

CHAPTER-II COMMERCIAL TAX

2.1 Results of audit

Test check of the assessments and other records of commercial tax offices, conducted during 2008-09, revealed non/short levy of tax, non/short levy of tax due to misclassification of goods and incorrect rate of tax, irregular exemption of tax, etc. of Rs. 64.65 crore in 1,967 cases, which fall under the following categories :

(Rupees in crore)			
Sl. No.	Categories	Number of cases	Amount
1.	Collection of arrears in Commercial Tax Department (A review)	1	00.00
2.	Non/short levy of penalty/interest	585	18.33
3.	Incorrect/short levy of tax	818	22.40
4.	Irregular grant of exemption from tax	315	9.78
5.	Misclassification of goods	28	4.23
6.	Irregularities relating to central sales tax	53	1.06
7.	Mistake in computation	11	0.35
8.	Turnover escaping tax	14	2.58
9.	Other irregularities	142	5.92
Total		1,967	64.65

During the year 2008-09, the department accepted under assessments and other deficiencies of Rs. 5.60 crore involved in 202 cases, of which, three cases involving Rs. 17.90 lakh had been pointed out during 2008-09 and the remaining in the earlier years. The department recovered Rs. 68.12 lakh in 128 cases during the year 2008-09, of which in one case involving Rs. 8,390 related to the year 2008-09 and the balance to the earlier years.

A performance review on **Collection of arrears in Commercial Tax Department** and few illustrative audit observations involving Rs. 9.23 crore, are mentioned in the succeeding paragraphs.

2.2 Performance review on Collection of Arrears in Commercial Tax Department

Highlights

- Frequent reopening of cases of assessments under Section 30 resulted in non-realisation of tax of Rs. 48.17 crore.

(Paragraph 2.2.7)

- Cross check of “Demand and Recovery Register” with monthly returns submitted by 85 assessing authorities to Joint Commissioner (Executive) revealed, discrepancy in figures of Rs. 254.62 crore in revenue realisation.

(Paragraph 2.2.8)

- Non-observance of prescribed procedure, delay in issue of recovery certificates and non-ensuring of particulars of the dealers at the time of registration resulted in non-realisation of tax of Rs. 142.69 crore.

(Paragraph 2.2.12)

- Non-execution of write-off cases resulted in accumulation of arrears of Rs. 1,278.55 crore.

(Paragraph 2.2.13)

2.2.1 Introduction

Commercial Tax (CT) (known as Trade Tax upto December 2007) is the major source of revenue of the State and contributed 60 *per cent* (Rs. 15,023.10 crore) of the total tax revenue (Rs. 24,959.32 crore) to the State exchequer during the year 2007-08. The levy of commercial tax is governed by the provisions of Uttar Pradesh Trade Tax Act, 1948 (UPTT Act) and rules made thereunder upto 31 December 2007, thereafter by provisions of Uttar Pradesh Value Added Tax Act, 2007 (UPVAT Act). The levy of Central Sales Tax is regulated by the provisions of the Central Sales Tax Act, 1956 (CST Act) and the rules made thereunder.

The UPTT Act provides that as soon as an assessment is made by the concerned Assessing Authorities (AA) (Commercial Tax Officer) he shall send the dealer a notice in form XI, together with a copy of the assessment order and the dealer shall pay the tax so assessed within 30 days from the receipt of the notice. The demand notice depicts tax already paid by the dealer and the balance due from him. If the dealer fails to deposit the tax, it can be recovered as arrears of land revenue under the provisions of Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (UPZA & LR Act). A Recovery Certificate (RC) in this regard is forwarded by the AAs to the District Collectors for collection of the amount specified therein. However,

with effect from October 1998, in 14 districts¹, the AAs have been empowered to act as a recovery officer of their concerned circles and have been entrusted the work of recovery under UPZA & LR Act. They work under the overall control of Commissioner Commercial Tax (CCT).

2.2.2 Organisational set-up

Principal Secretary, *Kar Evam Nibandhan* Uttar Pradesh, is the administrative head at Government level. The overall control and direction of the Commercial Tax Department vests with the CCT, Uttar Pradesh with headquarter at Lucknow. He is assisted by 18 Additional Commissioners, 114 Joint Commissioners (JCs), 198 Deputy Commissioners (DCs), 376 Assistant Commissioners (ACs) and 376 Commercial Tax Officers (CTOs).

2.2.3 Scope and methodology of audit

With a view to ascertain the extent of arrears, adequacy and effectiveness of the system and procedures prevailing in the department for collection of arrears, a review covering the period 2003-04 to 2007-08 was conducted between May 2008 and March 2009. For this purpose, 24 districts out of 70 districts were selected using simple random sampling² method and records of 139 offices (DCs and ACs) out of 244 offices of CT were test checked. The records of the office of CCT were also test checked. Audit noticed number of discrepancies which are mentioned in the succeeding paragraphs.

2.2.4 Audit objectives

The review was conducted with a view to ascertain the :

- extent of arrears and reasons for the accumulation of arrears;
- adequacy of system to prevent accumulation of arrears and prompt realisation thereof;
- compliance of the provisions of the Acts and rules and departmental instructions related to recovery of arrears and
- effectiveness of internal control mechanism for prompt realisation of arrears.

2.2.5 Acknowledgement

Indian Audit and Accounts Department acknowledges the co-operation of Commercial Tax Department in providing necessary information and records for audit. An entry conference was held with the CCT, Uttar Pradesh and other departmental officers on 20 August 2008 wherein they were apprised of

¹ Agra, Aligarh, Allahabad, Bareilly, Noida, Gorakhpur, Ghaziabad, Jhansi, Kanpur, Lucknow, Meerut, Moradabad, Saharanpur, Varanasi.

² (i) 5 districts under High risk area (revenue arrear > Rs. 1,000 crore).
(ii) 10 districts under Medium risk area (revenue arrear > Rs. 100 crore but < Rs. 1,000 crore).
(iii) 9 districts under Low risk area (revenue arrear < Rs. 100 crore).

the objectives of the review being taken up by the audit. The draft review was forwarded to Government/department on 17 June 2009. An exit conference was held on 1 July 2009, wherein the findings of the review were discussed with Joint Commissioner (Audit) CT. The viewpoint of the department has been incorporated in the relevant paragraphs.

