

## CHAPTER-II: TAXES/VAT ON SALES, TRADE, ETC.

### 2.1 Tax administration

Sales Tax/Value Added Tax laws and rules framed thereunder are administered at the Government level by the Principal Secretary (Finance). The Commissioner is the head of the Commercial Taxes Department (CTD) and is assisted by 27 Additional Commissioners, 48 Deputy Commissioners (DC), 98 Assistant Commissioners (AC), 146 Commercial Taxes Officers (CTO), 402 Assistant Commercial Taxes Officers (ACTO) and a Financial Adviser (FA). They are assisted by Junior Commercial Taxes Officers and other allied staff for administering the relevant Tax laws and rules.

The Rajasthan Value Added Tax (RVAT) Act, Rajasthan Tax on Entry of Goods into Local Areas (RET) Act, Rules framed thereunder and notifications issued from time to time govern the levy and collection of value added tax and entry tax, levy of interest and penalty.

### 2.2 Internal audit conducted by the Department

The Department has an Internal Audit Wing under the charge of Financial Adviser. The Wing has to conduct test check of cases of assessment as per the approved action plan and in accordance with the criteria decided by the Steering Committee so as to ensure adherence to the provisions of the Act and Rules as well as Departmental instructions issued from time to time.

The position of units audited by the Internal Audit Wing during the last five years is as under:

Year	Pending units for audit	Units due for audit during the year	Total units due for audit	Units audited during the year	Units remaining unaudited	Shortfall in per cent
2009-10	104	393	497	299	198	40
2010-11	198	384	582	489	93	16
2011-12	93	384	477	411	66	14
2012-13	66	384	450	267	183	41
2013-14	183	414	597	287	310	52

There was a shortfall in conducting internal audit ranging between 14 and 52 per cent during the years 2009-10 to 2013-14.

It was further noticed that 17,921 paragraphs of internal audit were outstanding at the end of the year 2013-14. The year-wise break up of outstanding paragraphs is as under:

Year	Upto 2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	Total
No. of paras	10,702	1,520	1,402	1,661	1,386	1,250	17,921

Non-settlement of large number of outstanding paragraphs indicates that the Department is not monitoring settlement of the observations raised by its own Internal Audit Wing.

**It is recommended that the Department may take immediate effective steps to address the issues raised by the Internal Audit Wing.**

### **2.3 Results of audit conducted by the Comptroller and Auditor General of India**

In 2013-14, test check of VAT/Sales tax assessment and other records of 54 units showed underassessment of tax and other irregularities involving ₹ 85.70 crore in 972 cases, which fall under the following categories as given in Table:

(₹ in crore)

Sl. No.	Category	Number of cases	Amount
1.	Performance audit on 'Levy and Collection of VAT on Works Contract'	1	22.28
2.	Underassessment of tax	372	49.51
3.	Acceptance of defective statutory forms	109	3.18
4.	Evasion of tax due to suppression of sales/purchase	22	1.98
5.	Irregular/incorrect/excess allowance of Input Tax Credit	157	3.78
6.	Other irregularities relating to		
	(i) Revenue	264	4.17
	(ii) Expenditure	47	0.80
<b>Total</b>		<b>972</b>	<b>85.70</b>

During the year, the Department accepted underassessment and other deficiencies of ₹ 7.33 crore in 608 cases which were pointed out in audit during the earlier years. An amount of ₹ 1.18 crore was recovered in 145 cases during the year 2013-14.

The Department accepted and recovered entire amount of ₹ 36.54 lakh in six cases pointed out by audit after issue of draft paragraphs to the Government. These paragraphs have not been discussed in the Report.

A Performance Audit on '**Levy and Collection of Value Added Tax (VAT) on Works Contract**' involving ₹ 22.28 crore and a few illustrative cases involving ₹ 9.79 crore are discussed in the paragraphs from 2.5 to 2.9.

## 2.4 Performance Audit on 'Levy and Collection of Value Added Tax (VAT) on Works Contract'

### Highlights

- There was no separate sub-head for classifying the works contract receipts as such the performance of the Department relating to the total receipts on account of works contract could not be ascertained.

(Paragraph 2.4.7)

- Analysis of data of returns revealed that during the last three years on an average 66 *per cent* dealers had either not filed their returns or had filed their returns with nil turnovers. No attempt was made by the Department to ascertain the reasons for non-filing or filing of returns with nil turnovers.
- Audit found that four dealers were assessed with nil turnover though their turnover was ₹ 91.20 crore, involving tax liability of ₹ 1.57 crore.

(Paragraph 2.4.8)

- No system existed for watching the receipt of the Form VAT-40 received from the awarders and for utilising the information, wherever received in the registration and assessment of the concerned dealers. Twelve works contractors involving a tax liability of ₹ 93.80 lakh were not found registered with the Department.

(Paragraph 2.4.9)

- The Assessing Authorities of five WT circles issued 41,767 VAT-41 forms during 2008-09 to 2012-13 to 527 awarders, though they were not authorised to issue the same. In five cases interest and penalty of ₹ 32.97 lakh were not levied on the awarders for delay in depositing the tax deducted at source (TDS) by them while in another case TDS was deposited short by ₹ 39.12 lakh.

(Paragraphs 2.4.10 & 2.4.11)

- In nine cases deductions of turnover of ₹ 79.76 crore from the taxable turnover was allowed to sub-contractors, without ascertaining that the payment of tax was made by the principal contractors.
- Nine principal contractors did not deduct TDS amount of ₹ 2.39 crore while making payment to sub-contractors. There was nothing on record to indicate that the principal contractors had paid the tax on this turnover.

(Paragraph 2.4.12)

- The Assessing Authorities did not follow the correct procedure laid down in the RVAT Rules for determination of taxable turnover. This resulted in underassessment of taxable turnover and consequently short levy of tax of ₹ 2.39 crore, including interest of ₹ 0.63 crore.

(Paragraph 2.4.13.1)

- Application of incorrect rate of exemption fee resulted in short levy of exemption fee and interest of ₹ 12.85 crore.

(Paragraph 2.4.14)

### 2.4.1 Introduction

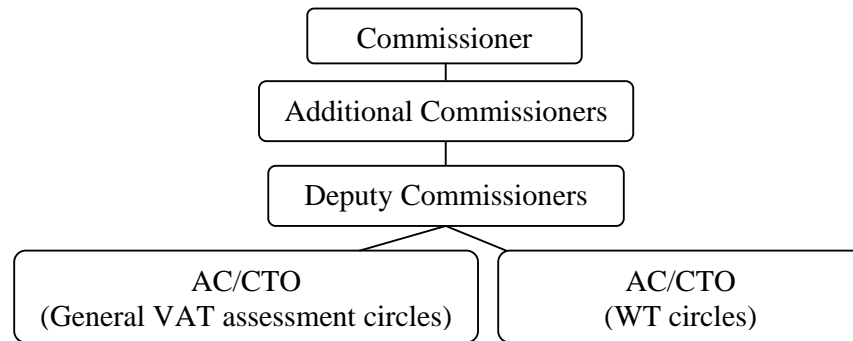
The assessment, levy and collection of VAT is governed by the Rajasthan VAT (RVAT) Act, 2003 and RVAT Rules, 2006 framed thereunder. Works contract means a contract for carrying out any work which includes assembling, construction, building, altering, manufacturing, processing, fabrication, erection, installation, fitting, improvement, repair or commissioning of any movable or immovable property. VAT is leviable on transfer of property in goods involved in the execution of a works contract. Every works contractor (also called a dealer) whose annual turnover exceeds ₹ 10 lakh is required to be registered under RVAT Act. The works contracts are allotted by awarders. Awarder means any person at whose instance or for whose benefit a works contract is executed. The awarders (henceforth called specified awarders) *i.e.* a Department of any Government, a corporation, a public undertaking, a cooperative society, a local body, a statutory body, an autonomous body, a trust or a private or public limited company are liable to deduct tax at the time of crediting the amount or making payment by any mode to the works contractors. The rate of tax deduction at source (TDS) is three *per cent*. However, no provision for TDS has been stipulated for the awarders other than the specified awarders.

