The Bengal Chamber

**WEST BENGAL VAT ACT**

**1. Definition of "Capital Goods" for the purpose of Works Contract**

Effective from 01.04.2008, sub-section (6) of section 2 defining "Capital Goods" does not cover Works Contract. It may be noted that Works Contractor equally needs Capital goods for carrying out works contract like other manufacturers.

Apart from the above the definition stating "Capital goods means plant and machinery, other than civil structure, for used directly in the manufacture of goods …." Created lot of confusion and disputes. There are many indirect capital goods which are required for carrying out the total manufacturing activities like Packing Machine, Capital goods for manufacturing of various tools (used in tool room), Quality control equipments etc.

**Please Note the Notification No.745-FT, dated: 22.05.2009,** *"Mould & Dies, Refractory Materials, Crane & Spare Parts, Machinery for Construction Works for use directly in manufacture of any goods or in the execution of Works Contract in West Bengal, are Capital Goods*".

**Suggestions:**

**Accordingly it would be our submission to take a more liberal approach in this regard and re-define the term "Capital Goods".**

**2. Input Tax Credit on Stores and Spares**

Section 22 (4) (h) had been amended w.e.f. 01/04/2008 to exclude consumable stores as eligible inputs for input tax credit. Prior to 01.04.2008, 'raw materials, capital goods and consumables' were eligible for credit. The word 'consumable' was omitted in the section.

Consumable stores include amongst others spares for capital goods which are essential in keeping the plant and machinery working for manufacture of goods. It is as important as the capital goods and raw material in manufacture. The Act allows input tax credit on the capital goods and such capital goods is an assembly of various parts. The value of capital goods includes the cost of such parts and tax paid on the value of such parts is allowed as input tax credit. Therefore, principally the Act allows credit on parts which constitute the main machine. There is no reason in barring input tax credit on the spares/parts which when purchased separately to be fitted to the machine on which input tax credit was allowed.

In this connection please note that with effect from 01.04.2010 Input Tax Credit is available on Spare Parts, Components and Accessories of Plant & Machinery *(other than civil structure)* directly used in manufacturing and on Coal used as raw material in the manufacturing process only. To allow Input Tax Credit on Purchases of such Capital Goods as Components, Spare Parts and Accessories of Plant & Machinery, it is irrespective whether such purchases are capitalized in the books of accounts or not.

**The Bengal Chamber of Commerce and Industry**
'Royal Exchange', 6 Netaji Subhas Road, Kolkata 700 001
Tel: 91-33-2230 8396 / 3711 / 3733 / 3746 Fax: 91-33-22301289
Email: director_general@bengalchamber.com Website: www.bengalchamber.com

**Suggestions:**

**The section may be suitably amended to include consumables uses in directly or indirectly used in the manufacturing process be allowed as input tax credit.The provisions would exclude input tax credit on other consumables like tools/tackles/lubes/etc.**

**3. Cash Discount, Turnover Discount:**

In Section 2(41) of the W. B. Vat Act, 2003, while defining "Sale Price" it is stated Sale price includes……. "but does not include any sum allowed as cash discount …….. at the time of delivery, or before delivery ……." creating lot of difficulties with regard to annuity discount, target discount, turnover discount, incentives and the like, which are allowed, not selectively, but consequent upon a specific scheme of company, for the purpose of sales promotion, to every customer who satisfies the condition or conditions. These discounts are allowed much after effecting sales and on completion of certain specific targets. Accordingly, target discount, turnover discount etc. allowed by the Seller should be excluded from the purview of "Sale Price." It would not be out of place to mention that Central Excise Act allows such exemption and such exemption is even extended to transportation cost upto place of removal. A similar facilities may be extended under the VAT Act.

Suggestions:

**This reduced amount should not be treated as amount payable as "valuable consideration for the sale", otherwise industry will suffer.**
**on.**

**3.0 <u>Adjustment of excess tax</u>**

The present WBVAT rules permit adjustment of excess tax in a subsequent return only if the subsequent return falls within the financial year. This is creating hardship to some of the member companies particularly in respect of excess payment. Accordingly, provision should be there so that the excess tax can be charged against the following year.

