

CHAPTER-II COMMERCIAL TAX / VALUE ADDED TAX

2.1 Tax administration

Trade Tax (TT) (known as Commercial Tax after December 2007) is the major source of revenue of the State and accounted for 62.93 *per cent* (₹ 33,107.34 crore) of the total tax revenue (₹ 52,613.43 crore) of the State during the year 2011-12. The levy of commercial tax is governed by the provisions of the Uttar Pradesh Trade Tax Act, 1948 (UPTT Act) and rules made thereunder upto 31 December 2007, and thereafter by the provisions of the Uttar Pradesh Value Added Tax Act, 2008 (UPVAT Act) implemented from 1 January 2008. The levy of Central Sales Tax is regulated by the provisions of the Central Sales Tax Act, 1956 (CST Act) and the rules made thereunder.

The Principal Secretary *Vanijaya Evam Manoranjan Kar* Uttar Pradesh, is the administrative head at Government level. The overall control and direction of the Commercial Tax Department vests with Commissioner, Commercial Tax (CCT), Uttar Pradesh with headquarters at Lucknow. He is assisted by 104 Additional Commissioners, 157 Joint Commissioners (JCs), 494 Deputy Commissioners (DCs), 964 Assistant Commissioners (ACs) and 1275 Commercial Tax Officers (CTOs).

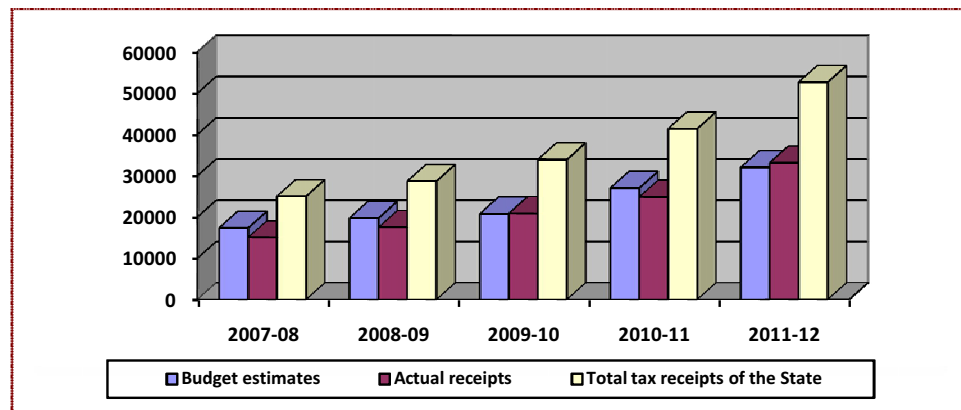
2.2 Trend of receipts

Actual receipts from TT/Value Added Tax (VAT) during the last five years from 2007-08 to 2011-12 along with the total tax receipts during the same period is exhibited in the following table and bar diagram:

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess(+) shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual TT/VAT receipts vis-à-vis total tax receipts
2007-08	17,314.10	15,023.10	(-) 2,291.00	(-) 13.23	24,959.32	60.19
2008-09	19,705.00	17,482.05	(-) 2,222.95	(-) 11.28	28,658.97	61.00
2009-10	20,741.27	20,825.18	(+) 83.91	0.40	33,877.60	61.47
2010-11	26,978.34	24,836.52	(-) 2,141.82	(-) 7.94	41,355.00	60.06
2011-12	32,000.00	33,107.34	(+) 1,107.34	3.46	52,613.43	62.93

Source: Finance Accounts of the Government of Uttar Pradesh.



It is evident from the table that there were abnormal variations during 2007-08 and 2011-12 between budget estimates and actual receipts ranged between (-) 13.23 and 3.46 per cent.

2.3 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2012 amounted to ₹ 18,960.28 crore of which ₹ 11,803.03 crore was outstanding for more than five years. The following table depicts the position of arrears of revenue during the period 2007-08 to 2011-12:

(₹ in crore)

Year	Opening balance of arrears	Amount collected during the year	Closing balance of arrears
2007-08	14,569.19	3,487.63	11,081.94
2008-09	11,081.94	4,307.91	15,389.85
2009-10	15,389.85	1,063.45	16,453.30
2010-11	16,453.30	1,350.97	16,665.41
2011-12	16,665.41	1,700.51	18,960.28

Source: Information provided by the Department.

The Department stated that the demand certified for recovery as arrears of land revenue of ₹ 1,576.23 crore has been issued, ₹ 4,260.46 crore had been stayed by the Courts and Government, recovery outstanding on Government Departments and semi-Government Departments was ₹ 495.62 crore, recovery certificates of ₹ 913.17 crore were sent to other States, recovery certificates of ₹ 69.93 crore were on transporters in the State, demand of ₹ 1,498.03 crore is likely to be written-off and rest of the arrear amount of ₹ 10,146.84 crore was pending for specific action by the Department.

2.4 Cost of VAT per assessee

The cost of VAT per assessee during the period from 2009-10 to 2011-12 is tabulated below:

Year	Number of dealers	Gross collection (₹ in crore)	Expenditure on collection (₹ in crore)	Cost per assessee (in ₹)
2009-10	5,75,434	20,825.18	358.43	6,228.86
2010-11	5,94,695	24,836.52	391.45	6,582.37
2011-12	6,42,645	33,107.34	440.89	6,860.55

Source: Finance Accounts of the Government of Uttar Pradesh and information provided by the Department.

2.5 Arrears in assessment

The details of assessments relating to commercial tax pending at the beginning of the year, additional cases that became due for assessment during the year, cases disposed during the year and cases pending at the end of the year as furnished by the Commercial Tax Department during 2007-08 to 2011-12 are mentioned in the following table:

Year	Opening balance	Cases which became due for assessment	Total	Cases disposed of during the year	Cases pending at the close of the year
2007-08	5,76,968	6,19,710	11,96,678	2,58,011	9,38,667
2008-09	9,38,667	5,33,358	14,72,025	9,50,313	5,21,712
2009-10	5,21,712	1,83,378	7,05,090	6,92,704	12,386
2010-11	12,386	5,44,458	5,56,844	5,50,802	6,042
2011-12	6,042	6,54,378	6,60,420	4,76,368	1,84,052

Source: Information provided by the Department.

The Department needs to complete the pending assessment cases within the prescribed time limit.

2.6 Cost of collection

The gross collection in respect of TT/VAT receipts, expenditure incurred on collection and percentage of such expenditure to the gross collection during the years 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12 along with the relevant all India average percentage of expenditure on collection to gross collection for the relevant previous year are mentioned below:

(₹ in crore)

Year	Gross collection	Expenditure on collection	Percentage of cost of collection to gross collection	All India average percentage for the previous year
2007-08	15,023.10	228.19	1.52	0.82
2008-09	17,482.05	272.54	1.56	0.83
2009-10	20,825.18	358.43	1.72	0.88
2010-11	24,836.52	406.65	1.64	0.96
2011-12	33,107.34	440.89	1.33	0.75

Source: Finance Accounts of the Government of Uttar Pradesh and information provided by the Department.

The percentage of expenditure on collection was higher than the all India average in all the five years.

The Government needs to take appropriate measures to bring down the cost of collection.

2.7 Revenue impact of audit

During the period 2006-07 to 2010-11 we had pointed out through our Inspection Reports non/short levy, non/short realisation, underassessment/loss of revenue, incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation etc. with revenue implication of ₹ 1,502.44 crore in 10,084 cases. Of these, the Department/Government had accepted audit observations in 1,359 cases involving ₹ 15.23 crore and had since recovered ₹ 2.05 crore in 508 cases. The details are shown in the following table:

(₹ in crore)

Year	No. of units audited	Amount objected		Amount accepted		Amount recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2006-07	473	1,548	74.60	38	0.36	6	0.02
2007-08	489	1,210	1,191.14	124	0.51	114	0.46
2008-09	591	1,967	64.65	202	5.60	128	0.68
2009-10	685	2,711	77.32	559	7.13	112	0.36
2010-11	892	2,648	94.73	436	1.63	148	0.53
Total	3,130	10,084	1,502.44	1,359	15.23	508	2.05

2.8 Results of audit

Test check of the assessments and other records of commercial tax offices, conducted during 2011-12, revealed non/short levy of tax, non/short levy of tax due to misclassification of goods and incorrect rate of tax, irregular exemption, etc. of ₹ 132.67 crore in 2,451 cases, which fall under the following categories:

(₹ in crore)			
Sl. No.	Categories	Number of cases	Amount
1.	Non/short levy of penalty/interest	949	39.21
2.	Non/short levy of tax	230	7.41
3.	Irregular grant of exemption from tax	263	32.37
4.	Incorrect classification of rate of goods	256	13.26
5.	Misclassification of goods	38	1.68
6.	Irregularities relating to central sales tax	31	0.86
7.	Mistake in computation	06	0.06
8.	Turnover escaping tax	14	0.59
9.	Other irregularities	664	37.23
Total		2,451	132.67

During the year 2011-12, the Department accepted underassessments and other deficiencies of ₹ 3.06 crore involved in 522 cases of which 21 cases involving ₹ 5.42 lakh had been pointed out during 2011-12 and the remaining in the earlier years. The Department recovered ₹ 44.68 lakh in 230 cases during the year 2011-12, of which 6 cases involving ₹ 2.02 lakh related to the year 2011-12 and the remaining to the earlier years.

