

## Recommendations

### WEST BENGAL VAT ACT and CST RULES

#### PROCEDURAL ISSUES

##### 1. 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.

***It is recommended that the rate of reversal of input tax credit under the West Bengal VAT Act be reduced with retrospective effect from 01.06.2008 to 2% - in line with the reduction in rate of CST from that date.***

##### 2. Definition of “Capital Goods”

Definition of “Capital Goods” under the West Bengal VAT Act “capital goods” is defined as “Capital goods mean plant and machinery, other than civil structure, for use directly in the manufacture of goods ....”. This definition is causing unnecessary confusion and disputes since the authorities disallow input tax credit taken on capital goods which are used for carrying out manufacturing activities like packing of goods, quality control equipment, capital goods for manufacturing various tools (used in tool room), etc.

***It is recommended that the term “capital goods” be redefined to enable the manufacturer to avail input tax credit, without any dispute, on all capital goods used in or in relation to manufacture.***

##### 3. Input Tax Credit on Stores and Spares

Section 22 (4) (h) had been amended w.e.f. 1st April 2008 to exclude consumable stores as eligible inputs for input tax credit. Prior to this ‘raw materials, capital goods and consumables’ were eligible for credit.

Responding to a long pending request of the Industry, the Hon’ble Finance Minister was pleased to allow, in 2010, input tax credit of VAT on components and spares; however, the said benefit was not extended to “consumables” which forms a substantial part of the cost of manufacturing. Similarly, Fuel has been also kept in negative list for the purpose of Input Tax Credit. Accordingly, dealers in West Bengal are put to a disadvantageous position in this regard since they bear a higher cost of manufacture on account of denial of input tax credit on consumables and fuels.

It would be pertinent to note that in certain States like Maharashtra VAT credit has been extended in relation to all expenses charged to Profit and Loss Account of dealers, including consumables, fuels, stationery, etc.

**It is recommended that under West Bengal VAT Act also input tax credit be allowed in respect of VAT paid on “consumables” and “fuel”.**

**4. Input Tax Credit – widening the scope for incidental activities**

As per Section 2 (5) of the West Bengal VAT Act, 2003 “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.”

Further, the Negative List (i.e. list of goods not eligible for input tax credit or input tax rebate) given under Section 22 of the said Act contains entry under Serial No.11 which reads as “taxable goods purchased for use in business other than that as defined in sub-clause (a) of clause 5 of section 2”.

A reading the aforementioned provisions suggest that whilst inputs procured for business as defined in S. 2(5)(a) qualify for input tax credit, inputs procured for any “ancillary or incidental” activity to such business, i.e., trade, commerce, manufacturing, execution of works contract and so on as defined in S. 2(5)(b) do not qualify for input tax credit. Consequently, the restriction under the negative list for VAT credit is contradictory to the basic concept of business as envisaged under the same Act.

In this connection it may be worth to note that States like Maharashtra, Andhra Pradesh etc. does allow VAT Credit towards any activity (be directly or indirectly involved) in relation to business. The relevant provisions from the said VAT Acts are summed up below for ready reference:

**Andhra Pradesh**

“Subject to the conditions if any, prescribed, an input tax credit shall be allowed to the VAT dealer ....., if such goods are for use in the business of the VAT dealer.....” [Section 13(1) of the APVAT Act]. Further, the Negative List specified in Schedule VI does not have any restriction on VAT Credit towards ancillary or incidental activity to the business.

**Maharashtra**

“.....The Commissioner shall subject to the provisions of Rules 53, 54 and 55 in respect of the purchases of goods made by the claimant dealer on or after the appointed day, grant him a set-off of the aggregate of the following sums, that is to say, -

(a) the sum collected separately from the claimant dealer by the other registered dealer by way of tax on the purchases made by the claimant dealer from the said registered dealer of goods being capital assets and goods the purchases of which are debited to the profit and loss account or, as the case may be, the trading account.....”

***In view of the above, to remove the cascading effect of tax and to encourage growth in trade, business and industry, it is imperative to remove the restriction of VAT credit on “ancillary or incidental” activity to trade, commerce and manufacturing and accordingly, the serial No. 11 of the Negative List under section 22 to the West***

***Bengal VAT Act may be rephrased as “taxable goods purchased for use in business other than that as defined in sub-clause (a) and sub-clause (b) of clause 5 of section 2”.***

#### **5. Rule 19(8) of the VAT Rules**

There is a judgment of the Calcutta High Court [ Ajit Kr. Mundra vs.CTO Salt Lake Charge - WPTT no. 12 of 2013] that has held that where settlement of dues takes place by adjustment of book debts no input tax credit (ITC) will be allowed as such forms of "payments" are not covered by Rule 19(8) of the West Bengal VAT Rules which states that to avail ITC the buyer has to make payment to the seller by account payee cheque or account payee draft or through electronic banking clearance, where such payment exceeds Rupees twenty thousand in a day.

#### **Views**

- Adjustment of dues by issuing debit/credit notes is a normal commercial practise and avoids unnecessary banking transactions.
- This practise is recognized under the Income-tax law also [ Rule 6DD(d) of the Income-tax Rules] and other revenue laws as well.
- Genuine transactions will be affected. Vide this interpretation even in cases where the dues of both parties arise on account of WB sales where the tax has been received by the GOWB from both the parties, the VAT credit may be denied to both the buyer and the seller simply because they have not paid each other by cheque.

#### **Recommendation**

***An explanation / clarification/proviso be inserted in Rule 19(8) w.e.f. 1.4.2005 that this provision shall not apply where the purchasing dealer makes payment by way of adjustment against the amount of any liability incurred by the selling dealer for any goods supplied or services rendered by the purchasing dealer to the selling dealer.***

#### **6. Section 22(4A) of the VAT Act**

This section states that if the selling dealer does not deposit with the Commercial tax authorities the VAT charged to the purchasing dealer, the purchasing dealer will not get the input tax credit (ITC) even if the purchasing dealer has paid the VAT amount to the selling dealer.

#### **Views**

This is a irrational provision as the purchasing dealer pays the tax to the selling dealer because under the VAT Act the charge for the tax is on the selling dealer and is not due to any choice on the part of the purchasing dealer. Hence he cannot be penalized if the selling dealer does not deposit the tax with the authorities.

Also all powers of tax recovery are vested with the Commercial tax department and not with the purchasing dealer.

