

CHAPTER II: COMMERCIAL TAX

2.1 Results of audit

Test check of assessment cases and other records relating to Commercial Tax Department during the year 2008-09 revealed underassessment, non/short levy of tax and penalty, application of incorrect rate of tax etc., involving Rs. 181.03 crore in 1,234 cases which can be categorised as under:

(Rupees in crore)

Sl. no.	Category	Number of cases	Amount
1.	Transition from Madhya Pradesh Commercial Tax to Value Added Tax (A Review)	01	2.88
2.	Non/short levy of tax	484	109.25
3.	Incorrect grant of exemption/deduction/set off	158	15.22
4.	Application of incorrect rate of tax	206	11.62
5.	Incorrect determination of taxable turnover	78	5.83
6.	Other irregularities	307	36.23
Total		1,234	181.03

During the year 2008-09, the department accepted underassessment of tax of Rs. 39.97 crore in 497 cases. All these cases pertained to 2008-09. The department recovered Rs. 82 lakh in 14 cases during the year.

A review on '**Transition from MP Commercial Tax to Value Added Tax**' and few illustrative audit observations involving Rs. 19.48 crore are mentioned in the following paragraphs.

2.2 Review on “Transition from Madhya Pradesh Commercial Tax to Value Added Tax”

Highlights

- Cross verification of sale could not be conducted due to lack of provision in the Act to furnish sale list.
(Paragraph 2.2.7.2)
- Lack of mandatory provision for furnishing security by the dealers resulted in non-realisation of revenue of Rs. 2.18 crore.
(Paragraph 2.2.7.5)
- Incorrect availing of inventory rebate and input tax credit of Rs. 15.70 lakh.
(Paragraph 2.2.11.1)
- Loss of revenue of Rs. 50.73 lakh due to non-levy of tax on fabric, sugar and tobacco products.
(Paragraph 2.2.12)

2.2.1 Introduction

The empowered committee of State Finance Ministers constituted by the Government of India on 23 January 2002 unanimously decided to introduce Value Added Tax (VAT) in all States and Union Territories with effect from April 2003. White paper prepared by the committee inter alia specified that:

it would eliminate cascading effect due to credit of tax paid on purchase for resale or for use in production;

Other taxes will be abolished and overall tax burden will be rationalised;

Overall tax would increase and there will be higher revenue growth;

There would be self assessment by dealers and set off will be given for input and tax paid on previous purchases.

The Government of Madhya Pradesh repealed the Madhya Pradesh Commercial Tax Act, 1994 (CT) and enacted the Madhya Pradesh Value Added Tax Act (Act), 2002 which came into effect from 1 April 2006 with certain amended provisions. The MP VAT Rules, 2006 (Rules) govern the administration of the Act under the new dispensation. A dealer registered under the repealed Act continued to be so registered under the MP VAT Act. Every dealer, whose turnover during the period of 12 months immediately preceding the commencement of the Act exceeds Rs. five lakh, shall be liable to pay tax. Besides, there is a provision for identification of unregistered dealers through periodic surveys. Unlike the commercial tax regime there is no statutory assessment of dealers. Those dealers who have filed their returns within the prescribed period, deposited tax and interest would be deemed to be covered under self-assessment. The Act provides for tax audit, which shall be completed within a period of six months from the institution

of the proceedings. The department had set up the deadline of June 2009 for assessment of the cases of 2006-07.

A review on transition from sales tax to VAT in Madhya Pradesh was conducted which revealed a number of deficiencies as discussed in the following paragraphs.

2.2.2 Organisational set up

The Principal Secretary, Commercial Taxes Department is the administrative head of the Department at the Government level. The Commissioner of Commercial Tax (CCT) is the head of the department. The department is divided in four zones, each headed by zonal Additional Commissioners. Each zone comprises of the divisional offices headed by 13 divisional Deputy Commissioners (DC). Under these divisions, there are 78 circle offices headed by the Commercial Tax Officers/Assistant Commissioners (CTO/AC).

2.2.3 Audit objectives

The review was conducted to ascertain whether:

- planning for implementation and the transition from the CT Act to VAT Act was effected timely and efficiently;
- organisational structure was adequate and effective;
- the provisions of the VAT Act and the Rules were adequate and enforced properly to safeguard revenue of the State; and
- adequate and effective internal control mechanism existed in the department to prevent leakage of revenue.

2.2.4 Scope of audit

Records and returns/assessments for the year 2006-07 and 2007-08 of six¹ CTOs/ACs were test checked in audit between May 2009 and September 2009. The selection of units was done through simple random sampling method. Besides, information was collected from the office of the Commissioner, Commercial Tax, three² out of five divisional offices (tax audit) and five³ CTOs/ACs.

2.2.5 Acknowledgement

The Indian Audit and Accounts Department acknowledges the co-operation of the Commercial Tax Department for providing information and records to audit. The findings of the review were communicated to the department/Government in August 2009. Reply of the department/Government has not been received (October 2009). Exit conference to discuss the audit findings and recommendations was not arranged by the department despite formal requests (August 2009).

¹ CTO Circle VIII and IX Indore, Circle- IV Gwalior, AC Indore (2) and AC Bhopal.

² Divisional Office (Tax Audit), Division I and II Indore and Gwalior.

³ CTO Circle I, II, III Gwalior and AC Gwalior (2).

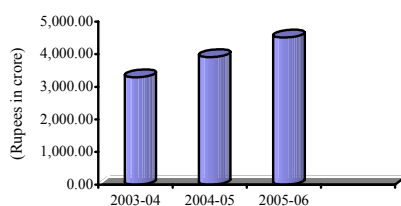
Audit findings

2.2.6 Pre-VAT and post-VAT tax collection

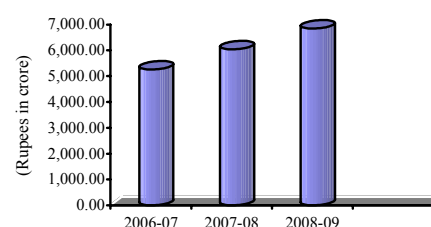
The comparative position of pre-VAT commercial tax collection (2003-04 to 2005-06) and post-VAT (2006-07 to 2008-09) tax collection and the growth rate in each of the years is shown below:

(Rupees in crore)

Pre-VAT			Post-VAT		
Year	Actual collection	Percentage of growth (over previous year)	Year	Actual collection	Percentage of growth (over previous year)
2003-04	3,293.26	13.32	2006-07	5,261.41	16.70
2004-05	3,912.01	18.79	2007-08	6,045.07	14.89
2005-06	4,508.42	15.25	2008-09	6,842.99	13.19



Actual collection (Pre VAT)



Actual collection (Post VAT)

2.2.7 Deficiencies in the Act and the Rules

The review revealed a number of deficiencies in the provisions of the VAT Act and the Rules. Some of the important deficiencies are discussed below:

2.2.7.1 Loss of revenue due to lack of any provision to mention the name of commodity in the form prescribed for filing return

Rules 21, 22 and 23 of MP VAT Rules (Chapter VI) provide that every registered dealer shall furnish to the appropriate CTO for each quarter of a year, a quarterly return in Form 10. **Part B of the form mentions the rate of tax for computation of VAT but does not have the provisions to mention the name of the commodity against the rate of tax. In the absence of the name of the commodity, the exigible rate of tax cannot be verified.** In earlier Commercial Tax Act, the commodity and its code number were mentioned in the return filed by the assessee. As most of the cases under the VAT regime are to be covered under self-assessment, it is not understood how the department planned to scrutinise the returns in the absence of such basic details.

Test check of records of CTO, Circle VIII, Indore revealed that motor parts valued at Rs. 13.51 lakh was shown in the assessment order to be sold at the rate of four *percent* in place of 12.5 *percent*. This led to short realisation of revenue of Rs. 1.14 lakh.

After this was pointed out, the CTO replied (May 2009) that 'bearing' was in stock, which was sold at the rate of four *per cent*. The fact, however, remains that there was no documentary proof to sustain the contention that 'bearing' was sold. This would have been avoided if there was provision in Form 10 to mention the name of the commodity.

The Government may consider amending the format of quarterly return to accommodate the name of the commodity and its code number in the interest of revenue.

2.2.7.2 Absence of cross verification of sales due to lack of provision in the Act to furnish sale list

Part J of Form 10 (prescribed for filing returns) provides for furnishing dealer wise list of purchases exceeding Rs. 25,000 in the quarter for goods specified in Schedule II. **There is no provision in the Act/Rules to furnish sale list, in the absence of which the department could not conduct cross verification of sales.** During the Commercial Tax regime, sale and purchase lists of more than Rs. 20,000 were to be submitted with the returns as per the Commissioner's circular (November 1997) to facilitate cross verification.

After this was pointed out, no reply was given by the department.

The Government should consider prescribing mandatory furnishing of sale list in Form 10 for proper cross verification of the transactions of a dealer. It may also consider issuing instructions to the dealers for receiving consideration through cheques or bank drafts for sale above Rs. 25,000.

