CHAPER-II: VALUE ADDED TAX, CENTRAL SALES TAX, ENTRY TAX AND PROFESSION TAX

EXECUTIVE SUMMARY

Increase/decrease in tax collection.	In 2011-12, the collection of taxes from Orissa Value Added Tax (OVAT) including Orissa Sales Tax (OST)/Central Sales Tax (CST), and Orissa Entry Tax (OET) increased by 20.42 *per cent* and 18.08 *per cent* respectively, whereas in case of Professional Tax (PT) it decreased by 4.79 *per cent* in comparison to the actual collections of the previous year. The reason for increase was attributed to increase in business activities of the industry sector and vigorous collection drive by the Commercial Tax (CT) wing of the Finance Department (FD). However, no reason for decreasing trend of revenue in PT was furnished by the Department.
Non-conduct of internal audit	Internal audit of the different auditable entities of the CT wing of the FD has not been conducted for the past several years and the Internal Audit Wing (IAW) is non-functional. This had its impact in terms of the weak internal controls in the Department leading to substantial leakage of revenue as pointed out by audit every year. It also led to omissions on the part of the Assessing Authorities (AAs) remaining undetected till audit was conducted.
Very low recovery by the Department against the observations pointed out by audit in earlier years	During the period 2006-07 to 2010-11, Audit pointed out non/short-levy and realisation, irregular allowance of exemption/set off of tax, non/short-levy of interest/penalty on tax with revenue implication of ₹ 923.18 crore in 26,434 cases. Of these, the Department/Government accepted audit observations in 143 cases involving ₹ 41.91 crore; but recovered only ₹ 3.75 crore in 23 cases. The recovery position as compared to acceptance of objections was as low as 8.95 *per cent*.
Results of audit in 2011-12	In 2011-12 Thematic Study on **"High Value Certificate-Pending Cases"** was conducted and records of 57 units relating to OVAT,CST,OET and PT were test checked. Cases of non/short-levy of tax/interest/penalty involving ₹ 266.19 crore in 328 cases were noticed. The Department accepted underassessment and other deficiencies of ₹ 11.54 crore in 80 cases which were pointed out by audit during the year 2011-12 and in the earlier years. An amount of ₹ 0.44 crore was recovered in 20 cases during the year 2011-12.

Highlights	In this Chapter we present a Thematic Study (TS) on **"High Value Certificate-Pending Cases"** with money value of ₹ 166.45 crore and other observations with money value of ₹ 80.76 crore relating to assessment and collection of OVAT, CST and OET in the offices of the CT wing of the FD due to non-compliance of the provisions of the Acts/Rules. It is a matter of concern that similar omissions have been pointed out by audit earlier also. The Department is yet to take adequate corrective action despite switching over to an IT-enabled system in all the CTOs. Though these omissions were apparent from the records made available to audit, the AAs were unable to detect these mistakes.
Conclusions	The Department needs to improve the internal control system including strengthening and functioning of IAW to reduce recurrence of such omissions. It also needs to initiate immediate action to recover the non-realisation of tax etc. pointed out by audit, more so in those cases where audit contention has been accepted.

2.1.1 Tax administration

The Commissioner of Commercial Taxes (CCT), Odisha under the overall supervision of the Principal Secretary to the Government, Finance Department administers the Orissa Value Added Tax (OVAT) Act, 2004, the Central Sales Tax (CST) Act, 1956, the Orissa Entry Tax (OET) Act, 1999, the Orissa Entertainment Tax (ET) Act, 2006, the Orissa Luxury Tax (OLT) Act, 1995 and the Orissa State Tax on Professions, Trades, Callings and Employments (PT) Act, 2000, being assisted by the Headquarters and field staff of the Commercial Tax Department, for the assessment and collection of the different taxes stated above. However, the tax assessments are made by the Joint CCTs (JCCTs) /Assistant CCTs (ACCTs)/ Commercial Tax Officers (CTOs) in the capacity of the Assessing Authorities (AAs) whereas PT is assessed by the Assistant CTOs designated as Assistant Profession Tax Officers (APTOs) under the control of the CTOs. Besides, there is an Enforcement Wing at the Commissionerate headed by the special CCT (Enforcement) for checking of cases of tax evasion and cross checking of records relating to inter-State transaction.

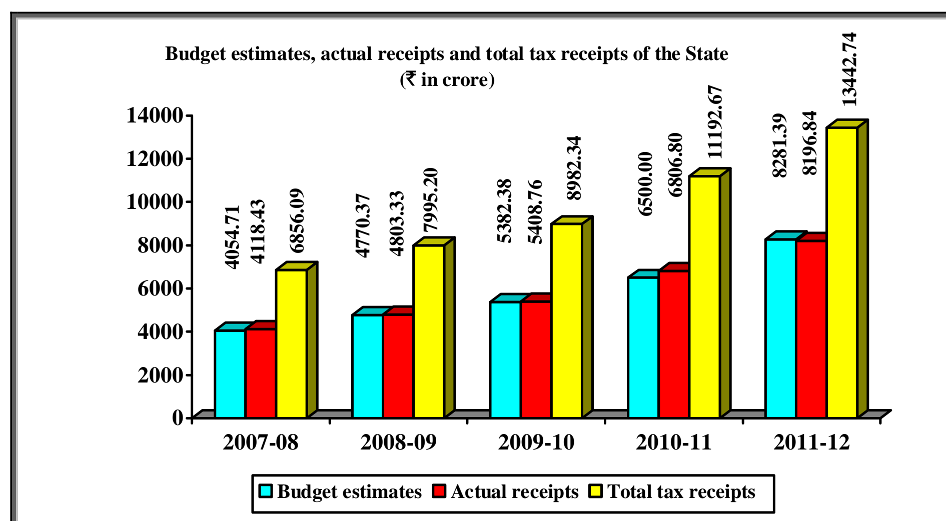
2.1.2 Trend of receipts

The actual receipts from OVAT including OST/CST, OET and PT during the last five years from 2007-08 to 2011-12 are as under:

A. OVAT including OST/CST

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+) / shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2007-08	4,054.71	4,118.43	(+)63.72	(+)01.57	6,856.09	60.07
2008-09	4,770.37	4,803.33	(+)32.96	(+)00.69	7,995.20	60.08
2009-10	5,382.38	5,408.76	(+)26.38	(+)00.49	8,982.34	60.22
2010-11	6,500.00	6,806.80	(+)306.80	(+)04.72	11,192.67	60.81
2011-12	8,281.39	8,196.84	(-)84.55	(-)01.02	13,442.74	60.98

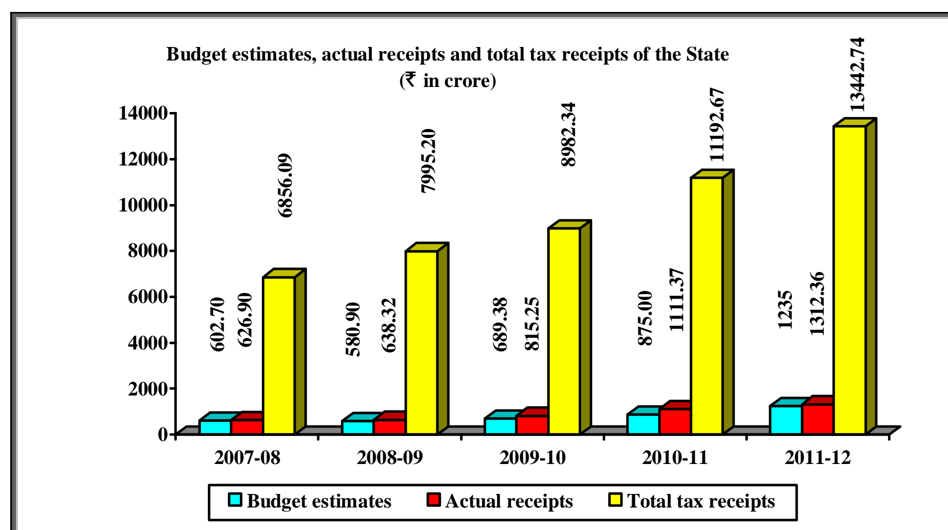


The trend of receipts showed that it increased from ₹ 4,118.43 crore in 2007-08 to ₹ 8,196.84 crore in 2011-12 (99.03 *per cent*) and its contribution to total tax revenue of the State varied between 60.07 *per cent* in 2007-08 to 60.98 *per cent* in 2011-12.

B. Entry Tax

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+) / shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2007-08	602.70	626.90	(+)24.20	(+)04.02	6,856.09	9.14
2008-09	580.90	638.32	(+)57.42	(+)09.88	7,995.20	7.98
2009-10	689.38	815.25	(+)125.87	(+)18.26	8,982.34	9.08
2010-11	875.00	1,111.37	(+)236.37	(+)27.01	11,192.67	9.93
2011-12	1,235.00	1,312.36	(+)77.36	(+)06.26	13,442.74	9.76

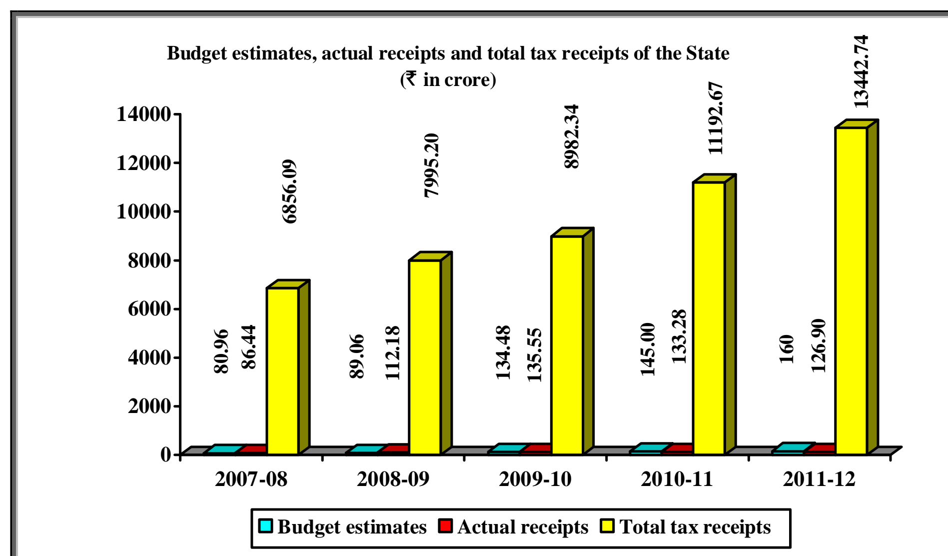


The trend of receipts showed that it increased from ₹ 626.90 crore in 2007-08 to ₹ 1,312.36 crore in 2011-12 (109.34 *per cent*) and its contribution to total tax revenue of the State varied between 7.98 *per cent* in 2008-09 to 9.93 *per cent* in 2010-11.

C. Profession Tax

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+) / shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2007-08	80.96	86.44	(+)05.48	(+)06.77	6,856.09	1.26
2008-09	89.06	112.18	(+)23.12	(+)25.96	7,995.20	1.40
2009-10	134.48	135.55	(+)01.07	(+)00.80	8,982.34	1.51
2010-11	145.00	133.28	(-)11.72	(-)08.08	11,192.67	1.19
2011-12	160.00	126.90	(-)33.10	(-)20.69	13,442.74	0.94



The trend of receipts showed that it increased from ₹ 86.44 crore in 2007-08 to ₹ 135.55 crore in 2009-10 and decreased to ₹ 133.28 crore in 2010-11 and

further decreased to ₹ 126.90 crore in 2011-12. Contribution of PT to total tax revenue of the State varied between 0.94 *per cent* in 2011-12 to 1.51 *per cent* in 2009-10. No reason for the above decreasing trend of revenue was furnished by the Department.

2.1.3 Assessee profile under the OVAT Act

Information furnished by the CCT on various types of dealers registered under the OVAT Act during the last three years is given below.

Year	Number of large tax payers (LTU) dealers	Number of dealers other than LTUs having Tax Identification Number (TIN)	Number of dealers with Small Retailer Identification Number (SRIN)	Total Number of dealers registered under the OVAT Act	Number of dealers required to file returns	Number of dealers who furnished returns in time	Number of dealers who have not furnished/ belatedly furnished returns	Number of cases where notice was not issued to the defaulted dealers
2009-10	689	1,03,319	27,287	1,31,295	1,30,193	91,847	51,494	19,525
2010-11	670	1,01,268	24,594	1,26,532	1,26,532	1,00,706	25,826	12,026
2011-12	739	1,02,479	23,751	1,26,969	1,26,969	1,00,784	26,185	8,297

The CCT contended that in order to ensure filing of returns by the dealers, the Government launched the facility for e-filing of return with effect from November 2010 and it was being made mandatory for different category of dealers in a phased manner. For the habitual non-filers of returns, the Department was also taking statutory actions like suspension and cancellation of Certificate of Registration (RC) and during the year 2011-12, around 8,000 RCs were suspended and 20,000 RCs were cancelled for non-filing of return by the dealers. Despite the above contention of the Department, 8,297 periodical returns were not filed during 2011-12 and notices were not issued to the defaulting dealers as required under the Act.

2.1.4 Cost of collection

Gross collection of tax revenue receipts under the CT wing of the Department, the expenditure incurred on their collection and percentage of such expenditure to the gross collection during the years 2009-10, 2010-11 and 2011-12 along with the all India average percentage for expenditure on collection to gross collection in the respective previous years are mentioned below.