***It is suggested that this provision should be repealed.***

## **7. Discounts Provided After Completion of Sales**

The definition of the term “Sale Price” under the West Bengal Vat Act states “Sale price includes...but does not include any sum allowed as cash discount...at the time of delivery, or before delivery ...”.

Consequently, authorities demand VAT on post Sales discounts like 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.

Sellers should, therefore, be allowed to exclude discounts of this nature, allowed after the completion of sale, 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 up to place of removal. A similar facility may be extended under the VAT Act.

‘Sale Price’ defined under the Act is inclusive of freight, delivery, installation, transit insurance and distribution. These charges are, thus, treated as value added in the hands of the selling dealer, which is clearly not the case. Also, these were not included in the definition of ‘sale price’ under earlier Act, i.e. West Bengal Sales Tax Act, 1994.

In this context, it may be noted that the above components are not included in the definition of sales price under many States as illustrated hereunder:

- i) The definition of ‘sale price’ in a number of other States like Uttar Pradesh, Madhya Pradesh, Meghalaya, Arunachal Pradesh, Uttarakhand and Chhattisgarh specifically exclude elements like freight.
- ii) Even the definition of sale price under CST does not cover items like freight.
- iii) Similarly, States like Maharashtra, Jharkhand and Gujarat have specifically excluded insurance from the ambit of ‘sale price’. Madhya Pradesh has even excluded insurance when goods are sold under hire purchase or payment by instalments.
- iv) States like Arunachal Pradesh, Jharkhand, Uttarakhand and Chhattisgarh have excluded installation charges from definition of ‘sale price’.

Further, most of these elements are also taxed under Service Tax, thereby resulting in an incidence of double taxation – once under West Bengal VAT Act and thereafter, under Service Tax.

***It is recommended that discounts allowed after completion of sales should also be excluded from ‘Sale Price’ and other related expenditure like freight, delivery, installation, transit insurance and distribution, when billed separately, should not be included in sales such that the “sale price” reflects the true transaction value.***

## **8. Adjustment of Excess Tax:**

The West Bengal VAT rules provide for adjustment of excess tax in a subsequent return only if the subsequent return falls within the financial year. This restriction causes needless hardship in case where the next return is due in the next financial year.

***It is recommended that the restriction of the next return falling due within the same financial year is removed and dealers are allowed to adjust excess payments, if any, in the next return – irrespective of the financial year. To prevent any attempt of misuse, appropriate audit on this account could be prescribed.***

#### **9. Refund of VAT where the rate of VAT on Inputs is higher than the rate of VAT on Output**

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, assesseees are faced with accumulation of VAT credits resulting in higher working capital requirements and interest burden. ***For such assesseees, cash refund of VAT credits may be introduced.***

#### **10. Tax Deduction at Source**

A new Rule 46XA(1)(c) has been introduced vide Notification No. 1539 – F.T. dated 17.10.2011. The Rule has clarified that “the amount of payment where no transfer of property in goods (whether as goods or in some other form) is involved in the execution of such works contract” will not be subject to deduction of tax at source under section 40(1) of the WB VAT Act, 2003. The Trade bona-fide believes that the said provision was introduced to overcome the anomaly in the provisions as pointed out by the Hon’ble Tribunal vide its Order dated 25.02.2010 in the case of M/s Builder’s Association of India & Anr. Vs. State of West Bengal & Anr.

However, despite the said clarification disputes continue in respect of composite works contracts where labour and materials cannot be bifurcated.

***It is recommended that the West Bengal VAT Rules be amended to clarify that in case of composite works contracts the ratio prescribed under Rule 30(2) should be adopted for the purpose of determining the material and labour part and tax deduction at source under section 40(1) be restricted to the material part only. It may be noted that the State of Tripura has vide a Circular dated 08.01.2013 clarified the position exactly in the same manner. Copy of the said circular is enclosed herewith for ready reference.***

#### **11. Use of Waybill to bring in Goods for a Temporary Period**

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 as per provisions of the West Bengal VAT laws.

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 or 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. To do so, the Department insists on 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. Service Providers are loath to undergo this complex process since:

- They do not have business in state
- They have no sales tax liability
- They do not have requisite manpower in West Bengal
- They would not like to deposit security as it is a needless blockage of fund
- Getting refund of the security deposit is, normally, a problem and requires significant follow-up with the Department.

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 of goods in question.

***It is recommended that the provisions related to Waybills be amended to allow a dealer (contractee) to use his Waybill to bring in goods of a service provider for temporary periods to enable jobs like repairs to plant & machinery, etc. Since the goods will be returned after completion of the service work the Department may clarify the documentary evidence in support of such return. It is also recommended that Waybill for sending goods outside the State – Form 51 - which is prescribed but not in use may be introduced for such transactions.***

## **12. Period of Return vs. Issuance of F- Forms**

As per the requirement of West Bengal VAT Laws, some assesseees are required to file quarterly returns both under VAT and CST laws by end of the month following the quarter. Under CST laws however, F Form is supposed to be issued monthly and to be submitted by the stock dispatching location with their assessing authority within 3 months from the end of the month in which interstate stock transfer takes place. As mentioned in Para 3 to Para 6 of the Trade Circular No. 7/2010 dated 22nd June 2010, since the separate application mechanism is going to be dispensed with the introduction of the proposed system, where the return along with its proposed Annexure itself will be the source of generation of statutory forms like C Form and F Forms, dealers are finding it extremely difficult, for the first month of the quarter, to adhere to the timelines of issuance and submission of forms as required under the CST law.

***Hence, it is recommended that either:***

- (a) Assessee may be allowed the facility to fill up Annexure F on a monthly basis and generate the forms which may automatically be considered for the purpose of quarterly CST Return or,***
- (b) Department may issue a suitable instruction to the other States for acceptance of the forms even after the expiry of the period of 3 months from the end of the month in which inter-State stock transfer takes place.***

## **13. Online Way Bill**

**(a) Abolition of Way Bill Requirement for dealers of repute**

The newly introduced proviso to Section 73(2) of the West Bengal VAT Act, 2003 [refer West Bengal Finance Bill, 2011 (No. 9 of 2011) vide Notification No. 981-L dated 25.08.2011] provides:

"Provided that the Commissioner may, from amongst the registered dealers, select certain such dealers who may be allowed to import goods from outside the State on the basis of such documents and subject to such conditions and restrictions as may be prescribed."

It was the expectation amongst the Trade that subsequent to this amendment probably the Department will issue necessary instructions to give relief to the dealers based on some threshold limit of the turnover or some other criterion as may be deemed fit for this purpose. However, nothing has moved since then.