2.2.7.3 Absence of provision in the Act/Rule to include purchase from unregistered dealers

As per Section 11 of the Act, a registered dealer purchasing goods specified in Schedule II from another such dealer within the state after payment to him of tax under Section 9 and/or purchasing goods specified in Schedule I and whose turnover in a year does not exceed Rs. 50 lakh, may opt, in the prescribed form, for payment, in lieu of tax, a lump sum at such rate not exceeding four *per cent*. **The quarterly return prescribed under this section (Form 5), however, does not have the provision to capture purchase from unregistered dealers for levy of Purchase tax.**

The Government may consider modifying the format of the return providing details of purchases made from unregistered dealers as well.

2.2.7.4 Loss of revenue due to lack of any system for cross verification in case of export

Export of goods is conducted through Form H under the CST Act. However, there is no provision in the Act for cross verification of the particulars mentioned in the bill of lading to safeguard revenue.

Test check of records of CTO Circle VIII, Indore revealed that auto parts of Rs 1.13 crore was exported and Form H was submitted in support of the claim. It was observed that neither any proof regarding customs clearance was available nor a copy of agreement was submitted. The consignee name was also not found in the bill of lading. This resulted in non levy of tax of Rs. 14.09 lakh at the rate of 12.5 *per cent*.

After this was pointed out, the assessing authority stated (May 2009) that Form H, bill of lading and sales bill were submitted in the case. He further stated that agreement was done on telephone and exported through agent; hence, customs clearance certificate was not necessary. The reply underscores the need to prescribe further checks in cases of export to safeguard revenue.

2.2.7.5 Lack of mandatory provision for furnishing security by the dealers

Sub section 12 (a) of Section 17 of the Act lays down that the Commissioner may, for the proper realisation of tax, from time to time, demand from a registered dealer reasonable security as may be prescribed to be furnished. Rule 20 prescribes that the amount of security shall be the highest amount of tax payable by such dealer in any quarter of the previous year subject to maximum of Rs. one lakh or where there is no previous year, Rs. 10,000. **The provisions are not mandatory. However, to prevent loss of revenue, the dealers should be analysed case by case to assess the scope of leakage and realisation of security determined. Audit scrutiny revealed that there was no such system of analysis of dealers for recovery of security deposit to safeguard revenue.**

Test check revealed that in two CTOs (Circle VIII and IX, Indore) registration of 2,176 dealers was cancelled due to non-submission of returns. It was, however, noticed that though the registrations were cancelled due to non-submission of returns, there was nothing on record to show that any assessment was attempted to ascertain the revenue accrued from these dealers. If the provision for security had been mandatory, the department would have recovered at least Rs. 2.18 crore from these defaulting dealers.

After this was pointed out, the CTO stated (May 2009) that the provision for security was not mandatory.

The Government may consider making it mandatory to realise security deposit from all dealers based on their volume of transactions.

2.2.7.6 Inconsistency between the Act and Rules

Under Section 57 (8 and 10) of the Act, the check post officer is empowered to levy penalty on the transporter for violation of sub section (2). Sub section 12 further states that if the penalty is not paid within 15 days of the service of the

order, the check post officer shall cause the goods to be sold in such manner as may be prescribed. However, Rule 74 (4) lays down that if the amount of penalty under sub section 8 and 10 of Section 57 of the Act, is not paid within 30 days of the service of the order, the check post officer shall serve a notice to the transporter to show cause why the goods or the vehicle should not be disposed of by sale. **This inconsistency requires to be reconciled.**

2.2.8 Other deficiencies

2.2.8.1 Database of dealer registration

As per departmental circular dated 9 January 2007, the database of all the dealers was to be completed by incorporating details like photo identity, bank account details etc. by 20 January 2007.

Information collected from six⁴ CTOs revealed that database was completed only in 7,981 out of 17,005 cases (46.93 *per cent*) upto May 2009.

2.2.8.2 Incomplete assessment

Section 20 (7) of the Act lays down that assessment of a dealer shall be made within a period of one calendar year from the end of the period for which assessment is to be made. Information collected from six⁵ CTOs and four⁶ ACs revealed that out of 29,280 cases of 2006-07, assessment of only 12,620 cases (43.1 *per cent*) was done till December 2008. This period was extended till March 2009 and further till June 2009. It was observed that 12,345 cases were due for assessment as of March 2009.

2.2.8.3 Survey and registration of dealers

Section 5 of the Act provides that every dealer whose gross turnover exceeds the taxable limit, which shall not exceed Rs. five lakh during any period of twelve consecutive months, shall be liable to pay tax in accordance with the provisions of the Act. Further, as per provisions of the section 17 of the Act, no dealer shall, while being liable to pay tax under section 5, carry in business as a dealer unless he has been registered under the Act and possesses a certificate of registration. Section 56 of the Act also provides for periodical survey to unearth unregistered dealers.

Information collected from the office of the Commissioner, Commercial Taxes and five circle offices⁷ revealed that no survey was conducted even after lapse of three years from the commencement of the Act. Besides unearthing unregistered dealers, the survey would also have facilitated identification of dealers whose registrations were cancelled due to various reasons.

The Government may consider making it mandatory to conduct periodic survey to unearth unregistered dealers in the interest of revenue.

⁴ CTO, Circle I, II, III & IV, Gwalior and CTO, Circle VIII & IX, Indore.

⁵ CTO, Circle I, II, III & IV, Gwalior and CTO, Circle VIII & IX, Indore.

⁶ ACCT, Gwalior (2), ACCT, Indore (2).

⁷ CTO, Circle I, II, III & IV, Gwalior and CTO, Circle IX, Indore.

2.2.8.4 Non-submission of returns

Section 18 (1) (a) of the Act prescribes that every dealer shall furnish a return in such form, in such manner, for such period, by such dates and to such authority as may be prescribed.

Test check of records in two CTOs⁸ and information collected from two CTOs⁹ revealed that out of 11,959 returns due to be filed in 2006-07, 3,329 returns (27.84 *per cent*) were not submitted by the dealers. Similarly, out of 10,775 returns due in the year 2007-08, 2,747 (25.49 *per cent*) returns were not filed by the dealers. Though action was taken by two CTOs, no action was taken by the other two CTOs.

As submission of returns is vital for the success of VAT, the Government may consider putting in place stringent penal measures for non-submission of returns within the prescribed time frame.

2.2.9 Non-submission of annual audit report

Under section 39 and Rule 54 of the Act and Rules made thereunder, the dealer having a turnover exceeding Rs.40 lakh in a year shall be required to furnish audit report to the CTO before 31 October of the next year, failing which the dealer shall not be eligible for self assessment. **But there is no penal consequence for this failure.** Further, Rule 54 prescribes that separate details relating to the business done by the dealer in the state of MP shall be included in the audit report. **But no separate format has been prescribed to submit these details and it is not clear what type of separate details shall be required to be submitted.**

Information collected from four out of six circle offices revealed that annual accounts were received in 771 out of 5,298 cases during 2006-07 and 883 out of 5,075 cases during 2007-08. The percentage of receipts was 14.55 *per cent* and 17.40 *per cent* respectively. **This shows that there was no machinery to watch over the submission of annual accounts.** Information was not furnished by two circle offices.

As audit certificate is a control mechanism to prevent evasion of tax, the Government may prescribe penal measures for non-submission of audit reports by the dealers along with their returns.

2.2.10 Tax audit

As per Section 19 of the MPVAT Act, 2002, the Commissioner or an agency authorised by him shall, after previous intimation to the dealer, undertake tax audit, in such manner as may be prescribed and tax audit shall be generally taken up in the office, business premises or warehouse of the dealer. The audit shall be completed within a period of six calendar months from the date of institution. After such audit, if the return or returns filed by the dealer are not found to be correct, the Commissioner shall, by issue of a notice in prescribed form, require such dealer to make the payment of tax and/or interest payable by him. If the dealer does not comply with the

⁸ CTO Circle VIII & IX Indore.

⁹ CTO Circle I & II Gwalior.

requirement made in the notice, the Commissioner shall assess or reassess him to tax and interest and/or to imposition of penalty in accordance with the provision of the Act. Accordingly, five DC (Tax Audit) were posted for conducting tax audit (August 2008).

Test check of records in two offices of Deputy Commissioners¹⁰ revealed that during the period 2006-07, out of 663 units selected for tax audit, the tax audit of only 288 units was completed (short fall of 56.56 *per cent*). In one office of the Deputy Commissioner, Tax Audit Wing, 241 units were selected for tax audit, but the position regarding shortfall could not be ascertained as no information was made available. Similarly, for the period 2007-08, information collected from one office of the Deputy Commissioner and two offices of the Deputy Commissioner, Tax Audit Wing revealed that out of 645 units selected for tax audit, the tax audit of only 200 units was completed (shortfall of 69 *per cent*). The department needs to take up the remaining tax audits for effective deterrence.

2.2.11 Input tax credit

2.2.11.1 Incorrect availing of inventory rebate and input tax credit

Under Section 14 of the VAT Act, rebate of input tax is allowed to a registered dealer under certain specified conditions.

Test check of records of two circle offices¹¹ and one regional office¹² revealed that incorrect availing of input tax rebate of Rs. 15.70 lakh was taken in eight cases of eight dealers assessed for the period 2006-07 between March 2008 and January 2009 either without purchase list, or used in tax free job work or tax not shown separately.

After this was pointed out, the assessing authority stated that action would be taken in five cases. In one case, it was stated that the purchase list was enclosed. The reply is not acceptable, as the list was unverified. The assessing authority stated in two cases that the list was enclosed showing the tax separately. Reply is not acceptable as the fact remains that the list was not available earlier in the file during audit.

