

## CHAPTER-II: SALES TAX, VALUE ADDED TAX AND ENTRY TAX

### 2.1 Results of audit

Test check of the assessments, refund cases and other records on sales tax, value added tax (VAT) and entry tax in commercial tax offices during the year 2008-09 revealed underassessment of tax, non/short levy of tax/surcharge/interest/penalty, incorrect grant of exemption, incorrect computation of taxable turnover, application of incorrect rate of tax etc., amounting to Rs. 310.61 crore in 340 cases which fall under the following categories:

(Rupees in crore)			
Sl. No.	Categories	No. of cases	Amount
<b>Sales tax/VAT</b>			
1.	<b>Transition from sales tax to value added tax (A review)</b>	1	3.39
2.	Undue concession to captive power plants of industrial units	17	139.51
3.	Underassessment of tax due to incorrect grant of exemption	68	51.47
4.	Underassessment of tax due to application of incorrect rate of tax	49	41.99
5.	Short levy of tax due to incorrect computation of taxable turnover	34	24.04
6.	Non/short levy of surcharge/interest/penalty	33	3.68
7.	Other irregularities	39	18.69
<b>Total</b>		<b>241</b>	<b>282.77</b>
<b>Entry tax</b>			
1.	Incorrect computation of taxable turnover	49	14.70
2.	Non/short levy of penalty	24	5.77
3.	Application of incorrect rate of tax	11	3.68
4.	Underassessment of tax due to grant of incorrect exemption	10	3.19
5.	Other irregularities	5	0.50
<b>Total</b>		<b>99</b>	<b>27.84</b>
<b>Grand total</b>		<b>340</b>	<b>310.61</b>

During the year 2008-09, the department accepted underassessment etc., of Rs. 4.88 crore in 84 cases, which were pointed out in audit in earlier years. Of these, the department recovered Rs. 73.65 lakh in 23 cases.

A review on “**Transition from sales tax to value added tax**” involving Rs. 3.39 crore and a few illustrative audit observations involving Rs. 179.35 crore are discussed in the following paragraphs.

## **2.2 Transition from sales tax to value added tax**

### **Highlights**

The reorganisation of ranges and circles was done belatedly. Manpower shortage and handling of huge number of assessments pertaining to the repealed Orissa Sales Tax Act for 2004-05 and earlier years affected the transition process.

*(Paragraph 2.2.7)*

There were various lacunae in the Orissa Value Added Tax Act/Rules. Necessary provisions were not made making it mandatory for the dealers to furnish, along with the return, the supporting documents or evidences.

*(Paragraph 2.2.9)*

Tax audit of dealers was neglected as there were shortfalls in tax audits ranging between 38 and 97 *per cent*. Audit module in the computerised VAT Information System remained completely non-operational.

*(Paragraphs 2.2.10.3 and 2.2.10.4)*

There was inordinate delay in submission of audit visit reports as well as completion of audit assessments.

*(Paragraphs 2.2.10.5 and 2.2.14.1)*

Inadmissible input tax credit of Rs. 46.79 lakh was allowed to the dealers in respect of the opening stock as on 1 April 2005.

*(Paragraph 2.2.11.2)*

### **2.2.1 Introduction**

The Empowered Committee of State Finance Ministers in a conference held on 16 November 1999 issued a 'White Paper' for introduction of Value Added Tax (VAT) in India. Accordingly, the Committee unanimously decided in January 2002 to implement VAT. The white paper envisaged that after introduction of VAT-

- The cascading effect of the existing taxation laws of the States would be eliminated due to credit of tax paid on purchase for resale or for use in manufacture.
- Other taxes would be abolished and overall tax burden would be rationalised. The Central Sales Tax would also be phased out.
- Overall tax would increase and there would be higher revenue growth.
- There would be self assessment by the dealers and set off would be given for input and tax paid on previous purchases.

The Government of Orissa repealed the Orissa Sales Tax (OST) Act, 1947 and enacted the Orissa Value Added Tax (OVAT) Act, 2004 effective from 1 April 2005.

Some of the differences between the newly introduced OVAT Act and the repealed Act are as under:

- While the VAT is a multi point taxation system, the repealed Act had a single point taxation system.
- The VAT system relies more on the dealers to pay tax willfully and submit self assessed returns whereas under the repealed Act supporting documents were required to be produced along with the returns.
- The VAT Act provides for identification of 20 *per cent* of the dealers<sup>10</sup> for tax audit. No norm has been fixed for separate assessment and the number of assessments depends on the results of tax audits whereas under the repealed Act, hundred *per cent* dealers were being assessed.
- The executives have a reduced control over the dealers under the VAT regime whereas it had more control over the dealers earlier.

Under the OST Act the goods were taxable under six different tax groups i.e. one *per cent*, two *per cent*, four *per cent*, eight *per cent*, 12 *per cent* and 20 *per cent* under two schedules. In addition, surcharge at the rate of 10 *per cent* of the tax assessed was also leviable on goods other than the declared goods. Under the OVAT Act, the goods are taxable under four different tax groups i.e. one *per cent*, four *per cent*, 12.5 *per cent* and 20 *per cent* under two schedules and there is no provision for levy of surcharge.

The review was taken up covering the tax period from 2005-06 to 2007-08 to study the measures taken by the Government for smooth transition from OST to OVAT. The review revealed deficiencies in the transition process as well as a number of other deficiencies which have been discussed in the succeeding paragraphs.

### **2.2.2 Organisational set up**

The OVAT Act is administered by the Commissioner of Commercial Taxes (CCT) under the administrative control of the Finance Department. He is assisted by the Additional Commissioners of Commercial Taxes (Addl. CCTs), Joint Commissioners of Commercial Taxes (JCCTs), Assistant Commissioners of Commercial Taxes (ACCTs) and Commercial Tax Officers (CTOs). The organisation of the Commercial tax department at the field level under the OST and OVAT regimes is given in the following table.

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<sup>10</sup> In case of large tax paying dealers tax audit of all the dealers under a Range was to be covered within an audit cycle of two years.

Units of tax administration	Under the OST regime		Under the OVAT regime			
	Number	Headed by	Upto 31 March 2008		After 31 March 2008	
			Number	Headed by	Number	Headed by
Ranges	9	ACCT	10	ACCT	12	ACCT upto 7 August 2008 and redesignated as JCCT thereafter
Circles	29	CTO	44	CTO	44	CTO upto 7 August 2008 and redesignated as ACCT thereafter

### **2.2.3 Audit objectives**

The review was conducted to ascertain whether:-

- (i) Planning for implementation and the transition from the OST Act to OVAT Act was effected timely and efficiently;
- (ii) organisational structure was adequate and effective;
- (iii) the provisions of the OVAT Act and the Rules made thereunder were adequate and enforced properly to safeguard the revenues of the State; and
- (iv) the internal control mechanism existed in the Department and was adequate and effective to prevent leakage of revenue.

### **2.2.4 Scope and methodology of audit**

The review was conducted between October 2008 and April 2009 in 15 circles and nine related ranges<sup>11</sup> covering the tax period from 2005-06 to 2007-08. Of the above, 14 circles<sup>12</sup> and their connected ranges were selected on the basis of stratified random sampling method and Cuttack II circle was taken up for review on best judgment basis. Filing and scrutiny of returns, tax audit and audit assessment and monitoring of refund cases were identified as risk areas.

### **2.2.5 Acknowledgement**

The Indian Audit and Accounts Department acknowledges the co-operation of the Finance Department in providing necessary information to audit. The audit objectives, criteria and methodologies were discussed with the officers of the Commercial Tax Department in an entry conference held on 22 October 2008. However, no exit conference could be held, though requested.

<sup>11</sup> Balasore, Bolangir, Cuttack I, Cuttack II, Ganjam, Koraput, Puri, Sambalpur and Sundargarh.

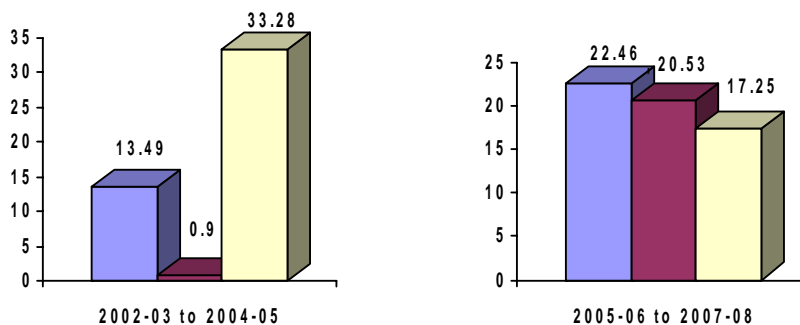
<sup>12</sup> Bhadrak, Bhubaneswar II, Bhubaneswar IV, Bolangir, Cuttack I (City), Cuttack I (East), Dhenkanal, Gajapati, Ganjam II, Kendrapara, Malkangiri, Nuapada, Rourkela II and Sambalpur II.

## Audit findings

### 2.2.6 Pre-VAT and post-VAT tax collection

The comparative position of pre-VAT (2002-03 to 2004-05) sales tax collection and post-VAT (2005-06 to 2007-08) tax collection including VAT and the growth rate in each of the years is furnished below:

Pre-VAT			Post-VAT		
Year	Actual collection (Rs. in crore)	Percentage of growth	Year	Actual collection (Rs. in crore)	Percentage of growth
2002-03	1,532.69	13.49	2005-06	2,524.18	22.46
2003-04	1,546.47	0.90	2006-07	3,042.34	20.53
2004-05	2,061.23	33.28	2007-08	3,567.16	17.25



The average growth rate during 2002-03 to 2004-05 under the repealed Act was 15.89 *per cent* while the average growth rate for 2005-06 to 2007-08 under the OVAT Act was 20.08 *per cent*. Thus, the average growth rate in the post VAT period registered an increase of 4.19 *per cent*. However, the percentage of growth is declining from year to year.

### 2.2.7 Preparedness and transitional process

#### 2.2.7.1 Planning for implementation of VAT in the State

The OVAT Act, 2004 enacted by the State Legislature received the assent of the President of India in March 2005 and was published in the Orissa Gazette in the same month. The implementation of the Act was made effective from 1 April 2005.

