

CALCUTTA CHAMBER OF COMMERCE

MEMORANDUM ON STATE BUDGET: 2012-2013

The Calcutta Chamber of Commerce is pleased to submit a Memorandum on State Budget 2012-2013 highlighting the points and suggestions for your kind consideration.

1. GOODS AND SERVICES TAX (GST)

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.

A. GST (GOODS AND SERVICE TAX)

- i) It should be introduced from the 1st day of the financial year and not from any date in between a financial year.
- ii) One nation, unified common market, one law, uniform rate of tax Policy should be followed.
- iii) Octroi, entry tax, profession tax, purchase tax had been left out from SGST. We propose that GST should include all indirect taxes. Besides, Electricity duty, State Cess on minerals royalty, research and development cess, duties/taxes on tobacco/petroleum/liquor products should be brought under GST regime.
- iv) Procedural Reforms – Declaration Forms, Way Bills etc. should be dispensed with, as interstate party-wise sale figures above threshold limit would be furnished by each dealer/manufacturer through periodical returns, which would be totally computerised and available for cross check by different government agencies all over India – main purpose for which way bills and declaration forms were introduced
- v) The aim should be reduction in paper works and ease of compliance.
- vi) Attempt should be to remove Inspector Raj.
- vii) Administration of CGST and SGST preferably be made by one authority and one return form should serve the purpose of both.
- viii) GST should be introduced all over the country on a single date preferably from the commencement of the financial year.

- ix) Dept. Audit under CGST or SGST should be used vice versa and one manufacturer/dealer should not be subjected to audit under both divisions before different authorities.
- x) All amendments in GST should be approved by a governing body like Empowered Committee of State Finance Ministers.
- xi) GST should be implemented simultaneously in all the states all over India.

B. SUGGESTIONS FOR DRAFTING OF GST LAW

- i) Definitions and procedural aspects should be clear and in simple words and in harmony with existing laws.
- ii) Co-operative Housing Societies, charitable institutions/NGOs should not be included as taxable entities.
- iii) Classification of goods and services should be based on international norms. Harmonised System of Nomenclature (HSN) Code should be used for classification of goods; international standard of industrial classification (ISIC) should be used for classification of activities and services.
- iv) Valuation Rules should be based on consideration only and notional valuation rules should not be introduced.
- v) Minimum rate of taxes be introduced following rate structures appears to be acceptable to all concerned.
 - a) Nil rate for exempted goods and services.
 - b) Nominal rate (1%) for special cases.
 - c) Lower rate for industrial inputs and specified goods and services - petroleum products should be introduced under this category to fight against international high prices of crude oil resulting hike in retail price of petroleum products - cause of concern.
 - d) General rate for other goods and services - should be revenue neutral rate.
 - e) Special rate for liquor/tobacco.
- vi) Composition scheme for small dealers and service providers - there should be a provision for designing composition scheme for small dealers (manufacturer, reseller, importer, service provider) having turnover up to Rs.60 lakhs/100 lakhs. The charge of liability by paying nominal composition percentage of total turnover of sales and service in lieu of CGST and SGST with facility of freedom from maintenance of regular books and accounts, save and except maintaining copies of bills/tax invoice and bill listing.

- vii) IGST should be collected on import of goods in place of custom duty and credit of the same should be allowed to the state in which imported goods are consumed to the extent of IGST credit is used for payment of SGST by manufacturer/dealer.
- viii) Export/import and sale in course of import and export, last sale prior to export should continue to remain exempted under GST regime (presently covered under Sec.5 of Central Sales Tax Act). Similarly supplies to SEZ, STP and EOU units and SEZ developers should continue to be zero rated. There should be no tax on outputs with easy and appropriate mechanism for corresponding credit/refund of input tax credit.
- ix) Supplies to other exporters may be taxed at normal rate with corresponding simple and easy refund mechanism to the exporter at the time of export.
- x) Input tax credit (ITC) paid on all legitimate business expenses (both goods and services) incurred should be allowed irrespective of their nexus with production / sale of goods and services. There appears no rationale to restrict ITC, where expenses are allowed in computation of business income. Major components of manufacturing cost are fuel and electricity. Presently it is classified under negative list of WB VAT Act. It is suggested that no such restriction should be there under GST regime, so that the cascading effect of taxes are eliminated. Obsolescence, damages due to natural and other causes are unavoidable in industry and trade. These are integral part of cost of manufacture/sales/services. It is suggested that such losses should not result in reversal of ITC.

