# CHAPTER-II: COMMERCIAL TAX

## EXECUTIVE SUMMARY

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|---|---|
| **What we have highlighted in this Chapter** | In this Chapter we present illustrative cases of ₹ 14.00 crore selected from observations noticed during our test check of records relating to short levy of VAT, short/non levy of entry tax, evasion of tax and non levy of penalty, irregular exemption on declaration forms, short levy due to incorrect allowance of set-off, incorrect application of rate of tax etc. and deficiencies in the implementation of *Saral Samadhan Yojna* in the Commercial Tax Department. |
| **Increase in tax collection** | The actual receipts of the Department exceeded the Budget Estimates during 2011-12 by ₹ 6.25 crore. |
| **Target not achieved by the Internal Audit Wing** | During the year, no unit was planned for audit by the Department due to non-availability of staff. |
| **Results of audit conducted by us in 2011-12** | We conducted test check of the records of 11 units relating to the Commercial Tax Department during the year 2011-12 and found 118 cases of incorrect grant of exemption/deduction, non/short levy of tax, incorrect determination of taxable turnover, application of incorrect rate of tax etc. amounting to ₹ 9.35 crore. During the year, the Department had recovered ₹ 18.05 lakh in seven cases including ₹ 6.61 lakh in four draft paragraphs. |
| **Our conclusion** | The Department needs to improve the internal control system including strengthening of internal audit so that weaknesses in the system are addressed and omissions of the nature detected by us are avoided in future.<br>It also needs to initiate immediate action to recover the short/non levy of tax, irregular exemption on declaration forms, incorrect application of rate of tax etc. pointed out by us, more so in those cases where it has accepted our contention. |

## 2.1 Tax administration

The Chhattisgarh Commercial Tax Department is responsible for levy and collection of Value Added Tax (VAT), Central Sales Tax (CST), Entry Tax (ET), Professional Tax (PT) and Luxury Tax (LT) in the State through assessment of cases of dealers. Commercial Tax Department contributes the major part of the revenue for the State. The Department implements the under mentioned Acts and Rules made thereunder:

- Chhattisgarh Value Added Tax Act, 2005 (CGVAT Act);
- Central Sales Tax Act, 1956 (CST Act);
- Chhattisgarh Entry Tax Act, 1976 (CGET Act);
- Chhattisgarh Commercial Tax Act, 1994 (CGCT Act);
- Chhattisgarh Professional Tax Act, 1995 and
- Chhattisgarh Luxury Tax Act, 1988.

The Commercial Tax Department is headed by the Principal Secretary at Government level. The Commissioner is the head of the Department and he is assisted in the discharge of his duties by four Additional Commissioners, 12 Deputy Commissioners (DCs), 26 Assistant Commissioners (ACs) and 69 Commercial Tax Officers (CTOs).

## 2.2 Trend of receipts from Taxes on Sales, trade etc.

Actual receipts from Taxes on sales, trade etc.[1] during the years 2007-08 to 2011-12 along with the total tax receipts during the period is exhibited in the following table:

*(₹in crore)*

| Year | Budget estimates | Actual receipts | Variation excess (+)/ shortfall (-) | Percentage of variation | Total tax receipts of the State | Percentage of actual receipts vis-à-vis total tax receipts |
|---|---|---|---|---|---|---|
| 2007-08 | 3,200.00 | 3,023.70 | (-) 176.30 | (-) 5.51 | 5,618.08 | 53.82 |
| 2008-09 | 3,470.00 | 3,610.94 | (+) 140.94 | 4.06 | 6,593.72 | 54.76 |
| 2009-10 | 3,447.12 | 3,712.16 | (+) 265.04 | 7.69 | 7,123.25 | 52.11 |
| 2010-11 | 4,524.13 | 4,840.79 | (+) 316.66 | 7.00 | 9,005.14 | 53.76 |
| 2011-12 | 6,000.00 | 6,006.25 | (+) 6.25 | 0.10 | 10,712.25 | 56.07 |

*(Source: Finance Accounts of Government of Chhattisgarh)*

We found that during the year 2011-12, the Finance Department (FD) had approved the budget estimate (BE) of ₹ 6,000 crore as against ₹ 6,268.72 crore

[1] Major head 0040- Taxes on Sales, Trade etc (101 – Receipts under Central Sales Tax Act, 102- Receipts under State Sales Tax Act, 103- Tax on sale of motor spirits and lubricants, 104- Surcharge on Sales Tax, 105- Tax on sale of Crude oil, 106- Tax on Purchase of Sugarcane, 107- Receipts of Turnover Tax, 108- Tax on the Transfer of Rights to use any goods for any purpose Act,1985, 109- Tax on Transfer of Property Goods involved in the execution of "Works Contract Act,1985" and 800- Other Receipts)

proposed by the Department. The FD was accurate in estimating the BEs as the variation between BE and actual receipts was only 0.10 *per cent*.

The above table indicates that collection from Taxes on sales, trade etc., contributed substantially to the tax revenue of the State. Overall collection of revenue under taxes on sales, trade etc. was more than the budget estimates during the period 2007-08 to 2011-12, except in 2007-08. The percentage of actual receipts over total tax receipts of the State ranged between 52 and 56.

## 2.3 Analysis of arrears of revenue

The arrears of revenue of Taxes on Sales, Trade (including VAT and Central Sales Tax), Entry Tax and Profession Tax as on 31 March 2012 amounted to ₹ 556.09 crore of which ₹ 156.53 crore was outstanding for more than five years. The following table depicts the position of arrears of revenue during the period 2007-08 to 2011-12:

***(₹in crore)***

| Year | Opening balance of arrears | Closing balance of arrears |
|---|---|---|
| 2007-08 | 156.53 | 183.33 |
| 2008-09 | 183.33 | 194.39 |
| 2009-10 | 194.39 | 438.57 |
| 2010-11 | 438.57 | 450.85 |
| 2011-12 | 450.85 | 556.09 |

*(Source: Figures furnished by the Department)*

## 2.4 Assessee profile

As per the information furnished by the Department, the number of dealers registered under CGVAT Act, 2005 during the period 2011-12 was 64,393 of which 5,246 were large tax payers[2] and the remaining were small tax payers. Out of these dealers, returns were required to be filed by 55,539 dealers and 1,04,415 returns were received during the year. As regards the remaining returns, it was stated by the Department that the dealers have been directed to submit the same along with the advance tax payable.

