CHAPTER-II

SALES TAX/VAT

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EXECUTIVE SUMMARY

Appreciable increase in tax collection	As indicated at para 1.1.2 of Chapter-I in the Report, the collection of taxes from VAT/CST increased by 16.63 *per cent*.
Low recovery on Audit observations pointed out in earlier years	During the period 2007-08 to 2011-12, Audit had pointed out non/short-levy, non/short-realisation, underassessment/ loss of revenue, incorrect exemption, concealment/ suppression of turnover, application of incorrect rate of tax, incorrect computation etc., with revenue implication of ₹ 1,422.03 crore in 7,310 cases. Of these, Department/ Government had accepted audit observations in 2,881 cases involving ₹ 327.15 crore but recovered only ₹ 5.89 crore in 208 cases. Recovery position in respect of accepted objections was low at 1.80 *per cent* during five year period.
Results of audits conducted by us in 2012-13	In 2012-13, Audit test-checked records of 75 offices of Commercial Taxes Department and noted preliminary audit findings involving under-assessments of tax and other irregularities of ₹ 159.83 crore in 710 cases. Department had accepted under-assessments and other deficiencies of ₹ 63.27 crore in 1,398 cases, of which 16 cases involving ₹ 4.19 crore were pointed out in audit during the year 2012-13 and rest in earlier years. An amount of ₹ 1.42 crore was realised in 100 cases during the year.
What Audit has highlighted in this chapter	This chapter includes illustrative cases of violation of Act provisions/Rules involving tax effect of ₹ 46.67 crore, selected from observations noticed during test check of records relating to the Commercial Taxes Department during 2012-13 as well as those noticed in earlier years but not included in previous years' reports. It is a matter of concern that similar omissions were pointed out by audit in Audit Reports for the past several years, but department had not taken corrective action.
Conclusion	Department needs to improve internal control system and initiate necessary corrective action to recover non/short levy of tax, interest, penalty etc., pointed out by Audit, more so in cases where it has accepted audit contention.

	With regard to sensitive commodities notified by Commissioner of Commercial Taxes due to their evasion prone nature, it is suggested that department needs to focus on cross verification of waybills transmitted by divisional officers with respective accounts of dealers by verifying utilisation certificates of waybills and purchase registers. Department should also conduct periodical internal audit regularly so as to prevent leakage of revenue with emphasis on such commodities prone to tax evasion.

2.1 Tax Administration

Commercial Taxes Department is under the purview of Principal Secretary to Revenue Department at Government level. The Department is mainly responsible for collection of taxes and administration of AP Value Added Tax (VAT) Act, Central Sales Tax (CST) Act, AP Entertainment Tax Act, AP Luxury Tax Act and rules framed thereunder. Commissioner of Commercial Taxes (CCT) is Head of Department entrusted with overall supervision and is assisted by Additional Commissioners, Joint Commissioners (JC), Deputy Commissioners (DC) and Assistant Commissioners (AC). Commercial Tax Officers (CTO) at circle level are primarily responsible for tax administration and are entrusted with registration of dealers and collection of taxes while the DCs are controlling authorities with overall supervision of the circles under their jurisdiction. There are 218 offices (25 Large Tax Payer Units (LTUs) headed by ACs and 193 Circles headed by CTOs) functioning under the administrative control of DCs. Further, there is an Inter State Wing (IST) headed by a Joint Commissioner within Enforcement wing, which assists CCT in cross verification of interstate transactions with different states.

2.2 Trend of Receipts

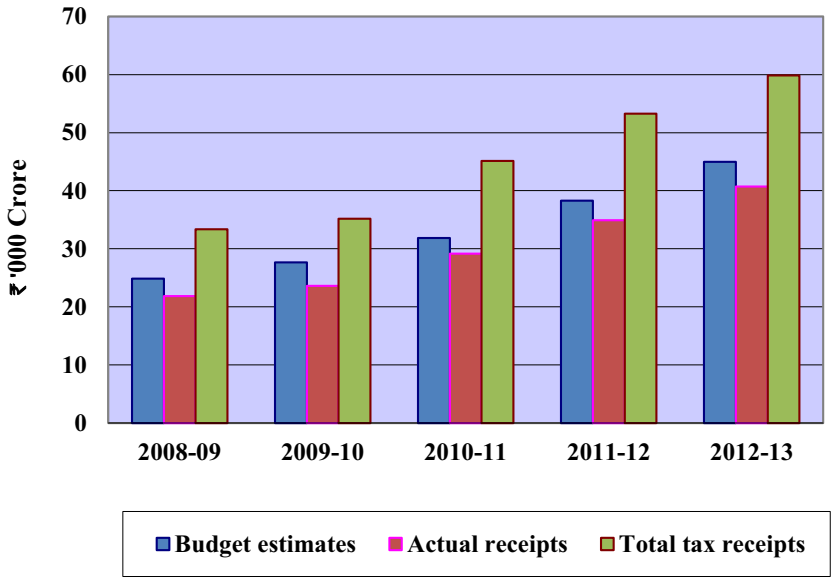
Actual receipts from VAT/CST during the last five year period from 2008-09 to 2012-13 along with total tax receipts during the same period is exhibited in the table 2.1 and graph 2.1, from which it can be seen that VAT constituted between 64 and 68 *per cent* of the State own tax receipts during the last five years, though the collections have consistently fallen short of the budget estimates.

Table 2.1 - Trend of receipts

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual VAT receipts *vis-a-vis* total tax receipts
2008-09	24,887.28	21,851.66	(-) 3,035.62	(-) 12.20	33,358.29	65.51
2009-10	27,685.00	23,640.21	(-) 4,044.79	(-) 14.61	35,176.68	67.20
2010-11	31,838.00	29,144.85	(-) 2,693.15	(-) 8.46	45,139.55	64.57
2011-12	38,305.60	34,910.01	(-) 3,395.59	(-) 8.86	53,283.41	65.52
2012-13	45,000.00	40,714.67	(-) 4,285.33	(-) 9.52	59,875.05	67.99

Graph 2.1: Budget estimates, Actual receipts and Total tax receipts



2.3 Cost of collection

Gross collection of Commercial Taxes Department, expenditure incurred on collection and percentage of such expenditure to gross collection during years 2010-11, 2011-12 and 2012-13 along with relevant all India average percentage of expenditure on collection to gross collection for the previous year are given below:

Table 2.2 - Cost of collection

(₹ in crore)

Head of revenue	Year	Gross collection	Expenditure on collection of revenue	Percentage of cost of collection to gross collection	All India average percentage for the previous year
Taxes/ VAT on sales, trade etc.	2010-11	29,144.85	261.98	0.90	0.96
	2011-12	34,910.01	282.63	0.81	0.75
	2012-13	40,714.67	311.31	0.76	0.83

2.4 Impact of Local Audit

During last five years, Audit had pointed out non/short levy, non/short realisation, underassessment/loss of revenue, incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation etc., with a revenue implication of ₹ 1,422.03 crore in 7,310 cases. Of these, Department/Government had accepted audit

observations in 2,881 cases involving ₹ 327.15 crore and had since recovered ₹ 5.89 crore. Details are shown in following table:

Table 2.3 - Impact of local audit

(₹ in crore)

Year	No. of units audited	Objected		Accepted		Recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2007-08	209	980	196.63	141	80.26	43	1.02
2008-09	198	1,282	267.95	776	43.90	21	1.19
2009-10	210	1,646	279.61	647	72.46	64	2.83
2010-11	223	1,622	373.64	582	87.55	43	0.50
2011-12	227	1,780	304.20	735	42.98	37	0.35
Total	**1,067**	**7,310**	**1,422.03**	**2,881**	**327.15**	**208**	**5.89**

The insignificant recovery of ₹ 5.89 crore (1.80 *per cent*) as against money value of ₹ 327.15 crore relating to accepted cases during the period 2007-08 to 2011-12 highlights failure of Government/Department machinery to act promptly to recover Government dues even in respect of cases accepted by them.