It is also suggested that ITC should be available to the purchaser without insisting for verification of deposit of tax by the suppliers. The supplier should be penalised for non-remittance of taxes collected from the purchaser and not vice versa. Full ITC should be allowed on all capital goods in the year of purchase/acquisition. However, dealers/manufacturers/service providers, opting for composition scheme may be denied the benefit of ITC. Alternatively, they may be permitted for restricted ITC depending upon the design of composition scheme.

- xi) Registration procedure should be simple and electronic.
- xii) Payment of taxes should be electronic or manual. However, in case of lower amount of taxes, it should be left upon to the convenience of the assessee.
- xiii) Filing of return should be simple, common and electronic (above threshold limit). Electronic return should not be imposed on small dealers/manufacturers below the threshold limit.
- xiv) Refund should be hassle free. Provisional refund to the extent of 90% should be granted within a week of filing of return and final refund should be given within a

month time. Rate of interest of delayed refund should be the same as that of delayed payment of tax by the assessee.

- xv) There is no need of State Border check post and declaration forms should be eliminated. However, international border check post has to be there.

C. PRESENT STATE TAX- VAT

Although on introduction of GST (expected within one year) the present VAT Law would be repealed, there remains certain anomalies in the present law, which requires to be addressed immediately and in some cases with retrospective effect. Our suggestions on the present law for your kind consideration are:

1. WAY BILL

Under the new VAT regime all the registered dealers have a unique Registration No. on all India bases. 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.

2. 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 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 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) 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 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.

3. 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) 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.

- vi) Large number of assessment orders based under VAT Act show a common trend- i.e. disallow input tax credit on the ground of Sec 22 (11), proper books of accounts, registers not maintained as per Sec.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.
- vii) Up to 31st March 2008 the re-sellers are entitled to input tax credit on capital goods used to keep the resale goods in saleable condition but at present such input tax credit is not allowed to re-sellers.

It is humbly suggested that the definition of capital goods should be amended to provide the relief from executing tax effect to resale dealers.

4. A. REFUND OF INPUT VAT TAX TO EXPORTERS AND 100% EXPORT ORIENTED UNITS (EOUS) & Other Dealers:

- i) Rules have been amended and new trade circulars have been issued like Trade Circular No. 11/2011 dated 01.08.2011 (Para C) whereby the instructions had been issued to refund 90% of the claim amount instead of old 75% through National Electronic Fund Transfer (NEFT) system within the prescribed time. But the experience of the exporters reveals that no ground reality refunds are held up for one or other whimsical grounds.
- ii) 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.
- iii) 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.
- iv) 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.

- v) 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.
- vi) 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.

Simplified procedure for issue of refunds should be introduced and procedural rigors should be dispensed with and stress should be given for implementation of policy decisions.

4.B. REFUND OF INPUT VAT TAX TO INDIGENOUS MANUFACTURING DEALERS

- i) 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 the payable for dispatch of finished goods thereby making them eligible to get refund of tax so paid in excess which is due to the nature of trade they deal with. This is mainly due to the fact that purchases are in the State- Tax Rate 4% or 12.5/13.5% whereas the place of dispatches is outside the State- Tax Rate @2% with 'C' Form.
- ii) Since introduction of VAT on and from 1st April 2005, manufacturing dealers other than exporters have not got refunds and the amount of refund is piling up year after year, which is adversely affect such industries.

Suggestion :

In order to remove the tax cascading effect it is suggested that the simplified system of refund to manufacturing dealers should be granted in line with Declaration Form 12A under VAT Rules.

