CHAPTER II

VALUE ADDED TAX, CENTRAL SALES TAX AND ENTRY TAX ETC.

2.1 Tax Administration

Value Added Tax, Entry Tax, Central Sales Tax, Professional Tax, Entertainment Tax, Luxury Tax Acts and Rules framed thereunder are administered at the Government level by the Additional Chief Secretary, Finance Department, Government of Odisha. The Commissioner of Commercial Taxes (CCT) is the head of the Commercial Tax wing of Finance Department who is assisted by Additional CCTs in 3 zones, Joint CCTs (JCCTs) in 12 ranges, Deputy CCTs (DCCTs) / Assistant CCTs (ACCTs) / Commercial Tax Officers (CTOs) in 45 circles and CTOs in 14 assessment units for administering the relevant tax laws and rules under Odisha Value Added Tax (OVAT) Act, 2004, Odisha Entry Tax (OET) Act, 1999, Central Sales Tax (CST) Act, 1956, Odisha State Tax on Professions, Trades, Callings and Employments Act, 2000 (commonly known as Professional Tax Act, 2000). Besides, there are 6 enforcement ranges headed by Special Commissioners of Commercial Taxes (Enforcement) and 15 investigation units for checking tax evasion and interstate transactions.

2.2 Internal Audit

The Internal Audit Wing (IAW) of the Department is defunct since 2002-03. The Department has not taken any steps to revive IAW despite this being pointed out in Audit Reports (Revenue Sector) during the previous years. The Department stated (July 2015) that steps would be taken to revive IAW.

2.3 Results of Audit

A. REVENUE RECEIPTS

In 2014-15, test check of records of 51 units relating to OVAT, CST, OET, Odisha Entertainment Tax and Professional Tax assessments and other records showed underassessment of tax and other irregularities involving ₹ 2,375.79 crore in 540 cases which fall under the following categories as given in **Table 2.1** below.

Table - 2.1

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
Sales Tax / VAT(including CST)			
1.	Audit of Levy and collection of Entertainment Tax from Cable Television and Direct to Home Broad casting service operators	1	0.82
2.	Audit of System of Assessment under Value Added Tax	1	591.50
3.	Underassessment of tax	131	522.52
4.	Acceptance of defective statutory declaration forms	25	6.54

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
5.	Evasion of tax due to suppression of sales / purchase	12	29.64
6.	Irregular / incorrect/excess allowance of input tax credit	36	28.02
7.	Other Irregularities	171	1047.15
	Total	**377**	**2,226.19**
Entry Tax			
1.	Underassessment of tax	81	94.90
2.	Acceptance of defective statutory declaration forms	5	3.00
3.	Evasion of tax due to suppression of sales / purchase	2	0.64
4.	Other Irregularities	68	50.96
	Total	**156**	**149.50**
Professional Tax			
1.	Other Irregularities	7	0.10
	Total	**7**	**0.10**
	Grand Total	**540**	**2,375.79**

During the year 2014-15, Department accepted underassessment and other deficiencies of ₹ 9.58 crore in 78 cases which were pointed out in audit during 2014-15 and earlier years. An amount of ₹ 1.16 crore was realised in 37 cases during the year 2014-15.

B. EXPENDITURE

Audit also test checked records relating to expenditure accounts of the above units and found irregularities involving ₹ 0.23 crore in 54 cases which fall under the following categories as given in **Table 2.2** below.

Table 2.2

(₹ in lakh)

Sl. No.	Categories	No. of cases	Amount
1.	Irregularity in management of cash	12	5.77
2.	Irregular payment of House Rent	6	4.96
3.	Other Irregularities	36	12.11
Total		**54**	**22.84**

During the course of the year, Department accepted irregularities and other deficiencies of ₹ 0.02 crore in 4 cases which were pointed out in audit during 2014-15 and earlier years. An amount of ₹ 0.10 lakh pointed out in 2014-15 had been realised.