				(₹ in crore)
Year	**Gross Collection**	**Expenditure on Collection of revenue**	**Percentage of expenditure of collection**	**All India average percentage for the previous year**
2009-10	6,409.96[1]	53.90	0.84	0.88
2010-11	8,106.29[1]	80.49	0.99	0.96
2011-12	8,196.85[2]	65.39	0.79	0.75

It is evident that the percentages of expenditure on collection of revenue is showing an increasing trend up to 2010-11 and it exceeded the all India

[1] This collection includes all taxes collected under different Acts by the CT wing of the Finance Department as per the Finance Account which is at variance with the figure furnished by the Department.

[2] The collection of taxes on sales only under the OVAT including OST/CST Acts as per the Finance Accounts which agrees with the figures furnished by the Department.

average percentage of the previous year by 0.03 *per cent* during 2010-11 and by 0.04 *per cent* in 2011-12.

2.1.5 Analysis of collection

Break up of the total collection at the pre-assessment stage, collection after regular assessments, arrear collection and refunds allowed in respect of VAT including Sales Tax, Entry Tax, Profession Tax and Entertainment Tax along with the net collections reflected in the Finance Accounts of the State for the last three years i.e. 2009-10 to 2011-12 is as under:

(₹ in crore)

Head of Revenue	Year	Amount collected at pre-assessment stage	Amount collected after regular assessment (additional demand)	Amount of arrear demand collected	Amount refunded	Net collection as per Department	Net collection as per finance account	Percentage of columns 3 to 8
1	2	3	4	5	6	7	8	9
Sales Tax/VAT	2009-10	5,404.63	24.90	31.60	52.37	5,408.76	5,408.76	99.92
	2010-11	6,762.33	45.17	18.09	18.79	6,806.80	6,806.80	99.34
	2011-12	**8,059.89**	**107.01**	**73.25**	**43.31**	**8,196.84**	**8,196.85**	**98.33**
Entry Tax	2009-10	772.72	26.63	2.88	0.50	801.73	815.25	94.78
	2010-11	1,080.26	06.83	3.45	1.50	1,089.04	1,111.37	97.20
	2011-12	**1,257.32**	**45.52**	**9.52**	**-**	**1,312.36**	**1,312.36**	**95.80**
Entertainment Tax	2009-10	2.76	0.01	0.05	-	2.82	9.28	29.74
	2010-11	3.35	0.00	0.07	-	3.42	3.42	11.70
	2011-12	**7.74**	**1.26**	**0.09**	**-**	**9.09**	**9.09**	**85.15**
Profession Tax	2009-10	116.43	0.54	0.74	-	117.71	135.55	85.89
	2010-11	125.26	0.14	0.13	-	125.53	133.28	93.98
	2011-12	**126.11**	**0.36**	**0.46**	**-**	**126.93**[3]	**126.90**	**99.38**

Thus, the percentage of collection of tax at pre-assessment stage during the last three years ranged between 98.33 and 99.92 in VAT and Sales Tax, between 94.78 and 97.20 in Entry Tax, between 11.70 and 85.15 in Entertainment Tax and between 85.89 and 99.38 in Profession Tax.

2.1.6 Analysis of arrears of revenue

As per the information furnished by the Department, arrears of revenue as on 31 March 2012 under different heads of revenue as reported by the Department amounted to ₹ 4,695.35 crore which included ₹ 4,345.51 under the OVAT including OST/ CST and ₹ 340.63 crore under the OET.

Arrears as on 31 March 2012 includes ₹ 2,494.87 crore outstanding for more than five years. Demands amounting to ₹ 2,088.36 crore and ₹ 914.65 crore were stayed by the Supreme Court/ High Court and the departmental authorities respectively. Demands of ₹ 966.98 crore was covered by show cause and penalty, ₹374.62 crore was covered under certificate/ tax recovery proceedings and ₹ 0.90 crore was proposed to be written off.

The above details indicate that the amount of uncollected revenue as on 31 March 2012 was 53 *per cent* of the revenue collected under the OVAT (including OST)/ CST during 2011-12 and substantial amounts were under stay by judicial/ departmental fora.

[3] Discrepancy of ₹ 0.03 crore was due to inclusion of share of net proceeds assigned to the States by the Government of India.

Further, arrears of ₹ 340.63 crore under OET included ₹ 30.80 crore outstanding for more than five years. Demands amounting to ₹ 146.71 crore and ₹ 71.23 crore were stayed by the Supreme Court/ High Court and the departmental authorities respectively. Demands of ₹ 116.33 crore was covered by show cause and penalty and ₹ 6.36 crore was covered under certificate/ tax recovery proceedings.

The above details indicate that the amount of uncollected revenue as on 31 March 2012 was 26 *per cent* of the revenue collected under the OET during 2011-12 and substantial amounts were covered under stay by judicial/ departmental fora.

Audit recommends that special efforts be made to pursue the cases stayed by Courts.

2.1.7 Working of Internal Audit Wing

At present the Internal Audit Wing (IAW) was not functioning and steps had been taken to revive the same.

The Department may ensure early revival of the IAW as an Internal Control Mechanism with adequate staff to aid the administration in watching the timely assessment, collection and deposit of tax revenue to the Exchequer and avert the leakage of revenue, if any.

2.1.8 Impact of Audit

2.1.8.1 Revenue impact

The year wise details of units audited under different Acts during the period 2006-07 to 2010-11 and the impact of audit in terms of observations raised and acceptance and recovery thereof are given in the following table.

(₹ in crore)

Year	Act	No. of units audited	Objected		Accepted		Recovered	
			No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2006-07	S T/ VAT	31	215	83.64	76	32.60	14	2.74
	Entry Tax		2,050	43.74	16	4.33	4	0.61
	Total	**31**	**2,265**	**127.38**	**92**	**36.93**	**18**	**3.35**
2007-08	Sales Tax/ VAT	38	155	160.16	17	1.51	1	0.36
	Entry Tax		34	112.13	1	0.02	Nil	Nil
	Total	**38**	**189**	**272.29**	**18**	**1.53**	**1**	**0.36**
2008-09	ST/ VAT	44	241	282.77	18	2.45	1	0.08
	Entry Tax		99	27.84	2	0.04	1	0.001
	Total	**44**	**340**	**310.61**	**20**	**2.49**	**2**	**0.01**
2009-10	ST/ VAT	**56**	224	82.45	2	0.11	1	0.02
	Entry Tax		66	19.51	1	0.43	Nil	Nil
	Profession Tax		23,075	16.87	Nil	Nil	Nil	Nil
	Total	**56**	**23,365**	**118.83**	**3**	**0.54**	**1**	**0.02**
2010-11	S T/ VAT	60	205	78.25	10	0.42	1	0.01
	Entry Tax		70	15.82	Nil	Nil	Nil	Nil
	Total	**60**	**275**	**94.07**	**10**	**0.42**	**1**	**0.01**
Grand total		**229**	**26,434**	**923.18**	**143**	**41.91**	**23**	**3.75**

The recovery position as compared to the accepted amount during the last five years was very low, being 8.95 *per cent* only.

Government may ensure prompt recovery of the amounts involved at least in the cases accepted by the Department.

2.1.9 Results of Audit

Test check of the records of 57 units relating to OST,OVAT, CST, OET and PT in commercial tax offices during the year 2011-12 besides a Thematic Study on " High Value Certificate-Pending Cases" covering 12 Circles revealed non/short-levy of tax/interest, penalty and incorrect allowance/adjustment of ITC etc. amounting to ₹ 266.19 crore in 328 cases.

During the year, the Department accepted underassessment and other deficiencies of ₹ 8.15 crore in 61 cases which were pointed out by us in 2011-12 and earlier years and an amount of ₹ 0.35 crore was realised in 15 cases in respect of VAT and CST during the year. Similarly, during the year the Department accepted under assessment and other deficiencies of ₹ 3.39 crore in 19 cases which were pointed out by us in 2011-12 and earlier years and an amount of ₹ 0.09 crore was realised in five cases in respect of Entry Tax.

2.2 THEMATIC STUDY ON "HIGH VALUE CERTIFICATE-PENDING CASES"

2.2.1 Introduction

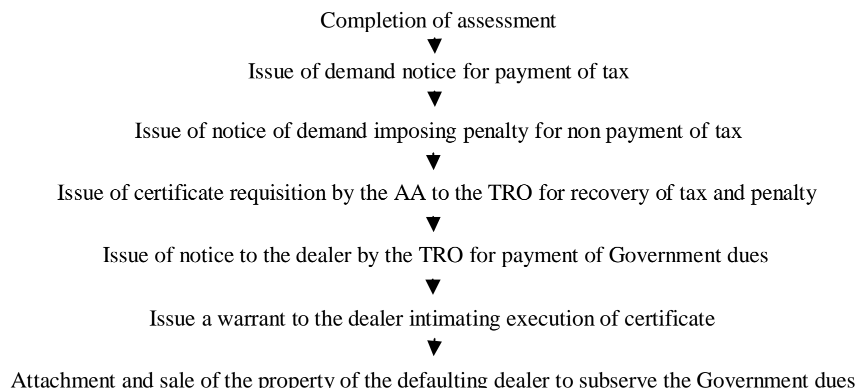
Taxes on sale of goods collected under the erstwhile OST Act, 1947 up to 31 March 2005, OVAT Act, 2004 from 1 April 2005 onwards and the CST Act, 1956 from 5 January 1957 onwards are the major sources of Tax Revenue of the State. As the recovery of taxes on sales decreased from ₹ 84.08 crore in 2006-07 to ₹ 18.09 crore in 2010-11, the procedure for recovery of arrears needs be followed up soon after the assessments are made and demand notices issued by the respective AA of the CT wing of the Finance Department. In case of default, it should be recovered by initiation of certificate proceedings against the defaulters.

2.2.1.2 Procedure prescribed for recovery of arrears of taxes

As per Section 13(4),(5) and (7) of the OST Act read with Rule 32 of the OST Rules and Section 50 (4),(5) and (7) of the OVAT Act read with Rule 54 of the OVAT Rules and the Tax Recovery (TR) Schedules of respective Acts and the instructions (October 1965) of the CCT, Odisha;

- After any assessment is completed, the AA shall serve a demand notice to the dealer directing him to pay the tax assessed within 30 days of service of such notice and to produce the proof of payment within seven days from the date of payment. No time limit is, however, prescribed therein for issue of such demand notices;
- Where a dealer fails to pay the tax demanded within 30 days, the AA shall, after giving an opportunity of being heard, direct him to pay the tax and penalty imposable for non-payment of tax within the specified date with the instruction that in case of failure to do so, the unpaid amount shall be recovered as arrears of public demand under the Schedule containing the TR procedures;
- The AA shall forward a certificate requisition in Form 1 to the Tax Recovery Officer (TRO) for recovery of the arrears, who in turn initiates the TR proceedings by issuing a notice to the defaulting dealer in Form 2 directing him to pay the dues within 15 days from the date of service of the notice;
- In case the amount is not paid within 15 days or such further time as the TRO may grant, he shall proceed to realise the amount by issue of warrant and attachment of property of the defaulter.

A flow chart showing the process of recovery of tax/ arrears of tax is given below:



2.2.2 Organisational Set up

The organisational set up is detailed in para 2.1.1 on Tax Administration. The AAs of the Circles (45 at present under 12 Ranges) i.e. DCCTs/ ACCTs have been authorised to act as the TROs for realisation of arrears by execution of certificate cases against the defaulters.

2.2.3 Audit Objectives

The objective of the TS was to examine whether the Department

- has complied with the provisions of different Acts and Rules read with the executive instructions for expeditious recovery of arrears of tax;
- is effectively pursuing the TR proceedings initiated against the dealers for recovery of arrear tax dues; and
- has an internal control mechanism for monitoring the system of TR proceedings initiated for recovery of arrears of tax.

2.2.4 Scope of Audit

Audit was conducted between January and July 2012 in 12 Circles[4], out of 45, to examine cases of arrears with money value of ₹ 1 lakh and above relating to the assessments finalised during the year 2000-01 to 2010-11 under the OST and the CST Acts which were not covered under any appeal or stay and assessments finalised under the OVAT Act during the years 2005-06 to 2010-11 and the TR proceedings initiated thereon during 2001-02 to 2010-11. TR proceedings initiated by the TROs prior to 2001-02, but not followed up till the date of audit, were also covered.

[4] Bhubaneswar I, Bhubaneswar II, Bhubaneswar III, Bhubaneswar IV, Cuttack I Central, Cuttack I City, Cuttack I East, Cuttack I West, Cuttack II, Jatni, Rourkela I and Rourkela II.

2.2.5 Position of arrears at different levels

The position of arrears as on 31 March 2011 is detailed in the table below.

(₹ in crore)

Name of the Act	Gross arrears under the Act	Proposed to be written off	Net arrears	Amount covered under stay				Total amount under stay	Balance amount under recovery proceedings
				Supreme court.	High court	CCT	JCCT		
OST	1,059.62	3.40	1,056.22	19.90	224.12	262.14	52.30	558.46	497.76
CST	2,439.61	0.10	2,439.51	157.46	1,425.55	245.79	32.80	1,861.60	577.91
OVAT	429.93	0.00	429.93	0.00	11.05	189.11	25.29	225.45	204.48
Total	**3,929.16**	**3.50**	**3,925.66**	**177.36**	**1,660.72**	**697.04**	**110.39**	**2,645.51**	**1,280.15**

Source: Information furnished by the CCT.

