

## CHAPTER-II: TAXES ON SALES, TRADE ETC.

### 2.1 Results of audit

Test check of the records of the offices of the Commercial Taxes Department conducted during the year 2008-09 revealed underassessment of tax amounting to Rs. 74 crore in 1,044 cases, which broadly fall under the following categories:

(Rupees in crore)			
Sl. no.	Category	Number of cases	Amount
1.	Transition from Sales Tax to Value Added Tax (A review)	1	-
2.	Short levy of tax due to application of incorrect rate of tax	254	19.88
3.	Irregular grant of exemption	108	13.64
4.	Underassessment due to irregular or incorrect allowances of deduction	100	2.27
5.	Non-assessment of taxable turnover	157	1.58
6.	Non-levy of purchase tax	35	0.16
7.	Non-levy of penalty/interest	29	0.11
8.	Other irregularities	360	36.36
<b>Total</b>		<b>1,044</b>	<b>74.00</b>

During the year 2008-09, the department accepted underassessment and other deficiencies of Rs. 38.90 crore involved in 437 cases, of which 66 cases involving Rs. 61.87 lakh had been pointed out in audit during 2008-09 and the rest in earlier years. The department recovered Rs. 88.51 lakh in 56 cases during the year 2008-09 of which eight cases involving Rs. 7.83 lakh related to the year 2008-09 and rest to the earlier years.

After issue of draft paragraph, the department recovered Rs. 5.92 lakh pertaining to a single observation pointed out during 2008-09.

A review on 'Transition from Sales Tax to Value Added Tax' and few illustrative audit observations involving Rs. 28.19 crore are mentioned in the succeeding paragraphs.

## 2.2 Review : Transition from Sales Tax to Value Added Tax

### Highlights

- Department failed to make assessment of dealers who filed belated returns on the basis of their books of accounts.

(Paragraph 2.2.9.3(iii))

- Department failed to implement tax audit as provided in the RVAT Act.

(Paragraph 2.2.10.1)

- Against the provision/instruction for prior verification of VAT paid on purchases before allowing input tax credit (ITC), ITC of Rs. 121.94 crore in 810 cases was allowed without prior verification.

(Paragraph 2.2.11.3)

### 2.2.1 Introduction

The Government of India decided to implement state level Value Added Tax (VAT) in all the states on the basis of decision taken on 23.1.2002 in the empowered committee of the States' Finance Ministers. The empowered committee brought out on 17.1.2005 a white paper on state level VAT. The following are the main features of VAT:

- it would eliminate cascading effect due to credit of tax paid on purchase for resale or for use in production;
- other taxes will be abolished and overall tax burden will be rationalised;
- overall tax would increase and there will be higher revenue growth; and
- there would be self assessment by the dealers and set off will be given for input and tax paid on previous purchases.

The Government of Rajasthan repealed the Rajasthan Sales Tax Act, 1994 (RST) and enacted the Rajasthan Value Added Tax Act, 2003 (RVAT) effective from 1.4.2006. Some of the differences between the existing RVAT and RST were as under:

(i) VAT is a multi point system while sales tax was single point system. VAT system relies more upon the dealers to pay tax willfully. Thus the VAT system is based on self assessment whereas supporting documents were required alongwith the returns in RST;

(ii) Unlike the sales tax regime, there is no statutory assessment of dealers. Instead, the RVAT Act provides for identification of selected dealers annually for conducting tax audit by the department and finalising assessments thereafter;

(iii) There are six schedules being part of the Act. While in schedule-I & II exempted goods and persons are classified, schedule III, IV & V contain goods

taxable at the rate of 1 *per cent*, 4 *per cent* and 12.5 *per cent* respectively. Schedule VI contains goods taxable at special higher rates. Dealers other than manufacturers with annual turnover upto Rs. 50 lakh can opt for composition tax scheme. Besides, the Act also provides for lump sum payment in lieu of tax;

(iv) Percentage check is provided in the VAT Act whereas cent per cent check was provided in RST Act; and

(v) Reduced control of the executives on dealers is envisaged in RVAT unlike the RST.

### **2.2.2 Organisational set up**

The receipts from Value Added Tax are administered by the Commissioner of Commercial Taxes (CCT) under the administrative control of Finance Department, the Government of Rajasthan. The CCT is assisted by six Additional Commissioners, 29 Deputy Commissioners (DC), 48 Assistant Commissioners (AC), 101 Commercial Taxes Officers (CTO) and 323 Assistant Commercial Taxes Officers (ACTO). The organisation of Commercial Taxes Department at the field level under the RST and RVAT regimes as mentioned below:

Units of tax administration	Under the RST regime (upto 2005-06)		Under the RVAT regime (2006-07 onwards)	
	Numbers	Headed by	Numbers	Headed by
Zones	12	Deputy Commissioners	14	Deputy Commissioners
Circles	106	Assistant Commissioners/CTO	124	Assistant Commissioners/CTO
Wards	171	Assistant Commercial Taxes Officers	190	Assistant Commercial Taxes Officers

### **2.2.3 Audit objectives**

The review was conducted to ascertain whether the

- planning for implementation and transition from the RST Act to RVAT Act was effected timely and efficiently;
- organisational structure was adequate and effective for smooth transition to VAT;
- provisions of the VAT Act and the Rules made thereunder were adequate and enforced properly to safeguard the revenue of the State;
- internal control mechanism existed in the Department and was adequate and effective to prevent leakage of revenue;
- VAT system, after being in place for three years, was working effectively.

### 2.2.4 Scope of audit and methodology

The review was conducted in selected circles of four zones<sup>1</sup> out of 14 for the period 2006-07 to 2008-09 during June to July 2009. The selection of the zones was made on best judgment basis.

### 2.2.5 Acknowledgement

The Indian Audit and Accounts Department acknowledges the cooperation of the Commercial Taxes Department (CTD) and their officers and staff in providing necessary information and records for audit. An entry conference was held on 12.6.2009 in the office of the CCT, Jaipur wherein objectives of the review were explained. The draft review report was forwarded to the department and the Government in August 2009. An exit conference was held on 13.10.2009 with the Commissioner of Commercial Taxes in which the results of audit and recommendations were discussed. The replies of the department received during the exit conference and at other points of time have been appropriately included in the respective paragraphs.