2.4 Audit of System of Assessments under Value Added Tax

2.4.1 Introduction

Value Added Tax (VAT) is a multi-point tax levied at each stage of value addition with a provision to allow input tax credit (ITC) on tax paid earlier at the time of purchase which is adjusted against the tax payable on sale by the dealer. The Odisha Value Added Tax (OVAT) Act, 2004 introduced in the State with effect from 1 April 2005 is administered by the Additional Chief Secretary, Finance Department, Government of Odisha. VAT constitutes a major portion of the State revenue and accounts for nearly 58 *per cent* of it. Assessment, levy and collection of VAT are entrusted to the Commissioner of Commercial Taxes, Odisha. Assessment of tax has a direct bearing on levy and collection of tax and quality of tax administration. Since assessments are made only in respect of the dealers selected on the basis of certain parameters, audit was conducted between April and August 2015 to study the effectiveness of the system of assessment in 15[1] out of 45 circles under the Commercial Tax (CT) wing of the Finance Department covering the tax periods from 2011-12 to 2013-14. Audit revealed several systemic and compliance deficiencies in the system of assessment as discussed in the succeeding paragraphs.

2.4.2 Trend of Revenue Collection under VAT *vis-à-vis* Collection from Assessments

The details regarding total revenue collection of the 15 test checked circles during the last three years 2011-12 to 2013-14 *vis-à-vis* the number of assessments made, amount demanded and amount realised from assessments were as follows:

(₹ in lakh)

Year	Number of dealers selected for tax audit	Number of dealers covered under tax audit during the year	Total number of assessments made by test checked circles under VAT	Total revenue collection of test checked circles under VAT	Amount of tax demanded by test checked circles under VAT on the basis of assessment	Percentage of amount demanded to total revenue under VAT	Amount realised out of tax demanded under VAT on the basis of assessment	Percentage of amount realised to amount demanded on assessments under VAT (col. 6 ÷ col. 4 × 100)
1	***2***	***3***	***4***	***5***	***6***	***7***	***8***	***9***
2011-12	5,618	2,300	1,110	5,41,569.63	35,743.24	6.60	3,194.12	8.94
2012-13	5,672	3,882	1,441	6,27,662.71	33,498.58	5.34	3,055.04	9.12
2013-14	3,260	2,718	1,723	6,93,597.85	39,712.84	5.73	3,039.27	7.65
Total	**14,550**	**8,900**	**4,274**	**18,62,830.19**	**1,08,954.66**	**5.85**	**9,288.43**	**8.53**

Source: Information furnished by the assessing authorities of test checked circles

As may be seen from the above, the percentage of amount demanded on assessments was 5.85 *per cent* of the total revenue under VAT on an average during the above three years and the remaining 94.15 *per cent* of the VAT revenue came from *suo motu* tax compliance by the dealers. Further, though the test checked units demanded 5.85 *per cent* of VAT, they realised only 0.5 *per cent* mainly due to departmental inaction to realise the amount. It was also seen that the percentage of assessments

[1] Angul, Balasore, Bhubaneswar-I, Bhubaneswar-II, Bhubaneswar-III, Bhubaneswar-IV, Bhadrak, Cuttack-I (Central), Cuttack-I (West), Cuttack-I (East), Cuttack-II, Gajapati, Jharsuguda, Mayurbhanj and Rourkela-II.

conducted by the test checked circles to the total number of dealers selected for tax audit during the year 2011-14 was 29.37 *per cent*.

Audit Findings

2.4.3 Selection of Dealers for Tax Audit

As per Section 41 of the OVAT Act read with Rule 41 of the OVAT Rules, the Commissioner may select certain number of registered dealers on random basis or on the basis of risk analysis or on the basis of any other objective criteria at such intervals as may be prescribed ordinarily before the close of the year for tax audit during the following year. However, for control of large taxpayers, the Commissioner may plan audit checks across the totality of the business of such dealers, within an audit cycle of three years.

The CCT, Odisha, had prescribed the following major parameters for selection of dealers for tax audit during 2011-12, 2012-13 and 2013-14.

(a) Decrease in tax paid in a year as compared to the preceding year;

(b) Dealers obtaining waybills and statutory declaration forms but filing 'nil' returns;

(c) Dealers carrying forward input tax credit consecutively for three tax periods;

(d) Misclassification of goods (lower tax rate versus higher tax rate); and

(e) Dealers disclosing total purchase turnover more than total sale turnover.

Dealers satisfying any three or more of the parameters so prescribed are considered for selection for tax audit. In addition to the above, large taxpayer units who were not audited for last two years are also selected for tax audit.

