

## CHAPTER II: COMMERCIAL TAX

### EXECUTIVE SUMMARY

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<b>What we have highlighted in this Chapter</b>	In this Chapter we present illustrative cases of ₹ 7.48 crore selected from observations noticed during our test check of records relating to incorrect/excess allowance of Input Tax Rebate (ITR), short/non levy of value added tax, non levy of penalty for unauthorised use of 'C' form, short/non levy of entry tax etc. in the Commercial Tax Department.
<b>Trend of revenue receipts</b>	The contribution of receipts from taxes on sales, trade etc. to the tax revenue of the State during the last five years ranged between 52 to 56 <i>per cent</i> . The receipts during the year 2012-13 decreased by 5.22 <i>per cent</i> as compared to Budget estimates which was attributed by the Department due to decrease in State sales of paddy, iron ore, sponge iron, timber, sleeper and <i>pan masala</i> and Central sales of diesel, cement, iron ore, aluminum, fertiliser, timber, soap etc.
<b>Internal Audit</b>	During the year, no unit was planned for audit by the Department due to non-formation of Internal Audit Wing.
<b>Impact of Audit</b>	We conducted test check of the records of 15 units relating to the Commercial Tax Department during the year 2012-13 and found 210 cases of non/short levy of tax, incorrect grant of exemption/deduction, application of incorrect rate of tax, incorrect determination of taxable turnover and other irregularities amounting to ₹ 14.27 crore. During the year, the Department had accepted 14 observations involving ₹ 1 crore and recovered ₹ 15.74 lakh in four cases.
<b>Our conclusion</b>	<p>The Department needs to set up Internal Audit Wing and conduct internal audit regularly, so that shortcomings of the nature detected by us can be avoided in future.</p> <p>It also needs to initiate immediate action to recover the incorrect/excess allowance of Input Tax Rebate (ITR), short/non levy of value added tax, non levy of penalty for unauthorised use of 'C' form, short/non levy of entry tax etc. pointed out by us, more so in those cases where it has accepted our contention.</p>

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## 2.1 Tax administration

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

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

The Commercial Tax Department (CTD) is under the administrative control of Finance Department and is headed by the Commissioner of Commercial Taxes (CCT). He is assisted by four Additional Commissioners of Commercial Taxes (Addl. CCTs), 12 Deputy Commissioners (DCs), 26 Assistant Commissioners (ACs), 69 Commercial Tax Officers (CTOs), 118 Assistant Commercial Tax Officers (ACTOs) and 168 Commercial Tax Inspectors (CTIs).

## 2.2 Trend of revenue receipts from taxes on sales, trade etc.

Actual receipts from taxes on sales, trade etc.<sup>1</sup> during the years 2008-09 to 2012-13 along with the total tax receipts during the period are exhibited in the following table:

*(₹ in crore)*

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2008-09	3,470.00	3,610.94	(+) 140.94	4.06	6,593.72	54.76
2009-10	3,447.12	3,712.16	(+) 265.04	7.69	7,123.25	52.11
2010-11	4,524.13	4,840.79	(+) 316.66	7.00	9,005.14	53.76
2011-12	6,000.00	6,006.25	(+) 6.25	0.10	10,712.25	56.07
2012-13	7,310.20	6,928.65	(-) 381.55	(-) 5.22	13,034.21	53.16

(Source: Finance Accounts of Government of Chhattisgarh)

The above table indicates that collection from taxes on sales, trade etc., contributed substantially to the tax revenue of the State. Overall collection of

<sup>1</sup> Major head 0040- Taxes on Sales, Trade etc (101 – Receipts under Central Sales Tax Act, 102- Receipts under State Sales Tax Act, 103- Tax on sale of motor spirits and lubricants, 104- Surcharge on Sales Tax, 105- Tax on sale of Crude oil, 106- Tax on Purchase of Sugarcane, 107 – Receipts of Turnover Tax, 108 – Tax on the Transfer of Rights to use any goods for any purpose Act, 1985, 109 – Tax on Transfer of Property Goods involved in the execution of “Works Contract Act, 1985” 111-Value Added Tax and 800 – Other Receipts)

revenue under taxes on sales, trade etc. was more than the budget estimates (BEs) during period 2008-09 to 2011-12, except in 2012-13 where it registered less collection than BEs. The contribution of receipts from taxes on sales, trade etc. to the tax revenue of the State during the last five years ranged between 52 to 56 per cent. The receipts during the year 2012-13 decreased by 5.22 per cent as compared to Budget estimates which was attributed by the Department to decrease in state sales of paddy, iron ore, sponge iron, timber, sleeper and *pan masala* and central sales of diesel, cement, iron ore, aluminum, fertiliser, timber, soap etc.

### 2.3 Analysis of arrears of revenue

The arrears of revenue of taxes on sales, trade (including VAT and Central Sales Tax), Entry Tax and Professional Tax as on 31 March 2013 amounted to ₹ 556.08 crore. The following table depicts the position of arrears of revenue during the period 2008-09 to 2012-13:

(₹ in crore)

Year	Opening balance of arrears	Closing balance of arrears
2008-09	183.33	194.39
2009-10	194.39	438.57
2010-11	438.57	450.85
2011-12	450.85	556.09
2012-13	556.09	556.08

(Source: Figures furnished by the Department)

The age-wise position of outstanding arrears has not been furnished by the Department despite request (November 2013).