## 2.5 Collection of VAT per assessee

| Year | Number of assessees | VAT Revenue as per Department (₹ in crore) | VAT Revenue as per Finance Accounts (₹ in crore) | Revenue/ Assessee (in ₹) |
|---|---|---|---|---|
| 2007-08 | 59,499 | 2,502.69 | 2,448.27 | 4,20,627.24 |
| 2008-09 | 63,446 | 2,968.09 | 2,943.67 | 4,67,813.57 |
| 2009-10 | 69,727 | 3,085.12 | 3,031.15 | 4,42,457.01 |
| 2010-11 | 58,299 | 4,047.58 | 4,031.50 | 6,24,279.49 |
| 2011-12 | 64,393 | 5,269.97 | 4,884.97 | 8,18,407.28 |

[2] Large tax payers are the dealers whose annual tax liability is more than ₹ 60,000 and who are required to pay tax monthly.

It may be seen from the above table that there was a difference in the figures of VAT revenue as per Finance Accounts and the Department al figures which requires reconciliation.

## 2.6 Arrears in assessment

The number of cases pending at the beginning of the year 2011-12, assessments becoming due during the year, assessments disposed of during the year and those pending at the end of the year 2011-12 as furnished by the Department are mentioned in the following table:

| Name of tax | Opening balance (2011-12) | Addition during the year | Total number of assessment cases due | Cases disposed during the year | Cases pending at the end of the year | Percentage of clearance (column 5 to 4) |
|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Value Added tax | 50,752 | 72,013 | 1,22,765 | 68,813 | 53,952 | 56.05 |
| Professional tax | 9,642 | 11,328 | 20,970 | 12,080 | 8,890 | 57.61 |
| Entry tax | 21,223 | 34,656 | 55,879 | 32,988 | 22,891 | 59.03 |
| Luxury tax | 23 | 118 | 141 | 76 | 65 | 53.90 |
| Tax on works contract | 417 | 115 | 532 | 113 | 419 | 21.24 |
| **Total** | **82,057** | **1,18,230** | **2,00,287** | **1,14,070** | **86,217** | **56.95** |

*(Source: Figures furnished by the Department)*

The above table indicates that at the end of the year 2011-12 only 57 *per cent* of the total assessment cases had been disposed of by the Department.

**The Government may initiate timely action for expeditious disposal of the pending cases in the interest of revenue.**

## 2.7 Cost of collection

Collection from Taxes on sales, trade etc., the expenditure incurred on their collection and the percentage of such expenditure to gross collection during the years 2009-10, 2010-11 and 2011-12 along with the relevant all-India average percentage of expenditure to gross collection of the preceding years are indicated in the following table:

***(₹ in crore)***

| Year | Collection | Expenditure on collection of revenue | Percentage of expenditure on collection | All-India average percentage of expenditure to gross collection of preceding year |
|---|---|---|---|---|
| 2009-10 | 3,712.16 | 25.71 | 0.69 | 0.88 |
| 2010-11 | 4,840.79 | 29.99 | 0.62 | 0.96 |
| 2011-12 | 6,006.25 | 40.63 | 0.68 | 0.75 |

*(Source: Finance Accounts of Government of Chhattisgarh)*

We noticed that there was variation in the percentage of expenditure on collection of the Department during the years. The cost of collection of the Department decreased in 2010-11 as compared to the year 2009-10, but the same increased in 2011-12. However, the cost of collection when compared to the all India averages during the three years was on the lower side.

## 2.8 Analysis of collection

The break-up of the total collection from taxes on sales, trade etc., entry tax, profession tax and luxury tax at the pre-assessment stage and after regular assessment of taxes on sales, trade etc. during the year 2011-12 and corresponding figures for the preceding five years as furnished by the Commercial Tax Department is mentioned below:

*(₹ in crore)*

| Heads of revenue | Year | Amount collected at the pre-assessment stage | Amount collected after regular assessment | Penalty for delay in payment of taxes and duties | Amount refunded | Net collection as per department | Net collection as per Finance Accounts | Percentage of collection (column 3 to 7) |
|---|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| Taxes on sales, trade, ET,PT and LT | 2007-08 | 3,668.63 | 126.97 | 10.44 | 14.55 | 3,545.77 | 3,545.10 | 103.46 |
| | 2008-09 | 4,089.42 | 52.77 | 8.12 | 18.35 | 4,046.88 | 4,038.41 | 101.05 |
| | 2009-10 | 4,691.64 | 190.93 | 87.35 | 57.33 | 4,470.69 | 4,325.16 | 104.94 |
| | 2010-11 | 5,859.41 | 387.55 | 41.78 | 60.15 | 5,490.23 | 5,355.67 | 106.72 |
| | 2011-12 | 6,329.89 | 618.59 | 18.86 | 62.18 | 6,905.16 | 6,837.80 | 91.67 |

It may be seen from the table that percentage of collection of taxes at the pre-assessment stage was the lowest during the year 2011-12.