It may be noted that in progressive States like Tamil Nadu, Maharashtra, Delhi there is no requirement of Way Bill, be it inward or outward movement for all the dealers. The same position is there in States like Chhattisgarh, Goa etc.

***Therefore, it is recommended that requirement of Way Bills should be exempted for dealers having turnover above a certain threshold limit and clean assessment records in past and they should be allowed with "Green Channel" facility for bringing into or taking out goods from the State of West Bengal on the strength of their own Invoices / Challans.***

**(b)**Amendment in proposed online system of Way Bill

In case, for some reason, extension of "Green Channel" facility to selected dealers, as mentioned above, is not possible at this juncture the proposed on-line system may be amended in the interest of all stake holders, as follows:

(1) A dealer who is having multiple places of business but allotted with single user ID and Password, has to update the information in the designated website from a central location. In such cases at first the information has to come from respective locations to that central location. Post this, the central location has to update the data into the Department's website, take print out of unique number (of Part I) as generated from online system and send the print outs or communicate the unique number to each of the locations. In the process, the data will travel through number of human interfaces which will invariably have the risk of human error. Further, once the unique number is generated, if any revision is required then the entire process has to be repeated, increasing the aforesaid risk. This may, ultimately, lead to disputes with the Check Post Authority and result in hindrance in free movement of goods.

***In view of the above, it is requested to provide multiple user IDs and passwords to the dealers having multiple places of business in the State, which is in line with the practice of other States like Karnataka, Andhra Pradesh etc.***

(2) The online system of generation of Way Bills does not allow option for editing the details inputted for generation of Key Number or Way Bill once it is saved. The only option left for the dealer is to cancel the Key number and to generate a fresh Key number if required. For Way Bill cancellation time is limited to 6 hours from time of generation, after which it cannot be cancelled. Specially, for inter-State purchases the Form 50A details have to be filled up by the vendor or their authorized representative and as such, the buyers who are dealers in West Bengal do not have any control over the details filled in by the vendors.

***Therefore, the dealers must be given an option (a) to edit the details entered for generation of Way Bill Key number till the Way Bill in Form 50A is not generated and (b) Form 50A should be allowed to be edited before the consignment reaches the check post.***

(3) The online system does not facilitate the dealers with any report which can help them to track details of Key numbers issued (e.g. Party name, Address, VAT/CST/Tin number etc.) and also to check utilization of Key numbers and Way Bills. Therefore, the dealers are constrained to keep replica of all the details as required in Part I or Part II of dematerialized way bills and to manually track generation date of Part I and Part II and expiry date of the same.

***Therefore, it is suggested that some online report is made available in the system to avoid duplication of manual record maintenance at dealers' end and for use by the Department as a real time Management Information System (MIS). In this regard, we would be happy to work with the Department in helping develop formats for the said online reports.***

(4) The online waybill (Form 50A) should be assigned with an alpha numeric serial numbers where the alpha part can denote the source State and numeric part can denote the serial number. With this codification State wise import data could be readily available to the Department and assessee both, issuance of C / F Form can be cross checked from Form 50A.

**14. Fixation of tax rate for certain goods (Schedule D) and Amendment in Schedules only with prospective effect**

As per existing provisions of VAT laws, the State Government may by Notification fix the rate of tax, with prospective or retrospective effect, not exceeding 35% of the turnover of sales of goods specified in Schedule D. Similarly, the State Government after giving 14 days notice of its intention to do so, by Notification can add to, amend or alter any Schedule to the Act with prospective or retrospective effect.

***It is recommended that the said provisions be amended appropriately to prevent retrospective effect of changes in Notifications in case these are detrimental to the assessee.***

**15. Definition of “Industrial Inputs”**

Industrial inputs are subject to VAT @ of 4% under the Act. However, ‘Industrial Input’ has not been defined in the Act. Accordingly, dealers have no recourse except for referring to the schedule of ‘Industrial Inputs’ to determine whether the applicable rate of VAT should be 4% or 14.5%. Consequently, a lot of hardship is faced by dealers particularly in cases where classification of an item as industrial input is disputed by the Department.

Similarly, in certain genuine cases e.g. restaurants, tyre retreading units, etc., the benefit of lower rate of tax is not available on items used as inputs for manufacture of taxable goods (e.g., LPG, table linen, crockery, cutlery, silver ware, materials required for retreading of tyres, etc.).

***It is recommended that a comprehensive definition of ‘Industrial Inputs’ be inserted into the Act and, additionally, specific guidelines be provided on what would constitute as ‘Industrial Input’ for industries like hotels, restaurants, tyre retreading industry etc.***

**16. Digital Signature**

***Big Corporate houses having multiple locations and businesses should be allowed to use digital signature on physical documents like invoices, way bills, stock transfer challans etc.*** In this connection it may be noted that even under the Income Tax Act, 1961 similar permission has been granted for TDS Certificates (Ref: Circular 2/2007 dated 21.05.2007).

This will also be in line with the latest initiative of the Department vide which Digital Signature has been allowed to be put on e>Returns filed by the dealers.

**17. Registration certificate:**

Amendment of Registration Certificates under the W.B.VAT, CST, WBST, Profession Tax Act is done manually from the department. This is a lengthy procedure and takes long time.

***It is recommended to introduce the Online Amendment of Registration Certificate under the W.B.VAT, CST, WBST, PT Act etc.***

**18. Help Desk**

Since introduction of Commercial Taxes Help Desk, the concerned officers most of the cases not entertaining the dealers by not pick up the telephone calls which create a very much inconveniences to the dealers.

***It is recommended to introduce a dedicated Commercial Taxes Help Desk by way of Back Process Outsourcing (BPO).***

**19. Mass upload of data for the purpose of generation of waybill**

Currently for each waybill, the dealer has to log in separately. For a dealer with large volume of daily transactions, it is becoming a tedious, time consuming task.

***The Department's IT system should allow such dealers to upload the excel file containing requirements of multiple Form 50A together against which key numbers can be generated. At least the system should allow to key in multiple requirements continuously instead of logging off automatically after keying details of each way bill.***

**20. Enhancement of demand at Appeal Stage – contradictory to settled legal position**

Section 84 (2) of the West Bengal VAT Act, 2003 reads as below:

“Subject to such rules of procedure as may be prescribed, the appellate authority, in disposing of any appeal under sub-section (1), may, for reasons to be recorded in writing,--

- (a) confirm, reduce, enhance or annul the provisional assessment or any other assessment, or
- (b) consider 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: .....***”

The highlighted portions of the aforesaid provision are contradictory to the well settled position of law that the appellant cannot be put in a worse of situation. Some of the decision relied upon are 2004 (9) SCC 747, 2005 (12) SCC 219, 2007 (4) SCC 241 etc.

