



## CHAPTER – II Taxes on sales, trade etc.

### 2.1 Tax administration

The Finance (Taxation) Department is responsible for the administration of taxes on sales, trade etc., in the State. The Commissioner of Taxes is the Head of the Department and responsible for administration of all taxation measures and for general control and supervision over the zonal and unit offices and the staff engaged in collection of taxes and to guard against evasion of taxes. He is also the authority for disposing of revision petitions under all Taxation Acts and laws besides providing clarification under Assam Value Added Tax Act, 2003. He is assisted by one Additional Commissioner of Taxes, five Joint Commissioners of Taxes, 15 Deputy Commissioners of Taxes, 25 Assistant Commissioners of Taxes, 165 Superintendents of Taxes, 320 Inspectors of Taxes and other officials in discharging day to day functions both at the Headquarters and regional/unit levels. In addition, there is one Deputy Commissioner of Taxes (Statistics) assisted by one Superintendent of Taxes and two Inspectors of Taxes, two Information Technology Officers and one Finance and Accounts Officer. The Commissionerate of Taxes has one Head Office/Commissioner's Office, 10 Zonal Offices, five Appellate Offices, 34 unit Offices, 23 recovery Offices and 10 check posts.

The functioning of the Department is governed by the provisions of the Assam Value Added Tax (AVAT) Act, 2003 (*w.e.f.* 01.05.2005); the Central Sales Tax (CST) Act, 1956; the Assam Entry Tax Act, 2008 (*w.e.f.* 01.06.2008); the Assam Professions, Trades, Callings and Employments Taxation Act, 1947; the Assam Tax on Luxuries (Hotels and Lodgings Houses) Act, 1989; the Assam Amusement and Betting Taxation Act, 1939; the Assam Electricity Duty Act, 1964; the Assam Taxation (on Specified Land) Act, 1990; the Assam Agricultural Income Tax Act, 1939 and various administrative orders issued from time to time.

### 2.2 Budget preparation

Assam Budget Manual lays down that the estimates of revenue receipts should include/project the actual demand including arrears due for past years and the probability of their realisation during the year. According to the Assam Financial Rules, the Finance Department is required to prepare the estimates

of revenue after obtaining necessary information/data from the respective Department/ Government.

The budget estimates of the Finance (Taxation) Department were prepared taking into account the actual collection of the last seven months of the previous year and provisional collection of the first five months of the current financial year. Besides, growth over actual receipts of the previous year as well as expected realisation of tax due to adoption of certain measures for augmentation of revenue was also taken into consideration.

This indicated that though the provisions of Budget Manual were not considered by the Department in letter and spirit, the budgeting was being done methodically. However, the Taxation Department was not provisioning recovery of arrear revenues which it should have done as provided in the Assam Budget Manual.

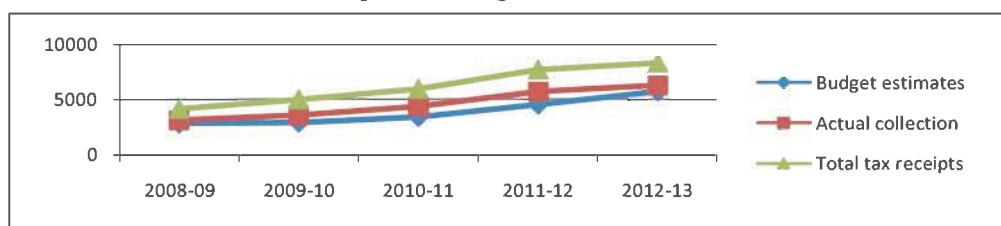
### 2.3 Trend of receipts

Details of budget estimates, actual receipts from taxes on sales, trade etc. during the period 2008-09 to 2012-13 along with total tax receipts during the same period are exhibited in the following Table 1.

**Table 1**  
**Trend of receipts**

(₹ in crore)						
Year	Budget estimates	Actual receipts (Taxes on sales, trade etc.)	Variation excess (+) shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2008-09	2,820.69	3,110.58	289.89	10	4,150.21	75
2009-10	2,900.00	3,535.26	635.26	22	4,986.72	71
2010-11	3,409.00	4,318.60	909.60	27	5,929.84	73
2011-12	4,491.00	5,693.96	1,202.96	27	7,638.23	75
2012-13	5,700.00	6,223.13	523.13	09	8,250.21	75

Source: Finance Accounts and Departmental figures.



Graph showing budget estimates, actual collection under taxes on sales, trade etc vis-a-vis the total tax receipts of the State.



Pie Chart showing actual collection under taxes on sales, trade etc vis-a-vis the total tax receipts

Thus, the growth of revenue under taxes on sales, trade etc during 2012-13 over previous year was at 9.29 per cent against 31.85 per cent in the year 2011-12. Collection under tax on sales, trade etc contributed substantially to the tax revenues of the State during the last five years (ranging between 71 and 75 per cent). The overall collection of revenue under sales tax/VAT also showed an increasing trend.

## 2.4 Analysis of arrears of revenue

The position of arrears of revenue during the period 2008-09 to 2012-13 is depicted in Table 2.

Table 2  
Arrears of revenue

Year	(₹ in crore)			
	Opening balance of arrears	Amount added during the year	Amount collected during the year	Closing balance of arrears
2008-09	638.12	51.88	22.77	667.23
2009-10	667.23	1,221.91	111.25	1,777.89
2010-11	1,777.89	803.48	110.55	2,470.82
2011-12	2,470.82	(-) 362.18	81.56	2,027.08
2012-13	2,027.07	158.34	122.87	2,062.54

Source: Figures as furnished by the Department.

The arrears of revenue had increased drastically in 2008-09, 2009-10 and 2010-11 because assessments made under on Assam Taxation (on Specified Land) Act, 1990 and Assam Entry Tax Act, 2008 could not be realised due to stay orders from Hon'ble Gauhati High Court and Supreme Court.

The above table shows that during 2012-13, the addition of arrears was considerably lower than the figures in 2009-10 and 2010-11 while the position of recovery was at its best in comparison to those pertaining to last five years.

## 2.5 Assessee profile

The total number of assessees under the Assam Value Added Taxation Act during 2012-13 was 1,66,098. It was observed that the Department/Commissionerate did not maintain records classifying dealers as large tax payers and small dealers separately. The Department/Commissionerate also did not ascertain the number of dealers who were required to file their returns and number of returns received during the year. On being requested for this information, the Department stated that it would have to be obtained from the field units. This is indicative of weak management information system as the Department should have obtained this information from time to time and prepare a State-wise database of dealers which might be required at any point of time for decision making or framing of appropriate and sound taxation policy.

## 2.6 Revenue per assessee

Position of total revenue collected *vis-à-vis* number of assessees and revenue per assessee for the years 2008-09 to 2012-13 are shown in Table 3.

Table 3

### Revenue per assessee

(₹ in crore)			
Year	Number of assessees	Revenue collected	Revenue per assessee
2008-09	89,630	3,110.58	0.03
2009-10	1,06,925	3,535.26	0.03
2010-11	1,25,215	4,318.60	0.03
2011-12	1,49,007	5,693.96	0.04
2012-13	1,66,098	6,223.13	0.04

Source: Figures as furnished by the department.

Revenue per assessee remained at the level of ₹ 3 lakh during 2008-09 to 2010-11 and increased to ₹ 4 lakh in 2011-12 and 2012-13.

## 2.7 Arrears in assessment

Details of pending assessment cases at the beginning of the year, cases becoming due for assessment during the year, cases finalised during the year and number of cases pending as of March 2013 as furnished by the Department are mentioned in Table 4.

Table 4

### Arrears in assessment

(Number of cases)					
Name of Acts	Opening balance as on 1 April 2012	Cases added for assessment during 2012-13	Total assessment due during the year 2012-13	Cases disposed during 2012-13	Balance as on 31 March 2013
Sales Tax (AGST/VAT/CST)	10,171	11,018	21,189	7,265	13,924
APTC&ET <sup>1</sup>	34,451	39,028	73,479	44,479	29,000
Entry Tax	2,230	2,289	4,519	1,885	2,634
Luxury (Hotel & Lodging), 1989	554	409	963	468	495
Electricity duty	1,694	528	2222	494	1,728
Specified Land	973	640	1613	638	975
Luxury Tax, 1997	20	-	20	14	6
Agriculture Income Tax	1,091	744	1,835	751	1,084
<b>Total</b>	<b>51,184</b>	<b>54,656</b>	<b>1,05,840</b>	<b>55,994</b>	<b>49,846</b>

Source: Figures as furnished by the department.

The Department could complete assessment of only 53 *per cent* of the total cases due for assessment during 2012-13 and there were 49,846 assessments yet to be completed by the Department. The Department did not have the information on age-wise break up of arrear assessments and those completed in order to keep a watch on the status of pendency so that assessments did not

<sup>1</sup> Assam Professions, Trades, Callings and Employment Taxation.

get time barred and ensure that there was no loss of revenue due to non-completion of assessments within the stipulated timeline.

*Recommendation No. 1: It is recommended that the Department may prepare an action plan for completion of pending assessments and also ensure that no assessment becomes time barred causing loss to the State exchequer.*

## 2.8 Cost of collection

The gross collection of taxes on sales, trade etc., expenditure incurred on collection and the percentage of such expenditure to gross collection during the years 2010-11 to 2012-13 along with the relevant all India average percentage of expenditure on collection relating to the preceding years are mentioned in Table 5.

**Table 5**  
Cost of collection

Year	Gross collection	Expenditure on collection	Percentage of expenditure to gross collection	(₹ in crore)
				All India average percentage for the previous year
2010-11	4,318.60	73.10	1.69	0.96
2011-12	5,693.96	43.99	0.77	0.75
2012-13	6,223.13	79.90	1.28	0.83

Source: Finance Accounts and departmental figures.

Percentage of expenditure on gross collection in respect of the last three years was higher than the all India average cost of collection which the Department needs to look into.

## 2.9 Impact of audit

During 2008-09 to 2011-12, Audit has through inspection reports (IRs), pointed out non/short levy, non/short realisation, underassessment/loss of revenue, incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation etc., with revenue implication of ₹ 698.75 crore through 911 audit observations. Of these, the department accepted audit observations in 250 cases involving revenue of ₹ 20.75 crore and had since recovered ₹ 4.84 crore (23.32 per cent) in 183 cases. The details are shown in Table 6.

**Table 6**  
Impact of audit

Year of Inspection Report	No. of units audited	Amount objected		Amount accepted		Amount recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2008-09	77	235	63.82	10	0.77	7	0.26
2009-10	120	237	86.35	85	1.50	85	1.50
2010-11	98	238	349.49	123	8.50	78	1.04

2011-12	78	201 <sup>2</sup>	199.09	32	9.98	13	2.04
<b>Total</b>	<b>373</b>	<b>911</b>	<b>698.75</b>	<b>250</b>	<b>20.75</b>	<b>183</b>	<b>4.84</b>

*Recommendation No. 2: It is recommended that the Department may take immediate action to install a mechanism to pursue, monitor and ensure prompt recovery of revenue involved in accepted cases.*

### 2.10 Results of audit

Test check of records of 27 units relating to taxes on sales, trade etc., during 2012-13 revealed irregular grant of exemption, non/short levy of tax/interest, turnover escaping assessment and other irregularities involving revenue of ₹ 130.33 crore in 323 cases, details of which are in Table 7.

