board [Sec87(1A)]: The Appellate and Revisional Board, in disposing of an application for revision, shall, for reasons to be recorded in writing, confirm, reduce, enhance or annul the final appellate or revisional order from an order of provisional assessment or any other assessment.

17.13.2. ¹²Additional Evidence before Board [Sec 87(1B)]: The applicant shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate and Revisional Board unless the Appellate and Revisional Board allows production of such evidence or document in the following circumstances-

- (a) if the appellate or revisional authority, whose order is under revision before the Appellate and Revisional Board, had refused to admit such evidence; or
- (b) if the applicant seeking to produce additional evidence, establishes that even after exercising due diligence, such evidence was not within his knowledge or could not be produced earlier; or
- (c) if the Appellate and Revisional Board requires production of any document for pronouncing its judgement or for any other substantial cause.

It is also provided that whenever additional evidence is allowed to be produced, the Appellate and Revisional Boards shall record the reason for its admission.

¹³17.13.3 Disposing of Application for Revision [Sec 87(1C)]

Any application for revision filed on or after the 1st day of July, 2015 and entertained thereafter, shall be disposed of within the date as referred to in

¹¹ Inserted by W B Act 2014 w.e.f 01.07.02014

¹² Inserted by W B Act 2014 w.e.f 01.07.02014

¹³ Inserted vide W.B. Finance Act, 2015 w.e.f 1-4-2015

column (3) of the Table below corresponding to the date of its filing as referred in column (2) of the said Table:-

TABLE

Sl. No.	Date of filing of application for revision	Date within which the application for revision has to be disposed of
(1)	(2)	(3)
1.	Between 1st day of April and 30th day of September of a year	30th day of September of the year immediately following the year in which the revision application was filed.
2.	Between 1st day of October of a year and 31st day of March of immediately following the following year	31st day of March of the year immediately following the year in which the revision application was filed,

The State Government may further extend the time for disposal of such application for revision.

17.13.3. ¹⁴Pre-Deposit: Where the application relates to an order passed by the appellate forum constituted under the first proviso to sec 84(1), such order shall not be revised unless the applicant makes payment of

- (a) ten per centum of the amount of the disputed tax or rupees five lakh, whichever is less, and
- (b) the full amount of tax, interest and late fee, as the appellant may admit to be due from him.

17.13.4. Application filed on or after 01.04.2014: ¹⁵Where an **application for revision filed on or after the 1st day of April, 2014**, relates to provisional assessment or any other assessment passed by an appropriate authority by taking into consideration an adverse finding arising out of seizure of books of accounts or other records or goods or upon audit as referred to in section 43 or upon special audit as referred to in section 43A, and where in the first appeal or revision, such adverse finding is upheld by the first appellate or revisional authority, such appellate or revisional order shall not be revised by the Appellate and Revisional Board where any

¹⁴Inserted by WB Finance Act 2013 w.e.f 01.04.2013.

¹⁵Inserted by WB Finance Act 2014 w.e.f 01.04.2014.

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revision case relating to earlier period is already pending for disposal before it, unless the applicant makes payment of —

- (a) **five per centum** of the **disputed amount** or rupees **one lakh**, whichever **is less**, and
- (b) the **full amount of tax, interest and late fee**, as the applicant may **admit** to be due **from him**:

Provided also that any payment made against disputed amount shall be adjusted as payment for the relevant assessment period.

17.13.5. Memorandum by Commissioner: Where during the pendency of an application for revision before the Board, the Commissioner having discovered-

- (a) any error or omission, in the order against which the revision application is filed; or
- (b) any concealment or incorrect Statement; or
- (c) any claim of excess amount of input tax credit; or
- (d) any non-reversal by a dealer of input tax credit to the extent of his disentitlement,

is of the opinion that the amount of tax assessed is liable to be enhanced from what has been made in the order of a provisional assessment or any other assessment or in the final appellate or revisional order, he may file, at any time before the application for revision is finally heard by the Board, a memorandum bringing to its notice the error or omission or concealment or incorrect Statement or claim of excess ITC or non-reversal as the case may be.

17.13.6. Review by Board: Where the Commissioner, after revision made by the Board, **discovers any concealment or incorrect Statement, or any claim of excess** amount of input tax credit, or **any non-reversal** by a dealer of input tax credit to the extent of his disentitlement, **he may, make, within four years** from the date of order of the Board, **an application** to the Board.

The Board may thereupon, after giving the Commissioner and the dealer a reasonable opportunity of being heard, review its order passed u/s. 87(4) and pass an order that it deems fit.

17.14. Application by the Assessing Authority for Revision by Board [Sec 88A]

Any assessing authority is aggrieved by any order being a final appellate order passed u/s. 84, or a final revision or review order passed u/s. 85 or sec 86 or sec 88 in respect a provisional assessment or any other assessment, such assessing authority may make an application for revision u/s. 87 of such order, to the Board.

17.15. ¹⁶Fast Track Method of Revision [Sec 87A]

Notwithstanding anything contrary contained in any other provision, the application for revision made before the Board, disputing the amount ~~for a sum of less than twenty lakh rupees and relating to the year ending the 31st day of March, 2007, and the 31st day of March, 2008, and which is pending on the 30th day of September, 2011, shall, on and from the 1st day of October, 2011~~ ¹⁷[for such amount, and for such period, as the State Government may, by notification, specify and which had been preferred under section 87 before the Appellate and Revisional Board for revision of a final appellate or revisional order from an order of assessment and which is pending on the 31st day of March, 2015, before the said board, shall, on and from the date as specified in the said notification], stand transferred to such authority to be constituted by the Commissioner.

The revision application so transferred shall be disposed of preferably within one year in such a manner as may be prescribed. The Commissioner may however extend the period till such time as he may deem fit, but not exceeding twelve months from the end of such period.

17.16. Review of an Order [Sec 88]

Any **provisional assessment** or **any other assessment** made or **order** passed under this Act or the Rules made thereunder, may be **reviewed by the person passing it** upon application or on his own motion.

The Appellate and Revisional Board may, in the like manner and for reasons to be recorded in writing, review any order passed by it.

The Commissioner may review any order passed either by his predecessors –in-office, or by any person in the rank of Special Commissioner or Additional Commissioner when such person ceases to hold such rank.

¹⁶Inserted by W B Act VII of 2011 w.e.f 01.09.2011.

¹⁷ Subs vide W.B. Finance Act, 2015 w.e.f 1-4-2015

Any order passed u/s. 87A or by the Appellate Forum constituted by the Commissioner under the first proviso to sec 84(1), may be reviewed, either on its own motion or upon an application by the authority which passed such order or by a similar authority to which the matter has been assigned to by the Commissioner.

17.17. Power of Commissioner to Revise Orders Prejudicial to Revenue [Sec 88B]

If the Commissioner considers that any order passed by any officer subordinate to him is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the person likely to be affected an opportunity of being heard, pass an order as the circumstances of the case justify, including an order enhancing or modifying any assessment, or cancelling or setting aside any assessment and directing a fresh assessment etc.

17.18. Reference to the Tribunal [Sec 92]

A **casual dealer** or **dealer**, by application in writing accompanied by a **fee of one hundred rupees**, or the Commissioner, by application in writing, may require the Appellate and Revisional Board **to refer to the Tribunal** any **question of law** arising out of **any order** passed by it, **affecting his liability**.

Time Limit: Such an application can be made within sixty days from the date of passing such order.

If the Tribunal is not satisfied that the Statements in a case referred to it are sufficient to enable it to determine the question of law raised thereby, it may refer the case back to the Board to make such addition or alteration as it may direct in this behalf.

The Tribunal upon hearing any such case shall decide the question of law raised thereby, and shall deliver the **judgment** containing the grounds on which such decision is founded. A copy of such judgment shall be sent to the Board. The Board, in its turn, shall dispose of the case accordingly.

Deposit of Amount: The payment of the amount, if any, of tax, penalty or interest due in accordance with the order of the Board shall not be stayed pending the disposal of such application for reference to the Tribunal. However, if such amount is reduced as a result of such reference, the amount paid in excess shall be refunded in accordance with the provisions of sec 62.

Chapter 18

Refunds

18.1 Refund To STP, EOU for Exports, Dealer other than Works Contractor, Consulates, UNO Agencies [Sec. 61(1)]

18.1.1 STP and EOU Units: In the case of export of taxable goods by a dealer in STP, or by an EOU, the amount of tax realized or realizable from them by another registered dealer in respect of their purchases in West Bengal shall be refunded to them by the Commissioner. Such refund shall be granted *without making any prior assessment*. The refund shall be granted of tax paid in respect of the following purchases:

- (i) goods for use directly in the manufacture of goods by him in such unit (i.e. STP and EOU unit) for sale by him in the course of export;
- (ii) goods being the containers or other packing material for packing of the goods manufactured in such a unit.

18.1.2 Registered Dealer Other Than Works Contractor: This provision allows refund of excess of input tax credit to a registered dealer other than a works contractor.

In case of a registered dealer whose nature of business is such that for any year the input tax credit exceeds the output tax payable for such year, the excess amount of net tax credit over output tax for such year shall be refunded.

The refund under this provision shall be granted only under the following circumstances:

- i) The tax rates on principal inputs are higher than the tax rates on output on all his sales of goods, or
- ¹(ii) the sales to registered dealers within the meaning of section 3 of the Central Sales Tax Act, 1956 exceeds fifty per centum of total sales;

It can be seen that the clause will serve a limited purpose as the conditions imposed to claim the refund are very strict and difficult to comply with practically.

¹ In section 61, in sub-section (1), in clause (aa), sub-clause (ii), is substituted by W.B. Finance Act, 2014

²18.1.3 Dealer Having More Than Fifty Percent Export Sales: ~~A registered dealer whose total sales of goods in the course of export out of India within the meaning of section 5 of the CST Act, 1956, to the total sales equal to or exceed ³fifty per centum in a return period. Such refund shall be in the proportion of such per centum of the input tax credit available during such return period as referred to as 'A' in sub-section 17 of section 22 after adjustment of reverse credit, if any, as corresponds to all sales of goods referred to in this sub-clause in the course of export out of India, to total sales in the return period.~~

⁴[A registered dealer, whose sum total of the turnover of inter-State sales of taxable goods within the meaning of sub-section (1) of section 8 of the Central Sales Tax Act, 1956 and of the turnover of sales of goods in the course of export out of the territory of India within the meaning of section 5 of the Central Sales Tax Act, 1956, exceeds fifty per centum of the total turnover of sales in a return period, Such refund shall be in the proportion of such per centum of excess amount of input tax credit after adjustment of reverse credit over output tax for such return period, as corresponds to the sum total of the turnover of sales referred to in this sub-clause computed as per centum of total turnover of sales in the return period][Section 61(1)(ab)]

18.1.4 Consulates: The amount of tax realized or realizable from the Consulates by a registered dealer in respect of taxable goods purchased by them in West Bengal for their personal or official use shall be refunded to them by the Commissioner.

18.1.5 Specified Agencies of UNO: The amount of tax realized or realizable from them by a registered dealer in respect of purchases of taxable goods by them in West Bengal for their official use shall be refunded to them by the Commissioner.

18.1.6 Withhold of Refund: The Commissioner may, for reasons to be recorded in writing, withhold the refund till such time as he deems fit and inform the dealer of the reason for withholding the refund. [Sec 61(2)]

² Clause (ab) inserted by W.B. Act III of 2007, w.e.f. 1-4-2007

Substituted by W.B. Act II of 2010, w.e.f 1-4-2010

³ Substituted for "seventy-five per centum" by W.B. Act VII of 2011, w.e.f. 1-10-2011

⁴ Subs vide W.B.Finance Act, 2015 w.e.f 1-4-2015

18.2 Procedure for Refund against Export [Rule 76]⁵

18.2.1 Application For Refund [Rule 76(2)]: The registered dealer shall, **after the submission of return** along with receipted challan or challans evidencing full payment of net tax, interest, and late fee for any period under the Act and under the Central Sales Tax Act, 1956, **make an application in Form 31A**⁶ under digital signature, electronically, within three months from the date of submission of such return, or subject to the satisfaction of the Commissioner, or the Additional Commissioner, as may be authorized by the Commissioner (referred to as the refund sanctioning authority for the purpose of this rule) within such further time not exceeding four months from the date of submission of such return as may be allowed by such authority, for refund of **ninety per centum** of the amount arising under clause (a), or clause (aa), or clause (ab), as the case may be, of sub-section (1) of section 61 [as discussed in para 18.1.1, 18.1.2 and 18.1.3] during the return period on the basis of Statements and declarations in Form 32, Form 35, Form 36, Form 37, as applicable.