2.2.6 Trend of arrears

As per the information furnished by the department the position of arrears during the last five years is mentioned below :

(Rupees in crore)

Year	Opening balance (as on 1 st April)	Demand raised	Arrear reduced by Appellate authority	Amount collected	Closing balance
2003-04	5,496.34	3,887.31	2,780.21	306.35	6,297.09
2004-05	6,297.09	3,768.84	2,518.94	337.31	7,209.68
2005-06	7,209.68	4,735.05	3,052.03	436.37	8,456.33
2006-07	8,456.33	10,194.15	3,470.32	610.59	14,569.57 ³
2007-08	14,569.19	4,264.26	7,041.89	709.62	11,081.94



The above table revealed the following :

- The collection of arrears during each year was far less than the addition during that year. The percentage of collection with reference to demand raised ranged between 5.99 per cent to 16.64 per cent. This resulted in accumulation of arrears. The amount of arrears increased from Rs. 6,297.09 crore on 1 April 2004 to Rs. 11,081.94 crore in 31 March 2008 i.e. an increase of 75.98 per cent.
- The major reason for the sharp increase in arrears in 2006-07 was the high rise in demand. The reasons for the steep rise though called for has not been received (August 2009).

³ The closing balance as on 31 March 2007 does not tally with the opening balance as on 1 April 2007. The department has been asked (August 2009) to reconcile the figures.

The information relating to the stages at which the arrears were pending for collection, as furnished by the department, is mentioned below :

(Rupees in crore)

Sl. No	Year	Out-standing arrears	Recovery stayed by		Amount to be written-off	Arrear against		Arrear involved in RC sent to other States	Certified arrear	Percentage of certified arrears to outstanding arrears
			Court	Government/ Administrative officers		Government department /Semi-Government department/ Corporation	Transporters			
1.	2003-04	6,297.09	918.19	2,821.84	1,077.12	227.91	141.95	605.99	504.09	8.01
2.	2004-05	7,209.68	1,018.07	3,507.46	979.52	215.52	126.72	651.39	711.00	9.86
3.	2005-06	8,456.33	1,132.40 ⁴	4,454.41 ⁴	1,064.35	299.42	155.65	640.25	710.12 ⁴	8.40
4.	2006-07	14,569.57	1,796.80	9,739.85	1,183.27	257.11	168.71	779.13	644.70	4.42
5.	2007-08	11,081.94	2,729.34	5,108.99	1,278.55	205.35	144.17	820.63	794.91	7.17

The above table revealed the following :

- The certified arrears increased from Rs. 504.09 crore as on 1 April 2004 to Rs. 794.91 crore as on 31 March 2008. The pace of recovery process was slow in comparison to mounting of arrear.
- Arrears pending with Government /Semi-Government departments and Corporations have not been shown as certified arrears. This reveals that no efforts were made to recover the recoverable amount against these departments.
- The arrears proposed for write off amounting to Rs. 1,077.12 crore in 2003-04 were shown to have been reduced to Rs. 979.52 crore in 2004-05. However, no records relating to the write off of Rs. 97.60 crore were shown to audit despite repeated requests.

Audit findings

System deficiencies

2.2.7 Repeated utilisation of provisions of Section-30 (Ex-parte assessment)

Under the provision of the UPTT Act, assessment order of a dealer is passed within the stipulated time fixed by the department. In case a dealer does not appear to show his accounts, an order of assessment is passed *ex parte*. However, the dealer may apply to the assessing authority within the 30 days of the service of the order to set-aside such order and reopen the case. If such authority is satisfied that the applicant did not receive the notice or was prevented by sufficient cause from appearing on fixed date, it may set-aside the order and reopen the case for hearing. No such application for setting aside *ex parte* assessment order shall be entertained unless it is accompanied by satisfactory proof of the payment of tax admitted by the dealer. Audit noticed

⁴ The figures are at variance with the figures furnished in the earlier audit reports.

that the dealers repeatedly requested for reassessment under section 30 of the Act and cases were assessed again and again.

Test check of the records of three commercial tax offices revealed that five dealers neither presented themselves nor submitted their accounts to their AA on the specified dates for finalising the assessments. Their assessments were finalised *ex-parte*. Thereafter, the dealers applied repeatedly for reopening the case, but again did not turn up. The reassessments were made *ex-parte* repeatedly between March 2000 and March 2007 for the years 1997-98 to 2004-05. This resulted in non realisation of tax of Rs. 47.24 crore and entry tax of Rs. 92.86 lakh as mentioned below :

(Rupees in lakh)								
Sl. No.	Name of office	No. of dealers	Assessment Year / Date of assessment	No. of times cases reopened	Date of last assessment	Time lapse YY-MM-DD (in days)	Entry Tax	Tax
1.	DC(A)-XI, CT, Lucknow	1	1997-98 / 01.03.2000	7	21.11.2008	08-07-22 (3,188 days)	-	122.73
		1	2001-02 / 26.12.2003	4	18.12.2008	04-11-24 (1,840 days)	-	145.46
		1	2004-05 / 15.03.2007	3	22.11.2008	01-08-08 (633 days)	-	378.92
2.	DC(A)-XIII, CT, Lucknow	1	1999-2000 / 28.02.2002	6	21.09.2008	06-06-25 (2,398 days)	-	456.30
			2000-01 / 24.01.2003	8	03.09.2008	05-07-11 (2,050 days)	-	1,087.03
			2001-02 / 31.12.2002	7	04.09.2008	05-08-05 (2,075 days)	-	573.88
3.	DC(A)-III, CT, Moradabad	1	2003-04 / 27.03.2006	3	28.05.2007	01-02-01 (428 days)	28.84	657.16
			2004-05 / 27.02.2007	3	06.05.2008	01-02-10 (435 days)	64.02	1,302.22
Total		5					92.86	4,723.70

It would be seen from the above table that repeated opening of the cases has resulted in non realisation of the amount. However, no provision has been made either in the Act or rules for not reopening such cases after affording a certain number of chances.

The matter was reported to the department and the Government in June 2009; their reply has not been received (August 2009).