#### 2.2.7.2 Creation of awareness among the stakeholders

During the initial period before and after introduction of the OVAT Act, the State Government publicised the contents and intents of the Act in the local newspapers as well as in the electronic media for generating awareness among the stakeholders.

### **2.2.7.3 Computerisation of Taxation Department**

The system of administration of VAT was computerised through the VAT Information System (VATIS) application software. There were various deficiencies in the VATIS, which were reported in paragraph 2.2 of the Report of the Comptroller and Auditor General of India on Government of Orissa (Revenue Receipts) for the year ended 31 March 2007<sup>13</sup>.

The review reported that, the provisions of OVAT Act and Rules were not incorporated fully into the application software (VATIS), resulting in various irregularities such as acceptance of wrong entries, generation of wrong report, acceptance of invalid registration number, vehicle number, waybill number etc. Besides, the integrity of the data was questionable in view of lack of proper security and access control.

The Government stated in January 2009 that the following rectificatory measures had been taken:-

- Initiation of steps to ensure the use of other modules of the VATIS starting with 'Audit' and 'Assessment' modules;
- four major check gates were upgraded to 2 Mbps;
- necessary tuning of the system had been done after upgradation of the leased line; and
- the software had been rectified for generation of correct management information system (MIS) report.

### **2.2.7.4 Slow pace of reorganisation**

Under the OST regime, while the circles were entrusted with registration of dealers, assessment and collection of tax, the ranges were working mainly as appellate authorities and were looking after overall supervision of the circles under them. However, under the VAT regime, while the registration, assessment and collection of tax in respect of TIN dealers were entrusted to the assessing authorities (AAs) of the ranges, the functions of the circles were limited to registration, assessment and collection of tax of SRIN dealers and acceptance and scrutiny of returns of all the dealers under the OVAT Act.

As per the OVAT Rules, the Government was to reconstitute several circles into ranges and several areas into circles over which a JCCT/ACCT would exercise jurisdiction. It was, however, noticed that although the OVAT Act was made effective from 1 April 2005, the reorganisation was made only in October 2006. Similarly, redesignation of the existing officers under the repealed Act for the purpose of VAT administration was made in August 2008. The ACCT, Bhubaneswar IV, a newly created circle, stated in January 2009 that the required accommodation and manpower had not been provided to the circle and the records relating to the dealers to be assessed in the circle had also not been transferred from the parent circle even by January 2009. In three

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13 [http://www.cag.gov.in/html/cag\\_report/Orissa/rep\\_2007/rev\\_chap\\_2.pdf](http://www.cag.gov.in/html/cag_report/Orissa/rep_2007/rev_chap_2.pdf)

circles<sup>14</sup> the required connectivity to the computerised VATIS have not been made till the date of audit (between 8 March 2009 and 18 April 2009) and necessary data entry in respect of the returns filed by the dealers were being done in the parent circles.

For achieving better tax efficiency, though one or two large taxpayers' units (LTUs) under each range were constituted in December 2005, the identification of large tax payers was notified only in September 2007 with retrospective effect from December 2005 assigning the records of the identified large dealers to the range LTUs. Thus, delay in reorganisation was a hindrance in smooth transition and also resulted in huge shortfall in tax audits and audit assessments as discussed in the succeeding paragraphs which affected the collection of VAT revenue.

#### 2.2.7.5 Manpower management

Manpower management is a key factor for smooth and efficient working of a department and shortage of personnel is a serious problem that impacts output. The overall position of sanctioned strength vis-à-vis the vacancies in the cadres from Group A to Group C as furnished by the CCT is given below:

Year	Category of post	Sanctioned strength	Persons-in-position	Vacancy	Percentage of vacancy
2004-05	Group A	104	89	15	
	Group B	244	201	43	
	Group C	1,328	1,085	243	
<b>Total</b>		<b>1,676</b>	<b>1,375</b>	<b>301</b>	<b>17.96</b>
2005-06	Group A	104	87	17	
	Group B	244	203	41	
	Group C	1,328	1,077	251	
<b>Total</b>		<b>1,676</b>	<b>1,367</b>	<b>309</b>	<b>18.44</b>
2007-08	Group A	121	100	21	
	Group B	468	164	304	
	Group C	1,533	977	556	
<b>Total</b>		<b>2,122</b>	<b>1,241</b>	<b>881</b>	<b>41.52</b>

The shortage of manpower during the above years ranged from 17.96 to 41.52 per cent, which adversely affected the transition process. Further, though the sanctioned strength was increased in 2007-08 the number of vacancies also increased.

#### 2.2.7.6 Compilation of manuals and training of staff

The Department published manuals in eight volumes for reference of the field officers for successful implementation of the VAT. The department has also been imparting training to the officers/officials on the taxation system on a regular basis. However, the department could not furnish the details of the

<sup>14</sup> Dhenkanal, Gajapati and Kendrapara.

number of training courses conducted and officials trained during the years 2005-06 to 2007-08 although sought for in July 2009.

#### **2.2.7.7 Completion of assessments under the repealed Act**

The Department was overburdened with finalising assessments of a large number of cases under the Sales Tax Act. It was seen that 9,68,846 assessments relating to 2004-05 and earlier years pertaining to the repealed Act including assessments under the Central Sales Tax (CST) Act and Orissa Entry Tax (OET) Act were completed during the years from 2005-06 to 2007-08 as shown in the following table.

<b>Year</b>	<b>Opening balance</b>	<b>Cases due for assessment during the year</b>	<b>Total</b>	<b>Cases finalised during the year</b>	<b>Balance at the close of the year</b>
2005-06	4,57,818	3,69,564	8,27,382	3,04,570	5,22,812
2006-07	5,22,812	1,38,081	6,60,893	3,00,643	3,60,250
2007-08	3,86,965 <sup>15</sup>	55,241	4,42,206	3,63,633	78,573

As of 31 March 2008, 78,573 assessments under the OST/CST/OET Act were pending. This indicated that the department lacked proper planning for finalisation of the assessments under the repealed Act as and when those became due without waiting for three years' period provided under the Act in order to avoid accumulation of huge number of pending assessments.

#### **2.2.7.8 Collection of arrears of taxes due under the repealed Act**

The Sales Tax Officers (STOs) under the repealed Act were also functioning as Tax Recovery Officers for collection of arrears of sales tax including arrears of entry tax, entertainment tax and profession tax. Besides this, the officers were also engaged in finalising the appeal cases and following up of cases pending in the Tribunal and High Court. These were also factors responsible for slow pace of transition from OST to VAT.

### **2.2.8 Registration and database of dealers**

A dealer registered under the repealed Act and who continued to be so registered on the day immediately before 1 April 2005 and who was liable to pay tax was deemed to be registered under the OVAT Act. Besides, the OVAT Rules and executive instructions provide for conducting survey for identification of dealers and getting them registered under the Act. Every retailer registered under the Act whose annual gross turnover does not exceed Rs. 20 lakh and every registered dealer of any specific class or category as the Government may by notification, direct, shall pay turnover tax and would be assigned with a unique "Small Retailers' Identification Number (SRIN)". Registered dealers other than the SRIN dealers would be assigned with "Taxpayers' Identification Number (TIN)".

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<sup>15</sup> Includes 26,715 cases relating to central sales tax not furnished by the department up to 2006-07.



**2.2.8.1 Creation of database of dealers**

The Commercial Tax Department has been maintaining a database of registered dealers in VATIS, which is being updated through conducting surveys of unregistered dealers who become liable for registration. The dealers registered under the OST Act who continued to be registered under that Act on 1 April 2005 were also added to the VATIS database.

**2.2.8.2 Cancellation of registration of dealers**

Although the OVAT Act provides for cancellation of registration certificates of dealers in certain circumstances, yet no time limit has been fixed thereunder for such cancellation in the event of non-filing of returns by the dealers. As a result, a large number of dealers who did not file returns consecutively for the years from 2005-06 to 2007-08 remained active in the database and no step was taken to cancel their registration certificates after verifying their existence.

**2.2.8.3 Database of dubious/ risky dealers**

The department has neither maintained a database of dubious/ risky dealers nor created any database of the dealers having grey track records based on their past history under the OST Act.

**2.2.8.4 Survey and registration of dealers**

The OVAT Act provides that no dealer who is liable to pay tax under the Act, shall carry on business as a dealer unless he has been registered under the Act and possesses a certificate of registration.

The Act provides for conducting periodical survey for identification of unregistered dealers who are liable to pay tax under the Act. The CCT issued instructions in September 2005 to all territorial ranges to register all the dealers to check escapement of tax on value addition at each point of sale. For this purpose, targets were also to be fixed for departmental officers for conducting survey of liable unregistered dealers as per the action plan. The CCT further instructed that the inspectors (now ACTOs) under each range should maintain a register indicating therein the names and addresses of dealers visited / surveyed, results of survey, etc., and submit a report every fortnight to the Range ACCTs (now JCCTs).

It was seen in eight test checked circles that though the circle wise targets for the year 2005-06 were fixed for registration of liable unregistered dealers, there were huge shortfalls in achievement of targets as detailed in the table below:

Sl. No.	Name of the circle	Target fixed by CCT	Achievement	Shortfall	Percentage of shortfall
1.	Bhubaneswar-II	6,500	1,514	4,986	77
2.	Bolangir	1,000	668	332	33
3.	Cuttack-I (East)	1,550	492	1,058	68
4.	Cuttack-II	2,400	1,505	895	37
5.	Dhenkanal	2,400	1,403	997	42

Sl. No.	Name of the circle	Target fixed by CCT	Achievement	Shortfall	Percentage of shortfall
6.	Ganjam-II	1,650	741	909	55
7.	Rourkela-II	2,700	858	1,842	68
8.	Sambalpur-II	1,400	669	731	52
<b>Total</b>		<b>19,600</b>	<b>7,850</b>	<b>11,750</b>	

It would be seen from the table above that the shortfall ranged between 33 and 77 per cent. This indicates that the instructions of the CCT for sustained survey and registration of dealers was not adhered to by the circle level officers.

