

EXECUTIVE SUMMARY

What we have highlighted in this Chapter	In this Chapter we present a review on “ Working of Enforcement Wing in Commercial Tax Department ” and illustrative cases of ₹ 149.94 crore selected from observations noticed during our test check or records relating to short levy of VAT, short/non levy of entry tax, and non-imposition of penalty, irregular exemption on declaration forms, short levy due to incorrect allowance of Form ‘D’, incorrect application of rate of tax etc.
Trend of receipts	In 2012-13, the collection from Tax on Sales, Trade etc. increased by 5.32 <i>per cent</i> over the previous year. The actual receipts of the Department were short by ₹ 3,622.52 crore (9.41 <i>per cent</i>) against the budget estimate.
Poor functioning of Enforcement Wing	The Enforcement wing (EW) of the Department comprises of Mobile Squad Units (MSUs) and Special Investigation Branches (SIBs). We noticed several deficiencies in functioning of the EW which is featured in the review on “Working of Enforcement Wing in Commercial Tax Department.”
Status of compliance to Inspection Reports (2012-13)	We conducted test check of the assessments and other records in 54,141 cases out of 1,17,213 cases in 616 Commercial Tax Offices, during 2012-13, and found non/short levy of tax due to misclassification of goods and application of incorrect rate of tax, non/short levy of entry tax, incorrect exemption, etc. of ₹ 778.39 crore in 3,589 cases. During the year 2012-13, the Department accepted underassessment and other deficiencies of ₹ 2.94 crore involved in 438 cases. The Department recovered ₹ 89.26 lakh in 316 cases during the year 2012-13.

Our conclusion

The Department needs to improve the functioning of Enforcement Wing so that weaknesses in the system are addressed and omissions of the nature detected by us are avoided in future.

It also needs to initiate immediate action recover the short/non-levy of tax, incorrect exemption on declarations forms, incorrect application of rate of tax etc. pointed out by us more so in those cases where it has accepted our observation.

CHAPTER-II TAX ON SALES, TRADE ETC.

2.1 Tax administration

Trade Tax (TT) (known as Commercial Tax after December 2007) is the major source of revenue of the State and accounted for 60 per cent (₹ 34,870.16 crore) of the total tax revenue (₹ 58,098.36 crore) of the State during the year 2012-13. The levy of commercial tax is governed by the provisions of the Uttar Pradesh Trade Tax Act, 1948 (UPTT Act) and Rules made thereunder upto 31 December 2007 and thereafter by the provisions of the Uttar Pradesh Value Added Tax Act, 2008 (UPVAT Act) implemented from 1 January 2008. The levy of Entry Tax is governed by the provisions of the Uttar Pradesh Tax on Entry of Goods into Local Areas Act, 2007 and the Rules made thereunder. The levy of Central Sales Tax is regulated by the provisions of the Central Sales Tax Act, 1956 (CST Act) and the Rules made thereunder.

The Principal Secretary *Vanijya Kar Evam Manoranjan Kar* Uttar Pradesh is the administrative head at Government level. The overall control and direction of the Commercial Tax Department vests with the Commissioner, Commercial Tax (CCT), Uttar Pradesh, headquartered at Lucknow. He is assisted by 104 Additional Commissioners, 157 Joint Commissioners (JCs), 494 Deputy Commissioners (DCs), 964 Assistant Commissioners (ACs) and 1,275 Commercial Tax Officers (CTOs).

2.2 Trend of receipts

Actual receipts from Tax on sales, trade etc. during the last five years from 2008-09 to 2012-13 along with the total tax receipts during the same period are exhibited in the table no. 2.1:

Table No. 2.1

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess(+) shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual TT/VAT receipts vis-à-vis total tax receipts
2008-09	19,705.00	17,482.05	(-) 2,222.95	(-) 11.28	28,658.97	61.00
2009-10	20,741.27	20,825.18	(+) 83.91	0.40	33,877.60	61.47
2010-11	26,978.34	24,836.52	(-) 2,141.82	(-) 7.94	41,355.00	60.06
2011-12	32,000.00	33,107.34	(+) 1,107.34	3.46	52,613.43	62.93
2012-13	38,492.18	34,870.16	(-) 3,622.02	(-) 9.41	58,098.36	60.02

Source: Finance Accounts of the Government of Uttar Pradesh.

In 2012-13, the collection from Tax on Sales, Trade etc. increased by 5.32 per cent over the previous year. Further, variations between budget estimates (BEs) and actual receipts ranged between (-) 11.28 per cent and 3.46 per cent during 2008-09 to 2012-13.

The Department, however, did not furnish specific reasons of variation between the BEs and actual receipts.

We recommend that the Government may ensure that variation between BEs and actual receipts is minimised by making BEs more realistic.

2.3 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2013 amounted to ₹ 22,850.53 crore of which ₹ 14,256.01 crore was outstanding for more than five years. The table no. 2.2 depicts the position of arrears of revenue during the period 2008-09 and 2012-13.

Table No. 2.2

(₹ in crore)

Year	Opening balance of arrears	Closing balance of arrears
2008-09	11,081.94	15,389.85
2009-10	15,389.85	16,453.30
2010-11	16,453.30	16,665.41
2011-12	16,665.41	18,960.28
2012-13	18,960.28	22,850.53

Source: Information provided by the Department.

Out of ₹ 22,850.53 crore of arrears pending as on 31.03.2013, the Department stated that the demand certified for recovery as arrears of land revenue of ₹ 1,730.04 crore has been issued, ₹ 4,566.12 crore had been stayed by the Courts and Government, recovery outstanding on Government Departments and semi-Government Departments was ₹ 489.86 crore, recovery certificates of ₹ 1,166.26 crore were sent to other States, recovery certificates of ₹ 51.78 crore pertained to transporters in the State, demand of ₹ 1,579.44 crore is likely to be written-off. Specific action taken in respect of the remaining arrears of ₹ 13,267.03 crore has not been intimated by the Department.

2.4 Cost of tax on sales, Trade etc. per assessee

The cost of Tax on Sales, Trade etc. per assessee during the period from 2010-11 to 2012-13 is mentioned in the table no. 2.3:

Table No. 2.3

Year	Number of dealers	Gross collection (₹ in crore)	Expenditure on collection (₹ in crore)	Cost per assessee (In ₹)
2010-11	5,94,695	24,836.52	391.45	6,582.37
2011-12	6,42,645	33,107.34	440.89	6,860.55
2012-13	7,08,636	34,870.16	430.31	6,072.37

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

2.5 Arrears in assessment

As per sub Section 3 of Section 29 of UP Value Added Tax Act the time limit for assessment has been prescribed for three years from the end of any assessment year.

The details of assessments relating to commercial tax pending at the beginning of the year, additional cases that became due for assessment during the year, cases disposed of during the year and cases pending at the end of the year as furnished by the Commercial Tax Department during 2008-09 to 2012-13 are mentioned in the table no. 2.4:

Table No. 2.4

Year	Opening balance	Cases which became due for assessment	Total	Cases disposed of during the year	Cases pending at the close of the year	Percentage of column 6 to 4
2008-09	9,38,667	5,33,358	14,72,025	9,50,313	5,21,712	35.44
2009-10	5,21,712	1,83,378	7,05,090	6,92,704	12,386	1.76
2010-11	12,386	5,44,458	5,56,844	5,50,802	6,042	1.09
2011-12	6,042	6,54,378	6,60,420	4,76,368	1,84,052	27.87
2012-13	1,84,052	4,58,225	6,42,277	4,95,505	1,46,772	22.85

Source: Information provided by the Department.

From the above it would be seen that pendency in finalisation of assessments ranged between 1.09 per cent and 35.44 per cent.

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

2.6 Cost of collection

The gross collection from Taxes on sales, Trade etc., expenditure incurred on collection and percentage of such expenditure to the gross collection during the years 2008-09 to 2012-13 along with the all India average percentage of expenditure on collection to gross collection for the relevant previous year are mentioned in the table no. 2.5:

Table No. 2.5

(₹ in crore)				
Year	Gross collection	Expenditure on collection	Percentage of cost of collection to gross collection	All India average percentage for the previous year
2008-09	17,482.05	272.54	1.56	0.83
2009-10	20,825.18	358.43	1.72	0.88
2010-11	24,836.52	406.65	1.64	0.96
2011-12	33,107.34	440.89	1.33	0.75
2012-13	34,870.16	430.31	1.23	0.83

Source: Finance Accounts of the Government of Uttar Pradesh.

The cost of collection is higher than the all India average during the years 2008-09 to 2012-13.

We recommend that the Government may take appropriate steps to reduce the cost of collection.

2.7 Impact of audit

2.7.1 Status of compliance to outstanding Inspection Reports (2007-08 to 2011-12):

During the period 2007-08 to 2011-12 we had pointed out through our Inspection Reports non/short levy, non/short realisation, underassessment/loss of revenue, incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation etc. with revenue implication of ₹ 1,560.51 crore in 10,987 cases. Of these, the Department/Government had accepted audit observations in 1,843 cases involving ₹ 17.93 crore and had since recovered ₹ 2.48 crore in 732 cases. The details are shown in the table no. 2.6:

Table No. 2.6

(₹ in crore)							
Year	No. of units audited	Amount objected		Amount accepted		Amount recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2007-08	489	1,210	1,191.14	124	0.51	114	0.46
2008-09	591	1,967	64.65	202	5.60	128	0.68
2009-10	685	2,711	77.32	559	7.13	112	0.36
2010-11	892	2,648	94.73	436	1.63	148	0.53
2011-12	615	2,451	132.67	522	3.06	230	0.45
Total	3,272	10,987	1,560.51	1,843	17.93	732	2.48

2.7.2 Status of compliance to Inspection Reports (2012-13):

Test check of the assessments and other records in 54,141 cases out of 1,17,213 cases in 616 Commercial Tax Offices, conducted during 2012-13,

revealed non/short levy of tax, and other irregularities of ₹ 778.39 crore in 3,589 cases, which fall under the following categories as mentioned in table no. 2.7:

Table No. 2.7

(₹ in crore)

Sl. No.	Categories	Number of cases	Amount
1.	Working of Enforcement wing in Commercial Tax Department (A review)	1	73.20
2.	Non/short levy of penalty/interest	711	75.47
3.	Non/short levy of tax	334	54.67
4.	Irregular grant of exemption from tax	326	18.45
5.	Incorrect classification of rate of goods	301	8.50
6.	Misclassification of goods	4	0.08
7.	Irregularities relating to central sales tax	56	3.21
8.	Mistakes in computation	14	16.96
9.	Turnover escaping tax	11	0.09
10.	Other irregularities	1,831	527.76
Total		3,589	778.39

During the year 2012-13, the Department accepted underassessment and other deficiencies of ₹ 2.94 crore involved in 438 cases of which one case involving ₹ 8,000 had been pointed out during 2012-13 and the remaining in the earlier years. The Department recovered ₹ 89.26 lakh in 316 cases during the year 2012-13.

A review of **‘Working of Enforcement Wing in Commercial Tax Department’** and a few illustrative cases involving financial impact of ₹ 149.94 crore are mentioned in the following paragraphs.

2.8 Working of Enforcement Wing in Commercial Tax Department

Highlights

- Despite computerisation which was begun in 2009, the policies, rules and procedures are still being developed, change management controls are not adequate and there are no disaster recovery and business continuity plans.
(Paragraph 2.8.7.1, 2.8.7.2)
- Due to absence of mechanism regarding transiting of the taxable goods through the State number of seizure cases and value of goods involved decreased from 14632 of ₹ 557.67 crore to 30 of ₹ 1.53 crore only.
(Paragraph 2.8.7.5)
- Online downloading of Form 38 (Form of declaration of import) without filling transaction details led to risk of loss of revenue.
(Paragraph 2.8.7.6)
- Insufficient manpower, non-functional control rooms and non-availability of devices etc. in Mobile Squad Units of the Department contributed to poor functioning of the Mobile Squad Units of the enforcement wing.
(Paragraph 2.8.8, 2.8.8.2)
- The Mobile Squad Units remained inoperational for 23 days to 287 days in a year, as a result cases of unauthorised movement of goods remained undetected.
(Paragraph 2.8.8.1)
- Circular issued in violation of Act resulted in short realisation of security of ₹ 32.37 crore.
(Paragraph 2.8.8.4)
- Lack of monitoring of seizure cases of registered dealers led to short realisation of security of ₹ 39.64 crore.
(Paragraph 2.8.8.5)

2.8.1 Introduction

The Enforcement Wing of the Commercial Tax Department derives its powers from the provisions under Sections 13A, 28, 28A and 28B of UP Trade Tax (UPTT) Act read with Rules 83 and 87 of UP Trade Tax Rules and under Sections 45 to 52 of UP Value Added Tax (UPVAT) Act 2008 read with Rules 52 to 59 of UPVAT Rules 2008. The constituents of the Enforcement Wing are Check Posts (CPs abolished between August 2008 and August 2009), Mobile Squad Units (MSUs) and Special Investigation Branches (SIBs), which function to check the evasion of tax.

Eighty three CPs at the strategic points on borders of State were responsible for checking the movement of goods from outside the State. MSUs are deployed to check evasion of tax during movement of goods.

Forty six SIBs were set up to investigate tax evasion cases. These SIBs are responsible for collection of information regarding prominent items of tax and

examining the methodologies adopted by dealers to evade tax, like irregular inter and intra-State sale, stock transfers, misinterpretation of decisions of Hon'ble Courts, non-payment of tax etc. The SIBs conduct confidential surveys and when required conduct raids/searches¹ in premises of dealers/transporters to check tax evasion.

Value Added Tax (VAT) was made applicable in Uttar Pradesh with effect from 1 January 2008. During 2008-09 and 2009-10, all the 83 check posts were abolished in two phases by the Government of Uttar Pradesh. After the abolition of CPs, the MSUs have become the sole agency of the Department to check evasion of tax, if any, by the movement of goods, within and transiting through the State without prescribed documents. The number of MSUs was increased² from 55 to 150 in June 2008.

We conducted a review of "Working of Enforcement Wing in Commercial Tax Department" which revealed a number of deficiencies in the post VAT System i.e. after the abolition of the check posts and also lacunae in the UP VAT Act, rules made thereunder and circular issued from time to time.

2.8.2 Organisational Setup

The determination of policy, monitoring and control at the Government level is done by the Principal Secretary *Vanijya Kar Evam Manoranjan Kar*, Uttar Pradesh. The overall control and direction of the Commercial Tax Department is with the Commissioner, Commercial Tax, Uttar Pradesh (CCT) with headquarters at Lucknow. For the purpose of administrative control and proper performance of enforcement activities, the Department has been divided into 20 zones. Zones are further divided into 45 ranges. Working of Enforcement Wing is monitored at Headquarters by Additional Commissioner, CT who is assisted by Joint Commissioner (JC) (SIB) and Joint Commissioner (MS). In field offices Additional Commissioner Grade-II (SIB) controls/monitors activities of Enforcement Wing at zonal level. He is assisted by Joint Commissioner (SIB). Deputy Commissioner (DC) is in-charge of SIB units at range level and is assisted by Assistant Commissioner (AC) and Commercial Tax Officer (CTO). There are 144 units³ of Mobile Squads (MS) headed by an AC (MS). All the MS of a range report to JC (SIB) of the range. Information Technology (IT) wing of the Department is headed by a JC (IT) at the Headquarters, who is assisted by one DC (IT), one AC (IT) and supporting staff.

2.8.3 Audit Objectives

The review was conducted with a view to ascertain:

- Conformity to the compliance of provisions of Acts and Rules made under notifications and circulars issued from time to time.
- Efficiency and effectiveness of SIB and MSUs in preventing the evasion of tax.
- Impact of Computerisation in Enforcement Wing.
- Effectiveness of internal control system.
- Utilisation of manpower in Enforcement Wing.

¹ Under Section 45 of UPVAT Act and under Section 28 A and B of UPTT Act.

² Vide notification no. *Ka.Ni.-4-1080/11-2008-400 (35)/91* dated 10 June 2008.

³ Against 150 sanctioned units as on 01 January 2013.

2.8.4 Audit Criteria

The audit criteria for the topic of review have been derived from the following sources:

- UPTT Act 1948, UPVAT Act 2008 and Rules made thereunder.
- Enforcement Manual (EM) issued by the Commercial Tax Department.
- Notifications and circulars issued by the Government/Department from time to time.

2.8.5 Audit Scope and Methodology

We conducted the review between April 2012 and March 2013 and covered the period from 2008-09 to 2011-12. The scope of the audit was limited to the checking of records of Enforcement Wing of the Department. We test checked the records of CCT office and 35 MSUs⁴ and 19 DC (SIB)⁵ of 14 zones⁶. The DC (SIB) concerned of the zone under which these MSUs were working, were also selected for audit. In addition we collected information from 17 MSUs⁷ and three zones of SIB⁸ for the period 2008-09 to 2011-12. An entry conference was held with the Department in November 2012 in which the Department was apprised of the scope and methodology of audit. The findings of the review were forwarded to the Department and the Government in July 2013. An Exit Conference was held in September 2013 in which the Additional Commissioner represented the Department and Secretary, Department of Commercial Tax and Entertainment Tax represented the Government. The response of the Government/Department has been incorporated in the relevant paragraphs.

2.8.6 Acknowledgement

The Indian Audit and Accounts Department acknowledges the co-operation of Commercial Tax Department for providing necessary information and records for audit.

Audit Findings

2.8.7 Use of Information Technology (IT)

The Department introduced (July 2009 and September 2009) an online system of downloading of Transit Declaration Forms (TDFs)⁹ and form¹⁰ 38 by the dealers/transporters respectively.

⁴ AC MS-2 Agra, AC MS-1 and 2 Bareilly, AC MS-Bulandshahar, AC MS-1, 4, 5 and 6 Gautam Buddha Nagar, AC MS-1, 2, 3 and 4 Ghaziabad, AC MS-2 and 3 Gorakhpur, AC MS-1 and 2 Jhansi, AC MS-1, 2 and 3 Kanpur, AC MS-1 Lucknow, AC MS-1 and 4 Mathura, AC MS-2, 4 and 5 Meerut, AC MS-2, 3 and 5 Moradabad, AC MS-1, 3 and 4 Saharanpur, AC MS-Mughalsarai at Varanasi, AC MS-1 Chandauli at Varanasi, AC MS-2 Naubatpur Chandauli at Varanasi, AC MS-4 Varanasi.

⁵ DC (SIB) Range A and B Agra, DC (SIB) Range A and B Bareilly, DC (SIB) Range A and B Gorakhpur, DC (SIB) Range Jhansi, DC (SIB) Range A, C and D Kanpur, DC (SIB) Range Mathura, DC (SIB) Range A & B Meerut, DC (SIB) Range A and B Moradabad, DC (SIB) Range A and B Saharanpur, DC (SIB) Range A and B Varanasi.

⁶ Agra, Aligarh, Bareilly, Gautam Buddha Nagar, Ghaziabad I, Gorakhpur, Jhansi, Kanpur I and II, Lucknow I, Meerut, Moradabad, Saharanpur and Varanasi I.

⁷ AC MS-1, 3, 4, 5, 6, 7 and 8 Agra, AC MS-9, 10, 11 and 12 Kanpur, AC MS-2, 3, 4 and 5 Lucknow, AC MS-2 and 3 Mathura.

⁸ Ghaziabad-II, Lucknow-II and Varanasi-II

⁹ TDF is a document to be carried by driver or person in-charge of a vehicle coming from a place outside the State and destined for a place outside the State, passes through the State (UP). As a proof that the goods laden in vehicle is not for sale in UP. Online system introduced in 27 July 2009 vide circular no. Check post/528/Vanijya kar dated 27 July 2009.

For the implementation of the IT system as per VAT Act (w.e.f. 1 January 2008) computerisation work was carried out with the help of National Informatics Centre in Mission Mode Project. Moreover a time frame for the same was also prescribed by the Government of India vide letter¹¹ dated June 2010. As per benchmark laid down the following works were to be completed by December 2010:

- (i) Certification and testing of application by an independent agency like Standardisation Testing and Quality Certification (STQC) is to be done as soon as the application is ready for use.
- (ii) Disaster management plan to ensure that system runs 24x365 days even in the case of long power outages, floods, earthquake, virus attacks etc.

As part of the functions of Check Posts was taken over by these computerised online systems of the Department, we conducted an IT audit of the TDF system. Our findings are as follows:

2.8.7.1 IT Audit of Data Bank of TDF

The National Informatics Centre (NIC), Lucknow has developed software for issuing /downloading transit passes/Transit Declaration Form (TDF) for carrying goods from one State to another State *via* Uttar Pradesh to provide enhanced Management Information System (MIS) and reporting capabilities for smarter decision making, thereby helping in arresting tax evasion and resulting in greater revenue mobilisation. The software designed by the NIC was a web-enabled application with Java Server Pages in the front end and Oracle RDBMS (Relational Data Base Management System) at the back end. All the Departmental offices have their own Local Area Network (LAN) and are connected with the central server in Commissioner's office, of a Wide Area Network (WAN) through Bharat Sanchar Nigam Limited leased line (64 kbps).

A formulated and documented IT policy is essential to ensure adherence to time frame, integration of business plan with IT plan and to prevent inconsistency and aphorism in decision making.

We conducted IT audit of data bank of transit passes issued/downloaded to ensure as to whether IT strategy and IT policy existed in the Department, System Requirement Specification (SRS) was documented, data bank relating to transit

passes stored was reliable and centralised data was being evaluated at Headquarters for effective use of MIS.

The data bank relating to transit passes were analysed using computer assisted auditing tool *viz.* IDEA (Interactive Data Extraction and Analysis) for examining the correctness, completeness and integrity of the data. The Department could make available the data for the period from 11 February 2010 to 16 December 2012 only and this was analysed for existence and adequacy of IT controls and efficiency and effectiveness of IT support system.

¹⁰ Form-38 is a form of declaration to be carried by registered dealers of UP who intend to bring/import taxable goods from any place outside the State, for the purpose of business. Online downloading system introduced in September 2009 vide circular no. Check Post-Form-38 *vyavastha/0910045/Vanijya Kar* dated 28 August 2009.

¹¹ F. No. S-31013/2/2010-SO/(ST), dated 24.06.2010.

We noticed that the Department did not formulate policies for implementation of IT system, computer security policy, change management control (to ensure that changes to a product or system are introduced in controlled and coordinated manner), storage of back-up data, disaster recovery and business continuity plan. These points have been discussed in succeeding paragraphs.

During exit conference, the Government stated (September 2013) that the Policies and Framework are being developed in the light of IT system of CT Department.

The reply confirms that policies rules and procedures were not developed and are still in the process of being developed.

2.8.7.2 Disaster management and business continuity plan

We found that there is no disaster management and business continuity plan outlining the action to be taken immediately after a disaster and to ensure that the data processing operation could be re-started immediately. The backup of the database is maintained by the NIC on incremental basis whereas the backup of the whole database should also be stored at the place other than premises of Department so as to ensure the availability of data in case of natural or technological calamities. The key configuration items viz. hardware, software, personnel and other assets which were required for continuity of the IT activities in case of disaster, had not been identified and documented.

During exit conference, the Government stated (September 2013) that the data back-up is being kept in tape drive and hard disk at State Data Centre of NIC established in *Yojana Bhawan*. Disaster management plan and procedures are being developed.

From the above it is clear that the Government could not achieve the bench mark of disaster recovery plan to be completed by December 2010.

We recommend that the Disaster management plan and business continuity plan be put in place.

2.8.7.3 Input and validation controls

Input controls are introduced to ensure that data entered in system fulfills defined criteria and are genuine and complete. It also addresses data consistency issue. The system design and its operation should be adequate to capture the data from the inputs. In case of deficiencies in the input control and validation checks, there are possibilities of errors in generation of transit passes and the related data bank on the basis of filling fake data.

To ensure correctness, completeness and reliability of the database, it is necessary to ensure application of appropriate controls during the data entry. Such controls ensure that the data received for processing is genuine, complete, valid, accurate and properly authorised and the data transfer is done accurately without duplication of fields and all the fields are duly filled in before the data is entered in the system.

