CALCUTTA CHAMBER OF COMMERCE

PRE-BUDGET MEMORANDUM

ON

STATE BUDGET

2014 -15

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The Calcutta Chamber of Commerce is pleased to submit a Memorandum on State Budget 2014-15 highlighting the points and suggestions for your kind consideration.

1. VALUE ADDED TAX – INPUT TAX CREDIT

i) The provision of input tax credit are backbone of the VAT Law since VAT was enacted for levy of tax on sale of goods on the basis of value added to the purchase price of such goods at each stage on sale of such goods.

Artificial disallowances and restrictions in the Input Tax Credit (ITC) provisions of the VAT Law had complicated the entire issue for taxpayers as well as tax collectors. Rampant disallowance of input tax credit on the grounds of books and accounts and stock register are prevalent at grass root level (even where books of accounts & stock registers, duly audited, were produced before assessing officer). Similarly disallowances of claim of ITC on the ground of misinterpretation of negative list are also widely prevalent in assessment proceedings. These are **root causes of substantial number of pending appeals and revision cases**.

ii) Presently a manufacturer registered dealer is not entitled to claim input tax credit or rebate on purchase of consumable stores, spare parts and accessories for repair and maintenance of machinery and equipments, since it is not within the purposes specified in Sec 22 (4) of WB VAT Act. Under the WB Sales Tax Act 1994, concessional rate of purchase was allowed on such product by way of use of declaration form, but this facility had been denied under the VAT Act. Use of generator by trade and industry for captive generation is very common in the State of West Bengal. Still the negative list of input tax credit provide for disallowance of ITC claim on the same. It is suggested that **input tax credit should be allowed to registered manufacturer on purchase of spare parts and accessories for repair and maintenance of machinery and equipments, factory premises, captive power generating units, consumable stores.**

iii) Input tax credit for a manufacturer registered dealer is not available under present law for use of goods in power and fuel, for example coal, furnace oil etc. used for manufacturing of taxable goods intended for sale in West Bengal (Sec.22(4) of WB VAT Act 2003). **It is suggested that input credit should be allowed on coal, furnace oil etc. goods to a manufacturing dealer. It may be classified as power and fuel products.**

iv) Sec.22 Sub-Sec.7 provide for reversal of input tax credit in respect of dispatches of goods outside state otherwise than by way of sale (stock transfer etc.). It is linked with rate of tax under CST Act, which was 4% at the introduction of VAT Law and presently it is 2% w.e.f. 1st June 2008. It is proposed that the reversal should be linked with rate of tax under CST Act

applicable to inter-state sale to registered dealers in place of mentioning any rate or any notification.

The rate was reduced from 3% – 2% by Union Government w.e.f. 1st June 2008 but no notification had yet been issued by State Government for reversal of input tax credit from 3% - 2% so far. In fact, there is a loss of revenue to the extent of rate of tax under CST Law, which is required to be reversed under State Value Added Tax Law and there is no justification of reversal at a higher rate than rate of CST Act.

v) Sub-**Section 13A & 13B of sec 22.** It provides for allowing input credit only to the extent of output tax payable in cases where goods are sold at loss. **This provision is similar to the Sales Tax laws wherein sales tax paid was neither adjustable nor refundable.** It was only a one-way traffic.

When VAT laws were being framed, the then Commissioner, Commercial Taxes along with his team of officers explained in several meetings that VAT laws were simple and they understood the fact that if business prices moved up and down and losses could happen. One needed to add up the output tax, deduct the total input credit and pay the remaining balance to the department.

The newly amended law makes the provisions more complicated and cumbersome. The business is not a perfect science. Profits and losses go side by side. Prices move upwards and downwards. Losses do happen and are not by intention and or purpose as the basic aim of doing business is to make profit and to create wealth.

The retailers, distributive trade small and medium enterprises cannot comply with the provisions for all practical purposes. It is next to impossible to keep track of every unit of a product being sold at a loss and reverse the input credit. The provisions will only promote the inspector raj and corruption.