### Audit findings

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

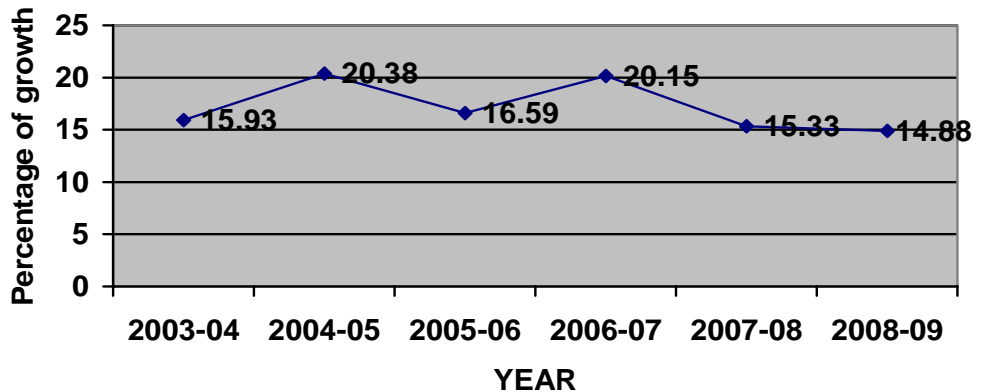
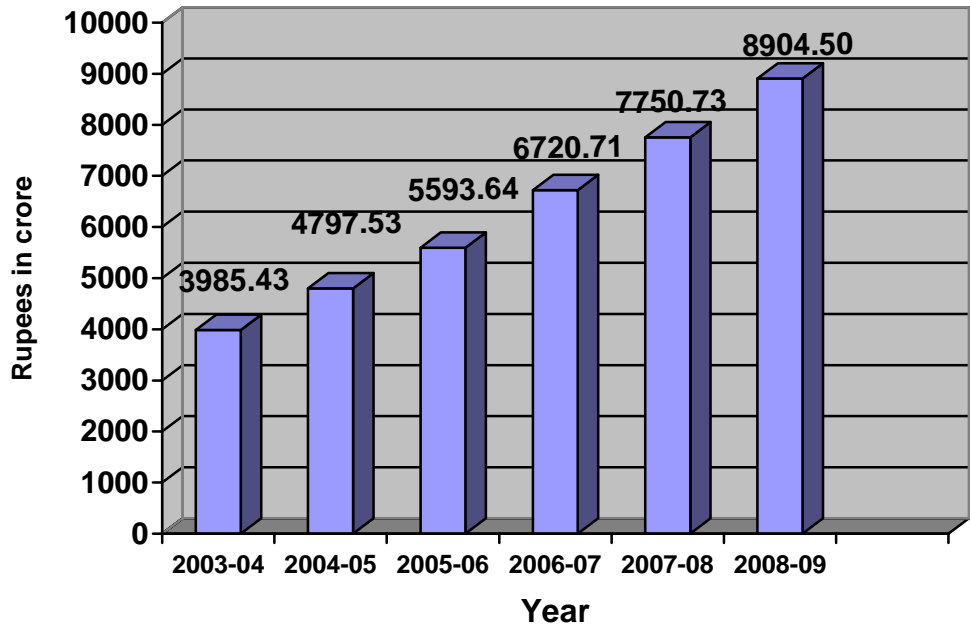
The comparative position of pre-VAT sales tax collection (2003-04 to 2005-06) and post-VAT (2006-07 to 2008-09) tax collection and the growth rate in each of the years is furnished below:

(Rupees in crore)

Pre-VAT			Post-VAT		
Year	Actual collection	Percentage of growth	Year	Actual collection	Percentage of growth
2003-04	3,985.43	15.93	2006-07	6,720.71	20.15
2004-05	4,797.53	20.38	2007-08	7,750.73	15.33
2005-06	5,593.64	16.59	2008-09	8,904.50	14.88

<sup>1</sup> Zone I (Circle 'E'), Zone II (Special Circle II), Zone III (Special Circle I) of Jaipur and Ajmer Zone (Circle Ajmer).

### Collection of Tax



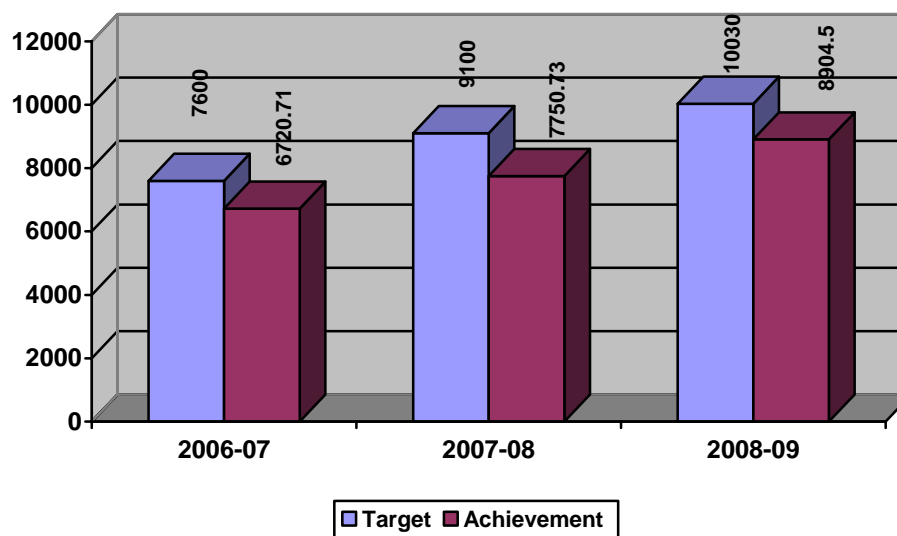
The average growth rate during 2003-04 to 2005-06 was 17.63 per cent while the average growth rate for 2006-07 to 2008-09 was 16.79 per cent. Thus, though the collections increased in absolute terms, the average growth rate in the post-VAT period registered a marginal decrease of 0.84 per cent.