***Therefore, to the extent mentioned above, the said provisions must be amended at the earliest to restrict the scope of Appellate Authority.***

**21. Rate of penalty u/s 77 on seizure**

- (a) Up to 31.03.2013, the rate of penalty u/s 77 on seizure relating to unauthorized import of taxable goods was @15% where goods are taxable not exceeding @4% and 25% where goods are taxable not exceeding @15%. If the seized goods are taxable exceeds @15%, the penalty amount will be 40%.

***With effect from 01.04.2013, the rate of VAT has been increased by 1% from i.e. from 4% to 5% and 13.5% to 14.5% but, the Section 77 has not been amended as yet in consistence with the VAT rate. As a result on seizure of unauthorized imported taxable goods which is taxable at lower rate in West Bengal i.e. @5%, attracting penalty @25% instead of 15%. It is recommended to amend the said Section with immediate effect.***

(b) If the seizure of goods has been made due to clerical error at the time of interception or search u/s 74, except any material discrepancy in the description of goods or quantity or weight or value disclosed in the form as prescribed u/s 73, he may be penalized @5% of the fair market value of the seized goods or Rs.25,000.00, whichever is lower.

***According to Section 73, the prescribed form indicates Way Bill only. It is recommended apart from the Way Bill, penalty @5% of the fair market value of the seized goods or Rs.25,000.00, whichever is lower should be considered in case of clerical error in the Invoice, Consignment Note, Challan etc. except any material discrepancy in the description of goods or quantity or weight or value disclosed.***

## **22. Unorthodox Payment of 15% of the disputed demand payment**

In all cases of filing appeal petitions, where a stay is required in the appeal an unorthodox amount of 15% of the disputed demand payment is mandatory. This becomes an undue burden on the part of the assessee. If payment is not made, appeal petition is not granted. The validity of the Draft Assessment Order is 7 days.

***It is recommended that an active monitoring system be introduced to consider the reply of the dealer before the prescribed payment. At the same time the validity of the Draft Assessment Order may be enhanced to 15 days from 7 days.***

## **23. Submission of proof for claiming exemption from the turnover of the contractors**

The requirement of submission of proof of payment of tax/return copy for claiming exemption from the turnover of the contractors u/s18(2)(C) while submitting the returns is unnecessarily increasing the documentation process.

Since the respective contractors are registered under VatAct and are filing returns online submission of proof of payment of tax/return copy etc. should be dispensed with. Even various Court judgment have dispensed with the submission of proof of payment of tax/return copy etc.

***It is recommended that the matter be discussed to dispense of these requirements.***

## **24. Release of Refund**

After 100% verification of ITC the department/CRU releasing the Refund Claim. Previously it was approx 70% to 80%.

***100% verification is practically an impossible thing for which the dealer harasses day after day. So, to promote the trade and industrial growth it is strongly recommended to change the system so that the assessee can get their refund smoothly and their capital should not be blocked. At the same time it is recommended to introduce an online system for verification of ITC just like the TDS Verification by the Income Tax Department, which expedites the refund process.***

**25. Allow ITC on production of Original Tax Invoices to the Purchasing Dealer irrespective of output tax deposited by the Selling Dealer or not:**

If a registered dealer purchasing goods vide a Tax Invoice by paying input tax and taking ITC against it but, the registered selling dealer not deposit the output tax against that transaction, the purchasing dealer deprived from taking ITC, though he duly paid the Input Tax.

***It is recommended to allow ITC on production of Original Tax Invoices to the Purchasing Dealer irrespective of output tax deposited by the Selling Dealer or not.***

**26. Threshold limit of Deemed Assessment**

Since the Financial Year 2010-2011, the threshold turnover limit for Deemed Assessment u/s 47A has been determined for Rs.5 Crores. So, the dealer below this turnover is treated as a small dealer.

***It is recommended to enhance the threshold limit for getting the Free Digital Signature from Rs.2 Crores to Rs.5 Crores.***

**27. Separate annexure In W.B.VAT Return**

1. 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’. Therefore, the online generation of dematerialized Declaration Form No.12A is not possible.

***It is recommended to incorporate a separate annexure for the said purpose so that the dealer can get online generated dematerialized Form No.12A at the same time Declaration Form-H should be available online.***

2. There is no separate template available for uploading details of tax deducted at source (TDS) by contractee as well as TDS deducted from the invoice of contractors (Annexure subcontract sec18(2)(C) at the time of filing of return. Hence, manual entry is to be done. However manual entry made in Jar file is not accepted at the time of uploading of return and hence return is uploaded without the above annexure. The same is submitted manually at the time of submission of hard copy of returns.

Also, Sub-contractors details 18(2)(C) has to be uploaded twice –one at the time of filing of TDS return and another at the time of filing Vat Return. However at the time of filing Vat Return the same cannot be uploaded along with Vat return and is submitted manually at the time of submission of hard copy of the documents.

***It is recommended that an xls file be made available in the list of templates available for filing of the returns for correct uploading of the returns.***

**28. Software for W.B.VAT e-Return**

1. 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.

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

2. In many instances, like in construction industry, loss is incurred. However, such losses are not accepted while filling Annexure-D Part-I. In the annexure, negative figure is not accepted in “profit earned by the contractor to the extent it is related to supply of labour and services”.

***It is recommended that the software be upgraded and such a system be provided so as to facilitate the assessee to show a loss while filling Annexure-D Part-I as per requirement.***

### **29. Dematerialized Online Declaration Forms against ‘Subsequent Sales’**

Since the Financial Year 2011-2012, the online issuance of Sales Tax Declaration Forms for ‘Subsequent Sales’ u/s 6(2) of the Central Sales Tax Act, 1956 has been suspended. Only manually it is issued by the commercial taxes department which is a voluminous paper work as well as time consuming.