Gross arrears was ₹ 3,929.16 crore, from which an amount of ₹ 3.50 crore (0.09 *per cent*) was proposed to be written off and an amount of ₹ 2,645.51 crore (67.33 *per cent*) was locked up at different judicial/ departmental appellate fora. Thus, ₹ 1,280.15 crore (32.58 *per cent*) was to be recovered through the TR proceedings of the Department.

2.2.6 Trend of collection of arrears

(A) Position of collection of arrears under OST/OVAT/CST Acts

Trend of collection of arrears of revenue during the last five years ending 31 March 2011 is given in the table below.

(₹ in crore)

Year	Arrears at the beginning of the year	Arrears added during the year	Total Arrears for the year (Col. 2+3)	Collection during the year	Percentage of collection of arrears (Col. 5 to 4)	Arrears at the end of the year (Col. 4-5)
(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*	*(7)*
2006-07	1,592.63	1,272.10	2,864.73	84.08	2.94	2,780.65
2007-08	2,780.65	447.10	3,227.75	77.69	2.41	3,150.06
2008-09	3,150.06	292.00	3,442.06	32.26	0.94	3,409.80
2009-10	3,409.80	302.81	3,712.61	31.60	0.85	3,681.01
2010-11	3,681.01	266.24	3,947.25	18.09	0.46	3,929.16

Source: Information furnished by the CCT

The percentage of collection to total arrears under different Acts steadily decreased from 2.94 *per cent* in 2006-07 to 0.46 *per cent* in 2010-11 with an average collection of 1.52 *per cent* only. The arrears increased by 147 *per cent* from ₹ 1,592.63 crore as on 1 April 2006 to ₹ 3,929.16 crore as on 31 March 2011. Thus, it is evident that the pace of recovery process was slow in comparison to the steady increase in arrears.

(B) Position of collection of arrears under the repealed OST Act

The total arrears of ₹ 3,929.16 crore outstanding as on 31 March 2011 includes ₹ 1,059.62 crore relating to the repealed OST Act. The trend of collection of such arrears during the period 2006-11 is given in the following table.

(₹ in crore)

Years	Arrears at the beginning of the year	Arrears added during the year	Total arrears (Col. 2+3)	Collection of arrears during the year	Percentage of collection of arrears (Col. 4 to 5)	Arrears at the end of the year (Col. 4-5)
(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*	*(7)*
2006-07	904.08	91.26	995.34	32.13	3.23	963.21
2007-08	963.21	91.36	1,054.57	20.52	1.95	1,034.05
2008-09	1,034.05	38.66	1,072.71	11.33	1.06	1,061.38
2009-10	1,061.38	34.31	1,095.69	10.79	0.98	1,084.90
2010-11	1,084.90	1.37	1,086.27	5.16	0.48	1,059.62[5]

Source: Information furnished by the CCT

The collection of arrears decreased from 3.23 *per cent* of the total arrears in 2006-07 to 0.48 *per cent* of total arrears in 2010-11 indicating that the collection under the repealed Act was not taken up on priority basis. No special review on the activities of the Circles regarding initiation of TR proceedings was done by the Department during the period 2006-11 for speedy collection of the arrears.

The above position needs a special review by the Department in the interest of the revenue of the State.

2.2.7 Audit findings

During the course of audit, we examined 483 TR case records made available to us out of 703 case records requisitioned in 12 Circles.

We noticed several deficiencies in 304 cases relating to 285 dealers in the implementation of the provisions of the TR proceedings for recovery of arrears under the different Acts. We also examined 1,349 cases[6] from the Demand Collection Registers (DCRs) and extracts[7] of DCRs relating to the outstanding arrear dues. The deficiencies noticed in 941 cases relating to 735 dealers and audit findings are discussed in succeeding sub paragraphs.

2.2.7.1 Notices in Form 2 issued but not served to the dealers due to closure of business

To accelerate the pace of collection, the CCT, Odisha instructed (October 1965 and July 2009) all the AAs of the State to expeditiously send the certificate requisition to the TROs (within 15 days as per circular of October 1965) after the expiry of the due date of payment, as delay in initiating the recovery proceedings might tempt the defaulters either to transfer the assets standing in their names or leave the place of business and in such cases, the arrear dues were likely to become bad debts.

During test check of the Registers relating to issue of certificate requisitions in Form 1, notices to the defaulters in Form 2 and Collection Records under the OST, OVAT and CST Acts, we noticed (April-May

5 Amount of ₹ 21.49 crore was reduced by the appellate fora during 2010-11 as informed by the CCT, Odisha.

6 Four cases from the DCRs and 1,345 cases from the extract of DCRs.

7 The demanded revenue against sundry dealers remaining unpaid at the end of the year as per the DCR for any year is shown a register known as 'Extracts of DCR' for monitoring realisation and ascertaining the status of such realisation during next year.

2012) that in 47 cases, TR proceedings were initiated in six Circles against 44 defaulting dealers during different periods between 1999-2000 and 2010-11 for recovery of arrear dues of ₹ 12.17 crore[8] relating to periods between 1989-90 and 2008-09.

However, notices in Form 2 were either not served to the respective dealers or served by way of affixture at the last places of business of the dealers due to closure of the business of the dealers. The TROs did not take any further steps to realise the Government dues from the dealers as per the procedures prescribed under the Schedules. Thus, the arrear dues of ₹ 12.17 crore remained unrealised due to inaction of the Department to trace out the whereabouts of the dealers for attachment of their properties for sale and it carries the risk of becoming a loss to the Government in the long run.

After we pointed out the above cases, while the TROs of Cuttack I East and Rourkela-I Circles agreed (June-July 2012) to take necessary action for recovery of arrears, the TROs of other Circles did not furnish any specific reply as to the actions taken by them for recovery of such arrear tax dues.

2.2.7.2 Non initiation of TR proceedings despite certificate requisitions

The OST Act and the Rules made thereunder as well as the executive instructions issued from time to time do not prescribe any time limit for the TRO for issue of notice to the defaulting dealer in Form 2 after receipt of certificate requisition in Form 1 from the AA. Section 13C of the OST Act, however, provides that no TR proceedings for recovery of any amount shall be initiated after the expiry of twelve years from the date of relevant assessment.

We noticed that in 29 cases, for realisation of tax dues of ₹ 1.16 crore[9] from 27 dealers (under the repealed OST Act) relating to the periods between 1983-84 and 2004-05, the AAs of three Circles issued certificate requisitions between 2002-03 and 2010-11 to the TROs in Form 1 for initiating TR proceedings against the defaulting dealers. However, the respective TROs did not initiate TR proceedings by issuing notices in Form 2 to the defaulting dealers till the dates of audit. As a result, the arrear dues of ₹ 1.16 crore remained unrealised.

After we pointed out the above cases, all the TROs stated (April-May 2012) that the cases would be examined.

---

[8] Bhubaneswar-I: OST ₹ 0.53 crore (13 cases, 12 dealers), Bhubaneswar-II: OST ₹ 0.02 crore (2 cases, 2 dealers), Cuttack-I East: OST ₹ 3.10 crore (1 case, 1 dealer), VAT and CST ₹ 3.98 crore (5 cases, 5 dealers), Jatni: OST ₹ 2.01 crore (9 cases, 7 dealers), Rourkela-I: OST ₹ 1.57 crore (4 cases, 4 dealers), Rourkela-II: OST ₹ 0.54 crore (9 cases, 9 dealers) and Rourkela-II: CST ₹ 0.42 crore (4 cases, 4 dealers).

[9] Cuttack I Central ₹ 2.80 lakh (2 cases 2 dealers) Bhubaneswar II: ₹ 50.82 lakh (16 cases, 16 dealers) and Cuttack I West : ₹ 62.43 lakh (11 cases, 9 dealers).

2.2.7.3 Notices in Form 2 served to the dealers but no further action taken

As per the TR procedures prescribed in the Schedules to the OST/ OVAT Acts, if the amount mentioned in the notice in Form 2 served to the dealer is not paid within the time specified therein or within such further time as the TRO may grant, he shall proceed to realise the amount by issue of warrant for payment, attachment and sale of the defaulter's movable/ immovable properties or shall proceed to arrest and detain the defaulter in a civil prison for specific periods pending realisation of the Government dues.

(a) During the scrutiny of TR records, we noticed (April-July 2012) that in 179 cases relating to 170 dealers, TR proceedings were initiated by the TROs of seven Circles between 1990-91 and 2011-12 by issuing notices to the dealers in Form 2 for realisation of OST, OVAT and CST arrear dues of ₹ 23.71 crore[10] relating to the period between 1976-77 and 2006-07.

However, we observed that the TROs issued the notices in Form 2, but did not follow up such proceedings as per the provisions of the Acts like collecting information on movable and immovable properties of the defaulting dealers, issue of warrants and attachment of the property for sale by public auction for recovery of Government dues. Thus, due to inaction on the part of the TROs, the arrear dues of ₹ 23.71 crore remained unrealised as on the date of audit (April-July 2012).

After we pointed out these cases, the TROs of the concerned Circles stated (April-July 2012) that the cases would be examined.

(b) Similarly, in Cuttack-I East Circle, we noticed (July 2012) that TR notices in Form 2 were issued to six dealers[11] in six cases between 2001-02 and 2003-04 for realisation of tax dues of ₹ 1.64 crore under the OST Act relating to the periods between 1988-89 and 1998-99. Though the TRO sought for the information regarding property particulars of the six dealers from the concerned Tahasildars during the period between 2001-02 and 2011-12, no information was received from them. No further action was also taken by the TRO for realisation of the above arrear dues and the same remained unrealised till the date of audit (July 2012).

After we pointed out the above cases, the TRO stated (July 2012) that the concerned Tahasildars would be requested to furnish the property particulars at the earliest.

---

[10] Bhubaneswar I: OST ₹ 0.87 crore (1 case, 1 dealer), Bhubaneswar II: OST ₹ 3.66 crore (16 cases, 16 dealers), Cuttack I East: OST ₹ 5.78 crore (66 cases, 63 dealers), Cuttack I West: OST ₹ 2.07 crore (6 cases, 4 dealers), Cuttack II: OST ₹ 4.70 crore (44 cases, 44 dealers), Rourkela I: OST ₹ 0.80 crore (17 cases, 15 dealers), OVAT ₹ 1.64 crore (11 cases, 10 dealers), CST ₹ 3.75 crore (9 cases, 9 dealers) and Rourkela II: OST ₹ 0.44 crore (9 cases, 8 dealers).

[11] (i) M/s Mahalaxmi Trading Co, RC No. CU-IE-3297 : ₹ 10.51 lakh (1995-96 and 1997-98), (ii) M/s Afsana Traders, RC No. CU-IE-3424: ₹ 74.10 lakh (1993-94 and 1996-97), (iii) M/s Jas Machineries, RC No. CU-IE-2998: ₹ 1.58 lakh (1984-85 to 1987-88), (iv) M/s Bhagyabati Banijya Bhandar, RC No. CU-IE-3305: ₹ 19.95 lakh (1998-99), (v) M/s OM Traders, RC No. CU-IE-2381: ₹ 47.53 lakh (1998-99) and (vi) M/s Rawani Dal and Flour Mills, RC No. CU-IE-2463: ₹ 9.93 lakh (1994-95 and 1995-96).

2.2.7.4 Initiation of TR proceedings beyond the limitation of time

As per the provisions of Section 13C of the OST Act, no proceedings for the recovery of any amount under the Act shall be initiated after the expiry of twelve years from the date of assessment.

(a) During scrutiny of TR records, we noticed (April-May 2012) that in three[12] Circles, the assessments under the OST Act for different periods from 1981-82 to 1998-99 relating to 25 dealers in 29 cases were made during 1988-89 to 1998-99 and demand notices for realisation of tax dues of ₹ 24.36 lakh[13] were served during July 1988 to April 1999. The TROs, however, initiated the TR proceedings during the period between February 2002 and July 2011, when the cases were already barred by the limitation of time. This led to loss of revenue of ₹ 24.36 lakh.

After we pointed out these cases, the TROs stated (May 2012) that the cases would be examined.

(b) During scrutiny of TR records, we noticed (April-July 2012) that in two Circles, the AAs issued certificate requisitions in Form 1 between 1995-96 and 2009-10 for recovery of OST arrears of ₹ 2.80 crore[14] through TR proceedings of 13 dealers (14 cases) relating to the period between 1981-82 and 1996-97. However, the TROs did not initiate the proceedings by issuing Form 2 to the defaulting dealers within the specified period of 12 years and even up to the date of audit. As a result, the recovery process of Government dues became barred by limitation of time leading to loss of revenue of ₹ 2.80 crore.

After we pointed out these cases, while the TRO, Bhubaneswar I Circle stated (May 2012) that the cases would be examined, the TRO, Cuttack I Central Circle stated (February and August 2012) that the TR proceedings in the said cases were initiated within the limitation period of 12 years. However, the evidence of initiation of TR proceedings i.e., office copies of Form 2 and acknowledgement of the dealers were not furnished by the TRO.

[12] Bhubaneswar I, Cuttack II, Rourkela II.

[13] Bhubaneswar I: ₹ 7.18 lakh (6 cases, 6 dealers), Cuttack II: ₹ 7.90 lakh (4 cases, 4 dealers) and Rourkela II: ₹ 9.28 lakh (19 cases, 15 dealers).

[14] Cuttack I Central: ₹ 0.83 (11 cases, 11 dealers) and Bhubaneswar I: ₹ 1.97 core (3 cases, 2 dealers).