#### 2.2.6.1 Targets and achievement for collection of revenue

The targets fixed by the Government for collection of revenue under RVAT and

actual collection for the years 2006-07 to 2008-09 were as mentioned below:

(Rupees in crore)



From the above graph, it would be seen that every year there was shortfall in collection of revenue as compared to the targets fixed.

## 2.2.7 Preparedness and transitional process

**2.2.7.1** Information and records relating to planning, enactment process, publicity, training on VAT *etc.* were called for by audit for scrutiny. However, these records were not made available by the department (September 2009). As a result, audit could not ascertain the department's preparedness for smooth and efficient transition from RST to RVAT.

### 2.2.7.2 Computerisation of the Taxation Department and the check gates and their interlinking

With a view to re-organising and computerising the tax related activities of the Department, an IT project christened RAJVISTA, was implemented in the Department which *inter-alia* provided facilities of e-payment, e-return, e-refund, online declaration forms of VAT *etc.*

Although a module for scrutiny of returns had been installed from 2.9.2007 under the computerised system 'RAJVISTA' for use by assessing authorities, during test check by audit it was noticed that none of the four circles were using it for the scrutiny of returns. Thus, the module developed for the purpose remained non-functional for about two years.

The department accepted (November 2009) the audit observation.

### 2.2.7.3 Date of implementation of VAT

Against the commitment of all the states as per paragraph 1.7 of the white paper for implementing VAT from 1 April 2005, VAT was implemented in Rajasthan from 1 April 2006 with a delay of one year. Though the Act had been passed in 2003, rules thereunder were framed only on 31 March 2006.

### 2.2.7.4 Creation of manuals and training of staff

It was noticed that no training was imparted to the Internal Check Parties (ICPs) in revenue audit. Department should make suitable arrangement for ICPs training on VAT. There is also no manual for proper guidance of ICPs. Whenever any serious irregularity is noticed, instructions are issued.

The department intimated (September 2009) that efforts were being made to compile a manual.

### 2.2.7.5 Completion of ST/CST assessments under the repealed Act

During the years 2006-07 to 2008-09, the transition from RST to RVAT had not gained momentum and was delayed *inter alia* due to finalisation of huge number of assessments under the repealed Act. It was seen that assessments of dealers pertaining to the year 2005-06 and earlier years under the repealed Act as well as the related assessments under CST Act, Entry Tax Act were finalised as below:

Circle	Assessment under RST	Assessment under CST	Assessment under Entry Tax	Total Assessment
<b>2006-07</b>				
Special-I Jaipur	330	280	20	630
Special-II Jaipur	432	273	42	747
E Circle Jaipur	4,890	1,510	21	6,421
Ajmer Circle	5,315	865	15	6,195
<b>Total</b>	<b>10,967</b>	<b>2,928</b>	<b>98</b>	<b>13,993</b>
<b>2007-08</b>				
Special-I Jaipur	293	214	37	544
Special-II Jaipur	352	163	27	542
E Circle Jaipur	384	46	0	430
Ajmer Circle	5,287	933	19	6,239
<b>Total</b>	<b>6,316</b>	<b>1,356</b>	<b>83</b>	<b>7,755</b>

After frequent extensions, the government decided in 2008 that assessments of the year 2006-07, the first year under RVAT Act, would be completed by 31.3.2009. This affected the smooth transition from RST to RVAT.

## 2.2.8 Registration and database of dealers

**2.2.8.1** Under the RVAT, registered dealers under the repealed Act had been assigned unique taxpayers' identification number (TIN) of 11 digits, and database of registered dealers was being kept on TIN basis. On introduction of VAT, the database was adopted for VAT regime with already allotted TIN. The database was kept under RAJVISTA. New dealers registered under VAT Act were also allotted TIN. As on 31.03.2006, there were 2,58,614 registered dealers. This number had gone up to 3,44,852 at the end of 2008-09 as seen from the table below:

Period	No. of dealers	Increase in the number of dealers with reference to the previous year	Percentage increase of dealers with reference to the previous year
2005-06	2,58,614	42,152	19.47
2006-07	3,00,098	41,484	16.04
2007-08	3,16,404	16,306	5.43
2008-09	3,44,852	28,448	8.99

**2.2.8.2** Periodical analysis of dealers below the threshold limit was undertaken by the department by conducting scrutiny of books of accounts of such dealers to ascertain whether they had crossed the limit prescribed under section 3(2) *i.e.* dealers under composition scheme whose annual turnover did not exceed Rs. 50 lakh. Instructions were issued by the department on 15.12.2008 to conduct such verification.

Pursuant to these instructions a campaign was made during 5.01.2009 to 31.01.2009 by the CTD. The department intimated that it had scrutinised 2,408 dealers registered under section 3(2) of the Act and had registered 157 dealers whose turnover was found to exceed Rs. 50 lakh, under section 3(1) of the VAT Act. However, the data of risky, dubious and dormant dealers was neither produced to audit nor was it intimated whether the data was prepared. The data is essential for monitoring the movement of risky, dubious and dormant dealers.

The department stated that the progress of campaign regarding registration of dealers was being regularly monitored by the CTD. However, reply in respect of risky, dubious and dormant dealers was not furnished.

## 2.2.9 Returns

### 2.2.9.1 Deficiencies in forms for submitting returns

Audit scrutiny of the form of return (VAT-10) revealed that against the name of commodity, no provision was made for giving schedule number and serial number of classified commodity. In the absence of correct classification of the goods, correct rate of tax charged by the dealer is not verifiable.

The department replied (November 2009) that this problem was spread over all the states and would be solved with the preparation of VAT related HSN.



### 2.2.9.2 Monitoring of returns

Receipt of returns is watched through Assessments Pending Register. Where return is not received, notice is issued to the dealer.

### 2.2.9.3 Scrutiny and verification of returns

#### (i) Dealers not filing returns

During audit scrutiny, it was noticed that a number of dealers in the test checked circles as mentioned below had not filed the returns during the three years 2006-07 to 2008-09:

Circle	2006-07		2007-08		2008-09		Remarks
	Total No. of dealers	No. of dealers not filing returns	Total No. of dealers	No. of dealers not filing returns	Total No. of dealers	No. of dealers not filing returns	
Special-I Jaipur	330	36	296	29	348	47	Notices were issued
Special-II Jaipur	280	Nil	267	Nil	264	30	Notices issued to 30 dealers
E Jaipur	4,890	Nil	4,997	312	4,599	-	Notices issued to 312 dealers
Ajmer Circle	9,020	Nil	9,731	Nil	9,542	Nil	-

The department replied (November 2009) that the outstanding returns had been filed and assessment orders passed for the year 2006-07.

