

2.1 Tax Administration

Commercial Taxes Department is the most important revenue-earning Department of the State. The Additional Chief Secretary to the Government of Meghalaya, Excise, Registration, Taxation and Stamps (ERTS) Department is in overall charge of the Sales Tax Department at the Government level. The Commissioner of Taxes (COT) is the administrative head of the Department. He is assisted by two Deputy Commissioners of Taxes (DCT) and two Assistant Commissioners of Taxes (ACT). One of the ACT, functions as the Appellate Authority. At the district level, 17 Superintendents of Taxes (ST) have been entrusted with the work of registration, scrutiny of returns, collection of taxes, levy of interest and penalty, issue of road permits/declaration forms, enforcement and supervision of check gates *etc.* The collection of tax is governed by the provisions of the Central Sales Tax (CST) Act, 1956, the CST Rules, 1957, the Meghalaya Value Added Tax (MVAT) Act, 2003, the MVAT Rules, 2005 and the Meghalaya (Sales of Petroleum and Petroleum Products including Motor Spirit and Lubricants Taxation) (MSL) Act. Before the introduction of VAT on 1 May 2005, the Meghalaya Sales Tax (MST) Act and the Meghalaya Finance (Sales Tax) (MFST) Act were in place, which have, since been repealed with the introduction of VAT.

2.2 Internal audit

The Sales Tax Department has no separate Internal Audit Wing (IAW). Despite the same being pointed out in the Performance Audits carried out from time to time, no action has been taken by the Department to create an IAW to monitor the working of the Department. In the absence of a separate IAW, the Department solely relies upon the audit carried out by the Accountant General.

Recommendation: *The Department may look into the possibility of creating an Internal Audit Wing to effectively monitor the functioning of the Department.*

2.3 Results of Audit

Test check of the records of 14 units relating to VAT during 2013-14 revealed under-assessment of tax and other irregularities involving ₹ 273.47 crore in 120 cases which fall under the following categories:

Table 2.1

Sl. No.	Category	Number of cases	(₹ in crore)
			Amount
1.	Non/Short realisation of tax	07	10.69
2.	Evasion of tax	11	72.65
3.	Loss of revenue	09	10.45
4.	Other irregularities	93	179.68
Total		120	273.47

During the course of the year, the Department accepted under assessments and other deficiencies of ₹ 256.14 crore in 109 cases. An amount of ₹ 0.08 crore was realised in 09 cases during the year 2013-14.

A few illustrative cases having financial impact of ₹ 44.46 crore in terms of underassessment/short levy/non-levy of tax and other provisions of the Acts are discussed in the paragraphs 2.4 to 2.15.

2.4 Concealment of turnover-ST, Circle-III, Shillong

A dealer concealed ₹ 4.11 crore by furnishing revised returns which led to evasion of tax of ₹ 0.51 crore on which interest of ₹ 0.73 crore and penalty of ₹ 1.02 crore was leviable.

The Meghalaya Value Added Tax (MVAT) Act, 2003 and the Rules made there under stipulate that:

- If a dealer discovers any omission or any other error in any return furnished, he may submit a revised return within sixty days from the date of submission of the return [Section 35(5)];
- If a dealer conceals the particulars of his turnover, he is liable to pay penalty not exceeding double the amount of tax evaded by way of composition of offence [Section 90(viii)]
- If a dealer fails to pay the full amount of tax within 21 days from the close of the quarter, simple interest at the rate of two *per cent* from the first day of the month following the said date shall be payable on the amount of default [Section 40].

A dealer¹ while submitting quarterly returns for the period from January 2006 to March 2009 on different dates between April 2007 and July 2009 disclosed turnover of ₹ 6.07 crore and paid tax amounting to ₹ 0.24 crore at 4 *per cent*. The dealer subsequently submitted revised returns with a reduced turnover from ₹ 6.07 crore to ₹ 1.96 crore for the aforesaid period in November 2009 at 12.5 *per cent*. However, in the revised returns, since the dealer reduced the turnover, there was no change in the tax liability. The Superintendent of Taxes (ST) accepted the revised returns and completed the scrutiny in November 2010. Thus, acceptance of revised returns with reduced turnover by the ST after the expiry of sixty days from the date of submission of returns led to concealment of turnover of ₹ 4.11 crore and consequent evasion of tax of ₹ 0.51 crore on which interest of ₹ 0.73 crore (calculated upto May 2014) and penalty not exceeding ₹ 1.02 crore was also leviable.

