

EXECUTIVE SUMMARY

Tax collection	<p>In 2010-11 the collection from commercial tax increased by 32.9 <i>per cent</i> over the previous year, reason for which was not informed by the Department despite being requested (April 2011 followed by reminders in July and September 2011).</p>
Results of audit conducted by us in 2010-11	<p>In 2010-11 we test checked the records of 100 units relating to commercial tax and found under-assessment of tax and other irregularities involving ₹ 26.5 crore in 1,017 cases.</p> <p>The Department accepted under-assessment and other deficiencies of ₹ 9.8 crore in 5 cases, which were pointed out by us during the year 2010-11. An amount of ₹ 4 lakh was recovered in 22 cases during the year 2010-11.</p>
What we have highlighted in this Chapter	<p>In this Chapter we present two performance audits on “Working of commercial tax check posts in Madhya Pradesh”, “Utilisation of declaration forms in inter-state trade and commerce” and illustrative cases of ₹ 8510 crore selected from observations noticed during our test check of records relating to assessment and collection of tax in the office of the Commercial Tax Officers (CTOs) and Regional Assistant Commissioners (RACs), where we found that the provisions of the Acts/Rules were not observed.</p> <p>It is a matter of concern that similar omissions have been pointed out by us repeatedly in the Audit Reports for the past several years, but the Department has not taken corrective action.</p>
Our conclusion	<p>The Department needs to initiate immediate action to recover non-short levy of entry tax/purchase tax, incorrect grant of exemption, non-recovery of tax from closed units, non-realisation of professional tax, non-short levy of penalty, non-levy of tax on transporters, non-short levy of tax on sale without declaration etc., pointed out by us, more so in those cases where it has accepted our contention.</p>

CHAPTER - II COMMERCIAL TAX

2.1 Tax administration

The Principal Secretary, Commercial Tax Department is the administrative head of the Department at the Government level. The Commissioner of Commercial Tax (CCT) is the head of the Department. The Department is divided in four zones, each headed by Zonal Additional Commissioner. Each zone comprises of divisional offices headed by 14 divisional Deputy Commissioners (DC). Under these divisions, there are 78 circle offices headed by the Commercial Tax Officers/Assistant Commissioners (CTO/AC).

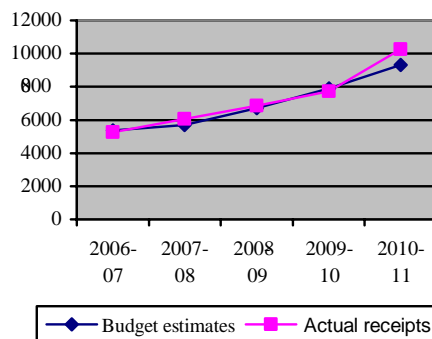
2.2 Trend of receipts

Actual receipts from VAT/Taxes on Sales, Trade etc. during the period 2006-07 to 2010-11 along with the total tax receipts during the same period are exhibited in the following table and line graph.

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual VAT/Taxes on sales, trade receipts vis-a-vis total tax receipts
2006-07	5,357.00	5,261.41	(-) 95.59	(-) 1.78	10,473.13	50.24
2007-08	5,700.00	6,045.07	(+) 345.07	(+) 6.05	12,017.64	50.30
2008-09	6,720.00	6,842.99	(+) 122.99	(+) 1.83	13,613.50	50.27
2009-10	7,894.11	7,723.82	(-) 170.29	(-) 2.16	17,272.77	44.72
2010-11	9,320.00	10,256.76	(+) 936.76	(+) 10.05	21,419.33	47.89

Receipts from VAT/Taxes on Sales, Trade etc. increased from ₹ 5,261.41 crore in 2006-07 to ₹ 10,256.76 crore in 2010-11 - an increase of 94.94 *per cent*. However, the share of VAT/Taxes on Sales, Trade etc. in total receipts declined from 50.30 *per cent* in 2007-08 to 47.89 *per cent* in 2010-11.



In 2010-11 the collection from commercial tax increased by 32.79 *per cent* over the previous year, reason for which was not informed by the Department despite being requested (April 2011 followed by reminders in July and September 2011).

2.3 Assessee profile

The Department reported that during 2010-11 there were 2,17,209 registered dealers, of which approximately 46,774 were large tax payers and 1,70,435 were small tax payers. All registered dealers having turnover upto ₹ 20 lakh or paying annual tax upto ₹ 10,000 are required to file annual returns whereas other dealers are required to file quarterly returns. In case of dealers who failed to furnish returns, advance tax notices are issued by the competent officer. The Department further informed that the number of returns received is not maintained at the Department headquarters. Thus, a vital monitoring mechanism is absent in the Department.

2.4 Arrears of sales tax

Position of arrears of sales tax during the last five years (2006-07 to 2010-11), as furnished by Commercial Tax Department, is given in the following table.

(₹ in crore)

Year	Opening balance of arrears	Additions during the year	Collection by the end of the year	Balance arrears
2006-07	759.30	702.79	877.84	584.25
2007-08	584.25	739.77	752.48	571.54
2008-09	571.54	1,086.23	1,111.73	546.04
2009-10	546.04	1,206.32	1,165.41	586.95
2010-11	586.95	1,214.02	1,271.17	529.80

The amount of arrears of sales tax at the year end was ₹ 529.80 crore out of which an amount of ₹ 450 crore was more than five years old.

2.5 Arrears in assessment

The details of assessments relating to sales tax/VAT, profession tax, entry tax, luxury tax, tax on works contracts pending at the beginning of the year, additional cases becoming due for assessment during the year, cases disposed during the year and pending cases at the end of each year during 2008-09, 2009-10 and 2010-11 as furnished by the Commercial Tax Department are mentioned in the following table:-

Name of tax		Opening balance	New cases due for assessment during the year	Total assessments due	Cases disposed during the year	Balance at the end of the year	Percentage of column 5 to 4
(1)		(2)	(3)	(4)	(5)	(6)	(7)
Commercial Tax Department							
Sales tax/VAT	2008-09	3,03,293	3,41,838	6,45,131	3,78,096	2,67,035	58.61
	2009-10	2,67,035	3,53,048	6,20,083	3,72,161	2,47,922	60.02
	2010-11	2,47,922	2,53,990	5,01,912	3,74,824	1,27,088	74.68
Profession tax	2008-09	1,27,515	1,50,048	2,77,563	1,53,188	1,24,375	55.19
	2009-10	1,24,375	1,40,241	2,64,616	1,57,938	1,06,678	59.69
	2010-11	1,06,678	88,196	1,94,874	1,27,626	67,248	65.49

	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Entry tax	2008-09	1,88,411	2,36,999	4,25,410	2,55,054	1,70,356	59.95
	2009-10	1,70,356	2,29,913	4,00,269	2,48,537	1,51,732	62.09
	2010-11	1,51,732	2,00,164	3,51,896	2,62,535	89,361	74.61
Luxury tax	2008-09	698	1,330	2,028	1,364	664	67.26
	2009-10	664	1,026	1,690	1,052	638	62.25
	2010-11	638	3,619	4,257	3,234	1,023	75.97
Tax on works contracts	2008-09	3,747	5,160	8,907	6,366	2,541	71.47
	2009-10	2,541	6,273	8,814	6,183	2,631	70.15
	2010-11	2,631	6,704	9,335	6,593	2,742	70.63

Thus, there has been increase in disposal of assessment during 2010-11 as compared to the previous years.

2.6 Cost of collection

The gross collection in respect of VAT/Taxes on Sales, Trade etc., expenditure incurred on collection as furnished by the concerned Department and the percentage of expenditure to gross collection during the years 2008-09, 2009-10 and 2010-11 along with the relevant all India average percentage of expenditure on collection to gross collection for preceding years are mentioned below:

(₹ in crore)

Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage
2008-09	6,842.99	96.23	1.41	0.83
2009-10	7,723.82	85.33	1.10	0.88
2010-11	10,256.76	98.35	0.96	0.96

The above table indicates that the percentage of expenditure on collection in respect of VAT/Taxes on Sales, Trade etc. was considerably higher than the all India average percentage for the years 2008-09 and 2009-10.

2.7 Working of internal audit wing

In pursuance of the Government orders dated 11 October 1982, 15 posts (five Assistant Commissioners, five Commercial Tax Officers and five Assistant Commercial Tax Officers) were sanctioned for internal audit in the Department. However, due to constant increase in the number of registered dealers and assessment cases, establishment of check posts and deployment of available staff in revenue work, system of internal audit is not working so far as internal audit of assessments are concerned. During the year 2010-11 internal audit of only the establishment records was done.

2.8 Results of audit

Test check of the records of 100 units relating to Commercial Tax/VAT revealed under-assessment of tax and other irregularities involving ₹ 265.45 crore in 1,017 cases which fall under the following categories:

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
1.	Working of commercial tax check posts in Madhya Pradesh (A performance audit)	1	63.10
2.	Utilisation of declaration forms in inter-state trade and commerce (A performance audit)	1	12.85
3.	Non/short levy of tax	294	31.43
4.	Application of incorrect rate of tax	164	10.99
5.	Incorrect determination of taxable turnover	94	3.63
6.	Incorrect grant of exemption/deduction/set off	142	27.95
7.	Other irregularities	321	115.50
	Total	1,017	265.45

During the course of the year, the Department accepted under-assessment and other deficiencies of ₹ 59.48 crore in 570 cases, which were pointed out in audit during the year 2010-11. An amount of ₹ 44 lakh was realised in 272 cases during the year 2010-11.

Two performance audits “**Working of commercial tax check posts in Madhya Pradesh**” involving revenue implication of ₹ 63.10 crore, “**Utilisation of declaration forms in inter-state trade and commerce**” involving revenue implication of ₹ 12.85 crore and a few illustrative cases with money value of ₹ 9.15 crore are mentioned in the following paragraphs.

2.9 Working of commercial tax check posts in Madhya Pradesh

Highlights

Absence of any provision to report penalty cases to circle offices resulted in loss of revenue of ₹ 12.77 lakh.

(Paragraph 2.9.9)

Absence of any provision for verification of TINs of dealers contained in Form 49 furnished by the transporters at the check posts resulted in loss of revenue of ₹ 1.18 lakh.

(Paragraph 2.9.13)

Non/short levy of penalty resulted in loss of revenue of ₹ 35.91 lakh.

(Paragraph 2.9.17)

Non-levy of tax on transporters who failed to give information about the consignor, consignee or the goods or who furnished forged documents resulted in loss of revenue of ₹ 38.67 lakh.

(Paragraph 2.9.18)

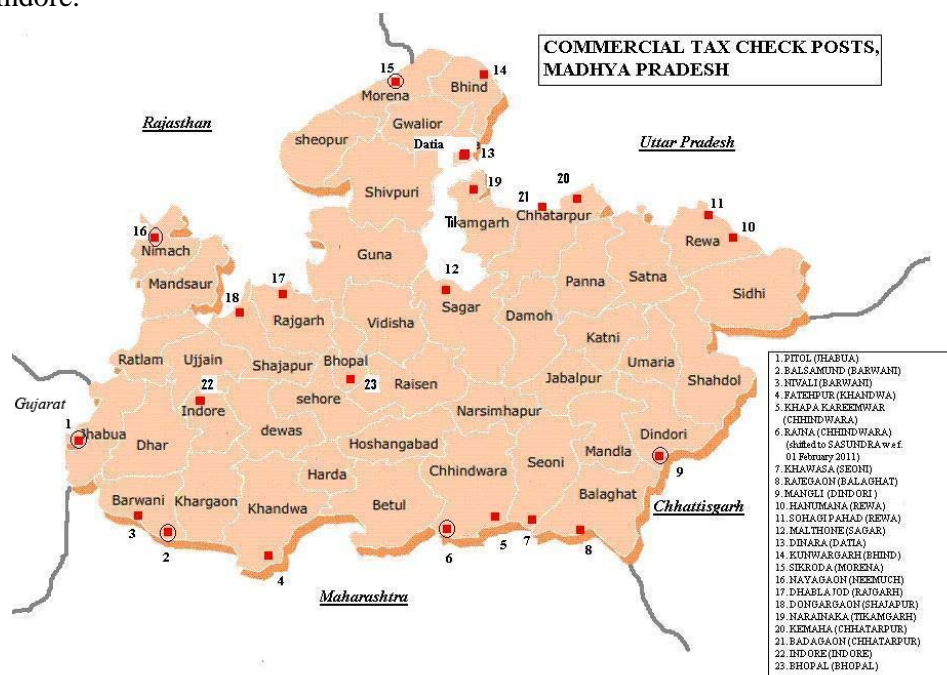
Deficient monitoring over movement of goods under transit pass resulted in non-realisation of penalty of ₹ 62.25 crore.

(Paragraph 2.9.20.2)

2.9.1 Introduction

In order to prevent evasion of tax on goods imported inside and exported outside Madhya Pradesh (MP), the Commercial Tax Department (CTD) of the Government of MP has been empowered to establish check posts where vehicles can be intercepted, searched and detained by the officer in-charge of the check post (CPO). The Madhya Pradesh VAT Act, 2002 (Act) empowers the Government and the Commissioner, Commercial Tax (CCT) to establish check posts in the prescribed manner at notified places in order to prevent or check evasion of tax. Accordingly, the Government established 23 check posts¹ at 23 places in the state between 1 April 2006 and 1 October 2009 through issuance of three notifications².

The work of data entry of declaration forms at the check posts have been computerised through the Centre for Entrepreneurship Development Madhya Pradesh (CEDMAP) for which space, furniture and power supply was to be provided by the Department and computer system operators and stationery was to be provided by CEDMAP. The head office of CEDMAP is located at Indore.



Source : Mapsofindia.com and check posts indicated manually.

¹ Badagaon, Balsamund, Bhopal, Dhabela Jod, Dinara, Dongargaon, Fatehpur, Hanumana, Indore, Kemaha, Khapa Kareemwar, Khawasa, Kunwargarh, Malthone, Mangli, Narainka, Nayagaon, Nivali, Pitol, Rajegaon, Rajna (shifted to Sasundara w.e.f. 1 February 2011), Sikroda, Sohagi Pahad.

² Notifications dated 31 March 2006, 31 August 2009 and 8 September 2009.

2.9.2 Organisational set-up

The Commercial Tax Department which administers the VAT Act, Entry Tax (ET) Act and Central Sales Tax (CST) Act in MP is headed by the Principal Secretary at the Government level and by the CCT at the Department level. The CCT is assisted by the Additional Commissioner (Enforcement) in the functioning of check posts while the Deputy Commissioners (DCs) administer the proper functioning of check posts established in their respective Divisions. The administration of each check post is entrusted to an Assistant Commissioner (AC) or Commercial Tax Officer (CTO) or Assistant Commercial Tax Officer (ACTO) who is assisted by Commercial Tax Inspectors.

2.9.3 Scope of Audit

A performance audit on the “Working of check posts in MP” was conducted during November 2010 to March 2011 covering the period from 2006-07 to 2010-11. Out of the 23 check posts in the State seven check posts³ were selected randomly for the review, taking at least one check post located near the borders of MP.

2.9.4 Audit objectives

We conducted the performance audit with a view to ascertain whether:

- an adequate and effective internal control system existed to prevent evasion of tax on goods and to ensure compliance to the provisions of the Act, Rules and notifications including the efficacy of controls in the computerised system; and
- infrastructure facilities in the check posts were adequate to check evasion of tax.

2.9.5 Acknowledgement

We acknowledge the co-operation of the CTD, the check post officers and field offices for providing necessary information and co-operation to audit. An entry conference to discuss the objectives, scope and methodology of audit was held with the Principal Secretary and Commissioner of the Department in January 2011. The performance audit report was forwarded to Government and Commissioner in July 2011. The exit conference was held in August, 2011 in which the Commissioner represented the Department. The views of the Department have suitably been incorporated in relevant paragraphs.

³ Balsamund, Dinara, Mangli, Nayagaon, Pitol, Rajna/Sasundra, Sikroda (Notified in March 2006).