## 2.9 Impact of Audit

**2.9.1 Position of Inspection Reports (IR):** During the years 2006-07 to 2010-11, we had pointed out through our IRs non/short levy, non/short realisation, underassessment, loss of revenue, incorrect exemption, incorrect computation etc. with revenue implication of ₹ 91.84 crore in 1,055 cases. Of these, the Department/Government had accepted audit observations in 206 cases involving ₹ 3.55 crore. The details are shown in the following table:

*(₹ in crore)*

| Years of Inspection Report | No. of units audited | Amount objected | | Amount accepted | |
|---|---|---|---|---|---|
| | | No. of cases | Amount | No. of cases | Amount |
| 2006-07 | 10 | 176 | 0.18 | 97 | 0.11 |
| 2007-08 | 4 | 37 | 0.03 | 16 | 0.07 |
| 2008-09 | 20 | 185 | 0.62 | 10 | 0.48 |
| 2009-10 | 32 | 295 | 35.93 | 10 | 0.30 |
| 2010-11 | 28 | 362 | 55.08 | 73 | 2.59 |
| **Total** | | **1,055** | **91.84** | **206** | **3.55** |

**2.9.2 Position of Audit Reports:** During the last five years, through our Audit Reports, we had pointed out cases of underassessment, non/short levy of tax involving ₹ 74.09 crore. The Department accepted observations of ₹ 54.33 crore of which only ₹ 8 lakh had been recovered till March 2012 as shown in the following table:

*(₹in crore)*

| Sl. No. | Year of the Audit Report | Total money value | Amount accepted | Recovery made up to March 2012 |
|---|---|---|---|---|
| 1. | 2006-07 | 2.11 | 0.24 | 0.08 |
| 2. | 2007-08 | 0.74 | 0.32 | Nil |
| 3. | 2008-09 | 49.46 | 47.49 | Nil |
| 4. | 2009-10 | 3.36 | 3.36 | Nil |
| 5. | 2010-11 | 18.42 | 2.92 | Nil |
| | **Total** | **74.09** | **54.33** | **0.08** |

The above table indicates that only 0.15 *per cent* of recovery has been made by the Department against the accepted amount which is negligible.

**We recommend that the Department may take steps to recover the amounts involved, at least in the accepted cases, as there is the risk of loss of revenue due to action becoming barred by limitation.**

## 2.10 Internal audit

Internal Audit Wing (IAW) of an organisation is a vital component of the internal control mechanism and is generally defined as the control of all controls. It enables the organisation to assure itself that the prescribed systems are functioning reasonably well.

We observed that only one post of Assistant Commissioner, Commercial Tax was sanctioned for the Internal Audit Wing. Further, during the year 2011-12, no internal audit was conducted due to transfer of the sole Assistant Commissioner posted in the wing.

**We recommend that the Internal Audit Wing of the Department may be strengthened by sanctioning more posts in the wing.**

## 2.11 Results of Audit

We conducted test check of the records of 11 units relating to Commercial Tax Department during the year 2011-12 and found cases of underassessment, non/short levy of tax/interest/penalty, application of incorrect rates of tax etc. amounting to ₹ 9.35 crore in 118 cases which fall under the following categories:

*(₹in crore)*

| Sl. No. | Category | No. of cases | Amount |
|---|---|---|---|
| 1 | Incorrect grant of exemption/deduction | 17 | 0.42 |
| 2 | Non/short levy of tax | 39 | 2.92 |
| 3 | Incorrect determination of taxable turnover | 14 | 3.61 |
| 4 | Application of incorrect rate of tax | 4 | 0.17 |
| 5 | Other irregularities | 44 | 2.23 |
| **Total** | | **118** | **9.35** |

During the year 2011-12, the Department had recovered ₹ 11.44 lakh in three cases pertaining to the current year.

The Department had also recovered the full amount of ₹ 6.61 lakh in four cases pointed out as draft paragraphs.

A few illustrative cases amounting to ₹ 14.00 crore including observations detected during earlier years are mentioned in the succeeding paragraphs.

## 2.12 Audit observations

*We scrutinised the assessment records of Sales tax/Value added tax (VAT), Central sales tax, Entry tax etc. in the Commercial Tax Department and found several cases of non-observance of the provisions of the Acts/ Rules, non/short levy of tax/penalty/interest, incorrect application of rate of tax, incorrect deduction from taxable turnover, incorrect exemption and other cases as mentioned in the succeeding paragraphs of this chapter. These cases are illustrative and are based on a test check carried out by us. Such omissions on the part of the Assessing Authorities (AA) are pointed out by us each year, but not only do the irregularities persist; these remain undetected till audit is conducted. There is need for the Government to improve the internal control system so that such omissions can be avoided.*

# COMMERCIAL TAX ACT

## 2.13 Evasion of tax and non-levy of penalty

As per Section 28 of the Chhattisgarh Commercial Tax Act (CGCT) 1994, when an assessment has been made under the Act and if for any reason any sale or purchase of goods chargeable to tax under the Act during any period has been underassessed or has escaped assessment or assessed at a lower rate or any deduction has been wrongly made or a set-off has been wrongly allowed, the Commissioner may, where the omission leading to such reassessment is attributable to the dealer, direct that the dealer shall pay by way of penalty in addition to the amount of tax so assessed, a sum not exceeding that amount. As per Schedule II of the CGCT Act 1994, Liquefied Petroleum Gas (LPG) was leviable to tax at the rate of 9.2 *per cent* including surcharge (15 *per cent* on tax) for the period 2004-05 and 2005-06.

We found (August 2011) during test check of the assessment records of the Assistant Commissioner (AC), Raipur that a dealer engaged in purchase and sale of LPG, assessed between January 2008 and December 2008 for the period 2004-05 and 2005-06, had total turnover of ₹ 3.48 crore and ₹ 3.25 crore respectively. Further cross-verification of the assessment records with the 59-A register revealed that the dealer had imported LPG valuing ₹ 72.75 lakh and ₹ 20.80 lakh during these years respectively against 134[3] declarations in form 59-A[4]. However, the above purchases were not accounted for in the books of accounts by the dealer and the corresponding sales, determined by adding 10 *per cent* profit[5] element in the purchases, were concealed for evading tax. This resulted in non levy of tax of ₹ 9.47 lakh. Besides this, maximum penalty of ₹ 9.47 lakh was also leviable (as shown in ***Appendix-2.1)***.