2.2.8 Other points of interest

2.2.8.1 Non issue of certificate requisitions for initiation of TR proceedings

To accelerate the pace of collection, the CCT, Odisha instructed (October 1965) all the AAs of the State that it is desirable to send the certificate requisitions in Form 1 to the TROs within 15 days after the expiry of the due date of payment, since the delay in initiating the recovery proceedings could tempt the defaulters either to transfer the assets standing in their names or leave the place of business and in such cases, the arrear dues were likely to become bad debts.

During scrutiny of the extracts of the DCRs for the years 2001-02 onwards relating to the OST and OVAT Acts in twelve Circles, we noticed that out of 1,345 cases examined, in 899 cases, tax dues of ₹ 118.40 crore for different periods during 1982-83 to 2009-10 as per the assessments made between 1999-2000 and 2010-11 remained unrealised as arrears of revenue against 701 dealers. However, certificate requisitions in Form 1 were not issued by the AAs for initiation of TR proceedings against the defaulters. This included ₹ 10.21 crore[15] in respect of 84 cases relating to different periods between 1983-84 and 2004-05 under the OST Act and between 2005-06 and 2007-08 under the CST Act for which even notices to 79 dealers imposing penalty were not issued by the AAs.

After we pointed out the cases, while the AA of Cuttack I Central Circle issued (July 2012) certificate requisitions in 124 cases out of 153 for recovery of tax dues of ₹ 8.74 crore under the OST Act, the AA of Cuttack I East Circle stated (April 2012) that in some cases certificate requisitions in Form I were issued. However, no evidence was furnished against such requisitions. The AAs of remaining nine Circles agreed (April-July 2012) to initiate TR proceedings against the defaulting dealers.

2.2.8.2 Non-issue of certificate requisitions within the limitation of time

As per the provisions of Section 13C of the OST Act, no proceedings for the recovery of any amount under the Act shall be initiated after the expiry of twelve years from the date of assessment.

During scrutiny of the extracts of DCRs of three Circles, we noticed (April-May 2012) that, certificate requisitions in 34 cases relating to 27 dealers were not initiated under the OST Act by the AAs for recovery of arrear tax dues relating to the period between 1986-87 and 1997-98 though the same were barred by limitation of time (May 2012). This resulted in loss of revenue of ₹ 1.36 crore[16].

After we pointed out the above cases, the AAs assured (May 2012) to ascertain the cases after verification of the records.

---

[15] Bhubaneswar II: OST ₹ 8.17 crore (49 cases, 49 dealers) and Rourkela I: OST ₹ 2.02 crore (34 cases, 29 dealers), CST ₹ 0.02 crore (1 case, 1 dealer).

[16] Bhubaneswar I: ₹ 120.09 lakh (12 cases, 10 dealers), Bhubaneswar IV: ₹ 11 lakh (3 cases, 2 dealers) and Rourkela I: ₹ 5.14 lakh (19 cases, 15 dealers).

2.2.8.3 Service of demand notice through affixture/ non-service of demand notices

During scrutiny of the extract of DCRs of Bhubaneswar III Circle and DCRs of Rourkela II Circle, we noticed (May 2012) that while the demand notices in Bhubaneswar-III Circle in respect of four dealers in four cases[17] involving tax dues of ₹ 29.41 lakh relating to 2004-05 were served through affixture due to closure of the business, in Rourkela-II Circle, demand notices to a dealer in two cases involving tax dues of ₹ 47.56 lakh relating to the period 2002-03 and 2003-04 could not be served due to closure of business. No further action was initiated by the AAs and hence the above tax dues remained unrealised.

After we pointed out these cases, the AAs agreed (May 2012) to examine the same.

2.2.8.4 Belated service of demand notices

During scrutiny of the DCRs, we noticed that-

- In Bhubaneswar IV Circle, service of demand notice to a dealer[18] was made with a delay of three months and there was a further delay in issue of certificate requisition in Form 1 for realisation of tax dues of ₹ 3.80 crore under the CST Act relating to the tax periods from December 2007 to February 2009. Consequentially, notice in Form 2 issued on 27 March 2010 could not be served to the dealer and it was published in local dailies as the dealer had already closed the business. The information on immovable properties sought for from the revenue authorities in April 2010 was, however, not received up to the date of audit.

- In Bhubaneswar I Circle, the assessment of a dealer[19] under the OVAT Act for the tax periods from April 2005 to October 2009 was finalised on 18 June 2010. Though the demand notice was shown in the DCR to have been issued on 18 June 2010, the same was actually issued on 7 February 2011, with a delay of 7 months as noticed from the Despatch Register. Certificate requisition in this case was also not issued by the AA to the TRO and the amount of ₹ 39.35 lakh remained unrealised till date of audit (May 2012).

After we pointed out the above two cases, the AA of Bhubaneswar I Circle, while admitting (May 2012) the belated issue of demand notice, did not mention any specific reason for non-initiation of any action for recovery of the assessed tax. The TRO of Bhubaneswar IV Circle stated that no tangible information was received from the Tahasildar, Rourkela despite repeated reminders. However, had the demand notice and notice in Form 2 issued on time before closure of the business, the Department would have been in a better position to recover the Government dues.

Audit recommends that the Department may prescribe specific time limits for issue of demand notices after an assessment is over

---

[17] Included in 1,345 cases test checked by us from the extract of DCRs.
[18] M/s R L Enterprises, TIN-21851120172.
[19] M/s Maxim System TIN 21551101422.

2.2.9 System Deficiencies

Audit noticed some system deficiencies in the following areas.

2.2.9.1 Annual Targets

Though a significantly decreasing trend of collection of arrears from year to year was noticed and despite such concern being raised by the CCT as early as in 1965, no annual targets were fixed by the CCT for the Circles for collection of arrears which could make the AAs/TROs accountable.

2.2.9.2 Prescription of time limits.

No time limits are prescribed in the Acts or Rules for

- issue of the demand notices to the dealers by the AA after completion of an assessment and issue of certificate requisitions in Form I to the TROs by the AAs when the demand of tax with penalty is not paid by the dealers.
- issue of notices to the dealers in Form 2 by the TROs after receipt of certificate requisitions in Form 1 from the AAs.

2.2.9.3 Internal controls

Internal Audit: Mention was made in the Audit Reports[20] regarding non-functioning of the internal audit system in the Department since 2002-03. The Department also admitted that the internal audit was totally defunct and there would be no possibility of revival due to non-filling up of the vacant posts. Thus adherence to the statutes and executive instructions by the AAs and TROs for timely issue of certificate requisitions and initiation of TR proceedings for recovery of arrear tax dues was not ensured through the Internal Audit System.

Departmental Review: With a view to handling the fundamental changes after the introduction of the OVAT Act, 2004, the CCT introduced (July 2009) the system of comprehensive review of the Circles to be undertaken by the senior officers like JCCTs of the Department at least once in a year which included review of records management, collection of arrears and the current tax, TR proceedings, etc. However, we noticed that the follow up of the said decision was not on record in the test checked Circles.

2.2.10 Conclusion

After the introduction of the OVAT Act from 1 April 2005 onwards, though collection of arrears of tax under the repealed OST Act required utmost priority keeping in view the limitations of time (12 years under the OST Act, reduced to 5 years under the OVAT Act), yet the same was not given adequate importance by the officers at the field level for initiation of TR proceedings. The notices issued to the dealers after initiation of TR proceedings remained un-served due to closure of business and other reasons, the TR proceedings were not initiated by the TROs on time after receipt of certificate requisitions from the AAs. As a result, some cases became barred by limitation of time.

[20] Paragraph 2.18 of the Audit Report for the year ended 31 March 2003, Paragraph 2.2.8 of the Audit Report for the year ended 31 March 2008 and Paragraph 2.2.15 of the Audit Report for the year ended 31 March 2009.

The TROs discharged their responsibilities only by initiating the TR proceedings without follow up action of the same. In majority of the cases, certificate requisitions were not issued by the AAs which resulted in non-realisation of substantial amount of arrears. We also noticed that the internal audit in the Department was non-existent and the Acts/Rules were not amended for speedy realisation of arrears of revenue.

2.2.11 Recommendations

As tax revenue constitutes a major share to the State's exchequer, Government may consider:

- Prescribing specific time limits in the CST/OVAT Acts/ Rules by suitable amendments for issue of notices by the TROs to the defaulters after receipt of certificate requisitions from the AAs.
- Fixing annual targets for AAs/ TROs for the collection of arrears of revenue.
- Strengthening and streamlining the mechanism for monitoring the recovery of arrears of the repealed OST Act and the current Acts

2.3 Other Audit observations

We test checked the assessment records relating to the OVAT including OST, CST and the OET Acts in the Commercial Tax Range/Circle offices of the State and noticed several cases of non-observance of the provisions of the above Acts and Rules made thereunder which led to non/short-levy of tax, interest and penalty as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out by us. We point out such omissions on the part of the AAs every year, but not only do the irregularities persist; these remain undetected till an audit is conducted. The Government needs to improve the internal control system including strengthening of internal audit to avoid recurrence of such omissions.

Orissa Value Added Tax and OST

2.4 Non-observance/compliance of the provisions of the Act and Rules

The erstwhile OST Act, 1947 and the OVAT Act, 2004/Rules made there under read with Government notifications provide for:

(i) the audit assessments by the AAs on the basis of Audit Visit Reports (AVRs) and levy of tax on the correctly assessed taxable turnover (TTO) of outputs after giving due credit/adjustment of tax paid on inputs (ITC) as admissible on different counts;

(ii) levy of interest on short-payment of tax and penal interest for delayed payment of tax detected during the regular scrutiny of monthly returns by the AAs;

(iii) imposition of penalty at prescribed rates in addition to the tax assessed at the audit assessment stage by the AAs; and

(iv) transfer of the OST liability of a dealer to its successor dealer when the ownership is changes after amalgamation.

The AAs, while finalising the audit assessments of the dealers for certain tax periods, did not follow the above provisions read with the Government notifications issued from time to time, as mentioned in the succeeding paragraphs which resulted in non/short-levy and realisation of tax, interest and penalty aggregating to ₹ 44.69 crore.

2.4.1 Short-levy of tax due to under assessment of taxable turnover

Under Section 2(56) of the OVAT Act, 2004 read with Rule 6 of the OVAT Rules, a dealer shall be liable to pay tax at the prescribed rate on the TTO of sales. As per Section 42(5) of the Act, if any tax is levied during the audit assessment, penalty equal to twice the tax so levied shall be imposed on him. Further, Section 20(3)(b) of the Act provides that ITC shall be allowed on the purchases made within the State from a registered dealer for use as inputs in the manufacturing of goods for sale.

(a) During scrutiny of audit assessment records[21] of Jajpur Range, we noticed (August 2011) that a dealer, M/s Orissa Mineral Development Company (OMDC) Ltd., engaged in extraction of ore from mines, crushing of ore, manufacture of sponge iron and sale of iron ore and sponge iron; declared a total sales turnover of ₹ 119.35 crore for the tax periods 2006-07 (₹ 71.01 crore) and 2007-08 (₹ 48.34 crore). The tax audit team of the Department detected suppression of manufacture of sized iron ore and sponge iron valued at ₹ 37.46 crore. While assessing the dealer (February 2011), the AA determined tax of ₹ 1.51 crore on suppressed turnover and imposed penalty of ₹ 3.03 crore thereon. After adjusting the tax and penalty of ₹ 4.54 crore against the tax of ₹ 4.79 already paid by the dealer, the AA allowed the dealer to carry forward an amount of ₹ 25.16 lakh to the next year. However, the turnover of ₹ 119.35 crore disclosed by the dealer in his self assessment for the above tax periods was not assessed in the audit assessment. This led to short-levy of tax of ₹ 4.77 crore.

After we pointed out the above case, Government stated (May 2012) that the reassessment proceeding has been initiated against the dealer.

b(i) During scrutiny of audit assessment records of Cuttack-II Range, we noticed (November 2011) that while assessing (March 2011) a dealer, M/s Godrej Consumer Products Ltd., dealing in toiletries for the tax periods from 01 November 2008 to 31 July 2010, the AA determined the sales turnover at ₹ 29.90 crore on the basis of the AVR.

We, however, noticed from the returns filed by the dealer under the Orissa Entry Tax (OET) Act, 1999, for the above tax periods, that the dealer had actually received goods valued at ₹ 31.65 crore out of which goods valued at ₹ 98.36 lakh only, was transferred to the branches outside the State. Taking

---

[21] Assessment order, calculation sheet, statement showing annual return, details of VAT sales, payment details under OVAT and copy of Audit Visit Report (AVR).

into account the opening and closing stocks as on 1 November 2008 and 31 July 2010 as disclosed by the dealer in his stock statement, audit noticed that the minimum sales turnover of the goods liable to tax was ₹ 30.48 crore exclusive of the profit margin. This led to short-determination of taxable turnover of ₹ 57.91 lakh and consequential short-levy of tax ₹ 7.24 lakh thereon. Besides, the dealer was liable to pay a penalty of ₹ 14.48 lakh.

b(ii) Similarly, during scrutiny of audit assessment records of Mayurbhanj Circle, we noticed (January 2012) that while assessing (April 2010) a dealer M/s Laxmi Soap & Detergent (P) Ltd, a manufacturer of soaps and detergents and a trader in cement, iron bars and rods etc., for the tax periods from 01 April 2005 to 31 July 2009, the AA accepted the sales turnover of ₹ 2.60 crore as declared by the dealer in the returns for tax periods covered in the years 2005-06 and 2006-07. However, we noticed from the annual accounts of the dealer, as certified by the Chartered Accountant that the actual sales turnover during the above period was ₹ 3.33 crore. Thus, due to acceptance of the sales turnover figure declared by the dealer without cross verifying the same with the annual audited accounts which was available to him, there was under determination of sales turnover of ₹ 72.63 lakh and resultant short-levy of tax of ₹ 7.54 lakh. Besides this, penalty of ₹ 15.08 lakh was also leviable.