### 2.4 Collection of VAT per assessee

Year	Number of Assessee	VAT revenue as per Department (₹ in crore)	VAT revenue as per Finance Accounts (₹ in crore)	Revenue/Assessee (in ₹)
2008-09	63,446	2,968.09	2,943.67	4,67,813.57
2009-10	69,727	3,085.12	3,031.15	4,42,457.01
2010-11	58,299	4,047.58	4,031.50	6,94,279.49
2011-12	64,393	5,269.97	4,884.97	8,18,407.28
2012-13	71,903	6,072.76	6,072.76	8,44,576.72

(Source: Figures furnished by the Department & Finance Accounts of Government of Chhattisgarh)

There has been a consistent increase in revenue earned per assessee since 2010-11.

### 2.5 Arrears in assessment

The number of cases pending at the beginning of the year 2012-13, assessments becoming due during the year, assessments disposed of during the year and those pending at the end of the year 2012-13 as furnished by the Department are mentioned in the following table:

Name of tax	Opening balance (2012-13)	Addition during the year	Total number of assessment cases due	Cases disposed during the year	Cases pending at the end of the year	Percentage of clearance (column 5 to 4)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Value Added tax	53,952	58,168	1,12,120	52,511	59,609	46.83
Professional tax	8,890	6,694	15,584	8,115	7,469	52.07
Entry tax	22,891	31,450	54,341	29,995	24,346	55.20
Luxury tax	65	32	97	64	33	65.98
Tax on works contract	419	253	672	258	414	38.39
<b>Total</b>	<b>86,217</b>	<b>96,597</b>	<b>1,82,814</b>	<b>90,943</b>	<b>91,871</b>	<b>49.75</b>

(Source: Figures furnished by the Department)

The above table indicates that at the end of the year 2012-13, only 50 per cent of the total assessment cases had been disposed of by the Department.

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

## 2.6 Cost of collection

Collection from taxes on sales, trade etc., the expenditure incurred on their collection and the percentage of such expenditure to gross collection during the years 2010-11, 2011-12 and 2012-13 along with the relevant all-India average percentage of expenditure to gross collection of the preceding years are indicated in the following table:

(₹ in crore)

Head of revenue	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage of expenditure to gross collection of preceding year
Taxes on sales, trade etc.	2010-11	4,840.79	29.99	0.62	0.96
	2011-12	6,006.25	40.63	0.68	0.75
	2012-13	6,928.65	37.42	0.47	0.83

(Source: Finance Accounts of Government of Chhattisgarh)

The cost of collection when compared to the all India averages during the three years was on the lower side.

## 2.7 Analysis of collection

The break-up of the total collection from taxes on sales, trade etc., entry tax, professional tax and luxury tax at the pre-assessment stage and after regular assessment of taxes during the year 2012-13 and corresponding figures for the preceding four years as furnished by the Commercial Tax Department is mentioned in the following table:

(₹ in crore)

Heads of revenue	Year	Amount collected at the pre-assessment stage	Amount collected after regular assessment	Penalty for delay in payment of taxes and duties	Amount refunded	Net collection as per the Department	Net collection as per Finance Accounts	Percentage of collection (column 3 to 7)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Taxes on sales, trade, Entry Tax, Professional Tax and Luxury Tax	2008-09	4,004.34	52.77	8.12	18.35	4,046.88	4,038.41	98.95
	2009-10	4,249.74	190.93	87.35	57.33	4,470.69	4,325.16	95.06
	2010-11	5,121.05	387.55	41.78	60.15	5,490.23	5,355.67	93.28
	2011-12	6,329.89	618.59	18.86	62.18	6,905.16	6,837.80	91.67
	2012-13	6,458.43	525.98	19.20	125.84	6,877.77	7,883.63	93.90

(Source: Figures furnished by the Department & Finance Accounts of Government of Chhattisgarh)

It may be seen from the above table that the percentage of tax collected before assessment ranged between 91.67 and 98.95 per cent.

## 2.8 Internal Audit

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

The Department stated (September 2013) that no instruction has been issued by the Commissioner regarding setting up and controlling of IAW after bifurcation of DC office into three DC Offices from 01.11.2009. Prior to that only one post of Assistant Commissioner, Commercial Tax was sanctioned for the IAW.

**The Government may consider setting up the IAW to monitor the correctness of levy and collection of taxes.**

Similar issue was pointed out in Para No. 2.10 of Audit Report (Revenue Sector) for the year ended 31 March 2012. However, the Department has not established an Internal Audit Wing so far.

## 2.9 Impact of Audit

**2.9.1 Status of compliance to Audit Reports (2007-08 to 2011-12):** During the last five years, through our Audit Reports we had pointed out cases of underassessment, non/short levy of tax etc. involving ₹ 86.20 crore. The Department accepted observations of ₹ 60.96 crore of which ₹ 44 lakh had been recovered till March 2013 as shown in the following table:

(₹ in crore)

Sl. No.	Year of the Audit Report	Total money value	Amount accepted	Recovery made up to March 2013
1.	2007-08	0.73	0.32	Nil
2.	2008-09	49.46	47.49	0.09
3.	2009-10	3.37	3.37	0.01
4.	2010-11	18.57	3.07	0.23
5.	2011-12	14.07	6.71	0.11
	<b>Total</b>	<b>86.20</b>	<b>60.96</b>	<b>0.44</b>

The above table indicates that only 0.72 *per cent* of the accepted amount was recovered by the Department which is negligible.