**Table 7**  
**Results of Audit**

			(₹ in crore)	
Sl. No.	Category	Number of cases	Amount	
<b>Sales tax</b>				
1.	Short/Non-levy of tax/interest/penalty	93	31.83	
2.	Irregular grant of exemption	72	27.04	
3.	Concealment of turnover escaped assessment	37	25.89	
4.	Irregular adjustment of Tax and ITC	38	11.74	
5.	Other Irregularities	26	5.81	
<b>Total</b>		<b>266</b>	<b>102.31</b>	
<b>Other Taxes</b>				
1.	Short/Non-levy of Entry Tax.	30	23.21	
2.	Application of incorrect rate of tax.	4	2.28	
3.	Short/Non-payment of interest	6	1.57	
4.	Short/Non-levy of Professional Tax.	7	0.04	
5.	Other irregularities	10	0.92	
<b>Total</b>		<b>57</b>	<b>28.02</b>	
<b>Grand Total</b>		<b>323</b>	<b>130.33</b>	

During the course of the year, the Department accepted underassessment and other deficiencies with revenue implication of ₹ 10.73 crore in 49 cases, of which, an amount of ₹ 1.98 crore was realised in 36 cases during 2012-13.

<sup>2</sup> This includes the Performance Audit on "Working of Recovery Offices in Sales Tax Department in Assam" which consisted of 681 cases.

A few illustrative cases with money value of ₹ 35.62 crore are mentioned in the succeeding paragraphs.

### 2.11 Audit observations

*Scrutiny of records relating to sales/value added tax (VAT) in the Taxation Department revealed several cases of non-observation of provisions of Acts/Rules/departmental orders and other cases as mentioned in the succeeding paragraphs. These cases are illustrative and are based on a test check carried out by Audit. Some of the omissions on the part of assessing officers (AO) are pointed out in audit each year, but not only do the irregularities persist; these remain undetected till next audit is conducted. It is a matter of concern as these observations are also sent to the higher authorities including the Government each time these are detected. Government and the Department need to strengthen measures to effectively monitor the cases, arrest recurrence of the irregularities and improve the internal control system including internal audit so that such mistakes and omissions are detected, corrected and avoided.*

## TAXES ON SALES, TRADE ETC.

### 2.12 Excess allowance of remission of tax to industrial unit.

[Assistant Commissioner of Taxes (ACT), Unit A: Guwahati; and Unit – C, Guwahati, June – September 2011 and January – March 2012]

The Assam Industrial Sales Tax Concession Scheme (AISTCS), 1997 provides that a new industrial unit shall be exempted from payment of tax for a period of seven years subject to a maximum limit of 150 per cent of the capital investment. Further, as per the Scheme, the existing industries going for expansion/modernisation/ diversification shall be entitled to the benefit of part exemption of tax on sale of finished products for nine years subject to maximum of 90 per cent of the additional fixed capital investment. Consequent upon implementation of the AVAT Act w.e.f 1 May 2005, the existing scheme was replaced by remission scheme and the industrial units are entitled to remission of 99 per cent of the tax payable by them during return periods until the amount of such remission exceeds the unavailed quantum of monetary ceiling.

During test check of records of the above units it was noticed that in case of two dealers M/s R.C.L. Cements Ltd. and M/s Unicem Paints (I) Pvt Ltd, the Taxation Department issued authorisation certificate based on Eligibility Certificate of the Industries Department for granting exemption from payment of tax w.e.f 12 December 1999 to 11 December 2004 and 11

November 2001 to 10 November 2008 subject to a maximum of ₹4.76 crore and ₹ 98.31 lakh respectively. Further, another entitlement certificate for seven years for exemption of tax with validity from 1 September 2001 to 31 August 2008 for diversification of the existing industrial unit was granted to M/s RCL Cements Ltd subject to maximum of ₹ 9.47 crore (90 per cent of additional investment for diversification). Scrutiny revealed that M/s RCL Cements enjoyed exemption of ₹15.63 crore (upto March 2008) despite the maximum ceiling of ₹ 9.47 crore. In case of M/s Unicem Paints, tax exemption of ₹ 1.11 crore was allowed against the maximum ceiling of ₹ 98.31 lakh. Thus, non-initiation of action in time by the AO in the case of M/s RCL Cements and irregular allowance of remission in case of M/s Unicem Paints resulted in excess exemption of tax of ₹ 6.28 crore and consequent non-levy of interest of ₹ 5.48 crore (calculated upto the date of audit).

After this was pointed out, the Department stated (June 2013), that M/s RCL Cements was assessed for the years 2005-06 to 2007-08 under both AVAT and CST Acts and determined tax (including interest) of ₹ 5.22 crore after granting maximum exemption of ₹ 15.63 crore. As against M/s Unicem Paints, the Department stated that the dealer was reassessed raising a demand of ₹ 26.59 lakh (including interest). Of these, the dealers had paid ₹ 1.43 crore. Report on realisation of the balance amount had not been received (September 2013).

The case was reported to the Government in April 2012 and followed up in April 2013; their reply has not been received (September 2013).

**2.13 Completion of assessments without conducting cross verification of declaration forms led to short levy of tax of ₹ 2.88 crore, on which interest of ₹ 2.33 crore was additionally leviable.**

[ACT, Unit A, Guwahati and ST, Diphu; July- September 2012 and November 2012]

Under the CST Act (as it stood during the relevant period), inter-State sales of goods, other than declared goods, to the registered dealers if supported by valid and duly filled in declaration in Form 'C' are taxable at the concessional rate of **four/three/two per cent**. Otherwise, tax was payable at 10 per cent or the rate applicable under the State whichever is higher upto April 2007 and thereafter at the rate of tax applicable under the State Act. In addition, interest at the prescribed rate is also leviable.

The CT, Assam instructed (May and September 1999) all the AOs to examine very carefully the claims of inter-State sales and to cross verify CST declaration forms submitted by some unscrupulous dealers for sale to North-Eastern States, particularly to Arunachal Pradesh (AP) and Mizoram,



and to verify the transaction while making the assessment and ensure that no false claim of such inter-State sales is accepted. The CT, Assam also directed to take appropriate action against the dealer as well as to the AOs for such evasion of taxes.

Under the AVAT Act, ‘Motor Spirit (MS)’ and ‘Diesel (HSD)’ were taxable at the rate of 25.75 per cent and 15.5 per cent from 1 May 2005 which were enhanced to 27.5 per cent and 16.5 per cent respectively from 4 June 2009. ‘India made foreign liquor (IMFL)’ was taxable at 24 per cent upto 31 March 2008 and thereafter at 27 per cent. ‘Cement’ was taxable at 12.5 per cent upto 30 October 2009 and enhanced to 13.5 per cent thereafter.

During scrutiny of records of the above Offices, it was observed that the AOs while finalizing the assessments of five dealers<sup>3</sup> allowed concessional rates of tax on the basis of declaration forms furnished by the dealers. Of these, only in case of M/s Essar Oil Ltd., the concerned AO initiated cross verification of declaration forms as per the directives of the CT, Assam. However, the assessment was completed without getting the reply of the Taxation authorities of the concerned State. In the other two cases, no mention about conducting such verification was made in the assessment orders.

Audit has carried out a limited cross verification of a number of declaration forms based on which concessional rates were allowed and results are as mentioned in the following table:

Name of dealer/goods dealt in	Year of assessment/date completed	Turnover on which concessional rate allowed (₹ in crore)	Concessional rate allowed	Turnover on which concession was irregularly allowed (₹ in crore)	Tax/interest leviable on turnover on which irregular concession was allowed (₹ in crore)
M/s Indian Oil Corporation Ltd/ MS and HSD	2005-06/ March 2011	232.10	four	4.79	1.11
	2006-07/ February 2012	270.77		3.52	1.18
<b>Audit findings:</b> A limited cross verification of 12 declaration forms issued by the dealers of AP covering transaction of ₹ 5.38 crore and ₹ 4.69 crore for 2005-06 and 2006-07 respectively by Audit revealed that the dealers of AP (M/s Yankee Filling Station, Dirang, West Kameng District and M/s Rupa Auto Agency, Rupa, West Kameng District, AP purchased MS and HSD of ₹ 0.58 crore and ₹ 1.17 crore during the above years. It was further noticed that the utilisation statements of forms ‘C’ submitted by the dealers of AP were duly authenticated by the concerned Superintendent of Tax & Excise, AP. Thus, by fraudulently inflating the value of MS and HSD sold in course of inter-State trade at least by ₹ 4.79 crore and ₹ 3.52 crore during 2005-06 and 2006-07 respectively in case of the above 12 declaration forms only, M/s Indian Oil Corporation Ltd., evaded tax of ₹ 1.11 crore, on which interest of ₹ 1.18 crore (calculated upto the date of Audit) was additionally leviable.					
M/s Essar Oil Ltd./ MS and HSD	2010-11/ July 2012	55.41	two	2.80	0.54 0.13

**Audit findings:** Though the AO initiated cross verification of declaration forms in June 2012, the assessment was

<sup>3</sup> M/s Indian Oil Corporation Ltd., M/s Essar Oil Ltd., M/s Lafarge India Pvt Ltd. and M/s Barak Industries Ltd. under Unit – A, Guwahati and M/s Flamingo Beverages under ST, Diphu.

completed in July 2012 without getting the response of the other State.

A limited cross verification by Audit of seven forms 'C' involving ₹ 2.80 crore<sup>4</sup> received from three dealers of AP revealed that out of three dealers of AP, though two dealers were registered under the CST Act in Bomdila, West Kameng District, AP and Ziro, Lower Subansiri District, AP, yet no form 'C' was issued to them till date; while the other dealer of Holongi, Papum Pare District, AP was not registered under the CST Act. It was further noticed that the aforesaid declaration forms 'C' pertained to Kurung Kumey District, AP. Thus, had the AO pursued the Taxation Department of AP for the information on the declaration forms sent for cross verification prior to completion of the assessments, the above discrepancy and evasion of tax could have been detected. This resulted in non-detection of invalid declaration forms and consequent short levy of tax of ₹ 53.82 lakh and interest of ₹ 12.92 lakh (calculated upto the date of Audit).

M/s Lafarge India Pvt Ltd/ Cement	2005-06 to 2009-10/ between September 2008 and March 2011	33.74	four/three/two	9.84	1.08 0.91
M/s Barak Industries Ltd/ Cement	2005-06 and 2006-07/March 2009	2.45	four/three/two	2.29	

**Audit findings:** A limited cross verification of 41 declaration forms issued by the dealers of AP covering transactions of ₹ 9.84 crore for the years 2005-06 to 2009-10 pertaining to M/s Lafarge India Pvt. Ltd and seven declaration forms issued by the dealers of AP to M/s Barak Industries Ltd covering transactions of ₹ 2.29 crore revealed that the dealers<sup>5</sup> against which concessional rate of tax was allowed in respect of the above 48 declaration forms were not registered with the Taxation Department of AP.