A few illustrative cases involving financial impact of ₹ 16.76 crore are mentioned in the following paragraphs.

2.9 Audit observations

Our scrutiny of the assessment records of the Commercial Tax Department revealed several cases of non-observance of the provisions of the Acts/Rules, non/short levy of tax/penalty/interest, irregular exemption, incorrect application of rate of tax, etc. and a case of idle expenditure as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on our test check. Such omissions on the part of Assessing Authorities (AAs) have been pointed out by us each year, but not only do the irregularities persist; these remain undetected till an audit is conducted. We feel that there is need for the Government to improve the internal control system including strengthening of internal audit.

2.10 Non/Short levy of tax due to application of incorrect rate of tax and misclassification of goods

The Assessing Authorities (AAs) while finalising the assessments, did not apply the correct rate of tax given in the schedule of rates, in some cases lower rate of tax was applied due to misclassification of goods and in some of the cases no tax was levied which resulted in non/short levy of tax of ₹ 5.04 crore as mentioned in the following paragraphs:

2.10.1 Non/Short levy of TT/VAT due to application of incorrect rate of tax

Under Section 3A of UP Trade Tax (UPTT) Act, 1948, tax on classified goods is leviable as prescribed in the schedule of rates notified by the Government from time to time. The goods not classified in the prescribed schedule of rates, are taxable at the rate of 10 *per cent* with effect from 1 December 1998. Under Section 4(1) of UP Value Added Tax (UPVAT) Act, 2008, goods mentioned in schedule-I are tax free, goods mentioned in Schedule- II are taxable at the rate of four *per cent*, goods mentioned in schedule-III are taxable at the rate of one *per cent* and those mentioned under schedule-IV are taxable at the rate notified by the Government from time to time. Goods not mentioned in any of the above schedules are covered under schedule-V and are taxable at the rate of 12.5 *per cent* with effect from 1 January 2008.

We observed in 55 Commercial Tax Offices ¹ (CTOs) that for the period 2002-03 to 2009-10, the concerned AAs, while finalising the assessments ² between August 2004 and March 2011, applied incorrect rate of tax on sale of goods worth ₹ 60.77 crore. This resulted in non/short levy of trade tax (TT)/value added tax (VAT) of ₹ 3.32 crore as shown in **Appendix-I.**

¹ AC Sec. 10 Agra, DC Sec. 11 Agra, DC Sec.17 Agra, DC Sec.19 Agra, AC Sec. 1 Aligarh, DC Sec. 1 Allahabad, AC Sec. 7 Allahabad, DC Sec. 14 Allahabad, DC Sec. 10 Bareilly, DC Sec. 2 Gautam Budh Nagar, DC Sec.3 Gautam Budh Nagar, JC (CC)-A Ghaziabad, AC Sec. 4 Ghaziabad, DC Sec.5 Ghaziabad, AC Sec. 7 Ghaziabad, DC Sec. 8 Ghaziabad, AC Sec. 8 Ghaziabad, DC Sec. 9 Ghaziabad, DC Sec. 14 Ghaziabad, DC Sec. 13 Ghaziabad, DC Sec. 15 Ghaziabad, AC Sec. 15 Ghaziabad, DC Sec. 16 Ghaziabad, DC Sec. 17 Ghaziabad, DC Sec.17 Ghaziabad, JC (CC) Gorakhpur, AC Sec. 1 Hapur, DC Sec. 2 Kanpur, AC Sec 3 Kanpur, DC Sec.7 Kanpur, DC Sec. 20 Kanpur, DC Sec. 25 Kanpur, DC Sec. 28 Kanpur, DC Sec. 29 Kanpur, DC Sec.30 Kanpur, JC (CC)-I Lucknow, DC Sec. 4 Lucknow, DC Sec. 5 Lucknow, DC Sec.16 Lucknow, AC Sec. 9 Meerut, JC (CC)-A Noida, DC Sec. 4 Noida, DC Sec.5 Noida, DC Sec. 6 Noida, DC Sec.7 Noida, DC Sec. 11 Noida, DC Sec. 12 Noida, DC Sec. 13 Noida, AC Sec. 13 Noida, AC Sec. 4 Rampur, DC Sec.4 Saharanpur, DC Sec.12 Saharanpur, DC Sec.2 Varanasi and AC Sec. 5 Varanasi.

² For 79 dealers.

After we pointed out the cases to the Department/Government between March 2007 and May 2012, the Department replied between January 2011 and August 2012 that TT/VAT of ₹ 33.16 lakh in 11 cases³ has been levied and ₹ 2.75 lakh out of this has already been recovered. We have not received the report on recovery and reply in other cases (February 2013).

2.10.2 Short-levy of TT/VAT due to misclassification of goods

We observed in 15 CTOs⁴ between August 2009 and September 2011 that in the cases of 17 dealers for the period 2005-06 to 2007-08, the AAs while finalising the assessments between September 2008 and March 2011, applied incorrect rate of tax due to misclassification on sale of goods worth ₹ 12.67 crore. This resulted in short levy of TT/VAT of ₹ 81.42 lakh as shown in **Appendix-II.**

After we pointed out these cases⁵, the Department replied (November 2012) that TT/VAT of ₹ 52.26 lakh has been levied in 13 cases⁶ and ₹ 3.35 lakh has been recovered so far. Department further replied that action is under process in cases related to four AAs⁷. However, we have not received report on final action taken (February 2013).

2.10.3 Non/Short levy of CST due to application of incorrect rate of tax

Under Section 8(1) of Central Sales Tax (CST) Act, 1956 tax on inter-State sale of goods (other than declared goods) covered with Form 'C' is leviable at the rate of four *per cent* upto 31 March 2007 and from 1 April 2007 at the rate of three *per cent* and under Section 8(2) of CST Act, goods not covered by declaration in Form 'C' is leviable at the rate of 10 *per cent* or at the rate applicable on sale or purchase of such goods inside the appropriate State, whichever is higher up to 31 March 2007 and from 1 April 2007, tax at the rate applicable on sale or purchase of such goods inside the appropriate State.

We observed in 13 CTOs⁸ between March 2007 and January 2012 that 13 dealers made inter-State sale of goods worth ₹ 15.23 crore during the years 2002-03 to 2007-08. The AAs while finalising the assessments between August 2004 and March 2011 levied CST at lower rates instead of the rates applicable or granted exemption of tax on sale. This resulted in non/short levy of CST

amounting to ₹ 90.65 lakh as detailed in **Appendix-III.**

³ DC Sec.2 Gautam Budh Nagar, DC Sec.3 Gautam Budh Nagar (Two cases), JC(CC)-A Ghaziabad, DC Sec.18 Ghaziabad (One case), AC Sec.3 Kanpur(One case), DC Sec. 4 Lucknow, DC Sec. 5 Lucknow, DC Sec. 5 Noida, DC Sec.7 Noida (One case) and AC Sec.5 Varanasi.

⁴ DC Sec.2 Ghaziabad, DC Sec.6 Ghaziabad, AC Sec.15 Kanpur, DC Sec.20, Kanpur, DC Sec.2 Lucknow, AC Sec.2 Lucknow, DC Sec.12 Lucknow, DC Sec.19 Lucknow, DC Sec.1 Meerut, AC Sec.12 Meerut, DC Sec.2 Mirzapur, DC Modinagar, DC Sec.2 Noida, DC Sec.5 Noida and DC Sec.13 Noida.

⁵ Between October 2009 and December 2011.

⁶ DC Sec. 2 Ghaziabad, AC Sec.15 Kanpur, DC Sec. 20 Kanpur, DC Sec.2 Lucknow, AC Sec. 2 Lucknow, AC Sec. 12 Meerut, DC Sec. 2 Mirzapur, DC Modinagar, DC Sec. 2 Noida, DC Sec. 5 Noida (Three cases) and DC Sec. 13 Noida.

⁷ DC Sec. 6 Ghaziabad, DC Sec. 12 Lucknow, DC Sec. 19 Lucknow and DC Sec. 1 Meerut.

⁸ DC Sec.1 Allahabad, CTO Sec.1 Ghaziabad, DC Sec.13Ghaziabad, DC Sec.15 Ghaziabad, AC Sec.15 Ghaziabad, DC Sec.17 Ghaziabad, DC Sec.6 Kanpur, DC Sec.16 Kanpur, DC Sec.26 Kanpur, DC Kosikalan, DC Modinagar, DC Sec.2 Noida and DC Sec.5 Noida.

After we reported the matter⁹, the Department replied (November 2012) that CST of ₹ 82.88 lakh has been levied in 10 cases¹⁰ and ₹ 20.30 lakh already recovered. The Department further replied that in cases of two AAs¹¹ action is under process. However, we have not received report on final action taken (February 2013).

2.11 Non-imposition of penalty and non-charging of interest

The AAs while finalising the assessments, did not notice the offences committed by the dealers i.e. irregular transactions, transactions out of accounts books, transactions against the provisions of the Act and Rules etc. Though there are clear cut provisions for imposition of penalties and charging of interest in the Act, no action was initiated in this regard, resulting in non-imposition of penalty and non-charging of interest amounting to ₹ 4.34 crore as mentioned in the following paragraphs:

2.11.1 Non-imposition of penalty for delayed deposit of tax

Under Section 15 (A) (1) (a) of the UPTT Act and Section 54 (1) (1) of UPVAT Act, if the Assessing Authority is satisfied that any dealer or other person has, without reasonable cause, failed to furnish the return of his turnover or fails to deposit the tax under the provision of these Acts, he may direct the dealer to pay by way of penalty in addition to tax, if any payable by him, a sum which shall not be less than 10 per cent but not exceeding 25 per cent of tax due, if the tax due is up to ₹ 10,000 and 50 per cent if it is above ₹ 10,000 under UPTT Act and a sum equal to 20 per cent of tax due under UPVAT Act.