2.9.6 Trend of revenue

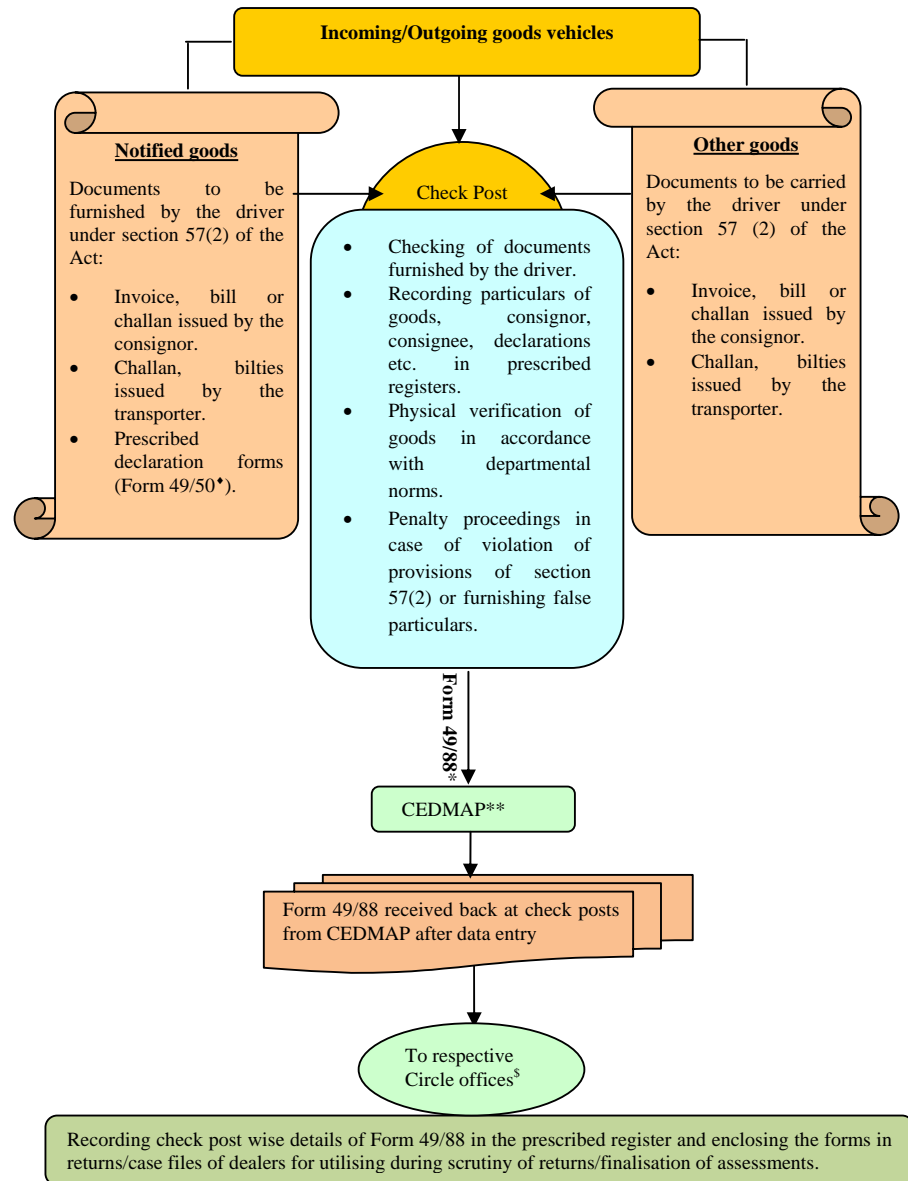
The collection of revenue at the check posts during the period 2006-07 to 2010-11 and its percentage to the revenue collected by the CTD is shown in the following table.

(₹ in crore)

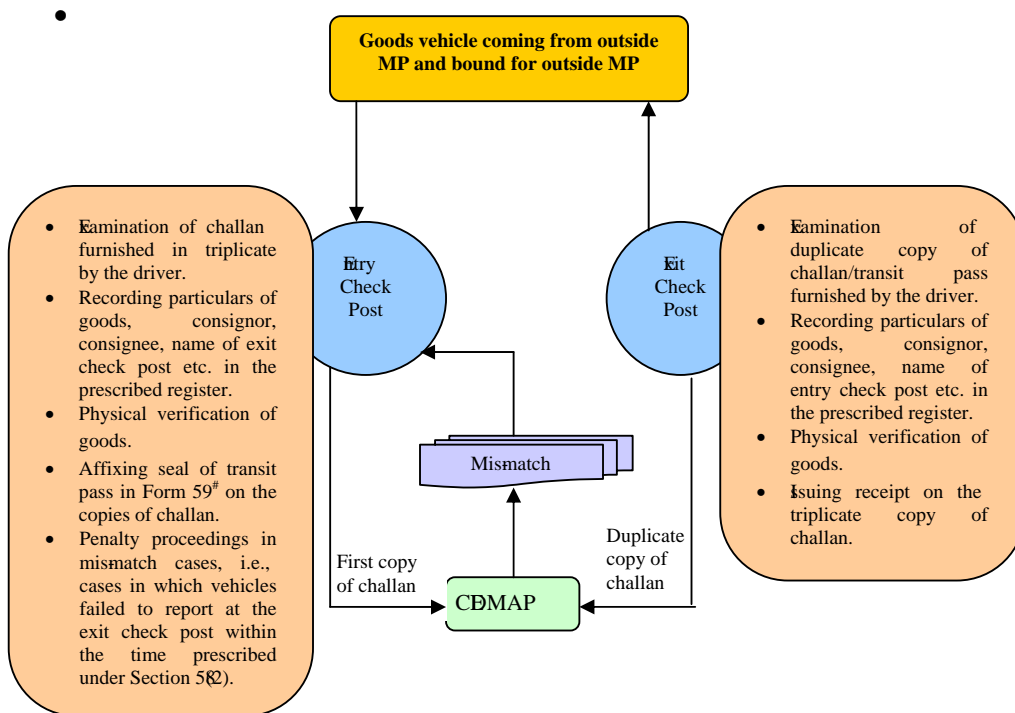
Year	Collection of revenue at the check posts	Total revenue collected by the CTD	Percentage
2006-07	2.02	5,261.41	0.04
2007-08	4.25	6,045.07	0.07
2008-09	5.97	6,842.99	0.09
2009-10	7.37	7,723.82	0.10
2010-11	6.02	10,256.76	0.06

(The figures in column 2 were provided by the Department and those in column 3 have been taken from Finance Accounts.)

2.9.7 System flow at check posts



- ♦ Form 50 - Check post declaration applicable to a person other than a registered dealer.
- * Form 49/88 - Check post declaration applicable to a registered dealer (Form no. 88 has been renumbered as Form no 49).
- ** Centre for Entrepreneurship Development, Madhya Pradesh - the body entrusted with the responsibility of data entry of Form 49/88 and transit passes.
- \$ 78 Circle offices.



Audit findings

2.9.8 Inappropriate location of check posts

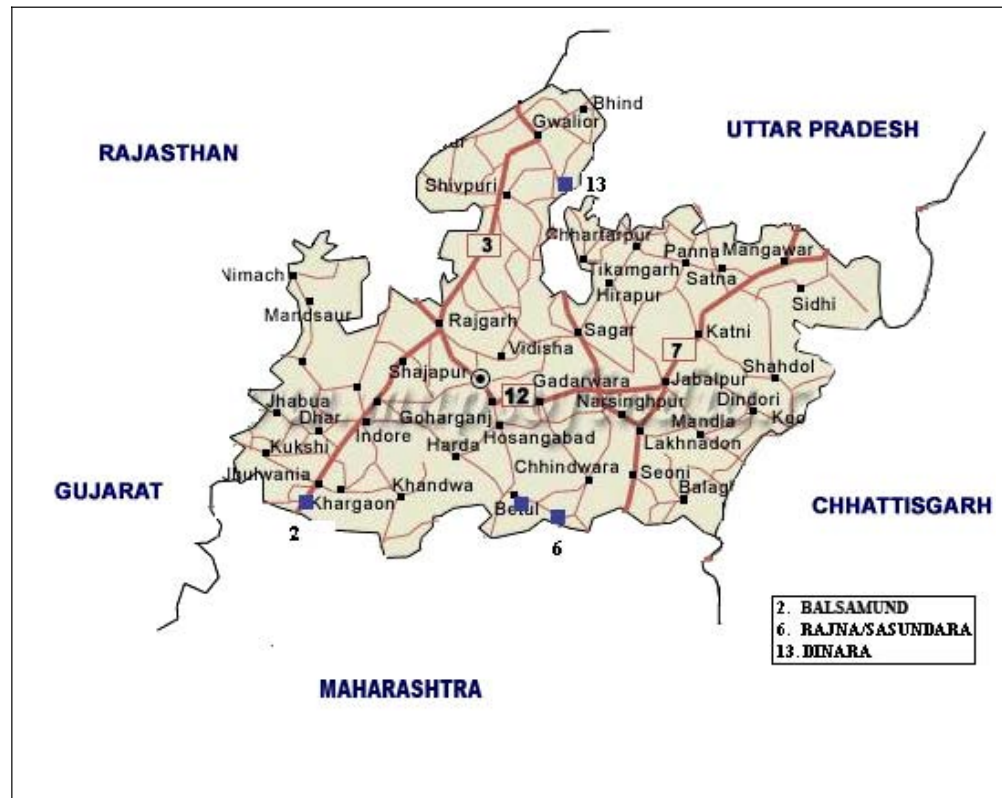
The Act provides for the establishment of check posts at the notified places with a view to prevent or check evasion of tax. As per Section 57(2) of the Act, a transporter is required to stop the vehicle or carrier at every check post or bring and stop the vehicle or carrier at the nearest check post while entering and leaving the limits of the State. Thus, position of check post/barrier is of utmost importance for preventing or checking tax evasion.

We observed that out of seven check posts selected for the review, three check posts⁴ have been established at places where the vehicles coming from neighbouring States can be diverted to various places within MP

through pocket roads without reaching the check posts or vehicles moving under transit passes can be unloaded within MP after delivering the transit passes at these exit check posts. Thus, inappropriate location of these check posts facilitates unscrupulous dealers for covert inter-State trade with consequent evasion of tax. The position of these check posts may be seen in the map given in the following page:

⁴ Balsamund, Dinara and Rajna (shifted to Sasundra with effect from 1 February 2011).

[#] Form 59 -Transit pass for transit of goods by road through the State.



Source : Mapsofindia.com and check posts indicated manually.

We observed that the existing check post at Rajna was shifted to Sasundra (in the interior part of the district) with effect from 1 February 2011 vide notification dated 28 January 2011. We also observed that the CPO, Rajna apprised (December 2010) the controlling DC that shifting of the check post would allow the vehicles, coming from other States, to divert to various places in MP through bypass roads without reaching the proposed check post at Sasundra.

As regards check post at Dinara, the CPO had apprised the controlling DC about the tax evasion due to the usage of optional/pocket roads by the vehicles coming/going from/to Jhansi (Uttar Pradesh) without reaching the check post at Dinara.

The Department in the exit conference (August 2011) assured that notification for new check posts to cover pocket roads would be issued.

2.9.9 Loss of revenue due to absence of any provision to report penalty cases to circle offices

The Register of penalty cases required to be maintained at every check post is meant for recording the particulars of penalty cases, such as penalty case number, name of transporter, amount of tax involved in goods on which penalty was imposed etc. However, columns relating to name of goods, value of goods on which penalty is imposed out of the total defaulter vehicle and reasons for imposition of penalty have not been prescribed in the register. In the absence of these particulars it could not be verified whether the value of goods and rate of tax were determined correctly for computing the quantum of

penalty. Besides, we could not categorise the penalty cases according to the reasons for imposition of penalty, for test check. Out of the total 2,714 penalty cases finalised (2006-07 to 2010-11) at the seven check posts, we test checked 1,628 cases. The findings are discussed in the following paragraphs:

Under Section 57 of the MP VAT Act, where a transporter fails to furnish before the CPO all the documents including prescribed declaration forms in respect of goods notified by the Government, he shall be liable for penalty imposed upon him in accordance with the provisions of the Act. However, there is no provision in the Act/Rules to transmit these penalty cases to the circle offices to ensure their inclusion during assessments by the circle officers.

2.9.9.1 We observed that in 576 cases in the test checked seven check posts, penalty was imposed upon transporters who failed to furnish prescribed declarations in respect of notified goods being purchased/sold by the dealers of MP but information relating to imposition of penalties in these cases along

with copies of bills/invoices was not transmitted to the concerned circle offices for placing in the assessment files of the dealers in order to verify the accounting of these transactions at the time of assessment. For test check we collected details of 68 bills/invoices contained in 58 penalty cases. On cross verification of the details of these bills/invoices from the concerned circle offices we found that 35 numbers of bills/invoices involving goods valued at ₹ 78.17 lakh with tax effect of ₹ 7.95 lakh relating to 29 penalty cases were not accounted for by the dealers. Out of these 29 penalty cases, in 11 cases our observation was pointed out on the basis of scrutiny of assessment files and in the remaining cases on the basis of quarterly returns.

Under Section 5 of the Act read with Rule 5 of the MP VAT Rules, every dealer shall be liable to pay tax in respect of sales or supplies of goods effected by him in MP with effect from the date on which his turnover in a year first exceeds rupees five lakh.

2.9.9.2 We observed at five check posts⁵ that in 12 out of 232 cases, penalty was imposed upon transporters who failed to furnish documents/declarations in respect of goods being imported by persons/works contractors (unregistered) from outside MP. Of these 12 cases in seven cases though the turnover exceeded the limit of ₹ five lakh, the information relating to these penalty cases was not transmitted to the concerned circle offices in order to bring such importers into the tax net. Therefore, due to non-reporting of these penalty cases to the concerned circle offices the Government was deprived of tax

of ₹ 4.82 lakh involved in such goods valued at ₹ 76.73 lakh.

In the exit conference (August 2011) the Department did not accept the observation and stated that there was no provision for such reporting.

⁵ Balsamund, Mangli, Pitol, Rajna, Sikroda.

The Government may consider prescribing a mechanism of transmission of penalty cases to the circle offices for their utilisation at the time of assessment or scrutiny of returns submitted by the dealers.

2.9.10 Loss of revenue due to lack of control over goods/vehicles outgoing from MP

Section 57 (2) of the MP VAT Act read with notifications dated 31 March 2006 and 20 April 2010 provides that every driver of a vehicle while leaving the limits of MP shall carry with him an invoice, bill or challan issued by the consignee and *bilties* issued by the transporter and stop the vehicle at the check post and in respect of notified goods, namely oilseeds, vegetable and edible oil and cotton, furnish all the documents mentioned above including declaration in Form 49. Thus, it is evident that neither any document is required to be furnished at the check posts in respect of goods other than notified goods nor any register has been prescribed for keeping the record of such outgoing goods.

No document including declaration in Form 49 is required to be furnished at the check posts in respect of sugar which is other than notified goods and no register has been prescribed for keeping the record of such goods outgoing from MP. Besides, C forms are also not required in respect of inter-state sale of sugar in view of the provisions of the Central Sales Tax Act, 1956.

During scrutiny of records of RAC, Neemuch in February 2011 we observed that five dealers, assessed in 2009-10 for the period 2006-07 to 2008-09,

imported sugar valued at ₹ 43.22 crore from outside MP of which sugar valued at ₹ 33.34 crore was claimed to be sold in the course of inter-state trade. Thus, entry tax of ₹ 32.97 lakh was not levied on the purchase value of ₹ 32.97 crore of sugar sold in the course of inter-state trade as per provision. Therefore, for verifying the genuineness of such inter-state sales, no record was available with the Department. However, from the inter-state sale lists available in the assessment case files of the dealers, we test checked the status of registration of those purchasing dealers of Rajasthan whose TIN⁶ was mentioned in the sale lists from the official website of Commercial Tax Department of the Government of Rajasthan. Of the 16 purchasing dealers test checked, three were not found registered. We do not rule out such evasion of tax in other cases of outgoing goods.