2.2.8 Discrepancy in figures of collection

As per paragraph No. 318 of CT Manual, a register called Demand and Collection Register is required to be maintained by each AA. This register is to be prepared annually and indicates the amount due, recovered and recoverable in respect of each assessee. A monthly return indicating tax due and deposited by the dealer is being sent by each AAs (DCs and ACs) to the CCT through JC (Executive) / Additional Commissioner. This return shows the progress of total demand and collection made during the year.

Audit cross checked the details made in "Demand and Recovery Register" with monthly returns submitted by 85 assessing authorities to JC (Executive). As per demand and recovery register only Rs. 121.39 crore was recovered during the year 2006-07 and 2007-08 while as per the monthly return, the total

recoveries were Rs. 376.01 crore. Thus there was a discrepancy of Rs. 254.62 crore as mentioned below :

(Rupees in lakh)

Sl. No.	Name of office and district	2006-07			2007-08		
		Figures reported in monthly return	Figures as per demand and recovery register	Difference	Figures reported in monthly return	Figures as per demand and recovery register	Difference
1.	DC (A) I to XII, CT, Agra	1,358.39	428.51	929.88	1,047.34	521.38	525.96
2.	DC (A) I, III & IV CT, Allahabad	754.61	502.57	252.04	585.83	225.38	360.45
3.	DC (A) I, III, CT, Aligarh	-	-	-	287.78	155.80	131.98
4.	DC (A), CT, Chandauli	485.16	25.06	460.10	577.33	24.65	552.68
5.	DC (A), CT, Fatehpur	73.50	12.49	61.01	75.17	20.77	54.40
6.	DC (A) I to XII, CT, Ghaziabad	3,526.67	1,854.23	1,672.44	4,830.54	2,215.14	2,615.40
7.	DC (A) I, II CT, Gorakhpur	141.23	70.78	70.45	289.92	155.51	134.41
8.	DC (A) I to VII, IX, X, XII & XIV to XX, CT, Kanpur	2,615.25	639.25	1,976.00	3,581.86	879.34	2,702.52
9.	DC (A) I to XII, CT, Lucknow	4,342.38	685.50	3,656.88	7,016.71	1,468.11	5,548.60
10.	DC (A) & AC ,CT, Mathura	-	-	-	246.02	62.18	183.84
11.	DC (A) II, IV to VI & DC (A) Sardhana, CT, Meerut	869.40	355.48	513.92	1,638.25	383.94	1,254.31
12.	DC (A) CT, Mirzapur	35.97	25.00	10.97	54.81	21.73	33.08
13.	DC (A) I to III, CT, Moradabad	182.45	134.00	48.45	267.53	138.00	129.53
14.	DC (A), CT, Pratapgarh	1.65	1.11	0.54	2.75	0.44	2.31
15.	AC, CT, Sant Kabir Nagar	-	-	-	12.83	1.81	11.02
16.	DC (A), CT, Sonebhadra	540.33	360.85	179.48	618.43	456.16	162.27
17.	DC (A) I to VI, CT, Varanasi	335.88	112.87	223.01	1,205.23	200.93	1,004.30
Total		15,262.87	5,207.70	10,055.17	22,338.33	6,931.27	15,407.06

The figures of collection for both the years were thus not reliable and needed reconciliation.

The matter was reported to the department and the Government in June 2009; their reply has not been received (August 2009).

2.2.9 Internal audit

Internal audit is a vital component of the internal control mechanism and is generally defined as the control of all controls to enable an organisation to

assure itself that the prescribed internal controls are intended to provide reasonable assurance of proper enforcement of laws, rules and departmental instructions. Internal control also helps in creation of reliable financial and management information system for prompt and efficient services and for adequate safeguards against evasion of tax and other irregularities.

Test check of the records revealed that an internal audit wing was functioning under the administrative control of CCT. The department had sanctioned strength of 13 Audit Officers, 40 Senior Auditors and 51 Auditors but all the post of AOs, 09 Sr. Auditors and 46 Auditors were vacant. It was stated that 520 units were audited against 690 units during the year 2006-07. However, the extent of coverage of audit i.e. days taken, days required to be allotted for audit viz-a-viz allotted /actually taken, periodicity of units, observation made, Local Audit Inspection Reports issued were not furnished to audit though demanded. As such audit could not ascertain the efficiency and effectiveness of internal audit.

Compliance deficiencies

2.2.10 Delay in issue of recovery certificates

Under the UPTT Act read with the commissioner's circular dated 28 November 1991, the tax assessed shall be deposited within 30 days of the service of the notice of assessment and demand. In case it is not deposited within the prescribed time, the AA, after expiry of 45 days of the service of assessment order, will issue immediately a recovery certificate for effecting recovery of tax as arrears of land revenue.

Test check of Demand and Recovery Register of eight commercial tax offices⁵ revealed that in 2006-07 and 2007-08, in 57 cases, RCs for Rs. 1.11 crore were issued after an average delay of 200 days. The recovery is still pending. The details are mentioned below :

Sl. No.	Delay in issue of recovery certificate	Year			
		2006-07		2007-08	
		No. of cases	Amount (Rs. in lakh)	No. of cases	Amount (Rs. in lakh)
1.	Upto 3 months	1	2.12	3	17.46
2.	Upto 3 to 6 months	5	8.58	18	38.71
3.	Upto 6 to 12 months	6	3.12	16	29.16
4.	Upto more than 1 year	4	10.68	4	1.02
Total		16	24.50	41	86.35

The matter was reported to the department and the Government in June 2009; their reply has not been received (August 2009).

⁵ DC (A) CT Chandauli, DC (A)-I CT Gorakhpur, DC (A)-XV & XX CT Kanpur, DC (A)-VIII CT Lucknow, DC (A)-I, II & III CT Moradabad.

2.2.11 Recovery certificates issued to transporters

Under Section 28B of UPTT Act, when a vehicle carrying goods coming from outside the State, intends to pass through the State, the driver or other person incharge of such vehicle shall obtain in the prescribed manner an authorization for transit of goods from the officer-in-charge of the first check post or barrier after its entry into the State and deliver it to the officer-in-charge of the last check post or barrier before his exit from the State. In the absence of which it shall be presumed that the goods carried thereby has been sold within the State and recovery certificate is issued to the transporter to recover the assessed tax on such goods. According to the Commissioner's circular dated 1 November 1991, RCs must be issued on correct address of the transporters. If it is not available, the truck number shall be noted in RC so that complete address of assessee may be obtained from transport department where the vehicle was got registered.