2.4.3.1 Shortfall in Tax Audit

From the information furnished by the CCT, Odisha, Audit noticed that out of 14,550 dealers selected by the CCT for tax audit during 2011-12 to 2013-14 on the basis of various parameters / criteria, only 8,900 dealers were audited, leading to a shortfall in tax audit of 5,650 dealers (39 *per cent*). The details are given in the table below:

Year	Number of dealers selected for tax audit	Number of dealers covered under tax audit during the year	Shortfall in tax audit	Percentage of shortfall
2011-12	5,618	2,300	3,318	59
2012-13	5,672	3,882	1,790	32
2013-14	3,260	2,718	542	17
Total	**14,550**	**8,900**	**5,650**	**39**

As may be seen from the above table, while the percentage of shortfall in tax audit was 59 *per cent* during 2011-12, it declined to 32 *per cent* during 2012-13 and 17 *per cent* in 2013-14. The Department could not attribute

any reason for shortfall in tax audit. Shortfall in tax audit indicated that the transactions of the dealers which were selected on the basis of the prescribed criteria, could not be assessed.

2.4.4 Non-adherence to Executive/ Departmental Instructions for Tax Audit

2.4.4.1 As per Section 41(4) of the OVAT Act, after completion of tax audit of any dealer, the officer authorised to conduct such audit shall, within seven days from the date of completion of audit, submit the audit report called as 'Audit Visit Report' (AVR) to the assessing authority (AA) in the prescribed form along with the statements recorded and documents obtained evidencing suppression of purchases or sales or both, erroneous claims of deductions including input tax credit and evasion of tax, if any, relevant for the purpose of investigation, assessment or such other purposes. To make the AVR comprehensive and qualitative covering all aspects of accounts, the CCT prescribed[2] (July 2009) an Audit Check Sheet to be duly filled in by the tax audit team which will form part of the AVR. The check sheet shall include, among other things, the details of purchase and sales, details of statutory forms and waybills used, details of closing stock and physical verification thereof by the tax audit team.

From the scrutiny of 678 out of total 3,223 AVRs produced by the AAs of test checked circles on the basis of which audit assessments were finalised during 2011-12 to 2013-14, Audit noticed that 449 AVRs did not contain the prescribed audit check sheets. The year-wise details are given below:

Year	Total number of AVRs produced to audit along with audit assessment records	Number of AVRs in which audit check sheets were not available	Percentage of AVRs in which audit check sheets were not available
2011-12	106	58	54.71
2012-13	189	130	68.78
2013-14	383	261	68.15
Total	**678**	**449**	**66.22**

As may be seen from the above, on an average, 66.22 *per cent* of the AVRs did not contain the audit check sheets and thus lacked the required information. Despite this, audit assessments were finalised on the basis of the AVRs. As a result, it could not be ascertained whether the assessments in these cases were done correctly or not.

After Audit pointed out the matter, the AAs of all the test checked circles admitted (between June and August 2015) the audit observation and stated to have noted the same for future guidance.

2.4.4.2 Tax authorities, when performing quasi-judicial functions have the jurisdiction of a court and accordingly they are required to discharge the duties enjoined upon them under the statute in accordance with the norms of the judicial procedure.

2 CCT's Circular No. 12492/Ct, dated 8 July 2009.

Based on the direction of the Hon'ble High Court of Odisha[3] the CCT, Odisha issued instructions (November 2009, September 2012 and July 2014) to the AAs for-

(i) using the Government printed order sheet forms from 1 December 2009;

(ii) issuing orders of assessment and the demand notices to the dealers by registered post with acknowledgement form; and

(iii) maintaining the records up-to-date and taking signatures of the dealers or their authorised representatives on the body of the order sheets on the date of appearance.

Audit examined the records relating to 1,008 assessments involving financial implication of ₹ 500.29 crore (including 678 audit assessments) out of 4,284 assessments made during 2011-14 in the test checked circles and noticed (between June and August 2015) as under.

- In 862 cases (85.52 *per cent*), signatures of dealers or their authorised representatives were not taken on the order sheets.
- In 518 cases (51.39 *per cent*), the order sheets were not maintained in Government printed order sheet forms.
- In 915 cases (90.77 *per cent*), demand notices were not issued within two weeks from the date of issue of assessment orders.
- In 821 cases (81.45 *per cent*), the assessment orders were not despatched through registered post.