2.2.11.2 As per section 14 (1), a rebate of input tax provided in this section shall be claimed by or be allowed to a registered dealer subject to provision of sub section 5 and such restriction and conditions as may be prescribed. Moreover, section 14 (6) (vi), provides that no input rebate under sub section (1) shall be claimed or be allowed to a registered dealer who opts for composition under section 11 and 11A.

Test check of records of regional office, Bhopal revealed that input tax credit of Rs. 2.68 lakh was taken by one works contractor assessed in July 2008 for the period 2006-07. It was noticed that the contractor had opted for composition under section 11 (A).

¹⁰ Divisional Office (Tax Audit), Indore (2).

¹¹ CTO, Circle VIII and IX, Indore.

¹² ACCT, Indore.

After this was pointed out, the assessing authority stated (July 2009) that the input tax credit was allowed on the amount on which composition facility was not taken. The reply is not acceptable as there is no such provision in the Act to allow partial input tax credit.

Other cases

2.2.12 Loss of revenue due to non-levy of tax on fabric, sugar and tobacco products

As per entry number 48, 49 and 50 of Schedule 1 of MP VAT Act, fabrics, sugar and tobacco products are tax free goods provided additional excise duty is levied or leviable on them under the Central Excise and Tariff Act 1985. Otherwise, these goods are charged at the rate of four *per cent* under entry number 34, 84 and 87 of the Part II of Schedule II. Government of India, by notification No. 11/2006-CE dated 1 March 2006 exempted additional excise duty on fabric, sugar and tobacco products with immediate effect. Thus, these goods were exigible to tax at the rate of four *per cent*.

Test check of records in two circle offices¹³ and one regional office¹⁴ revealed that tax of Rs. 50.73 lakh was not levied (six cases) in case of six dealers assessed/audited for the period 2006-07 and 2007-08 between March and September 2008, treating them as tax free goods, which was irregular.

After this was pointed out, the assessing authority stated (May 2009) in one case that action would be taken while in other cases, it was stated that there would be no effect even after issue of the said notification and in four cases, it was stated (May 2009) that excise duty has been charged in the sale bill. The reply is not acceptable as these goods were exigible to four *per cent* tax after the exemption notification of Government of India of March 2006. Moreover, there was no proof of levy of excise duty on the sale bill. **Besides, as per Paragraph 2.19 of the White Paper on VAT (17 January 2005) and decision taken by the Empowered Committee, VAT on sugar, fabrics and tobacco shall not be levied for one year due to some organisational difficulties and this position would be reviewed after one year. It was observed that this has not been reviewed so far.**

2.2.13 Conclusion

It was observed that the department faltered in its preparedness for implementation of VAT. There were shortfalls in the registration and survey of dealers and tax audit while there were arrears in assessments and submission of annual accounts by the dealers. There were some deficiencies in the Act/Rules leading to loss of revenue. The department was constrained in cross verification in the absence of provisions for furnishing sale list by the dealers.

¹³ CTO Circle VIII and IX, Indore.

¹⁴ Assistant Commissioner, Division-III, Indore.

2.2.14 Summary of recommendations

The Government may consider implementation of the following recommendations to rectify the deficiencies.

- Amend the format of the quarterly return to accommodate the name of the commodity and its code number in the interest of revenue;
- make it mandatory to furnish sale list in Form 10 and receiving consideration through cheques in case of sales above Rs. 25,000;
- modify the format of the return providing details of purchases made from unregistered dealers also;
- make it mandatory to realise security deposit from all dealers based on their volume of transactions;
- reconcile the inconsistencies between the Act and Rules for violation of check post declarations;
- make it mandatory to conduct periodic survey to unearth unregistered dealers in the interest of revenue;
- put in place stringent penal measures for non-submission of returns/audit reports within the prescribed time frame; and
- consider levying VAT on fabrics, sugar and tobacco.

2.3 Other audit observations

Scrutiny of assessment records of sales tax/value added tax (VAT) in Commercial Taxes Department revealed several cases of non-observance of provisions of Acts/Rules, non/short levy of tax/penalty/interest, incorrect determination/classification/turnover and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of assessing authorities (AA) are pointed out in audit each year, but not only the irregularities persist; these remain undetected till an audit is conducted. There is need for Government to improve the internal control system including strengthening of internal audit to ensure that such omissions are detected and rectified.

2.4 Non/short levy of tax

2.4.1 Under the Madhya Pradesh *Vanijyik Kar* (MPVK) *Adhiniyam*, 1994, every dealer who in the course of his business purchases any goods which have not suffered tax, shall be liable to pay purchase tax at concessional rate of four *per cent*, except goods specified in Schedule III, if after such purchase the goods are used or consumed in the manufacture of other goods for sale. Under the *Adhiniyam*, if any registered dealer purchasing the goods exempted in whole or part from payment of tax, does not comply with the conditions of the exemption, he shall be liable to pay tax on the purchase price of such goods at the full rate, and penalty equal to 25 *per cent* of the amount of tax so payable.

Test check of records of six regional offices and five circle offices, as mentioned below, revealed non/short levy of tax of Rs. 2.96 crore (including penalty) on a turnover of Rs. 26.39 crore.

(Rupees in crore)

Sl. no.	Name of unit Period Month of assessment	Value of goods sold/ purchased Amount of tax not levied/ penalty	Nature of observation	Department's reply	Audit comments
1.	2.	3.	4.	5.	6.
1.	RAC, Circle-V, Bhopal 2004-05 January 2008	<u>6.36</u> 1.54	Purchase tax on High Speed Diesel (HSD) was levied at concessional rate of 4.6 <i>per cent</i> instead of 28.75 <i>per cent</i> .	Tax was correctly levied at concessional rate because HSD is goods of Schedule II of the <i>Adhiniyam</i> .	HSD is also included in Schedule III for which concessional rate of purchase tax under Section 10 is not admissible.
2.	RAC, Satna 2004-05 December 2007	2.46 <u>0.23</u> 0.23	Sale value of Rs. 2.46 crore of plant and machinery was not included in the taxable turnover resulting in non-levy of tax and penalty.	Assessing Authority (AA) stated (August 2008) that action will be taken after verification.	Final action has not been intimated (September 2009).

1.	2.	3.	4.	5.	6.
3.	RAC, Gwalior 2003-04 January 2007	<u>8.99</u> <u>0.09</u> 0.27	Tax on purchase of wheat from unregistered dealers was neither paid by the dealer nor was levied by the AA. This was incorrectly treated as purchase of tax free flour.	It was intimated (January 2009) that a demand of Rs. 17.98 lakh had been raised (August 2008).	Reply does not explain why the penalty (equal to amount of tax) was imposed under Section 28 (1) instead of three times of the tax under Section 69, when this was on record that the dealer had furnished false particulars of purchases.
4.	RAC, Indore 2004-05 January 2008	<u>2.91</u> 0.11	As against the leviable tax of Rs. 11.64 lakh on inter-state sale of valves, the AA levied tax of Rs. 72,000 only.	AA stated (December 2008) that action would be taken after verification.	Final action has not been intimated (October 2009).
5.	CTO-VI, Indore 2003-04 & 2004-05 October 2006 & 2007 CTO-VI, Bhopal 2003-04 January 2007 CTO-V, Bhopal 2004-05 & 2005-06 January & February 2008 CTO-I, Indore 2004-05 January 2008	<u>2.56</u> <u>0.11</u> 0.04	Tax was not levied on raw material purchased without paying tax thereon.	In three cases, demand of Rs. 8.27 lakh was raised and adjusted against balance quantum of exemption (May & September 2008). In one case, the AA accepted the audit observation (January 2009). In the remaining cases, the AA stated (December 2008) that action would be taken after verification.	Final action has not been intimated (October 2009).
6.	CTO, Rewa 2004-05 January 2008	<u>0.45</u> <u>0.10</u> 0.02	Though HSD purchased against declarations was not used for the specified purpose of manufacturing other goods for sale, yet purchase tax on the same was levied incorrectly at the concessional rate of 6.9 per cent instead of 28.75 per cent.	The dealer used HSD in the captive power plant; hence grant of concessional rate was correct.	The reply does not correctly interpret the exemption notification which states that the electrical energy generated from HSD should be used in the manufacture of other goods for sale, while in this case there was nothing on record which could prove sale of manufactured goods.
7.	RAC, Ratlam 2003-04 April 2006	<u>1.05</u> 0.08	Tax on light diesel oil (LDO) was levied at concessional rate of six per cent instead of 13.8 per cent.	Tax was correctly levied at concessional rate because LDO is goods of Schedule II of the Adhinyam.	LDO is also included in Schedule III for which concessional rate of purchase tax under Section 10 is not admissible.
8.	RAC, Gwalior 2004-05 August 2007	<u>0.28</u> 0.06	Tax on HSD was levied at concessional rate of 6.9 per cent instead of 28.75 per cent.	AA stated (November 2008) that action would be taken after verification	Final action has not been intimated (October 2009).