M/s Flamingo Breweries/ IMFL	2007-08/ May 2011	48.28	three	0.68	0.15
	2008-09/ May 2011	19.28			0.11

**Audit findings:** As per information available with Audit, the licence of the purchasing dealer M/s Atlantic Liquors, Banderdewa, AP was cancelled with effect from 16 November 2000. Moreover, the Joint Commissioner of Tax & Excise, Itanagar, AP stated (October 2010) that the correct/genuine declaration in form 'C' issued by the Taxation Department of AP has six digit number with a prefix 'GG'. Thus, the declaration in form 'C' issued by the dealer of AP bearing numbers AP 8558255, AP 8558256 and AP 8558257 for the years 2007-08 and 2008-09 respectively were not genuine. This fact would have come to the knowledge of the AO had he got the declaration forms verified with his counterparts in AP as instructed by the CT, Assam and fraudulent claims of inter-State sales made by the dealer could have been detected.

After this was pointed out, the Department stated (June 2013) that in respect of the first dealer the sales made to the two dealers of AP during 2005-06 and 2006-07 were authentic. The reply is not tenable as the utilisation of 'C' forms was authenticated by the Superintendent of Tax and Excise, Bomdila, West Kameng District, AP. As regards the second dealer, it was replied that the dealer had replaced the defective 'C' forms which had been sent to the Commissioner of Tax, AP. It was further stated that the AO was being sent to the state of AP for ascertaining the genuineness of the declaration forms.

The action taken by the Department in the second case is praiseworthy. The reason(s) for different types of action for similar audit observations as regards the first two dealers was not elucidated by the Department though in both the cases allowance of concessional rate of tax based on invalid/fake declaration

<sup>4</sup> MS of ₹ 1,30,22,237 and HSD of ₹ 1,49,56,216 = ₹ 2,79,78,453

<sup>5</sup> Declaration forms issued by M/s T.J. Enterprises, Khonsa, M/s N.T. Enterprises, Khonsa, M/s Tirap. Enterprises, Khonsa, M/s L.L. Enterprises, Along (now Aalo), M/s North East Engineering, Naharlagun and M/s A.R. Enterprises, Tezu to M/s Lafarge India Pvt. Ltd and declaration forms issued by M/s Lowang Hardware & Agency, Khonsa and M/s Domin Traders, Khonsa, AP to M/s Barak Industries Ltd.

forms were brought to their notice. Report on further developments and reply to the fifth case have not been received (September 2013).

In respect of the third and fourth dealers, the Department stated in case of M/s Lafarge India Pvt. Ltd (June 2013), the assessments had been revised raising a demand of ₹ 1.71 crore (including interest). As the dealers failed to pay the demanded tax, arrear certificate for ₹ 1.74 crore (adding further interest) was issued in May 2013. In respect of the other dealer, the Department stated (June 2013) that the dealer was re-assessed for the years 2005-06 and 2006-07 raising demand of ₹ 8.95 lakh and ₹ 30.46 lakh respectively against which arrear certificate was issued to the RO. Further development has not been reported (September 2013).

The cases were reported to the Government between October 2012 and December 2012 and followed up in March 2013; their reply has not been received (September 2013).

#### **2.14 Exemption without verification of information with other State despite instructions of the CT resulted in non-levy of tax.**

[ACT, Unit A, Guwahati and Nagaon; July- September 2012 and December 2011]

Under the provision of the CST Act, transfer of goods to any other place of business outside the State is exempted from tax provided that the dealer furnishes a declaration in form 'F' of importing States duly filled in by the transferee alongwith evidence of dispatch of goods. Otherwise, such transaction is to be treated as inter-State sale and taxed accordingly.

The CT, Assam instructed (March 1999) the AO to verify declaration forms that are issued by the dealers of other North Eastern States, especially on stock transfers, to ascertain the authenticity of the forms and bonafides of the transferee to prevent evasion of tax.

'Cement' was taxable at 13.2 per cent including additional tax under the AGST Act and 12.5 per cent from May 2005 under AVAT Act. 'Jute Products (except Raw Jute)' are taxable at 12.5 per cent in Assam from May 2005 under AVAT Act.

It was observed that the AOs while finalising the assessments of M/s Vinay Cements Ltd. (manufacturer and trader) for the years 2004-05 and 2005-06 between August 2008 and November 2009 and M/s Assam Co-operative Jute Mills Limited (dealing in Jute Products) for the years 2005-06 and 2006-07 in December 2008 allowed exemption from payment of tax on stock transfer of Cement valued at ₹ 8.07 crore and ₹ 13.45 crore respectively (M/s Vinay Cements Ltd) and ₹ 3.03 crore and ₹ 2.05 crore respectively (M/s Assam Co-operative Jute Mills Limited) on the basis of declaration forms 'F' submitted by the dealers.

However, the AOs did not mention anything about verification of the declaration forms submitted by the dealer as instructed by CT, Assam though the dealers had stock transfer to other North Eastern States.

A limited cross verification by Audit of the declaration forms based on which the exemption from payment of tax were granted in the above cases revealed the following:

- In case of M/s Vinay Cements Ltd., a dealer M/s S.K. Enterprise, Banderdewa, AP who issued 15 declaration forms covering transaction of ₹ 2.86 crore and ₹ 2.06 crore for 2004-05 and 2005-06 respectively was not registered in the Taxation Department of AP.
- In case of the other dealer, two dealers M/s Binod Enterprises, Itanagar and M/s Sangam Enterprise, Naharlagun who issued nine declaration forms 'F' covering transaction of ₹ 46.02 lakh and ₹ 33.02 lakh for 2005-06 and 2006-07 respectively were not registered in the Taxation Department of AP.

These facts would have come to the knowledge of the AOs had they got the declaration forms verified with their counterparts in AP as instructed by the CT, Assam and fraudulent claims of stock transfer by the dealers of Assam could have been detected. Failure to do so by the AOs resulted in non-detection of invalid declaration forms and consequent non-levy of tax of ₹ 63.75 lakh (M/s Vinay Cements Ltd) and ₹ 9.88 lakh<sup>6</sup> (M/s Assam Co-operative Jute Mills Limited) on which, interest of ₹ 1.01 crore and ₹ 9.78 lakh (calculated upto the date of Audit) respectively was additionally leviable.

After this was pointed out, the Department stated (July 2013) that the assessments in respect of the first dealer for the year 2004-05 and 2005-06 had been revised and demand notice for ₹ 1.67 crore (including interest) was raised, of which, the dealer had paid ₹ 60 lakh (May 2013). As regards the other dealer, the Department stated that the assessments had been revised under Section 37(1) of the AVAT Act and demand notice was raised for ₹ 1.28 crore including interest and penalty for the years 2005-06 and 2006-07. Report on recovery of balance amount in the first case and recovery in the second had not been received (September 2013).

The case was reported to the Government between February and October 2012 and followed up in March 2013; reply has not been received (September 2013).

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<sup>6</sup> Calculated at the rate of 12.5 per cent on ₹ 79.04 lakh (₹ 46.02 lakh + ₹ 33.02 lakh).

**2.15 Assessment of sale price of coal at rates lower than those applicable at the source of coal in Meghalaya resulted in short levy of tax of ₹ 1.24 crore, on which interest of ₹ 40.21 lakh was additionally leviable.**

[Superintendent of Taxes (ST), Jalukbari and Kabaitari Check Posts; June and September 2012]

The Government of India, Ministry of Coal vide its order GSR 522 (E) dated 1 August 2007 revised the rate of royalty per MT of coal from ₹ 165 to ₹ 130 plus five *per cent* of pithead price of coal with effect from 1 August 2007. Accordingly, the Government of Meghalaya after detailed survey and analysis, has fixed the rate of royalty at ₹ 290 considering pithead price (at the coal fields in Meghalaya) of coal as ₹ 3,200 per MT. Thus, minimum value of each MT of coal in Meghalaya is worked out to ₹ 3,490 excluding profit element of the selling dealer in Meghalaya as well as the transportation charges for transporting of coal from Meghalaya to Assam.

During scrutiny of records in the above office, it was observed that the AO while assessing 22 dealers between July 2009 and September 2011 for the years 2008-09 and 2009-10, enhanced the sale value of Meghalaya based coal as disclosed by the dealers and determined the same between ₹ 2,500 and ₹ 3,000 per MT. The assessments were accordingly completed determining aggregate turnover as ₹ 186.08 crore on 6.21 lakh MT coal.

Since the dealers had paid advance tax in the shape of additional security, the same was set off against the tax payable and the balance security was allowed as excess to be carried over to the next assessment periods.

It was observed that the rate of coal per MT in respect of the Guwahati based dealers for the year 2008-09 and 2009-10 was determined by the AO at price (₹ 2,500 and ₹ 3,000 per MT) which was lower than the minimum value of per MT of coal in Meghalaya *i.e.* ₹ 3,490 during 2007, without the profit element of the Meghalaya based dealer and the transportation cost involved in carrying the mineral to Guwahati. The short determination of aggregate turnover of the dealers was to the tune of at least ₹ 30.92 crore resulting in short levy of tax of ₹ 1.24 crore on which interest of ₹ 40.21 lakh was additionally leviable (calculated upto June 2012).

After this was pointed out, the Department stated (June 2013) the following:

- The Government of Meghalaya determined the pit value of coal to fix the Royalty. The actual sale value of coal may not be as determined by Government of Meghalaya for fixation of Royalty.
- The price of commodity like coal is dependent on a number of factors such as market force, various grades/quality of coal and other issues.

- The Hon'ble Supreme Court<sup>7</sup> has held- if the returns are substantiated and the figures disclosed therein are verifiable from the account books in which no defect is noted, the AO is not legally empowered to reject the account version and to proceed to make assessment on best judgment in disregard of the accounts books.

The replies furnished as per the first two bullets are not convincing as the Government of Meghalaya has conducted a detailed market survey while fixing the pit head price of coal which has duly taken into consideration the ups and downs of the market of coal and other corresponding elements like quality/grades of coal etc. Further, Meghalaya based coal are among the best quality coal available in the country. The replies at third bullet is not acceptable as the AO has rejected the turnover (sale value per MT of coal) disclosed by the dealers and had enhanced that to a uniform figure in respect of all the assessment cases referred by Audit. The AO had specifically mentioned in the assessment proceedings that the turnover returned by the dealers was lower than the prevalent market rate and hence the same were being enhanced. Thus, while determining the market rate, the AO should have also ascertained the pit head price of coal in Meghalaya which was done by Audit. That would have enabled him to determine the sale value of coal on more sound principles.

The case was reported to the Government/department in July 2012 and followed up in April 2013; reply has not been received (September 2013).

### **2.16 Concealment of purchase turnover.**

[ACT, Unit C, Guwahati; January- March 2012]

The AVAT Act read with the CST Act provides that if any dealer conceals or fails to fully disclose the particulars of his turnover, the AO may, within eight years from the date of relevant years, make an assessment/re-assessment of the dealer.

**'Glass' was taxable at 12.5 per cent under the AVAT Act.**

During scrutiny of the records of M/s Ghosh Brothers Motors Pvt. Ltd. (dealing in Motor Vehicles and Spare Parts), it was observed that the dealer furnished the annual return for the year 2008-09 disclosing the purchase value of goods brought from outside Assam at ₹ 7.66 crore. Another dealer M/s Balaji Agencies (dealing in Glass), furnished the annual returns for the years

2005-06 and 2006-07 disclosing the purchase value of goods brought from outside Assam at ₹ 50.19 lakh and ₹ 95.65 lakh respectively.