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

**2.9.2 Status of compliance to outstanding Inspection Reports (2007-08 to 2011-12):** During the years 2007-08 to 2011-12, we had pointed out through our Inspection Reports, non/short levy, non/short realisation, underassessment, loss of revenue, incorrect exemption, incorrect computation etc. with revenue implication of ₹ 101.01 crore in 997 cases. Of these, the Department/Government had accepted audit observations in 112 cases involving ₹ 3.55 crore. The details are shown in the following table:

(₹ in crore)

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
2007-08	04	37	0.03	16	0.07	Nil	Nil
2008-09	20	185	0.62	10	0.48	Nil	Nil
2009-10	32	295	35.93	10	0.30	Nil	Nil
2010-11	28	362	55.08	73	2.59	Nil	Nil
2011-12	11	118	9.35	3	0.11	3	0.11
<b>Total</b>		<b>997</b>	<b>101.01</b>	<b>112</b>	<b>3.55</b>	<b>3</b>	<b>0.11</b>

**2.9.3 Status of compliance to Inspection Reports (2012-13):** We conducted test check of the records of 15 out of 58 units relating to Commercial Tax Department during the year 2012-13. We found cases of non/short levy of tax, incorrect grant of exemption/deduction, application of incorrect rate of tax, incorrect determination of taxable turnover, other irregularities etc. amounting ₹ 14.27 crore in 210 cases out of revenue of ₹ 2,490.95 crore in 21,392 cases which fall under the following categories:

(₹ in crore)

Sl. No.	Category	No. of cases	Amount	Accepted cases	Amount
1	Non/short levy of tax	103	9.39	6	0.61
2	Incorrect grant of exemption/deduction	32	2.96	Nil	Nil
3	Application of incorrect rate of tax	19	0.51	6	0.25
4	Incorrect determination of taxable turnover	8	0.31	Nil	Nil
5	Other irregularities	48	1.10	2	0.14
<b>Total</b>		<b>210</b>	<b>14.27</b>	<b>14</b>	<b>1.00</b>

During the year, the Department had accepted 14 observations involving ₹ 1 crore. During the year 2012-13, the Department had recovered ₹ 15.74 lakh in four cases pertaining to the current year.

A few illustrative cases amounting to ₹ 7.48 crore including observations detected during earlier years are mentioned in the succeeding paragraphs.

## 2.10 Audit observations

*We scrutinised the assessment records of sales tax/value added tax (VAT), Central sales tax, Entry tax etc. in the Commercial Tax Department and found several cases of non-observance of the provisions of the Acts/Rules, incorrect/excess allowance of input tax rebate, non/short levy of value added tax, non levy of penalty for unauthorised use of 'C' Form, non levy of entry tax, irregular grant of exemption of entry tax and other cases as mentioned in the succeeding paragraphs of this chapter. These cases are illustrative and are based on a test check carried out by us. Such omissions on the part of the Assessing Authorities (AA) are pointed out by us each year, but not only do the irregularities persist; these remain undetected till an audit is conducted. There is need for the Government to establish internal control system so that such omissions can be avoided.*

## 2.11 Incorrect/excess allowance of Input Tax Rebate

According to Section 13 (1) of CGVAT Act, when a registered dealer purchases any goods specified in part I, II and IV of schedule II other than those specified in Schedule III (Capital expenditure on land and civil construction for use in manufacture or trade, including office building and other related constructions, furniture and fixtures including air conditioners and refrigerators, petrol and diesel and motor cars, two wheelers, parts and accessories etc.) within the State of Chhattisgarh from such dealer after payment to him of input tax, for use or consumption of such goods for/in the manufacture in State of any goods mentioned in schedule II for sale within the State or in the course of inter-State trade or commerce or in the course of export out of territory of India or for use as capital goods in the course of business within the State of Chhattisgarh, a rebate of input tax shall be claimed by or be allowed to him, input tax rebate of such amount of tax, in such manner and within such period as may be prescribed.

According to Section 2(e) of the CGVAT Act, capital goods means plants, machinery and equipment directly used in the process of manufacture and/or in the course of business.

We found during test check of the assessment records of two ACCTs out of test checked 15 units between April 2012 and October 2012 that while finalising assessments cases of five dealers between May 2010 and September 2011 for the period 2006-07 to 2008-09, the AOs had allowed excess/incorrect Input Tax Rebate (ITR) of ₹ 1.34 crore on purchases made by the dealers. This resulted in incorrect/ excess grant of ITR of ₹ 1.34 crore as detailed below:

(₹ in lakh)

