CHAPTER-II

Taxes / VAT on Sales, Trade etc.

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Taxes / VAT on Sales, Trade etc.

2.1 Tax administration

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

2.2 Internal Audit

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

2.3 Results of Audit

In 2013-14, test check of the assessment files, refund records and other connected documents of the Commercial Taxes department showed underassessment of sales tax and other irregularities involving ₹ 494.06 crore in 1,476 cases which fall under the following categories as given in **Table - 2.1.**

Table – 2.1

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
1	Audit of "Refunds of tax made to Works Contractors"	1	131.62
2	Audit of "Arrears of Revenue under VAT/Sales Tax''	1	9.56
3.	Excess Input Tax allowed	182	34.57
4.	Non-levy/Short levy of Interest and Penalty	150	47.28
5.	Short levy of tax on works contract	103	29.06
6.	Excess authorization of refunds	15	8.01
7.	Incorrect exemption of taxable turnover	247	57.53
8.	Short levy of tax due to application of incorrect rate of tax	260	46.75
9.	Under-declaration of VAT	159	38.43
10.	Other irregularities	358	91.25
	Total	**1476**	**494.06**

During the year, Department accepted under-assessments and other deficiencies of ₹ 164.52 crore in 703 cases, including ₹ 43.55 crore of 488 cases which were pointed out in audit during the earlier years. An amount of ₹ 1.26 crore was realized in 95 cases during the year 2013-14.

Audit of "Refunds of tax made to Works Contractors" involving ₹ 131.62 crore, audit of "Arrears of Revenue under VAT/Sales Tax" involving ₹ 9.56 crore and a few illustrative cases involving ₹ 36.89 crore are discussed in the following paragraphs:

Audit observations

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

2.4 Audit of Refunds made to works contractors

2.4.1 Introduction

Andhra Pradesh Value Added Tax (AP VAT) Act, 2005 was introduced with effect from 1 April 2005, replacing the erstwhile Andhra Pradesh General Sales Tax (APGST) Act, 1957. Credit for tax paid on purchases i.e., input tax credit (ITC) was introduced in the VAT Act. The system of annual assessment was done away with and a system of audit of dealers selected based on various parameters prescribed in the department VAT Audit manual (Manual) was introduced instead.

According to Section 38 of the AP VAT Act, all VAT dealers whose ITC is in excess of output tax due are entitled to claim refund subject to the conditions prescribed. In Rule 59(1) (12) of AP VAT Rules, following delegation of powers has been prescribed for authorizing refunds.

Authority	Powers to authorize refunds
Commercial Tax Officer (CTO)	In cases where the amount determined to be refunded does not exceed ₹ 50,000.
Assistant Commissioner (Commercial Taxes) {AC(CT)}	In the case of LTU dealers where the amount determined to be refunded does not exceed ₹ two lakhs.
Deputy Commissioner (Commercial Taxes) {DC(CT)}	In cases where the amount determined to be refunded does not exceed ₹ 10 lakhs.
Joint Commissioner (JC)/ Additional Commissioner(AC) (CT)	In cases where the amount determined to be refunded exceeds ₹ 10 lakhs.

As per Para 6 (3)(d) of the VAT Audit Manual of Commercial Taxes Department, the Commercial Tax Officer (CTO)/Assistant Commissioner (AC){Large Taxpayers' Unit (LTU)} should monitor all refund returns and select cases requiring audit in accordance with the guidelines prescribed.

"Works Contract" as defined under Section 2(45) of AP VAT Act, includes any agreement for carrying out, for cash or for deferred payment or for any other valuable consideration, building construction, manufacture, processing, fabrication, erection, installation, laying, fitting out, improvement,

modification, repair or commissioning of any movable or immovable property. The taxable event, taxability and calculation of tax are all dealt with under Section 4 of the Act read with Rule 17 of APVAT Rules.

2.4.2 Objectives, Scope and Methodology

The audit was taken up to check whether the procedure prescribed for authorizing refunds of taxes to the works contractors and verifying their claims was properly followed.

Observations made during the scrutiny of 70 out of 99 cases in respect of works contractors involving refund of more than ₹ 10 lakhs authorized during 2011-13 and certain procedural lapses noticed in nine DC(CT)s[3] and 52 circle offices[4] have been included in this report.

Audit findings

2.4.3 Non verification of ITC refund claims

As per circular instructions[5] issued (June 2009) by Commissioner of Commercial Taxes (CCT), the claim for refund has to be verified by the CTO concerned before submission of file to JC (CT)/DC (CT) for authorization of refund. The CTO is required to ensure that the claim of ITC refund on purchases made by a dealer has been cross verified with the records of the selling dealers by the respective officers of the Commercial Taxes Department, under whose jurisdiction the selling dealers are registered.

Audit noticed (between November 2013 and March 2014) in two DC (CT) offices[6] and 11 circles[7] that during the period 2011-12 and 2012-13, ITC refunds amounting to ₹ 15.08 crore in 42 cases of works contractors were authorized. Though references for cross verification of ITC claims were sent to respective jurisdictional authorities, verification reports were received only in nine cases for an amount of ₹ 1.40 crore against the total amount of ₹ 1.60 crore involved. In remaining 33 cases, ITC claims of ₹ 13.48 crore were admitted and refunds authorised without any cross verification of the purchase details with the records of the selling dealers as no verification reports were received.

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3 Abids, Begumpet, Hyderabad (Rural), Nellore, Punjagutta, Saroornagar Secunderabad, Vijayawada-I and Warangal.

4 Aghapura, Ashoknagar, Autonagar, Balanagar, Basheerbagh, Benz Circle, Dabagardens, Dwarkanagar, Gajuwaka, Gandhinagar, General Bazar, Hindupur, Hyderguda, Jagannaikpur, Jeedimetla, Jubilee Hills, Kadapa-I, Kadapa-II, Khairtabad, Kurnool-II, MG Road, Machilipatnam, Madhapur, Mahankali Street, Mahboobnagar, Maharajgunj, Malakpet, Mangalagiri, Miryalaguda, Nacharam, Nampally, Nandyal-II, Nellore-II, Nellore-III, Peddapally, Proddutur-I, Punjagutta, Rajampet, Rajendranagar, Ramgopalpet, Ranigunj, R.P. Road, S.D. Road, Sanathnagar, Saroornagar, Somajiguda, Special Commodities, Srinagar Colony, Steel Plant, Tadipatri, Tarnaka and Vengalaraonagar.

5 CCT's Ref. No. BVI(I)/76/2006 dated 08 June 2009.

6 Abids and Punjagutta.

7 Benz Circle, Dwarakanagar, Gajuwaka, Punjagutta, R.P. Road, Rajampet, Rajendranagar, Sanathnagar, Somajiguda, Srinagar Colony and Steel Plant.

2.4.4 Incorrect refund due to exemption of turnover related to interstate purchases

Under Section 4(7)(g) of AP VAT Act, no tax shall be leviable on the turnover of transfer of property in goods involved in the execution of works contract, if such transfer from the contractor to the contractee constitutes a sale in the course of inter-state trade or commerce under Section 3, or a sale outside the State under Section 4, or a sale in the course of import or export under Section 5 of the Central Sales Tax Act, 1956. The AP Sales Tax Appellate Tribunal (STAT) based on the A.P. High Court judgment in the case of Gannon Dunkerly & Co. and others vs State of Andhra Pradesh held that goods purchased by a contractor from outside the state where the contractee has not issued 'C' forms are liable to be taxed under the local law at the time of use of goods in the work.

As per instructions[8] issued by the CCT to all the assessing authorities, if as per the terms, the contractors were not under contractual obligation to purchase the goods to be used from outside the State, these purchases were also to be included in the assessment. If it were under contractual obligation, the contractee would be assessed.

Audit noticed (November 2013) in three circles[9] that in four cases, for which assessments had been completed for the period 2007-08 to 2010-11, purchase turnovers of contractors were allowed exemption even though the purchases were not made under contractual obligation. The incorrect exemption of turnover of ₹ 765.04 crore resulted in non-levy of tax of ₹ 92.60 crore. Besides, in these cases refund of ₹ 16.95 crore was authorized.

After Audit pointed out the cases, the Department replied (May 2014) that in two cases the revision was under process and in remaining cases (November 2013), the matter would be examined and action taken intimated to audit.

2.4.5 Non-forfeiture of excess collection of tax and incorrect refund

The Government issued orders[10] that four *per cent* of the cost of work may be provided in the estimates towards VAT where value of the material component in the work is more than 10 *per cent* of the value of the total work. According to Section 57(2) of the AP VAT Act, no dealer shall collect any amount by way of tax at a rate exceeding the rate at which he is liable to pay tax under the provisions of the Act. If any tax is collected in excess of the liability, it shall be forfeited to the Government under Section 57(4) of the Act. Further, according to Rule 18(3) (b) of AP VAT Rules, with effect from 01 May 2009, if the contractors, executing works for Government or local authority where tax is added separately to the estimated value of the contract, have not opted for composition[11], such tax collected at source in excess of their liability shall be forfeited.

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[8] CCT's Ref. No. A1(3)/911/2005-1, dated 23 January 2006.

[9] Kadapa-II, Punjagutta and R.P. Road.

[10] G.O.Ms.No.11 Finance (Works and Projects) Department dated 29 July 2005.

[11] Works contractors can pay tax in two ways – if they are under composition, they pay tax at a uniform rate on the entire value of the works contract. Otherwise, they have to maintain accounts and pay tax on goods incorporated at the rates applicable.

Audit noticed (between November 2013 and February 2014) in the offices of two DC (CT)s[12] and three circles[13]that during the period 2005-12, in seven cases, refund of ₹ 30.88 crore was authorized. Scrutiny of records revealed that in these cases, tax collected at source in respect of works executed for Government was in excess of tax liability which ought to have been forfeited. Excess tax collected amounting to ₹ 30.88 crore was not forfeited and this resulted in incorrect grant of refund.

After Audit pointed out the cases two Assessing Authorities (AAs)[14] replied (April and June 2014) in four cases that assessments were under revision. In one case, CTO Rajampet contended (April 2014) that Rule 18(3)(b) was effective from 1 May 2009 and was not applicable for the earlier period. The reply is not tenable as tax was added separately to the estimates and the excess tax collected during the period from 2005-09 was liable to be forfeited under Section 57(4) of the Act. For the remaining two cases, final reply is awaited.

2.4.6 Excess grant of refund due to incorrect determination of taxable turnover

Under Section 4(7) (a) of the AP VAT Act, tax is payable on the value of goods at the time of incorporation of such goods in the works at the rates applicable. To determine such value of goods incorporated in the works contract, deductions like labour, hire charges of machinery, consumables, cost of establishment and expenses relatable to supply of labour and services, profit on labour and amounts paid to sub-contractors as prescribed under Rule 17(1) (e) of AP VAT Rules are to be allowed.