***It is recommended to issue the Dematerialized Online Declaration Forms against ‘Subsequent Sales’ u/s 6(2) of the Central Sales Tax Act, 1956.***

### **30. Taxation on sale/purchase of duty credit licenses in West Bengal**

Currently tax is applicable at 5% under VAT and 2% under CST on sale of license in WB and input Tax credit is allowed to traders but not to manufacturers. As the manufacturers are the real consumers of such credit scrips and utilise them against payment of duties on purchase of their raw materials. ***It is recommended that following points to be considered during the time of preparation of current budget:***

1. ***Input Tax credit is allowed to manufacturers also.***
2. ***Sales tax forms are also to be issued to manufacturers also.***

In VAT act of other parts of India i.e., Maharashtra, Gujarat, Bihar, etc has permitted as under:

- i) VAT is levied and ITC is also allowed to manufacturers.
- ii) Sales tax forms are also issued to manufacturers.

### **31. Amnesty Scheme under Sales Tax act**

***It is recommended to introduce Amnesty Scheme under Sales Tax act*** as last scheme was done way back in 2007 or 2008. Moreover, this will enable the State Govt to garner huge funds like the way Central Govt did with Service Tax.

### **32. Threshold Limit For Composition Scheme**

As per section 16(3) of the WB VAT Act 2003 threshold limit for composition scheme is Rs 50 lakhs. Also, The Tannery Manufacturing units are not entitled to enjoy this Composition Scheme.

In Central Excise, for small scale industries there is an exemption from paying excise duty on clearances not exceeding Rs.150 lakhs.

***It is recommended that the Tannery Manufacturing Units also be entitled to avail the composition scheme. It is further recommended that a similar exemption be given to small dealers under the Composition Scheme.***

### **33. Clarifications on Sales Tax forms received**

We all are aware that sales tax forms are required to be issued on quarterly basis. In the present situation the following problem is occurring and most of the assesses are suffering for that. These are

1. Goods sold on inter-state basis on last week of end of quarter say 28<sup>th</sup> Dec and reaches the customer on 2<sup>nd</sup> Jan i.e. first week of next quarter.
2. The customer issues form citing Jan-Mar i.e. for the quarter on which material was received and the same is disallowed by the assessing officer as seller is receiving the goods in next quarter i.e. Oct-Dec bill has generated and despatched the goods,
3. Resulting huge losses to the assesses as well as entire trade community.
4. ***In respect to that a circular to be issued in the line of the Circular issued by Commissioner of Commercial Tax, Maharashtra.***

### **34. Ensuring Ease of Transactions**

Under Rule 19(8) of the West Bengal VAT Rules if a Registered dealer wants to avail VAT credit on his purchases, he has to make payment to the seller by account payee cheque or account payee draft or through electronic banking clearance. Due to the above rule, where there are dues between the buyer and seller they will be forced to settle the same by making payments to each other instead of adjusting the same by issuing debit/credit notes which is the normal commercial practise in such cases.

***Hence the above Rule should be amended ab initio to allow adjustment through debit/credit notes where the buyer and the seller have dues between them so that unnecessary payments to one another simply for the purpose of availing VAT credit can be avoided. Adjustments through debit/credit notes are recognized in other tax laws also. For example Rule 6DD(d) of the Income tax rules recognizes settlement of debts by way of adjustment of dues between two parties.***

### **35. Industrial Promotion Assistance Scheme (IPAS)**

It is recommended that for the benefit of the Micro & Small Enterprises, the Industrial Promotion Assistance be extended for a further period of one year i.e. up to 31.03.2017.

### **36. Mismatch of Entry tax balance between CTD and Courier Agent**

When an Enrolled Courier Agent deposits Advance Entry Tax for necessary adjustment during each consignment by uploading of a Manifesto, there is no such online system for automatically displaying the amount utilized thereof or the balance which remains unutilized with the department towards Advance Entry Tax. This subsequently creates mismatch between the CTD and Courier Agent and needs to be reconciled manually.

***It is recommended to develop the online system in such a way that the Utilization of Advance Entry Tax and Balance Remaining Unutilized can be displayed automatically during uploading of manifesto or generation of Acknowledgment for the convenient of the Courier Agent.***

### **37. Online Verification of transporting Vehicle for the dealer**

For verifying the ITC claimed by the dealer, the Assessing Officer has an option to make an online verification of the transporting vehicle's number from the VAHAN website. However, there is no such facility provided to the dealer to verify the vehicle number. As a result, after the local purchase made, the ITC of the dealer is rejected due to the only reason being a fake vehicle number.

*It is recommended that an online verification system in the Commercial Taxes Website (apart from the assessing officer) be made available to the dealers by which the dealers can easily access it for necessary verification of the transporting Vehicle.*

### **SECTORAL ISSUES**

#### **1. Inclusion of LED Lights / Lamps including all sorts of lamps / lights / lantern / bulbs using LEDs under VAT Schedule "C" attracting VAT rate at 5%**

With the advent of power saving technology and availability and use of LED Bulbs and the consumer demanding more energy efficient lighting products, the industry had to shift to Torches & Flashlights using LED bulb. LED Bulbs in India have are recent phenomenon & it's per capita consumption is negligible compared to other countries although torches / flashlights / lamps are the sole source of light to the remote part of the country. Introduction of variety of items of lighting products namely **LED Bulbs / lights / lamps, LED Torches / LED Flashlights / LED Lamps / LED Lanterns, LED Emergency Lamps, LED Emergency Rechargeable Light, Rechargeable LED Portable Lamp, LED based Rechargeable Desk Light / Study Lamp**, has encouraged consumers to take them due to the advantage of lower battery / power consumption, longer durability. The FMCG companies are expanding it's lighting business with big thrust on LED Bulbs / lights / lamps including LED Rechargeable Lanterns, LED Solar Lanterns, LED Emergency Rechargeable Light, Rechargeable LED Portable Lamp, LED based Rechargeable Desk Light / Study Lamp in addition to LED Lamps / Lanterns especially targeted to electricity starved & disturbed areas. To enhance user-ship of these products it is necessary that they are made available to the consumers at a cheaper price. Reduction in VAT rate of LED Emergency Rechargeable Light, Rechargeable LED Portable Lamp, LED based Rechargeable Desk Light / Study Lamp in addition to LED Torches / Flashlights / Lamps and Lanterns will boost consumption.