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<sup>7</sup> The Commissioner Sales Tax, UP, Lucknow Vs Saurashtra Chemicals [1996] 100 STC 0448-(All).

However, scrutiny of the utilisation statements of form 'C' furnished by the dealers revealed that the dealers had actually purchased goods from outside the State valued at ₹ 14.86 crore (M/s Ghosh Brothers Motors Pvt. Ltd. during 2008-09) and ₹ 67.86 lakh & ₹ 1.36 crore respectively (M/s Balaji Agencies during 2005-06 & 2006-07). Thus, there was concealment of purchase turnover of ₹ 7.78 crore<sup>8</sup> which resulted in short payment of tax of ₹ 97.30 lakh<sup>9</sup> and interest of ₹ 51.16 lakh<sup>10</sup> (calculated upto the date of Audit).

After this was pointed out, the concerned ACT stated (July 2013) that in respect of the first case the assessment was completed for the year 2008-09 levying tax of ₹ 1.69 crore of which the dealer paid ₹ 70.81 lakh. The ACT further stated that since the dealer had failed to pay the balance dues of ₹ 98.28 lakh and interest of ₹ 57.50 lakh, recovery certificate of ₹ 1.56 crore (adding further interest) was issued. Report on realisation of balance amount has not been received (September 2013). In respect of the other case, the ACT stated (July 2012) that the assessments were completed for the years 2005-06 and 2006-07 levying tax of ₹ 12.73 lakh and ₹ 14.98 lakh against which the dealer paid ₹ 0.76 lakh and ₹ 1.58 lakh respectively. Report on realisation of balance amount has not been received (September 2013).

The case was reported to the Government in April 2012 and followed up in March 2013, further reply of recovery has not been received (September 2013).

<sup>8</sup> ₹ 7.20 crore – M/s Ghosh Brothers Motors Pvt Ltd for 2008-09 and ₹ 17.67 lakh and ₹ 40.05 lakh – M/s Balaji Agencies during 2005-06 and 2006-07 respectively.

<sup>9</sup> ₹ 90.09 lakh (M/s Ghosh Brothers Motors Pvt Ltd) + ₹ 7.22 lakh (M/s Balaji Agencies).

<sup>10</sup> ₹ 44.59 lakh (M/s Ghosh Brothers Motors Pvt Ltd) + ₹ 6.57 lakh (M/s Balaji Agencies).

**2.17 Incorrect grant of concession against invalid and obsolete declaration form.**

[ACT, Unit A, Guwahati; July- September 2012]

Under the CST Act, 1956 as it stood during the relevant years, inter-State sales of goods, other than declared goods, to the registered dealers if supported by valid declaration in form 'C' are taxable at the concessional rate of **four/three/two per cent**. Otherwise, tax was leviable at the rate of 10 per cent, or rate of tax applicable to sale of such goods within the State, whichever is higher upto March 2007 and thereafter at the rate applicable within the State.

The CT, Nagaland, in his letter of February 2002 intimated the CT, Assam regarding cancellation of a series of declaration forms 'C' with effect from 11 June 2001. The information was duly circulated to all the unit offices by the CT, Assam in December 2002 to be taken note of at the time of finalising assessments.

During 2005-06 and 2006-07, **LPG** and **SKO** were taxable at the rate of four and 12.5 per cent respectively while **Asphalt** was taxable at the rate of 22 per cent upto 3 February 2008 and at the rate of four per cent from 4 February 2008 and **Lubes** was taxable at the rate of 12.5 per cent in Assam.

It was observed that the AO while finalising the assessments of M/s Indian Oil Corporation Limited (IOCL) for the years 2005-06 and 2006-07 and M/s Hindustan Petroleum Corporation Limited (HPCL) for the year 2007-08 between March 2011 and February 2012 allowed concessional rate of tax on turnover of ₹ 232.09 crore, ₹ 281.61 crore and ₹ 17.42 crore respectively. Scrutiny of declaration in form 'C' on the basis of which concessional rates of tax was allowed, revealed that inter-State sales amounting to ₹ 1.49 crore and ₹ 1.22 crore during 2005-06 and 2006-07 of M/s IOCL and ₹ 1.60 crore during 2007-08 of M/s HPCL respectively were supported by declaration forms 'C' which

had been declared invalid by the Government of Nagaland. Thus, inaction on the part of the AO to take note of the circular of the CT, Assam in this regard resulted in irregular allowance of concessional rate on the turnover covered by invalid declaration forms and short levy of tax of ₹ 31.17 lakh and interest of ₹ 28.96 lakh (calculated upto the date of Audit).

After this was pointed out, the Department in respect of M/s IOCL stated (June 2013) that the dealer had replaced 12 out of 13 invalid declaration forms. However, in the other case the Department stated that the assessments had been revised raising a demand of ₹ 43.89 lakh (including interest). As the dealers failed to pay the demanded tax, arrear certificate for ₹ 45.42 lakh (adding further interest) was issued in May 2013. Report on recovery has not been received (September 2013).



The action of the AO in allowing the dealer M/s IOCL to replace the invalid declaration forms after the same was pointed out by Audit and without further verification was highly irregular and was in stark contrast with the other case where the same AO had assessed the dealer levying tax and interest. Further, in a similar case (of M/s Essar Oil Limited) the same AO had sent the new declaration forms submitted by the dealer to the concerned State for authentication and also the Department is contemplating to send the AO to that State to personally investigate the case (para 2.13 refers). Reasons for setting different standards for different dealers by the same AO needed to be elucidated by the higher authorities of the Department, which was not done.

**Recommendation No. 3:** *The Department may ensure that the new declaration forms submitted by M/s IOCL are dealt in a similar manner as was done in the case of M/s Essar Oil Limited.*

The case was reported to the Government in October 2012 and followed up in March 2013, reply has not been received (September 2013).

### **2.18 Non-initiation of best judgment assessment by the AO resulted in non-realisation of tax.**

[ST, Goalpara, October 2012]

Under the provisions of AVAT Act, every registered dealer is required to submit annual return of turnover, pay the admitted tax within the prescribed date and produce books of accounts to the AO as and when asked for. Otherwise, the AO shall complete the assessment on best judgment basis and determine the tax payable by him. Section 43 of the AVAT Act provides that where a dealer fails to pay tax within thirty days from the date of serving notice, the dues shall be recoverable as arrears of land revenue.

**‘Coal’** was taxable at four *per cent* with effect from 31 October 2009 under Schedule III and five *per cent* with effect from 21 July 2011 under Schedule II of the AVAT Act.

During scrutiny of the records of a dealer M/s T.R.Enterprise, (dealing in coal only) in the above office, it was noticed that assessment for the year 2008-09 and 2009-10 was completed in June 2010 and June 2011 respectively and tax of ₹ 61.67 lakh (2008-09) and ₹ 21.55 lakh (2009-10) was levied. Out of this, the dealer paid total taxes of ₹ 56.82 lakh (admitted tax paid along with returns) leaving a balance of ₹ 26.40 lakh. The dealer neither paid the balance tax nor submitted monthly/

annual returns since 2010-11 till the date of audit which was required as per provision under the AVAT Act. Yet, the AO did not proceed to refer the case to the RO for recovering the dues as arrears of land revenue.

It was further observed that for non-submission of returns, show cause notices were issued by the AO between June and September 2011. From the show cause notice it was observed that the dealer had despatched 26,404.20 M.T. and 21,120 M.T. coal during the year 2010-11 and 2011-12 respectively through railway rakes to destinations outside the State of Assam from different railway stations. However, despite (i) initiating the proceedings for assessing the dealer for the years 2010-11 and 2011-12 between June and September 2011 and (ii) availability of specific information on dispatch of coal, the AO did not complete the assessments on best judgment basis. This resulted in non-realisation of tax of ₹ 79.84 lakh and interest ₹ 14.50 lakh (calculated upto the date of Audit). The omission on the part of AO to take timely action resulted in possibility of recovery of tax and interest of ₹1.21 crore<sup>11</sup> becoming doubtful.

After this was pointed out, the Department stated (July 2013) that for the years from 2008-09 to 2011-12, demand notice for total dues of ₹ 1.19 crore had been raised. Report on recovery has not been received (September 2013).

The case was reported to the Government in November 2012 and followed up in April 2013; reply has not been received (September 2013).

### **2.19 Non-verification of utilisation of declaration forms resulted in non-detection of suppression of turnover**

[ACT, Unit D, Guwahati, November - December 2011]

Under Section 33(1) of AVAT Act, every return in relation to any period furnished by a registered dealer shall be subject to scrutiny by the prescribed authority to verify the correctness of full payment of tax and interest payable by the dealer during such period.

As per Section 39 of the AVAT Act, no assessment shall be made after the expiry of five years from the end of the year to which the assessment relates. However, in cases where specific information is available, assessment can be made on best judgment basis under Section 40 of AVAT Act as a special case within a period of eight years after allowing the dealer an opportunity of being heard.

Scrutiny of records of M/s T.V.S. Motor Company Ltd. (dealing in Motor Cycle, Motor Parts etc.) revealed that the dealer disclosed in the annual return for 2007-08 the receipt of taxable goods from outside the State at ₹ 37.41 crore and the AO accepted the same during scrutiny of returns in March 2009. The utilisation/ requirement statements of form 'F' submitted by the dealer for the year 2007-08, however, showed that the dealer had

<sup>11</sup> ₹79.84 lakh + ₹14.50 lakh + ₹26.40 lakh (arrear of 2008-09 and 2009-10).

actually received goods from outside the state valued at ₹43.07 crore against ₹37.41 crore. Thus, the dealer concealed minimum turnover of ₹5.65 crore and evaded tax of ₹ 70.68 lakh. In addition to tax, interest of ₹45.59 lakh (calculated upto the date of Audit) on unpaid tax was additionally leviable.

After this was pointed out, the Department stated (July 2013) that the assessment have been revised raising a demand of ₹ 74.70 lakh as tax and ₹ 37.16 lakh as interest. Scrutiny of the reply revealed that the interest should have been calculated as ₹ 69.47 lakh (upto June 2013) instead of ₹ 37.16 lakh assessed by the AO. Report on recovery and reply of the AO on short assessment of interest had not been received (September 2013).

The case was reported to the Government in January 2012 and followed up in April 2013; reply has not been received (September 2013).

### 2.20 Short levy of interest.

[ACT, Unit A-Guwahati and Silchar; July- September 2012 and February – March 2012]

The AVAT Act provides that if a dealer fails to pay the full amount of tax payable by him by the due date, he is liable to pay interest at the rate of one and half *per cent* for each month on the amount by which the tax paid falls short.

Test check of records of the above unit offices revealed that four dealers M/s Assam Tea Brokers' Pvt. Ltd., M/s Cachar Traders, M/s Abhishek Motors Pvt. Ltd. and M/s Jatinga Tea Ltd. (A/c Urunabound Tea Estate) failed to pay full amount of tax payable for various years falling

between 2001-02 and 2007-08, by the due date. The AOs while finalising the assessments between January 2009 and March 2011 levied interest of ₹ 1.80 crore against actual liability of ₹ 2.52 crore resulting in short levy of interest of ₹ 71.73 lakh.