The State Government introduced (11 August 2006) an exemption scheme for the works contractors specifying the rate of exemption fee (ranging from 0.25 to 3 *per cent*) on total value of the works contract. The works contractor can pay the tax on the goods transferred in execution of the works contract as per the rate stipulated in Schedules of RVAT Act or opt for the exemption scheme. Under the scheme, Exemption Certificates (EC) are issued by the Assessing Authorities (AAs) mentioning the rate and amount of exemption fee on the basis of applications submitted by works contractors along with copy of the work orders. In case of EC, the awarder shall deduct an amount based on the rate of exemption fee as mentioned in the EC. The amount deducted shall be deposited by the awarder within 15 days of the close of the month of such deduction. Every registered works contractor shall assess his liability and furnish VAT return to the AA. The amount deducted at source by the awarder shall be adjusted against the tax liability created at the time of assessment of the works contractor and refunds or demands shall be allowed or raised accordingly.

### 2.4.2 Organisational Set-up

The Commissioner Commercial Taxes (CCT) administers the RVAT and CST receipts under the overall control of Secretary, Finance (Revenue) Department, Government of Rajasthan. The Commercial Taxes Department (Department) is divided into 15 zones. Each zone except Jaipur-IV, Pali and anti-evasion has one works contracts and leasing tax circle. Thus, there are 12 Works Contracts and Leasing Tax Circles (WT circles) in the State.

The Deputy Commissioner is the senior most administrative officer at the zonal level. The assessment and recovery of tax is undertaken by AA at the level of Assistant Commissioners (AC)/Commercial Taxes Officers (CTO) and Assistant Commercial Taxes Officers (ACTO) posted in circles and wards respectively.

**ORGANOGRAM****2.4.3 Audit Objectives**

The Performance Audit was conducted with a view:

- to ascertain whether the provisions of RVAT Act and Rules governing the registration, assessment, levy and collection of tax on works contract were adequate and to evaluate the degree of compliance by the dealers/awarders with the provisions of the Act;
- to ascertain whether a database of on-going construction work in the State was maintained by the Department and the information was utilised for identification of the unregistered dealers and for other purposes; and
- to verify the adequacy and effectiveness of the internal control mechanism.

**2.4.4 Scope and Methodology**

The Performance Audit on 'Levy and Collection of VAT on Works Contract' was conducted covering the period 2010-11 to 2012-13, wherein the assessments for the financial year from 2008-09 to 2010-11 were finalised. The State is divided into 15 zones containing 129 circles. The dealers whose fifty *per cent* of gross turnover or more in an accounting year relates to the works contract and/or leasing of goods are required to be assessed in WT circles. Out of the 12 WT circles, 6 WT circles<sup>1</sup> were selected through statistical sampling on the basis of probability proportion to size sampling method. Information from other Government Departments *i.e.* North Western Railway (NWR), Central Public Works Department (CPWD) and Public Works Department (PWD) awarding the contracts were also obtained by audit for this Performance Audit.

<sup>1</sup> WT circles: Ajmer, Bhilwara, Jaipur-I, Jaipur-III, Jodhpur and Sriganganagar.

### 2.4.5 Audit Criteria

The audit criteria for Performance Audit were derived from the provisions of the following Acts, Rules and notifications/circulars issued thereunder:

#### State Laws

- Rajasthan Value Added Tax Act, 2003; and
- Rajasthan Value Added Tax Rules, 2006;

#### Central Laws

- Central Sales Tax Act, 1956; and
- Central Sales Tax (Registration and Turnover) Rules, 1957.

### 2.4.6 Acknowledgement

The Indian Audit and Accounts Department acknowledges the co-operation extended by the Commercial Taxes Department, their officers and staff in providing necessary information and records to audit.

An Entry Conference was held on 6 March 2014 with Secretary, Finance (Revenue) Department and Commissioner, Commercial Taxes wherein objectives, scope and methodology of Performance Audit were explained. The Factual Statement/Draft Paragraph was forwarded to the Government and the Department in August/November 2014. An Exit Conference was held on 3 December 2014 with Commissioner, Commercial Taxes and Secretary, Finance (Revenue) Department wherein the findings of the Performance Audit were discussed. The replies received during the Exit Conference and at other points of time have been appropriately considered in the relevant paragraphs.

### Audit findings

#### 2.4.7 No Separate sub-head for works contract receipts

RVAT is credited under the budget head 0040 'Tax on sales, trade, etc'. However, there was no separate sub-head for credit of tax received under works contract. There were 12 WT circles exclusively responsible for assessment and collection of tax on works contract. The receipts of WT circles as collected and furnished by the Department are mentioned in the table 2.4.7:

**Table 2.4.7**

(₹ in crore)

Year	Receipts shown by WT circles	Total Taxes on Sales, Trade etc.	Increase in receipts from taxes on sales, trade, etc. over the preceding year (in per cent)	Increase/decrease in WT receipts over the preceding year (in per cent)
(1)	(2)	(3)	(4)	(5)
2009-10	353.29	9,681.38	NA	NA
2010-11	236.22	11,901.24	24.26	(-) 33.13
2011-12	245.66	14,665.63	24.84	4.00
2012-13	243.77	17,214.34	17.81	(-) 0.77
2013-14	284.54	19,834.72	14.22	16.72

It would be seen from the above that during the period 2009-10 to 2013-14, the collection of receipts in WT circles has come down from ₹ 353.29 crore to ₹ 284.54 crore *i.e.* reduced by 19.46 *per cent* whereas there was increase in overall receipts from taxes on sales, trade, *etc.*

It was noticed that apart from these 12 WT circles, collection and assessment of tax from works contracts were also being done by other regular assessment circles. Further, awarders were depositing the TDS relating to works-contracts in their jurisdictional regular circles. It could, therefore, be concluded that the total receipts of the WT circles did not depict the overall receipts from works contracts and as such the performance of the Department in collection of the receipt could not be ascertained. A separate sub-head for works contract receipts would have given a clear true picture of these receipts. This would help in fixing the rate of exemption fee in a scientific manner and in revising the same from time to time. In view of the above it is recommended that the Department may consider the feasibility of a separate sub-head to depict the works contract receipts.