A perusal of monthly return submitted by 46 Commercial Tax Offices to CCT revealed that (as on 2006-07) RCs involving tax of Rs. 9.18 crore were sent to the transporters of the State for collection of dues, but no amount was realised. Similarly, RCs for Rs. 32.29 crore were sent to the transporters of the other state upto the year 2006-07. This resulted in non-realisation of Government revenue of Rs. 41.47 crore as mentioned below :

(Rupees in lakh)			
Sl. No.	Name of office and district	Arrears within State (2006-07)	Arrears outside State (2006-07)
1.	DC (A) I & II, AC, Sec. I to Sec. XIV, CT, Agra	288.16	1,086.09
2.	AC, Sec. I, CT, Chandauli	4.26	35.72
3.	DC (A) I, III & V, CT, Ghaziabad	-	492.69
4.	AC, Sec. III, Sec. V to Sec. IX, CT, Lucknow	5.97	135.78
5.	AC, Sec. I to IV & VI to VIII, CT, Meerut and AC, CT Sardhana (Meerut)	188.96	478.24
6.	AC, Sec. I to Sec. III, CT, Mirzapur	52.46	179.04
7.	AC, Sec. I to Sec. IX, CT, Varanasi	378.16	821.78
Total		917.97	3,229.34

As the records relating to recovery certificates were not furnished to audit, the action taken to collect the arrear could not be ascertained.

The matter was reported to the department and the Government in June 2009; their reply has not been received (August 2009).

2.2.12 Non-observance of prescribed procedure

Every dealer, liable to pay tax, is required to obtain registration certificate under UPTT Act. Before granting registration certificate, it is the duty of the AA to verify the identity of the dealer, his source of livelihood, financial position and his local and permanent addresses. After satisfying himself he will grant registration certificate. Further, under the provision of Rule 211 (2) of Sales Tax Manual Khand-3, Part-I, assessment of new firms and closed

firms may be finalised on such priority which is observed in cases likely to be time barred shortly. Non observation of prescribed procedure resulted in non-realisation of Rs. 142.69 crore, as mentioned below :

2.2.12.1 Test check of the records of the 10 Commercial Tax offices⁶ revealed that 13 dealers had closed their business. Of these only two dealers intimated the department for closure of their firms. The remaining 11 dealers were found absconding from their place of business by the departmental authority. These cases, though required to be finalised on priority, were finalised after a delay of two to three years. The recovery certificates of Rs. 52.57 crore were issued but due to delay in finalisation of the cases, dealers could get time to leave their place of business. This resulted in non recovery of tax of Rs. 52.57 crore.

The matter was reported to the department and the Government in June 2009; their reply has not been received (August 2009).

2.2.12.2 Test check of records of DC (Tax Recovery Officer), Ghaziabad revealed that in 2006-07 and 2007-08, 835 RCs for Rs. 106.57 crore were forwarded to Delhi State for collection of dues as arrears of land revenue. Of this, 456 RCs for Rs. 87.53 crore were received back between April 2006 and March 2008 with the remark that the RCs contained incorrect address of the dealers. Thus, non-ensuring the correctness of particulars of the dealers at the time of registration resulted in non-realisation of Government revenue.

The matter was reported to the department and the Government in June 2009; their reply has not been received (August 2009).

2.2.12.3 Test check of the records of DC (A)-XX, CT, Kanpur revealed that two cases involving Rs. 2.59 crore were sent by the assessing authority to Dy. Collector Kanpur Dehat for collection. No action was taken by the department to recover the dues. Details are mentioned below :

(Rupees in lakh)

Sl. No.	Name of dealer	Assessment Year Date of assessment	Amount	RC No. and date of issue
1.	M/s Singh Traders, Kanpur	1999-00 23.04.2003	238.49	122 1 August 2003
			10.00	123 1 August 2003
2.	M/s Shivshakti Gramudyog Samiti, Kanpur	2001-02 18.08.2006	4.88	99 13 October 2006
		2003-04 18.08.2006	5.67	100 13 October 2006
Total			259.04	

Audit observed that even after the lapse of 2 to 4 years no action was taken for affecting recovery. Consequently the amount remained un-recovered.

The matter was reported to the department and the Government in June 2009; their reply has not been received (August 2009).

⁶ AC Sect.X CT Agra, DC (A)IV CT Allahabad, AC Sect. II & III CT Ghaziabad, DC (A)I CT Gautam Budh Nagar, DC (A) XVIII B CT Kanpur, DC (A)XIX CT Kanpur, DC (A) CT Pratapgarh, DC (A) CT Sonebhadra and AC Sect.VI CT Varanasi.

2.2.13 Non-execution of write-off

In accordance with the Commissioner's circular dated 9 June 1992, arrears pending for more than 6 years become irrecoverable and may be submitted to competent authority for write off after completion of joint enquiry. Further, arrears pending for less than six years may be avoided for write off. However, in special circumstances such cases may be submitted for write-off after completion of joint inquiry by forwarding a copy to the Government for information. The amount proposed for write-off was Rs. 1,278.55 crore upto 2007-08 against total arrear of Rs. 11,081.94 crore (11.54 per cent). The matter is pending between AAs and CCT and is still under correspondence.