We observed in 13 CTOs¹² between September 2009 and February 2012 that 15 dealers had not deposited their admitted tax of ₹ 4.19 crore for the period 2005-06 to 2009-10 in time. The delay ranged between three and 759 days. The AAs while finalising the assessments between December 2008 and March 2011 did not impose minimum penalty of ₹ 59.18 lakh in

addition to the tax leviable as detailed in **Appendix- IV**.

After we reported the matter¹³, the Department replied (November 2012) that the penalty of ₹ 54.84 lakh has been imposed and ₹ 7.99 lakh out of this has been recovered. We have not received report on final action taken in case of AC Sector 21 Lucknow (February 2013).

⁹ Between March 2007 and August 2012.

¹⁰ DC Sec.1 Allahabad, CTO Sec.1 Ghaziabad, DC Sec.15 Ghaziabad, AC Sec.15 Ghaziabad, DC Sec.6 Kanpur, DC Sec.16 Kanpur, DC Sec.26 Kanpur, DC Kosikalan, DC Sec.2 Noida and DC Sec.5 Noida.

¹¹ DC Sector 13 and 15 Ghaziabad.

¹² DC Sec.3 Bareilly, DC Sec.2 Chandausi (Two cases), DC Sec.4 Firozabad, DC Sec.2 Gautam Budh Nagar, DC Sec.1 Gorakhpur, AC Sec.5 Jhansi, JC(CC)-II Kanpur(Two cases), DC Sec.5 Kanpur, JC(CC)-Oil Sector Lucknow, DC Sec.2 Lucknow, AC Sec.21 Lucknow, DC Sec.2 Mathura and DC Sec.5 Noida.

¹³ Between August 2010 and March 2012.

2.11.2 Non-imposition of penalty on concealed turnover

Under Section 15 A (1) (C) of the UPTT Act, if the AAs is satisfied that a dealer has concealed his turnover or has deliberately furnished incorrect particulars of his turnover, he may direct such dealer to pay by way of penalty, in addition to tax, a sum not less than 50 *per cent* but not exceeding 200 *per cent* of the amount of tax.

From the final assessment orders of the dealers, judgment of Commercial Tax Tribunal and orders of Appellate Authorities, we observed that three dealers had concealed sales turnover of ₹ 6.23 crore during the years 1997-98 to 2003-04. The AAs while finalising their

assessments between November 1998 and November 2009 levied TT of ₹ 43.18 lakh on concealed turnover. Though the Tribunal and Appellate Authority has confirmed (between December 2008 and October 2010) that dealers had concealed their sales turnover, the AAs did not impose even the minimum penalty of ₹ 21.59 lakh, as shown below:

(₹ in lakh)							
Sl. No.	Name of the unit	Number of dealers	Assessment year (Month and year of assessment)	Concealed turnover	Name of the commodity	Tax levied on concealed turnover	Minimum penalty leviable
1.	AC Sec.8 Agra	1	1997-98 (November 1998)	25.00	Diesel engine spares	1.88	0.94
		1	1998-99 (September 2005)	500.00	Footwear	38.00	19.00
2.	DC Sec.1 Sitapur	1	2003-04 (November 2009)	97.88	Mentha oil and pulses	3.30	1.65
	Total	3		622.88		43.18	21.59

After we reported the matter¹⁴, the Department replied (October 2012) that minimum penalty of ₹ 21.59 lakh has been imposed in all the cases. We have not received report on its recovery (February 2013).

2.11.3 Non-imposition of penalty on issuance of false declaration

Under Section 15 A (1) (I) of the UPTT Act, any dealer who issues or furnishes a false certificate or declaration, by reason of which tax ceases to be leviable, shall pay by way of penalty in addition to tax, a sum not less than 50 *per cent* but not exceeding 200 *per cent* of the amount of tax, which would thereby have been avoided.

We observed between September 2010 and November 2011 that two dealers had issued or furnished false declarations by which tax on sale or purchase ceased to be levied which worked out to ₹ 69.18 lakh during the years

2002-03 and 2007-08 (up to December 2007). Though the AAs while finalising the assessment of these dealers between March 2009 and May 2010 levied TT of ₹ 33.32 lakh in case of DC Sector 16, Kanpur but did not impose the minimum penalty of ₹ 16.66 lakh. In other case both the TT of ₹ 35.86 lakh and minimum penalty of ₹ 17.92 lakh was not imposed. Details are as shown in the following table:

¹⁴ Between March 2011 and November 2011.

(₹ in lakh)

Sl. No.	Name of the unit	Assessment year (month & year of assessment)	Name of commodity	Value of goods	Tax avoided by furnishing false certificate/ declaration	Minimum penalty leviable
1.	DC Sec.8, CT Ghaziabad	2006-07 (March 2009)	Plant, machinery and its parts	289.52	28.95	14.47
		2007-08(UPTT) (March 2010)	-do-	76.74	6.91	3.45
2.	DC Sec.16, CT Kanpur	2002-03 (May 2010)	Petroleum based oil	208.23	33.32	16.66
Total				574.49	69.18	34.58

After we reported the matter¹⁵, the Department replied (October 2012) that DC Sector 8 Ghaziabad had levied TT of ₹ 35.86 lakh and imposed maximum penalty of ₹ 71.72 lakh, but the demand has been stayed in September 2012, in the another case action is in process. However, we have not received report on final action taken (February 2013).

2.11.4 Non-imposition of penalty under CST

Under Section 10 & 10 A of the CST Act, a registered dealer may purchase any good from outside the State at concessional rate of tax against declaration in Form 'C'. If such goods are not covered by his Registration Certificate under the CST Act or the goods purchased from outside the State at concessional rate of tax are used for the purpose other than that for which the registration certificate is granted, the dealer is liable to be prosecuted. However, in lieu of prosecution, if the Assessing Authority deems it fit, he may impose penalty up to one and a half times of the tax payable on the sale of such goods.

We observed between November 2009 and January 2012 that during the years 2005-06 and 2007-08, eight dealers purchased goods valued at ₹ 7.21 crore at concessional rate of CST against declaration in Form 'C'. These goods were not covered by their certificates of registration under CST Act. The AAs

while finalising the assessments between February 2009 and March 2011 did not recommend prosecution or impose the penalty of ₹ 1.12 crore as shown below:

(₹ in lakh)

Sl. No.	Name of the unit	No of dealers	Assessment year (Month and year of assessment)	Name of the commodity	Amount of purchase	Rate of tax (per cent)	Penalty leviable
1.	JC (CC)-B, Gautam Budh Nagar	1	2007-08 (UPTT) (March 2011)	Office bunk house, scaffolding	36.77	10	5.52
				Coating powder, E.P.S.,E.P.S resin etc.	493.09	10	73.96
				Paint	40.34	12	7.26
2.	DC Sec.16 Kanpur	1	2007-08(UPTT) (March 2009)	Construction material	0.27	10	0.04
				Stone	4.27	8	0.51
				Steel structure	0.20	4	0.01

¹⁵ Between November 2010 and March 2012.

Sl. No.	Name of the unit	No of dealers	Assessment year (Month and year of assessment)	Name of the commodity	Amount of purchase	Rate of tax (per cent)	Penalty leviable
3.	DC Sec.21 Lucknow	1	2007-08(UPTT) (March 2010)	Chassis	78.26	12	14.08
4.	DC Sec.2, Noida	1	2006-07 (June 2010)	Aluminum section	5.92	10	0.89
5.	AC Sec.8, Noida	1	2005-06 (April 2010)	Air conditioner, tiles	10.39	16	2.49
				Channel, furniture, R.O. system	6.52	10	0.98
6.	DC Sec.9, Noida	1	2006-07 (February 2009)	CPI, bearing, solvent cement	9.39	10	1.41
7.	DC Sec.11, Noida	1	2007-08(UPTT) (February 2010)	Machinery, dies, oil, chemical, c.i. casting	24.64	10	3.70
				Wood	1.58	16	0.38
				Furniture	0.29	8	0.03
				Machinery, dies (01.04.2007 to 31.12.2007)	1.10	9	0.15
				Chemical (01.04.2007 to 31.12.2007)	7.65	4	0.46
				Total	8		

After we pointed this out¹⁶, the Department replied (October 2012) that the penalty of ₹ 1.05 crore has been imposed and ₹ 3.47 lakh out of this has been recovered. We have not received report on final recovery (February 2013).

2.11.5 Non-imposition of penalty on delayed deposit of works contract tax

Under section 8D (6) of the UPTT Act and 34(8) of UPVAT Act, a person responsible for making payment to a contractor, for discharge of any liability on account of valuable consideration payable for the transfer of property in goods in pursuance of works contract, shall deduct an amount equal to four *per cent* of such sum, payable under the Act, on account of such works contract. In case of failure to deduct the amount or deposit the amount so deducted into the Government treasury before the expiry of the month following the month that in which deduction is made in UPTT Act and before the expiry of 20th day of the month following the month that in which the deduction was made in UPVAT Act, the AAs may direct that such person shall pay by way of penalty a sum not exceeding twice the amount so deducted.