In the exit conference (August 2011) the Department did not accept the observation and stated that there was no provision for such control.

⁶ Taxpayer Identification Number.

2.9.11 Physical verification of goods vehicles crossing check posts

No specific target for conducting physical verification of goods has been fixed by the Department.

The Act and the Rules made thereunder empower the CPO for inspecting and searching the goods being carried in the vehicles crossing the check posts to prevent evasion of tax. As per the directions contained in various circulars issued by the CCT, physical verification of goods vehicles crossing check posts shall be conducted only in case of “doubt”.

We observed that no vehicle-wise records are maintained at the check posts. Therefore, we could not determine the actual number of vehicles which crossed the check posts during the period covered in the performance audit. However, the average number of vehicles crossing the check posts per day was furnished by the respective CPOs. We

compared the data with the number of penalty cases instituted at the seven check posts during 2006-07 to 2010-11 on the basis of vehicles physically verified and found that the number of vehicles physically verified was disproportionate to the total number of vehicles crossing the check posts per day as shown in the table below:

Sl. No.	Name of check post	Average no. of vehicles crossing the check post per day (as per information provided by the Department)	Physical verification during 2006-07 to 2010-11	
			No. of vehicles physically verified and found liable for penalty	Penalty recovered (₹ in lakh)
1.	Balsamund	2,500	09	15.48
2.	Sikroda	968	09	1.43
3.	Dinara	353	Nil	Nil
4.	Nayagaon	1,361	09	1.97
5.	Rajna/Sasundra	1,200	47	8.85
6.	Pitol	900	146	32.88
7.	Mangli	165	35	8.85
	Total	7,447	255	69.46

It is evident that the number of vehicles physically verified is low in case of Balsamund, Sikroda, Rajna/Sasundra and Nayagaon check posts as compared to the average number of vehicles crossing these check posts per day. No vehicle was physically verified at Dinara check post during 2006-07 to 2010-11. Although there was lesser traffic at Pitol in comparison to Balsamund, Nayagaon and Rajna/Sasundra, largest amount of penalty was recovered as a result of physical verification conducted for highest number of vehicles. Therefore, had the Government/Department prescribed any daily/weekly/monthly/annual target for physical verification of vehicles crossing check posts, more cases of tax evasion would have been detected.

In the exit conference (August 2011) the Department did not accept the observation and stated that physical verification was not required because it was against the principle of hassle-free trade. Only doubtful vehicles were to

be checked. It was further stated that mobile checking of vehicles takes place after the vehicles cross the check posts on a regular basis. Increased verification was also not feasible due to lack of manpower.

2.9.12 Inadequate infrastructure at check posts

Infrastructural facilities such as weigh bridge, parking yard, cash chest, telephones, drinking water, toilets etc. are considered necessary for efficient functioning of check posts as the check posts are required to work round the clock.

During the course of the audit we observed that:

- Permanent building was not available at four⁷ out of seven check posts.
- Cash chest for safe custody of penalty deposited by transporters was not available at any check post.
- Parking yard, godown, crane, weigh bridge etc., essential for conducting physical verification of detained goods, were not provided at any check post.
- Computers/internet and telephones, essential for instant cross-verification of documents furnished by the transporters from the circle offices, were not available at any check post except Pitol where telephone has been provided.
- Drinking water facility was not available at any check post while toilets and resting rooms were available only at two⁸ out of seven check posts. Non-availability of such basic amenities adversely affects the functioning of check posts as the check posts function round the clock.



(Bundles of TPs lying in Dinara and Sikroda check posts)⁹

In the exit conference (August 2011), the Department accepted the observation and assured that new infrastructure would be introduced soon.

⁷ Dinara, Mangli, Nayagaon and Sikroda.

⁸ Pitol and Sasundra.

⁹ Photographs were captured by digital camera by review party with permission of the Department.

2.9.13 Absence of provision for verification of TIN contained in Form 49 furnished by the transporters

Declarations in Form 49 furnished by the transporters at check posts in respect of notified goods being imported or exported by the registered dealers of MP *inter alia* contain name, address and TIN of such registered dealers. Form 49 acts as a tool for monitoring the liability and payment of tax by the registered dealers engaged in such inter-state trade. However, no procedure has been prescribed for verifying the status of registration of the dealers while accepting declarations at check posts in order to confirm their genuineness and to ensure the collection of tax involved in the goods being transported under such declarations.

On a random verification of declaration forms (October, 2010) from the departmental website¹⁰, we found that out of three dealers mentioned in three declarations accepted at three check posts¹¹, two were not registered while registration of one dealer was cancelled with effect from 31 January 2009. Thus, the Government was deprived of tax of ₹ 1.18 lakh involved in aggregate invoice value of ₹ 20.60 lakh of goods imported under these

three declarations because the importers of these goods were not registered with the Department.

In the exit conference (August 2011), the Department accepted the observation and assured that the facility of internet connectivity would be provided to all the check posts. With the introduction of downloading of Form 49 from the departmental website, this aspect would be taken care of.

¹⁰ MPtax.net.

¹¹ Mangli, Rajna and Sikroda.

2.9.14 Lack of monitoring over maintenance of records

Circulars dated 29 August 2005 and 31 March 2006 issued by the CCT prescribe various registers which are required to be maintained at the check posts. Batch Registers of declarations in Form 49 is required to be maintained in check posts for recording the information relating to forwarding of declarations to the circle offices.

- We observed the following irregularities in the maintenance of the prescribed registers.

Sl. No.	Name of register	Irregularity
1.	Stock Register of receipt books (MPTC 6)	Not maintained in any of the seven check posts.
2.	Register of incoming vehicles	Not maintained in Balsamund, Nayagaon, Rajna/Sasundra and Sikroda check posts.
3.	Register of Form 50	Not maintained in Dinara, Mangli and Sikroda check posts.
4.	Register of detained vehicles	Not maintained in any of the check posts except Pitol check post.
5.	Register of unloading of goods	Not maintained in any of the check posts except Pitol check post.

No instructions have been issued for periodical closing and submission of the registers to the CPO or higher authorities for effective monitoring.

- As a result, none of the registers maintained at the check posts was periodically closed and submitted to the CPO or higher authorities. Due to this, the CPO/higher authorities were unable to monitor forwarding of declarations to circle offices in time to facilitate them to finalise assessment cases of the dealers. Loss of revenue due to non forwarding of declarations in Form 50 has been pointed out in the subsequent paragraphs.
- During review of the records of seven check posts during November 2010 and March 2011, we observed at Dinara and Mangli check posts that Batch Registers of Form 49 were not maintained, while at four check posts¹² no entries were made regarding acknowledgement of circle offices to whom the declarations in Form 49 were forwarded. Therefore, we could not verify the timely despatch of declarations to these circle offices. However, during review of the acknowledgment receipts of two circle offices¹³ at Balsamund check post we observed that batches of March 2007 were received in March 2010 in the circle office at Jhabua. Similarly, monthly batches related to December 2006 to June 2009 were received in January 2010 in the circle office at Neemuch. Thus, due to delayed forwarding to the circle offices declarations in Form 49 remained unutilised for verification of import purchases during scrutiny of returns/finalisation of assessments of dealers.

¹² Balsamund, Nayagaon, Rajna and Sikroda.

¹³ Jhabua and Neemuch.

In the exit conference (August 2011) the Department stated that all check posts were being computerised very soon and effective monitoring would be possible through the system thereafter.

2.9.15 Preparation of working manual

Besides Act and Rules, a working manual of an organisation consists of a consolidated set of instructions to be followed by the officials in discharge of their duties and ensures standard operating procedures across the State. We observed that no working manual had been prepared in the Department for day to day functioning of check posts.

In the exit conference (August 2011), the Department stated that user manual for enforcement module of departmental application software (including working of check posts) was available online to all CTD users. The Department's manual would also be prepared.

2.9.16 Internal audit

Internal audit is one of the most vital tools of the internal control mechanism and functions as the “eyes” and “ears” of the management. It also independently appraises whether the activities of the organisation are being conducted efficiently and effectively. We observed that during 2006-07 to 2010-11, no internal audit was conducted in the check posts selected for review.

In the exit conference (August 2011), the Department stated that no internal audit was being conducted but regular inspections were being conducted by the higher officials.

2.9.17 Loss of revenue due to non/short levy of penalty

Section 57(8) of the MP VAT Act provides that if a transporter fails to furnish before the CPO all the documents including prescribed declarations relating to notified goods or to carry with him an invoice, bill, challan and *bilties* relating to other goods or submits false or forged documents or declarations he shall be liable for penalty or a lump sum amount in lieu of penalty as shown below:

Period	Maximum penalty	Minimum penalty	Amount payable in lump sum by way of composition
1.04.2006 to 31.03.2007	3.5 times of tax	3 times of tax	2 times of tax
1.04.2007 to 11.05.2008	10 times of tax	8 times of tax	5 times of tax
12.05.2008 to 31.07.2009			3 times of tax
1.08.2009 to 31.03.2011	7 times of tax	5 times of tax	3 times of tax

(Under Section 57(8) *ibid* tax (in the above table) means VAT which would have been payable if the goods were sold within the State on the date of inspection).

2.9.17.1 Out of 1,423 penalty cases test checked in four check posts¹⁴ we observed that in nine cases, penalty on defaulters was imposed incorrectly taking the base rate of entry tax payable on detained goods instead of VAT which would have been payable if the goods had been sold within the State. This resulted in short realisation of penalty of ₹ 24.93 lakh.

In the exit conference (August 2011), the Department did not accept the observation and stated that VAT was not attracted on purchase of machinery by contractors used in the execution of work contracts as per the explanation inserted in section 57(8) of MP VAT Act 2002 w.e.f. 1 April 2011.

The contention of the Department is not to the point. The audit objection is that penalty should have been imposed on VAT and not on entry tax in terms of provisions of section 57 (8) of the Act.

As per Section 57 (10) of the MP VAT Act, where the transporter abstains from bringing or stopping the vehicle or carrier at the check post, the CPO may impose an additional maximum penalty equal to twice the amount of tax which would have been payable if the goods were sold within MP.

2.9.17.2 Out of 928 penalty cases test checked in four check posts,¹⁵ we observed that in 30 penalty cases the transporters carrying goods involving tax of ₹ 5.49 lakh were trying to abstain from bringing or stopping their vehicles at the check posts were forced by the CPOs to get the vehicles stopped yet the CPOs did not

impose the maximum additional penalty equal to ₹ 10.98 lakh.

¹⁴ Balsamund, Nayagaon, Pitol, Rajna/Sasundra.

¹⁵ Balsamund, Mangli, Rajna/Sasundra and Sikroda.

In the exit conference (August 2011), the Department accepted the observation and agreed to issue instructions to the check posts for imposing maximum additional penalty in cases where the transporters abstain from bringing or stopping the vehicle or carrier at the check posts.

2.9.18 Loss of revenue due to non-levy of tax

As per Section 57 (15) and (16) of the MP VAT Act where a transporter fails to give information about the consignor, consignee or the goods in movement or transports the goods with forged documents, besides imposing penalty, it shall be presumed that the goods so transported have been sold in MP by him and he shall be deemed to be a dealer for the purpose of levy, collection and assessment of tax.

Out of 1,628 penalty cases test checked in seven check posts, we observed that in 379 penalty cases, penalty was imposed on the transporters who failed to give information about the consignor, consignee or the goods or who furnished forged documents. However, the CPOs failed to

forward the cases of such transporters treating them as dealers to the circle offices for levy of tax. This resulted in non-realisation of tax of ₹ 38.67 lakh involved in the value of goods being transported.

In the exit conference (August 2011), the Department stated that as per Act CPOs were not authorised to levy and collect tax. However, instructions would be issued for forwarding such cases to the circle offices so that it is taken care of during assessment proceedings.

2.9.19 Non-realisation of revenue due to delayed forwarding of check post declarations to circle offices

As per instructions issued in December 2005 by the CCT, declarations collected at the check posts shall be forwarded to the circle offices in monthly batches after their data entry by CEDMAP. Further, as per notifications dated 30 September 1997 and 9 June 2003 issued under Section 3(2) of the Entry Tax Act, persons/works contractors (unregistered) are liable to pay entry tax at specified rates on specified goods.

We noticed that separate Batch Registers of Form 50 were not maintained at any of the seven check posts. Therefore, we could not verify whether the declarations in Form 50 collected at these check posts were forwarded to circle offices. Further, during test check of records of Balsamund and Pitol check posts, we observed that 81 declarations in Form 50, furnished by the transporters during 2008-09 to 2010-11 in respect of notified goods valued at ₹ 9.01 crore imported by

persons/works contractors (unregistered) in MP, were not forwarded to the concerned CTOs. This resulted in non-realisation of entry tax of ₹ 21.02 lakh on these goods.

After we pointed out the matter, the CPO, Balsamund stated (December 2010) in 51 cases that action would be taken after examination. In the remaining two cases the CPO, Balsamund did not furnish specific reply and stated that action on the basis of verification of Form 50 is done in circle offices and not at the check post. The reply does not explain why the declarations in Form 50 were not forwarded to the concerned circle offices for further action. CPO, Pitol (March 2011) stated that instructions had been issued for forwarding of remaining declarations of the year 2008-09 to the concerned circle offices.

2.9.20 Deficient monitoring over movement of goods under transit pass

Section 58 of the MP VAT Act provides that when a vehicle coming from any place outside MP and bound for any other place outside MP passes through the State, the person in-charge of such vehicle shall obtain, in the prescribed form and manner, a transit pass (TP) from the CPO of the first check post (entry check post) after his entry into the State and deliver it within a week to the CPO of the last check post (exit check post) before his exit from the State. A register in the prescribed format is required to be maintained at entry/exit check posts.

2.9.20.1 We observed the following irregularities in the maintenance of the registers.

Sl. No	Name of register	Irregularity
1.	Register of documents/challan at entry check post	Not maintained at Nayagaon check post. Entries regarding name of consignee/consignor/transporter, name/value of goods, place of trans-shipment etc. were not completed at Balsamund, Sikroda, Dinara and Rajna/Sasundra check posts.
2.	Register of documents/challan at exit check post	Not maintained at Nayagaon check post. At Pitol, Mangli and Dinara check posts entries in the column "Date and time mentioned in the TP for reporting at the exit check post" were not made. We observed that during the selected months, although 44 TPs were delivered after 10 to 112 days at these exit check posts, no reasons/remarks in respect of the delay were recorded in the prescribed column.

The non-maintenance/incomplete maintenance of registers denies the Department an opportunity to ascertain whether the goods entering the State for transit to other states are actually transmitted to other states or are being disposed of within the State without payment of the requisite entry tax.

Section 58 of the MP VAT Act provides that the CPO of the entry check post shall intimate the information contained in the TP issued by him to the CPO of the exit check post. If within a week of receipt the TP is not delivered at the exit check post the CPO of the exit check post shall immediately bring this fact to the notice of the CPO of the entry check post, who shall then, presuming that the goods covered under such TP have been sold within the State by the transporter, initiate action to recover the penalty from the transporter under Section 57 of the Act.

2.9.20.2 For efficient monitoring over movement of goods under transit pass and expedient detection of defaulters, the work relating to data entry of TPs and preparation of mis-match reports (TPs issued but not delivered at the exit check posts) has been entrusted to CEDMAP and this work has to be done at every check post.

We observed that the CEDMAP collected TPs from entry and exit check

posts at intervals of one month for data entry and returned the TPs pertaining to a month with completion certificate to check posts after two to six months. Due to belated data entry of TPs, mis-match reports were also prepared late. Consequently, at five check posts¹⁶ 8,241 penalty cases were instituted on the basis of mis-match reports prepared by CEDMAP of which 5,283 cases remained undisposed till March 2011 because the transporters could not be traced and notices could not be served to them. Out of these, 310 cases of two check posts¹⁷ involve penalty of ₹ 6.56 crore. In the remaining cases, the Department could not initiate action for levy of penalty as the requisite particulars like name of consignee/consigner/transporter, name/value of goods, place of trans-shipment etc., were not entered in the registers. Thus due to improper maintenance of these registers, the Department was deprived of unascertainable amount of revenue.