Further, in the absence of detailed accounts to determine the taxable turnover under Rule 17(1) (e) of the Rules, tax at the rate of 14.5 *per cent* shall be levied after allowing the standard deduction prescribed under Rule 17(1)(g) i.e., 30 *per cent* of the total consideration received in respect of civil works.

Audit noticed (between October 2013 and March 2014) in seven circles[15] that, in eight cases assessed during the period 2011-13, taxable turnover for the assessment periods from December 2006 to March 2012 was incorrectly determined at ₹ 47.21 crore instead of ₹ 76.87 crore. In six cases, deductions inadmissible under Rule 17(1)(e) such as bank guarantee commission, loading and unloading expenses, income tax payments, salaries, telephone charges, etc. were allowed. In one case, pre-incorporated expenditure like labour charges and service tax payments incurred for fabrication were admitted and also inadmissible deductions such as mobilization advance and VAT payments were allowed. In the remaining case, the details of exemptions allowed were not furnished. Where details of exemption are not furnished, taxable turnover is to be determined under Rule 17(1) (g). Incorrect determination of taxable turnover

[12] Hyderabad Rural and Nellore-I.
[13] Dwarakanagar, Rajampet and Srinagar Colony.
[14] DC(CT), Nellore and CTO Srinagar Colony.
[15] Dabagardens, Dwarakanagar, Gajuwaka, Madhapur, Punjagutta, Special Commodities and Steel Plant.

under Rule 17(1) (e) instead of under Rule 17(1)(g) resulted in short levy of tax of ₹ 3.31 crore. However, in these cases, refund of ₹ 2.93 crore was authorized.

After Audit pointed out the cases, two AAs[16] in two cases replied (between December 2013 and January 2014) that the audit files would be sent to DC for revision. In one case involving ₹ 20 lakh, CTO Steel plant replied that the allowance of exemption was correct. The reply is not tenable as labour charges and service tax on account of fabrication of steel are pre-incorporated expenditure and are not allowable deductions. Mobilization advance and VAT are also not allowable deductions under the Act. In another case involving incorrect refund of ₹ eight lakh, CTO Dwarakanagar replied that the purchases were made from outside the State. The reply is not relevant. Final replies are awaited in the remaining four cases.

2.4.7 Insufficient efforts by the Department to safeguard revenues

Under Section 5-F of the APGST Act, 1957, every dealer executing works contracts shall pay tax on his turnover on transfer of property in goods involved in the execution of works contract. To determine the taxable turnover, deductions as prescribed under Rule 6(2) of APGST Rules are allowable while calculating the taxable turnover of the dealer. However, under Rule 6(3)(i) in cases where the execution of works contracts extends over a period of more than one year, the total turnover for the purpose of taxation for that year shall be deemed to be the value of goods purchased for being supplied or used in the execution of such contract in that year.

In view of a judgment[17] of the Supreme Court on the issue of valuing the goods incorporated, the CCT issued guidelines[18] according to which the taxable turnover under Rule 6(3)(i) shall be determined as the value of the goods at the time of incorporation. The time limit for preferring an appeal in the High Court against the order of the Sales Tax Appellate Tribunal (STAT) is 90 days.

Audit noticed (January 2014) in case of an assessee in DC(CT), Abids, that the assessment was revised by DC (CT), Abids on 8 January 2013 on the judgment of STAT[19] and tax under Rule 6(3)(i) was levied on purchase value of goods i.e., ₹ 40.90 crore, instead of on the value of goods at the time of incorporation, ₹ 93.54 crore. Tax due and tax paid as per revised assessment were ₹ 3.27 crore and ₹ 4.05 crore respectively. Excess tax paid was thus arrived at ₹ 0.77 crore and was allowed as refund. Though the appeal against the order had to be filed in 90 days, the Department preferred the appeal against the STAT order in the A.P. High Court on 28 November 2012, i.e., after 14 months of passing of orders. There were no reasons on record for the delay. The appeal was rejected by the A.P. High Court being time-barred.

Thus, due to failure to file an appeal against the orders of STAT within the timeframe, Department lost the opportunity to put forth their opinion and to

[16] CTOs- Dabagardens and Special Commodities.
[17] M/s. Gannon Dunkerly & Others vs. State of Rajasthan & Others (88 STC 204).
[18] Circular No. AII(1)/407/2005 dated 4 October 2005.
[19] T.A.No. 1172/2007 dated 27 September 2011.

attempt to levy/save revenue amounting to ₹ 4.98 crore (₹ 4.21 crore of Tax + ₹ 77 lakh of refund authorized).

After Audit pointed it out (March 2014), the AA replied that the refund was authorized as per the order of STAT. However, delay in filing the appeal indicated that though Department had strong grounds against the STAT orders, there were insufficient efforts on its part for safeguarding tax revenue.

2.4.8 Incorrect authorization of refund to unregistered works contractor

Under Section 38(1) of AP VAT Act, 2005, a VAT dealer shall be eligible for refund of tax subject to the conditions prescribed. Any person not registered as a VAT dealer though liable to be registered is not eligible for refund.

Audit noticed (December 2013) in DC(CT) Nellore-I that during the period 2008-11, a contractor, though required to be registered under the Act remained unregistered and executed Government works contracts as a sub-contractor. The tax of ₹ 62 lakh collected in excess of liability and available at the credit of the contractor was refunded under Section 38 of the Act though he was ineligible for refund.

After audit pointed out the case, the AA replied (June 2014) that the contractor was not liable to be registered under the APVAT Act. The reply is not acceptable as the contractor executed works contracts for the Government and therefore was liable to be registered under the provisions of Section 17(5)(h) of the Act.

The observation was communicated to the Department (April 2014) and reply is awaited (November 2014).

2.4.9 Non-availability of records

According to Rule 59 read with Rule 35 of AP VAT Rules, the DC (CT) is empowered to refund upto ₹ 10 lakh and JC (CT) or Additional Commissioner (CT) is empowered to authorize refunds exceeding ₹ 10 lakh. The claim for refund is to be first processed by the jurisdictional CTO and submitted for approval to the authority concerned. However, it has not been prescribed to return the file to the respective jurisdictional offices with which the dealers are registered. The files relating to a single dealer are thus spread across offices and it is difficult for the Department as well as Audit to establish a history of the dealer.

Audit noticed (between November 2013 and March 2014) that in the office of DC(CT), Punjagutta and in 12 circles[20], refund of ₹ 31.08 crore was authorized during the years 2011-12 and 2012-13 to 24 dealers (29 cases) but the relevant records were not available at offices where the dealers were registered. The respective jurisdictional officers replied that refund audit records were not available with them or had not been returned by the respective JC (CT)/DC

[20] Basheerbagh, Chinawaltair, Dabagardens, Dwarakanagar, Hyderguda, Hindupur, Jubilee Hills, Kadapa-I, Mahankali Street, S.D.Road, Sanathnagar and Srinagar Colony.

(CT). Due to unavailability of records the correctness of refunds authorized could not be verified by Audit. In the absence of these records, audit was in no position to verify the correctness or otherwise of refunds.

2.4.10 Conclusion

The Commercial Taxes Department failed to ensure compliance with the procedure for checking the refund claims and cross verification of claims for input tax credit was not completed in spite of the instructions of CCT. There were cases of excess refund due to incorrect assessments of turnover. The Department failed to forfeit the excess tax collected at source and authorized refunds there-against to works contractors executing works for the Government.

2.5 Audit of Arrears of revenue under VAT/Sales Tax

2.5.1 Introduction

Andhra Pradesh Value Added Tax (AP VAT) Act was introduced in April 2005 to replace the Andhra Pradesh General Sales Tax (AP GST) Act, 1957. According to Section 4 (1) of APVAT Act, save as otherwise provided in the Act, every dealer registered or liable to be registered as a VAT dealer shall be liable to pay tax on every sale of goods in the State at the rates specified in the Schedules. If tax is found to be due from an assessee on final assessment by assessing authority, a demand notice shall be issued to the assessee for payment of dues within prescribed time.

Central Sales Tax (CST) Act, 1956 deals with taxation of interstate transactions. In terms of Section 9 (2) of CST Act, the authorities empowered to collect dues under the Sales Tax Act of the state may exercise the same powers for collection of dues under CST Act also.

2.5.2 Objectives, Scope and Methodology

The audit of arrears of revenue pertaining to two DC(CT)s and 22 circles[21] was taken up during June-July 2014 with an objective to

- check whether the system adopted was adequate for collecting and consolidating information relating to arrears of revenue at various levels of Commercial Taxes (CT) Department viz. Commissionerate, Divisions and Circles;
- scrutinize the selected high value arrear cases to ascertain the effectiveness of action taken, and the recoverability of such high value arrear claims;

In the process, records relating to arrears of revenue for the period 2008-09 to 2012-13 of 24 offices were scrutinized vis-a-vis the data available with Debt Management Unit (DMU) portal.

[21] DC(CT)s- Ananthapur and Nizamabad; CTOs - Afzalgunj, Ananthapur-I, II, Bodhan, Dharmavaram, Guntakal, Hindupur, Kamareddy, Madanapalli, Medak, Nellore, Nizamabad I, II, III, Rajahmundry, Sangareddy, Seetharampuram, Siddipet, Sultan Bazar, Tadipatri, Vengalaraonagar and Vuyyur.

Audit findings

Observations made during the process have been included in this report. The system and compliance deficiencies are discussed in the succeeding paragraphs.

2.5.3 Lack of accurate arrears figures with Commercial Taxes Department

If tax is found to be due from an assessee on final assessment by an assessing authority, a demand notice shall be issued to him for payment of dues within prescribed time. Demands so raised should also be posted in the Demand, Collection and Balance (DCB) Register and collection thereof watched through the Register. The Commissioner of Commercial Taxes (CCT) also in his circular (May 2007)[22], reiterated that the maintenance of prescribed manual DCB Register was necessary. Apart from maintaining manual DCB Registers, all arrear figures are to be entered into the DMU package for monitoring their collection. The CCT also routinely calls for the DCB figures from the subordinate offices.

Audit noticed (July 2014) in Ananthapur Division that the arrear figures for the period 2008-09 to 2012-13 furnished to audit by the Division from the DMU portal did not match those furnished (December 2013) by the CCT. Further it was noticed from the statement of arrears of revenue for the years 2007-08 to 2012-13 furnished by the CCT that the balance amount in any particular year did not match the opening balance of the subsequent year. It was also noticed that the year-wise arrears position furnished in respect of 14 Divisions[23] were not matching with that of arrears position furnished in Division-wise consolidated statement. Audit also noticed (June to July 2014) that during the years 2008-09 to 2012-13, in two LTUs[24], and eight Circles[25], the offices did not maintain manual DCB Registers.

After Audit pointed out the above discrepancy, the offices in two LTUs and in two circles[26] replied (between June and July 2014) that DCB modules and Debt Management Unit (DMU) package were available in the new Value Added Tax Information System (VATIS) and so separate DCB registers were not being maintained. Two circles[27] confirmed that the registers were not being maintained, and the remaining four circles did not furnish any reply.