The CCT during Exit Conference accepted the audit contention and assured to check the feasibility of a separate sub-head to depict the works contract receipts.

#### 2.4.8 Analysis of filing of returns by registered dealers

Information provided by the Department disclosed that on an average 66 *per cent* of the dealers registered with WT circles had either not filed returns or filed returns with nil turnovers for the assessment years 2010-11 to 2012-13 as shown in table 2.4.8

**Table 2.4.8**

Year	Total number of dealers				
	Registered with the Department	Submitting returns	Not submitting returns	Submitting returns with nil turnover	Not submitting the returns or showing nil returns (4+5)
(1)	(2)	(3)	(4)	(5)	(6)
2010-11	10,819	5,122	5,697	1,726	7,423
2011-12	11,548	10,390	1,158	6,167	7,325
2012-13	12,024	10,486	1,538	6,518	8,056
Average of the three years	11,464	8,666	2,798	4,804	7,601
Percentage to column number 2.		76	24	42	66

As would be seen from the table above, 24 *per cent* dealers did not file their returns during 2010-11 to 2012-13.

CCT had issued (24 July 2007) instructions for cancellation of registration of the dealers who had not filed their returns for the years 2005-06 and 2006-07. However, thereafter, no such instructions were issued. The dealers, thereafter continued to default in submission of the returns, no action was taken by the

Department to call for the returns or to check whether the dealers had closed their business or whether business being conducted in a clandestine manner. Evasion of tax cannot be ruled out in these cases.

Scrutiny of the table 2.4.8 also revealed that on an average 42 *per cent* of the dealers had filed returns with 'nil' turnover. It was observed that the Department had not taken any action to check the correctness of the returns by obtaining the information from awarders or utilising the information available with it. Cross verification of returns and audit reports submitted by the dealers with certificates issued by the awarders in form VAT-41<sup>2</sup> disclosed a number of discrepancies in disclosure of turnover. A few instances of non/short disclosure of turnover are discussed in the following paragraphs:

- In WT circle, Jodhpur a dealer (a Pvt. Ltd. company) had filed return with 'nil' turnover for the year 2009-10. The AA had assessed the nil turnovers on the basis of the return filed by the dealer. Scrutiny of the information obtained from the jurisdictional<sup>3</sup> AA of the awarder (Maharana Pratap Airport Authority, Udaipur) revealed that the dealer had received payment of ₹ 3.94 crore during the year 2009-10 on account of works contract executed. Thus, the nil turnovers for this year shown by the dealer in his return was incorrect. This resulted in suppression of turnover of ₹ 3.94 crore involving a tax effect of ₹ 5.91 lakh. The dealer was liable to pay interest and penalty on the concealed turnover.

- In WT circle, Jodhpur, a dealer (a Pvt. Ltd. company) was awarded three works contracts valued at ₹ 3.31 crore. The dealer applied for payment of tax under the exemption scheme of 2006 and the AA issued ECs at the rate of three *per cent* on these works during 2009-10.

The dealer however, filed his return with 'nil' turnover for the year 2009-10. The AA also assessed the dealer on 'nil' turnovers and did not issue any demand notice. However, on cross verification with VAT audit report of the dealer, it was noticed that the dealer had received a sum of ₹ 2.62 crore during the relevant year on account of works contract executed by him. This resulted in non-levy of tax of ₹ 7.85 lakh. Further, the dealer had not filed return for the year 2010-11 and AA assessed nil turnover without ensuring payment of the exemption fees on the remaining works of ₹ 69 lakh.

- Scrutiny of assessment record of two dealers of WT circle Jaipur-I revealed that the dealers had filed returns online for the year 2010-11 showing the turnover of ₹ 84.64 crore and tax liability of ₹ 1.43 crore. However, the AA finalised the assessments of the dealers without considering these returns and assessed the dealers for nil turnovers. This resulted in non-levy of tax of ₹ 1.43 crore.

The Government replied (November 2014) that revised assessment orders of the works contractors had been passed and position of recovery would be intimated. Further progress made for recovery of the amount has not been received.

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<sup>2</sup> Form VAT-41 has all details of the contract viz. date of contract, nature of contract, value of contract, amount deducted at source voucher no and date of credit *etc.*

<sup>3</sup> Jurisdictional Authority refers to that office of the Department within whose jurisdiction the office of the awarder is located.



## 2.4.9 Absence of a system to detect unregistered dealers

Section 11 of the RVAT Act, stipulates that where a dealer liable to be registered under this Act does not make application for registration, the registering authority shall proceed to register such person as a dealer from the date he becomes liable to pay tax under this Act.

As per Rule 40(1) of RVAT Rules, where any works contractor enters into a contract with any awardee and where the gross value of such contract exceeds ₹ five lakh, the awardee shall furnish within one month from the date of the contract, the particulars of the contract in Form VAT-40 to the jurisdictional authority and shall also send a copy of Form VAT-40 to the Authority empowered to assess the contractor.

Audit scrutiny disclosed that Department had not put in place any system for watching the receipt of the Form VAT-40 from the awarders. Further, wherever such forms were received from the awarders, no system was put in place to maintain a data of such transactions and utilize the same in the registration and assessment of the concerned dealers. Audit cross verified the data available in *Rajtax*<sup>4</sup> with the information available with the Department and obtained in respect of works contracts awarded by three Government Departments (38 by North Western Railway (NWR), 18 by CPWD and 21 by PWD). The findings are discussed in the succeeding paragraphs:

### Registration of works contractors

#### 2.4.9.1 Absence of a monitoring system for registration of dealers

NWR had not submitted any return in VAT 40 to the Department. Audit obtained information in respect of 38 contractors and found that six works contractors had exceeded the threshold limit of turnover (ten lakh) required for registration during the years 2008-09 to 2010-11. These contractors, though liable to be registered under RVAT Act were not found registered in the *Rajtax*. These contractors had received payments aggregating to ₹ 19.99 crore with a tax effect of ₹ 59.97 lakh. Thus absence of a monitoring system for watching the receipt of Form VAT 40 resulted in non-registration of the dealers and escaping of the tax.

#### 2.4.9.2 Non-utilisation of information received from awarders

Audit noticed that in respect of 18 works contracts the awardee namely CPWD had submitted statements of TDS to the WT circle, Jaipur-II between January 2011 and December 2013. The return contained details of the amount paid to works contractors. The Department had made no attempt to cross verify the data with the software *Rajtax* available with it to ascertain the registration of the dealers. Audit cross verified these details with *Rajtax* and found that six out of the 18 works contractors had exceeded the threshold limit (ten lakh) of necessary for registration. However, these dealers were not registered under RVAT Act. These contractors had received payments amounting to ₹ 22.55 crore during January 2009 to December 2013 involving tax liability of ₹ 33.83 lakh.

<sup>4</sup> Official website of Commercial Taxes Department of Rajasthan.

This indicates that the Department had not utilised the information available with it for registration of dealers resulting in escaping of the tax.

**2.4.9.3** Survey is an important tool to detect unregistered works contractors and to widen the tax base. It was noticed that no survey for identifying/ registering works contractors was conducted in six test checked circles during the period from 2009-10 to 2012-13.