We observed from the assessment orders between March 2011 and December 2011 in 11 CTOs¹⁷ that 13 dealers while making payment to the contractors, deducted works contract tax (WCT) of ₹ 68.07 lakh at source, during the years 2007-08 and 2008-09 but did not deposit the same into the Government treasury within the prescribed time. The delay ranged between five to 311 days. The AAs while finalising the assessments between

¹⁶ Between April 2011 and March 2012.

¹⁷ DC Sec.11Agra, DC Sec.16 Ghaziabad, AC Sec.18 Ghaziabad, DC Sec.17 Kanpur, AC Sec.7 Muzaffarnagar, DC Sec.2 Noida, DC Sec.9 Noida (Three cases), DC Paliakalan, AC Sec.12 Saharanpur and AC Sec.1 Shamli and DC Sec.14 Varanasi.

December 2009 and March 2011 did not impose the maximum penalty of ₹ 1.36 crore in 13 cases on the delayed deposit as detailed in **Appendix-V**.

After we reported the matter¹⁸, the Department replied (October 2012) that the penalty of ₹ 1.34 crore has been imposed in 12 cases and ₹ 1.78 lakh out of this has been recovered. We have not received reply in the remaining case (February 2013).

2.11.6 Non-levy of interest on delayed deposit of tax

Under Section 8(1) of the UPTT Act and Section 33(2) of UPVAT Act, the tax admittedly payable by the dealer, shall be deposited within the time prescribed, failing which simple interest shall become due and be payable on unpaid amount with effect from the day immediately following the last date prescribed till the date of payment of such amount at the rate of two *per cent* per mensem upto 11 August 2004, 14 *per cent* per annum upto 31 December 2007 and thereafter one and quarter *per cent* per mensem.

We observed in nine CTOs¹⁹ between February 2011 and January 2012 that nine dealers, who were assessed between October 2009 and January 2011 for the assessment years 1980-81 to 2007-08 had deposited the admitted tax of ₹ 62.33 lakh after delay ranging between 465 and 10,987 days.

The AAs did not issue notice for payment of interest on the belated payment in any of these cases. The belated payment of admitted tax attracted interest of ₹ 62.52 lakh, which was not levied by the AAs.

After we reported the matter²⁰, the Department replied (October 2012) that interest of ₹ 61.55 lakh has been levied in all the cases and ₹ 8.69 lakh out of this has been recovered. We have not received report on recovery in the remaining cases (February 2013).

¹⁸ Between April 2011 and June 2012.

¹⁹ JC(CC) Agra, DC Sec.18 Ghaziabad, DC Sec.5 Kanpur, DC Sec.3 Mathura, AC Sec.5 Noida, DC Sec.12 Noida, DC Sec.14 Noida, AC Sec.2 Rampur and DC Sec.4 Sonbhadra.

²⁰ Between March 2011 and May 2012.

2.11.7 Non-imposition of penalty on wrong adjustment of tax

Under Section 43(1) of UPVAT Act, where any amount has been realised from any person by any dealer, purporting to do so by way of realisation of tax on the sale or purchase of goods, in contravention of provisions of the Act, such dealer shall deposit the entire amount so realised in the manner and within the period prescribed. Under the provision of Section 54(1)(16) of UPVAT Act, if any dealer realises any amount as tax in contravention of the provision of this Act will be liable to pay by way of penalty, an amount three times of the tax so realised. Further, under Section 25 of UPVAT Act, where in respect of any tax period of an assessment year, preliminary examination of tax return, by the assessing authority, reveals that computations shown in the tax return are wrong or amount of input tax credit claimed or tax payable shown is incorrect, the assessing authority may, after making such inquiry as it may deem fit and after giving a reasonable opportunity of being heard to the dealer, determine the amount of tax payable and amount of input tax credit admissible, in any other case, by passing a provisional order of assessment for such tax period.

While checking the assessment orders and concerned file of the dealers registered in the Office of the Deputy Commissioner, Commercial Tax, Sector 16 Kanpur in November 2011, we observed that a dealer had realised VAT in excess amounting to ₹ 2.79 lakh on sale of goods during January 2008 and deposited it in the prescribed time. The dealer further wrongly adjusted it against tax payable by him in the next month i.e. February 2008. As per provisions of sub section 2, 3 and 4 of section 43, any amount deposited by dealer to the extent it is not due tax, is to be held by State

Government in trust for the person on whom such liability has been passed ultimately, with reference to the goods concerned and on claiming the same, the amount will be refunded in the manner prescribed to the person on whom the liability has been ultimately passed.

Disregarding these provisions, while passing the assessment order in February 2011, adjustment of ₹ 2.79 lakh of tax, wrongly availed as adjusted was not disallowed by AA and the penalty of ₹ 8.37 lakh as per provision of section 54(1)(16) was also not imposed.

After we reported the matter²¹, the Department replied (October 2012) that the penalty of ₹ 8.37 lakh has been imposed and Input Tax Credit of ₹ 2.79 lakh has also been reversed. However, we have not received report on its recovery (February 2013).

²¹ In January 2012.

2.12 Irregular exemption/concession of tax on various declaration forms

2.12.1 Irregular exemption/concession against Form 'C'

Under Rule 12(1) of CST (Registration & Turnover) Rules, 1957, a single declaration in form 'C' may cover all transactions of sale, which take place in a quarter of a financial year between the same two dealers.

We observed between October 2010 and March 2011 that six dealers made inter-State sale of goods worth ₹ 4.29 crore between 2006-07 and 2007-08 (upto December

2007) at concessional rate against 12 form 'C'. These covered transactions for more than one quarter and as per the provisions of the Rule, the transactions covered beyond one quarter and claimed for concession in same Form 'C' were not eligible for concession. In contravention of the rules, the AAs while finalising assessment between February 2009 and March 2010 levied CST at concessional rate on the transactions covered beyond one quarter. This resulted in irregular allowance of concession of ₹ 7.45 lakh as shown below:

(₹ in lakh)

Sl. No.	Name of the unit	Number of dealer	Assessment year (month & year of assessment)	Name of commodity	Total Value of goods covered by objected Forms	Transaction covered after allowing benefit of quarter's transaction beneficial to dealer	Rate of tax leviable (per cent)	Rate of tax levied (per cent)	Differential rate of tax	Irregular concession allowed to the dealers
1.	DC Sec.8 Bareilly	1	2006-07 (February 2009)	Mentha Oil	115.73	8.91	10	4	6	0.53
2.	DC Sec.3 Fatehgarh	1	2007-08(UPTT) (December 2009)	Tobacco	47.45	7.47	32.5	3	29.5	2.20
3.	DC Sec. 9 Hardoi	1	2007-08(UPTT) (December 2009)	Wheat	91.39	34.42	4	0	4	1.38
4.	DC Sec.1 Lalitpur	1	2007-08(UPTT) (January 2010)	Wheat, jowar	12.58	4.99	4	0	4	0.20
			-do-	Pulses	80.13	29.29	2	0	2	0.59
5.	JC(CC)-A Noida	1	2006-07 (March 2009)	Electronic goods/Scrap/ Machinery	53.15	12.77	10	4	6	0.77
6.	DC Sec.1 Siddhartnagar	1	2007-08(UPTT) (March 2010)	Timber	28.93	13.66	16	3	13	1.78
Total		6			429.36	111.51				7.45

After we reported the matter²², the Department replied (October 2012) that the CST of ₹ 6.13 lakh has been levied²³, ₹ 77000 out of this has been recovered²⁴ and action is in process in the remaining cases. However, we have not received report on final action taken (February 2013).

²² Between November 2010 and April 2012.

²³ In cases of Sl. No. 2, 3, 5 and 6.

²⁴ In case of Sl. No. 5.

2.12.2 Irregular exemption/concession against Form 'F'

Under Rule 12(5) of CST (Registration & Turnover) Rules, 1957, a single declaration in form 'F' may cover transfer of goods, by a dealer, to any other place of his business or to his agent or principal as the case may be, effected during a period of one calendar month.

We observed between December 2008 and December 2011 that five dealers transferred goods out of State worth ₹ 68.22 crore during the years 2005-06 and 2007-08

against 12 form 'F'. These covered transactions for more than one month and as per the provisions of the Rule, the transactions covered beyond one month and claimed for concession in same Form 'F' were not eligible for concession. In contravention of the rules, the AAs while finalising the assessments between July 2007 and January 2011 allowed transaction of more than one calendar month on a single form 'F'. This resulted in irregular exemption of CST of ₹ 2.67 crore on transactions of ₹ 30.54 crore as detailed below:

(₹ in lakh)

Sl. No.	Name of the unit	Number of dealers	Assessment year (Month & year of assessment)	Name of commodity	Total Value of goods covered by objected Forms	Transaction covered after allowing benefit of month's transaction beneficial to dealer	Rate of tax leviable (per cent)	Irregular exemption allowed to the dealers
1.	AC Sec.2, Barabanki	1	2005-06 (July 2007)	Mentha oil	2,955.80	1,184.38	10	118.40
2.	DC Sec. 28, Kanpur	1	2005-06 (December 2009)	Detergent powder	26.66	2.52	10	0.25
3.	DC, Kosikalan	1	2007-08(UPTT) (January 2011)	Unfinished wooden furniture	139.04	74.03	8	5.92
4.	DC Sec. 20, Lucknow	1	2006-07 (February 2009)	Rice	3,660.39	1,770.12	8	141.61
5.	JC (CC) Moradabad	1	2007-08(VAT) (December 2009)	Packing material	40.24	22.75	4	0.91
	Total	5			6,822.13	3,053.8		267.09

After we pointed out these cases²⁵, the Department replied (October 2012) that the CST of ₹ 2.66 crore has been levied²⁶, ₹ 25000 out of this has been recovered²⁷ and action is under process in the remaining case. However, we have not received report on final action taken (February 2013).