#### (ii) Non-existence of provision for annual return for the year 2006-07

The RVAT Act or the rules did not provide for furnishing of annual return for the year 2006-07 by the dealer or statement of opening and closing stock, declaration forms received and utilised *etc.* in respect of transactions carried out by them during the financial year, although a provision was made vide section 73 of the Act *ibid* for furnishing of audited accounts by the dealers having gross turnover of more than Rs. one crore in a particular financial year duly certified by a Chartered Accountant. In absence of annual returns, the correctness of purchases and sales with relation to the opening and closing stock pertaining to a particular accounting period was not ascertainable by the Assessing Authorities while finalising the assessments. Further, the Assessing Authorities were not able to correlate the annual turnover of the dealers with the annual audited accounts. Due to this, the audited accounts submitted by the dealers could not be utilised during assessments. However, provision for annual return was made in late 2008 effective for the year 2007-08 and onwards.

#### (iii) Non-compliance with the provisions of the Act for assessment

As per provisions of section 24(4) of RVAT Act, where the dealer files returns after the due date, the assessing authority shall assess the dealer on the basis of his books of accounts.

It was noticed that assessment of dealers who had filed returns late were not made on the basis of their books of accounts. After this was pointed out, the AC, Special Circle-II, Jaipur stated that due to time constraint assessments could not be made in accordance with section 24(4) of the Act.

The department replied (November 2009) that keeping in view the policy that there should be minimum interaction with the dealers, the assessment were finalised on best judgment basis in such cases.

However, the fact remains that the provisions of the Act were not complied with.

#### **2.2.9.4 Inadequacy of the documentation**

As per provisions of section 73 of RVAT Act, every registered dealer, if his turnover exceeds Rs. 100 lakh in any year, is required to get the accounts of such year audited by a Chartered Accountant within the prescribed period from the end of that year and furnish within the prescribed period the report of such audit in the prescribed form. For the year 2006-07, the date for furnishing the audit report was prescribed as 31.3.2008. As per sub-section 2 of section 73 of the Act, if any dealer fails to furnish a copy of such report within the time as aforesaid, the Assessing Authority may impose a penalty equal to 1/10 *per cent* of the total turnover of the year or rupees one lakh, whichever is less.

In 'E' Circle, Jaipur, it was noticed (July 2009) that two dealers whose total turnover during 2006-07 was Rs. 9.76 crore and Rs. 1.13 crore, did not furnish the report of such audit for the year.

After this was pointed out, the Assessing Authority replied (July 2009) that the audit reports had already been filed by the dealers on or before due date. However neither was such report produced to audit nor was it found on record.

#### **2.2.10 Tax audit**

##### **2.2.10.1 Process of selection of dealers for tax audit**

As per section 27 of RVAT Act, with a view to promoting compliance with the provisions of the RVAT Act, the Commissioner may arrange for audit of the business of such of the registered dealers who are selected on the basis of any criteria or on a random selection basis or in respect of whom the Commissioner has reasons to believe that detailed scrutiny of their business is necessary. The audit of the dealer shall be conducted by the auditor in the prescribed manner.

It was seen in audit that no procedure/criterion for tax audit had been prescribed. The CCT while confirming the fact stated (October 2009) that circular dated 07.06.2008 provides for selection of dealers for the year 2006-07, the list of which was required to be sent by 20.06.2008 by DCs (Admn.) to Addl. Commissioner (Tax). However, it was noticed in Audit that the instructions of CCT were not complied with. Thus, tax audit which was a vital part of VAT administration, as it provides a credible deterrence to willful suppression of assessable turnover and evasion of tax by the dealers, was not implemented in the State.

## **2.2.11 Input Tax Credit (ITC)**

### **2.2.11.1 Deficiency in the provision for ITC**

Rule 18(2) of the RVAT Rules, 2006 deals with ITC on capital goods. The rule, however, is deficient as it does not prescribe the minimum period for utilisation of capital goods as condition for utilisation of ITC availed on such goods.

### **2.2.11.2 Deficiency in return forms**

Form VAT-07 and VAT-09 prescribed for purchases and sales respectively and to be submitted with the return do not contain column for name of commodity, in the absence of which the department will not be able to ascertain the goods purchased/sold.

Department replied (November 2009) that column for name of commodity was added in the forms, however, on demand of trade association it was subsequently deleted.

### **2.2.11.3 Irregular allowance of ITC without verification**

As per section 18(2) of RVAT Act, the claims of ITC shall be allowed on the tax deposited on the basis of original VAT invoice within three months from the date of issuance of such invoice. Thus, verification of tax deposited after collection as per VAT invoice is necessary before allowing ITC. The CCT also instructed the Assessing Authorities to verify such ITC while allowing such credit.

It was noticed that the ITC claims of Rs. 16.62 crore in 125 claims were being withheld subject to verification by AC, Special Circle-II, Jaipur, and in other three circles 810 claims out of 1,269 claims of Rs. 121.94 crore were allowed without prior verification. Therefore, there is need to ensure strict compliance with CCT's instructions.

## **2.2.12 Absence/deficiencies in provisions for cross verification of records with other departments/sources like, Central Excise and Income Tax Department etc.**

The empowered committee in its white paper envisaged a comprehensive cross checking computerised system with a view to reduce tax evasion. The system was to be based on coordination between the state tax and central excise (CE) and income tax (IT) authorities by comparing the tax returns of these departments. The system has not yet come into existence in the department. Thus the department had not undertaken cross verification of returns with the CE and IT departments. As a result, the possibility of the department not taking action against tax-evaders can not be ruled out.

The department replied (November 2009) that computerised system of verification was not in existence in the department. However, instructions were

issued on 24.7.2009 to all circles to undertake cross verification by collecting information from IT & CE, Service Tax, Electricity Board and Banks etc.