1.	2.	3.	4.	5.	6.
9.	RAC, Indore 2002-03 December 2005	0.31 0.03	Sale value of Rs. 31.14 lakh of duty entitlement pass book (DEPB) was not included in the taxable turnover with the contention that the transaction occurred out of state. This resulted in short realisation of tax.	Demand of Rs. 1.37 lakh had been raised at the rate of 4.6 per cent.	During the relevant period, rate of tax on DEPFB was 9.2 per cent. Hence rate of tax levied is not in consonance with the provisions of the Act.
10.	RAC, Guna 2004-05 January 2008	0.56 0.03	Tax on goods sold against declarations in Form 32, was not levied whereas it was leviable at the rate of 4.6 per cent.	Tax is not leviable on goods sold against declarations.	Under the <i>Adhinyam</i> , sale of goods against declaration in Form 32 is liable to tax at concessional rate of 4.6 per cent.
11.	RAC, Jabalpur 2003-04 January 2007	0.46 0.02	Tax on purchase of pulses from unregistered dealers was not levied due to incorrect treatment of the goods as tax paid.	AA stated (December 2007) that action would be taken after verification.	Final action has not been intimated (October 2009).

2.4.2 As per MPVK *Adhinyam*, where a sale or purchase takes place in pursuance of a contract of sale, such sale or purchase shall be deemed to have been taken place in the State wherever the contract of sale or purchase might have been made, if the goods are within the State.

Test check of records of RAC, Indore in July 2006 revealed that tax on deemed sale of paper by a dealer, for the period 2002-03, engaged in job work of photo developing was not levied treating the job as a contract of service instead of contract of sale. This resulted in non-realisation of tax of Rs. 3.80 lakh on the deemed sale of paper of Rs. 45.06 lakh at the rate of 9.2 per cent.

After this was pointed out, the AA in June 2007 reassessed the case and raised a demand of Rs. 3.80 lakh. A report on recovery has not been received (October 2009).

The cases were reported to the Commissioner, Commercial Tax, Madhya Pradesh (CCT, MP) and the Government between August 2006 and December 2008; their reply has not been received (October 2009).

2.5 Application of incorrect rate of tax

The MPVK *Adhinyam*, read with the Central Sales Tax (CST) Act, 1956 and notifications issued thereunder, specify the rates of commercial tax leviable on different commodities.

Test check of records of 16 regional offices¹⁵ and 15 circle offices¹⁶ between December 2003 and January 2009 revealed that in case of 40 dealers, assessed between November 2002 and February 2008 for the period 1999-2000 to 2005-06, tax on the sales turnover of Rs. 41.04 crore was levied at

¹⁵ Bhopal (02), Chhindwara, Guna, Gwalior, Indore (04), Jabalpur (03), Satna (02) and Ujjain (02).

¹⁶ Bhopal, Burhanpur, Dhar, Gwalior (02), Indore (06), Jabalpur, Mandasaur (02) and Rewa.

incorrect rates. This resulted in short levy of tax of Rs. 2.57 crore and interest/penalty of Rs. 6.61 lakh. A few instances are mentioned below:

(Rupees in crore)

Sl. no.	Name of auditee unit/No. of cases	Assessment period/ Month of assessment	Turn-over amount of short levy of tax	Audit observations
1	RAC, Ujjain 03	2002-03 to 2004-05 November 2006, June 2007 and February 2008	14.97 1.36	Tax on pigment black was levied at the rate of 4.6 per cent treating it as chemical. However, as per the judicial decision ¹⁷ it is included in dyes and paints, liable to tax at the rate of 13.8 per cent.
2.	RAC, Bhopal 01	2004-05 January 2008	3.01 (Intra-State) 0.14 2.40 (Inter-state) 0.09	Tax on mango pulp was levied at the rate of 9.2/10 per cent vide entry No. 26 of part IV of Schedule II of the Adhiniyam whereas it was liable to tax as preserved food article at the rate of 13.8 per cent.
3.	RAC, Indore 02	2004-05 & 2005-06 July 2007 & December 2007	3.73 0.17	Tax on white petroleum jelly was levied at the rate of 9.2 per cent treating it as drugs and medicines whereas the same is liable to tax as cosmetics at the rate of 13.8 per cent under entry No. 41 of part III of Schedule II of the Adhiniyam.
4.	RAC, Satna 01	2003-04 January 2007	2.52 0.12	Tax on craft paper was levied at the rate of 4.6 per cent treating it as packing material whereas the same is liable to tax as paper at the rate of 9.2 per cent.
5.	RAC, Jabalpur 01	2004-05 January 2008	1.47 0.10 (including interest)	Tax on high density polyethylene (HDPE) pipes was levied at the rate of 4.6 per cent vide notification dated 11 August 2004 incorrectly as the said notification was applicable to PVC pipes and not HDPE pipes.

After the cases were pointed out, the AAs, in case of seven dealers raised a demand for Rs. 23.88 lakh, out of which Rs. 19.55 lakh was adjusted against the cumulative quantum of tax. In case of one dealer, the AA accepted the audit observation while in case of 12 dealers it was stated that action would be taken after verification.

In the remaining cases of 20 dealers, departmental replies and audit comments thereon are as under:

Sl. no.	Name of auditee unit/No. of dealers	Commodity	Departmental reply	Audit comment
1.	2.	3.	4.	5.
1.	CTO, Gwalior 01	Polyurethane foam	Polyurethane foam is different from other kinds of foam, therefore is taxable at the rate of 9.2 per cent under entry no. 39 of part IV of Schedule II of the Adhiniyam as unspecified item.	Reply is not in consonance with the Chapter 39 of the Central Excise Tariff Act wherein polyurethane foam is classified as plastic goods and is accordingly taxable at the rate of 13.8 per cent under entry no. 43 of part III of Schedule II of the Adhiniyam.

¹⁷ M/s Rang Rasayan Vs CCT, MP (2004-4-STJ-76).

1.	2.	3.	4.	5.
2.	RAC, <u>Bhopal</u> 01	Motor vehicle parts	Assessment was correct in view of notification no. 70 dated 9 July 2002.	The said notification was in force only upto 31 March 2003, hence it was not applicable for the accounting year 2003-04.
3.	CTO, <u>Jabalpur</u> 01	Bearings	Tax at concessional rate was levied in view of notification no. 43 dated 4 May 2000.	The said notification came into force with effect from 1 April 2000, hence was not applicable for the year 1999-2000.
4	<u>RAC, Indore</u> 01	Motor vehicle parts	The dealer sold aluminium scrap.	Reply is not in consonance with the accounts furnished by the dealer wherein sale of motor vehicle parts is recorded.
5.	CTO, <u>Gwalior</u> 01	Metavik Stearate, PVC Stabilizers	The sold goods was chemical as the same was used in the manufacture of PVC granules.	The CCT in the case of M/s BCM organics ¹⁸ has decided that plastic stabilisers are taxable under residuary entry at the rate of 9.2 per cent.
6.	CTO, Vidisha and <u>CTO, Indore</u> 03	Tractor parts	Tractor parts are taxable as unspecified goods under entry no. 39 of part IV of Schedule II of the <i>Adhiniyam</i> because the same have no specific entry in the Schedule II.	As per the decision of Appellate Board in the case of M/s Raj Tractors, Bina, tractors are included in motor vehicles. Accordingly, tractor parts not having any specific entry in the schedule shall be liable to tax under entry no.11 of part III of Schedule II as motor vehicle parts.
7.	<u>RAC, Indore</u> 01	Herbals	The goods manufactured by the dealer were correctly treated as basic drugs in view of MP Appellate Board's decision in the case of M/s Lupin Laboratories Vs CCT, MP.	The subject matter of the said decision was not to define basic drugs but to decide whether the notification issued in respect of basic drugs was specific or general.
8.	<u>CTO, Indore</u> 01	Racks (furniture)	The dealer sold IT related goods, as specified in the notification no. 42 dated 2 May 2001.	As per basic records of the dealer, he manufactured and sold racks which have not been specified in the said notification. Racks are generally included in furniture.
9.	RAC, <u>Gwalior</u> 01	Chlorinated paraffin wax (CPW)	The goods sold are covered in chemicals.	The reply is not in consonance with the CCT, MP orders dated 15 July 2005 which decided that CPW is a plasticiser which is not included in chemicals.
10.	CTO, <u>Burhanpur</u> 01	Lay flat tube	Lay flat tube is soft PVC pipe used for irrigation, hence taxable at the rate of 4.6 per cent vide notification no. 78, dated 10 October 2000.	PVC pipes are different from lay flat tubes because they do not lay flat when they are not in use.
11.	CTO, Mandsaur RAC <u>Jabalpur</u> 02	Bitumen/ sound system/ pumps	The goods were sold against form A-1 under notification no. 28 dated 13 April 2000.	The said notification was in force only upto 31 March 2002 whereas the observation relates to the periods 2003-04 and 2004-05.
12.	<u>CTO, Bhopal</u> 01	Medical equipments	Tax was levied at the rate of 4.6 per cent as per rules.	The reply does not explain why the tax was levied at the rate of 4.6 per cent instead of prescribed rate of 9.2 per cent.
13.	RAC, <u>Jabalpur</u> 01	HDPE pipe	HDPE pipe is a kind of PVC pipe, thus taxable at the rate of 4.6 per cent under notification no. 12 dated 11 August 2004.	The notification dated 11 August 2004 provides concessional rate only for PVC pipes and not for HDPE pipes.