After we pointed out the above cases, Government stated (May 2012) that in the case of M/s Godrej Consumer Products Ltd. the case has been reopened and the reassessment proceeding was continuing. Response of the Government in case of M/s Laxmi Soap & Detergent (P) Ltd. is yet to be received (January 2013).

2.4.2 Non-levy of VAT on Duty Entitlement Pass Book

Under Section 12 of the OVAT Act, 2004, every dealer, who purchases or receives taxable goods from a registered dealer or any person other than a registered dealer under the circumstances in which no tax is paid, is liable to pay tax on the purchase price or the prevailing market price of such goods, if after such purchase or receipt, the goods are not sold within or outside the State or in the course of export out of the territory of India, but are otherwise disposed off without payment of tax. Penalty equal to twice the amount of tax assessed in audit assessment is also imposable [Section 42(5) the Act]. Under Section 34 of the Act, if a dealer fails to pay the tax dues along with his periodical returns, he will be liable to pay interest at the rate of one *per cent* per month in respect of the tax which he fails to pay. All intangible goods like Duty Entitlement Pass Book (DEPB) is taxable at the rate of four *per cent.*

During test check of audit assessment records[22] of the dealers in Bhubaneswar II Circle and Cuttack II Range for the tax periods ranging from April 2005 to March 2009, we noticed (between June and November 2011) that three dealers[23] received DEPBs without payment of tax and subsequently transferred the same to their branches/ consignment agents outside the State on the strength of declarations in form "F" and hence no tax was paid on such goods. In such circumstances, the receipt of DEPBs were subject to tax at the rate of four *per cent.* However the AAs, while finalising the assessments of the dealers, did not levy such tax. In case of Cuttack II Range, the AA also ignored the observation made for such taxation in the Audit Visit Report (AVR) of M/s. IMFA Ltd. From the data made available, we found that the DEPBs received were valued at ₹ 37.07 crore on which tax of ₹ 1.48 crore[24] and penalty of ₹ 2.96 crore was leviable, in addition to interest of ₹ 0.52 crore on account of short-payment of tax in the periodical returns.

After we pointed out the above cases, the Government stated (April and June 2012) that the reassessment proceeding of M/s Teekay Marines (P) Ltd.and M/s MMTC Ltd. were completed raising a demand of ₹ 22.22 lakh and ₹ 4.37 crore respectively; while the reassessment proceeding of M/s IMFA Ltd was under process.

---

22 Assessment orders, one hard copy of return, copy of appeal order in respect of M/s Teekay Marines (P) Ltd and Audit Visit Report (AVR) made available to Audit.

23 M/s MMTC Ltd., M/s Teekay Marines (P) Ltd., of Bhubaneswar-II Circle and M/s IMFA Ltd., Cuttack-II Range.

24 In the absence of data on purchase price or prevailing market price of the said goods on the dates of purchase or receipt in the assessment records we calculated tax on stock transfer value of DEPBs.

2.4.3 Allowance of inadmissible claim of Input Tax Credit

Under Section 24 and 25 of the OVAT Act, 2004 and the Rules made thereunder, no dealer shall be issued with more than one Certificate of Registration (RC). Under Section 20 (3)(b) of the OVAT Act, 2004, Input Tax Credit (ITC) is allowed on purchase of raw materials, which are directly used in manufacturing of goods for sale. As per Section 20 (9)(a), if the goods purchased for any of the purposes specified under Section 20 (3)(b) are subsequently used or disposed off otherwise than sale, the ITC availed for such purchases shall be deducted from the total ITC so availed. Under Section 38 and 39(2) of the Act, if the return furnished by a dealer is found to be in order, it shall be accepted as self assessed. However, under Section 42 of OVAT Act, 2004 read with Rule 41(4) of OVAT Rules, 2005 the Large Taxpayer Units (LTUs) are to be assessed within an audit cycle of two years up to 20 October 2010 and three years thereafter. The Act provides that if any sales turnover of a dealer has escaped assessment, the same shall be assessed under Section 43 of the Act.

During test check of self assessed returns of M/s NALCO Ltd, Damanjodi, a Large Taxpayer Unit (LTU) engaged in manufacture of Alumina, for the tax periods from February 2007 to January 2008, we noticed (November-December 2008) that the dealer claimed and availed ITC of ₹ 2.27 crore on purchase of coal from a registered dealer of the State. This was not admissible as coal is not directly used as an input for manufacture of 'Alumina'. However, the dealer availed such inadmissible ITC of ₹ 8.05 crore for the tax periods from April 2005 to March 2009 including the above mentioned ₹ 2.27 crore.

We further noticed (July 2010) that the dealer transferred Alumina valued at ₹ 2,008.59 crore during April 2005 to March 2009 to a dealer[25] and availed ITC of ₹ 3.35 crore on the corresponding purchase of all inputs related to the manufactured goods transferred to its other branch at Angul illegally registered under the Act during the above tax periods. As the dealer disposed off its manufactured goods otherwise than by way of sale, the above ITC of ₹ 3.35 crore availed by the dealer was not admissible. This included the coal related ITC of ₹ 2.19 crore availed by the dealer. Hence, the net inadmissible ITC availed by the dealer was ₹ 1.16 crore.

Moreover, we noticed that the LTU dealer was not covered under audit assessment though three such assessments were required to be taken up as per the OVAT Act, 2004 effective from April 2005 onwards and the self assessment returns of the dealer were accepted by the AA. This led to non-detection of the above type of lapses.

After we pointed out the above lapses, JCCT, Koraput Range, Koraput, stated (June 2012) that the returns filed by the dealer M/s NALCO Ltd for the period from April 2005 to March 2010 were accepted as self assessed and hence the

[25] Sister unit-smelter plant situated at Nalco Nagar, Angul, having separate registration number-TIN-21571302104 and being assessed separately.

AA reassessed (March 2012) the case under Section 43 of the Act and demanded tax and penalty of ₹ 11.95 crore. This was confirmed (September 2012) by the Government.

2.4.4 Inadmissible ITC on spare parts of machinery

Under Section 20(3)(b) of the OVAT Act, 2004 and Rules made thereunder read with Government Notification of 28 May 2008, ITC shall be allowed on purchase of components and spare parts of capital goods like plant and machinery, as defined under Section 2(8) of the above Act, purchased on or after 1 June 2008 and used directly in the process of manufacture. Purchase of spare parts and components of plant and machinery prior to 1 June 2008 was, therefore, not entitled to ITC. The Act further provides for imposition of penalty equal to twice the amount of tax assessed in the audit assessment under Section 42(5) of the Act.

During test check of the audit assessment records of Jajpur Range, we noticed (August 2011) that while finalising the audit assessments of three dealers[26] (between July 2010 and March 2011), the AA allowed ITC on purchase of components and spare parts of plant and machinery valued at ₹ 7.51 crore prior to 1 June 2008. This resulted in allowance of inadmissible ITC of ₹ 78.94 lakh and a penalty of ₹ 157.87 lakh. This was neither detected by the Tax Audit Team nor the AA, although the information was available on record at the time of audit visit and assessment of the above cases.

After we pointed out the above cases, Government stated (May 2012) that the reassessment proceedings have been initiated against the dealers.

[26] M/s Rungta Sons (P) Ltd.,TIN-21511400786, M/s Mangilal Rungta,TIN-21951400238 and M/s Banspani Iron Ltd.,TIN-21091400144

2.4.5 Non-levy of tax on "cotton yarn"

A dealer shall be liable to pay tax at the prescribed rate on the TTO under Section 2 (56) of the OVAT Act, 2004 read with Rule 6 of the OVAT Rules. As per entry No. 38 of the Schedule B, Part II of the OVAT Act, 2004, 'Cotton yarn' is exigible to tax at the rate of four *per cent*. Section 38 of the Act further provides for scrutiny of all the self-assessed returns filed by the dealers and, in case the dealer is found to have paid less tax than what is payable, the AA is required to issue notice to the dealer directing him to pay the balance tax and interest at the rate of one *per cent* thereon (Section 34 of the Act) per month from the due date of the return to the date of its payment or order of assessment, whichever is earlier. If the dealer fails to pay the tax and interest, the Commissioner may, after giving the dealer a reasonable opportunity of being heard, direct him to pay in addition to tax and interest a penalty at the rate of two *per cent* per month thereon from the date it had become due to the date of its payment or the order of the assessment, whichever is earlier. In audit assessments, penalty equal to twice the amount of tax assessed additionally shall be imposed on the dealer under Section 42(5) of the Act.

During test check of audit assessment records of a dealer in Subarnapur Circle, we noticed (February 2012) that a dealer, M/s Gourishankar Dyeing Works, engaged in dyeing of yarn, sold "cotton yarn" valued at ₹ 2.05 crore inside the State during the period from 1 April 2005 to 31 March 2009. However, during the above period no tax was paid thereon treating the same as tax exempted goods. The tax audit team in their AVR accepted the above contention of the dealer and hence recommended that no audit assessment was required. Accordingly, the AA dropped the audit assessment proceedings. However, cotton yarn is exigible to tax at four *per cent*. Thus a turnover of ₹ 2.05 crore escaped assessment and it led to non-levy of tax of ₹ 8.22 lakh and penalty of ₹16.44 lakh.

Further, we noticed that the self assessed returns of the above dealer for the tax periods from 1 April 2009 to 31 March 2011 were accepted by the AA wherein no tax was paid by the dealer on the taxable sales turnover of "cotton yarn" of ₹ 1.84 crore treating the same as tax exempted sales. This resulted in further escapement of tax of ₹ 7.37 lakh. Besides, interest of ₹1.47 lakh and penalty of ₹ 3.60 lakh on the above tax and interest was also leviable.

Thus, omission on the part of the AA for levying appropriate tax on the sales turnover of cotton yarn at the audit assessment stage and inadequate scrutiny of the self assessed returns resulted in non-levy of tax, interest and penalty aggregating to ₹ 37.10 lakh.

After we pointed out the above case, the Government stated (June 2012) that the reassessment proceeding was initiated against the dealer.

2.4.6 Non-levy of penalty for non-submission of certified report on the audited accounts

Under Section 65 of the OVAT Act, 2004 read with Rule 73 of the OVAT (O) Rules, 2005 made thereunder a dealer having gross turnover exceeding ₹ 40 lakh during a financial year shall furnish a true copy of the annual audited accounts for that year duly certified by a Chartered Accountant by 31 October of the next financial year to the concerned AA for his record in the register prescribed by the CCT Odisha in September 2009 to monitor the timely submission of such accounts at the Circle level and also to act as a reference at the time of tax audit and assessment. The Act further provides that in case the dealer fails to furnish or furnishes the same belatedly, the AA shall, after giving the dealer a reasonable opportunity of being heard, impose on him a penalty of rupees one hundred for each day of default in submission.

During test check of records maintained by 33 Circles[27], from October 2010 onwards, we noticed (between May 2011 and March 2012) that the Circles did not maintain any records to monitor the receipt of copy of the certified annual audited accounts from the dealers, whose gross turnover exceeded ₹ 40 lakh during the previous financial year i.e. 2009-10.

From the information collected from Value Added Tax Information System (VATIS), and confirmed by the AAs, we noticed that out of 10,189 dealers, who were liable to furnish the true copies of the certified annual audited accounts relating to the year 2009-10 during the above period, 5,883 dealers did not submit the same to the respective AAs within the prescribed dates and even up to the date of audit, which warranted levy of penalty under the Act. The delay in submission of copies of the above reports ranged from 211 to 486 days, for which penalty of ₹ 19.87 crore was to be imposed as detailed in **Annexure 1**. The reasons for non-imposition of penalty were also not recorded in the relevant assessment orders or the register prescribed by the CCT, Odisha.

After we pointed out the above cases, the Government stated (July and September 2012) that demand notices had been issued to 22 dealers of Subarnapur Circle. The response for the remaining cases relating to other Circles was awaited (January 2013).

[27] Angul, Balasore, Barbil, Bargarh, Bhubaneswar I, Bhubaneswar II, Bhubaneswar III, Bolangir, Cuttack I (City), Cuttack I Central, Cuttack I East, Cuttack I West, Cuttack II, Deogarh, Dhenkanal, Jagatsingpur, Jajpur, Jatani, Jharsuguda, Kalahandi, Kantabanji, Kendrapara, Keonjhar, Mayurbhanj, Nabarangpur, Nayagarh, Nuapada, Rayagada, Rourkela I, Rourkela II, Sambalpur I, Sambalpur II and Subarnapur.

2.4.7 Escapement of tax due to suppression of purchases of goods brought through waybills

Under Section74(2) of the OVAT Act, 2004 read with Rule 79(3) of the OVAT Rules, way bills have been prescribed to facilitate transportation of goods through check posts, to prevent evasion of tax and to ensure that transactions made by the dealer are properly accounted for in his books of accounts. Further, the CCT instructed (April and October 2009) that the data relating to waybills received by the Circles from the check gates should be entered in the VATIS and such data needs to be cross verified scrupulously with the utilisation statements of waybills furnished by the dealers.

