

WEST BENGAL

Sales tax was introduced in the erstwhile State of Bengal in July 1941 by the enactment of the Bengal Finance (Sales Tax) Act, 1941. At present, apart from the CST Act, 1956, the following enactments are in force in the State for the levy of sales tax:

- A. The Bengal Finance (Sales Tax) Act, 1941.
- B. The West Bengal Sales Tax Act, 1954.
- C. The West Bengal Motor Spirit Sales Tax Act, 1974.

In addition, a tax on the purchase of raw jute is levied under the Bengal Raw Jute Taxation Act, 1941.

The Bengal Finance (Sales Tax) Act, 1941 was enacted for imposing tax at the last-point on the sale of goods. Subsequently, low rate multi-point tax for intermediate transactions in addition to the last-point tax was also introduced into the system.

The West Bengal Sales Tax Act, 1954 was enacted to prevent evasion of tax by providing for the levy of first-stage tax in respect of specified goods which are manufactured, made or processed in West Bengal or brought into West Bengal from outside the State. In respect of commodities notified under the WBST Act, 1954, the provisions of the Bengal Finance (Sales Tax) Act, 1941, are not applicable, with the exception that Section 6D regarding works contract extends to notified commodities taxable under the West Bengal Sales Tax Act, 1954 also. For attraction of liability for turnover tax under Section 6B of the Bengal Finance (Sales Tax) Act, 1941, turnover under the West Bengal Sales Tax Act, 1954 is also included.

The West Bengal Motor Spirit Sales Tax Act, 1974 governs the levy of sales tax on motor spirits.

1. Structure

The liability to pay tax under the Bengal Finance (Sales Tax) Act, 1941 is for the dealers with gross turnover exceeding the taxable quantum within an accounting year. The "taxable quantum" for different dealers is:

- i. Rs.20,000 for any dealer who imports goods for sales in West Bengal.
- ii. Rs.50,000 for a manufacturer or producer of goods other than cooked food.
- iii. Rs.1 lakh for any dealer who manufactures or produces cooked food for sale.
- iv. Rs.2 lakh for any other dealer.

Taxable quantum is 'nil' for a certified dealer in certain specified goods notified under the 1941 Act. Cotton cloth, timber, groundnut oil, bricks, etc. are some of the goods falling in this category. Taxable quantum is also 'nil' in respect of dealers dealing in goods notified under the West Bengal Sales Tax Act, 1954. Similarly all sales of motor spirits are liable to tax under the West Bengal Motor Spirit Sales Tax Act, 1974.

Point of Levy: Under the Bengal Finance (Sales Tax) Act, 1941, tax is levied at the last-point with multi-point taxation at low rates on intermediate sale transactions.

The West Bengal Sales Tax Act, 1954, provides for tax at the first stage on manufacturers, processors or importers of goods notified under this Act.

Sale of motor spirit is taxed at the point of first sale.

Rate Structure: The West Bengal Finance (Sales Tax) Act, 1941 prescribes a multiple rate system, ranging from 1 per cent to 15 per cent, with intermediate rates of 2,3,4,8,11 and 15 per cent. The minimum of 1 per cent is levied on gold of fineness not below 90

per cent, rice, wheat and hosiery goods (other than cotton and woollen hosiery goods), mustard oil, rapeseed oil and blends of mustard and rapeseed oils. Readymade garments other than hosiery goods and garments made of khaddar or khadi are taxed at 2 per cent. Lottery tickets are taxed at the maximum rate of 20 per cent. The general rate of tax is 8 per cent.

The West Bengal Sales Tax Act, 1954, provides for specific commodities to be taxed at rates not exceeding 15 per cent. Special notifications are issued in respect of commodities notified under this Act, and so far 98 groups of commodities have been so notified. Rates range from 2 per cent to 15 per cent. All non-cotton yarn other than coir yarn and pure silk yarn attract tax at 2 per cent. Power tillers suffer tax at 3 per cent. Fertilisers, insecticides, drugs, paper boards and straw boards and ships are taxed at 4 per cent. Cigarette cases, video cassette recorders, processed food, dry or preserved fruit, television sets, and a number of other commodities are taxed at 15 per cent.