18.2.2 Export Documents: In case of refund claim in respect of sales made in the course of export out of the territory of India, the following documents should be available with the dealer:

- (a) a copy of the contract or order for export of goods out of the territory of India;
- (b) a copy of the Customs Clearance Certificate;
- (c) a copy of tax invoice, invoice, cash memo or bill issued to the purchaser;
- (d) transport documents i.e. Bill of lading, Airway Bill, or a like document; and
- (e) other relevant documents evidencing such export.

18.2.3 Electronic Submission: The registered dealer who has made an application electronically in Form 31A in respect of a return period shall, immediately after making such an application, **transmit electronically** the following, along with the application in Form 31A:-

⁵ As amended by notification no. 1530-F.T., dated 20.10.2008 w.e.f. 1-10-2008
Further amended by notification no. 1124-F.T., dated 21.07.2011 w.e.f. 1-4-2011

⁶ In sub rule 2 for the words "either under digital signature or without any digital signature", substitute the words "under digital signature" by Notification no. 1183-F.T. dated 14.07.2014 w.e.f. 1-7.2014

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- (a) Form 32,
 - ⁷(aa) any other information or documents as may be specifically called for in the website of the Directorate,
- (b) a Statement of computation of the amount, claimed by him in the application to be refunded to him
- (c) a Statement of purchases, pertaining to the refund.
- (d) an application for condoning the delay in making application for refund in Form 31A, if the application has been made after the expiry of the period of three months from the date of submission of the return. [Rule 76(2A)]

18.2.4 Documents in Paper Form: The dealer shall, **within fifteen days** from the date of completion of the electronic transmission, submit those documents **in paper form**, to the refund sanctioning authority. He shall also submit the following along with the paper form of the above documents:

- (a) Form 35, Form 36, Form 37, as the case may be;
- (b) a copy of the return certified by him to be the true copy of the return furnished by him in respect of the quarter for which refund has been sought;
- (c) a certificate from a Chartered Accountant or a Cost Accountant certifying the amount of purchase and the amount of sales and the correctness of the claim of refund made in Form 31A;
- ⁸(ca) a copy of receipt obtained from the website of the Directorate, upon e-filing of the declarations in Form C received in respect of inter-State sales;
- (cb) an indemnity bond as per the format given in sub-rule (2D) for the amount claimed as refund;

Where all the declaration(s) in **Form C** for all the inter-State sales as claimed in the return are not available, the balance amount of tax as payable at the full rate of tax applicable in respect of the goods involved in such sales shall be deducted from the input tax credit claimed as refund.

⁷Clause (aa) in sub rule (2A) inserted by Notification no. 1183-F.T. dated 14.07.2014 w.e.f. 1-7.2014

⁸ Clause (ca) and (cb) in sub rule (2B) inserted by Notification no. 1183-F.T. dated 14.07.2014 w.e.f. 1-7.2014

- (d) a copy of the receipt received by the dealer, electronically acknowledging the receipt of document transmitted electronically. [Rule 76(2B)]

The application for refund in Form 31A shall be deemed to have been received on the date on which the application in paper form accompanied by the documents is received by the authority. [Rule 76(2C)]

⁹The format of indemnity bond for this purpose is given in clause (2D).

If the dealer fails to furnish the required documents or if the application is not in order, the refund sanctioning authority shall serve a **notice** on the dealer asking him to furnish those documents or to remove the defect within fifteen days from the receipt of the notice. [Rule 76(2E)]

If the dealer complies with the terms of the notice, the application for refund shall be deemed to have been received on the date on which the dealer furnishes the required documents or removes the defect in the application and thereafter the application for refund will be entertained. If the dealer does not comply with the terms of the notice, the application shall be rejected and the dealer shall be informed. [Rule 76(2F) and 76(2G)]

18.3 Order for Refund [Rule 76(3)]

18.3.1 Notice: If upon preliminary examination of the documents, and ¹⁰application for refund, the refund sanctioning authority is prima facie satisfied that the claim is admissible, he shall serve a **notice in Form 37B** upon the applicant informing him that **ninety per centum** of the amount of refund claimed by him shall be refunded to him forthwith by Refund Adjustment Order or Refund Payment Order or by cheque, or by National Electronic ¹¹Funds Transfer. [Rule 76(3)(c)]

⁹ Sub-rule 2D substituted by Notification no. 1183-F.T. dated 14.07.2014 w.e.f. 1-7.2014

¹⁰ In clause (c) of sub-rule (3) for the words, letters and brackets "application for refund, copy of the return certified by the appropriate assessing authority to be true copy of the return and the reports furnished by the appropriate assessing authority under sub-rule 3 (a) and sub-rule 3(b),", the words "application for refund" are substituted. by Notification no. 1183-F.T. dated 14.07.2014 w.e.f. 1-7.2014

¹¹In clause (c) of sub-rule (3) for the words "Funds Transfer, upon furnishing by him, in accordance with the provisions of sub-rule (2D), an indemnity bond", the words "Funds Transfer" substituted by Notification no. 1183-F.T. dated 14.07.2014 w.e.f. 1-7.2014

18.3.2 Approval of Commissioner: The Additional Commissioner, who is the refund sanctioning authority, shall before serving a notice for refund, send all records and also his observation to the Commissioner for obtaining his approval.

Provided that where the Commissioner has returned those records with the direction to make examination or re-examination, the refund sanctioning authority shall act according to such direction and re-determine the amount which is to be refunded and thereafter, obtain the approval before proceeding to serve the notice in Form 37B.

18.3.3 Order for Refund: The refund sanctioning authority shall, **within thirty working days** from the date of receipt of the application for refund, **pass an order** for making refund to such a dealer ninety per centum of the amount of refund claimed by him, and issue Form 37C enclosing therewith the Refund Adjustment Order or Refund Payment Order (Cash) or the cheques and one copy of the Form 37C shall be sent to the appropriate assessing authority. [Rule 76(3A)]

Where, as declared in the Form 31A, any amount is payable by, or due from, such dealer, the refund sanctioning authority shall **first** issue **Refund Adjustment Order** in favour of the dealer authorizing the dealer to adjust the amount shown to have been paid in excess in the Refund Adjustment Order against the amount payable by, or due from, him and thereupon, if any amount still remains refundable, the refund sanctioning authority shall issue Refund Payment Order (Cash) or cheque in favour of the dealer.

18.3.4 Excess Refund: If, after assessment, no amount is determined to be refundable or the amount of refund determined to be refundable is less than the amount which has already been refunded, the said authority shall demand the amount so refunded by way of assessment. [Rule 76(3C)]

18.3.5 Show Cause Notice: Where the refund claim upon preliminary examination is found inadmissible, the authority shall issue a notice to the applicant asking him to show cause as to why the application shall not be rejected. In case the authority is not satisfied with the reasons adduced, he shall, within thirty working days from the receipt of the application for refund, reject the application and inform the applicant of such rejection. [Rule 76(5)]

18.3.6 Uniform Pattern And Accounting Principles [Rule 76(6)]: The applicant shall follow uniform pattern and accepted principles of accounting in respect of the claims of refunds, with appropriate modifications or

adjustments, if any, on the basis of findings of the Commissioner with regard to the disposal of earlier application or applications.

18.3.7 Ineligibility To Apply For Refund [Rule 76(7)]: If information furnished by a registered dealer in any document is found to be incorrect or if the claim of refund of excess amount of net tax credit over output tax for any return period is found to be in excess of the admissible amount by more than ten per centum for that return period, the dealer shall not be eligible to get refund not exceeding fifty per centum of the amount for the next eight return periods.

18.3.8 Refund Withheld: Notwithstanding anything contained elsewhere in this rule, but subject to sub-rule (7D), where the refund sanctioning authority is satisfied that for certain reasons the refund of the amount claimed is to be withheld for a period of time that he deems fit, he may do so after obtaining the approval of the Commissioner. The dealer shall be informed of the reasons for which the refund has been withheld. [Rule 76 (7A) and (7B)]

18.3.9 Bar from Refund Claim¹²: Notwithstanding anything contained elsewhere, where the Commissioner has reasons to believe, upon any enquiry or otherwise, that the dealer is engaged in fake transactions of purchase for claiming input tax credit as refund, he may, after giving the dealer an opportunity of being heard, bar such a dealer from claiming refund for three years from the date of such an order. [Rule 76(7D)]

18.4 Refund of Excess Tax Paid, or Excess of Net Tax Credit [Sec. 62]

Refund shall be granted to a dealer by the Commissioner in respect of the following:

- (i) Any amount of tax, penalty or interest paid by a dealer in excess of the amount due from him, and
- (ii) Excess of Net tax credit over output tax payable under this Act.

Adjustment of Refund: The Commissioner shall have the power to adjust any amount due to be refunded to a registered dealer against tax, interest, late fee or penalty due from him, in such manner, and subject to such conditions and restriction as may be prescribed.

¹² Sub-rule (7D) inserted by Notification no. 1183-F.T. dated 14.07.2014 w.e.f. 1-7.2014

Withhold of Refund: Where an order giving rise to a refund is the subject matter of an appeal or revision or any other proceeding, or where any other proceeding is pending, and the Commissioner has reasons to believe that the grant of the refund is likely to adversely affect the interest of revenue, the Commissioner may withhold the refund for a period not exceeding three months from the date of such order.

18.4.1 Conditions [Rule 79]

- (i) No refund under section 62 shall be allowed to a dealer without making assessment of his claim for the relevant period, except under rule 80, 81 and 82 as given in para 18.5, 18.6 and 18.7 below.
- (ii) If after an order of assessment is made under rule 57 and rule 58 in respect of assessment under section 46 or section 48(1), the amount of tax payable and penalty payable, if any, is found to be less than the amount of tax paid by such a dealer according to return in respect of the same period, the refund shall be made as per conditions and in the manner prescribed in rule 59, discussed in para 17.5.2. below.

18.4.2 Procedure for Refund [Rule 59(4) and 59(5)]

Notice for Refund and Refund Adjustment Order: The appropriate assessing authority or appropriate auditing authority shall serve a notice in **Form 27 or Form 27A** to the dealer.

The notice shall specify the amount paid in excess, allow the refund, and enclose a Refund Adjustment Order.

The dealer is authorized to adjust the amount paid in excess against the amount payable which falls due subsequent to the date of receipt of the Refund Adjustment Order. He can also adjust such excess payment against any amount due under the Act on the date of order of such assessment.

Prior Approval: If the amount of refund exceeds rupees twenty thousand, the appropriate assessing authority or the appropriate auditing authority, as the case may be, shall obtain prior approval of the Additional Commissioner concerned, where

- (a) such authority is a Senior Joint Commissioner, or
- (b) of the Senior Joint Commissioner concerned where the authority is a Joint Commissioner, Deputy Commissioner or Sales Tax Officer.

Refund Payment Order: A refund shall ordinarily be made through Refund Adjustment order. However, a dealer can make an application any time but ordinarily not later than thirty days from the date of receipt of the Refund Adjustment Order, for payment of the refundable amount otherwise than by way of Refund Adjustment Order.

Such an application can be made on the following grounds:-

- (i) There shall be no such amount of tax payable by him against which the refundable amount may be adjusted. If the appropriate assessing authority is satisfied, the refund may be granted to the dealer accordingly by Refund Payment order (Cash) or by cheque.
- (ii) When there is a permanent closure of business.

18.5 Refund In Consequence of Order of Appeal, Revision, etc. [Rule 80]

Where any amount payable by a dealer in respect of any period on account of tax assessed, penalty imposed or interest determined is reduced in consequence of any order passed on re-assessment, re-determination, appeal, revision or review, as the case may be, a notice will be served upon such a dealer in 28 specifying therein the amount paid in excess, along with the refund adjustment order.

18.6 Refund or Adjustment of Tax Deducted at Source in Respect of Works Contract [Rule 81]

A dealer having no liability to pay tax under the Act, who intends to claim refund shall, after the receipt of the certificate of deduction of tax at source in Form 18, make an application to the appropriate assessing authority for refund of the amount of such tax deducted from payment to him.