Sl. No.	Name of Units	Assessment year (Month & Year of assessment)	ITR Allowable	ITR Allowed	Excess ITR Allowed	Nature of Observations
1	ACCT, Raipur	2006-07 (May 2010)	0	10.26	10.26	The AO incorrectly allowed ITR of ₹ 10.26 lakh on sale of ₹ 2.57 crore on the plea that the dealer had sent the goods on the strength of 'F' forms to his branch at Nagpur for job work which was returned and sold within the State. The scrutiny of 'F' forms in audit however revealed that these forms were issued from Mumbai. This resulted in excess allowance of ITR of ₹ 10.26 lakh.
After we pointed this out (June 2013), the Department stated (August 2013) that goods were sent to Nagpur for job work and sold within the Chhattisgarh State after receipt. Hence, ITR given was correct. We do not agree as the 'F' forms enclosed in the case file indicated that the goods were sent to Mumbai instead of Nagpur. Thus, the ITR of ₹ 10.26 lakh by the AO was not in order.						
2	ACCT,	2006-07	0	85.45	85.45	ITR allowed on "Fixed Assets/Capital goods" (MS & ISBM Beam, MS channel,



	Raipur	(June 2010)				MS angel, ISBC channel and other related items for civil construction while PSC sleeper were used for railway sidings) which are not plant & machinery and are not directly involved in the process of manufacturing.
After we pointed this out (June 2013), the Department stated (August 2013) that the case has been reopened under Section 22(1) and demand notice for recovery of ₹ 85.45 lakh has been issued to the dealer. Report on recovery has not been received (November 2013).						
3	Assistant Commissioner-II, Division-I, Bilaspur	2008-09 (September 2011)	0	26.93	26.93	Allowance of the ITR on purchases of capital goods i.e. refrigerators, ice boxes which are not directly involved in the process of manufacturing was not correct as per the provision of the CGVAT Act.
After we pointed this out (May 2012), the AO stated (May 2012) that action would be taken after verification.						
4	ACCT, Raipur	2006-07 (June 2010)	130.32	138.44	8.12	The AO had allowed an input tax rebate of ₹ 1.38 crore on the purchases of ₹ 39.12 crore. However, as per the Chartered Accountant's Audit Report the dealer made purchases of ₹ 36.83 crore only. As such, the assessee was eligible for ITR of ₹ 1.30 crore on the purchases of ₹ 36.83 crore.
After we pointed this out (June 2013), the Department stated (August 2013) that the case has been reopened under Section 22(1) and demand for ₹ 8.12 lakh has been raised. Report on recovery has not been received (November 2013).						
5	ACCT, Raipur	2006-07 (June 2010)	0	3.73	3.73	The dealer had sold tax-free soya De-oiled cake (DOC) of ₹ 3.09 crore within the State and inter-State manufactured out of tax-paid <i>soyabean</i> seeds which was 22.12 per cent of total sales (₹ 13.97 crore). As the dealer had sold tax-free goods made out of tax-paid goods, the corresponding ITR should have been reduced.
After we pointed this out (June 2013), the Department stated (May 2013) that the case was reopened under Section 22 (1) and demand for ₹ 8.65 lakh has been raised. The difference between the objected amount and demand raised was due to the disallowance of ITR on export sale of soya DOC by the dealer.						

We reported this to the Government (June 2013) for comments; their reply is awaited (November 2013).

## 2.12 Non/Short levy of Value Added Tax

Section 8 of CGVAT Act provides for levy of tax at the rates as prescribed in the Schedules to the Act, depending upon the classification of the goods. However, where the goods are not covered under any specific entry of the Schedule, general rate of tax given in residuary entry is applicable. As per Schedule II part IV entry no. 1, all goods not included in Schedule I, Part I (1 *per cent*), part II (4 *per cent*) and part III (25 *per cent*) of this Schedule are taxable at the rate of 12.5 *per cent*.

Section 22 of CGVAT Act provides that the Commissioner shall, where the omission leading to assessment or re-assessment is attributable to the dealer, impose upon him a penalty of maximum two times the amount of tax assessed but which shall not be less than the amount of tax assessed.

We found during test check of the assessment records of four units<sup>2</sup> out of test checked 15 units between February 2012 and November 2012 that while finalising assessments between March 2010 to June 2012, the AOs allowed seven dealers to pay tax at lower rates due to incorrect classification of goods valuing ₹ 20.49 crore during the period 2006-07 to 2008-09. In these cases, the AOs had not levied tax at appropriate rate due to misclassification of goods. The difference

between the rate of tax leviable and levied was ranging from four to 25 *per cent*. This resulted in non/short realisation of tax of ₹ 3.06 crore including penalty as given in the table below:

(₹ in lakh)

Sl. No.	Commodity	Assessment year (Month & Year of assessment)	Schedule no./Part no./item no.	Turnover of sales	Rate of tax leviable/levied	Non/short levy of tax/ Minimum penalty	Nature of Observations
1	Electronics goods/Inter Cellular Adhesion Molecule (ICAM) System	2007-08 (August 2011)	II/IV/1	45.40	12.5/4	3.86/3.86	The AO levied tax on electronics goods and ICAM system at the rate of four <i>per cent</i> treating the goods as capital goods.

After we pointed this out in audit (June 2013), the Department stated (August 2013) that these goods were machinery for Engineering industry, Metal and Alloys industries and iron and Steel industries so they were capital goods for which were taxed at four *per cent* as per notification no. 45 dated 28.04.2006. We do not agree as it was confirmed from form 59-A<sup>3</sup> and other records submitted by the dealer that he was engaged in trading of electronic goods and ICAM system (an unspecified goods). Further, electronic goods and

<sup>2</sup> CTO-II, Durg, ACCT (Raipur), ACCT-II (Bilaspur) and CTO-(Jagdalpur).