Under the West Bengal Motor Spirit Sales Tax Act, rates of 2,5,8,9,10,12 and 25 per cent are in effect. Furnace oil sold to manufacturers is taxed at 2 per cent. The general rate of tax on sale of furnace oil is 8 per cent.

Additional Tax: Every dealer liable to pay tax under relevant sections of the Bengal Finance (Sales Tax) Act 1941 and West Bengal Sales Tax Act 1954, should in addition to the tax payable by him pay an additional Sales Tax at the rate of 15 per cent of the total amount of tax payable except in respect of the tax payable on the sale of declared goods and such other sales as may be prescribed.

Purchase Tax: Under the BF (Sales Tax) Act, purchase tax is payable under the following circumstances:

- i. by manufacturing registered dealers:
 - at 4 per cent in respect of purchases made from unregistered dealers of goods other than gold, rice and wheat intended for direct use in manufacture of goods in West Bengal for sale, and of containers and other material for packing of goods so purchased or manufactured.
 - at 3 per cent in respect of purchases made from registered dealers against declarations made in Form XXIV-A for use in the manufacture of goods or by way of packing materials when such manufactured goods are transferred to a place outside West Bengal or disposed of otherwise than by way of sales in the State.
- ii. by registered dealers:
 - at 4 per cent on purchases from unregistered dealers or persons, of goods other than gold, rice and wheat intended for a purpose other than for direct use in the manufacture of goods for sale in West Bengal.

Works Contract: Any transfer of property in goods, whether as goods or in some other form, involved in the execution of a works contract, is deemed to be a sale of those goods by the person making the transfer. Liability to pay tax arises where contractual transfer price exceeds Rs.2 lakh in a year. The tax rate is 4 per cent on the taxable contractual transfer price arrived at after permissible deductions.

Leasing: 'Sale' includes any transfer of right to use any goods for any purpose, whether or not for a specified period, for cash or deferred payments, etc. The tax is levied at 4 per cent and for video cassette tapes it is 20 per cent.

Exemptions: Schedule I to the BF (ST) Act specifies 26 tax-exempted goods. These include, as in other States, essential commodities such as cereals (excluding rice and wheat) and pulses, wheatflour, bread, salt, vegetables, fresh fruits, etc. Inputs such as cotton, cotton yarn, electrical energy, mustard seed, furnace oil, etc. are also exempted. To encourage cottage industries, exemption has been accorded to silkworm eggs, articles made of bamboo, clay utensils, etc., and also to biogas plants. Moreover, the rules provide for exemption on certain other goods.

Under the WBST Act 1954, powers have been vested with the State Government to grant exemption in respect of any commodity if it is satisfied that it would serve public interest.

Turnover Tax: This tax was imposed with effect from 1.4.1979. If the turnover exceeds Rs.25 lakh in any accounting year, the concerned dealer has to pay a turnover tax for three successive years that follow, irrespective of the turnover in those three years. The rates applicable are as under:

- i. If the gross turnover exceeds Rs.50 crore during the year in respect of which the turnover tax is levied, 2 per cent of gross turnover.
- ii. If the gross turnover exceeds Rs.1 crore but does not exceed Rs.50 crore, 1.5 per cent of gross turnover.
- iii. If the gross turnover exceeds Rs.50 lakh but does not exceed Rs.1 crore, 1 per cent of gross turnover.
- iv. In other cases, 0.5 per cent of gross turnover.

In computing the gross turnover under both the Acts, *viz.*, BF(ST) Act and WBST Act have to be aggregated.

Under the WB Motor Spirit Sales Tax Act, turnover tax is levied at one and a half per cent of the turnover on all dealers.

Turnover tax under any of the three Acts is not recoverable from the purchasers.

Taxation of Inputs: Concessional treatment is accorded to inputs of raw material and machinery when these are used directly in the manufacture of finished taxable goods, news papers or motor spirit for sale in West Bengal. Raw material sold to a manufacturing dealer registered in the State is taxed at 2 per cent against the production of Form XXIV-A. If, however, finished goods are not sold within the State or are

transferred outside the State in the course of inter-State trade or commerce or exports out of India, the purchasing dealer has to pay 3 per cent on the purchase price as purchase tax in addition to a payment of 2 per cent as sales tax.

The provisions of both BF (ST) Act and WBST Act are identical in this regard.