The circular instructions of Commissioner of Commercial Taxes issued from time-to-time, however, prescribe that both DCB registers and DMU portal data should be maintained and updated simultaneously. The DMU portal, which replicates the data contained in the DCB registers maintained manually, is yet to be stabilised and the intention behind the CCT's circular in May 2007

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22 B.Vi(i)/109/2007 dated 29 May 2007.

23 Begumpet, Charminar, Chittoor, Guntur-I, Eluru, Kadapa, Kakinada, Kurnool, Nellore, Nizamabad, Secunderabad, Vijayawada-I & II, Visakhapatnam.

24 Ananthapur, Nizamabad.

25 Afzalgunj, Madanapalli, Nellore, Rajamundry, Seetharampuram, Sultan Bazar, Vengalaraonagar, Vuyyur.

26 Madanapalli and Vuyyur.

27 Afzalgunj and Nellore-II.

requiring maintenance of manual DCB register was to ensure a mechanism for data validation of the DMU package. The mismatch between the data shows data inconsistency and lack of data integrity in the package and also points to the consequent inability of Department to ensure accuracy of figures in the absence of DCB registers. There is also a possibility of irretrievable loss of data due to the absence of DCB registers.

2.5.4 Issues relating to data in DMU portal

Audit noticed (July 2014) in AC (LTU), Nizamabad Division, from the Debt Management Unit (DMU) Portal that the arrears figure of an assessee was initially overstated by ₹ 27.48 lakh due to posting the same demand multiple times. Subsequently, the total demand was shown as written off though arrears of ₹ 20.88 lakh were due. The data available in the DMU portal and the files do not support either the excess demand or the write-off.

Audit further noticed (July 2014) in AC(LTU) Ananthapur Division that in case of an assessee, against the tax due of ₹ 31.05 lakh for the year 2007-08, tax paid was ₹ 30.51 lakh with a balance of ₹ 0.54 lakh. However, the balance amount is not displayed in the DMU. The DC replied (September 2014) that a notice was issued to the dealer to pay the amount or to show the payment particulars if already paid.

In these cases, documents supporting the changes were not available in the files. In the absence of any reference to the write-off orders in the DMU portal, the veracity of data could not be ascertained in audit.

The issue was brought to the notice of the department (July 2014), reply is awaited (November 2014).

2.5.5 Incorrect waiver of realisable demand

As per the provisions of Section 9 (1) of the APGST Act, 1957, the Government, may, by notification in the Andhra Pradesh Gazette, make an exemption or reduction in rate, in respect of any tax or interest payable under the Act. In terms of Section 5(3) of the CST Act, 1956, the last sale or purchase of any goods made preceding the export of those goods out of the territory of India shall also be deemed to be in the course of such export.

Audit noticed (July 2014) that GST arrears of ₹ 9.29 crore due from dealers on account of sales of turmeric and chilli in four Divisions were written off by Government[28]. These purchases were made by dealers within the state which were subsequently sold to parties outside the state, for eventual export out of India. They were not to be covered under the exemption provided by Section 5(3) as they were not the immediate purchases made before export. The amounts due are as detailed below:

[28] G.O.Ms.No.617 dt 28 April 2008.

(₹ in crore)

Sl. No.	Commodity	Total Amount	Division	Amount
1.	Chilli	2.56	Guntur Division	1.69
			Warangal Division	0.87
2.	Turmeric	6.73	Nizamabad Division	2.50
			Guntur-I Division	4.23
Total				**9.29**

The Government raised the demands for tax but waived the demands later on a representation from the dealers who were under 'a *bona fide* belief' that their purchases were not liable to tax under Section 5(3) of the CST Act. The waiver order given by the Government in the aforesaid cases was not in conformity with the provisions of the said Act, resulting in incorrect waiver of realisable demand of ₹ 9.29 crore.

The issue was brought to the notice of the Department (July 2014), reply is awaited (November 2014).

2.5.6 Lack of follow-up action by the Department

As per Section 28 (1) of the AP VAT Act as well as Section 17-C (1) of AP GST Act, Deputy Commissioner (DC) shall have the powers of a District Collector under the Andhra Pradesh Revenue Recovery Act, 1864 (AP RR Act) for the purpose of recovery of any amount due under the AP VAT Act or AP GST Act. Further, as per Section 28(2) of AP VAT Act/Section 17-C (2) of AP GST Act, a Deputy Commercial Tax Officer (DCTO) shall, for the purposes of recovery of any amount due under the Act, have the powers of a Mandal Revenue Officer under the Andhra Pradesh Rent and Revenue Sales Act, 1839 for the sale of property seized for any amount due under the respective Act.

Audit noticed (July 2014) in AC (LTU), Nizamabad Division that in the case of an assessee firm from which arrears of ₹ 5.34 lakh was due on account of AP GST for the period 1990-91, the assessing authority finally issued notices to the partners and its sureties in December 2003 and December 2005 respectively. These could not be served for the reason (as recorded on the undelivered notices) that the said persons were not available on the premises registered with the department. Even after tracing out the address of one of the partners of the firm, the Assessing Authority did not take any action under AP RR Act to recover the dues but instead asked (7 February 2006) the Gram Panchayat office[29] concerned to withhold permission to sell his properties. No response was received from the Gram Panchayat.

In spite of not receiving any reply, the Department did not make any efforts thereafter for more than one year to realize the arrears. The assessing authority finally addressed the jurisdictional authority of the Revenue Department on 26 September 2007 disclosing the identity of the partner and requesting him to collect the arrears of ₹ 5.34 lakh due, if necessary, by taking action to invoke the provisions of APRR Act. No reply was received and no further action was taken.

[29] Armoor

The issue was brought to the notice of the department (July 2014), reply is awaited (November 2014).

2.5.7 Cases which fell into arrears because of non-adherence to procedures

As per Commissioner's instructions[30] an advisory visit should be made to the place of business of newly registered dealers before issuing statutory forms, to ascertain the genuineness of the purpose for which the issue of statutory forms was sought.

Audit noticed (July 2014) in AC (LTU), Ananthapur Division from the assessment records of an assessee falling under the jurisdiction of Ananthapur-II Circle that the assessing authority raised demands (July 2008) of ₹ 68.56 lakh and ₹ 49.45 lakh as taxes payable by the dealer under VAT and CST Acts respectively for the year 2008-09. The dealer did not respond to the assessment orders and the demands were included in the DMU portal. The above demands were shown as non-realisable in DMU portal (8 July 2014).

It was noticed that the assessing authority, without considering the advice of the officer assigned to complete the advisory visit not to issue statutory forms to the assessee till the procedure was complete, issued 180 and 130 way bills to the assessee to meet the requirements under VAT and CST Acts respectively. The advisory visit was not completed as the officer deputed recorded that the dealer was "out of station''. As per the assessment order, these waybills were used for tax evasion. The department did not make any effort to ascertain the details of the properties of the assesse. Issuing of way bills before completion of advisory visit and failure of the department in determining the property details of the assessee resulted in arrears of ₹ 1.18 crore under both the Acts. No further action was taken in the case.

The issue was brought to the notice of the department (July 2014), reply is awaited.

2.5.8 Non-production of records

In Nizamabad and Ananthapur Divisions, 30 files relating to arrears were called for out of which 12 files were not made available to Audit. Further, in Ananthapur Division, the case-wise details along with the relevant files in respect of 361 cases pertaining to APGST and 798 cases pertaining to CST for which write-off proposals were submitted were not produced to Audit.

The Department replied (July 2014) that the files were not readily traceable and would be submitted shortly. Further reply is awaited (November 2014).

[30] Circular Ref. No. A III (1)-5/2005, dated 27 October 2005.

2.5.9 Conclusion

The Commercial Taxes Department failed to maintain proper data in respect of arrears affecting their collection. The Department also failed to pursue the cases to their logical conclusion by following them up.

2.6 Input tax credit (ITC)

2.6.1 Excess claim of input tax credit

In terms of Section 13(5) of the AP VAT Act, 2005 (Act), no input tax credit (ITC) shall be allowed on sale of exempted goods (except in the course of export), exempt sales and transfer of exempted goods outside the State otherwise than by way of sale. As per Section 13(6) of the Act, ITC for transfer of taxable goods outside the State otherwise than by way of sale (exempt transactions) shall be allowed for the amount of tax in excess of four *per cent* (five *per cent* with effect from 14 September 2011).

As per sub rules (7), (8) and (9) of Rule 20 of AP VAT Rules 2005, a VAT dealer making taxable sales, exempted sales and exempt transactions of taxable goods shall restrict his ITC as per the formula prescribed i.e. A*B/C, where A is the input tax for common inputs for each tax rate, B is the taxable turnover and C is the total turnover.

Entry 59 was inserted in Schedule I of the Act, with effect from 1 June 2008, by Act 28 of 2008, exempting sale of goods to any unit located in Special Economic Zone (SEZ) from levy of VAT.

Under Section 20(3) of the Act, every return shall be subject to scrutiny to verify the correctness of calculation, application of correct rate of tax and input tax claimed therein and full payment of tax payable for such tax period. If any mistake is detected as a result of such scrutiny made, the authority prescribed shall issue a notice of demand in the prescribed form for any short payment of tax or for recovery of any excess ITC claimed.

During the test check of VAT records of offices of eight Deputy Commissioners of Commercial taxes (DC (CT)) and 13 circles[31] for the assessment period from 2005-06 to 2012-13, Audit noticed (between May 2011 and March 2014) that in VAT returns of 14 cases for the assessment period 2007-08 to 2012-13, though sale transactions of the dealers involved taxable sales, exempt sales and also exempt transactions, they claimed ITC in excess, without proper restriction as per the formula prescribed. Further, the returns had not been scrutinised by the Assessing Authorities (AAs) as mandated under the Act. In 12 other cases, the AAs, while finalising the VAT assessments of these dealers between December 2009 and November 2012 for the assessment years 2005-06, 2006-07 and 2008-09 to 2011-12 had not restricted ITC correctly as per the

[31] DC(CT)s - Anantapur, Begumpet, Charminar, Eluru, Kadapa, Nalgonda, Nizamabad, and Visakhapatnam; CTOs - Basheerbagh, Bhimavaram, Bowenpally, Begumpet, Ferozguda, Hydernagar, IDA-Gandhinagar, Jubilee Hills, M.G. Road, S.D Road, Somajiguda, Vengalaraonagar and Vidyanagar.

formula prescribed. This resulted in excess claim of ITC of ₹ 2.04 crore in 26 cases.