4.0 **Reversal of Input Tax Credit on inter-State stock transfers**

As per existing provisions of VAT laws input tax credit up to 3% ( previously it was 4%) is denied to dealers in the event the taxable goods are sent out of the State otherwise than by way of sale, i.e., by way of inter-State stock transfer.

The Empowered Committee of State Finance Ministers on VAT had clarified that this provision had been incorporated in VAT laws in order to preclude an inequitable situation wherein the originating State is denied tax revenue on inputs that are used for manufacture of taxable goods in the destination State. It was further explained that the rate of denial of input tax credit, 4%, had been pegged to the then prevailing CST rate.

**Suggestions:**

**In view of the above, the rate of reversal of input tax credit should have been reduced to 2% with effect from 01.06.2008 in line with the reduction in rate of CST from that date. The said reduction is yet to be implemented in West Bengal VAT Act. .**

In the interest of fairness to the tax payers the Chamber requests the following actions:

1. Retrospective reduction (in all States), effective 01.06.2008 of the rate of input tax credit denial to 2% and appropriate refunds to tax payers.

2. Amendments in VAT laws such that the rate of denial of input tax credit is pegged to the prevailing CST rate. This will ensure its automatic reduction as and when the CST rate is reduced.

**5. Refund of VAT where there is major difference of VAT between input and Output**

**Suggestions: In certain cases (e.g. in the chemicals industry), VAT is payable at a higher rate for inputs and at a lower rate for outputs. In such situations, assessees are faced with accumulation of VAT credits resulting in higher working capital requirements and interest burden. For such assessees, cash refund of VAT credits may be introduced.**

**6. Sale of Software**

Sale of licensed software is subjected to double taxation with effect from 16th May 2008 - once as a taxable service and the second time as 'goods'. This is in spite of the fact that the principle that the levy of service tax and VAT are mutually exclusive was upheld by the Supreme Court in the case of Bharat *Sanchar Nigam Limited v Union of India* (*2006-TIOL-15-SC-CT-LB)* and *Imagic Creative Private Ltd v Commissioner of Commercial Taxes (2008-TIOL-04-SC-VAT).*

**Suggestions:**
**It is recommended that clarifications be provided forthwith to ensure that sale of licensed software is taxed only once – either as a taxable service under Service Tax or as goods under VAT.**

**7. Tax Deduction at Source**

Section 40 of the VAT Act requires deduction of tax at source while making payment to a dealer in connection with execution of works contract. The Builder's Association of India (BAI) had challenged the validity of the provision of section 40 of the Act before the Taxation Tribunal.

The Hon'ble Tribunal in its order dated 25/02/2010 had held

> *We have interpreted that section-40 has intended and imposed obligation for deduction of specified amount from Contractual Transfer Price paid by the owner (contractee) to the contractor. But such interpretation does not save the Section from unconstitutionality in absence of any provision or mechanism for ascertaining Contractual Transfer Price and for excluding sales or deemed sales in course of inter-state trade or commerce or export or import or other non-taxable components, if any.*
>
> *For the reasons hereinabove explained and following the decisions of the Supreme Court and several High Courts referred to and discussed hereinabove, we declare Section-40 of the West Bengal Value Added Tax Act, 2003 as unworkable, arbitrary, unreasonable, incompetent and unconstitutional. We direct the concerned Respondents to adjust the amount already deducted at source from work contractors against tax on Contractual Transfer Price payable under the VAT Act, 2003 and to refund excess amount, if any, to the concerned work contractor within 4 months from the date of communication of this judgment and order by the concerned works contractors.*

**Suggestions:**

**It has been communicated by the Builder's Association of India that Department applied for a stay of the order before the Taxation Tribunal and was given 4 weeks stay till 24/03/2010. On the said date the Department did not appear before the Tribunal and the stay got vacated. Neither has the Department moved any alternative petition before any competent forum against the order.**

**The contractors are now insisting that no tax should be deducted at source based on the Taxation Tribunal even though the section-40 is still in force.**

**In view of this contradictory position of law where the Act continues with a provision which has been held ultra vires and if the order has, in all probability has been accepted by the Department then the section-40 and the relevant rules should be rescinded or the position of law be properly clarified so that dealers can take the correct stand.**

8. **Use of waybill to bring in temporary goods**

In many occasion repair of plant & machinery is done by the equipment manufacturer or service provider where no transfer of property takes place. It is a plain case of service with no VAT / CST involved. To do the service the service provider requires bringing in of some equipment for which waybill is required.