1.	2.	3.	4.	5.
14.	<u>RAC, Ujjain</u> 01	Pigment-black	The assessment was made in view of CCT, MP's order dated 2 December 1998 issued under section 68 in the case of the assessee dealer.	The reply is not in consonance with the decision of MP Appellate Board given in the case of M/s Rang Rasayan Vs CCT, MP (2004-4-STJ-76) wherein it has been held that pigments are included in dyes and paints.
15.	<u>RAC, Bhopal</u> 01	Mango pulp	Mango pulp is not a food article rather it is used for preparation of fruit juice. It was also stated that pulp is exigible to tax at the rate of eight <i>per cent</i> under entry no. 26 part IV of Schedule II of the <i>Adhiniyam</i> .	Mango pulp is a food article because it is used directly or indirectly in the manufacture of fruit juice. Hence the said entry no. 26 does not cover mango pulp which is a preserved food article.
16.	<u>RAC, Indore</u> 01	White Petroleum jelly	In view of MP Board of Revenue's decision in the case of M/s Ponds India Ltd. (2003-2-STJ-78) petroleum jelly is taxable as drugs and medicines.	Under the <i>Adhiniyam</i> , medicinal preparations of cosmetics are taxable at the rate of 13.8 <i>per cent</i> vide entry no. 41 of part III of Schedule II of the <i>Adhiniyam</i> .
17.	<u>RAC, Indore</u> 01	Plasticiser	As per literature obtained from a web-site, plasticiser is chemical.	As per CCT, MP's orders dated 15 July 2005, issued under Section 68, plasticisers are chemical products and different from chemicals. They are exigible to tax at the rate of 9.2 <i>per cent</i> .

The matter was reported to the CCT, MP and the Government between February 2004 and March 2009; their reply has not been received (October 2009).

2.6 Non-realisation of profession tax

As per provisions of Section 3 (2) of Profession Tax Act, 1995, every person who carries on a trade either himself or by an agent or representative or who follows a profession or calling other than agriculture in Madhya Pradesh shall be liable to pay profession tax at the rate specified against the class of such persons in column (3) of the Schedule of the Act. Section 8 (2) of the said Act further provides that such person liable to pay tax shall obtain a certificate of registration from the profession tax assessing authority in the prescribed manner.

Cross verification of information obtained from 10 Circle Offices¹⁹ and two Deputy Commissioners²⁰ with the list furnished in respect of liquor licensees, cinema houses, video parlours, cable operators and hotels by the State Excise Department, list of beauty parlours furnished by the Customs and Central Excise Department and list of contractors furnished by eight offices²¹ of Gwalior district revealed that 8,037 persons remained unregistered with the Commercial Tax Department under the Profession tax Act for the years 2002-03 to 2007-08, although they were liable to pay profession tax. This resulted in non-registration of these dealers and consequent non-realisation of profession tax of Rs. 1.89 crore at the rate ranging from Rs. 1,000 to Rs. 2,500 per annum.

¹⁹ CTO - Balaghat, Chhindwara (2), Dewas, Guna, Katni, Ratlam (2) and Sagar (2).

²⁰ Dy. Commissioner, Commercial Tax, Gwalior (2).

²¹ Executive Engineer (EE) (PWD)-2, Superintending Engineer (SE) (PWD), Chief Engineer (WRD), EE (PHE), SE (PHE), EE (RES) and SE (*Nagar Nigam*).

The matter was reported to the CCT, MP and the Government in March and April 2009; their reply has not been received (October 2009).

2.7 Non-levy of tax on sales incorrectly treated as tax free

The MPVK *Adhiniyam* and notifications issued thereunder prescribe rates of commercial tax leviable on different commodities except those specified under Schedule I of the *Adhiniyam* and those which are exempted from whole of tax through notifications. Further, the MP High Court in the case of M/s Raj Pack Well Ltd. Vs Union of India {1990 (50) ELT 201} held that high density polyethylene/poly propylene fabric is not a kind of cloth/textile material, rather it is covered in plastic goods.

2.7.1 Test check of records of six regional offices²² and seven circle offices²³ between December 2007 and January 2009 revealed that in case of 15 dealers, assessed between April 2006 and February 2008 for the period 2002-03 to 2005-06, tax on high density polyethylene/poly propylene (HDPE/PP) fabrics valued at Rs. 29.58 crore was not levied treating the same as tax free cloth. This resulted in non-levy of tax of Rs. 1.71 crore.

After this was pointed out, the AAs in case of two dealers stated (July and December 2008) that action would be taken after verification. In case of five dealers, it was stated that exemption was allowed under notification no. 68 dated 24 August 2000. The reply does not correctly interpret the said notification which exempts all varieties of cloth and not HDPE/PP fabrics which is plastic goods. In case of one dealer, it was stated (January 2008) that HDPE fabric is tax free under entry no. 4 of Schedule I of the *Adhiniyam*. Reply is not acceptable because HDPE fabric being plastic goods is not covered under the said entry, which includes cloth. In case of one dealer no specific comments were offered by the AA. In case of six dealers the AAs stated that as per order of the Commissioner, Sales Tax, dated 16 February 1983 issued under Section 42-B of the repealed Act (MPGST Act), HDPE fabric was deemed as a kind of cloth. Contention of the AAs is not acceptable in view of the MP High Court decision referred to above.

2.7.2 Test check of records of a Circle office at Ujjain in December 2008 revealed that in case of a dealer, assessed in February 2008 for the period 2005-06, tax on sale of paper *dona*²⁴ valued at Rs. 63.83 lakh was not levied treating the same as sale of tax free goods. This resulted in non-levy of tax of Rs. 5.87 lakh including penalty.

After this was pointed out, the AA raised demand of Rs. 5.87 lakh including penalty (March 2009).

2.7.3 Test check of records of a circle office at Chhindwara in January 2008 revealed that in case of a dealer, assessed in January 2007 for the period 2003-04, tax on sale of *Khandsari* valued at Rs. 40.49 lakh was not levied treating the goods as tax free. This resulted in non-levy of tax of Rs. 3.24 lakh at the rate of four *per cent* and penalty.

²² Indore (4), Jabalpur and Khandwa.

²³ Gwalior (2) and Indore (5).

²⁴ *dona* – bowl like container.

After this was pointed out, the AA raised demand of Rs. 3.24 lakh including penalty of Rs. 1.62 lakh (July 2008).

The matter was reported to the CCT, MP and the Government between February 2008 and March 2009; their reply has not been received (October 2009).

2.8 Non/short levy of Entry Tax

Under the Madhya Pradesh *Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhinyam*, 1976 and rules and notifications issued thereunder, entry tax (ET) is leviable at the specified rates on the goods entering into a local area for consumption, use or sale therein.

Test check of records of 11 regional offices²⁵ and 13 circle offices²⁶ between March 2006 and January 2009 revealed that in case of 36 dealers assessed/reassessed between August 2004 and February 2008 for the period 2001-02 to 2005-06, ET on goods like timber, furnace oil, diesel, motor vehicles, tractors, cigarettes, iron and steel etc. valued at Rs. 68.65 crore was not/short levied on their entry into local area. This resulted in non/short realisation of ET of Rs. 1.41 crore including interest and penalty of Rs. 33.99 lakh.

After the cases were pointed out, the AAs in 18 cases stated (between January 2008 and January 2009) that action would be taken after verification. In 15 cases, the AAs reassessed the cases and raised demand of Rs. 41.20 lakh (October 2008 to May 2009), of which, Rs. 5.08 lakh has been recovered. In the remaining three cases, the replies are as under:

Sl. no.	Name of auditee unit/No. of dealers	Commodity	Departmental reply	Audit comment
1.	RAC, Gwalior 01	Cement, coal, sand and HTS wire	As per the judicial decision of hon'ble Madhya Pradesh High Court in the case of M/s Jai Prakash Associates, factory situated on railway's land is not covered under 'local area'.	The subject of the said decision was "reopening of assessment" and not to decide whether railway siding is a local area. Further, Madhya Pradesh Board of Revenue in its judgement ²⁷ of 2002 has held that railway sidings and rail lines are covered in local area.
2/	CTO, Indore 01	Timber	The dealer purchased soft wood and not timber.	The reply is contradictory to the fact mentioned in the purchase bills, which show the purchase of timber.
3.	RAC, Khargone 01	LDO	As per a notification dated 06 September 2001, raw material is exempted from ET.	LDO is not recorded as raw material in the registration certificate of the dealer.

The cases were reported to the CCT, MP and the Government between March 2006 and March 2009; their reply (except in one case) has not been received (October 2009).

²⁵ Bhopal (3), Gwalior (2), Indore (3), Khargone, Neemuch and Satna.

²⁶ Betul, Bhopal (3), Burhanpur, Gwalior (2), Indore (4), Neemuch and Vidisha.

²⁷ M/s Larsen and Toubro Ltd. Vs CCT (2002-35-VKN-50).

2.9 Incorrect grant of exemption

2.9.1 As per exemption notification dated 6 October 1994 issued under the MPGST Act, a new industrial unit engaged in repacking of goods is not eligible for exemption. The notification further stipulates that industrial units engaged in processing of iron and steel and manufacture of HDPE/LDPE bags, commencing production after 31 December 1996 and 30 September 1999 respectively, shall not be eligible for exemption. Exemption notifications dated 6 October 1994 and 6 June 1995 provide for exemption to the extent of maximum cumulative quantum of tax as specified in the eligibility certificates (EC) issued thereunder.