After audit pointed out the cases, three DC(CT)s[32] and 11 CTOs[33] in 14 cases, stated (between February 2013 and September 2014) that the assessment would be revised. Two DC(CT)s and two CTOs[34] in four cases, stated (between February 2014 and August 2014) that revision show cause notices were issued to the dealers. Two CTOs [35] in three cases (between June 2012 and February 2014), stated that the matter would be examined and report submitted in due course. Two DC (CT)s and two CTOs[36] in four cases stated (between February 2014 and November 2014) that the assessments were revised, though no documentary evidence was furnished.

In one case (February 2014), the DC(CT) Kadapa contended that restriction of ITC was not applicable to the dealer, as he was not dealing in any exempt goods. The reply is not acceptable as the dealer had made exempt sales (SEZ sales) also and no ITC was admissible on such sales.

2.6.2 Under-declaration of tax due to incorrect claim of input tax credit

Under Section 13(1) of the Act, input tax credit (ITC) shall be allowed to the VAT dealer for the tax charged in respect of all purchases of taxable goods, made by that dealer during the tax period, if such goods are meant for use in the business of the VAT dealer. As per Section 13(4) of the Act read with Rule 20(2)(a), (h), (i), (q) and (r) of APVAT Rules 2005, a VAT dealer is not entitled to ITC on purchase of automobiles, coal, inputs used in construction or maintenance of any building, other fuels like LPG etc., used in manufacture or processing units, and cement used in manufacture of RCC or PCC pipes or cement poles unless the dealer is in the business of dealing in these goods. CCT clarified[37] that usage of LPG in hotels should be treated as manufacturing activity and its purchase was not eligible for ITC.

Under Section 4(9)(d) of the Act, the dealers running any restaurant or eating establishments etc., having annual turnover between ₹ five lakh and ₹ 1.50 crore are not entitled to claim ITC and are required to pay tax at the rate of four *per cent* (five *per cent* with effect from 15 September 2011) on the taxable turnover.

Audit noticed (between August 2013 and February 2014), during test check of VAT records of DC(CT) Chittoor and 11 circles[38] that in 19 cases, the dealers incorrectly claimed ITC amounting to ₹ 1.23 crore on purchase of automobiles, LPG, coal and cement (used in manufacture of spun pipes) for the period from 2008-2009 to 2011-2012, though these goods were not indicated in their

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[32] DC(CT)s - Charminar, Eluru and Visakhapatnam.
[33] Basheerbagh, Begumpet, Bhimavaram, Bowenpally, Ferozguda, Hydernagar, IDA Gandhinagar, Jubilee Hills, Somajiguda, Vengalaraonagar and Vidyanagar.
[34] DC(CT)s - Begumpet and Nalgonda; CTOs- Jubilee Hills and SD Road.
[35] Basheerbagh and Vengalaraonagar.
[36] DC(CT)s- Ananthapur and Nizamabad; CTOs – MG Road and Vengalaraonagar.
[37] Advance Ruling -A.R.Com/79/2012, dt.21 February 2013.
[38] CTOs Ashoknagar, Basheerbagh, Begumpet, Ferozguda, Jubilee Hills, Keesara, Khairatabad, Madhapur, Malakpet, Nampally and Tadipatri.

registration certificates. In two other cases the dealers running canteen/restaurant and paying tax under composition as per the provisions of Section 4(9)(d) incorrectly claimed ITC of ₹ 3.86 lakh during 2011-12 and 2012-13, though not entitled. This resulted in excess claim of ITC of ₹ 1.27 crore in all 21 cases.

After audit pointed out the cases, the CTOs Nampally and Khairatabad stated in three cases (January 2014) that VAT audit was under progress and rectification report would be submitted in due course. Four CTOs[39] in five cases (November 2013 to September 2014), stated that VAT audit file would be submitted to DC(CT) for revision. In four cases CTOs Khairatabad and Malakpet stated (between January 2014 and February 2014) that revision show cause notices were issued to the dealers and in the remaining nine cases, the AAs stated (between September 2013 and January 2014) that the matter would be examined and report submitted in due course.

2.6.3 Incorrect allowing of input tax credit

Audit cross checked (between November 2013 and March 2014), the ITC claims of dealers in two circles[40] with the sales reports of the selling dealers in Value Added Tax Information System (VATIS) for the period 2010-11 and 2011-12. In respect of two VAT dealers, Audit noticed that the sellers either reported less or 'Nil' sales turnovers during the period. However, the AAs without cross-checking the sales turnovers, incorrectly allowed ITC of ₹ 14.96 lakh.

After audit pointed out the cases, in one case (February 2014), CTO Sanathnagar stated that the matter would be examined with reference to the records of the dealer concerned and final reply submitted in due course. In another case (November 2013), CTO Srinagar Colony stated that the dealer was in possession of valid tax invoice and hence ITC was allowed to the dealer. The reply is not tenable as the correctness of the invoice was not verified by the AA before allowing ITC claim/refund. Since the sales report of the sellers in VATIS showed less sales/'Nil' sales during the tax period, the invoice was not valid tax invoice.

The matter was referred to the Department between March and May 2014. Their reply has not been received (November 2014).

2.6.4 Short levy of tax due to incorrect allowing of notional input tax credit

According to Sections 13(1) and 13(3) (a) of the Act, ITC shall be allowed to a VAT dealer for the tax charged in respect of all purchases of taxable goods, made by that dealer during the tax period subject to the condition that on the date the goods are received by him, he is in possession of tax invoices obtained from other VAT dealers. As per the provisions of Rule 20(2)(a) of AP VAT Rules, no ITC is allowed to the VAT dealers on purchase of automobiles unless

[39] Basheerbagh, Begumpet, Ferozguda and Keesara.
[40] CTOs -Sanathnagar and Srinagar Colony.

they are in the business of dealing in these goods. However, Rule 20(3)(a) allows the dealers to claim notional ITC on the purchase price actually paid at the time of sale of those used vehicles, if such claim is supported by documentary evidence for payment of tax at the time of purchase.

As per Section 21(3), read with Rule 25(5) of APVAT Rules 2005, where any VAT return filed by the dealer appears to be incorrect or incomplete, the authority prescribed shall assess the tax payable to the best of his judgement on Form VAT 305 after affording a reasonable opportunity to the dealer and raise a demand in Form VAT 202. Dealer shall pay the sum within the time and manner specified.

Audit noticed (December 2013) during the test check of VAT records of DC(CT), Visakhapatnam that in one case for the assessment year 2009-10, AA allowed notional ITC on the purchases of used cars made by a car dealer from persons/entities other than VAT dealers for resale. Since no tax was paid on such purchases, notional ITC was not allowable under Rule 20(3)(a), it resulted in incorrect allowing of ITC amounting to ₹ 5.27 crore.

After audit pointed out the case, the AA stated that (March 2014) the dealer had furnished documentary evidence in proof of purchase and ITC was allowed as per Rule 20(3)(a) of the Act and the Advance Ruling[41] issued by a Committee appointed by the CCT. However, the rule is clear that the admission of such ITC is valid only when supported by documentary evidence. The credit notes and proof of payments made by the dealer for purchase of vehicles cannot be considered as documentary evidence. In the absence of tax invoices application of Rule 20(3)(a) was not in order. Advance ruling issued is against the provisions of Section 13 of the Act as ITC is allowable for the tax charged for the purchase of taxable goods. In the present case, since no tax was charged on purchases, allowing notional ITC was incorrect.

The matter was referred to the Department in March 2014. Their reply has not been received (November 2014).

2.7 Under-declaration of tax due to adoption of incorrect rate of tax

Under Section 4(1) of the Act, tax on sales is leviable at the rates prescribed in Schedule I to IV and VI to the APVAT Act, 2005. Commodities not specified in any of these schedules fall under Schedule V and are liable to VAT at the rate of 12.5 *per cent* (14.5 *per cent* with effect from 15 January 2010).

The dealers dealing in the commodities viz., imitation jewellery and HDPE woven sacks (Schedule IV goods) and the works contractors who opt to pay tax under composition are liable to pay tax at the rate of four *per cent*[42].

[41] Advance Ruling 64/200, dt. 23 April 2010.

[42] Five *per cent* with effect from 14 September 2011 vide G.O.Ms.No.1718 Rev(CT II) dated 13 September 2011

Further, as per Section 4(9)(c) of the Act, with effect from 26 April 2010, every dealer whose annual total turnover is ₹ 1.5 crore and above shall pay tax at the rate of 14.5 *per cent* on the taxable turnover representing sale or supply of food or any other article for human consumption or drink served in restaurants, sweet-stalls, clubs or any other eating houses or anywhere whether indoor or outdoor or by caterers. The commodities viz., broken glass, purlin, galvalume galvanized coloured coated sheets, composite gutter columns and rafters and pre-engineered buildings[43] are not specified in any of the Schedules of the Act and therefore fall under Schedule V and are taxable at the rate of 14.5 *per cent*.

According to Section 20(3)(a) of the Act, every monthly return submitted by a dealer shall be subjected to scrutiny to verify the correctness of calculation, application of correct rate of tax, input tax credit claimed therein and full payment of tax payable for such tax period.

Audit noticed (between February 2012 and March 2014) during the test check of VAT records of 21 circles[44] for the assessment period from 2009-10 to 2012-13 that 57 works contractors who opted to pay tax under composition and one dealer dealing in HDPE woven sacks paid tax at the rate of four *per cent* and one dealer dealing in imitation jewellery, paid tax at one *per cent* instead of five *per cent* for the transactions effected after 14 September 2011. Six dealers running hotel/sweet shops etc., two dealers dealing in broken glass and one dealer dealing in the commodity 'purlin, galvalume galvanized coloured coated sheets, composite gutter columns and rafters and pre-engineered buildings' paid tax at less than 14.5 *per cent*. The incorrect application of rate of tax resulted in under declaration of tax of ₹ 8.08 crore on the turnover of ₹ 214.37 crore by 67 dealers.

After audit pointed out the cases, the five CTOs[45] stated (between December 2012 and August 2014) in six cases that audit of these dealers would be taken up with the permission of DC(CT) concerned, and rectification report submitted after completion of audit. CTOs Bowenpally, Nampally and Nidadavole in 12 cases stated (between November 2013 and August 2014), that notices would be issued to these dealers proposing higher rate of tax. CTO Barkatpura stated (November 2012), that in one case, the dealer is yet to receive TDS (Tax Deducted at Source) certificates for the balance tax recovered, and in another case, that the dealer submitted TDS certificates for the balance tax due. However, no evidence was furnished in support of the same and in the remaining 47 cases (between February 2012 and March 2014), the AAs stated that the matter would be examined and report furnished in due course.

The matter was referred to the Department between October 2012 and May 2014. Their reply has not been received (November 2014).

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[43] Advance ruling No.A.R.Com/57/2011 dated 10 November 2011 also confirmed the rate of tax as 14.5 *per cent.*

[44] CTO - Ashoknagar, Barkatpura, Beet Bazaar, Begumpet, Bowenpally, Dabagardens, Fort Road, Gajuwaka, Kothagudem, Madhapur, Malkajgiri, Nampally, Narayanguda, Nidadavole, Ramgopalpet, R.P.Road, Saroornagar, Somajiguda, Sultan Bazaar, Tarnaka and Vengalaraonagar

[45] Beet bazaar, Narayanguda, Saroornagar, Somajiguda and Vengalaraonagar.