Realizing the necessity and advantage of LED Lamps / LED Lights / LED Fixtures, **Central Excise Duty was reduced to 6% from 12%** in May'2012 on broad spectrum of all sorts of LED Lighting products falling under Chapter 85 & 94 of Central Excise Tariff Act, 1985 under description "LED lights or fixtures including LED Lamps". **VAT rate** on all sorts of **LED lights** has been **reduced in the States of Delhi, Rajasthan Punjab Himachal Pradesh and Haryana** details of which are as follows:

State	Description of Goods in VAT Schedule	Schedule and Serial No. of the relevant State VAT Acts
Delhi	Compact Fluorescent Lamp and Electronic Chokes (Bureau of Indian Standards certified or star rated by Bureau of Energy Efficiency), <b>LED Lights</b>	Schedule III, Sl.No.183
Rajasthan	<b>LED Lamp, LED Torch, LED Flashlight, LED Emergency Lamp, LED Lantern</b>	Schedule IV, Sl.No.196
Punjab	<b>LED Lights</b>	Schedule B, Sl.No.174
Himachal Pradesh	<b>LED Bulbs</b>	Schedule A, Part-II-'A', Sl.No.66-A
Haryana	<b>LED Lights</b>	Schedule C, Sl. No.21A

We request for inclusion of “**all sorts of LED based Lighting products**” in **Schedule C** of West Bengal VAT Act, 2003 attracting VAT rate of **5%**.

## 2. Cigarette Industry – Stability and Uniformity in Tax Rates

The Cigarette industry is an important generator of tax revenue for the State of West Bengal, contributing about Rs.460 crore in the form of State taxes in the year 2012-13. In addition, the State received another Rs.315 crore during 2012-13 as its share of Central Shareable Funds, on account of Cigarette Excise Duty. Moreover, with over 7.0 lakh livelihoods in tobacco trade dependent on this industry for sustenance; it provides critical support for employment and economic activity in the State.

The Government of West Bengal increased the VAT rate on cigarettes from 20% to 25% with effect from 1st April 2013. Subsequently, on 25th April 2013, it was further increased to 35%. Cumulatively, this represents an increase of 75% over last year’s VAT rate.

As a consequence of this steep Tax increase, the cigarette business in the State has been diverted to illegal products controlled by criminals and anti-social elements. This has also impacted the livelihood of legitimate cigarette traders in the State.

The legal cigarette industry in the State has already declined by about 29% and continues to decline further. Accordingly, despite a 75% increase in tax rates on cigarettes, the growth in tax revenues is already showing a decelerating trend and is expected to result in negative growth in the near future. Therefore, this tax rate increase

is not only jeopardizing the growth momentum in tax collections in the State but is also impacting the livelihood of legitimate traders in the State.

It would be pertinent to note that on account of the unintended consequences of steep tax rate on cigarettes, the State of Uttar Pradesh, in May 2013 has reduced the VAT rate from 50% to 25% and very recently (on 20.01.2014), The Cabinet of Punjab has approved the reduction in VAT rate on cigarettes from 55% to 22.55% (including 10% Surcharge).

***Therefore, in the interest of revenue as well as millions of lives depending on this trade, the State Government is requested to reconsider the steep hike in the tax rate on cigarettes and to bring it back to earlier rate of 20%.***

### 3. Paper Industry

Coal being is the most important fuel in the paper industry and its cost has increased significantly of late. One of the factors contributing to the increase in costs is the cascading impact of VAT on Central Excise Duty introduced on Coal. The position has been worsening with disallowance of VAT credit on Coal when the same is used as fuel. Whilst the VAT credit is allowed on Coal when used as Raw Material there is no reason to disallow the same when it constitutes one of the major costs of production for industry like Paper Industry. In fact, even under CENVAT Credit Rules, 2004, the credit is allowed on Coal irrespective of the fact whether the same is used as raw materials or fuels.

***In view of the above, it is recommended that VAT Credit be allowed on Coal even if the same is used as Fuel.***

### 4. Battery Industry

The production and sale of battery operated vehicles is controlling the menace of pollution in the cities and towns of West Bengal to a large extent. Moreover, change over to Battery operated vehicles in large numbers would mean noiseless and eco-friendly mode of transportation. Small scale storage battery manufacturing units are fighting a fierce battle for survival of stiff competition.

***Tax Exemption in respect of exclusively Battery operated vehicles which would control the menace of pollution in the State to a large extent and also boost the small battery manufacturing units to turnaround.***

### 5. Others

a. Under Schedule-‘C’ of Part-I in Serial No.61 in the entry ***“Readymade Garments other than Hosiery Goods but including Necktie, Bow and Collar”*** it is taxable @5% but, the item ***“Sweaters or Garments prepared by knitting”*** is taxable @14.5% under Schedule CA.

***It is recommended to bring similarity in both the cases by including the item “Sweaters or Garments prepared by knitting” under Schedule-‘C’ of Part-I in Serial No.61.***

b. Under Schedule-‘C’ of Part-I in Serial No.74B in the entry ***“Spare Parts of Motor Vehicle”*** it is taxable @5% but, the ***“Accessories of Motor Vehicle”*** is taxable @14.5% under Schedule CA.

***It is recommended to bring similarity in both the cases by including the item “Accessories of Motor Vehicle” under Schedule-‘C’ of Part-I in Serial No.74B.***

c. Under Schedule-‘C’ of Part-I in Serial No.55C in the entry **“Pre-used Motor Car”** it is taxable @5% but, the **“Pre-used Motor Vehicle”** is taxable @14.5% under Schedule CA.

***It is recommended to widening the term from “Car” to “Vehicle” and bring similarity in both the cases by including the item “Pre-used Motor Vehicle” under Schedule-‘C’ of Part-I in Serial No.55C.***

d. Under Schedule-‘C’ of Part-I in Serial No.53 in the entry **“Paper, Coated Paper, Carbon Paper, Paper Board, Paper used for Computer Print and News Print”** it is taxable @5% but, the item **“Tissue Paper”** is taxable @14.5% under Schedule CA.

***It is recommended to consider the item “Tissue Paper” under Schedule-‘C’ of Part-I in Serial No.53.***

e. 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 @5%. But, in case of **“Dentistry Items like False Teeth”** etc. it is taxable @14.5% under Schedule CA.

***It is recommended to bring similarity in both the cases by reducing the tax rate of Dentistry Items from @14.5% to @5%.***

f. 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 @5%. But, in case of **“Earth Soil & Debris”** it is taxable @14.5% under Schedule CA.

***It is recommended to bring similarity in both the cases by reducing the tax rate of “Earth Soil & Debris” from @14.5% to @5%.***

g. 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 @5%. 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.