Though the dealers are also required to get themselves registered once their turnover exceeds a prescribed limit, under the RVAT Act, a number of violations have been noticed and a number of dealers have remained outside the tax net. Provisions for stringent measures like levy of higher rate of TDS in case of unregistered works contractors as provided in Delhi and Maharashtra VAT Act may be prescribed.

After this was pointed out, the CCT during Exit Conference stated that RVAT Rules had been amended (July 2014) for submission of online returns by awarders showing details of works contracts awarded. CCT also stated that the suggestion regarding higher rate of TDS in case of unregistered works contractors would be considered by the Government.

#### **Registration of awarders**

**2.4.9.4** RVAT Act provides for tax deduction at source, its timely remittance to Government account by the awarder and in case of violation of statutory provisions, penalty on the awarder. However, no specific provisions are provided in RVAT Act for allotment of 'tax deduction account number' to the awarders to ascertain their liability as provided in Section 203A of Income Tax Act, 1961 that every person deducting tax shall be allotted a 'tax deduction account number'.

After this being pointed out (December 2013), CCT in the Exit Conference stated that Rule 40 has now been amended (July 2014) and provisions for registration of the awarders have been made.

### **Tax Deduction at Source**

#### **2.4.10 Non- follow up of the system in issue of blank TDS forms**

Rule 40(3)(a) of RVAT Rules provides that blank Forms VAT-41 (TDS certificate forms) shall be obtained by the awarder from the jurisdictional AC/CTO. The CCT has also instructed (July 2013) that TDS certificate forms should only be obtained by the awarders from their jurisdictional Authority.

- Scrutiny of the Form Issue Registers in the six test-checked WT circles disclosed that five WT circles<sup>5</sup> issued 41,767 VAT-41 forms during 2008-09 to 2012-13 to 527 awarders though they were not authorised to issue the same. The awarders were required to obtain the same from their regular circles. Thus issue of the forms to these awarders was irregular. Since the registration of the awarders under RVAT Act was not prescribed, timely and correct deposit of TDS could not be ascertained.

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<sup>5</sup> WT circles: Bhilwara, Jaipur-I, Jaipur-III, Jodhpur and Sriganganagar.

- Scrutiny of WT circle Jaipur-I disclosed that the circle had issued 350 VAT-41 forms to a builder/developer though the circle had no jurisdiction over the builder/developer. It was seen that after issuing the forms, WT circle Jaipur-I neither enquired about the tax liability of the builder/developer nor passed any order to ascertain the timely deposit of TDS amount. The information regarding forms was also not sent to the Circle-G Jaipur to which it pertained. As a result, the regular circle also failed to monitor the tax liability. Scrutiny of VAT-42 submitted by the builder/developer disclosed that the builder/developer had deducted a sum of ₹ 88.05 lakh as TDS but deposited only ₹ 48.93 lakh. TDS amount of ₹ 39.12 lakh was, therefore, short deposited.

After this being pointed out (December 2013), CCT in the Exit Conference stated that Rule 40 has been amended (July 2014) and it has been made clear that TDS certificate forms should be obtained by the awarders from their jurisdictional Authority. However the reply was silent about the recovery in this case.

#### **2.4.11 Non-imposition of penalty for delayed deposit of TDS**

**2.4.11.1** As per Section 55 of the RVAT Act, where any person commits a default in making the payment of any amount of tax leviable or payable within the specified time, he shall be liable to pay interest on such amount at the rate of 12 *per cent* for the delay and as per section 63(1) of RVAT Act, where an awarder fails to deposit the TDS amount within the prescribed time, he shall be liable to pay TDS amount and a penalty at the rate of two *per cent* per month on the amount of TDS deposited with delay.

- Scrutiny of assessment records of three WT circles<sup>6</sup> disclosed that four awarders<sup>7</sup> had deposited TDS amount of ₹ 4.35 crore with delays ranging between 1 and 742 days. Though the awarders issued the TDS certificates showing the date of deduction and deposit of TDS, the AAs did not levy interest and penalty of ₹ 24.45 lakh for delayed deposit.

The Government replied (October 2014) that demand of ₹ 1.86 lakh had been raised against one awarder. Reply in other cases is awaited (November 2014).

- Information regarding deposit of TDS collected from an awarder (CPWD) disclosed that the awarder had deposited TDS amount of ₹ 93.98 lakh with delay ranging between 2 to 256 days during the year 2010-11 to 2012-13. The awarder had also submitted the details of deposited TDS to WT circle Jaipur II. Despite this, the AA did not levy interest and penalty of ₹ 8.52 lakh on delayed deposit of TDS.

- Scrutiny of the assessment records of four WT circles<sup>8</sup> disclosed that 17 TDS certificates involving tax effect of ₹ 2.83 crore issued by 13 awarders were incomplete, either the date of payment to the works contractors or date of TDS deposited into treasury were not mentioned. The AAs accepted incomplete certificates and allowed adjustment of tax on these incomplete

<sup>6</sup> WT circles: Ajmer, Jodhpur and Sriganganagar.

<sup>7</sup> M/s Soma Isolux Kishangarh Beawar Tolway Pvt. Ltd., M/s National Building Construction Corporation Ltd., M/s Kishangarh Hi-tech Textiles Park Ltd and SE, Ministry of Road, Transport & Highway, Govt. of India, Jaipur.

<sup>8</sup> WT circles: Ajmer, Jaipur-I, Jodhpur and Sriganganagar.

certificates. Thus, timely and correctness of the deposits could not be ascertained.

The Government replied (October 2014) that demand of ₹ 1.41 lakh had been raised against one awardee. Reply in other cases is awaited (November 2014).

- Scrutiny of assessment records of five test checked WT circles<sup>9</sup> disclosed that 58 TDS certificates involving transactions of ₹ 6.36 crore were issued by 28 awarders. These certificates though required to be furnished monthly were furnished belatedly after 2 to 12 months. Similarly two awarders (NWR and CPWD) did not submit the certificates at all to the jurisdictional authorities. However, penalty at the rate of ₹ 25 for every day of the default period though leviable under Section 64 of RVAT Act was not levied.

**2.4.11.2** As per Rule 40 of RVAT Rules, the awardee shall issue TDS certificate to the works contractor in VAT-41 forms obtained from the jurisdictional office of the Department and also send a copy of such certificate to the issuing authority. The issuing authority after receiving the copy of the certificate, shall verify that the amount of the TDS has been deposited into the Government treasury and send the same immediately to the AA of the works contractor. The AA of the works contractor shall adjust the verified TDS amount against the tax liability created at the time of the assessment of the works contractor.

Scrutiny of assessment records of 18 works contractors of five WT circles<sup>10</sup> disclosed that the AAs adjusted TDS involving ₹ 21.26 crore at the time of finalisation of assessments of these works contractors without verification of the credits into the Government account by the issuing authority.

In another case of WT circle, Jaipur-III, the AA accepted TDS certificate involving ₹ 21.62 lakh in a self-printed certificate on plain paper instead of the prescribed Form VAT 41 while finalising the assessments for the years 2009-10 and 2010-11.

The CCT during Exit Conference stated that directions had been issued to allow the adjustment of TDS after its verification and for levying interest and penalty on defaulting awarders. He further stated that an online system for generation of TDS forms had been introduced.