The dealer in West Bengal cannot issue a waybill because he does not use the goods, has not placed any order for the goods and it is not stock transfer. The Department has also confirmed that the dealer (contractee) cannot use his waybill. The service provider who has no business in West Bengal and not being a seller is not registered in either state – his own state and West Bengal. For getting a waybill as a casual dealer the service provider has to apply for a waybill and has to deposit a security. Normally the Department requires an invoice, adds 30% notional profit and calculates VAT as security deposit. Only after the security is paid by the service provider the Department issues a waybill. The service provider would not like to undertake this procedure as

- He does not have business in state
- Has no sales tax liability
- Does not have manpower in WB to do the work
- Would not like to deposit security as it is a blockage of fund
- Refund of the security is always a problem
- Once the work is done (say within 2 days) he would leave WB with material and cannot wait for refund of deposit.

If the dealer (contractee) issues waybill but cannot account for the goods as these are neither raw material nor capital goods or consumables and taken back by the service provider. During audit / assessment Department will demand tax as clandestine local sale if the importer dealer cannot prove (to the satisfaction of the officer) the use and disposal if goods in question.

**Suggestions:**

**It is suggested that the provision (thru notification or trade circular) be amended to allow a dealer (contractee) to use his waybill to bring in goods of a service provider to enable the service provider to repair the plant & machinery. After the service work the material will be returned to / taken back and Department has to clarify the documentary evidence is support of such return. It is also suggested that a waybill for sending goods outside WB – Form 51 which is prescribed but not in use may be introduced for such transactions.**

**9. AUTOMATION**

**Waybills**

The current procedure for online e-waybill requires the second part to be filled in by the consignor online and a printout generated. In many cases the suppliers (small dealers) are in very remote and backward areas with no internet connectivity. These dealers are not able to update the details online. In some cases even if internet connection is available the dealer may not have a printer to print the Part –II of the waybill. Updation done in cyber cafes / internet parlours also may not have printer facility. In such cases material enters the state without the complete waybill. Server problem also makes the online website inaccessible which in turn delays release on vehicle and sometimes result in demurrage.

**Suggestions:**

**It is suggested that the system allows printing of blank Part-II along with the filled Part-I by the importer in WB so that the Part-I and Part-II are sent together to the supplier. The supplier can manually fill in the details in Part-II and the importer dealer in WB can update the details online.**

10. Under Rule 39 of the West Bengal Value Added Tax Rules, 2005 the limit for Works Contractors in case of Composition Scheme is Rs.20 Lakh. But, in case of Resellers it is Rs.50 Lakh.

***Suggestions:*** **It is recommended to bring similarity in both the cases by enhancing the limit for Composition Scheme of Works Contractors to Rs.50 Lakh.**

11. In W.B.VAT Return Form No.14 there is no Annexure in accordance to Rule 30C for availing Sales Tax Declaration Form-12A, just like the Annexure-'B' of the CST Return Form No.1 towards 'Last Sale Preceding the Sale Occasioning Export' for availing the Sales Tax Declaration Form-'H'.