After we pointed this out to the Department and Government (July 2012), the Government in its reply (December 2012) stated that demand of ₹ 13.84 lakh has been raised, of which ₹ 4.11 lakh has been recovered. As regards assessment against 60 forms (closing balance of 2003-04), it has been stated that the matter is under investigation and further action shall be taken after receipt of information.

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3 For the year 2004-05 part sale value of ₹ 42.44 lakh has been determined presuming that closing balance of 60 declaration forms at the end of 2003-04 were consumed in the year 2004-05 and taking minimum value of the form as ₹ 64,300 on the basis of purchases made against each form during the year 2003-04.

4 Form 59- A- A document issued by the Department to a registered dealer for importing goods from outside the state, indicating the name of the consignor and consignee, the place of dispatch, the destination and the description, quantity and value of the goods.

5 Profit=Gross profit (tax paid)+transportation charges+ loading/unloading charges.

## 2.14 Irregular exemption on declaration forms

The Government vide notification dated 12.11.2001 exempted sale of iron and steel from levy of tax when sold by a dealer registered under the *Adhiniyam* and such dealer in support of his claim for exemption in respect of the sale of the said goods furnishes at the time of his assessment to the Assessing Authority, a declaration in form A-2 issued to him by the dealer manufacturing the said goods or a subsequent selling registered dealer selling such goods.

We found (April 2011) during test check of the assessment records of Assistant Commissioner Commercial Tax (ACCT)-II, Bilaspur that a dealer engaged in trading and manufacture of iron and steel, assessed in February 2009 for the period 2005-06, was allowed exemption of tax on the sale value of ₹ 3.53 crore supported by A-2[6] declaration forms. On scrutiny of the A-2 declaration forms, we noticed that the dealer had sold MS round and Tar Steel to unregistered dealers and the Assessing Officer (AO) while finalising the assessment incorrectly allowed exemption from levy of tax on the strength of A-2 declaration forms. Since the sale was made to unregistered dealers, the dealer was not eligible for exemption. This resulted in non levy of tax of ₹ 7.06 lakh. Besides, penalty was also leviable.

After we pointed this out to the Department/Government (July 2012), the Department stated (December 2012) that demand of ₹ 21.18 lakh has been raised.

## 2.15 Short levy due to incorrect allowance of set-off of tax

According to section 13 of the CGCT Act, when a registered dealer purchases any goods specified in Schedule II other than goods specified in Schedule III which are tax paid goods in his hands and the sale thereof by the selling registered dealer to him is otherwise exempt from tax the dealer shall be entitled to set-off for such tax-paid purchases. Further, in the case of Commissioner of Commercial Tax, CG Vs. Unique Rolling Mills (2003) VKN 583, the Chhattisgarh Revenue Board held that goods purchased from exempted units are not tax-paid goods and are therefore not eligible for set-off.

We found during test check (May 2010) of the assessment records of the Commercial Tax Officer (CTO-I), Bilaspur that a dealer engaged in manufacture and sale of cement poles was assessed in August 2008 for the period 2005-06. The AO allowed set off of ₹ 2.84 lakh on consumption of cement of ₹ 41.22 lakh treating them as tax paid goods. Further scrutiny of bills pertaining to the case revealed that the

[6] The dealer in support of his claim for exemption in respect of the sale of the goods furnishes at the time of his assessment to the assessing authority a declaration in form A-2 issued by the selling dealer.

cement was purchased from dealers who had made purchases from M/s. Grasim Cement, which was an exempted unit. As the dealer had made purchases of cement which were already exempted from tax, the set-off allowed was irregular. Thus, incorrect set-off allowed on consumption of cement of ₹ 41.22 lakh resulted in short levy of tax of ₹ 2.84 lakh.

After we pointed this out to the Government/Department (July 2012), the Department stated (October 2012) that demand of ₹ 2.84 lakh has been raised (October 2011) against the dealer and his bank account has been frozen for early recovery of dues. Further report on recovery has not been received (December 2012).

## 2.16 Short levy of tax

According to entry no. 1 of Part IV of Schedule II of the CGVAT Act, all other goods not included in Schedule I and in part I, part II and part III of this schedule are taxable at the rate of 12.5 *per cent*. Hair oil being a residuary good is taxable at 12.5 *per cent*. Section 22 of CGVAT Act provides that the Commissioner shall, where the omission leading to assessment or re-assessment is attributable to the dealer, impose upon him a penalty of maximum two times the amount of tax assessed but which shall not be less than the amount of tax assessed.

We found (November 2010) during test check of the assessment records of the Assistant Commissioner (AC), Commercial Tax, Raipur that a dealer engaged in purchase and sale of coconut oil (hair oil), mustard oil and spices assessed in September 2009 for the period April 2006 to March 2007 had a total turnover of ₹ 3.45 crore, out of which turnover of hair oil was ₹ 1.39 crore. The AO levied tax of ₹ 13.28 lakh at the rate of four *per cent* on the turnover of hair oil. Since hair oil being a residuary item is taxable at the rate of 12.5 *per cent*, tax amounting to ₹ 11.39 lakh [7]was leviable at the differential rate of 8.5 *per cent* (12.5-4=8.5). Thus, application of incorrect rate of tax resulted in short levy of tax amounting to ₹ 11.39 lakh. Besides, penalty of ₹ 11.39 lakh was also leviable.

After we pointed this out to the Government /Department (July 2012), the Government stated (December 2012) that demand of ₹ 22.78 lakh has been raised. Report on recovery has not been received (December 2012).

