

CHAPTER II: COMMERCIAL TAX

2.1 Tax administration

Commercial Tax/ Value Added Tax laws and rules framed thereunder are administered at the Government level by the Secretary. The Commissioner is the head of the Commercial Tax Department is assisted by four Additional Commissioners of Commercial Tax (Addl. CCTs), 12 Deputy Commissioners (DCs), 26 Assistant Commissioners (ACs), 72 Commercial Tax Officers (CTOs), 121 Assistant Commercial Tax Officers (ACTOs) and 174 Commercial Tax Inspectors (CTIs). Against the above sanctioned posts, seven DCs, 16 ACs, 52 CTOs, 67 ACTOs and 93 CTIs are presently working in the Department.

2.2 Results of Audit

In 2013-14, we test checked the assessment records of 24 out of 52 units relating to Value Added Tax (VAT), Central Sales Tax (CST) and Entry Tax (ET) and other records and found underassessment of tax and other irregularities involving ₹ 20.21 crore in 240 cases, which fall under the following categories as given in **Table 2.1**:

Table 2.1

(₹ in crore)

Sl. No.	Category	No. of cases	Amount
1	Non/ short levy of tax	99	3.01
2	Incorrect grant of exemption/deduction	17	1.93
3	Application of incorrect rate of tax	34	1.32
4	Incorrect determination of taxable turnover	12	0.87
5	Other irregularities	77	11.92
6	Long Draft Paragraph (LDP) on “Levy and collection of entry Tax”	1	1.16
Total		240	20.21

During the course of the year, the Department accepted one case involving ₹ 28,000 relating to incorrect determination of taxable turnover and realized ₹ 85,000 (including interest and penalty).

After issue of Draft Paragraphs, the Department recovered full amount of ₹ 4.56 lakh in three cases.

A few illustrative cases involving ₹ 3.24 crore including findings of LDP on “Levy and collection of entry tax” are discussed in the following paragraphs.

2.3 Incorrect/ excess allowance of Input Tax Rebate

According to Section 13 (1) of CGVAT Act, when a registered dealer purchases any goods specified in Part I, II and IV of Schedule II other than those specified in Schedule III (Capital expenditure on land and civil construction for use in manufacture or trade, including office building and other related constructions, furniture and fixtures including air conditioners

and refrigerators, petrol and diesel and motor cars, two wheelers, parts and accessories thereof, capital goods used in manufacture, providing service or trading activities not liable to tax under the Act etc.) within the State of Chhattisgarh from such dealer after payment to him of input tax, for use or consumption of such goods for/ in the manufacture in State of any goods mentioned in Schedule II for sale within the State or in the course of inter-State trade or commerce or in the course of export out of territory of India or for use as capital goods in the course of business within the State of Chhattisgarh, a rebate of input tax shall be claimed by or be allowed to him, input tax rebate of such amount of tax, in such manner and within such period as may be prescribed.

We found during test check of 263 assessment cases out of 741 cases of two ACCTs between November 2012 and October 2013 that in two cases the Assessing Officers (AOs) concerned had allowed (April 2011 and August 2011) excess/ incorrect Input Tax Rebate (ITR) of ₹ 27.26 lakh on purchases made by the dealers as detailed below:

Table 2.2

(₹ in lakh)

Sl. No.	Name of Unit	Assessment year (Month & Year of assessment)	ITR Allowable	ITR Allowed	Excess ITR Allowed	Nature of Observation
1	AC-II, Division-I, Bilaspur	2007-08 (April 2011)	0	19.15	19.15	The dealer purchased computers for providing services. Hiring services are not taxable under the Act, allowance of ITR is not correct. However the Assessing Officer allowed ITR on purchase of capital goods.
2	AC, Commercial Tax, Raipur	2007-08 (August 2011)	0	8.11	8.11	The dealer had transferred stock of Ferro alloys of ₹ 12.14 crore outside the State manufactured out of tax-paid raw material which was 27.63 per cent of total sales (₹ 43.95 crore). As the dealer had stock transferred finished goods made out of tax-paid goods, the corresponding ITR should have been reduced.