Such provisions need to be withdrawn and / or amended to bring uniformity, clarity and simplicity.

vi) Regarding maintenance of books and accounts and stock register etc. relaxation was provided by Finance Act 2010 giving retrospective effect from 01.04.2005 that **where turnover did not exceeded Rs. 2 crore, the provision for maintenance of records, books and accounts and stock register etc. were relaxed for the purpose of allowance by ITC claim.**

It is suggested that such limit should be enhanced from 2 crore to 5 crore considering the inflationary effect and providing relief to small dealers.

vii) **REFUND OF INPUT VAT CREDIT INVOLVED IN EXPORT OF GOODS**

At present the special facility granted to exporters for refund of input tax credit where the exporters are having export turnover 75% or more of total turnover.

It is suggested that the limit of 75% should be brought down to 50% for granting special facility for refund on exports, as a large number of exporters are not getting this facility which is otherwise available to other exporters.

A. Like sales by a dealer to a dealer located in SEZ is exempted from tax under Section 21A read with Schedule – AA of the W.B. VAT Act, sales by a dealer to a dealer registered as 100% EOU and other exporters registered with respective Export Promotion Council, established by Government of India, Ministry of Commerce should be placed under Schedule AA, so that no VAT is charged on purchases of goods by exporters either for resale or for consumption as manufacturers of export goods.

B. All old refunds prior to amendment (re. Refunds through ECS to Exporters) should be granted on a time frame basis and such time frame should be provided in the law itself.

C. The module of Central Excise Law may be followed as an alternate suggestion, whereby all the purchases made by the exporters should be exempted on execution of a bond by the exporters before an appropriate authority and such exporters shall furnish proper certificate against their purchase invoice to the selling dealer, which may be prescribed by the Government through notification on furnishing of such certificate VAT should be zero rated on sales by any dealer to such exporters. Alternatively Form 12A should be made applicable to all types of exporters in place present provision relating to resale cases only.

viii) **REFUND OF VAT**

The introduction of VAT Scheme helped to eliminate the extra burden of tax by setting off the tax paid on inputs against the output tax payable. The VAT Scheme thus has encouraged Industries, Trade and the Consumer.

There are registered dealers (other than exporters) in the state where the input tax credit taken by them for purchase of inputs exceeds the output tax payable for dispatch of finished goods thereby making them eligible to get refund of tax so paid in excess. This is mainly due to the fact that purchases are in the State whereas the place of dispatches is outside the State.

As per Section 62 of West Bengal Value Added Tax Act 2003, the Commissioner (subsequently delegated to Sales Tax Officer) shall, in the manner and within the time refund to a dealer excess of net tax credit over output tax payable under this Act.

Since the Value Added Tax Act is effective from 1st April, 2005 and no refund has yet been made to any dealer (other than exporter), the refundable amount payable to the dealers is increasing year after year and affecting their Working Capital need and eating up the profitability in turn higher interest burden due to higher Working Capital need.

In case of dealers who are engaged in export, the process of getting tax refund by them is simpler though in their cases also input tax is in excess compared to nil amount of output tax payable on export. Besides, for exporter the refund process has been simplified by introducing e-Application for pre-assessment refund.

Sir, in lieu of above we are requesting you to introduce scheme like pre-assessment refund for dealers (other than exporters) also so that they can get at least 80% of refund amount after filling the return of refund.

2. VAT REFUND

Vat Refund is withheld till verification of input tax credit. A report for verification is called by assessing officer of the claimant dealer from the jurisdictional officer of the selling dealer on whose sales Tax Invoice ITC is claimed. At present there is no time limit within which such verification report is to be submitted by jurisdictional officer to the claimant dealer officer.

It is suggested that for submitting input tax credit claim verification report, a time limit of 60 days prescribed in the law otherwise it should be treated that the verifying officer has no comments to pass on and the claim should be accepted on the face of it.