[7] ₹ 139 lakh-₹ 5.36 lakh=₹134 lakh*8.5/100=₹11.39 lakh

## 2.17 Application of lower rate of tax

The State Government through Notification no. 45 dated 28.04.2006 notified the list of goods to be treated as "Capital Goods" for levy of tax at the rate of four *per cent*. Diesel engine and parts are not included in the list of capital goods. Further, as per CG VAT Act, 2005 all other items which are not mentioned in Schedule-I and part I to III of Schedule II shall be taxable at 12.5 *per cent.* Diesel engine being a residuary goods is taxable at the rate of 12.5 *per cent.*

**2.17.1** We found (December 2011) during the test check of the assessment records of the Commercial Tax Officer (CTO), Circle – I, Raipur that a dealer engaged in purchase and sale of diesel engine and parts, assessed in December 2010 for the period 2007-08, had a total turnover of ₹ 28.58 lakh which included sale of ₹ 27.10 lakh of diesel engine and parts. While assessing the case, the AO levied tax amounting to ₹ 1.04 lakh at the rate of four *per cent* on the turnover of ₹ 27.10 lakh and on the remaining sale of ₹ 1.48 lakh, the AO levied tax of ₹ 16,000 at the rate of 12.5 *per cent*. As diesel engine and parts are not capital goods and are also not mentioned in any of the Schedules, tax amounting to ₹ 3.01 lakh at the rate of 12.5 *per cent* was leviable on the sale of ₹ 27.10 lakh. Thus, levy of tax at lower rate by the AO resulted in short levy of tax of ₹ 2.12 lakh.

After we pointed this out to the Government /Department (July 2012), the Government stated (December 2012) that demand of ₹ 2.47 lakh has been raised. Report on recovery has not been received (December 2012).

AC Drive, DC Drive, Programming Logic Controller System and Lubricating system are not included in the list as capital goods notified vide Notification no. 45 dated 28.04.2006. As per CGVAT Act, all other items which are not mentioned in Schedule-I and part I to III of Schedule II shall be taxable at 12.5 *per cent*. AC Drive, DC Drive, Programming Logic Controller System and Lubricating system being residuary goods are taxable at the rate of 12.5 *per cent.*

**2.17.2** We found (January 2012) in the test check of the assessment records of the Assistant Commissioner Commercial Tax (ACCT)-III, Durg that a dealer engaged in manufacture and sale of electrical parts such as AC Drive, DC Drive, Programming Logic Controller System and Lubricating system was assessed in October 2009 for the period 2006-07. Sale of ₹ 2.79 crore was made by the dealer on which the Assessing Officer levied tax at the rate of four *per cent* treating it as capital goods. As the goods manufactured by the dealer were electrical goods, tax of ₹ 30.95 lakh at the rate of 12.5 *per cent* was to be levied instead of ₹ 10.71 lakh. Thus levy of tax at lower rate by the AO resulted in short levy of tax of ₹ 20.24 lakh.

After we pointed this out to the Government/Department (July 2012), the Department stated (September 2012) that the goods sold were machinery parts

of iron and steel industries and covered under notification no. 45 dated 28.04.2006.

We do not agree as the above goods were not mentioned as capital goods in the above notification.

## 2.18 Non-levy of tax due to irregular input tax rebate

According to Section 8 of CGVAT Act, tax shall be levied on goods specified in Schedule II, at the rate mentioned in the corresponding entry in column (3) thereof. Further Section 13 (b) of the Act provides for rebate of input tax when a registered dealer purchases any goods within the State of Chhattisgarh from another such dealer after payment to him of input tax and he shall claim or be allowed, input tax rebate of such amount of tax, in such manner and within such period as may be prescribed. The rate of tax prescribed for furnace oil is four *per cent*.

We found (December 2010) in the test check of the records of the ACCT-II, Durg that a dealer engaged in manufacture and sale of wires was assessed in February 2010 for the period April 2006 to March 2007. The above dealer purchased furnace oil of ₹ 39.95 lakh on which the AO allowed input tax rebate of ₹ 4.99 lakh at the rate of 12.5 *per cent* as against the admissible amount of ₹ 1.60 lakh calculated at the rate of four *per cent.* Thus the grant of Input Tax Rebate in excess of the admissible rate resulted in short-levy of input tax of ₹ 3.40 lakh.

After we pointed this out to the Government/Department (July 2012), the Department stated (July 2012) that the case was reopened under Section 22 (1) and demand of ₹ 3.40 lakh has been raised.

# CENTRAL SALES TAX ACT

## 2.19 Non-levy of tax

According to Section 8 of CST Act, every dealer, who in the course of inter-state trade or commerce sells goods other than declared goods without 'C' form shall be liable to pay tax at the rate of 10 *per cent* or the rate applicable to the sale or purchase of such goods inside the State, whichever is higher.

According to entry no. 50 of Part II of Schedule II of CGVAT Act, Flour, *Atta, Maida, Suji, Besan* etc. are taxable at the rate of four *per cent*. Further, the State Government vide notification no. 15 dated 30.03.2006 exempted "*Atta, Maida, Suji* and *Besan*" from payment of tax for the period 2006-07 but not "Flour". Further, the Hon'ble Allahabad High Court also held in the case of M/s. Vishambhar Sahai Sheetal Prasad Vs State of UP and others 2004 NTN that *Atta* (Wheat flour) and *Besan* (Gram flour) are two different commodities.

We found (November 2011) during test check of the assessment records of the Assistant Commissioner, Division-II, Raipur that a dealer engaged in manufacture and sale of oils, oil seeds and soya flour was assessed in June 2010 for the period 2006-07. The dealer had a total turnover of ₹ 17.42 crore as inter-state sale, out of which sale of soya flour of ₹ 15.55 crore was made without "C" Form[8]. The Assessing Authority (AA) allowed exemption on the same treating it as "*Atta*". As flour was not exempted from payment of tax as per the above notification, and also being different from *Atta*, tax amounting to ₹ 1.55 crore at the rate of 10 *per cent* was leviable. This resulted in non-levy of tax of ₹ 1.55 crore. Besides, maximum penalty of ₹ 3.11 crore was also leviable.