2.5 Working of Internal Audit Wing

Department did not have a structured Internal Audit Wing that would plan and conduct audit in accordance with a scheduled audit plan. Internal audit is organised at Divisional level under the supervision of Assistant Commissioner (CT). There are 25 Large Tax Payers Units (LTUs) and 193 circles in State. Each LTU/circle is audited by audit teams consisting of five members headed by either CTOs or Deputy CTOs. Internal audit report is submitted within 15 days from the date of audit to DC (CT) concerned, who would supervise rectification work giving effect to findings in such report or internal audit.

2.6 Results of audit

Test check of records of 75 offices of Commercial Taxes Department during 2012-13 relating to VAT, revealed under-assessments of tax and other irregularities involving ₹ 159.83 crore in 710 cases, which fall under following categories:

(₹ in crore)

Sl. No.	Category	No. of cases	Amount
1	Evasion of VAT by builders	1	30.78
2	Application of incorrect rate	270	79.29
3	Non/short levy of interest/penalty	80	13.12
4	Excess claim of input tax credit	80	7.26
5	Under declaration of VAT due to incorrect exemption	59	5.61
6	Under declaration of VAT on works contract	58	3.61
7	Other irregularities	162	20.16
Total		**710**	**159.83**

During course of the year 2012-13, Department accepted under-assessments and other deficiencies of ₹ 63.27 crore in 1398 cases, of which 16 cases involving ₹ 4.19 crore were pointed out in audit during year 2012-13 and the rest in earlier years. An amount of ₹ 1.42 crore was realised in 100 cases during year 2012-13.

A few illustrative audit observations involving ₹ 46.67 crore are mentioned in following paragraphs.

2.7 Audit Observations

During scrutiny of the records of the offices of the Commercial Taxes Department relating to revenue received from VAT and CST, Audit observed several cases of non-observance of the provisions of the Act/Rules resulting in non/short levy of tax/penalty and other cases as mentioned in the succeeding paragraphs in this Chapter. These cases are illustrative and are based on a test check carried out by the Audit. Audit points out such omissions in audit every year, but not only do such irregularities persist, they also remain undetected till an audit is conducted. There is a need for improvement of internal controls so that such omissions can be avoided, detected and rectified.

2.8 Evasion of Value Added Tax (VAT) by builders

Under Section 4(7) (b) of AP VAT Act 2005, a VAT dealer executing works contract may opt to pay tax under composition[9], at four/five *per cent*[10] on total consideration received or receivable. He shall, before commencing execution of work, notify the prescribed authority in form VAT 250 of the details of work including value of contract on which option to pay tax under composition has been exercised.

However, under section 4(7) (d), works contractors engaged in construction and selling of residential apartments, houses, buildings and commercial complexes shall pay tax, under composition (if they opt) at the rate of four *per cent*/five *per cent*[11] on 25 *per cent* of the total consideration received or receivable or market value fixed for the purpose of stamp duty, whichever is higher.

Rule 17(4)(i) of AP VAT Rules 2005, provides that VAT is to be paid in the form of demand draft drawn in favour of CTO to Registration Department at the time of registration of the property.

Audit identified 70 builders of apartments, commercial complexes etc., through internet and test checked documents registered by them at offices of seven Sub-Registrars and one District Registrar[12]. On scrutiny of registered documents at these offices, audit noticed that dealers (builders) were executing sale deeds at semi-finished stage (apparently to give buyer the advantage of lower stamp duty on sales price) and paying VAT at the rate prescribed under Section 4(7) (d) of the Act. For works carried out subsequently towards finishing of apartments, separate construction agreements were being entered

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[9] Under composition, a works contractor can opt to pay VAT at a composite rate on the total consideration received/receivable; otherwise he shall pay tax at normal rates on the value of goods incorporated in the works executed and he will have to maintain an account of those goods.

[10] By Act No. 12 of 2012 dated 20 April 2012 rate changed from four *per cent* to five *per cent* w.e.f. 14 September 2011.

[11] By Act No. 12 of 2012 dated 20 April 2012 rate changed from four *per cent* to five *per cent* w.e.f. 14 September 2011.

[12] Jubileehills, Kukatpally, Medchal, Qutubullahpur, Rajendranagar, Serilingampally, SR nagar, District Registrar - Rangareddy

into and VAT was being paid at same rate of four/five *per cent* on 25 *per cent* of consideration value applicable to construction and sale of apartment under Section 4(7)(d) of the Act.

Data collected from Registration Department in respect of these 70 builders was further cross-checked with VAT audit files and monthly returns (VAT 200) for the years 2009-10 to 2011-12 in 17 circles[13] of Commercial Taxes Department. During scrutiny (between March and May 2013) of records it was noticed that these builders included consideration value (₹ 1,011.88 crore) of additional works carried out by them subsequent to execution of sale deeds with total value of the apartments and paid VAT under Section 4(7) (d) of the Act, i.e. at the rate of four/five *per cent* on 25 *per cent* of total consideration received.

Audit observed that rights of ownership/titles to the property were transferred upon execution of sale deed and payment of VAT under Section 4(7) (d). Any work carried out thereafter by entering into a separate agreement becomes a 'works contract' under AP VAT Act between such buyer and dealer and attracts tax under Section 4(7) (b) of the Act, i.e. the rate of four/five *per cent* of total consideration received. Commissioner of Commercial Taxes also clarified this in Advance Ruling[14] dated 16 October 2012. Therefore, amount received towards subsequent works for finishing/completion was liable to VAT at the rate of four/five *per cent* instead of four/five *per cent* on 25 *per cent* of consideration value. Adoption of incorrect rate of tax thus resulted in evasion of ₹ 30.78 crore[15] by 70 builders.

Matter was referred to Department in July 2013 and to Government in August 2013. Their reply has not been received (March 2014).

2.9 Procedural irregularities relating to sensitive commodities

Sensitive commodities are notified by Commissioner of Commercial Taxes under Rule 55(2) of the AP VAT Rules due to their evasion-prone nature. It includes commodities such as marbles, transformers, generators, paper, vegetable oils, oil seeds, iron and steel, crackers etc. In order to monitor the import of such sensitive commodities in the State from places outside, some provisions have been made, compliance to which has been commented upon in the following sub-paragraphs:

2.9.1 Non verification of Advance Way Bills

As per proviso to Rule 55(2) of APVAT Rules, sensitive commodities purchased and brought from other states/Union Territories shall be accompanied by advance way bills filled in and signed by the consignor in duplicate**.** One copy of advance way bill shall be surrendered at the first check

[13] Ashoknagar, Barkatpura, Basheerbagh, Begumpet, Gandhinagar, Hyderguda, Hydernagar, IDA Gandhinagar, Jubileehills, MG Road, Madhapur, Nampally, Narayanguda, Panjagutta, Somajiguda, Srinagar colony and Vengalraonagar.

[14] Advance Ruling Com/66/2011.

[15] VAT chargeable on the consideration value of construction agreements (finishing works) under Section 4(7)(b) *less* VAT paid under Section 4(7)(d).

post through which goods enter into the State. Advance way bills so surrendered at check post shall be transferred to Deputy Commissioner (CT) concerned for further transmission to jurisdictional Commercial Tax Officers/Large Tax payers' Units (LTUs) for cross verification with the monthly returns of the purchasing dealer.

Audit noticed (between February and May 2013) that during the year 2011-12 in seven circles[16] 22,604 out of 27,280 way bills (constituting 83 *per cent*) transmitted by Deputy Commissioners (CT) to circles were not cross verified. The very purpose of issuing the advance way bill has thus been defeated.

Audit also noticed that no advance way bills were transmitted from DCs (CT) to LTU Vijayawada and eight circles[17] for cross verification.

Failure to cross verify the details in the advance way bills was fraught with risk of unaccounted sales which was likely to lead to tax evasion by dealers.

Matter was referred to Department in July 2013 and to Government in October 2013. Their reply has not been received (March 2014).

2.9.2 Short reporting of interstate purchases

In terms of Section 20 of AP VAT Act, read with Rule 23(1) of AP VAT Rules, every dealer registered under the Act shall submit return in Form VAT 200 within 20 days after the end of tax period along with proof of payment of tax. Under section 21 of the Act, this return shall be subject to scrutiny for verifying correctness of calculation, application of correct rate, input tax credit claimed and full payment of tax.