During scrutiny of the information available in the VATIS, on the details recorded in the "In" and "Out" Registers maintained at the check gates in respect of the value of goods entered into the State through waybills and cross verification of the same with the utilisation statements, we noticed (between May 2011 and March 2012) that in eight Circles[28]; 89 dealers brought goods valued at ₹ 17.51 crore under different tax groups from outside the State during the tax periods from February 2009 to July 2011 through 165 waybills, whereas the dealers exhibited the value of such goods at ₹ 9.21 crore only in their utilisation statements furnished to the AAs. The duplicate copies of 19 waybills furnished by eight dealers to the concerned AAs and made available to us were compared with the data of the check gates and found that there was short-accountal of purchases of ₹ 8.31 crore and possible escapement of a minimum tax of ₹ 44.33 lakh.

Thus, failure of AAs to cross verify the data of the original waybills received from the check gates with the utilisation statements of the waybill received from the respective dealers through VATIS in contravention of the instruction of the CCT led to non-detection of the above lapses. Though we requested the AAs to furnish the original copies of 165 waybills received from the check gates for cross checking the factual position of loss, none of the Circles furnished the same for verification of the factual position of waybills.

After we pointed out the above deficiencies, the Government replied (between September 2011 and December 2012) that verification of 76 waybills of five Circles including nine original waybills furnished by Cuttack-I (West) Circle revealed that there was no discrepancy in respect of 36 waybills with reference to the utilisation accounts of the waybills submitted by the respective dealers.

[28] Bhadrak, Bhubaneswar I, Bhubaneswar II, Cuttack I (East), Cuttack I (West), Koraput, Malkangiri and Mayurbhanja circle.

The above contention of the Government is not acceptable as in the absence of 156 original waybills not being available the correctness can not be established. The matter needs further investigation by the Department by tracing out all the original waybills.

2.4.8 Non-levy of penalty on audit assessment

Under Section 42(1) and (5) of the OVAT Act, 2004, where the tax audit results in detection of any discrepancy such as suppression of purchases or sales or both, erroneous claims of deduction including claim of input tax credit (ITC), evasion of tax or contravention of any provision of the Act affecting the tax liability of the dealer, the AA is required to make audit assessment of the dealer wherein penalty equal to twice the amount of tax assessed shall be levied against the dealer.

During test check of audit assessment records of two Ranges[29], we noticed (August 2011) that while finalising the audit assessments of five dealers[30] for the tax periods from April 2005 to March 2010, the AAs assessed additional tax liability of ₹ 1.45 crore for various discrepancies / contraventions of the Act. However, they did not impose penalty of ₹ 2.90 crore.

After we pointed out the above cases, the Government stated (August 2012) that in respect of the five dealers the AAs cannot reopen the cases under section 43 of the OVAT Act on the ground of non-levy of penalty. Therefore, the proposal for *suo motu* revision / disposal of 1st appeal in the light of the audit objection has been sent to the respective appellate authorities.

[29] Angul Range and Jajpur Range.

[30] M/s Bhushan Steel Ltd , M/s Rungta Sons (P) Ltd , M/s IDCOL Ferro-Chrome Alloys Ltd , M/s Mangilal Rungta , M/s Mangal Sponge & Steels (P) Ltd.

2.4.9 Non-levy of interest and penalty for delayed payment of tax

Under Section-34 (1) of the OVAT Act, 2004, where a dealer, who is required to file a return under the Act, fails without sufficient cause to pay the amount of tax due as per the return, he shall be liable to pay interest at the rate of one *per cent* per month in respect of the tax which he fails to pay according to the return, from the due date of the return to the date of its payment or to the date of order of assessment, whichever is earlier. Under Section 34(2) of the Act, if the dealer fails to pay the above amount of tax and interest, the Commissioner may, after giving the dealer a reasonable opportunity of being heard, direct him to pay, in addition to tax and interest, a penalty at the rate of two *per cent* per month thereon from the date it had become due to the date of its payment or the order of assessment, whichever is earlier.

During verification of the tax payment details generated from the VATIS, self-assessed VAT returns, treasury schedules, progressive collection registers as well as analysis of tax payment details in the assessment records made available in one Range[31] and 28 Circles[32] for different tax periods between 1 April 2005 and 31 March 2011, we noticed (between July 2011 and February 2012) that in respect of 2,159 tax periods, 1,211 dealers paid the tax due (₹ 168.87 crore) with delays ranging from five to 625 days for which interest of ₹ 88.33 lakh was leviable. While accepting the returns for the relevant tax periods, the AAs did not levy the above interest dues against the dealers. Besides, penalty of ₹ 1.81 crore was also leviable. Thus, failure on the part of the AAs resulted in non-levy of interest and penalty of ₹ 2.69 crore as detailed in **Annexure 2**.

After we pointed out these cases, the Government stated (June, July and September 2012) that 25 dealers of three circles had deposited interest and penalty of ₹ 5.84 lakh. The notices were issued to 94 dealers of Sambalpur I and Cuttack I Central Circle. Replies for the remaining cases were awaited (January 2013).

---

[31] Cuttack-I Range

[32] Angul, Balasore, Bhubaneswar II, Bhubaneswar III, Bhubaneswar IV, Barbil, Bargarh, Bolangir, Cuttack I Central, Cuttack I City, Cuttack II, Ganjam I, Jagatsinghpur, Jajpur, Jharsuguda, Kalahandi, Kantabanji, Kendrapada, Keonjhar, Mayurbhanj, Nabarangpur, Nuapada, Rourkela I, Rourkela II, ,Rayagada Circle, Sambalpur I, Sambalpur II and Subarnapur Circle.

2.4.10 Non-realisation of OST arrears

Under Section 19 of the erestwhile OST Act, 1947, when the ownership of the business of a dealer liable to pay tax under the Act entirely transferred, any tax payable in respect of the business till the date of the transfer and remaining unpaid at the time of transfer shall be payable by the transferee as if he were a dealer liable under this Act for such tax and shall apply for registration under this Act, unless he is already registered. Further, Section 13C of the above Act provided that no proceedings for recovery of any tax shall be initiated after the expiry of 12 years from the date of relevant assessment.

During scrutiny of the extract of the DCR and RC records, we noticed (April 2012) that M/s Tripty Drinks Pvt Ltd having arrear dues of ₹ 2.44 crore relating to the periods 2002-03 to 2004-05 under the OST Act was amalgamated with M/s SMV Beverages (Pvt) Ltd with effect from 6 October 2010 under the orders of the Hon'ble High Court of Orissa. As per the Court order, the transferee company was required to undertake all the liabilities and assets of the amalgamated company under all Acts. However, the transferee company undertook (October 2010) only the liabilities and assets of the amalgamated company under the OVAT, CST and OET Act ignoring the liability under the OST Act. While amending the RC (October 2010), the AA also did not ask the transferee to take over the said liability of ₹ 2.44 crore of the amalgamated company. Thus, the arrear dues of ₹ 2.44 crore remained unrealised and is fraught with the risk of becoming bad debt in the long run after the limitation period of 12 years, as the above arrears relate to the years 2002-05.

After we pointed out the above case, the AA stated (May 2012) that the matter will be examined and action will be taken as per provisions of the law.

Central Sales Tax

2.5 Non-observance/compliance of the provisions of the CST Act/Rules

The CST Act, 1956 and Rules made thereunder read with Government notifications and executive orders issued from time to time provide for:

(i) levy of tax at the assessment stage at the prescribed rates or concessional rates, subject to certain conditions, on the net taxable turnover(NTO) of goods determined at such stage;

(ii) exemption of tax in respect of sales turnover of goods exported outside the country including their penultimate transaction; and

(iii) levy of penalty at the prescribed rates for contravention of provisions of the Act and Rules on the tax liability determined by the AA in audit assessment.

We noticed that while finalising the assessments, the AAs did not observe some of the above provisions read with Government notifications/orders as mentioned in the succeeding paragraphs which resulted in non/short-levy of tax and penalty of ₹33.11 crore.

2.5.1 Non-levy of penalty due to misutilisation of declarations in form 'C'

Under Section 8(3)(b) of the CST Act,1956, a registered dealer is eligible to purchase goods from outside the State at concessional rate of tax against declaration in form 'C' provided that such goods are specified in his RC and the goods so purchased are intended for re-sale or for use by him in the manufacture or processing of goods for sale or in the telecommunications network, mining or in the generation or distribution of electricity or any other form of power. Further, if any person being a registered dealer falsely represents when purchasing any class of goods which is not covered by his RC, he is liable to prosecution under Section 10 of the Act. However, under Section 10 A of CST Act the AA may, in lieu of prosecution, after giving him a reasonable opportunity of being heard, impose upon him by way of penalty a sum not exceeding one and a half times of the tax which would have been levied on such goods. Cement is taxable at the rate of 12.5 *per cent*.

During scrutiny of the audit assessment records for the tax periods from July 2006 to December 2007 and further cross check of the utilisation accounts of form 'C' (December 2011) for the period January 2008 to November 2010 in Angul Range, we noticed (August 2011) that a dealer M/s Bhusan Steel Ltd engaged in manufacturing of sponge iron and billets started the commercial production from July 2006. During the tax periods from July 2006 to November 2010, the

dealer purchased cement at a cost of ₹ 75.67[33] crore from outside the State at concessional rate of tax against declaration in Form 'C'. 'Cement' was, however, not included in the RC of the above dealer. Thus, the dealer was not eligible to purchase cement at concessional rate of tax against declaration in Form 'C'. As such, the entire purchase of cement during the above periods at concessional rate was irregular and the dealer was liable to be imposed with a penalty of ₹ 14.18 crore at one and a half times of the tax of ₹ 9.46 crore leviable on cement valued at ₹ 75.67 crore. However, while finalising the assessment up to December 2007 and issuing the 'C' Forms thereafter up to November 2010, the AA did not notice the non-eligibility of the dealer to purchase cement at a concessional rate of tax by using the declaration in Form 'C'. This led to non-imposition of penalty of ₹ 14.18 crore.

After we pointed out the case, the Government stated (September 2012) that show cause notice under Section 10A read with Section 10(b) and 10 (d) of the CST Act, 1956 has been issued on the dealer for imposition of penalty.

[33] ₹ 23.85 crore during the tax periods from July 2006 to December 2007 covered under the assessments and ₹ 51.83 crore from January 2008 to November 2010 for the periods not covered under assessment.

2.5.2 Short-levy of tax due to irregular allowance of concessional rate of tax against defective/invalid declarations in Form 'C'

Under Section 8 of the CST Act, 1956 read with Rule 12 of CST (Registration and Turnover) (R&T) Rules 1957, a dealer who claims concessional rate of tax on inter State sale of goods is required to obtain valid declarations in form 'C' marked 'Original' from the purchasing dealers covering the sales turnover relating to a quarter and furnish the same to the AA within the next quarter. Tax on these transactions is leviable at the concessional rate of four *per cent* up to 31 March 2007, three *per cent* from 1 April 2007 to 31 May 2008 and two *per cent* from 1 June 2008 onwards or at lower rate as applicable to the sale or purchase of these goods within the State.

The Act also provides that inter-State sale of goods not supported by declaration in form 'C' is taxable at twice the rate applicable to sale or purchase of such goods inside the State for declared goods and at the rate of 10 *per cent* or the rate of tax applicable to sale or purchase of such goods within the State, whichever is higher, for non-declared goods up to 31 March 2007 and at the rate of tax applicable to sale or purchase of such goods within the State both for the declared goods and non declared goods. after 31 March 2007.

Rule 12(8) of the pre amended CST (O) Rules, 1957 provides for imposition of penalty not exceeding one and half times of the tax escaped and assessed for the transaction made up to 5 July 2006 and amended sub Rule 3(g) of Rule 12 of CST (O) Rules provides for imposition of penalty of twice the amount of tax assessed in audit assessment for the transactions made from 6 July 2006 onwards.

(a)(i) During scrutiny of the audit assessment records in three Ranges and three Circles, we noticed (between July 2011 and February 2012) that the concerned AAs, while finalising the audit assessments, allowed concessional rate of tax to six dealers[34] on inter-State sale of goods worth ₹ 17.25 crore although the dealers furnished invalid (defective, duplicate, photocopied and manipulated) declarations in form 'C' This led to short-levy of tax of ₹ 62.15 lakh and non-imposition of penalty of ₹ 107.49 lakh.

(ii) Further, during scrutiny of the audit assessment record of a dealer: M/s Narayani Sons (P) Ltd, Barbil Circle, we noticed (September 2011) that the AA levied tax at a concessional rate of three *per cent* on the inter-State sale of goods valued at ₹ 2.66 crore relating to the tax periods from 01 July 2006 to 31 March 2007 instead of the prescribed rate of four *per cent*. This resulted in short-levy of tax of ₹ 2.66 lakh. Besides, penalty of ₹ 5.33 lakh is also leviable.

[34] Cuttack II Range (one dealer), Jajpur Range (one dealer), Sundergarh Range (one dealer), Barbil Circle (two dealers) and Rourkela II Circle (one dealer).

After we pointed out the above cases, the Government stated (September 2012) that demand of ₹ 42.47 lakh was raised against three dealers and reassessment proceedings was opened in case of one dealer. Government further stated that one case being time barred was referred to the JCCT, Jajpur Range for initiation of revision proceedings and in another case, the dealer preferred first appeal against the orders of the Government. Report on the remaining one case is awaited (January 2013).

(b) During scrutiny of audit assessment records in Rourkela-II circle, we noticed (February 2012) that a dealer M/s Pooja Sponge Pvt Ltd engaged in manufacture and sale of sponge iron effected inter State sale of sponge iron worth ₹ 14.49 crore (exclusive of tax) against 90 declarations in Form 'C' during the tax periods from 1 July 2006 to 31 March 2008. We, however, noticed that out of above, 24 declaration forms covering inter-State sales turnover of ₹ 2.20 crore (including tax) relating to different States were defective and hence not valid.