## **2.2.9 Returns**

### **2.2.9.1 Deficiencies in forms for submitting returns**

It was observed that the return form (VAT-201) prescribed under the Act is not suitable for works contractors as it does not provide a column for filling in the specific transactions relating to works contract.

### **2.2.9.2 Inadequate documentation along with the returns**

Under the OVAT Act, the self assessed returns filed by the dealers are accepted after scrutiny until and unless selected for tax audit. The AA has no scope for calling for any information or production of any record by the dealer and has to rely on the self assessed returns filed by the dealer until such audit is conducted. Therefore, the Act should have contained necessary safeguards making the dealer liable to furnish, along with the return, supporting documents or evidences such as statement of opening and closing stock, details of purchases and sales, type of goods purchased and sold, etc. In the absence of such provision in the Act, the scrutiny of the returns was restricted to mere check of arithmetical accuracies, leaving no scope to detect evasion of tax, if any.

### **2.2.9.3 Absence of provision for furnishing annual returns**

The Act provides for furnishing of annual audited accounts by registered dealers having annual gross turnover exceeding Rs. 40 lakh or any other amount as the Commissioner may specify by notification duly certified by Chartered Accountants. No provision was, however, made in the Act requiring the dealers to furnish annual returns or statements of annual purchases and sales and amount of tax paid, etc., for correlation of the same with the annual audited accounts. As a result, submission of annual audited accounts virtually did not serve any purpose.

### **2.2.9.4 Scrutiny and verification of returns**

The Act provides for manual or system based scrutiny of returns of all the dealers. However, no time limit has been prescribed in the Rules for completing the scrutiny of returns. Registers have also not been prescribed to record the receipt of returns and their scrutiny. As a result, the department is

not having an effective control mechanism over the receipt and scrutiny of the returns.

### 2.2.9.5 System based scrutiny of returns

Mention was made vide para 2.2 of the Comptroller and Auditor General's Report (Revenue Receipts) for the year 2006-07 about the deficiencies in the VATIS as a result of which the IT system was unable to address the business needs of the department and the computerisation efforts did not yield the expected results.

It was seen in the test checked ranges and circles that although a module had been developed in the VATIS for system based scrutiny of the returns filed by the dealers, the same remained unutilised and system based scrutiny was not carried out during the period covered under the review.

### 2.2.9.6 Dealers not filing returns

During the review it was noticed in four<sup>16</sup> ranges/circles that a large number of TIN dealers had not filed any return during the three years from 2005-06 to 2007-08 as shown in the table below:

Year	Total number of TIN dealers required to file return	Number of TIN dealers who did not file returns	Percentage of dealers who did not file returns
2005-06	18,704	4,796	26
2006-07	22,412	5,903	26
2007-08	24,616	7,454	30

It was further noticed in Rourkela II and Cuttack I (East) circles as well as in Ganjam range that 1,431 TIN dealers<sup>17</sup> had not filed any return consecutively for the last three years from 2005-06 to 2007-08. Though the registration certificates of the dormant dealers were to be suspended initially after issuing notice to explain the reasons for non-filing of return and then cancelled after verifying their existence or liability to pay tax, yet no such steps had been taken by the circles/ranges.

### 2.2.9.7 Non-transmission of the returns of TIN dealers to the range offices

In accordance with the provisions of the OVAT Rules, the CCT reiterated in October 2005 that the returns in respect of all the TIN dealers were to be transmitted to the range offices concerned after effecting necessary data entry at the circle level. It was, however, noticed in the test checked ranges that the circle offices under them did not transmit the returns of the TIN dealers to the range offices. Non-transmission of the returns to the concerned range offices not only violated the provisions of the Rules but also affected the monitoring of receipt and scrutiny of returns by the ranges.

<sup>16</sup> Balasore Range, Ganjam Range, Cuttack I(East) circle and Rourkela II circle.

<sup>17</sup> Cuttack I (East) circle: 367, Ganjam Range: 457 and Rourkela II circle: 607.

After this was pointed out, while the AA of Balasore range noted the observation for future guidance, the AA of Sundargarh range stated that the returns were not sent due to shortage of staff. The AA, Ganjam range stated that steps were being taken to regularise the matter. The AAs of Bolangir and Cuttack I (City) circles stated that the position had since changed after amendment of the Act. The other AAs did not furnish any reply.

#### **2.2.9.8 Non-availability of returns in the assessment records**

According to the OVAT Rules, all the documents<sup>18</sup> relevant to the making of any assessment in respect of any particular dealer shall be kept together and shall form an assessment case record. These records shall be preserved for a period of six years or until the assessment reaches its finality, whichever is later.

Scrutiny of the assessment records revealed that in seven circles<sup>19</sup> in almost all the cases, the returns filed by the dealers had not been kept in the assessment records. It was also seen that the returns had not been sorted out dealer wise since the introduction of VAT. It was further noticed that the hard copies of the returns of the dealers were kept in bundles and it was not possible to trace out the same dealer wise. This indicated that the returns filed by the dealers were not manually scrutinised as required under the Act nor were the details of those returns entered in the VATIS database required to be referred to while making system based scrutiny at a subsequent date to ensure whether all the details along with information in the annexure were entered in the computer correctly and the self assessments made by the dealer were correct.

#### **2.2.10 Tax audit**

According to the provisions of the OVAT Act and the Rules the Commissioner shall randomly select by 31<sup>st</sup> of January or by any date before the close of every year, not less than 20 *per cent* of the registered dealers for audit during the following year. For the assessment of the large tax payers the Commissioner may plan audit check of such dealers within an audit cycle of two years. After identification of individual dealers or a class of dealers for tax audit, audit of such dealers are to be conducted as per the approved programme.

##### **2.2.10.1 Non-maintenance of registers/ records to watch the audit process**

It was noticed that prior to April 2008, the Rules or executive instructions did not prescribe for maintenance of registers or records to watch the progress of tax audit. As a result, no records or registers were maintained in the ranges and circles test checked to watch the number of dealers selected for tax audit, name of the audit team to which audit was assigned, number of days provided vis-à-vis taken for audit, dates of commencement and completion of audit,

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18 Returns filed by the dealer, Audit Visit Report (AVR), statements of the dealer during tax audit, statement of purchases and sales furnished at the time of assessment, statement of dealer furnished at the time of audit assessment on confrontation of findings of the AVRs, annual audited accounts duly certified by Chartered Accountant submitted by the dealer, etc.

19 Cuttack II, Dhenkanal, Gajapati, Ganjam II, Nuapada, Rourkela II and Sambalpur II.

number of Audit Visit Reports (AVRs) received, date of receipt of AVRs, number of audit assessments made, etc. Consequently, the correct position regarding the tax audit conducted could not be ascertained.

**2.2.10.2** The form prescribed for AVR does not provide for obtaining the details of purchases such as invoice wise details of goods purchased by the dealer and names of the registered dealers from whom the goods were purchased on payment of tax to justify his claim for input tax credit (ITC) and cross verification of the same at the time of audit assessment. As such, non-verification of the claim of the dealer in regard to payment of tax on purchases is fraught with the risk of excess ITC which the dealer was not entitled to.

**2.2.10.3 Shortfall in tax audit**

It was noticed that annual selection/programme were not drawn up for conducting tax audit and only monthly/bi-monthly audit programme were made. The officers assigned with the tax audit were not being instructed to complete the audit timely and submit the AVR within the time prescribed. Further, it was seen that although there is no provision in the Rules for allowing postponement of audit at the request of the dealer, the officers in-charge of the audit were themselves giving extension of time frequently without the approval of the higher authorities, thereby resulting in dislocation of the audit programme and wastage of mandays. This led to huge shortfall in tax audit in eight selected ranges/circles ranging between 38 and 97 *per cent* as detailed in the table below. The information in respect of the other selected ranges/circles could not be made available in complete shape.

Sl. No.	Name of Range/ Circle	Year	Number of dealers required to be audited	Number of dealers selected for tax audit	Number of audit visits taken up	Shortfall with respect to Col. 4	Percentage of shortfall
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1.	Bhadrak Circle	2005-06 to 2007-08	1,428	60	54	1,374	96
2.	Bolangir Range	2005-06 to 2007-08	4,257	1,526	280	3,977	93
3.	Cuttack I Range	2005-06 to 2007-08	4,657	341	156	4,501	97
4.	Cuttack II Range (LTU dealers)	2005-06 to 2007-08	150	150	93	57	38
5.	Cuttack II Circle	2005-06 to 2007-08	1,906	170	98	1,808	95
6.	Ganjam Range	2005-06 to 2007-08	4,743	833	528	4,215	89
7.	Rourkela II Circle <sup>20</sup>	2005-06 to 2007-08	2,120	1,956	106	2,014	95
8.	Sambalpur Range	2005-06 to 2007-08	3,759	2,580	575	3,184	85
	<b>Total</b>		<b>23,020</b>	<b>7,616</b>	<b>1890</b>	<b>21,130</b>	

Thus, though tax audit was a vital part of VAT administration the same could not be ensured due to huge shortfall in conducting tax audit.

<sup>20</sup> Including the LTU of Sundargarh Range.

#### **2.2.10.4 Audit module in the VATIS remained non-functional**

A module for tax audit has been provided in the computerised VATIS. Despite the fact of non-operation of the module being pointed out vide para 2.2.3 of Audit Report 2006-07, the said module has not been made operational till March 2009. As such, neither has the module provided in VATIS for management of tax audit system and generation of report thereon been utilised nor has the functioning of tax audit been effectively monitored through the conventional method though more than three years have already elapsed after introduction of VAT.

#### **2.2.10.5 Delay in submission of audit visit reports**

The OVAT Act/Rules provide that after completion of tax audit of any dealer, the officer authorised to conduct such audit shall, within seven days from the date of completion of audit, submit the AVR to the AA in the prescribed form alongwith the statements recorded and documents obtained evidencing suppression of purchases or sales or both, erroneous claims of deductions including ITC and evasion of tax, if any, relevant for the purpose of investigation, assessment or such other purposes.

On scrutiny of the records relating to tax audit, it was seen that in eight circles<sup>21</sup> and seven ranges<sup>22</sup> 244 AVRs were submitted after delays ranging from one to 537 days (median delay ranging from 13 to 125 days). Delay in submission of AVRs resulted in delay in finalisation of audit assessments.