Test check of records of four regional offices and two circle offices between December 2007 and September 2008 revealed that six dealers were allowed incorrect exemption having tax effect of Rs. 1.06 crore as mentioned below:

Sl. No.	Name of auditee unit	Period Month of assessment	Observation in brief
1.	2.	3.	4.
1.	RAC, Sagar	2003-04 & <u>2004-05</u> September 2006	Two dealers engaged in bottling of liquified petroleum gas (LPG) from bulk containers were allowed exemption from payment of tax on the basis of ECs issued to them. This was not correct because as per exemption notification dealers engaged in repacking of goods are not eligible for exemption. This deprived the Government of revenue of Rs. 72.08 lakh.
	CTO-VI, Bhopal	<u>2003-04</u> January 2007	
After the cases were pointed out, the AAs stated (December 2007) that as per letter dated 16 June 1998, issued by the Government (Commercial Tax Department), refilling of LPG is a process of manufacture, as such the exemption allowed was correct. The reply is not in consonance with the judicial decisions ²⁸ wherein it has been held that refilling of LPG is not a manufacturing process but in fact is repacking of goods.			
2.	RAC, Indore	<u>2003-04</u> January 2007	Exemption from payment of tax was incorrectly allowed to two dealers engaged in manufacturing of HDPE/LDPE bags and steel forgings and castings, although they commenced production after expiry of the prescribed dates. This deprived the Government of revenue of Rs. 16.74 lakh.
	CTO, Guna	<u>2003-04</u> December 2006	
After the cases were pointed out, the AA in one case stated (December 2007) that action would be taken after verification. In the other case, it was stated (January 2008) that the exemption was allowed in view of the EC issued to the dealer, however, the matter regarding incorrect issue of EC will be communicated to the Industries department. Further action/progress has not been intimated (October 2009).			

²⁸ Modi Gas Service, Indore Vs. State of M.P. & others (2006-8-STJ-536) (MP High Court), State of Gujarat Vs. Kosan Gas Co. (1992-STC-237) (Gujarat High Court).

1.	2.	3.	4.
3.	RAC, Indore	<u>2005-06</u> June 2007	In case of one dealer, exemption from payment of tax of Rs. 1.11 lakh was allowed in excess of the maximum cumulative quantum of tax specified in the EC. In case of another dealer, though tax was computed as Rs. 33.22 lakh, only Rs. 16.89 lakh was adjusted against the cumulative quantum of tax. This resulted in excess grant of tax benefit of Rs. 17.44 lakh.
	RAC, Morena	<u>1997-98</u> October 2007	
After the cases were pointed out (June 2008), the AA in one case effected recovery of Rs. 1.11 lakh (October 2008) while in other case, it was stated (September 2008) that action would be taken after verification. Further developments have not been reported (October 2009).			

2.9.2 Notification dated 12 October 2000, issued under the MPVK *Adhinyam*, exempts goods manufactured and sold by specified village industries whose annual gross turnover does not exceed Rs. 10 lakh.

Test check of records of a circle office at Neemuch in April 2008 revealed that a village industry was assessed between August 2004 and March 2007 for the periods 2001-02 and 2003-04 to 2005-06. Though the turnover in the relevant years exceeded Rs. 10 lakh, exemption from payment of tax of Rs. 3.16 lakh was incorrectly allowed as shown below:

(Rupees in lakh)

Period	Turnover	Amount of tax levied, if any	Amount of tax leviable	Short levy of tax
2001-02	46.97	-	1.88	1.88
2003-04	11.48	0.06	0.47	0.41
2004-05	12.00	0.08	0.50	0.42
2005-06	25.20	0.59	1.04	0.45
Total		0.73	3.89	3.16

This resulted in short realisation of tax of Rs. 3.16 lakh.

After the case was pointed out, the AA accepted (April 2008) to take action after verification as proposed by audit. Further developments have not been reported (October 2009).

The matter was reported to the CCT, MP and the Government in January 2008 and November 2008; their reply has not been received (October 2009).

2.10 Incorrect deduction of tax paid sales

The MPVK *Adhinyam* provides for deduction of sale of goods which are in the nature of tax paid goods in the hands of a dealer in order to determine the taxable turnover of such dealer. The *Adhinyam* also provides that where a dealer has furnished false particulars of his sales or purchases in his returns, the Commissioner shall impose a penalty not less than three times the tax payable.

Test check of records of two regional offices and two circle offices between October 2004 and September 2008 revealed grant of incorrect deduction of tax paid sales of Rs. 3.12 crore having tax effect of Rs. 1.01 crore including penalty of Rs. 71.06 lakh as shown below:

Sl. no.	Name of auditee unit	Assessment period/month of assessment	Audit observation
1.	RAC, Satna	<u>2004-05</u> December 2007	Deduction on account of tax paid sale of bitumen of Rs. 2.58 crore was allowed on the ground that the bitumen was purchased from another registered dealer. Cross verification revealed that the assessee dealer had not purchased any tax paid bitumen. This resulted in non-levy of tax of Rs. 23.68 lakh and minimum penalty of Rs. 71.06 lakh.
The case was reported to the AA in January 2009, his reply has not been received (October 2009).			
2.	RAC, Satna	<u>2000-01</u> January 2004	Deduction on account of tax paid sale of cement of Rs. 21.72 lakh was allowed incorrectly though the said goods had not suffered tax. This resulted in non-levy of tax of Rs. 3 lakh.
After the case was pointed out, the AA intimated (January 2009) that a demand of Rs. 3 lakh had been raised. A report on recovery has not been received (October 2009).			
3.	CTO-XIII, Indore	<u>2003-04</u> September 2006	Deduction of sale of tax paid cement of Rs. 18.50 lakh was allowed although the dealer himself was manufacturer of cement and was the first selling dealer. This resulted in non-levy of tax of Rs. 2.40 lakh.
After the case was pointed out, the AA stated (January 2008) that besides own manufactured cement, the dealer also purchased and resold cement. The reply is not in consonance with the audited accounts furnished by the dealer wherein fuel/power charges of Rs. 28.83 lakh were shown as incurred for processing of raw material. This confirms that the sale of cement of Rs. 22.27 lakh, as recorded in the accounts, was the sale of his own manufactured product and did not include any sale of tax paid cement.			
4.	CTO, Shahdol	<u>2004-05</u> February 2008	The AA allowed deduction of sale of tax paid mustard oil of Rs. 14.21 lakh on the ground that the mustard oil was purchased from another registered dealer. Cross verification of the transactions revealed that the dealer, from whom the mustard oil was claimed to be purchased, had 'nil' turnover in the relevant period. Therefore, the deduction allowed was incorrect. Thus, it resulted in non-levy of tax of Rs. 57,000.
After the case was pointed out, the AA stated (September 2008) that the deduction was allowed after verifying the purchase bills furnished by the dealer. Reply is contradictory to the results of cross verification. Further reply has not been received (October 2009).			

The cases were reported to the CCT, MP and the Government between December 2004 and January 2009; their reply has not been received (October 2009).

2.11 Incorrect deduction on account of discount

As per the definition of sale price under the MPVK *Adhiniyam*, only cash discount allowed as per ordinary trade practice can be deducted from the sale price. Further, in various judicial decisions²⁹, it has been held that various kinds of discounts like turnover discounts, target discount, sales promotion discount etc., allowed to the customers through credit notes are not eligible for deduction from the sale price.

Test check of records of a regional office at Sagar in January 2009 revealed that two dealers assessed in December 2007 for the period 2004-05, allowed quantity discount and cash discount of Rs. 5.26 crore to their customers through credit notes. The AA however, allowed deduction of the said discounts from the turnover. The deduction was incorrect, as the discounts were not granted through the invoice/bill itself at the time of sale of goods. This resulted in non-levy of tax of Rs. 72.59 lakh at the rate of 13.8 per cent.

After this was pointed out, the AA stated (January 2009) that the said discounts were not part of the turnover and therefore deduction allowed was correct. However, the fact remains that, only cash discount allowed from the invoice/bill itself at the time of sale can be deducted from the turnover. But the discounts allowed after sale/through credit notes is part of the turnover. Therefore, such discounts were not eligible for deduction as has been held in the decisions.

The cases were reported to the CCT, MP and the Government in April 2009; their reply has not been received (October 2009).

2.12 Incorrect grant of refund

Under the MPVK *Adhiniyam*, any amount collected by any person by way of tax not payable under any provision of the *Adhiniyam* shall be liable to forfeiture to the State Government.

Test check of records of a regional office at Chhindwara in February 2008 revealed that two dealers, assessed between July and September 2006 for the periods 2002-03 and 2004-05, were liable to pay tax of Rs. 1.95 crore but they collected by way of tax a sum of Rs. 2.66 crore and deposited the same into the treasury. The AA instead of forfeiting the excess amount of tax of Rs. 70.96 lakh so collected by the dealers, incorrectly allowed refund of the same. This resulted in incorrect grant of refund of Rs. 70.96 lakh.