VAT dealers had to report non-creditable/exempt purchases in their monthly returns (VAT 200). These purchases include

(i) interstate purchases

(ii) local purchase of exempt goods; and

(iii) taxable purchase from non-VAT dealers.

In Goods Information System (GIS)[18] data registered at check posts, details of interstate purchases were recorded. Hence, non-creditable purchases reported by VAT dealers in their monthly returns had to be necessarily more than or equal to the turnover recorded at GIS data of check posts.

During cross verification of turnovers reported by VAT dealers with that of GIS data available at check posts in seven LTUs[19] and 21 Circles[20], audit

[16] Aryapuram, Bhimavaram, Malkajgiri, Mandapeta, Nacharam, Special commodities and Tirupati-II.

[17] Anakapalle, Benz Circle, Eluru, Gudur, Hydernagar, Jeedimetla, Somajiguda and Tadepallegudem.

[18] A module in the VATIS (VAT Information System software).

[19] Abids, Eluru, Hyderabad (Rural), Kakinada, Punjagutta, Secunderabad and Visakhapatnam.

[20] Aryapuram, Benz Circle, Chittoor-II, Dwarakanagar, Eluru, Gowliguda, Gudur, Hydernagar, Jeedimetla, Malkajigiri, Mandapeta, Maredpally, Nacharam, Nellore-II,

noticed (between November 2012 and May 2013) that 715 dealers of sensitive commodities in their monthly returns had reported turnover for year 2011-12 as ₹ 6,626.39 crore, whereas, in GIS data of check posts, the turnover was ₹ 19,354.46 crore. Purchase turnover was thus short reported in VAT returns by ₹ 12,728.07 crore.

In response, nine CTOs/four Divisional Offices[21] (between December 2012 and May 2013) in respect of 284 cases furnished non-specific and presumptive replies like variation being possibly due to mistakes in data entry or dealers possibly not reporting outside purchases etc., while the remaining authorities replied (between November 2012 and May 2013) in respect of 431 cases that matter would be examined and report submitted.

It is evident from the above that dealers violated the prescribed system of reporting purchases in monthly returns and department also failed to verify the correctness of the turnover.

Matter was referred to Department in July 2013 and to Government in December 2013. Their reply has not been received (March 2014).

2.9.3 Arrears in conducting VAT audit

As per Clauses 3.1(i) and 4.8.2 of AP VAT Audit Manual 2005[22] every VAT dealer should be audited in a period of two years and audits so taken up should not exceed 12.5 *per cent* of total VAT dealers in a quarter.

VAT Audits need to be conducted strictly in accordance with the guidelines prescribed in the VAT Audit Manual, 2005, to minimize loss due to tax evasions. Audit scrutinized periodicity of VAT Audits conducted by the department with special emphasis on audit of dealers of sensitive commodities, as they are, by definition, evasion prone.

Based on the information furnished by the department, audit observed (between November 2012 and May 2013) in three LTUs[23] and 22 circles[24], that audit of only 359 dealers of sensitive commodities was conducted during the year 2011-12. As per the provisions of the AP VAT Manual, out of total 5,355 VAT dealers of sensitive commodities registered in these units, audit of 669 dealers (12.5 *per cent* of 5,355) was to be conducted during a quarter.

Punjagutta, Ramachandrapuram, Saroornagar, S.D. Road, Somajiguda, Tadepalligudem and Tirupati-II.

[21] DCs Eluru, Hyderabad (Rural), Visakhapatnam, Abids, CTOs Hydernagar, Jeedimetla, Malkajigiri, Nellore-II, Ramachandrapuram, S.D. Road, Somajiguda, Tadepalligudem and Tirupati-II.

[22] The department rescinded the earlier VAT audit Manual 2005 with effect from 23 July 2011 and a revised manual was issued in June 2012 which was implemented from September 2012. Since VAT audit manual 2005 was applicable upto 22 July 2011 audit observation was confined to audit coverage upto first quarter of financial year 2011-12.

[23] Eluru, Punjagutta and Vijayawada-II.

[24] Anakapalle, Aryapuram, Bhimavaram, Chittoor-II, Eluru, Gudur, Hydernagar, Jeedimetla, Kakinada, Malkajigiri, Mandapeta, Maredpally, Nacharam, Nellore, Punjagutta, Ramachandrapuram, Saroornagar, Somajiguda, Special Commodities circle, Srinagar Colony, Tadepalligudem and Tirupati-II.

Department thus could not achieve the target for one quarter even in a whole year.

Matter was referred to Department in July 2013 and to Government in December 2013. Their reply has not been received (March 2014).

2.10 Interstate sales

2.10.1 Non/short levy of tax on interstate sales

According to Section 8(2) of the Central Sales Tax (CST) Act, 1956, read with Rule 12 of the CST Registration & Turnover (R&T) Rules, 1957, every dealer, who in the course of interstate trade or commerce sells goods to a registered dealer located in another state, shall be liable to pay tax under the Act at the rate of four *per cent* (three *per cent* with effect from 1 April 2007 and two *per cent* with effect from 1 June 2008), provided the sale is supported by declaration in form 'C'. Otherwise, tax shall be calculated at double the rate in case of declared goods[25]. In case of other than declared goods, tax is leviable at the rate of 10 *per cent* or at the rate applicable to sale of such goods within the state, whichever is higher. With effect from 1 April 2007, the respective state rate is applicable to all goods. The applicable rate of tax for commodities like cotton, by-products of maize, SS rough casting, rice etc. falling under Schedule IV of AP VAT Act is four *per cent* and the commodities like pharma equipments, paints, cement, granite etc., falling under Schedule V are liable to tax at the rate of 12.5 *per cent* upto 14 January 2010 and at the rate of 14.5 *per cent* thereafter.

Audit noticed (between March 2011 and April 2013) during the test check of CST assessment files of seven circles[26] that in 15 cases, the Assessing Authorities (AAs) while finalising the assessments, between February 2010 and March 2012 for the years 2006-07, 2008-09 to 2010-11, either incorrectly computed the taxable turnover of interstate sales or levied tax at rates less than the applicable rates on interstate sales of commodities like cotton, by-products of maize, SS rough castings, computer labels, rice, pharma equipment, paints and colours, vacuum pumps, rock drill machinery and spare parts, granite, cement and chemical admixtures etc. which were not supported by the declarations in form 'C'. This resulted in non/short levy of tax of ₹ 75.40 lakh on a turnover of ₹ 9.40 crore.

After audit pointed out the cases, in one case, CTO Maharajgunj stated (November 2012) that assessment was revised and demand raised. In remaining cases, the AAs replied (between March 2011 and April 2013) that matter would be examined and assessments revised.

[25] Goods declared under Section 14 of the CST Act, to be of special importance in interstate trade or commerce. e.g., Cereals, paddy, rice, wheat etc.

[26] Guntur (Kothapet), Hyderabad (Basheerbagh, Maharajgunj, Malkajgiri and Nacharam), Kurnool-III, and Vijayawada (Benz circle).

Matter was referred to Department (between April 2012 and June 2013) and to Government in November and December 2013. Their reply has not been received (March 2014).

2.10.2 Short levy of tax and non-levy of penalty on fake/false declarations

According to Section 9(2-A) of the CST Act read with Section 7(A) (2) of the Andhra Pradesh General Sales Tax (APGST) Act, 1957, where a dealer claims concessional rate of tax on the basis of documents containing false/fake declarations, he shall be liable to pay a penalty of three to five times the tax due for such transaction. After promulgation of AP VAT Act, under Section 16 of the AP VAT Act, read with Section 55(4) (b), penalty of 200 *per cent* of the tax due is leviable for such offence.