Test check of the records of seven commercial tax offices revealed that tax amounting to Rs. 47.49 crore was recoverable from 18 dealers for the period between 1984-85 and 2002-03. The joint enquiries against all such cases were constituted to ascertain the possibility of recovery of tax. Enquiries completed between March 1998 and September 2005 revealed that no amount was recoverable. After this the AAs sent proposals for write off of the amounts to the Commissioner CT for Rs. 47.49 crore. The matter of write-off was under correspondence between AAs and CCT from one to nine years. No amount has been written off (June 2009). The details are mentioned below :

(Rupees in lakh)

Sl. No.	Name of office	No. of dealer	Arrear of tax	First date and Last date of submission to CCT for write off	Pending period (in years)	Date of completion of joint enquiry
1.	DC(A)-XII, CT, Agra	1	597.52	<u>24.02.05</u> 04.02.09	4	Prior to February 2005
2.	AC, Sec. III, CT, Agra	7	474.98	<u>15.02.05</u> 04.02.09	4	
			222.30	<u>16.02.05</u> 03.02.09	4	
			117.37	<u>16.02.05</u> 04.02.09	4	
			322.75	<u>16.02.05</u> 09.07.08	3	
			218.66	<u>16.02.05</u> 18.08.06	1	
			161.41	<u>16.02.05</u> 03.02.09	4	
			153.37	<u>16.02.05</u> 03.02.09	4	
3.	DC(A)-I, CT, Aligarh	1	120.29	<u>22.12.04</u> 12.12.08	4	Prior to December 2004
4.	AC, CT, Chandauli	3	554.70	<u>Prior to 13.11.06</u> 31.11.08	2	February 2005
			536.51	<u>Prior to 13.11.06</u> 31.11.08	2	January 2003
			161.05	<u>Prior to 13.11.06</u> 31.11.08	2	February 2005
5.	DC (A)-XIII, CT, Kanpur	3	1.95	<u>27.04.04</u> 14.07.09	5	Prior to April 2004

Sl. No.	Name of office	No. of dealer	Arrear of tax	First date and Last date of submission to CCT for write off	Pending period (in years)	Date of completion of joint enquiry
			4.10	<u>03.07.04</u> 14.07.09	5	30 July 1999
			4.64	<u>03.07.04</u> 14.07.09	5	22 October 2000
6.	AC, Sec.VIII CT, Meerut	2	679.00	<u>13.08.99</u> 19.11.08	9	21 March 1998 & 30 July 1999
			233.60	<u>18.02.99</u> 19.11.08	8	30 December 1998, 30 July 1999 & 18 March 2001
7.	AC-I, CT, Varanasi	1	185.03	<u>09.09.05</u> 23.01.09	3	Prior to September, 2005
Total			4,749.23			

The matter was reported to the department and the Government in June 2009; their reply has not been received (August 2009).

2.2.14 Conclusion

Commercial tax is a major source of revenue in the State. Though an increasing trend in the arrear position was noticed during the years 2003-04 to 2006-07, but the correctness of dues remained doubtful in view of the fact that the demand and recovery register was not maintained properly. Hence, the exact amount outstanding against assesseees and the stages of action for recovery were not ascertainable. Proper follow up action was not taken to effect the recovery of arrears.

Delay in issue of RCs, time barred assessments of defaulter dealers were some of the factors which not only lead to non recovery of arrears but also brought out short comings in the system for timely realisation of dues.

2.2.15 Summary of recommendations

Government may consider :

- creation of mechanism for constant monitoring of the dues and collections;
- taking effective measure for recovery of pending dues; and
- fixation of time limit and number of chances for reopening of cases under *ex-parte*.

2.3 Other Audit observations

Scrutiny of assessment records of commercial tax department revealed several cases of non-observance of provisions of Acts/Rules, non/short levy of tax/penalty/interest/acceptance of false statutory forms, irregular concession, incorrect application of rate of tax, etc. 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 remained 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-compliance of the provisions of the Act/Rules

The UPTT Act provide :

- (i) imposition of penalties for various kinds of trade offences;*
- (ii) charging of interest in case of belated payment of admitted tax;*
- (iii) levy of tax and interest at the prescribed rates; and*
- (iv) exemption/concessional rate of tax subject to prescribed conditions.*

The AAs while finalising the assessment did not observe some of the above provisions. This resulted in short levy of tax / penalty amounting to Rs. 8 crore as mentioned in the following paragraphs :

2.4.1 Non-levy of penalty and interest

The AAs while finalising the assessments, did not notice the trade offences of the dealers i.e. irregular transactions, transactions out of account books, transactions against the provisions of the act and rules. Though there are clear cut provision for imposition of penalties and charging the interest in the Act, no action was initiated in that regard, resulting in non-imposition of penalty and non-charging of interest amounting to Rs. 5.33 crore as mentioned in the following paragraphs :

2.4.1.1 Under the UPTT Act, a registered dealer, intending to import taxable goods from outside the State, shall furnish a declaration in Form XXXI to the AA where such goods are intended to be imported from outside the State by road, rail, river or air. The importer shall not obtain delivery thereof unless he furnishes to the AA the declaration in duplicate, duly filled in and signed by him for endorsement by such authority. In the event of violation of these provisions, the AA may direct that such dealer or person shall pay, by way of penalty, a sum not exceeding 40 *per cent* of the value of goods, imported or three times of the tax leviable on such goods, whichever is higher. Further, the Commissioner Commercial Tax directed in October 2005 that timely penal action may be taken against import of goods, not supported with the declaration form.

Test check of the records of four commercial tax offices between October 2004 and February 2009 revealed that five dealers imported goods from

outside the State valued at Rs. 3.17 crore without declaration in Form XXXI. The AAs levied the tax but neither imposed the penalty nor discussed the reason for non-imposition of penalty for unauthorised import of goods. Penalty upto Rs. 1.27 crore could have been levied as mentioned below :

(Rupees in lakh)

Sl. No.	Name of the office	Number of dealer	Assessment year (Month and year of assessment)	Value of the goods imported	Name of commodity	Maximum penalty leviable
1.	AC, CT, Chandpur, Bijnore	1	2005-06 (October 2007)	24.28	Three wheeler	9.71
2.	AC, Sec.II, CT, Noida	1	2005-06 (March 2008)	12.79	Polyester yarn	5.11
		1	2001-02 (February 2004)	2.18	Hardware, Paints, GP Store and marble	0.87
3.	AC, Sec. IV, CT, Noida	1	2005-06 (March 2008)	274.48	Electrical goods	109.79
4.	AC, Sec. II, CT, Sitapur	1	2005-06 (October 2007)	2.98	Uncertified seed	1.19
Total		5		316.71		126.67

After the cases were reported to the department, the AC Sect. II, CT, Noida stated that it had reopened the case (2001-02) and had found transaction valued at Rs. 2.71 lakh worth of declaration form and levied penalty of Rs. 1.08 lakh. A report on recovery and reply in the remaining cases has not been received (August 2009).