The case was reported to the Excise, Registration, Taxation & Stamps (ERTS) Department, Government of Meghalaya in February 2014; reply was awaited (November 2014).

¹ M/s H.K. Enterprise.

2.5 Loss of revenue-ST, Circle-III, Shillong

A dealer concealed purchase of ₹ 3.33 crore and evaded tax of ₹ 0.42 crore on which interest of ₹ 0.68 crore and penalty of ₹ 0.84 crore was leviable, leading to a loss of revenue due to failure of the ST to complete assessment in time.

Under Section 55(1)(a) of the MVAT Act, if a registered dealer fails to furnish return in respect of any tax period, the ST may assess the dealer to the best of his judgement. Further under Section 57 (1) of the Act *ibid*, no assessment can be made after the expiry of five years from the end of the tax period to which the assessment relates. In Meghalaya, 'cigarettes' are taxable at the rate of 12.5 *per cent* at the point of first sale with effect from 01 April 2007.

A dealer² was registered from April 2007 but failed to submit the quarterly return for the quarter ended June 2007. The dealer, however, submitted returns from the quarter ended September 2007 onwards showing local purchase of cigarettes. From the utilisation statement of 'C' forms it was, however, noticed that the dealer purchased cigarettes valued at ₹ 3.33 crore from an Assam based dealer in April 2007. Thus, the dealer concealed the entire turnover of ₹ 3.33 crore and evaded tax of ₹ 0.42 crore on which interest of ₹ 0.68 crore (calculated upto May 2014) and penalty not exceeding ₹ 0.84 crore was also leviable.

Since no assessments can be made after the expiry of five years from the end of the tax period to which the assessment relates, the case has become time-barred. Thus, failure of the ST to make best judgement assessment in a timely manner led to a revenue loss of ₹ 1.10 crore.

The case was reported to the ERTS Department, Government of Meghalaya in February 2014; reply was awaited (November 2014).

2.6 Irregular claim of Input Tax Credit-ST, Circle-III, Shillong

A dealer irregularly claimed ITC on purchase of Schedule-V goods resulting in short payment of tax of ₹ 5.01 crore on which interest of ₹ 7.62 crore and penalty of ₹ 10.02 crore was leviable, leading to a loss of revenue due to failure of the ST to complete assessment in time.

As per Section 11(1) of the MVAT Act, Input Tax Credit (ITC) shall be allowed to a registered dealer for purchase of taxable goods, within the State of Meghalaya, other than the goods specified in Schedule-V appended to the Act. Further under Section 90(xii) if a dealer falsely avails ITC then he is liable to pay penalty not exceeding double the amount of

² M/s Hardeodas Jagannath (P) Ltd.

ITC claimed by way of composition of offence. The item ‘cigarettes’³ is specified in Schedule-V and hence no ITC is admissible to a dealer on purchase of cigarettes within the State of Meghalaya.

A dealer⁴ submitted quarterly returns for the period from July 2007 to March 2008 showing local purchase of ‘cigarettes’ amounting to ₹ 40.05 crore and claimed ITC of ₹ 5.01 crore on such purchase. During the same period, the dealer sold goods amounting to ₹ 40.47 crore on which tax amounting to ₹ 5.06 crore was payable, against which, the dealer paid only ₹ 0.05 lakh⁵ as tax after adjusting ITC of ₹ 5.01 crore. Thus, irregular adjustment of ITC on sale of goods listed in Schedule-V led to short payment of tax of ₹ 5.01 crore on which interest of ₹ 7.62 crore (calculated upto May 2014) and penalty of ₹ 10.02 crore was also leviable.

Since no assessments can be made after the expiry of five years from the end of the tax period to which the assessment relates, the case has become time-barred. Thus, failure of the ST to make timely best judgement assessment led to a revenue loss of ₹ 12.63 crore.

The case was reported to the ERTS Department, Government of Meghalaya in February 2014; reply was awaited (November 2014).