After we pointed this out (May 2014), the Government stated (October 2014) that the cases would be re-opened under Section 22 (1).

Similar issue was pointed out in Para No. 2.11 of Audit Report (Revenue Receipts) for the year ended 31 March 2013, for which the Government had stated that demand notice of ₹ 1.02 crore had been issued in three cases. The nature of lapses/ irregularities are still persisting which shows ineffectiveness of the Internal Control System of the Department to prevent recurring leakage of revenue.

2.4 Non/ Short levy of Value Added Tax

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

We found during test check of 3,945 assessment cases out of 16,593 cases of 13¹ AOs between February 2012 and November 2012 that while finalising the assessment between May 2010 and August 2012 the AOs concerned applied lower rate of VAT due to incorrect classification of goods in 26 cases. The difference between the rate of tax leviable and levied ranged between four to 12.5 *per cent*. This resulted in non/ short realisation of tax of ₹ 1.64 crore (*Appendix 2.1*).

After we pointed this out (May 2014), the Government stated (October 2014) that in six cases demand notices of ₹ 47.14 lakh have since been issued and the remaining 20 cases would be re-opened under Section 22 (1) of the Act.

Similar issue was pointed out in Para No. 2.12 of Audit Report (Revenue Receipts) for the year ended 31 March 2013, for which the Government stated that demand notice of ₹ 40.56 lakh were issued in four cases and out of which ₹ 14.07 lakh had been recovered in two cases. The nature of lapses/ irregularities are still persisting which shows ineffectiveness of the Internal Control System of the Department to prevent recurring leakage of revenue.

¹ AC, Korba; AC-V, Division II, Raipur; AC (T.L. Dhruv), Raipur; AC, Division I, Raipur; AC (K.K. Arya), Raipur; AC IV, Raipur; CTO II Bilaspur; CTO I, Korba; CTO I, Raigarh and CTO II, IV, V and IX, Raipur

Central Sales Tax Act

2.5 Short levy of tax due to incorrect grant of exemption

According to Section 8 of the Central Sales Tax (CST) Act, 1956 read with Taxation Laws (Amendment) Act, 2007 effective from April 2007; the inter-State sales made by registered dealers against 'C' form will be taxable at the rate of three *per cent*. Further, the Government reduced the rate by one *per cent* while such goods were manufactured and sold by small scale industries, whose investment in plant and machinery does not exceed rupees one crore.

We found (April 2012) during test check of 104 assessment cases out of 213 cases of Assistant Commissioner-I, Division-I, Bilaspur that a dealer engaged in manufacture and sale of chemicals had sold goods of ₹ 13.90 crore against 'C' forms during the period 2007-08. While finalising the assessment (March 2011), the AO levied tax at the rate of two *per cent* amounting ₹ 27.25 lakh treating as small scale industry. Further scrutiny of Chartered Accountant's audit report we noticed that the dealer had Plant and Machinery of more than rupees one crore at the time of assessment. Thus, the dealer was not eligible for concessional rate and tax of ₹ 40.88 lakh at the rate of three *per cent* was leviable. Thus, failure on the part of AO for not scrutinising the audit report resulted in short levy of tax of ₹ 13.63 lakh.

After we pointed this out (May 2014), the Government replied (October 2014) that the case would be re-opened under Section 22 (1).

2.6 Incorrect application of rate of tax

According to Section 8 of CST Act, 1956 every dealer, who in the course of inter-state trade or commerce sells goods other than declared goods without 'C' form shall be liable to pay tax at the rate applicable to the sale of such goods inside the State. According to entry 1 of part IV of Schedule II of the CGVAT Act, all other goods not included in Schedule I and in Part I, Part II and Part III of this Schedule are taxable at the rate of 12.5 *per cent*. Furniture being a residuary good is taxable at 12.5 *per cent*.