²⁵ Between January 2009 and December 2011.

²⁶ In cases of Sl. No. 1, 2, 3 and 4.

²⁷ In case of Sl. No. 2.

2.12.3 Irregular concession of tax granted on time barred declaration forms

Under Rule 25-B(1) of UPTT Rules, where a dealer holding a recognition certificate purchases any goods for use as raw material for the purpose of manufacture of any notified goods, he shall, if he wishes to avail of the concession, furnish to the selling dealer a certificate in Form III-B and under Rule 25-B(3) any single declaration form III-B issued to dealers in a financial year shall be valid for the transactions of purchase or sale made during that financial year as also made during two financial years immediately preceding and succeeding that financial year.

We observed in nine CTOs²⁸ between January 2011 and May 2011 that nine dealers sold goods valued at ₹ 8.83 crore at concessional rates between 2004-05 and 2007-08 (upto 31 December 2007) against form III-B²⁹. The 50 declaration forms used by the dealers for the transaction were time barred and not eligible

for concessional rate of TT. However the AAs, while finalising the assessments levied TT at concessional rates. This resulted in irregular allowance of concession of ₹ 40.85 lakh.

After we reported the matter between April 2011 and December 2011, the Department replied (October 2012) that the TT of ₹ 40.80 lakh has been levied in all the cases and ₹ 83000 out of this has been recovered.

2.12.4 Irregular concession of tax granted on declaration forms for transactions exceeding prescribed monetary limit

Under Section 3-G (1) of UPTT Act, tax on the turnover of sales of goods to a Department of the Central Government or of a State Government or to a Corporation or Undertaking, established or constituted by or under a Central Act or Uttar Pradesh Act, or to a Government Company, shall, if the dealer furnishes to the AA a certificate in Form III D or Form III D(1), be levied and paid at the rate for the time being specified in sub section (1) of Section 8 of CST Act or at such rate as the State Government may, by notification, specify. As per provisions of Rule 12-C (3) of UPTT Rules, no single certificate in Form III D or Form III D(1) shall cover transactions of purchase or sale of more than one assessment year and of value exceeding rupees five lakh. As per rule 12-C (8) of UPTT only provisions of sub-rules (3) to (6) and (10) to (20) of Rule 12-A applies to a declaration form.

We observed between May 2011 and September 2011 that six dealers sold goods valued at ₹ 7.07 crore at concessional rate between 2005-06 and 2007-08 (upto December 2007) against 19 Form III-D and III-D (1)³⁰. As each of these forms III-D and III-D (1) covered transactions exceeding ₹ 5 lakh per form they were not eligible for concession in TT.

²⁸ DC Sec.4, Ghaziabad AC Sec.4, Ghaziabad, DC Sec.4, Hardoi, DC Sec.5, Kanpur, DC Sec.30, Kanpur, DC Sec.2, Khatauli, DC Modinagar, DC Sec.7, Muzaffarnagar and DC Sec.3 Raebareli.

²⁹ To provide special relief to certain manufacturers, Form III B is issued to them by the Commercial Tax Department. By issuing it to another dealer they can purchase goods at concessional rate or be wholly or partly exempt from tax.

³⁰ To provide special rate of tax facility to the Department of Central Government or a State Government or to a Corporation or Undertaking, established or constituted by or under a Central Act or Uttar Pradesh Act, or to a Government Company, Form III D or III D(1) facility has been given to them.

The AAs while finalising assessment between December 2009 and December 2010, incorrectly levied concessional rate of TT on the transactions above ₹ 5 lakh per form. This resulted in irregular allowance of concession of ₹ 38.38 lakh as shown below:

(₹ in lakh)

Sl. No.	Name of the unit	No. of dealers	Assessment Year (Month and year of Assessment)	Name of the commodity	Transactions covered after deducting allowed ₹ five lakh per Form	Rate of tax leviable (per cent)	Rate of tax levied (per cent)	Irregular concession allowed to the dealers
1.	AC Sec.2, Bulandshahar	1	2005-06 (January 2010)	Rodi Badarpur	2.63	8	4	0.11
			2006-07 (January 2010)	-do-	20.32	8	4	0.81
2.	DC Sec.1, Deoria	1	2005-06 (November 2010)	Stone and Gitti	30.51	8	4	1.22
			2006-07 (July 2010)	-do-	46.56	8	4	1.86
			2007-08(UPTT) (July 2010)	-do-	10.90	8	4	0.43
3.	DC Sec.6, Kanpur	1	2007-08(UPTT) (December 2009)	Diesel locomotive machinery	575.50	9	4	28.77
4.	DC, Kosikalan	1	2007-08(UPTT) (October 2010)	Bitumen	16.98	20	4	2.72
5.	DC Sec.8, Lucknow	1	2007-08(UPTT) (December 2009)	Electrical goods	17.05	10	4	1.02
6.	AC Sec.2 Rampur	1	2007-08(UPTT) (December 2010)	Interlocking Blocks	97.96	10	4	5.87
Total		6			707.49			38.38

After we reported the matter³¹, the Department replied (October 2012) that the TT of ₹ 32.41 lakh has been levied in cases at Sl. No. 1, 3 and 4. In cases of Sl. No. 2, 5 and 6, Department further replied that the sale is made to a Government undertaking with turnover more than ₹ 5 crore, and under rule 12-A (7)(i) of UPTT Rules, the limit of money value of ₹ 5 lakh in a single declaration form does not apply. We do not agree with this reply as under Rule 12-C (8) of UPTT Rules only the provisions of sub-rules (3) to (6) and (10) to (20) of Rule 12-A apply to a declaration form and not provisions of sub rule (7) of rule 12-A.

2.13 Non-levy of entry tax

Under Section 4 of the UP Tax on Entry of Goods Act 2001, entry tax on value of goods is leviable as per schedule of rates notified by the Government from time to time.

We observed between February 2010 and January 2012 that during 2004-05 to 2007-08 seven dealers purchased goods worth ₹ 32.70 crore from outside

local area. The AAs, while finalising the assessment between October 2008 and March 2011, did not levy entry tax of ₹ 1.56 crore as detailed in table:

³¹ Between May 2011 and December 2011.

(₹ in lakh)

Sl. No.	Name of the unit	No. of dealer	Assessment year (Month and year of assessment)	Name of the commodity	Taxable turnover	Rate of tax leviable (per cent)	Amount of tax not levied
1.	DC Sec.2, Chandpur, Bijnore	1	2005-06 (October 2008)	LDO	65.01	5	3.25
		1	2007-08 (March 2010)	Machinery	25.01	2	0.50
2.	DC Sec.3, Etawah	1	2004-05 (March 2009)	Furnace Oil HSD & Bitumen	151.95	5	7.60
			2006-07 (March 2009)	-do-	1,473.61	5	73.68
3.	AC Sec.17, Ghaziabad	1	2007-08 (January 2010)	Natural gas	12.58	5	0.63
4.	DC Sec.6, Kanpur	1	2007-08 (March 2011)	Finished Leather	236.68	2	4.73
5.	DC Sec.18, Kanpur	1	2007-08 (March 2010)	Furnace Oil	68.02	5	3.40
6.	JC (CC), Noida	1	2007-08 (March 2010)	Furnace Oil	1,237.10	5	61.86
Total		7			3,269.96		155.65

After we reported the matter³², the Department replied (October 2012) that entry tax of ₹ 85.66 lakh has been levied in four cases³³ and action is under process in the remaining cases. However, we have not received report on final action taken (February 2013).

2.14 Non-levy of State Development Tax

Under section 3-H of the UPTT Act read with the Commissioner's circular dated 3 May 2005 as applicable from 1 May 2005, State Development Tax (SDT) at the rate of one *per cent* of the taxable turnover shall be levied on a dealer whose annual aggregate turnover exceeds ₹ 50 lakh. The SDT shall be realised in addition to the tax payable under any other provision of this Act.

We observed between March 2010 and August 2011 that in the cases of 10 dealers whose annual aggregate turnover exceeded ₹ 50 lakh, the AAs, while finalising the assessments for the years 2005-06, 2006-07 and 2007-08 (up to December 2007), between January 2009

and January 2011, did not levy SDT on taxable turnover of ₹ 16.72 crore. This omission resulted in non levy of SDT of ₹ 16.72 lakh as shown below:

(₹ in lakh)

Sl. No.	Name of the unit	No. of dealers	Year of assessment (Month and year of assessment)	Taxable turnover	Development tax leviable
1.	AC, Sec.4, Ghaziabad	1	2006-07 (June 2010)	80.26	0.80
2.	DC, Sec.18, Ghaziabad	1	2006-07 (February 2010)	140.64	1.41
			2007-08(UPTT) (March 2010)	20.45	0.20
3.	DC, Sec.8, Kanpur	1	2006-07 (October 2010)	96.47	0.97
			2007-08(UPTT) (January 2011)	39.79	0.40
4.	DC, Sec.30, Kanpur	1	2005-06 (January 2009)	44.28	0.44

³² Between February 2010 and February 2012.