Thus, non-maintenance of assessment records as per the Court's directions was fraught with risk of the assessments becoming vulnerable to challenges in judiciary and consequential blockage of Government revenue. In this connection, it may be mentioned that the Hon'ble High Court in three other cases[4] also quashed (August 2013) the assessment orders as the directions of the Court were not carried out.

After Audit pointed out (between June and August 2015) the above cases, the concerned AAs admitted (between June and August 2015) the facts and noted it for future guidance. The matter was brought to the notice of the CCT, Odisha in August 2015 and reply is awaited (December 2015).

2.4.5 Assessment of Escaped Turnover

As per Section 43 of the OVAT Act read with Rule 50 of the OVAT Rules, if after assessment of the dealer, the AA, on the basis of any information in his possession, is of the opinion that the whole or any part of the turnover of the dealer in respect of any tax period has escaped assessment or been under assessed or been assessed at a rate lower than that leviable, he may, after giving the dealer a reasonable opportunity of being heard, proceed to assess the escaped turnover. Further, if the AA is satisfied that the

3 WP(C) No. 2180 of 2008- M/s Geetanjali Cement Products vrs. Sales Tax Officer, Rourkela II Circle, Rourkela [(2010) 036 VST 0380].

4 WP(C) No. 16616 of 2013-dated 16 August 2013, WP(C) No. 16617 of 2013-dated 16 August 2013 and WP(C) No. 16622 of 2013-dated 16 August 2013.

escapement is without any reasonable cause, he may direct the dealer to pay, by way of penalty, a sum equal to twice the amount of tax additionally assessed. Enforcement and Vigilance wings of the Department play an important role in checking the evasion of tax by unscrupulous dealers. CCT, Odisha in his circular[5] dated 29 December 2012, issued instructions to all AAs for speedy disposal of investigation reports of Enforcement and Vigilance wings of the Department. As per the instruction, the assessment proceedings must be initiated immediately after receipt of investigation reports and completed within six months from the date of receipt of these reports. In case of compelling reasons, such proceedings may be completed within one year from the date of receipt of reports. In the event of extending the assessment beyond one year, reasons have to be recorded and the CCT kept informed of the same.

2.4.5.1 Non-completion of Assessments of Fraud / Tax Evasion cases

During scrutiny of records relating to fraud / tax evasion cases, Audit noticed that during 2011-12 to 2013-14, the test checked circles received 991 fraud cases / tax evasion reports from the Enforcement and Vigilance wings of the Department. Out of the above, 973 reports had been disposed of within the prescribed time limit and the remaining 18 reports involving evasion of tax of ₹ 9.24 crore had not been disposed of by four[6] circles even after more than one year.

After Audit pointed out the cases, the AAs stated (between June and August 2015) that the assessment proceedings against the dealers were in progress and would be completed very soon. The matter was reported (August 2015) to the CCT, Odisha and reply is awaited (December 2015).

2.4.5.2 Short levy of tax due to non-inclusion of Transport Charges in the Taxable Turnover of Sales

The term 'sale price' as defined under Section 2(46) of the OVAT Act, means the amount of valuable consideration received or receivable by a dealer as consideration for the sale of any goods less any sum allowed as cash discount or trade discount at the time of delivery or before delivery of such goods but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof. As per Explanation (a) to the above section applicable with effect from 1 June 2008, any sum charged for freight, delivery, distribution, installation or insurance at the time of delivery or before delivery of such goods, shall be included in the sale price.

During scrutiny of assessment records in Jharsuguda Circle, Audit noticed that a dealer engaged in trading of coal within the State received transport charges of ₹ 6.78 crore during the tax periods from 1 June 2008 to 31 March 2012 as revealed from the Profit & Loss Accounts of the dealer on which tax of ₹ 27.11 lakh was payable. The dealer did not include the

[5] Circular No. III (I) 38/09-22239/CT, dated 29 December 2012.

[6] Bhubaneswar-III (two cases), Cuttack-I East (one case), Jharsuguda (14 cases) and Rourkela-II (one case).

transportation charges in the sale turnover in the purchase / sale statements. The AA, while finalising the audit assessment under Section 42 of the Act for the tax periods from 1 April 2007 to 31 March 2012, had also failed to include such transport charges in the taxable turnover. This resulted in short levy of tax of ₹ 27.11 lakh. Besides, penalty of ₹ 54.22 lakh was also leviable.