3. TAX ARREAR – STEP FOR EARLY REALISATION THEREOF – SETTLEMENT OF DISPUTE SCHEME (SOD)

Steps taken so far for realisation of tax arrears have not yielded desired results. Amendments wherein only certificate cases are covered under Settlement Scheme have not achieved its goal. A large number of revision cases of appeals are pending for years and revenue collection is affected adversely.

It is suggested that a new Settlement of Dispute Scheme (SOD) should be introduced under VAT law as well as under old Sales Tax Acts of 1941 and 1994 and Central Sales Tax including certificate cases pending. Such measure will augment the revenue collection.

We suggest that tax arrears up to Rs.10 lacs should be settled on payment of 25% of tax and 5% on accrued interest on tax; tax dispute in the range of Rs.10 lacs and one crore settlement amount should be 20% of tax and where tax due is more than one crore settlement amount should be 15%.

Above suggestion will bring tax arrears, which are unrealizable in the next 2-8 years, collection in one financial year. Simultaneously on the other hand, it will reduce pendency of appeals and revision cases to a great extent.

4. CERTIFICATE CASES – TAX RECOVERY PROCEEDINGS

In practice it has been observed that while appeal/revision case is pending before Appellate Authority and connected stay application had not been disposed off by the Appellate Authority, the assessing officers initiate the recovery proceeding and forward cases to Tax Recovery Officers which is bad in law, in view of legal position as pronounced by High Court orders and orders of West Bengal Tax and Tribunal (WBTT).

It is, therefore, suggested that provision should be made in the VAT Act itself that during the pendency of appeal/revision case and its connected stay petition – neither any recovery steps would be taken against appellant dealer nor tax recovery proceeding would be initiated by Assessing Officer and in case of initiation of certificate case, the Assessing Officer should certify that no appeal/revision and connected stay petition are pending before Appellate Authority.

5. MEASURE TO AVOID MULTIPLICITY OF APPEALS/REVISION BEFORE KOLKATA HIGH COURT

As per present law appeal against the revision order passed by West Bengal Commercial Taxes and Appeal and Revision Board is filed before W.B. Taxation and Tribunal under the State VAT Law before Hon'ble Kolkata High Court under Central Sales Tax Act, although the facts and issues involved are similar in both the cases.

It is, therefore, suggested that both appeals/revisions should be filed before W.B. Taxation and Tribunal by way of amendment in the law. This amendment shall avoid multiplicity of appeals before two appellate forums and reduce pending litigations before Hon'ble Kolkata High Court.

6. RELIEF TO MANUFACTURING EXPORTERS BY PROVIDING DEDUCTION FROM TURNOVER OF SALES SIMILAR TO SALES IMMEDIATELY PROCEEDING OF GOODS (SEC. 16(1)(b) OF WB VAT ACT)

At present merchant exporters are purchasing goods for exports of the same goods in same form upon its purchases without payment of tax by way of availing deduction from turnover of sales U/s 16(1)(b) of the Act. Thereby merchant exporters are not to pay VAT on its purchases and their export sales are free of tax, which does not give rise to any claim for refund of VAT. But in the case of manufacturing exporters the law is not

friendly to the exporters. Such manufacturing exporters are required to pay tax on purchases of raw materials and packing materials and on their sales there are no tax, resulting claim for huge amount of VAT refund.

It is suggested that the provision similar to Sec. 16(1)(b) and use of Form 12A should be introduced in the law for manufacturing exporters where the goods are used as raw materials, packing materials and capital goods.

7. REGISTRATION UNDER VAT LAW

Registration procedure under the VAT Law needs further simplification. It has been noted that the Registration Authority requires various certificates from landlords, whereas in practice landlords do not issue any certificate other than rent receipts or advance / security deposit receipts. There has been a tendency of demanding huge amount of security for granting registration for want of certificate from Land Lords. It is suggested that such practice should be immediately stopped.

8. TIME LIMIT FOR SUBMISSION OF VAT RETURNS FORM

At present the VAT Returns forms are voluminous. It requires number of annexure containing various details and such details are to be filed within one month from the end of the quarter.