³³ Sl. No. 1, 2 and 3.

Sl. No.	Name of the unit	No. of dealers	Year of assessment (Month and year of assessment)	Taxable turnover	Development tax leviable
5.	DC, Modinagar	1	2006-07 (March 2009)	53.27	0.53
		1	2007-08(UPTT) (March 2010)	127.67	1.28
6.	AC, Sec.3, Noida	1	2005-06 (July 2010)	163.83	1.64
			2006-07 (July 2010)	111.43	1.11
		1	2005-06 (April 2010)	31.58	0.32
			2006-07 (April 2010)	68.71	0.69
7.	DC, Sec.3, Raebareli	1	2005-06 (March 2009)	110.33	1.10
8.	DC, Sec.12, Saharanpur	1	2007-08(UPTT) (October 2009)	583.13	5.83
Total		10		1,671.84	16.72

After we reported these cases³⁴, the Department replied (October 2012) that SDT of ₹ 15.12 lakh has been levied, ₹ 12.78 lakh out of this has been recovered and in the remaining case³⁵ action is under process. However, we have not received report on final action taken (February 2013).

2.15 Irregular grant of Registration/Recognition Certificate

2.15.1 Irregular authorisation to purchase cement in Central Registration Certificate

Under Section 7(3) of CST Act, any person intended to purchase goods on concessional rate of tax from another State shall apply for registration under this Act. The registering authority shall register the applicant and grant him a certificate of registration in the prescribed form which shall specify the class or classes of goods for being intended for resale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or in the telecommunications network or in mining or in the generation or distribution of electricity or any other form of power.

Further, Commissioner, Commercial Tax (CCT) issued (1992) instructions to all the Assessing Authorities vide circular No. 17 dated 04 December 1992 that the facility of Form 'C' for purchase of cement and other building materials will not be given to the manufacturers/dealers for construction of buildings.

While checking the records of the office of the Joint Commissioner (CC) Commercial Tax, Lucknow (October 2011) we observed that a dealer³⁶ was granted Central Registration Certificate (CRC) in July 2003, for purchase of raw material which also includes purchase of all kinds of building materials. On the basis of this wrong item included in CRC, the dealer purchased cement of ₹ 1.52 crore during the year 2006-07 and

³⁴ Between May 2010 and September 2011.

³⁵ Sl. No. 3.

³⁶ Bajaj Hindustan Limited

2007-08 for use in construction of machinery foundation/ building. He claimed CST at concessional rate (four *per cent* for 2006-07 and three *per cent* for 2007-08) on this purchase.

The dealer was manufacturer of sugar, molasses and bagasse from sugar cane³⁷ and cement is not a raw material used in manufacture of the said goods. The facility of Form 'C' to a manufacturer is only for purchase of those goods which are used by him in the manufacture or processing of goods intended for sale. The authorisation to purchase cement given by AA under the CRC was in contravention of the provisions of the Act as well as orders of the CCT. The AA did not detect the error while passing the AOs for the year 2007-08. This omission of AA resulted in undue benefit to the dealer to the extent of ₹ 12.21 lakh.

After we reported the matter in January 2012, the Department stated (November 2012) that the penalty of ₹ 28.47 lakh has been imposed and notice for deletion of cement from CRC has also been issued.

2.15.2 Irregular grant of Recognition Certificate

The Government notification dated 21 May 1994 issued under Section-4B of the UPTT Act provides for special relief in tax to the manufacturer on purchase of raw material, processing material, consumable stores, machinery, plant, equipment, spare parts, accessories, components, fuel or lubricants for use in the manufacture of specified goods.

While checking the assessment orders and concerned files of the dealers of two CTOs in January 2011, we observed that two dealers were granted Recognition Certificate for purchase of raw material at concessional rate of TT

for conversion of MS Rod into MS Wire by drawing process. It has been judicially held³⁸ that conversion of MS Rod into MS Wire does not amount to manufacture. Since the dealers were not engaged in any manufacturing process, they were not entitled to concessional rate of TT on purchase of raw material valued at ₹ 8.95 crore during the years 2005-06 to 2007-08. This resulted in irregular grant of recognition certificate and loss of revenue of ₹ 17.89 lakh as detailed below:

(₹ in lakh)

Sl. No.	Name of the unit	Number of dealers	Assessment Year (Month and year of Assessment)	Name of the commodity	Value of goods covered by form	Rate of tax leviable (<i>per cent</i>)	Rate of tax levied (<i>per cent</i>)	Tax short levied
1.	AC Sec. 4 CT Allahabad	1	2005-06 (August 2008)	Wire Rod	336.06	4	2	6.72
2.	DC Sec.14 CT, Allahabad	1	2006-07 (March 2009)	-do-	306.96	4	2	6.13
			2007-08 (January 2010)	-do-	252.12	4	2	5.04
Total		2			895.14			17.89

After we reported the matter³⁹, the Department replied (October 2012) that the TT of ₹ 11.18 lakh has been levied in case at Sl. No. 2 and action is under

³⁷ As per AO dated 27 March 2010.

³⁸ CTT vs. Decent Industries STI 2005 All. H.C. 205:2005 NTN (Vol. 26) 202 All. H.C.

³⁹ Between January 2011 and July 2011.

process in another case. However, we have not received report on final action taken (February 2013).

2.16 Irregularities related to Input Tax Credit claims

With the introduction of VAT in UP w.e.f. 1 January 2008, the dealers registered with the Department became eligible to claim Input Tax Credit (ITC) under section 13 of the UPVAT Act. In order to ensure that the claim of ITC made by the dealers is accurate, various forms have been prescribed and Department has from time to time issued orders to the Assessing Authorities with respect to maintaining the ITC database, verification of ITC claims, etc. Our scrutiny of the records of the Department revealed several cases of irregularities regarding ITC claims like irregular/non admissible ITC claims, excess claims, non-reversal of ITC etc. We have also noticed that Departmental orders regarding maintenance of ITC database, verification of ITC claims, tax audit, etc have not been followed in a large percentage of the field offices of the Department. A few cases are mentioned below. These are merely illustrative and based on our test check. We feel that there is a need for the Government and Department to ensure that the Act/Rules and various orders regarding ITC claims are effectively implemented.

2.16.1 Absence of Database regarding earned, adjusted and balance ITC.

Commissioner, Commercial Tax vide Circular No. 414 dated 23-07-2008 instructed every Additional Commissioner Grade-1 to ensure that a permanent register is maintained by every Assessing Authority in a format having monthly information of opening, earned, utilised and closing balance of Input Tax Credit (ITC) in respect of every dealer and Zone wise information of the same is submitted on 10th of every month to *Sankhya Anubhag*. Further, another circular No. 809060 dated 03-09-2008 requires details to be recorded in respect of all the dealers, in form R-2 register having tax period wise data of returns submitted, tax deposited, ITC earned and its adjustment, till the returns are not fed in computer.

To review the compliance of above orders, we collected information from 51 Commercial Tax Offices⁴⁰ audited between January 2012 and March 2012 and found that except for one AA⁴¹ the remaining 50 AAs did not comply with the orders to maintain database of earned, adjusted and balance ITC and to submit it to *Sankhya Anubhag* in prescribed format. Therefore the Department is not

readily able to ascertain the amount of ITC earned and adjusted by the dealers. Despite specific orders all these 50 AAs stated that there is no order or prescribed format for compilation of above database.

⁴⁰ DC Sec. 1 & 2 Agra, AC Sec. 11 Agra, DC Sec.10 Aligarh, AC Sec.10 Aligarh, AC Sec.2 Azamgarh, DC Sec.2 Barabanki, AC Sec.2 Barabanki, AC Sec. 6, 7 & 10 Bareilly, AC Sec.14 & 17 Ghaziabad, AC Sec. 1 & 2 Kannauj, DC Sec. 6 Kanpur, AC Sec.9, 16, 17, 18, 23 & 29 Kanpur, DC Sec.3, 6, 9 & 10 Lucknow, AC Sec.1, 6, 14, 15, 16, 18 & 19 Lucknow, CTO Sec.6 Lucknow, AC Sec.10 & 13 Meerut, DC Sec.4 & 10 Moradabad, AC Sec.3, 4 & 5 Moradabad, DC Sec.1 & 3 Pilibhit, AC Sec.1 Pilibhit, DC Sec.2 Pratapgarh, AC Sec.1 Raebareli, AC Sec.3 Rampur, AC Sec.2 Sitapur, DC Sec.1 Unnao, DC Sec.1 Varanasi and AC Sec.15 Varanasi.

⁴¹ AC Sec.11 Agra.

After we reported the matter in June 2012, the Department replied that the instructions have been reiterated.

2.16.2 Non-verification of Input Tax Credit despite orders

Section 13 of the UPVAT Act prescribes certain conditions to claim input tax credit by the dealers and its adjustment against the payable tax. Commissioner, Commercial Tax, UP also issued instructions in 2008-09 in the larger interest of revenue vide letter No. VAT-input tax credit/2008-09/755/080974/CT dated 22 October 2008, VAT Circular Part-2 (08-09)-774/080977/CT dated 31 October 2008 and letter No. JC (SIB/Mu./Sa.Pa./2009&10/1593/*vanijyakar* dated 18 September 2009 regarding verification of Input Tax Credit by AAs and maintenance of a database regarding the same.

The Commercial Tax Department utilised ₹ 45 crore for the computerisation project by providing WEB based Citizen Centric Services to enhance the efficiency of the Department. All the information with respect to Department is available on the website, (comtax.up.nic) for the public and VYAS (*Vanijkar* Automation

System) for the Department's use.