2.8 Non-levy of interest

According to Section 22(2) of the APVAT Act, if any dealer fails to pay the tax due on the basis of return submitted by him under the Act within the time prescribed or specified thereunder, he shall pay, in addition to the amount of such tax or penalty or any other amount, interest calculated at the rate of one *per cent* per month (1.25 *per cent* with effect from 15 September 2011) for the period of delay.

Audit noticed (between May 2012 and February 2014) during the test check of the VAT records of DC (CT)-Kakinada and nine circles[46]for the assessment period from March 2006 to March 2013 that in 11 cases, the dealers paid tax of ₹ 1,957 crore as declared in their monthly VAT returns with delays upto 1,892 days from the due date of payment. In three cases, the dealers paid the under-declared tax of ₹ 77.09 lakh as pointed out by the AAs (April 2011 and February 2012) with delay upto 1,380 days. However, the AAs did not levy/short levied interest on belated payment of tax. This resulted in non/short levy of interest of ₹ 5.50 crore in all 14 cases.

In response to audit observation, three CTOs[47] stated in five cases (between April 2013 and February 2014) that notices would be issued to the dealers, four CTOs[48] in six cases stated (April 2013 to January 2014) that the matter would be examined. In one case, CTO, Aghapura stated (November 2014) that the file would be sent to DC concerned for revision.

In one case (March 2013) the DC(CT) contended that interest was levied from the date of passing of assessment order, as per the judgement of High Court of Andhra Pradesh[49]. However, the judgement quoted is irrelevant since the present case is not even in similarly placed category. Section 22(2) of the Act clearly provides for levy of interest for delay from the due date i.e. the date of submission of returns under Section 20(1), which is the case here. In the other case (February 2014), CTO, Basheerbagh contended that payments were made through cheques within the time period and there was no late payment. But the payment was made through post-dated cheques.

The matter was referred to the Department between March 2013 and May 2014. Their reply has not been received (November 2014).

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46 CTO- Aghapura, Basheerbagh, Chittoor-II, IDA Gandhinagar, Jubilee Hills, Nacharam, Nellore-II and Punjagutta.

47 IDA Gandhinagar, Jubilee Hills, and Special commodities.

48 Chittoor-II, Nacharam, Nellore II and Punjagutta.

49 M/s Viceroy Hotels Limited, Hyderabad vs CTO General Bazar, Hyderabad WP No.17110 of 2010, dated 23 February 2011.

2.9 Sales tax deferment

2.9.1 Non levy of interest on belated repayment of sales tax deferment

According to 'Target 2000 sales tax incentive scheme' promulgated by State Government in 1996, sales tax incentives such as tax deferment and tax exemption were sanctioned to certain industrial units for products manufactured by them to the extent of incentive limit as mentioned in the Final Eligibility Certificate (FEC).

As per the provisions of Section 69 of the Act, all sales tax exemption cases sanctioned prior to the enactment of the Act were converted to sales tax deferment by doubling the period left over, without change in monetary limit of the amount sanctioned. Further, as per the Government order[50] dated 8 May 2009, repayment of deferred sales tax was to commence after the end of the period of availing. In case of non-remittance of deferred tax on the due dates, interest at the rate of 21.5 *per cent* per annum was to be charged as per the guidelines of the sales tax deferment scheme.

During test check of deferment records of three DC(CT)s and five circles[51], Audit noticed (between February 2011 and January 2014) that in 17 cases, where the dealers availed sales tax deferment but repaid the deferred tax amounting to ₹ 438.67 crore belatedly (delays upto 1,371 days), no interest was levied. This resulted in non-levy of interest of ₹ 3.57 crore.

After audit pointed out the cases, two DC(CT)s and two CTOs[52] stated that in eight cases (between May 2011 and April 2014), notices would be issued to the dealers and payment particulars furnished within a short period. In one case DC(CT) Chittoor stated (July 2014) that the assessment file was sent for revision. In one case, DC(CT) Secunderabad stated (October 2014) that interest calculated by Audit on the belated payments was incorrect. The reply is not tenable as the Department adopted incorrect due dates for calculation of interest. In the remaining eight cases, CTOs Somajiguda, Nacharam and SD Road stated (between December 2013 and April 2014) that the matter would be examined and rectification report submitted in due course.

The matter was referred to the Department between January 2014 and May 2014. Their reply has not been received (November 2014).

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[50] G.O.Ms.No.503 dated 8 May 2009.

[51] DC(CT)-Chittoor, Nalgonda, Secunderabad, CTO-Benz circle, Jubilee Hills, Nacharam, SD Road and Somajiguda.

[52] DC(CT) Nalgonda and Secunderabad, CTO- Benz circle and Jubilee Hills.

2.10 VAT on works contracts

2.10.1 Payment of VAT under non-composition

2.10.1.1 Short realization of tax due to incorrect determination of taxable turnover/ application of incorrect rate of tax

Under Section 4(7) (a) of the APVAT Act, 2005 (Act), tax on works contract is payable on the value of goods incorporated in the work at the rates applicable to such goods. To determine the value of goods incorporated, deductions prescribed under Rule 17(1) (e) of APVAT Rules are to be allowed from the total consideration received or receivable, and the balance turnover is taxable at the same rates at which the purchase of goods were made and in the same proportion.

Audit noticed (between February 2011 and February 2014) during test check of the VAT returns and assessment files of 17 circles[53] that the AAs while finalising the assessments in 17 cases for the years from 2005-06 to 2012-13 between August 2010 and March 2013, incorrectly determined the taxable turnover by allowing inadmissible deductions like bank interest, partner's remuneration, machinery repair charges, administrative charges, depreciation on material etc., from gross turnovers which are not prescribed under the rules. It was also observed that in some of these cases, charges such as sub-contract payments, job work charges, expenditure on high sea sales, etc. were deducted from the taxable turnover; subsequently those charges were again included in the establishment charges relatable to labour deductible from taxable turnover, leading to double deductions availed on the same allowable charges.

In one case, the CTO, Special commodities circle did not adopt correct turnovers in one year while the turnover in other two years was not assessed under Rule 17(1)(e) though required. In another case, an assessee, during 2011-12, though he had paid taxes at different rates on his purchases and claimed input tax credit at those rates, reported his output tax on sales turnover at five *per cent* only, which was lower than the rates at which he had claimed the input credit.

All these cases resulted in short levy/ under-declaration of tax of ₹ 1.91 crore.

After audit pointed out the cases (between February 2011 and February 2014), seven CTOs[54] stated in seven cases (between April 2013 and August 2014), that assessment files were submitted to DC (CT) concerned for revision. CTO Nampally and Vengalaraonagar stated (July 2014 and August 2014) in two cases that revision show cause notice was issued to the dealer. Seven CTOs[55] in seven cases (between May 2012 and February 2014) stated that the matter

[53] CTO-Aghapura, Basheerbagh, Benz circle, Bhimavaram, Dabagardens, Dwarakanagar, Hydernagar, Jeedimetla Jubilee Hills, Keesara, Kurupam Market, Nampally, Nellore-II, Punjagutta, Special commodities, Steel Plant, and Vengalaraonagar.

[54] Benz circle, Dabagardens, Dwarakanagar, Hydernagar, Keesara, Special Commodities and Vengalaraonagar.

[55] CTO Basheerbagh, Jeedimetla, Jubilee Hills, Nampally, Nellore-II, Punjagutta, and Steel plant.

would be examined and report submitted in due course. In one case CTO Kurupam Market stated (August 2014) that the assessment was revised, though no documentary evidence was furnished.

In respect of one case (April 2012), CTO Hydernagar contended that administrative expenses were exempt as they were not taxable. However, administrative expenses to the extent relatable to labour only are exempt under Rule 17(1)(e)(v). Reply of the CTO Aghapura in one case was irrelevant.

The matter was referred to the Department (February 2013 and April 2014); their reply has not been received (November 2014).

2.10.1.2 Under-declaration of tax by works contractors who did not maintain detailed accounts

As per Rule 17(1) (g) of AP VAT Rules, where the VAT dealer has not maintained detailed accounts to determine the correct value of the goods at the time of incorporation, he shall pay tax at the rate of 12.5 *per cent* (14.5 *per cent* with effect from 26 April 2010) on the total consideration received or receivable, subject to the deductions specified. In such cases the contractor VAT dealer shall not be eligible to claim ITC.

Audit noticed (between July 2013 and January 2014) during the test check of VAT audit files in the office of DC(CT), Karimnagar and two circles[56] that in two cases for the period from 2008-09 to 2010-11, the AAs did not assess the taxable turnover of ₹ 1.36 crore for the period from 2008-09 to 2010-11; in the remaining case where the dealer's turnover of ₹ 1.84 crore for the period from 2009-10 to 2011-12 was assessed as per Rule 17(1)(g), the AA levied tax at the rates applicable to the goods instead of at the rate of 12.5 *per cent* (14.5 *per cent* with effect from 26 April, 2010). This resulted in a total short levy of tax of ₹ 25.54 lakh.

After audit pointed out the cases, the CTO Vengalaraonagar stated (August 2013) that the audit file would be submitted to DC(CT) for further necessary action. In two other cases, the DC(CT) Karimnagar and CTO Nampally stated (between July 2013 and September 2013) that the matter would be examined and result intimated in due course.

The matter was referred to the Department between February 2014 and May 2014. Their reply has not been received (November 2014).

2.10.2 Payment of tax under composition method

2.10.2.1 Short levy of tax on works contract under composition

As per Section 4(7) (b) of AP VAT Act, 2005 (Act), every dealer executing works contract may, in lieu of the amount of tax payable by him under clause (a) of Section 4(7) of Act opt to pay tax by way of composition at the rate of four *per cent* (five *per cent* with effect from 14 September, 2011) of the total

[56] Nampally and Vengalaraonagar.

amount received or receivable by himself towards execution of the works contract. No deductions are permissible to these dealers except payments made to sub-contractors.

As per Section 4(7)(e) of Act, if any dealer having opted for composition, purchases or receives any goods from outside the State or India or from any dealer other than a dealer in the State and uses such goods in the execution of the works contracts, such dealer shall pay tax on such goods at the rates applicable to them under the Act and the value of such goods shall be excluded from the total turnover for the purpose of computation of the turnover on which tax by way of composition at the rate of four *per cent* is payable.

During test check of VAT records of nine circles[57] during the period from 2007-08 to 2011-12 of the works contractors who had opted to pay tax under composition, Audit noticed (between October 2011 and March 2014) that in three cases, dealers during 2011-12 under-declared taxable turnover by ₹ 3.02 crore in monthly VAT returns compared to the turnover as per TDS certificates.