The matter was reported to the Government between March 2008 and March 2009; their reply has not been received (August 2009).

2.4.1.2 Under the provisions of the UPTT Act, if the AA is satisfied that a dealer has concealed his turnover or has deliberately furnished incorrect particulars of his turnover, he may direct such dealer to pay by way of penalty, in addition to tax, a sum not less than 50 *per cent* but not exceeding 200 *per cent* of the amount of tax which would thereby have been avoided.

Test check of the records of 16 commercial tax offices between September 2005 and March 2009 revealed that 16 dealers had concealed sales turnover of Rs. 17.23 crore during the year 1999-2000 to 2005-06. The AAs levied tax of Rs. 116.81 lakh but did not impose any penalty which at minimum rate would be Rs. 58.40 lakh as shown in Appendix-I.

After the cases were reported to the department, the AAs stated between March 2006 and January 2009 that the penalty of Rs. 7.53 lakh in five cases had been imposed. A report on recovery and reply in the remaining cases has not been received (August 2009).

The matter was reported to the Government between November 2005 and March 2009; their reply has not been received (August 2009).

2.4.1.3 Under the provisions of the UPTT Act, if the AA is satisfied that any dealer or other person, without reasonable cause, has failed to deposit the admitted tax within the prescribed period, he may direct the dealer to pay by way of penalty, in addition to tax, if any, payable by him, a sum which shall

not be less than 10 *per cent* but not exceeding 25 *per cent* of the tax due, if the tax due is upto Rs. 10,000, and 50 *per cent*, if it is above Rs. 10,000.

Test check of the records of three commercial tax offices⁷ between November 2006 and February 2009 revealed that three dealers, assessed for the years 2004-05 to 2005-06, did not deposit their admitted tax of Rs. 2.74 crore within the prescribed period. The average delay was 147 days. Belated payment of admitted tax attracted minimum penalty of Rs. 27.44 lakh which was not imposed. This resulted in short realisation of revenue to that extent.

The matter was reported to the department and the Government between December 2006 and December 2008; their reply has not been received (August 2009).

2.4.1.4 Under the UPTT Act, a person responsible for making payment to a contractor, for discharge of any liability on account of valuable consideration payable for the transfer of property in goods in pursuance of works contract, shall deduct an amount equal to four *per cent* of such sum, payable under the Act, on account of such works contract. In case of failure to deduct the amount or deposit the amount so deducted into the Government treasury before the expiry of the month, following the month in which the deduction was made, the AA may direct that such person shall pay by way of penalty a sum not exceeding twice the amount so deducted.

Test check of the records of 16 commercial tax offices between May 2005 and January 2009 revealed that 17 dealers, while making the payment to the contractors, deducted the tax of Rs. 52.63 lakh at source, during the years 2002-03 to 2005-06 but deposited the same into the Government treasury after an average delay of 137 days. The AAs failed to impose the maximum penalty of Rs. 1.05 crore as shown in Appendix-II.

After the cases were reported between December 2007 and February 2009 the department stated that penalty amounting to Rs. 13.57 lakh had been imposed in four cases. A report on recovery and reply in other cases has not been received (August 2009).

The matter was reported to the Government between August 2005 and February 2009; their reply has not been received (August 2009).

2.4.1.5 Under the provisions of the CST Act, if a registered dealer purchases goods from outside the State at concessional rate of tax, on the strength of declaration in Form C by falsely representing that such goods are covered by his registration certificate (RC) under the CST Act, the dealer is liable to be prosecuted. However, in lieu of prosecution, if the AA deems it fit, he may impose a penalty upto one and half times of the tax, payable on the sale of such goods.

Test check of the records of 34 commercial tax offices between September 2004 and March 2009 revealed that during the years 2001-02 to 2006-07, 37 dealers purchased goods valued at Rs. 11.97 crore, at concessional rate of tax,

⁷ DC (A)-XII CT Lucknow, DC (A)-VII CT Noida and DC (A) CT Sonebhadra.

against declaration in Form C. The items purchased by the dealers were not covered by their RCs. None of these dealers had been prosecuted and they were liable to pay penalty upto Rs. 1.89 crore which was not levied by the concerned AAs as shown in Appendix-III.

After the cases were reported between December 2004 and April 2009, the department stated that the penalty of Rs. 38.64 lakh in 14 cases had been imposed. A report on recovery and reply in the remaining cases has not been received (August 2009).

The matter was reported to the Government between August 2008 and March 2009; their reply has not been received (August 2009).

2.4.1.6 Under the provisions of UPTT Act, if a dealer realises any amount as commercial tax on sale or purchase of goods or any amount in lieu of such tax by giving it any different name or colour in contravention of the provisions of sub-section (2) of Section 8-A, he may be liable for penalty for a sum not less than the amount of tax realised but not more than three times of the said amount.

Test check of the records of two commercial tax offices⁸ between July 2008 and August 2008 revealed that during the year 2005-06, two dealers had realised Rs. 5.90 lakh as excess tax from the customers. The AAs forfeited the amount of excess tax but failed to impose the minimum penalty of Rs. 5.90 lakh.

The matter was reported to the department and the Government between November 2008 and February 2009; their reply has not been received (August 2009).

2.4.1.7 Under the provisions of the UPTT Act, every dealer liable to pay tax, is required to deposit the amount of tax into the Government treasury before the expiry of the month, following the month in which the tax was due. The tax admittedly payable by the dealer, if not paid by the due date, attracts interest at the rate of two *per cent* per month upto 11 August 2004 and thereafter at the rate of 14 *per cent* per annum on the unpaid amount, till the date of deposit.

Test check of the records of four commercial tax offices between January 2008 and February 2009 revealed that four dealers, assessed between March 2004 and August 2007 for the year 2001-02 to 2006-07, deposited admitted tax of Rs. 41.23 crore after an average delay of 446 days. Belated payment of admitted tax attracted interest of Rs. 20.08 lakh, which was not levied by the AAs as mentioned below :

⁸ DC (A)-II CT Kanpur and DC (A)-II CT Meerut.