It is suggested that without effecting any date of payment of tax the date of furnishing the return may be extended from 30 days to 60 days from the end of the quarter to allow dealers sufficient time to prepare voluminous details of annexure in VAT Return Forms.

At the same time there is a scope of simplification in the VAT Return Form. It is felt by various dealers that the present prescribed form is a complex one.

9. REVISED RETURN

Restriction on filing of revised return should be removed and it should be made similar to the Income Tax provision i.e. one year after the end of the financial year and completion of assessment order, whichever is earlier.

10. ENTRY TAX

The levy of entry tax had become harsh on the trade, industry and commerce. Union Government is levying customs on import. General rate of tax had increased from 12.5% to 13.5%, 4% to 5% and simultaneously levy of entry tax had been imposed wef. 1 April,

2012. Therefore, **the multiple effects of two levies are adversely affecting the growth of the trade and industry in the state of West Bengal.**

11. WAY BILL

Under the new VAT regime all the registered dealers have a unique Registration No. on all India basis. As per the law, the registered dealers are required to mention the VAT/ST Registration No. on invoice. Transaction of a particular invoice can be tracked down through the help of computer 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.

12. VALUE ADDED TAX – RATES OF TAX

i) We invite the attention of Hon'ble Minister to a White Paper on State Level Value Added Tax dated 17.01.2005 published by Empowered Committee of State Finance Ministers at paragraph 2.19 titled **'VAT Rates and Classification of Commodities'**.

Abstract of the said paragraph is set out hereunder:

"Under 5% VAT rate category, there will be the largest number of goods (about 270), common for all the States, comprising of items of basic necessities such as medicines and drugs, all agricultural and industrial inputs, capital goods and declared goods. The schedule of commodities will be attached to the VAT Bill of every State. The remaining commodities, common for all the States, will fall under the general VAT rate of 12.5%".

It is desired that the description of the goods taxable at lower rate of VAT i.e. 5% should be clearly stated in the Schedule of the Act, whereby there is no doubt in the minds of the readers as to whether a particular product falls within the 5% rate category or not. The present lack of clarity is evident from the fact that a large number of queries are raised by dealers and general public before the Commissioner of Commercial Taxes and the P.R.O. for clarification. There are orders passed by the Commissioner under sec.102 of WBVAT Act and the list of such orders published in the official website of the Directorate contained several pages. It reflects the fact that there are rooms for clear provisions in the Schedule.

ii) Eight financial years after introduction of VAT have shown substantial increase in revenue collection compared to collection under earlier Sales Tax Law. In Direct Taxes collection, it has 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 13.5% to 10%, revenue will increase; besides this measure will boost business, trade and industry.**

iii) In West Bengal, the rates of sales tax are the highest for Petroleum Products. It should be noted that LPG, Kerosene are mass consumption items and hence sales tax rates should be low. How far it would be just and fair is not clear to us.

iv) Generator of all types and Diesel Engine Pump Set were earlier in the Part C of the VAT Act attracting rate of tax @4%. By Finance Act 2011 it was brought under Schedule CA having a tax rate of 13.5%. Besides diesel pump sets there are other pump sets which are driven by kerosene, electric, petrol but there are no change in rate in these engine pump sets i.e. even after amendment other engine pump sets (other than diesel driven) attract tax @4% only.

It is suggested that it should be brought back to Schedule C Part 1.

13. <u>RATE OF TAX</u>

From April 2013 rate of tax was enhanced from 12.5% to 13.5% and from 4% to 5% across the board. Simultaneously entry tax is levied on all import of goods from outside West Bengal.

It is suggested that no further enhancement of rate of tax should be proposed by the ministry as it would be burdensome on the trade, industry and commerce.

14. <u>RULE 33A(1)(b) OF WB VAT RULES – EXEMPTION FROM VAT under Section 16(1)(c)</u>

At present the exemptions are provided from payment of VAT on sale of gold/silver/platinum/diamond/precious stone to MMTC and scheduled commercial banks. While MMTC and State Trading Corporation (STC) both are functioning under Ministry of Commerce, Govt. of India and serve the same purpose for the government, i.e. import of specified goods & sale to manufacturers of jewellery for exports.