Limitation: The limitation of three years according to the provisions of Article 24 of the Schedule to the Limitation Act, 1963 (36 of 1963) shall apply from the date of receipt of the certificate of deduction.

Refund Or Adjustment : Either a Refund Payment Order (cash) or cheque will be issued to the dealer allowing refund for the amount deducted in excess of the amount payable by him for such period, or

The excess amount deducted shall be adjusted towards the arrears of tax, penalty or interest in respect of any other period, and the balance, if any,

shall be refunded in the manner referred to above, where the dealer is found to have incurred liability at a later date, under section 10, section 11, section 14, section 24(3) or section 27C(3).

18.7 Refund Arising Out of Rectification of the Order Determining Interest [Rule 82]

Where, upon rectification of the amount of interest under sub-section (1) of section 51, the amount of interest is in excess of the amount that a dealer has already paid, a notice shall be served in Form 28 upon such dealer specifying the amount of interest refundable to him and sent along with a Refund Adjustment Order for such refundable amount.

18.8 Interest for Delayed Payment of Refund [Rule 83]

A dealer is also entitled to payment of interest, as may be decided by the Commissioner or the Deputy Commissioner, as the case may be, for the period of delay in getting the refund, under section 36. He shall get the amount of interest by a Refund Adjustment Order or Refund Payment Order, by making payment of the said amount in accordance with the first and second provisos to sub-rule (5) of rule 59, and discussed in para 17.5.2.

18.9 Unjust Enrichment

The Act is not specific on the issue of doctrine of “unjust enrichment” as in central excise. The author apprehends that the same principle will become relevant here also in case of certain refunds. Under the principle, the dealer claiming refund has to prove that the burden of the tax has not been passed on to another person. However, in case of refund of excess credit, or refund against exports should be free from such concept.

Chapter 19

Penal Provisions

Principles Laid Down In the White Paper

Penal provisions in the VAT Bills should not be more stringent than in the existing Sales Tax Act.

Provisions In The West Bengal VAT Law

19.1 Penalty For Failure To Furnish Information [Section 27E]

A dealer shall be liable to penalty under this section if he fails to furnish information required under section 27A, section 27B, section 27C, or section 27D within the time prescribed, with respect to:

- Information regarding change of business;
- Information regarding transfer of business by a registered dealer;
- Information regarding partial transfer of business by a registered dealer; and
- declaration in respect of the manager or other officers of a registered dealer.

Quantum: Penalty can be imposed for a sum not exceeding five thousand rupees in the prescribed manner.

19.2. Penalty for Failure to Furnish Information Related To Transfer Of Goods Otherwise Than By Way Of Sale [Sec. 30C]

A dealer shall be liable to penalty under this section in the following cases:

- (i) the dealer fails to furnish information as required under section 30B with respect to **transfer of goods otherwise than by way of sale** in West Bengal; or
- (ii) in the Statement so filed by the dealer, the following discrepancies are found:
 - any of the particulars furnished in such a Statement is not correct or complete; or

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- the goods transferred by such a dealer otherwise than by way of sale in West Bengal have not been accounted for by the dealer's head office, or branch office, or agent, as the case may be; or
- the agent of such a dealer is not traceable or is not available at the address furnished in such a Statement; or
- the agent to whom the transfer of goods has been made, denies having any knowledge of the goods claimed to have been transferred to him by the dealer; or
- the goods have not been transported by the transporter named in such a Statement.

Quantum: Penalty can be imposed for a sum not less than **fifteen per centum** but not exceeding **twenty-five per centum** of the value of the goods so claimed to have been transferred by the dealer.

If any penalty is imposed under this section for concealment of any sale, it shall be excluded in determining the turnover of sales in respect of such period for the purpose of imposition of penalty, if any, under sub-section (1) of section 96.

19.3. Penalty for Failure To Submit Statements, Accounts, Audit Reports or Declarations [Sec. 30E and Rule 45]

A registered dealer shall be liable to penalty under **sub-section (2) of section 30E**, if he fails to submit such Statements, Accounts, Audit Reports or Declarations within the prescribed time.

Show Cause Notice: A notice shall be issued to the dealer requiring him to show cause as to why penalty should not be imposed on him, and an opportunity of being heard shall be given to him before imposing such penalty.

Quantum: Penalty can be imposed for a sum not exceeding five thousand rupees for each default in the prescribed manner.

19.4. In Case of Provisional Assessment [Sec. 45]

A dealer shall be liable to penalty under this section if:

Penal Provisions

- (a) ¹[The Dealer has failed to furnish the return, or assess his net tax for the relevant return period on the basis of past returns or past records, and where no such returns or records are available, on the basis of information received by the Commissioner or such other authority, and determine the interest payable by him for the relevant return period; [sec 45(2)(a)] or
- (b) He furnishes the return but fails to make an application to the Commissioner, or fails to make payment of the net tax, interest and late fee as referred to in sub-section (2) of section 32, or fails to make payment of the unpaid amount of ²{net tax, interest and late fee as referred to in sub-section (2) of section 32} as mentioned in clause (b), clause (c) and clause (d), respectively, of sub-section (1), assess on the basis of return furnished and determine the interest payable or unpaid amount of interest, for the relevant period,]

Quantum: The penalty may extend up to **twice the amount of tax** so assessed under provisional assessment.

³19.5. Issue of Tax Invoice [Sec. 65]

In case a dealer contravenes the provisions of section 64 regarding the compulsory issue of tax invoice, cash memorandum or bill, he shall be liable to penalty.

Quantum: The penalty under this section may extend up to **double the amount of tax**, which could have been levied on the sales, or **five ⁴[ten] thousand rupees**, whichever is greater.

19.6. Transporting Goods In Violation of The Provisions [Sec. 77, 78 and 79]

Penalty can be imposed for violating the provisions in the Act and Rules made there under with respect to the transportation of taxable goods in West Bengal. Penalty can be levied in the following cases:

- (i) If any goods are seized under section 76;

¹ Sub-section (2) of Section 45 was substituted by W.B.Act Xviii of 2006, s.12(22), w.e.f.1-8-2006

² Substituted for 'net tax or interest' by W.B.Act I of 2008, 9.(15), w.e.f. 1-4-2007

³ Omitted by W.B.Act II of 2012, s.5(10), w.e.f 01-04-2012

⁴ Sub. For 'five thousand rupees' by W.B.Act VII of 2011, s. 5(18), w.e.f. 1-9-2011

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- (ii) If seized goods are delivered by the transporter, carrier, or transporting agent to any person including the consignee or owner of such goods in violation of section 76;
- (iii) Where goods have been transported in contravention of restrictions and conditions prescribed under section 73 and are not available for seizure under section 76.

Quantum

In case of seizure of goods, referred to in point (i) above, a penalty of an amount calculated on the basis of the percentage as specified in column (3) of the Table below

Sl. No.	Nature of seized goods	Amount of Penalty
(1)	(2)	(3)
1	Goods in respect of which the rate of tax leviable under sub-section (2) of section 16 on sale of such goods does not exceed <i>four per centum</i>	Fifteen <i>per centum</i> of the fair market value of seized goods
2	Goods in respect of which the rate of tax leviable under sub-section (2) of section 16 on sale of such goods exceeds <i>four per centum</i> but does not exceed <i>fifteen per centum</i>	Twenty five <i>per centum</i> of the fair market value of the seized goods
3	Goods in respect of which the rate of tax leviable under sub-section (2) of section 16 on sale of such goods exceeds <i>fifteen per centum</i>	Forty <i>per centum</i> of the fair market value of the seized goods
4	Goods seized are raw jute	Twenty per centum of the fair market of seized goods:

- (iv) In case of delivery of the seized goods, as referred to in point (ii) above, a penalty, not exceeding **twenty-five per centum** of the market value of such seized goods in West Bengal.
- (v) In case of goods not being available for seizure, referred to in the point (iii) above, a sum not exceeding **twenty-five per centum** of the market value of such goods.

19.7. Penalty for Concealment of Sales, Purchases, Contractual Transfer Price or For Furnishing of Incorrect Particulars Thereof or For Claiming Input Tax Credit or Rebate [Sec. 96]

19.7.1. Cases For Penalty: Penalty under this section may be imposed by way of a separate proceeding independent of any assessment, appeal, revision or review. Such penalty may be imposed in the following cases:

- (a) A dealer or casual dealer has concealed any sales or purchases or contractual transfer price, as the case may be, or any particulars thereof; or
- (b) A dealer, required to furnish the return has furnished incorrect Statement or incorrect particulars of his turnover of sales or purchases or of contractual transfer price in the return furnished by him; or
- (c) Any dealer has claimed excess amount of input tax credit or input tax rebate but has not reversed the same to the extent of his disentitlement.

19.7.2. Malafide Intention Required: Such penalty can be imposed only when there is a malafide intention on the part of the dealer to reduce the amount of net tax or any other tax payable by him.

19.7.3. Quantum: The penalty can be for a sum not exceeding *twice* the amount of tax which could have been avoided by him. This penalty shall be in addition to any tax levied or penalty imposed under this Act.

In addition to the various penal provisions discussed above, section 93 of the Act provides for fine, penalty and imprisonment for various offences under different provisions of the Act, elaborated therein.

Chapter 20

Exports

Principles Laid Down in the White Paper

Treatment of Exports, etc.: For all exports made out of the country, tax paid within the State will be refunded in full, and this refund will be made within three months. Units located in SEZ and EOU will be granted either exemption from payment of input tax or refund of the input tax paid within three months.

Provisions In The West Bengal VAT Law

Section 115 of the Act, inter alia, specifically provides that nothing in this Act shall be construed to impose, or authorize the imposition of tax on the sale or purchase of goods or on the execution of works contract where such sale or purchase or execution of works contract takes place outside west bengal in the course of import of goods into, or export of goods out of, the territory of India.

20.1. No Tax Payable on Exports [Sec 16(1)(b)]

Section 16, which provides for the *turnover of sales* liable to tax under the VAT regime specifically provides for deduction of the sales of goods in the course of export out of the territory of India within the meaning of section 5 of the Central Sales Tax Act, 1956. Therefore, export of taxable goods is not liable to tax.

20.1.1. Evidence In Support of Export [Rule 31]:A dealer who has exported goods from West Bengal and intends to claim deduction under clause (b) of sub-section (1) of section 16 from his turnover of sales shall, on demand furnish before the appropriate auditing authority at the time of audit, or before the appropriate assessing authority at the time of assessment, a Statement containing the following particulars:

- invoice or bill number and date;
- description of goods;
- quantity or number of goods;

- value of the invoice or bill;
- name and address of the buyer or consignee;
- name and address of the transporter with enrolment number, if any;
- number and date of railway receipt, bill of lading, or consignment note, or air note as the case may be;
- name of the railway station or steamer station or airport or the place from which such goods have been dispatched.

20.2. No Tax on Inputs Used for Export Goods

Explanation to sub-section (2) of section 16 declares that “*the export of the goods out of the territory of India shall be zero rated, i.e. the tax paid under this Act shall be refunded or adjusted, as the case may be, against the output tax payable, if any, by a dealer*”. Therefore, when goods are purchased on payment of tax under this Act, the same will be eligible for input tax credit provided they are exported, or are used in manufacture of export goods. Such ITC can be adjusted against the output tax liability on other ‘turnover of sales’, as is chargeable to tax under section 16(1) and discussed in para 19.1. (supra). If some ITC still remains unadjusted, or if such adjustment is not possible for any reason, the amount of ITC can be claimed as refund under section 62.

Even inputs can be procured without payment of tax for export against submission of **Form-H**.

20.3. No Tax on Purchase from Unregistered Dealer for Export [Sec. 17 and Rule 29]

Section 17(2) inter-alia, provides for deduction of purchases that have taken place in the course of export of the goods out of the territory of India within the meaning of section 5 of the CST Act. Therefore, purchases from an unregistered dealer shall not be liable to purchase tax under section 12, if such purchases are made for export (penultimate sale or sale prior to export).

Similarly, rule 29 provides for deduction of purchases of goods from an unregistered dealer by a registered dealer having a unit in a Special Economic Zone.