<sup>3</sup> Form 59-A- A document issued by the Department to a registered dealer for importing goods from outside the state, indicating the name of the consignor and consignee, the place of dispatch, the destination and the description, quantity and value of the goods.

ICAM system are not mentioned in the list of capital goods. Therefore, tax at the rate of 12.5 per cent was leviable.							
2	Protein/ Protein powder	2008-09 (June 2012)	II/IV/1	67.17	12.5/4	5.71/ 5.71	The AO levied tax on Protein powder at the rate of four per cent instead of 12.5 per cent.
After we pointed out this in audit (June 2013), the Department stated (August 2013) that the case was reopened under Section 22(1) and during the year, the dealer had purchased medicines of ₹ 58.12 lakh and protein of ₹ 7.68 lakh from M/s. British Biological, Bangalore. Further, it was stated that demand notice of ₹ 1.54 lakh has been raised on sale of protein of ₹ 9.05 lakh at the differential rate of 8.5 per cent. We do not agree as it was clearly mentioned in form 59-A that the dealer had purchased only protein not medicines from the above dealer.							
3	Diesel	2007-08 (August 2011)	II/III/1	58.84	25/4	12.36/ Nil	The AO levied tax at the rate of four per cent treating it as hydrocarbon.
After we pointed this out in Audit (June 2013), the Department stated (August 2013) that the case was opened under section 22(1) and demand notice has been issued for ₹ 11.18 lakh. Report on recovery has not been received (November 2013).							
4	Carbon credit	2007-08 (August 2011)	II/II/5	245.75	4/0	9.83/ Nil	The AO did not levy tax on sale of Carbon Credit of ₹ 2.46 crore. As Carbon Credit is intangible goods, tax at the rate of four per cent was leviable.
After we pointed this out (November 2012), the AO stated (November 2012) that action would be taken after verification.							
5	Railway Cable	2007-08 (August 2011)	II/IV/1	1461.92	12.5/4	124.26/ 124.26	The AO levied tax at the rate of four per cent.
After we pointed this out (May 2012), the AO stated (May 2012) that action would be taken after verification.							
6	Toast	2006-07 (April 2010), 2007-08 (July 2011)	II/IV/1	110.21	12.5/0	13.78/ Nil	The AO did not levy tax treating toast as tax free goods.
After we pointed this out in audit (June 2013), the Department stated (August 2013) that demand notice of ₹ 27.55 lakh has been issued. Report on recovery has not been received (November 2013).							
7	LPG	2006-07 (March 2010)	By Not. No. 34 dated 13.4.2006	59.75	4/0	2.39/ Nil	The AO did not levy tax treating LPG as tax free goods.
After we pointed this out (October 2012), the AO stated (October 2012) that the case would be re-assessed and action would be taken after verification.							
<b>Total</b>				<b>2,049.04</b>		<b>172.19/ 133.83</b>	

We reported this to the Government (June 2013) for comments; their reply is awaited (November 2013).

## Central Sales Tax Act

### 2.13 Non levy of penalty for unauthorised use of 'C' Form

According to Section 10-A of Central Sales Tax Act read with Section 10(b), if a registered dealer purchases such goods which are not mentioned in his Registration Certificate (RC) against 'C' forms, the authority may impose penalty upon the assessee equivalent to one and half times the tax which would have been payable. Further it has also been judicially held by the Hon'ble Madras High Court in the case of State of Tamilnadu Vs Akhtar (1998) 108 STC that purchase against C forms of goods not mentioned in RC is an offence and penalty can be imposed. According to Rule 13 of Central Sales Tax Rules (Registration and Turnover) 1957, a registered dealer may purchase goods against 'C' form intended for use by him as raw materials, processing materials, machinery, plant, equipment, tools etc. in the manufacture or processing of goods for sale or in mining, or in the generation or distribution of electricity or any other form of power.

We found (April 2012) during test check of the assessment records of two units<sup>4</sup> out of test checked 15 units that two dealers of which one was engaged in breaking and transporting of coal/removal of over burden (OB) and transportation of coal and another dealer engaged in supply of building materials and earthwork, had purchased tippers/dumpers and hydraulic machine model EX-70 respectively against 'C' forms. These goods were not mentioned in RC of the dealer at the time

of purchase. As the dealers were service providers and not dealing in sale and purchase of goods, penalty amounting to ₹ 1.19 crore on the purchases against unauthorised use of 'C' form worth ₹ 8.94 crore was leviable (*as shown in Appendix 2.1*). Despite this, no penalty was imposed by the AOs.

After we pointed this out in audit (June 2013), the Department stated (August 2013) that penalty of ₹ 1.19 crore was imposed under Section 10-A of the CST Act. Report on recovery has not been received (November 2013).

We reported this to the Government (June 2013) for comments; their reply is awaited (November 2013).

Similar issue was pointed out in Para No. 2.12.21 of Audit Report (Revenue Receipts) for the year ended 31 March 2011, for which the Department/Government had stated that out of three cases, demand has been raised in two cases. The nature of lapses/ irregularities are still persisting which shows ineffectiveness of the Internal Control System of the Department to prevent recurring leakage of revenue.