Vide the orders of the CCT cited above, every Deputy Commissioner was instructed to ensure that hundred *per cent* verification of the Annexure-A (purchase list) with the Annexure-B (Sale list) was done for top 20 dealers who claimed the highest ITC and a database created⁴² by feeding the above details using either an outsourced agency or Departmental employees. Apart from this *cent per cent* checking and verification was also to be done of cases covered by a random statistical method.

During the test check (2011-12) for the period 2007-08⁴³ to 2009-10, we observed that:

- There is no online checking system for the transactions of the dealers from within the State as a result in case of 137 dealers of 78 Commercial Tax Offices⁴⁴, AAs passed the assessment orders adjusting ITC of ₹ 14.06 crore against the payable VAT, without on line verification.

No computerised database of the top 20 dealers was made and no information of the verification made by designed random statistical method was available. As a result, in the cases of 279 dealers⁴⁵ we noticed the following:

⁴² Vide letter No. Bank and UPTT integration-volume-II (2008-09)/1330/CT dated 2 March 2009.

⁴³ (01.01.08 to 31.03.08)

⁴⁴ DC: Sec.13 Agra, Sec.5 Allahabad, Sec.2 Barabanki, Sec.1 Bulandshahar, Sec.1 Gonda, Sec.5 & 6 Gorakhpur, Sec. 5, 16, 17, 18, 19, 20, 22, 24, 25, 26, 27, 28 & 30 Kanpur, Sec.3, 6, 10, 12, 13, 16 & 21 Lucknow, Sec.2 Mahrajganj Sec.3 & 6 Mathura, Sec.4, 5, 6, 7 & 8 Moradabad, Sec.2 Rampur, Sec.9, 10, 11 & 12 Saharanpur, and Sec.1 Siddharth Nagar.

AC: Sec.15, 17, 18 & 19 Agra, Sec.6 Aligarh, Sec.5 & 17 Allahabad, Sec.2 Barabanki, Sec.6 Gorakhpur, Sec.1 Gonda, Sec.1 Hapur, Sec.5 & 26 Kanpur, Sec.1, 6, 12, 13, 14, 16, 18 & 19 Lucknow, Sec.2 Maharajganj, Sec.3 Mathura, Sec.7 & 8 Meerut, Sec. 5 Moradabad, Sec.6 Muzaffarnagar, Sec.10, 12 & 14 Noida, Sec.2 Rampur and Sec.4 Shahjahanpur.

JC (Corp. Circle): Bareilly, Etawah, Lucknow, Meerut and Muzaffarnagar.

⁴⁵ In 100 Commercial Tax Offices

- For 86 dealers of 45 CTOs⁴⁶, AAs passed the assessment orders where ITC of ₹ 13.70 crore was adjusted with their payable tax without any attempt to verify the ITC claims.
- For 193 dealers pertaining to 64 CTOs⁴⁷, AAs passed the assessment orders where ITC of ₹ 24.06 crore was adjusted with their payable tax but the instructions given for verification were not followed.

AAs passed the orders for the adjustment of ITC worth ₹ 51.02 crore without getting the same verified.

After we reported the matter in July 2012, the Department accepted (September 2012) our observation and replied that while there were difficulties in implementing these orders the instructions for the compliance are being reiterated.

2.16.3 Non-reversal of inadmissible ITC and non-imposition of penalty and interest on claiming inadmissible ITC

Under Section 54(1) (19) of UPVAT Act, if the Assessing Authority is satisfied that any dealer or any other person, as the case may be, falsely or fraudulently claims an amount as ITC he may direct that such dealer or person shall, in addition to the tax, if any, payable by him, pay by way of penalty, a sum equal to five times of amount of ITC. Further under Section 14(2) of Act if any dealer has wrongly claimed ITC in respect of any goods, benefit of ITC to the extent it is not admissible, shall stand reversed along with simple interest at a rate of 15 per cent per annum.

We observed between July 2010 and January 2012 that six dealers, claimed ITC of ₹ 27.78 lakh during the year 2007-08 and 2008-09 on the basis of tax paid on goods which were not admissible for ITC. The AAs while finalising the assessment between July 2008 and August 2011 were required to reverse this non admissible ITC and

direct the dealers to pay penalty and interest. We noticed that in four cases the AAs reversed only the ITC but did not levy interest (₹ 14.41 lakh) and penalty (₹ 1.32 crore). In the remaining two cases the AAs did not reverse the ITC (₹ 1.43 lakh), did not levy interest (₹ 73000) and penalty (₹ 7.15 lakh). The details are as follows:

⁴⁶ DC: Sec.4 Bareilly, Sec.1 & 2 Gautam Budh Nagar, Sec.1, 2, 6, 7 & 9 Ghaziabad, Sec.2 Hardoi, Sec. 2, 3, 4 & 29 Kanpur, Sec.3, 4, 5 & 17 Lucknow, Sec.2 & 3 Mathura, Sec.1 & 5 Meerut, Sec.3 Moradabad, Sec. 4 Muzaffarnagar, Sec.4, 5, 7 & 11 Noida and Sec.7 & 8 Varanasi.

AC: Sec.6 Agra, Sec.1 Aligarh, Sec.7 Ghaziabad, Sec.1 Hapur, Sec.2 Kanpur, Sec.1 Lalitpur, Sec.8 Muzaffarnagar, Sec.7 Noida, Sec.2 Shahjahanpur, Sec.2 Rampur and Sec.6 & 8 Varanasi.

JC (Corp. Circle): Gautam Budh Nagar, Agra 1st Ghaziabad and 2nd Kanpur.

⁴⁷ DC: Sec.2, 5, & 10 Aligarh, Sec.1 Amroha, Sec.3 Pilibhit, Sec.2 & 3 Sitapur, Sec.1 Gautam Budh Nagar, Sec.1 Hathras, Sec.2, 3, 4, 5, 6, 8, 15 & 25 Kanpur, Kosikalan Mathura, Sec.2, 3, 4, 16 & 22 Lucknow, Sec.4 Meerut, Sec.4 Moradabad, Sec.4 & 8 Muzaffarnagar, Sec.1 Noida, , Sardhna Meerut, Sec.2, 4 & 10 Saharanpur and Sec.2, 3 & 4 Shahjahanpur .

AC: Sec.6, 11 & 17 Agra, Sec.2, 3, 5 & 10 Aligarh, Sec.4 Firozabad, Sec.2 & 14 Ghaziabad, Sec.2 Hapur, Sec.3 Hardoi, Sec.3, 6, 16, 21 & 27 Kanpur, Sec.8 Lucknow, Sec.5 Mathura, Sec.6 & 8 Meerut, Sec.3 Moradabad, Sec.3 Pilibhit, Sec.3 Rampur, Sec.2 Shahjahanpur and Sec.2 Sitapur.

JC (Corp. Circle): Agra, Bareilly and 2nd Kanpur.

(₹ in lakh)

Sl. No.	Name of the office	Number of dealer	Assessment year (month and year of assessment)	Amount of falsely or fraudulently claimed ITC	RITC done by AAs	RITC not done by AAs	Interest ⁴⁸ leviable	Penalty leviable
1.	AC Sec. 16 Agra	1	2008-09 (February 2011)	0.41	0.41	-	0.20	2.05
2.	DC Sec. 1, Ghaziabad	1	2008-09 (January 2011)	15.46	15.46	-	7.53	77.30
3.	AC Sec. 2, Ghaziabad	1	2007-08(VAT) (March 2011)	0.16	0.16	-	0.10	0.80
4.	AC Sec. 5, Ghaziabad	1	2007-08(VAT) (July 2008)	10.32	10.32	-	6.58	51.60
5.	DC Sec. 4, Noida	1	2008-09 (August 2011)	1.23	-	1.23	0.60	6.15
6.	AC Sec. 8, Noida	1	2007-08(VAT) (March 2011)	0.20	-	0.20	0.13	1.00
	Total	6		27.78	26.35	1.43	15.14	138.90

After we pointed out these cases⁴⁹, the Department replied (November 2012) that the penalty of ₹ 1.36 crore has been imposed in all the cases, RITC of ₹ 1.23 lakh been done and ₹ 58,000 out of this has been recovered.

2.17 Non/short levy of tax due to non-registration of dealers

Under Section 3A of UPTT Act, tax on classified goods is leviable as prescribed in the schedule of rates notified by the Government from time to time. The goods not classified in the prescribed schedule of rates, are taxable at the rate of 10 *per cent* with effect from 1 December 1998.

With a view to check whether the dealers engaged in building construction and developing work and registered in Income Tax Department (ITD), are registered in Commercial Tax Department (CTD)

and submitting their returns in CTD according to the turnover submitted in ITD, we collected the copy of the balance sheets of five dealers for the year 2004-05 and 2005-06 from ITD and cross checked the same with the assessment orders passed by the AAs of five⁵⁰ CTD and found that two AAs⁵¹ had passed assessment order correctly after taking all aspects into account. In the remaining three cases⁵², two dealers were unregistered and in one case the AO was incorrect. This resulted in non/short levy of TT of ₹ 26.13 lakh as discussed below:

- As per balance sheet of the two dealers submitted in ITD for the year 2005-06 they purchased and consumed goods of ₹ 2.03 crore for construction of flats/ buildings. As these dealers were running their

⁴⁸ Calculated from 1st April of the year following the assessment year at the rate of 15 *per cent* per annum up to 30th June 2012.