***It is recommended to correct 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.***

h. ***Input Tax credit on consumption of Colour & Chemicals in manufacturing process of Textile Industry:***  
Lot of chemicals and colours are used in production of Yarn in Textile Industry

These are considered as part of Raw material cost in such industries, as it is a major cost to them without which production of yarn cannot happen. WB govt is granting sales tax form for purchase of such colours and chemicals under CST act, hence the question of denying ITC is not justifiable

***It is recommended to allow Input Tax credit on consumption of Colour & Chemicals in manufacturing process of Textile Industry***

#### **REFUND OF INPUT TAX CREDIT (ITC) TO EXPORTERS & 100% EXPORT ORIENTED UNITS (EOU) & OTHER DEALERS:**

Chapter-9 Part-5 of the WB VAT Rules 2005 provides procedures for revenue of tax which has undergone drastic amendment and substitutes vide notification No. 1530-FT, dated: 20.10.2008, later amended from time to time. It is prayed that the procedure laid down for refund appears to be very cumbersome on the part of the applicant dealers. A simple and easy process could have been adopted following the provisions of excise and customs law

where excise duty is not levied at all on export production and customs duty is not charged on imports which are meant for re-export.

*i) We strongly suggest that in line with provisions under Central Excise Law of furnishing the bond by the exporter, under the VAT law all purchases by the exporters should be exempted on execution of a bond by the exporter before the appropriate authority and such exporter shall furnish a certificate against their purchasing invoice to the selling dealers as may be prescribed by the government. If the particulars of bonds executed and the purchase invoice match with certificate, no tax should be charged from the exporter dealer and there would be no cause of concern for such exporter dealers that their working capital will be blocked for payment of Input VAT and claiming of refund.*

*ii) It is further suggested that just as EOUs and SEZs units have been placed under zero rated tax category (Schedule AA) 100% exporter dealers other than EOUs and SEZs should also be placed under the same category on fulfillment of aforesaid suggested condition.*

*iii) The refund application procedure for exporters is bound by time frame but there is no time frame provided in the law for issue of refund from the Commercial Taxes Department. It is felt by the exporting community that the process of refund had been made very complicated and almost impossible due to unrelated matters.*

*iv) It is also felt that the creation of Central Refund Unit (CRU) had caused more complications than simplifications – one more hurdle to cross. It is suggested that realistic and pragmatic view concerning refund should be taken otherwise the exporting community are facing financial crunch apart from external adverse conditions.*

*v) Besides exporters, dealers whose maximum turnover is interstate sales to registered dealers are refund applicants. In such cases output tax is @ 2% and input tax is @5% or @14.5%. These cases are similar to exporters' cases. Simplified procedure for issue of refunds should be introduced and procedural rigors should be dispensed with.*

*vi) The documents to be submitted as a proof of export to Nepal and Bhutan should be clearly mentioned in the rules as these two countries does not require Indian Customs Certificate.*

*vii) Sales mentioned u/s 21A of the W.B.VAT Act,2003 are Zero Rated. When a dealer claims exemption on account of sale in course of export u/s 5(3) of the CST Act,1956, he produces Declaration Form No.12A/H. But, in order to prove tax exemptions u/s 21A (1), no formal Declaration Form or Certificate in Own Stationery have been prescribed by the purchasing SEZ or EOU Dealers. This constrains should be removed.*

**38.** Eight financial years after introduction of VAT have shown substantial increase in revenue collection compared to collection under earlier Sales Tax Laws. In Direct Taxes collection, it has also been noticed that wherever the rate of tax had decreased, the revenue collection had increased.

***Following the same analogy, it can be estimated that if the general rate of tax is brought down from @14.5% to @10%, revenue will increase; besides this measure will boost business, trade and industry.***

**39.** Under the new VAT regime all the registered dealers have a unique Registration Number on all India bases. As per the law, the registered dealers are required to mention the VAT/CST/WBST Registration Number on invoice. Transaction of a particular invoice can be tracked down through the system as to under whose jurisdiction the same dealer is being assessed.

***Under these circumstances, it is suggested that the requirement of Way Bill at the entry point of every State may not be required, as no transaction backed by invoice of registered dealer will be untraceable. Moreover, inter-state sales transaction is being computerized on all India basis whereby all inter-state movement of goods would be under control and the purpose of way bill would be achieved by computerization process itself. Many states do not have any requirement of Way Bill in the VAT Law and these states are receiving VAT revenues no less than West Bengal's revenue.***

**40.** In the Budget Speech for the Financial Year 2011-2012, it was proposed for inserting a new Sub-Section 2 in Section 73, by virtue of which the Commissioner may amongst the registered dealers, select certain dealers who may be allowed to import goods from outside the State of West Bengal on the basis of such documents and subject to such conditions and restrictions as may be prescribed no Way Bill is required for such dealers who paying net tax of Rs.3 Crore or more in a Year. But, due to non amendment of the respective rules this proposal has not been effected as yet.

***It is suggested to amend the respective rules immediately so that the proposal should be introduced without any further delay.***

**41.** Large number of assessment orders based under VAT Act show a common trend i.e. disallow input tax credit on the ground of Section 22 (11), proper books of accounts, registers not maintained as per Section 63 of the Act read with Rule 87.

***There is no specific observation about specific defaults of the dealer. By mention of these three provisions, simply input tax claim is disallowed and dealers are forced to file appeal against the assessment orders. It leads to corruption and non-cooperation attitude of the tax officials. These types of disallowances of ITC credit must be avoided by the tax officials through administrative measures.***

**42.** Distortion in VAT Rates by States against agreed structure by the Empowered Committee should be rectified. The Government of India taken initiative and played a major role in Empowered Committee to co-ordinate the States on introduction of uniform VAT Rates across the country. The Ministry of Finance under the Government of India used its good offices in bringing the unanimity by approaching various States in introduction of VAT which was a path breaking achievement in country's federal structure. However, in the last over two years many states have deviated from the uniform VAT and have been tinkering with the broad understanding on the rate of VAT applicable to goods and in the process certain anomalies have emerged that need to be rectified.