<sup>4</sup> ACCT-I, Div.-I (Bilaspur) and CTO Circle-IV (Raipur).

## ENTRY TAX ACT

### 2.14 Non levy of entry tax on explosive

As per Section 4-A of Chhattisgarh Entry Tax (CGET) Act read with Notification No. 66 dated 27.07.2006 entry tax at the rate of six *per cent* shall be levied on 'Explosive' when purchased by a registered dealer under the CGVAT Act from another such registered dealer after payment of tax (VAT). Further Section 13 of CGET Act read with Section 22 of CGVAT Act provides that the Commissioner shall, where the omission leading to assessment or re-assessment is attributable to the dealer, impose upon him a penalty of maximum two times the amount of tax assessed but which shall not be less than the amount of tax assessed.

We found (April 2012) during test check of the assessment records of the ACCT, Raipur out of test checked 15 units that a dealer engaged in purchase and sale of sponge iron, generation of power and mining of coal was assessed in June 2010 for the period 2006-07. The assessee brought and consumed explosives of ₹ 1.34 crore for mining purpose. The Director of Industries, Chhattisgarh issued Exemption Certificate dated 09.02.2009, exempting raw materials, incidental goods and packing material used in manufacturing of sponge iron from payment of entry tax for the period 17.03.2006 to

16.03.2011. As the mining of coal was not exempted from payment of entry tax, tax of ₹ 8.04 lakh<sup>5</sup> at the rate of six *per cent* was leviable. Inaction on the part of the AO to scrutinise the registration certificates and exemption certificate resulted in non-levy of entry tax of ₹ 8.04 lakh. Besides, penalty of ₹ 8.04 lakh was also leviable.

After we pointed this out (June 2013), the Department stated (August 2013) that demand notice of ₹ 8.04 lakh has been raised. Report on levy of penalty and report on recovery has not been received (November 2013).

We reported this to the Government (June 2013) for comments; their reply is awaited (November 2013).

### 2.15 Non levy of entry tax on Schedule III goods

According to Section 3 of Chhattisgarh Entry Tax Act, a dealer is liable to pay entry tax on the entry in the course of business of a dealer of goods specified in Schedule III into each local area for consumption or use of such goods but not for sale therein. Rate of Entry tax specified in Schedule III is one *per cent*. Bitumen comes under Schedule III goods.

**2.15.1** We found during test check (May 2012) of the assessment records of the ACCT, Div-I, Bilaspur out of test checked 15 units for the period 2007-08 and 2008-09 that eight dealers engaged in the business of works

<sup>5</sup> ₹ 134 lakh X 6/100 = ₹ 8.04 lakh

contract and assessed between October 2010 and September 2011 had made purchases of Bitumen of ₹ 14.24 crore and used for construction of road works. As the purchases were made from outside local area (Raipur), entry tax at the rate of one *per cent* was leviable. However, the AO allowed exemption of entry tax treating it as tax paid goods. Thus, grant of irregular exemption by the AO, resulted in non-levy of entry tax of ₹ 14.24 lakh (as shown in *Appendix 2.2*).

We reported this to the Government/Department for comments (June 2013); their reply is awaited (November 2013).

According to Section 3 of Chhattisgarh Entry Tax Act, an entry tax shall be levied at the rate of one *per cent* on the entry specified in Schedule III into each local area for consumption or use of such goods in the course of business of a dealer but not for sale therein.

The Hon'ble Supreme Court of India (SCI) in the case of M/s. Sr. DME Vs. State of Orissa & others (August 2008) held that entry tax is leviable on the goods entered from one local area to railway local area. Further, the Commissioner, Commercial Tax directed in May 2011 to review all cases of such dealers or contractors working in the railway local areas in the light of above judgement and levy tax accordingly.

**2.15.2** We found (May 2012) during test check of the assessment records of the ACCT-II, Div-I, Bilaspur out of test checked 15 units that two dealers engaged in works contract were assessed between April 2010 and July 2011 for the period 2006-07 and 2007-08. Scrutiny of records revealed that raw materials worth ₹ 2.39 crore were purchased and used in the railway local areas. As per the judicial pronouncement *ibid*, entry tax of ₹ 2.39

lakh at the rate of one *per cent* was leviable. However, the AOs allowed exemption on the ground that the railway area does not come under local area. Thus grant of irregular exemption by the AO and non-observance and review of cases as per Commissioner's direction resulted in non-levy of ₹ 2.39 lakh (as shown in *Appendix 2.3*).

We reported this to the Government/Department for comments (June 2013); their reply is awaited (November 2013).

## 2.16 Non levy of entry tax on Extra Neutral Alcohol

According to Section 3 of the Chhattisgarh Entry Tax Act, an entry tax shall be levied at the rate of one *per cent* on the entry in the course of business of a dealer of goods specified in Schedule III into each local area for consumption or use of such goods, but not for sale therein. As per the Chhattisgarh Entry Tax Act read with Schedule I of Chhattisgarh VAT Act, goods on which duty is or may be levied under the Chhattisgarh Excise Act, 1915 other than medicinal and toilet preparations specified in the Schedule to the Medicinal and Toilet Preparations (Excise duties) Act, 1955 are tax-free from entry tax also. Liquor is excisable commodity but not Extra Neutral Alcohol (ENA).