Thus, due to acceptance of the above invalid forms there was short-levy of tax of ₹ 7.97 lakh along with penalty of ₹ 15.35 lakh. We endorsed the details of these 24 declaration forms to the offices of the CT Departments of the concerned 10 States, out of which the authorities of the three States, in respect of five forms, confirmed our observation stating that the forms were not genuine. In respect of other forms, the replies of the CT Departments of the concerned States are yet to be received (January 2013).

After we pointed out the above cases, the Government stated (July 2012) that the reassessment proceeding was opened.

2.5.3 Short-levy of tax due to allowance of inadmissible exemption

Under Section 5(3) of the CST Act, 1956, the last sale or purchase of any goods preceding the sale or purchase of goods for export out of India shall also be deemed to be in the course of export for getting exemption of tax under the Act, if such last sale or purchase took place after, and was in compliance with, the agreement or order for or in relation to export. Under the Act, inter-State sale of declared goods like pig iron without supporting declarations were exigible to tax at the rate of eight per *cent* during 2003-04 under Section 8(2)(b) of the Act.

During test check of the assessment records of Jajpur Circle, we noticed (October 2007) that a dealer M/s Nilachal Ispat Nigam Ltd sold pig iron worth ₹ 77.29 crore to M/s MMTC Ltd. during 2003-04 against five declarations in Form H and claimed exemption of tax under the Act. The AA accepted the said claim (February 2007) while finalising the assessment of the dealer for that year. However, we noticed that the above forms furnished by the dealer were defective as the entries and figures in the informatory columns of the declaration forms were tampered with by erasing the previous entries and writing fresh entries thereon as well as non- availability of essential supporting documents for export of the goods. Thus exemption of tax by acceptance of defective statutory declaration forms by the AA was irregular and it resulted in short-levy of tax to the extent of ₹ 6.18 crore.

After we pointed this out, the Government stated (August 2012) that the case was reassessed and disposed of (April 2010) by raising of extra demand of ₹ 9.05 crore, which included ₹ 6.18 crore observed by us. However, the dealer being aggrieved by the orders of the 1st Appellate authority preferred 2nd Appeal before the Sales Tax Tribunal, Odisha and filed an application for revision before the CCT seeking stay for realisation of the demand. Thereafter, the dealer filed a writ petition (December 2011) in the Hon'ble High Court of Orissa against the verdict of the Revisional Authority. Report on further development of the case is awaited (January 2013).

2.5.4 Inadmissible exemption/ concession on sales in transit

Under Section 6(2) of the CST Act, 1956, where a sale of any goods in the course of inter-State trade or commerce has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods to a registered dealer, if the goods are listed under Section 8(3), shall be exempt from tax under this Act. The dealer effecting the sale has to furnish to the prescribed authority within the prescribed time, a certificate in Form E I or E II, as the case may be, duly filled in and signed by the registered dealer from whom the goods were purchased and a declaration in form 'C' obtained from the ultimate buyer registered under the Act. Under the OVAT Act, 2004 and the Rules made thereunder, machinery and equipment are taxable at the rate of 12.5 *per cent* under Part III of the Schedule B to the Act. Further, Rule 12(3)(g) of CST(O) Rules, 1957 provides for levy of penalty equal to twice the amount of tax assessed during the audit assessment against the dealer.

During test check of the AVR and assessment record containing E I certificates, declarations in form 'C' and purchase and sales statements under the CST Act in Sundargarh Range, Rourkela, we noticed (December 2011) that a registered dealer, M/s Larsen &Toubro (L&T) Ltd. engaged in manufacturing of machinery, surface miners, crushers, castings and impactors etc claimed exemption of tax on goods valued at ₹ 12.70 crore towards sales in transit in the course of inter-State trade or commerce for the tax periods from July 2006 to March 2008. The corresponding purchase value of the said goods was ₹ 11.28 crore. However, the AA, while finalising the audit assessment of the dealer in December 2010 for the tax period 1 April 2006 to 31 March 2008, allowed exemption of tax on the sales turnover of ₹ 9.59 crore as the dealer was able to submit five E I certificates obtained from the selling dealers for the corresponding purchase value of ₹ 8.07 crore. The AA levied tax on the remaining sales turnover of ₹ 3.11 crore at the concessional rate of four *per cent* (₹ 1.03 crore) and three *per cent* (₹ 2.08 crore) as the same were not supported with E I Certificates, but supported by declaration in form 'C' obtained from the ultimate buyers.

On further scrutiny of the audit assessment record, examination of the information available in the TINXSYS website, we noticed that proper examination of the declaration forms was not done and the genuineness of the transit sales was not verified by the AA while allowing exemption/ concession of tax during the assessment which ultimately resulted in non/ short-levy/ escapement of tax and penalty of ₹ 4.02 crore. The details are discussed in the succeeding paragraphs.

1. Irregular allowance of exemption of tax against invalid E I Certificates

We noticed that out of five E I certificates for ₹ 8.07 crore submitted by the dealer and accepted by the AA during the assessment, three E-I certificates covering purchase value of ₹ 7.96 crore were not acceptable as those were invalid on the following grounds:

- The E I certificate (B 412278) covering purchase value of ₹ 35.84 lakh during August 2006 was issued by the selling dealer M/s Shanti Gears Ltd of Tamil Nadu in favour of M/s L&T, Bangalore, not in favour of the instant dealer. The invoice attached with the E I certificate was in favour of M/s L&T, Bangalore with destination of dispatch as Barbil whereas the instant dealer was located at Kansbahal, Odisha. As such, the instant dealer was not entitled to any exemption against the said certificate.

- The E I certificate (MH 08/0082494) pre-filled by the Sales Tax Department of Maharashtra State for ₹ 58.03 lakh against one invoice relating to the period July to September 2007 was issued originally by the selling dealer M/s Tractor Engineers Ltd, Mumbai in favour of M/s L&T, Bhopal, Madhya Pradesh, TIN-23654000082. The certificate was reused by the instant dealer for ₹ 5.92 crore relating to the period July to September 2006 by manipulating the original details i.e. TIN, value of goods and period of transaction.

- The E I certificate (MH 08/0082498) pre-filled by the Sales Tax Department of Maharashtra for ₹ 1.62 crore against two invoices relating to the period January to March 2008 was issued originally by the selling dealer M/s Tractor Engineers Ltd, Mumbai in favour of M/s L&T, Bhopal, Madhya Pradesh, TIN-23654000082. The certificate was reused by the instant dealer for ₹ 1.68 crore relating to the period January to March 2007 by manipulating the original details i.e. TIN, value of goods and period of transaction.

Despite the above discrepancies, which were sufficient to render the said three E I certificates invalid and unacceptable, the AA, while finalising the audit assessment, accepted the same and allowed exemption of tax on the corresponding sale value of ₹ 8.51 crore to the dealer of Odisha. This indicated that the AA relied merely upon the statement of transit sale submitted by the dealer and the availability of E 1 certificates and the corresponding C forms without checking the details in regard to the genuineness of such E I certificates and scrutinising the said certificates for their acceptability in assessment. This resulted in non-levy of tax of ₹ 1.06 crore besides a penalty of ₹ 2.12 crore.

2. Short-levy of tax due to irregular allowance of concessional rate of tax

Further, we noticed that for the remaining sales turnover of goods valued at ₹ 3.11 crore for which the dealer could not submit E 1 certificates, the AA levied tax at concessional rates of four *per cent* on ₹ 1.03 crore and three *per cent* on ₹ 2.08 crore only on the basis of the declaration in form 'C' submitted by the dealer. On verification, we noticed that as against ₹ 3.11 crore 'C' forms for ₹ 2.53 crore were only available in the assessment record and 'C'

forms for the remaining amount of ₹ 0.58 crore were not available. From the 'C' forms for ₹ 2.53 crore which were available in the record, we noticed that all the forms were issued by the dealers of Odisha.

As the above 'C' forms were obtained from the dealers of Odisha, in the absence of the corresponding 'E-I' certificates, the transactions in respect of these 'C' forms were neither transit sales nor inter-State sales but were intra-State sales. The transactions were, therefore, liable to be taxed at the rate of 12.5 *per cent* under the OVAT Act. As such, allowance of concessional rate of tax against these 'C' forms without verifying the admissibility of treating the same as inter-State sale was not correct. This led to short-levy of tax of ₹ 28.11 lakh at the differential rate of 8.5 *per cent* on ₹ 1.03 crore and 9.5 *per cent* on ₹ 2.08 crore respectively along with a penalty of ₹ 56.22 lakh.

After we pointed out the inadmissible exemption of sales in transit, Government stated (July 2012) that the dealer had preferred 1st appeal against the order of the assessment. Hence, the observations of the audit had been transmitted to the above appellate authority for consideration

2.5.5 Short-levy of tax due to allowance of inadmissible exemption

Under Section 5(3) and (4) of the CST Act, 1956, the last sale of goods preceding the export sale is exempted from levy of tax, if it is supported with a certificate in form 'H' filed by the ultimate exporter in respect of purchase of such goods for export along with relevant documents in proof of such export sale to have taken place after, and was in compliance with, the agreement or order for export. Inter-State sale of 'iron ore fines' without supporting certificate in form 'H' was taxable at the rate of 10 *per cent* up to 31 March 2007 and at the rate applicable to sale or purchase of these goods inside the State with effect from 1 April 2007 onwards under Section 8(2)(b) of the Act.
Further, Rule 12(3)(g) of the CST (O) Rules, 1957 provides for imposition of penalty equal to twice the amount of tax assessed in audit assessment with effect from 6 July 2006.

During test check of the audit assessment records in three Ranges[35] and two Circles[36], we noticed (between August 2011 and January 2012) that five dealers[37] sold goods such as fabricated and galvanised transmission line towers, sponge iron, rice and iron ore fines worth ₹ 6.04[38] crore to the exporters in course of export during the tax periods from 1 April 2005 to 31 March 2010 and paid no tax thereon claiming exemption of tax under the Act. While finalising the audit assessments, between April

[35] Cuttack II, Jajpur and Sundargarh Range.

[36] Rourkela I and Sambalpur I Circle.

[37] (1) M/s Adhunik Metallicks Ltd, Sundargarh Range (2) M/s Nainadevi Minerals (P) Ltd, Rourkela I Circle (3) M/s Shakti Minerals, Jajpur Range (4) M/s Shree Annapurna Rice Mill, Sambalpur I Circle (5) M/s Utkal Galvanisers Ltd. Cuttack II Range.

[38] Export sale against photocopied certificates in form H (₹ 252.94 lakh) , against forms H not supported with copies of agreement between the foreign buyer the exporter and bill of lading etc.(₹ 221.39 lakh) and incidence of not complying with the agreement or order (₹ 130.17 lakh).

2010 and February 2011, the AAs allowed the dealers to avail exemption on the sale of these goods. However, we noticed that the exemption allowed by the AA was irregular since the same was allowed against photocopies in Form 'H', certificates of export, forms 'H' not supported with the required documents such as copies of agreement between the foreign buyer the exporter and bill of lading etc and incidences where goods were sold to the exporters before the purchase orders were placed on the exporters by the foreign buyers. This resulted in short-levy of tax of ₹ 33.03 lakh and non-imposition of penalty of ₹ 46.77 lakh.

After we pointed out these cases, the Government stated (June 2012) that notice for the assessment of the escaped turnover was issued to one dealer of Sambalpur I Circle, whereas another dealer of Sundargarh Range had preferred appeal (August 2012). The Government further stated that extra demand of ₹ 0.48 lakh have been raised in case of one dealer of Rourkela I Circle. The reassessment proceeding of remaining two dealers was under process.

2.5.6 Short-levy of tax due to allowance of concessional rate of tax

As per the order dated 24 December 1999 of the Ministry of Commerce and Industries, Department of Industrial Policy and Promotion GoI, read with the notifications dated 18 July 2006 and 29 September 2006 of the Ministry of Small Scale Industries of the Central Government, industrial units with Fixed Capital Investment (FCI) in plant and machinery up to ₹ one crore between 24 December 1999 and 2 October 2006 and ₹ five crore thereafter are considered as Small Scale Industries (SSI) units. Under the CST Act, 1956 read with Government notifications dated 31 March 2005 and 16 June 2006, inter-State sale of goods manufactured by the SSIs of the State are taxable at a concessional rate of one *per cent* up to 15 June 2006 and at two *per cent* thereafter against declarations furnished by the purchasing dealer in form 'C'. Under Section 8(1) of the CST Act , inter State sale of goods supported with declarations in form 'C' are exigible to tax at the rate of four *per cent* up to 31 March 2007 and at the State rate from 1 April 2007 onwards. This concession was, however, not extended to inter-State sales made to Government Departments against certificate in Form 'D'. Jute products as well as goods manufactured by SSI units and sold to Government Departments in the course of inter-State trade against certificate in Form 'D' were liable to be tax at the rate of four *per cent.*

(a) During test check of the audit assessment records of M/s Om Oil & Flour Mills of Cuttack I Range, we noticed (November 2010) that the dealer was allowed to avail concessional rate of tax ranging from one to two *per cent* instead of tax at the prescribed rate of four *per cent* and three *per cent* on inter State sale of goods against valid declarations in form 'C being considered as an SSI unit during the period April 2005 to March 2006 and April 2007 to November 2008. During the period 1 April 2005 to November 2008 the

FCI on plant and machinery exceeded the investment limit[39] as seen from the balance sheets submitted by the dealer. However, overlooking the balance sheets kept on record at the time of assessment, the AA allowed the dealer to avail tax at concessional rate. This led to short-levy of tax of ₹ 13.13 lakh besides non-levy of penalty of ₹ 26.26 lakh.