We found (May 2013) during test check of 178 assessment cases out of 3,068 cases of CTO, Circle-I, Raigarh that a dealer engaged in manufacture and sale of fabricated furniture, had sold the furniture of ₹ 36.82 lakh outside the State without 'C' form during the year 2007-08. However, the AO while assessing the case (August 2011) levied tax of ₹ 1.47 lakh at the rate of four *per cent*. Since the furniture being residuary item, tax was leviable at the rate of 12.5 *per cent* on the same amounting to ₹ 4.60 lakh. Thus, inaction on the part of AO to verify the entries of Schedule and levy tax accordingly resulted in short levy of tax of ₹ 3.13 lakh.

After we pointed this out (May 2014), the Government replied (October 2014) that demand notice of ₹ 5.34 lakh had been issued. Report on recovery is awaited (December 2014).

2.7 Levy and collection of entry tax

2.7.1 Introduction

The Commercial Tax Department is responsible for levy and collection of entry tax as per the rates mentioned in the Schedule I, II and III of the Chhattisgarh Entry Tax (CGET) Act, 1976. The contribution of the entry tax to the total tax revenue of the State during the last five years ranged between 5.64 and 8.50 *per cent*. The Chhattisgarh *Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam*, 1976 as adopted and termed as CGET Act, provides for levy of tax on entry of goods in the course of business in the local areas in the State of Chhattisgarh. As per Section 3 of CGET Act, entry tax is leviable on the entry of goods in the course of business of a dealer into each local area for consumption, use or sale therein and on the entry in course of business of a dealer of goods specified in Schedule into each local area for consumption or use of such goods, but not for sale therein. Further, Section 4-A of the CGET Act provides for levy of entry tax at enhanced rate as notified by the State Government for use or consumption in the manufacture of other goods. Under the Industrial Policies promulgated from time to time by the Government, dealers are granted exemption from payment of entry tax on certain terms and conditions. The Government also grants exemption from payment of entry tax vide notifications subject to fulfilling certain conditions.

2.7.2 Scope of Audit and methodology

We conducted test check of assessment cases of 10² DCs/ ACs/ CTOs out of 52 Assessing Officers (AOs) on simple random sampling basis with a view to evaluate the efficiency and effectiveness of the Department in enforcing the system and procedure prescribed for levy and collection of entry tax. The Audit was conducted between April 2014 and June 2014. During the course of Audit 1,936 out of 2,643 assessment cases were scrutinised. The draft report was forwarded to the Government in August 2014. The exit conference was held in September 2014 wherein the audit findings were discussed. The Government was represented by the Additional Chief Secretary, Commercial Tax Department, whereas the Commissioner represented the Department. The replies received during the exit conference and at other points of time have appropriately been included in the relevant paragraphs.

2.7.3 Audit objectives

The audit was conducted to ascertain:

- whether the Department had adequate system in place to ensure levy and collection of Entry Tax in accordance with the prescribed provisions of Act/Rules/procedures etc;
- whether exemptions/concessions were allowed as per the Rules/provisions of the Act; and
- whether adequate and effective internal control mechanism exists in the Department to ensure proper assessment by the AOs.

² DC (Hqr), Raipur; AC III, Durg; AC, Raigarh; AC (Hqr) Div.I, Raipur; AC I, Div.II Raipur; CTO II Durg; CTO II, Korba and CTO V, VII, VIII, Raipur,

2.7.4 Audit Criteria

The provisions of the following Act, Rules and circulars of Commercial Tax Department were used as audit criteria:

- Chhattisgarh Entry Tax Act, 1976; and
- Various notifications/orders issued by the Government/ Department.

2.7.5 Acknowledgement

Indian Audit and Accounts Department acknowledges the co-operation of the Commercial Tax Department for providing requisite information and records to Audit.