### **2.2.13 Provisions governing tax deducted at source**

Section 20(2) of the RVAT Act provides for deduction by an awarder of an amount *in lieu* of tax from every bill of payment to a works contractor at such rate as notified. Rule 40 of the RVAT Rules, 2006 further provides that if the gross value of such contract exceeds Rs. five lakh, the awarder shall furnish within one month from the date of contract the particulars of the contract in form VAT-40 to the concerned AC/CTO of the area of the awarder and also to the AC/CTO of the contractor. Where the amount is not deducted, the awarder shall be liable to penalty as provided for in the Act.

Audit, however, noticed that no mechanism existed to identify the awarders including unregistered awarders who failed to comply with the said provisions. Further, no record in this regard was produced to audit. Audit could not, therefore, ascertain whether tax was deducted correctly from the contractors.

### **2.2.14 Acceptance and disposal of appeal cases**

#### **2.2.14.1 Slow pace of disposal of appeal cases**

Under the RVAT Act and Rules made thereunder, any dealer aggrieved by an order of assessment or an order levying interest or penalty passed by the prescribed authority against him may appeal to the DC (Appeal) authorised in this behalf, within 60 days of the receipt of the notice of demand. Though the Act provides a time frame for admission or rejection of appeal, no time frame for issue of final orders has been prescribed. As a result large number of cases are pending with the appellate authorities as mentioned below:

Year	Opening balance	No. of appeals filed during the year	Total	No. of appeals disposed off during the year	Balance at the close of the year
2005-06	11,112	3,396	14,508	7,245	7,263
2006-07	7,263	3,287	10,550	4,870	5,680
2007-08	5,680	3,278	8,958	4,934	4,024
2008-09	4,024	3,122	7,146	2,383	4,763

It would be seen from the above table that the pace of disposal of appeal cases has slowed down during VAT regime.

The department intimated (November 2009) that appeal cases pending for more than one year would be disposed off by March 2010.

### **2.2.15 Deterrent measures**

**2.2.15.1** The department's prime object is to collect the declared tax revenue as well as to prevent the leakage of revenue. The tax is collected as per notified rates

and deposited by the dealer themselves. To prevent the leakage of revenue following control systems have been devised in the department:

**I. Checking of goods while in transit:** The possible leakages of revenue by not recording the transactions of sale or purchases are being prevented by checking of goods in transit by flying squads, anti-evasion wing and other officers.

**II. Surveys in case of evasion/avoidance of revenue:** Whenever there is a complaint against any dealer or any information to this effect is gathered by the department that any dealer is attempting to avoid/evade tax, their business premises/residence/godown is surveyed/searched by the departmental officers to prevent leakage of revenue.

**III.** In place of “VAT FRAUD TASK FORCE”, anti-evasion wing works in the CTD under the charge of an Additional Commissioner. The wing conducts search/raid against tax evaders.

**IV. Absence of minimum penalty for offences**

The penal provisions in RVAT Act provides for penalty on various offences, but at the discretion of the tax authorities. In the liberal milieu of VAT, there must be a minimum penalty for each and every offence, and its imposition should not be left to the discretion of tax authorities.

**2.2.16 Internal control**

**2.2.16.1** The offices working under the CTD had maintained various manual registers prescribed under the earlier law. Though the RVAT Act was implemented from April 2006, neither the sufficiency related to registers prescribed under the earlier law were analysed nor instructions to continue maintenance of such registers under the RVAT law was issued by the CTD. In absence of these, the unit offices continued to maintain the registers under earlier law, according to their own convenience. Thus, there was no control mechanism in respect of important areas under the RVAT law *viz.*, ITC on capital goods, return scrutiny, submission of audited accounts, self/deemed assessment, option to pay lump sum amount *in lieu of tax etc.*

**2.2.16.2** For monitoring of status of various areas of activity of the department at unit level, a monthly return called monthly Demi-Official (D.O) is prescribed to be submitted by units to their zonal DCs, who compiles the information and further submits to CCT. The information contained in the D.O. covers various areas such as revenue targets and achievements, assessment done and pending, top tax payers, pending refund cases, recovery position, number of registered dealers, anti-evasion activities, composition schemes *etc.*

**2.2.17 Internal audit**

**2.2.17.1** Internal audit is an important part of internal control mechanism of any organisation. In the Commercial Taxes Department, internal audit exists with

13 Internal Check Parties (ICP) working in the year 2008-09. There are 14 zones (13 Administrative + 1 Anti Evasion) in the department; one ICP posted in each zone. The ICP, besides checking revenue accounts/assessments, also audits expenditure accounts, disposes tenders and does pay fixations of employees.

It was noticed that at the end of the year 2007-08, 1760 objections were pending for settlement. These needed to be expeditiously settled.

**2.2.17.2** CCT is the head of the department. It was seen, however that no periodical return/report *etc.* on the results of activities of ICPs was submitted to him by the Financial Advisor of the department who steered the internal audit. This shows that there was no monitoring of internal audit at the Commissioner's level.

Department intimated (September 2009) that henceforth results of activities of ICPs would be submitted to the Commissioner.

### **2.2.18 Conclusion**

VAT is the biggest source of revenue of the state. In the VAT system, 100 *per cent* reliance is placed on the dealers to willfully pay the tax and file returns. Possibilities of evasion of tax by tax-evaders are immense. To provide a credible deterrence against such unfair practices, certain percentage of dealers are required to be brought under effective tax audit which the department has failed to do for the year 2006-07. In addition, the input tax credit (ITC) is being allowed without prior cross verification with the selling dealers. ITC being a very important aspect of VAT, in the absence of verification, the possibility of fake ITC claims getting allowed cannot be ruled out. Department does not seem to be alert in this regard.