#### **2.2.10.6 Non-finalisation of refund cases due to non-completion of tax audit**

Under the OVAT Act/Rules, where any dealer claims refund in the return furnished for a tax period on account of sales in course of export out of the territory of India, he shall make an application to the AA of the circle or range, within thirty days from the date of furnishing such return. The AA on receipt of the application along with the documents shall refer the case for tax audit to determine the admissibility or otherwise of the claim of refund. If the claim for refund is found to be correct after tax audit and is supported by the required evidences, the AA shall sanction the refund claimed. Further, where any refund claimed is found to be admissible, it shall be granted within a period of 90 days from the date of application for such refund. The Act also provides that the dealer entitled to refund is also entitled to interest at the rate of eight *per cent* per annum after the expiry of the period of 90 days from the date of receipt of the application for grant of refund till the date of its sanction.

Scrutiny of the refund cases in Cuttack II and Sundargarh Ranges and Ganjam II circle revealed that 51 applications received from seven dealers between May 2005 and May 2008 for refund of Rs. 3.84 crore were pending

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21 Bhubaneswar II, Cuttack I (East), Cuttack II, Gajapati, Ganjam II, Nuapada, Rourkela II and Sambalpur II.

22 Balasore, Bhubaneswar, Bolangir, Cuttack I, Cuttack II, Ganjam and Sundargarh.

for disposal due to non-completion of tax audits. The delay in disposal of the above refund cases may lead to payment of interest also, if refund is admissible.

It was also noticed that in Sundargarh Range the receipt of applications for refund and their disposal was not watched properly as the registers maintained for the purpose were not updated and the same did not depict a correct position of applications pending for disposal.

After the cases were pointed out, the AAs of Cuttack II and Sundargarh Ranges stated in December 2008 that refund would be made after completion of tax audit while the AA of Ganjam II circle stated in February 2009 that suitable action would be taken to finalise the cases. A report on further development has not been received (October 2009).

### **2.2.11 Input tax credit**

#### **2.2.11.1 Deficiencies in the return forms**

The Act envisages that where a registered dealer sells or dispatches goods, both taxable and exempt under the Act, the ITC shall be allowed proportionately only in relation to the goods which are not so exempt. The Rules also provide for proportionate calculation of ITC in the above case by adopting the prescribed formula. However, the prescribed return form (VAT-201) did not provide any column for calculation of proportionate ITC by the dealer.

The Act and the Rules have not made it mandatory for the dealer to furnish along with the return, the details of purchases such as invoice wise details of goods purchased and names of the registered dealers from whom the goods were purchased on payment of tax to justify the claim for ITC.

#### **2.2.11.2 Irregular allowance of credit of tax paid on the opening stock**

According to the provisions of the OVAT Act/Rules, if a registered dealer had stock of goods on 1 April 2005 on which sales tax had been paid, he was entitled to claim credit of sales tax paid or sales tax suffered in respect of those goods in hand on that date, which were purchased on or after 1 April 2004. The Rules further provide that documentary evidence of payment of sales tax at the time of purchase or evidence that the goods had suffered tax at the first point of sale in a series of sales under the OST Act shall be made available for examination. However, the dealers paying turnover tax were not entitled to any ITC and the same was also not admissible on the amount of surcharge paid.

Scrutiny of the records revealed that in 139 cases the AAs allowed ITC of Rs. 3.16 crore on opening stock as on 1 April 2005. However, it was noticed that the same included inadmissible credit of Rs. 46.79 lakh as discussed below:

- ◆ The AAs in eight circles<sup>23</sup> irregularly allowed credit of surcharge of Rs. 21.05 lakh paid in 106 cases on sales tax under Section 5(A) of the OST Act.
- ◆ In 14 cases, the AAs of three circles<sup>24</sup> allowed credit of Rs. 16.68 lakh although documentary evidence in support of actual tax suffered at the first point of sale in a series of sales under the OST Act had not been furnished.
- ◆ The AAs of five circles<sup>25</sup> irregularly allowed credit of Rs. 7.03 lakh in nine cases though no documentary evidence in regard to purchase of goods between 1 April 2004 and 1 April 2005 were furnished by the dealers.
- ◆ Though the dealers paying turnover tax were not entitled to ITC yet the AA of Sambalpur II circle irregularly allowed ITC of Rs. 76,873 in three cases.
- ◆ In five cases, credit of Rs. 68,895 was allowed irregularly by the AAs of four circles<sup>26</sup> on goods purchased prior to 1 April 2004.
- ◆ The AA of Gajapati circle irregularly allowed ITC of Rs. 56,845 in two cases on goods which was not in the opening stock of the dealers as on 1 April 2005 but were received and accounted for after the appointed day i.e. 1 April 2005.

After the cases were pointed out, all the AAs stated between November 2008 and March 2009 that action would be taken after examination of the cases. A report on further development has not been received (October 2009).

#### **2.2.12 Provision for cross verification**

##### ***Deficiency in uploading/ updating data in TINXSYS***

The Empowered Committee of State Finance Ministers has authored a website named 'TINXSYS.com' to serve as a repository of interstate transactions. This is mainly aimed at helping the commercial tax department to effectively monitor interstate trade. Test check of the records of four ranges<sup>27</sup> and information collected from them revealed that none of them had updated the data relating to issue of declaration forms C and F and utilisation thereof during the years 2005-06 to 2007-08 in the VATIS and consequently, the information on issue and utilisation of declaration forms could not be uploaded/ updated in the website by the office of the CCT.

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23 Bhadrak (28 cases), Bhubaneswar-II (18 cases), Bolangir (four cases), Cuttack-I (East) (17 cases), Cuttack-II (five cases), Ganjam-II (14-cases), Rourkela-II (16 cases) and Sambalpur-II (four cases).

24 Cuttack-I (East) (one case), Ganjam-II (one case) and Rourkela-II (12 cases).

25 Cuttack-I (East) (one case), Cuttack-II (three cases), Ganjam-II (two cases), Rourkela-II (two cases) and Sambalpur-II (one case).

26 Bhadrak (one case), Cuttack-I (East) (two cases), Cuttack-II (one case) and Rourkela-II (one case).

27 Bhubaneswar, Cuttack-I, Cuttack-II and Ganjam.



### **2.2.13 Furnishing of annual audited accounts by the dealers**

According to the provisions of the OVAT Act and the Rules, if in respect of any particular year, the gross turnover of a dealer exceeds Rs. 40 lakh or any other amount as the Commissioner may specify by notification in the Gazette, such dealer shall get his accounts in respect of such year audited by a Chartered Accountant within a period of six months from the date of expiry of that year and obtain within that period a report of such audit in the prescribed form containing the prescribed particulars duly signed and verified by such Chartered Accountant and in every such case, a true copy of such report shall be furnished by such dealer to the Commissioner by the end of the month following the expiry of the said period of six months.

Self assessed returns furnished by the dealers are accepted by the AAs until tax audit of the dealers is conducted. Till then, the AAs were to utilise the audited accounts as a tool to ascertain the correctness of the turnover declared by the dealers. However, the Rules or any instruction do not provide for maintenance of any record or register to monitor timely receipt of annual audited accounts from the dealers.

### **2.2.14 Audit assessment**

#### **2.2.14.1 Delay in audit assessments**

As per the provisions of the OVAT Act/Rules, where the tax audit results in detection of suppression of purchases or sales or both, erroneous claims of deductions including claim of ITC, evasion of tax or contravention of any provision of the Act affecting the tax liability of the dealer, the AA, after giving prior notice to the dealer for production of records, is required to make assessment of the dealer within a period of six months from the date of receipt of AVR. The Act further provides that if for any reason the assessment is not completed within the time specified under the Act, the Commissioner may, on the merit of each case, allow such further time not exceeding six months for completion of the assessment proceedings.

Prior to April 2008 no records were prescribed under the Rules or under any executive instructions for monitoring the completion of audit assessments. It was noticed in three ranges<sup>28</sup> and two circles<sup>29</sup> that 398 AVRs received during the years 2006-07 and 2007-08 were pending for audit assessment as of 31 March 2008. The year to which the pending AVRs related could not be ascertained as the records were maintained in an irregular manner in absence of any prescribed provision for maintenance of the same.

It was further noticed that in five ranges<sup>30</sup> and six circles<sup>31</sup> in 55 cases, though audit assessments were completed after expiry of the stipulated period of six months raising demand of Rs. 2.51 crore, yet approval of the Commissioner

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28 Bolangir, Cuttack I and Ganjam.

29 Cuttack II and Rourkela II.

30 Balasore, Bolangir, Cuttack I, Ganjam and Sundargarh.

31 Bhubaneswar II, Cuttack I(East), Cuttack II, Gajapati, Ganjam II and Sambalpur II.

was not obtained. Out of these, in five cases involving demand of Rs. 8.26 lakh, the assessments were made after expiry of one year.

#### ***2.2.14.2 Assessment of TIN dealers by circle officers-violation of jurisdiction***

According to the OVAT Rules, the AA in respect of SRIN dealers are the CTOs (now ACCT) of the circles whereas the AAs in respect of TIN dealers are the ACCTs (now JCCT) of the Ranges.

It was, however, noticed that in Rourkela I and Rourkela II circles neither did the circle offices transmit the returns of all the TIN dealers to the Range offices nor were the assessments of TIN dealers except in the case of LTUs finalised by the AA of the Range. After conducting tax audit of TIN dealers, the audit assessments were also finalised by the AAs of the circles under the seal and signature of the Sales Tax Officer of the circle thereby violating the jurisdiction of the AAs provided in the Act.

It was also seen in Sundargarh range that in five cases involving demand of Rs. 2.92 crore the dealers challenged the jurisdiction of the AAs of the circles for making assessments for the years 2005-06 and 2006-07 and in all the said cases, the assessments were set aside between January and March 2008 by the High Court of Orissa for violation of jurisdiction of AAs. Thus, non-adherence to the provisions by the departmental officers led to blockade of revenue of Rs. 2.92 crore.