We observed that register of penalty cases (out to out) and penalty case files were not maintained at two check posts¹⁸. We collected data of TPs of these two check posts for the months April 2009 and October 2010 from CEDMAP and compared the TPs issued from these check posts (IN_DATA) from the TPs delivered at the exit check posts (OUT_DATA) in order to detect the undelivered TPs and defaulter vehicles. Results of verification are shown in the table below.

¹⁶ Dinara, Mangli, Nayagaon, Pitol and Rajna.

¹⁷ Dinara and Nayagaon.

¹⁸ Balsamund and Sikroda.

Name of entry check post	Period/Date for which verification of TPs issued was <u>done</u> No. of TPs issued	Result of verification of TPs	Value of goods covered under the TPs found undelivered (₹ in crore)	Tax involved (₹ in crore)	Penalty remained unrecovered (₹ in crore)
Balsamund	<u>9 April 2009</u> 524 TPs issued for Dongargaon and Nayagaon exit check posts	57 TPs found undelivered at the exit check posts of which name and value of goods were mentioned only in 41 TPs. Remaining TPs were issued on challans/documents not containing particulars of goods.	2.43	0.17	1.38
Sikroda	<u>1 to 18 April 2009</u> 4,985 TPs issued for Gavadi and Rajna exit check posts	650 TPs found undelivered at the exit check posts of which name and value of goods mentioned only in 279 TPs. Remaining TPs were issued on challans/documents not containing particulars of goods.	19.06	1.44	11.49
	<u>1 to 15 October 2010</u> 7,412 TPs ¹⁹	1,334 TPs found undelivered at the exit check posts of which name and value of goods were mentioned only in 905 TPs. Remaining TPs were issued on challans/documents not containing particulars of goods.	89.59	8.56	42.82
		Total	111.08	10.17	55.69

In the absence of mismatch report penalty of ₹ 55.69 crore could not be levied.

In the exit conference (August 2011), the Department did not accept the observation and stated that provision was there to match all out-to-out vehicles

¹⁹ Issued for Balsamund, Dinara, Fattehpur, Hanumana, Khapa Kareemwar, Khawasa, Kunwargarh, Mangli, Pitol, Rajegaon and Rajna exit check posts.

through the enforcement module of the application software and a provision to capture truck numbers was also there to find out defaulter trucks in subsequent entries.

The fact remains that though there is a module to match out to out vehicles, delayed generation of mismatch reports is not serving the purpose of having such a module and the same was highlighted in the audit observation.

Information System (IS) related findings

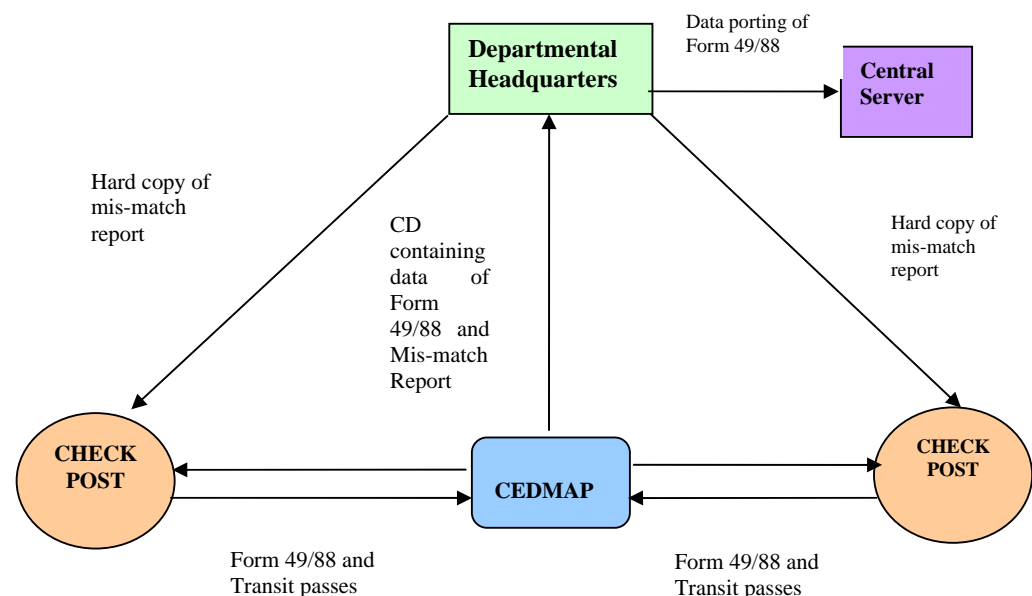
2.9.21 Introduction

Prior to computerisation of the declarations (Form 85 and Form 75) received at the check posts, the work of reconciling the two copies of Form 85 submitted by the 'out to out' transporters at the entry and exit check posts was done manually. Thus, the generation of mis-match reports was a cumbersome task and this handicap was exploited by the transporters to their advantage. It was decided by the Department (September 2005) to undertake data entry of the declarations received at the check posts in order to prevent heavy evasion of tax by the 'out to out' transporters of goods. The work of computerisation which involved data entry of the declarations (Form 85 and 88/49), Transit Passes (TPs), reconciliation of these TPs and preparation of mis-match reports was awarded to Centre for Entrepreneurship Development, MP (CEDMAP), an undertaking of the Government of MP.

We decided to review the efficacy of controls in the computerised system developed by CEDMAP.

2.9.22 System architecture and work flow

The application software is based on Visual Basic (6) with Windows 98/XP as the Operating System. The database is maintained in MS Access and the systems are connected through LAN.



Data entry of the declarations and the TPs is done at the check posts/ CEDMAP centres by the operators provided by the agency. The data for a month is consolidated at Indore and mis-match reports are generated, which is sent to the departmental headquarters in a CD (text format) for porting at the central server and transmission to various circle offices. For generation of mis-match reports, the bar codes pasted on the TPs/Challans at the entry and exit check posts are reconciled and the data where incoming vehicle is being shown but no outgoing is recorded is marked as mis-match. The period for such mis-match is the common incoming and outgoing month as well as outgoing data for the next month.

2.9.23 IT controls

General controls

Planning

We observed that the work of computerisation was awarded to CEDMAP in September 2005 on the basis of a proposal by CEDMAP itself. The administrative sanction for the work was given by the Department on the basis of a note submitted by the CCT (17 August 2005) to the Principal Secretary of the Department in which the proposal and the rates quoted by CEDMAP was approved and recommended. Thus the benefit of competitive rate was denied to the Department. We also noticed that no agreement was signed with the service provider during the award of work. This not only jeopardises the interests of the Department but also makes its position vulnerable in case of unilateral rate hike and sub standard service quality.

We further noticed that no formal User Requirement Specification (URS) was prepared by the Department/CEDMAP and there was nothing on record to show that the System Design Document prepared by CEDMAP was vetted and approved by the Department. When we pointed this out, the DC stated (May 2011) that after evaluating the requirements of the Department, the proposal of system design was obtained from CEDMAP. We are of the opinion that a detailed URS would have taken care of some of the deficiencies in the system highlighted in the subsequent paragraphs.

Implementation

The administrative sanction accorded in September 2005 provided that the data entry of Form 49/88 and TPs would be done by CEDMAP at the check posts for which space, furniture and power supply at check posts would be provided by the Department and computer systems, operators and stationery etc. would be provided by CEDMAP. However, no time schedule for periodic submission of data of declarations/mis-match reports by CEDMAP to the Department for porting/circulation has been incorporated in the above sanction *ibid*.

We observed in six check posts²⁰ that the data entry of Form 49/88 and TPs was carried out by CEDMAP at places other than the check posts due to non-provision of adequate infra-structure facilities at check posts. We noticed that CEDMAP collected Form 49/88 and TPs from the entry and exit check posts after one month and took another two to six months for completion of data entry and preparation of mis-match reports. This time lag would hinder

departmental efforts to initiate action against defaulting transporters and dealers. Thus, the objective of faster and more efficient verification of check post declarations and timely detection of mis-match cases to prevent tax evasion, as mentioned in the note of the CCT proposing outsourcing of the work to CEDMAP, largely remained unfulfilled.

Physical security

Physical security arrangements like fire extinguishers, fire alarm and smoke detection system were not available at the seven check posts/CEDMAP centres where computers systems were kept for data entry/processing work.

As a result of non-provision of fire fighting equipments there is the risk that in case of a fire the Department would not be in a position to salvage the data/records at CEDMAP offices.

Inadequate data fields in the application

Data fields relating to description and value of goods were not included in the data entry form of transit passes. Due to the absence of these data fields in IN_DATA and OUT_DATA, mis-match reports prepared on the basis of these data do not contain the quantum of tax involved in cases of evasion for the purpose of management information. Besides, for institution of penalty in mis-match cases, the amount of tax evaded and penalty leviable/recoverable is calculated manually. Thus, manual intervention in monitoring of vehicles moving under transit pass restricts the faster disposal of mis-match cases.

2.9.24 Input and validation controls

Input control guarantee that (i) the data received for processing are genuine, complete, not previously processed, accurate and properly authorised and

²⁰ Balsamund, Dinara, Mangli, Nayagaon, Pitol and Rajna/Sasundra.

(ii) data are entered accurately and without duplication. Input control is extremely important as the most important source of error or fraud in computerised systems is incorrect or fraudulent input. Controls over input are vital to the integrity of the system.

The accuracy of the data input to a system can be controlled by imposing a number of computerised validity checks on the data presented to the system. Automated validation checks should be sufficient to ensure that all data accepted into the system is capable of acceptance by all subsequent processes, including acceptance into other systems where there is an automatic transfer of data.

2.9.24.1 Acceptance of duplicate data

According to the CCT's circular of August 2005 transit passes should be issued in running numbers from 0 hours to 24 hours at every check post.

We test checked the data of 1 April 2009 of Balsamund check post and found that out of 954 records, 15 TPs were found entered twice for different vehicles. This was due to lack of validation controls in the system which enabled acceptance

of duplicate numbers for different vehicles. We further noticed that the data type of such field (transit_pass_no) was "text" whereas it should be a numerical field.

After we pointed this out, the DC stated (May 2011) that the TP number was entered manually on the challans by the CPO and the serial number was broken due to heavy workload and diversion of attention of the CPOs. It was further stated that the text format had been implemented to accommodate the missing numbers, which were then entered in combination of numbers and alphabets. We are of the opinion that necessary changes in system logic should be made so that duplicate entries are not accepted at the input level.

2.9.24.2 In order to assess the existence and effectiveness of validation checks in the application developed for data entry, we analysed the data of Form 49/88, transit passes and mis-match reports using IDEA²¹, MS-Access and MS-Excel.

Data of Form 49/88

In the data for the month of October 2010 for seven check posts test checked which contained 1,12,788 records, we noticed the following discrepancies showing lack of validation checks in the application.

- In 853 records, quantity of goods was 1000 MT or more which is improbable.
- In 59 records, quantity was entered in the field of invoice value.
- In 22 records, invoice value ranged between ₹ 50 crore and ₹ 979 crore which is unrealistic.

²¹ Interactive Data Extraction and Analysis.

- In 2,065 records, although the goods were being imported from outside MP, the consignor-place was shown as Indore, Bhopal, Dewas etc. i.e., districts of MP.
- In 604 records, although the goods were being exported outside MP, the destination was shown as Indore, Dewas, Bhopal and Satna, i.e., districts of MP.

Data of transit passes and mis-match reports

In the data for the month of April 2009 (1,26,863 records inward data and 2,42,449 records in outward data) for all the check posts we noticed the following discrepancies.

- (i) In 285 records (outward) and 33 records (inward), number of *bilties* was shown as zero which is invalid because in the absence of *bilties* transit pass could not be issued.
- (ii) In 17 records (inward) transit pass number was shown as “MP”, “MH”, “68/3”, “226+” etc. which are garbage values and in 14 cases TP numbers were not found entered. Similarly, in the data of 30 April 2009 of check post Dinara, we noticed that five TP numbers were not found entered out of 41 records examined by us.
- (iii) In 117 records (outward), nine records (inward) and three records of mis-match report, truck number was shown as NA-00-NA-0000 which were invalid.
- (iv) In 5,603 records (inward) and 540 records of mis-match report, transporter name was shown as NA.
- (v) In 8,064 records (inward) and 681 records of mis-match report, transporter place was shown as NA.

2.9.25 Output controls

For detection of defaulter vehicles/transporters moving under transit pass, mis-match reports are prepared by CEDMAP through reconciliation of barcodes entered in inward and outward data of a month. Therefore, barcode is the key field for detection of defaulters.

Output controls are those controls which ensure that results which are obtained are in accordance with the parameters set. Inaccurate results indicate that either there was default in setting the parameters or the optical recognition system not working properly resulting in throwing of inaccurate outputs.

We observed during the analysis of outward data of April 2009 for all the check posts that out of total 2,42,449 records, barcodes were entered as “NA” in 286 records. Of the 286 records, barcodes were found entered in the corresponding 108 records of inward data of April 2009. This implies that these 108 TPs were delivered at the exit check posts. However, 25 of these TPs/vehicles were found included in the mis-match report of the month. Thus,

inclusion of 25 TPs/vehicles which were not defaulters in the mis-match report resulted in unfruitful institution of penalty cases against such transporters.

2.9.26 Change management

As per the information furnished by CEDMAP, change requirements in the data entry system were executed in consultation with the Department. Notification dated 31 March 2006 incorporated list of 34 categories of goods for which declaration in Form 49 is required to be furnished by the transporter at the check post while entering MP. With effect from 14 July 2008 three categories of goods were omitted from the aforesaid list.

We analysed the data of Form 49 for the month of October 2010 for all the check posts and found that out of 1,12,788 records 1,716 records also contained three categories of goods which were omitted from the list. As Form 49 was not required in respect of these goods with effect from 14 July 2008, records containing these goods in the

relevant data field have become redundant. The Department did not inform CEDMAP to make the required changes in the automated system.

2.9.27 Conclusion

We observed that the location of some of the check posts was not conducive to check evasion of tax. No mechanism existed to ensure that the penalty cases were sent to the circle offices at required intervals. We noticed that substantial revenue was lost due to deficient maintenance of records at the check posts and absence of any system to verify TIN of dealers under Form 49. Moreover, inadequate infrastructure at the check posts severely hampered their efficient functioning. No internal audit was conducted during the period 2006-07 to 2010-11. We also noticed cases of non/short levy of tax and penalty at the check posts due to deficient monitoring of out-to-out vehicles and lack of coordination with circle offices. Besides, we observed deficiency in controls in the IT system implemented in the check posts.

2.9.28 Summary of recommendations

The Government may consider implementation of the following recommendations;

- selecting appropriate locations for the check posts to avoid diversion of vehicles and consequent evasion of tax;
- issuing necessary instructions for reporting of penalty cases to circle offices so that these can be utilised for verifying account of import transactions of notified goods not supported with declarations in Form 49 at the time of assessment/scrutiny of returns;
- issuing necessary instructions for maintenance of a register at the check posts in order to keep a record of every vehicle carrying goods bound for locations outside MP;

- prescribing minimum number of vehicles to be physically verified weekly/monthly by each Inspector posted at the check posts;
- providing adequate infrastructure and amenities at the check posts for their efficient functioning;
- prescribing an appropriate mechanism for verifying the status of registration of the dealers while accepting Form 49 at the check posts; and
- prescribing a time schedule for completion of data entry and periodic submission of data/mis-match reports by CEDMAP to the Department.

In the exit conference (August 2011), the Department accepted the last three recommendations.

2.10 Utilisation of declaration forms in inter-state trade and commerce

Highlights

181 declaration forms were not returned by the dealers whose registration certificates were cancelled.

(Paragraph 2.10.7)

There was irregular grant of concession of ₹ 7.29 crore on incomplete declarations.

