BCC&I
THE BENGAL CHAMBER

Recommendations

WEST BENGAL VAT ACT and CST RULES

PREPARING FOR GST :

1. 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.

Further, there might be some excess payment which is made in the VAT regime by cash at the year end of 31.3.2017. It should be allowed to be carried forward to the next FY i.e. 2017-18 in view of the ensuing GST as availing the refund of the same in the current law will be a hardship.

Keeping in view the ensuing GST, 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.

2. Fast Tracking Refunds -

Refunds were fast tracked in the last FY in lieu of The assurance of the FM in the Assembly, but the same have again begun lagging behind after a one time effort.

In view of the ensuing GST it is recommended that a fast track mechanism be introduced to process all refunds due till 2014-15 at least. The same has to be time bound barring which the Dept. shall have to pay interest.

3. Settlement of Dispute Scheme & Fast Track Appeal Settlement for cases pertaining to FY 2014-15

A. As per information received from the Department, most of the assessment orders for FY 2014-15 shall be out by 31st Jan 2017. Some of these cases shall be going for appeals.

Before GST is implemented, this is the right time for introduction of a "Settlement of disputes Scheme" for all pending cases of FY 2014-15 so that dealers may clean their accounts and the Department can also reduce their appellate burden.

B. In line of the above, for that assesses who still wish to continue with their appeals, perhaps it is the right time for a "Fast Track Appeal Settlement Mechanism" also for all pending cases upto FY 2014-15.

PROCEDURAL ISSUES

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

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

2. 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".

3. 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 is 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".

4. 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.

5. 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.

6. 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, 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.***

7. 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.

8. Period of Return vs. Issuance of F- Forms

As per the requirement of West Bengal VAT Laws, some assessees 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.

9. 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 cancelation 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 assessees both, issuance of C / F Form can be cross checked from Form 50A.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. Separate annexure In W.B.VAT Return

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.

20. Software for W.B.VAT e-Return

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.

21. Software for CST e-Return

In case of preparing CST e-Return there are two Software i.e. Form No.1 and Annexure for which total ten xml file have to upload and at the time of print option total ten html Annexure separate printing is required, which is time consuming and disgusting also.
It is recommended upgrade the software for making one xml file and one html file for uploading and printing CST e-Return.

22. 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.

23. 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.

SECTORAL ISSUES

1. 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%.

2. 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*.**

3. 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.

4. 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:

1. 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) I 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.

24. 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.

25. 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.

26. 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.

27. Input tax credit for a manufacturer registered dealer is not available under present law for use of goods in power and fuel, for example furnace oil, gas, jbo, lubricant etc. used for manufacturing of taxable goods intended for sale in West Bengal (Sec.22(4) of WB VAT Act 2003). In the paper industry Coal is used to generate steam which is an essential input for manufacture of Paper & Paperboards. Similarly, Furnace Oil is used for burning lime in lime kilns. This process is essential for recovery of chemicals and is vital for

cost effective manufacture of paper & paperboard. Under the VAT Act, Input Tax Credit is not available in respect of Coal and Furnace Oil since these are categorized as "*Fuels*". However, as far as the paper and paperboard industry is concerned, these items are essential inputs for the manufacturing process.

It is suggested that input credit should be allowed on furnace oil, gas, lubricants, jbo etc. goods to a manufacturing dealer. It may be classified as power and fuel products. In some industries except Sponge Iron Manufacturing Unit, coal is used both as fuel and raw materials but, in the existing provision, there is no rule of how the dealer could Input Tax Credit of that portion of coal which is used as raw materials. It is also recommended that a policy level decision is taken jointly by the Centre and all the States whereby Input Tax Credit is provided to the industry for Coal and Furnace Oil.

28. 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.

29. 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.

30. 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 make payment 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 make payment 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.

31. 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".