The system design and its operation should be adequate to capture the data from the inputs. In case of deficiencies in the input control and validation checks, there are possibilities of errors in generation of transit passes and the related data bank.

We checked the data bank of 1,04,62,126 transit passes covering transaction value of ₹ 98,11,54,740.90 crore generated/downloaded during the period 11 February 2010 to 16 December 2012 and

noticed that number of transit passes downloaded increased to 4,10,189 in March 2012 against the transit passes numbering 4,726 in February 2010.

Scrutiny of the database of TDFs revealed that in 6,50,971 cases many crucial fields like description of goods, weight and units, owner's name, departure State, destination State etc. were left blank. Further in a number of cases fields like value of goods, *bility* number, number of bills etc. were entered as zero. Details are mentioned in the table no. 2.8:

Table No. 2.8

Sl. No.	Field	Field details	No. of cases
		Blank/Zero	
1.	Chassis number	Blank	6,662
2.	Departing State		5,748
3.	Description of goods		32,490
4.	Destination State		35,976
5.	Engine number		6,661
6.	Owners		6,023
7.	Weight and units of goods		36,006
8.	Name of transporter		18,997
9.	Value of goods	Zero	70,878
10.	<i>Bility</i> number.		3,71,154
11.	Number of bills		60,376

Our analysis of the database revealed that following fields contained incorrect/unrealistic data as detailed in the table no. 2.9:

Table No. 2.9

Sl. No.	Field	Field details	No. of cases
1.	Date of entry/exit	Not available in correct format ¹²	19,400
2.	Exit date	Filled earlier ¹³ than entry date	35
3.	Exit date	Exit date was less than four days from Entry date	38,60,760
4.	Vehicle number and transporter	Multiple downloading of TDF for same vehicle on same day	7,93, 593

During the exit conference, the Department stated (September 2013) that the problems have now been rectified after web-site security audit and updation/modification of software in respect of incorrect date format. The Department further stated that due to data conversion in the Excel table format, the data of dates might have been changed. We do not agree as the reports are generated by the IDEA¹⁴ and there is no conversion of date field as IDEA software analyses databank without any data conversion.

In case of transit passes downloaded for less than four days and multiple passes downloaded for same vehicle for same day, the Department stated that so many places in the State exist where vehicles plied across within five to six hours. We do not agree as the entry point and destination in above mentioned cases at serial number 3 and 4 of the table above was beyond 390 kilometers where it was not possible to perform the return journey in one or two days.

¹² Dates of entry in the State and exit out of State should be filled in DD/MM/YYYY i.e. 02/11/2012.

¹³ No vehicle can exit out of State before its entry so entry date must be of earlier period than exit date e.g. entry date 17/04/2010 while exit date 11/04/2010.

¹⁴ A certified International audit tool used by C&AG.

2.8.7.4 Weaknesses of online TDF system

Under the provisions of Section 28 of UPTT Act and Section 49 of UPVAT Act, CPs at strategic points along its borders with the neighbouring States were established with a view to check the evasion of tax by irregular import of goods into UP and their non-accounting in the books by the dealers. The CPs were responsible to:

- Check the unauthorised entry of vehicles carrying taxable goods into the State by endorsing and checking the import declaration forms (Form-38).
- Issue transit passes (*Bahati*) to the owner/transporter of the vehicles carrying taxable goods from outside the State and bound for another State, transiting through the State of UP.
- Endorsement (Cancellation) of the transit passes at the exit CPs.

With effect from 1 January 2008 UPVAT Act was enacted. At that time 83 CPs were working at strategic points along its borders with the neighboring States. During 2008-09 and 2009-10, all the CPs were abolished in two phases i.e. 46 CPs¹⁵ in June 2008 and 37 CPs¹⁶ in July 2009.

A substitute online system of downloading of Transit Declaration Forms (TDFs) and

Import Declaration Form (Form-38) by the dealers/transporters was begun in July 2009¹⁷ and September 2009¹⁸ respectively. In the new system information¹⁹ on 19 points was to be filled up online by transporter/vehicle in charge. After filling the required information TDF having self-generated 14 digits number was issued online. By taking copy of this TDF vehicle in charge was allowed to pass through the State. TDF was valid for four days from the date of entry and it was deemed that vehicle will pass out of State within this period. There was a gap of 12 months between abolition of 46 CPs and the implementation of online downloading system of the TDFs. Because of that gap routes of UP of those areas where CPs were abolished were not covered by any TDF.

We noticed that no system for analysis/monitoring of downloaded TDFs at MSU/Zonal/Headquarters level was established. Further no electronic system was introduced which could confirm that the goods destined for a place out of State has actually passed out of the State. We further noticed that while an online downloaded TDF is valid for four days, there is no system check to

¹⁵ Achnera, Amarpur, Ambabai, Bhagwantpura, Bangra, Bindhamgunj, BadshahiBagh, Bhopura, Bhoypur, Chakhani, Chanddiyar, Devarimau-Ranipur, Dungarwala, Dumchadi, DL Chauraha, Governadhan, Hathinikund, Indrapuri, Jhuppa, Gram Khunwa, Kumhraura, KundaliBangar, Kulesara, Kuwangaon, Maharajpur, Makanpur, Mehrauna, Mohand, Maswari Chauraha, Madhotanda, Naglabich (Nandgaon), Narain Nagla, Naraini Chauraha, Panwadi, Rainanagar, Raipuri, Rampur Bujurg, Sahibabad (Kadkadpul), Samaur, Saunkh, Shamsabad, Sitapur, Suawala (Bhootpuri), TP Nagar, Tilakothi, Wipravali.

¹⁶ Amariya, Aamtanda, Audimod, Bara, Bhabni, Bhaguwala, Bharauli, Bhurahedi Gram, Badkala, Badhni, Chaukhata, Drumundgunj, FatehpurSikri, Gaurifanta, Gauripur, Harinagar, ICD Noida, Kairana, Kaudiya, Kaushalgunj, Kotwan, Loni, Majhola, Masaura, Mohan Nagar (including Mohan Nagar Extension), Mugarra, Naubatpur, Raksa, Rupaidiha, Sainya, Shahjahanpur, Srinagar, Sonauli, Tamkuhiraj, Thakurdwara, Udi, Vijai Nagar.

¹⁷ Circular No. Check post/528/Vanijya kar dated 27 July 2009.

¹⁸ Circular No. Check Post-Form-38 vyawastha/0910045/Vanijya Kar dated 28 August 2009.

¹⁹ (i) Departing place of vehicle (ii) Destination place (iii) Vehicle number (iv) Chassis number (v) Engine number (vi) Transporter's name and address (vii) Present address as mentioned in insurance policy of vehicle (viii) Vehicle owner's name and address (ix) Detail of routes inside the State (x) Expected date of entry in State (xi) Expected date of exit from State (xii) Total number of bilities (xiii) Total number of bills (xiv) Total number of units (xv) Value of goods (in words) (xvi) Value of goods (in number) (xvii) Description of goods (xviii) Weight of goods (xix) Printing (server IP address).

prevent multiple generation of TDF forms for the same vehicle for same day, despite the fact that distance between entry and exit points precluded multiple trips on same day.

To ascertain the correct utilisation of TDF with respect to revenue we test checked and analysed the data of 99,000 TDF out of 1,04,62,126 downloaded by the dealers from Departmental website between the years 2010 and 2012 and noticed that:

- 3,605 dealers consigned their goods by road from one State to another through Uttar Pradesh by downloading 44,318 TDFs i.e. 44.77 per cent of total analysed 99,000 TDFs. The downloading ranged between five times and 569 times for the same consignment dispatch details for the same destination covered by the same vehicle from same route and for the same entry and exit places, dates in Uttar Pradesh, though only one TDF is required to perform complete journey from one state to another state till the handing over of goods to the purchaser. We noticed that Department did not examine this anomaly despite the fact that it was a continuous phenomenon from 2010 onwards and 425 forms in multiples were downloaded in 2010-11, 486 in 2011-12 and 36 in 2012-13 (upto May 2012).
- Out of 3605 dealers, 27 dealers showed consignment of their goods valued at ₹ 133.60 crore by downloading 911 TDF from one State to another State.

We noticed that each of these vehicles had downloaded a TDF for a date one/two days prior to the entry date in the 2nd TDF. We further noticed that the distance between original place and destination place²⁰ as per the earlier downloaded TDF were too far apart for any vehicle to make onward and back journey in one/two days, hence legitimate use of the 2nd TDF downloaded in one/two days later is not physically possible.

Five dealers had downloaded multiple TDF for 15 vehicles for transportation of their goods showing loading at different places with different dispatch destination of more than one State with the different entry and exit places in Uttar Pradesh on the same date for the same vehicle. Though one vehicle can be loaded at one place in a State for a particular destination in other State with one entry and exit place in UP.

- It was revealed that two transporters downloaded multiple TDFs with the same entry and exit dates for the same vehicle. This process was practiced by 12 transporters.
- We further, noticed that the IT wing of the Department had not established a system to detect the above and forward the same to the MS and SIB wings for analysis and further action in revenue interest.
- We cross checked the MIS website of the Department and noticed that the data was not automatically updated but manually uploading was done only twice a day²¹. Due to manual uploading of TDF data only two times a day,

²⁰ e.g. Ahmedabad (Gujrat) to Biratnagar (Nepal), Alarsa (Gujrat) to Dhuliyani (West Bengal), Bhiwandi (Maharashtra) to Kathmandu (Nepal), Indore (MP) to Bardwan (Bihar), Jamshedpur (Jharkhand) to Barmer (Rajasthan), Katni (Madhya Pradesh) to Dalsinghsarai (Bihar), Ludhiana (Punjab) to Cuttack (Orissa), Parwanoo (Himachal Pradesh) to Patna (Bihar), Patna (Bihar) to Pune (Maharashtra) and Satna (Madhya Pradesh) to Girdih (Jharkhand).

²¹ At 07.54 a.m. and 01.54 p.m.

there is a risk of the vehicles going back from jurisdiction of concerned MSUs in border areas like Agra, Bulandshahar, Ghaziabad, Jhansi, Mathura etc. after unloading the vehicles and resultant inability of enforcement wing to check these vehicles. This fact was accepted by field Enforcement units.

During exit conference, the Department stated (September 2013) that MIS report related to all online applications operated by the Department are available on Departmental website through user ID and password allotted to Departmental officers which provided roll based and consolidated reports. Vehicle wise, Day wise, State wise, Entry location wise, Exit location wise and Commodity wise reports of online downloaded TDFs available on website. Besides this officers can verify TDF at real time through SMS.

We do not agree with the reply as department has not examined and analysed the cases pointed out by us and cross checked them with data of vehicles caught by MSUs to rule out the risk of these vehicles having gone through unchecked. Further TDF verification facility through SMS is fruitful only when the vehicle comes under checking by MSU otherwise there is a risk of the vehicles intending tax evasion returning after unloading goods in the State before data of downloaded TDFs is posted on website.

2.8.7.5 Absence of mechanism regarding transiting of taxable goods from the State

As per provision of Section 28B of UPTT Act and Rule 87 of UPTT Rules and under Section 52* of UPVAT Act and Rule 58** made thereunder the driver or person in-charge of a vehicle carrying goods referred to in sub section (1) of Section 50, coming from a place outside the State and destined for a place outside the State, passes through the State, the driver or person-in-charge of a vehicle shall carry such documents and follow such procedures as may be determined by general or special order issued by the Commissioner from time to time.

Under Section 49 of UPVAT Act the Government was empowered to establish Check-posts or Barriers at such places as it may deem fit. This provision was omitted vide notification no. 1230 (2) /79-V-1-09-1 Ka 21/2009 dated 27 August 2009.

* Amended vide notification no. KA.NI.-2-1980/XI dated 27 August 2009.

** Amended vide notification no. KA.NI.-2-241/XI dated 4 February 2010.

We analysed the impact of the absence of a mechanism to provide assurance to the Department that consignments transiting through the State have actually crossed the State, and found that in only six zones²² between 2007-08 and 2008-09, there were 14,632 cases of non-submission of transit passes at exit CPs covering the taxable goods valued at ₹ 4,448.60 crore. As per provision of the UPTT Act and UPVAT Act, tax of ₹ 557.67 crore was levied. From 2008-09 (July 2008 onwards) to 2011-12, the number of cases of invalid/no TDF caught by MSUs have

come down to only 30 covering the goods of ₹ 1.53 crore having tax effect of ₹ 1.04 crore as shown in the table no. 2.10:

²² The data from the remaining seven zones was not made available to us while Kanpur –I showed the details as 'nil'.

Table No. 2.10

(₹ in lakh)

TDF not cancelled							
Before abolition of Check posts					Cases caught by MSUS		
Period : 2007-08 to 2008-09					July 2008 to 2011-12		
Sl. No.	Zone	No. of TDF not cancelled	Total Amount	Amount of tax which is not deposited	No. of cases with invalid/no TDF	Total Amount	Amount of tax which is not deposited
1	Agra	Nil	Nil	0.43	Nil	Nil	Nil
2	Aligarh	11,003	3,932.53	1,730.31	NP	NP	NP
3	Jhansi	575	3,321.13	985.37	18	93.31	79.65
4	Kanpur-II	Nil	Nil	Nil	NP	NP	NP
5	Saharanpur	3,049	4,37,564.09	53,050.70	12	60.07	24.02
6	Varanasi-I	05	41.77	0	0	0	0
Total		14,632	4,44,859.52	55,766.81	30	153.38	103.67

Note: NP=Not provided.

It is clear that CPs have been inadequately substituted by MSUs which have not been as effective to check cases of unauthorised off-loading of goods in the State.

The details of the total number of TDFs issued manually by the CPs during 2007-08 to 2008-09 and the downloaded figures of TDFs between 2009-10 and 2011-12 are mentioned in the table no. 2.11:

Table No. 2.11

Year	Mode of issued TDF	No. of TDFs issued	Increase/Decrease	Percentage increased/decreased
2006-07	Manual	17,99,323	--	--
2007-08	Manual	20,10,480	2,11,517	11.76
2008-09	Manual	19,74,896	(-) 35,944	(-) 01.79
2009-10 (September 2009 to March 2010)	Online	21,68,181	1,93,285	09.79*
2010-11	Online	37,19,217	17,44,321	88.32
2011-12	Online	42,90,260	5,71,043	15.35

Note: Data of manually issued TDFs for the period April, 2009 to August, 2009 was not available.

*This increase was during seven months duration only.

It is evident from the above table that during the years 2007-08 and 2008-09 when TDFs were issued manually, there was increase of 11.76 per cent and even decrease of 1.79 per cent. On introducing the system of online issuance of TDFs (with effect from 1 September 2009) there was increase of 9.79 per cent in six months period only. Moreover, this jumped to 88.32 per cent in the year 2010-11 whereas there was no corresponding increase in downloading of Form 38²³ which is evident from the table no. 2.12:

Table No. 2.12

(Number in lakh)

Year	Number of Forms 31/ 38 (printed and issued manually)	Year	Number of Forms 38 (issued manually and downloaded by the dealers)
2006-07	7.50	2009-10	48.31
2007-08	43.80	2010-11	18.48
2008-09	34.05	2011-12	37.65
Total	85.35	Total	104.44

This abnormal increase in TDFs is also not supported by the increase in the number of dealers in the neighboring States. We further noticed that under the provision of manual issued under the UPTT Act²⁴, DC (CP) was responsible

²³ Declaration Forms for Import i.e. Form 31 and Form 38 defined under Section 28-A (1) of UPTT Act and Rule 83(4) (a) (i) of UPTT Rules 1948 and Under Section 50 of UPVAT Act and Rule 54 (3) of UPVAT Rules 2008 as the form in which the name, value and quantity of taxable goods imported in the State are declared.

²⁴ In sub heading 11 (I) 3 of Chapter 2 of *Vyapar kar Sahayata Kendra/Sachal Dal* Manual issued under UPTT Act by authority of CTT.

for analysing the abnormal increase/decrease in number of TDFs but no equivalent provision has been made in the manual issued under the UPVAT Act.

We studied the system for checking of TDFs data in other States and found that in States like Gujarat, Madhya Pradesh, Karnataka, Uttarakhand and Assam, CPs are still in existence. In Bihar, where there was no system of CPs, the CP system introduced was with effect from June 2011. In Karnataka a specific system for verifying the TDFs has been introduced with effect from 1 July 2011.

During exit conference the Government accepted (September 2013) that the lacunae in the online TDFs system led to tax evasion and stated that on 03 September 2013²⁵ the Department has implemented new system to check the systematic tax evasion being carried out in guise of the TDF.

We recommend that Department may consider establishing a system at entry and exit points in the State for information collection to facilitate the dealers to voluntarily ensure compliance of codal provisions. This will confirm that goods loaded in other States destined for other States have actually passed from UP and check evasion of tax.

2.8.7.6 Online downloading of Form-38 (Form of declaration for Import) without filling transaction details

As per Section 50 of UPVAT Act and Rule 54 (1) of the UPVAT Rules 2008, a registered dealer who intends to bring/import taxable goods to the State from any place outside the State in such quantity or measure or of such value as may be notified by the State Government in this behalf in connection with business shall either obtain the prescribed form of declaration (Form 38) from the assessing authority or shall download from official website of the Department in such manner as may be prescribed.

In the meeting dated 06 July 2009 Government decided that filling of transaction details before downloading the Form would be mandatory for dealer.

Facility of online downloading of Form 38 was introduced with effect from 01 September 2009. Accordingly eligible dealers can download the form 38 online after feeding of date of downloading and details of the firm. Form 38 shall be utilised within three months from the date of downloading the same. The detail of utilisation of Form-38 is to be given online within seven days.

We noticed that while as per the decision of the Government²⁶ the filling of transactions details like name of goods, quantity, value, name and address of selling dealer was mandatory, however in the circular²⁷ issued by CCT stated that dealer could download Form 38 by only filling self-details like date of downloading, name of issuing office and name and address of dealer. The dealer was given the facility to fill the remaining transaction details like name of goods, quantity, value, name and address of selling dealer, at time of online submission of

²⁵ Vide circular no. *Sachal Dal* – Transit Pass- 2013-14/ 1341/1314041 dated 03.09.2013.

²⁶ In meeting date 06 July 2009.

²⁷ No. Check Post-Form-38 *vyawastha*/0910045/*Vaniya Kar* dated 28 August 2009.

the utilisation form seven days after utilisation. Hence the transaction details would be available to department for cross check only three months and seven days after downloading of the Form-38. The circular of the CCT of August 2009 was at variance with the decision of the Government taken in July 2009. Non filling of mandatory fields like name of goods, quantity, value, name and address of selling dealer lead to a risk that the same form can be printed and used multiple times during the three months seven day period.

When CPs were in existence, Form-38 was required to be endorsed by the CP at entry into the State and this endorsement provided a check against repeated use of the same form. This lack of application control in form of mandatory fields in the downloadable Form-38, brings out a clear risk of goods being brought in UP for sale, out of accounts and ultimately loss of revenue to the Department/ Government.

The utilisation against downloaded forms was to be submitted online within seven days of utilisation. We also noticed that utilisation in respect of 15.33 per cent to 19 per cent of the downloaded forms has not been submitted. Details are mentioned in table no. 2.13:

Table No. 2.13

Year	Total number of Form-38 downloaded	Utilisation submitted	Difference
2009-10	46,533	Nil	46,533
2010-11	18,48,298	15,60,832	2,87,466
2011-12	37,64,719	31,87,381	5,77,338
2012-13	44,96,865	36,41,038	8,55,827

In reply (May 2013), the Department stated that the system of Karnataka, Gujarat and Maharashtra state was studied prior to implementation. We do not agree with the reply as the system of Gujarat and Karnataka is different and online feeding of all the particulars of transaction of goods being transported is compulsory before its movement and the same is verified by the officers-in-charge of CP. As CPs do not exist in the State, a strong application control to check misuse of form-38 was needed.

We recommend that the Department may consider making provisions for mandatory filling details of transaction online before downloading Form-38 in line with the Government's decision of July 2009.

2.8.7.7 Identification of repeated offenders and caught unregistered dealers

Under the provision of Sub Section-1 of Section 17 of UPVAT Act, read with Sub Section 4 of Section 3 of the Act, every dealer whose taxable quantum of turnover in a year is ₹ 5 lakh will be liable to pay tax and shall obtain registration certificate issued by the prescribed registering authority in the prescribed form and manner. Further, under the provision of Section 54 (1) (7) of UPVAT Act, if a dealer being liable for registration carried on business without getting the registration, he shall be liable to pay penalty at the rate of ₹ 100 per day during which business was carried.

Government of India vide letter no. F. No. S-31013/2/2010-SO/(ST), dated 24 June 2010 approved project cost of ₹ 58.40 crore for the Mission Mode Project for computerisation of Commercial Taxes Administration (MMPCT) of Commercial Tax Department of UP with the condition that the

Government of UP will ensure that the important benchmarks are achieved. In compliance of the above order the Commercial Tax Department got the necessary software developed by the National Informatics Centre Services Incorporate (NICSI).

We studied the computerisation process of the Department and found that there was no specific module²⁸ related to working of Enforcement Wing of the Department. We checked the records of the offices of 25 MSUs and found that details of 151 unregistered dealers, who were caught carrying the taxable goods worth more than ₹ 5 lakh, were available in the *Panji-5*²⁹ for period between 2008-09 and 2011-12, an important record maintained by the MSUs. Though necessary security/penalty/tax of ₹ 6.54 crore was realised from them but there was no system to ascertain whether the same dealer/transporter was caught one or more time in a year. We also found that out of 1946 cases³⁰ there were 123 cases wherein the same vehicle was caught more than once, carrying goods of value ₹ 4.35 crore on which penalty of ₹ 1.41 crore was imposed. However there was no method to compile the information of such repeated offenders for appropriate action against the same. A module in the software could have made such information available to the Department.

We recommend that Department may consider identification of dealers caught evading tax on consignment of ₹ five lakh and above, by an enforcement module software which may also have a provision for identification of and maintaining profile of repeat offending dealers. Appropriate provision for registration and minimum penalties on such dealers should also be considered.

2.8.8 Working of MSUs

The Mobile Squad Units (MSUs) are deployed to check evasion of tax during movement of goods within and transiting through the State not covered by prescribed documents³¹/information and purported the belonging to unregistered dealers. Assistant Commissioners (Mobile Squad) are officer in charge of their MSUs. Their main responsibility is to check goods transported through vehicles and in godowns of transporters under the provisions of Sections 45, 46, 47, 48, 50, 51 and 52 of UPVAT Act. Their other responsibilities are to collect bills, with collection of bills of sensitive goods and leading manufacturers being a priority. They are required to check movement of goods with fake documents inside the State, prevent tax evasion with reference to goods imported by rail and roads through effective search work. The MSUs are required to seize the goods not covered by prescribed documents, assess the value of the taxable goods being transported and levy the prescribed penalty/realised security amount³² prior to releasing the goods.

We test checked the records³³ of office of the CCT and noticed that when 83 CPs were in existence prior to June 2008³⁴, as per norms 267 ACs and 422

²⁸ Modules – for TDF module, e-payment module, e- return module, e-registration module, e-form module (for Form 38 etc.) online MIS module and online GRC (Grievance Redressal Cell) module.

²⁹ *Panji 5* is a register with details of vehicle number, Name and address of the transporter, name of the commodity, estimated value of goods and amount of penalty/security imposed.

³⁰ Where value of goods seized was more than ₹ two lakh.

³¹ Invoice/Challan copy, TDF/Form-31/Form-38, name of dealer, value of goods, weights, measure or number etc.

³² Prescribed under Section 48 (5) of the UPVAT Act

³³ Annual Reports of the Department and Enforcement Manual.

³⁴ Check-posts were abolished vide order no. vide notification no. *Ka.Ni.-4-1080/11-2008-400 (35)/91* dated 10 June 2008 and *KA.NI.-4-1459/11-2009-400(137)/2001 TC-5* dated 30 July 2009 of Government of UP

CTOs were to be posted at the CPs³⁵. After the abolition of CPs to strengthen enforcement activities, 95 new MSUs were sanctioned³⁶ increasing number of MSUs from 55 to 150. 144 units (including two units at Headquarters for control room) were in operation in 2012-13. The sanctioned strength for a MSU is: - One AC, two CTOs, others (driver, clerks etc.) five.