#### **2.2.15 Internal audit**

Internal audit is one of the most vital tools of the internal control mechanism and functions as the 'eyes' and 'ears' of the management and evaluates the efficiency and effectiveness of the mechanism. It also independently appraises whether the activities of the organisation/department are being conducted efficiently and effectively.

Mention was made in paragraph 2.18 of the Report of the Comptroller and Auditor General of India on Government of Orissa (Revenue Receipts) for the year ended 31 March 2003 as well as in paragraph 2.2.8 of the said Report for the year ended 31 March 2008 regarding non-functioning of the above internal audit wing (IAW) since 1999-2000 except for inspection of 15 units in 2001-02. It was recommended that the IAW may be revamped to check the leakage of revenue. However, the Government has not yet revived the IAW in the department.

Thus, due to the failure of the Government to revive the IAW, reduction of the risk of committing errors and irregularities within the department was not ensured.

#### **2.2.16 Compensation of loss of revenue on introduction of VAT**

The Government of India (GoI) had given their consent to compensate the State Government for loss of revenue consequent upon the implementation of

VAT. For this purpose, the VAT receipts were to be compared with the revenue of the pre-VAT period suitably extrapolated on the basis of the average growth rate of revenue of the previous five years. The compensation was to be allowed to the extent of 100 *per cent* of the shortfall of revenue during the first year of VAT implementation and 75 *per cent* and 50 *per cent* respectively during the subsequent two financial years computed as per the guidelines prescribed by the GoI in June 2006.

It was seen that against a loss of Rs. 103.32 crore during the year 2006-07, the claim for compensation of Rs. 77.49 crore (75 *per cent*) was made belatedly in July 2008 along with the claim of Rs. 97.63 crore (50 *per cent* of Rs. 195.26 crore) for the year 2007-08. Against the above claims, compensation of Rs. 142.59 crore relating to the above years was received in March and May 2009 as an ad-hoc payment. Besides the above, further compensation of Rs. 39.66 crore was also received in July 2009 based on additional instructions on compensation issued by the GoI in June 2009.

### **2.2.17 Conclusion**

The transition from OST to VAT suffered due to several deficiencies in the transition process such as slow process of reorganisation of the administrative machinery, shortage of manpower and engagement of the existing manpower in finalisation of assessments and collection of arrears under the repealed Sales Tax Act. Adequate steps were not taken to watch receipt and scrutiny of the self assessed returns. Tax audit, a vital part of the VAT administration, was neglected as the prescribed quantum of tax audit could not be achieved. Several deficiencies in the Act and the Rules and absence of executive instructions also contributed to failure of the field functionaries in effectively implementing the Act.

### **2.2.18 Recommendations**

The Government of Orissa may consider the following steps for effective implementation of the VAT system.

- Amending the Rules making provision for submission of annual returns alongwith supporting details/documents showing opening and closing stock, purchases and sales, etc..
- Amending the return form providing necessary column for calculating proportionate ITC and details of transactions in respect of works contracts.
- Prescribing a time limit for scrutiny of returns.
- Prescribing maintenance of records/registers to monitor timely receipt of annual audited accounts and to ensure follow up action for non-submission of annual audited accounts.

### **2.3 Other audit observations**

*Scrutiny of assessment records of sales tax/value added tax (VAT) and entry tax in commercial tax offices 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 (AAs) are pointed out in audit each year, but not only do the irregularities persist; these remain undetected till an audit is conducted. There is need for the Government to improve the internal control system including strengthening of internal audit.*

### **2.4 Allowance of undue concession to captive power plants installed by industrial units**

*Non-application of judicial pronouncement resulted in inadmissible concession of Rs. 139.51 crore.*

As per the provisions of the Central Sales Tax (CST) Act, 1956 and the Rules framed thereunder registered industrial units are eligible to purchase raw materials, processing materials, plant and machineries, tools and equipments, stores, spare parts and accessories, fuel, lubricants, etc., at a concessional rate of tax for use in manufacturing or processing of goods for sale, or in the telecommunication network, or in mining or in generation or distribution of electricity or any other form of power subject to furnishing of declarations in form C to the selling dealer from whom such goods are purchased. It was judicially<sup>32</sup> held in the case of a captive power plant (CPP)<sup>33</sup> run by a paper industry that electricity was not a raw material for manufacture of paper and pulp. The CPP might facilitate the manufacturing of paper, but erection of such plant was not integrally connected with the manufacturing of paper and pulp. Therefore, the purchase of plant and machinery for a new CPP could not be covered by the declaration in form C prescribed under the CST Act. It was also held that the dealer industry was liable to pay the difference between the tax payable at the normal rate and the tax already paid at the concessional rate by utilising the declarations in form C.

Test check of the records of six range offices<sup>34</sup> and eight circle offices<sup>35</sup> between October 2008 and March 2009 revealed that 17 industrial units manufacturing iron and steel, aluminum, sponge iron, etc., purchased goods valued at Rs. 1,603.83 crore between April 2000 and February 2009 at concessional rates of tax by furnishing declarations in form C for use in manufacture. It was seen from the utilisation account of form C rendered by the dealers that the goods so purchased were procured for installation and maintenance of their CPPs. Further, in Jajpur and Sundargarh range, three

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32 M/s. Orient Paper Mills Limited Vs. State of Orissa and others [2007 – 10 VST-547 (Orissa)]

33 CPP – a power plant installed for utilisation of the power in a particular industry for its own use.

34 Angul, Bhubaneswar, Cuttack II, Jajpur, Sambalpur and Sundargarh.

35 Angul, Barbil, Bhubaneswar III, Dhenkanal, Jagatsinghpur, Jajpur, Rourkela I and Sambalpur II.

dealers admitted to have purchased goods valued at Rs. 17.60 crore during April 2007 to February 2009 at concessional rates of tax for utilisation in their CPPs, on the condition of furnishing declarations in form C to the selling dealers. As generation of electricity is not integrally connected with the manufacturing process of their end products, the industries were not entitled for the purchases at the concessional rate of tax. Hence the concession availed by the dealers was irregular for which differential tax of Rs. 139.51 crore is leviable. The department did not initiate any action for levy and realisation of the differential tax.

After the cases were pointed out, all the AAs, except the AAs of Cuttack II and Jajpur Range in one case and Rourkela I circle in one case, stated between November 2008 and March 2009 that the cases would be examined and action as per the provisions of the law would be taken. A report on further development has not been received (October 2009).

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

## **2.5 Non-observance of the provisions of the Acts/Rules**

*The OST/OVAT/CST/OET Acts/Rules provide for:*

- (i) *Levy of tax/surcharge/interest/penalty at the prescribed rates;*
- (ii) *exemption of tax to new industries on fulfilment of the prescribed conditions;*
- (iii) *exemption of tax on interstate sales subject to submission of the prescribed declarations/certificates;*
- (iv) *scrutiny of dealers' self assessed returns by the AAs; and*
- (v) *allowance of input tax credit as admissible.*

*The AAs while finalising the assessments did not observe the above provisions as mentioned in paragraphs 2.5.1 to 2.5.14 resulting in non/short levy, non-realisation of tax, interest, penalty etc. of Rs. 35.05 crore.*

### **2.5.1 Non-levy of tax and penalty**

Under the OVAT Act, 2004, every dealer who in course of his business purchases any goods within the state from unregistered dealers, is liable to pay tax on the purchase price or prevailing market price of such goods, if after such purchase, the goods are consumed or used in the manufacture of goods declared to be exempt from tax under the Act. Sugarcane being an unspecified item is taxable at the rate of 12.5 *per cent*. Further, under the Act, sugar and textile fabrics though enlisted under four *per cent* tax group, was not subject to tax as long as it was exigible to Additional Duties of Excise (ADE). The Government of India by a notification of March 2006 exempted ADE on sugar and textile fabrics and thus the same became taxable under the OVAT Act

from March 2006. Besides, penalty equal to twice the amount of tax assessed on account of suppression of sales or purchases, evasion of tax or contravention of any provision of the Act is also leviable.

**2.5.1.1** Test check of the records of Cuttack II Range in September 2008 revealed that a registered manufacturer of sugar purchased sugarcane worth Rs. 15.16 crore during November 2005 to February 2006 from unregistered dealers. Although sugar manufactured therefrom was not taxable under the Act upto February 2006, the dealer did not pay tax on the said turnover. The department also failed to detect this in the tax audit conducted in February 2007 and did not levy purchase tax and penalty leviable thereon. This led to non-levy of tax and penalty of Rs. 5.69 crore.

**2.5.1.2** Test check of the records of Cuttack I, Cuttack II and Ganjam Ranges and Bolangir and Cuttack II circles between September 2008 and February 2009 revealed that five registered dealers sold sugar valued at Rs. 66.53 crore between March 2006 and August 2007 but did not pay tax thereon. The tax audit team while conducting the tax audit in four cases between November 2006 and August 2007 failed to detect the non-payment of tax and the AAs also while finalising the assessments between February 2007 and February 2008 failed to levy tax. This resulted in non-levy of tax of Rs. 2.66 crore. Besides, penalty of Rs. 5.32 crore is also leviable.

After the cases were pointed out, the CCT stated in March 2009 that in two cases proceedings for assessment of tax on the escaped turnover had been initiated. The JCCT, Ganjam initiated proceedings in February 2009 for reassessment. The ACCT, Bolangir circle stated in February 2009 that the case would be examined while the ACCT, Cuttack II circle stated in November 2008 that action would be taken on receipt of final report. A report on further development has not been received (October 2009).

The matter was brought to the notice of the Government in January and July 2009. The Government stated in August 2009 that sugar continued to be in the Schedule to the Additional Duties of Excise (Goods of Special Importance) Act but the rate of ADE was reduced to zero and the Government of India had the authority to levy ADE thereon at any time they decided. The fact, however, remains that from March 2006 sugar was neither subjected to levy of ADE nor VAT.

**2.5.1.3** Test check of the assessment records of three circles<sup>36</sup> revealed that four dealers did not pay tax on sale of textile fabrics worth Rs. 5.53 crore made between March 2006 and March 2007. The AAs also while finalising the assessments between October 2006 and November 2007 irregularly allowed exemption on the said turnover. This resulted in non-levy of tax of Rs. 22.11 lakh. Besides, penalty of Rs. 44.22 lakh is also leviable.