⁴⁹ Between August 2010 and April 2012.

⁵⁰ DC 13 Lucknow, DC 14 Lucknow, DC 20 Lucknow, DC 16 Kanpur and DC 11 Varanasi.

⁵¹ DC 13 Lucknow and DC 11 Varanasi.

⁵² M/s Jugul Kishor Industries, University Road, Lucknow (DC 14 Lucknow), M/s Raj Ganga Developers, Gomti Nagar Lucknow (DC 20 Lucknow) and M/s Dolphin developers Ltd. Kanpur (DC 16 Kanpur).

activities without getting registration in CTD, no TT was assessed by the AAs while they were liable to pay TT of ₹ 22.16 lakh.

- A dealer having activities of construction of flats/buildings without getting registration in CTD purchased wood of ₹ 38.18 lakh during the year 2005-06 and making doors and windows of it used in constructions of flats. AA while finalising assessment did not levied tax of ₹ 3.97 lakh leviable on ₹ 49.63⁵³ lakh being sale value of doors and windows.

After we reported the matter (June 2012), the Department accepted (October 2012) our point and replied that the TT of ₹ 48.61 lakh has been imposed in the first two cases (October 2012). In the third case the Department has replied that the tax has been correctly levied. However, the Department has not examined the fact that TT of ₹ 3.97 lakh leviable on ₹ 49.63 lakh being sale value of doors and windows used in constructions of flats manufactured from wood purchased within State has not been levied.

2.18 Absence of provision for confirmation of deposit of tax

Under the provision of Section 3(1) of UPTT Act and Section 3(1) of UPVAT Act, every dealer shall be liable to pay tax under the Acts, for each assessment year, on his taxable turnover of sale or purchase or both, as the case may be, of taxable goods, at prescribed rates. But in both the Acts, no provision is there for ascertaining the deposit of tax in Government treasury, realised on sale of goods, bearing Maximum Retail Price (MRP) received under any scheme as free of cost.

We observed during audit in two CTOs⁵⁴ in September 2011 that during 2007-08 two dealers sold medicines worth ₹ 47.71 crore and along with that distributed medicines valued at ₹ 4 crore, free of cost to the purchasing dealers under the free bonus scheme. But there was

no mechanism for assurance regarding deposit of tax realised in case of its sale by the receiving dealers.

In order to ensure the disposal of such medicines, which were given free of cost, we test checked the assessment files of eight dealers of Allahabad and two dealers of Meerut for the year 2007-08, who had purchased medicines from two dealers of Noida and Meerut, and found that, they did not disclose in their returns regarding receipt and disposal of such medicines which were received by them as free of cost. Due to non-disclosure of such transactions, chances of non-remittance of tax realised on sale, if any, of such medicines, cannot be ruled out.

As there is no provision in the Act for ensuring the realisation of tax on its sale if any, the dealers did not disclose this fact in their returns nor there is any column in the returns for providing such information.

We feel that there should be a mechanism to ascertain the realisation and remittance of tax on such transactions.

After we pointed this out in December 2011, the Department issued order dated 25 September 2012 to ensure the recovery of tax realised in such cases.

⁵³ Cost of wood + 30 per cent labour cost as per CCT letter No. 1340 dated 24 September 1992.

⁵⁴ JC(CC) Meerut and DC Sec.5 Noida.

2.19 Non-conducting of tax audit

Section 44(1) of UPVAT Act states that for the purpose of examining the correctness of tax return or returns filed by a dealer or class of dealers and to verify admissibility of various claims including claim of input tax credit made by a dealer or class of dealers, tax audit shall be made of such number of dealers as may be prescribed. Rule 43 of UPVAT Rules 2008 prescribes the Rank of the Departmental officers conducting tax audit and the modalities, regarding name of selection of dealers. Duties and responsibilities of the officers and the manner of selection of dealers are described in Chapter 4 and 5 of Tax Audit Manual, issued by the Department of Commercial Tax, Uttar Pradesh.

In order to examine the application of provisions and orders regarding tax audit between January 2012 and March 2012, we collected information from 148 offices of Commercial Tax Department and found that only in nine offices⁵⁵ files were selected for tax audit by the tax audit wing and in 139 offices⁵⁶ no files were called for conducting tax audit. Thus, the main aim of tax audit to verify the

purchase, sale and admitted tax of dealers with his account books and related documents to check the evasion of tax was not fulfilled. This shows that the Department has not complied with the provisions of the Act despite the assurance given to us in December 2010 that it has been made functional.

After we reported the matter (in June 2012), the Department replied in September 2012 that the tax audit of 1790 dealers were completed up to March 2012 and irregularities in respect of 1082 dealers involving money value of ₹ 874.15 crore were found. The reply is general and the Department is silent on the fact that tax audit was not conducted in 94 *per cent* of the offices we test checked. Moreover tax audit of 1790 dealers out of 6.43 lakh registered dealers of the State is negligible and shows that the Department has not taken any concrete steps to ensure that the aims of tax audit were fulfilled.

Effective implementation of tax audit would have increased the sample size and ensured that more cases of revenue loss were detected and rectified by the Department itself.

⁵⁵ AC Sec.15 Agra, DC Sec.4 Gorakhpur, DC Sec.3 & 4 Hardoi, AC Sec.9 Meerut, DC Sec.4 Muzaffarnagar, DC Sec.1 and AC Sec.1 & 2 Padrauna.

⁵⁶ AC Sec.6, 7, 10, 11, 13, 14, 17, 18, 19 & 20 Agra, DC Sec.5 & 10 Aligarh, AC Sec.5, 6 & 10 Aligarh, AC Sec.11, Allahabad, DC Sec.2 Azamgarh, AC Sec.2 Azamgarh, DC Sec.2 Barabanki, AC Sec.2 Barabanki, AC Sec.5, 6, 7, 8, 9 & 10 Bareilly, DC Sec.2 Chandauli, AC Sec.2 Chandauli, DC Sec.2 Firozabad, AC Sec.2 Firozabad, AC Sec.8, 15, 17, 18 & 19 Ghaziabad, DC Sec.1 Gonda, AC Sec.1 Gonda, DC Sec. 5 & 6 Gorakhpur, AC Sec.4, 6, 7, 8 & 9 Gorakhpur, DC Sec.4 Hapur, AC Sec.4 Hapur, AC Sec.3 & 4 Hardoi, AC Sec.4 Jhansi, DC Sec.1 Kannauj, AC Sec.1 & 2 Kannauj, DC Sec.23 Kanpur, AC Sec. 9, 16, 17, 18, 20, 23, 25, 26, 28, 29 & 30 Kanpur, AC Sec.1 Lalitpur, DC Sec. 3, 9 & 10 Lucknow, AC Sec.1, 12, 13, 14, 16, 18, & 19 Lucknow, DC Sec.2 Mahrajganj, AC Sec.2 Mahrajganj, DC Sec.3 Mainpuri, DC Sec.3 & 6 Mathura, AC Sec. 3, 4 & 6 Mathura, AC Sec. 7, 8, 10, 12 & 13 Meerut, DC Sec.2 Mirzapur, DC Sec.3, 4, 5, 9 & 10 Moradabad, AC Sec. 3, 4, 5, 6, 7, 8, 9 & 10 Moradabad, AC Sec.4, 5, 6, 7 & 8 Muzaffarnagar, AC Sec.10, 12 & 14 Noida, DC Sec.1 & 3 Pilibhit, AC Sec.1 & 3 Pilibhit, DC Sec.2 Pratapgarh, AC Sec.3 Rampur, AC Sec.8, 9, 10, 11 & 12 Saharanpur, DC Sec.3 Sant Ravidas Nagar, AC Sec.2, 3 & 4 Shahjahanpur, DC Sec.1 Siddharth Nagar, DC Sec.1 Sikohabad, DC Sec.3 Sonebhadra, AC Sec.3 Sonebhadra, DC Sec.3 Sultanpur and AC Sec.11, 12, 13, 14, 15, 17, 18, 20 & 21 Varanasi.

2.20 Idle expenditure

With a view to provide hostel facility to the Departmental officials/officers administrative and financial sanction of ₹ 80.09 lakh was accorded by the Government for maintenance of old hostel of training institute of Commercial Tax Officers against which ₹ 35 lakh was released in November 2009 and balance ₹ 45.09 lakh in February 2011 to executing agency Construction and Design Services Unit-26, Uttar Pradesh Jal Nigam, Lucknow.

We scrutinised (August 2011) the records of the Joint Director (Training), Commercial Tax, Lucknow and observed that the executing agency completed the maintenance of 24 rooms, kitchen and mess of old hostel in May 2010 at a cost of

₹ 35 lakh against the amount released as first installment and requested (June 2010) the Department to take it over. The Department did not take over the 24 rooms, kitchen, and mess of old hostel even after a lapse of 14 months till the date of Audit (August 2011) citing the reason that there were no technical staff available to examine the quality of work done by the executing agency.

The Department needed these 24 rooms urgently as there were more trainees than available rooms, despite that the Department had not taken any step to take over the completed rooms even after the expiry of 14 months, the work was completed, rendering ₹ 35 lakh expenditure idle.

After we reported the matter to the Department/Government in September 2011, the Department replied in October 2012 that the possession has been taken over in September 2012. The reply confirms the fact that the expenditure on renovation was idle for 26 months after renovation.