We noticed that there is gap between sanctioned strength between the officials engaged in enforcement activities before and after abolition of CPs. This shows that the planning for staffing of main enforcement wing was not optimum. The officers/staff of the abolished CPs³⁷ were not deployed for enforcement activities. The details are as mentioned in the table no. 2.14:

Table No. 2.14

Particulars	Sanctioned strength before abolition of CPs			Sanctioned strength after abolition of CPs For MSUs	Difference
	For CPs as per norms of EM	For MSUs	Total		
ACs	267	55	322	150	172
CTOs	422	110	532	300	232
Others	559	275	834	750	84

The details of number of vehicles caught by the CPs and MSUs and the revenue realised in form of penalty/security are mentioned in the table no. 2.15:

Table No. 2.15

(₹ in lakh)

Year	CPs			MSUs			Total no. of vehicles caught during year		Percentage increase with respect to previous year
	No. of CPs	No. of vehicles caught	Penalty/Security realised	No. of MSUs	No. of vehicles caught	Penalty/Security realised	Nos.	Penalty/Security realised	
2007-08	83	5,84,282	14,988.01	55	20,817	6,480.79	6,05,109	21,468.80	(+) 8.35
2008-09 (Apr. 08 to Jul.08)	83	NA	NA	NA	NA	3,242.39	NA	3,242.39*	NA
2008-09 (Aug. 08 to March, 09)	37	NA	NA	NA	NA		NA		NA
2009-10	Nil	Nil	Nil	136	15,990	6,859.15	15,990	6,859.15	(-) 68.05
2010-11	Nil	Nil	Nil	136	21,693	9,079.67	21,693	9,079.67	(-) 57.70
2011-12	Nil	Nil	Nil	136	21,446	11,294.50	21,446	11,294.50	(-) 47.39

*Figures as given by Department for 2008-09.
NA= Figure not available with Department.

It would be seen from the above that:

- During the period from 2009-10 to 2011-12, number of MSUs increased by 147 per cent compared to 2007-08, whereas the revenue realisation actually decreased between 47.39 to 68.05 per cent.
- The number of vehicles caught was almost same during the period 2007-08 to 2011-12 despite the increased number of MSUs which indicates inadequate substitution of CPs by MSUs.

During exit conference Government stated (September 2013) that during CPs there was a continuous checking system so more manpower was deployed. After abolition of CPs in MSU system there is system of surprise checking, so staff was deployed as per requirement.

³⁵ As per norms prescribed in Chapter 3(3) of *Bikri kar Jaanch Chowki Sachal Dal* Manual persons were posted at check-posts.

³⁶ Vide notification no. *Ka.Ni.-4-1080/11-2008-400 (35)/91* dated 10 June 2008.

³⁷ No. of CPs 83, no. of AC 267 and CTOs 422.

We do not agree as even in surprise check there is need for deployment in shifts so that randomness is maintained. The sanctioned strength of the MSUs is designed only for a single shift. Hence, out of 24 hours the MSU is active only for one duty shift, showing inadequate substitution of CPs by deployment of MSUs.

2.8.8.1 Operational gaps in MSUs

Under Section 45 of UPVAT Act, Mobile Squad units inside the State are responsible for checking the movement of goods, not covered by proper documents. The duties and responsibilities of the MS have been laid down in the Enforcement Manual of the Department. The mobile squads have been established to check evasion during transportation of goods and to seize goods not covered by valid document etc. Para 2(1) (xiii) of Chapter-10 of Enforcement Manual specifically states that the MS in a zone should be deployed in such manner that there remains no break even on public holidays.

With a view to check the effectiveness of Mobile Squads in checking evasion of tax by irregular import/transport of goods into the State, we test checked the records³⁸ of 35 MSUs³⁹ and found that during 2008-09 to 2011-12, MSUs were not deployed in accordance with the provisions of Enforcement Manual. The number of days of operation of MS ranged

between 78 and 343 days in a year. Details are indicated in **Appendix-I**.

Thus the purpose of stopping leakage of revenue through deployment of Mobile Squads without break was defeated.

During the exit conference the Department stated (September, 2013) that 24 hours road checking was not possible as after seizure of vehicles/goods, other formalities like Physical Verification, Issue of Notice and Depositing of Security etc. were performed by the Mobile Squads. As such round the clock watch on all the roads by MSUs was not possible. Further, the Department stated that the data as compiled by audit is hypothetical.

We do not agree as the reply was not in conformity with the provisions of the Enforcement Manual. As regards genuineness of data it is stated that the details have been worked out from the log books of the vehicles assigned to Mobile Squads.

³⁸ Log book of vehicles attached to the MSUs.

³⁹ AC (MS)-2, 4, 5, 7 and 8 Agra, AC (MS)-1 and 2 Bareilly, AC (MS) Bulandshahar, AC (MS)-1 Chandauli, AC (MS)- 4 Gautam buddha Nagar, AC(MS)-1, 2, 3, and 4 Ghaziabad, AC (MS)-1 and 2 Jhansi, AC (MS)-1, 2, 3, 8 and 12 Kanpur, AC (MS)-1 and 5 Lucknow, AC (MS)-4, Mathura, AC (MS)-2, 4 and 5, Meerut, AC (MS)-3 and 6 Moradabad, AC (MS) 1, 5 and 6 Noida, AC (MS)-1 and 4 Saharanpur and AC (MS)-4, Varanasi.

2.8.8.2 Non-functional Control Rooms and non-availability of devices

Under the provision of Para 2 (c) 3 (i) of Chapter 4 of Enforcement Manual JC (SIB) is responsible for establishment of control room at zonal level for monitoring of enforcement activities by deriving an effective information network.

Para 1 of Chapter 10 and Para 2 of Chapter 4 of Enforcement Manual AC/MSUs are responsible for checking the vehicles on the basis of collection of data of daily downloaded Transit Declaration Forms (TDFs) with the help of internet. JC (SIB) is responsible for planning and monitoring.

In audit of 35 units of MSUs of 11 zones between April, 2012 and March, 2013 we noticed that in six zones⁴⁰, the Control Rooms were established, but in two⁴¹ of these, the control room was not functioning as no staff/MSUs was posted there. Also there was no internet connection in the control rooms established for the purpose of analysis of

TDFs, verification of Tax payers Identification Number and address of dealers etc. We found that no control rooms were established in five zones⁴². Resultantly purpose of establishing the control room was not fulfilled, which can be seen from fact that only 21999 cases were detected (between 2009-10 and 2011-12) in the seven zones⁴³ where the Control Rooms were not established/non-functioning when compared to 20187 cases detected during same period in the four zones⁴⁴ where Control Rooms were functional. Thus efficiency was better in zones where Control Rooms were established.

We further noticed that no devices⁴⁵ with internet connectivity have been provided to the officers of MS units for verification of information such as name and address of the dealer, Taxpayers Identification Number (TIN) etc. related to consignment loaded in the vehicle. The absence of such devices and with non-functional control rooms, the officers had no way to verify or cross check the information regarding the consignment carried by the vehicles when the MSUs are in the field. After withdrawal of provisions of Rule 55 (2) of UPVAT Rules vide notification no. *Ka.Ni.-2-241/XI-9 (295)/07-UP Act-5-2008-UPVAT niyamavali-08-order-(55)-2010* dated 4 February 2010 the MSUs in-charge has no authority to demand the documentation with reference to the ownership of vehicle to ascertain the genuineness of consignment and its owner on the spot.

The MSU officers have a push and pull SMS facility⁴⁶ for verification of TIN numbers of registered dealers only, and getting the TDF details of a vehicle, however, we noticed that no CUG⁴⁷ facility has been given to the Department officials for the same.

During the exit conference the Government stated (September 2013) that devices are not available and that providing of the same was under

⁴⁰ Agra, Ghaziabad, Gorakhpur, Kanpur –I & II, Varanasi.

⁴¹ Agra and Gorakhpur.

⁴² Bareilly, Jhansi, Meerut, Moradabad and Saharanpur.

⁴³ Agra, Bareilly, Gorakhpur, Jhansi, Meerut, Moradabad and Saharanpur.

⁴⁴ Ghaziabad, Kanpur I and II and Varanasi.

⁴⁵ Like laptops, Tablets, smart phones etc.

⁴⁶ SMS to a specific number

⁴⁷ CUG – Common User Group numbers, which are billed at one source.

consideration. It further stated that there are grievance cells at Headquarters and zonal levels.

2.8.8.3 Lack of monitoring on the deployment of MSUs

Para 2 (1) of Chapter 10 of EM envisages establishment of beat according to requirement after identifying the entry roads into the city (covering area with two or more entry roads). Beat should be made as per requirement and number of beats may be kept as per number of MSU. In every beat one MSU will carry out road checking work on all high-ways under its jurisdiction. Duty of MSUs should be changed weekly. A link unit should also be nominated for every beat so that it could perform vehicle checking duties for itself and the other beat in case of in-operation of beat. Holidays for each MSU should be fixed in such a way that all MSU get one day rest in a week and enforcement work remains uninterrupted even during public holidays. Intensive checking around railway stations and airports are also be done by the MSUs. JC (SIB) is in charge of the MSUs in the range.

In compliance with the provisions of the EM Additional Commissioners Grade II are required to prepare monthly duty chart for MSUs in their zone and performing their duty accordingly.

From the records⁴⁸ of 42 MSUs falling under 14 zones we noticed that in six zones⁴⁹ where 15 of the 42 MSUs were operating, no duty charts were prepared. In eight zones⁵⁰ where 21 of the 42 MSUs were operating, duty charts were prepared.

During exit conference, the Government stated

that all concerned have been directed (September 2013) to remove shortcomings.

⁴⁸ Duty chart.

⁴⁹ Gorakhpur, Jhansi, Lucknow, Meerut, Moradabad and Saharanpur.

⁵⁰ Agra, Aligarh, Bareilly, GB Nagar, Ghaziabad, Kanpur I & II, and Varanasi.

2.8.8.4 Circular issued in violation of Act

Section 48 (7) of UP VAT Act provides that if the officer in charge of the MS after taking into consideration the explanation of the dealer finds that there is sufficient reason to seize the goods, will pass an order in writing mentioning the fact of such seizure and indicating the amount, not exceeding such amount as would be sufficient to cover the penalty likely to be imposed. As per Section 54 (1) of UP Value Added Tax Act, 2008 the penalty of 40 per cent is leviable in such cases. CCT vide Circular no. *Che.po.-25 Ka-Paripatra/2008/0809100* dated 03 February 2009 prescribed that in the seizure cases of registered dealers transporting goods within the State and from outside the State respectively, without valid documents, the security value was to be realised at the rate of twice or three times the due tax respectively or 40 per cent of the value of goods whichever is less. This order was withdrawn vide circular no. *Che.Po.-25Ka-Paripatra jama praman patra/2009-2010/0910060* dated 05 November 2009.

We checked the records of 21 MSUs⁵¹ and collected information from 13 other MSUs⁵² and found that between February 2009 and November 2009, in 3031 cases, goods of registered dealers valued at ₹ 128.97 crore was seized by these MSUs. Security of ₹ 19.22 crore was realised in these cases, being two or three times the tax due. As per provisions of the Act, security of 40 per cent calculated to ₹ 51.59 crore was to be imposed. The revenue impact of circular of CCT issued in contravention of

Section 48 (7) of the UPVAT Act led to short realisation of security of ₹ 32.37 crore in the cases of these 34 MSUs alone.

During exit conference, the Government stated (September 2013) that the circular did not violate the legal provisions of Section 48 (7).

The reply is contrary to the Act which states to deposit such amount as would be sufficient to cover the penalty likely to be imposed. The penalty defined under Section 54 (1) is fixed i.e. 40 per cent in these cases.

⁵¹ AC (MS)- 2 Agra, AC (MS)-1 and 2 Bareilly, AC (MS)-2, 3 and 4 Ghaziabad, AC (MS)-4 Gautambudh Nagar, AC (MS)-2 Gorakhpur, AC (MS)-1 and 2 Jhansi, AC (MS)-1, 2 and 3 Kanpur, AC (MS)-1Lucknow, AC (MS)-1and 4 Mathura, AC (MS)- 6 Moradabad, AC (MS)-3 and 4 Saharanpur and AC (MS)-Mughalsarai and Naubatpur situated at Varanasi.

⁵² AC (MS)-1, 3, 4, 5, 6, 7 and 8 Agra, AC (MS) 9 and 11 Kanpur, AC (MS) 3, 4 Lucknow, AC (MS) 2 and 3 Mathura.

2.8.8.5 Monitoring of seizure cases of registered dealers

Section 48 of UP VAT Act provides that if the officer in charge of the MS finds that there is sufficient reason to seize the goods, will pass an order in writing mentioning the fact of such seizure and indicating the amount, not exceeding such amount as would be sufficient to cover the penalty likely to be imposed i.e. 40 per cent of the value of the seized goods. On deposit of security amount as per provision under Section 48 (5), the goods are released. In the case of registered dealers the matter is forwarded to the concerned sector for further examination.

These matters are required to be monitored by JC (Executive).

During the test check of records⁵³ of 12 Zones⁵⁴ we noticed that MSUs caught 41,081 vehicles transporting goods of ₹ 404.25 crore without prescribed documents, between 2007-08 and 2011-12 and penalty of ₹ 176.62 crore in 41081 cases of unregistered dealers was levied. In the case of registered dealers, 26,510 cases were sent to the AAs for assessment between 2007-08 and 2011-12. The details are

mentioned in the table no. 2.16:

Table No. 2.16

(₹ in crore)

Year	No. of vehicles seized		Total	Value of goods		Total	Penalty imposed (Unregistered)	Sent to AAs in Sectors	Penalty recovered in Sectors*
	Registered	Unregistered		Registered	Unregistered				
2007-08	3014	5662	8676	52.57	35.32	87.89	16.86	3014	0.17
2008-09	6975	5563	12538	152.97	50.87	203.84	21.38	6975	1.90
2009-10	7504	8463	15967	218.75	79.81	298.56	33.79	7504	2.06
2010-11	4466	10725	15191	134.94	109.26	244.20	46.96	4466	1.70
2011-12	4551	10668	15219	133.63	128.99	262.62	57.63	4551	1.88
Total	26510	41081	67591	692.86	404.25	1097.11	176.62	26510	7.71

Source: Information collected during Audit.

*Information available for only three zones (Agra, Aligarh and Kanpur-II) with Department.

We noticed in the case of 17 MSUs⁵⁵, that out of the 17,151 vehicles seized⁵⁶, 2,566 vehicles belonged to registered dealers carrying goods of total value of ₹ 190.96 crore. As per provision ₹ 76.35 crore was realisable as penalty, whereas we noticed that only ₹ 36.71 crore was realised. Hence there was short realisation of ₹ 39.64 crore as security.

We also noticed that the MSUs or their supervisory officers neither maintained any record to keep a watch on the action taken at the end of AAs i.e. realisation and imposition of tax from the dealers caught by MSUs during road checking nor devised any system of sending periodic progress report regarding imposing of tax and realisation thereof by the AAs in respect of seizure cases of registered dealers.

⁵³ Panji-5.

⁵⁴ Agra, Aligarh, Bareilly, Gorakhpur, Jhansi, Kanpur-I and II, Lucknow-I and II, Moradabad, Saharanpur and Varanasi-I.

⁵⁵ AC MS-1 and 2 Bareilly, AC MS-4, Gautam Budh Nagar, AC MS-2, 3 and 4 Ghaziabad, AC MS 3 Gorakhpur, AC MS-1 and 2 Jhansi, AC MS-3 Kanpur, AC MS-1 Lucknow, AC MS-5 and 6 Moradabad, AC MS-3 and 4 Saharanpur, AC MS-Moghalsarai at Varanasi, AC MS-2, Naubatpur Chandauli at Varanasi.

⁵⁶ Between 2008-09 to 2011-12 (excluding seizures from February 2009 to November 2009, in the period covered under circular No. Che.Po-25 Ka-Paripatra/2008/0809100).

During exit conference the Government stated (September 2013) that a software has now been designed for uploading the details of the cases caught by MSUs and communicated to the AAs vide circular⁵⁷ of August 2013. While department has taken action for online entry of details, it has not given specific reply to our observation regarding short realisation of security.

2.8.8.6 Non-auction of seized goods

Under the provision of Sub Section 9 of Section 48 of UPVAT Act, if the assessed tax or imposed penalty is not deposited in respect of seized goods, the officer seizing the goods may sell the seized goods by public auction in prescribed manner. However, no time limit has been prescribed for auction of such goods after the seizure.

We test checked the *Panji-5* of 25 MS units and found that in five MSUs, officers of the units intercepted between the year 1998-99 and 2010-11 the vehicles carrying the goods without proper documents. Goods were

seized as the consigner did not deposit the security/penalty amount. The dealers did not turn up for a long time, the Department became the sole owner of the goods valued at ₹ 1.02 crore as detailed in the table no. 2.17:

Table No. 2.17

(₹ in lakh)					
Sl. No.	Name of unit	Year	Number of cases	Name of goods	Value of goods
1	MS-4, Ghaziabad	2005-06 to 2009-10	3	Medicine,readymade garments, <i>parchoon</i> , PVC granules.	8.28
2	MS-1, Kanpur	2009-10 to 2010-11	4	Leather, Medicine, Misc goods etc.	1.37
3	MS-2, Kanpur	1998-99 to 2010-11	5	Medicine, <i>Supari</i> , <i>Gutkha</i> .	56.13
4	MS-3, Kanpur	1999-2000 to 2001-02	12	<i>Gutkha</i> , Tobacco, Medicine, Bangles, mixer-grinder, Hosiery.	7.09
5	MS- I, Lucknow	2001-02 to 2009-10	30	<i>Gutkha</i> , Medicine, Iron & steel etc.	28.73
Total			54		101.60

We observed that the seized goods were not auctioned and were lying in godowns/even though a considerable portion of the goods are perishable such as medicines, leather, *supari*, *gutkha* etc. Due to the inaction on part of the Department the value of seized goods could not be realised.

During exit conference the Government accepted (September 2013) our observations and stated that zonal Additional Commissioners (SIB) have been instructed (September, 2013) to do needful for disposal of seized goods.

We recommend that the Department should set a time frame for the disposal of seized goods in the interest of the revenue.

2.8.8.7 Non-levy of tax

As per CCT's Circular No. Mobile Squad/Penalty/*ka.ni.*/Transit Pass/1011047/Commercial Tax dated 20 September 2010, if TDF cases are seized by the officer-in-charge MSU, he will exercise the right of assessing officer for levy of tax in addition to imposing penalty.

We test checked the records of 35 MSUs and found that in 12 MSUs⁵⁸ in 68 cases not covered under valid transit pass/TDF in which total value of goods was ₹ 3.22 crore were seized by the officer-in-charge of MSUs and only the penalty

⁵⁷ No. I.T.-*Bill Sangrahan* computerisation-2013-14/642 dated 30.08.2013.

⁵⁸ AC MS- 2 Agra, AC MS- 2 and 3 Gorakhpur, AC MS- 2 Jhansi, AC MS- 3 Kanpur, AC MS- 2 Meerut, AC MS- 5 and 6 Moradabad, AC MS- 3 and 4 Saharanpur AC MS- 2 Naubatpur situated at Varanasi.

of ₹ 1.41 crore was imposed. Tax of ₹ 17.55 lakh though leviable was not levied by the officer in charge of MSU.

During exit conference the Government accepted (September 2013) our observation and stated that action to levy tax is underway. Further report has not been received (December 2013).

2.8.8.8 Late deposit of cash

Under the provision of para 5(4) of chapter 11 of Enforcement Manual (EM), officers of MS units should deposit the cash into State Bank of India/Treasury daily or twice in a week. The deposit has to be verified from treasury once in a month, and a copy of the verified challans is to be submitted to JC (SIB).

We test checked the records of 35 MSUs and found that in 906 cases of 14 units⁵⁹, amount of ₹ 4.23 crore was not deposited in accordance with the provisions of the EM. The delay ranged from three to 33 days.

The JC (SIB) concerned did not take action to ensure timely deposit despite details being available with them. In the remaining 21 units the deposit was in time. A good practice of timely verification of challans from treasury done by MSUs and Internal Audit Wing was also seen.

During exit conference the Government accepted (September 2013) our observation and stated that instructions have been issued for compliance.

2.8.8.9 Non-availability of Cash Chest

As per Rule 28 of Financial Hand book Volume 5 Part-I, Government money should be kept in a strong Cash Chest. Cash Chest should be fixed/fastened to earth or wall.

MSUs get seizure of valuable goods and security deposit/penalty in cash. During the test check of records of 25 units we noticed that only

three MSUs⁶⁰ had cash chests to store the cash received. In absence of cash chest remaining 22 MSUs were storing seized valuables and cash received in shape of security/penalty in ordinary steel almirahs compromising the safety and security of revenue.

During exit conference the Government stated (September 2013) that instructions have been issued for compliance of codal provisions.

⁵⁹ AC MS-1 and 2 Bareilly, AC MS-2 and 3 Ghaziabad, AC MS-2 and 3 Gorakhpur, AC MS-1, 2 and 3 Kanpur, AC MS-1 Lucknow, ACMS-2 and 5 Meerut, AC MS-Moghalsarai at Varanasi, AC MS-2, Naubatpur, Chandauli at Varanasi.

⁶⁰ MS-2 Bareilly, MS-1 and 2 Kanpur.

2.8.8.10 Non-maintenance of prescribed records

As per provision of Chapter 13 of Enforcement Manual MSUs are required to maintain Physical Verification Register (PVR). In Part A of the register date and category-wise entry is to be made, whereas in Part B date-wise payment and balance in head of *Palledari* is maintained.

As per provision of para 2 (6) of Chapter 10 of Enforcement Manual, MSU officers are required to collect copy of bills from vehicles owners and their endorsement to the AAs concerned and recording entry in the *Bill Preshan Register*. Road Checking Register was to be maintained in prescribed format.

We noticed in offices of 35 MSUs⁶¹ that system of maintenance of records was not followed.

- In 14 units⁶² it was seen that Part A of Physical Verification Register (PVR) was not maintained. In three MSUs⁶³, the part A of the register were not maintained and

details such as *bility* number, quantity/ weight of goods declared and quantity/weight of goods actually seen in verification were not filled.

- In eight⁶⁴ MSUs *Bill Preshan Register* was not maintained in prescribed format and columns for date and time, place of checking, name of AAs, number and date of dispatch and signature of officer in-charge were not made in registers.
 - In six⁶⁵ MSUs Road Checking Register was not maintained in the prescribed format and details like place of checking, name of officer-in-charge, date and time, vehicle number were not filled.

Due to non-maintenance/incomplete records the validity of the physical verification, dispatch of bills and road checking of vehicles claimed by the MSU, could not be confirmed.

During exit conference the Government stated (September 2013) that orders for compliance have been issued on 2 September 2013 and further stated that on-line system regarding uploading of the details of invoices, details of dealers, quantity (details of goods etc.) caught by MSUs and that of entering details of *Panji-5* have been developed and MSUs have been ordered to implement the same vide⁶⁶ circulars of August 2013.

⁶¹ AC MS-2 Agra, AC MS-1 & 2 Bareilly, AC MS Bulandshahar, AC MS 1, 2, 3 and 4 Ghaziabad, AC MS 1, 4, 5 and 6 G B Nagar, AC MS-2 & 3 Gorakhpur, AC MS-1 & 2 Jhansi, AC MS-1, 2 and 3 Kanpur, AC MS-1 Lucknow, AC MS-1 & 4 Mathura, AC MS-2, 4 and 5 Meerut, AC MS 3, 5 & 6 Moradabad, AC MS 1, 3 and 4 Saharanpur, AC MS 1 Chandauli at Varanasi, AC MS Moghalsarai at Varanasi, AC MS 2, Naubatpur at Varanasi, AC MS 4 Varanasi.