In case of one dealer during 2007-08 and 2008-09, the AA incorrectly allowed exemption on labour charges of ₹ 1.67 crore though not permissible. In five cases during 2008-09 to 2011-12, the AAs determined taxable turnover of ₹ 58.59 crore when the actual turnovers received by the dealers was ₹ 66.53 crore and in one of these cases the AA allowed exemption on labour charges though not permissible. In the remaining case, during 2007-08 to 2009-10, the AA levied tax on the goods purchased from outside the state at lesser rates. All these cases, resulted in short levy/payment of tax of ₹ 58.55 lakh.

After audit pointed out the cases, three CTOs[58] in three cases stated (between November 2013 and February 2014) that files would be submitted to DC (CT) for revision. In four cases, three CTOs[59] stated (between October 2013 and October 2014) that revision show cause notices were issued to the dealers and in the remaining three cases, three CTOs[60] (between September 2013 and March 2014) stated that the matter would be examined and report submitted in due course.

The matter was referred to the Department between September 2013 and May 2014. Their reply has not been received (November 2014).

2.10.2.2 Short levy of tax on builders

Under Section 4(7)(b) of APVAT Act 2005 (Act), a VAT dealer executing works contract before commencement of work may opt to pay tax by way of composition at the rate of four *per cent* (five *per cent* with effect from 14 September 2011) on the total consideration received or receivable.

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[57] CTO Autonagar, Gajuwaka, Gandhinagar, Hyderguda, Jubilee Hills, Keesara, Khairtabad, Kothagudem and Ramannapet.
[58] Autonagar, Keesara and Khairatabad.
[59] CTO- Gandhinagar, Hyderguda and Ramannapet.
[60] Gajuwaka, Jubilee Hills and Kothagudem.

However, under Section 4(7)(d) of Act, every dealer engaged in construction and selling of residential apartments, houses, buildings or commercial complexes may opt to pay tax by way of composition at the rate of four *per cent* on 25 *per cent* (five *per cent* on 25 *per cent* w.e.f. 14 September 2011) of the amount, received or receivable towards the composite value of both land and building or the market value fixed thereon for the purpose of stamp duty, whichever is higher. Rule 17(4)(i) of the APVAT Rules 2005 provides that VAT is to be paid to Registration Department at the time of registration of the property in the form of demand draft drawn in favour of CTO.

The rights of ownership/title to the properties are said to have been transferred upon execution of sale deed and payment of tax under Section 4(7)(d). Any additional works carried out thereafter by entering into separate agreement becomes a 'works contract' under APVAT Act between such buyer and dealer and attracts tax under Section 4(7)(d) of the Act, i.e. the rate of four/five *per cent* of the total consideration received. The Advance Ruling[61] dated 16 October 2012 also confirmed this. Therefore, amount received towards subsequent works for finishing/completion of flats was liable to VAT at the rate of four/five *per cent* instead of four/five *per cent* on 25 *per cent* of consideration.

During the test check of VAT audit files in seven circles[62] for the assessment period from 2006-07 to 2011-12 Audit noticed (between August 2013 and March 2014) that in five cases, the AAs levied tax at the rate of four *per cent* on 25 *per cent* of the amounts received by the apartment builders towards execution of additional works in finishing of apartments after sale deeds were executed by entering into separate construction agreements with buyers, instead of at the applicable rate of four *per cent* on the total value of the works.

Out of the two other cases, in one case of CTO, Beet Bazar, Audit observed that during the assessment period 2009-10 and 2010-11, a dealer paid VAT at the rate of four *per cent* on 25 *per cent* of the total value of 45 apartments constructed on the land owned by another individual. Payment of tax treating the transaction as sale of all the apartments was not in order, as 16 out of the 45 apartments belonged to the land owner and construction work executed for the land owner was to be treated as works contract taxable under Section 4(7)(b) at four *per cent* of the value of work. In the other case in the office of CTO, Somajiguda, as per the Profit and Loss accounts for the years 2007-08 and 2009-10 of a dealer, the consideration received was more than the turnover declared by him in his returns, leading to short levy of tax. AAs did not detect the discrepancies in these two cases.

Application of incorrect rate of tax and omission of turnover resulted in short levy of tax of ₹ 64.73 lakh in these seven cases.

After audit pointed out the cases, the three CTOs[63] stated in three cases (between January 2014 and June 2014) that audit files would be submitted to the DC(CT)s

[61] A.R.Com/66/2011 dt. 16 October 2012

[62] Beet Bazar, Dwarakanagar, Gandhinagar, Jubilee Hills, Khairatabad, Sanathnagar and Somajiguda.

[63] Jubilee Hills, Khairatabad and Sanathnagar.

concerned for revision, in another three cases (August 2014), three CTOs[64] stated that revision show cause notices were issued and in the remaining case (March 2013), CTO Dwarakanagar stated that the matter would be examined and report submitted in due course.

The matter was referred to the Department between January 2014 and May 2014; their reply has not been received (November 2014).

2.11 Tax on interstate sales

2.11.1 Short levy of tax on interstate sales

According to Section 8(2) of the Central Sales Tax (CST) Act (Act) read with Rule 12 of the CST (Registration & Turnover) Rules (CST R&T Rules), every dealer, who in the course of interstate trade or commerce sells goods to a registered dealer located in another State, shall be liable to pay tax under the Act at the rate of four *per cent* (three *per cent* with effect from 1 April 2007 and two *per cent* with effect from 1 June 2008), provided the sale is supported by a declaration in form 'C'. Otherwise, tax shall be calculated at the rate of 10 *per cent* or at the rate applicable to the sale of such goods inside the State, whichever is higher up to 31 March 2007. With effect from 1 April 2007, the respective State rate was applicable to all goods not covered by 'C' forms. As per Advance Ruling[65] dated 2 July 2009, any interstate sale made by Special Economic Zone (SEZ) dealer to a dealer of Domestic Tariff Area (DTA)[66] is taxable.

Blades, granites, mosquito repellents, retreaded tyres, timber, machinery, fruit pulp, air filters, spare parts to LPG equipment, construction material, moulded furniture, cosmetics, noodles and toys which fall under Schedule V to the APVAT Act are liable to be taxed at the rate of 12.5 *per cent* (14.5 *per cent* with effect from 15 January 2010); similarly, analytical instruments, aluminium conductors and software fall under Schedule IV to the Act *ibid* and are taxable at the rate of four *per cent.*

Audit noticed (September 2013 to March 2014) during the test check of assessment files of 14 circles[67] that in 21 cases the AAs, while finalising the CST assessments between March 2012 and March 2013 for the years 2002-03, 2008-09 and 2009-10, levied tax on turnover of ₹ 2.08 crore representing interstate sales of goods not supported by 'C' forms at rates less than the applicable rates. In another case of an SEZ dealer, the AA did not levy tax on interstate DTA sale of software of ₹ 23.18 crore for the period from 2006-07 to 2008-09 and in the other case, the AA did not assess the interstate sale turnover of aluminium conductors of ₹ 2.64 crore for the period 2009-10 though covered by 'C' forms. In all, there was a short levy of ₹ 1.79 crore on the taxable turnover of ₹ 27.89 crore.

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64 CTO Beet Bazaar, Gandhinagar and Somajiguda.

65 A.R. No. 52/2008 dated 2 July 2009.

66 DTA means the whole of India including territorial waters and continental shelf but does not include areas of the Special Economic Zone.

67 CTOs Benz Circle, Brodipet, Gajuwaka, Jeedimetla, Jubilee Hills, Keesara, Khammam-II, Madhapur, Nacharam, Nampally, Punjagutta, Rajendranagar, Ranigunj and Sanathnagar.

After audit pointed out the cases, six CTOs[68] in six cases stated (November 2013 and July 2014), that assessment files were submitted to DC (CT) concerned for revision. In one case, CTO, Keesara stated (November 2013), that the assessment would be revised. Eight CTOs[69] in 15 cases stated (September 2013 and March 2014) that the matter would be examined. In another case, CTO Nacharam is yet to furnish reply.

The matter was referred to the Department between January and May 2014. Their reply has not been received (November 2014).

2.11.2 Short levy of tax due to incorrect determination of taxable turnover under CST Act

As per Section 2(h) of CST Act, 1956, "sale price" means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount, but inclusive of any sum charged for anything before the delivery thereof other than the cost of freight in cases where such cost is separately charged. AP Sales Tax Appellate Tribunal (STAT) held[70] that interest charged for belated payment of the bill amount also forms part of the sale consideration.

During the test check of CST assessment file of DC (CT), Visakhapatnam for the period 2009-10, Audit noticed (between November 2013 and December 2013) that in one case the AA did not include the interest received on belated payments into consideration while arriving at the taxable turnover. This resulted in short levy of tax of ₹ 3.24 lakh due to incorrect determination of taxable turnover.

After audit pointed out the case, the AA stated (September 2014) that revision show cause notice was issued to the dealer.

The matter was referred to the Department (April 2014). Their reply has not been received (November 2014).

2.12 Non-payment of purchase tax

Under Section 4(4) of the APVAT Act, 2005, every VAT dealer, who in the course of business purchases any taxable goods from a person or a dealer not registered as a VAT dealer or from a VAT dealer in circumstances in which no tax is payable by the selling VAT dealer, shall be liable to pay tax at the rate of four *per cent* on the purchase price of such goods, if after such purchase, the goods are used as inputs for products which are exempt from tax under the Act, or used as inputs for goods, (i) which are disposed of otherwise than by way of sale in the State or (ii) dispatched outside the State otherwise than by way of sale in the course of interstate trade and commerce (exempt transactions) or by way of export out of the territory of India.

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68 CTOs Benz circle, Khammam II, Madhapur, Punjagutta, Rajendranagar and Sanathnagar.

69 CTOs Brodipet, Gajuwaka, Jeedimetla, Jubilee Hills, Nacharam, Nampally, Ranigunj, Sanathnagar.

70 AP Paper Mills vs State of Andhra Pradesh (44 STC P.61).

Provided that wherever a common input is used to produce goods, the turnover taxable under this sub-section shall be the value of the inputs, proportionate to the value of the goods, used or disposed of.

Audit noticed (between August 2011 and February 2014) during the test check of VAT records of two DC (CTs)[71] and three circles[72] for the period 2008-09, 2010-11 to 2012-13, that in eight cases, the dealers reported exempt transactions of chillies, cotton and sale of exempted goods such as cotton seed hull, husk of paddy and pulses derived from taxable goods such as cotton, pulses and paddy. In all these cases, the dealers purchased taxable goods from unregistered dealers. Out of the total purchase of taxable goods worth ₹ 288.77 crore from unregistered dealers, the purchase price of ₹ 27.60 crore corresponding to the exempt transactions and exempt sales attracted purchase tax. However, neither did the dealers pay the tax nor was the same levied by the AAs. This resulted in non-payment of purchase tax of ₹ 1.33 crore.