After Audit pointed out (December 2014) the case, the AA stated (December 2014) that the matter would be examined and results would be intimated later.

2.4.6 Provisional Assessment

As per Section 40 of the OVAT Act read with Rule 47 of the OVAT Rules, where a dealer fails to file return in respect of any tax period or files return not accompanied by proof of payment of tax for any tax period within the prescribed time, the AA may assess the dealer provisionally. Further, as per the provisions of Section 34(3) of the Act, if a registered dealer or any other dealer required to furnish return, without any sufficient cause, fails to furnish the returns, the commissioner may, after giving the dealer a reasonable opportunity of being heard, direct him to pay in addition to any tax, interest and penalty payable or paid by him, a penalty of a sum of rupees one hundred per each day of default subject to a maximum of rupees ten thousand. Further, as per Section 31 of the Act, the registering authority may, at any time, for reasons to be recorded in writing, suspend the certificate of registration if such dealer fails to file returns under the Act within the time prescribed.

2.4.6.1 Non-initiation of action for not filing returns

During analysis of data generated from the VAT Information System (VATIS) and information furnished by all test checked circles for the year 2013-14, Audit noticed that 2,830 dealers registered under the OVAT Act stopped filing returns between July 2009 and April 2014. The number of months for which returns were not filed by these dealers ranged between 15 and 72. It was however noticed that although these dealers were required to be assessed provisionally under Section 40 of the Act, neither had the AAs made any such provisional assessments nor did they initiate any action for imposition of penalty of ₹ 2.83 crore[7] as per the provisions of the Act.

After Audit pointed out these cases, the AAs stated (between June and August 2015) that the cases would be taken up for examination. The matter was reported to the CCT, Odisha in August 2015 and reply is awaited (December 2015).

2.4.7 Non-assessment of Casual Dealers

As per provision under Section 45 of the OVAT Act read with Rule 52(1) of the OVAT Rules, a casual dealer shall furnish to the assessing authority including the officer-in-charge of check post or barrier referred to in

[7] 2,830 dealers × ₹ 10,000 (penalty at the rate of ₹ 100 per day subject to a maximum of ₹ 10,000).

Section 74, a return of estimated turnover in Form VAT-311A either on his own motion or when called upon to do so by notice in Form VAT-309, immediately. The assessing authority or the officer in-charge of check post or barrier, if he is satisfied, after making such enquiry as he may consider necessary, that the return furnished under sub-rule (1) is correct and complete, shall provisionally assess the amount of tax due from him on the basis of such return.

From the information furnished by the five circles[8], Audit noticed that no survey and assessments of casual dealers were conducted during the period 2011-12 to 2013-14. However, as per the information on casual dealers obtained by Audit from the Deputy Commissioner of Police, Bhubaneswar and Additional District Magistrate, Balasore, 1,324 casual dealers under the four circles of Bhubaneswar and 12 dealers under Balasore Circle had taken licence for sale of firecrackers during the period which is taxable at the rate of 13.5 *per cent*. However, neither did these dealers furnish returns in respect of the transactions effected nor did the AAs of above five circles issue notices to them for assessment as per the provisions of the Act.

After Audit pointed out the cases, while the AA of Bhubaneswar-I Circle stated (June 2015) that the list provided by Audit would be taken into consideration for survey, the AAs of Bhubaneswar-III and Balasore Circles noted the audit observation for future action. The AAs of Bhubaneswar-II and Bhubaneswar-IV circles stated (July 2015) that the matter would be examined and steps taken accordingly.

The matter was reported to the CCT, Odisha in August 2015 and reply is awaited (December 2015).