⁶² AC MS 8 Agra, AC MS 1 and 2 Bareilly, AC MS 3 Gorakhpur, AC MS 2 Ghaziabad, AC MS 3 Kanpur, AC MS 4 GB Nagar, AC MS 2 Meerut, AC MS 5 and 6 Moradabad, AC MS 3 and 4 Saharanpur, AC MS Mughalsarai at Varanasi, AC MS 2, Naubatpur at Varanasi.

⁶³ AC MS-3 & 4 Ghaziabad, AC MS-6 Moradabad.

⁶⁴ AC MS 4 GB Nagar, AC MS 2, 3 & 4 Ghaziabad, AC MS-5 & 6 Moradabad, AC MS-3 & 4 Saharanpur.

⁶⁵ AC MS 4 GB Nagar, AC MS-2, 3 & 4 Ghaziabad, AC MS-1 & 3 Kanpur.

⁶⁶ No. IT *Bill Sangrahan* Computerization-2013-14/642 and No. IT *Bill Sangrahan* Computerisation-2013-14/IT *Panji-5 Sa. Da.* 2013-14/643 dated 30.08.2013.

2.8.9 Working of SIBs

Under the provisions of Para 2 (c) of Chapter 4 of Enforcement Manual, JC (SIB) is responsible for sending survey reports of dealers to the Assessing Authority concerned. AA will also review and monitor the position of provisional/final assessment order passed in respect of SIB reports sent to AAs. As per chapter 9 of Enforcement Manual, SIB units are required to maintain a twelve column Register of Reports dispatched to AAs, with complete details of surveys including the details of AOs passed by AAs in respect of survey reports. As per Para 1 a (vi and vii) of Chapter 5 of EM, the DC (SIB) and AC (SIB) should also analyse the assessment orders against the confidential reports sent by them. They are required to verify the SIB cases pending to the level of AAs quarterly. CTO (SIB) will examine the cases related to small traders with help of AC (SIB) and forward the SIB report to the concern AAs after approval of DC (SIB).

SIBs conduct surveys, search and seizure operations in premises of dealer's/transporter's godowns within the range/zone. The adverse search reports alongwith seized documents and other reports are forwarded to the concerned AA in the State for assessment and realisation of tax.

The working results of SIBs in the State are mentioned in the table no. 2.18:

Table No. 2.18

Year	No. of units	No. of adverse surveys	No. of seized records	Reports ⁶⁷ forwarded to AAs	Amount involved in reports sent (₹ in crore)	Per cent of growth in reports forwarded to AAs over previous year	Per cent of growth in amount over previous year
2007-08	39	5,024	2,316	6,994	7,547.48	14.36	73.49
2008-09	46	6,133	2,638	8,170	7,916.57	16.81	04.89
2009-10	46	7,031	3,180	8,244	9,008.05	00.91	13.79
2010-11	46	4,625	2,421	7,357	11,513.00	(-)10.76	27.81
2011-12	46	4,513	02,505	6,979	13,015.00	(-) 05.14	13.04
Total		27,326	13,060	37,744	49,000.1	32.08	133.02

Source: Annual reports of the Department.

From the table no. 2.18 it is clear that there is 11 to five *per cent* decline in the number of adverse surveys between 2009-10 and 2011-12, and 10.76 to 5.14 *per cent* in the number of reports forwarded to AA. The money value involved in the reports sent to AA has increased to ₹ 13,015 crore in 2011-12 from ₹ 7,916.57 crore in 2008-09. The Department has been unable to report of the position of the amount actually realised in these cases as the details required in the register⁶⁸ were not found filled.

⁶⁷ Total reports sent, including reports of adverse surveys.

⁶⁸ twelve column Register of Reports dispatched to AAs

In our test check we noticed that in 11 SIB zones⁶⁹ the DC (SIBs) conducted 20,257 surveys, wherein estimated evaded turnover of ₹ 24,698.07 crore was reported to the AAs between 2007-08 and 2011-12. The details are given in the table no. 2.19:

Table No. 2.19

(₹ in crore)

Year	Number of Zones	Number of surveys	Number of reports sent to AA	Estimated amount of evaded turnover involved
2007-08	11	4,590	3,960	5,853.96
2008-09	11	4,845	4,268	4,378.36
2009-10	11	4,655	4,525	4,655.62
2010-11	11	3,188	3,278	4,481.95
2011-12	11	2,979	3,012	5,328.18
Total		20,257	19,043	24,698.07

The details of tax assessed by AAs and tax realised which were required to be maintained by the DC (SIB) were found maintained only by DCs (SIB)⁷⁰ of Moradabad Zone and we noticed that the actual tax realised⁷¹ was between 22 to 25 per cent of the tax assessed⁷² on the evaded turnover in 2,395 cases of Moradabad zone.

We were able to cross check only the assessment orders related to 21 dealers of five zones⁷³ which were finalised by the AAs on the basis of adverse reports sent by the officers of the SIB wing and found that:

- Cases of three dealers⁷⁴ for the period 2007-08 to 2009-10 having tax effect of ₹ 1.34 crore were pending for reassessment under Section 32 of UPVAT Act and Section 21 of UPTT Act.
- In cases of nine dealers⁷⁵ for the period 2007-08 to 2011-12 of evaded turnover of ₹ 115.27 crore with a tax effect of ₹ 6.18 crore, the tax, was reduced to ₹ 8.04 lakh by the first/second appellate authorities. All the cases were pending in appeal.
- In two cases⁷⁶ the dealers deposited the assessed tax of ₹ 1.5 lakh and in one case⁷⁷ the AA found no evasion. In the fourth case⁷⁸, Reverse Input Tax Credit (RITC) of ₹ 8,000 was done.
- In one case⁷⁹ of 2009-10, tax of ₹ 88.30 lakh has been assessed by AA in April 2012.
- In remaining three cases⁸⁰ related to 2007-08 to 2009-10 having tax effect ₹ 1.50 crore, recovery certificates were issued between June 2011 and September 2012.

In these 21 cases we noticed that the evasion intimated by the SIB could not be sustained at the level of Assessing/Appellate Authorities.

During exit conference the Government agreed (September 2013) that details of the action taken by AAs are to be noted by the SIB units and there are

⁶⁹ Agra, Aligarh, Bareilly, Gorakhpur, Jhansi, Kanpur I and II, Lucknow I, Moradabad, Saharanpur and Varanasi I.

⁷⁰ DC -SIB-A, SIB-B and SIB, Bijnore of Moradabad Zone.

⁷¹ Tax realised ₹ 41.19 crore.

⁷² Tax assessed ₹ 171.71 crore.

⁷³ Agra, Aligarh, Ghaziabad, Lucknow and Noida

⁷⁴ Bansal Ispat Ghaziabad, Chetna Steels Ghaziabad and Ghaziabad Iron and Steel Co. Ghaziabad

⁷⁵ Gail India Ltd. Agra, Ganesh Enterprises Agra, Girraj Kishore Agra, Balaji Food Products Mathura, Samay foods Pvt. Ltd. Noida, Maini Steel Works, Noida, Namita Agarwal Agra, Neelkanth Sweets Lucknow, Krishna Electric and Hardware Noida,

⁷⁶ Swadeshi Manufacturing (P) Ltd. Noida and Vally Health Products (P) Ltd. Noida.

⁷⁷ Babulal and Sons, Mathura.

⁷⁸ Khandelwal Steel Centre, Ghaziabad

⁷⁹ SG Steels, Ghaziabad.

⁸⁰ Raj Ganga Developers Lucknow, Suresh Chandra Rishi Kumar Mathura, Taj Steel Works, Noida.

orders to analyse the action taken by AAs as well as a laid down process of appeal against orders of AA by the DC (SIB). Due to non compliance of the above, strict instructions have again been issued vide circular⁸¹ dated 13 September 2013.

2.8.10 Monitoring and supervision by Additional Commissioner (SIB)

Under Chapter 5 of EM, duties and responsibilities of officers of SIB wing have been defined. DCs (SIB) are assigned duties as such as collecting the information regarding transportation of goods through rail, *Mandi Samiti*, data related to sensitive commodities* power consumed by manufacturers etc. review the confidential reports sent to the AAs, correlate the pending cases at level of AAs quarterly.

Under the provision of Para 2(b) of Chapter 4 of EM, Additional Commissioners Grade-II, (SIB) are also assigned duties including fortnightly monitoring the work of JC (SIB), DC (SIB) and AC (MS) and inspecting their offices periodically, identifying transporters who are indulged in tax evading activities, checking atleast one godown of one transporter and checking the movement of all his vehicles during 24 hours of that day, identifying such manufacturing units which are involved in tax evading activities and inspecting their factories, godowns and branches, collecting the information of tax evasion from other Departments and sharing it with the AAs.

* Such as Iron and Steel, *Supari, Gutkha and Parchoon* etc.

We examined the details of work⁸² performed by 14 SIB zones and our observations are as follows:

(i) 12 DCs SIB⁸³ of eight zones⁸⁴ did not maintain the details of work done. Information from other DCs⁸⁵ of remaining six zones⁸⁶ was not received.

(ii) No follow up action was carried out to ascertain details of tax assessed/realised on basis of records forwarded to AAs maintained by 10 zones⁸⁷. Only Moradabad zone could provide data in respect of tax realised. Data from three zones⁸⁸ was not received.

Apart from the above, we noticed gaps in the working of the Additional Commissioners Grade II SIB also, as no details of guidelines issued by them to SIB units, minutes of meetings held, details of periodical inspections conducted, details of 24 hours checking of at least one godown of one transporter and checking the movement of all his vehicles during the 24 hours of that day, details of action taken with reference to transit of goods through railways, information sharing with other Government Departments such as

⁸¹ No. *Jwa.Kami.(Vi.Anu.Sha.) Mu.- 57/Sa.pa./ Vi.Anu.Sha.Vyavastha Parivartan/2013-14/1047* dated 13.09.2013.

⁸² Railway container depot, collection of information of tax evasion by investigation from railway/*mandi samiti*, preparation of traders profile with reference to important goods, collection of information in respect of power consumed by the manufacturers, information of transfer of right to use of goods and plants and machinery etc., information of tax evaders from other Government Departments viz. Income Tax, Central Excise, Food and Civil Supplies etc., collection of Permanent Account Number (PAN) of contractors, correlating tax assessed on seizure reports sent to AAs.

⁸³ Agra-A and B, Bareilly-A and B, Jhansi, Kanpur-A, C and D, Mathura, Meerut-A and B, Saharanpur A.

⁸⁴ Agra, Aligarh, Bareilly, Jhansi, Kanpur-I and II, Meerut and Saharanpur.

⁸⁵ Gorakhpur A and B, Moradabad A and B, Saharanpur B, Varanasi A and B.

⁸⁶ Gautam Buddha Nagar, Ghaziabad I, Gorakhpur, Lucknow I, Moradabad and Varanasi I

⁸⁷ Agra, Aligarh, Bareilly, Gorakhpur, Jhansi, Kanpur I and II, Lucknow I, Saharanpur and Varanasi I.

⁸⁸ Gautam Budh Nagar, Ghaziabad-I and Meerut.

Income Tax, Central Excise and Food and Civil Supplies, big suppliers and contractors of various Government Departments on the basis of their PAN were available in five⁸⁹ zones.

The only details available are of search and seizure operations of manufacturing units in three⁹⁰ out of these five zones. Thus the supervisory and monitoring control lacked direction and was not purposeful. Data/information from remaining nine zones⁹¹ was not made available.

During exit conference the Government accepted (September 2013) our observation and issued⁹² instructions for strict compliance of provisions of the manual.

2.8.11 Internal Audit

Internal audit is a vital component of the internal control mechanism and is generally defined as the control of all controls to provide reasonable assurance of proper enforcement of laws, rules and Departmental instructions. Internal control also helps in creation of reliable financial and management information system for prompt and efficient services and for adequate safeguards against evasion of tax and other irregularities.

We collected information from the office of the CCT regarding the MSU planned for Internal Audit for the years 2010-11 to 2012-13 and found that 129, 136 and 134 units of Mobile Squads were planned for audit respectively. Further, examination of the records of the Internal Audit Wing in the Office of the CCT revealed that only treasury verification of deposits by these units were being done and no other records were checked. This shows that the units of Mobile Squads are not being identified for detailed internal audit. No internal audit of SIB units was conducted. As the Enforcement Wing of the Commercial Tax Department is an integral wing of the Department, all aspects of the same should be covered by internal audit.

During exit conference Government accepted (September 2013) our observation and stated that Internal Audit Wing is being directed to check all the records of MSUs viz. Detention Memo, Show Cause Notice, Seizure Memo, Godown *Panji*, *Panji-5*, PV Register, Case Files, Daily Receipt Register, Cash Book etc. in future.

2.8.12 Conclusion

The review revealed that there were gaps in the issue and submission of the transit declaration forms and Form 38. The IT Audit of online system of issue of transit declaration forms revealed lack of input and validation controls and Disaster Management System. There is lack of co-ordination between the IT wing and Enforcement Wing and Enforcement Wing did not get the required data input in time. There is no module to detect repeated tax evading dealers/transporters. The MSUs working had operational gaps, the control rooms were non-functional and the MSU officers had no devices to verify or cross check information available on the IT system. There was lack of follow-up and monitoring in the seizure cases by MSUs and in adverse survey cases by SIB regarding final tax imposed/realised by AAs.

⁸⁹ Agra, Ghaziabad I, Jhansi, Lucknow I and Varanasi I.

⁹⁰ Ghaziabad-1, Lucknow-1 and Varanasi-1.

⁹¹ Aligarh, Bareilly, Gautam Buddha Nagar, Gorakhpur, Kanpur I and II, Meerut, Moradabad, and Saharanpur.

⁹² Vide circular No. *Jwa.Kami.(Vi.Anu.Sha.) Mu.- 57/Sa.pa./ Vi.Anu.Sha.Vyavastha Parivartan/2013-14/1047* dated 13.09.2013.

2.8.13 Recommendations

The Government may consider implementing the following recommendations to rectify the deficiencies:

- Provision of mandatory filling of transaction details before on-line downloading of Form-38.
- Establishing input and validation controls for TDF and a Disaster Management System.
- Developing a module to maintain database of repeated tax evading dealers/transporters.
- Provision for suitable devices to enforcement officers so that they may use the data available on the Commercial Tax website.
- Establishing system of follow-up of monitoring of seizure/survey cases by enforcement officers regarding final tax imposed/realised by AAs.

2.9 Audit observations

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

2.10 Non/Short levy of tax

The Assessing Authorities (AAs) while finalising the assessments, did not apply the correct rate of tax given in the schedule of rates, in some cases lower rate tax was applied due to misclassification of goods and in some of the cases no tax was levied which resulted in non/short levy of tax of ₹ 16.92 crore as mentioned in the following paragraphs:

2.10.1 Non/Short levy of Trade Tax/Value Added Tax due to application of incorrect rate of tax

Under Section 3A of Uttar Pradesh Trade Tax (UPTT) Act, 1948, tax on classified goods is leviable as prescribed in the schedule of rates notified by the Government from time to time. The goods not classified in the prescribed schedule of rates, are taxable at the rate of 10 *per cent* with effect from 1 December 1998. Under Section 4(1) of Uttar Pradesh Value Added Tax (UPVAT) Act, 2008, goods mentioned in schedule I are tax free, goods mentioned in schedule II are taxable at the rate of four *per cent*, goods mentioned in schedule III are taxable at the rate of one *per cent* and those mentioned under schedule IV are taxable at the rate notified by the Government from time to time. Goods not mentioned in any of the above schedules are covered under schedule V and are taxable at the rate of 12.5 *per cent* with effect from 1 January 2008. Under Central Sales Tax Act, 1956 tax on Inter-State sale of goods not covered by declaration in Form 'C' or 'D' is leviable at the rate of 10 *per cent* or at the rate applicable to the sale or purchase of such goods inside the State whichever is higher upto 31 March 2007. From 1 April 2007 it is leviable at the rate applicable inside the State.

We observed⁹³ between November 2008 and March 2013 in 75 Commercial Tax Offices (CTOs)⁹⁴ that for the period 2002-03 to 2009-10, the AAs concerned, while finalising the assessments of 95 dealers between July 2007 and March 2012, accepted the tax as submitted by the dealers in their returns instead of rates given in the schedule on sale of goods worth ₹ 33.79 crore. This resulted in non/short levy of trade tax (TT)/value added tax (VAT) of ₹ 2.36 crore.

After we pointed out the cases to the Department/
Government between

December 2008 and May 2013, the Department accepted our observation (December 2013) and levied tax of ₹ 69.49 lakh in 25 cases out of which ₹ 8.91 lakh has been recovered so far. The Department has initiated action in six other cases.

⁹³ From the assessment files and returns filed by the assesseees.

⁹⁴ DC Sec 3 & 5 AC Sec 11 Allahabad, DC Sec 8 & 10 AC 19 Agra, DC Sec 2 Amroha, DC Sec 2 Barabanki, DC Sec 5 Bareilly, DC Sec 3 Behraich, DC Sec 3 Etah, DC Sec 2 Etawah, DC Sec 1 Fatehgarh, JC(CC) Faizabad, JC (CC) A, DC Sec 8, 9, 10 & 17, AC 2, 3, 4, 7, 10 & 11 Ghaziabad, DC Sec 3 G.B. Nagar, AC Sec 1 G.B. Nagar, DC Sec 2 & 9, AC Sec 4 & 10 Gorakhpur, DC Sec 1 Hardoi, DC Sec 5, 10, 17, 24, 27 & 28, AC Sec 5, 6, 11, 16, 17, 19, 20, 27 & 29 Kanpur, AC Kaushambi, DC Sec 1, AC Sec 1 Lakhimpur Khiri, DC Sec 2, 5, 13, 14, 16, 17 & 20, AC Sec 16 & 20 Lucknow, DC Sec 7 Moradabad, DC Sec 6, AC Sec 6 & 8 Meerut, DC Sec 4, 5, 12 & 14, AC Sec 6 & 14 Noida, AC Sec 3 Orai, AC Sec 2 Shahjahanpur, AC Sec 4 Sitapur, AC Sec 11 Saharanpur, DC Sec 3 & 15 Varanasi.

2.10.2 Non-levy of tax on sale of goods for use in RGGVY

Under Section 3A of the UPTT Act 1948, tax on classified goods is leviable as prescribed in the schedule of rates notified by the Government from time to time. The goods not classified in the prescribed schedule of rates, are taxable at the rate of 10 per cent with effect from 1 December 1998. Under Section 3 H of the UPTT Act, State Development Tax at the rate of one per cent of the taxable turnover shall be levied on a dealer whose annual aggregate turnover exceeds ₹ 50 lakh with effect from 1 May 2005. Further, Government of Uttar Pradesh, vide notification dated 13 July 2006, granted exemption from payment of tax under the said Act on the sale of electrical goods imported from outside the State, for exclusive use in *Rajiv Gandhi Grameen Vidyutikaran Yojana* (RGGVY) in the State of Uttar Pradesh with effect from the date of publication of the notification till the completion of the Scheme.

We observed from the records⁹⁵ of DC Sector 3 Sitapur in March 2012, that during the year 2005-06 and 2006-07 (till 12 July 2006), a dealer⁹⁶ sold electrical goods worth ₹ 43.33 crore upto 12 July 2006 to the contractors working for *Rajiv Gandhi Grameen Vidyutikaran Yojana* (RGGVY). The AA, while finalising the assessment in July 2010, wrongly gave the benefit of exemption of trade tax on the sale of electrical goods used for RGGVY scheme

in 2005-06 and upto 12 July in 2006, whereas the exemption⁹⁷ was effective from 13 July 2006. This wrong exemption resulted in non levy of tax⁹⁸ including State Development Tax of ₹ 4.77 crore.

After we pointed out this case to the Department/Government in May 2012, the Department accepted (January 2014) our observation and levied the tax of ₹ 4.64 crore. Report on recovery has not been received.

2.10.3 Short levy of tax on rent received from transfer of right to use of goods

Under Section 3F of UPTT Act read with notification dated 14 November 2000, tax on transfer of the right to use of any goods is leviable at the rate of five per cent with effect from 15 November 2000.

We observed⁹⁹ in the office of the DC Sector 13, Allahabad in June 2012 that while finalising the assessment of a dealer in December 2011 for the years 2002-03 and 2003-

04 the AA, incorrectly applied rate of tax of four per cent instead of five per cent on rent from transfer of the right to use of machinery and equipment amounting to ₹ 23.64 crore. This resulted in short levy of tax of ₹ 23.64 lakh.

After we reported the matter to the Department/Government in August 2012, the Department accepted our observation (September 2013) and stated that the

⁹⁵ Assessment order and files related to the dealer.

⁹⁶ Executive Engineer, *Vidyut-Vitaran Khand-1st*, Vatsganj, Sitapur.

⁹⁷ KA.NI.-2-1283/XI-9(24)/2006-UP Act 15-48-order-(12)-2006 dated July 13, 2006.

⁹⁸ TT ₹ 4.33crore, SDT ₹ 43.33 lakh.

⁹⁹ Assessment order and files related to the dealer.

tax of ₹ 23.64 lakh has been levied. Report of recovery is awaited (December 2013).

2.10.4 Short levy of tax on toffee and confectionary goods

Under Section 4(1) of UPVAT Act, 2008, goods mentioned in schedule I are tax free, goods mentioned in schedule II are taxable at the rate of four *per cent*, goods mentioned in Schedule III are taxable at the rate of one *per cent* and those mentioned under Schedule IV are taxable at the rate notified by the Government from time to time. Goods not mentioned in any of the above schedules are covered under schedule V and are taxable at the rate of 12.5 *per cent* with effect from 1 January 2008. Toffee and confectionary items are not covered under Schedule I to IV.

We observed¹⁰⁰ in 11 CTOs that for the period 2007-08 (from 1 January 2008 to 31 March 2008) and 2008-09, the AAs concerned, while finalising the assessments of 12 dealers between March 2011 and March 2012, applied incorrect rate of tax on sale of branded¹⁰¹ toffee and confectionary items of ₹ 8.01 crore. This resulted in short levy of VAT of ₹ 68.05

lakh as shown in the table no. 2.20:

Table No. 2.20

Sl. No.	Name of the office	No. of dealer	Assessment Year (Month and year of Assessment)	Name of goods (Schedule)	Taxable Turnover	Rate of tax leviable/levied (<i>per cent</i>)	(₹ in lakh)
							Tax short levied
1.	DC Sec-8, CT Agra	1	2008-09 (March 2012)	Toffee (V)	14.00	12.5/4	1.19
2.	DC Sec-11, CT Aligarh	1	2007-08(VAT) (March 2011)	Confectionary Products (V)	10.74	12.5/4	0.91
			2008-09 (January 2012)		33.91	12.5/4	2.88
3.	CTO Sec-9, CT Aligarh	1	2008-09 (February 2012)	Toffee Confectionary (V)	10.81	12.5/4	0.92
4.	AC Sec 1 CT Chatrapati Shahuji Maharaj Nagar (Gauriganj)	1	2008-09 (February 2012)	Confectionary (Toffee and Chewing Gum) (V)	1.27	12.5/4	0.11
5.	AC Sec-8, CT Ghaziabad	1	2008-09 (January 2012)	Confectionary Item (V)	53.04	12.5/4	4.51
		1	2008-09 (January 2012)	Confectionary (V)	53.13	12.5/4	4.52
6.	DC Sec-1, CT Gonda	1	2008-09 (March 2012)	Toffee and Toffee Gum (Confectionary Product) (V)	22.16	12.5/4	1.88
7.	DC Sec-2 CT, Gonda	1	2008-09 (October 2011)	Confectionary (V)	13.32	12.5/4	1.13
8.	DC Sec- 10, CT Gorakhpur	1	2008-09 (September 2011)	Toffee (V)	7.68	12.5/4	0.65
9.	DC Sec- 3, CT Kanpur	1	2008-09 (November 2011)	Confectionary (Toffee) (V)	60.06	12.5/4	5.10
10.	AC Sec 10, CT Noida	1	2008-09 (March 2012)	Confectionary Item (V)	101.82	12.5/4	8.65
11.	DC Sec 4, CT Saharanpur	1	2008-09 (March 2012)	Confectionary (V)	418.85	12.5/4	35.60
Total		12			800.79		68.05

¹⁰⁰ From the assessment files and returns filed by the assessee.