During the test check of the CST assessment files of seven dealers finalised between August 2010 and March 2011 in two circles[27] for the period 2004-05 and 2007-08, Audit noticed (between June and December 2011) that in cases of two dealers, the AAs incorrectly levied concessional rate of tax on transactions supported by fictitious 'C' forms. In case of one dealer, the AAs levied concessional rate of tax on interstate sale supported by fake 'C' forms and allowed exemption on branch transfer based on fake 'F' forms. In the remaining four cases, the Assessing Authority levied higher rate of tax i.e. tax applicable to commodity by withdrawing the concessional rate of tax on the turnover covered by fake 'C' forms. But in none of these cases had the AAs levied any penalty for submission of fake forms which resulted in non-levy of penalty of ₹ 2.94 crore besides short levy of tax of ₹ 0.53 lakh.

After audit pointed out the cases, CTO Chinawaltair stated (October 2012) that in four cases penalty proceedings would be initiated and intimated to audit. In the remaining three cases, CTO Jagityal contended (March 2013) that Government waived the excess demand under CST for interstate sale of "rice" during the period from 1 April 2007 to 31 May 2008 and therefore levy of penalty was unwarranted. However, Government had waived[28] excess demand of tax on "rice" raised by CTD only for non-furnishing of declaration forms. It did not waive the penalty under Section 55(4) (b) for producing fake forms.

Matter was referred to Department (between August 2012 and April 2013) and to Government in December 2013. Their reply has not been received (March 2014).

2.10.3 Non-levy of penalty on misuse of 'C' forms in interstate purchases

A dealer registered under section 7 of CST Act who carries on business in interstate trade under section 3 is eligible for purchase of any goods from the dealers outside the state. The selling dealer would get benefit of concessional rate of tax on sale of goods by providing 'C' form given by the purchasing dealer under section 8 (4) of CST Act read with Rule 12 (1) of CST (Registration & Turnover) Rules.

[27] CTO - Chinawaltair, Jagityal.
[28] Memo No.20345/CT.II(1)/2011-1 dated 08 June 2011.

As per section 8(3)(b) of CST Act, the goods purchased from outside the state shall be specified in the Registration certificate (Form B) of the purchasing dealer. Such dealers are eligible to issue 'C' form, provided that those goods shall be intended for (i) resale; (ii) manufacture or processing of goods for sale; (iii) mining; (iv) generation or distribution of electricity or any other form of power; (v) packing of goods for sale/resale.

Under Section 10A of CST Act, penalty not exceeding one and half times is required to be levied if the dealer violates the provisions mentioned under section 8(3)(b) of CST Act.

Audit noticed (between May 2012 and April 2013) during the test check of CST records of four circles[29] for the period from 2009-10 to 2011-12, that in two out of four cases, dealers made interstate purchase of electrical goods, automobile parts, electronics, machinery, paints and colours etc., which were not specified in their Registration Certificates. In the remaining two cases, works contractors purchased goods which were not incorporated in works in violation of Section 8(3)(b)(ii) of CST Act. Thus 'C' forms were misused for purchase of commodities which were not included in the registration certificate and commodities not used in execution of works contract. The penalty leviable for misuse of 'C' form worked out to ₹ 1.04 crore.

After audit pointed out the cases, AAs stated (February 2012 and April 2013), the matter would be examined and action taken.

Matter was referred to Department (between December 2012 and June 2013) and to Government in November 2013. Their reply has not been received (March 2014).

2.10.4 Grant of incorrect concessional rate of tax due to acceptance of invalid 'C' forms

According to Section 8(4) of the CST Act, 1956 read with Rule 12(1) of CST (R&T) Rules, every dealer shall file a single declaration in 'C' form covering all transactions of sale, which take place in a quarter[30] of a financial year between the same two dealers with effect from 1 October 2005.

Audit noticed (between November 2010 and April 2013) during the test check of the CST assessment files of nine circles[31] that the AAs, while finalising the assessments in 14 cases between July 2009 and March 2012 for the years 2005-06 to 2008-09, incorrectly allowed concessional rate of tax on the interstate sales turnovers of switchgears and spares, paper, machinery, studs, industrial electronics, VCB trolley, electrical items, explosives, corrugated boxes, iron and steel etc., amounting to ₹ 3.05 crore supported by invalid 'C' forms. The 'C' forms were invalid as they covered transactions of more than one quarter/pertained to irrelevant period/duplicate copy of 'C' forms. This resulted in short levy of tax of ₹ 17.98 lakh.

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[29] CTO - Basheerbagh, Dwarakanagar, Kakinada, Punjagutta.
[30] With effect from 1 October 2005, prior to that it was "one financial year".
[31] Bhongir, Bowenpally, Gowliguda, Nacharam, Mahankali Street, Malkajgiri, Srinagar Colony, Tarnaka and Tirupati-II.

After audit pointed out the cases, the AAs stated (November 2010 and April 2013) that the matter would be examined and revision would be taken up.

Matter was referred to Department (between April 2012 and July 2013) and to Government between October and December 2013. Their reply has not been received (March 2014).

2.10.5 Non-levy of tax on export/deemed export sales/high sea sales not covered by documentary evidence

Under Section 5(1) and 5(3) of the CST Act, export of goods and goods sold for export are not liable to tax. As regards 'high sea sale', Section 5(2) of CST Act provides that a sale or purchase of goods shall be deemed to have taken place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by transfer of documents of title to the goods before the goods have crossed the customs frontiers of India. Further, under Section 5(4) of the Act read with Rule 12(10) of the CST (R&T) Rules, 1957 the dealer selling the goods shall furnish documentary evidence such as bill of lading, purchase order, 'H' form duly filled in and signed by the exporter in support of the transaction, failing which the transaction is required to be treated as interstate sale not covered by 'C' form and tax levied under section 8(2) of the Act at the rates applicable to the sale or purchase of such goods inside the appropriate State.

Audit noticed (between June 2011 and March 2013) during the test check of the CST assessment files of 10 circles[32] for the period 2007-08 to 2010-11, that out of 12 cases where the assessments were completed between November 2010 and March 2012, in seven cases, the AAs incorrectly allowed exemption on deemed export sales/high sea sales, which were not supported by documentary evidence such as 'H' forms, purchase orders, bill of lading and bill of entry etc. In three cases, the goods were exported even prior to the date of purchase order. In the remaining two cases, details furnished in shipping bills and documents produced in proof of export were not same which makes it evident that goods shipped and goods for which exemption claimed were not the same. The incorrect exemption allowed on commodities worth ₹ 6.43 crore in these cases resulted in non-levy of tax of ₹ 29.09 lakh.

After audit pointed out the cases, CTO S.D. Road stated (December 2012) in respect of one case that notice would be issued. In remaining 11 cases, AAs stated (May 2011 and March 2013) that audit observations would be verified.

Matter was referred to Department (between January and July 2013) and to Government in October 2013. Their reply has not been received (March 2014).

[32] Anakapally, Chilakaluripet, Gudiwada, Hyderabad (Balanagar, Vengalraonagar), Palkol, Sangareddy, S.D.Road, Visakhapatnam (Dwarakanagar and Kuruppam Market).

2.11 Payment of VAT on works contracts under non-composition

2.11.1 Short levy of tax on works contractors who did not maintain detailed accounts

Under Section 4(7) (a) of the APVAT Act and Rule 17(1) (a) of APVAT Act Rules, tax is payable by every dealer executing works contract on the value of goods at the time of incorporation of such goods at the applicable rates. To determine the taxable turnover on works contract, the dealer should keep the records as prescribed under Rule 31 of APVAT Rules. As per Rule 17 (1) (g) of APVAT Act Rules, where the VAT dealer did not maintain the accounts of goods incorporated in execution of works as prescribed, the dealer shall pay tax at the rate of 12.5 *per cent* up to 25 April 2010 and 14.5 *per cent* with effect from 26 April 2010 on the total consideration received or receivable subject to standard deductions specified under the rules. Further, the contractor shall not be eligible to claim input tax credit (ITC) if tax is paid under Rule 17(1) (g).

During test check (February 2012 and April 2013) of the VAT assessment files of three circles for the period 2007-08 to 2010-11, Audit noticed the following:

In one case, the dealer did not report the amounts received towards works contracts in the turnover in monthly returns for the years 2007-08 and 2008-09 and the AA, Nandigama, also finalised the assessment on the basis of declared turnover. Audit cross-verified the returns with the Profit and Loss Accounts of the dealer and observed that the dealer had concealed the turnover amounting to ₹ 32.14 lakh resulting in under assessment of VAT of ₹ 2.81 lakh.