### **2.2.19 Summary of recommendations**

**The Government may consider taking the following action:**

- **in the return (VAT-10) alongwith commodity, its classification, schedule No. and S. No. in the schedule should also be mentioned;**
- **the Government may make tax audit mandatory for effective implementation of VAT;**
- **prior cross verification of input tax credit should be made mandatory;**
- **a computerised mechanism should be introduced for cross verification of records with Central Excise and Income Tax authorities;**
- **disposal of cases in appeal should be expedited; and**
- **minimum penalty for offences may be prescribed.**

### **2.3 Other audit observations**

*Test check of the assessment records of sales tax/entry tax in Commercial Taxes Department revealed several cases of non-observance of provisions of Acts/Rules, non/short levy of tax/interest, incorrect computation of tax, non-levy of entry tax, incorrect levy of concessional rate of tax under RST/CST Acts 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 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 Non-observance of the provisions of Acts/Rules**

*The RST/CST/Entry Tax Acts and Rules provide for:-*

- (a) levy of tax at prescribed rates;*
- (b) correct computation and levy of tax;*
- (c) levy of entry tax at prescribed rates; and*
- (d) levy of concessional rate of tax under CST on submission of 'C' and 'F' forms as prescribed.*

*The AAs, while finalising the assessments, did not observe some of the rules in cases mentioned in the paragraph 2.4.1 to 2.4.6. This resulted in non/short levy/non-realisation of tax/interest of Rs. 18.79 crore.*

#### **2.4.1 Incorrect grant of exemption from tax**

Under section 2(38)(ii) of the RST Act, 1994 read with sub clause (b) of clause 29(A) of Article 366 of the Constitution of India, transfer of property in goods involved in the execution of works contract is sale and is therefore, exigible to sales tax. Even if the dominant intention of the contract is rendering of service, it will amount to be a works contract. Further, the Apex court, vide their order dated 16 August 2002, disposing of the Commercial Taxes Department, Rajasthan's SLP filed against the Rajasthan High Court decision dated 7 March 2001 in the case of STR No. 709/99 M/s Ajmer Colour Lab V/s ACTO, Anti Evasion II, Ajmer, decided that job work of making photographic prints falls in the category of works contract and was therefore exigible to sales tax at the rate prescribed.

During test check of the assessment records of two CTOs<sup>2</sup>, for the year 2002-03 and 2003-04, it was noticed between February 2004 and January 2005, that two dealers purchased photographic paper of Rs. 12.12 crore outside the state during the years 1999-2000, 2000-01 and 2001-02 and used the same in the job work of making of photo prints. The rate of tax prescribed for photographic paper was

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<sup>2</sup> WT-1, Jaipur and 'F' Jaipur.

8 per cent with 15 per cent surcharge thereon. Moreover, interest at the prescribed rates was also leviable under section 58 of the RST Act, 1994. However, the AAs, while finalising the assessments between July 2001 and February 2004 allowed exemption from tax as claimed by the assesseees. This resulted in incorrect grant of exemption from tax and surcharge of Rs. 1.11 crore, besides interest of Rs. 1.65 crore.

After this was pointed out between February 2004 and January 2005, the department intimated (January 2009 and March 2009) that a demand for Rs. 1.46 crore (tax and surcharge Rs. 65 lakh and interest Rs. 81 lakh) had been raised (December 2008 and March 2009) on the basis of the actual taxable purchases of Rs. 6.96 crore from out side the state. A report on the progress of recovery has not been received (October 2009).

The Government to whom the matter was reported in November 2008; confirmed the reply of the department in August 2009.

#### **2.4.2 Short levy of tax due to application of incorrect rate of tax**

By issue of notifications under RST Act and CST Act, the State Government has prescribed different rates of tax for different commodities. The commodities for which no specific tax rate had been prescribed, are to be taxed at the general rate of tax as prescribed in these notifications. Further interest under section 58 of the RST Act, 1994 is also leviable for default in making payment of tax.

Test check of the assessment records of four CTOs revealed that in 16 cases due to application of incorrect rate of tax, there was short levy of tax and interest aggregating to Rs. 71.54 lakh as mentioned below:

(Rupees in lakh)							
Sl. no.	Name of circle/No. of units	Assessment year/month of assessment	Commodity	Turnover	Tax and interest leviable	Tax and interest levied	Short levy of tax, surcharge and interest
1.	Circle 'A' Jaipur (1)	2005-06/ 27.3.2008	Morning Walker	70.46	10.99	1.41	9.58
2.	Circle- I Jaipur (11)	2004-06/ November 2006 and March 2008	Various goods	182.31	28.79	11.15	17.64
3.	Special Circle Bhilwara (2)	2005-06/ 19.3.2008	Cement	106.93	37.45	9.62	27.83
		2005-06 30.3.08	Railway Sleepers	832.59	44.71	33.30	11.41
4.	Special Rajasthan Circle Jaipur (2)	2005-06 February 2008	Branded Electrical fans	101.65	14.23	9.15	5.08
<b>Total</b>					<b>136.17</b>	<b>64.63</b>	<b>71.54</b>

After this was pointed out, the Government intimated (August 2009) that a demand of Rs. 43.25 lakh (tax: Rs. 28.64 lakh and interest: Rs. 14.61 lakh) has been raised in both the cases pertaining to Special Circle, Bhilwara. In case of



Special Rajasthan Circle, Jaipur a demand of Rs. 5.37 lakh has been raised of which Rs. 0.86 lakh has been recovered. Report on recovery of remaining amount and reply in the remaining cases have not been received.

### **2.4.3 Under-assessment due to error of computation**

Under section 29 of the RST Act, 1994 and section 8 of the CST Act, 1956, the leviable tax at the prescribed rate is determined by the assessing authority on the taxable turnover of different commodities. The net recoverable amount is worked out after deducting the advance tax deposited by the dealer from the total amount of tax so determined. Moreover, interest at the prescribed rates was also leviable under section 58 of the RST Act, 1994.

Test check of the records of CTO, Special Circle, Kota, for the year 2007-08, it was noticed (December 2008) that the assessing authority while finalising (March 2008) the assessment of a dealer for the year 2005-06 incorrectly computed the amount of tax as Rs. 1.83 lakh. The correct amount works out to Rs. 18.99 lakh on the sale of Rs. 1.58 crore. This resulted in short levy of tax of Rs. 17.16 lakh.

After this was pointed out (December 2008), the assessing authority raised (December 2008) a demand of Rs. 20.99 lakh (tax: Rs. 17.16 lakh and interest: Rs. 3.83 lakh). Report on recovery has not been received (October 2009).