After audit pointed out these cases, the CTO Machilipatnam stated (April 2014) in one case that VAT audit file was submitted to the DC(CT) for revision. In one case, CTO Jubilee hills stated (January 2014) that show cause notice was issued to the dealer. In two cases, DC(CT) Guntur-II stated (April 2014) that VAT audit of the dealers was taken up and final orders would be passed. In one case, CTO Maharajgunj stated (March 2014) that the matter would be examined.

In the remaining three cases, DC (CT) I, Guntur contended (March 2013) that the dealers were not liable to pay purchase tax as they did not dispose of the husk otherwise than by way of sale or consumption. However, the dealers, in their returns had shown sale of husk in the column of exempted sales and hence, purchase tax payable by them was worked out accordingly. Advance ruling[73] dated 5 January 2012 also supports the audit view.

The matter was referred to the Department (between September and May 2014) and to the Government in August 2014. Their reply has not been received (November 2014).

2.13 Levy of penalties

2.13.1 Non levy of penalty for failure to file returns/belated payment of tax

Under Section 51(1) of the APVAT Act, a dealer who fails to pay tax due on the basis of the return submitted by him by the last day of the month in which it is due, shall be liable to pay tax and a penalty of 10 *per cent* of the amount of tax due. Under Section 50(3) of the APVAT Act, where a dealer files a return after the last day of the month in which it is due, shall be liable to pay a penalty of 15 *per cent* of the tax due.

As per Section 9 (2A) of CST Act, 1956, all the provisions relating to offences, interest and penalties of the sales tax law of each State shall, with necessary

[71] Guntur I and II.
[72] Jubilee Hills, Machilipatnam and Maharajgunj.
[73] Advance Ruling No. AR/Com/73/2012.

modifications, apply in relation to the assessment, re-assessment, collection and the enforcement of payment of any tax required to be collected under the CST Act in such State as if the tax under the Act were a tax under such State sales tax law.

Audit noticed (between February 2012 and March 2014) during the test check of VAT records of seven circles[74] for the period 2005-06 to 2012-13 that in 10 cases the dealers paid tax of ₹ 1.91 crore due on the monthly returns submitted by them after the last day of month in which it was due. The AAs did not levy penalty of 10 *per cent* of the amount of tax due on belated payment of tax. In another case, the AA while finalising the CST assessments (March 2012) for the years 2010-11 and 2011-12, did not levy any penalty on belated payment of tax and for filing returns after the due date. The total non-levy of penalty was ₹ 48.3 lakh.

After audit pointed out the cases, the AAs stated that in two cases[75] (between December 2013 and January 2014), penalty was levied in November 2013 and January 2014. However, no documentary evidence in proof of raising the demand was furnished. In one case, CTO, Steel plant stated (January 2014), that the assessment file was submitted to DC (CT) and on receipt of orders further report would be submitted. In four more cases (between January and June 2014), two CTOs[76] stated that penalty show cause notices were issued to the dealers and in the remaining four cases, three CTOs[77] stated (between October 2013 and March 2014) that the matter would be examined and report submitted in due course.

The matter was referred to the Department between October 2013 and April 2014. Their reply has not been received (November 2014).

2.13.2 Non/short levy of penalty for under-declaration of tax

As per Section 53(1) of AP VAT Act, 2005, where any dealer has under-declared the tax, and where it has not been established that fraud or wilful neglect has been committed and where the under-declared tax is (i) less than 10 *per cent* of the tax, a penalty shall be imposed at ten *per cent* of such under-declared tax; (ii) more than 10 *per cent* of the tax due, a penalty shall be imposed at 25 *per cent* of such under-declared tax. Under Section 53(3) of APVAT Act (Act), any dealer who has under-declared the tax and where it is established that fraud or wilful neglect has been committed he shall be liable to pay penalty equal to the tax under-declared.

During the test check of the VAT audit files in DC(CT), Visakhapatnam Division and nine circles[78] during the period 2007-08 to 2011-12, Audit noticed (between September 2013 and March 2014) that in eight out of 15 cases where

[74] CTO- Bhimavaram, Kadapa I, Madhapur, Mahboobnagar, R.P. Road, Sanathnagar and Steel Plant circle.
[75] CTO-Bhimavaram and Mahboobnagar.
[76] RP Road and Sanathnagar.
[77] CTO-Kadapa-I, Madhapur, and R.P. Road.
[78] CTOs Dwarakanagar, Ferozguda, Fort Road, Gajuwaka, Jubilee Hills, Maharajgunj, Nacharam, N.S.Road and Saroornagar.

the dealers under-declared tax of ₹ 1.91 crore for reasons other than due to fraud or wilful neglect, AAs did not levy any penalty. In three cases, on the under-declared tax of ₹ 19.46 lakh which was more than 10 *per cent* of the total tax due, AAs levied penalty at the rate of 10 *per cent* only. In four other cases, though the dealers under-declared tax of ₹ 20.65 lakh wilfully, AAs either did not levy or short levied penalty as per the provisions of the Act. This resulted in non/short levy of penalty of ₹ 61.35 lakh.

After audit pointed out the cases the AA stated in seven cases[79] (between September 2013 and March 2014) that files would be sent to DC(CT) concerned for revision and in the remaining eight cases[80] (between November 2013 and February 2014) that the matter would be examined and report submitted in due course.

The matter was referred to the Department between January 2014 and May 2014. Their reply has not been received (November 2014).

2.13.3 Short levy of penalty for using invalid tax invoice

According to Section 55(2) of the APVAT Act, 2005 (Act) any VAT dealer who issues a false tax invoice or receives and uses a tax invoice knowing it to be false, shall be liable to pay a penalty of 200 *per cent* of tax shown on the false invoice.

Audit noticed (December 2013), during the test check of VAT records of DC(CT)I-Vijayawada that in one case, the AA while finalising the assessment (May 2012) for the years 2007-08 to 2011-12 disallowed ineligible input tax credit (ITC) of ₹ 4.19 lakh on the invalid tax invoices issued by two dealers whose VAT registrations were cancelled. However, the AA levied penalty at the rate of 25 *per cent* of the ineligible ITC only, though penalty of 200 *per cent* was leviable as per the provisions of Section 55(2) of the Act. This resulted in short levy of penalty of ₹ 7.33 lakh.

After audit pointed out the case, the AA stated (September 2014) that revision show cause notice was issued to the dealer by proposing penalty at the rate of 200 per cent and result would be intimated in due course.

The matter was referred to the Department between January 2014 and May 2014. Their reply has not been received (November 2014).

[79] CTOs Ferozguda, Fort Road, Jubilee Hills, Nacharam and N.S. Road.
[80] DC(CT) Visakhapatnam, CTOs Dwarakanagar, Gajuwaka and Maharajgunj.

2.14 Non-levy of tax on export sales not covered by documentary evidence

As per Sections 5(1) and 5(3) of CST Act, export of goods and goods sold for export are not liable to tax.

Further, under Section 5(4) of the CST Act read with Rule 12(10) of the CST (R&T) Rules, 1957, the dealer selling the goods shall furnish documentary evidence such as bill of lading, purchase order, 'H' form duly filled and signed by the exporter in support of the transaction, failing which the transaction is required to be treated as inter-state sale not covered by 'C' form and tax levied under Section 8(2) of the Act at the rates applicable to the sale or purchase of such goods inside the State.

The commodities barite powder, software and chillies fall under Schedule IV to the AP VAT Act and are liable to tax at the rate of four *per cent*. The commodities electrical transformers, machinery and cables fall under Schedule V to the AP VAT Act, 2005 and are liable to tax at the rate of 12.5 *per cent* (14.5 *per cent* with effect from 15 January 2010).

During the test check of the CST assessment files of two DC (CTs)[81] and four circles[82] for the period 2007-08 to 2010-11, Audit noticed (between January 2012 and February 2014) that out of eight cases where the assessments were completed between December 2010 and March 2013, in five cases, the AAs incorrectly allowed exemption on export sales which were not supported by proper documentary evidence. In two cases, incorrect export turnovers were adopted by the AAs. In the remaining case, the 'H' form issued by the exporter was not in name of the assessee. The incorrect exemption on commodities worth ₹ 8.06 crore allowed in these cases resulted in non-levy of tax of ₹ 48.66 lakh.

After audit pointed out the cases, the DC(CT) Secunderabad in one case (August 2014) stated that file was submitted for revision. In two cases, CTO Somajiguda and DC(CT) Warangal stated (August 2014) that revision show cause notices were issued. Three AAs[83]in remaining five cases stated (between March 2013 and February 2014) that the matter would be examined and report submitted in due course.

The matter was referred to the Department between February and May 2014 and to the Government in July 2014. Their reply has not been received (November 2014).

2.15 Non-levy of penalty for misuse of 'C' form on interstate purchases

As per the provisions of Section 8(4) of the CST Act (Act) read with Rule 12(1) of CST(R&T) Rules a registered dealer under Section 7 of the Act may purchase

[81] Secunderabad and Warangal.
[82] CTO- Kadapa-I, Madhapur, Nacharam and Somajiguda.
[83] CTO-Kadapa-I, Madhapur and Nacharam.

any goods from the dealers outside the State at concessional rate of tax on issue of 'C' form.

As per Section 8(3)(b) of CST Act, the goods purchased on issue of 'C' form shall be as specified in the Registration Certificate (RC) (Form B) of the purchaser and the purchases so made shall be for the purpose of (i) resale, (ii) use in the manufacture or processing of goods for sale, (iii) use in mining, (iv) use in the generation or distribution of electricity or any other form of power or (v) use in the packing of goods for sale /resale.

In Circular[84] dated 30 August 2012, the CCT also clarified that works contractors cannot issue 'C' forms for the purposes other than those mentioned under Section 8(3)(b) of the CST Act.

As per Section 10 A of CST Act, 1956 penalty not exceeding one and half times has to be levied if the dealer violates the provisions mentioned under Section 8(3) (b) of the CST Act.

Audit noticed (November 2012 and March 2014) during the test check of CST records of two DC(CT)s[85] and three circles[86] for the period 2006-07 to 2012-13 that in three cases the dealers made interstate purchase of paints, rubber products, PVC products, plastic containers, electric motors and leather products etc., which were not specified in their RCs, by issuing 'C' forms. In three other cases, works contractors used 'C' forms for purchase of goods and machinery which were not incorporated in works. Thus the assessees misused 'C' forms by violating the conditions laid down under Section 8(3)(b) of the CST Act and the AAs did not take any penal action. Penalty on the turnover of ₹ 5.73 crore could have been levied (₹ 60.20 lakh), if penal action under Section 10A of the CST Act had been taken for misuse of 'C' forms.