After we pointed out the above case, the AA stated (November 2010) that proper action after verification of fact and figures would be taken.

The matter was referred to the CCT, Odisha in April 2012 and the Government in May 2012. Replies are yet to be received (January 2013).

(b) During scrutiny of audit assessment records in two Circles[40], we noticed (November and December 2010) that four dealers transacted inter-State sales of goods worth ₹ 5.06 crore to different Government Departments[41] during the tax periods ranging from 1 April 2005 to 31 December 2006 against certificates in Form 'D' and paid tax at concessional rates of one/ two *per cent*. As the concession was not extended to inter-State sales made to Government Departments against certificate in form 'D', the concession allowed by the AA during the assessment stage of the dealers as well as during scrutiny of monthly returns led to short-levy of tax of ₹ 11.06 lakh.

After we pointed out the above cases, the Government stated (June and July 2012) that reassessment proceedings in respect of all the dealers were completed by raising of demand of ₹ 11.06 lakh during July and September 2011.

2.5.7 Non-levy of penalty in audit assessment

Under Rule 10(3) read with Rule 12(3) (a), (e) and (f) of the CST (O) Rules, 1957 as amended (6 July 2006), where the tax audit results in detection of suppression of purchases or sales or both, erroneous claims of deduction, evasion of tax or contravention of any provision of the Act affecting the tax liability of the dealer, the AA is required to make audit assessment of the dealer and impose penalty equal to twice the amount of tax so assessed in such assessment as per sub Rule 3 (g) of Rule 12 of the CST (O) Rules, 1957.

During test check of the audit assessment records of two Ranges[42] and one Circle[43], we noticed (between August and November 2011) that in six cases pertaining to six registered dealers[44], the concerned AAs, while assessing the dealers for different tax periods from 1 April 2006 to 31 March 2010, assessed tax of ₹ 1.95

[39] The capital investment of the dealer in plant and machinery stood ₹ 9.32 crore and ₹ 10,79 crore as against the eligible limit of rupees 1 crore during the period 2005-06 and rupees 5 crore during the period April 2007 to Nov 2008 respectively.

[40] Cuttack I (West) and Rourkela-II Circle.

[41] Directorate of Supplies and Disposal, 6 Esplanade East, Kolkata and Eastern/Southern and Eastern Railways etc.

[42] Jajpur and Cuttack-I Range.

[43] Cuttack-I Central Circle.

[44] (1) M/s K J S Alhuwalia (2) M/s OMDC Ltd (3) M/s S N Mohanty (4) M/s Total Fina Elf(I) Ltd. (5) M/s State Trading Corporation Ltd (6) M/s Proctor & Gamble Home Products Pvt. Ltd.

crore at concessional rate of tax without supporting declarations and production of books of accounts during assessment stage. Although the tax levied for the above irregularities warranted imposition of penalty, the AAs did not impose penalty of ₹ 3.90 crore as detailed below:

- Jajpur Range: Three dealers could not produce the required declaration forms after tax audit visit or even up to the time of assessment and hence the AA while assessing the dealers levied tax of ₹ 1.87 crore. However, he neither imposed penalty of ₹ 3.74 crore as per the provisions nor discussed the reasons for non-levy of the same.

- Cuttack I Range **:** The dealer failed to produce the relevant declarations in Form 'F' for the period 6 July 2006 to 31 March 2007 till the date of assessment**.** Though the AA assessed the dealer and levied tax of ₹ 5.47 lakh for the said period he did not impose penalty of ₹ 10.95 lakh or record any reason for non-levy of penalty.
- Cuttack I Central Circle: The AA assessed the dealer and levied tax of ₹ 10.70 crore, out of which the dealer paid ₹ 10.69 crore. Although the remaining amount of tax of ₹ 1.55 lakh attracted penalty as per the provision, yet the AA did not impose the penalty of ₹ 3.07 lakh nor discuss the reasons for non-imposition of the same.
- Cuttack I Central Circle: The AA assessed the dealer exparte and demanded tax of ₹ 0.78 lakh as the dealer failed to produce the books of accounts before the AA. However, the AA neither imposed penalty of ₹ 1.55 lakh on the above amount nor discussed the reasons for non-levy of the same.

After we pointed out the above cases, the Government stated (July 2012) that one dealer of Cuttack I Central Circle paid ₹ 3.07 lakh and audit observation in case of another dealer was transmitted to the Registering Authority (RA). Government further stated (August 2012) that in three cases of the Jajpur Range, it was not possible on the part of the AA to reopen the cases. Therefore, proposal for suo-motu revision/disposal of first appeal in the light of audit objection has been referred to the appellate authority and in one case, the Commissioner issued show cause notice. However, reply in respect of one dealer of Cuttack I Range is yet to be received (January 2013).

2.5.8 Short-levy of tax due to allowance of inadmissible exemption of tax on stock transfer

Under Section 6A(1) of the CST Act, read with Rule 12(5) of the CST (R&T) Rules, 1957, a dealer is not liable to pay tax for goods transferred by him to any other place of his business or to his agent or principal located outside the State, provided he furnishes a declaration in Form 'F'. Further, each declaration in form 'F' shall cover transactions effected during a period of one calendar month only. Branch transfer of non declared goods without declarations in Form 'F' were exigible to tax at the rate of 10 *per cent* or the rate of tax applicable to sale or purchase of goods inside the State whichever was higher up to 31 March 2007 and at the same rate of tax applicable to sale of these goods inside the State with effect from 1 April 2007 onwards under Section 8(2) of the Act.

During scrutiny of the audit assessment records of two Ranges and one Circle[45], we noticed (between June and August 2011) that the concerned AAs, while assessing four dealers[46] under the CST Act between March and November 2010 for different tax periods from 1 April 2005 to 31 March 2009 granted exemption of tax on stock/ branch transfers of goods worth ₹ 36.19 crore as claimed by the dealers though such transfers of goods were not supported by valid declarations in Form 'F' or were supported by defective, duplicate, photocopied and manipulated declaration forms. This led to non/ short-levy of tax of ₹ 1.52 crore.

After we pointed out the above cases, the Government stated (July 2012) that there was no question of levy of tax on the transferred value of goods under objection (in case of M/s Ferro alloys Corporation Ltd, Balasore Range) as one 'F' form covering the value of ₹ 12.37 lakh was furnished by the dealer but the same could not be produced to audit and that another invalid declaration previously furnished by the dealer covering the transactions of ₹ 62.66 lakh was replaced with a fresh 'F' Form issued by the purchasing dealer. The reply is not acceptable as acceptance of the fresh declaration after the assessment is not in conformity with any of the provisions of the Act and the Rules made thereunder. In respect of other two dealers, the Government intimated (August 2012) that proceedings were initiated against them. However, response to the objection made against one dealer is yet to be received (January 2013).

---

[45] Balasore, Jajpur Range, and Bhubaneswar III Circle.

[46] M/s Ferro Alloys Corporation Ltd., M/s Dishnet Wireless Ltd., M/s N.K. Bhojani Pvt. Ltd., M/s Mangala Sponge and Steel Pvt. Ltd.

Entry Tax

2.6 Non-compliance of the provisions of OET Act/Rules

The OET Act, 1999 and Rules made thereunder read with Government notifications issued from time to time provide for:

(i) completion of audit assessment based on Audit Visit Report (AVR) and levy of tax at the prescribed rates on entry of scheduled goods into any local area for sale, use or consumption therein;

(ii) levy of tax on the sale value of manufactured scheduled goods at the prescribed rates;

(iii) allowance of set off towards tax paid on purchase of scheduled goods by the manufacturers as raw materials on the ET payable on the sale value of taxable finished goods; and

(iv) levy of penalty at prescribed rates on the tax levied in audit assessment.

We noticed that while finalising the assessments, the AAs did not adhere to the above provisions as mentioned in the following paragraphs which resulted in non/short-levy of tax, interest and penalty of ₹ 0.77 crore.

2.6.1 Non-levy of Entry Tax

Under Section 3(1) of the OET Act, 1999, entry tax is leviable at the prescribed rates on the purchase value of scheduled goods on their entry into a local area for consumption, use or sale therein. Under the Act, minerals including boulders are taxable at the rate of one *per cent*. Further, penalty equal to twice the amount of tax assessed is leviable in case of an audit assessment of any dealer under Section 9C(5) of the Act.

During test check of the assessment records in Ganjam-II Circle, we noticed (August 2011) that a dealer M/s Gopalpur Ports Ltd., was procuring stone boulders from its own quarry and also from another registered dealer[47]. As per the report of the Sales Tax Officer (STO), Vigilance, Berhampur dated 29 February 2008, the dealer procured 0.66 lakh MT of boulders during August to December 2007 from its own leased quarry situated in another local area whose market value was determined at ₹ 2.26 crore as the procurement cost was much below the market price. The extent of procurement of boulders from the other registered dealer could not be ascertained by the vigilance wing. However, the AA determined the same as 2.51 lakh MT, the market value of which was ₹ 8.53 crore at the rate of ₹ 340 per MT applied by the STO Vigilance, Berhampur. The cost of total procurement of 3.17 lakh MT of boulders was, therefore, arrived at ₹ 10.79 crore. The AA, while finalising the assessment (February 2011) for the above period (August to December 2007) overlooked the Report of STO Vigilance and determined the entry tax liability of the dealer as nil, considering the boulders as non-scheduled goods under the Act. This resulted in non-levy of entry tax of ₹ 10.79 lakh along with a penalty of ₹ 21.58 lakh.

[47] M/s Star Smart Trading Pvt. Ltd.(SSTPL), Cuttack.

After we pointed out the case, the Government stated (September 2012) that the reassessment proceeding was completed by raising extra demand of ₹ 32.37 lakh.

2.6.2 Short-levy of tax due to under determination of purchase turnover

Under Section 3(1) of the OET Act, 1999, entry tax is leviable at the prescribed rates on the purchase value of scheduled goods on their entry into a local area for consumption, use or sale therein. Further, the Act provides that every manufacturer shall collect entry tax payable from the buying dealers or persons on the value of finished products and deposit the tax so collected into the Government account under Section 26 of the Act, 1999. Under Section 2(j) of the Act, purchase value includes the Value Added Tax (VAT). Further, penalty equal to twice the amount of tax assessed is leviable in case of audit assessment of any dealer under Section 9C(5) of the Act.

During test check of audit assessment records in Cuttack-I Range, we noticed (October 2011) that a dealer M/s Cargil India Ltd., a manufacturing unit engaged in processing of edible oil from crude soya oil, olive oil and palm oil etc. sold finished goods worth ₹ 118.73 crore during the tax period from 1 April 2005 to 31 March 2006, on which he was liable to pay ₹ 4.75 crore towards VAT at the rate of four *per cent* and also entry tax at the rate of one *per cent* on the total amount of sale value (value of finished goods plus VAT thereon) of ₹ 123.48 crore. However, the AA levied entry tax on ₹ 118.73 crore only without adding the VAT component on such sale. This resulted in under determination of taxable turnover and resultant short-levy of entry tax of ₹ 4.75 lakh besides non-imposition of penalty of ₹ 9.50 lakh.

After we pointed out the case, the Government stated (August 2012) that notice in form E-32 was issued. Further compliance is yet to be received (January 2013).

2.6.3 Excess allowance of Entry Tax set off

Under Section 26 of the OET Act 1999, as amended (May 2005) read with Rule 19 (5) of the OET Rules 1999, the manufacturers of scheduled goods, while selling the finished products, shall collect Entry Tax on the sale value of goods. The entry tax paid by the manufacturer of scheduled goods on the purchase of raw materials, which directly go into the composition of finished products, is permitted to be set off against entry tax payable. Where no ET is payable on a part of the sales (due to local sale, inter State sale, branch transfer etc.), the set off admissible shall be reduced proportionately. Further, Section 9C(5) of the Act provides for levy of penalty equal to twice the amount of tax assessed on audit assessment.

During scrutiny of the audit assessment records of a registered dealer M/s OMFED Ltd., of Bhubaneswar II Circle for the tax periods from 01 April 2005 to 31 March 2008, we noticed (July 2011) that the dealer purchased scheduled goods for ₹ 56.09 crore on payment of entry tax of ₹ 56.09 lakh and sold the finished products for ₹ 87.81 crore. The above sales included sale of goods worth ₹ 15.81 crore within the local area on which no entry tax was payable. Hence, the dealer was eligible to avail proportionate set off of ₹ 46.02 lakh only. However, the dealer availed set off of the entire amount of ₹ 56.09 lakh paid on purchase of raw materials. This was neither detected by the Audit Visit Team at the time of their visit nor the AA at the assessment stage despite the requisite information being available to them. This resulted in excess allowance of set off of ₹ 10.07 lakh. Besides, a penalty of ₹ 20.13 lakh was also leviable.

After we pointed out the above case, the Government stated that the reassessment proceeding (April 2012) for the period 2006-07 and 2007-08 was completed raising demand of ₹ 14.53 lakh towards penalty. However, from the copy of the reassessment order of the AA, we noticed that reassessment proceedings for the tax period 2005-06 was barred by limitation of time for the AA. Further action taken by the Department for levy of tax and penalty for that period i.e., 2005-06 is awaited and details of realisation of tax demanded is yet to be received (January 2013).