(Paragraph 2.10.9)

There was short levy of tax of ₹ 11.36 crore on sale without declarations.

(Paragraph 2.10.11.1)

There was short levy of tax of ₹ 47.37 lakh due to application of incorrect rate of tax.

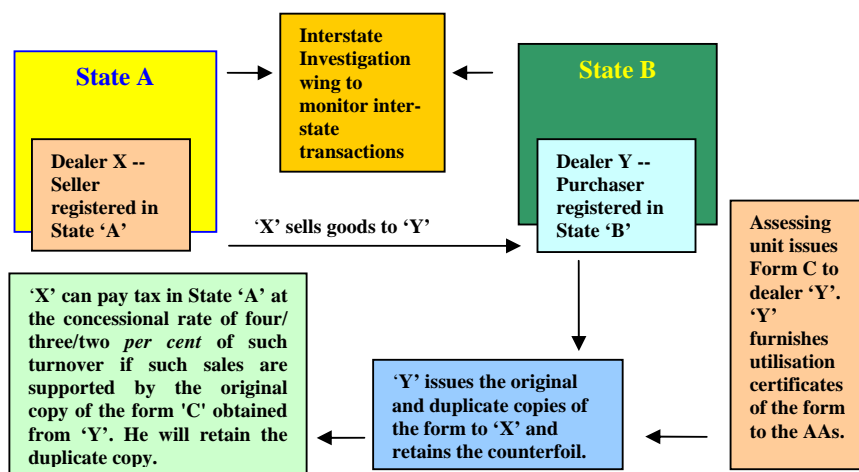
(Paragraph 2.10.12)

2.10.1 Introduction

Under the Central Sales Tax Act, 1956, (CST Act) registered dealers are eligible to certain concessions and exemptions of tax on interstate transactions on submission of prescribed declarations in form C, E-I/E-II and F. The State Government grants these incentives to dealers for furtherance of trade and commerce on production of these declaration forms. It is the responsibility of the Commercial Tax Department (CTD) to ensure proper accounting of declaration forms and to take adequate safeguards against misutilisation of these forms/certificates on which tax relief is allowed involving large amount of revenue to the state exchequer. Section 10 and 10A of CST Act contains penal provisions for contravention of the provisions of the Act.

Form 'C'

Under the provisions of the CST Act, every dealer, who in the course of inter-state trade or commerce, sells to a registered dealer, goods of the classes, specified in the certificate of registration of the purchasing dealer, shall be liable to pay tax at the concessional rate of four *per cent* (three *per cent* w.e.f. 1 April 2007 and two *per cent* w.e.f. 1 June 2008) of such turnover provided such sales are supported by the declarations in form 'C'.

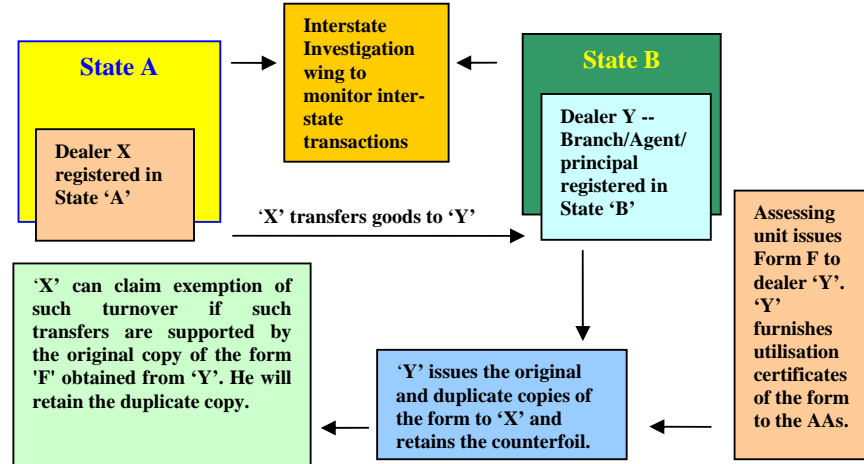


Form 'F'

Under Section 6A of CST (Amendment) Act 1972, transfer of goods claimed other than by way of sale made by a registered dealer to any other place of his business located outside the State or his agent or principal in other States is exempt from levy of tax on production of prescribed declarations in Form 'F', duly filled in and signed by the principal as the case may be, along with evidence of despatch of such goods. Filing of declaration in Form 'F' was not mandatory upto May 2002. However, the CST Act provided for the Assessing Authority (AA) to make such enquiries as he deemed necessary to satisfy himself about bonafides of the transfer of such sale *patties*²², dispatch particulars, way bills etc. Form F has been prescribed under Rule 12(5) of the

²² Sale *patties*: Sale notes defining transfer of title of documents with full particulars in the course of inter-State consignment sale of goods.

CST Rules, 1957. According to the proviso to Rule 12 (5), a single form F can be issued for all the transactions of transfer in one month.



We decided to review the efficacy in utilisation of the declaration forms in inter-state trade and commerce to examine the adequacy and effectiveness of internal control mechanism in the Department to safeguard against misutilisation of such forms.

2.10.2 Organisational set up

The Principal Secretary, Commercial Tax Department is the administrative head of the Department at the Government level while the Commissioner of Commercial Tax (CCT) is the head of the Department. The Department is divided in four zones, each headed by zonal Additional Commissioners. Each zone comprises of the divisional offices headed by 14 divisional Deputy Commissioners (DCs). Under the divisions, there are 78 circle offices headed by the Commercial Tax Officers/Assistant Commissioners (CTOs/ACs). In addition to above, four audit wings have been established, each headed by a DC.

2.10.3 Audit objectives

The performance audit was conducted to ascertain whether:

- exemption/concession of tax granted by the assessing authorities was supported by original/valid declaration forms;
- there is a system of uploading the particulars of the dealers and the forms in the TINXSYS website; and
- appropriate steps are taken on receipt and detection of fake, invalid and defective (without proper or insufficient details) forms.

2.10.4 Scope of Audit

The performance audit covered 13 ACs and 13 CTOs²³ encompassing assessment cases completed during the period 2007-08 to 2009-10 where exemptions/concessions were granted under the Central Sales Tax Act. It was conducted between October 2010 and March 2011. The scope of the review was limited only to 'C' and 'F' forms. We also included cases of exemptions/concessions granted under the CST Act which were noticed during regular audit conducted for the period 2006-07 to 2009-10. During the course of the performance audit, we also sent the declaration forms for verification to different states and the results have been included in the succeeding paragraphs.

2.10.5 Acknowledgement

We acknowledge the co-operation of the Commercial Tax Department and its field offices for providing necessary information and cooperation to audit. An entry conference to discuss the objectives, scope and methodology of audit was held in Bhopal in January 2011 in which the Principal Secretary, Commissioner and Additional Commissioner of the Commercial Tax Department participated. The exit conference was held in August 2011 in which the Commissioner, Director and two Dy. Commissioners of Commercial Tax Department participated. The views of the Department/Government have suitably been incorporated in the relevant paragraph.

2.10.6 Trend of revenue

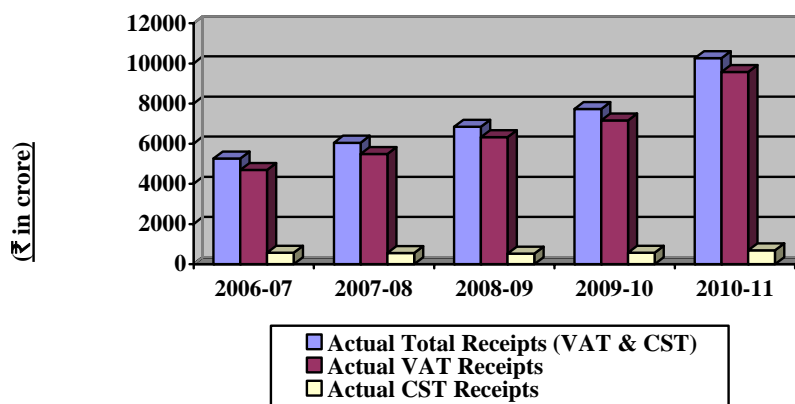
Actual receipts from Central Sales Tax (CST) during the period from 2006-07 to 2010-11 along with the total tax receipts under CST and receipts under the MP VAT Act during the same period are exhibited in the following table and graph.

(₹ in crore)

Sl. No.	Year	Total Receipts (VAT & CST)	VAT Receipts	CST Receipts	Percentage of Col. (5 to 3)
1	2006-07	5,261.41	4,695.57	565.84	10.75
2	2007-08	6,045.07	5,488.14	556.93	9.21
3	2008-09	6,842.99	6,323.22	519.77	7.59
4	2009-10	7,723.82	7,153.83	569.99	7.37
5	2010-11	10,256.76	9,574.04	682.71	6.66

The above table shows that the composition of CST in the total VAT and CST receipts of the Department has been declining over the last five years.

²³ ACs- Chhindwara (2), Dewas, Guna, Indore (2), Itarsi, Khandwa (2), Morena, Ratlam, Sagar and Sendhwa
CTOs- Betul, Bhopal (2), Hoshangabad, Indore (4), Itarsi, Jabalpur, Rewa, Satna and Ujjain



In the exit conference the Department stated (August 2011) that tax collection figures (share of CST) to total receipts of CST and VAT were lower in comparison to previous years but this is due to reduction in CST rates from four *per cent* to three *per cent* and then three *per cent* to two *per cent*. Revenue collection is actually increasing if this tax rate reduction is taken into account.

There was decline in the growth of CST receipts compared to the VAT receipts in the year 2010-11 as compared to the year 2009-10. The VAT receipts grew by 34 *per cent* whereas CST receipts grew by only 20 *per cent*.

Audit findings

System deficiencies

2.10.7 Non-returning of the declarations forms issued to the dealers on cancellation of the registration certificate

Under Section 7(4)(b) of the CST Act, 1956 a certificate of registration granted under this Section may be cancelled by the authority granting it where he is satisfied, after due notice to the dealer to whom it has been granted, that he has ceased to carry on business or has failed to pay any tax or penalty payable under this Act, or in the case of a dealer registered has ceased to be liable to pay tax under the sales tax law of the appropriate State or for any other sufficient reason.

There is no mechanism to ensure that the declaration forms issued to the dealer are returned back after cancellation of the registration to prevent misuse. During test check of records of three circle offices²⁴ we noticed in 11 out of 18 cases that neither the declarations issued to the dealers were returned nor were their accounts submitted after cancellation of the registration certificates. We further noticed that 181 'C'

²⁴ Indore (2) and Ujjain.

and 'F' forms remained with these 11 dealers even after the cancellation of their registration certificates. We cannot rule out misuse of these forms.

In the exit conference the Department (August 2011) accepted the observation.

2.10.8 Deficiency in uploading data on TINXSYS

TINXSYS is an important tool to verify dealers and Central statutory forms issued by other state Commercial Tax Departments and submitted to them by the dealers in support of their claim for concessions. It also provides MIS (Management information system) and other Business Intelligence Reports to the Department to monitor inter-State trade movements. The Department was required to upload the relevant data in TINXSYS.

During test check of records in 13 RACs²⁵ and 13 Circle Offices²⁶ (between October 2010 and January 2011), we observed that details of only 146 out of 796 declaration forms could be verified by us from TINXSYS. Similarly, 195 out of 534 dealers test checked by us could not be verified from the website. Moreover, in 104

cases, either the TIN number was not entered or the old CST number was mentioned. We further observed during test check from TINXSYS that in case of five dealers in three RACs²⁷ and two Circle offices²⁸ either the selling/purchasing dealer's name was different or the registration was shown as cancelled on the website although the dealer was still active.

Under the present system, there is no facility in TINXSYS to enter the amount mentioned in the 'C' forms. We examined the report of data availability in TINXSYS for the state of MP from the year 2006 to 2010 and found that though the data on dealer main records and C and F forms issued had been increasing over these years, yet the number of C and F form utilisation had remained constant for the last four years. The above situation underscores the necessity of ensuring the uploading of data in TINXSYS to reap its benefits.

In the exit conference the Department stated (August 2011) that an effective system as well as infrastructure existed in the Department and data was being uploaded in TINXSYS. It was further stated that a beginning had been made in issuing 'C' forms through the system and in the near future printed 'C' forms would be issued.

²⁵ RACs- Chhindwara (2), Dewas, Guna, Indore (2), Itarsi, Khandwa (2), Morena, Ratlam, Sagar and Sendhwa.

²⁶ CTOs- Betul, Bhopal (2), Hoshangabad, Indore (4), Itarsi, Jabalpur, Rewa, Satna and Ujjain.

²⁷ RACs- Bhopal, Chhindwara and Sendhwa.

²⁸ CTOs - Indore (2).

Compliance deficiencies

2.10.9 Irregular grant of concession on incomplete declarations

Under Section 6 of the CST Act, the concession shall be allowed subject to the production of a certificate duly filled and signed by the registered dealer to whom the goods were sold containing the prescribed particulars in prescribed form from the prescribed authority in the case of inter-state sale. Under Section 6A, the concession shall be allowed subject to the production of a certificate duly filled and signed by the dealer to whom the goods is transferred along with evidence of dispatch of such goods in case of transfer of goods claimed otherwise than by way of sale. The CCT also instructed vide circular dated 01.01.2005 all the Assessing Authorities (AAs) not to accept incomplete declarations and to examine all declarations before assessment. These instructions were issued pursuant to an audit review on a similar subject published in Audit Report (Revenue Receipts) Government of MP for the year ended 31 March 2004.

During test check of records of 13 regional offices²⁹ and 13 circle offices³⁰, we observed (between October 2010 and January 2011) that 796 declarations relating to 150 out of 711 dealers test checked, were found incomplete on account of various deficiencies such as purchase order, commodity, purpose, TIN, Railway Receipt number/truck receipt number etc. not being mentioned/partly mentioned. We noticed that the Assessing Authorities (AAs) allowed concession of ₹ 7.29 crore on these deficient declarations.

After we pointed this out between October 2010 and January 2011, three AAs³¹ accepted the audit observation and stated that necessary compliance would be made. Four AAs³² stated that action would be taken while AC Morena stated that correct forms were accepted and wherever discrepancies had been noticed, those would be reconciled. AC Sendhwa stated

that necessary compliance was being observed. AC Indore stated that declarations were verified from bills. We do not accept the reply as declarations should be complete in all respects while allowing concession. AC Dewas stated that C forms were not liable for cancellation. We do not accept the reply as declarations should be complete as per instructions of the Commissioner. The replies of the remaining 15 AAs are awaited.

²⁹ Chhindwara (2), Dewas, Guna, Indore (2), Itarsi, Khandwa (2), Morena, Ratlam, Sagar, Sendhwa.

³⁰ Betul, Bhopal (2), Hoshangabad, Indore (4), Itarsi, Jabalpur, Rewa, Satna, Ujjain.

³¹ AC Bhopal, Guna and CTO Ujjain.

³² AC Chhindwara, Khandwa (2) and CTO Indore.

2.10.10 Irregular grant of exemption/concession

2.10.10.1 Irregular grant of concession on fake declaration forms

Under the provision of section 8(2) of the CST Act, tax on inter-state sales of goods (other than declared goods) not supported by the prescribed declaration in form 'C' shall be levied at the rate of 10 per cent or the rate applicable in the State, whichever is higher. However, this provision was amended from 1 April 2007 and as per the amended provision in such circumstances the tax shall be levied at the rate of tax applicable in the state on such goods. Under the CST Act, if a registered dealer misrepresents while purchasing any goods covered by his registration certificate (RC) or utilises such goods for any purpose other than that mentioned in his RC, he is liable to be prosecuted. However, the authority competent to grant the RC may, in lieu of prosecution, impose penalty of a sum not exceeding one and a half times of the tax leviable as if the transaction is not supported by the prescribed declarations.