2.4.8 Follow-up of Assessments

2.4.8.1 Non-levy of interest and penalty for non-payment of amount demanded in assessments

As per the provisions of Section 50 (5) of the OVAT Act, where a registered dealer fails to make payment of the tax assessed, interest payable or penalty imposed or any other amount due from him under the Act within 30 days of the date of service of the notice of demand, the AA shall, after giving the dealer a reasonable opportunity of being heard, direct that such dealer shall pay, in addition to the amount due for payment, by way of penalty, a sum equal to two *per cent* of such amount of tax, interest, penalty or any other amount due, for every month for which payment has been delayed by him after the date on which such amount was due to be paid. Further, as per sub-section (6) of the Section *ibid*, if the dealer is in default in payment of the amount payable by him under sub-section (5), he shall be liable to pay simple interest on such amount at the rate of two *per cent* per month with effect from the date of such default till the payment of the amount. This apart, Section 50 (7) *inter alia* provides that all amounts that remain unpaid after the due date of payment in pursuance of the notice issued under Section 50 (5) of the Act shall be recoverable as arrears of

[8] Balasore, Bhubaneswar-I, Bhubaneswar-II, Bhubaneswar-III and Bhubaneswar-IV.

public demand or in accordance with the provisions contained in Schedule E to the Act.

During scrutiny of assessment records and Demand Collection Registers[9] for the years 2011-12 to 2013-14 in the test checked circles and further information furnished by the Department, Audit noticed that till the date of audit, 540 dealers had not paid tax, interest and penalty of ₹ 74.06 crore demanded (between April 2011 and September 2014) by the AAs during finalisation of 552 assessments under various provisions of the Act during 2011-12 to 2013-14. However, neither had the AAs issued show cause notices to the defaulting dealers nor levied any interest as per the provision of the Act. Besides, the AAs had also not initiated action for recovery of the amount as prescribed in Section 50(7) of the Act along with penalty and interest of ₹ 79.24 crore.

(₹ in crore)

Provision under which assessed	Number of cases (assessments)	Amount of tax, interest and penalty levied	Period during which demand notices issued	Range of delay till date of audit (in days)	Penalty leviable	Interest leviable	Total of penalty and interest leviable
Section 40	3	0.27	May 2012 to December 2013	550 to 1095	0.10	0.10	0.20
Section 42	346	40.37	May 2011 to September 2014	262 to 1525	20.41	20.41	40.82
Section 43	162	32.05	April 2011 to June 2014	292 to 1518	18.32	18.32	36.64
Section 44	41	1.37	September 2011 to March 2014	184 to 1408	0.79	0.79	1.58
Total	**552**	**74.06**			**39.62**	**39.62**	**79.24**

After Audit pointed out (August 2015) the above cases, the AAs of 13 out of 15 test checked circles stated (between June and August 2015) that action would be taken to realise the amount after examination. However, AAs of Bhubaneswar-I and Cuttack-II circles stated (June and July 2015) that tax recovery proceedings would be initiated against the defaulting dealers.

2.4.8.2 Non-adherence to the Executive Instructions for Review of Assessment Records

The CCT, Odisha instructed[10] (February 2010) all the zonal Additional CCTs and JCCTs / DCCTs of the ranges to review at least two / five assessment records every month and to submit monthly compliance report.

From the information furnished by the AAs of 11[11] out of total 15 test checked circles, it was noticed that no such review of assessment records had been conducted by the JCCTs / DCCTs of the ranges or the zonal Additional CCTs during 2011-12 to 2013-14. It was further noticed

[9] Demand Collection Registers are maintained by the circles to watch the recovery of tax, interest, penalty etc. demanded during assessments.

[10] CCT's letter No. 1745/ CT, dated 2 February 2010.

[11] Angul, Balasore, Bhubaneswar-I, Bhubaneswar-II, Bhubaneswar-III, Cuttack-I Central, Cuttack-I East, Gajapati, Jharsuguda, Mayurbhanj and Rourkela-II.

that neither the compliance reports were submitted by the JCCTs / DCCTs / Additional CCTs to the office of the CCT nor did the latter monitor receipt of the same. The remaining four circles[12], though stated that reviews had been done by the JCCTs of the concerned ranges, could however produce no evidence in support thereof to Audit.

Audit reported the matter to the CCT, Odisha in August 2015. However, his reply is awaited (December 2015).

2.4.9 Assessment Module of VATIS remained non-operational

The VAT Information System (VATIS) provides an assessment module for maintaining and updating of information relating to assessments right from the issue of notice to the dealer for assessment upto the generation of demand collection register. The CCT, Odisha instructed (22 May 2013) all the AAs, among other things, for updation of the module at the time of assessment of the dealers. However, from the information furnished by the selected circles, it was noticed that the Department had not utilised the assessment module of VATIS during assessments. Non-utilisation of the module at the time of assessments is fraught with risk of manipulation of data such as antedating of notices, assessment orders, demand notices etc. Further, the assessment orders could not also be uploaded to the module to maintain transparency in assessments as well as for review and monitoring of such assessments by the higher authorities. The CCT also failed to monitor proper adherence to his instructions by the AAs.