In another case, AA, Jeedimetla while finalising the assessment of a works contractor under Rule 17(1)(g), who had not opted for payment of VAT under composition and had not maintained accounts of goods incorporated, allowed ITC amounting to ₹ 5.13 lakh in contravention of the rules.

In a third case, AA, Dwarkanagar assessed the tax liabilities of a works contractor for the years 2008-09, 2009-10 and 2010-11. Since the dealer had not maintained the accounts of goods incorporated in execution of works contract, AA allowed standard deduction of 30 *per cent* from the total turnover of the dealer. But instead of levying VAT at the rate of 12.5 *per cent*/14.5 *per cent* on the remaining 70 *per cent* of turnover as provided under Section 17(1)(g), he levied VAT at lower rates of four *per cent*/12.5 *per cent*, which was not in order. In addition, after calculating the incorrect tax liability, ITC was also allowed, in contravention of the provision of Rule 17(1)(g). The incorrect calculation of VAT and irregular allowance of ITC resulted in under assessment of tax of ₹ 1.26 crore.

After audit pointed out the cases, the AAs stated (between February 2012 and April 2013) that matter would be examined and detailed reply sent in due course.

Matter was referred to Department (between December 2012 and June 2013) and to Government in October 2013. Their reply has not been received (March 2014).

2.11.2 Declaration of VAT by works contractors at incorrect rates

In terms of Section 13(7) of the AP VAT Act, VAT dealers paying tax under Section 4(7)(a) of the Act, (i.e., other than by way of composition) are required to maintain accounts under Rule 31 of AP VAT Rules. Tax is payable by every dealer executing works on the value of goods incorporated in the works at the rates applicable to goods after allowing deductions under Rule 17(1)(e) of APVAT Rules. These deductions include planning cost, designing cost, cost of consumables, hire charges of machinery etc. In such cases, the VAT dealer is eligible to claim ITC up to 75 *per cent*[33] on related input tax with effect from 15 September, 2011.

Audit noticed (between June and December 2012) during the test check of VAT records in respect of three cases in two circles[34] for the period 2010-11 and 2011-12 that in two cases, the dealers engaged in painting and other works contracts paid tax at the rate of four *per cent* on total consideration, although they had not opted to pay tax by way of composition. As goods used in works were taxed at higher rates, the dealers were liable to pay VAT at the rates applicable to input goods. In another case, a dealer had claimed ITC on 90 *per cent* of VAT paid on the purchases effected after 15 September 2011 instead of 75 *per cent*. This resulted in under declaration of tax of ₹ 52.67 lakh.

After audit pointed out the cases, the AAs stated that in two cases (December 2012), that notices would be issued to the dealers; and in remaining one case it was stated (March 2013) that DC (CT) Kadapa had assigned audit of the assessee to CTO (Intelligence), Kadapa.

Matter was referred to Department in February and May 2013 and to Government in November 2013. Their reply has not been received (March 2014).

2.12 Payment of VAT on works contracts under composition

Under Section 4(7)(b) and (c) of the APVAT Act, any VAT dealer executing works contract may opt to pay tax by way of composition at the rate of four *per cent* (five *per cent* from September 2011) on the total consideration received or receivable for any specific contract subject to conditions prescribed. Such contractors have to opt for composition and file Form VAT 250 before commencing each work. No other deduction except payments made to subcontractors is allowable to the dealers who opt for composition and they would not be entitled to claim ITC.

[33] Prior to 15 September 2011 ITC eligibility was up to 90 *per cent*.
[34] Kadapa-II and S.D. Road.

Audit noticed (between May 2011 and March 2013) during the test check of VAT records of 11 circles[35] for the period 2010-11 and 2011-12, that out of the 13 cases, in 10 cases, the dealers who had opted to pay tax under composition had under-declared tax either due to incorrect claim of exemption or on account of under-reporting of turnover/tax in the monthly returns. In two other cases, the dealers paid tax at the concessional rate of four *per cent,* though their options for payment of tax under composition were invalid due to filing of option after commencement of work. In one case, despite opting for composition, the assessee had claimed ITC on purchases relating to the period 2005-06 and 2007-08. This resulted in under declaration of tax of ₹ 62.90 lakh.

After audit pointed out the cases, CTO (Vishakhapatnam steel plant) stated that in one case (August 2012), notice was issued to the dealer. In remaining 12 cases, AAs stated (between May 2011 and March 2013) that the issue would be verified.

Matter was referred to Department (between December 2011 and June 2013) and to Government between October and December 2013. Their reply has not been received (March 2014).

2.13 Application of incorrect rate

Under Section 4(1) of the AP VAT Act, VAT is leviable at the rates prescribed in schedules I to IV & VI to the Act. Commodities not specified in any of the schedules fall under schedule V and are liable to VAT at 12.5 *per cent* from 1 April 2005 and at 14.5 *per cent* with effect from15 January 2010.

Audit noticed (between September 2010 and March 2013) during the test check of the VAT records of 14 circles[36] for the period from 2007-08 to 2011-12 that 24 dealers declared VAT in their returns and paid ₹ 1.52 crore instead of ₹ 3.68 crore on turnover relating to commodities falling under Schedule V to the Act such as dyes and chemicals, cement poles, rock drills, detonators, food sales, automobiles parts etc., due to application of incorrect rate and due to reporting of turnover taxable at 12.5 *per cent,* though the rate of tax was enhanced to 14.5 *per cent* with effect from 15 January 2010 (26 April 2010 in the case of works contracts). This resulted in under declaration of VAT of ₹ 2.16 crore.

After audit pointed out the cases, the AAs replied in respect of 14 cases (between August 2011 and February 2013) that revision of assessments would be taken up. In remaining 10 cases, AAs stated (between September 2010 and March 2013) that facts would be verified.

[35] Gudiwada, Hyderabad (Rajendranagar, Somajiguda), Jagityal, Macherla, Mancherial, Medak, Nellore-I, Palkol, Visakhapatnam (Steel plant) and Vuyyuru.

[36] Agapura, Anantapur-I, Benz circle, Chinawaltair, Dharmavaram, Kamareddy, Karimnagar-I Mangalagiri, Musheerabad, Nacharam, Nandyal-I, Nizamabad-II, S.D. Road and Srinagar colony.

Matter was referred to Department (between June 2011 and June 2013) and to Government between October and December 2013. Their reply has not been received (March 2014).

2.14 Sales tax incentives for industrial units

According to 'Target 2000 Sales Tax Incentive Scheme' promulgated by Government in 1996, sales tax incentive of deferment of tax is available for the products manufactured by the industrial units to the extent of incentive limit as mentioned in the Final Eligibility Certificate (FEC) issued by the Department of Industries and Commerce. After introduction of the AP VAT Act, with effect from 1 April 2005, sales tax holiday/exemption incentives sanctioned earlier to industrial units were converted into sales tax deferment with the remaining period of availment being doubled without any change in monetary limit of the incentives sanctioned.

Some of the cases regarding irregular availment of benefits of incentive scheme were noticed by audit and are presented in the following paragraphs.

2.14.1 Non/short levy of interest on belated payment of deferred sales tax

As per Government order[37] dated 8 May 2009, amending Rule 67 of the AP VAT Act with effect from 1 May 2009, the repayment of deferred Sales Tax was to commence after the completion of the period of deferment. In case of non-remittance of deferred tax on due dates, interest at the rate of 21.5 *per cent* per annum (as mentioned in the FEC) was liable to be paid.

Audit noticed (between August 2010 and May 2013) during the test check of the deferment records of two DCs[38] and nine circles[39] that in 18 cases, the dealers who availed sales tax deferment had paid tax belatedly (delay ranging from eight to 1406 days) for which interest was either not levied or levied short. This resulted in non/short levy of interest of ₹ 77.24 lakh.