2.7.6 Trend of revenue receipts from entry tax

Actual receipts from entry tax during the years 2009-10 to 2013-14 along with the total tax receipts of the State during the period are shown below:

Table 2.3

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2009-10	560.00	605.65	45.65	8.15	7,123.25	8.50
2010-11	616.00	508.31	(-)107.69	(-)17.48	9,005.14	5.64
2011-12	700.00	823.75	123.75	17.68	10,712.25	7.69
2012-13	950.00	952.25	2.25	0.23	13,034.21	7.30
2013-14	1192.00	945.44	(-)246.54	(-)20.68	14,342.72	6.59

(Source: Finance Accounts of Government of Chhattisgarh)

It may be seen from the above table that the percentage of variation of the actual receipts to the Budget Estimate (BE) was more than 17 *per cent* during the year 2010-11, 2011-12 and 2013-14. The actual receipt with respect to BE fell short between 17.48 *per cent* and 20.68 *per cent* during the year 2010-11 and 2013-14 respectively while it increased by 17.68 *per cent* in 2011-12 which indicates unrealistic estimates while budgeting.

During exit conference the Government stated (September 2014) that the large variation between BE and actual was mainly due to grant of exemption from payment of entry tax and fluctuations of prices of commodities. Further, the variation is also due to the matter regarding payment of entry tax by M/s. Bhilai Steel Plant, pending with the Hon'ble Supreme Court.

2.7.7 Arrears of entry tax

We requested (April 2014) the Department (Commissioner) to provide year wise details of arrears of entry tax. During the Exit Conference, the Government also assured (September 2014) that the information would be provided within 10 days. However, the required information is still awaited (December 2014).

The above facts indicate that monitoring mechanism to ensure the realisation of the arrears of entry tax was lacking in the Department.

2.7.8 Lack of coordination with Industries Department

As per Notification No. 41 of September 2005, new industrial units are exempted in whole from payment of entry tax subject to certain conditions mentioned in the notification. Further, Annexure-III (b)(iii) of the notification stipulates that to avail exemption there shall be no substantial reduction in production. Substantial reduction in production shall be deemed to have occurred if the production of the same product has fallen below the level of the average production of the preceding five years or 60 *per cent* of the installed capacity, whichever is less.

Under the Industrial policies promulgated from time to time by the Government, industrial units are granted exemption from payment of entry tax on fulfillment of certain terms and conditions. Such incentives are payable upto a specified period. The Industries Department issues the exemption certificate and the Commercial Tax Department allows the exemption from payment of entry tax.

We found during scrutiny of 192 assessment cases out of 239 cases of Assistant Commissioner III, Durg that a dealer engaged in the manufacture and sale of Cast Iron (CI) ingot, mould, base plate etc. was exempted (June 2007) from the payment of entry tax for the period April 2005 to April 2010 being a new industry. The installed capacity of this industrial unit was 9,000 MT. Further scrutiny of balance sheet of the industry revealed that the production of the industry ranged between 24.11 *per cent* and 33.16 *per cent* with respect to the installed capacity as below:

Table 2.4

Year	Installed capacity (in MT)	60 <i>per cent</i> of installed capacity (in MT)	Actual production (in MT)	Percentage of production
2005-06	9,000	5,400	2,329.03	25.88
2006-07	9,000	5,400	2,169.93	24.11
2007-08	9,000	5,400	2,984.21	33.16

It may be seen from the above table that the production of the industry was much below the prescribed percentage since the commencement of commercial production. Thus, as per the condition iii (b) of the Annexure III the company was not eligible for exemption from payment of entry tax. However, instead of referring the matter to the Industries Department for reconsideration of exemption, the AO allowed (August 2011) the exemption from payment of entry tax. Thus, lack of co-ordination with Industries Department not only led to irregular exemption of entry tax of ₹ 8.92 lakh but also resulted in extension of undue benefit to the industry.

During the exit conference, the Government stated (September 2014) that action would be taken after verification.