In another case, M/s SCL Cements Ltd failed to pay tax of ₹ 26.58 lakh payable for the year 2009-10 (between April 2009 and October 2009) by the due date. However, the AO while finalizing the assessment in January 2010 failed to levy interest of ₹ 14.67 lakh (calculated upto the date of Audit) for non-payment of tax.

After this was pointed out, the Department stated (June 2013) that all the assessments had been rectified raising a demand of ₹ 1.56 crore (after adding further interest) and arrear certificates were issued to the ST (Recovery), Guwahati in respect of first two dealers. Of this, the RO has realised ₹ 7.25 lakh in respect of the first dealer. Report on recovery of balance amount and initial reply in case of M/s SCL Cements Ltd had not been received (September 2013).

The case was reported to the Government between April 2010 and October 2012, followed up in March 2013; reply has not been received (September 2013).

**2.21 Double adjustment of treasury challan resulted in excess benefit awarded to the dealer coupled with short realisation of tax of ₹ 40 lakh on which interest of ₹ 38.40 lakh was also leviable.**

[ACT, Unit A, Guwahati; July- September 2012]

Under the AVAT Act and rules made thereunder, every registered dealer is required to submit a copy of treasury *challan* as a token of full payment of tax paid on his taxable turnover along with the monthly tax return/annual return of turnover.

Test check of records of the above unit revealed that the AO while finalising the assessment of M/s Abhishek Motors Pvt. Ltd. for the year 2006-07 during March 2012 adjusted ₹ 7.55 crore against the dealer's tax liability during the said period and allowed the claim of excess payment of tax of ₹ 28.69

lakh made by the dealer. In support of payment of ₹ 7.55 crore the dealer submitted 79 treasury *challans*.

Scrutiny of the treasury *challans* against which tax payable was adjusted revealed that two *challans*<sup>12</sup> valuing ₹ 20 lakh each furnished by the dealer at the time of assessment for the year 2005-06 were again furnished by the dealer, one in "ORIGINAL" and the other in "TRIPLICATE" to get credit against the year 2006-07 which the AO failed to detect.

Thus, non-detection of fraudulent claim of payment of ₹ 40 lakh submitted through two *challans* of 2005-06 against tax liability of 2006-07 by the AO resulted in double adjustment of ₹ 40 lakh and consequently the dealer got the undue benefit. This also led to short realisation of tax of ₹ 40 lakh. Besides, interest of ₹ 38.40 lakh (calculated upto the date of Audit) was additionally leviable.

After this was pointed out, the Department stated (June 2013) that the assessment was rectified and the dealer had paid the entire dues as pointed out by Audit. However, reasons for not initiating penal measures while reassessing the dealer for fraudulently claiming tax credit was neither mentioned in the reassessment order.

The case was reported to the Government in October 2012 and followed up in April 2013; reply has not been received (September 2013).

<sup>12</sup> Challan No. 10355 dated 27/12/2006 (vide cheque Nos. 057544 and 057545 dated 8/12/2006) and Challan No. 9944 dated 27/12/2006 (vide Cheque Nos.057546 and 057547 dated 29/11/2006).

**2.22 Irregular grant of concessional rate of tax on inter-State sales against certificate in Form 'D'.**

[ACT, Unit A, Guwahati; July- September 2012]

Under the CST Act, a dealer, who in course of inter-State trade or commerce sells to Government departments, any goods, other than declared goods, is liable to pay tax at the concessional rate of **four per cent** if sales are supported by valid and duly filled in certificates in Form 'D'. Otherwise, tax is payable at the rate of **10 per cent** or at the rate of tax applicable under the State Act, whichever is higher. In addition, interest at the prescribed rate is also leviable.

**'Transformer'** was taxable at **12.5 per cent** from May 2005 under AVAT Act.

It was observed that the AO while finalising the assessment of M/s Prag Electricals Pvt. Ltd. (manufacturer and trader) for the year 2006-07 during October 2010 allowed concessional rate of tax of **four per cent** on turnover of ₹ 6.06 crore on inter-State sales of 'Transformer' on the basis of certificate in form 'D' submitted by the dealer.

But scrutiny of certificate in form 'D' revealed that out of inter-State sales against certificate in form 'D' for ₹ 6.06

crore against concessional rate of tax, the dealer submitted certificate in form 'D' for ₹ 4.57 crore of the Deputy General Manager (Material Management), Electrical Stores Division, Tripura State Electricity Corporation Ltd., (A Government of Tripura Undertaking), Agartala. Since, Tripura State Electricity Corporation Ltd. was a 'Corporation' and not a Government department, acceptance of certificate in form 'D' furnished by the 'Corporation' was irregular. Thus, allowance of concessional rate of tax by the AO resulted in short levy of tax of ₹ 37.40 lakh and interest of ₹ 35.90 lakh (calculated upto the date of Audit).

After this was pointed out, the Department stated (June 2013) that the dealer was re-assessed and a demand of ₹ 81.71 lakh (adding further interest) was raised and demand notice issued accordingly. Report on realisation has not been reported (September 2013).

The case was reported to the Government in October 2012 and followed up in March 2013; reply has not been received (September 2013).

**2.23 Incorrect grant of exemption of taxable goods as exempted goods.**

[ST, Mongoldoi, June 2012]

Section 2(20)(ii) of the AVAT Act states that **goods** means all materials, commodities and articles and all other kinds of movable property whether tangible or intangible and includes computer software, Subscriber Identification Module (SIM) Card and the like.

The Commissioner of Tax (CT), Assam in September 2010 clarified that SIM Cards are also 'goods' under the AVAT Act and should be taxed accordingly.

**'IT Software or any media'** was taxable at four *per cent* under the AVAT Act.

Test check of records of the above unit office revealed that M/s Easy Communication dealing in SIM Cards claimed exemption on turnover of ₹ 8.23 crore for 2005-06 and 2006-07. While scrutinising the dealer in February 2011, the AO allowed the exemption as claimed by the dealer, without mentioning the rationale or the provision of the AVAT Act under which the exemption was allowed. The exemption was irregular as the dealer dealt in

SIM Cards which are taxable as per the provisions of Section 2(20)(ii) of the AVAT Act and also clarified by CT, Assam. Thus, incorrect grant of exemption resulted in non-levy of tax of ₹ 32.92 lakh and interest of ₹ 30.34 lakh (calculated upto the date of audit).

After this was pointed out, the ST, Mangaldoi stated (June 2013) that SIM Cards had no intrinsic value and it is supplied to the customers for providing mobile service to them and thus it is not taxable. The fact remains that SIM Cards are taxable as per the provisions of the AVAT Act as well as the clarification of the CT, Assam.

The case was reported to the Government in April 2012 and followed up in April 2013; their reply has not been received (September 2013).

### 2.24 Non-levy of additional tax.

[ACT, Silchar; February-March 2012]

Under the AGST Act, 1993, additional tax at the rate of 10 *per cent* of the tax payable by the dealer is to be levied with effect from 5 June 1998. The provisions of the State Act apply *mutatis mutandis* in case of assessment/reassessment under the CST Act. Further, the CT, Assam clarified on 30 March 2004, that additional tax is payable on inter-State sales of goods, not supported by 'C' or 'D' forms attracting local rate of tax exceeding nine *per cent*. Inter-State sales not supported by declaration in forms 'C'/'D' are to be taxed at 10 *per cent* or rate of tax of the State, whichever is higher. Besides, interest, as applicable, is also leviable on unpaid tax.

Further, under the CST Act when any dealer claims exemption from payment of tax in respect of any goods by reason of transfer of such goods to any other place of his business out of the State, he may furnish to the AO, a valid declaration in form 'F' duly filled in and signed by the transferee alongwith evidence of dispatch of such goods. As per the amended provision of the CST Act, declaration in form 'F' is mandatory with effect from 11 May 2002. If the dealer fails to furnish such declaration, the movement of goods shall be deemed for all purposes to have been occasioned as a result of sale.

**'Cement'** was taxable at 13.2 *per cent* including additional tax of 10 *per cent* at the point of first sale to a person other than registered dealer under the AGST Act.

certificate had been issued to the Recovery Officer, Silchar. The reply was silent regarding short raising of demand by ₹ 4.01 lakh as pointed by Audit (₹ 60.96 lakh minus ₹ 56.95 lakh). Report on realisation had not been received (September 2013).

The case was reported to the Government/department in April 2012 and followed up in April 2013; reply has not been received (September 2013).

Test check of records of the ACT, Silchar (between February and March 2012) revealed that the AO completed assessment of M/s Cachar Traders during February 2011 for the years 2002-03, 2003-04 and 2004-05 indicating turnover of ₹ 3.67 crore, ₹ 5.75 crore and ₹ 8.49 crore respectively which were not supported by declaration in forms 'C'/'D'/'F' under the CST Act. The AO while finalising the assessments, levied tax at the rate of 12 *per cent* but did not levy additional tax. This resulted in non-levy of additional tax of ₹ 21.50 lakh. Besides, interest of ₹ 39.46 lakh (calculated upto the date of Audit) was also leviable on unpaid amount of tax.

After this was pointed out, the Department stated (June 2013) that the assessments for the years from 2002-03 to 2004-05 were rectified and revised demand of ₹ 56.95 lakh was issued. For non-realisation of dues, arrear

**2.25 Irregular grant of concessional rate of tax due to acceptance of declaration in form 'C' of unregistered dealer.**

[ACT, Unit A, Guwahati; July- September 2012]

Under the CST Act, inter-State sales of goods, other than declared goods, to the registered dealers if supported by valid and duly filled in declaration in Form 'C' are taxable at the concessional rate of **two per cent**. Otherwise, tax is payable at the rate of tax applicable under the State Act. In addition, interest at the prescribed rate is also leviable.

**'Motor Spirit (MS)' and 'Diesel (HSD)' were taxable at 27.5 per cent and 16.5 per cent respectively w.e.f. 4 June 2009.**

It was observed that the AO while finalising the assessment of M/s Essar Oil Ltd. for the years 2010-11 during July 2012 allowed concessional rate of tax of two *per cent* on turnover of ₹ 55.41 crore on inter-State sales of MS and HSD on the basis of declaration forms 'C' submitted by the dealer.

Scrutiny of Form 'C' revealed that out of total inter-State sales of ₹55.41 crore to registered dealers, the dealer submitted one Form 'C' No. NL 079672

indicating transaction of ₹ 2.11 crore made with a dealer of Nagaland between 6 July 2010 and 27 September 2010 for ₹ 2.11 crore<sup>13</sup> of a dealer of Nagaland whose registration was valid from 1 October 2010. Thus, transaction made prior to registration of the purchasing dealer of Nagaland resulted in fraudulent claims of inter-State sales against concessional rate of tax. Non-detection of invalid declaration form of unregistered dealer by the AO resulted in short levy of tax of ₹ 41.98 lakh and interest of ₹ 10.08 lakh (calculated upto the date of Audit).

After this was pointed out, the ACT, Unit A stated that against a show cause notice issued on 1 October 2012, the dealer stated that the purchasing dealer of Nagaland was registered from 16 November 2007. The reply was not tenable as it was noticed that the Taxation Authority of Nagaland issued the Registration Certificate to the dealer of Nagaland on 21 November 2012 (*i.e.* after issuing the show cause notice) by fixing the liability from 16 November 2007. Also, Audit had verified the TINXSYS<sup>14</sup> website and the transaction details of 'C' form no. NL 079672 was not found.