2.7 Evasion of tax-ST, Circle-XIII, Shillong

A dealer concealed purchase of ₹ 0.49 crore and evaded tax of ₹ 0.06 crore on which interest of ₹ 0.09 crore and penalty not exceeding ₹ 0.09 crore was leviable.

Under Section 16(1)(c) of the Assam (Sales of Petroleum *etc.*) Taxation Act, 1955 (as adapted by Meghalaya) if the particulars of turnover have been concealed, a dealer is liable to pay as penalty, in addition to the tax payable, a sum not exceeding one and half times that amount. In addition, interest at 12 *per cent* per annum from the first day of the month following the due date⁶ for the first sixty days and at 24 *per cent* per month thereafter is leviable under Section 20A of the Act *ibid*.

A dealer⁷ submitted quarterly returns for the period from October 2005 to March 2008 disclosing sale of petroleum products valued at ₹ 10.70 crore and was accordingly assessed by the ST in December 2010. Thereafter the dealer continued to submit ‘nil’ returns. However, examination of the

³ Taxable at 12.5 *per cent*.

⁴ M/s Hardeodas Jagannath (P) Ltd.

⁵

Output tax	-	ITC	=	Tax payable
₹ 5.06 crore	-	₹ 5.01 crore	=	₹ 0.05 crore

⁶ Due date is the last day of the month following the end of the quarter.

⁷ M/s Reliance Industries Ltd.

utilisation statements of 'C' forms submitted by the dealer revealed that during the same period, the dealer imported petroleum products valued at ₹ 11.19 crore. Thus, the dealer concealed purchase of ₹ 0.49 crore and evaded tax of ₹ 0.06 crore on which interest of ₹ 0.09 crore (calculated upto May 2014) and penalty not exceeding ₹ 0.09 crore was also leviable.

On this being pointed out (February 2014), the ST stated (March 2014) that the dealer would be issued show cause notice to explain the difference. Further reply was awaited from the ERTS Department, Government of Meghalaya (November 2014).

2.8 Under assessment of tax due to incorrect application of rate-ST, Circle-XIII, Shillong

Incorrect application of rate of tax on ₹ 8.75 crore in a works contract led to underassessment of tax of ₹ 0.74 crore.

It was held⁸ by the Supreme Court of India that the value of the goods involved in the execution of works contract will have to be determined by taking into account the value of the entire works contract and deducting there from the charges towards labour and services. The Apex court also held that the State Legislature is empowered to tax all the goods involved in the execution of a works contract at a uniform rate which may be different from the rates applicable to individual goods because the goods which are involved in the execution of the works contract when incorporated in the works can be classified into a separate category for the purpose of imposing tax. In Meghalaya, works contract is taxable at a uniform rate⁹ of 13.5 *per cent* after deducting there from, the charges towards labour and services and segregating the declared goods¹⁰.

A dealer¹¹ executed works contracts valued at ₹ 109.38 crore between October 2012 and December 2012 out of which ₹ 76.62 crore was deducted towards cost of labour and services. Out of the balance amount of ₹ 32.76 crore, the dealer paid tax at the rate of five *per cent* on ₹ 14.71 crore¹² and 13.5 *per cent* on ₹ 18.05 crore. The ST while scrutinising (April 2013) the returns of the dealer, allowed payment of tax at 5 *per cent* on the entire turnover of ₹ 14.71 crore as claimed by the dealer treating it as declared goods. From the detailed accounts submitted by the dealer, it was, however, noticed that the dealer actually utilised declared goods valued at ₹ 5.96 crore during the same period. Thus, failure of the ST to properly scrutinise the tax returns led to incorrect application of rate of tax

⁸ Gannon Dunkerley & Co. Vs State of Rajasthan and Larsen & Toubro Vs Union of India [1993] 88 STC 204 (SC).

⁹ Schedule IV attached to the Act.

¹⁰ As per Section 14 of the CST Act, 1956 declared goods are goods considered to be of special importance in inter State trade or commerce.

¹¹ M/s BSC & SC JV.

¹² Which included declared goods such as iron & steel etc.

on ₹ 8.75 crore¹³ at five *per cent* instead of 13.5 *per cent* thereby resulting in under assessment of tax of ₹ 0.74 crore.