#### **2.4.12 Absence of mechanism to verify the tax liability of sub-contracts**

Rule 22(2A) of RVAT Rules provides that where a principal contractor exercises option to pay exemption fee on a works contract and awards the whole or part of such contract to a sub-contractor, the turnover of such transaction shall be deducted from the total turnover of the sub-contractor. No provision was incorporated in RVAT Act to ascertain that principal contractor had paid the tax on the turnover of the sub-contract before allowing deduction to the sub-contractor. A few instances highlighting the result of absence of mechanism to verify the tax liability in sub-contracts are as follows:

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<sup>9</sup> WT circles: Bhilwara, Jaipur-I, Jaipur-III, Jodhpur and Sriganganagar.

<sup>10</sup> WT-circles: Ajmer, Bhilwara, Jaipur-I, Jodhpur and Sriganganagar.

**2.4.12.1** During scrutiny of the assessment records of three WT circles<sup>11</sup> it was noticed that AAs had allowed the deductions of turnover of ₹ 79.76 crore for the years 2009-10 to 2010-11 to nine sub-contractors from the taxable turnover without ascertaining the payment of tax by the principal contractors. Non-verification of the transactions is fraught with the risk of non-payment of taxes.

**2.4.12.2** Scrutiny of assessment records of four WT circles<sup>12</sup> disclosed that during 2008-09 to 2010-11, out of 10 principal contractors, 9 did not deduct TDS amount of ₹ 2.39 crore while making payment of ₹ 79.76 crore to sub-contractors. There was nothing on record that the TDS amount of ₹ 2.39 crore was paid by the principal contractor.

**2.4.12.3** It was noticed that a sub-contractor of WT circle Jodhpur received a payment of ₹ 15.77 crore from a principal contractor of WT circle Ajmer during the year 2010-11. The sub-contractor intimated that all the goods involved in execution of the works contract were supplied by the principal contractor and the cost of the materials was deducted from the payment made to him. As such tax was required to be paid by the principal contractor. Assessment records of the principal contractor, however, revealed that he had not paid any tax on this transaction indicating therein non-payment of the tax.

The value of the material supplied by the principal contractor was not available in the assessment record of the principal contractor as well as the sub-contractor with the result that the amount of tax due could not be worked out on escaped turnover.

A provision to ascertain that principal contractor had paid the tax on the turnover of the sub-contract before allowing deduction to the sub-contractor exists in Maharashtra (Section 45 of VAT Act). The Government may consider a similar provision for RVAT Act.

The CCT during Exit Conference accepted the audit contention and stated that the issue regarding ascertaining the tax liability of the sub-contractors would be taken into consideration at the time of Budget 2015-16.

### **2.4.13 Underassessment of turnover**

Section 4(1) of RVAT Act and Section 6 of CST Act provide for levy of tax on taxable turnover. Further, as per rule 22(2) of RVAT Rules in case of works contract, while determining the taxable turnover, the amount of labour shall be deducted from the total value of the contract. Further, as per explanation given under this Rule, where the amount of labour is not determinable from the accounts of a works contractor, the deduction towards labour charges shall be allowed by the AA according to the norms laid down in the RVAT Rules.

**2.4.13.1** During scrutiny of assessment records of five works contractors of three WT circles<sup>13</sup> for the years 2008-09 to 2010-11, it was observed that the AAs determined the taxable turnover by adding certain percentage of profit

<sup>11</sup> WT circles: Ajmer, Jaipur-I and Sriganganagar.

<sup>12</sup> WT circles: Ajmer, Jaipur-I, Jodhpur and Sriganganagar.

<sup>13</sup> WT circles: Bhilwara, Jaipur-I and Jodhpur.

element in the value of goods purchased by the works-contractors and did not follow the procedure laid down in the RVAT Rules for determination of taxable turnover. This resulted in underassessment of taxable turnover as detailed below:

(₹ in crore)

Name of dealers	Total receipts of works-contracts	Taxable turnover calculated as per RVAT Rules <sup>14</sup>	Taxable turnover calculated by AAs <sup>15</sup>	Under - assessment of taxable turnover by AAs	Short levy of tax	Interest
(1)	(2)	(3)	(4)	(5)	(6)	(7)
A	180.77	108.91	94.23	14.68	0.62	0.25
B	32.02	22.41	16.66	5.75	0.23	0.10
C	7.53	5.27	4.58	0.69	0.03	0.01
D	76.32	35.06	32.49	2.57	0.10	0.04
E	38.47	26.93	11.37	15.56	0.78	0.23
<b>Total</b>	<b>335.11</b>	<b>198.58</b>	<b>159.33</b>	<b>39.25</b>	<b>1.76</b>	<b>0.63</b>

Underassessment of taxable turnover resulted in short levy of tax of ₹ 1.76 crore besides interest of ₹ 0.63 crore.

**2.4.13.2** Section 6(2) of CST Act stipulates that sale during the transit in the course of inter-State trade shall not be exempt from tax unless the dealer affecting the sale furnishes a declaration (Form E-I) of the registered dealer from whom the goods were purchased and another declaration (Form- C) of the registered dealer to whom the goods were sold.

During scrutiny of the assessment records of WT circle Bhilwara, it was noticed that a works contractor had purchased goods valued at ₹ 74.21 crore and sold these goods for ₹ 162.86 crore. The works contractor claimed exemption of tax on the sales made during the transit of goods. However, the works contractor did not submit E-I forms for the purchase value of ₹ 13.34 crore. As per details submitted by the works contractor, these goods were sold for the value of ₹ 55.60 crore. Accordingly, tax of ₹ 1.11 crore was leviable. However, while finalising the assessment, the AA levied tax of ₹ 26.64 lakh on the purchase value of goods (₹ 13.34 crore). This resulted in short levy of tax of ₹ 0.84 crore besides interest of ₹ 35.52 lakh.

The CCT during Exit Conference stated that directions had been issued to AAs to comply with the RVAT Rules.

<sup>14</sup> Taxable turnover was determined by deducting allowable expenses from the total receipts where details of labour and other expenses were submitted and where details were not submitted 30 per cent for the labour and other expenses were deducted from the total receipts.

<sup>15</sup> AAs determined the taxable turnover by adding certain percentage of profit element in the value of goods purchased by the works-contractors.

## Exemption Scheme

### 2.4.14 Short levy of exemption fee

The State Government notified (11 August 2006) a scheme and exempted the registered works contractors engaged in the execution of works contract from payment of tax leviable on the transfer of property in the goods involved in the execution of works contract subject to the condition that AA shall issue the EC and such works contractors shall pay exemption fee at the rate specified as under:

Sl. No.	Description of works contract	Rate of exemption fee (per cent of the total value of contract )
1.	Works contract where the cost of material does not exceed five <i>per cent</i> of the total contract amount (with effect from 9 March 2010).	0.25 <i>per cent</i>
2.	Building, roads, bridges, dams, sewerage system.	1.50 <i>per cent</i>
3.	Installation of plants and machinery including PSPO, water treatment plant, laying of pipe line with material.	2.25 <i>per cent</i>
4.	Any other kind of works contract not covered by above items.	3.00 <i>per cent</i>

For availing the benefit of the scheme, a works contractor has to submit an application mentioning the nature of the works contract and applicable rate of exemption fee. On receipt of the application, the AA on being satisfied as to the correctness of the facts mentioned therein, shall issue EC showing description of works contract, total value of the contract, rate of exemption fee and amount of exemption fee.