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

### **2.4.4 Non-levy of entry tax**

Under section 3 (1) of the Rajasthan Tax on Entry of Goods into Local Areas Act, 1999, the State Government by issue of notifications on 22 March 2002, 12 July 2004 and 24 March 2005 specified that every dealer who brought goods from other State into local areas for consumption or use or sale, shall pay entry tax of one *per cent* on oilseed, Low Sulphur High Stocks (LSHS), pet coke and two *per cent* on furnace oil. The rate of tax on furnace oil was subsequently revised to three *per cent* with effect from 12 July 2004. Further, under section 2(r) of the Rajasthan Tax on Entry of Goods into Local Areas Act, 1999, purchase price includes all statutory duties. Moreover, interest at the prescribed rates was also leviable under section 58 of the RST Act, 1994.

**2.4.4.1** During test check of the assessment records of CTO, Circle 'K', Jaipur for the year 2007-08, it was noticed (September 2008) that four manufacturing units of cattle feed purchased cotton seed valuing Rs. 11.49 crore and Rs. 11.44 crore during the years 2004-05 and 2005-06 respectively from out of the state which were liable to entry tax at the rate of one *per cent*. The assessing authority while finalising the assessments of the dealers for the years 2004-05 and 2005-06 did not levy the tax. This resulted in non-levy of entry tax of Rs. 22.93 lakh. Besides interest amounting to Rs. 9.41 lakh was also leviable.

After this was pointed out to the department in October 2008, the department intimated (May 2009) that a demand of Rs. 33.09 lakh has been raised in all the cases. Report on recovery has not been received (October 2009).

The matter was reported to the Government in December 2008; their reply has not been received (October 2009).

**2.4.4.2** During test check of the assessment records of CTO, Special Circle II, Jodhpur for the year 2007-08, it was noticed (January 2009) that an industrial unit purchased different goods viz. LSHS, pet-coke, furnace oil *etc.* from out of the state during 2003-04 and 2004-05 and claimed refund/adjustment of entry tax paid on the element of CENVAT (2003-04: Rs. 2.72 crore; 2004-05: Rs. 2.93 crore). The assessing authority while finalising the assessments in April 2007 and April 2008 allowed the same and issued refund adjustments as claimed. This resulted in short levy of entry tax and interest of Rs. 6.63 lakh during 2003-04 and Rs. 10.84 lakh during 2004-05.

After this was pointed out in March 2009, the Government intimated (September 2009) that a demand of Rs. 19.07 lakh has been raised. Report on recovery has not been received (October 2009).

#### **2.4.5 Irregular exemption from tax on transfer of goods**

Under section 6A of the Central Sales Tax Act, 1956 (CST Act) burden of proving that the movement of goods was occasioned by reason of transfer of such goods to any other place of his business or to his agent or principal, as the case may be and not by reason of sale, for availment of tax exemption, shall be on the dealer. For this purpose he may furnish to the assessing authority, within the prescribed time a declaration in form 'F' duly filled and signed by the principal officer of the other place of business, alongwith the evidence of dispatch of such goods. Further, as per amendment in section 6(A)(1) of the Act, *ibid* with effect from 11 May 2002, if the dealer fails to furnish such declaration, the movement of such goods shall be deemed for all purposes of the Act to have been occasioned as a result of sale. In terms of rule 12(5) of the CST Rules, 1957 one declaration form may cover transactions which are affected during the period of one calendar month. Moreover, interest at the prescribed rates was also leviable under section 58 of the RST Act, 1994.

During test check of the records of CTO, Circle A, Bhilwara for the year 2007-08, it was noticed (September 2008) that a dealer transferred his stock of goods valued at Rs. 77.18 crore to his depot out of the state against declaration form 'F'. Scrutiny of the declarations submitted by the assessee, however, revealed that 43 'F' forms covered transactions for more than one month as against the limit of one calendar month in respect of goods valuing Rs. 49.72 crore. The assessing authority, however, while finalising (March 2008) the assessment of the dealer for the relevant year accepted these forms. This resulted in irregular exemption of tax of Rs. 6.96 crore; besides, interest of Rs. 2.44 crore was also leviable.

After the case was pointed out, the department intimated (May 2009) that a demand of Rs. 9.95 crore (tax : Rs. 6.96 crore and interest : Rs. 2.99 crore) has been raised (May 2009). Report on recovery has not been received (October 2009).

The Government to whom the matter was reported in December 2008; confirmed the reply of the department in August 2009.

#### **2.4.6 Short levy of tax on inter-state sales**

In exercise of powers conferred by section 8(5) of the CST Act, 1956, the State Government by issue of a notification on 21 January 2000 prescribed a concessional tax rate of 6 *per cent* on the inter-state sale of cement without furnishing of declaration in 'C' form. The Central Government amended the section 8(5) w.e.f 11 May 2002 which stipulated that submission of 'C' form was mandatory for claiming concessional rate of tax on inter-state sales. Thus, after the above amendment, the inter-state sales of cement without 'C' form were liable to tax at state rate. The rates were (i) 19 *per cent* from 12.7.2004 to 1.12.2005 (ii) 28 *per cent* from 2.12.2005 to 31.3.2006 and (iii) 12.5 *per cent* from 1.4.2006. However, the State Government vide notification dated 13 May 2008 decided to write off the difference of tax on inter state sale without 'C' form for the period from 26.9.2005 to 31.3.2007 over and above the prescribed state rate. Moreover, interest at the prescribed rates was also leviable under section 58 of the RST Act, 1994.

During test check of the records of CTO, Special Circle, Pali for the year 2007-08, it was noticed (January 2009) that two industrial units (one of which was a beneficiary of Sales Tax Exemption Scheme, 1998) sold cement valuing Rs. 17.43 crore during 2005-06 (2.12.2005 to 31.3.2006) and Rs. 65.90 lakh during 2006-07 in the course of inter-state trade and commerce without furnishing declaration in form 'C' and paid tax at the rate of 6 *per cent*. The assessing authority while finalising the assessments of the dealer did not levy the correct state rate of 28 *per cent* during 2.12.2005 to 31.3.2006 and 12.5 *per cent* thereafter. This resulted in short levy of tax of Rs. 387.80 lakh out of which Rs. 10.19 lakh was adjustable towards the exemption benefit under the scheme and balance tax of Rs. 377.61 lakh and interest of Rs. 135.87 lakh was payable.