Incentives to Industries: Small Scale Industries are entitled for tax holiday for 3 to 5 years if the unit is situated within or beyond the Calcutta Metropolitan Planning Area provided that the investment on plant and machinery excluding the value of land and building does not exceed Rs.10 lakh.

Provision for deferment of tax or, in the alternative, remission of tax is available to the new industrial units or even expanded portions of existing units and the dealer can opt for any one scheme. Tax payable according to return or account of sale of goods manufactured or on account of purchase of goods for use in the manufacture of such goods in respect of a newly set up industrial unit or in the expanded portion of an existing unit in the State (except in the areas under the jurisdiction of Calcutta Municipal Corporation) may be deferred or remitted upto a fixed percentage of the gross value of fixed capital assets. The deferment benefit is available to new units having fixed capital investment of Rs.10 lakh or above. No such limit is applicable to units claiming remission of tax.

2. Registration

Every dealer except a certified dealer who is liable to pay tax must obtain a certificate of registration. A certified dealer must initially obtain a special certificate and thereafter, a certificate of registration in terms of the usual provisions for registration applicable for all dealers. Separate certificates have to be obtained under

each Act if the dealer comes under its purview and becomes liable to pay tax. Provisional certificates are issued to dealers who commence the manufacture of goods to enable them to buy goods (Superintendent with Certificate) without payment of tax.

A new dealer may voluntarily get himself registered even if his turnover is less than the taxable quantum but exceeds Rs.10,000 during his accounting year.

3. Assessment

Returns:

- i. *BF(ST) Act:* The BFST Act provides for monthly payments but quarterly returns to be filed by the dealers. Except in the case of dealers whose aggregate tax payment in an accounting year does not exceed Rs.12,000, annual returns are to be filed for the following year.

The time prescribed for filing returns 30 days from the close of the quarter or the year as the case may be. Failure to make payment as per quarterly or annual return as above attracts interest at the rate 2 per cent per month.

- ii. *WBST Act:* Ordinarily, returns have to be filed on a monthly basis but Assistant Commissioners have powers to allow the filing of a quarterly return. The time limit for filing returns are 21 days.
- iii. *The Bengal Motor Spirit Sales Tax Act:* Monthly returns have been prescribed under the Act which are to be filed by the end of the subsequent month.

Mode of Assessment: In a case where no returns have been filed or returns filed are not considered to be correct, assessment may be completed on best judgement after giving the dealer an opportunity of being heard.

The time prescribed for completing the assessment is four and six years respectively for registered and unregistered dealers. Provisions for completing such assessments by 30th June for dealers whose accounting year ends during the first half of the English calendar year and by 31st December for dealers whose accounting year ends during the second half, are made under the Act.

Both the BF(ST) Act 1941 and the WBST Act, 1954 provide for summary assessment of small dealers. Summary assessments were completed for all eligible periods in respect of all registered dealers whose gross turnover assessed on or before 1.6.1990 under Act '41 or Act '54, or the aggregate gross turnover, if the dealer is registered under both the Acts in respect of the latest period of one full year which ended on or before 30.6.1986 did not exceed Rs.10 lakh. For all the eligible periods the dealer is assessed on the basis of his return without being called upon to produce books of accounts.

4. Penalty and Prosecution

Penalties:

- i. Penalty is leviable if a registered dealer fails to submit a return in respect of any period. Such penalty is not to exceed one and a half times the amount of the tax determined to be payable. The penalty, however, is to be restricted to 50 per cent of the tax where interest is payable under the provisions of the law for any shortfall in the amount of tax paid by the dealer.
- ii. Penalty may also be imposed for failure to pay any tax found to be payable after the assessment of such tax has been made and the date of payment thereof has expired, but no penalty shall be imposed in respect of assessment for which interest is payable.
- iii. Where notified goods/commodities are found being transported in contravention of the provisions of the law, a penalty not exceeding 25 per cent of the value of such goods/commodities is imposable.
- iv. For concealment of sales or furnishing inaccurate particulars with the intention of reducing tax liability, the penalty amount may not exceed one and a half times the amount of tax sought to be evaded.
- v. Where a dealer fails to issue cash memo or bill for sale exceeding Rs. 20, penalty of a sum equal to double the amount of tax which could have been levied in respect of unsupported sale or Rs.500, whichever is greater will be imposed.