After audit pointed out, five AAs[40] stated in five cases (between May 2011 and May 2013) that rectificatory action would be taken. CTO Adoni-II contended (June 2012 in respect of one case) that the dealer had paid the amount as per the due dates fixed by the DC and there was no delay in payment of interest. But as the tax deferment and payment schedule was approved by the Department of Industries and Commerce under an incentive scheme, DC should not have altered the payment schedule which was approved by a different authority. In the remaining 12 cases (between August 2010 and May 2013), it was stated that the matter would be examined.

Matter was referred to Department (between November 2011 and July 2013) and to Government between October and December 2013. Their reply has not been received (March 2014).

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[37] G.O.Ms.No. 503 dated 8 May 2009.
[38] Charminar and Nalgonda.
[39] Adoni, Bhongir, Hyderabad (Gowliguda and Somajiguda), Nandigama, Nellore-II, Peddapuram, Suryapet and Tirupati-II.
[40] DC Nalgonda; CTOs -Bhongir, Gauliguda, Somajiguda and Tirupati-II

2.14.2 Excess availment of sales tax deferment

Audit noticed (April 2013) during the test check of records of Jeedimetla circle that in one case, the dealer was sanctioned 'Sales tax deferment' for an amount of ₹ 1.19 crore under Target 2000 scheme for the period from 1997-98 to 2011-12. This unit had availed tax deferment of ₹ 1.85 crore between 1997-98 and 2008-09. This resulted in excess availment of sales tax deferment to the extent of ₹ 65.86 lakh.

After audit pointed out the case, the AA replied (April 2013) that unit was closed and action was being taken to collect the excess availed deferment by taking coercive steps. However, AA did not intimate action taken on the issue before it was raised by audit. Status of recovery of deferred tax allowed in FEC was also not furnished.

Matter was referred to Department in June 2013 and to Government between October 2013 and December 2013. Their reply has not been received (March 2014).

2.15 Non/short levy of penalty

2.15.1 Under Section 51 of the APVAT Act, a dealer who fails to pay tax due on the basis of the return submitted by him by the last day of the month in which it is due, shall be liable to pay tax and a penalty of 10 *per cent* of the amount of tax due.

As per Rule 9(2A) of the CST Act, the provisions relating to tax, interest and penalties of AP VAT Act shall apply in relation to any dues required to be collected under CST Act in the State.

Audit noticed (between November 2011 and April 2013) during the test check of the VAT/CST records of six circles[41] for the period from March 2006 to March 2012, that in 18 cases, the dealers paid tax of ₹ 6.19 crore as declared in their VAT/CST returns with delays ranging from six days to 1,892 days from the scheduled dates. The Assessing Authorities, however, did not levy penalty of 10 *per cent* of the amount of tax due on belated payments of tax. This resulted in non- levy of penalty of ₹ 62.13 lakh.

After the audit pointed out the cases, CTO Tirupati-II replied (April 2013) that orders were passed in four cases levying penalty; two CTOs[42] stated (May 2012 and April 2013) that rectificatory action would be taken in three cases pointed out by audit. In the remaining 11 cases, AAs replied (November 2011 and May 2012) that matter would be examined.

Matter was referred to Department (between May 2012 and July 2013) and to Government between October and November 2013. Their reply has not been received (March 2014).

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[41] Hyderabad (Agapura, Basheerbagh, IDA Gandhinagar, M.J. Market), Special Commodities Circle and Tirupati-II.

[42] Basheerbagh and Special Commodities Circle.

2.15.2 Under Section 53(1) of the AP VAT Act, 2005, where tax has been under-declared by any dealer and it has not been established that fraud or wilful neglect has been committed and such under-declared tax is less than 10 *per cent* of the tax payable, a penalty at 10 *per cent* of such under-declared tax is leviable. If the under-declared tax exceeds 10 *per cent* of tax payable, penalty is leviable at 25 *per cent* of the under-declared tax. Under Section 53(3) of AP VAT Act, where it is established that fraud or wilful neglect has been committed, the dealer shall be liable to pay penalty equal to the amount of tax under-declared, besides being liable for prosecution.

During the test check of the records of DC, Abids and eight circles[43] for the period covering 2005-06 and 2007-08 to 2011-12, Audit noticed (between February 2012 and May 2013) that in 17 cases, though the dealers under declared tax of ₹ 5.49 crore, the AAs either did not levy or short levied penalty against the provisions of the AP VAT Act, resulting in non/short levy of penalty of ₹ 44.25 lakh.

After audit pointed out the cases, CTO Ananthapur-I stated (June 2012) in respect of one case that Show Cause Notice (SCN) was issued to the dealer. In respect of nine cases three CTOs[44] replied (between December 2012 and April 2013) that revision would be taken up. DC (CT) Abids contented (January 2013 in respect of one case) that penalty was levied on over declared input tax credit and under declared output tax separately. But penalty under Section 53 was prescribed for the net under-declared tax during the tax period without treating input tax credit and output tax separately. In the remaining six cases, AAs replied (between February 2012 and March 2013), that matter would be examined.

Matter was referred to Department (between October 2012 and July 2013) and to Government between October and December 2013. Their reply has not been received (March 2014).

2.15.3 According to Section 50(1) of the APVAT Act, any VAT dealer, who fails to file a return where no tax is due by the end of the month in which it was due, shall be liable to pay a penalty of ₹ 2,500. Further, under Section 50(3), where a dealer files a return after the last day of the month in which it is due, he shall be liable to pay a penalty of 15 *per cent* of the tax due.

Audit noticed (between March 2012 and May 2013) during the test check of the records of Tirupati - II circle for the period 2010-11 and 2011-12, that in five cases, the dealers filed returns after the due date and they were liable to pay tax of ₹ 1.43 crore as per monthly returns filed by them. Although belated filing of returns attracted penalty under the provisions of the AP VAT Act, the AA did not do so. This resulted in non-levy of penalty of ₹ 21.49 lakh.

After audit pointed out the cases, the AA stated (between March 2012 and May 2013) that action would be taken for levy of penalty.

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[43] Anantapur-I, Hyderabad (Hydernagar, Hyderguda, Gowliguda, Somajiguda), Nandigama, Nellore-II and S.D. Road.

[44] Hydernagar, S.D. Road and Somajiguda.

Matter was referred to Department in February/June 2013 and to Government in October 2013. Their reply has not been received (March 2014).

2.16 Input Tax Credit

2.16.1 Non-filing of periodical returns to claim Input Tax Credit (ITC)

According to Section 13(5) of APVAT Act, 2005, no ITC shall be allowed on the inputs used in manufacture of exempt goods. Similarly as per Section 13(6), ITC on exempt transactions shall be allowed in excess of four or five *per cent*. For this purpose the dealers using common inputs on sale of both taxable goods and exempt goods/exempt transactions have to file VAT-200A returns monthly associated with VAT 200 returns and VAT-200B returns annually to claim ITC entitled for.

Audit noticed (between November 2012 and May 2013) in 15 circles[45] that only five out of 448 test checked dealers submitted additional returns in Form-200-A and 200-B during the year 2011-12.

Though the department made electronic filing of VAT-200 returns mandatory for the dealers, filing of VAT 200A and VAT 200 B returns was not enforced. There was no mechanism to check whether these returns were actually filed. Due to non-filing of VAT-200A and VAT-200B returns by the dealers, the correctness of ITC claimed by these dealers could not be verified.

In response, CTOs Dwarakanagar and Jeedimetla stated (February and April 2013) that after introduction of e-filing of VAT 200 returns, there was no provision for the dealer to file 200A and 200B online and that the issue would be brought to the notice of higher authorities. The remaining AAs stated (between February 2013 and May 2013) that the matter would be examined and necessary action taken.

Matter was referred to Department in July 2013 and to Government in November 2013. Their reply has not been received (March 2014).

2.16.2 Excess claim of ITC

As per sub-rules (7), (8), (9) of Rule 20 of the APVAT Rules, a VAT dealer making taxable sales, exempted sales and exempt transactions of taxable goods shall restrict his ITC as per the formula prescribed[46].