Audit reported the matter to the CCT, Odisha in August 2015. However, his reply is awaited (December 2015).

2.4.10 Conclusion

The audit of system of assessments under Value Added Tax revealed several deficiencies. While there were huge shortfalls in tax audit of selected dealers leading to non-assessment, the assessing authorities failed to adhere to the executive instructions regarding tax audit and audit assessments issued from time to time. Casual dealers remained unidentified due to absence of intensive surveys. The department also failed to initiate any action against the dealers who defaulted in filing returns continuously.

[12] Bhadrak, Bhubaneswar-IV, Cuttack-I West and Cuttack-II.

2.5 Audit of Levy and Collection of Entertainment Tax from Cable Television and Direct to Home Broadcasting Service Operators

2.5.1 Introduction

The assessment, levy and collection of entertainment tax in Odisha is governed by the Odisha Entertainment Tax Act, 2006 (OENT Act) and the Rules made thereunder, as amended from time to time. Under the Act, the proprietor of a cable television (TV) network or Direct to Home (DTH) Broadcasting Service shall be liable to pay entertainment tax at such rate as may be prescribed.

The administration of Entertainment Tax (ENT) in the State is entrusted to the Commercial Tax wing of Finance Department and the Commissioner of Commercial Taxes (CCT), Odisha is responsible for implementation of the provisions of OENT Act and the Rules made thereunder.

As per information furnished by the Department of Posts, the number of cable TV operators increased from 985 in 2011-12 to 1,496 in 2013-14. In view of increasing number of cable TV and DTH operators in the State, audit was taken up during April to June 2015 through test check of nine[13] out of 45 circles where cable TV and DTH operators were registered, covering the period from 2010-11 to 2013-14 to assess the existence of system to check evasion of ENT and the extent of compliance to the provisions under the Act and the Rules in levy and collection of tax.

2.5.2 Trend of Revenue Collection

2.5.2.1 Trend of collection of entertainment tax

Total revenue collected by the Department *vis-à-vis* the collection of entertainment tax for the last three years 2011-14 is given in the table below.

(₹ in crore)

Year	Total revenue collected	Entertainment tax receipts	Percentage of entertainment tax receipts to total revenue
2011-12	9,657.45	9.09	0.09
2012-13	11,134.07	9.78	0.09
2013-14	12,555.38	12.81	0.10

Source: Data collected from Commissioner of Entertainment Tax

Revenue collected towards entertainment tax ranged between 0.09 and 0.10 *per cent* of the total revenue collected during the above three years. As the department could not furnish the budget estimates (BE) of ENT, the achievement / shortfall of the department with respect of BE could not be analysed.

[13] Balangir, Barbil, Bhubaneswar-II, Bhubaneswar-III, Bhubaneswar-IV, Ganjam-I, Kalahandi, Puri and Koraput.

2.5.2.2 Trend of collection through Cable TV and DTH Operators

Total revenue collected by Government towards entertainment tax *vis-à-vis* the revenue collected from cable TV and DTH operators of the State in the nine test checked circles during the last three years is given below:

(₹ in crore)

Year	No. of Cable TV operators	Total collection from Cable TV operators	No. of DTH operators	Total collection from DTH operators	Total Cable TV and DTH operators	Total collection from Cable TV and DTH operators	Total ENT receipts	Percentage of collection from Cable TV and DTH operators to total ENT
2011-12	22	2.29	4	4.42	26	6.71	9.09	73.82
2012-13	23	2.60	4	4.66	27	7.26	9.78	74.23
2013-14	24	2.87	4	5.54	28	8.41	12.81	65.65
Total	**69**	**7.76**	**12**	**14.62**	**81**	**22.38**	**31.68**	

Source: Data collected from Commissioner of Entertainment Tax

The collection of ENT from cable TV and DTH operators to total entertainment tax receipts increased by 0.41 *per cent* in 2012-13 as compared to the previous year, it decreased by 8.58 *per cent* in 2013-14 despite increase in number of cable TV operators during 2013-14.