Scrutiny of the assessment records of the six selected circles and information collected from an awarder (NWR) revealed that while issuing ECs, AAs did not determine correct category of the works contract which resulted in short levy of exemption fee of ₹ 12.32 crore in respect of 82 works contractors as discussed in the following paragraphs:

#### 2.4.14.1 Works contracts for composite works

A works contract order, awarded for different nature of works (composite works contract) is not covered under serial number one to three of notification (2006). The rate of exemption fee leviable on the composite was three *per cent*.

During scrutiny of records of three WT circles<sup>16</sup> and an awarder (NWR), it was noticed that 48 works contracts were awarded for composite works<sup>17</sup> valued at ₹ 1,114.64 crore. For these works contracts, 10 AAs had issued ECs

<sup>16</sup> WT circles: Jaipur-III, Jodhpur and Sriganganagar.

<sup>17</sup> Such as 'execution of advancement part of water supply project including transmission mains, water treatment plant, pump house, pumping machinery and switch yard, RCC reservoir, electrical enhancement at all pumping stations with related ancillary works etc' and 'construction of new/addition/alteration of service building, passenger platforms, platform shelters and other miscellaneous civil works on stations/sections related to gauge conversion project'. for the composite works contracts.

to 33 works contractors at the rate of 1.00/1.50/2.25 *per cent* instead of correct rate of three *per cent* of the total value of the contract. The AAs had levied exemption fee of ₹ 23.52 crore instead of leviable exemption fee of ₹ 33.44 crore. This resulted in short levy of EC fee of ₹ 9.92 crore.

#### **2.4.14.2 Works contracts for boundary walls**

Works contracts awarded for construction of only boundary walls is not covered under serial number one to three of the table given in the above notification. Thus, rate of exemption fee leviable on the construction of only boundary walls was three *per cent*.

During test check of the records of the selected circles, it was noticed that AAs of four WT circles<sup>18</sup> had issued ECs for construction of boundary walls and levied exemption fee of ₹ 37.80 lakh at the rate of 1.5 *per cent* instead of leviable exemption fee of ₹ 75.60 lakh at the rate of three *per cent* on the contract value of ₹ 25.20 crore. This resulted in short levy of exemption fee of ₹ 37.80 lakh.

#### **2.4.14.3 Works contracts for miscellaneous civil works**

Works contracts awarded for miscellaneous civil works not mentioned in category from serial number one to three are leviable at the rate three *per cent*.

Scrutiny of records of selected WT circles<sup>19</sup> revealed that 16 works contractors had applied for exemption certificates for civil works such as swimming pool, gravelling, cable trench, transformer track, foundation, supply and fixing of vitrified tiles *etc.* at Power Grid Sub-stations. These works are not covered under serial number one to three of the table given in the above notification. Thus, the exemption fee was leviable at the rate of three *per cent* for contract value of ₹ 53.20 crore. AAs had incorrectly issued ECs at the rate of 1.5 *per cent* and levied exemption fee of ₹ 79.80 lakh instead of ₹ 159.60 lakh at the correct rate of three *per cent*. This resulted in short levy of exemption fee of ₹ 79.80 lakh.

#### **2.4.14.4 Works contracts for installation of plant and machinery**

Works contract relating to installation of plant and machinery was covered under serial number three of the table given in the above notification in which exemption fee for works contracts relating to 'installation of plant and machinery' was notified at the rate of 2.25 *per cent*.

During scrutiny of assessment records of WT circle Jaipur-I, it was noticed that a works contractor executed the works contract of ₹ 150.90 crore relating to erection and installation of wind mills during 2008-09 and 2009-10 for which ECs were incorrectly issued at the rate of 1.5 *per cent*. The AA while finalising the assessments of the dealer, assessed (February 2011 and February 2012) exemption fee of ₹ 2.26 crore at the rate of 1.5 *per cent* instead of ₹ 3.39 crore at the correct rate of 2.25 *per cent*. This resulted in short levy of exemption fee of ₹ 1.13 crore and interest of ₹ 53.02 lakh.

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<sup>18</sup> WT circles: Ajmer, Jaipur-III, Jodhpur and Sriganganagar.

<sup>19</sup> WT circles: Ajmer, Jodhpur and Sriganganagar.



#### 2.4.14.5 Works contracts for repair of road

The State Government vide notification dated 26 March 2012 notified one *per cent* rate of exemption fee for 'works contracts relating to construction of roads'. Thereafter, vide notification dated 6 March 2013, it was substituted with 'works contract relating to construction or repair of roads'. The exemption fees was, therefore, leviable at the rate of three *per cent* during the period 26 March 2012 to 5 March 2013 on works contracts relating to repair of roads.

Scrutiny of records of two WT circles<sup>20</sup> disclosed that AAs had incorrectly issued 35 ECs to 22 works contractors at the rate of one *per cent* for the works contracts of ₹ 4.50 crore 'relating to repair of roads' awarded during the period 26 March 2012 to 5 March 2013 and levied exemption fee of ₹ 4.50 lakh instead of leviable exemption fee of ₹ 13.49 lakh. This resulted in short levy of exemption fee of ₹ 8.99 lakh.

The CCT during Exit Conference agreed and stated that directions had been issued to the AAs to examine the nature of works contract before grant of exemption certificate.

### Assessment of escaped turnover

#### 2.4.15 Sale of flats/villas/shops on pre-booking basis prior to completion of construction

The construction of flats/villas/shops *etc.* after accepting advance from prospective buyers on a pre-construction agreement comes under the purview of works contract and is to be taxed under Section 4(1) of RVAT Act. It was, however, noticed that not a single developer/builder was assessed to tax as works contractor in the selected circles on the basis of pre-construction booking.

Scrutiny of test check records of WT circle Ajmer disclosed that Department had made initial enquiries (June 2012) about four builders/developers/dealers who were engaged in building/developing malls/residential colonies in Ajmer zone. The construction was being done through contractors as well as by builders/developers themselves. As per the enquiry report, shops/flats, *etc.* were sold on pre-booking basis before completion of the construction of the buildings/malls. In certain cases, either cement or steel was provided free of cost to the contractors or costs of goods supplied to the contractors were deducted from their bills. Such transactions were liable to be taxed under RVAT Act. It was noticed that the WT circle Ajmer, did not take any action beyond preliminary enquiries and a report was sent to the concerned AAs of the awarders/dealers for necessary action. No further action was found to have been taken in this regard. Scrutiny of these enquiry reports and information collected from the concerned circles revealed irregularities in following cases:

<sup>20</sup> WT circles: Ajmer and Sriganganagar.

**2.4.15.1** A registered dealer of Circle-B, Jaipur had developed/ constructed a mall at Ajmer with the project cost of ₹ 40 crore. The shops, offices, *etc.* were sold on pre-booking basis before completion of the mall.