Under Section 20(3) of the APVAT Act, every return shall be subject to scrutiny to verify the correctness of calculation, application of correct rate of tax and input tax claimed therein and full payment of tax payable for such tax period. If any mistake is detected as a result of such scrutiny, the authority

[45] Aryapuram, Benz circle, Dwarakanagar, Eluru, Gudur, Hydernagar, Jeedimetala, Kakinada, Malkajgiri, Nacharam, Nellore-II, Ramachandrapuram, S.D. Road, Srinagar colony and Tirupati-II.

[46] A*B/C, where A is the input tax for common inputs for each tax rate, B is the taxable turnover and C is the total turnover.

prescribed shall issue a notice of demand in the prescribed form for any short payment of tax or recovery of any excess ITC claimed.

Audit noticed (between November 2011 and March 2012) during the test check of VAT records of DC, Vizianagaram in one case that during the years 2009-10 and 2010-11, the dealer had sold sugar (taxable sales and exempt sales effected to SEZ) and claimed ITC on entire sales instead of restricting it to the amount allowed by the formula. In another case (CTO Nampally), the dealer had made both taxable and exempt sales during the year 2010-11 without restricting the ITC claim by applying the formula. In a third case (CTO Mandapeta), the dealer manufactured oil and made both taxable as well as exempt sales for the year 2009-10 by using common inputs taxable at four *per cent* and 12.5 *per cent*. The AA in this case restricted ITC only in the months in which the exempt sales were reported, instead of restricting it for the entire period for computing ITC by applying the formula.

These together resulted in excess claim of ITC of ₹ 78 lakh.

After audit pointed out the cases, CTO Mandapeta replied (December 2012) that revision had been taken up. DC Viziaynagram contested in one case stating (February 2012) that as the dealer had taxable/exempt turnovers and exempt transactions, ITC was allowed under Rule 20 (9) of the APVAT Rules which allows the dealers to claim 10.5 *per cent* portion of ITC eligibility. But there were no exempt transactions of the dealer during the relevant period and as such Rule 20(9) did not apply. In respect of another case, CTO Nampally replied (December 2011) that the matter would be examined and report submitted in due course.

Matter was referred to Department (between September 2012 and May 2013) and to Government in November 2013. Their reply has not been received (March 2014).

2.16.3 Incorrect claim of input tax credit on ineligible items

According to Section 13(1) of the APVAT Act, 2005, input tax credit (ITC) shall be allowed to the VAT dealer for the tax charged in respect of all purchases of taxable goods made by that dealer during the tax period, if such goods are for use in the business of the VAT dealer. As per Section 13(4) of the APVAT Act, 2005 read with Rule 20(2) (h) made under the Act, no ITC is allowable on purchase of natural gas, naphtha, coal unless dealers are dealing in these goods. Further, as per Rule 20(2)(j) of APVAT Rules, a VAT dealer is not entitled for ITC or sales tax credit on earth moving equipment such as bulldozers, JCBs etc., and parts and accessories thereof unless the dealer is in the business of dealing in these goods. As per Rule 20(2) (q) of APVAT Rules furnace oil, LSHS and other similar fuels used in furnaces and boilers of factories or manufacturing or processing units are not entitled for ITC. Commissioner of Commercial Taxes also clarified[47] that LPG purchased from

[47] Advance Ruling Com 79/2012 dated 21 February 2012 given in case of M/s Vijayawada Hospitalities Private Limited.

local registered dealers and used for preparation of food items will not qualify for claiming ITC. In terms of Rule 20(2) (r), cement used in the manufacture of RCC and PCC pipes or poles etc. is not eligible for ITC.

Audit noticed (between March 2011 and April 2013) during the test check of the VAT records of six circles[48] for the period 2009-10 to 2011-12, that out of seven cases, in one case, the dealer had claimed ITC of ₹ 7.17 lakh on purchase of cement used in manufacture of PCC poles. In another case, the dealer who rendered catering service claimed ITC of ₹ 0.95 lakh on the items purchased for use in housekeeping. In two cases, the dealers claimed ITC of ₹ 31.42 lakh on purchase of 'cranes' and 'coal' though they were not dealing in those goods. In the remaining three cases, the dealers incorrectly claimed ITC on LPG purchases made from local dealers and used in preparation of food items. This resulted in incorrect claim of ITC to the extent of ₹ 64.35 lakh.

After audit pointed out the cases, CTO Nandayal-II replied (October 2012) that revision of the case had been initiated. Two CTOs[49] stated (April 2013 in respect of three cases) that rectificatory action would be taken up to realise differential tax. In remaining three cases AAs stated (between March 2011 and March 2013) that issue would be examined.

Matter was referred to Department (between September 2011 and May 2013) and to Government between October and November 2013. Their reply has not been received (March 2014).

2.16.4 Incorrect claim of ITC by eating establishments

Under Section 4(9)(d) of the AP VAT Act, every dealer who runs an eating establishment and whose annual total turnover is more than ₹ five lakh and less than ₹ 1.5 crore shall pay tax at the rate of four/ five *per cent*[50] on the taxable turnover of the sale or supply of goods being food or any other article for human consumption. Such dealers are not entitled to claim ITC under section 13(5) (h) of the Act.

Audit noticed (between May 2011 and May 2013) during the test check of VAT records of three circles[51] that in five cases, the dealers who ran hotels declared annual sales turnover of less than ₹ 1.5 crore and claimed ITC for the period 2009-10 to 2011-12 in contravention of the provisions. This resulted in under-declaration of VAT by ₹ 6.33 lakh.

After audit pointed out, CTOs replied (January 2013 and April 2013) that facts would be verified and rectificatory action would be taken.

Matter was referred to Department (between September 2011 and June 2013) and to Government in December 2013. Their reply has not been received (March 2014).

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[48] Aryapuram, Kurnool-III, Malkajgiri, Nandyal-II, Somajiguda and Tirupati.
[49] Somajiguda and Tirupati.
[50] Four *per cent* upto 13 September 2011 and five *per cent* thereafter.
[51] Hyderabad (Basheerbagh, Khairatabad, Somajiguda).

2.16.5 Incorrect claim of ITC on interstate purchases and amalgamating companies

Section 5 of the AP VAT Act inter alia stipulates that the Act does not apply to the sales or purchases of goods outside the State. According to Section 13(5) (b) of the AP VAT Act, no input tax credit shall be allowed on the transfer of a business as a whole. As per Section 13(3) of the Act, a VAT dealer shall be entitled to claim input tax credit if he is in possession of a valid tax invoice.

Audit noticed (between September 2011 and August 2012) during the test check of VAT records of DC Chittoor and two circles[52] for the period 2008-09 and 2010-11 that out of the three cases, in one case, the dealer had claimed ITC on purchases whereas scrutiny of the VAT records of the selling dealers revealed that the sale turnover reported by this dealer was 'Nil'. In another case, the dealer claimed ITC on interstate purchases, which was not in accordance with the Act provisions. In the remaining case, two companies were amalgamated into one assessee company and the unutilised ITC relating to amalgamated companies was claimed by the assessee, which was contrary to the provisions of the VAT Act. This resulted in incorrect claim of ITC of ₹ 5.15 lakh.

After audit pointed out the cases, CTO Sangareddy stated (February 2012) that action had been initiated. In remaining two cases, AAs stated (September 2011 and June 2012) the matter would be examined.

Matter was referred to Department (between May 2012 and January 2013) and to Government in October 2013. Their reply has not been received (March 2014).

2.17 Under declaration of tax due to incorrect exemption

The commodities rexine, mango pulp, cotton seeds, software, ash, carbon credits fall under Schedule IV of the APVAT Act and are taxable at four *per cent.* PP carpets, aluminium partitions, blinds, sofa sets and motor vehicles are not specified in Schedule I to IV to the APVAT Act and hence these goods fall under Schedule V and are liable to VAT at the rate of 12.5 *per cent* (14.5 *per cent* with effect from 15 January 2010). Further, food sales in restaurants are taxable at four *per cent* where turnover is less than ₹ 1.50 crore and at the rate of 12.5 *per cent* (14.5 *per cent* with effect from 15 January 2010) where annual total turnover is ₹ 1.50 crore or above, under Sections 4(9)(b) and 4(9)(c) of the Act.