***Suggestions:*** **It is recommended to incorporate a separate annexure for the said purpose.**

12. **In W.B.VAT Return Form No.14 no space has been provided for Local Stock Transfer / Branch Transfer (in/out) within the State of West Bengal.**

***Suggestions:*** **It is recommended to provide a separate space for reflecting the Local Stock Transfer/Branch Transfer (in/out) figures of the same organisation situated within the State of West Bengal.**

13. **In W.B.VAT e-Return Preparing Software, the print option for each Annexure has been separated though at the time of uploading only one xml file have to upload.**

***Suggestions:*** **It is recommended upgrade the software for making one xml file and one html file for uploading and printing W.B.VAT e-Return.**

14. **In W.B.VAT e-Return Preparing Software, the print option for each Annexure has been separated though at the time of uploading only one xml file have to upload.**

***Suggestions:*** **It is recommended upgrade the software for making one xml file and one html file for uploading and printing W.B.VAT e-Return.**

15. **In case of preparing CST e-Return there is two Softwares i.e. Form No.1 and Annexure for which total nine xml file have to upload and at the time of print option total eight html Annexures separate printing is required, which is time consuming and disgusting also.**

***Suggestions:*** **It is recommended upgrade the software for making one xml file and one html file for uploading and printing CST e-Return.**

**SECTOR RELATED ISSUES**

**16.** Under Schedule-'C' of Part-I in Serial No.69 the Rate of ***"Spectacles including Sunglasses and Parts and Components thereof, Contact Lens and Lens Cleaner"*** is @4%. But, in case of ***"Dentistry Items like False Teeth"*** etc. it is taxable @13.5% under Schedule CA.

***Suggestions:*** **It is recommended to bring similarity in both the cases by reducing the tax rate of Dentistry Items from @13.5% to @4%.**

17. Under Schedule-'C' of Part-I in Serial No.8B the rate of ***"Ashes"*** and in Serial No.22A the rate of ***"Clay including Fireclay, Fine China Clay and Ball Clay"*** is @4%. But, in case of ***"Earth Soil & Debris"*** it is taxable @13.5% under Schedule CA.

***Suggestions:*** **It is recommended to bring similarity in both the cases by reducing the tax rate of *"Earth Soil & Debris"* from @13.5% to @4%.**

18. Under Schedule-'C' of Part-I in Serial No.54B the rate of ***"Machinery, excluding Generator of all types and Diesel Engine Pump Set"*** is @4%. But, in the said entry there is a confusion of tax rate for ***"Kerosene or Petrol Engine Pump Set"*** which is not mentioned in any Schedule.

***Suggestions:*** **It is recommended to amend the existing entry from *"Machinery, excluding Generator of all types and Diesel Engine Pump Set"* to *"Machinery, excluding Generator of all types and Diesel, Kerosene, Petrol or Oil Engine Pump Set"* for clearing the confusion.**

19. Under Schedule-'C' of Part-III in Serial No.180 the rate of ***"Porcelain Bushing (hollow), Grinding Wheel, Silicon Steel Stamping"*** and in Serial No.188 the rate of ***"Electrical Items namely (vi) Insulating Materials, Insulators"*** is @4%.
Under Schedule-'C' of Part-I in Serial No.14A the rate of ***"Furnace, Boiler and Parts thereof"*** and in Serial No.27 the rate of ***"Electrical Insulators, Electrodes"*** is @4%. In such cases most of the items were made from Industrial Ceramics or Industrial Porcelain.

***Suggestion:*** It is recommended to include the said items under a broad head ***"Industrial Ceramics"*** under Schedule-'C'.

19. TEA

- Tea is a mass consumption item.
- Presently rate of Excise Duty on tea is Rs 1 per kg under classification 0902 which even is exempted by special notification. For packaged tea there is no Excise Duty.
- Presently for tea procured/sold through auction centres in Gauhati/Kolkata/Siliguri the VAT rate is 1%.
- The VAT rate on Tea (both bulk and packaged) charged by all the States presently is between 4% / 5%

In view of above we should represent that in GST regime Tea should be kept in 0% or minimum slab. Alternately there should be credit mechanism so that the current level of VAT rate is maintained in proposed GST regime even.