After we pointed this out to the Government/Department (July 2012), the Department stated (July 2012) that demand of ₹ 4.66 crore (including penalty of ₹ 3.11 crore) has been raised. Report on recovery has not been received (December 2012).

[8] C-form is a declaration form issued by the Department to a registered dealer for importing goods from outside the state at concessional rate of tax in course of inter-state trade or commerce.

## ENTRY TAX ACT

### 2.20 Non-levy of entry tax

According to Section 3 (1) (a) of the Chhattisgarh Entry Tax Act (CGET Act), 1976, there shall be levied an entry tax on the entry in the course of business of a dealer of goods specified in Schedule II, into each local area for consumption, use or sale therein. Entry No. 53 of the Schedule provides for tax to be levied on "All kinds of electrical and electronic goods except those specified elsewhere in this Schedule" at the rate of one *per cent*. Mobile handsets which are electronic goods are not specified in the Schedule and hence are liable to be taxed as per entry no. 53. Further, the Hon'ble Madhya Pradesh High Court also held in the case of M/s. Drive India Dot Com Vs State of MP and others 2011 (19) STJ that mobile handset is covered under wireless reception instruments and apparatus. Alternatively, it can also be covered in entry 53 which is relating to electronic and electrical goods.

We found (November 2011) in the test check of the assessment records of the Assistant Commissioner (AC)-II, Raipur that a dealer engaged in purchase and sale of mobile handsets was assessed in June 2010 for the period 2006-2007. The dealer received mobile handsets worth ₹ 124.28 crore through stock transfer on which no entry tax was levied by the AO treating the same as goods covered under Schedule III of the Act. However, mobile handsets are electronic goods and are to be taxed as per entry no. 53 of the Act. Therefore, entry tax of ₹ 1.24 crore at the rate of one *per cent* on ₹ 124.28 crore was leviable. Thus, failure on the part of AO to verify the entries of the Schedule and levy tax accordingly resulted in non-levy of entry tax of ₹ 1.24 crore.

After we pointed this out to the Government/Department (July 2012), the Department had issued a circular (October 2012) to all the divisions directing them to check and levy entry tax on mobile handsets at the rate of one *per cent* in cases where it has not been levied. Further report on recovery has not been received (December 2012).

## 2.21 Non-levy of tax

According to Section 3 of the CGET Act, entry tax at the rate of one *per cent* shall be levied on the entry in course of business of a dealer of goods specified in Schedule-III into each local area for consumption or use of such goods but not for sale therein. As per Schedule III of the above Act, rice bran is taxable at the rate of 2 *per cent* w.e.f. 4.9.2004 when imported from outside Chhattisgarh.

We found (December 2010) during the test check of the assessment records of the Assistant Commissioner Commercial Tax (ACCT), Rajnandgaon that a dealer engaged in manufacture and sale of rice bran and edible oil was assessed in January 2008 and July 2009 for the period April 2004 to March 2006. The AO incorrectly allowed exemption of ₹ 3.83 crore on total purchases of ₹ 42.16 crore in the year 2004-05 and exemption of ₹ 24.84 lakh on total purchases of ₹ 27.91 crore in the year 2005-06 on the basis of purchases of materials before commencment of production. Also,there was under assessment of purchase turnover of ₹ 1.95 crore as the purchases of ₹ 29.86 crore determined in respect of the same dealer by the AO earlier while finalising the ex-parte assessment for the year 2005-06 in February 2009, were not taken into account without assigning any reason. Thus, the exemption of ₹ 4.08 crore allowed for the years 2004-05 (₹ 3.83 crore) and 2005-06 (₹ 24.84 lakh) and reduction (₹ 1.95 crore) in total purchases during 2005-06 was irregular. This resulted in non-levy of entry tax of ₹ 8.31 lakh (as shown in ***Appendix-2.2)***. Besides, penalty was also leviable.

After we pointed this out to the Department and Government (July 2012), the Government stated (December 2012) that demand of ₹ 24.15 lakh has been raised. Report on recovery has not been received (December 2012).

## 2.22 Non-levy of entry tax due to irregular exemption

According to Section 3 of the CGET Act, there shall be levied an entry tax on the entry of goods specified in Schedule-II, into each local area for consumption, use or sale therein. Entry no. 31 of Schedule II of the Act prescribes one *per cent* tax on all types of sanitary goods and fittings. Further, in the case of M/s Mahesh Enterprises Vs State of Andhra Pradesh(2000)119 STC 578(AP), the Hon'ble High Court (June 2000) held that Cast Iron pipes and fittings are different from Cast Iron and are not declared goods and thus are covered under the entry "water supply and sanitary fittings".

We found (December 2010) in the test check of the assessment records of the ACCT-II, Durg that a dealer engaged in purchase and sale of Cast Iron (CI) pipes and fittings was assessed in November 2009 for the period April 2006 to March 2007. The dealer made purchases of CI pipes amounting to ₹ 3.49 crore. The AO allowed exemption on the above purchases treating CI pipes as different from iron and steel and covered under Schedule III. As CI pipes and fittings fall under the

category of "all types of sanitary goods and fittings" of Schedule II as per the above judgement, entry tax amounting to ₹ 3.49 lakh at the rate of one *per cent* should have been levied. Thus, failure on the part of AO to verify the entries of the Schedule resulted in non- levy of entry tax of ₹ 3.49 lakh.

After we pointed this out to the Government/Department (July 2012), the Department stated (July 2012) that as there is no entry of "all kinds of sanitary goods and fittings" under Schedule II, CI pipes come under Schedule III and therefore no tax was levied.