After audit pointed out the cases, the CTO Kodad stated (September 2013) in two cases that the matter would be brought to the notice of the higher authorities for proposing penal proceedings. In another case, DC(CT) II Guntur stated (September 2014) that notice was issued to the dealer. In another case CTO Begumpet stated (August 2013) that the matter would be examined and a detailed reply furnished soon. In one case, the DC (CT) Charminar stated (July 2014) that the matter was referred to the CTO concerned to verify the correctness of the claim and the verification report is yet to be received. In the remaining case (August 2014), CTO SD Road, stated that on raising demand after completion of assessment, the dealer preferred an appeal with ADC Panjagutta which is yet to be disposed of.

The matter was referred to the Department between December 2013 and May 2014; their reply has not been received (November 2014).

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84 CCT Circular No. AII(2)/292/2012, dated 30 August 2012.
85 Charminar and Guntur II.
86 CTO-Begumpet, Kodad and S.D. Road.

2.16 Under-declaration of VAT due to incorrect computation of taxable turnover

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

As per Section 21(4) of the Act, the authority prescribed may, based on any information available or on any other basis, conduct a detailed scrutiny of the accounts of any VAT dealer and where any assessment, as a result of such scrutiny, becomes necessary, such assessment shall be made within a period of four years from the end of the period for which assessment is to be made.

Rule 25(10) of AP VAT Rules requires all the VAT dealers to furnish to the prescribed authority for every financial year, the statements of manufacturing/ trading, profit and loss accounts, balance sheet and annual report duly certified by a Chartered Accountant on or before 31 December subsequent to the financial year to which the statements relate.

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

During the test check of VAT records/VAT assessment files of 10 circles[87] in respect of 10 cases for the assessment period from 2008-09 to 2011-12 including eight audited cases (audited between July 2011 and March 2013), Audit noticed (between April 2013 and March 2014) that the turnovers declared by the dealers in monthly VAT returns/determined by the AAs were less than the turnovers as per the trading, profit and loss accounts by ₹ 12.23 crore. Consequently there was under-declaration of tax of ₹ 58.01 lakh.

After audit pointed out the cases, the seven CTOs[88] stated (between November 2013 and September 2014) that in seven cases, the concerned Audit files were submitted to DC (CT) for revision. In one case, CTO Fort Road stated (February 2014) that show cause notice was issued to the dealer and final report would be submitted in due course. In the remaining two cases, the CTOs[89] stated (between September 2013 and March 2014) that the matter would be examined and report submitted in due course.

The matter was referred to the Department between January 2014 and May 2014. Their reply has not been received (November 2014).

[87] CTO - Benz circle, Brodipet, Dabagardens, Ferozguda, Fort Road, General Bazar, Jubilee Hills, M.G. Road, Srinagar Colony and Tarnaka.

[88] CTO - Benz circle, Dabagardens, Ferozguda, General Bazar, MG Road, Srinagar colony and Tarnaka.

[89] CTO - Brodipet and Jubilee Hills.

2.17 Under-declaration of tax due to incorrect exemption

'Safety Valves' for LPG and other Petroleum Gases, and probiotic drinks, fall under Schedule V to the AP VAT Act and are to be taxed at the rate of 12.5 *per cent* (14.5 *per cent* w.e.f. 15 January 2010). Under Section 4(9) (c) of the Act, food sales in restaurants having annual total turnover of ₹ 1.5 crore and above also attract tax at the rate specified in Schedule V of the Act. "Red chillies" are classified under Entry 59 of Schedule IV of the Act and are taxable at four *per cent* up to 13 September 2011 and at five *per cent* thereafter.

Audit noticed (between August 2013 and March 2014), during the test check of VAT records of four circles[90] for the assessment years 2005-06 to 2012-13 that in case of three dealers, AAs allowed exemption on a turnover of ₹ 5.10 crore relating to taxable sales of LPG safety valves, food sales in restaurants, and red chillies. In another case, the dealer declared sale turnover of probiotic drinks of ₹ 57.99 lakh as exempted sales. The misclassification of these sales resulted in short levy/ under declaration of tax of ₹ 48.06 lakh.

After audit pointed out the cases, the CTO, Ferozguda replied (November 2013) in one case that VAT audit file would be submitted to DC(CT), Hyderabad (Rural) for necessary action. CTO, Saroornagar in another case stated (February 2014) that VAT audit would be taken up to assess the turnovers, and in the remaining two cases, AAs[91] stated (between August 2013 and October 2013) that the matter would be examined.

Audit referred the matter to the Department between January 2014 and May 2014. Their reply has not been received (November 2014).

2.18 Non levy of tax due to incorrect exemption on high sea sales

Under Section 5(2) of the CST Act, all sales in the course of import (High sea sales) are exempt from tax. A sale or purchase of goods shall be deemed to have taken place in the course of the import of goods into the territory of India only if the sale either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India. To claim exemption on High Sea sales documents such as high sea sale agreement, copy of import bill, bill of lading, airway bill, bill of entry in the name of the purchaser and proof of payment of customs duty are required to be furnished. In the absence of documentary evidence, such transaction shall have to be treated as interstate sale not covered by 'C' forms and tax levied at the rates applicable to the goods inside the State under the AP VAT Act.

Audit noticed (January 2014) during the test check of CST assessment files of two circles[92] for the assessment year 2009-10 that in two cases, where the assessments were finalised between December 2012 and February 2013, AAs incorrectly allowed exemption on high sea sales turnover of ₹ 10.31 crore, in respect of copper coated steel and non-coking coal taxable at the rate of four *per*

[90] CTO-Ferozguda, Madhapur, Saroornagar and Tarnaka.
[91] CTOs Madhapur and Tarnaka.
[92] CTOs - Ranigunj and S.D. Road.

cent, without proper documentary evidence. This resulted in non-levy of tax of ₹ 41.25 lakh.

After audit pointed out the cases, the CTO SD Road stated (January 2014) in one case that the bill of entry would be obtained and in another case[93] that the reply would be submitted in due course.

The matter was referred to the Department in May 2014. Their reply has not been received (November 2014).

2.19 Incorrect grant of concessional rate of tax due to acceptance of invalid 'C' forms

According to Section 8(4) of the CST Act, 1956 read with Rule 12(1) of CST (R&T) Rules, 1957 every dealer shall file a single declaration in form 'C' covering all transactions of sale, which take place in a quarter of a financial year between the same two dealers with effect from 1 October 2005, to claim concessional rate of tax as per Section 8(2) of the Act at the rate of four *per cent* (three *per cent* with effect from 1 April 2007 and two *per cent* with effect from 1 June 2008). Otherwise, tax shall be calculated at double the rate in case of declared goods and in case of goods other than the declared goods, tax shall be levied at the rate of 10 *per cent* or at the rate applicable on sale of such goods within the State, whichever is higher. With effect from 1 April 2007, the respective State rates are applicable to all goods.

Audit noticed (between August 2013 and March 2014) during the test check of the CST assessments by two DC(CT)s and four circles[94] that AAs while finalising assessments in six cases between March 2011 and January 2013 for the years 2008-09 to 2010-11, incorrectly allowed concessional rate of tax on the sale turnover of steam coal, VRLA batteries, cotton yarn, injection mould, cream, ghee, and glass amounting to ₹ 10.99 crore on the basis of invalid 'C' forms, e.g. covering transactions extending beyond a quarter period of time, photocopies of 'C' forms instead of the original etc. This resulted in short levy of tax of ₹ 40.23 lakh.

After audit pointed out the cases, AAs stated that in one case[95] (February 14), as per CCT's Circular[96] 'C' forms and 'F' forms can be accepted, either based on the date of dispatch of goods or on the date of receipt of goods in the absence of specific mention in the Act for reckoning the period. The reply is not acceptable as there was vide variation between dates of transactions**.** In another case, CTO Kurupam market stated that file was sent to DC(CT) for revision. In the remaining four cases[97] (between August 2013 and February 2014), AAs stated that the matter would be examined and report submitted.

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93 CTO Ranigunj

94 DC(CT)s-Begumpet, Chittoor, CTOs Begumpet, Charminar, Kurupam Market and Nampally.

95 DC(CT) Begumpet.

96 CCT's circular No.10 dt. 10 May 2012.

97 DC(CT) -Chittoor, CTO-Begumpet, Charminar, and Nampally.

The matter was referred to the Department between January and May 2014. Their reply has not been received (November 2014).

2.20 Short payment of tax due to non-conversion of TOT dealer as VAT dealer

Under Section 17(3) of the AP VAT Act, 2005 every dealer whose taxable turnover exceeds either ₹ 10 lakh in the preceding three months (up to 30 April 2009) or ₹ 40 lakh in the preceding 12 months shall be liable to be registered as a VAT dealer.

Audit noticed (between September 2010 and March 2014) during the test check of Turnover Tax (TOT) dealer records of six circles[98] that in seven cases, though turnovers exceeded ₹ 10 lakh in preceding three months or ₹ 40 lakh in preceding 12 months, AAs did not convert these dealers into VAT dealers. The turnover that exceeded the threshold limits in these cases amounted to ₹ 4.41 crore on which VAT of ₹ 30.11 lakh was leviable, had they been registered as VAT dealers. The dealers had neither applied for registration nor were they registered by AAs. This resulted in short realisation of revenue of ₹ 25.79 lakh.

After audit pointed out the cases, the AAs stated that in four cases[99] (January 2014 and March 2014), the matter would be examined and report submitted in due course. In another case, CTO MG Road stated (September 2014) that books of accounts of the dealer were called for. In one case, CTO Suryapet stated (August 2014) that demand was raised but no documentary evidence was furnished in proof of the same. In the remaining case, CTO Ranigunj contended (January 2014), that the turnover of the dealers was within the limit if seen financial year-wise. The reply is not acceptable to audit as reckoning the period financial year-wise was not prescribed under Section 17(3) of the AP VAT Act.

The matter was referred to the Department between March and May 2014 and to the Government in August 2014. Their reply has not been received (November 2014).

2.21 Non-levy of VAT on hire charges

As per Section 4(8) of AP VAT Act, 2005, every VAT dealer who transfers the right to use goods taxable for any purpose whatsoever, whether or not for a specified period, to any lessee or licensee for cash, deferred payment or other valuable consideration in the course of his business shall, on the total amount realized or realizable by him, pay a tax for such goods at the rates specified in the Schedules.

Audit noticed (December 2013) during the test check of records of CTO, Dabagarden circle that in one case, the AA while finalising the assessments for the years from 2007-08 to 2010-11 did not levy tax on a turnover of

[98] CTO- Dwarakanagar, Gajuwaka, Maharajgunj, M.G.Road, Ranigunj and Suryapet.
[99] CTO-Dwarakanagar, Gajuwaka, Maharajgunj and Suryapet.

₹ 41.85 lakh pertaining to lease rentals of Audio systems. This resulted in non-levy of VAT of ₹ 5.40 lakh.

After Audit pointed out the case, the AA replied (May 2014) that the audit file was submitted to Dy. Commissioner (CT), Visakhapatnam Division for revision.

The matter was referred to the Department in April 2014. Their reply has not been received (November 2014).