(Rupees in lakh)

Sl. No	Name of the Office	Number of dealer	Assessment year (Month and year of assessment)	Admitted tax	Period of delay (in days)	Rate of interest per annum	Interest leviable
1.	DC (A) I-A, CT Ghaziabad	1	2004-05 (March 2007)	5.62	981	14	2.15
2.	DC (A)-XII, CT Lucknow	1	2004-05 (March 2007)	4,101.49	4 to 6	24	11.96
3.	AC, Sec.I, CT Pilibhit	1	2001-02 (March 2004)	6.25	982	24	4.09
4.	DC (A), CT Sonebhadra	1	2006-07 (August 2007)	9.23	527 to 553	14	1.88
Total		4		4,122.59			20.08

The matter was reported to the department and the Government between January 2009 and March 2009; their reply has not been received (August 2009).

2.4.2 Non/short levy of tax due to application of incorrect rate of tax and misclassification of goods

The AAs while finalising the assessments, did not apply the correct rate of tax, given in schedule of rates and in some of the cases lower rate of tax was applied due to misclassification of goods which resulted in non/short levy of tax of Rs. 2.67 crore as mentioned in the following paragraphs :

2.4.2.1 Under the Central Sales Tax Act (CST Act), tax on interstate sale of goods (other than declared goods) not covered by declaration in form 'C' is leviable at the rate of 10 *per cent* or at the rate applicable on sale or purchase of such goods inside the appropriate State, whichever is higher.

- Test check of the records of AC, Sect. II, CT, Hathras in August 2008 revealed that a trader sold broken glass beads (*Munga, moti* made of glass) valued at Rs. 1.06 crore without declaration in form 'C' during the year 2004-05. The AA did not levy tax on interstate sale of broken glass beads treating it as glass beads which is exempted from tax under notification dated 29 November 2001. As glass beads after breaking become pieces of glass which fall under the entry of broken glass on which tax is leviable at the rate of 10 *per cent* on interstate sale made without declaration in form 'C'. Thus, this resulted in non levy of tax of Rs. 10.58 lakh.

The matter was reported to the department and the Government in February 2009; their reply has not been received (August 2009).

- Test check of the records of two commercial tax offices⁹ between February 2008 and April 2008 revealed that during the years 2003-04 to 2005-06, three dealers made inter-state sale of adhesive, coaltar, enamel, primer, white paint, epoxy-thinner and DEPB worth Rs. 8.74 crore without declaration in Form 'C'. The AAs levied tax at lesser rates than those prescribed on sale of goods. This resulted in short levy of tax amounting to Rs. 61.13 lakh.

⁹ DC (A) CT Koshikalan (Mathura) and DC (A)-IX CT Noida.

The matter was reported to the department and the Government between July 2008 and August 2008; their reply has not been received (August 2009).

2.4.2.2 Under the UPTT Act, tax on classified goods is leviable as prescribed in the schedule of rates, notified by the Government from time to time. The goods not classified prescribed in the schedule of rates, are taxable at the rate of 10 *per cent*, from 1 December 1998.

- Test check of the records of 14 commercial tax offices between June 2005 and March 2009 revealed that in cases of 15 dealers, the AAs applied incorrect rate of tax on sale of goods valued at Rs. 11.44 crore due to misclassification of goods. This resulted in short levy of tax of Rs. 47.79 lakh as shown in Appendix-IV.

After the cases were reported, the department stated that tax of Rs. 8.13 lakh in five cases had been levied. A report on recovery and reply in the remaining cases has not been received (August 2009).

The matter was reported to the Government between August 2008 and March 2009; their reply has not been received (August 2009).

- Test check of the records of 10 commercial tax offices between March 2008 and January 2009 revealed that in case of 11 dealers, the AAs levied tax at lesser rate on the turnover of Rs. 32.99 crore. This resulted in non/short levy of tax of Rs. 90.65 lakh as shown in Appendix-V.

After the cases were reported to the department, a tax of Rs. 78,000 in one case has been levied by the department. A report of recovery and reply in the remaining cases has not been received (August 2009).

The matter was reported to the Government between July 2008 and March 2009; their reply has not been received (August 2009).

2.4.2.3 Under Section 3-H of the UPTT Act read with the Commissioners circular dated 3 May 2005 as applicable from 1 May 2005, State Development Tax (SDT) at the rate of one *per cent* of the taxable turnover shall be levied on the dealers whose annual aggregate turnover exceeds fifty lakh rupees. The SDT shall be realised in addition to the tax payable under any other provision of this Act. Further, the SDT shall be adjustable in the monetary limit specified in the eligibility certificate issued under Section 4-A.

Test check of the records of three commercial tax offices between July 2008 and November 2008 revealed that three dealers whose aggregate turnover exceeded Rs. 50 lakh sold taxable goods valued at Rs. 67.93 crore during the year 2005-06. The dealers were liable to pay SDT of Rs. 67.92 lakh. Of these, one dealer paid SDT of Rs. 10.53 lakh against Rs. 12.59 lakh while other two dealers did not pay any tax. The AAs, while finalising the assessments between August 2007 and March 2008, did not detect the mistake resulting in non/short levy of SDT of Rs. 57.39 lakh as mentioned below :

(Rupees in lakh)

Sl. No.	Name of office	Number of dealer	Assessment year (Month and year of assessment)	Taxable turnover	Amount of SDT leviable	Amount of SDT levied	SDT non/short levied
1.	DC (A)-I, CT, Agra	1	2005-06 (March 2008)	79.03	0.79	--	0.79
2.	DC (A)-VI, CT, Noida	1	2005-06 (February 2008)	5,454.34	54.54	--	54.54
3.	DC (A)-VII, CT, Noida	1	2005-06 (August 2007)	1,259.44	12.59	10.53	2.06
Total		3		6,792.81	67.92	10.53	57.39

After the cases were reported between November 2008 and December 2008, the department stated in June 2009 that tax of Rs. 79,000 has been levied in one case. A report on recovery and reply in the remaining cases has not been received (August 2009).

The matter was reported to the Government between November 2008 and March 2009; their reply has not been received (August 2009).

2.4.3 Evasion of tax due to misuse of statutory forms

The AAs while finalising the assessments accepted false declaration forms and allowed concessions, without verifying the facts from the original records of the dealer, which resulted in grant of irregular concession of tax of Rs. 65.06 lakh.