¹⁰¹ Alpenliebe, Center Fresh, Chlormint, Filly Folly, Fruittella and Mentos etc.

After we reported the matter to the Department/Government between August 2012 and May 2013; in reply the Department (September 2013) has accepted our observation and levied tax of ₹ 53.66 lakh in cases mentioned at Sl. No. 3, 5, 6, 7, 9 and 11 of the above table. In remaining cases action has been initiated for levy of tax.

2.10.5 Non-levy of tax on irregular stock transfer

Under Section 4 of the CST Act, 1956 read with Section 3, a sale or purchase of goods is determined to take place inside a State, shall be deemed to have taken place outside all other States, in the case of specific or ascertained goods, at the time the contract of sale is made and in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation. Further, in case of *Bharat Carbon Ribbon Mfg. Co. Ltd. vs. State of Haryana 2005 NTN*, transfer to depot/branch outside the State was not considered as Branch transfer where goods were manufactured of certain specification under a contract with a customer for their ultimate sale and delivery to that customer.

We observed from the records¹⁰² of Joint Commissioner (Corporate) Noida between October 2011 and December 2012 that one dealer supplied goods (CTV/DVD component/Printed Circuit Board) worth ₹ 67.67 crore during the years 2007-08 and 2008-09 to its branches at Dehradun and Mohali as per specifications mentioned in the purchase orders. The AA while finalising the assessment

between March 2011 and March 2012 did not examine the fact that these were not to be considered as stock transfer as they were manufactured under a pre existing purchase order for delivery to specific customers. The AA wrongly treating the same as stock transfer, did not levy the tax despite the provisions of Act and judicial pronouncement. This resulted in non levy of tax of ₹ 2.71 crore.

We reported the matter to the Department/Government between December 2011 and March 2012. Their replies have not been received (December 2013) despite several reminders.

¹⁰² Assessment files and returns filed by the assessee.

2.10.6 Non-levy of tax on purchase of Paddy Husk

Under Section 7 of UPVAT Act, goods classified in schedule-1 of the Act are not taxable at any point and goods not classified in Schedule II to IV of the UPVAT Act are taxable at the rate of 12.5 per cent. Further, under the provision of Section 5 of the UPVAT Act, if the goods are purchased from an unregistered dealer, tax shall be levied at the same rate applicable on the turnover of sale of that commodity.

Cattle feed and cattle fodder which includes green fodder, *chuni*, *bhusi*, *chhilka*, *choker*, *javi*, *gower*, de-oiled rice polish, de-oiled rice bran, de-oiled rice husk, de-oiled paddy husk or outer covering of paddy are exempted from tax at Serial number 4 of Schedule I. Outer covering of paddy known as Paddy husk, which has not been de-oiled or used for purpose other than cattle fodder is not covered under this entry and falls under schedule V of the Act, and is taxable at the rate of 12.5 per cent.

We observed¹⁰³ in four CTOs between October 2012 and March 2013 that four dealers had purchased paddy husk or outer covering of paddy valued at ₹ 34.42 crore, during the period 2007-08 (1 January 2008 to 31 March 2008) and 2008-09 from unregistered sellers and used it as fuel to run their manufacturing plants. The paddy husk was used as fuel whereas use of de-oiled paddy husk as cattle fodder only is exempted from VAT. The AAs while finalising the

assessments between November 2010 and December 2012 did not levy the tax on this purchase of paddy husk or outer covering of paddy used as fuel resulting in non-levy of tax of ₹ 4.30 crore, as shown in the table no. 2.21:

Table No. 2.21

(₹ in lakh)

Sl. No.	Name of the office	Number of dealer	Assessment Year (Month and year of Assessment)	Name of commodity	Value of goods	Rate of tax leviable/levied (per cent)	Tax not levied
1.	JC(CC) CT Etawah at Firozabad	1	2008-09 (February 2012)	Paddy husk used as fuel (Schedule V)	94.30	12.5/0	11.79
2.	DC Sec-16, CT Kanpur	1	2008-09 (December 2011)		149.28	12.5/0	18.66
3.	DC Sec-2, CT Sambhal	1	2007-08 VAT (November 2010)		331.32	12.5/0	41.41
			2008-09 (November 2010)		2697.10	12.5/0	337.14
4.	DC CT Sikandrabad	1	2008-09 (February 2011)	170.37	12.5/0	21.30	
Total		4			3442.37		430.30

After we reported the matter to the Department/Government between August 2012 and May 2013, the Department stated in August 2013 that outer covering of paddy does not contain oil and is covered under Entry No.4 of Schedule-I. We do not agree as de-oiled paddy husk used as cattle fodder is exempted from tax. In these cases the paddy husk was used as fuel and not cattle feed. Hence tax of ₹ 4.30 crore was leviable on this purchase/sale.

¹⁰³ From the assessment files and returns filed by the assesseees.

2.10.7 Short levy of tax on transformer and transformer parts

Goods not mentioned in Schedules I to IV are covered under schedule V and are taxable at the rate of 12.5 per cent with effect from 1 January 2008. Transformer was classified in schedule II and was taxed at the rate of four per cent till 29 September 2008. After this date transformer was omitted from schedule II and was taxable at the rate of 12.5 per cent. Transformer parts and transformer oil is not mentioned in Schedules I to IV.

We observed from the records¹⁰⁴ of five CTOs between December 2011 and November 2012 that in case of five dealers for the period 2007-08 (VAT) to 2008-09, the AAs while finalising the assessments between March 2011 and March 2012, applied incorrect rate of tax on sale of transformer, its parts and

transformer oil of ₹ 5.20 crore during January 2008 to September 2008. This incorrect taxation resulted in short levy of tax of ₹ 44.22 lakh, as shown in the table no. 2.22:

Table No. 2.22

(₹ in lakh)

Sl. No.	Name of the unit	Number of dealer	Assessment year (month & year of assessment)	Name of commodity (Schedule)	Value of goods	Rate of Tax leviable/levied (per cent)	Tax short levied
1.	DC Sec -5 CT, Kanpur	1	2008-09 (March 2012)	Transformer parts and oil (V)	112.91	12.5/4	9.60
2.	DC Sec-6 CT, Jhansi	1	2007-08(VAT) (March 2011)	Transformer parts (V)	30.66	12.5/4	2.61
3.	DC Sec 16, CT Lucknow	1	2007-08(VAT) (March 2011)	Transformer oil (V)	13.42	12.5/4	1.14
4.	DC Sec -6 CT, Meerut	1	2008-09 (February 2012)	Transformer (V)	186.03	12.5/4	15.81
5.	DC Sec -12 CT, Meerut	1	2008-09 (November 2011)	Transformer parts (V)	177.18	12.5/4	15.06
	Total	5			520.20		44.22

We reported the matter to the Department/Government between September 2012 and November 2012. In reply (December 2013) the Department accepted our observation in one case mentioned at Sl. No. 3 of the above table and levied the tax of ₹ 1.14 lakh. Report of recovery and reply in remaining cases has not been received despite several reminders (December 2013).

2.10.8 Short levy of tax on tractor accessories

Goods not mentioned in Schedules I to IV are covered under schedule V and are taxable at the rate of 12.5 per cent with effect from 1 January 2008. Tractor and attachments are classified under Schedule II and taxed at the rate of four per cent. Tractor accessories are not covered in Schedule I to IV.

We observed from the records of three CTOs between September 2012 and October 2012 that in cases of five dealers for the period 2008-09, the AAs while finalising the assessments between July 2011 and March 2012,

¹⁰⁴ Assessment files and returns filed by the assessee.

applied incorrect rate of tax on sale of tractor accessories of ₹ 3 crore. As tractor accessories are not covered in Schedule I to IV, they are to be taxed at the rate of 12.5 *per cent*. We noticed that in the returns/tax invoices submitted by the dealer, the sale/purchase of tractor accessories was clearly mentioned, but the AAs did not take the fact in cognizance. This incorrect application of rate of tax resulted in short levy of tax of ₹ 25.52 lakh as detailed in the table no. 2.23:

Table No. 2.23

(₹ in lakh)

Sl. No.	Name of the office	Number of dealer	Assessment Year (Month and year of Assessment)	Name of commodity (Schedule)	Value of goods	Rate of tax leviable/levied (<i>per cent</i>)	Tax short levied
1.	DC Sec 14, CT Agra	1	2008-09 (July 2011)	Tractor Accessories (V)	15.11	12.5/4	1.28
2.	DC Sec 6, CT Meerut	1	2008-09 (February 2012)		46.71(S)	12.5/4	3.97
		1	2008-09 (January 2012)		99.93(C)	12.5/4	8.49
		1	2008-09 (February 2012)		84.92	12.5/4	7.22
		1	2008-09 (February 2012)		3.69(S)	12.5/4	0.31
3.	AC Sec 8, CT Meerut	1	2008-09 (March 2012)		36.02(C)	12.5/4	3.06
				13.98	12.5/4	1.19	
Total		5			300.36		25.52

We reported the matter to the Department/Government between November 2012 and December 2012, their reply has not been received (December 2013) despite several reminders.

2.10.9 Short levy of tax on paint

Goods not mentioned in Schedules I to IV are covered under schedule V and are taxable at the rate of 12.5 *per cent* with effect from 1 January 2008. Paint is not covered in schedule I to IV. It has judicially been* held that if any goods is used for any specific purpose it is taxable under the specific entry where such goods are classified.

* Hon'ble SC's decision in case of M/s Pyuma Ayurvedic Herbal (P) Ltd. Vs Commissioner, Central Excise.

We observed in two CTOs between February 2013 and March 2013 that in cases of two dealers for the year 2008-09 the AAs while finalising the assessments between October 2011 and February 2012,

applied incorrect rate of tax on sale of paint (powder coating) and paint drier treating them as epoxy resin and mixture of chemicals valued at ₹ 13.78 crore instead of classifying these under Schedule V. This resulted in non/short levy of tax of ₹ 1.17 crore. As powder coating and paint drier are all utilised in paint work and paint is not classified in Schedule I to IV, these items were to be taxed at 12.5 *per cent* and not at four *per cent*. This wrong treatment of powder coating and paint drier resulted in short levy of tax of ₹ 1.17 crore. Details are shown in the table no. 2.24:

Table No. 2.24

(₹ in lakh)

Sl. No.	Name of the office	Number of dealer	Assessment Year (Month and year of Assessment)	Name of commodity (Schedule)	Value of goods	Rate of tax leviable/levied (per cent)	Tax short levied
1.	DC Sec 5, CT Moradabad	1	2008-09 (February 2012)	Paint (Powder coating) (V)	142.57	12.5/4	12.12
2.	JC(CC) 1 Varanasi	1	2008-09 (October 2011)	Paint Drier (V)	1235.25	12.5/4	104.99
Total		2			1,377.82		117.11

We reported the matter to the Department/Government between April 2013 and June 2013. In reply the Department stated in August 2013 that these items are polishing material/mixture of chemicals which is covered under entry 29 of Schedule II A. We do not agree with the reply as entry 29 does not include these items. As paint drier and paint (powder coating) were specifically sold to paint companies¹⁰⁵ used for specific purpose, in light of the aforementioned judicial pronouncement they are unclassified and to be taxed at the rate of 12.5 per cent.

2.11 Non-levy of purchase tax

Under Section 3AAAA of the UPTT Act, every dealer who purchases any goods liable to tax under this Act from any person other than a registered dealer whether or not tax is payable by such person, shall be liable to pay tax on purchase price of such goods at the same rate at which tax is payable on the sale of such goods.

We observed from the records¹⁰⁶ of two CTOs between June 2009 to May 2011 that in the cases of two dealers for the period 2006-07 to 2007-08 (till December 2007), the AAs did not scrutinise the returns

while finalising the assessments between November 2008 and January 2011 and levy tax on purchase of goods from unregistered dealers worth ₹ 1.89 crore. This resulted in non levy of tax of ₹ 8.13 lakh. The details are shown in the table no. 2.25:

Table No. 2.25

(₹ in lakh)

Sl. No.	Name of the unit	No. of dealer	Assessment year (Month & year of assessment)	Name of Commodity	Taxable Turnover	Rate of tax leviable (per cent)	Rate of tax levied (per cent)	Non levy of Tax
1.	DC Sec CT Debai, Bulandshahr	1	2006-07 (November 2008)	Timber	52.79	2.5	0	1.32
2.	DC Sec 8 CT Kanpur	1	2006-07 (October 2010)	Tin Container	96.47	5	0	4.82
			2007-08 (upto December 2007) (January 2011)		39.79	5	0	1.99
Total		2			189.05			8.13

¹⁰⁵ Sold to paint manufacturing co. namely Asian Paints Ltd. (various units), Berger Paints India Ltd. Rajdoot Division Jammu, Kamdhenu Paints (Division of Kamdhenu Ispat Ltd.) Alwar Rajasthan, Monarch Paints, Punjab Paints Colour (P) Ltd. Kanpur, Nerolac Paints Ltd. Kanpur etc.

¹⁰⁶ Assessment order and files related to the dealer.

We reported the matter to the Department/Government between July 2009 and June 2011. The Department accepted (August 2013) our observation fully and levied the tax of ₹ 8.13 lakh. The detail of recovery is awaited (December 2013).

2.12 Non-imposition of Penalty/Interest

The AAs while finalising the assessments, did not notice the offences committed by the dealers i.e. irregular transactions, transactions out of accounts books, transactions against the provisions of the UPTT Act and UPVAT Act and Rules made thereunder etc. Though there are clear cut provisions for imposition of penalties and charging of interest in the Act. The AAs concerned did not initiate action in this regard, resulting in non-imposition of penalty and non-charging of interest amounting to ₹ 11.10 crore as mentioned in the following paragraphs:

2.12.1 Non-imposition of penalty for delayed deposit of tax

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

In 22 CTOs¹⁰⁷ between October 2009 and December 2012, we observed¹⁰⁸ that 27 dealers had not deposited their admitted tax of ₹ 5.49 crore for the period 2006-07 to 2009-10 in time. The delay ranged between four and 844 days. The AAs while finalising the assessment between March 2009 and March 2012 did not impose penalty of ₹ 99.47 lakh in addition to the tax levied.

After we reported these cases to the Department/Government between November 2009 and February 2013, the Department accepted (August 2013) our observations and imposed the penalty of ₹ 79.61 lakh in 12 cases and initiated action in the remaining cases. The details of recovery are awaited (December 2013).

2.12.2 Non-imposition of penalty on concealed turnover/evaded liable tax

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

2.12.2.1 We observed¹⁰⁹ in seven CTOs between July 2009 to June 2012, that during the year 2000-01 to 2007-08 (up to December 2007), seven dealers had concealed sales turnover of ₹ 4.21 crore on which tax amounting to ₹ 37.26

¹⁰⁷ DC Sec 2 Allahabad, JC(CC) Bareilly, DC Sec 3 Bulandshahar, DC Sec 1 Basti, DC Sec 4 Barabanki, DC Sec 3 Etah, JC(CC-A), JC(CC) Range-B, DC Sec 18 Ghaziabad, JC(CC) G. B. Nagar, DC Sec 6 Jhansi, DC Sec 25 Kanpur, JC(CC) Zone-1, DC Sec 5, 14, 15 & 22 Lucknow, DC Sec 2 Maharajganj, DC Sec 3 & 11, AC Sec 9 Noida and DC Sec 12 Saharanpur.

¹⁰⁸ Assessment order and files related to the dealer.

¹⁰⁹ Assessment order and files related to the dealer.

lakh was levied by the AAs between February 2007 and January 2012 but the AAs did not impose even the minimum penalty of ₹ 18.63 lakh. The details are given in the table no. 2.26:

Table No. 2.26

(₹ in lakh)

Sl. No.	Name of Unit	Number of Dealer	Assessment year/ Month and year of Assessment	Concealed Turnover	Tax levied on Concealed Turnover	Minimum Penalty
1.	DC Sec. 1, CT Chandauli	1	2007-08 (upto December 2007) (January 2012)	55.46	2.22	1.11
2.	AC Sec 4, CT Ghaziabad	1	2007-08 (upto December 2007) (August 2011)	32.89	2.63	1.32
3.	AC Sec 29, CT Kanpur	1	2005-06 (July 2010)	207.35	22.81	11.40
4.	DC Sec1, CT Mau	1	2000-01 (February 2007)	5.23	0.57	0.28
			2001-02 (February 2007)	22.14	1.56	0.78
			2002-03 (February 2007)	12.24	1.28	0.64
5.	AC Sec 8, CT Moradabad	1	2000-01 (August 2002)	19.16	1.67	0.84
6.	AC Sec 8, CT Noida	1	2005-06 (April 2010)	31.00	3.10	1.55
7.	DC Sec13, CT Varanasi	1	2000-01 (December 2010)	35.44	1.42	0.71
Total		7		420.91	37.26	18.63

We reported the matter to the Department/Government between September 2009 and July 2012. The Department accepted our observation (December 2013) and imposed penalty of ₹ 25.22 lakh in three cases¹¹⁰ out of which ₹ 1.55 lakh was recovered so far. The Department also initiated action of penalty in two other cases. Reply in the remaining two cases has not been received (December 2013) despite several reminders.

Under Section 54(1) (2) of UPVAT Act, where a dealer has concealed particulars of his turnover or has deliberately furnished inaccurate particulars of such turnover; or submits a false tax return under this Act or evades payments of tax which he is liable to pay under this Act, the AA may direct that such dealer shall, in addition to the tax, if any, payable by him, pay by way of penalty, a sum three times of amount of tax concealed or avoided.

2.12.2.2 We observed from the records¹¹¹ of 44 CTOs¹¹² between August 2011 and March 2013, that 55 dealers concealed purchase and sales turnover of ₹ 23.57 crore during the year 2007-08 (from 1 January 2008 to 31 March 2008) to 2010-11. The AAs while finalising the

assessments between December 2009 and March 2012 levied tax of ₹ 1.09 crore on this concealed turnover. Though the Appellate Authorities had

¹¹⁰ Sl. No. 3, 4 and 7 of the table no. 2.26

¹¹¹ Final assessment orders of dealers, accepted tax deposited by dealers and order of CT appellate authorities.

¹¹² DC Sec 12, AC Sec 16 Agra, DC Sec 5 Aligarh, DC Sec 2 Badaun, DC Sec 4 Barabanki, DC Sec 3 Bareilly, DC Sec 4 Bulandshahar, DC Sec 1, AC Sec 1 Chandauli, DC Sec 1 Faizabad, DC Sec 7, 8 & 18 Ghaziabad, AC Sec 4 Gonda, DC Sec 12 Gorakhpur, DC Sec 1, 12, 16, 17, 18, 28 & 29 AC Sec 1 & 2 Kanpur, AC(Incharge) Kaushambi, AC Sec 16 Lucknow, DC Sec 2 Mahrajganj, AC Sec 5 Mathura, DC Sec 2 Mirzapur, AC Sec 7 & 8 Moradabad, AC Sec 4 Muzaffarnagar, JC(CC) 1, DC Sec 1 Nazibabad, DC Sec 6, 8, 9 & 10, AC Sec 2 & Noida, DC Sec 1 Pratagarh, DC Sec 6 Saharanpur, DC Sec 1 Sonbhadra, DC Sec 8 Varanasi.

confirmed (between December 2010 and September 2012) that the dealers had concealed the turnover/evaded payment of liable tax or the dealers had themselves accepted¹¹³ the same and deposited the tax due on the concealed turnover, the AAs concerned did not impose penalty of ₹ 3.27 crore .

We reported the matter to the Department/Government between September 2011 and May 2013. In reply the Department has accepted (September 2013) our observation and imposed penalty of ₹ 48.58 lakh in 20 cases. Report on recovery in these cases and reply in the remaining cases has not been received (December 2013) despite several reminders.

2.12.3 Non-imposition of penalty on issuance of false declaration

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

We observed¹¹⁴ between November 2009 and July 2011 that two dealers had issued or furnished false declarations by which tax on sale or purchase of ₹ 11.43 lakh was not levied during the years 2002-03 and 2004-05. However, the AAs while

finalising the assessment of these dealers between April 2008 and March 2011, did not impose the minimum penalty of ₹ 5.72 lakh. Details are as shown in the table no. 2.27:

Table No. 2.27

(₹ in lakh)

Sl. No.	Name of the unit	Assessment year (month & year of assessment)	Name of Goods	Turnover	Tax avoided by furnishing false certificate/ Declaration	Minimum penalty leviable
1.	DC Sec 5, CT Mathura	2002-03 (April 2008)	Rodi, Gitti, Badarpur & Sand	42.13	1.88	0.94
2.	JC (CC), CT Robertsganj Sonebhadra	2004-05 (March 2011)	Aluminium Ingots & Ridda Rods	159.25	9.55	4.78
Total				201.38	11.43	5.72

After we reported the matter between December 2009 and September 2011 the Department accepted (August 2013) our point and stated that action on imposition of penalty has been started; ₹ 46,000 has been recovered so far.

¹¹³ In one case of DC Sec3 Bareilly dealer has not appealed the order of AA.

¹¹⁴ From the assessment order and files related to the dealer.

2.12.4 Non-imposition of penalty on delayed deposit and short deduction of works contract tax

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

2.12.4.1 We observed from the assessment orders between September 2011 and August 2012 in 13 CTOs that 13 dealers while making payment to the contractors, deducted works contract tax (WCT) of ₹ 1.44 crore at source, during the years 2005-06 and 2008-09 but did not deposit the same into the Government treasury within the prescribed time. The delay ranged between three and 1285 days. The AAs while finalising

the assessments between March 2009 and April 2012 did not impose the penalty of ₹ 2.88 crore as mentioned in the table no. 2.28:

Table No. 2.28

(₹ in lakh)						
Sl. No.	Name of the office	Number of dealers	Assessment year (Month and year of Assessment)	Amount of tax	Period of delay (in days)	Penalty leviable
1.	DC Sec 2, CT Azamgarh	1	2007-08 (VAT) (March 2011)	4.81	26 to 78	9.61
2.	AC Sec 2, CT Amroha	1	2008-09 (April 2012)	4.17	120 to 181	8.34
3.	DC Sec 12, CT Ghaziabad	1	2007-08 (UPTT) (March 2010)	3.67	117 to 362	7.34
			2007-08 (VAT) (March 2010)	1.88	38 to 98	3.77
4.	AC Sec 16, CT Ghaziabad	1	2008-09 (January 2012)	3.43	7 to 38	6.86
5.	AC Sec 3, CT G.B.Nagar	1	2007-08 (UPTT) (December 2010)	30.68	6 to 421	61.36
			2007-08 (VAT) (December 2010)	11.28	16 to 690	22.56
6.	AC Sec 4 CT Gonda	1	2008-09 (March 2012)	28.18	13 to 115	56.35
7.	JC(CC)-2, CT Kanpur	1	2008-09 (March 2012)	2.32	63 to 275	4.64
8.	DC Sec 12, CT Lucknow	1	2007-08 (VAT) (March 2011)	8.34	13 to 26	16.68
9.	DC Sec 7, CT Lucknow	1	2008-09 (February 2012)	30.83	24 to 94	61.66
10.	AC Sec 8, CT Moradabad	1	2007-08(VAT) (March 2011)	3.49	19 to 1182	6.98
11.	DC Sec 11, CT Noida	1	2007-08(UPTT) (July 2010)	1.10	12 to 23	2.20
12.	AC Sec 3, CT Noida	1	2005-06(UPTT) (March 2009)	1.34	3 to 1285	2.68
13.	AC Sec 1, CT Rampur	1	2008-09 (August 2011)	8.52	17 to 53	17.04
Total		13		144.04		288.07

After we reported the matter to the Department/Government between November 2010 and November 2012, the Department replied (September 2013) that the penalty of ₹ 1.08 crore has been imposed in seven cases¹¹⁵ and action in the remaining cases has been initiated.

2.12.4.2 We observed from the records¹¹⁶ of DC Sector 8 CT, Lucknow in August 2012 that during the year 2008-09, a dealer¹¹⁷ deducted only ₹ 1.39 crore tax at source while making the payment of ₹ 57.29 crore to contractors. As per the provisions of the Act, the tax of ₹ 2.29 crore at the rate of four *per cent* was required to be deducted at source and deposited. The AA while finalising the assessment in March 2012 failed to notice this short deduction of tax at source of ₹ 90.52 lakh. This resulted in short levy of tax of ₹ 90.52 lakh besides penalty.