On this being pointed out (February 2014), the ST while accepting (March 2014) the audit observation stated that assessment for the period from October 2012 to December 2012 had been completed and sale of declared goods was accordingly determined at ₹ 5.96 crore instead of ₹ 14.71 crore. A report on realisation of the tax amount was awaited from the ERTS Department, Government of Meghalaya (November 2014).

2.9 Irregular claim of remission of tax-ST, Nongpoh

A manufacturing unit was irregularly allowed extension of eligibility beyond seven years resulting in short payment of tax of ₹ 1.09 crore on which interest of ₹ 0.10 crore was also leviable.

As per Clause D.2.1 of the Meghalaya Industrial Policy, 1997 only new units set up on or after 15 August 1997 and existing units as on that date, undertaking expansion, modernisation or diversification will be eligible for tax incentives as specified¹⁴ under the Meghalaya Industries (Sales Tax Exemption) Scheme 2001 and Meghalaya Industries (Tax Remission) Scheme 2006. The tax incentives were allowed for a period of seven years in respect of Large and Medium Scale Industries (LMSI).

An LMSI unit¹⁵ started commercial production from 25 March 2005 and was accordingly eligible for availing tax incentives upto 24 March 2012. The unit undertook expansion in December 2009 and was granted further extension by the Industries Department, Government of Meghalaya for a period of seven years upto 14 December 2016. Between 1 April 2012 and 31 March 2013, the unit disclosed turnover of ₹ 29.98 crore on which tax of ₹ 1.10 crore was payable against which, the unit retained ₹ 1.09 crore as tax incentives (being 99 *per cent* of the tax payable) and paid only ₹ 0.01 crore as tax to the Government. Since the unit was set up after 15 August 1997, no extension of the tax incentive scheme was to be allowed beyond the period of seven years. Thus, the irregular action of the Government in allowing extension to the unit beyond the period of seven years resulted in short payment of tax of ₹ 1.09 crore on which interest of ₹ 0.10 crore (calculated upto May 2014) was also leviable.

On this being pointed out (September 2013), the ST stated (November 2013) that proceedings had been initiated for completion of assessments

¹³ ₹ 14.71 crore – ₹ 5.96 crore = ₹ 8.75 crore

¹⁴ Under the provisions of the Scheme of 2001, eligible units were exempted from payment of sales tax. This was replaced by the Scheme of 2006 under which, eligible units were allowed to retain 99 *per cent* of the VAT collected and deposit only 1 *per cent* into the Government account.

¹⁵ M/s Meghalaya Bitchem Pvt. Ltd.

for the year 2012-13. A report on completion of assessment and realisation of the tax with interest was awaited from the ERTS Department, Government of Meghalaya (November 2014).

2.10 Concealment of turnover-ST, Nongpoh

A dealer concealed sale turnover of ₹ 15.12 crore and evaded tax of ₹ 0.60 crore on which interest of ₹ 0.88 crore and penalty not exceeding ₹ 0.90 crore was leviable.

Under Section 45(2) of the MVAT Act, if dealer has not accounted for the turnover of sales in his returns, the ST shall assess him to the best of his judgement and direct the dealer to pay the amount of tax so assessed. In addition to the tax so assessed, the dealer shall also pay, by way of penalty, a sum not exceeding one and half times the assessed tax.

During the period from 1 April 2007 to 31 March 2008, a dealer¹⁶ engaged in sale of old and unused machineries disclosed sale turnover amounting to ₹ 6.59 crore in the course of inter-State trade and the same was duly accepted and assessed by the ST in December 2011 at the concessional rate¹⁷ of 3 *per cent*. Cross-verification of the audited accounts certified by the Chartered Accountants, however, revealed that during the same period, the dealer actually made inter-State sale of ₹ 21.71 crore. Thus, failure of the ST to take into account all available information at the time of assessment enabled the dealer to conceal sale turnover amounting to ₹ 15.12 crore and evade tax of ₹ 0.60 crore¹⁸ on which minimum interest of ₹ 0.88 crore (calculated upto May 2014) and penalty not exceeding ₹ 0.90 crore was also leviable.

On this being pointed out (September 2013), the ST stated (November 2013) that the sale turnover of ₹ 21.71 crore reflected in the audited accounts was pertaining to the States of Meghalaya and West Bengal in which the dealer was additionally registered and as such, there was no evasion of tax. The reply is not acceptable as the audited accounts submitted under the West Bengal Value Added Tax Act and those submitted under the MVAT Act were not only certified by different Chartered Accountants but also had discrepancies relating to actual sales effected by the dealer pertaining to Meghalaya.