2.7.9 Absence of clear provision

As per Section 4-A of CGET Act, 1976 read with Notification No. 84 of September 2003, high speed diesel oil, kerosene and solvent, if not borne VAT, the entry tax at the rate of 25 *per cent* is leviable.

We found during test check of 487 assessment cases out of 519 cases of AC, Raigarh that in two cases of a dealer engaged in the manufacture of explosives assessed in April 2011 and November 2013, had purchased Organic Composite Solvent (OCS) of ₹ 36 lakh during the year 2007-08 and 2009-10 from outside the State. As per the notification entry tax of ₹ 9 lakh at the rate of 25 *per cent* was leviable. However it is not clearly mentioned in the notification as to which type of solvent is taxable at the above rate. Due to lack of clarity regarding solvent in the notification the AO levied the tax amounting to ₹ 36,000 at the rate of one *per cent* treating it as a chemical and the Government could not realise the entry tax of ₹ 8.64 lakh.

During the exit conference, the Government stated (September 2014) that the notification would be looked into and necessary steps would be taken to resolve the issue.

The Government may ensure to issue a clear notification in the interest of revenue.

2.7.10 Application of incorrect rate of entry tax

As per Section 4-A of CGET Act, 1976 read with Notification No. 20 of April 2003 entry tax at the rate of five *per cent* shall be leviable on 'steel pipe' for consumption or use in the manufacture of other goods.

During scrutiny of 768 assessment cases out of 768 cases of AC Korba, assessed between September 2008 and April 2011, we found that two dealers engaged in purchase and maintenance of machinery parts and coal beneficiation assessed in May 2013, had purchased steel pipe of ₹ 25.10 crore and ₹ 1.20 crore respectively during the period 2005-06 to 2007-08 from outside the State and used it in the manufacture of other goods. As per notification No. 20 of April 2003, entry tax amounting to ₹ 1.31 crore was leviable. However, the AO levied entry tax of ₹ 62.75 lakh at the rate of 2.5 *percent* on the purchase of ₹ 25.10 crore and ₹ 1.20 lakh at the rate of one *percent* on the purchase of ₹ 1.20 crore. Thus, failure on the part of AOs to levy the entry tax as per the rate mentioned in the notification resulted in short realisation of entry tax of ₹ 67.05 lakh.

During the exit conference, the Government stated (September 2014) that demand notice has since been issued for recovery of ₹ 67.53 lakh.

2.7.11 Short/ non levy of entry tax

2.7.11.1 As per Notification No. 17 of March 2006, iron and steel as specified in categories (iv) and (v), hoops and strips falling in category (vi) of clause (IV) of Section 14 of the CST Act are exempted from payment of entry tax when these goods are manufactured in a steel re-rolling mill situated in the State.

We found during test check of 192 assessment cases out of 239 cases of Assistant Commissioner III, Durg that a dealer engaged in purchase and sale of iron and steel had purchased waste and scrap, cutting, plate mill end shearing (PMES) and mill ends of ₹ 2.49 crore from outside the local area. As these items are mentioned in category (i) and (xvi) of clause (IV) of Section 14 of CST Act, entry tax amounting to ₹ 3.74 lakh was leviable at the rate of 1.5 *per cent*. However, the AO allowed (April 2011) the exemption from payment of entry tax treating it as re-rolling products. Thus, incorrect action on the part of AO to levy tax in accordance with the provisions of the notification resulted in the non levy of entry tax of ₹ 3.74 lakh.

During the exit conference, the Government stated (September 2014) that the cases would be re-opened as per the Act and necessary action would be taken.

2.7.11.2 As per Section 3 of CGET Act, 1976 there shall be levied an entry tax on the entry in the course of business of a dealer specified in Schedule II, into each local area for consumption, use or sale therein. Further, those goods not covered in Schedule I and II are covered in Schedule III is taxable at the rate of one *per cent*. As per entry no. 27(b), 29, 35 and 54 of Schedule II, entry tax at the rate of one *per cent* is leviable on bricks, sand, air conditioner and machinery. Packing material and doors & windows are covered under Schedule III.