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<sup>36</sup> Bhubaneswar II, Cuttack II and Dhenkanal.

After the cases were pointed out, while the AA of Dhenkanal circle stated in March 2009 that the case would be examined, the AA of Cuttack II circle stated in December 2008 that proceeding would be initiated after approval of the head office. No reply was furnished by the AA of Bhubaneswar II circle.

The matter was reported to the Government in July 2009; their reply has not been received (October 2009).

### **2.5.2 Non-levy of penalty for non-submission/delayed submission of audited accounts**

According to the provisions of the OVAT Act and the Rules, if in respect of any particular year, the gross turnover of a dealer exceeds Rs. 40 lakh or any other amount as the Commissioner may specify by notification in the Gazette, such dealer shall get his accounts in respect of such year audited by a Chartered Accountant within a period of six months from the date of expiry of that year and obtain within that period a report of such audit in the prescribed form containing the prescribed particulars duly signed and verified by such Chartered Accountant, and in every such case, a true copy of such report shall be furnished by such dealer to the Commissioner by the end of the month following the expiry of the said period of six months. The Act further provides that if any dealer liable to get his accounts audited fails to furnish a true copy of such report within the time specified, the Commissioner shall, after giving the dealer a reasonable opportunity of being heard, impose on him a penalty of Rs. 100 for each day of default.

It was noticed from the information collected from three ranges<sup>37</sup> and eight circles<sup>38</sup> that though 5,308 dealers did not submit audited accounts for the years 2005-06 to 2007-08, penalty of Rs. 11.57 crore leviable was not levied. Further, from the records maintained in Rourkela II circle and the audited accounts produced to audit by four circles<sup>39</sup>, it was revealed that although 148 dealers delayed in submission of audited accounts, penalty of Rs. 8.76 lakh was not levied. This was due to non-existence of a system to monitor timely receipt of annual accounts and follow up action on non-receipt of the same.

The matter was reported to the Government in July 2009; their reply has not been received (October 2009).

### **2.5.3 Underassessment due to application of lower rate of tax**

**2.5.3.1** Under the OST Act, 1947, specific rates of tax are applicable to different commodities as notified from time to time. Goods not specified in the rate chart are taxable at the general rate of 12 *per cent*. Besides, penalty equal to one and a half times of tax assessed is also leviable for furnishing incorrect particulars without sufficient cause.

<sup>37</sup> Balasore, Cuttack II and Koraput.

<sup>38</sup> Bhadrak, Bhubaneswar II, Cuttack II, Gajapati, Ganjam II, Kendrapara, Rourkela II and Sambalpur II.

<sup>39</sup> Dhenkanal, Gajapati, Ganjam II and Nuapada.

Test check of the assessment records of Cuttack I(East) and Cuttack I(Central) circles between May and August 2008 revealed that in two cases the dealers misclassified the goods valued at Rs. 36.42 crore sold during 2003-04 and 2004-05 and paid tax at lower rates. The assessing officers (AOs) also accepted the returns and completed the assessments between November 2006 and March 2008 accordingly. In another case, the AO, Ganjam I circle while completing the assessment in March 2007 for the year 2003-04 applied incorrect rate of tax. This resulted in under assessment of tax of Rs. 1.93 crore including surcharge and penalty as detailed in the following table.

<b>(Rupees in lakh)</b>					
<b>Sl. No.</b>	<b>Name of the circle</b>	<b>Year assessed Month of assessment</b>	<b>Taxable turnover</b>	<b>Short levy of tax including surcharge and penalty</b>	<b>Remarks</b>
1.	Cuttack I (East)	2003-04 and <u>2004-05</u> November 2006 and March 2008	3,172.59	139.59	Asphalt was assessed to tax at the rate of eight <i>per cent</i> instead of 12 <i>per cent</i> .
2.	Cuttack I (Central)	<u>2004-05</u> December 2007	469.29	51.62	Potato chips and 'kurkure' in packets were assessed to tax at the rate of eight <i>per cent</i> instead of 12 <i>per cent</i> .
3.	Ganjam I	<u>2003-04</u> March 2007	18.15	1.60	Air conditioner, refrigerator, stabilizer, etc., was assessed to tax at the rate of four <i>per cent</i> instead of 12 <i>per cent</i> .
<b>Total:</b>				<b>192.81</b>	

After the cases were pointed out, the Government stated in July 2009 that demand of Rs. 1.41 crore was raised in case of Sl. Nos. 1 and 3 and reassessment proceeding had been initiated in December 2008 in case of Sl. No. 2. A report on realisation in case of Sl. Nos. 1 and 3 and further development in case of Sl. No. 2 has not been received (October 2009).

**2.5.3.2** As per the Government of Orissa notification of March 2001, the portion of the turnover of the works contract equaling the purchase value of goods purchased by the dealer for use in the works contract free of tax are taxable at the rate applicable for sale of such goods under the OST Act. Further, as per the notification of January 2002 the purchase value of goods purchased from unregistered dealers and utilised in works contract shall be subjected to tax at the last point of sale. Under the Act, sand, moorum, chips and metals are taxable at the rate of 12 *per cent* as unspecified items.

Test check of the records of Cuttack II circle in September 2008 and further scrutiny in January 2009 revealed that a registered dealer engaged in execution of contract works utilised sand, moorum, chips and metal valued at Rs. 8.63 crore in execution of works contracts during the years 2003-04 and 2004-05 which were purchased free of tax from unregistered dealers inside the State.



The AO while finalising the assessments in March 2006 levied tax at the rate of eight *per cent* on the above materials used in the works instead of the appropriate rate of 12 *per cent*. This resulted in underassessment of tax of Rs. 37.98 lakh including surcharge.

After the case was pointed out, the Government stated in July 2009 that the reassessment proceedings were completed in April 2009 which resulted in refund of Rs. 1.71 lakh for the year 2003-04 and extra demand of Rs. 5.65 lakh for the year 2004-05. A report on recovery and reasons for refund as well as variation in demand has not been received (October 2009).

#### **2.5.4 Non-levy of penalty**

Under the OVAT Act, penalty equal to twice the amount of tax assessed in audit assessment is leviable without prejudice to any penalty or interest that may have been levied under any other provision of the Act. Further, under the Act, any person, who being a registered dealer collects any amount by way of tax in excess of the tax payable by him is liable to pay in addition to the tax for which he may be liable, a penalty equal to twice the sum so collected by way of tax.

**2.5.4.1** Test check of the audit assessments of Cuttack II circle revealed that demand of tax of Rs. 2.53 crore was raised in May 2008 against a dealer for the period from April 2005 to September 2007. Of this, Rs. 73.47 lakh was found payable due to non-disclosure of turnover of Rs. 7.42 crore by the dealer in his self assessed returns. Though penalty of Rs. 1.47 crore was leviable for such suppression, the AA did not levy any penalty while completing the assessment in May 2008. This resulted in non-levy of penalty of Rs. 1.47 crore.

After this was pointed out, the AA stated in December 2008 that the case would be examined. A report on further development has not been received (October 2009).

**2.5.4.2** Test check of the assessment records of Cuttack II circle revealed that although two dealers collected tax in excess of that assessed for the tax periods from April 2005 to May 2006, the excess tax of Rs. 27,138 collected was not demanded at the time of assessment in October 2006 nor was penalty of Rs. 54,276 lakh levied. This apart, the AA also did not raise demand for the tax of Rs. 1.06 lakh found due in assessment. This resulted in short demand of tax of Rs. 1.87 lakh including penalty of Rs. 54,276.

After the case was pointed out, the AA stated in December 2008 that proceedings would be initiated after receipt of approval of head office. A report on further development has not been received (October 2009).

The matter was reported to the Government in July 2009; their reply has not been received (October 2009).

### **2.5.5 Excess grant of exemption under the sales tax incentive scheme**

Under the OST Act read with the Industrial Policy Resolution (IPR), 1996, a small scale industrial (SSI) unit located in zone C<sup>40</sup> is eligible for exemption of sales tax on purchase of raw materials, machinery, spare parts, packing materials and sale of finished products subject to a ceiling of 100 *per cent* of the fixed capital investment (FCI) for a period of five years from the date of commercial production. As per the Government of Orissa notification of March 2001 issued under the delegated provisions of the CST Act, interstate sale of goods manufactured by the SSI units are taxable at a concessional rate of one *per cent* against declaration in form C with effect from 1 April 2001. As clarified by the CCT, Orissa in February 2003 this concession is, however, not available to the SSI units enjoying sales tax exemption under the IPR.

**2.5.5.1** Test check of the records of Cuttack II circle in September 2008 and subsequent scrutiny of records in January 2009 revealed that the AO while finalising in July 2007 the assessment for the year 2004-05 of an SSI unit availing exemption under the IPR 1996 computed tax on interstate sale turnover of Rs. 14.68 crore at the concessional rate of one *per cent* instead of four *per cent*. This resulted in short computation of tax of Rs. 44.05 lakh. Further, it was seen that tax of Rs. 45.30 lakh assessable at the rate of four *per cent* on interstate sale turnover of Rs. 11.33 crore for the years 2002-03 and 2003-04 was not computed and considered for allowance of exemption upto the ceiling limit. Thus, the total short computation of tax comes to Rs. 89.35 lakh which led to consequential excess exemption of tax of Rs. 89.35 lakh.

It was further seen that against the FCI of Rs. 2.65 crore the dealer was allowed exemption of Rs. 1.66 crore upto 2002-03 leaving a balance of Rs. 99.22 lakh admissible for exemption during the remaining period of eligibility. The AO while finalising the assessments for 2003-04 and 2004-05 under both the OST and CST Acts in March 2005 and July 2007 allowed exemption of Rs. 131.21 lakh. This resulted in excess exemption of Rs. 31.99 lakh. The total excess exemption, thus, comes to Rs. 1.21 crore.

After the case was pointed out, the Government stated in July 2009 that intimation for verification of the books of account of the dealer had been issued which was pending for disposal. A report on further development has not been received (October 2009).