We reported the matter to the Department/Government in December 2012. The Department has accepted (September 2013) our observation and imposed the penalty of ₹ 1.81 crore, however, details regarding recovery of the short levied tax of ₹ 90.52 lakh has not been furnished. Recovery of penalty and levy of short deposited tax is awaited (December 2013).

2.12.5 Non-imposition of penalty under CST

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

We observed¹¹⁸ in 10 CTOs between August 2009 and September 2012, that during the year 2005-06 to 2009-10, 10 dealers purchased goods valued at ₹ 6.83 crore at concessional rate of tax against declaration in Form 'C' which were not covered by their certificates of registration. The AAs while finalising the assessments between

March 2009 and March 2012 did not scrutinise the Registration Certificate and utilisation details of Form 'C'. As no such deterrent action was taken, penalty of ₹ 99.86 lakh was not imposed. The details are mentioned in the table no. 2.29:

¹¹⁵ At Sl. No. 1, 3, 4, 6, 7, 8 & 12

¹¹⁶ Assessment order and file related to the dealer.

¹¹⁷ Executive Engineer Lucknow Division, Sharda Nahar Lucknow.

¹¹⁸ From the assessment order and files related to the dealer.

Table No. 2.29

(₹ in lakh)

Sl. No.	Name of Unit	No. of dealer	Assessment year/ Month and year of Assessment	Name of the commodity not covered by registration certificate	Amount of purchase	Rate of tax (per cent)	Rate of penalty imposable (per cent)	Penalty imposable
1.	DC Sec 2, CT, Barabanki	1	2006-07 (March 2009)	Yarn	13.30	8	12	1.60
2.	DC Sec 5, CT, Gorakhpur.	1	2007-08 (01.01.08 to 31.03.08) (March 2011)	D.G. Set, Truck ¹¹⁹ Mountec, Batching Plant Bentonite Powder & Tata Tripper(UPTT) Battery	397.02	10	15	56.85
3.	DC Sec 1,CT, Greater Noida	1	2008-09 (March 2012)	Engine and Shuttering Material	7.92	10	15	1.19
				U Jack	3.71	12	18	0.67
				Tiles and Shuttering Material	11.55	12.5	18.75	2.16
4.	D.C.Sec 18,CT, Kanpur	1	2008-09 (March 2012)	Rent on D.G. Set (UPTT)	29.20	10	15	4.38
				Rent on D.G. Set (VAT)	20.86	4	6	1.25
5.	AC Sec 1, CT, Lakhimpur Kheri	1	2008-09 (February 2012)	D.G. Set	11.99	4	6	0.72
6.	DC Sec 19,CT, Lucknow	1	2006-07 (March 2009)	D.G. Set	88.02	10	15	13.20
7.	DC Sec 4,CT, Meerut	1	2008-09 (March 2012)	Hot Mix Plant	23.72	12.50	18.75	4.45
				Air Compressor, Generator JCBBDX Vibrator and Weight Mix Plant	53.63	12.50	18.75	10.05
				Transformer Parts and Accessories	4.66	12.50	18.75	0.87
8.	AC Sec 9,CT,Nodia	1	2007-08 (March 2011)	Diesel Engine Spare Parts and Chemical	0.62	4	6	0.04
				BOPP Tape (VAT)	0.24	4	6	0.01
9.	DC Sec 9,CT, Saharanpur	1	2007-08 (01.01.08 to 31.03.08) (August 2011)	Adhesive/Gum & Shrink Sleeves (VAT)	0.61	12.50	18.75	0.11
				BOPP Tape (UPTT)	0.24	5	7.50	0.02
				Adhesive (UPTT)	0.18	12	18	0.03
				Shrink Sleeves & Plastic Bag (UPTT)	2.29	10	15	0.34
				D.G. Set and Hot Crane Geared Trolley Grinder Base Plate	12.81	10	15	1.92
Total		10			682.57			99.86

After we pointed out these cases to the Department/Government between December 2009 and December 2012, the Department accepted our observation (September 2013) and imposed penalty of ₹ 22.18 lakh in six cases¹²⁰ and stated that action has been initiated in remaining cases.

¹¹⁹ The concession has been claimed for period prior to the period covered under the certificate of registration.

¹²⁰ At Sl. No. 1, 5, 6, 8, 9 and 10.

2.13 Non-levy of entry tax

Under Section 4 of the UP Tax on Entry of Goods Act, 2007, entry tax on value of goods is leviable as per schedule of rates notified by the Government from time to time.

We observed from the records¹²¹ of 22 CTOs¹²² between April 2011 and March 2013 that during 2005-06 to 2009-10, 23 dealers purchased goods worth ₹ 31.17 crore from outside local area. The AAs, while finalising the assessments between March 2010 and May 2012, did not examine the issue that the goods were purchased out of local area on which entry tax was leviable, resulting in non levy of entry tax of ₹ 61.46 lakh.

After we reported the matter to the Department/ Government between May 2011 and May 2013, the Department in his reply¹²³ accepted (September 2013) our observation and stated that entry tax of ₹ 44.30 lakh has been levied in six cases¹²⁴ of seven dealers out of which ₹ 12.05 lakh has been recovered and action has been initiated in one case. Reply in remaining CTOs has not been received (December 2013) despite several reminders.

2.14 Incorrect exemption/concession in CST

2.14.1 Incorrect exemption against Form 'F'

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

From the assessment orders and assessment files of three CTOs we observed between October 2007 and August 2012 that three dealers transferred goods out of State worth ₹ 5.59 crore

during the years 2004-05 and 2008-09 against 23 Form 'F.' In contravention of the Rules, the AAs while finalising the assessments between January 2007 and February 2012 allowed transaction of more than one calendar month on a single Form 'F'. Whereas the transactions covered beyond one month and claimed for concession in same Form 'F' were not eligible for concession. This resulted in incorrect exemption of CST of ₹ 12.53 lakh on transactions of ₹ 1.61 crore as detailed in the table no. 2.30:

Table No. 2.30

(₹ in lakh)

Sl. No.	Name of the unit	Number of dealers	Assessment year (Month & year of assessment)	Name of commodity	Total Value of goods covered by objected Forms	Transaction covered after allowing benefit of month's transaction beneficial to dealer	Rate of tax leviable (per cent)	Irregular exemption allowed to the dealers
1.	DC CT Lalitpur	1	2004-05 (January 2007)	Wheat	14.10	3.60	8	0.29
				Jwar		1.94	4	0.08
2.	DC Sec 5, CT Noida	1	2008-09 (December 2011)	Readymade Garment	169.02	85.57	4	3.42
3.	DC Sec 1, CT Raebareli	1	2008-09 (February 2012)	Asbestos Sheet	375.38	69.90	12.5	8.74
	Total	3			558.50	161.01		12.53

¹²¹ Assessment order and files related to the dealer.

¹²² JC(CC) Etawah, JC(CC), DC Sec 2 G. B. Nagar, JC(CC) A, Range-B, DC Sec 9, 10, 12 & 14 Ghaziabad, DC Sec 2 Gonda, AC Sec 4 Gorakhpur, JC(CC) Jhansi, DC Sec 17 Kanpur, AC Kaushambi, DC Sec 2 Lakhimpurkhiri, DC Sec 4 Mathura, DC Sec 4 Meerut, DC Sec 1 Muzaffarnagar, JC(CC) 1, DC Sec 6 Noida, DC Sec 1 Raebareli, DC Sec 2 Sambhal.

¹²³ In seven CTOs-JC(CC) and DC Sec 2 G. B. Nagar, JC(CC) 1 and DC 9 Ghaziabad, DC Sec 2 Gonda, DC Sec 1 Muzaffarnagar and DC Sec 1 Raebareli involving eight dealers only.

¹²⁴ Sl. No. 2, 3, 4, 6, 18 & 21.

After we pointed out these cases, the Department (August 2013) accepted our observation and stated that action is being taken, and in one case¹²⁵ CST has been levied and recovered. Recovery in other cases is awaited (December 2013).

2.14.2 Incorrect exemption of tax on consignment sale

Under section 6A of the Central Sales Tax Act, read with Rule 12(5) of CST (Registration and Turnover) Rules, a dealer is entitled to exemption on stock transfer of goods to other States, if he furnishes a declaration in form 'F' obtained from the transferee containing complete particulars i.e. central registration number, date of validity, number and date of purchase order etc., at the time of assessment. One Form 'F' may cover transactions of one calendar month only. In case the transaction is not covered by form 'F', tax is leviable at the rate applicable to the sale or purchase of such goods inside the State. Under Rule 45(2) of the UPVAT Act, a dealer has to furnish separate information about consignment sale in monthly return in Form-XXIV. Craft paper is taxable at the rate of four *per cent* under schedule II of the UPVAT Act.

We observed from the records of DC Sector-1, CT, Nazibabad, in March 2013, that during the year 2007-08 (01 January 2008 to 31 March 2008) a dealer had declared consignment sale of craft paper of ₹ 2.97 crore in his monthly return in Form XXIV. At the time of assessment the dealer furnished Form 'F' covering transaction of ₹ 1.99 crore for year 2007-08 (January 2007 to March 2008). Thus, Form 'F' for the transactions of ₹ 98

lakh was not submitted by the dealer. The AA, rather levying tax¹²⁶ of ₹ 3.93 lakh and the interest thereof ₹ 2.95 lakh, allowed the incorrect exemption on the turnover not covered by Form 'F'. This resulted in incorrect exemption of tax and interest of ₹ 6.88 lakh.

We pointed out the matter to the Department/Government in May 2013. Their reply has not been received (December 2013) despite several reminders.

¹²⁵ ₹ 37,000 at Sl. No. 1

¹²⁶ at the rate of four *per cent*

2.14.3 Incorrect exemption on inter-State sale of molasses

Under Section 8(1) of Central Sales Tax (CST) Act, tax on inter-State sale of goods (other than declared goods) covered with Form 'C' is leviable at the rate of three *per cent* from 1 April 2007. Under Section 8(2) of CST Act, tax on sale of goods not covered by declaration in Form 'C' is leviable at the rate applicable on sale or purchase of such goods inside the appropriate State from 1 April 2007. Further, vide notification dated 15.1.2000 tax on sale of molasses is leviable at the rate of 20 *per cent* from 17 January 2000 to 31 December 2007. It has judicially* been held that if the administrative charges are paid, sales under the UPTT Act will be exempted from payment of tax but this exemption is not allowed in case of inter State sale. Further, it has also judicially# been held that provisions of Section 8 (2A) of the CST Act, would be applicable only where the goods are exempt from tax generally and not under some specified condition.

* Hon'ble High Court's decision in the case of M/s Dhampur Sugar Mills Ltd. Dhampur v/s CST Uttar Pradesh.

Hon'ble High Court's decision in the case of CST v/s Mohkampur Tea Garden, STI 2001 All. HC 97

We observed from the assessment files of DC Sector 1, Nazibabad in March 2013 that in case of a dealer for the period 2007-08 (01 April 2007 to 31 December 2007) while finalising the assessment in March 2011 the AA incorrectly granted exemption of tax of ₹ 11.88 lakh on inter-State sale of molasses of ₹ 3.96 crore covered by Form 'C' and ₹ 70 lakh on concealed turnover of ₹ 3.50 crore. This incorrect exemption was allowed by the AA on the basis that administrative charges had been paid by the assessee on it. As exemption on sale of molasses was not general but

conditional¹²⁷, central sale of this does not qualify for exemption in the light of aforesaid decision of Hon'ble High Court. Hence the AA allowed incorrect exemption of ₹ 81.88 lakh.

We reported the matter to the Department/Government in May 2013. The Department has accepted (December 2013) our observation and levied the tax of ₹ 81.88 lakh. Report on recovery has not been received (December 2013).

¹²⁷ That administrative charges have been paid on such molasses.

2.14.4 Incorrect exemption against Form 'H'

Under the provision of Section 5 of CST Act read with Rule 12(10) of CST(R&T) Rules 1957, a sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such exports or is effected by a transfer of documents of title to the goods after the goods have crossed the custom frontier of India with the condition that the declaration shall be in Form 'H' and shall be furnished to the prescribed authority at the time of assessment. Form 'H' is a certificate of export which is issued by the exporter (purchasing dealer) to the selling dealer that goods purchased from him is exported out of India. Further, the terms and conditions for submission of forms only for one quarter applicable to Form 'C' will apply to certificate in Form 'H' also.

We observed from the records¹²⁸ of two CTOs between December 2010 and March 2012 that two dealers for the period 2007-08 (1 April 2007 to 31 December 2007) exported goods valued at ₹ 7.02 crore and each has submitted one Form 'H' for the entire transaction made during the year 2007-08, rather than submit separate form 'H' for each quarter. Out of the total transactions, the transaction of ₹ 1.06 crore pertained to more than one quarter.

The AAs while finalising the assessment between July 2009 and February 2010 incorrectly allowed exemption of tax of ₹ 10.47 lakh as shown in the table no. 2.31:

Table No. 2.31

(₹ in lakh)

Sl. No.	Name of the unit	Number of dealer	Assessment year (month & year of assessment)	Name of commodity	Value of goods covered with form H	Transactions covering more than a quarter	Rate of Tax leviable (per cent)	Tax not levied
1.	DC CT, Kosikala	1	2007-08 (February-2010)	Acid Casin, Lactose, Grade powder	652.19	81.20	8	6.50
2.	AC Sec 4 CT, Moradabad	1	2007-08 (July-2009)	Glass ware	50.20	24.84	16	3.97
Total		2			702.39	106.04		10.47

After we reported the matter to the Department/Government between January 2011 and May 2012, the Department stated (September 2013) that tax of ₹ 10.47 lakh has been levied in both the cases. Report on recovery has not been received (December 2013).

2.15 Non levy of State Development Tax

Under Section 3H of the UPTT Act 1948 read with Commissioner's circular dated 3 May 2005 as applicable from 1 May 2005, State Development Tax (SDT) at the rate of one per cent of taxable turnover shall be levied on a dealer whose annual aggregate turnover exceeds ₹ 50 lakh. The SDT shall be realised in addition to the tax payable under any other provision of this Act.

We observed between October 2008 to July 2012 from the assessment files of 9 CTOs that in cases of 10 dealers whose annual aggregate turnover exceeded ₹ 50 lakh the AAs while finalising the assessments¹²⁹ for the

¹²⁸ From the assessment order and files related to the dealer.

¹²⁹ Between February 2008 and December 2011.

year 2005-06 to 2007-08 (till December 2007), did not levy the SDT on taxable turnover of ₹ 81.21 crore. This omission resulted in non levy of SDT of ₹ 81.21 lakh as mentioned in the table no. 2.32:

Table No. 2.32

(₹ in lakh)

Sl. No.	Name of the unit	Number of dealers	Assessment year (Month and year of assessment)	Taxable turnover	SDT leviable
1.	DC Sec 12, CT, Agra	1	2006-07 (October 2011)	635.35	6.35
2.	AC Sec 5, CT, Ghaziabad	1	2007-08 (March 2010)	111.00	1.11
		1	2007-08 (March 2010)	87.00	0.87
3.	DC Sec 15, CT, Ghaziabad	1	2005-06 (February 2010)	62.89	0.63
4.	DC Sec 9, CT, Gorakhpur	1	2006-07 (September 2011)	96.76	0.97
5.	DC Sec 28, CT, Kanpur	1	2006-07 (December 2010)	143.97	1.44
6.	DC Sec 1, CT, Kanpur	1	2005-06 (February 2008)	6,377.87	63.78
7.	DC Sec 2, CT, Noida	1	2006-07 (December 2011)	170.08	1.70
8.	AC Sec 2, CT, Rampur	1	2006-07 (December 2010)	184.23	1.84
9.	AC, CT, Shikohabad	1	2005-06 (June 2008)	252.08	2.52
	Total	10		8,121.23	81.21

After we pointed these cases to the Department/Government between January 2009 and August 2012, the Department accepted our observation and stated that in six cases (at Sl. No. 1, 2, 3, 5, 6 and 9 of the above table), SDT of ₹ 73.74 lakh has been levied. Report on recovery and reply in the remaining cases has not been received (December 2013) despite several reminders.

2.16 Cases without complete information were deemed assessed

Under Section 24 of the UP Value Added Tax (UPVAT) Act 2008, every taxable dealer shall submit tax return of his self assessed turnover of tax within the prescribed time, form and manner. Under Section 27 of the Act, every dealer who has submitted annual return of turnover and tax, in the prescribed time, form and manner, shall be deemed to have been assessed to an amount of tax admittedly payable him. Rule 45 of the UPVAT Rules 2008 provides that a tax return shall contain the detailed information regarding sale and purchase, search and seizure, tally of goods in trading, computation of taxable purchase/sale and tax payable on purchase/sale, penalty/provisional assessment etc. and result in appeal/writ, input tax credit and reverse input tax credit (ITC/RITC), tax deposited in Treasury/banks etc.

In 88 CTOs¹³⁰, out of 3,718 deemed assessed cases, we test checked 1693 cases in 2012-13 and found that in 12 per cent of these cases for the year 2007-08 to 2011-12, incomplete/inaccurate information¹³¹ was given in the prescribed forms of tax returns submitted by the dealers. Lack of complete information on the turnover of sales or purchases or both does not remain worthy of credence and the amount of tax payable and amount of

input tax credit claimed, both no longer remain credible. Hence, these cases were required to be assessed after proper hearing and examination of books of accounts of the dealer. We noticed that in all these cases the AAs overlooked the missing information in the returns while declaring the cases deemed assessed. Thus, allowance of irregular ITC and short levy of tax could not be ruled out.

We reported the matter to the Department/Government between June 2012 and March 2013. The Department accepted (September 2013) our observation and stated that tax, penalty and interest of ₹ 1.29 lakh has been levied in eight cases¹³² and ₹ 31,096 has been recovered so far. Action has been initiated in 12 cases¹³³ and corrective measures have been taken in the remaining cases.

¹³⁰ AC Sec 11 Agra, DC Sec 11 Aligarh, DC Sec 3 Allahabad, DC Sec 7 CT Allahabad, DC Sec 12 Allahabad, AC Sec 12 Allahabad, DC Sec 2 Amroha, DC Sec 2 Bareilly, AC Sec 1 Bareilly, AC Sec 5 Bareilly, DC Sec 2 Budaun, AC Sec 2 Budaun, AC Sec 1 CSM Nagar Gauriganj, DC Sec 2 CT Etawah, DC Sec 4 Faizabad, AC Sec 5 Faizabad, AC Sec 2 G.B. Nagar, AC Sec 3 G.B. Nagar, DC Sec 5 CT Ghaziabad, DC Sec 6 CT Ghaziabad, DC Sec 7 Ghaziabad, DC Sec 10 Ghaziabad, DC Sec 14 Ghaziabad, AC Sec 5 CT Ghaziabad, AC Sec 6 Ghaziabad, AC Sec 7 Ghaziabad, AC Sec 8 Ghaziabad, AC Sec 10 Ghaziabad, AC Sec 18 Ghaziabad, DC Sec 4 Gonda, DC Sec 1 Gorakhpur, DC Sec 2 Gorakhpur, DC Sec 10 Gorakhpur, DC Sec 12 Gorakhpur, AC Sec 10 Gorakhpur, DC Sec 4 Hapur, DC Sec 2 Hathras, AC Sec 2 Hasanpur, DC Sec 6 Jhansi, DC Sec 15 Kanpur, DC Sec 16 Kanpur, DC Sec 19 Kanpur, DC Sec 28 Kanpur, AC Sec 10 CT Kanpur, AC Sec 15 Kanpur, AC Sec 16 Kanpur, AC Sec 18 Kanpur, AC Sec 27 CT Kanpur, AC Sec 29 Kanpur, AC Sec 30 Kanpur, JC(CC) Lucknow, DC Sec 8 Lucknow, AC Sec 3 Lucknow, AC Sec 15 Lucknow, DC Sec 15 Lucknow, DC Sec 16 Lucknow, DC Sec 17 Lucknow, AC Sec 18 Lucknow, DC Sec 4 CT Meerut, DC Sec 6 Meerut, DC Sec 8 Meerut, DC Sec 9 Meerut, AC Sec 10 Meerut, DC Sec 10 Meerut, AC Sec 8 Meerut, DC Sec 2 Mirzapur, DC Sec 7 Muzaffar Nagar, AC Sec 5 Muzaffar Nagar, CTO Sec 7 Muzaffar Nagar, DC Sec 3 Noida, DC Sec 4 CT Noida, AC Sec 4 CT Noida, AC Sec 6 CT Noida, AC Sec 8 CT Noida, AC Sec 9 Noida, AC Sec 13 Noida, CTO Sec 4 Noida, DC CT Paliakalan, DC Sec 1 Rampur, AC Sec 1 Rampur, DC Sec 4 CT Saharanpur, DC Sec 5 CT Saharanpur, DC Sec 6 CT Saharanpur, DC Sec 1 Sonebhadra, DC Sec 8 CT Varanasi, DC Sec 14 CT Varanasi, DC Sec 15 CT Varanasi, AC Sec 8 Varanasi.

¹³¹ Name, quantity and code of the commodity according to applicable rate of tax, improper calculation of ITC/RITC, improper computation of tax, prescribed columns and annexure of the prescribe forms are incomplete or inaccurate, separate information reg. opening and closing balance etc.

¹³² DC Sector 12 Allahabad, AC Sector 5 Ghaziabad, AC Sector 18 Ghaziabad, DC Sector 4 Gonda, DC Sector 1 Gorakhpur, DC Sector 15 Lucknow, DC Sector 3 and AC Sector 13 Noida.

¹³³ AC Sector 1 Amethi (Gauriganj), DC Sector 4 and 6 Ghaziabad, AC Sector 5 and 7 Ghaziabad, DC Sector 2 Hathras, DC Sector 28 Kanpur, AC Sector 29 Kanpur, AC Sector 8 Meerut, AC Sector 4 Noida, DC Sector 4 and 5 Saharanpur.

2.17 Non- charging of interest

Under section 33(2) of the UPVAT Act 2008, every dealer liable to pay tax is required to deposit the amount of tax into the Government treasury before the expiry of due date. The tax admittedly payable by the dealer, if not paid by the due date, attracts interest at the rate of one and quarter *per cent* per month on the unpaid amount with effect from the day immediately following the last date prescribed till the date of deposit.