The discrepancies in the two audited accounts were brought to the notice of the ERTS Department, Government of Meghalaya in February 2014; further reply was awaited (November 2014).

¹⁶ M/s Adhunik Meghalaya Steels Pvt. Ltd.

¹⁷ The sale was supported by 'C' forms.

¹⁸ Calculated at 4 *per cent*.

2.11 Concealment of turnover-ST, Williamnagar

Four dealers concealed turnover of ₹ 11.44 crore on sale of coal and evaded tax of ₹ 0.46 crore on which interest of ₹ 0.09 crore and penalty not exceeding ₹ 0.92 crore was leviable.

In Meghalaya, all dealers engaged in inter-State sale of coal have to obtain 'P' forms on payment of advance tax from the STs which authorise the dealers to transport nine MT of coal per truck. The Commissioner of Taxes (COT) in August 2012 revised the rate of 'P' form from ₹ 1100 per truck to ₹ 1736 per truck by enhancing the sale price of coal from ₹ 3044 per MT to ₹ 4825 per MT.

During the period from January 2012 to September 2013, four dealers¹⁹ dispatched 360155²⁰ MT of coal by utilising 39752 'P' forms. Thus, the turnover of the dealers for the purpose of assessment should have been ₹ 147.78 crore. However, during the same period, the dealers disclosed turnover of ₹ 136.34 crore in the quarterly returns and the same was accepted by the ST at the time of assessments. Thus, the dealers concealed turnover of ₹ 11.44 crore and evaded tax of ₹ 0.46 crore on which interest of ₹ 0.09 crore (calculated upto May 2014) and penalty not exceeding ₹ 0.92 crore was also leviable.

The case was reported to the ERTS Department, Government of Meghalaya in May 2014; reply was awaited (November 2014).

2.12 Under assessment of tax due to acceptance of false 'C' form declarations-ST, Williamnagar

A dealer fraudulently covered sale amounting to ₹ 64.87 crore made to unregistered dealers in the 'C' form declarations resulting in under assessment of tax of ₹ 1.33 crore on which interest of ₹ 0.93 crore and penalty not exceeding ₹ 2.66 crore was leviable.

Under Section 8(1)(b) read with Section 8(4) of the CST Act, 1956 every registered dealer who sells goods to another registered dealer in the course of inter-State trade shall be liable to tax at the concessional rate of two *per cent* subject to production of 'C' form(s). Inter-State sale of goods not supported by 'C' form(s) shall be taxed at the local rate. In Meghalaya, coal is taxable at 4 *per cent*.

¹⁹ M/s B. Marak Coal Syndicate, M/s Cheran Coal Agency, M/s Nangwin Sangma Coal Carrier, M/s R.M. Sangma Coal Traders.

²⁰ 39752 X 9 MT + 2397 MT (being excess load transported by M/s M/s R.M. Sangma Coal Traders) = 360155 MT.

During the period from January 2011 to June 2012, a dealer²¹ disclosed inter-State sale of coal valuing ₹ 66.73 crore to registered dealers in Assam and submitted nine 'C' forms in support of the sale. The same was accepted by the ST and was accordingly assessed at the concessional rate of 2 per cent. Cross-verification of the 'C' forms with the website²² of the Taxation Department, Government of Assam revealed that the 'C' forms submitted by the dealer had actually been issued to some other dealers for making inter-State purchases from other States (other than Meghalaya) and not to the purchasing dealers as declared by the dealer. Thus, the dealer fraudulently covered sale of ₹ 66.73 crore made to unregistered dealers by submitting false 'C' form declarations with a view to evading tax. The same was however, not cross-checked by the ST at the time of assessments. This resulted in under assessment of tax of ₹ 1.33 crore on which interest of ₹ 0.93 crore (calculated upto October 2014) and penalty not exceeding ₹ 2.66 crore was also leviable.

The case was reported to the ERTS Department, Government of Meghalaya in May 2014; reply was awaited (November 2014).