**2.5.5.2** Test check of the records of Bhubaneswar III circle in July 2008 and subsequent collection of information in March 2009 revealed that a registered SSI unit under IPR 1996 was eligible for tax exemption of Rs 45.68 lakh, i.e., the amount of FCI. The AO while finalising the assessments for the years 2001-02 to 2003-04 between March 2003 and February 2007 computed tax on the interstate sale turnover of Rs. 6.21 crore at the rate of one *per cent* instead

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40 Zone C : The State of Orissa is divided into zones depending upon their industrial backwardness. Zone C locations : Angul, Balasore, Bargarh, Berhampur, Bhubaneswar, Chhatrapur, Cuttack, Dhenkanal, Jajpur, Jharsuguda, Panposh, Rayagada, Sambalpur and Talcher Sub Divisions.

of four *per cent*. This resulted in short computation and consequential excess exemption of tax of Rs. 18.63 lakh.

After the case was pointed out, the Government stated in July 2009 that reassessment proceeding had been completed in May 2009 raising demand of Rs. 76.06 lakh which included other points considered in reassessment. A report on realisation has not been received (October 2009).

### **2.5.6 Non-levy of tax on unmanufactured tobacco**

Under the OVAT Act, unmanufactured tobacco is exigible to tax at the rate of four *per cent* from 1 July 2005 to 31 May 2007. Further, for evasion or escapement of tax penalty equal to twice the amount of tax additionally assessed is also leviable.

Test check of the records of Samabalpur I circle in September 2008 revealed that a registered dealer did not pay tax on sale of raw tobacco (unmanufactured tobacco) valued at Rs. 10.71 crore effected during July 2005 to March 2007. The AA while completing the assessment in July 2007 of the dealer for the period from April 2005 to March 2007 also considered the said sale turnover as tax free sales and did not levy tax thereon. This resulted in non-levy of tax of Rs. 42.86 lakh. Besides, penalty of Rs. 85.72 lakh is also leviable.

After the case was pointed out, the Government stated in July 2009 that proceeding for assessment of tax on the escaped turnover was initiated in January 2009 which was pending as the dealer had taken time. A report on further development has not been received (October 2009).

### **2.5.7 Non-levy of interest and penalty for delay in payment of tax/non-payment of tax**

According to the OVAT Act/Rules, where a dealer required to file a return under the Act fails without sufficient cause to pay the amount of tax due as per the return, revised return or final return, as the case may be, for any tax period, such dealer is liable to pay interest in respect of the tax which he fails to pay according to the return, at the rate of one *per cent* per month (two *per centum* per month from 1 April 2005 to 30 June 2005) from the date the return for the period was due to the date of its payment or to the date of order of assessment, whichever is earlier. The Rules further provide that where a dealer fails to make payment of the tax due and interest thereon along with the return for any tax period, penalty at the rate of two *per cent* per month on the tax and interest so payable from the date it had become due to the date of its payment or the order of assessment, whichever is earlier, is leviable by giving prior notice to the dealer.

Test check of audit assessments as well as self assessed returns of four circles<sup>41</sup> and four ranges<sup>42</sup> revealed that 30 dealers paid tax of Rs. 75.01 crore

41 Cuttack II, Ganjam II, Nuapada and Rourkela II.

42 Balasore, Bhubaneswar, Cuttack II and Sundargarh.

with delays ranging from 1 to 442 days. Further, in Cuttack II circle a dealer did not deposit the admitted tax of Rs. 1.43 lakh alongwith the return for the period from April 2005 to December 2006. Though interest and penalty of Rs. 39.35 lakh and Rs. 50.30 lakh respectively was leviable, the same was not levied by the AAs.

The matter was reported to the Government in July 2009; their reply has not been received (October 2009).

### **2.5.8 Non/short levy of entry tax**

Under the Orissa Entry Tax (OET) Act, 1999 and the Rules made thereunder, entry tax is leviable on the scheduled goods entering into a local area for consumption, use or sale therein at the rates prescribed in the schedule appended to the Act. While *bhujia* and mixture and machinery spare parts are taxable at the rate of two *per cent* synthetic rubber and carbon black (being chemical) are exigible to tax at one *per cent*. Further, scheduled goods brought for use as raw material by a manufacturer on first entry into a local area are taxable at a concessional rate of 50 *per cent* of the rate prescribed.

Test check of the records of three circles<sup>43</sup> between May and August 2008 revealed that while completing the assessments between March 2006 and January 2008 of three dealers for the years 2002-03 and 2004-05 the AAs did not levy tax on synthetic rubber, carbon black, *kurkure* and *bhujia* and levied tax on machinery spare parts at a lower rate. This resulted in non/short levy of entry tax of Rs.70.04 lakh.

After the cases were pointed out, the Government stated in July 2009 that the reassessment proceedings initiated against the dealers were pending for disposal. A report on further development has not been received (October 2009).

### **2.5.9 Underassessment of tax due to irregular allowance of deduction**

Under the OST Act, wire rods are exigible to tax at the rate of four *per cent* and hardware goods being unspecified item are exigible to tax at the rate of 12 *per cent*. Besides, penalty equal to one and a half times of tax assessed shall be leviable for furnishing incorrect particulars without sufficient cause.

Test check of the records of Ganjam II circle in August 2008 revealed that during 2004-05 a registered dealer had manufactured hardware goods like wire nail, hard barbed wires and winding wires out of tax paid raw materials like wire rod and die powder but did not pay tax on sale of the finished products. The dealer claimed exemption on the sale of finished product as tax paid goods. While finalising the assessment in March 2008 the AO also deducted the entire sale turnover of finished products as first point tax paid goods and the dealer was assessed to nil. As the finished goods and the raw materials are separately classified under the rate chart the deduction allowed was irregular.

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<sup>43</sup> Balasore, Cuttack I (Central) and Jagatsinghpur.

This resulted in underassessment of tax of Rs. 13.27 lakh including surcharge. Besides, penalty of Rs. 19.90 lakh is also leviable.

After the case was pointed out, the Government stated in July 2009 that the case was reopened in August 2008 which was pending for disposal. A report on further development has not been received (October 2009).

#### **2.5.10 Underassessment of tax due to irregular allowance of transit sale**

Under the CST Act, sale of any goods in the course of interstate trade effected by transfer of documents of title to such goods are not subject to levy of tax. In support of such transit sales, certificates in form E-I or E-II and declarations in form C are required to be furnished by the dealers causing the movement and taking the delivery of the goods respectively. Sale of iron dust, iron scrap, coal and coke supported by declaration in form C are exigible to tax at the rate of four *per cent* under the Act.

Test check of the records of Rourkela I circle in September 2008 revealed that the AO while completing the assessment in February 2008 for the year 2005-06 of a registered dealer dealing in iron dust, iron scraps, coal and coke, allowed sale turnover of Rs. 7.97 crore as exempt from CST treating the same as transit sale. Scrutiny of the assessment records revealed that the above sale turnover was not supported by certificates in form E-I or E-II though supported by declarations in form C. Thus, there was irregular allowance of transit sale resulting in underassessment of tax of Rs. 31.89 lakh.

After the case was pointed out, the Government stated in July 2009 that the reassessment proceeding initiated against the dealer was dropped since the dealer submitted the valid E-I certificates in support of the transit sales which were not submitted at the time of original assessment. However, the CST (Registration and Turnover) Rules, 1957 provides that the E-I certificates should be furnished upto the time of assessment by the first AA. Thus, the acceptance of E-I certificates was irregular.

#### **2.5.11 Non-levy of surcharge**

Under the OST Act, surcharge at the rate of 10 *per cent* is leviable on the amount of tax payable by the dealer.

Test check of the records of Cuttack II and Angul circles in July and September 2008 revealed that the AOs while completing the assessments of two registered dealers for the years 2003-04 and 2004-05 in March and December 2007 did not levy surcharge on the assessed tax of Rs. 2.46 crore. This resulted in non-levy of surcharge of Rs. 24.58 lakh.

After the cases were pointed out, the Government stated in July 2009 that in one case demand of Rs. 4.09 lakh had been raised in September 2008 and in the other case reassessment proceeding initiated in September 2008 was pending for disposal. A report on recovery in the former case and further development in the latter has not been received (October 2009).

### **2.5.12 Improper scrutiny resulted in excess adjustment of input tax credit**

As per the provisions of the OVAT Act, each and every return in relation to any tax period furnished by a registered dealer shall be subject to scrutiny by the AA to verify the correctness of calculation, application of correct rate of tax and interest, claim of ITC made therein and full payment of tax and interest payable by the dealer for such period. Further, if any mistake is detected as a result of scrutiny the AA shall serve a notice in the prescribed form on the dealer to make payment of the extra amount of tax along with the interest as per the provisions of the Act, by the date specified in the said notice.

Test check of the self assessed returns in Rourkela II circle revealed that a dealer, in his return for the month of May 2007, instead of exhibiting input tax of Rs. 11,316 on a purchase value of Rs. 2.83 lakh exhibited input tax of Rs. 2.92 lakh in the four *per cent* tax group. The said input tax of Rs. 2.92 lakh was adjusted by him against the output tax payable for the month. The erroneous exhibition and adjustment of input tax could not be detected by the AA during scrutiny which indicates inadequate scrutiny of returns. This resulted in excess adjustment of ITC of Rs. 2.81 lakh. Besides, as the dealer did not pay the tax due by declaring excess input tax, he was liable to pay interest and penalty thereon amounting to Rs. 1.79 lakh.

After the case was pointed out, the AA stated in December 2008 that the case would be re-examined. A report on further development has not been received (October 2009).

The matter was reported to the Government in July 2009; their reply has not been received (October 2009).

### **2.5.13 Non-raising of demand**

As per the provisions of the OVAT Rules, all the returns received from the dealers shall be subject to scrutiny by the AAs. If as a result of such scrutiny the dealer is found to have made payment of tax, less than what is payable by him for the tax period, as per the return furnished, the AA shall issue a notice in the prescribed form to the dealer directing him to pay the balance tax and interest.

Test check of the records of Ganjam II circle relating to scrutiny of returns revealed that though several discrepancies such as short payment of tax of Rs. 1.53 lakh in 11 cases, inadmissible ITC of Rs. 57,752 in six cases and computation mistake of Rs. 2,000 in one case were noticed during scrutiny between October 2006 and June 2007, no follow up action in the form of issuance of statutory notice to the dealers was taken as required under the provisions of the Act.

