

Ref. No. CCC-5H/10

Date: 16-01-2010

Dr. Asim Kr.Dasgupta
Hon'ble Minister of Finance
Govt. of West Bengal
Writers' Buildings
Kolkata - 700 001

Respected Sir,

PRE-BUDGET MEMORANDUM FOR WEST BENGAL: 2010-11

On behalf of Calcutta Chamber of Commerce, we have pleasure in forwarding for your kind consideration a Memorandum giving our suggestions and comments on various fiscal & financial issues, which may be of help in the preparation of the State Budget 2010-11.

Thanking you,

Yours faithfully,

SUSHIL KR. AGRAWAL
PRESIDENT

Encl. As above.

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**The Commissioner
Directorate of Commercial Taxes, West Bengal
14, Beliaghata Road
Kolkata-700 015**

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CALCUTTA CHAMBER OF COMMERCE

MEMORANDUM ON STATE BUDGET: 2010-2011

The Calcutta Chamber of Commerce is pleased to submit a Memorandum on State Budget 2010-2011 highlighting the points and suggestions for your kind consideration.

1. GOODS AND SERVICES TAX

After First Discussion Paper on Goods and Services Tax was published we had furnished our views and comments and the same was discussed with the Hon'ble State Finance Minister on 23rd November 2009. Our Chamber is eagerly waiting for Draft Legislation of GST and the road map for introduction of the same as a radical improvement in Indirect Taxation Law.

2. VALUE ADDED TAX – RATES OF TAX

- i) We invite the Notification 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 4% 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. 4% 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 4% 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 WB VAT Act and the list of such orders published in the official website of the Directorate contained 81 pages up to March 2009. It reflects the fact that there are rooms for clear provisions in the Schedule.

- ii) General rate of tax had been fixed at 12.5%, which includes commodities, which were taxed under WB Sales Tax 1994 Act at rates between 6% & 10%. Four 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 12.5% 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. All the petroleum products are excluded from the VAT and proposed to be excluded from GST. How far it would be just and fair is not clear to us.
- iv) It has been observed that few states have already enhanced lower rate of 4% VAT to 5%, perhaps to raise claim before Central Government showing as loss of revenue on introduction of GST in place of VAT. Such rate enhancement policy adopted by few states are not in accordance with White Paper published on introduction of VAT in the year 2005, wherein it was declared that 4% VAT category would be created all over India, and against public policy.

3. WAY BILL

- i) 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.

- ii) Recent endeavor of the Commercial Tax Department for e-application for issue of Way Bills is highly appreciated by one and all dealers. However, we suggest that there should be more transparency in fixation of limit of number

of Way Bills, which can be applied on electronic mode. And procedure for enhancement of such limit should be simplified and time bound.

4. VALUE ADDED TAX – INPUT TAX CREDIT

- i) Presently a manufacturer registered dealer is not entitled to claim input tax credit or rebate on purchase of 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 has not been denied under the
- ii) VAT Act. It requires review and 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.**
- 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) The recent amendments in the VAT laws of the State of West Bengal are entirely unjustified and devoid of any merit reg. Insertion 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.

The provisions such as these needs to be withdrawn and / or amended to bring uniformity, clarity and simplicity.

5. REFUND OF INPUT VAT TAX TO EXPORTERS AND 100% EXPORT ORIENTED UNITS (EOUS):

- i) Chapter-9 Part-5 of the WB VAT Rules 2005 provide procedures for revenue of tax which has undergone drastic amendment and substitutes vide notification No. 1530-FT dated 20th October 2008.

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.

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 (as proposed herein before), 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 tax 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 VAT 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.

It is also felt that the creation of Special Refund Cell 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.

6. WIDE DISPARITY OF TAX RATES

Wide disparity of tax rates between different states under the VAT Law is found which is in the knowledge of government. It is strongly suggested that there should be uniform rate of tax of all commodities throughout India. For this purpose, the forum of Empowered Committee should be utilised and all State Governments should be pursued for maintenance of uniform rate of tax.

7. WORKS CONTRACT

Works Contract are executed by small dealers. Often 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.

8. 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 from 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.

9. 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.

10. CENTRAL SALES TAX (CST)

(i) While 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, 2010 against declaration forms as proposed by the earlier Union Finance Minister.

11. **STAMP DUTY**

i) **Uniform Stamp Duty on property registration and rationalization.**

The present stamp duty on property registration in metropolitan city area is @7% and outside is @6% + 1.1% registration charges in both cases. **Already a number of states have reduced the property registration stamp duty rate to 5% + registration charges. It is also worthwhile to note here that all State Governments had assured the Union Government at some or other form that to bring uniformity rate, state will levy 5% stamp duty due to property registration + registration charges.** In view of recession on real estate market already taken by Union Government and State Governments, the stamp duty rate should be reduced to 5% without any further delay.

ii) Housing sector is drawing attention of all governments, be at union government or state government. It is proposed that a concession should be granted to LIG and MIG housing by way of rebate in stamp duty rate by introducing some mechanism whereby the cost of housing for Lower Income Group and Middle Income Group are reduced.