20.4. Refund of Tax Paid On Inputs

There is a provision under **section 61** for refund of tax paid on inputs which are used for manufacture of export goods or as containers or packing materials for such export goods by an industrial unit. Such unit should be any one of the following:

- an industrial unit in the *Software Technology Park*;
- an *Export Oriented Unit*, situated anywhere in West Bengal.

20.4.1. Application: For claiming refund under section 61 as above, the dealer is required to make an application to the Commissioner.

20.4.2. Documents: The application should be accompanied by Statements and declarations in the prescribed forms, viz. form no. 32, ~~133~~, 34, 35, 36 and 37 as applicable.

20.4.3. Frequency of Refund Claim: The refund claim shall be filed for a minimum period of three months at a time.

A detailed discussion regarding the refund of tax paid on purchases in case of exports is in chapter 17.

¹Sub-rule (2) of Rule 76 was substituted by notification No. 1732-F.T. dated 18-10-2006, w.e.f. 1-10-2006

Further, the rule was substituted by notification No. 351-F.T., dated 1-3-2011, w.e.f. 1-4-2011

Chapter 21

Audit by Departmental Officers and By Chartered Accountants

The accounts, registers and documents maintained or kept by the dealer are subject to audit by the officers of the Department. The provisions regarding this are contained in the State Value Added Tax Act. This is an audit by the Department and not an assessment. The dealer is also required to submit a separate audit report in the prescribed Form, duly certified by a chartered accountant or by any other professional as may be prescribed.

Provisions In The West Bengal VAT Law

Sec. 43 and Rule 53 and 54:

The Commissioner as per sec. 43 of the WBVAT Act shall select dealers on a random basis for audit of the **accounts, registers or documents**, maintained or kept by them for any year or part thereof, not being a period which has ended five years previous to the date of selection. [Sec 43(1)]. The audit shall be taken up only after giving due notice [Sec 43(2)]. After the completion of the audit, a **Report** along with a **Computation Sheet** in Form 27 shall be prepared [Sec 43(3)]. The audit is to be completed within **six months** from the date of selection, which may be extended by another six months [sec 43(4)]. Where it appears that any sale price has escaped levy, some purchase price has not been disclosed, deductions from Turnover of Sales have been claimed in excess, excess ITC has been enjoyed, incorrect and/or incomplete information has been furnished erroneously or otherwise, it may lead to best judgment **assessment** u/s. 46(1) [Sec 43(5)]. In case the dealer admits the observation made in the report, and pays tax along with interest and late fee, no such assessment would be taken up.

In case the dealer fails to pay such tax, interest or late fee within one month of receipt of the audit report and the computation sheet, such report shall be deemed to be an order of assessment, and the computation sheet attached to the report shall be deemed to be a notice of demand. The amount shall be payable within 15 days thereafter [Sec 43(5A)].

Selection of Dealers for Audit in West Bengal [Rule 53]

Any registered dealer may be selected for audit by the Commissioner by draw of lots. The Commissioner shall ¹[select ordinarily by the 31st March of every year], a certain number of registered ²[dealers for audit] under section 43, by a draw of lots either mechanically or with the use of computers. The Commissioner may select the dealers who, according to him, are required to be audited.

³[Where a registered dealer in the year for which selection is being made has shown a growth of thirty per centum or above in the payment of net tax under the Act over the net tax paid in the year immediately preceding it, without taking into consideration the growth owing to increase in rate of tax of goods dealt in by such dealer or to withdrawal of exemption from tax on goods dealt in by such dealer, if any, may not be selected for audit for that year:

Provided also that the above provision shall not be applicable to a dealer against whom there is any information or adverse report regarding evasion of tax either from the Bureau of Investigation or any other investigating authority.

⁴The number of dealers to be selected by the Commissioner shall depend on the result of analysis of their returns and the number of auditing authorities or teams engaged in such an audit.

21.1 Conduct of Audit

The audit shall be independent of the assessments, or irrespective of the fact of self-assessment, or time limit for assessment.

21.1.1 ⁵Auditing Authority: The audit shall be performed by an appropriate auditing authority who may be

- (a) an officer, such as a Senior Joint Commissioner or a Joint Commissioner or a Deputy Commissioner or a Sales Tax officer, as the case may be, to whom the task of audit is assigned by the

¹Subs for "select by the 31st March every year. by Notifn No. 1057- F.T, dated 12.07.2010, (w.r.e.f 31.3.2010), which were earlier subs. for "select by the 31st January every year," by Notifn No. 1163-F.T., dated 23.7.2008, (w,e,f, 1.1.2008),.

² Subs. by Notifn No. 652-F.T., dated 22-05-2013, w.e.f. 22-05-2013

³ Inserted by 1539-F.T., dated 17-10-2011, w.e.f. 1-9-2011

⁴ Inserted by notification No. 652-F.T., dated 22-05-2013, w.e.f. 1-4-2013

⁵ Subs by notification No. 1057-F.T., dated 12-7-2010, w.e.f. 1-4-2010.

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Commissioner or by any such authority as may be authorized by the commissioner; or

- (b) a team which may consist of one or more Sales Tax Officers, Deputy Commissioner, Joint Commissioner, or Senior Joint Commissioner, as the Commissioner may deem fit.

21.1.2 Procedure For Audit [Rule 54]

- (i) **Notice:** Notice has to be issued in Form 21 to the dealer asking him to produce the books of account, registers and relevant documents including those in the form of electronic records, on the specified date and time. A minimum of fifteen working days from the date of issue of such notice has to be allowed for the same.
- (ii) **Hearing:** ⁶On the first date fixed in terms of the notice in Form 21 issued to a dealer, the Statements as specified in such notice shall be furnished by the dealer. Dealers having a turnover of sales or contractual transfer price or both of more than rupees ten crore in the year or part of the year in respect of which the notice in Form 21 has been issued for audit, shall also furnish a compact disc containing a soft copy of the Statements specified in the notice.
- (iii) **Audit Report:** ⁷On completion of audit for any period in respect of which selection has been made on or after the 1st day of April, 2012, the auditing authority or his successor in office, as the case may be, shall prepare a '**Report**' stating his observations or findings therein regarding the correctness of returns and the admissibility of claims made by the dealer. The authority shall also prepare a '**Computation Sheet**' in **Form 27** incorporating the amount of tax, and interest or late fee as found to be payable by the dealer. A copy of the **report** and the **notice** in **Form 27** would be sent to the concerned dealer,
- (iv) ⁸Liability in Form 27: Where the dealer fails to pay tax, interest, or late fees as specified in the computation sheet issued in Form 27 and attached to the report, within one month of receipt of such report and the computation sheet in Form 27, then such report shall be deemed to be an order of assessment and the computation sheet in Form 27

⁶ Subs by notification No. 1057-F.T., dated 12-7-2010, w.e.f. 1-4-2010.

⁷ Subs, by notification No. 1059-F,T., dated 26.06.2012, w.e.f. 1-4-2012

⁸ Inserted by notification No. 1059-F.T., dated 26-06-2012, w.e.f. 1-4-2012

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shall be deemed to be a notice of demand and such amount shall be payable within fifteen days thereafter,

- (v) **Action:** ⁹If upon preparation of an audit report, it appears to the auditing authority that there are discrepancies of the Kind / nature mentioned in section 43(5), the authority or his successor in office, who has prepared the relevant audit report, shall initiate the proceedings to make assessment under section 46(1)(ca) and complete it within the stipulated time.

21.2 Time Limit for Audit

The time limit for selection for audit of accounts, registers and documents for any year or part of a year is **five years** from the end of the financial year.

21.3 Objective of Such Audit

The objective of the audit is to verify the correctness of the returns furnished and admissibility of the claims made by the dealer, including claims regarding the input tax credit.

21.4 Time Limit For Completion

The audit should be completed within six months from the date of selection for audit.

Extension of Time Limit: However if the Commissioner is satisfied that audit in respect of the dealer cannot be completed within six months, he may, upon giving him an opportunity of being heard and for the reasons to be recorded in writing, extend the period by another six months. The order of such extension shall be made within six months from the date of selection for audit and shall be immediately communicated to the dealer.

21.5 ¹⁰Special Audit of Dealers [Sec 43A]

The Commissioner has been given the power to select certain dealers for the purpose of special audit of accounts, records and physical verification of stock of goods held by the dealer as provided in Rule 54A. This work is to be performed by the Special Audit team. A copy of the report drawn by any member of the team is to be sent to the concerned assessing authority and to the dealer.

⁹ Subs, by notification No. 1059-F,T,. dated 26.06.2012, w.e.f. 1-4-2012

¹⁰ Inserted by WB Act VII of 2011 w.e.f. 01.09.2011

Audit by Departmental Officers and By Chartered Accountants

Special audit may be made of a dealer for any period or periods where:

- (i) The dealer shows high stocks of goods as compared to sales;
- (ii) The dealer carries forward huge amount of Input Tax Credit (ITC) to another period;
- (iii) The dealer shows higher purchase as compared to sales;
- (iv) The dealer is found to have made fictitious purchases for claiming ITC;
- (v) The dealer has issued fake tax invoice to a registered dealer;
- (vi) The dealer is a manufacturer of iron and steel and its reseller.

21.6 ¹¹Audit by a Special Team of Selected Tax Professionals [Sec 43AB]

The Commissioner, at any stage of a proceeding initiated under the Act against a dealer, is empowered to call for audit of accounts, records and documents of a dealer who is believed to be engaged in an activity detrimental to the State revenue. Such audit will be conducted by a special team of selected tax practitioners nominated by the Commissioner. Rule 54B inserted into the WBVAT Rules, 2005 prescribes how the team for making the audit would be constituted and how it would function.

The special team to be constituted shall consist of at least two professionals, namely a chartered accountant or a cost accountant, and an advocate, professionals who have been actively engaged in the practice of Value Added Tax and Sales Tax laws of the State for not less than eight years.

The eligible professionals on going through the information given in the website, if interested, may furnish their application electronically through the process laid down in the said website for consideration by the Commissioner for empanelment.

From amongst the professionals who have furnished applications in this regard, the Commissioner shall empanel those he may deem fit, and nominate later to be a part of the special team for conducting audit.

A professional nominated for conducting audit under this rule in any year shall not be eligible for nomination in the following year.

¹¹ Inserted by WB Act I of 2014 w.e.f 11.03.2014

21.7 Audit By Chartered Accountants

Apart from the audit by the officers of the Commercial Taxes (VAT) department, which is nothing but a system of assessment through the audit route, there is also a provision that requires that some of the data furnished by the registered dealers (as specified), has to be certified by professionals, who could either be chartered accountants or cost accountants. These professionals are required to certify the correctness and completeness of the returns furnished by the dealer under audit. This is applicable to any registered corporate dealer and a non-corporate registered dealer having a turnover of sales or CTP or both or turnover of purchase exceeding the prescribed limit (presently ₹ 500 lacs). The chartered accountant, who is normally the statutory auditor or the tax auditor of the dealer, as the case may be, is required to certify some of the figures which have already been submitted by him in his quarterly returns, and to submit his report in the prescribed **Form 88**. The report is to be furnished within the 31st day of December from the end of the year. The provision is similar to the requirement of tax audit under **section 44AB** of the Income Tax Act. The statutory provisions relating to such VAT audit are contained in sec 30E read together with Rule 44.

21.8 Self Audit by Certain Dealers

Further, w.e.f. FY 2011-12, the non-corporate registered dealers, having a turnover of sales or CTP or both or turnover of purchase exceeding the prescribed limit (presently ₹ 150 lacs), but not exceeding the prescribed limit (presently ₹ 500 lacs), in a year or part of a year, are also required to furnish a **Self-Audited Statement in Form 88A**.

Chapter 22

Transporters under VAT

All the transporters who carry goods within or outside West Bengal have to comply with a number of provisions in the VAT, which are generally akin to the provisions in the Sales Tax Law. In the West Bengal VAT law various provisions dealing with various aspects of transportation of taxable goods in West Bengal have been incorporated. Some relevant provisions are discussed below.

Provisions in the West Bengal VAT Law

22.1. Transporter, Carrier or Transporting Agent Defined [Sec. 2(52)]

“Transporter, carrier or transporting agent’ means a person who carries on the business of transporting goods on account of any other person into, or outside, or within, West Bengal”.