After the cases were pointed out, the AA in one case stated (February 2008) that it was due to issue of incorrect EC for exemption from tax that the dealer had to deposit tax of Rs. 1.11 crore. Later on, as per revised EC, thereby increasing the quantum of exemption, liability of the dealer to pay tax was reduced to Rs. 53 lakh only. He further stated that the excess amount of tax so collected remaining in the hands of the dealer was refunded to the purchasing dealers through credit notes. The reply is not acceptable because there was nothing on record to prove the refund of excess tax to the purchasing dealers.

²⁹ (i) Orient Paper Mill, Amlai Vs CCT, MP (2009 14 STJ 128) (MP-Bd)
(ii) Apollo Tyres Ltd. Vs CCT, MP (2003) 1 STJ 24 (MP-Bd);
(iii) Vandana Sales Corporation (1996) 29 VKN 376

In the other case, the AA stated (February 2008) that grant of deduction on account of various kinds of discounts to the purchasing dealers led to refund. The reply does not explain how the dealer was eligible for refund as the discounts granted by him to the purchasing dealers after sale could not be said to be inclusive of tax.

The matter was reported to the CCT, MP and the Government in May 2008; their reply has not been received (October 2009).

2.13 Mistake in computation of tax

Test check of records of four regional offices³⁰ and one circle office³¹ between December 2004 and August 2008 revealed that in case of five dealers, assessed between January 2003 and December 2007 for the period 1999-2000 to 2004-05, the AAs erroneously computed/levied tax of Rs. 16.91 crore instead of Rs. 17.21 crore. This resulted in short levy of tax of Rs. 29.40 lakh.

After the cases were pointed out, the AAs in two cases raised demand for Rs. 17.85 lakh and adjusted the same against cumulative quantum of exemption of tax (June 2008), while in three cases the AAs stated (December 2004 to August 2008) that action would be taken after verification. Further replies in these cases have not been received (October 2009).

The cases were reported to the CCT, MP and the Government between March 2005 and September 2008; their reply has not been received (October 2009).

2.14 Incorrect grant of set off

Under the MPVK *Adhinyam*, when a registered dealer purchases any tax paid goods for consumption or use by him as raw material or as incidental goods in the manufacture of any other goods for sale within the State or in the course of inter-state trade or for export out of the territory of India, he shall be entitled to set off at a rate equal to the difference between the tax at full rate and the tax at concessional rate of four *per cent* or such other concessional rate as may be notified, on the quantum of price of goods so purchased. Notification dated 1 April 1995 issued under the *Adhinyam* prescribes the other concessional rate of zero *per cent* in respect of iron and steel of any category meant for use as raw material in the manufacture of goods belonging to the same or any other category of iron and steel.

³⁰ Indore (2), Satna and Ujjain.
³¹ Rewa

Test check of records of two regional offices and two circle offices between November 2005 and December 2008 revealed incorrect grant of set off of Rs. 24.46 lakh as mentioned below:

Sl. no.	Name of unit	Period/ Month of assessment	Observation in brief	Department's reply/audit comments
1.	RAC, Katni	1997-98 April 2001 <u>1998-99</u> June 2002	Set off of Rs. 7.58 lakh was incorrectly allowed in respect of tax paid raw material used/consumed in the manufacture of goods which were not sold but stock transferred.	After this was pointed out, the AA effected recovery of Rs. 7.58 lakh (February 2006).
2.	RAC, Bhopal. CTO, Jabalpur.	<u>2001-02</u> September 2006 <u>2003-04</u> November 2006	Set off of Rs. 14.21 lakh and of Rs. 1.20 lakh was allowed to two works contract dealers in respect of tax paid goods used by them in the construction work. This was not correct because the tax paid goods so purchased were not used in the manufacture of other goods for sale.	After this was pointed out, in one case the AA stated (February 2008) that set off was allowed in accordance with a notification dated 13 April 2000. The reply is not acceptable as the said notification deals with exemption under section 17 of the <i>Adhiniyam</i> while set off is covered by section 13. In another case, the AA stated (April 2007) that action would be taken after verification. Further development has not been reported (October 2009).
3.	CTO, Indore	2004-05 & <u>2005-06</u> January 2008	Set off of Rs. 1.47 lakh was incorrectly granted in respect of tax paid iron and steel used/consumed in the manufacture of wire nails (hardware) which do not belong to any category of iron & steel.	After this was pointed out, the AA in one case raised demand of Rs. 60,430 (March 2009), while in the other case stated (December 2008) that action would be taken after verification. Further development has not been reported (October 2009).

The matter was reported to the CCT, MP and the Government between March 2006 and January 2009; their reply has not been received (October 2009).

2.15 Short levy of tax due to grant of incorrect deduction

Section 2 (w) (v) of the MPVK *Adhiniyam* and Section 8-A of the CST Act prescribe a formula³² to arrive at the amount of taxable turnover. It also provides that no deduction on the basis of the formula shall be allowed if the amount of tax is not included in the aggregate of sale prices.

³²
$$\frac{\text{Turnover} \times \text{rate of tax}}{100 + \text{rate of tax}}$$

The *Adhinyam* also provides for deduction on account of sales return of goods within six months from the date of purchase of the same.

2.15.1 Test check of records of four regional offices³³ and three circle offices³⁴ between January and December 2008 revealed that in case of nine dealers, assessed between August 2004 and January 2008 for the period 2001-02 to 2004-05, deduction aggregating Rs. 1.75 crore on the basis of the formula was allowed incorrectly as tax was not included in the sale price. This resulted in short levy of tax of Rs. 10.29 lakh.

After this was pointed out, the AAs in two cases raised demand of Rs. 2.03 lakh and adjusted the same against cumulative quantum of exemption of tax (June 2008 and May 2009), while in case of five dealers it was stated (between January and December 2008) that action would be taken after verification. In one case, it was stated that the deduction allowed was correct as the sale price was inclusive of tax. The reply does not explain how tax was included in the turnover as the dealer was having facility of exemption from payment of tax by virtue of eligibility certificate issued to him under notification dated 6 October 1994. In one case, the AA stated that assessment was made in the light of various decisions of Tribunal. Reply is contrary to the CCT, MP's circular dated 28 April 2003 which states that in case of a new unit eligible for exemption from payment of tax, deduction under Section 2(w)(v) of the MPCT Act and under Section 8-A of the CST Act will not be allowed.

2.15.2 Test check of records of a regional office at Indore in May 2008 revealed that in case of a dealer, assessed in November 2007 for the period 2004-05, deduction of Rs. 21.47 lakh was incorrectly allowed on account of sales returns after the prescribed period of six months. This resulted in non-realisation of tax of Rs. 2.96 lakh.

After this was pointed out, the department stated (February 2009) that the case had been reassessed and in view of revised list of sales returns furnished by the dealer, a demand of Rs. 1.13 lakh has been raised. However, scrutiny revealed that there were 197 cases of sales return received after six months/pertaining to previous accounting year involving value of Rs. 21.97 lakh. It is not understood how the list was revised subsequently thereby reducing the demand. Further reply has not been received (October 2009).

The matter was reported to the CCT, MP and the Government between April 2008 and February 2009; their reply has not been received (October 2009).

2.16 Short levy of tax on intra-state sale treated incorrectly as inter-state sale

As per the CST Act, sale of goods shall be deemed to take place in the course of inter-state trade, if the sale occasions the movement of goods from one State to another or is effected by a transfer of documents of title to the goods during their movement from one State to another. It further stipulates that if the movement of goods commences and terminates in the same State, it shall not be deemed to be a movement from one State to another.

³³ Indore (03), Jabalpur.

³⁴ Bhopal, Indore and Neemuch.

Test check of records of two circle offices³⁵ in March 2008 revealed that three dealers, assessed between December 2005 and December 2006 for the period 2002-03 to 2004-05, sold bauxite valued at Rs. 1.07 crore against declaration in form C to local registered dealers. The AAs, however, while finalising the assessment treated the local sale as inter-state sale incorrectly and allowed levy of tax at concessional rate of four *per cent* on the basis of C forms issued by the local purchasing dealers. This resulted in short levy of tax of Rs. 10.47 lakh at the differential rate of 9.8 *per cent*.

After the cases were pointed out, the AA, in case of two dealers, stated (March 2008) that action would be taken after verification. In case of one dealer, the AA did not offer any specific comments. Further development has not been reported (October 2009).

The matter was reported to the CCT, MP and the Government in May 2008; their reply has not been received (October 2009).

2.17 Short levy of value added tax

Under Section 9-B of the MPVK *Adhiniyam*, VAT is leviable at the prescribed rate on the value addition on resale of goods specified in Part II to VI of Schedule II of the *Adhiniyam*.

Test check of records of four regional offices³⁶ and three circle offices³⁷ between January 2005 and November 2008 revealed that in case of seven dealers, assessed between December 2002 and January 2008 for the period 1999-2000 to 2005-06, value addition on resale of goods was short determined to the extent of Rs. 68.33 lakh. This resulted in short realisation of VAT of Rs. 5.76 lakh at the rate of 9.2 *per cent* (including surcharge).

After this was pointed out, the AA in one case raised (March 2006) a demand of Rs. 1.41 lakh, including penalty, while in four cases it was stated that action would be taken after verification. Further development has not been received (October 2009).