Audit noticed (between December 2010 and May 2013) during the test check of VAT records of nine circles[53] for the period from 2007-08 to 2011-12 that in 10 cases, the dealers declared the sale turnover of ₹ 22.15 crore relating to mango pulp, cotton seeds, software, ash, carbon credits rexine, sale of food,

[52] Lalapet and Sangareddy.

[53] Aryapuram, Hindupur, Hyderabad (Basheerbagh, Gowliguda, Nacharam, Nampally and Somajiguda), Paruchur and Tirupati-II.

PP carpets, aluminium partitions, blinds, sofa sets, motor vehicles etc., as exempted turnover which was against provisions of the Act. The incorrect claim of exemption of taxable turnover resulted in under declaration of VAT of ₹ 87.92 lakh.

After audit pointed out the cases, four CTOs[54] replied (between December 2010 and May 2013 in respect of five cases) that revision would be taken up. In remaining five cases, CTOs replied (between June 2011 and March 2013) that the matter would be verified and necessary action taken.

Matter was referred to Department (between July 2011 and June 2013) and to Government between October 2013 and November 2013. Their reply has not been received (March 2014).

2.18 Non/short payment of purchase tax

Under Section 4(4) of the AP VAT Act, every VAT dealer, who in the course of business, purchases any taxable goods from a person or a dealer not registered as a VAT dealer or from a VAT dealer in circumstances in which no tax is payable by the selling VAT dealer, shall be liable to pay tax at the rate of four *per cent* on the purchase price of such goods, if after such purchase, the goods are (i) used as inputs for goods which are exempt from tax under the Act or (ii) used as inputs for goods, which are disposed of otherwise than by way of sale in the State or dispatched outside the State otherwise than by way of sale in the course of interstate trade and commerce or export out of the territory of India. Wherever a common input is used to produce (exempt and taxable) goods, the turnover, taxable under this sub-section, shall be the value of the inputs, proportionate to the value of the goods, used or disposed of in the manner as prescribed.

During the test check of CST assessments and VAT records of DC Adilabad and three circles[55] for the period from 2005-06 to 2010-11, Audit noticed (between December 2011 and June 2012) that in one case, non-VAT purchases of biomass waste taxable at the rate of four *per cent* was used in the manufacture of electrical energy which is exempt under entry 13 of Schedule I to the APVAT Act. In another case, the assessee purchased black gram, dhal from unregistered dealers and did not pay tax on sale of black gram husk as they are exempt under entry 41 of Schedule I to the Act. In two other cases, the dealers claimed exemption on consignment sales of chillies purchased from unregistered dealers within the State. In the remaining one case, the dealer purchased soya bean seeds from unregistered dealers within the State and utilised them in the process of production of soya de-oiled cake which is exempt from levy of tax. In all these five cases, purchase tax was either not paid or paid less. This resulted in non/short payment of purchase tax of ₹ 43.42 lakh.

After audit pointed out the cases, DC Adilabad and CTO Warangal replied (December 2011 in respect of three cases) that facts would be verified.

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[54] Aryapuram, Basheerbagh, Paruchur and Tirupati-II.
[55] Brodipet, Mangalagiri and Warangal.

CTO Brodipet contended (June 2012 in respect of one case) that since husk was not manufactured but obtained as a by-product of black gram, hence purchase tax was not chargeable. The reply was not tenable as husk was an exempt commodity and hence purchase tax was leviable on input goods under Section 4(4). Advance Ruling[56] dated 5 January 2013 also supports the audit view.

CTO Mangalagiri in another case contended (February 2013) that biomass waste was consumed in the process of manufacture of electricity but not used and therefore not liable to tax. However since biomass waste which was input for manufacture of electricity was purchased from unregistered dealers and output electrical energy was exempt from payment of VAT, tax is payable as per Section 4(4) of the APVAT Act.

Matter was referred to Department (between April 2012 and May 2013) and to Government between October 2013 and November 2013. Their reply has not been received (March 2014)

2.19 Short levy of tax due to arithmetical error

Under the CST Act, tax is leviable on interstate sale of goods at the rates prescribed in the Act.

Audit noticed (between March and April 2013) during the test check of CST records of two circles[57] that in three cases, the AAs while finalising the CST assessments in March 2012 for the period 2008-09, worked out the tax leviable as ₹ 6.44 lakh instead of ₹ 25.26 lakh due to arithmetical errors. This resulted in short levy of tax of ₹ 18.82 lakh.

After audit pointed out the cases, the AAs stated (March/April 2013) that audit observations would be examined, necessary action taken and compliance report submitted.

Matter was referred to Department (May and June 2013) and to Government in October 2013. Their reply has not been received (March 2014).

2.20 Short levy of VAT due to incorrect computation of taxable turnover

As per Section 21(3) of APVAT Act, 2005 read with Rule 25(5) of AP VAT Rules 2005, if assessing authority is not satisfied with a return filed by the VAT dealer or the return appears to be incorrect or incomplete, he shall assess the tax payable to the best of his judgment on form VAT 305 within four years of the due date of the return or within four years of the date of filing the return whichever is earlier.

As per Section 21(4) of the AP VAT Act 2005 authority prescribed may, based on any information available or on any other basis, conduct a detailed scrutiny of the Accounts of any VAT dealer and where any assessment, as a result of such scrutiny, becomes necessary, such assessment shall be made

[56] Advance Ruling Com/73/2012 dated 5 January 2013.
[57] CTO- Nacharam and Malkajgiri.

within a period of four years from the end of the period for which assessment is to be made.

Every VAT dealer shall furnish for every financial year to the prescribed authority, the statements of manufacturing/trading, profit and loss accounts, balance sheet and annual report duly certified by Chartered Accountant on or before 31 December subsequent to the financial year to which the statements relate.

As per para 5.11.4 of VAT Audit Manual 2005, audit officer is required to verify the details given by the dealer on VAT returns against the annual accounts for that period.

Audit noticed (between December 2011 and May 2013) during test check of VAT returns/assessment files of nine circles[58], that the AA, while finalising assessments between January 2010 and March 2012, incorrectly computed the taxable turnover in 10 cases. Of the 10 cases, VAT audit had been completed in nine cases. In all these cases taken together, turnovers declared in monthly returns (VAT 200) were less than the turnovers reported in trading/profit and loss accounts by ₹ 3.05 crore. Consequently there was under declaration of tax of ₹ 17.95 lakh.

After audit pointed out the cases, CTO Hindupur replied (January 2013 in respect of two cases) that revision had been initiated. In three other cases CTOs[59] stated (between February 2013 and May 2013) that revision would be taken up. In remaining five cases, AAs stated (between May 2011 and May 2013) that reply would be furnished after examination.

Matter was referred to Department (between April 2011 and July 2013) and to Government in December 2013. Their reply has not been received (March 2014).

2.21 Non-levy of interest on belated payments

According to Section 22(2) of the APVAT Act, if any dealer fails to pay the tax due on the basis of return submitted by him under the Act within the time prescribed or specified thereunder, he shall pay, in addition to the amount of such tax or penalty or any other amount, interest calculated at the rate of one *per cent* per month for the period of delay from such prescribed or specified date for its payment.

Audit noticed (between July 2010 to December 2011) during the test check of records of five circles[60] for the period 2009-10 and 2010-11 that in five cases, the dealers paid tax of ₹ 16.40 crore as declared in their monthly VAT returns with delays ranging from five days to 177 days from the scheduled dates. The AAs however did not levy interest at the rate of one *per cent* per month on belated payment of tax. This resulted in non-levy of interest of ₹ 9.55 lakh.

[58] Anakapalle, Benz circle, Dwarakanagar, Hindupur, Janagaon, Lord bazaar, Nellore-II, Nizamabad-II and Somajiguda.

[59] Benz circle, Nizamabad-II and Somajiguda

[60] Anantapur, Hyderabad (Agapura, IDA Gandhinagar and Marredpally) and Special Commodities circle.

In response, CTO Marredpally stated (November 2011 in respect of one case) that revision had been initiated. In the remaining cases, AAs stated (between July 2010 and November 2011) that facts would be verified.

Matter was referred to Department (between March and May 2012) and to Government in October 2013. Their reply has not been received (March 2014).