‘Explanation: For the purposes of this Act, the expression “transporting agent” shall also include a clearing, forwarding, shipping and handling agent’

Such transporter, carrier or transporting agent is referred to here-in-after in this chapter collectively as ‘**transporter**’.

22.2. Enrolment of Transporters, Carriers or Transporting Agents [Sec. 25]

For exercising restriction on the movement of goods, regulation on transport of goods through West Bengal and for preventing evasion of tax on sales within the State, as per section 73, section 80 and section 81, ¹[every transporter, carrier or transporting agent including those who are already in possession of a certificate of enrolment] operating his transporting business in West Bengal is required to **apply and obtain a Certificate of Enrolment** or a fresh certificate of enrolment, as the case may be] in such manner, and within such time as may be prescribed as per Rule 17.

¹Subs. By W.B.Act I of 2013, s.3(8), w.e.f. 1-4-2013

Display of Certificate of Enrolment: A transporter, carrier or a transporting agent to whom a certificate of enrolment or a fresh certificate of enrolment has been issued shall display the certificate of enrolment or copies thereof at a conspicuous place in his head office and branch office(s) and warehouses.

Further, he shall mention the enrolment number as it appears in the certificate of enrolment, on every consignment note and goods receipt issued by him and on every other document as may be prescribed.

Such enrolment is necessary for transporting any consignment of goods into, or outside, or within, West Bengal.

In case of failure to make the application for enrolment within the prescribed time ²[for failure to comply with the provisions], a penalty of a sum not exceeding **one thousand rupees** for each month of default or for each failure, may be imposed.

22.3. ³[Application And Issue of Certificate of Enrolment or fresh Certificate of Enrolment [Rule 17]

Application has to be made in **Form-10** for certificate of enrolment under Section 25, to the appropriate enrolling authority,

- (a) Firstly, by making such application electronically with or without digital signature; and
- (b) Secondly, by sending by registered post or speed post, the application in Form 10 in paper form, and accompanied by a copy of the challan or receipt evidencing payment of rupees one hundred and such other documents as are called for, within five days from the date of making application for enrolment in Form 10 electronically.

Provided that the Commissioner may allow to make application manually in Form 10 in paper form together with the fee as referred above.

A **certificate of enrolment** or a fresh certificate of enrolment shall be issued in favour of the applicant **within five working days from the receipt of application.**

The transporter may obtain additional copies of certificate of enrolment, upon application along with a fee of rupees one hundred for each such additional

²Subs. By W.B.Act I of 2013, s.3(8), w.e.f. 1-4-2013

³ Sub-rule (1) to (3) of Rule 17 was subs. By *ibid*, w.e.f. 1-4-2013

copy, as may be required for display in his branch offices or warehouses in West Bengal.

22.4. Maintenance of Accounts and Inspection by Commissioner [Sec. 70]

Every transporter has to maintain, in the prescribed form, **proper account of taxable goods transported** by him into, or outside, or within, West Bengal on account of any person, being a consignee or consignor, as the case may be.

On demand by the Commissioner, furnish such information as may be required in relation to transport of such goods by such transporter.

The accounts and goods referred above and stored in a godown or warehouse in West Bengal shall be open to inspection by the Commissioner at all reasonable times.

22.5. Maintenance of Registers [Rule 89]

Every transporter shall maintain a true and up-to-date account of every consignment of taxable goods in his Registers in the following Forms:

Form 47 – For goods transported into West Bengal from any place outside the State;

Form 48 – For goods transported from any place in West Bengal to any place outside the State;

Form 49 – For goods transported from any place to any other place within the State.

22.6. Search and Seizure of Records and Documents by Commissioner [Sec. 71]

The Commissioner may:

- **enter and search** any place of transporting business or any other place where such transporter keeps any accounts, registers or documents, including those in the form of electronic records;
- **seize** such accounts, registers or documents.

Such search or seizure may be resorted to where any transporter fails to maintain proper account, or fails to furnish information as required, or the Commissioner has reason to believe that the account is relevant for the

purpose of carrying out any investigation or holding any inquiry into any case of alleged or suspected evasion of tax as well as malpractices.

22.7. Power of the Commissioner to Stop Delivery and Seizure of Goods [Section 72]

The Commissioner may direct a transporter, by an order in writing, that—

- (i) the consignment of goods shall not be transported, or
- (ii) the consignment of taxable goods shall not be delivered, till the matter is investigated or till a period of fifteen days from the date of communication of such direction to the transporter, whichever is earlier.

Such direction can be issued where the Commissioner has information that the person is not available at the address given in the way bill or tax invoice

In case the person is available at the address given in the way bill or tax invoice, the direction shall be withdrawn by an order in writing.

In case the person is not available at the address given in the way bill or tax invoice, the consignment of goods shall be liable to be seized.

22.8. Measures to regulate transport of goods [Section 73]

To ensure that there is no evasion of tax, no person shall transport from any railway station, steamer station, airport, port, post office or any check post set up under section 83 or from any other place any consignment of goods, without furnishing particulars about them in the prescribed form and in the prescribed manner.

22.9. Interception, Search and Detention [Section 74]

The Commissioner, the Special Commissioner, the Additional Commissioner or any such persons appointed under section 6(1) to assist the Commissioner, to exercise the power as the case may be, may subject to such restrictions as may be prescribed, —

- (a) intercept, detain and search at any place, any goods vehicle or any load carried by a person;
- (b) search any warehouse or any other place in which goods transported in contravention of the provisions of section 73 have been stored;

- (c) intercept, detain and search any check post or any other place, any goods vehicle or any load carried by a person.

22.10. Seizure of Goods [Section 76]

Where, upon interception or search referred to above, the Commissioner, the Special Commissioner, the Additional Commissioner or any of such person appointed under section 6(1) to assist the Commissioner, as the case may be, has reason to believe that any goods are being transported in contravention of the provisions of section 73, or section 81, he shall:

- (a) if no document in respect of the consignment of goods is produced at the time of such interception or search, seize such goods forthwith;
- (b) if he is not satisfied about the correctness of the particulars furnished in a form, as may be prescribed under section 73 or section 81, as the case may be, in respect of the description or quantity or weight or value of such goods, seize such goods forthwith;
- (c) if the documents except such as may be prescribed under section 73 or section 81, as the case may be, in respect of the consignment of goods are produced at the time of such interception or search, first detain the consignment of such goods, whether carried in a vehicle or not, for a period not exceeding twenty four hours, and the person bringing, importing, receiving, or carrying such goods fails to furnish within such period of detention such particulars in such form as may be prescribed under section 73, or section 81 which is required to be in possession of such person before entry of such goods into West Bengal, seize such goods, together with any container or other materials for the packing of such goods]

22.11. ⁴[Transportation of Taxable Goods Into, or Outside, or Within West Bengal [Section 80]

22.11.1. Declaration on Entry: When a goods vehicle, transporting any goods, other than goods specified in Schedule A, enters into West Bengal, and such vehicle transporting such goods is bound for any place outside West Bengal, the transporter, shall before entering such vehicle into West Bengal, make a declaration in such form, as may be prescribed,--

⁴ Section 80 was amended by W.B.Act XXXIII of 2010, s.3(3), w.e.f. 15-11-2010

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- (a) *firstly*, by way of transmitting certain information required to be furnished in connection with the said declaration electronically, either under digital signature or without any digital signature, including a Statement made by him that the goods being so transported shall not be unloaded, delivered or sold in West Bengal,
- (b) *secondly*, by generating electronically the paper form of the declaration created on the basis of information which has been successfully transmitted by him electronically under clause (a)

No Declaration for Export: In the case of transportation of goods for export no such declaration shall be required.

22.11.2 Validity of Declaration: The paper form of the declaration generated, shall remain valid for a period not exceeding **seven days** computed from the expected date of entry of the goods vehicle in West Bengal as declared and where the goods are bound for export to a foreign country or the goods have been imported from a foreign country, such paper form of the declaration shall remain valid for a period not exceeding **thirty days** computed from the expected date of entry of the goods vehicle in West Bengal as declared. [sec 80(1A)]

If the transporter cannot enter into West Bengal with a valid declaration in paper form before the expected date of exit of the goods vehicle from West Bengal as declared by such transporter, in the said declaration, he may again generate a fresh declaration in paper form in the manner mentioned above, after cancelling the earlier one. [Sec 80(1B)]

22.11.3 No Exit without Declaration: The transporter shall not transport any goods in any goods vehicle bound for any place outside West Bengal, unless he has in his possession a valid declaration in paper form mentioned above. [Sec 80(1C)]

Where it appears to the transporter, after entering into West Bengal with the declaration that for certain reason, it will not be possible for him to move outside the State within the period specified in the declaration, he shall before the expiry of the validity of the said declaration, make an application for revalidation to the Commissioner in the following manner:--

- (a) *firstly*, by making such application electronically for revalidation for such time as may be deemed necessary by him; and
- (b) *secondly*, by generating electronically the paper form of the declaration to be revalidated by the Commissioner,

and shall commence the transportation with the declaration so validated.
[Sec 80(1D)]

The transporter shall enter into West Bengal from any place with a valid declaration, in paper form, generated by him in accordance with the provisions of sub-section (1) together with such other documents as may be prescribed and shall produce the said declaration including those documents before the Commissioner, where such vehicle is intercepted by him during its transit from the place of entry into West Bengal and the ultimate exit of the goods vehicle outside West Bengal with such goods. [Sec 80(2)]

22.11.4 Interception In Between: The goods vehicle may be intercepted at any place within West Bengal to produce the declaration and other documents, and after satisfactory verification, such documents shall be returned after they are countersigned in the prescribed manner. Such goods vehicle may be searched for verification of the goods with the declaration and other documents. In case it is found that the transporter has contravened the provisions of this section, a penalty may be imposed. [Sec 80(5)]

The transporter transporting the goods in a goods vehicle bound for any place outside West Bengal with the declaration, shall, within a period of two days after the exit of the vehicle outside West Bengal, inform the Commissioner electronically of the date, time and place of exit of the goods vehicle and obtain a receipt in return acknowledging receipt of the said information. [Sec 80(5A)]

22.11.5. Transporter Deemed To Be A Dealer: If the goods vehicle, transporting the goods, does not move outside West Bengal within the period of validity of the declaration or if no receipt referred to in sub-section (5A) is obtained from the Commissioner, it shall be presumed that the goods so transported have been sold in West Bengal by the transporter, and he shall be deemed to be a dealer under this Act.

The provisions of this Act shall, for the purposes of levy, collection and assessment of tax, determination of interest, payment and recovery of tax and interest, appeal, review or revision, apply to the transporter, to be deemed to be a dealer. [sec 80(14)]

22.12. Documents to be carried by the Transporter [Section 81]

Where any consignment of goods is carried from any place in West Bengal in

a goods vehicle, and such vehicle is bound for any place outside West Bengal, the following documents shall be carried, in addition to a document of title to the goods —

- (a) In case of sale of such goods – two copies of the tax invoice or invoice or bill or cash memorandum and ⁵a way bill in the prescribed form in case of such goods or class of goods, as the State Government may, by notification specify, and such other documents, as may be prescribed; or
- (b) In case of stock transfer, two copies of the *forwarding note, delivery challan* or document of like nature, and a way bill in the prescribed form for such goods or class of goods, as the State Government may, by notification specify, and such other documents as may be prescribed.

22.13. Restriction on Transport of Consignment Dispatched from Outside West Bengal [Rule 99]

No person shall transport any consignment of goods, except the consignment of goods of the nature or value specified in sub-rule (2), dispatched from any place outside West Bengal from any railway station, steamer station, ⁶[port, airport or post office] in West Bengal or across or beyond the notified area of a check post or any other place, except in the manner prescribed in rules laid down in this behalf.

Explanation: For this purpose, “goods” shall mean goods other than those goods for which the sale is tax free u/s. 21, but including raw jute.