After this was pointed out in February 2009, statutory notices were issued in February 2009 in all the cases. A report on further development has not been received (October 2009).

The matter was reported to the Government in July 2009; their reply has not been received (October 2009).

#### **2.5.14 Irregular allowance of input tax credit on exempted sales**

According to the provisions of the OVAT Act, ITC is admissible to registered dealers against tax paid on purchases made within the State from a registered dealer in respect of goods intended for use in specified purposes. Further, where a registered dealer sells or dispatches goods, both taxable and exempt from tax under the Act, ITC shall be allowed proportionately only in relation to the goods which are not so exempt.

Test check of assessment records of Cuttack II circle revealed that in two cases, although the dealers had effected both exempted and taxable sales during the years 2005-06 and 2006-07, ITC was allowed in full without calculating the same on proportionate basis as per the formula prescribed. This resulted in excess allowance of ITC of Rs. 2.07 lakh.

After the cases were pointed out, the AA stated in November 2008 that action would be taken after examination of the cases. A report on further development has not been received (October 2009).

The matter was reported to the Government in July 2009; their reply has not been received (October 2009).

### **2.6 Non-compliance of the provisions of the Act/Rules**

*The OVAT/OET Act and Rules provide for:*

- (i) *Disclosure of actual turnover by the dealer in the self assessed returns; and*
- (ii) *accurate determination of turnover by the AAs at the time of assessment.*

*Non-observance of some of the above by the dealers/AAs resulted in non-realisation of revenue of Rs. 3.61 crore as discussed in paragraphs 2.6.1 and 2.6.2.*

#### **2.6.1 Underassessment of entry tax due to short determination of taxable turnover**

The OET Act and the Rules made thereunder provide for levy and collection of tax on entry of scheduled goods into a local area for consumption, use or sale therein at the prescribed rates on the purchase value inclusive of insurance charges, excise duties, countervailing charges, sales tax, value added tax, transport charges, freight charges and all other charges incidental to purchase of such goods. Ammonia, rock phosphate, sulphur and coal are taxable at the rate of one *per cent*. Further, scheduled goods brought for use as raw material by a manufacturer are exigible to tax at a concessional rate of 50 *per cent* of the rate prescribed. Besides, penalty not exceeding one and half a times the amount of tax due on turnover that was not disclosed by the dealer in his

return is also leviable. Under the amended provision of the Act effective from 19 May 2005 where, for any reason, all or any of the scheduled goods brought by a dealer has escaped assessment or where the value of all or any of the scheduled goods has been underassessed, the dealer is required to pay in addition to tax, penalty equal to twice the amount of tax so assessed.

**2.6.1.1** Test check of the records of Jagatsinghpur circle in May 2008 revealed that one registered manufacturer imported ammonia, rock phosphate and sulphur worth Rs. 480.88 crore during 2003-04. The dealer also paid customs duty of Rs. 23.53 crore for import of goods during 2003-04. While completing the assessment for 2003-04 in March 2007 the AA did not include the customs duty paid and determined purchase value of ammonia, rock phosphate and sulphur at Rs. 392.98 crore instead of Rs. 480.88 crore for computing the entry tax liability of the dealer. In case of another registered dealer the AA while completing the reassessment for the year 2003-04 rejected the claim of high sea sale of coal and assessed the turnover of Rs. 13.99 crore under the OST Act but did not assess the said turnover under the OET Act.

The above omissions resulted in total short determination of taxable turnover of Rs. 125.42 crore and consequential underassessment of entry tax of Rs. 69.70 lakh. Besides, penalty upto Rs. 1.05 crore is also leviable.

After the cases were pointed out, the Government stated in July 2009 that reassessment proceedings initiated in both the cases were pending for disposal. A report on further development has not been received (October 2009).

**2.6.1.2** Test check of the records of Cuttack II range in September 2008 and February 2009 revealed that the AA while finalising the assessment in August 2006 for the period from April 2005 to February 2006 of a registered dealer manufacturing fertilizer determined the purchase turnover of scheduled goods at Rs. 1,325.92 crore and assessed tax accordingly. On cross verification with the assessment record for the year 2005-06 under the OVAT Act it was seen that the dealer had purchased goods valued at Rs. 1,448.22 crore during the period between April 2005 and February 2006. Therefore, the taxable purchase turnover of the dealer was short determined by Rs. 115.75 crore after allowing a deduction of Rs. 6.55 crore towards entry tax paid. This resulted in underassessment of entry tax of Rs. 57.87 lakh. Besides, the dealer is also liable to pay penalty of Rs. 1.16 crore.

After the case was pointed out, the Government stated in July 2009 that the reassessment proceeding initiated was pending for disposal. A report on further development has not been received (October 2009).

## **2.6.2 Escapement of tax due to suppression of sales**

The return form prescribed under the OVAT Rules provides for filling therein the tax/retail invoices issued by the dealer for a particular tax period and the total value of sales thereof. The dealer is required to calculate the tax due on the basis of the sale invoices and pay the tax or proof of payment of tax along



with the return. Under the Act, interest at the rate of two *per cent* per month is leviable for the period from the date on which the tax was due till the date of payment.

Test check of the assessment records as well as the self assessment returns filed by the dealers for the years 2005-06 to 2007-08 of Cuttack-II range and Rourkela II circle revealed that in four cases, the dealers calculated output tax on turnover less than that shown in the invoices and accordingly paid less tax after adjustment of ITC. This indicates that the tax audit teams while taking up tax audit of the dealers in the assessed cases did not examine the invoice wise sale value vis-à-vis the sale value on which output tax was calculated by the dealers and also did not point out the suppression in the AVRs. The suppression made by the dealers in the self assessed returns could not also be detected due to ineffective scrutiny of returns. During audit assessments, the AAs considered the points raised in the AVRs and did not verify the sale turnover mentioned in the returns and the sale turnover as per invoices issued and/ or sales statement furnished by the dealers. Thus, failure on the part of the departmental officers to scrutinise the self assessed returns as well as during tax audit and audit assessments led to escapement of tax of Rs. 10.36 lakh. Besides, interest of Rs. 1.94 lakh was also leviable.

After the case was pointed out, the AAs stated in November 2008 that the cases would be examined. A report on further development has not been received (October 2009).

The matter was reported to the Government in July 2009; their reply has not been received (October 2009).

## **2.7 Non-observance of government notifications**

*Government notifications of April 1991, April 2001 and May 2002 provide for:*

- (i) *Exemption of tax on interstate sales subject to fulfilment of the prescribed conditions; and*
- (ii) *mandatory submission of declaration forms.*

*Non-observance of some of the above by the AAs resulted in short levy of tax of Rs. 1.18 crore as discussed in paragraphs 2.7.1 and 2.7.2.*

### **2.7.1 Irregular allowance of exempted sale**

In exercise of the powers conferred by the CST Act, the Government of Orissa exempted interstate sale of iron and steel from levy of tax with effect from 1 April 1991 subject to fulfilment of the prescribed conditions without submission of the statutory declaration in form C. With effect from 14 May 2002, by an amendment in the CST Act, submission of form C was made mandatory. Interstate sale of iron and steel and paddy not supported by valid declarations are taxable at the rate of eight *per cent*.

**2.7.1.1** Test check of the records of Rourkela II circle in March 2008 revealed that while finalising between March 2006 and March 2007 the assessments of five registered dealers under the CST Act for the years between 2002-03 and 2004-05, in four cases, the AOs allowed sale turnover of iron and steel of Rs. 8.32 crore effected during 2003-04 and 2004-05 as exempted sale without supporting declarations in form C. In another case, the AO allowed exemption of tax on sale turnover of iron and steel of Rs. 2.09 crore for the year 2002-03 accepting duplicate C forms. Thus, irregular grant of exempted sales resulted in underassessment of tax of Rs. 83.29 lakh as shown in the following table.

(Rupees in lakh)				
No. of dealers	Year assessed Month of assessment	Turnover	Amount of tax underassessed	Nature of irregularity
3	2003-04 March 2007	816.96	65.36	Exemption was allowed without supporting declaration in form C.
1	2004-05 January 2007	15.44	1.24	-do-
<b>Sub total:</b>		<b>832.40</b>	<b>66.60</b>	
1	2002-03 March 2006	208.68	16.69	Exemption was allowed against duplicate C forms
<b>Grand total :</b>		<b>1,041.08</b>	<b>83.29</b>	

After the cases were pointed out, the Government stated in July 2009 that in all the cases reassessment proceedings had been initiated which were pending for disposal. A report on further development has not been received (October 2009).

**2.7.1.2** Test check of the records of Bolangir circle in February 2008 revealed that the AO while finalising the assessment under the CST Act in January 2007 for the year 2003-04 of a registered dealer allowed the interstate sale of paddy worth Rs. 2.85 crore as exempted sale though the dealer did not furnish declaration in form C or D. Irregular grant of exemption resulted in underassessment of CST of Rs. 22.80 lakh.

After the case was pointed out, the Government stated in April 2009 that demand of Rs. 12.95 lakh was raised in March 2009 on completion of the reassessment proceeding. A report on recovery has not been received (October 2009).

**2.7.2 Underassessment due to incorrect application of concessional rate of tax**

Under the delegated provisions of the CST Act, with effect from 1 April 2001 interstate sale of goods manufactured by SSI units are taxed at a concessional rate of one *per cent* against declaration in form C. This concession is not extended to the sales made to Government departments against declaration in form D. Sale of such goods against declaration in form D is taxable at the rate of four *per cent* under the CST Act.

Test check of the records of Rourkela II circle in March 2008 revealed that the AO while finalising the assessments in March and December 2006 for the

years 2002-03 and 2003-04 under the CST Act in respect of two registered SSI units, levied tax at the concessional rate of one *per cent* on the sale turnover of Rs. 4.05 crore made against declarations in form D instead of the correct rate of four *per cent*. This resulted in short levy of tax of Rs. 12.14 lakh.

After the cases were pointed out, the Government stated in July 2009 that reassessment proceedings were initiated in both the cases which were pending for disposal. A report on further development has not been received (October 2009).