2.17.1 We observed from the records¹³⁴ of 14 CTOs between December 2011 and June 2013 that 19 dealers deposited admitted tax of ₹ 1.68 crore during the years 2007-08 (1 January 2008 to 31 March 2008) to 2009-10 with delays ranging between 434 and 1,763 days. Belated payment of admitted tax

attracted interest of ₹ 59.65 lakh upto date of deposit of tax. This was not charged by the AAs at the time of passing the assessment order. The details are mentioned in table no. 2.33:

Table No. 2.33

(₹ in lakh)

Sl. No.	Name of the unit	No. of dealers	Year and Month of assessment	Admitted tax	Period of delay (in days)	Rate of interest per annum	Interest leviable
1.	DC Sec-1 CT, Badaun	1	2008-09 (September 2011)	1.18	1267	15	0.61
				1.88	1185	15	0.91
2.	DC Sec-3 CT, Etah	1	2008-09 (March 2012)	3.50	761	15	1.09
				0.73	844	15	0.25
				1.53	844	15	0.53
3.	DC Sec-4 CT, Faizabad	1	2007-08(VAT) (September 2011)	1.43	1229	15	0.72
4.	DC Sec-4 CT, Firozabad	1	2008-09 (September 2011)	5.28	1338	15	2.47
5.	JC(CC) Zone B, CT Ghaziabad	1	2008-09 (March 2012)	1.81	606	15	0.45
				4.85	1241	15	2.47
6.	AC Sec-4 CT, Ghaziabad	1	2007-08 (UPTT) (June 2012)	0.94	92	14	0.03
			2008-09 (June 2011)		1763	15	0.68
7.	JC(CC) CT, Gorakhpur	1	2007-08(VAT) (March 2011)	3.50	435	15	0.63
8.	DC Sec- 6 CT, Jhansi	1	2008-09 (February 2012)	38.75	966	15	15.39
			2009-10 (March 2013)	75.58	601	15	18.67
9.	DC Sec-2 CT, Kanpur	1	2007-08(UPTT) (March 2010)	3.30	92	14	0.12
			2008-09 (March 2010)		1180	15	1.39
10.	DC Sec-5 CT, Kanpur	1	2007-08(VAT) (September 2011)	11.12	1368	15	6.25
11.	DC Sec-16 CT, Kanpur	1	2008-09 (September 2011)	2.71	1340	15	1.49
12.	DC Sec-14 CT, Lucknow	1	2008-09 (March 2012)	0.43	1360	15	0.24
			2008-09 (March 2012)	0.51	1403	15	0.29
			2008-09 (February 2012)	0.25	1336	15	0.14
			2008-09 (March 2012)	1.12	1426	15	0.64
			2008-09 (March 2012)	3.68	1428	15	2.16
13.	DC Sec-6 CT, Noida	1	2008-09 (February 2012)	2.74	1407	15	1.53
14.	DC Sec-4 CT, Saharanpur	1	2008-09 (February 2011)	1.36	897	15	0.50
Total		19		168.18			59.65

We reported the matter to the Department/Government between January 2012 and March 2013. The Department accepted (December 2013) our observation

¹³⁴ Assessment files and returns filed by the dealers.

and recovered interest of ₹ 18.42 lakh in five cases¹³⁵ raised demand of ₹ 3.76 lakh and action for recovery of interest in seven cases¹³⁶ has been initiated.

2.17.2 Encashment of Bank Guarantee/FDR

2.17.2.1 Non-charging of Interest on encashment of Bank Guarantee/FDR

Under Section 4 of the UP Tax on Entry of Goods Act 2007, amended in 2008 and 2009, entry tax on value of goods is leviable as per schedule of rates notified by the Government from time to time. As per Section 13 of the said Act provisions of Section 33 of UPVAT Act and Section 8 of the UPTT Act, are applicable on all proceedings under UP Tax on Entry of Goods Act 2007. Under Section 33(2) of UPVAT Act and Section 8(1) of UPTT Act every dealer liable to pay tax is required to deposit the amount of tax into the Government treasury before the expiry of due date failing which simple interest at the rate of one and quarter *per cent* per month (14 *per cent* per annum in UPTT period) shall become due and be payable on unpaid amount with effect from the day immediately following the last date prescribed till the date of payment. Order under Section 9(4) of UP Tax on Entry of Goods Act, is separately passed by AA in case of items on which entry tax is leviable.

Legislative competence of Government of UP to levy Entry tax on entry of scheduled goods into local area was challenged in the Hon'ble High Court. The Hon'ble High Court on initial hearing of the matter between October 2007 and May 2010 ordered the dealers to deposit the impugned entry tax in form of Bank Guarantee (BG)/Fixed Deposit Receipts (FDR). The final orders of Hon'ble High Court (December 2011) upheld the competence of Government of UP to

levy the said entry tax. As a consequence of the above orders of the Hon'ble High Court entry tax became leviable/payable and the AAs were required to pass assessment order under Section 9(4) of UP Tax on Entry of Goods Act in cases where impugned entry tax as BG/FDR was deposited.

From the records¹³⁷ of 17 CTOs¹³⁸ between July 2012 and July 2013, we noticed that in cases of 30 dealers, the BG/FDR were encashed by the AAs after the final orders of the Hon'ble High Court.

We noticed that only in five cases,¹³⁹ the AAs concerned levied the interest due ₹ 46.40 lakh, on the belated deposit of entry tax after encashment of the BGs/FDRs. In the remaining 25 cases though the BGs/FDRs were encashed, the interest leviable on the belated deposit of entry tax was not charged by the AAs.

Since the BGs/FDRs were for the entry tax due in the year in question, only the entry tax due was deposited once the BGs/FDRs were encashed. Though the admitted entry tax of ₹ 52.02 crore was deposited in Government treasury after a delay ranging from 20 months 28 days to 55 months seven days, the

¹³⁵ Mentioned at Sl. No. 1,3,6,7 and 8 of the table no. 2.33.

¹³⁶ Mentioned at Sl. No. 2,4,9,10,12,13 and 14 of the table no. 2.33

¹³⁷ Assessment files, demand register

¹³⁸ JC(CC) and DC Sector 10 Aligarh, J C(CC) 1 and 2, DC Sector 6, 7, 9 and 15 Ghaziabad, JC (CC) 1 and 2, DC Sector 6, 14 and 22 Kanpur, JC (CC) 1 Lucknow, DC Sector 1 and 6 Muzaffarnagar, DC Sector 8 Varanasi.

¹³⁹ M/s Whirlpool of India Ltd. and M/s Varun Breweries Ltd. of JC(CC) 1 Ghaziabad, M/s Harsho Steels (P) Ltd of JC (CC) 2 Ghaziabad, M/s International Tobacco Company Ltd. of DC Sector 6 and M/s Mangalam Wires (P) Ltd. of 15 Ghaziabad.

AAs failed to charge interest of ₹ 26.71 crore, on the delayed credit to the Government account as shown in **Appendix-II**.

After we reported the matter to the Department/Government between October 2012 and March 2013, the Department accepted our observation and stated (September 2013) that demand of ₹ 5.90 crore has been raised in 10 cases in seven CTOs¹⁴⁰ and interest of ₹ 34.09 lakh has been recovered in five cases.

2.17.2.2 Non-encashment of bank guarantee/FDR

In records¹⁴¹ of three CTOs between December 2012 and May 2013 that in cases of three dealers; during the year 2008-09 to 2009-10, the BG/FDR deposited by the dealers were to be encashed by the AAs in compliance to orders of Hon'ble High Court while passing the order under Section 9(4) of UP Tax on Entry of goods Act. We noticed that while finalising the cases between March 2011 and January 2012, the AAs gave the benefit of deposit of tax to the dealers but did not encash the BGs and FDRs of ₹ 1.27 crore as well as interest of ₹ 68.46 lakh (as on date of audit). Details are mentioned in table no. 2.34:

Table No. 2.34

(₹ in lakh)

Sl. No.	Name of the unit	No. of dealers	Assessment year (month & year of assessment)	Name of Commodity	Type of document	Value of Goods	Entry Tax Levied	Entry Tax deposited by Challan	Entry tax in the form of BG/FDR	Interest charge able
1.	JC(CC)1 Kanpur	1	2008-09 (January 2012)	Motor vehicle	FDR	1,623.21	16.23	6.62	9.56	6.45
			2009-10 (March 2012)	Motor vehicle	FDR	3,405.85	34.06	0.00	34.09	17.89
2.	JC(CC) Lucknow	1	2009-10 (June 2012)	Cement and High Speed Diesel	BG	3,451.22	77.46	0.00	75.69	39.08
3.	DC Sec 19 Varanasi	1	2008-09 (March 2011)	Soft Coke	BG	526.31	10.52	3.06	7.47	5.04
Total		3				9,006.59	138.27	9.68	126.81	68.46

We reported the matter to the Department/Government between March 2013 and July 2013. The Department accepted (December 2013) our observation and issued recovery certificates for recovery of interest of ₹ 41.82 lakh.

¹⁴⁰ Sl. No. 3, 5, 6, 7, 9, 11 & 13

¹⁴¹ Assessment files and demand register.

2.18 Incorrect allowance of rate of tax

As per entry no. 4(b) the Schedule IV issued under the provisions of Section 4(1) (c) of UPVAT Act 2008, tax on diesel is leviable at the rate of 21 per cent with effect from 1 April 2008 to 7 June 2008, at the rate of 16.16 per cent from 8 June 2008 to 28 January 2009 and 17.23 percent from 29 January 2009 to 31 March 2009. Under entry no. 7(b) of the same Schedule, tax on furnace oil or residue furnace oil is leviable at the rate of 20 per cent upto 29 September 2008 and at the rate of 21 per cent thereafter. Under entry no. 4(a) and 7(a) respectively Manufacturers of only taxable goods are entitled to purchase diesel and furnace oil including residue furnace oil at the concessional rate of tax at four per cent upto 29 September 2008 and 5 per cent thereafter against certificate in Form D, which is prescribed by the Commissioner.

It has judicially* been held that alteration of stone grits or dust from big stones is not the process of manufacturing. Further, as per circular dated 30 March 2007 of Commissioner, processing of *til* (Sesamum) is also not a process of manufacturing.

Further, under Section 54 (1) (11)(i) of the Act, if the AA is satisfied that any dealer issues or furnishes a false or wrong certificate prescribed under the Act, by reason of which a tax on sale or purchase, ceases to be leviable, he may direct that such dealer shall, pay by way of penalty, a sum equal to 50 per cent of value of goods.

* STI 2000 S.C. 53, Uttar Pradesh Vs. M/s Lal Kuwan Stone Crusher Pvt. Ltd.

We observed between June 2012 and March 2013 from the assessment orders and files of respective dealers of three CTOs mentioned below for the assessment year 2008-09 and 2009-10, that the AAs while finalising the assessments of three dealers between February 2011 and March 2012, incorrectly allowed purchases of furnace oil and diesel at concessional rate of tax against form 'D'. This resulted in incorrect allowance of concessional rate of tax of ₹ 41.45 lakh besides penalty.

The concessions in rate of tax were incorrect as the dealer at Sl. No. 1 manufactured tax exempted goods, whereas only manufacturers of taxable goods are entitled for the concessional rate of tax. In the remaining two cases, the products¹⁴² made by the

dealer do not come under the definition of manufacturing.

Details are mentioned in table no. 2.35:

¹⁴² *Til* sand Stone grits respectively.

Table No. 2.35

(₹ in lakh)

Sl. No.	Name of the unit	Number of dealer	Assessment year (month & year of assessment)	Period of purchase	Name of commodity	Value of diesel/FO	Rate of Tax payable/paid (per cent)	Irregular concession of tax availed	Penalty imposable
1.	DC Sec 12 CT, Ghaziabad	1	2008-09 (March 2012)	01.04.2008 to 07.06.2008	Furnace Oil	17.41	20/4	2.78	8.71
				01.04.2008 to 07.06.2008	Diesel	51.88	21/4	8.82	25.94
				08.06.2008 to 29.09.2008		66.94	16.16/4	8.14	33.49
				30.09.2008 to 28.01.2009		23.31	16.16/5	2.60	11.66
				29.01.2009 to 31.03.2009		12.74	17.23/5	1.59	6.37
2.	DC Sec 2 CT, Muzaffarnagar	1	2008-09 (March 2012)	01.04.2008 to 07.06.2008.	Diesel	15.32	21/4	2.60	7.66
				08.06.2008 to 29.9.2008		3.62	16.16/4	0.44	1.81
				30.9.2008 to 28.1.2009		24.41	16.16/5	2.71	12.21
				29.1.2009 to 31-3-2009		12.69	17.23/5	1.55	6.35
3.	DC Sec 1 CT, Nazibabad	1	2008-09 (March 2012)	2008-09	Diesel	44.09	16.16/4	5.36	22.05
			2009-10 (February 2011)	2009-10		39.72	17.23/5	4.86	19.86
Total		3				312.13		41.45	156.11

We reported the matter to the Department/Government between March 2013 and May 2013. The Department has accepted (September 2013) our observation and levied ₹ 7.32 lakh tax and ₹ 28.02 lakh as penalty in the case mentioned at Sl. No. 2 of the above table. Report of recovery and reply in the remaining cases has not been received (December 2013) despite several reminders.

2.19 Turnover escaping assessment

Under Section 4(1) of UPVAT Act, goods mentioned in schedule I are tax free, goods mentioned in Schedule-II are taxable at the rate of four *per cent*, goods mentioned in schedule-III are taxable at the rate of one *per cent* and those mentioned under schedule-IV are taxable at the rate notified by the Government from time to time. Goods not mentioned in any of the above schedules are covered under schedule-V and are taxable at the rate of 12.5 *per cent* with effect from 1 January 2008. Under Section 28 of UPVAT Act the AA has to finalise the assessment after examining the books, accounts and documents kept by the dealer in relation to his business and other relevant records.

We observed from the records of eight CTOs between December 2011 and March 2013 that in case of nine dealers for the period 2006-07 to 2008-09, turnover of sale of ₹ 8.20 crore was disclosed by the dealers in the records submitted to the AAs. The details of turnover which escaped assessment were clear from details¹⁴³ available in the

¹⁴³ Trading and profit and loss account, annual balance sheet, current and previous year's assessment orders etc.

respective assessment files of the dealers and these details were to be examined by AAs at the time of assessment. The AAs failed to detect the same while finalising the assessments between March 2011 and March 2012. This resulted in non-levy of tax of ₹ 79.90 lakh as shown in the table no. 2.36:

Table No. 2.36

(₹ in lakh)

Sl. No.	Name of the unit	Number of dealer	Assessment year (month & year of assessment)	Name of commodity (Schedule)	Value of goods	Rate of Tax leviable/levied (per cent)	Tax not levied
1.	JC(CC) CT, Agra	1	2008-09 (March 2012)	Used Car (II)	12.54	4/0	0.50
2.	DC Sec -7 CT, Agra	1	2007-08 (01.01.08 to 31.03.08) (June 2010)	Automatic Filter and Lubricant Oil (V)	84.65	12.5/0	10.58
3.	DC Sec- 10 CT, Bareilly	1	2007-08 (01.01.08 to 31.03.08) (March 2011)	Car, Truck and Tyre tube of Auto Vehicle (V)	23.25	12.5/0	2.91
4.	DC Sec 4 Firozabad	1	2008-09 (March 2012)	Paint (V)	7.89	12.5/0	0.99
5.	DC Sec -7 CT, Jhansi	1	2007-08 (01.01.08 to 31.03.08) (March 2011)	Battery and Motor Parts (V)	3.39	12.5/0	0.42
				Machinery Parts (II)	5.52	4/0	0.22
		1	2007-08 (01.01.08 to 31.03.08) (March 2011)	Battery and Machinery Parts (V)	10.53	12.5/0	1.32
				Tractor Parts (II)	8.31	4/0	0.33
6.	JC(CC) CT, Lucknow	1	2008-09 (September 2011)	Spare Parts and Lubricants (V)	327.67	12.5/0	40.96
7.	DC Sec -1 CT, Mau	1	2008-09 (September 2011)	Nylon Filament Yarn (II)	198.67	4/0	7.95
8.	DC CT, Modinagar	1	2006-07 & 2007-08 (UPTT) (April 2011)	Dish Antenna & other Electronics Goods	137.16	10/0	13.72
Total		9			819.58		79.90

We reported the matter to the Department/Government between January 2012 and April 2013. The Department has accepted (September 2013) our observation and stated that the tax of ₹ 8.53 lakh has been levied in two cases (Sl. No. 4 and 7) of above table. Report of recovery and reply in the remaining cases has not been received (December 2013) despite several reminders.

2.20 Undue monetary benefit by refund of Tax

Under the provisions of Section 29 of UP TT Act and Section 40 of UP VAT Act an amount of tax, fee, or other dues paid in excess of the amount due from the dealer are refundable to him. Further, it has been judicially held*that if any dealer or any person claiming refund of tax has passed on the burden of tax on other persons, then granting him refund is to enrich him unjustly. The burden of proof is on the dealer.

*Hon'ble Supreme Court's decision in case of M/s Mafatlal Industries Ltd. V. Union of India etc. (1996).

Between August 2011 and December 2012 we examined the assessment orders related to 35 contractors in 20 CTOs¹⁴⁴, and noticed that during the year 2006-07 to 2009-10, in case of 20 dealers the AAs while finalising the assessments between February 2010 and March 2012, adjusted the levied tax against the

¹⁴⁴ AC Sec 14 Allahabad, AC Sec 5 Bareilly, DC Sec 1 Basti, DC Sec 1 Dhampur, AC Sec 8 Ghaziabad, DC Sec 5 Ghaziabad, DC Sec 11, 13, 14 and 22 Kanpur, DC Sec 2, 8, 14, 17, 19, 22 and AC Sec 1 of Lucknow, DC Sec 4 Meerut, DC Sec 2 Muzaffarnagar, AC Sec 2 Saharanpur.

amount of TDS¹⁴⁵ and granted refund of the excess tax of ₹ 71.62 lakh to the dealers. In the light of the judicial pronouncement the AAs were required to ensure before granting tax refund to any dealer that the burden of such tax was not passed on to the other persons and they did not receive undue monetary benefit by such a refund. Only in eight cases¹⁴⁶ the AAs correctly examined the cases and withheld the refund. The details of irregular refund in the remaining 21 cases are mentioned in table no. 2.37:

Table No. 2.37

(₹ in lakh)				
Sl. No.	Name of the unit	No. of dealer	Assessment year (month and year of assessment)	Refund of Tax
1.	AC Sec 14 Allahabad	1	2008-09 (February 2012)	1.13
		1	2008-09 (February 2012)	3.98
		1	2008-09 (March 2012)	1.47
2.	AC Sec 5 Bareilly	1	2006-07 (February 2010)	1.05
3.	DC Sec 1 Basti	1	2008-09 (October 2011)	1.64
		1	2008-09 (October 2011)	2.49
		1	2008-09 (August 2011)	1.24
		1	2009-10 (August 2011)	1.21
4.	DC Sec 1 Dhampur	1	2008-09 (January 2012)	2.91
5.	AC Sec 8 Ghaziabad	1	2009-10 (December 2011)	1.46
6.	DC Sec 5 Ghaziabad	1	2008-09 (November 2011)	2.36
7.	DC Sec 13 Kanpur	1	2008-09 (July 2010)	22.63
8.	DC Sec 14 Kanpur	1	2008-09 (March 2012)	9.25
9.	DC Sec 17 Lucknow	1	2008-09 (March 2012)	1.86
10.	DC Sec 19 Lucknow	1	2008-09 (September 2011)	3.45
11.	DC Sec 4 Meerut	1	2007-08 (December 2010)	0.51
12.	DC Sec 2 Muzaffarnagar	1	2008-09 (October 2011)	5.27
			2009-10 (February 2012)	4.10
13.	AC Sec 2 Saharanpur	1	2008-09 (March 2012)	1.91
		1	2008-09 (May 2011)	0.61
		1	2008-09 (April 2011)	0.47
		1	2008-09 (April 2011)	0.62
	Total	21		71.62

We cross examined from the records¹⁴⁷ of Government Departments / PSUs¹⁴⁸ who gave the contract and found that these contractors had realised tax from the respective Government Departments / PSUs as rates of materials¹⁴⁹ quoted

¹⁴⁵ In one case of DC 14 Kanpur the dealer deposited tax by cash but not showed it in his Profit & loss account as expenditure.

¹⁴⁶ DC Sec 2, 8, 14, 22 and AC Sec 1 of Lucknow, DC Sec 11, 14 and 22 Kanpur.

¹⁴⁷ Extract of contracts/Agreements bond, bills of quantities, letters of intents, running bills etc.

¹⁴⁸ Various divisions of Public Works Department, Rural Engineering Services, Uttar Pradesh Project Corporation Ltd., UP State Industrial Corporation Ltd, Uttar Pradesh Jal Nigam, etc.

¹⁴⁹ Stone ballast, grit, sand, bitumen, cement, bricks, iron and steel etc.

in contracts were inclusive of taxes. Thus, TDS deducted by the respective Government Departments / PSUs was already realised by the contractors from the respective Government Departments / PSUs by including the tax element on price quotations. Hence, as excess tax paid to contractors pertained to the respective Government Departments / PSUs and was not refundable to the contractors as the contractors had passed on the burden of the tax to the respective clients from whom they received the contract. Thus it is construed as undue monetary benefit.

We reported the matter to the Department/Government between October 2011 and March 2013. The Department accepted (December 2013) our observation and reversed the refund order in two cases¹⁵⁰. The Department did not furnish any reply in eight cases¹⁵¹ and stated that action is in progress in other five cases¹⁵². In remaining six cases¹⁵³ the Department stated that after re-examining the cases refund was allowed on the basis of letters received from the clients, affidavits filed by the contractors, and TDS certificates issued by the clients of the contractors. We do not agree with the reply as prior to refund, the terms and conditions of work orders/contracts given to the contractors was not examined by the AAs who relied only on affidavits and letters. Refunds should not been allowed to these contractors as they had not paid the tax from their own accounts, but it was realised from their respective clients.

2.21 Cases of wrong/false claim of ITC

Between August 2011 and March 2013 we examined the assessment orders passed between October 2010 and March 2012 in 56 CTOs focusing on ITC claims. We noticed that in 82 cases the dealers had falsely/wrongly claimed ITC on basis of purchases from non-existing dealers, irregular invoices, rebate and discount received on purchases on which tax was not paid, showing lesser rate of tax commodities as higher rate, tax exempted goods, capital goods, sale to Special Economic Zone (SEZ), etc.

We further noticed that in 27 CTOs¹⁵⁴ the ITC verification as ordered vide VAT Circular Part-2 (08-09)-774/080977/CT dated 31 October 2008 and letter No. JC (SIB/Mu./Sa.Pa./2009 and 10/1593/vanijyakar dated 18 September 2009 was being carried out and as a consequence false/wrong/fraud ITC claims were detected by the AAs and reversal of ITC falsely claimed was done by the AAs. In 41 cases the fake/wrong ITC claimed was not detected by the CTOs concerned. The details of our examination are as follows:

¹⁵⁰ Mentioned at Sl. No. 5 and 10 of the table no. 2.37

¹⁵¹ DC Sector 14 Allahabad (1 dealer), DC Sec 1 Basti (4 dealers), DC Sec 14 Kanpur (1 dealer) DC Sec 17 Lucknow (1 dealer), DC Sec 4 Meerut (1 dealer).

¹⁵² DC Sec 13 Kanpur (1 dealer), AC Sec 2 Saharanpur (4 dealers).

¹⁵³ Of DC Sec 14 Allahabad (2 dealers), AC Sec 5 Bareilly (1 dealer), DC Sec 1 Dhampur (1 dealer), DC Sec 5 Ghaziabad (1 dealer) DC Sec 2 Muzaffarnagar (1 dealer)

¹⁵⁴ JC(CC) CT Agra, DC Sec 12 CT Agra, DC Sec 2 CT Etawah, DC Sec 5, 7, 10 & 19, AC Sec 4 & 11 CT Ghaziabad, DC Sec 29, 20, 14, 18 & 1 CT Kanpur, DC Sec 2 CT, Kanshi Ram Nagar (Kasganj), DC Sec 1 CT, Kasganj, DC Sec 20, 11 & 3, AC Sec 13 CT Lucknow, DC Sec 2 CT, Maharajganj, DC Sec 1 CT, Mathura DC Sec 12 CT Meerut, DC Sec 7 CT Muzaffanagar, DC Sec 8 CT Noida, DC Sec 3 CT Pilibhit and JC (CC) 2 CT Varanasi.

2.21.1 Cases not detected by the AAs

Under Section 13 of UPVAT Act, 2008 read with Rule 24 of UPVAT Rules, 2008 tax paid on purchase of goods from registered dealers against tax invoice or deposited cash on purchase of goods from the unregistered dealers, Input Tax Credit (ITC) is allowed to the extent of the tax paid or payable by the dealer on such sale or purchase. Section 14 of the said Act read with Rules 21, 22, 23 and 25 of UPVAT Rules provide the reversal of the ITC in cases where ITC has been claimed in contravention of the provisions of the Act. Under the provisions of section 54(1) (19) of the VAT Act if the AA is satisfied that any dealer or any other person, as the case may be, falsely or fraudulently claims an amount as ITC, he may direct that such dealer or person shall, in addition to the tax, if any, payable by him, pay by way of penalty, a sum equal to five times of amount of ITC. Further under Section 14(2) of Act if any dealer has wrongly claimed ITC in respect of any goods, benefit of ITC to the extent it is not admissible, shall stand reversed. Where event, giving rise to reverse ITC the dealer shall be liable to pay such amount of Reverse Input Tax Credit (RITC) alongwith simple interest at a rate of 15 per cent per annum for the period ending on the date on which amount has been deposited. Under rule 21(4) of UP VAT Act no credit of amount of input tax in respect of which purchasing dealer has received credit note from the selling dealer, shall be claimed ITC against the provisions of this Act or the rules framed there under or has wrongly claimed input tax credit in respect of any goods, benefit of input tax credit to the extent it is not admissible, shall stand reversed and such amount of RITC shall be deducted from the amount of ITC already claimed by the dealer.