5. DEPARTMENTAL VAT AUDIT

- A. The objective of the Departmental VAT Audit was to collect the revenue and it was not aimed at harassing the dealers. At the grass route level it is felt by large number of dealers that more time is spent by Audit Officers on checking of relevant documents and/or extraneous issues from accounts and records which have no relevance with VAT demand. A guideline / White Paper should be issued on procedural aspects of Departmental VAT Audit so that dealers are not harassed in future. Such guideline/White Paper would be used under GST regime as well.

- B. It is strongly suggested that all cases referred in the Departmental VAT Audit should not go back to Assessing Officer and the Audit Officer should pass the assessment order to remove the duplicity of production of records and documents of one year before two sets of officers.

6. **RETURN FORMS**

At present Return Forms under VAT Law is highly complicated for small and medium dealers. The simplified return form should be introduced following examples of Income Tax Return Forms (Assessment Year 2011-12)– ITR 1 Sahaj; ITR 4 S .

7. **TAX ARREAR – EARLY REALISATION THROF**

For reduction of tax arrears, it is suggested that a **Settlement of Dispute Scheme (SOD)** should be introduced under VAT Law as well as old Sales Tax Act i.e. 1941 & 1994 Acts and Central Sales Tax Act including Certificate cases. Such scheme would help collection of revenue blocked in appeals. In other words, such measure will augment the revenue collections. At present revision cases are pending for years and revenue collection is affected adversely. Recent amendment for Certificate Cases only will not bring desired result.

It is suggested that such scheme should be implemented for tax arrears cases irrespective of the fact whether appeals and revisions are pending or not, case is before Certificate officer or not.

We suggest that tax arrear 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 whether tax due is more than one crore settlement amount should be 15%.

Above suggestion will bring tax arrears which are unreliabile in the next 2-5 years and ultimately major part of it would be collected in one year. Simultaneously on the other hand it will reduce pendency of appeals and revision cases to a great extent.

8. **Under utilization of manpower** – regulatory measure would save govt. expenditure:

- i) After introduction of Pay Commission recommendations, salary constitutes major part of State Government revenue expenditure. With the introduction of deemed assessment procedures, the time required for computing the assessments had reduced, thereby filing of fresh appeals had reduced drastically resulting lower workload on the officers in the appeal process.

It is suggested that a High Level Committee should re-assess the workload of the officers concerned and shift surplus officers to other departments, where government development plans are delayed for want of manpower. In other words, without incurring additional revenue expenditure the State Government may achieve its target of **“Transforming West Bengal into the league of progressive and forward looking states of the country”** i.e. **“PARIBARTAN”**.

- ii) To clear the backlog of Appellate & Revisional Board Fast Track Benches were introduced. Cases involving revenue dispute up to Rs.20 lakh, which is presently headed by 3 Member Bench under First Track Scheme. Additional Commissioners are posted as members of the bench. On the other hand, the present Appellate & Revisional Board is having only one member, where the cases are involving revenue dispute up to Rs.50 lakhs. The rank of the Board member is equivalent to Additional Commissioner rank. It is felt that use of three members under the First Track Scheme is misuse of experienced and costly manpower.
- iii) Similarly vigilance machinery should be strengthened for proper and strong administration.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. **STAMP DUTY**

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

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.
- iii) There are various parameters for fixation of market value for the purpose of levy of stamp duty. Since these parameters are not transparent and known to the public at large, the applicants are unable to make use of the same. Such hidden factors, however, leads to corruption.
- iv) Valuation of property should not be changed frequently. Valuations should be based on a committee of persons comprising of valuers, architects and representatives from construction industry.
- v) **Suggestions to augment State revenue on Financial Transactions:**

Stamp Duty on Pledge is presently 1% in W.B. whereas it has zero stamp duty in Delhi (if unattested) and capped at Rs.50,000 (if attested); Delhi model should be followed in West Bengal as well.

Stamp Duty on document evidence mortgage by deposit of title deed is 1% in Kolkata, in Delhi the same is capped at 50,000;

Stamp Duty on Deed of assignment (except for securitization) is based on ad valorem, the same may be capped at a reasonable value like Pledge, mortgage(suggested herein before).