The case was reported to the Government in October 2012 and followed up in April 2013; reply has not been received (September 2013).

<sup>13</sup> MS of ₹1,11,08,158 and HSD of ₹99,98,929 = ₹2,11,07,087

<sup>14</sup> Tax information exchange system – A website for online verification of declaration forms.



## 2.26 Underassessment of tax.

[ACT, Jorhat, February – March 2012]

As per Section 39 of the AVAT Act, no assessment shall be made after the expiry of five years from the end of the year to which the assessment relates. However, in cases where specific information is available and the AO has reason to believe that tax has been underassessed, he may assess/re-assess the dealer on best judgment basis under Section 40 of the AVAT Act as a special case within a period of eight years after allowing the dealer an opportunity of being heard.

**‘Conductor’** was taxable at 12.5 per cent from 1 May 2005 under the AVAT Act.

It was observed that the AO while scrutinising the annual return for the year 2007-08 in September 2010 of M/s Singhi Cables & Conductors Pvt. Ltd. dealing in ‘Conductor’, levied tax at four per cent instead of 12.5 per cent on turnover of ₹ 4.03 crore resulting in short levy of tax of ₹ 29.09 lakh. Besides, interest of ₹ 19.63 lakh (calculated upto the date of Audit) was additionally leviable.

Scope of recovery is remote as the case has become time barred. However, the Department should resort to reassessment of the dealer on

best judgment basis as a special case under Section 40 of the AVAT Act.

After this was pointed out, the Department stated (July 2013) that the assessment had been revised raising a demand of ₹ 48.94 lakh (including interest and penalty). As the dealer failed to pay the demanded tax, arrear certificate for ₹ 53.05 lakh (adding further interest) was issued in July 2013. Report on recovery has not been received (September 2013).

The case was reported to the Government in April 2012 and followed up in April 2013; reply has not been received (September 2013).

**2.27 Fraudulent use of declaration form issued in the name of other dealer resulted in evasion of tax**

[ACT, Unit A, Guwahati; July- September 2012]

Under the CST Act, inter-State sales of goods, other than declared goods, to the registered dealers if supported by valid and duly filled in declaration in Form 'C' are taxable at the concessional rate of four *per cent*. Otherwise, tax is payable at the rate of 10 *per cent* or at the rate of tax applicable under the State Act, whichever is higher. In addition, interest at the prescribed rate is also leviable.

The CT, Assam instructed (May and September 1999) all the AOs to examine very carefully the claims of inter-State sales and to cross verify Central Sales Tax declaration forms submitted by some unscrupulous dealer for sale of 'Cement' to North-Eastern States, and to verify the transaction while making the assessment and ensure that no false claim of such inter-State sales is accepted. The CT, Assam also directed to take appropriate action against the dealer as well as to the AOs for such evasion of taxes.

'Cement' was taxable at 12.5 *per cent* from May 2005 under AVAT Act.

It was observed that the AO while finalising the assessment of M/s R.C.L. Cements Ltd. (manufacturer and trader) for the years 2006-07 during January 2010 allowed concessional rate of tax of four *per cent* on turnover of ₹ 3.47 crore on inter-State sales of 'Cement' on the basis of declaration forms 'C' submitted by the dealer. However, the AO did not mention anything about verification of the declaration forms submitted by the dealer as instructed by CT, Assam though the latter had inter-State sales to other North Eastern States.

On scrutiny of three declaration forms covering transaction of ₹ 2.98 crore issued by a dealer M/s Krishna Trading Co., Kohima Road, Dimapur, Nagaland having CST and VAT

Registration No. 13040008171 and No. 13040109013 respectively it was found that the registration numbers actually belonged to M/s Karnex Trading Co., Kohima Road, Dimapur, Nagaland. Audit also verified the genuineness of the dealer through TINXSYS and it revealed that the dealer M/s Krishna Trading Co., Dimapur was not registered in the Taxation Department of Nagaland and illegally used the registration number of M/s Karnex Trading Co., Dimapur in the fake declaration forms. Such fraudulent use of declaration forms resulted in short levy of tax of ₹ 24.38 lakh and interest of ₹ 23.40 lakh (calculated upto the date of Audit).

After this was pointed out, the Department stated (June 2013) that M/s Krishna Trading Co. was renamed as M/s Kernex Trading Co. on 21 March 2007. However, reply is not acceptable as three 'C' forms against which concession of tax was claimed were issued to the dealer by the Taxation Authority of Nagaland between 13 February 2008 and 21 May 2008 when the name had already been modified.

The case was reported to the Government in October 2012 and followed up in March 2013, reply has not been received (September 2013).

**2.28 Non-detection of stock transfer of goods not supported by declaration forms resulted in non-levy of tax.**

[ACT, Unit D, Guwahati, November - December 2011]

The CST Act provides that a dealer may claim exemption from payment of tax of any goods by reason of transfer of such goods to any other place of his business out of the State, he may furnish to the assessing authorities declaration in Form 'F' along with the evidence of dispatch of such goods failing which tax at the prescribed rate is to be charged.

It was noticed that while assessing M/s Wimco Ltd. (dealing in Safety Matches) for the years 2007-08 and 2008-09 in March 2010 and June 2010 respectively, the AO did not levy any tax on account of branch transfer of goods. From the audited accounts submitted by the dealer, it was observed that

during the years 2007-08 and 2008-09 the dealer made stock transfer of goods valued at ₹ 5.08 crore and ₹ 1.36 crore respectively which were neither disclosed by the dealer in the annual returns nor submitted 'F' form for such stock transfer. This resulted in non levy of tax of ₹ 25.78 lakh. In addition, interest of ₹ 16.03 lakh (calculated upto the date of Audit) was also leviable.

After this was pointed out, the Department stated (July 2013) that the dealer had produced requisite declaration forms for 2008-09 which had been accepted by the AO. As regards 2007-08, they stated that the stock transfer was wrongly shown by the CA as ₹ 5.08 crore instead of ₹ 1.20 crore. The error was due to copy paste of the figures of 2006-07 in the Audit Report for 2007-08 which was duly verified by the AO. Of the amount, the dealer could produce declaration forms covering transaction of ₹ 1.04 crore and thus, the balance turnover of ₹ 16.29 lakh was assessed as inter-State sale and tax of ₹ 0.56 lakh and interest of ₹ 0.55 lakh levied which had been paid by the dealer.

The case was reported to the Government/department in January 2012 and followed up in April 2013; reply has not been received (September 2013).

**2.29 Non-completion of assessment/scrutiny of return resulted in non-detection of short payment of tax and interest of ₹ 37.10 lakh**

[ACT, Nagaon, November-December 2011]

The AVAT Act provides that every registered dealer shall submit annual return of turnover, pay the admitted tax within the prescribed date and produce books of accounts. Otherwise, the AO shall complete the assessment on best judgment basis and determine the tax payable by him.

The CT, Assam vide circular dated 11 January 2007 instructed all the AOs to complete scrutiny of returns within 15 days of submission of returns. Also, the CT, Assam vide circular dated 19 January 2011 instructed to complete audit assessment up to 2009-10 under the AVAT and CST Acts within 30 June 2011.

Under the provision of the AVAT Act, 'Jute Products (except Raw Jute)' was taxable at the rate of 12.5 per cent under Sl. No. 1 of Schedule V up to 31 March 2008 and at the rate of four per cent under Schedule II with effect from 1 April 2008.

During scrutiny of records it was observed that Annual Return for the years 2007-08 and 2008-09 were submitted on 25 June 2008 and 2 January 2010 respectively by the dealer M/s Assam Co-operative Jute Mills Limited (manufacturer and seller of 'Jute Products'). However, it was noticed that neither scrutiny of Annual Return nor audit assessment under the AVAT and CST Act was done by the AO till November 2011.

Further, verification of Annexure 'B' of Audited Accounts along with Annual Report presented by the Board of Directors

revealed that the gross sales during 2007-08 and 2008-09 were ₹ 18.67 crore and ₹ 20.85 crore respectively (including freight, CST and AVAT).

However, the dealer while furnishing Annual Returns for the years 2007-08 and 2008-09 calculated tax on turnover of ₹ 17.15 crore and ₹ 19.86 crore respectively during self assessment. Thus, turnover of ₹ 1.52 crore and ₹ 99.43 lakh during the years 2007-08 and 2008-09 respectively escaped self assessment which resulted in short levy of tax of ₹ 22.99 lakh. Besides, interest of ₹ 14.11 lakh (calculated upto November 2011) was also leviable for non-payment of full tax.

Thus, due to non-scrutiny/non-assessment by the AO as per instruction of the CT, Assam, short payment of tax and interest of ₹ 37.10 lakh for the years 2007-08 and 2008-09 remained undetected.

After this was pointed out by Audit, the ACT, while accepting the audit observation, stated (July 2012) that the assessment had been completed under Section 37 of the AVAT Act and demand notice for ₹ 42.35 lakh was raised. Report on realisation has not been received (September 2013).

The case was reported to the Government in December 2011 and May 2012 and followed up in April 2013; reply has not been received (September 2013).

### 2.30 Application of lower rate of tax

[ACT, Unit A & D, Guwahati; July – September 2012 and November – December 2011 respectively]

As per Section 33 of the AVAT Act, every return shall be subject to scrutiny by the AO to verify, *inter-alia*, full payment of tax and interest payable by the dealer during the period of return.

The items '**Particle Board**' was taxable at 13.5 *per cent* with effect from 31 October 2009 as unspecified item (as clarified by CT Assam in October 2010) while 'coal tar' was taxable at 12.5 *per cent* between 1 May 2005 and 20 May 2012 under the AVAT Act.

Test check of records of the above unit offices revealed that M/s Shree Balaji Traders and M/s Kamakhya Coaltar Industries (manufacturer and seller of coal tar) while submitting the returns for the year 2010-11 and 2011-12 and 2007-08 and 2008-09 respectively classified 'Particle Board' involving turnover of ₹ 1.59 crore and 'coal tar' involving turnover of ₹ 82.01 lakh as taxable at five and four *per cent* respectively. The AO while scrutinising the annual returns of the dealers between December 2011 -

May 2012 and May 2009 – January 2010 accepted the application of rate of tax at five and four *per cent* instead of 13.5 *per cent*. This resulted in short levy of tax of ₹ 20.49 lakh and interest of ₹ 6.05 lakh (calculated upto the date of audit).

After this was pointed out, the Department stated (June 2013), that the assessments had been rectified and demand of ₹ 17.54 lakh and ₹ 11.38 lakh respectively (including interest) had been raised. Of this, ₹ 7.10 lakh had been recovered and for the balance amount recovery certificate had been issued. Further developments had not been reported (September 2013).

The case was reported to the Government between January and October 2012 and followed up in April 2013; reply has not been received (September 2013).

**2.31 Failure of the AO to take cognisance of the turnover reported in the audit report resulted in short determination of taxable turnover**

[ACT, Silchar; February- March 2012]

Under the AVAT Act, if any part of the turnover of a dealer in respect of any period escaped assessment to tax, the AO may within eight years from the end of the relevant year make a reassessment of the dealer. If a dealer fails to pay the full amount of tax payable by him by the due date, he is liable to pay interest at the rate prescribed on the amount of tax due.