2.13 Acceptance of invalid 'F' form-ST, Williamnagar

Acceptance of invalid 'F' form covering transactions of two months valuing ₹ 52.13 crore led to under assessment of tax of ₹ 2.09 crore.

Under Section 6A of the CST Act, 1956 read with Rule 11(5) of the CST (R&T) Rules, 1957, if a dealer transfers goods, otherwise than by way of sale, in the course of inter-State trade to any other place of his business or to his agent or principal, as the case may be, then such transfer is exempt from tax if the dealer furnishes a duly filled declaration in form 'F'. Each 'F' form covers transactions of one calendar month.

For the period from October 2013 to December 2013 a dealer²³ claimed exemption on stock transfer of coal valuing ₹ 52.13 crore to Assam and produced a declaration in form 'F' in support of the claim and the ST accepted the same and assessed the dealer accordingly. However, from the examination of the 'F' form it was seen that the form covered transactions of two calendar months and as such, the 'F' form was invalid and liable to be rejected. Thus, acceptance of invalid 'F' form by the ST led to under assessment of tax amounting to ₹ 2.09 crore.

The case was reported to the ERTS Department, Government of Meghalaya in May 2014; reply was awaited (November 2014).

²¹ M/s F. Areng Coal Agency

²² <http://tax.assam.gov.in>

²³ M/s Santi Coal Traders.

2.14 Short levy of composition money – ST, Byrnihat check gate

Taxable goods was carried by transporters without proper documents in 14524 cases on which composition money of ₹ 0.14 crore only was realised instead of ₹ 7.26 crore resulting in short levy of composition money of ₹ 7.12 crore.

Under Section 76(2) of the MVAT Act, the transporter or person in charge of vehicle or carrier of goods in movement shall carry with him records of the goods including *challans*, bills of sale or dispatch, waybills *etc.* If a person transports goods in contravention of Section 76(2), the Commissioner may accept from such dealer, a sum not exceeding ₹5,000 or double the amount of tax whichever is greater, by way of composition of offence, as provided under Section 96 of the Act.

From the offence case register of the ST, Byrnihat check gate it was seen that the ST detected 14,524 cases between April 2012 and March 2014 in which transporters carried taxable goods without proper documents and levied/collected composition money of ₹ 0.14 crore from these transporters instead of ₹ 7.26²⁴ crore thereby resulting in short levy/realisation of composition money of ₹ 7.12 crore. Further, the ST did not record the reasons in any of the cases for collecting lesser penalty than that prescribed under the MVAT Act. The value of the goods was also not recorded by the check post authorities and in absence of this; the exact amount of short realisation of penalty cannot be worked out.

The case was reported to the ERTS Department, Government of Meghalaya in May 2014; reply was awaited (November 2014).

2.15 Non levy of penalty - STs, Byrnihat and Umkiang check gate

Excess load of coal and limestone was carried without any *challan*, bill of sale *etc.* on which penalty of ₹ 16.01 crore though leviable was not levied.

Section 76(5) of the MVAT Act stipulates that if a transporter or the person in charge of a vehicle fails to produce records of taxable goods being carried such as *challans*, bills of sale, waybills *etc.*, the officer-in-charge of the taxation check post shall impose a penalty equal to five times the tax leviable on such goods or 20 *per cent* of the value of the goods whichever is greater. In Meghalaya, the permissible limit for carrying of goods is 9 MT per truck²⁵.

From the records of the STs, Byrnihat and Umkiang check posts, it was noticed that 1.21 lakh MT of coal and 2.48 lakh MT of limestone valued at

²⁴ Calculated at the minimum rate of ₹ 5000 per offence case

²⁵ Vide Government notification dated 29 July 2011.

₹ 2.21 crore and ₹ 0.99 crore respectively was carried by 59628 trucks beyond the permissible limit of 9 MT between April 2012 and March 2014. The excess load carried was without any *challan*, way bills *etc.* and hence penalty²⁶ of ₹ 16.01 crore was leviable against which none was levied and collected. The reasons for non-levy of the penalty were also not recorded.

The case was reported to the ERTS Department, Government of Meghalaya in May 2014; reply was awaited (November 2014).

²⁶

Name of Minerals	MT	Value (₹)	Penalty leviable (₹)
Coal	121111	22077163	110385815
Limestone	248479	9940018	49700090
Total			160085905