Further in the case of Commissioner of Income Tax Vs. Vinbros and company (October 2007), the Hon'ble Madras High Court held that blending of Extra Neutral Alcohol (ENA) is a manufacturing process of Indian Made Foreign Liquor (IMFL). So ENA is a raw material for liquor.

We found (between May 2012 and October 2012) during test check of the assessment records of two<sup>6</sup> units out of test checked 15 units that three dealers engaged in manufacture and sale of Liquor from ENA were assessed between June 2010 and August 2011 for the period 2006-07 and 2007-08. Scrutiny of records revealed that the dealers had purchased ENA worth

₹ 32.47 crore and used for manufacturing of liquor. As ENA is not an excisable commodity, entry tax amounting to ₹ 32.47 lakh at the rate of one *per cent* was leviable. However, the AO allowed exemption treating the same as tax free goods. Thus, grant of irregular exemption by the AO resulted in non-levy of entry tax of ₹ 32.47 lakh (as shown in *Appendix 2.4*).

After we pointed this out in audit (June 2013), the Department intimated (August 2013) that in two cases, demand notice of ₹ 5.02 lakh had been raised and regarding remaining case it was stated that the case was being reviewed and the position would be intimated to audit in due course. Further report has not been received (November 2013).

We reported this to the Government for comments (June 2013); their reply is awaited (November 2013).

<sup>6</sup> ACCT-II, Div-I Bilaspur and ACCT, Raipur

## 2.17 Non levy of entry tax

According to Section 3 of Chhattisgarh Entry Tax Act, there shall be levied an entry tax on the entry in the course of business of a dealer specified in Schedule II, into each local area for consumption, use or sale therein. Entry No. 27 (a) of the Schedule II *ibid* provides for tax to be levied on fly ash bricks at the rate of five *per cent*.

**2.17.1** We found (July 2012) during test check of the assessment records of 15 offices that two dealers of ACCT, Raipur engaged in civil construction works

for the period April 2007 to March 2008 were assessed in August 2011. In one case, the AO while finalising the assessment did not levy entry tax of ₹ 1.53 lakh at the rate of five *per cent* on purchases of fly ash bricks of ₹ 30.59 lakh. Similarly, in another case, the AO did not levy entry tax of ₹ 2.72 lakh on fly ash bricks of ₹ 54.33 lakh purchased from other than the local area. This resulted in non levy of entry tax of ₹ 4.25 lakh<sup>7</sup>.

After we pointed this out in audit (June 2013), the Department stated (August 2013) in one case that demand of ₹ 3.06 lakh had been raised and in another case it was stated that case would be re-opened under Section 22(1). Further reply and report on recovery have not been received (November 2013).

We reported this to the Government for comments (June 2013); their reply is awaited (November 2013).

According to Chhattisgarh Entry Tax Act read with Notification No. 33 dated 13.04.2000, Iron and Steel as specified in categories (ii) and (xvi) of clause (iv) of Section 14 of the Central Sales Tax (CST) Act, 1956 when entered into local area by a dealer liable to pay tax under Chhattisgarh Value Added Tax Act, for consumption or use as raw material in the manufacture of goods are exempted from payment of Entry Tax. Iron Scrap being specified in category (i) of clause (iv) of Section 14 of CST Act is not exempted from payment of entry tax under the above said notification.

**2.17.2** We found (April 2012) during test check of the assessment records of the ACCT, Raipur out of test checked 15 units that one dealer engaged in manufacture and sale of rolling steel and structures were assessed in May 2011 for the period 2007-08. The dealer purchased iron scrap, sleeper and trolley valuing ₹ 3.42 crore<sup>8</sup> from outside local area and used the same for manufacturing. The AO allowed exemption of entry tax on this purchase treating the goods purchased within the local area as well as an

item covered under notification no. 33 dated 13.04.2000. However, scrutiny of Gate-pass cum *Challan*, purchase list and other receipts revealed that the items were brought from outside local area<sup>9</sup>. Therefore, entry tax of ₹ 3.42 lakh at

<sup>7</sup> ₹ (54.33+30.59) lakh X 5/100=₹ 4.25 lakh

<sup>8</sup> Scrap ₹ 2.38 crore, sleeper ₹ 85.86 lakh and trolley ₹ 18.17 lakh.

<sup>9</sup> Dongargarh, Bhilai, Amaseoni etc.



the rate of one *per cent* on ₹ 3.42 crore was leviable. Thus, irregular grant of exemption by the AO resulted in non-levy of entry tax of ₹ 3.42 lakh.

After we pointed this out in audit (June 2013), the Department stated (August 2013) that the demand for ₹ 3.26 lakh had been raised. Report on recovery has not been received (November 2013).

We reported this to the Government (June 2013) for their comments; their reply is awaited (November 2013).

## 2.18 Incorrect grant of exemption of entry tax

According to Chhattisgarh Entry Tax Act read with Notification No. 24 dated 2 April 2007 goods manufactured by any industries situated in Chhattisgarh State, except coal and iron ore, when entered into local area by a small enterprise, where the investment in plant and machinery does not exceed ₹ 1 crore, for consumption or use as raw material in the process of manufacture shall be exempted from payment of entry tax for the period 2007-08 otherwise entry tax at the rate of one *per cent* would be levied on such goods used as raw material.