Under the provisions of Section 3B of UPTT Act, if a person issues a false or wrong declaration, by reason of which tax on sales or purchase ceases to be leviable or becomes leviable at concessional rate, the dealer shall be liable to pay a sum equal to the amount of relief in tax secured by him on purchase of such material.

Test check of the records of four commercial tax offices between May 2008 and January 2009 revealed that during the year 2005-06, four dealers had purchased goods valued at Rs. 37.77 crore, at concessional rate of tax, by issuing prescribed declaration. As the goods purchased were not mentioned in the recognition certificate, they were not eligible for concessional rate of tax. However, the AAs did not levy the differential amount of tax of Rs. 65.06 lakh, as mentioned below :

(Rupees in lakh)

Sl. No.	Name of Office	Number of dealer	Assessment year (Month and year of assessment)	Name of goods	Value of goods	Differential rate of tax	Amount to be recovered
1.	DC(A)-IX, CT, Agra	1	2005-06 (June 2007)	Adhesive and rubber sheets	8.27	9.5	0.79
2.	DC(A), CT, Firozabad	1	2005-06 (October 2007)	Natural gas	53.02	15	7.95
3.	DC(A)-VII CT, Kanpur	1	2005-06 (March 2008)	Upgraded oil	3,700.55	1.5	55.51
4.	DC(A),CT, Mainpuri	1	2005-06 (October 2007)	Machinery	14.71	5.5	0.81
Total		4			3,776.55		65.06

The matter was reported to the department and the Government between November 2008 and March 2009; their reply has not been received (August 2009).

2.5 Non-observance of the terms and conditions of the Government notification and departmental order

The AAs while finalising the assessments did not verify the terms and conditions of the specific notifications and departmental circulars and even in absence of required terms and conditions, exemption and adjustment of tax were allowed, which resulted in non-levy of Rs. 48 lakh, as mentioned in the following paragraphs :

2.5.1 As per Government notifications dated 31 January 1985 and 27 February 1997 issued under the U.P. Trade Tax Act 1948, institutions certified by All India *Khadi* and Village Industries Commission or the U.P. *Khadi* and Village Industries Board, are exempt from payment of tax on the sale of products and the purchase of any goods connected with manufacture or purchase of products of village industries as specified in the Schedule (mentioned under the notification). Manufacturing of machinery spare parts (rubber roll) and sports goods treated as rubber goods and manufacturing of rice from paddy, are not covered under the aforesaid notifications and as such not entitled to exemption.

Test check of the records of five commercial tax offices¹⁰ between March 2008 and January 2009 revealed that eight dealers sold self manufactured machinery spare parts (rubber roll) and sports goods treated as rubber goods and rice from paddy valued at Rs. 5.32 crore for the years 2002-03 to 2006-07. The AAs incorrectly allowed exemption of tax of Rs. 23.18 lakh under the aforesaid notification, though these goods were not eligible for exemption. Incorrect grant of exemption resulted in non-realisation of Government revenue amounting to Rs. 23.18 lakh.

The matter was reported to the department and the Government between August 2008 and March 2009; their reply has not been received (August 2009).

2.5.2 Under the provision of Section 15 (C) of Central Sales Tax Act read with Commissioner's circular dated 27 March 2007, tax is levied on purchase of paddy inside the State. If the rice is produced out of such paddy, the purchase tax is deducted from the tax levied on sale of rice only in case of intra-State sale and if it is sold in the course of inter-State trade/commerce, such adjustment is not permissible.

Test check of the records of 11 commercial tax offices between February 2008 and December 2008 revealed that 18 dealers, purchased paddy valued at Rs. 13.50 crore from within the State and manufactured rice from it. During the years 2003-04 and 2005-06, the dealers made inter-state sales of rice manufactured from paddy on which purchase tax of Rs. 24.82 lakh was paid. The AAs incorrectly allowed the benefit of purchase tax resulting in short realisation of revenue of Rs. 24.82 lakh as shown in Appendix-VI.

¹⁰ DC (A) CT Ambedkar nagar, DC (A)-I CT Bareilly, DC (A) CT Chandauli (Mughal Sarai), DC (A)-V CT Meerut and DC (A)-III CT Saharanpur.

After the cases were reported between June 2008 and February 2009, the department stated in April 2009 that the benefit of purchase tax of Rs. 2.24 lakh in respect of two dealers of Budaun has been withdrawn. A report on recovery and reply in the remaining cases has not been received (August 2009).

The matter was reported to the Government between August 2008 and March 2009; their reply has not been received (August 2009).

2.6 Non-levy of tax due to issue of incorrect clarification

The AAs while finalising the assessment did not levy the tax because Commissioner Commercial Tax had clarified that DEPB was an export licence whereas DEPB is an incentive scheme but due to issue of incorrect clarification, tax of Rs. 10.47 lakhs was not levied.

Under the UPTT Act, tax is leviable as per the schedule of rates, notified by the Government from time to time. In case of goods, not classified elsewhere, tax is leviable at the rate of 10 *per cent* with effect from 1 December 1998. Further, under section 2 (g) of the Foreign Trade (Development and Regulation) Act, 1992 (FT Act) license means a license to import or export and includes a customs clearance permit and any other permission issued under the Act. Duty entitlement pass book (DEPB) is an export incentive, introduced by the Government of India, Ministry of Commerce. By a circular issued on 13 August 2003, the department clarified that DEPB is covered under import license under section 2 (g) of FT Act and import license was exempted from levy of tax vide notification of 17 February 2000 whereas DEPB does not fall under the category of any license.

Test check of the records of DC (A), CT, Koshikalan (Mathura), in February 2008 revealed that a dealer sold DEPB, valued at Rs. 1.05 crore during the period 1 April 2003 to 31 December 2003. The assessing authority (AA) exempted the turnover from levy of commercial tax under the circular of August 2003 issued by the CCT which stipulated that DEPB was a license and was not eligible to tax. The circular issued by the CCT was not in consonance with the UPTT Act. Treatment of an export incentive as a license resulted in non levy of tax of Rs. 10.47 lakh. Thus, issue of incorrect clarification resulted in a loss of Government revenue to that extent.

The matter was reported to the department and the Government between July 2008 and August 2008; their reply has not been received (August 2009).