In two Regional offices³³ and one circle office at Betul we observed that three dealers had availed/were allowed concession of ₹ 4.28 lakh on the strength of five declarations in form 'C' during the period between August 2009 and October 2009. But on cross verification we observed that these declaration forms were not issued from the concerned circles of the two states³⁴ from where they were stated to have been issued. Thus, it was evident that the dealers claimed/were allowed concession on the basis of fake declaration forms which resulted in short levy of tax of ₹ 1.71 lakh. Besides maximum penalty of ₹ 2.57 lakh was also leviable.

2.10.10.2 Misutilisation of declaration forms

In one regional office at Dewas and one circle office at Indore we observed that two dealers were allowed (January and December 2009) concession/exemption of ₹ 40,495 on the strength of two declarations in form 'C' and 'F'. But on cross verification with the purchasing dealers in Uttar Pradesh we observed that these forms were issued to dealers other than those who had used the forms to purchase the goods. This resulted in irregular grant of concession/exemption of tax of ₹ 40,495. Besides maximum penalty of ₹ 13,920 was also leviable.

³³ Indore and Chindwara.

³⁴ Chhattisgarh and Delhi.

2.10.10.3 Irregular grant of concession due to variation in figures of the declaration form

In one regional office at Chhindwara and three Circle offices³⁵ we observed that four dealers had availed/were allowed concession of ₹ 3.65 lakh on the strength of four declarations in form 'C' during the period between January 2010 and September 2010. In two cases the selling dealers had exhibited their sales at ₹ 34.44 lakh against the purchases of ₹ 4.27 lakh as per the utilisation submitted by the purchasing dealer in Uttar Pradesh. In another two cases, the selling dealers had exhibited their sales at ₹ 24.25 lakh against the purchases of ₹ 56.30 lakh as per the utilisation submitted by the purchasing dealers in Uttar Pradesh. Thus, there is a possibility of suppression of sales/purchases to the extent of ₹ 58.69 lakh (sales) and ₹ 60.57 lakh (purchases) which needs investigation by the Department.

2.10.11 Non/short levy of tax on sale not supported with/defective declarations

Under Section 6 of the CST Act, the concessional sale/exemption shall be allowed to a dealer subject to the production of the declaration duly filled and signed by the purchaser to whom the goods are sold in prescribed form obtained from prescribed authority. Similarly under Section 6A of the CST Act, exemption shall be allowed to a dealer who transfers the goods to another dealer to whom the goods have been transferred subject to the production of the prescribed form in prescribed manner to the prescribed authority. Rule 12 of the Central Sales Tax (R&T) Rules 1957 provides for the submission of original declarations.

2.10.11.1 During test check of records of one divisional office at Sagar, fourteen regional offices³⁶ and five circle offices³⁷ we noticed (between August 2009 and April 2011) that concessional rate of tax was allowed without production of declaration forms or on duplicate copies of the declarations in 20 cases of 20 dealers assessed between August 2008 and July 2010 for the period 2002-03, 2005-06, 2006-07 and 2007-08. This resulted in non-levy of tax of ₹ 11.36 crore.

After we pointed out the cases (between August 2009 and April 2011), the AAs stated that action would be taken in

13 cases while in the other cases they replied as mentioned in the following table:-

³⁵ Guna, Khargone and Ujjain.

³⁶ Gwalior, Indore (08), Jabalpur, Khandwa, Morena and Sendhwa(2).

³⁷ Gwalior, Hoshangabad, Indore (2), and Neemuch.

Sl. No.	Name of Auditee Unit No. of dealers	Period Month of Assessment	Commodity Turnover (₹ in lakh)	Rate of tax applicable (per cent)	Rate of tax applied (per cent)	Amount of non /short levy of tax (₹ in lakh)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	RAC Indore (Sh. Sunil Mishra) 1	2006-07 January 2010	Industrial valve 170.59	12.5	3	15.57
After we pointed this out, the AA did not furnish specific reply.						
2.	RAC Khandwa (Sh. R.K.Soni) 1	2006-07 December 2008	Cotton 72.20	8	4	2.89
The concession was allowed on sale of cotton without 'C' form. After this was pointed out the AA replied that the assessment was done after verification of sale bills and other records. The reply is not tenable as the 'C' forms were not found in the case file.						
3.	RAC Indore (Dr. Gopal Porwal) 1	2006-07 September 2008	Tiles Bath Fittings 4.80	12.5	0	0.60
In the instant case there was purchase return of the goods valuing ₹ 4.80 lakh from outside the state, however, F form was not found attached. In the absence of evidence, tax at the rate of 12.5 per cent was leviable. The AA not accepting the audit contention stated that F forms were not required on purchase return. The reply is not tenable and in the absence of F forms the said goods valued at ₹ 4.80 lakh should be treated as sale and taxed at the rate of 12.5 per cent.						
4.	CTO-12 Indore 1	2007-08 March 2010	Iron & Steel 14.00	4	3	0.14
The concession was allowed on duplicate 'C' form. After this was pointed out (March 2011), the assessing authority stated that the original form was submitted in the office and duplicate was in the file. The reply is not tenable as original 'C' form is necessary for claiming concessional rate of tax.						
5.	RAC Morena 1	2007-08 April 2009	Old Vehicle & Machinery 15.45	12.5	3	1.47
Tax was levied on sale without 'C' form. After this was pointed out, the Assessing Authority stated that short levy was under examination and tax on scrap is four per cent. The reply is not tenable as the rate of tax on old vehicle and machinery is 12.5 per cent.						
6.	RAC Jabalpur (Sh. P.K.Singh) 1	2007-08 March 2010	Readymade Garments 163.46	4	0	6.54
After this was pointed out the AA refuted (July 2010) the audit observation and stated that tax had been levied in the previous year on the value of goods stock transferred which were not supported with F form. The reply is not relevant to the audit observation. Our observation relates to the incorrect allowance of deduction on account of goods stock transferred in the previous year from the current year's turnover.						

(1)	(2)	(3)	(4)	(5)	(6)	(7)
7.	RAC Gwalior 1	2002-03 March 2009	Edible Oil 130.62	10	0	13.06

Tax on inter-state sale of tax paid edible oil not supported with form 'C' was not levied. After this was pointed out the AA referring to a notification of State Government³⁸ stated (June 2010) that in case of sale of tax paid goods furnishing of 'C' form had been exempted. The contention of the AA is not correct as the exemption under the said notification was subject to the fulfillment of the requirements laid down in CST Act.

As per Rule 12 of CST (Registration and Turnover), Rules 1957 provides that a declaration may cover all transactions of sales, which take place in a quarter of financial year between two dealers in case of form C. The CCT also instructed (Circular No. 7-04-Audit-5-7 dated 01.01.05) all the Assessing Authorities (AAs) not to accept incomplete declarations and to examine all declarations before assessment.

2.10.11.2 During test check of records of four circle offices³⁹, we noticed that (between February 2010 and May 2011) concession of ₹ one crore was allowed on defective declaration forms in six cases (in one case correction fluid was applied in the declaration forms and in the remaining cases C forms contained transactions of more than one quarter of the financial year) of six dealers assessed between October 2008 and December

2009 for the period 2006-07 and 2007-08. This resulted in non-levy of tax of ₹ one crore.

After we pointed this out (between February 2010 and May 2011), the AAs stated that action would be taken after verification in three cases. In one case the AA stated that the C form bears transaction of one quarter. We do not agree as we found that the C form contained transactions of more than one quarter.

³⁸ Notification no. 24 dated 31st March 2003.

³⁹ Balaghat, Indore, Mandasaur and Neemuch.

2.10.12 Short levy of tax due to application of incorrect rate of tax

Under Section 8 of the CST Act, every dealer, who in the course of inter-state trade or commerce, sells to a registered dealer, goods of the classes specified in the certificate of the purchasing dealer shall be liable to pay tax at the concessional rate of four *per cent* (three *per cent* w.e.f. 01.04.2007 and two *per cent* w.e.f. 01.06.2008) of such turnover provided such sales are supported by declarations in form 'C'. Under Section 6(A) of the Central Sales Tax Act, 1956 as amended, transfer of goods not by reason of sales by a registered dealer to any other place of his business outside the state or to his agent or principal in other state is exempt from tax on production of declaration in form 'F' duly filled in and signed by the principal officer of the other place of business or his agent or principal as the case may be, along with evidence of dispatch of goods.

During test check of records of seven regional offices⁴⁰ and three circle offices⁴¹ we noticed (between August 2007 and April 2011) that tax of ₹ 47.37 lakh was short levied due to application of incorrect rate of tax in 12 cases of 11 dealers assessed between July 2006 and March 2010 for the period 2000-01, 2003-04, 2006-07 and 2007-08.

After we pointed this out (August 2007 and April 2011), the AAs stated in nine cases that action would be taken after verification and in the other cases, they replied as mentioned below:

Sl. No.	Name of Auditee Unit No. of dealers	Period Month of Assessment	Commodity Turnover (₹ in lakh)	Rate of tax applicable (per cent)	Rate of tax applied (per cent)	Amount of short levy of tax (₹ in lakh)
1.	CTO Circle-9 Indore 2	2007-08 December 09	Railway Signals 49.69 24.61	12.5 12.5	4 (local rate) 4 (Central rate)	3.89 1.93
Tax was levied at the rate of four <i>per cent</i> instead of 12.5 <i>per cent</i> on local sale and tax was levied at the rate of four <i>per cent</i> instead of 12.5 <i>per cent</i> on sale without C form. After this was pointed out, the AA stated that MS Sheet was sold in inter-state sale. The reply is not tenable as the entire material was shown as consumed in the balance sheet. Besides, the dealer manufactured railway signals as is evidenced from the records.						
2.	RAC Shajapur 1	2006-07 July 2006	Dhania 4.25	10	4	0.25
Tax on inter-state sale of <i>Dhania</i> , not supported with form 'C' was levied at incorrect rate. After we pointed out the case, the AA replied that demand of ₹ 25,000 had been raised (December 2009).						

⁴⁰ Bhopal (2), Indore(3), Satna and Shajapur.
⁴¹ Indore, Neemuch and Sagar.

2.10.13 Conclusion

There is no system to ensure that the declaration forms are returned after the registration of dealers are cancelled. We noticed that the Department has not been regular in uploading data on TINXSYS to reap its benefit. We also observed that the AAs have been granting concessions to the dealers even if the declarations are deficient which led to ineligible tax relief. Moreover, significant amount of revenue was lost due to irregular grant of concession on fake forms and forms with incomplete information.

2.10.14 Recommendations

The Government may consider implementing the following recommendations;

- (i) issuing necessary instructions to ensure that the declaration forms are received back after the registration of the dealers is cancelled to obviate their misuse;
- (ii) issuing appropriate instructions to regularly upload all necessary data in TINXSYS; and
- (iii) ensuring that incomplete declarations are not accepted by the assessing authorities.

2.11 Non/short levy of entry tax

Nine regional offices⁴² and 15 circle offices⁴³

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

We observed between May 2007 and September 2010 that in 38 cases of 33 dealers, assessed/re-assessed between January 2007 and December 2009 for the periods 2002-03 to 2008-09, ET on goods like iron and steel, plant and machinery, motor vehicles,

paper, high speed diesel (HSD), coal, furnace oil etc. valued at ₹ 193.14 crore, was either not levied or was levied at incorrect rate on their entry into local area. This resulted in non/short realisation of ET of ₹ 1.97 crore including interest and penalty of ₹ 9.86 lakh.

After we pointed out the cases, the assessing authorities (AAs), in five cases of three dealers raised additional demand (between November 2009 and December 2010) of ₹ 6.07 lakh, in 26 cases of 23 dealers stated (between May 2007 and September 2010) that action would be taken after verification and in two cases of two dealers, no specific comment was offered. In the remaining cases of five dealers, the departmental replies and our comments are as under:

Sl. No.	Name of auditee unit/ No. of dealers	Commodity	Amount involved (₹ in lakh)	Departmental reply	Our comments
(1)	(2)	(3)	(4)	(5)	(6)
1.	RAC-Gwalior 1	Railway sleepers	11.74	The AA stated that the factory of the dealers was situated in railway siding which was not covered in any local area.	We do not find the reply in consonance with the judicial decisions ⁴⁴ in which it has been held that railway sidings and rail lines are covered in local area.

⁴² Bhopal, Chhindwara, Gwalior, Indore (4), Satna, and Ujjain.

⁴³ Bhopal (2), Datia, Dewas, Gwalior (2), Indore (4), Jabalpur, Rajgarh, Seoni, Shivpuri and Tikamgarh.

⁴⁴ (i) M/s Larsen and Toubro Ltd. v/s CCT (2002) 35 VKN 50 (MP Bd.).
(ii) M/s Simical Engineering Co. v/s CCT (2004) 4 STJ 519 (MP Bd.).

(1)	(2)	(3)	(4)	(5)	(6)
2.	RAC I/c, Circle-III, <u>Gwalior</u> 1	<i>Bidi and Tendupatta</i>	6.15	The AA stated that most of the import purchase of <i>Bidi</i> was used in inter-state sale which does not attract ET and the whole purchase of <i>tendupatta</i> was not import purchase.	The contention of the AA is not in consonance with the facts as there is no document or record to prove that imported <i>bidi</i> was subjected to inter-state sale. Further, in case of <i>tendupatta</i> the AA himself has held it liable to tax and not tax paid. However, he levied tax incorrectly at the rate of one <i>per cent</i> instead of two <i>per cent</i> .
3.	RAC Dvn-I <u>Bhopal</u> 1	Iron and Steel	1.43	The AA stated that tin ingots and tin alloy are not covered under section 14(IV) of CST Act (declared goods).	The reply is not acceptable because tin alloys and ingots are covered under Section 14(IV) of the CST Act.
4.	CTO- <u>Seoni</u> 1	Plant and Machinery	0.47	The AA stated that ET was not leviable on machinery in that period.	The reply is contrary to the provisions of entry number 54 of Schedule-II of the ET Act.
5.	CTO- <u>Seoni</u> 1	Tractor	0.21	The AA stated that ET was not leviable on tractors w.e.f. 1 April 2006 under the ET Act.	The reply is contrary to the provisions prevailing during 2006-07. ET was leviable on tractors during 2006-07.

We reported the cases to the Commissioner Commercial Tax, Madhya Pradesh (CCT, MP) and the Government between December 2010 and May 2011; their replies have not been received (March 2012).

2.12 Application of incorrect rate of tax

Two regional offices⁴⁵ and 17 circle offices⁴⁶

The Madhya Pradesh *Vaniyyik Kar Adhiniyam* (Adhiniyam) and the MP VAT Act, read with the Central Sales Tax (CST) Act, and notifications issued thereunder specify the rates of commercial tax and VAT leviable on different commodities. Under the *Adhiniyam* and the Act, a dealer is liable to pay interest if he fails to pay tax payable by him according to the periodic returns. The *Adhiniyam* also provides for re-assessment and where the omission leading to such re-assessment is attributable to the dealer, he is liable to pay penalty not exceeding the amount of tax so re-assessed.

We observed between June 2007 and October 2010 that in 34 cases of 32 dealers, assessed between December 2005 and December 2009 for the period 2002-03 to 2007-08, tax on sales turnover of ₹ 17.22 crore was levied at incorrect rates. This resulted in short levy of tax of ₹ 1.52 crore including interest/penalty of ₹ 10.24 lakh. A few instances are mentioned below:

Sl. No.	Name of auditee unit/No. of cases	Assessment period/ Month of assessment	Name of commodity	Turn-over (₹ in crore)	Rate of tax applicable (per cent)	Rate of tax applied (per cent)	Amount of short levy of tax (₹ in lakh)
1.	CTO, Circle-V, <u>Bhopal</u> 1	<u>2006-07</u> April 2009	Ujala Supreme (whitening agent)	4.22	12.5	4	36.00
2.	CTO, Circle-II, <u>Indore</u> 2	<u>2007-08</u> (1)Oct 2009 (2)Nov 2009	Banners	1.01 0.96	12.5 12.5	4 4	21.00 (including interest)
3.	RAC - I/c CTO, Circle-I, <u>Jabalpur</u> 1	<u>2006-07</u> June 2009	Kerosene (sold otherwise than through PDS*)	1.60	12.5	4	14.00

After we pointed out the cases, the assessing authorities (AAs), in case of seven dealers raised demand (between December 2008 and March 2011) of ₹ 6.52 lakh. In case of two dealers the AA accepted (between March 2008 and April 2010) the audit observation. In 15 cases of 14 dealers it was stated

⁴⁵ Indore and Neemuch.