**CENTRAL SALES TAX**

1. **Reduction of CST Rate to 1%**

On introduction of VAT it was announced that the CST rate would be reduced by 1% point in successive years over four years to pave the way for a complete destination based sales tax regime in the country. Thereafter, the CST rate was reduced from 4% to 3% on 1st April 2007 and then from 3% to 2% on 1st June 2008. However, no further reduction of the CST rate has been effected since then.

**It is recommended that the CST rate be reduced to 1% immediately and brought down to "Nil" upon introduction of GST.**

2. **Purchase of Raw Materials for Export :**

Presently, purchase of goods for exports are exempted from CST. However, the exemption is applicable only if the goods purchased are exported in the same form. Raw materials purchased for exports do not qualify for exemption under CST. State VAT laws provide that export sales can be included in the eligible sales for working out the tax ratio, thereby giving some relief. It is recommended that all purchases made for manufacture of goods for exports may be exempted from CST / VAT.

**3. Restriction on free trade**

Certain statutory provisions in the Central / State Sales Tax legislation which restrict the applicability of exemption from sales tax for sale/purchase in the course of Export need to be amended appropriately as these provisions hinder free trade particularly seasonable items.

Section-5 of the Central Sales Tax Act, 1956 covers, inter alia, some aspects of taxes/exemptions applicable to the trade conducted in the course of export. Three of the provisions therein affect the free trade in the course of exports.

Firstly, it is mandatory that the purchases must take place **after procuring the Export Order** to qualify the transaction for exemption from Sales Tax.

Items like agri commodities, where supplies are seasonal and the demand is spread over the year, it is important that an exporter procures the exportable commodities in advance (during the season) even if the demand does not exist in the international market at that point; even if it does, prices may not be right. Exporters either sell in distress or lose the business opportunity to remain within the scope of this provision.

Sec 5(3) of CST Act to be amended to such that any sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of India is also deemed to be in course of such export not withstanding whether such sale or purchase took place against an existing Export Order

**Suggestions: It is recommended that Form H may be permitted to be issued and the exemption be availed by the buyers at all transaction points as long as the goods are eventually exported (evidenced by the Bills of Lading as required under the current regulations) irrespective of the timing of buying (meaning that an exporter can also buy goods before entering into a sales contract) without necessarily linking purchases and sales one-to-one (only the aggregate volumes may be considered at the time of assessment).**

**4. Form C**

The online updation of inter-state purchase against Form-C does not allow invoice which are dated more than 6 month back. In some cases the purchases made inter-state may be accounted for after 6 months due to pending quality acceptance and other reasons.

**Suggestions:**

**In such cases either the system should allow the invoice to be updated or Department should allow issuance manual Form C.**

***In such cases department are already issuing manual C forms. In such case, system generated C form be issued after the expirty of 6 months.***

**5. Documentation for sale in transit**

**It is suggested that the documentation for in-transit sale under rule 6(2) of CST Rules be made available online so that manual waybills and Form C is not required.**

**6. Amendment of Registration Certificates**

**In present system the VAT or CST or WBST Registration Certificates can be amended by manually only. It is suggested to introduce the system of Online Amendment of Registration Certificates.**

**7. Stock Transfer by Ordnance Factories**

With effect from 11.05.2002, furnishing of Sales Tax Declaration Form-'F' by an assessee to his jurisdictional assessing authority is mandatory to establish the claim of inter-State Stock transfer and not by way of inter-State sale.

But, only in case of Stock Transfer by the Ordnance Factories under the Ministry of Defence, Union of India, the Ministry of Finance, Department of Revenue, Government of India has taken a policy decision regarding non-applicability of Sales Tax Declaration Form-'F' in case of Stock Transfer from One Ordnance Factory to Other Ordnance Factory or to its sister factory vide a Letter dated: 23.06.2006. *(Photocopy enclosed)*

But, the said letter has not been accepted by the Commercial Tax Department, Government of West Bengal, which resulting to disallowance the Claim of Inter-State Stock Transfer and taxes accordingly without production of Sales Tax Declaration Form-'F' by the Ordnance factories situated in West Bengal