We observed¹⁵⁵ in 35 CTOs¹⁵⁶ that 41 dealers had claimed ITC of ₹ 1.23 crore during the year 2007-08 to 2010-11. The AAs while finalising the assessments between February 2011 and March 2012 did not cross verify the ITC claims of the dealers and allowed falsely and fraudulently claimed ITC of ₹ 1.23 crore. The ITC was claimed on false/ fraudulent grounds such as purchase from non existing dealers, irregular invoices, on capital goods, on tax exempted goods on which ITC was not admissible as these claims were in contravention of the provisions of the Act and Rules. Thus false claim attracts reversal of ITC, penalty and interest of ₹ 8.24 crore as shown in **Appendix-III**.

After we reported the matter to the Department/Governme

nt between August 2011 and April 2013, the Department replied (December 2013) that in six cases¹⁵⁷, ITC of ₹ 5.88 lakh had been reversed and the penalty of ₹ 16.11 lakh was also imposed, out of which, ₹ 7.20 lakh has been

¹⁵⁵ From the assessment order and files related to the dealers.

¹⁵⁶ DC Sec 12 Agra, JC (CC) Agra, DC Sec 2 Azamgarh, JC (CC) A Bareilly, DC Sec 1 Basti, DC Sec 1 Chhatrapati Sahuji Maharaj Nagar (Gauriganj), DC Sec 2 Gautam Buddha Nagar, DC Sec 9, 7, 6 & 4 Ghaziabad, AC Sec 6 Ghaziabad, DC Sec 1 Gonda, DC Sec 5 Gorakhpur, DC Sec 4 Hapur, DC Sec 1 Hardoi, DC Sec 1 Hasanpur, DC Sec 2 Hathras, DC Sec 2 Kannauj, DC Sec 18 Kanpur, DC Sec 12 Kanpur, AC Sec 9 Kanpur, DC Sec 20 Lucknow, DC Sec 18 Lucknow, DC Sec 17 Lucknow, AC Sec 21 Lucknow, AC Sec 18 Lucknow, AC Sec 15 Lucknow, AC Sec 8 Lucknow, DC Sec 8 Meerut, DC Sec 4 Meerut, DC Sec 1 Padrauna (Kushinagar), DC Sec 1 Raebareli, DC Sec 4 & 1 Varanasi.

¹⁵⁷ DC Sec 1 Amethi, DC Sec 2 Gautam Budh Nagar, DC Sec 6 & 7 Ghaziabad, DC Sec 4 Hapur and DC Sec 1 Hardoi.

recovered so far. Reply in remaining cases has not been received (December 2013) despite several reminders.

2.21.2 Non-levy of interest/penalty

We observed¹⁵⁸ in 27 CTOs¹⁵⁹ that in cases of 32 dealers AAs while finalising the assessments between October 2010 and June 2012, cross verified the ITC claims of the dealers and found that the dealers had fraudulently claimed ITC of ₹ 71.70 lakh. While the AAs reversed the ITC we noticed that they neither charged interest of ₹ 47.79 lakh nor imposed penalty of ₹ 3.59 crore as shown in **Appendix-IV**.

We reported the matters to the Department/Government between August 2011 and April 2013. Reply has not been received (December 2013) despite several reminders.

2.21.3 Incorrect claim of ITC on goods purchased showing wrong rate of tax

Under Section 13 of UPVAT Act, 2008 read with Rule 24 of UP VAT Rules, 2008 ITC to the extent provided under the relevant clauses of the said Act and Rules, is allowed on tax paid or payable by a registered dealer on purchase of taxable goods from within the State subject to certain conditions and restrictions for resale or use in manufacture of goods intended to resale. Rate of tax applicable to each commodity is prescribed under Schedule I to V of the Act.

In eight CTOs 10 dealers falsely claimed ITC on purchases of ₹ 4.76 crore at the rate of 12.5 per cent. These items are mentioned in Schedule II of the UPVAT Act and rate of tax applicable is four per cent. The AAs while finalising the assessments between

March 2011 and March 2012 did not notice this fact and without any cross verification and thorough examination that dealers were claiming ITC at the rate of 12.5 per cent on the goods taxable at the rate of four per cent allowed the excess inadmissible ITC to the dealers. This false claim attracts reversal of ITC, penalty and interest of ₹ 2.69 crore as detailed in the table no. 2.38:

Table No. 2.38

(₹ in lakh)

Sl. No.	Name of Units	No. of dealer	Assessment year (month and year of assessment)	Name of goods (Schedule)	Value of goods	Rate of tax applicable/wrongly applied	Amount of ITC not reversed	Penalty imposable	Interest chargeable
1	JC(CC) CT, Etawah	1	2008-09 (March 2012)	Aluminium Wire and Copper Wire (II)	45.37	4/12.5	3.86	19.28	2.03
2	DC Sec 4 CT Ghaziabad	1	2008-09 (November 2011)	Pump (II)	7.84	4/12.5	0.67	3.33	0.45
3	DC Sec 7 CT Ghaziabad	1	2008-09 (March 2012)	Duplex Paper (II)	31.32	4/12.5	2.66	13.30	1.80
		1	2008-09 (March 2012)	Copper cable scrap (II)	4.72	4/12.5	0.40	2.00	0.27

¹⁵⁸ From the assessment order and files related to the dealer.

¹⁵⁹ JC(CC) Agra, DC Sec 12 Agra, DC Sec 2 Etawah, DC Sec 5, 7, 10 and 19, AC Sec 4&11Ghaziabad, DC Sec 1, 14, 18, 20 & 29, Kanpur, DC Sec 2,Kanshi Ram Nagar (Kasganj), DC Sec 1,Kasganj, DC Sec 3, 11 & 20, AC Sec 13 Lucknow, DC Sec 2, Maharajganj, DC Sec 1,Mathura, DC Sec 12 Meerut, DC Sec 7 Muzaffanagar, DC Sec 8 Noida, DC Sec 3 Pilibhit and JC (CC) 2 Varanasi.

Sl. No.	Name of Units	No. of dealer	Assessment year (month and year of assessment)	Name of goods (Schedule)	Value of goods	Rate of tax applicable/wrongly applied	Amount of ITC not reversed	Penalty imposable	Interest chargeable
4	DC Sec 1 Gautam Buddha Nagar	1	2008-09 (March 2012)	Packing boxes, chemical (II)	6.05	4/12.5	0.51	2.57	0.34
		1	2008-09 (March 2012)	Chemical and hose pipe (II)	6.18	4/12.5	0.52	2.62	0.35
5	DC Sec 2 Gautam Buddha Nagar	1	2008-09 (March 2012)	Copper, packing material (II)	337.09	4/12.5	28.66	143.30	19.34
6	DC Sec 3 Gautam Buddha Nagar	1	2008-09 (December 2011)	PU foam (II)	32.55	4/12.5	2.77	13.83	1.87
7	DC Sec 4 Moradabad	1	2007-08 (March 2011)	Iron ware (II)	2.64	4/12.5	0.22	1.12	0.16
8	DC Sec 2 Hasanpur	1	2008-09 (March 2012)	Ice cream (II)	2.14	4/12.5	0.18	0.91	0.12
Total		10			475.90		40.45	202.26	26.73

We reported the matter to the Department/ Government between May 2012 and July 2013. The Department has accepted (September 2013) our observation and stated that penalty of ₹ 18.64 lakh has been imposed and ITC of ₹ 3.73 lakh has been reversed in two cases (Sl. No. 2 and 3). Reply in the remaining cases has not been received despite several reminders (December 2013).

2.22 Non-confirmation of deposit of tax

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

During audit of five CTOs between March 2011 February 2013 we noticed from the assessment files of the dealers that 17 dealers had received ₹ 110.56 crore of medicines from outside UP, free of cost as a part of a scheme¹⁶⁰

of the manufacturers for selling their medicines. These dealers had paid no tax on these free medicines as they came under category of discounts in kind¹⁶¹. These dealers then passed on the free medicines valued at ₹ 110.61 crore to their retail/wholesale dealers alongwith taxable medicines.

We also cross checked details and examined the assessment files of these purchasing retail/wholesale dealers and noticed that they did not disclose this free medicine received in their respective tax returns¹⁶² pertaining to receipt/purchases. Moreover, we noticed that the orders of the CCT dated 25 September 2012¹⁶³ to ascertain the realisation and deposit of tax on such

¹⁶⁰ Scheme of the drug manufacturers under which certain quantity of medicines is given free of cost to the distributors/retailers on purchase of medicines.

¹⁶¹ As decided by Hon'ble High Court Allahabad in 2003.

¹⁶² Annexure A as part of the monthly/annual return submitted to their CTO's.

¹⁶³ Audit-Mahalekhakar-2012-13/1551/Vanijyakar.

transactions were not followed by the CTOs, only in the case of DC Sector 5 Noida, letters were issued to various CTOs to ascertain the same. Due to non-verification of these transactions, the remittance of tax of ₹ 4.42 crore could not be ascertained and levied alongwith due interest and penalty on non disclosure of turnover under Section 33(2)¹⁶⁴ and 54 (1)(2)¹⁶⁵ of U.P. VAT Act.

The details are mentioned in the table no. 2.39:

Table No. 2.39

(₹ in lakh)

Sl. No.	Name of the unit	Name of dealer	Assessment year (Month & year of assessment)	Name of Commodity	Taxable Turnover	Cost of medicines distributed as free Bonus	Tax effect on free bonus (at the rate of four per cent)
1	JC (CC) 1, Lucknow	M/s Elcame Laboratories Ltd. C-31 Transport Nagar Lucknow	2008-09 (February 2012)	Medicines	12,379.77	788.11	31.50
		M/s Lupin Ltd. E-207 Transport Nagar Lucknow	2008-09 (February 2012)	Medicines	16,080.13	937.00	37.48
		M/s Cipla Ltd. C-27 Transport Nagar Lucknow	2008-09 (September 2011)	Medicines	20,986.84	3797.12	151.88
		M/s Ranbaxy Laboratories Ltd. Gagan Palace Bagh No. 2 Lucknow	2008-09 (November 2011)	Medicines	12,384.27	4019.82	160.79
		M/s Allembic Ltd. 35 Havelak Road Lucknow	2008-09 (March 2012)	Medicines	6,838.64	634.20	25.37
2	DC Sec 9 Lucknow	M/s Sind Drug Distributors 67 Vijay nagar Krisna Nagar Lucknow	2008-09 (May 2011)	Medicines	690.02	41.99	1.68
		M/s Punjab Formulation Ltd. E-104 Transport Nagar Lucknow	2008-09 (August 2011)	Medicines	618.13	29.08	1.16
		M/s Sentoor Pharmaceuticals Ltd. E-323 Transport Nagar Lucknow	2008-09 (November 2011)	Medicines	604.56	77.08	3.08
		M/s Panasia Biotech Ltd. Bagh No. 2 Lucknow	2008-09 (November 2011)	Medicines	1,275.63	25.64	1.03
		M/s Indico Remedies Ltd. E-132 Transport Nagar Lucknow	2008-09 (October 2011)	Medicines	1,332.10	159.49	6.38
		M/s Almet Health Care Pvt. Ltd. C-516 Transport Nagar Lucknow	2009-10 (December 2011)	Medicines	159.68	60.07	2.40
		M/s S.S. Biotech 565-566 Vishwamitra Complex Lucknow	2008-09 (January 2012)	Medicines	174.61	32.99	1.32
		M/s Mapra. Laboratories Pvt. Ltd. E-3/10 Transport Nagar Lucknow	2008-09 (May 2011)	Medicines	443.63	56.33	2.25
		M/s Pfizer Products (E) Pvt. Ltd. C-43 Transport Nagar Lucknow	2008-09 (January 2012)	Medicines	1,080.94	12.59	0.50

¹⁶⁴ Under Section 33(2) of the UPVAT Act 2008, every dealer liable to pay tax is required to deposit the amount of tax into the Government treasury before the expiry of due date. The tax admittedly payable by the dealer, if not paid by the due date, attracts interest at the rate of one and quarter per cent per month on the unpaid amount with effect from the day immediately following the last date prescribed till the date of deposit.

¹⁶⁵ Under Section 54(1)(2) of UPVAT Act, where a dealer has concealed particulars of his turnover or has deliberately furnished inaccurate particulars of such turnover; or submits a false tax return under this Act or evades payments of tax which he is liable to pay under this Act, the AA may direct that such dealer shall, in addition to the tax, if any, payable by him, pay by way of penalty, a sum three times of amount of tax concealed or avoided.

Sl. No.	Name of the unit	Name of dealer	Assessment year (Month & year of assessment)	Name of Commodity	Taxable Turnover	Cost of medicines distributed as free Bonus	Tax effect on free bonus (at the rate of four per cent)
3	DC Sec 2 Lucknow	M/s Concept Pharmaceuticals Ltd. 35 Havlak Road Lucknow	2007-08(UPVAT) (March 2011)	Medicines	163.56	18.70	0.75
4	DC Sec 5 Noida	M/s Martin And Harris Pvt. Ltd. ShriJi Complex Sharma Market C-5 Noida	2008-09 (February 2012)	Medicines	2,290.97	217.31	8.69
5	DC Sec 5 Meerut	M/s Blue Cross Laboratories Ltd. 38-A Papple Street, Meerut	2008-09 (September 2010)	Medicines	1,558.07	153.97	6.16
Total		17			79,061.55	11,061.49	442.42

As these free medicines were also marked with maximum retail price inclusive of tax, the distribution of free medicines to wholesale/retail dealers is a disguised sale while being kept out of the tax net, as they are not shown in the Annexure 'A' filed with the monthly and annual tax returns by the wholesale/retail dealers.

As a case study we would like to indicate the dealer¹⁶⁶ at Sl. No. 4 of the table above assessed by JC (CC)1 Lucknow who had shown giving of free medicines of ₹ 13.52 crore to a subsequent dealer¹⁶⁷ registered in DC Sector 9 Lucknow. This subsequent dealer had however shown a total turnover of only ₹ 12.50 crore in his returns, which clearly indicates that the free medicines of ₹ 13.52 crore were not taken in the account.

Despite this being pointed out in the Reports of the Comptroller and Auditor General of India for the year ending 31 March 2010 and 31 March 2012, the Department has not made a workable mechanism to ascertain the realisation and deposit of tax on such transactions. Only in one case of JC (CC) 1, Lucknow we found that the AA disallowed the issue of medicine as free bonus and levied the tax.

We reported the matter to the Department/ Government between December 2011 and April 2013. In reply Department stated in August 2013 that medicines given by selling dealers to purchasing dealers as free bonus do not come in the ambit of sale, turnover, sale price as per definitions under Section 2 of UPTT Act and UPVAT Act. Further under various judicial pronouncements quantity discounts and supply of free medicines is not covered under definition of sale. As no valuable consideration was received in supply of medicines, no tax was leviable on this transaction.

The Department has not replied to our observation which was on not developing a workable mechanism to ascertain the realisation and deposit of tax on such transactions. In our cross checking and examination of assessment files¹⁶⁸ of subsequent purchasers from these 17 dealers, we found that in 86 cases the subsequent purchasers did not disclose, in their VAT returns, the free medicines received by them hence no further tracking of the free medicines was possible.

¹⁶⁶ Ranbaxy Laboratories Ltd., Gagan Palace Bagh No. 2, Kanpur Road, Lucknow.

¹⁶⁷ M/s Soar Pharmacia Pvt Ltd., Kanpur Road, Lucknow.

¹⁶⁸ In 22 CTOs.

We recommend that Government may consider developing a mechanism to ascertain the realisation and deposit of tax on such transactions on the lines of the orders of CCT, Karnataka.¹⁶⁹

2.23 Irregular Grant of Central Registration Certificate

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

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

While checking the records of the office of the JC(CC) CT, Zone 2 Varanasi with headquarters at Sonebhadra (September 2012) we observed that a dealer¹⁷⁰ was granted Central Registration Certificate (CRC) in March 1985 (amended in March 1998), for purchase of material for use in generation or distribution of electrical energy. The CRC also included purchase of cement and batteries which are not used for generation or distribution of electrical energy. The

dealer purchased cement and batteries of ₹ 61.93 lakh during the year 2007-08 and 2008-09 and claimed CST at concessional rate (three per cent for 2007-08 and 2008-09 up to 31 May 2008) on this purchase.

Since the dealer was engaged in business of generation and distribution of electrical energy, and cement and batteries are not a raw material/processing material used in generation of the said electricity. The facility of Form 'C' to a manufacturer is only for purchase of those goods which are used by him in the manufacture or processing of goods intended for sale. The authorisation to purchase cement given by AA under the CRC was in contravention of the provisions of the Act as well as orders of the CCT. The AA did not detect the error while passing the assessment orders for the year 2008-09 in March 2012. This omission of AA resulted in undue benefit to the dealer to the extent of ₹ 5.78 lakh.

We reported the matter to the Department/Government in November 2012. The Department accepted (August 2013) our observation regarding cement but on purchase of batteries stated that these are used in generators which are integral parts of plant and machinery. We do not agree with the reply as the

¹⁶⁹ In Karnataka the CCT has issued a circular No. CLR.CR.149/05-06 dated 28 June 2006 clarifying that in case a dealer who supplies free samples of medicines to the purchasers alongwith other medicines that are sold such a manufacturer/importer/wholesaler may opt to pay tax on MRP of free samples supplied to retailers who are permitted to sell them for a consideration, even though no consideration is received by him from the retailer, and such tax charged on free samples supplied will be eligible for input tax credit at the hands of retailer.

¹⁷⁰ M/s Central Finance Account and Budget Organisation, ATPS, Anpara, Sonbhadra.

batteries were not categorized as part of plant and machinery in the list attached to CRC of the dealer which is a Thermal Power Plant.

2.24 Non-verification of Input Tax Credit despite orders

Section 13 of the UPVAT Act prescribes certain conditions to claim input tax credit by the dealers and its adjustment against the payable tax. Commissioner, Commercial Tax, UP also issued between October 2008 and September 2009 instructions in the larger interest of revenue regarding verification of Input Tax Credit by AAs and maintenance of a database regarding the same. All the Deputy Commissioners were required to ensure that hundred *per cent* verification of the Annexure-A (purchase list) with the Annexure-B (Sale list) was done for top 20 dealers who claimed the highest ITC and a database created¹ by feeding the above details using either an outsourced agency or Departmental employees. Apart from this *cent per cent* checking and verification was also to be done of cases covered by a random statistical method.

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

During the test check (2012-13) for the period 2007-08¹⁷¹ to 2010-11, we observed that:

- For 122 dealers of 38¹⁷² CTOs, AAs passed the assessment orders where ITC of ₹ 13.07 crore was adjusted with their payable tax without any attempt to verify the ITC claims.
- For 122 dealers pertaining to 39¹⁷³ CTOs, AAs passed the assessment orders where ITC of ₹ 23.33 crore was adjusted with their payable tax but the instructions given for verification were not followed.

AAs passed the orders for the adjustment of ITC worth ₹ 36.40 crore without getting the same verified.

We reported the matter to the Department/Government between May 2012 and January 2013. The Department stated in August 2013 that due to huge volume of returns, in-sufficient infrastructure, shortage of fund and other constrains,

¹⁷¹ 1 January 2008 to 31 March 2008.

¹⁷² DC: Sec 7 Allahabad, Sec 12 Agra, Sec 2 Ambedkar Nagar, Sec 2 Amroha, Sec 1 Auraiya, Sec 1 Basti, Sec 1 & 2 Chandauli, Sec 1 Deoria, Sec 1 Dhampur, Sec 1 Fatehgarh, Sec 4 Firozabad, Sec 6, 7 & 8 Ghaziabad, Sec 2, 4, 8, 10 & 13 Lucknow, DC Mahoba, Sec 2 Moradabad, Sec 3 Orai, Sec 8 & 10 Varanasi.
AC: Sec 12 Allahabad, Sec 1 Aligarh, Sec 5 Bareilly, Sec 1 Chandauli, Sec 1 C.S.M. Nagar, Sec 2 & 3 G. B. Nagar, Sec 5, 6 & 7 Ghaziabad, Sec 10 Kanpur, Sec 4 & 20 Lucknow.

¹⁷³ JC (CC) II Varanasi.

DC: Sec 22 Agra, Sec 1 & 2 Chandauli, Sec 1 Dhampur, Sec 2 Etawah, Sec 4 Faizabad, Sec 1 Fatehgarh, Sec 4 Firozabad, Sec 6 Ghaziabad, Sec 12 Gorakhpur, Sec 4 Gonda, Sec 15, 21, 24 & 25 Kanpur, Sec 2, 8, 10, 11, 12 & 22 Lucknow, Sec 9 Meerut, Sec 3 Orai, Sec 5 Saharanpur, Sec 1 Unnao, Sec 15 Varanasi,
AC: Sec 18 & 19 Agra, Sec 1 Aligarh, Sec 5 Bareilly, Sec 2 Budaun, Sec 12 Gorakhpur, Sec 22 Kanpur, Sec 1, 2, 4 & 22 Lucknow, Sec 10 Meerut.

cross verification of ITC claims cannot be done in the desired way. However, the Department is cross checking the ITC claims on the basis of random numbers and several cases of incorrect/false claims have been detected.

2.25 No provision for tax on sale of textiles

The Central Act 58 of 1957 was enacted to provide for the levy and collection of additional duties of Excise on certain goods like sugar, tobacco, mill made textiles, etc. The States get their share from duties so collected and hence they do not levy Sales Tax on it.

Vide Notification No. 11/2006-Central Excise dated 1 March 2006 had withdrawn the additional duties of excise (goods of special importance) Act, 1957. Consequently, vide notification No.KA.NI.-993/XI-9 (94)/07-UP, Act-15-48-Order-(04)-2007 Lucknow dated 30 May 2007 all types of un-manufactured tobacco, tobacco refuse etc. was made taxable at the rate of 32.5 per cent under the Uttar Pradesh Trade Tax Act, 1948 and subsequently in UPVAT Act, at the rate of four per cent.

No provision for levy of UPTT/VAT was made in sale/purchase of textiles, while Government has been authorised to levy the tax but till date no such notification has been issued.

We examined the revenue implication of non levy of UPTT/VAT on sale/purchase of mill made textiles after the withdrawal of the additional duties of excise on goods of special importance. We examined (between April 2012 and March 2013) assessment orders of 27 dealers of textiles from 13 CTOs¹⁷⁴, pertaining to the year 2006-07 to 2009-10 and found that sale turnover of the textiles of ₹ 369.73 crore no VAT was levied by Government.

Levy of tax at the rate of 4 per cent would have led to realisation of ₹ 14.79 crore, only in case of these 27 dealers which would help recoup the shortfall towards the sharable revenues caused by the withdrawal of the levy of additional excise duty on the same. This would be much higher if worked out for all such dealers of the State. Since the additional excise duty on textile was withdrawn from 01 March 2006, it is evident that there has been a shortfall in sharable revenue of State and the Government should consider levy of tax on sale of mill made textiles.

After we reported the matter to the Department/Government in February 2013; the Department replied in August 2013 that this is the privilege of State Government to decide rate and taxability of any commodity. The reply of Government is awaited (December 2013) despite several reminders.

We recommend that Government may consider levy of tax on sale of textiles in view of the withdrawal of the additional duties of excise of the same, on lines of other States like Andhra Pradesh, Odisha, Rajasthan and Tamil Nadu.

¹⁷⁴ DC Sec 11 Agra, DC Sec 12 Ghaziabad, DC Sec 2 Kanpur, AC Sec 6 & 10 Lucknow, CTO Sec 8, AC Sec 8, AC Sardhana Mandal, AC Sec 10, 13 Meerut, DC Sec 1, 4 and AC Sec 2 Noida.