Prosecution: Certain offences under the Act are punishable with imposition of fine or imprisonment, or both as summarised below:

<i>Nature of Offence</i>	<i>Punishment</i>
i. Transporting goods at railway station, steamer station, airport, etc. in contravention of law.	Simple imprisonment which may extend to six months or with fine or both if the offence is a continuing one, a daily fine not exceeding Rs.50 during the period of continuance of default is imposed.
ii. Carrying on business as a dealer without furnishing security demanded.	
iii. Selling notified goods imported by manufacturers from outside West Bengal without obtaining a special certificate.	
iv. Submitting false return or failure to file any return.	
v. Failure to keep proper accounts of goods purchased and sold.	
vi. Failure to produce accounts or furnish information in compliance with any notice.	
vii. Realising Turnover tax from purchasers.	
viii. Carrying on business without obtaining Registration Certificate.	Simple imprisonment upto one year or minimum fine of Rs.1000 or both. If the offence is a continuing one, a daily fine upto Rs.100 may be imposed.

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| ix. False representation by a registered dealer that certain goods are covered by his certificate of registration and false representation by an unregistered dealer that he is a registered dealer. | Simple or rigorous imprisonment upto six months or fine or both. If the offence is a continuing one a daily fine not exceeding Rs.100 may be imposed. |
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Offences such as submitting incorrect accounts, abatement of any offence, etc. are also punishable with imprisonment and fine.

5. Administrative Organisation

The Commissioner of Commercial Taxes is the administrative head of the department. He is assisted by Additional Commissioners who are assigned such functions of the Commissioner as the State Government may notify. The Assistant Commissioners, Commercial Tax Officers and Inspectors of Commercial Taxes are in the next rung of the Officers.

For the sake of administrative convenience, the State of West Bengal is divided into 16 circles with a central section and one assessment wing. Circles constitute 66 charges formed on the basis of geographical location and are headed by Assistant Commissioners, while a charge is looked after by a senior Commercial Tax Officer. The Central Section and an assessment wing, exercise their jurisdiction all over the State looking after prevention of evasion, and assessment of big dealers respectively and are headed by Assistant Commissioners.

The first appeal against the assessments made by Commercial Tax Officers lies before the Appellate Assistant Commissioner and the second appeal lies before the West Bengal Commercial Taxes Tribunal. In the exercising of the powers conferred

under Article 323B of the Constitution, the State Government has set up a Taxation Tribunal for final adjudication of sales tax disputes which implies that the writ/reference/appellate jurisdiction of the High Court has been withdrawn.

The cases of top 700 assesses in the State who account for 53 per cent of sales tax revenue are assessed in a special assessing circle assessed by Commercial Tax Officers and supervised by Assistant Commissioners.

6. Appeal and Revision

The provisions of appeal and revision are almost similar for all the Sales Tax Act in West Bengal. An appeal against an order of the Commercial Tax Officer lies to the Assistant Commissioner and an appeal against the assessment order passed by an Assistant Commissioner lies to the Commissioner. The Tribunal may upon application revise the final appellate order on an order of assessment passed by the Assistant Commissioner.

The Assistant Commissioner may either on application or suo moto, revise an assessment order or a miscellaneous order of the Commercial Tax Officer. Tribunal is the competent revision authority for revising the order passed by the Assistant Commissioner relating to the assessments and the Commissioner is the competent authority for revising the revisionary order of the Assistant Commissioner in respect of miscellaneous orders passed by the Commercial Tax Officer.

7. Checkposts

There are 33 checkposts and notified places located at the different railway stations in Calcutta, Dum Dum airport, dockyards under Calcutta Port Trust and at the State borders. Goods arriving at the railheads, airport and dockyards are released only after being cleared by the appropriate commercial tax authorities on duty. Clearance is

given after verification that the requisite permit issued by the Commercial Tax Department in respect of the consignment has been submitted at the checkpost. Besides, there are range checkposts to administer the regular checkposts.

Similarly, road checkposts also ensure that the goods being freighted are accompanied by permits issued by the area offices. Absence of such a permit may lead to seizure of goods and their release can be effected only after recovery of prescribed penalties.

Transit permits are issued by the border checkposts for the movements of goods from outside State to outside State.