⁴⁶ Bhopal (04), Chhindwara, Dewas, Indore (06), Jabalpur, Rajgarh, Ratlam, Shivpuri and Tikamgarh.

* Public distribution system.

(between March 2009 and October 2010) that action would be taken after verification.

In the remaining 10 cases of nine dealers, departmental replies and our comments thereon are as under:

Sl. No.	Name of auditee unit/No. of dealers	Amount involved (₹ in lakh)	Commodity	Departmental reply	Our comments
(1)	(2)	(3)	(4)	(5)	(6)
1.	CTO, Circle I, <u>Ratlam</u> 1 (two cases)	0.83	Inverters	The dealer sold UPS.	The reply is contradictory to the fact recorded in purchase list and trading account of the dealer which clearly show purchase and sale of inverters.
2.	CTO, Circle-VI, <u>Indore</u> 1	11.80	Advertising material like flex boards, flex banners	The dealer dealt in processing of films, flex printing material and vinyl printing and not in advertising material.	Reply is contrary to the facts on record like sales invoices which confirmed sale of advertising material like flex boards, flex banners etc.
3.	CTO, Circle-XV, <u>Indore</u> 3	9.72	Leaf Spring	Tax has been levied as per the judicial decision in which Leaf Spring was held to be Iron & Steel.	The reply of the AA is not acceptable in the light of the decision ⁴⁷ of the CCT, MP where leaf spring is liable to tax at the rate of 12.5 per cent.
4.	CTO, Circle-V, <u>Bhopal</u> 1	8.51	Hydraulic Ram Machine	The sale relates to power generating machine and tax was levied at correct rates.	The reply is not in consonance with the fact that sale of Hydraulic ram machine is clearly recorded in the local sale detail schedule. Moreover, Hydraulic ram is a machine used for pumping water and not for generating power.

⁴⁷ [(2007) 11 STJ 64 (CCT, MP)].

(1)	(2)	(3)	(4)	(5)	(6)
5.	CTO, Circle-V, <u>Bhopal</u> 1	36.00	Ujala Supreme (whitening agent)	The levied tax is correct and is in accordance with the entry no.55 (organic casting) of Schedule-II of the Act.	The reply of the AA does not correctly interpret the fact as entry 55 is of chemicals whereas ujala supreme is a post-wash whitener in liquid form. It is an optical whitening agent of varying chemical structure and is different from chemical.
6.	CTO, Circle-V, <u>Bhopal</u> 1	2.26	Banners (LD foam Banners)	The AA merely stated that levy of tax is correct.	The reply is not in consonance with the fact that the purchase orders received by the assessee and assessment order clearly establish sale of banners which is liable to tax at the rate of 12.5 per cent.
7.	CTO, Circle-V, <u>Bhopal</u> 1	1.57	Gas Kits	The sale relates to Gas Cylinder and tax was correctly levied.	The reply does not interpret the fact correctly as the sold cylinders are used as a component of Gas kits. Gas kits used in motor vehicles are parts of motor vehicle attracting tax at the rate of 12.5 per cent.

We reported the matter to the CCT, MP and the Government between December 2010 and May 2011; their replies have not been received (March 2012).

2.13 Allowance of inadmissible input tax rebate

Regional office, Satna

As per the provisions of notification no. A-3-195-2005-1-V(31) dt. 31 March 2006 and as amended vide notification no. (39) dt. 14th June 2006 if the goods manufactured are goods specified in Schedule I or II of the VAT *Adhiniyam* are transferred outside the State, the dealer would be allowed full input tax rebate on the goods used or consumed in the manufacture of the goods. The amount equal to the input tax at the rate at which it is realised for the type of transactions, shall be included in computation of cumulative quantum of tax benefit.

2.13.1 We observed in August 2010 that a dealer, assessed in June 2009 for the period 2006-07 was incorrectly allowed non-adjustment of amount equal to Input Tax Rebate (ITR) payable by the dealer on account of goods transferred out of the state, while computing cumulative quantum of tax benefit. This resulted in allowance of inadmissible ITR of ₹ 79.75 lakh.

The AA did not furnish specific reply.

One divisional office⁴⁸, two regional offices⁴⁹ and four circle offices⁵⁰

As per Section 14 of the Madhya Pradesh VAT Act, where a registered dealer purchases any goods specified in Schedule II of the Act, other than those specified in part III of the said Schedule, for use or consumption in the manufacture of other goods and the dealer has claimed and adjusted ITR towards the tax payable by him, in the event of disposal of the goods otherwise than by way of sale within the State, he shall be liable to pay the amount of ITR at the rate of four *per cent* of the purchase price or net of input tax of such goods, whichever is lower. The Act further provides that where a registered dealer purchases any goods after payment of input tax for consumption or use for/in the manufacture or processing or packaging in connection with sale of goods declared tax free under Section 16 of the Act, he shall be allowed ITR of the amount of such input tax which is in excess of four *per cent* of the purchase price of such goods.

2.13.2 We observed between May 2010 and October 2010 that in eight cases of eight dealers, assessed between April 2009 and February 2010 for the periods between 2006-07 and 2007-08, the dealers were allowed inadmissible ITR of ₹ 29.12 lakh including interest of ₹ 1.78 lakh on account of non paying back of ITR claimed on the goods transferred out of state otherwise than by way of sale or excess allowance of ITR on sale of tax free goods.

After we pointed out the cases, the AAs in seven cases⁵¹ (involving tax ₹ 27.78 lakh) stated (between May 2010 and October 2010) that action would be taken after verification. In one case the AA (DC, Division-II,

Indore) replied (September 2010) that the ITR has been allowed on the purchase of packing material made within the state and these packing materials have been used in packing of goods sold within the state. The imported packing materials have been used in the packing of goods which have been sold out of state. The reply of the AA is not acceptable as there is no separate account of tax paid and imported packing materials and ITR has not been claimed in the returns.

⁴⁸

Indore.

⁴⁹

Sagar and Ujjain.

⁵⁰

Gwalior and Indore (3).

⁵¹

RAC, Sagar and Ujjain; RAC I/c, Circle-III, Gwalior (2); RAC I/c, Circle-X, Indore; CTO, Circle-15, Indore ; CTO, Circle-II, Indore.

As per Section 14 of the Madhya Pradesh VAT Act, where a registered dealer purchases any goods specified in Schedule II of the Act, other than those specified in part III of the said Schedule, from another registered dealer after payment of input tax, he shall be allowed input tax rebate (ITR) of the amount of such input tax. Further, as per provisions of Notification no. A-3-95-05-1-V(28), dt.17 August 2007 issued under Section 14(6)(vi) of the Madhya Pradesh VAT Act, motor vehicles other than those used in/for manufacture or mining of goods for sale are not eligible for ITR.

2.13.3 We observed during the period from July 2009 to October 2010 that four dealers assessed between September 2008 and November 2009 for the period 2006-07 to 2007-08 were granted inadmissible ITR of ₹ 41.89 lakh as mentioned below :

(₹ in lakh)

Sl. No.	Name of auditee unit	Period of assessment/ Month of assessment order	Amount of inadmissible ITR	Our observation
(1)	(2)	(3)	(4)	(5)
1.	RAC-Sagar 1	<u>2007-08</u> July 2009	31.35	The AA incorrectly allowed ITR of ₹ 46.11 lakh at the rate of 12.5 per cent instead of ₹ 14.75 lakh at the rate of four per cent on purchase of Rock Phosphate. This resulted in incorrect allowance of ITR of ₹ 31.35 lakh.
In reply, the AA stated (October 2010) that action would be taken after verification.				
2.	RAC - Khandwa 1	<u>2006-07</u> October 2008	5.90	The AA while finalising the case incorrectly allowed ITR of ₹ 1.29 crore instead of ₹ 1.23 crore. This resulted in allowance of inadmissible ITR of ₹ 5.90 lakh.
In reply, the AA accepted (February 2010) the audit objection and raised a demand of ₹ 16.62 lakh including penalty of ₹ 12.47 lakh. The difference of ₹ 1.75 lakh (₹ 5.90 - ₹ 4.15) is due to the fact that the case was reassessed on the basis of new records of the assessee as the old records were destroyed in a fire in the premises of the assessee.				

(1)	(2)	(3)	(4)	(5)
3.	RAC, Dvn-II, <u>Bhopal</u> 1	<u>2006-07</u> September 2008	3.98	The dealer purchased cement valued at ₹ 6.16 crore on which ITR of ₹ 76.97 lakh at the rate of 12.5 <i>per cent</i> was admissible. However, the AA allowed ITR of ₹ 80.95 lakh resulting in excess grant of ITR of ₹ 3.98 lakh.
The AA replied (July 2009) that the ITR was allowed on the basis of bills of purchase after verification. The reply is not acceptable as the amount recorded in the purchase list does not tally with the figures in the audited Profit and Loss account.				
4.	RAC - <u>Jabalpur</u> 1	<u>2007-08</u> November 2009	0.66	The AA allowed ITR of ₹ 66,134 on purchase of truck not meant for use in manufacture of goods.
The AA replied (August 2010) that action would be taken after verification.				

We reported the cases to the CCT, MP and the Government between December 2010 and May 2011; their replies have not been received (March 2012).

2.14 Short levy of purchase tax

Circle III, Gwalior Office

Madhya Pradesh *Vanijyik Kar Adhiniyam*, provides that every dealer, who in the course of his business purchases any goods without paying tax thereon, shall be liable to pay purchase tax on the purchase price of such goods at the concessional rate of four *per cent* or at the prescribed lower rate, except in case of goods specified in Schedule III, if after such purchase the goods are used or consumed in the manufacture or packing of other goods for sale. High Speed Diesel (HSD) is specified in Schedule-III of the *Adhiniyam* and is taxable at the prescribed rate of 28.75 *per cent* including surcharge.

We observed in October 2009 that a dealer, assessed in March 2009 for the period 2005-06 purchased HSD valued at ₹ 5.75 crore without paying tax thereon and used the same in the manufacture of other goods. The AA while finalising the assessment levied purchase tax on HSD incorrectly at the concessional rate of 6.9 *per cent* instead of prescribed rate of 28.75 *per cent*. This resulted in short levy of tax of

₹ 1.26 crore at the differential rate of 21.85 *per cent*.

After the case was pointed out (October 2009), the AA stated that purchase tax at concessional rate was levied in view of a notification⁵². The reply is not acceptable as the said notification has been issued under Section 9 of the *Adhiniyam* and is not applicable for charging purchase tax under Section 10 *ibid*.

⁵² No. A-3-8-2001-ST-V(24) dated 30th March 2001.

We reported the matter to the CCT, MP and the Government between February and May 2011; their replies have not been received (March 2012).

2.15 Incorrect determination of turnover

10 regional offices⁵³ and seven circle offices⁵⁴

As per Section 2 of the Madhya Pradesh *Vanijyik Kar Adhiniyam* and the Madhya Pradesh VAT Act, turnover in relation to any period means the aggregate of sale prices received and receivable by a dealer in respect of any sale or supply of goods made during that period, excluding the amount of sales return within the prescribed period. For the purpose of determining taxable turnover (TTO), the VAT Act provides for deduction from turnover the sale price of tax paid goods and the amount of tax, if included in the aggregate of sale prices. Under the *Adhiniyam*, packing material is liable to tax at the same rate as applicable to the goods packed therein.

2.15.1 We observed between July 2008 and October 2010 that turnover in 28 cases of 28 dealers, assessed between January 2007 and March 2010 for the periods between 2003-04 and 2008-09, was less determined by ₹ 3.54 crore against the aggregate of turnover of the dealers recorded in their audited books of accounts/sale list/relevant records. Thus, turnover aggregating ₹ 3.54 crore was not assessed to tax and resulted in non-levy of tax of ₹ 28.26 lakh including penalty of ₹ 2.44 lakh.

After we pointed out the cases, the AA in four cases of four dealers raised demand of ₹ 7.40 lakh (December 2010) and in one case of another dealer the reply of the AA (September 2008) is awaited. In 21 cases of 21 dealers the AAs stated (between February 2009 and October 2010) that action would be taken after verification, while in the remaining two cases of two dealers the replies of the AAs are as given in the following table:

Sl. No.	Name of auditee unit	Our observation	Department reply/our comments
(1)	(2)	(3)	(4)
1.	RAC, Dvn-I, Bhopal	Due to non-furnishing of 'F' forms on account of sale out of state, turnover of ₹ 3.77 crore was to be regarded as inter-state sale. The AA incorrectly determined the same as ₹ 3.28 crore.	The AA stated (July 2008) that the sale was assessed after allowing deduction of expenses and commission. The reply is not acceptable because no after-sale deduction is allowable under the rules.

⁵³ Bhopal (2), Jabalpur (2), Neemuch, Sagar (2), Satna (2) and Shajapur.
⁵⁴ Dewas, Indore, Jabalpur, Khargone, Narsinghpur, Rewa and Shajapur.

(1)	(2)	(3)	(4)
2.	CTO- Rewa	Sale value of vehicle, as per audited accounts, was not included in the turnover, which resulted in short realisation of tax of ₹ 62,500.	The AA replied (October 2010) that the vehicle was registered in the name of dealer not in the name of firm and therefore was not included in the turnover. The reply is not tenable as depreciation is charged from the account of the firm. Accordingly the turnover should have been shown in the books of the firm.

Under the Madhya Pradesh *Vanijyik Kar Adhiniyam*, and rules and notifications issued thereunder commercial tax is leviable on sales of goods other than those specified in schedule I or exempted by the Government by issue of notification.

According to a judicial pronouncement* the transfer of materials consumed in processing of job work has been held to be a deemed sale of the material so consumed and accordingly it is taxable.

2.15.2 We observed in two circle offices between June 2008 and February 2009, in six cases of two dealers, assessed between January 2006 and April 2007 for the periods 2002-03 and 2005-06, incorrect determination of TTO to the extent of ₹ 55.99 lakh resulting in non-levy of tax of ₹ 5.15 lakh as shown below :

Sl. No.	Name of auditee unit	Our observation	Department's reply/ our comments
1.	CTO-III, Jabalpur	Printing ink was purchased for use in job work. Its deemed sale of ₹ 17.83 lakh (worked out after adding on an average of 15 <i>per cent</i> profit on the basis of trading A/c of three years) was liable to tax at the rate of 9.2 <i>per cent</i> .	The AA stated (February 2009) that in case of job work, goods were not liable to tax. The reply does not correctly interpret the fact since the property of the used material stood transferred during the process of job work, hence the used material was liable to tax.
2.	CTO, Circle-Betul	The AA allowed the deduction of the value of the rubber solution and hardener with the contention that they were consumables and their properties did not stand transferred during the process of repairing works. This resulted in non-realisation of tax of ₹ 3.51 lakh.	The AA stated (June 2008) that the repairing material, solution and hardener, used in repairing of conveyor belts, vapourise and disappear after use and lose their identity. The reply does not interpret the fact correctly as the property of repairing material solution and hardener stand transferred during the process of repairing.

*

M/s S P Tools & Processors Ltd. v/s CCT, MP [(2001)27 TLD 323(MP Board)].

Two circle offices⁵⁵

As per provisions of Section 2(u)(vi) of the MPVAT Act and Section 9-A of MP *Vanijiyik Kar Adhiniyam* sale means any transfer of property in goods for cash or deferred payment or for other valuable consideration and includes a transfer of the right to use any goods including leasing thereof for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration, and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods.