22.14. Procedure on Arrival of Consignment from Outside [Rule 100]

Where any consignment of goods is imported into West Bengal by a person, on his own account from any place outside West Bengal, and such consignment reaches a railway station, steamer station, port, airport or post office in West Bengal, such person shall, before taking delivery of such

⁵Clause (a) and (b) of Section 81(1) subs. By W.B.Act XVIII of 2006, s. 12(28), w.e.f. 1-8-2006

⁶ The word “airport or post office” was subs. as “airport” by notification no. 1968-F.T., dated 4-12-2006, w.e.f. 1-10-2006. Thereafter, the word “airport” was subs. “airport or post office” By notification No 1059-F.T. dated 26-6-2012, w.e.f. 1-4-2012

consignment of goods, present before the Deputy commissioner or Sales Tax Officer or Assistant Sales Tax Officer of the check post, a **way bill** in **Form 50** in **duplicate** and he shall also present the railway receipt, bill of lading, air consignment note or any document of like nature for countersignature by such Deputy commissioner or Sales Tax Officer or Assistant Sales Tax Officer.

The Deputy Commissioner or Sales Tax Officer or Assistant Sales Tax Officer of the check post shall endorse the duplicate way bill in Form 50 and countersign the railway receipt, bill of lading, air consignment note etc. and return the duplicate copy of the way bill so endorsed along with such RR etc. to the dealer.

Where any consignment of goods reaches any railways station, airport or the State through the Container Corporation of India, the railway authorities, the cargo complex authorities or the authorities of such Corporation shall not deliver or hand over the consignment, unless they are satisfied that the way-bill has been endorsed, and the RRs, air consignment note or the document of like nature has been countersigned by the authority. [Rule 100(11)]

22.15. Procedure on Arrival of Consignment from Outside for Onward Transportation [Rule 101]

Where any consignment despatched from any place outside West Bengal, which is bound for any destination outside West Bengal, reaches a railway station etc., any person shall, before taking delivery of such goods, make a declaration in the format appended to the sub-rule (1) of rule 101.

The declaration shall be produced in **triplicate** along with a copy of invoice, railway receipt etc. before the Deputy commissioner, Sales Tax Officer or Assistant Sales Tax Officer posted at the check post situated in or around the railway station, port or airport or post office from where the delivery is to be taken.

22.16. Procedure for Transporting Consignments Across or Beyond a Check post other than a Railway Station, Steamer Station, etc. [Rule 103]

Where any consignment of goods is imported or brought into West Bengal by a person from any place outside West Bengal, and such consignment of goods is transported across or beyond a check post in West Bengal by a

road vehicle, a **way bill in Form 50 in duplicate** shall be presented before the Deputy commissioner or Sales Tax Officer or Assistant Sales Tax Officer of such check post at the time of entry of such vehicle into the area of such check post.

⁷22.17. Procedure for transporting consignment of goods from railway station, steamer station, port, post office, airport or customs station in West Bengal by a registered dealer selected under sub-rule (1) of rule 110B [Rule 100A]

Where any consignment of goods is imported or brought into West Bengal by a registered dealer selected under sub-rule (1) of rule 110B for generation of way bill electronically, on his own account from any place outside West Bengal and such consignment of goods reaches a railway station, steamer station, port, post office, airport or customs station in West Bengal, such registered dealer shall possess, while taking delivery of such consignment of goods the original and duplicate copies of the **way bill**, obtained in the manner laid down in rule 110B and **duly filled containing all the required particulars** in respect of such consignment of goods.

The registered dealer shall present, on demand by the Deputy Commissioner or the Sales Tax Officer or the Assistant Sales Tax Officer posted in a check post, if any, the original and duplicate parts of the way bill in Form 50A, in respect of such consignment of goods, along with the documents related thereto.

22.18. Procedure for transport of goods into West Bengal by air courier service under certain situation. [Rule 102]

Where any consignment of goods is imported or brought into West Bengal by a person on his own account from any place outside West Bengal through an air courier service and such air courier service is not in possession of any warehouse within the airport area where it can keep such consignment of goods till the requirements of sub-rule (1) of rule 100 or rule 101 are complied with by the person before taking delivery of such consignment of goods, the Commissioner may allow transportation of such goods to any warehouse situated outside the airport area to keep such goods there for the purpose as aforesaid during any period when the check post in or around such airport is not in operation.

⁷ Inserted by notification No. 1763-F.T., dated 16-11-2010, w.e.f. 1-12-2010, and then amended by notification No. 1059-F.T., dated 26-6-2012, w.e.f. 1-4-2012.

The owner of an air courier service or any person authorized by him shall make an application to the Commissioner, duly verified and signed by him and stating therein, inter alia, the following particulars:

- (i) name and address of the air courier service:
- (ii) the name of the airport through which consignment of goods will be imported or brought into West Bengal:
- (iii) whether there is any warehouse in their possession within the airport area [Yes/No]:
- (iv)
 - (a) complete address of the warehouse outside the airport area where consignment of goods will be kept:
 - (b) approximate distance of such warehouse from the airport:
 - (c) whether such warehouse has been taken on rent or on lease, and if so, the name and address of the owner of such warehouse
- (v) an undertaking to the effect that if the air courier service is allowed to avail of the benefit prayed for, it shall not deliver any consignment of goods wholly or partly to the dealer, casual dealer or any other person who imports or brings into West Bengal such goods or otherwise disposes of such goods without complying with the requirements of sub-rule (1) of rule 100, or rule 101.

22.19. ⁸Procedure for transporting consignment of goods across or beyond a check post other than a railway station, steamer station, port, and airport or customs station by a registered dealer selected under sub-rule (1) of rule 110B. [Rule 103A]

No consignment of goods shall be imported or brought into West Bengal by a registered dealer selected under sub-rule (1) of rule 110B, on his own account from any place outside West Bengal, by transporting, across or beyond a check post unless such dealer possesses, at the time of the entry of the road vehicle, the original and duplicate copies of the way bill in Form 50A.

The dealer, or the driver or person-in-charge of the vehicle, **shall present, only on demand** by the Deputy Commissioner or the Sales Tax Officer or the Assistant Sales Tax Officer of such check post **at the time of entry** of such vehicle into the area of such check post, **the original** and duplicate

⁸Inserted by notification No. 1763-F.T. dated 16-11-2010, w.e.f. 1-12-2010.

parts of the **way bill** in Form 50A to such authority of the check post, along with the bill or invoice or tax invoice or forwarding note or road challan and consignment note and trip sheet or any other documents of like nature in respect of consignment of goods.

22.20. Procedure for transport from places other than check posts in West Bengal of consignment of goods dispatched from places outside West Bengal. [Rule 104]

Where any consignment of goods is imported or brought into West Bengal by a person on his own account from any place outside West Bengal, such person shall possess, at the time of entry of road vehicle transporting such consignment of goods into West Bengal, the original and duplicate parts of a valid way bill in Form 50, with all the required particulars in respect of such consignment of goods, and such person, or the driver or person-in-charge of the vehicle transporting such consignment of goods, shall present, on demand by such Senior Joint Commissioner or Joint Commissioner or Deputy Commissioner or Sales Tax officer or Assistant Sales tax officer, the way bill in Form 50, in duplicate and duly filled in with the particulars in respect of such consignment of goods, and the bill or invoice or tax invoice or forwarding note or road challan and consignment note and trip sheet or any other documents of like nature.

22.21. Procedure for transport from places other than check posts in West Bengal of consignment of goods dispatched from places outside West Bengal by a registered dealer, selected under sub-rule (1) of rule 110B [Rule 104A]

Where any consignment of goods is imported or brought into West Bengal by a registered dealer, on his own account from any place outside West Bengal, by transporting such consignment of goods in a road vehicle through any place other than across or beyond a check post in West Bengal, such dealer shall possess, the way bill, duly filled in with all the required particulars in respect of such consignment of goods.

The driver or person in-charge of the vehicle shall, on interception of such vehicle at any place within West Bengal and only on demand by such Senior Joint Commissioner or Joint Commissioner or Deputy Commissioner or Sales Tax Officer or Assistant Sales Tax Officer, present the way bill in Form 50A, along with the bill or invoice or tax invoice or forwarding note or road challan and consignment note and trip sheet or any other document of like nature.

22.22. Selection of Dealers for Way Bills Electronically

⁹The registered dealers selected under rule 34A for electronically transmitting data in the return in Form 14 or Form 14D, as the case may be, shall be deemed to have been selected by the Commissioner for issue of way bill in Form 50A to be obtained and generated electronically. [Rule 110B]

22.23. Restrictions Not To Apply In Certain Cases

The provisions of ¹⁰[rule 100, rule 100A, rule 101, rule 102, rule 103, rule 103A, rule 104 or rule 104A] shall not apply to a consignment of goods-

- (a) where such consignment of goods is his personal effects; or
- (b) where such consignment of goods is of tea being transported by any banking company or on account of such banking company; or
- (c) Where such consignment of goods is of-
 - (i) printed materials including diary, calendar, brochure, leaflet or pamphlet not meant for sale;
 - (ii) gold, or precious stones including pearls (real, artificial or cultured);
 - (iii) pure silk cloth made in India;
 - (iv) radioisotope or radio-pharmaceutical item;
 - (v) exposed cinematographic film; and
 - (vi) cotton yarn.
- (d) Where such consignments of goods is consigned by defence group under the Ministry of Defence, Govt. of India;
- (e) Where such consignment of goods is for bond to bond transfer by customs group where the goods are moved under the seal of Customs Department subject to the submission of declaration in duplicate, for counter signature by check post authority at the time of the entry of goods.

⁹Inserted by notification No. 1763-F.T., dated 16-11-2010, w.e.f 1-12-2010.

¹⁰ Sub. By Notification No. 1763-FT, dated 16-11-2010, w.e.f. 1-12-2010

Chapter 23

Incentive Schemes

Principles Laid Down in the White Paper

Under the VAT system, the existing incentive schemes may be continued in the manner deemed appropriate by the States after ensuring that the VAT chain is not affected.

Provisions in the West Bengal VAT Law

23.1 Incentive Schemes under West Bengal Sales Tax Act, 1994

Under the West Bengal Sales Tax Act, 1994, the following kinds of incentive schemes were in place-

- (i) **Deferment of tax.** The business unit charges sales tax in the invoices but retains the sales tax as a loan to be repaid without interest after a specified period;
- (ii) **Exemption** from payment of sales tax for a specified period based on investments made;
- (iii) **Exemption** from payment of tax on raw materials, capital goods and other inputs;
- (iv) **Tax exemption** as well as exemption on payment of tax on inputs;
- (v) **Remission of tax.** Under the remission scheme, the manufacturer charges tax in the invoice and files the monthly return. However, he retains the tax towards the incentive receivable by the unit.

23.2 Continuance of the Incentive Schemes [Sec. 116 and Sec. 118]

Provision has been made under the WBVAT Act for continuation of the above incentive schemes under the new law without breaking the VAT chain. The Commissioner has been empowered to permit the output tax payable by a registered dealer or a class or classes of dealers as may be prescribed-

- (a) **to be deferred** where such registered dealer is entitled to continue to enjoy such deferment under section 118 (1) (a); or
- (b) **to be exempt** where such registered dealer is entitled to continue to enjoy such exemption under section 118 (1) (b); or
- (c) **to be remitted** where such registered dealer is entitled to continue to enjoy such remission under section 118 (1) (c).

Ceiling: The deferment, exemption or remission has been allowed for the unexpired balance period or for the balance eligible amount.

23.3 Deferment of Tax [Sec. 118(1)(a) and Rule 165]

A registered dealer who has been enjoying, or has been entitled to enjoy, the benefit of deferment of tax under section 40, section 42 or section 43, as the case may be, of the WBST Act, **for a specified period or for a specified amount** determined with respect to gross value of the fixed capital assets, immediately before the appointed day, has been allowed deferment of payment of output tax payable by him for the un-expired balance period or for the balance eligible amount, with respect to gross value of the fixed capital assets, whichever expired earlier.

The deferment has been allowed in the case of a newly set up industrial unit in respect of sales of goods manufactured in such unit, or in the case of an existing industrial unit, which has been expanded on the approval of the State Government, in respect of sales of goods, manufactured in the expanded portion of such industrial unit on utilization of the added capacity of the plant and machinery installed therein. [Rule 165(1)]

Restriction on Specified Amount of Deferment: For calculating the amount of deferment, however, an upper limit of ₹ seventy five crores has been fixed. In other words, the deferment for the balance eligible amount shall be up to an amount which, together with the aggregate amount of deferment availed up to 31.3.2005 shall not exceed rupees seventy five crores. [Rule 165(3)]

23.4 Tax Holiday [Sec. 118(1)(b) and Rule 188]

A registered dealer who was enjoying the benefit of tax holiday under section 39 of the WBST Act, for a specified period, immediately before the appointed day has been allowed such tax holiday by way of exemption of output tax payable by him for the balance **un-expired period or until the aggregate of**

the benefit of exemption from payment of tax enjoyed by such dealer under section 39 of the WBST Act, computed from the first day of April, 2003, **exceeds the limit of two hundred per centum** of gross value of the fixed capital assets, whichever expires earlier.