Therefore, it is suggested that the exemption should be extended to STC as well as MMTC as both are serving to the cause of import and export for Govt. of India (manufacturing for jewellery for exports). Otherwise the cost of export is added by levy of tax.

15. WORKS CONTRACT

Works Contracts are often executed by small dealers. They cannot maintain regular books of accounts. Rate of tax prescribed is very high for small dealers up to a prescribed limit of total turnover during the year, should be in the range of 1 – 4%.

It is suggested that special provision for levy of VAT on Works Contract by small dealers should be framed in line with the provision of Section 44AD of the Income Tax Act, 1961. The basic facility provided under the Income Tax Act, which are missing in the present VAT Laws are as under –

Contractor is not required to maintain regular books of accounts, rather only civil construction bill of supply of labour bill is required to be maintained.

16. PURCHASE TAX

There should not be any levy of purchase tax of business expenditure items which are not used either for resale or for manufacture for processing of goods. It has been a practice in the VAT Department to levy purchase tax on expenditure items like printing stationery, staff welfare and so on.

17. PENAL PROVISIONS

It was suggested in the White Paper that penal provision under VAT Act should not be more stringent than the existing State Sales Tax Act.

But the provision under VAT Act for levy of penalty as included the term for imprisonment have been included which is much more stringent than the provision under W.B.S.T. Act, 1994. Although our Chamber does not support any tax evader, it definitely would like to ensure proper justice to all the dealers in terms that the promises made by the Empowered Committee to Indian citizens through White Paper.

Therefore, it is strongly suggested that the provision for imprisonment, (Sec. 93 etc) should be deleted for offences like maintenance of accounts, (Sec.63), reversal of input tax credit (Sec.22) non payment of security (Sec.26), Payment of tax & interest, way bill provisions (Sec.73) apart from seizure & levy of penalty), and so on and it should contain only payment of fine to a prescribed sum. Imprisonment provisions under FERA had no place in FEMA (Foreign Exchange Management Act).

Penalty had been introduced for late filing of return. On principle, there is no dispute between the Govt. and the trade & business on this issue. But, where there is no tax liability due to nil gross turnovers, penalty should also be nil.

18. PENALTY – CASES OF MISMATCH OF PURCHASE OR SALE

Section 96 of the Act provides for 200% of the penalty for concealment of sales or purchase etc. While the interest of the government is required to be protected by prescribing the penalty present in the law, the cases of mismatch of purchase or sale in returns, where the dealer would produce sufficient evidences to prove that the dealer had no intend to reduce the amount of no tax payable by him, penalty should not be levied at all.

It is therefore, suggested that the law should be amended by way of explanation or proviso to explain that the cases of mismatch of purchase or sale where the dealer is not at fault, it would not be considered as case of concealment of sales or purchases.

19. PAYMENT OF DISPUTED AMOUNT OF TAX BEFORE FILING REVISION AT APPELLATE AND REVISION BOARD FORUM

As per the present law 10% of the amount of disputed tax or Rs. 5 lacs is required to be paid before the revision case is filed at Appellate and Revisional Board office. There are cases of arbitrary additions, illegal disallowances of input tax credit claims and tax demands arising from unreasoned passed assessment orders and on non-judicial appellate orders. Under these circumstances, it is not prudent to press for payment of part disputed amount of tax before filing revision case at the appellate.

It is therefore, suggested that the provision for payment of 10% of disputed tax as per 1st proviso to Section 87(1) of the VAT Act should be deleted.

20. GRANT OF APPEAL EFFECT ORDER BY THE ASSESSING OFFICER

At present there is no time limit for passing appeal effect order by the Assessing Officer for revision of taxable turnover and tax payable thereon if giving the effect of appellate order or order of revision etc.

It is suggested that a time limit of six months should be prescribed in law to pass appeal effect order by the Assessing officer. In case of default by officer, a penalty should be levied on the officer, which should be recovered from his / her salary.