After this was pointed out (March 2009), the Government stated (October 2009) that the demand for difference of tax beyond the prescribed rate and interest thereon as pointed out by audit had been raised on 31.3.2009 and written off with reference to the Government notification dated 13 May 2008. However, the fact remains that the said notification does not apply to cement as the prescribed state rate is higher than the applicable CST rate without 'C' form.

#### **2.5 Non-compliance with Government notifications/schemes**

- (a) *The Government notified the 'Sales Tax Exemption Scheme for Industries 1998' whereunder industrial units were exempted from payment of tax on*

*sale of goods manufactured by them subject to the maximum quantum and period of benefit prescribed in the scheme.*

- (b) *The Government notified the Rajasthan Investment Promotion Scheme, 2003 whereunder new investments and investments made by the existing units and enterprises going in for modernisation/expansion/diversification subject to certain conditions as prescribed in the scheme shall be eligible for subsidy.*

*Non-compliance with some of the provisions in the above notifications/scheme in cases as mentioned in paragraphs 2.5.1 to 2.5.3 resulted in excess grant of exemption/subsidy of Rs. 9.40 crore.*

### **2.5.1 Non-withdrawal of benefits on breach of condition**

Under the ‘Sales Tax Exemption Scheme for Industries 1998’, industrial units were exempted from payment of tax on sale of goods manufactured by them subject to the maximum quantum and period of benefit prescribed in the scheme. The scheme further provided that the beneficiary industrial units shall, after having availed of the benefit of the scheme, continue their production for the next five years failing which the units were liable to be taxed on the sale of finished goods as if there was no exemption.

In five Commercial Taxes Offices (CTOs)<sup>3</sup>, it was noticed between June 2008 and December 2008, that nine industrial units were granted eligibility certificates between July 1998 and March 2002. These units availed the benefit of tax exemption of Rs. 8.77 crore during 1998-1999 to 2005-06 and were required to continue their production for a further period of five years after the expiry of the period during which exemption from tax under the scheme was availed. These units stopped production within five years from the date of availing exemption between 2002-03 and 2006-07. They were filing nil returns which were accepted and assessed by the department. In four cases registration certificates were cancelled by the department and in one case, the unit was taken over by the bank. However, the exemption benefits availed by these units were not withdrawn by the assessing authorities. Audit also observed the absence of mechanism in the department to ensure compliance of the conditions of eligibility certificate as despite the fact that these units were filing nil returns, no action was taken to recover the exempted amount of sales tax. This resulted in non-recovery of tax of Rs. 8.77 crore as no demand for payment of exempted tax was raised.

The cases were reported to department between July 2008 and January 2009 and reported to the Government between November 2008 and March 2009; their replies have not been received (October 2009).

<sup>3</sup> Special Alwar (1), ‘B’ Bikaner (1), Churu (3), Jalore (2) and Sirohi (2).

### **2.5.2 Excess grant of exemption**

Under the “Sales Tax Exemption Scheme for Industries, 1998” industrial units were exempted from payment of tax on the sale of goods manufactured by them within the state or in the course of inter-state trade and commerce in the manner and to the extent and period as covered by the scheme. The exemption was admissible annually on reducing percentage basis viz. 100 *per cent* for the first year, 90 *per cent* for the second year and so on. Moreover, interest at the prescribed rates was also leviable under section 58 of the RST Act, 1994.

During test check of the assessment records of the CTO, Special Circle, Bhilwara for the year 2006-07, it was noticed (November 2007) that an industrial unit was sanctioned tax exemption benefit under the scheme with effect from 15.12.2003. It was, however, allowed 100 *per cent* exemption upto 31 December 2004 during 2004-05 being first year of its operation instead of correct period upto 14.12.2004 and 90 *per cent* exemption upto 31 December 2005 during 2005-06 against the correct period upto 14.12.2005. Thus, exemption was allowed in excess for 17 days in each year. This resulted in excess grant of tax exemption of Rs. 7.07 lakh and Rs. 12.60 lakh during 2004-05 and 2005-06. Further, interest of Rs. 2.41 lakh and Rs. 2.77 lakh respectively was also leviable.

After the case was pointed out (December 2007), the department intimated (July 2009) that a demand of Rs. 28.74 lakh had been raised (May 2009) and the amount would be adjusted against exemption limit available to the unit. Further progress has not been received (October 2009).

The Government to whom the matter was reported in March 2009; confirmed the reply of the department (August 2009).

### **2.5.3 Excess grant of subsidy**

Under the Rajasthan Investment Promotion Scheme, 2003 wherein new investments and investments made by the existing units and enterprises going in for modernisation/expansion/diversification subject to certain conditions as prescribed in the scheme shall be eligible for subsidy. Further, as per clause 7 (iii) of the scheme, *ibid*, in case of expansion/modernisation/diversification, the unit shall be eligible for subsidy under the scheme from the date of payment of sales tax over and above the highest sales tax paid in the immediately preceding three years before such expansion/modernisation/diversification. Moreover, interest at the prescribed rates was also leviable under section 58 of the RST Act, 1994.

During test check of the assessment records of CTO, Special Circle, Ajmer for the year 2007-08, it was noticed (January 2009) that benefit of subsidy of Rs. 44.81 lakh was granted to an assessee from 16 July 2004, the date on which the unit commenced its commercial production after expansion as per Note 4 of the entitlement certificate issued to the unit whereas the benefit of subsidy actually was admissible from 1.12.2004 the date on which tax was paid by it over and above the highest tax paid before expansion as per clause 7(iii) of the scheme

as aforesaid. This resulted in excess grant of subsidy of Rs. 24.09 lakh which will also attract interest for Rs. 14.09 lakh.

After this was pointed out (February 2009) the department stated (March 2009) that (a) as per Note-4 of entitlement certificate and clause 4(b) of the scheme, the subsidy was admissible from the date of commercial production; and (b) as per the Government clarification dated 10 October 2008, the computation of subsidy under the scheme was to be made on quarterly basis.

The fact, however, remains that the provisions of Note 4 of entitlement certificate are not in conformity with the provisions of the scheme in clause 7(iii).

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