No tax shall be payable by a dealer for the balance unexpired period in respect of his sales of goods manufactured by him in his newly set up small-scale industrial unit, and in calculating his turnover of sales upon which tax shall be payable, that part of his turnover of sales which represents the turnover of sales of such goods shall be deducted. [Rule188]

23.5 Remission of Tax [Sec. 118(1)(c) and Rule 177]

A registered dealer who was enjoying the benefit of **remission of tax** under section 41 of the WBST Act, for a specified period or a specified amount determined with respect to gross value of the fixed capital assets, immediately before the appointed day has been allowed remission of output tax for the balance un-expired period, or balance eligible amount with respect to gross value of fixed capital assets, whichever expires earlier.

The output tax payable by such dealer who is entitled to enjoy the remission of tax, in respect of sales of such goods manufactured in such unit shall continue to be remitted for the balance of the unexpired period. [Rule 177]

23.6 Accumulation of Input Tax Credit [Sec 22(8)]

There is an important change with respect to the treatment of tax paid on inputs by a business unit enjoying deferment, exemption or remission as the case may be in West Bengal. To ensure that the VAT chain is not broken, enabling provisions have been made under the Act for the accumulation of input tax credit during the period of enjoyment of the incentive scheme. Accordingly section 22 (8) provides that a dealer enjoying **deferment of tax**, or **tax holiday**, or **remission of tax**, under section 118(1), shall not be entitled to input tax credit or input tax rebate during the period of such enjoyment. The ITC pertaining to the period of exemption, remission or deferment shall be accumulated and carried forward until the expiry of such period of deferment, or tax holiday, or remission, as the case may be.

The ITC shall be accumulated in respect of purchases within West Bengal, of taxable goods which are used-

as ¹[raw materials]in the manufacture of taxable goods or

- in the packing of goods so manufactured, or
- which are used as capital goods required for the purpose of manufacture of taxable goods,

It is to be noted that if under certain circumstances the output tax on sale of such goods in West Bengal by such dealer is not deferred, exempted, remitted, as the case may be, he shall be entitled to input tax credit or input tax rebate in respect of purchases of such taxable goods within West Bengal.

In case the dealer exports the goods manufactured by using such goods out of the territory of India, he shall be entitled to a refund of the input tax credit or input tax rebate in respect of such purchases of taxable goods within West Bengal.

A dealer, in lieu of allowing ITC to be accumulated and carried forward until the expiry of his period of deferment, or tax holiday, or remission, as the case may be, **may at his option**, and subject to such conditions and restrictions as may be prescribed, be entitled to a refund of 75 per centum of the accumulated ITC in respect of any quarter of a year in such manner as may be prescribed.

23.7 Return [Rule 165(4), 177(4) and 188(4)]

A registered dealer availing of the benefit of such incentive schemes under these rules shall, notwithstanding such incentive, furnish returns as required by section 32 and the rules made there under.

23.8 Information Regarding Deferment, Remission or Tax Holiday

Where a registered dealer had been enjoying or had been entitled to enjoy the benefit of deferment of payment of tax or remission of tax or tax holiday on the day immediately preceding the appointed day, he ought to inform the appropriate assessing authority about the balance unexpired period and the available eligible amount as the case may be. Such information was required to be submitted within one hundred and twenty days from the appointed day. [Rule 182 and 190]

¹Subs. For “raw materials, consumable stores” by W.B.Act I of 2008, s.9(4), w.e.f. 1-4-2008.

23.9 Application for Fresh Eligibility Certificate [Rule 184 and 192]

The dealer was entitled to such continuing benefit under the schemes provided he obtained a fresh Eligibility Certificate. The dealer was required to make an application for such certificate within one hundred and twenty days from the appointed day to the Sr. JC or JC or DC as may be authorized by the Commissioner. However, if the balance un-expired period was not more than two months as on the appointed day, the earlier EC was deemed to be valid and fresh EC was not required to be obtained.

Form of Application: The application was to be made in Form 76 or Form 78 as the case may be.

23.10 Records

A record should be maintained regarding the date of sanction of the incentive scheme, with reference to the sanction authority certificate, period for which the incentive scheme is granted, value limit of the incentive, incentive availed with year wise breakup, unexpired value of the incentive etc. A suggested format for the same is given below:

Annexure - 2

Incentives and concessions sanctioned

Sl. No.	Year of sanction	DIC Certificate reference	Date of issue of certificate	Issuing Authority	Incentive - Exempt/ Deferred			
					Sanctioned	Financial Year	Utilised Value	Unexpired value
1	2	3	4	5	6	7	8	9

Chapter 24

Declaration Forms

Principles Laid Down in the White Paper

Declaration Form: There will be no need for any provision for concessional sale under the VAT Act since the provision for set off makes the input zero-rated. Hence, there will be no need for a declaration form, which will be a further relief for dealers.

Provisions In The West Bengal VAT Law

24.1. Declaration In Respect of Manager and All Other Officers under Section 27D

Every registered dealer shall send a declaration in **Form 7** to the appropriate assessing authority, within 30 days from the appointed day stating the names of the manager and all officers of other designations who are responsible for ensuring compliance with any requirement made of such dealer under this Act, and in the event of any change of the manager or other officers, the dealer shall send a revised declaration in the like manner to the said authority within 30 days from the date of change. [Section 27D and Rule 13]

24.2. Declaration by Auctioneer or Agent for Deduction from Turnover of Sales under Section 16 and Rule 32(1)

Rule 32 (1) provides that the claim by a registered dealer for deduction of the turnover representing transfer of manufactured goods, referred to in **sub-rule (1) of rule 27**, under **clause (c) of sub-section (1) of section 16**, from his turnover of sales, shall not be admissible unless:

- (i) the auctioneer or agent as the case may be, through whom such sale is made is a dealer registered under the Act; and
- (ii) such registered dealer furnishes, on demand by the appropriate assessing or audit authority,-
 - (a) a copy of the relevant account of sale obtained from such auctioneer or agent, and

- (b) a certificate in **Form 12** duly filled and signed by such auctioneer or agent, or a person authorized by him, and

he proves to the satisfaction of the appropriate assessing **or audit authority** that the amount of tax payable at the appropriate rate, on such sale of goods has been deposited by such auctioneer or agent, in the appropriate Government Treasury.

Rule 27(1) as referred in Rule 32(1) provides that when a registered dealer upon manufacturing any goods in West Bengal, transfers such goods, other than tea, to an auctioneer or an agent, as the case may be, in West Bengal, for effecting sales of such goods against commission or other remuneration may, subject to the condition specified in **sub-rule (1) of rule 32**, while determining his turnover of sales on which tax is payable, deduct the turnover representing such transfer of manufactured goods under clause (c) of **sub-section (1) of section 16** from his turnover of sales.

24.3. Declaration by Broker Member or Person Authorized By Him For Deduction From Turnover Of Sales Under Section 16 and Rule 32(2)

Rule 32(2) provides the claim by a registered dealer for deduction of sales of tea, referred to in **sub-rule (2) of rule 27**, under clause (c) of sub-section (1) of section 16 from his turnover of sales, shall not be admissible unless-

- (i) the broker-member through whom such sale of tea is made under the Private Treaty sales is a dealer registered under the Act; and
- (ii) such registered dealer furnishes, on demand by the appropriate assessing **or audit** authority,-
 - (a) a copy of the relevant account of sale obtained from the broker member, and
 - (b) a certificate in **Form 13** duly filled and signed by the broker member or a person authorized by him, and

he proves to the satisfaction of the appropriate assessing or **audit** authority that the amount of tax payable at the appropriate rate, on such sale of tea has been deposited by the broker-member in the appropriate Government Treasury.

Rule 27(2) as referred in Rule 32(2) provides that when a registered dealer, ¹[makes a sale of such tea] through a broker member of the Kolkata Tea Traders Association or the Siliguri Tea Auction Committee or the North Bengal Tea Auction Committee being his agent under Private Treaty sales held in Kolkata under the auspices of such Association or at Siliguri under the auspices of such Committee or Jalpaiguri under the auspices of North Bengal Tea Auction Committee, such registered dealer shall, subject to the condition specified in **sub-rule (2) rule 32**, while determining his turnover of sales on which tax is payable, deduct, from his turnover of sales, the turnover representing such sale of tea under clause (c) of sub-section (1) of section 16.

Thus deduction from the turnover of sales is admissible with respect to the sale of tea through a broker or a member subject to the conditions prescribed.

24.4. Evidence In Support of Inter-State Dispatches from West Bengal [Rule 31]

Sale of goods outside the State of West Bengal is not liable to tax under this Act, and is eligible for deduction under section 16(1)(b) from the turnover of sales. To avail this deduction, the dealer needs to furnish a Statement giving all the details regarding the goods dispatched, buyer, seller, invoice details etc. to the appropriate auditing authority or the appropriate assessing authority or both.

24.5. Statements, Accounts or Declarations to be Furnished by Registered Dealers [Section 30E and Rule 44]

Every registered dealer is required to submit before the prescribed authority such Statements, accounts or declarations within the time prescribed in Rules and shall verify that such Statements, accounts or declarations are true to the best of his knowledge and belief. [Section 30E] Accordingly Rule 44 provides that-

Every registered dealer, other than a Public Limited Company or a Private Limited Company whose turnover of sales including stock transfer outside the State or contractual transfer price or both, or turnover of purchase

¹ Sub. For "a registered dealer, who purchases or manufactures tea, makes a sale of such tea" by notification No. 369-F.T., dated 28-03-2013, w.e.f 1-4-2005 retrospectively.

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exceeds rupees ²ten crore, in an accounting year, shall, within the 31st day of December from the end of the year, submit before the appropriate assessing authority, a Profit and Loss Account and Balance Sheet for such year, duly audited by a Chartered Accountant ³[or Cost Accountant], along with his report ⁴[in Form 88]

Every registered dealer, being a Public Limited Company or a Private Limited Company, shall submit before the appropriate assessing authority a copy of Profit and Loss Account and Balance Sheet for such year, duly audited by a Chartered Accountant, along with his report ⁵[in Form 88] within 31st day of December from the end of the year,

⁶Every registered dealer, other than those mentioned above, who are required to get his accounts audited under the provision of Income Tax Act, 1961, shall, within 31st December (day of December after the end of the year submit before the appropriate assessing authority, a copy of the audit report as required to be furnished under the Act together with a copy of the Profit and Loss Account and Balance Sheet for such year

² Subs from time to time as below:- 1. "exceeds rupees one crore in a year" were substituted for the words "exceeds rupees forty lakh in a year" by notification No. 1163-F.T., dated 23-7-2008, w.e.f. 1-4-2008.

2. "exceeds rupees one crore in a year" were substituted for the words "exceeds rupees forty lakh in a year" by notification No. 1163-F.T., dated 23-7-2008, w.e.f. 1-4-2008.

3. "exceeds rupees one crore and fifty lakh in a year" were substituted for "exceeds rupees one crore in a year" by notification No.1057., dated 12-7-2010, w.e.f. 1.4.2010:

4. "whose turnover of sales or contractual transfer price or both, or turnover of purchases, exceeds three crore in a year" were substituted for "whose turnover of sales or contractual transfer price or both exceeds rupees one crore and fifty lakh in a year" by notification No. 1059-F.T., dated 26-6-2012, w.e.f. 1-4-2011; and

5. As above for "whose turnover of sales or contractual transfer price or both exceeds rupees three crore in a year" by notification No. 369-F.T., dated 28-03-2013, w.e.f. 1-4-2013

³ Substituted by Notification No. 950-F.T., dated 05-07-2007, w.e.f. 01-04-2007.