21. POWERS OF APPELLATE OFFICERS IN APPEAL PROCEEDINGS

As per the present law in the course of 1st appeal, the Appellate Officer has no power to set aside the assessment order. Various instances have come to notice of Chamber where ex-parte assessment orders are passed and there are genuine reasons for accepting the dealer's plea and determining the turnover as per books of accounts and records of the dealer. In such cases determination of turnover in appeal proceedings is a cumbersome

process as the entire exercise of the assessing officer is required to be executed by the Appellate Officer.

It is suggested that the powers of the Appellate Officer in 1st appeal proceeding should be enhanced to set aside the assessment order, like similar powers held by Appellate and Revisional Board and Taxation Tribunal.

22. INDUSTRIAL PROMOTION SCHEME

For industrial development in the state of West Bengal there is a need of re-introduction of 3 years Tax Remissions Scheme or deferment of tax scheme. This proposal will boost setting up of new industries and expansion of existing industries.

23. GRIEVANCES

It is suggested that a Grievance Cell should operate in the office of the Commissioner of Commercial Taxes to be headed by a separate officer for redressal of any grievance of dealers like Grievance Cell operating at Income Tax Department, like Ombudsman.

The Ombudsman Officer should have adequate power and his order should be made mandatory on departmental officers for compliance and removal of grievances. Otherwise this scheme would be just ornamental one.

24. INTEREST PAYABLE BY DEPARTMENT TO THE DEALER

At present payment of interest by the Department have been provided only in the cases of excess tax paid by the dealer which arise as a result of any order passed in appeals, revision or reference. It does not cover cases of excess tax paid as found in assessment proceedings.

It is suggested that following the principle of Income Tax Law, any excess tax paid by the dealer, which may be determined at any stage i.e. assessment or appeal or revision etc., should carry interest payable Government to dealers at the rate of interest charged from dealer on short payment of tax.

25. CENTRAL SALES TAX (CST)

The White Paper on state level VAT has accepted in principle the need of phasing out of CST. But on implementation part, it is silent for one or other reasons. At the same time the Government is citing examples of different countries where VAT has been successfully implemented, but on the point of implementation of VAT, we are dividing the whole concept into different parts. Some of the vital parts are left out and CST is one such vital part.

It is suggested that CST should be reduced to NIL on and from 1st April, 2014 against declaration forms as proposed by the earlier Union Finance Minister.

26. APPEAL UNDER CST LAW

A memorandum of appeal or an application for revision or review under CST law was amended from Bengal Common Form (No 68) to Form No. 4VA. There was no justification of introducing a separate form under the CST (W.B.) Rules 1958 by way of insertion of Rule 9C. It had been the practice in the VAT department that the one prescribed form was applicable for State Law as well as CST Law. It appears that such new prescription of form is creating confusion and leading to non-compliance.

It is therefore, suggested that the old practice of following the same prescribed form for filing of memorandum of appeal under State Law and CST Law should be followed and a new form prescribed should be deleted.

27. E-FILING OF TAX RETURNS: EXTENSION OF THE CAPACITY OF THE SYSTEM (WEBSITE)

This is to note that the companies are facing difficulties in electronically furnishing returns on the last date of filing, because the system normally crashes due to congestion. This leads to the extension of the deadline for mandatory e-filing.

Hence it is suggested that in order to ensure smooth filing and to avoid system congestion, the capacity of the system (site) should be expanded similar to CBDT and Ministry of Corporate Affairs sites.

28. PROFESSION TAX

(i) Deemed Provision for Assessment for Profession under Profession Tax Law:

At present the deemed assessment provision is applicable for the period up to 31st March 2012 U/s 7(6) of the Act.

It is suggested such provision should be continued for future years as well.

(ii) A provision was introduced for branch-wise registration and enrolment for one entity under the profession tax law. It is suggested to allow one taxable entity to have only one registration certificate or enrolment certificate as per the old law and the dealers should not be forced to obtain separate enrolment and registration for each and every branches.

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