Scrutiny of the Entry tax assessment files of the dealer for the years 2009-10 and 2010-11 disclosed that the builder/developer had purchased goods such as mild steel bars, tiles, wooden doors, electrical cables, DG sets, pre-engineered building structures, *etc.* valued at ₹ 18.64 crore from outside the State during 2009-10 and 2010-11. The dealer had stated that these goods were used in the construction of various projects in the State. As per enquiry report submitted by the Junior Commercial Taxes Officer, shops, offices, *etc.* were sold on pre-booking basis. These goods were, therefore, liable to be taxed under RVAT Act. However, the AA did not assess tax on these goods.

**2.4.15.2** A builder/developer was developing a housing colony at Ajmer with the project cost of ₹ 50 crore. The construction work was being done through various contractors.

Scrutiny of the work orders submitted by the builder/developer in WT circle Jaipur-I disclosed that the builder/developer was providing cement and steel to the contractors free of cost and in some cases the cost of supplied material was deducted from the bills of the contractors. The materials supplied by the builder/developer were taxable under RVAT Act if the flats, villas, shops were sold on pre-booking basis. However, no investigation was made by the Department to ascertain the tax liability of the builder/developer.

**2.4.15.3** A Developer was constructing/developing a residential complex with a project cost of ₹ 55 crore. As per the enquiry report of WT circle Ajmer, materials were purchased by the developer from outside the State. Further, 170 flats out of 392 flats were sold on pre-booking before completion of the construction work. The enquiry report was forwarded to Circle-B, Jaipur for further action. It was noticed that no action was taken on this report to ascertain the tax liability of the developer.

**2.4.15.4** As per the enquiry report, a registered dealer was building a mall at Ajmer with the project cost of ₹ 40 crore. The firm had used cement and steel, *etc.* of ₹ 12.07 crore in the construction of the mall. The shops were sold on pre-booking basis before completion of the construction. No reason regarding non-assessment of tax on these transactions was found on record.

**2.4.15.5** Information collected by Audit from a financial institution disclosed that four developers/builders had sold 324 flats in four projects situated at Jaipur before completion of construction/finishing of the flats. These developers/builders were, therefore, liable to pay tax on the goods used in the execution of works contracts. However, on cross-verification with *Rajtax* it was found that these developers/builders were not registered under RVAT Act. In absence of further details, actual loss of revenue could not be ascertained.

The above deficiencies indicate that the Department did not ascertain the liability of tax on sale of flats/villas/shops on pre-booking basis prior to completion of construction, though information was available with the Department.

The CCT during Exit Conference stated that specific provisions regarding liability of VAT on builders and developers had been incorporated (July 2014) in the RVAT Rules; however, VAT liability on builders and developers for the period up to March 2014 had been exempted by the State Government.

The CCT also stated that directions had been issued to conduct enquiry and register the developers/builders. It was also stated that information was being collected in this regard from Urban Local Bodies, Stamps and Registration Department, Labour Department, etc.

Thus, the facts indicate that a large amount of money that could have been collected has been forgone though provisions for levy of tax already existed in the Act.

#### **2.4.16 Failure to conduct 'audit of business' of dealers**

Section 27 of RVAT Act and Rule 47 provide that the CCT may arrange for audit of the business (business audit) of such registered dealers who are selected on the basis of any criterion specified or on a random selection basis or if there are reasons to believe that detailed scrutiny of their business is necessary. An audit report is required to be prepared under the Act.

The CCT prescribed norms in 2009 and 2011 for selection of five *per cent* of the total number of registered dealers for business audit. It was noticed that not a single dealer was selected for business audit during the years 2010-11 to 2012-13 in the test checked WT circles.

Failure to conduct business audit as per instructions issued by the CCT resulted in non-ensuring the correctness of the returns submitted by the works contractors and prevention of leakage of revenue.

The CCT in the Exit Conference stated that directions had been issued to select the works contractors for business audit.

#### **2.4.17 Audit of WT circles by the Internal Audit Wing**

Internal controls are intended to provide reasonable assurance of proper enforcement of laws, rules, executive instructions, etc. Such controls are also exercised through internal audit.

Scrutiny of the records of the Internal Audit Wing (IAW) of the Department disclosed that all the 12 WT circles were selected by the IAW. But the IAW audited only six to seven WT circles during each year during 2010-11 to 2012-13. It was also noticed that irregularities were detected in 189 cases during 2010-11 to 2012-13, action was taken only in 21 cases.

## 2.4.18 Conclusions and Recommendations

The Commercial Taxes Department, being the principal contributor of revenue receipts to the State Government, has introduced some significant changes like online filing of returns by dealers and assessment thereof, verification of ITC claims through IT module, etc. However, the following areas require special attention:

- There was no system either for maintaining the database of ongoing construction works or utilising the same to identify the unregistered works contractors, wherever it was available. Besides, no stringent measures like higher rate of TDS in case of unregistered works contractors were available in the RVAT Act. *The Government may consider evolving a system for maintaining database of ongoing construction works and utilise it to identify the unregistered works contractors. The Government may also consider incorporating a suitable provision in the RVAT Act for levy of higher rate of TDS in case of unregistered works contractors.*
- Liabilities of awarders regarding deduction of TDS, timely deposition and submission of monthly statement were not ascertained, which resulted in non-levy/imposition of interest and penalty. *The Government may consider issuing instructions to assess the liability of awarders regarding correct deduction and timely deposition of TDS.*
- Deductions of sub-contract value from the taxable turnover of sub-contractors were allowed by the AAs without ascertaining that the principal contractors had paid tax on that turnover. *The Government may consider incorporating a provision in the RVAT Act on the lines of Maharashtra VAT Act for ascertaining that the tax has been paid on the turnover related to sub-contract by the Principal contractor before allowing any deduction from the taxable turnover by obtaining declarations in a prescribed form.*
- The Departmental machinery was not vigilant towards collection of tax from pre-bookings of flats/shops by the builders/developers. It had not made any investigation in any of the cases that were in its knowledge. *The Government may evolve a system for identification of such builders/developers and take steps to check leakage of revenue due to sale of flats/villas/shops/malls on pre-booking basis.*
- Internal control mechanism in the Department was not adequate to verify the correctness of returns filed by works contractors and unearth concealed taxable turnover. *The Government may direct the Department to examine the correctness of nil turnover reported in returns and consider stringent provision of revocation of registration of works contractors, who had not filed returns for three to five consecutive years, when they had clear taxable turnover to disclose and after due verification of information from awarders/available with the Department.*
- Failure to conduct business audit resulted in non-detection of under-declaration of turnover by the works contractors. *The Government may consider issuing necessary directions to bring the works contractors under the sphere of business audit.*

## 2.5 Non-levy of purchase tax

As per Section 4(2) of the RVAT Act, 2003, every dealer who in the course of his business purchases any goods other than exempted goods in the circumstances in which no tax under sub section (1) is payable on the sale price of such goods and the goods are disposed of for the purpose other than specified in clause (a) to (g) of sub section (1) of Section 18, shall be liable to pay tax on the purchase price of such goods at the rate mentioned against each of such goods in schedule III to schedule VI of the Act. Besides, interest at 12 *per cent* per annum is also payable as per Section 55 of the Act.