**'IMFL/Beer'** were taxable at 24 per cent upto 31 March 2008 under the AVAT Act.

It was observed that the AO while finalising assessment of M/s Union Bonded Warehouse for the year 2005-06 in December 2009 determined taxable turnover at ₹ 13.35 crore. However, scrutiny of audited accounts as certified by the Chartered Accountant revealed that the dealer's sales during the period was ₹ 13.73 crore. Thus, turnover of ₹ 38.28 lakh escaped notice of the AO at the time of assessment which resulted in short levy of tax of ₹ 9.19 lakh and interest of ₹ 11.30 lakh.

After this was pointed out, the Department stated (June 2013) that the turnover between 1 May, 2005 and 31 March, 2006 was ₹ 13.35 crore and the remaining amount of ₹ 38 lakh related to the month of April 2005. The Department also furnished the copy of the revised Audit Report for the period May 2005 to March 2006 and monthly return as submitted by the dealer for April 2005 under the AGST Act, 1993. However, scrutiny of the copy of the monthly return now furnished by the Department indicated that the same was not dated and docketed by the concerned office of the AO and as per the circular of CT, Assam issued in May 2001, such returns are not acceptable. Besides, the return does not mention the details of payment of tax *i.e.* date and *challan* number through which the payment has been made. The Department should have verified these before forwarding the documents to Audit which was not done. The matter has been referred back to the Department; their reply has not been received (September 2013).

The case was reported to the Government in April 2012 and followed up in April 2013; reply has not been received (September 2013).

**2.32 Non-detection of suppression of purchase turnover and inter-State sales not covered by declaration forms led to short levy of tax and interest of ₹ 19.46 lakh.**

[ACT, Unit D, Guwahati, November - December 2011]

Section 33(1) of the AVAT Act provides that all returns shall be subjected to scrutiny to verify the correctness of calculation, input tax credit claimed therein and application of correct rate of tax and interest payable by the dealer.

Under the CST Act, a registered dealer is eligible to certain concession of tax on inter-State transactions subject to submission of form 'C'. Otherwise, tax is leviable at the rate of tax applicable under the State Act.

However, in cases where specific information regarding turnover escaping is available, re-assessment can be made on best judgment basis under Section 40 of AVAT Act as a special case within a period of eight years after allowing the dealer an opportunity of being heard.

During test check of records of M/s Subham Glass Agency dealing in 'Glass', it was noticed that the dealer in his annual return for 2008-09 disclosed turnover of ₹ 1.03 crore (intra-State: ₹ 12.31 lakh and inter-State sales: ₹ 90.20 lakh). The AO also while finalising scrutiny/ assessment between September and November 2010 accepted the disclosed turnover and levied tax of ₹ 3.64 lakh (₹ 1.54 lakh on intra-State sales and ₹ 2.10 lakh on inter-State sales). Audit scrutiny of related records revealed that the dealer had disclosed opening stock of goods as ₹ 85.75 lakh and closing stock as 'nil'. The dealer also disclosed inter-State purchase during the year as 'nil'. Verification of

utilisation/ requirement statements of form 'C' further revealed that the dealer actually purchased goods valued ₹ 76.91 lakh during the aforesaid year. Considering the above, the turnover of the dealer for the above year should not have been less than ₹ 1.63 crore (opening stock: ₹ 85.75 lakh + purchases: ₹ 76.91 lakh – closing stock: Nil). Of this, the dealer submitted form 'C' covering transactions of ₹ 36.61 lakh only and disclosed intra-State sales as ₹ 12.31 lakh. Thus, concessional rate of tax should have been restricted to ₹ 36.61 lakh only and the remaining turnover of ₹ 1.14 crore should have been determined as intra-State sales. Failure of the AO to properly assess/scrutinise the returns despite information of discontinuance of business of the dealer from March 2009 and availability of supporting documents led to non-detection of the suppressed turnover and consequent short levy of tax of ₹ 13.15 lakh. Besides, interest of ₹ 6.31 lakh (calculated upto the date of Audit) was also leviable.

Thus, the AO has the only option of resorting to assessing the dealer under section 40 of the AVAT Act and proceed to recover the tax and interest

through recovery proceedings. Otherwise, the possibility of recovery of tax and interest of ₹ 19.46 lakh is remote.

After this was pointed out, the Department stated (July 2013) that assessment had been revised and demand for ₹ 30.08 lakh was raised. Report on realisation had not been received (September 2013).

The case was reported to the Government in January 2012 and followed up in April 2013; reply has not been received (September 2013).

### **2.33 Non-verification of the outside purchase available in the case records resulted in non-detection of evasion of tax**

[ACT, Unit D, Guwahati, November - December 2011]

Under Section 33(1) of AVAT Act, every return in relation to any period furnished by a registered dealer shall be subject to scrutiny by the prescribed authority to verify the correctness of full payment of tax and interest payable by the dealer during such period.

As per Section 39 of the AVAT Act, no assessment shall be made after the expiry of five years from the end of the year to which the assessment relates. However, in cases where specific information is available, assessment can be made on best judgment basis under Section 40 of AVAT Act as a special case within a period of eight years after allowing the dealer an opportunity of being heard.

During scrutiny of records of M/s Shree Distributors (dealing in Electronic goods only), it was observed that the dealer disclosed outside purchase/ stock receipt during the year 2005-06 as 'nil'. The AO also while scrutiny of annual return of turnover for the year 2005-06 in May 2009 accepted the return and levied tax accordingly. Scrutiny of requirement list of form 'F' revealed that during the year 2005-06 the dealer had received goods from outside the State by way of stock transfer worth ₹ 1.09 crore. Thus, the dealer concealed taxable turnover of ₹ 1.09 crore and evaded tax of

at least ₹ 4.36 lakh on which interest of ₹ 4.45 lakh (calculated upto the date of Audit) was also leviable. In addition, penalty of ₹ 8.72 lakh for concealment of turnover was also leviable.

After this was pointed out, the Department stated (May 2012) that the assessment had been revised and demand notice for ₹ 17.23 lakh (being tax, interest and penalty) was raised. As the dealer failed to pay the demanded tax, the case was transferred to ST (Recovery), Guwahati in March 2013 to recover the demand of ₹ 17.31 lakh by levying additional interest. Report on realisation has not been received (September 2013).

The case was reported to the Government/department in January 2012 and followed up in April 2013; reply has not been received (September 2013).



**2.34 Delay in assessment/non-issuance of recovery certificate resulted in non-recovery of revenue.**

[ST, Goalpara; October 2012]

Under the provisions of the AVAT Act, every registered dealer is required to submit return of turnover, pay the admitted tax within the prescribed date and produce books of accounts to the AO as and when asked for. Otherwise, the AO shall complete the assessment on best judgment basis and determine the tax payable by him. The AVAT Act further provides that if the dealer fails to pay the tax demanded within one month, the AO would proceed to recover the dues as arrears of land revenue.

During scrutiny of case records of M/s Seven Sister Enterprise dealing in coal only it was noticed that the dealer submitted monthly/annual returns for the year 2008-09 and defaulted in submission of monthly/annual returns since April 2009. It was noticed that though the AVAT Act provided for taking up assessments on best judgment basis in case of non- submission of returns and payment of tax, it was only in August 2010 the AO assessed the dealer and levied tax and interest

of ₹ 33.51 lakh. The dealer, however, paid tax of ₹ 22.38 lakh (August 2011). Though the dealer failed to pay the balance tax of ₹ 11.13 lakh, the AO did not issue (September 2012) arrear certificate to recover the dues as arrear of land revenue as per provisions of the AVAT Act. Thus, there was gap of 16 months in the first phase (date of non-submission of return and date of best judgment assessment) and 13 months (date of part payment of taxes and date of audit till when arrear certificate was not issued). This 29 months of delay ultimately helped the dealer to wind up his business and become untraceable leading to revenue of ₹ 11.13 lakh becoming irrecoverable.

After this was pointed out by Audit, the department stated (May 2013) that a demand of ₹ 14.93 lakh including further interest of ₹ 3.81 lakh was raised and sent to the Recovery Officer for realisation of the same as arrears of land revenue. Further reply received in July 2013 indicated that the Department had initiated to issue warrant of arrest against the dealer and had also identified some assets of the dealer which is being attached for recovery of tax. Further developments are awaited (September 2013).

The case was reported to the Government in November 2012 and followed up in April 2013; reply has not been received (September 2013).

### 2.35 Application of incorrect rate of tax.

[ACT, Dibrugarh, January - February 2012]

Under the provisions of the AVAT Act, in cases where specific information is available and the AO has reason to believe that tax has been underassessed, he may assess/re-assess the dealer on best judgment basis under Section 40 of the AVAT Act as a special case within a period of eight years after allowing the dealer an opportunity of being heard.

The item '**Pre-Stressed Concrete (PSC) Poles**' was taxable at 12.5 per cent and enhanced to 13.5 per cent from 31 October 2009 while the item '**Pre-Cast Concrete (PCC) Poles**' was taxable at 12.5 per cent till 30 October 2009 which was reduced to five per cent from 31 October 2009.

It was observed that M/s Sigma Liners Private Limited paid tax at five per cent on turnover of ₹ 71.07 lakh which was accepted by the AO while completing the scrutiny for the year 2009-10 in August 2010. However, as the dealer dealt in 'PSC Pole', tax at 12.5 per cent was leviable on taxable turnover of ₹71.07 lakh. This escaped the notice of the AO at the time of assessment resulting in non-detection of evasion of tax of ₹ 5.33 lakh on which interest of ₹ 1.68 lakh (calculated upto the date of Audit) was additionally leviable.

After this was pointed out, the Department stated (July 2013) that assessment has been revised and demand notice for ₹ 8.84 lakh (including interest of ₹ 3.15 lakh) was issued (May 2013). Report on realisation has not been received (September 2013).

The case was reported to the Government/department in March 2012 and followed up in April 2013; reply has not been received (September 2013).

## OTHER TAXES

**2.36 Non-scrutiny of returns resulted in non-detection of short payment of entry tax of ₹ 1.19 crore.**

[ACT, Unit-A; Guwahati, July- September 2012]

As per the Assam Entry Tax (AET) Act 2001 and 2008, every registered dealer liable to pay tax under the Act shall submit to the AO his monthly statement of such purchase value before the expiry of the next succeeding month alongwith a *challan* or a crossed cheque or a crossed demand draft for the full amount of tax payable on the purchase value of the goods.

The CT, Assam instructed (May 2008 and January 2011) the AOs to complete scrutiny of returns under the AET Act from 2005-06 onwards by 31 March 2011.

The item '**Telecom Equipment**' was taxable at the rate of eight *per cent* under the AET Act.

During scrutiny of records of the above unit it was observed that a dealer M/s Bharat Sanchar Nigam Limited (BSNL) purchased 'Telecom Equipment' for ₹ 29.77 crore in April and May 2005. But the dealer submitted monthly statement of purchase in November 2009 showing payment of entry tax in January 2006 for ₹ 1.19 crore by calculating tax at the rate of four *per cent* instead of eight *per cent*. This resulted in short payment of entry tax of ₹ 1.19 crore.