⁴ Substituted by notification No. 950-F.T., dated 5-7-2007, w.e.f. 1-4-2007

⁵ Substituted by notification No. 950-F.T., dated 5-7-2007, w.e.f. 1-4-2007

⁶ Inserted by W.B.Act II of 2012, s.5(7), w.e.f. 1-4-2011

Chapter 25

Statutory Fees

25.1. Application for Registration [Rule 5(1)]

A fee of Rupees one hundred (₹ 100/-) shall be affixed by way of court fee stamp, along with the application for registration to the appropriate registering authority in **Form No. 1**,

25.2. Appeal, Revision, Review, Petition Etc. [Rule 207]

The amount of fee payable at the time of the presentation of memorandum of appeal, application for revision, review or any other application or petition is as given in the table below:

TABLE

Sl. No.	Description of memorandum, application or petition.	Amount of fee
(1)	(2)	(3)
1.	Application under sub-section (4) of section 64 for allowing input tax credit in the absence of original tax invoice under the proviso to sub-clause (a) of sub-section (5) of section 22.	Two <i>per centum</i> of the amount of input tax credit subject to a minimum of one hundred rupees and a maximum of five hundred rupees.
2.	Memorandum of appeal under section 84 against an order of assessment referred to in the said section.	Five <i>per centum</i> of the amount of net tax, or any other tax, interest, late fees or penalty in dispute involved in the appeal subject to a minimum of one hundred rupees and a maximum of five hundred rupees.
3.	Application for revision under section 86.	Two hundred rupees.
4.	Application to the Appellate and	Five <i>per centum</i> of the amount

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	Revisional Board for revision under section 87.	of net tax, or any other tax, interest, late fee or penalty in dispute, subject to a minimum of one hundred rupees and a maximum of five hundred rupees.
5.	Application for review under section 88 against an order of assessment referred to in section 84 or against any order passed under section 87.	Five per centum of the amount of net tax, or any other tax, interest, late fees or penalty is dispute, subject to a minimum of one hundred rupees and a maximum of four hundred rupees.
6.	Application for review under section 88 against an order, other than an order of assessment or an order passed under section 87.	Two hundred rupees

Provided that no fee shall be payable for filing any objection, written or verbal, made in reply to any notice served under the provisions of the Act or the rules made thereunder or for filing an application for registration in Form 1CR or amendment under rule 46XB or for filling any application requiring information from any person appointed under the Act.

Provided further that no court fee is required to be affixed by a dealer on the information required to be submitted by him in Form 2, if he was registered under the West Bengal Sales Tax Act, 1994, immediately before the appointed day.

Fees payable under this rule shall be paid ¹[either in court fee stamp or to the appropriate Government Treasury in the manner laid down in rule 43 and such court fee stamp evidencing payment of such fee shall be affixed, or one copy of the challan referred to in sub-rule (4) of rule 43 or one copy of the receipt referred to in sub-rule (4) of rule 43 or one copy of the receipt referred to in the second proviso to rule 36 evidencing payment of such fee, shall be annexed, to the memorandum, application or petition, as the case may be.]

¹ Sub. For "in court fee stamp affixed to the memorandum, application or petition, as the case may be" by notification No. 719-F.T., dated 18-5-2011, w.e.f. 1-9-2010 retrospectively

Statutory Fees

Notwithstanding the above, no fee shall be payable when memorandum is presented or application for revision or review is made by the Commissioner, Additional Commissioner, Senior Joint Commissioner, Joint Commissioner or Deputy Commissioner to the Appellate and Revisional Board under the provisions of the Act or the rules made thereunder.

Chapter 26

Declaration and Way Bill for Transportation

26.1. Definition as per Section 2(52)

'Transporter' for the purpose of this chapter in the Act includes any transporter, carrier, or transporting agent.

Transporter, Carrier or Transporting Agent means a person who carries on the business of transporting goods on account of any other person into, or outside, or within, West Bengal.

Explanation: For the purposes of this act, the expression "Transporting Agent" shall also include a clearing, forwarding, shipping and handling agent.

26.2. Obligations of Transporters

Under the VAT regime, every transporter has to discharge various obligations relating to the maintenance of accounts and documentation for the purpose of transportation of goods, which are discussed hereafter.

26.2.1. Maintenance of Accounts [Sec. 70]: The transporter shall maintain proper accounts of taxable goods transported by him. Such accounts shall be maintained in respect of taxable goods-

- (A) transported into West Bengal;
- (B) transported outside West Bengal, or
- (C) transported within West Bengal.

Such goods may be transported on account of any person, being a consignee or consignor, as the case may be. The accounts should be maintained in the prescribed form.

26.2.2. To Carry Way Bill or Declaration [Sec. 73] : No person shall transport any consignment of goods except in accordance with such restrictions and conditions as prescribed in the rules, and presented in the **Table** later (on page no 250) in this chapter in a summarized form.

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Restrictions shall apply for transportation from the following places:

- any railway station;
- steamer station;
- airport;
- port;
- post office;
- any check post set up under section 83, or
- from any other place.

26.2.3. Declaration [Sec. 80]: The transporter should also give a declaration in the appropriate Form available on the website, regarding his work of transport in the State of west Bengal—

- (a) *firstly*, by way of transmitting information required to be furnished in connection with the said declaration electronically through such website, either under digital signature or without any digital signature, including a Statement made by him that the goods being so transported shall not be unloaded, delivered or sold in West Bengal,
- (b) *secondly*, by way of generating electronically the paper form of the declaration created on the basis of information which has been successfully transmitted by him electronically under clause (a)

There can be **eleven different situations** for transportation of goods, and documentations are prescribed for each such situation, which is given below:

TABLE

Situation	Rule	Form of Way Bill/ Declaration	Copies	Other Documents Required	To be produced for Counter-signature, before
Situation 1	101	Declaration appended to sub – rule (1)	Triplicate	Invoice, R/R, Bill of Lading (B/L) or Air C/N.	The check post-DC, STO or Asst. STO. If no check post, jurisdictional JC, DC STO or Asst. STO.
Situation 2	100	Form 50	Duplicate	R/R, B/L or Air C/N.	The check post-DC, STO or Asst. STO.

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					If no check post, for Rly Stn., Charge/Range office; for others, appropriate assessing authority or such JC, DC, STO as the Commissioner may authorise.
Situation 3	103	Form 50	Duplicate	C/N, Invoice, Road Challan (R/C) or Trip Sheet.	The Check post-DC, STO or Asst. STO.
Situation 4	104	Form 50	Duplicate	¹ Invoice, Tax invoice, Forwarding Note, Road Challan (R/C) C/N or Trip Sheet.	Sr. JC or JC or DC STO or Asst. STO.
Situation 5	106	Declaration appended to sub – rule (3)	Duplicate	B/L or Air C/N.	The Check post-DC, STO or Asst. STO.
Situation 6	102	Application mentioned in sub-rule (2)	--	--	Commissioner

¹ Sub-rule (1) of rule 104 was substituted by Notification No. 1763-F.T., dated 16-11-2010

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Situation 7	108	Form 51	One Copy	(ii) For Sale- 2 Copies of Tax Invoice; Cash memorand -um issued by selling dealer For STM- Forwarding Note or Delivery Challan, 2 Copies of stock transfer advice.	STO or Asst. STO at the last check post.
Situation 8	107	² [.]		Forwarding note , Challan, Tax invoice, Invoice, bill, Cash memorand um issued by selling dealer, stock Transfer advice.	JC, DC or STO as commissioner may authorise
Situation	³ 100	Form 50A	Single	Bill,	The Check post –

² Rule 107 was substituted by notification No. 300-F.T. dated 20.02.2006 w.e.f. 20.02.2006

³ Inserted by notification No. 1763-F.T., dated 16-11-2010, w.e.f. 1-12-2010 and then amended by notification No. 1059-F.T., dated 26-6-2012, w.e.f. 1-4-2012.

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9	A		Copy	invoice, tax invoice, forwarding note, road challan, railway receipts, bill of lading, air consignme nt note.	DC or STO or Asst. STO
Situation 10	⁴ 103 A	Form 50A	Duplicate	Bill, invoice, tax invoices, forwarding note, road challan, consignme nt note, trip sheet.	The Check post – DC or STO or Asst. STO
Situation 11	⁵ 104 A	Form 50A	Duplicate	Bill, invoice, tax invoice, forwarding note, road challan, consignme nt note, trip sheet.	Sr. JC or JC or DC or STO or Asst. STO,

⁴ Inserted by notification No. 1763-F.T. dated 16-11-2010, w.e.f. 1-12-2010.

⁵ Inserted by notification No. 1763-F.T., dated 16-11-2010, w.e.f. 1-12-2010.

26.3. Way Bills [Sec. 119]

The Way Bills under the WBST Act shall continue to be valid under the VAT regime as well. The Way Bills may be-

- Issued earlier;
- Furnished earlier;
- Endorsed earlier;
- Applied for earlier;

26.3.1. Obtaining Way Bills [Rule 110-112]

(A) Application For Way Bill is to be made electronically

- | | | |
|------------------------|---|------------|
| By a Registered dealer | — | In Form 52 |
| By a casual dealer | - | In Form 56 |
| By any other person | - | In Form 56 |

(B) Along with the application, a Statement of account shall be furnished in **Form 54** for Way Bills in form 50, or in **Form 55** for Way Bills in form 51. The Statement shall contain details of receipt and use of way bills by him and stock of unused way bills, if any, held by him on the date of making the application.

26.3.2. Security For Way Bills [Rule 105 and Rule 105A]: The authority may ask for a cash security, or a bank guarantee of equivalent amount, before issuing way bills. The security may be asked from the following persons-

- an unregistered dealer;
- a casual dealer or
- any other person other than a registered dealer.

26.3.3. Register of Way Bills [Rule 113]: Every dealer, casual dealer or any other person who obtains way bill forms shall maintain separately-

- a register in **Form 58** for way bill in Form 50; and
- a register in **Form 59** for way bill in Form 51 obtained by him.

26.3.4. Reporting for Loss of Way Bills [Rule 115]: If any unused blank way bill form is lost, destroyed or stolen, the concerned person should report

the fact of such loss, destruction or theft of such way bill forms. The report should be made to the appropriate assessing authority or the appropriate authority from whom such way bill form was obtained.

The report should be made within seven days from the date of such loss, destruction or theft.

26.3.5. Surrender of Unused Way Bills [Rule 116 and 117]: The unused blank way bill forms should be surrendered for cancellation, as follows-

- By a registered dealer-At the time of application for cancellation of the registration certificate;
- By any other dealer or person- When he does not intend to use such way bills.

26.4. Rights of the Department

26.4.1. Entry by Commissioner [Sec. 71]: The Commissioner may enter and search any place of transporting business or any other place where such transporter keeps any accounts, registers or documents in relation to transport of goods.

26.4.2. Stop Delivery by Commissioner [Sec. 72]: The Commissioner may direct a transporter that—

- (i) the consignment of goods shall not be transported outside, or within, West Bengal, or
- (ii) the consignment of taxable goods shall not be delivered.

Such direction shall be valid till the matter is investigated by the Commissioner or till a period of fifteen days (excluding Sunday or a public holiday declared under the Negotiable Instruments Act, 1881) expires from the date of communication of such direction, whichever is earlier.

26.4.3. Interception, Detention, Search [Sec. 74]: The Commissioner may intercept, detain and search the following:

- any goods vehicle, or
- any load carried by a person.

The Commissioner may also conduct search at any warehouse or at any other place.

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Such interception, detention or search may be carried out if the Commissioner believes that any goods are being or have been transported in contravention of section 73 or section 81.

26.5. Seizure of Accounts and Goods

26.5.1. Seizure of Accounts [Sec. 71]: The Commissioner may, for reasons to be recorded in writing, seize accounts, registers or documents maintained by the transporter.

26.5.2. Seizure of Goods [Sec. 72 and 76] : The Commissioner shall seize the consignment of goods under section 76, if it is transported in contravention of the provisions of section 73 or section 81, i.e. without following the procedure for documentation prescribed in the rules and discussed above. The Commissioner shall give the transporter a reasonable opportunity of being heard.

26.5.3. Custody of Seized Goods [Rule 109]: Where a consignment of goods has been seized under section 76 and the transporter of such seized goods has exercised option in writing, the authority may give custody of such seized goods to the transporter, and allow him to transport such seized goods to the godown or warehouse of such transporter, in West Bengal as declared by him.