We do not agree as there is a specific entry for all kinds of sanitary goods and fittings in the Schedule.

## 2.23 Chhattisgarh *Bakaya Rashi Saral Samadhan Yojana* 2010

With a view to liquidate the *Bakaya Rashi,*[9] *(*outstanding dues*)* the Government of Chhattisgarh introduced the Chhattisgarh *Vanijyik Kar (Bakaya Rashi) Saral Samadhan Yojana* 2010 under Chhattisgarh General Sales Tax Act 1958, Chhattisgarh *Vanijik Kar Adhiniyam* 1994, Central Sales Tax Act 1956, Chhattisgarh Entry Tax Act 1976, Chhattisgarh Luxury Tax Act 1988 and Chhattisgarh Professional Tax Act, 1995 in November 2010. The cases of arrears were to be settled on payment of 60 *per cent* of the *Bakaya Rashi*. Any defaulter desirous of availing the benefit under the Scheme was required to submit the application in duplicate by 31st January 2011 and to deposit the sanctioned *Samadhan Rashi*[10] (settlement amount) within 15 days from the date of receipt of notice.

According to clause 4 of the *Samadhan* certificate (*Praroop-3)* issued by the *Samadhankarta* that no action would be initiated against the *bakayadar* for any offence/error under the relevant Act and no penalty would be levied against the *bakayadar*. In the case of M/s Vikas Enterprises vs. Assistant Commissioner (March 2007), the Hon'ble Madhya Pradesh High Court also held that no penalty would be imposed and no action under the Act on account of any offence or error would be initiated against the *bakayadar* since cases under the scheme were disposed of and *Samadhan* certificates were duly issued in favour of the petitioner.

The Department extended benefits aggregating ₹ 15.66 crore to 9,507 *bakayadars* in the state. We test checked the records of 102 *bakayadars* in eight units[11] and observed that benefits aggregating ₹ 8.05 crore was extended to these *bakayadars* under the *Yojna*. The top 10 beneficiaries out of the above 102 *bakayadars* to whom more than 25 *per cent* of the total benefits (₹ 15.66 crore) were extended are mentioned in the following table:

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9 *Bakaya Rashi* means the arrears of taxes, interest and penalties under different Acts relating to the assessment period up to 31March 2006 and pending as on 31 October 2010.

10 *Samadhan Rashi* means the assessed and paid arrears of the considered cases under the *Saral Samadhan Yojna,* 2010 i.e. 60 *per cent* of the *bakaya rashi*.

11 Three Additional Commissioner and Five Deputy Commissioner offices.

*(₹ in lakh)*

| Sl. No. | Name of *bakayadars* | Amount outstanding | Settlement Amount |
|---|---|---|---|
| 1 | M/s. Larsen and Toubro limited | 242.75 | 33.18 |
| 2 | M/s. Budhia Auto | 209.37 | 62.62 |
| 3 | M/s. Raghuvir Ferro Alloys Private Limited | 116.71 | 54.49 |
| 4 | M/s. Kakkad Auto | 88.34 | 53.00 |
| 5 | M/s. Jyoti Structure Limited | 81.60 | 48.96 |
| 6 | M/s. Hi-Tech Abrasives Limited | 81.29 | 44.19 |
| 7 | M/s. Sepco Electric Power Corporation Company Limited | 76.64 | 45.99 |
| 8 | M/s. Botalda Tractors | 48.24 | 11.46 |
| 9 | M/s. Kitchen Appliances | 43.01 | 25.80 |
| 10 | M/s. ACC Limited ( Power Plant) | 42.54 | 18.38 |
| | **Total** | **1030.49** | **398.07** |

Our scrutiny of the records relating to implementation of the Scheme revealed certain irregularities in 96 out of 102 test checked cases, as discussed in the succeeding paragraphs.

### 2.23.1 Non inclusion of penalty amount in computation of *Bakaya Rashi*

According to Rule 2(3) of the Chhattisgarh *Vanijyik Kar* (*Bakaya Rashi*) *Saral Samadhan Yojana Niyam* 2010, the *Bakayadar* shall be eligible for exemption upto 40 *per cent* of the outstanding dues as on 31.10.2010 and would have to pay balance 60 *per cent* of the outstanding amount as *Samadhan Rashi.* Further, according to Rule 2(3)(च) of Chhattisgarh *Vanijyik Kar* (*Bakaya Rashi*) *Saral Samadhan Yojana Niyam* 2010, all provisions regarding interest and penalty of Chhattisgarh Commercial tax Act, Central Sales tax Act, Entry tax Act etc. would be applicable under this *Yojna*.

According to Section 32(9) of the Chhattisgarh Commercial Tax Act, 1994 read with Central Sales Tax, Entry Tax Act etc. if a dealer does not pay the tax assessed on him or the penalty imposed on him or any other amount due from him under the Act within a specified time, he shall be liable to pay penalty at the rate of 2 *per cent* per month on due tax, penalty or any other amount up to the date of payment.

We found (June 2012) during the test check of the *saral samadhan* records of three Additional Commissioners and two Deputy Commissioners (DCs) of Raipur division, two DCs of Bilaspur and one DC of Durg division that 88 *bakayadars (*defaulters*)* having total arrears of ₹ 15.99 crore pertaining to the assessment period 1991-92 to 2005-06 availed the scheme for settlement of arrears. Scrutiny of the records revealed that demand notice/ Revenue Recovery Certificates/ appeal orders for depositing the tax were finalised between June 1995 and October 2010. These *bakayadars* had failed to deposit the amount of tax within

specified time and the delay in payment of tax ranged between 12 and 5602 days. However, the *Samadhankarta* authorities calculated the *bakaya rashi* up to 31.10.2010 without taking penalty into consideration. Thus, failure on the part of the *Samadhankarta* authority to include the amount of penalty on the above arrears resulted in short realisation of *Samadhan Rashi* of ₹ 5.25 crore (60 *per cent* of ₹ 8.76 crore) (as shown in ***Appendix-2.3)***.