***Suggestion:*** **It is recommended to amend the Central Sales Tax Act, 1956** ***(in respect of the said letter dated: 23.06.2006 issued by the Ministry of Finance, Department of Revenue, Government of India)*** **in such a way that issuance of Sales Tax Declaration Form-'F' is not compulsory or is not required at all in case of Inter-State Stock Transfer by the Indian Ordnance Factories only.**

**7. Issuance of Form F by Job-Workers**

In terms of Section 6A(1) of the Central Sales Tax Act, 1956 if an assessee sends goods on inter-State stock transfer then he has to furnish a Form F to his jurisdictional assessing authority to establish that the goods were actually sent out on stock transfer and not in the course of an inter-State sale. The Form F has to be issued by the recipient of the goods, being any other place of business of the assessee / agent of the assessee / principal. In the event of non-submission of Form F the transaction is deemed to be an inter-State sale.

Due to the provisions of Section 6A(1) in cases of despatch of goods by way of inter-State stock transfer to the assessee's job-worker, the Department does not permit issuance of Form F by the job-

worker to the principal notwithstanding the fact that the principal is permitted to issue Form F to the job worker. Consequently, genuine cases of inter-State stock transfer from a principal to a job-worker situated in another State are assessed to tax as inter-State sales and taxed accordingly. This leads to avoidable disputes and litigation between the Department and the assessee.

**Suggestion: It is recommended that the Central Sales Tax Act be amended such that job-workers receiving materials through inter-State stock transfer from their Principals are permitted to issue Form F to the Principals.**

8. **Restriction on free trade in Agri-commodities**

Certain statutory provisions in the Central / State Sales Tax legislation which restrict the applicability of exemption from sales tax for sale/purchase in the course of Export need to be amended appropriately as these provisions hinder free trade in agri-commodities.

Section-5 of the Central Sales Tax Act, 1956 covers, inter alia, some aspects of taxes/exemptions applicable to the trade conducted in the course of export. Three of the provisions therein affect the free trade in the course of exports.

Firstly, it is mandatory that the purchases must take place after procuring the Export Order to qualify the transaction for exemption from Sales Tax.

In items like agri commodities, where supplies are seasonal and the demand is spread over the year, it is important that an exporter procures the exportable commodities in advance (during the season) even if the demand does not exist in the international market at that point; even if it does, prices may not be right. Exporters either sell in distress or lose the business opportunity to remain within the scope of this provision.

Sec 5(3) of CST Act to be amended to such that any sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of India is also deemed to be in course of such export not withstanding whether such sale or purchase took place against an existing Export Order

Secondly, the exemption is applicable to the penultimate sale prior to the actual export sale alone.

Traditionally, in India the existing commodity trade channels and the highly fragmented structure of Indian farms has fostered a chain of traders and agents between a farmer and the exporter. The aforesaid provisions of CST severely restrict trading liquidity because it is not always possible that an exporter directly procures from farmers. Thus, the only alternative is to pay taxes at all points until the penultimate leg, making the price uncompetitive in the process.

Lastly, the procedure to avail exemption from CST necessitates a one-to-one linkage of various purchases and sales.

This would mean complication in blending of goods of various qualities to produce the exportable product of a desired specification, when multiple purchases (made at different points of time) are used to deliver multiple sales (compounded by the first provision explained above). An exporter has to issue Form H under the CST Act in support of his claim of tax exemption.

**Suggestion: It is recommended that Form H may be permitted to be issued and the exemption be availed by the buyers at all transaction points as long as the goods are eventually exported (evidenced by the Bills of Lading as required under the current regulations) irrespective of the timing of buying (meaning that an exporter can also buy goods before entering into a sales**

**contract) without necessarily linking purchases and sales one-to-one (only the aggregate volumes may be considered at the time of assessment).**

**9. Guidelines for exclusions from "transfer otherwise than by way of sales" for facilitating the clearances of issues and receipts**

This is to mitigate while exchanging F Forms in case inter office transfer of 'tools and tackles" "demo machines which travel length and breath of the country.

10. **Amendment of C form to expressly include the "use of goods in works contracts and "use in telecommunication networks"**