During test check of the assessment records of Assistant Commissioner, Special Circle-Rajasthan, Jaipur, it was noticed (September 2013) that a dealer purchased wheat valuing ₹ 5.26 crore from unregistered dealers for making flour. The dealer did not deposit purchase tax on the value of wheat which is a taxable raw material and transferred the wheat flour to its branch offices located out of the State. The Assessing Authority also while finalising the assessment of the dealer for the year 2010-11, did not levy purchase tax. This resulted in non-levy of purchase tax of ₹ 21.02 lakh and interest of ₹ 6.31 lakh (upto March 2013).

The omission was pointed out to the Department (September 2013) and reported to the Government (May 2014). The Government intimated (September 2014) that demand of ₹ 21.02 lakh and interest of ₹ 9.67 lakh had been raised and ₹ 2.10 lakh had been recovered. Report on remaining recovery is awaited (December 2014).

## 2.6 Irregular allowance of input tax credit

Section 18(2) of the RVAT Act, 2003 provides that the claim of input tax credit (ITC) shall be allowed on the tax deposited on the basis of original VAT invoice within three months from the date of issuance of such invoice. The Commissioner, Commercial Taxes had issued instructions (1 September 2009) to verify the claims of ITC within six months from the date of filing of return. Further, Section 61(2)(a) provides that where any dealer has availed ITC wrongly on the basis of false or forged VAT invoices, the Assessing Authority shall reverse such credit of input tax and shall impose a penalty equal to four times of the amount of such wrong credit.

During test check of assessment records of Assistant Commissioner, Circle-B, Bharatpur for the period 2010-11, it was noticed (June 2013) that a dealer had availed ITC of ₹ 8.79 lakh and the same was allowed by the Assessing Authority without any verification at the time of assessment. The dealer had availed ITC of ₹ 5.97 lakh on the basis of invoices issued by some of the selling dealers whose sales statements were available online.

Cross verification of sellers records and buyer returns revealed that the dealer availed credit of ₹ 5.97 lakh whereas as per sales statements of selling dealers, tax collected from the dealer was only ₹ 0.02 lakh only. Thus, excess credit of ₹ 5.95 lakh was availed by the dealer. Non-verification of ITC by the Assessing Authority resulted in irregular allowance of ITC of ₹ 5.95 lakh and non-imposition of four times penalty of ₹ 23.79 lakh.

After being pointed out, the Department and the Government intimated (September 2014) that demand of ₹ 5.85 lakh and penalty of ₹ 23.25 lakh had been raised. Report on recovery is awaited (December 2014).

## 2.7 Short levy of tax on inter-State sale

As per Section 8 of CST Act, the 'C' form can be issued by a registered dealer only for the purchase of goods intended for re-sale by him or for use by him in manufacture or processing of goods for sale or in the communication network or in mining or in the generation or distribution of electricity. Further, the Section provides that the tax payable by any dealer on sale of goods in the course of inter-State trade not fulfilling the prescribed conditions shall be at the rate applicable on sale of such goods inside the State.

During test check of assessment records of Assistant Commissioner, Circle-Special Rajasthan, Jaipur for the year 2010-11, it was noticed that a dealer (M/s Tata Motors Ltd. Jaipur) sold motor vehicles to the following works contractors (dealers) in the course of inter-State trade with the support of 'C' forms and paid tax at the rate of two *per cent*.

(₹ in lakh)

Sl. No.	Name of Purchasing dealer	'C' form no.	Value of sales
1.	M/s Varaha Infra Ltd., Haryana	4840337	809.97
2.	M/s Varaha Infra Ltd., Haryana	4840338	154.27
3.	M/s SRC Real Tech Pvt. Ltd., Haryana	3175560	163.04
<b>Total sale upto 8.3.2011</b>			<b>1,127.28</b>
4.	M/s G.R.Infra Projects Ltd., Jharkhand (Sale after 8.3.2011)	0980421	143.27
<b>Total</b>			<b>1,270.55</b>

Since the motor vehicles were not used for the intended purposes (for use by him in manufacture or processing of goods for sale or in the communication network or in mining or in the generation or distribution of electricity) the tax, therefore, on these inter-State sales was leviable at the rate applicable in the state which was 14/15 *per cent* as mentioned below:

(₹ in lakh)

Sale Period	Value of sale	Difference in rate of tax ( <i>per cent</i> )	Tax leviable	Interest leviable (Upto March 2013)
Upto 8.3.2011	1,127.28	12	135.27	40.58
After 8.3.2011	143.27	13	18.63	4.47
<b>Total</b>	<b>1,270.55</b>		<b>153.90</b>	<b>45.05</b>

However, these facts were not considered by the Assessing Authority while finalising the assessments, which resulted in short-levy of tax of ₹ 1.54 crore and interest of ₹ 45.05 lakh.

After this being pointed out, the Department and the Government intimated (September 2014) that tax of ₹ 1.54 crore and interest of ₹ 69.25 lakh had

been raised and ₹ 22.32 lakh had been recovered. Report on remaining recovery is awaited (December 2014).

## **2.8 Non-levy of interest on delayed payment**

The State Government prescribed interest on delayed payment of tax at the rate of 24 per cent upto 31 March 2002, 18 per cent from 1 April 2002 to 11 July 2004 and 12 per cent thereafter under Section 58 of the RST Act, 1994 and Section 55 of RVAT Act, 2003.

During test check of records of Commercial Taxes Officer, Circle, Baran for the period 2012-13, it was noticed (August 2013) that a dealer had deposited (8 January 2013) a demand of ₹ 40.89 lakh pertaining to the period from 1994-95 to 1998-99. However, the Assessing Authority did not levy interest on delayed deposit of demand. This resulted in non-levy of interest of ₹ 81.79 lakh.

The omission was pointed out to the Department (August 2013) and reported to Government (May 2014). The Government intimated (September 2014) that demand of ₹ 81.79 lakh had been raised in September and November 2013. It was also stated that recovery proceedings had been initiated and Bank account had been seized. Report on recovery is awaited (December 2014).

## **2.9 Non-levy of entry tax**

By issue of a notification dated 8 March 2006 under Section 3(1) of the Rajasthan Tax on Entry of Goods into Local Area Act, 1999, the State Government specified the tax payable by a dealer in respect of the specified goods brought into any local areas for consumption or use or sale therein, at such rates as shown in the notification.

As per Form VAT-47/VAT Audit Report/VAT-10A and other records enclosed with VAT returns 20 dealers had purchased goods valued at ₹ 369.66 crore from outside the State during 2009-10 to 2010-11 on which entry tax was leviable. The AAs, while finalising the entry tax assessments of the dealers, did not check the records available with the department. This resulted in non-levy of Entry Tax of ₹ 4.72 crore and interest of ₹ 1.69 crore.

After this being pointed out (August 2013 to April 2014), the Department and the Government intimated (September 2014) that demand of ₹ 5.44 crore (entry tax ₹ 3.70 crore, interest ₹ 1.23 crore and penalty ₹ 51.02 lakh) had been raised and tax of ₹ 84.68 lakh had been recovered. Reports on remaining recovery have not been received (December 2014).