Audit scrutiny of case records revealed that the dealer though delayed the submission of return, no action was initiated by the department till September 2012. Thus, non-scrutiny of returns resulted in non-detection of short payment of tax of ₹ 1.19 crore.

After this was pointed out, the ST while accepting the audit observation issued (September 2012) demand notice for ₹ 1.19 crore to the dealer which had been deposited by the dealer. However, while raising the demand the AO did not levy interest for delayed payment which was also payable by the dealer.

The case was reported to the Government/department in October 2012 and followed up in March 2013; reply has not been received (September 2013).

**2.37 Failure of the AO to take cognisance of the purchase turnover of a dealer resulted in short levy of entry tax.**

[ACT, Unit-A; Guwahati, July- September 2012]

The item **Telecom Equipments** and **Diesel Generator** were taxable at the rate of 8 *per cent* under the AET Act.

During scrutiny of the records of M/s Dishnet Wireless Ltd. (dealing in Telecom Equipments, Diesel Generator sets etc.) it was

observed that while assessing for the year 2008-09 (upto May 2008) during December 2009 the AO determined the import purchase of the dealer worth ₹ 1.60 crore as taxable at eight *per cent*. Further scrutiny of utilisation of road permits revealed that the dealer imported goods worth ₹ 13.40 crore which were also available in the case records of the dealer. Failure to include this turnover in the assessment resulted in short levy of entry tax of ₹ 94.37 lakh.

After this was pointed out, the Department stated (June 2013) that the dealer was re-assessed on June 2013 and levied tax of ₹ 51.81 lakh<sup>15</sup>. Later, at the time of assessment the AO found that the dealer had paid ₹ 42.40 lakh and balance amount of ₹ 9.41 lakh was paid by the dealer on 18 June 2013. However, evidence of payment of ₹ 42.40 was not made available during Audit, as the dealer was defaulter in payment of tax at the time of original assessment (October 2009) as well as at the time of Audit (September 2012).

The case was reported to the Government in October 2012 and followed up in March 2013, reply has not been received (September 2013).

**2.38 Irregular fixation of liability of a dealer while registration resulted in non-realisation of entry tax.**

[ACT, Silchar; February- March 2012]

As per the AET Act, read with the AVAT Act, upon receipt of an application for registration under the AET Act, the prescribed authority may conduct such inquiry/call for such evidence and information as he deems fit and after the inquiry/considering the evidence and information, if he is satisfied that the application for registration is in order, he shall register the applicant and issue a certificate of registration.

The items 'HTS Wire' and 'Inserts' used in manufacture of Railway tracks' were taxable at the rate of 12.5 *per cent* with effect from November 2006 and 'Cement' was taxable at 12 *per cent* with effect from August 2005 under the AET Act.

During scrutiny of the records of M/s Railtrack Concrete Products Pvt. Ltd. (imported HTS Wire, Inserts and Cement for manufacturer of Railway Concrete Sleepers), it was noticed that though the dealer started commercial production from 15 June 2007, the AO while registering the dealer under the AET Act fixed tax liability from 1 June 2008.

Audit scrutiny revealed that the dealer imported HTS Wire, Inserts and

Cement valued at ₹ 7.26 crore by using 'C' Form between January 2007 and

<sup>15</sup> The balance amount related to imports made by the dealer from outside the country on which entry tax was not leviable. The AO had verified the invoices which were not available in the case records seen by Audit.

May 2008 *i.e.* prior to the registration under the AET Act and also did not pay any Entry Tax on the aforesaid items. The AO also failed to take cognisance of the aforesaid turnover while registering the dealer and erroneously fixed the date of tax liability as 1 June 2008 instead of date of import of taxable goods as disclosed by the dealer while furnishing utilisation of 'C' Forms. It was further noticed that though the dealer had disclosed purchase of above materials worth ₹ 7.26 crore by using 'C' Forms which were available in the case records, the AO did not initiate any assessment proceedings (March 2012). Thus, non-detection of purchase turnover resulted in non-realisation of entry tax of ₹ 90.20 lakh.

After this was pointed out, the Department stated (June 2013) that the dealer was originally liable to pay Entry Tax of ₹ 66.39 lakh, not ₹ 90.20 lakh (as import value was less due to cancellation and double issue of 'C' form against same purchases). The dealer had paid ₹ 15.03 lakh and for the balance amount of ₹ 51.36 lakh arrears certificate was issued to the ST (Recovery), Silchar. Further report on realisation is awaited (September 2013).

The case was reported to the Government in April 2012 and followed up in March 2013, reply has not been received (September 2013).

### 2.39 Concealment of purchase turnover while filling returns under AET Act.

[ST, Morigaon , July-August 2011]

The AET Act read with the AVAT Act provides that a registered dealer liable to pay tax shall submit to the AO his monthly statement of such purchase along with a copy of the treasury challan for the full amount of tax payable on the purchase value of goods disclosed in the statement before the expiry of the next succeeding month of purchase.

**'Lime Stone' and 'Lime Powder'** were taxable at the rate of four per cent under the AET Act.

During scrutiny of the case records of M/s Hindustan Paper Corporation Ltd., Morigaon it was noticed that the dealer submitted monthly statement of purchase value of 'Lime' during the year 2008-09 from outside the state at ₹ 47.10 lakh and paid entry tax of ₹ 1.88 lakh. However, scrutiny of records revealed that the dealer actually imported 'Lime' valued at ₹ 5.72 crore during 2008-09 (between June 2008 and March 2009) by utilising declaration in Form 'C'. Though the

information on import of 'Lime' was available in the case records, the prescribed authority failed to co-relate the returns with the utilisation statement of Form 'C'. Non-detection of concealment of purchase turnover of

₹ 5.25 crore (₹ 572.18 lakh - ₹ 47.10 lakh) by the AO resulted in non-levy of entry tax of ₹ 21 lakh.

After this was pointed out, the Department stated (June 2013) that assessment has been revised and demand notice for ₹ 43.19 lakh (including interest) was raised. Report on realisation has not been received (September 2013).

The case was reported to the Government in August 2011 and followed up in April 2013; reply has not been received (September 2013).

#### **2.40 Under assessment of entry tax.**

[ACT, Unit-A; Guwahati, July - September 2012]

The item 'Air Cooler (AC)' and 'Diesel Generator (DG) set' were taxable at the rate of eight *per cent* under the AET Act.

It was observed that the AO while finalising the assessment in December 2010 of M/s Vodafone Essar Spacetel Ltd (dealing in 'AC' and 'DG set') for the year 2007-08 (July 2007 to March 2008) determined purchase turnover at ₹ 7.95 crore as eight *per cent* goods (as per revisional order passed by the Deputy Commissioner of Taxes). Audit scrutiny of utilisation statement of form 'C' submitted (June 2009) by the dealer revealed that the dealer actually imported 'AC' and 'DG set' valued at ₹ 10.09 crore between 1 July 2007 and 31 March 2008. Thus, purchase turnover of ₹ 2.14 crore escaped assessment resulting in underassessment of entry tax of ₹ 17.12 lakh.

After this was pointed out, the Department stated (July 2013) that the dealer has been reassessed raising a demand of ₹ 17.12 lakh which has been paid by the dealer. However, the AO did not levy interest for delayed payment which was also payable by the dealer.

The case was reported to the Government in October 2012 and followed up in April 2013; reply has not been received (September 2013).

#### **2.41 Non levy of entry tax.**

[ACT, Barpeta Road, March 2012]

Under the AET Act, the item 'Tobacco' was taxable at the rate of 10 *per cent* with effect from February 2005.

Scrutiny of the records in the above unit revealed that M/s Ganesh Tobacco Company imported 'Tobacco' from outside the state valued at ₹1.34 crore during the year 2006-07 as per monthly returns submitted by the dealer. Though the

information on import of taxable goods was available in the case records, the AO did not initiate any action to levy entry tax of ₹ 13.41 lakh.

After this was pointed out, the Department stated (June 2013) that the AO had reassessed the dealer and demand notice for ₹ 13.41 lakh was raised, of which, the dealer had deposited ₹ 4.25 lakh. Report on realisation of balance amount had not been received (September 2013).

The case was reported to the Government in April 2012 and followed up in April 2013; reply has not been received (September 2013).

**2.42 Non-imposition of entry tax on taxable purchase led to evasion of entry tax.**

[ACT, Unit-A; Guwahati, July- September 2012]

As per the AET Act, every registered dealer liable to pay tax under the Act shall submit to the AO his monthly statement of such purchase value before the expiry of the next succeeding month alongwith a *challan* or a crossed cheque or a crossed demand draft for the full amount of tax payable on the purchase value of the goods.

The item 'Crane' was taxable at the rate of eight *per cent* under the AET Act from 10 February 2006 to 13 September 2009.

During scrutiny of records of the above unit it was observed that a dealer M/s Bharat Heavy Electricals Limited was registered under the AET Act by the AO by fixing tax liability from 1 June 2008 and as such the dealer submitted annual return of the year 2007-08 in June 2011 by showing import purchase as 'nil'. But Audit scrutiny of utilisation statement of Form 'C'

revealed that the dealer purchased 'crane' valued at ₹ 1.48 crore in December 2007 and did not pay any entry tax on such purchase. Thus, non-detection of taxable purchase by the AO and fixation of liability from later date enabled the dealer to evade tax of ₹11.86 lakh.

After this was pointed out, the Department stated (July 2013) that the AO had reassessed the dealer raising a demand of ₹ 11.86 lakh which has been paid by the dealer. However, the AO did not levy interest for delayed payment which was also payable by the dealer.

The case was reported to the Government in October 2012 and followed up in April 2013; reply has not been received (September 2013).

### 2.43 Short levy of Entry Tax.

[ACT, Silchar; February - March 2012]

Under the AET Act, item 'SGCI Inserts' used in manufacture of Railway tracks' was taxable at the rate of 12.5 per cent with effect from November 2006.

During scrutiny of the records of a dealer M/s Railtrack Concrete Products Private Limited (manufacturer of Railway Concrete Sleepers) it was observed that while completing the assessment (March 2011) the AO determined the dealer's import purchase of 'SGCI Inserts' for the years 2008-09 as ₹ 3.72 crore instead of ₹ 4.53 crore resulting in short levy of entry tax of ₹ 10.12 lakh.

After this was pointed out, the Department stated (June 2013) that there was an inflation of figure with regard to the purchase of 'SGCI Inserts' arising out due to consideration of figures both under Road Permits and 'C' Forms and accordingly actual entry taxable purchase was ₹ 4.09 crore and not ₹ 4.53 crore. Accordingly, the reassessment was completed and the dealer was liable to pay entry tax of ₹ 4.63 lakh on the differential turnover of ₹ 37 lakh<sup>16</sup>. It was further noticed that during reassessment in August 2012 the AO irregularly adjusted interest amount of ₹ 3.23 lakh which was paid by the dealer voluntarily. Thus, the dealer is liable to pay ₹ 7.86 lakh<sup>17</sup>.

The case was reported to the Government in April 2012 and followed up in March 2013, reply has not been received (September 2013).

<sup>16</sup> ₹ 4.09 crore minus ₹ 3.72 crore.

<sup>17</sup> Balance tax of ₹ 4.63 lakh plus incorrect credit of ₹ 3.23 lakh.