2.15.3 During test check of records of circle offices between June 2008 and July 2010 we observed that in three cases of two dealers, assessed between August 2007 and June 2009 for the period between 2004-05 and 2007-08, the AA while determining the taxable turnover did not include the receipt of rent of containers/lease

rent of ₹ 2.02 crore in the turnover. Thus, the turnover could not be assessed to tax resulting in non-levy of tax to the tune of ₹ 10.16 lakh including penalty of ₹ 1.84 lakh.

After we pointed out the case, the AA raised the demand of ₹ 3.68 lakh (December 2009) including penalty of ₹ 1.84 lakh in one case and in remaining two cases stated (July 2010) that action would be taken after verification.

As per provisions of Section 2(w) of MP *Vanijiyik Kar Adhiniyam* taxable turnover means that part of a dealer's turnover which remains after deduction therefrom sale price of goods which are in the nature of tax paid goods in the hand of a dealer.

2.15.4 During test check of records of regional office, Jabalpur in August 2009 we observed that in case of one dealer, assessed in March 2009 for the period 2005-06, the AA

while determining the taxable turnover allowed deduction of tax paid sale of iron and steel scrap valued at ₹ 87.92 lakh. The deduction allowed was not correct as the scrap was obtained during the process of re-rolling of iron and steel and it was liable to tax. This resulted in non-realisation of tax amounting to ₹ 3.52 lakh.

After we pointed out the case, the AA stated (August 2009) that besides selling of manufactured goods the dealer had traded the tax paid goods. The reply is not in consonance with the facts on record which revealed that the dealer purchased tax paid scrap valued at ₹ 2.61 crore which was consumed in the process of re-rolling instead of trading and on which the AA allowed set off on account of its consumption in the manufacturing process, as is evident from the audited trading and manufacturing accounts and its schedule and assessment orders.

⁵⁵ Dewas and Jabalpur.

We reported the matter to the CCT, MP and the Government between December 2010 and May 2011; their replies have not been received (March 2012).

2.16 Non-levy of tax on sales incorrectly treated as tax free/exempted

Five regional offices⁵⁶ and eight circle offices⁵⁷

The Madhya Pradesh *Vanijyik Kar Adhiniyam*, and the MP VAT Act, read with the Central Sales Tax (CST) Act and notifications issued thereunder prescribe rates of commercial tax leviable on different commodities except those which are specified under Schedule I of the *Adhiniyam/Act* or exempted through notifications.

We observed between February 2007 and October 2010 that in 17 cases of 15 dealers, assessed between January 2006 and September 2009 for the period between 2002-03 and 2007-08, the assessing authorities (AAs) did not levy tax on sales turnover of ₹ 18.75 crore of taxable commodities like high density polyethylene

(HDPE)/polypropylene (PP) fabrics, pump sets up to 3HP, cotton bandage etc., incorrectly treating them as tax free goods or goods exempted from tax. This resulted in non-levy of tax of ₹ 88.69 lakh including interest. A few illustrative cases are mentioned below:

(₹ in lakh)

Sl. No	No. of dealers No. of cases	Commodity	Turnover	Rate of tax applicable (per cent)	Amount of tax not levied
(1)	(2)	(3)	(4)	(5)	(6)
1.	6 8	HDPE/PP Fabrics	1,717.16	4.6	79.14
The AAs did not levy tax on sale of HDPE/PP fabrics, incorrectly treating the same as tax free cloth. After we pointed out the case the AAs stated (February 2007 and March 2010) that HDPE fabric was tax free vide notification ⁵⁸ dated 24.08.2000. The reply is not in consonance with the contents of the notification/judgement ⁵⁹ and not acceptable because as per notification all varieties of cloth are exempted. HDPE/PP 'fabric' is plastic goods and is, thus, liable to be taxed.					
2.	1 1	Paper Waste	12.96	9.2	1.19
The AA did not levy tax on sale of paper waste, incorrectly treating the same as tax free goods. After we pointed out the case the AA raised (July 2010) a demand of ₹ 1.31 lakh.					

⁵⁶ Guna and Indore (4).

⁵⁷ Bhopal, Gwalior (2), Indore, Narsinghpur, Rajgarh, Seoni and Shajapur.

⁵⁸ Notification no.68 dt.24 August 2000.

⁵⁹ MP High Court order in the case of M/s Raj Pack Well v/s Union of India [1990 (50) ELT 201].

(1)	(2)	(3)	(4)	(5)	(6)
3.	<u>1</u> 1	Pump Sets	24.70	4.6	1.14

The AA did not levy the tax on sale of Pump Sets upto 3HP, incorrectly treating the same as tax free goods. After we pointed out the case, the AA stated (May 2010) that pump sets upto 3HP are tax free. The reply is not acceptable because neither the said commodity is included in tax free goods nor there is any notification which exempts the same from tax.

We reported the matter to the CCT, MP and the Government between December 2010 and May 2011; their replies have not been received (March 2012).

2.17 Incorrect grant of exemption

- (i) Exemption notification no.A-3(1) 95-ST-V(43), dated 6 June 1995, does not provide a 100 *per cent* Export Oriented Unit (EOU) exemption from payment of tax on the sale of goods produced under the expanded capacity.
- (ii) Notification No. 108 dated 6 October 1994, issued under the Madhya Pradesh *Vanijiyik Kar Adhinyam*, provides grant of exemption to the extent of tax leviable on goods produced under expanded capacity specified in the eligibility certificate issued to a new industrial unit. Under the notification, benefit of exemption from payment of tax is available to the extent of maximum cumulative quantum of tax specified in the eligibility certificate (EC) issued thereunder.

We observed between March 2008 and June 2010 that three dealers were incorrectly allowed exemption from payment of tax aggregating ₹ 91.13 lakh as mentioned in the following table:

(₹ in lakh)

Sl. No.	Name of auditee unit	Period/ Month of assessment	Tax effect	Observation in brief
(1)	(2)	(3)	(4)	(5)
1.	RAC-Bhopal	2004-05 January 2008	59.12	The dealer was allowed exemption from payment of tax on sale of goods produced under expanded capacity of the unit, on the basis of an eligibility certificate (EC) issued by the Industry Department. The notification* under which the said eligibility certificate was issued does not provide a hundred <i>per cent</i> Export Oriented Unit (EOU) exemption from payment of tax on sale of goods produced under expanded capacity. The AA instead of referring back the matter to Industry Department, allowed exemption from payment of tax. Thus allowance of exemption was incorrect.

* No.A-3(1) 95-ST-V(43), dated 6 June 1995

(1)	(2)	(3)	(4)	(5)
2.	RAC - I/c Circle-III, Gwalior.	2006-07 May 2009	25.56	As per the EC, issued under notification no. 108 dated 6 October 1994, the dealer was entitled for exemption from payment of tax payable on 9000 MT of leaf springs produced under expanded capacity, which was 21.23 <i>per cent</i> of the total quantitative sale of leaf springs during 2006-07. Accordingly, out of the assessed turnover of ₹ 172.82 crore, turnover to the extent of 21.23 <i>per cent</i> i.e. ₹ 36.69 crore was to be exempted from payment of tax. However, it was noticed that the AA allowed exemption on the turnover of ₹ 62.25 crore. This resulted in excess grant of exemption on turnover of ₹ 25.56 crore having tax effect of ₹ 25.56 lakh at the rate of one <i>per cent</i> .
3.	CTO, Circle-I, Bhopal.	2003-04 January 2007	6.45	The AA levied tax of ₹ 6.45 lakh, on sale of scrap valued at ₹ 70.10 lakh which was obtained in the course of execution of job work and was incorrectly allowed exemption from payment of tax. This resulted in incorrect grant of exemption of tax of ₹ 6.45 lakh.
After we pointed out the case, the AA replied (March 2008) that in view of EC, benefit of exemption was also available in respect of by products and waste products. The reply is not in consonance with the provisions contained in the exemption notification which states that the facility of exemption from payment of tax is available in respect of principal products manufactured in the said industrial unit and by-products and waste products obtained in the course of manufacture in such unit. It follows that the facility of exemption from payment of tax is not available in respect of by-products and waste products obtained in the course of job work.				

We reported the matter to the CCT, MP and the Government between January and May 2011; their replies have not been received (March 2012).

2.18 Non-realisation of profession tax

As per provisions of Section 3 (2) of the Profession Tax Act, 1995, every person who carries on a trade either himself or by an agent or representative or who follows a profession or calling other than agriculture in Madhya Pradesh shall be liable to pay profession tax at the rate specified against the class of such persons in column (3) of the Schedule of the Act. Section 8 (2) of the said Act further provides that such person liable to pay tax shall obtain a certificate of registration from the competent authority in the prescribed manner. Further Section 8(4) of the Act provides that where an employer or a person liable to registration has willfully failed to apply for such certificate within the time specified in sub-section (3), the Assessing Authority may after giving him a reasonable opportunity of being heard, impose penalty not exceeding ₹ 20 for each day of delay subject to a maximum of ₹ 2,500.

Cross verification of information obtained from 41 Circle Offices⁶⁰ of Commercial Tax Department with (i) lists furnished in respect of liquor licencees, cinema houses, video parlours and cable operators by the State Excise Department and (ii) lists of beauty parlours furnished by the Customs and Central Excise Department revealed that 3,689 persons remained unregistered with the Commercial Tax Department under the Act for the years 2005-06 to 2009-10, although they were liable to pay profession tax. This resulted in non-realisation of profession tax of ₹ 78.28 lakh at rates ranging from ₹ 2,000 to ₹ 2,500 per annum.

The matter was reported to the Department and the Government in April and May 2011; their replies have not been received (March 2012).

⁶⁰ Balaghat, Bhopal (6), Chhatarpur (Nowgaon), Datia, Dewas, Hoshangabad, Indore (15), Jabalpur (4), Katni, Khargone, Narsinghpur, Rewa, Sagar (2), Shajapur, Sidhi and Ujjain (3).

2.19 Non/short levy of tax under the CST Act

Two Regional offices⁶¹

Notification no. A-3-38-06-1-V(46) dated 5 July 2006 issued under the Central Sales Tax Act, 1956, provides, *inter alia*, concessional rate of tax of one *per cent* applicable to inter-state sale of copper wire rod, copper wire bar and copper cathode supported with 'C' form. The said concessional rate is not available/applicable in respect of inter-state sale of copper wire or paper covered copper conductors supported with 'C' form.

2.19.1 We observed between August 2010 and September 2010 that in two cases of two dealers, assessed in December 2009 for the period 2007-08, tax on sale of copper wire and paper covered copper conductors of ₹ 7.86 crore supported with declaration in form 'C' was incorrectly levied at concessional rate of one *per cent*. Since the commodities involved were different from the commodity covered under the notification, the dealers were liable to pay

tax at normal rate of three *per cent* applicable for transactions supported with declarations in form C. This resulted in short levy of tax of ₹ 15.68 lakh as detailed below :

(₹ in lakh)

Sl. No.	Name of auditee unit No. of dealers	Period Month of assessment	Commodity Turnover	Rate of tax applicable (<i>per cent</i>)	Rate of tax applied (<i>per cent</i>)	Amount of non/short levy of tax
1.	RAC, Satna 1	2007-08 December 2009	Copper wire 546.00	3	1	10.92
Tax on inter-state sale of copper wire (supported with 'C' form), was levied at incorrect rate. After we pointed out the case, the AA stated (August 2010) that copper wire rod had been sold to the cable manufacturers who use it as their raw material. The reply of the AA is contrary to the fact recorded in the purchase and sale list where purchase and sale of copper wire is clearly mentioned.						
2.	RAC, Satna 1	2007-08 December 2009	Paper covered Copper Conductors 239.38 (236.33+3.05)	3 3	1 2	4.76
Tax on inter-state sale of paper covered copper conductors, supported with form 'C', was levied at incorrect rate. After we pointed out the case, the AA stated (September 2010) that the assessee had manufactured and sold paper covered <i>copper strips</i> . The reply of the AA is contrary to the fact recorded in audited accounts where the manufacture of paper covered copper conductors has been clearly mentioned.						

⁶¹ RAC, Satna(Sh N.L.Bhalavi), and RAC, Satna(Sh. S.M.Chaturvedi).

Notification no. A-3-59-05-1-V(16) dated 31 March 2006 issued under the Central Sales Tax Act, provides, *inter alia*, concessional rate of tax of two *per cent* applicable among other commodities to vegetable and edible oils. The said concessional rate is not available/applicable in respect of non-edible oils.

2.19.2 In Regional office, Gwalior we observed in June 2010 that in two cases of one dealer, assessed between June 2009 and March 2010 for the periods 2006-07 and 2007-08, tax on inter-state sale of non-edible oils of ₹ 5.86 crore, was levied at incorrect rates. This resulted in short levy of tax of ₹ 8.19 lakh.

We reported the cases to the Department and the Government between December 2010 and May 2011; their replies have not been received (March 2012).

2.20 Mistake in computation of tax

During test check of records of two regional offices⁶² and circle office, Indore between February 2010 and May 2010 we observed that in case of three dealers, assessed between March 2009 and December 2009 for the period 2005-06 to 2007-08, the assessing authorities (AAs) erroneously levied/computed tax of ₹ 6.61 lakh instead of ₹ 29.49 lakh. This resulted in short levy of tax of ₹ 22.88 lakh.

After we pointed out the cases, the AAs accepted the audit observation involving ₹ 20.39 lakh in two cases and raised demand of ₹ 20.31 lakh (one case) and stated in respect of the third case that action would be taken after verification.

The cases were reported to the Department and the Government between December 2010 and May 2011; their replies have not been received (March 2012).

⁶² Bhopal and Indore.

2.21 Non-recovery of tax from closed unit

Circle office, Jhabua

As per notification dated 19 February 1991 read with notification dated 16 October 1986 and 6 October 1994, a dealer holding eligibility certificate (EC) for exemption from payment of tax shall keep his industrial unit running during the period of eligibility and also for a period of five years from the date of expiry of the period of eligibility, failing which the EC shall be cancelled by the District Level Committee (DLC)/State Level Committee (SLC) empowered to issue the EC. The amount of tax exemption availed by the dealer shall be recovered. The notification also states that if the circumstances so warrant, such cancellation may be given retrospective effect.

We observed in June 2010 that a dealer, holding EC for exemption from payment of tax, failed to keep his industrial unit running for a period of five years after expiry of the eligibility period. The dealer was availing the facility of exemption from payment of tax from 01.11.1998 to 30.10.2006. The AA, however, did not take any action to refer the matter to the DLC/SLC for cancellation of EC of the dealer. This resulted in non-recovery of tax benefit of ₹ 10.98 lakh which was availed by the dealer during the period between 1 November 1998 and 31 March 2004.

After we pointed out the case, the AA stated (June 2010) that the registration of the dealer was still valid and the assessee had furnished returns of 2009-10. On scrutiny of the returns, we found

that the transaction was nil which proves that the unit had become idle. Further, the AA did not take any action to get the EC cancelled.

We reported the matter to the Department and the Government between February and May 2011; their replies have not been received (March 2012).

2.22 Incorrect determination of value addition

Two regional offices⁶³ and two circle offices⁶⁴

Section 9-B of the Madhya Pradesh *Vanijyik Kar Adhiniyam*, provides for levy of tax at prescribed rates on the value addition on resale of goods specified in Part II to VI of Schedule II to the *Adhiniyam*.

We observed between June 2007 and September 2010 that in six cases of four dealers, assessed between July 2006 and March 2009 for the periods 2003-04 to 2005-06, value addition on

resale of goods was determined less by ₹ 64 lakh. This resulted in short realisation of tax of ₹ 5.31 lakh.

⁶³ Indore and Khandwa.

⁶⁴ Indore and Narsinghpur.

After we pointed this out, in one case, the AA, RAC Khandwa, stated that the assessment was correct. The reply is neither in consonance with the facts recorded in the audited accounts nor did the AA provide any proof in support of his reply. However, the AA raised a demand of ₹ 70,085 in September 2010. In the remaining five cases the AA stated that action would be taken after verification.

We reported these cases to the Department and the Government between January and May 2011; their replies have not been received (March 2012).