During test check of 150 assessment cases out of 270 cases assessed of DC, Raipur we found that a dealer had purchased and used goods of ₹ 9.64 crore mentioned in Schedule II and III of the CGET Act. As per the Act, entry tax at the rate of one *per cent* amounting to ₹ 9.64 lakh was leviable. However the AO (January 2012) levied the tax of ₹ 5.20 lakh without any basis which resulted in short realisation of entry tax of ₹ 4.44 lakh (*Appendix 2.2*).

During the exit conference, the Government stated (September 2014) that the case is being reopened under Section 22(1) of the Act.

2.7.11.3 As per Section 3 of CGET Act, 1976 there shall be levied an entry tax on the entry in the course of business of a dealer as rates specified in Schedule II, into each local area for consumption, use or sale therein.

We found during test check of 2,074 assessment cases out of 3,117 cases of eight³ AOs while finalising the assessment between December 2009 and November 2013 that in 20 cases, the AOs concerned applied lower rate due to incorrect classification of goods valuing ₹ 16.20 crore. The difference between the rate of tax leviable and levied ranged between 0.5 to 7.5 *per cent*. This resulted in non/short realisation of tax of ₹ 19.99 lakh (*Appendix 2.3*).

During the exit conference the Government stated (September 2014) that two cases have been re-opened under Section 22(1); action is being taken in 17 cases. In the remaining case it was stated that pass-pass is a mouth freshener and cannot be termed as *pan masala* because it does not contain betel nuts and *katha*. The reply is not acceptable as, on the packet it is written “the fun mouth freshener with *katha*” which asserts that the *katha* is one of its contents.

³ DC, (Hqr.), Division I, Raipur; AC II, Durg; AC, Korba; AC, Raigarh; AC I, Division II, Raipur; CTO, Ambikapur; CTO II, Durg and CTO V, Raipur

2.7.11.4 As per Section 3 of CGET Act, 1976 a dealer is liable to pay entry tax on the entry in the course of business of a dealer of goods specified in Schedule III into each local area for consumption or use of such goods but not for sale therein at the rate of one *per cent*.

We found during test check of 408 assessment cases out of 572 cases of four⁴ AOs while finalising the assessment between August 2011 and October 2013 that in 10 cases the AOs concerned applied lower rate due to incorrect classification of goods valuing ₹ 12.78 crore. The difference between the rate of tax leviable and levied ranged between 0.5 to one *per cent*. This resulted in non/short realisation of tax of ₹ 11.78 lakh (*Appendix 2.4*).

During the exit conference, the Government stated (September 2014) that seven cases would be re-opened under Section 22(1) and in three cases information is being collected.

2.7.12 Internal control mechanism

The Internal Audit Wing (IAW) of a Department is a vital arm of the internal control mechanism and is generally defined as the control of all controls to enable an organisation to assure itself that the prescribed systems are functioning reasonably well. We however noticed that IAW was not in existence leaving the Department vulnerable to risk of leakage of revenue. During the exit conference, the Government stated (September 2014) that Internal Audit Wing would be established in due course to strengthen the internal control mechanism.

The Government may establish an Internal Audit Wing in the Department to strengthen the internal control mechanism.

2.7.13 Conclusion

The Audit revealed a number of compliance and system deficiencies leading to leakage in revenue as per the entries specified in the Act/ Schedule and absence of clarity in notifications as discussed in preceding paragraphs and requires top attention at the Government/ Department level. We observed that:

- Lack of coordination between Industries Department and Commercial Tax Department led to irregular exemption from payment of entry tax.
- Lack of clarification regarding type of solvent in notification led to short levy of entry tax; and
- Department failed to monitor the assessments made by AOs as per the entries specified in Act/Schedule due to absence of IAW and internal control mechanism.

⁴ DC (Hqr.), Division II Raipur; AC, Raigarh; AC I, Division I, Raipur and AC (Hqr.), Division II, Raipur