In one case, the AA stated (September 2008) that VAT is not worked out on the profit element but is calculated on the value addition. The fact, however, remains that value addition can never be less than the profit element.

In one case, the AA contended (September 2008) that while calculating the value addition, audit did not consider the tax paid opening balance of Rs. 11.52 lakh. Reply is not acceptable because as per trading account the dealer had no opening balance of tax paid goods.

The cases were reported to the CCT, MP and the Government between March 2005 and November 2008; their reply has not been received (October 2009).

³⁵ Rewa and Satna.

³⁶ Bhopal, Indore, Jabalpur, Satna.

³⁷ Indore, Neemuch, Tikamgarh.

2.18 Non/short levy of tax under CST Act

The CST Act and the rules made thereunder lay down that every selling dealer who fails to furnish declarations in form C, received from and duly signed by the purchasing dealers, shall be liable to pay tax in respect of inter-state sale of declared goods at twice the specified rate and in respect of other goods at the rate of 10 *per cent* or at the specified rate, whichever is higher, instead of concessional rate of four *per cent*. Further, where any dealer fails to furnish any proof/declaration in respect of movement of any goods by him to any other place of his business otherwise than by way of sale, the movement of such goods shall be deemed to have been occasioned as a result of sale.

2.18.1 Test check of records of eight regional offices and five circle offices between December 2007 and January 2009 revealed that in case of 16 dealers, tax on inter-state sale of goods valued at Rs. 17.64 crore in respect of which declarations in form C were not furnished, was either not levied or levied at incorrect rates. This resulted in non/short levy of tax of Rs. 1.30 crore as shown below:

(Rupees in crore)

Sl. no.	Name of audited unit No. of dealers	Period Month of assessment	Commodity Turnover	Rate of tax applicable (per cent)	Rate of tax applied (per cent)	Amount of non/short levy of tax
1.	2.	3.	4.	5.	6.	7.
1.	<u>RAC, Indore</u> 02	<u>2004-05</u> October 2007 & February 2008	<u>Computer parts</u> 4.09	10	1	0.39
			<u>Yarn</u> 0.39	10	4	
In case of one dealer, the AA accepted the mistake but did not intimate any action taken in this regard (October 2009).						
In case of other dealer, it was stated (May 2008) that concessional rate on inter-state sale of yarn was allowed in view of notification no. 81 dated 6 September 2001. The reply is not in consonance with the said notification which provides concessional rate subject to furnishing of form C.						
2.	<u>RAC, Bhopal</u> 01	<u>2004-05</u> December 2007	<u>Sliver (Pooni)</u> 2.78	10	-	0.28
After this was pointed out, demand of Rs. 2.93 lakh was raised as C forms involving value of Rs. 2.48 crore were produced at the time of reassessment (February 2009).						
3.	<u>RAC, Indore</u> 01	<u>2004-05</u> June 2007	Thermal energy storage <u>system</u> 2.04	10	-	0.20
The AA raised (July 2008) a demand of Rs. 20.40 lakh and adjusted the same against the balance quantum of exemption.						
4.	<u>RAC, Sagar</u> 01	<u>2003-04</u> November 2006	<u>Edible oil</u> 1.32	10	2.3	0.10
After this was pointed out, demand of Rs. 3.93 lakh was raised as C forms involving value of Rs. 89 lakh were produced at the time of reassessment (June 2009).						

1.	2.	3.	4.	5.	6.	7.
5.	<u>CTO-I, Indore</u> 02	<u>2004-05</u> January 2008	<u>Explosives</u> 0.37	13.8	12	0.07
			<u>Edible Oil</u> 0.64	10	-	
The AA stated (December 2008 and January 2009) that action would be taken after verification.						
6.	<u>CTO-IV, Jabalpur</u> 02	<u>2002-03 & 2004-05</u> January 2006 & January 2008	<u>Readymade garments</u> 0.82	10	4	0.06
			<u>Iron & Steel scrap</u> 0.20	8	4	
In case of one dealer, the AA raised (May 2008) a demand of Rs. 4.95 lakh, while in the case of other dealer, it was stated (September 2008) that action would be taken after verification. Further development has not been received (October 2009).						
7.	<u>CTO-VI, Bhopal</u> 01	<u>2003-04</u> January 2007	<u>Asbestos pipes</u> 1.35	13.8	10	0.05
The AA stated (December 2007) that action would be taken after verification. Further reply has not been received (October 2009).						
8.	<u>RAC, Indore</u> 01	<u>2004-05</u> February 2008	Television, Airconditioners, DVD and parts <u>thereof</u> 0.92	13.8	10	0.04
The AA stated (August 2008) that tax on inter-state sale of TV, DVD, AC and parts thereof was correctly levied at the rate of 10 <i>per cent</i> because intra-state sale of the said goods is taxable at the rate of 9.2 <i>per cent</i> . Reply is self-contradictory as the AA himself levied tax on intra-state sale of the said goods at the rate of 13.8 <i>per cent</i> .						
9.	<u>RAC, Khargone</u> 01	<u>2003-04</u> January 2007	<u>Cotton yarn</u> 1.30	4	2	0.03
The AA stated (January 2008) that concessional rate on inter-state sale of yarn was allowed in view of notification no. 81 dated 6 September 2001. Reply is not in consonance with the said notification which provides concessional rate subject to furnishing of Form C.						
10.	<u>RAC, Indore</u> 01	<u>2004-05</u> January 2008	<u>Thinner</u> 0.69	13.8	10	0.03
The AA stated (July 2008) that tax on inter-state sale of thinner was levied at the rate of 10 <i>per cent</i> by treating it as chemical. Reply is not in consonance with the decision of MP High Court ³⁸ , which held that thinner is covered in 'dyes & paints' which is taxable at the rate of 13.8 <i>per cent</i> .						

³⁸ M/s Asian Paints India Ltd., Indore Vs CST [(2002) 35 VKN 155].

1.	2.	3.	4.	5.	6.	7.
11.	CTO- XII, Indore 01	2003-04 January 2007	Loose leaf <u>springs</u> 0.34	8	1	0.02
After this was pointed out, the AA raised demand of Rs. 2.36 lakh (April 2009).						
12.	RAC, Indore 01	2003-04 January 2007	Loose leaf <u>springs</u> 0.28	8	2.3	0.02
After this was pointed out, the AA stated (December 2007) that action would be taken after verification. Further development has not been reported (October 2009).						
13.	CTO-I Chhindwara 01	2003-04 January 2007	<u>Gur</u> ³⁹ 0.11	10	4	0.01
After this was pointed out, demand of Rs. 26,228 was raised as C forms involving value of Rs. 4.99 lakh were produced at the time of re-assessment (August 2009).						

2.18.2 Test check of records of RAC, Ujjain in August 2008 revealed that a dealer, assessed in January 2008 for the period 2004-05, although failed to furnish requisite proof/declaration in respect of packing material valued at Rs. 1.28 crore which was claimed by the dealer to be transferred to other State otherwise than by way of sale, the AA did not levy tax on the said deemed sale of packing material. This resulted in non-levy of tax of Rs. 12.77 lakh at the rate of 10 per cent.

After this was pointed out, the AA stated (August 2008) that furnishing of declarations was not imperative in case of sale of packing material. Fact remains that in case of movement of goods from one State to another otherwise than by way of sale, the burden of proof rests on the dealer.

2.18.3 Test check of records of a circle office at Ratlam in February 2008 revealed that although two dealers, assessed between October 2005 and September 2006 for the period 2002-03 to 2004-05, furnished form C in respect of inter-state sale of mono filament yarn valued at Rs. 1.72 crore, tax was levied incorrectly at the rate of 2.3 per cent instead of four per cent. This resulted in short levy of tax of Rs. 2.93 lakh.

After the cases were pointed out, the AA reassessed (August 2008) and raised demands in both the cases.

2.18.4 Test check of records of a regional office at Indore in December 2008 revealed that a dealer, assessed in November 2007 for the period 2004-05, furnished form C in respect of inter-state sale of footwears valued at Rs. 46.81 lakh. The AA, however, did not levy tax even at concessional rate, and allowed exemption, on the basis of a notification dated 29 August 2003 issued under the MPVK *Adhiniyam*. This was not correct in view of explanation below Section 8(2) of the Act that if under sales tax law of the appropriate State, sale or purchase of any goods is exempt only in specified circumstances/conditions, such goods shall not be deemed to be exempt from tax generally. Thus, grant of incorrect exemption resulted in non-realisation of tax of Rs. 1.87 lakh at the rate of four per cent.

³⁹ Jaggery.

After the case was pointed out, the AA stated (December 2008) that action would be taken after verification. Further reply has not been received (October 2009).

2.18.5 Test check of records of a circle office at Shahdol in August 2008 revealed that a dealer, assessed in January 2008 for the period 2004-05, furnished form C in respect of inter-state sale of *tendu* leaves valued at Rs. 34.08 lakh. The AA, however, did not levy tax thereon treating the sale as tax paid. This was not correct because the dealer did not have any tax paid goods during the period in which the said sale was effected. This resulted in non-realisation of tax of Rs. 1.36 lakh at the rate of four *per cent*.

After this was pointed out (August 2008), the AA did not offer any specific comment.

The cases were reported to the CCT, MP and the Government between January 2008 and March 2009; their reply has not been received (October 2009).