### 2.23.2 Loss of revenue due to short levy of *Samadhan Rashi*

According to rule 2(3)(ख) of Chhattisgarh *Vanijyik Kar* (*Bakaya Rashi*) *Saral Samadhan Yojana Niyam* 2010, the payment made by the *Bakayadar* in the first/second appeal or revision would be adjusted against the *Bakaya Rashi* treating it as part payment of tax.

We found (June 2012) in the test check of the *Saral Samadhan* records of three Additional Commissioners and two DCs of Raipur and one DC of Bilaspur division that 41 *bakayadars,* having *bakaya rashi* of ₹ 9.85 crore availed the facility of the scheme. The *bakayadars* had made part payment of ₹ 3.35 crore in the first/second appeal. As per the above rule, the payment was to be adjusted against the *bakaya rashi* only. However, scrutiny of the records revealed that the *Samadhankarta* Authorities adjusted the part payment of ₹ 3.35 crore paid in first/second appeal against the *Samadhan Rashi* (as calculated by the *Samadhankarta* Authorities) of ₹ 5.89 crore in lieu of *Bakaya Rashi* of ₹ 9.85 crore. Thus adjustment of the part payment of appeal *rashi* against *Samadhan Rashi* led to short realisation of *Samadhan Rashi* of ₹ 1.35 crore (as shown in ***Appendix 2.4)***

### 2.23.3 Delay in payment of *Samadhan Rashi*

According to rule 6 and 9(4) of *Chhattisgarh Vanijyik Kar (Bakaya Rashi) Saral Samadhan Yojana niyam* 2010, the *Bakayadar* will have to pay *Samadhan rashi* within 15 days from date of receipt of *Praroop*-2, failing which the benefit of the scheme will not be available. Further, in the case of D.M.Woollen Mills Pvt Ltd. & Another vs. Commercial Tax Department & Another the Hon'ble Madhya Pradesh High Court held (March 2005) that the assessee claiming benefit under the said scheme is bound to comply with the condition of payment of the settlement amount within 15 days. In case of failure to pay the settlement amount within 15 days, the benefit of the scheme would not be available. Further, in the matter of M/s Vikas Enterprises vs Assistant Commissioner, the Hon'ble Madhya Pradesh High Court held that (March 2007) that no penalty would be imposed and no action under the Act on account of any offence or error would be initiated against the *bakayadar* since cases under the scheme were disposed of and *Samadhan* certificates were duly issued in favour of the petitioner.

We found (June 2012) in the test check of the *saral samadhan* records of two Additional Commissioners of Raipur division that in two cases *Bakaya Rashi* was ₹ 1.11 crore. The *Samadhankarta* Authority determined the *Samadhan Rashi* of ₹ 66.38 lakh after allowing relief of ₹ 44.26 lakh. Further scrutiny of records revealed that the *Bakayadars* had deposited the *Samadhan Rashi* with delays ranging from six to 28 days after the permissible period of 15 days after receipt of *praroop*-2[12]. Since the *bakayadars* failed to deposit the *Samadhan rashi* in time, the benefit of the said *Yojana* should not have been allowed to them. Thus, failure to pay the settlement amount within the permissible period resulted in loss of revenue of ₹ 44.26 lakh (as shown in ***Appendix-2.5)***.

After we pointed this out to the Department/Government (July 2012), the Department replied (September 2012) that as per the judgement of the Hon'ble Madhya Pradesh High Court in the case of M/s Vikas Enterprises vs. Assistant Commissioner, no penalty/action would be imposed once *samadhan* certificate was duly issued in favour of the petitioner.

Since the Department was aware of the judgement of the Hon'ble Madhya Pradesh High Court, it should have taken all precautions while finalising the cases under the *Yojna* to avoid any loss of revenue.

[12] *Praroop 2*- A proforma for determination of settlement amount by the *Samadhan karta* and to be issued to the concerned *bakayadar* to deposit the settlement amount.

### 2.23.4 Wrong adjustment of Refund Adjustment Order in *Samadhan Rashi*

As per Chhattisgarh *Vanijyik Kar* (*Bakaya Rashi*) *Saral Samadhan Yojana Niyam* 2010, any part payment of the *Bakayadar* would be adjusted against the *Bakaya Rashi* treating it as payment of tax.

During scrutiny (June 2012) of the *Saral Samadhan* records of Additional Commissioner, Raipur division we found that in case of a *bakayadar* having arrears of tax amounting to ₹ 14.97 lakh, the *Samadhankarta Authority* determined the *samadhan rashi* at ₹ 8.98 lakh. Further scrutiny of records revealed that Refund Adjustment Order (RAO) amount was adjusted from 60 *per cent* dues of total dues before considering the refund amount. It should have first been deducted from total dues and 60 *per cent* of remaining dues (i.e. after adjustment of RAO) was to be deposited which was not done. The *Samadhankarta Authority* wrongly adjusted refund of ₹ 6.80 lakh against *Samadhan rashi* in lieu of *Bakaya rashi*. Thus, wrong adjustment of RAO resulted in short realisation of ₹ 2.72 lakh.

We pointed this out to the Department/Government (July 2012) for their comments; their replies are awaited (November 2012).

### 2.23.5 Conclusion

**Since the cases cannot be reopened after issue of *Samadhan* Certificates as per the provisions of the Scheme, it was expected that due care should have been taken by the *Samadhankarta* Authorities while determining the settlement amount. The instances of non inclusion of penalty, short levy of *Samadhan Rashi*, irregular extension of benefit and wrong adjustment of refund adjustment order as pointed out in the preceding paragraphs were indicative of lack of required attention on the part of the assessing authorities which resulted in a direct loss to the State Exchequer.**