**2.18.1** We found (April 2012) during test check of the assessment records of 15 units that in office of the Assistant Commissioner, Commercial Tax (ACCT), Raipur, two dealers engaged in manufacture and sale of M S Ingot, M S CTD bar, round, angle, channel, re-rolled product etc., were assessed in June 2011 for the period 2007-08. The assessee had purchased raw materials valuing ₹ 62 crore from outside local area during 2007-08. The AO incorrectly allowed

exemption of entry tax on purchase of raw materials of ₹ 62 crore. These two dealers were not eligible for exemption under notification no. 24 dated 2 April 2007 as the investment in plant and machinery was above ₹ 1 crore. Accordingly, entry tax amounting to ₹ 62 lakh at the rate of one *per cent* on the purchases of ₹ 62 crore was leviable which was not levied (as shown in *Appendix 2.5*).

After we pointed this out to the Government/Department (June 2013), the Department stated (August 2013) that the demand for ₹ 62 lakh had been raised. Report on recovery has not been received (November 2013).

We reported this to the Government (June 2013) for comments; their reply is awaited (November 2013).

**2.18.2** We found (November 2012) during test check of the assessment records of 15 units that in office of the Assistant Commissioner, Commercial Tax (ACCT), Raipur, a dealer engaged in manufacture and sale of iron and steel was assessed in August 2011 for the period 2007-08. The assessee had purchased raw materials worth ₹ 11.22 crore from outside local area during 2007-08. The AO incorrectly allowed exemption of entry tax on purchase of raw materials. The dealer was not eligible for exemption under notification no. 24 dated 2 April 2007 as the investment in plant and machinery was above ₹ 1

crore. Accordingly, entry tax amounting to ₹ 11.22 lakh at the rate of one *per cent* on the purchases made was leviable. Thus, incorrect grant of exemption by the AO resulted in non levy of entry tax of ₹ 11.22 lakh (as shown in *Appendix 2.5*).

After we pointed this out to the Government/Department (June 2013), the Department stated (August 2013) that the dealer had Small Scale Industries (SSI) certificate, so entry tax could not be levied. We do not agree as the condition (under notification no. 24 dated 2 April 2007) that investment in plant and machinery should not exceed ₹ 1 crore was not fulfilled.

We reported this to the Government (June 2013) for comments; their reply is awaited (November 2013).

**2.18.3** We found (April 2012) during test check of the assessment records of 15 units that in office of the Assistant Commissioner, Commercial Tax (ACCT), Bilaspur, a dealer engaged in manufacture and sale of chemicals was assessed in March 2011 for the period 2007-08. The assessee had purchased raw materials valuing ₹ 3.05 crore from outside local area during 2007-08. The AO incorrectly allowed exemption of entry tax on purchase of raw material. The dealer was not eligible for exemption under notification no. 24 dated 2 April 2007 as the investment in plant and machinery was above ₹ 1 crore. Accordingly, entry tax amounting to ₹ 3.05 lakh at the rate of one *per cent* was leviable. The incorrect grant of exemption by the AO resulted in non levy of entry tax of ₹ 3.05 lakh (as shown in *Appendix 2.5*).

After we pointed this out in audit (April 2012), the AO stated (April 2012) that action would be taken after verification.

We reported this to the Department/Government (June 2013) for comments; their reply is awaited (November 2013).

## 2.19 Non levy of entry tax on mobile handset

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

We found (October 2012) during test check of the assessment records of four<sup>10</sup> units out of test checked 15 units that four dealers engaged in purchase and sale of mobile handsets, sim card etc. were assessed between June 2010 and August 2011 for the period 2006-07 to 2008-09. During the assessment, the AOs did not levy entry tax treating the goods as tax free. Since mobile handsets are electronic goods, entry tax was

leviable as per entry no. 53 of the Act. Therefore, entry tax of ₹ 38.89 lakh at the rate of one *per cent* of ₹ 38.89 crore was leviable (as shown in **Appendix 2.6**). Thus, inaction on the part of AOs to verify the entries of the Schedule and levy tax accordingly resulted in non-levy of entry tax of ₹ 38.89 lakh.

After we pointed this out (June 2013), the Department stated (August 2013) in three cases that the cases were reopened under Section 22 in which demand for ₹ 37.35 lakh has been raised. Report on recovery has not been received (November 2013). In remaining case; no reply has been received (November 2013).

We reported this to the Government (June 2013) for comments; their reply is awaited (November 2013).

In reply to similar issue pointed out in Para No. 2.20 of Audit Report (Revenue Sector) for the year ended 31 March 2012, the Department/ Government had stated that a circular was issued (October 2012) to all the divisions directing them to check and levy entry tax on mobile handsets at the rate of one *per cent* in cases where it has not been levied. The nature of lapses/irregularities are still persisting which shows ineffectiveness of the Internal Control System of the Department to prevent recurring leakage of revenue.

<sup>10</sup> ACCT (Shri S.S. Pandey), Raipur, ACCT (Shri Uday Shankar), Raipur, ACCT (Shri K.K. Arya), Raipur and ACCT (Shri T.L. Dhruv), Raipur