***The Ministry of Finance should take initiative to restore the earlier position of uniform VAT Rates in all States.***

**• *VAT on all food products should be taxed at a concessional rate throughout the country including packaged drinking water.***

**• *In the run up for the regime of proposed GST, many State Governments have recently increased rates of VAT applicable to several items including Aerated Waters, Carbonated etc. This defies economic logic and is an exercise to determine a higher base for compensation claim from the Central Government under GST for any future loss of revenue. Central Govt. should take up this matter to restore the earlier position. While we recognize that VAT is a state subject, we would none the less request the Federal Government to use their good offices in persuading the State governments to be guided by the above rationale. The Fiscal prudence is sought to be altered and this could lead to the other states also making changes in the VAT Rate. We request that matter be appropriately flagged to The Empowered Committee of State Finance Ministers.***

***Sales Tax Department should be more business friendly and proactive. Department should have young and business savvy people. We should try to make tax department technology savvy and it should be unique/ efficient***

***in comparison to the other region. Presently we are facing a lot of problems in order to File Return/Generate Way Bill and making payment of Tax online.***

***Entire product should fall under same % of tax to avoid anomaly subsequently. Like Electrical product should either be under @5% or @14.5%. Presently it is not the case. Product category should be decided on the basis of utilization rather than appearance like "Electrical Box" should be called "Metal Box" because it is made of metal. "Data Wire" should be "Data Wire" not "Cable".***

***Any error/omission must be sorted out at the time of assessment. Traders must feel assured that once assessment is done, they shall not be asked to refurnish the data of the assessment years. This construed as harassment.***

***Issuance of Sales Tax Registration Certificate should not be based on Trade license. Since both are different department and should be independent of each other. Lot of tax revenues are getting delayed because of nuisance of Trade License Department.***

***One big volume of sales we are losing because of accessibility i.e. QTS Train Service is available from Delhi to North East but not from Kolkata. North East Traders are placing orders at Delhi and are getting material within 24 to 48 hours whereas from Kolkata it takes 7 to 8 days. We must push government to ensure for making our all wholesales market easily reachable and connectivity by all modes of convenient transport services.***

**43.** Payment by purchasing dealer on the authorization of the selling dealer to their agent by verbatim reference to Rule 19(8) of The West Bengal VAT Rules, 2005 in gross misreading of the intent of the rule.

The general trade practice followed traditionally for procurement of raw material by converting industries from large mills is to procure the materials through agents, where, the agents negotiate prices for bulk quantities at suitable terms of payments, take orders in different rates; depending on ordered quantities and payment terms, from various small converting units. The large mills do not market their goods door to door to converting units and prefer to sell through the agents only.

The orders so collected are placed on the large mills by the agents, the mills affect delivery/sales directly, through their transporters, raising Tax Invoice on the converting units. The converting units make payment against endorsement/authorized letter from the mills to the agents on behalf of the mills. The agent either makes the payment in advance to the large mills or as per agreed terms. The agent raises a debit note for commission, either on the mills or the converting units subject to Service Tax & TDS provisions of Income Tax.

The ITC availed by the converting units are being denied by the department by citing Rule 19(8) of the West Bengal VAT Rules, 2005 as reproduced below :-

***"Rule 19(8) A registered dealer who intends to claim input tax credit or input tax rebate, shall makepayment by account payee cheque or account payee draft only to the seller, where such payment exceeds rupees twenty thousand in a day, Provided that this provision shall not apply to such purchasing registered dealer who proves that banking facility is not available at his place."***

The Serial No.3 of Trade Circular No.14/2011 Dated: 24.10.2013 includes the following in Rule 19(8) :-

***"One important issue which deserves mentioning here is that to claim Input Tax Credit on a purchase, a dealer is given liberty w.e.f 01.09.2011 by the amended rule 19(8) to make payment to his seller through electronic banking clearance in addition to through account payee cheque or draft when consideration value per day exceeds Rs. 20,000.00"***

The intent of the statute is to ensure that payments above Rs. 20,000.00 are made through banking channels rather than cash dealings, to prevent any illegitimate transactions and ensure the authenticity of the purchasing & selling dealer.

The assessing/appealing authorities are misconstruing the term “only” in the rule – *“shall makepayment by account payee cheque or account payee draft only to the seller”*. The emphasis on “only” is for making payment by account payee cheque or account paying draft or electronic banking clearance; whereas the department is construing “only” linking it “to the seller” to misread that payment should be made to the seller only, by verbatim re production of the ruling rather than the purpose of the legislation for payment through banking systems only.

***We beg to state the trade practice of procurement through agent is the life line of business; the aforesaid transactions are genuine, the selling dealers are paying Output Tax on the Tax Invoices raised, the buying dealers are availing ITC on purchases used as raw materials, purchases are from registered dealers, payments are made by means prescribed by Rule 19(8), hence, ITC should not be denied merely for payment to agent on behalf of the seller. The afore stated payment practices are being followed for ages & also allowed under Excise & Income Tax laws.***

**44.** In cases of non reconciliation of Mismatch at the selling dealers end, in spite of Mismatch Statement being filed, as prescribed; by the purchasing dealers for the same transaction, ITC is being disallowed, for no fault of the purchasing dealer.

The Mismatch module initiated by the department is commendable for its accuracy and purpose to ensure compliances and weed our willful connivance of sham transactions to curtail illicit claims of ITC.

The law abiding member units have had to bear the brunt of mismatch; there have been several instances, where the purchasing dealers in cases of mismatches on purchases made; have either rectified the anomalies at their end, if any or followed up with selling dealers to rectify, file revised returns and update the mismatch statements to reconcile the differences. In situations where the selling dealers have not complied and the mismatch continues, the assessing authorities have disallowed the ITC on such transactions.

*The Hon’ble Punjab & Haryana High Court, has in a land mark judgment on 23.09.11 has held that no liability can be fastened on the purchasing registered dealer on account of non-payment of tax by the selling registered dealer in the treasury unless it is fraudulent, or collusion or connivance with the registered selling dealer or its predecessors with the purchasing registered dealer is established. (Gheru Lal Bal Chand Vs. State of Haryana)*

The buying dealer has no control over the selling dealer in as far as compliances are concerned; they can only request the sellers; hence, the buying dealer should not be made to pay for the in action of the seller as the purchases have been affected, from dealers having proper VAT registration certificates, against Tax Invoices, payments have been made by prescribed means, returns and other mandatory provisions of Vat Act & Rules have been complied with.

***We humbly pray to your kind self; to uphold the intent of Rule 19(8) in true spirit by allowing ITC on payments made; on behalf of selling dealers, to agents by whatsoever name called by issuing a clarificatory Trade Notice with retrospective effect; on the merit of the issue and provide the much needed relief to business community.***

***We earnestly appeal to you to kindly issue an inter departmental advisory; reversing past & restraining future disallowance of ITC to the purchasing dealers in mismatch instances, where bona fide transactions have been substantiated by such dealers; thereby not be make them liable for non compliances of selling dealers, thus upholding the underlining doctrine of fair justice - "Thousand Culprits Can Escape But An Innocent Should Not Be Punished".***