Audit Findings

2.5.3 Loss of revenue due to non-initiation of action against unregistered operators

Section 15 of OENT Act empowers the officer authorised by the State Government to search and inspect any place of entertainment while the entertainment is proceeding and any place ordinarily used as a place of entertainment or for keeping connected records with a view to securing compliance of the provisions of the Act or the Rules.

2.5.3.1 Failure to obtain information from the Department of Posts led to continuation of cable operators without registration

As per Sections 3 and 4 of Cable Television Networks (Regulation) Act, 1995 read with Rule 3 of Cable Television Networks (Regulation) Rules, 1994, a cable TV operator is required to register himself with the Department of Posts of Government of India and obtain a certificate for running the cable TV network till the operator carries on the cable TV service or where the surrender of the certificate is accepted by the competent authority. Rule 12 of the OENT Rules, 2006 stipulates that the proprietor of a cable TV network shall submit to the Commissioner, an application in Form XA at least fifteen days before the date of providing such entertainment and the Commissioner, after making enquiry, shall issue a certificate in form XIIIA permitting the proprietor to operate the cable TV network. As per Section 9(2) of OENT Act, 2006, no proprietor of a cable television network shall provide entertainment unless he obtains permission from the Commissioner in Form XIIIA. Further, as per Rule 31(1)(a) of OENT Rules, where the proprietor failed to give information or take

permission as required under above rule, the AA shall issue notice in Form VIII for assessment of tax.

From the information collected from the Department of Posts, Audit noticed that more than 98 *per cent* of the cable TV operators of the State registered under the Department of Posts were not registered under the OENT Act during 2011-12 to 2013-14. The details regarding number of operators registered under the Department of Posts vis-à-vis the OENT Act during 2011-12 to 2013-14 are given below.

Year	Number of cable TV operators registered under		Number of cable TV operators not registered under OENT Act	Percentage of cable TV operators not registered under OENT Act
	Department of Posts	OENT Act		
2011-12	985	22	963	97.77
2012-13	1,269	23	1,246	98.19
2013-14	1,496	24	1,472	98.40

Source: Data collected from Department of Posts and Commissioner of Entertainment Tax

Thus, 1,472 cable TV operators (more than 98 *per cent*) registered under the Department of Posts were not registered under the OENT Act and had also not submitted application in Form XA to the Commissioner for issue of certificates as on 31 March 2015. Despite this, the Department did not attempt to get the information regarding cable TV operators from the Department of Posts and initiate any action as per the provision of the Act for inspection and search. Thus, failure to obtain information from the Department of Posts and non-initiation of action against unregistered cable TV operators led to continuation of cable operators without registration and consequential evasion of tax.

After Audit pointed this out, the Assistant Commissioners of Entertainment Tax (ACETs) of seven circles[14] stated (May and June 2015) that action would be taken after confirmation from the Department of Posts. ACET, Bhubaneswar-II Circle stated (July 2015) that there is no provision in the Act for survey and registration of cable TV operators. He further added that the activities of such cable TV operators would be examined and necessary steps would be taken to get them registered if their liabilities are established.

The matter was reported to the CCT, Odisha and the Government in August 2015. Their replies are awaited (December 2015).

2.5.3.2 Lack of Departmental coordination led to continuation of DTH operators without registration

Rule 12 of the OENT Rules, 2006 stipulates that the proprietor of a DTH Broadcasting service shall submit to the Commissioner, an application in Form XA at least fifteen days before the date of providing such entertainment and the Commissioner, after making enquiry, shall issue a certificate in form XIIIA permitting the proprietor to operate the DTH broadcasting service. As per Section 9(2) of OENT Act, 2006, no proprietor of a Direct to Home Broadcasting Service shall provide entertainment unless he obtains permission from the Commissioner in Form XIIIA.

[14] Barbil, Balangir, Bhubaneswar-III, Bhubaneswar-IV, Ganjam-I, Koraput and Puri.

Further, as per Rule 31(1)(a) of OENT Rules, if the proprietor failed to give information or take permission as required under above rules, the AA shall issue notice in Form VIII for assessment of tax.

Audit noticed that six DTH operators in the State were registered under the Odisha Value Added Tax Act in four circles[15] during the period covered under audit. However, only four of them were registered under the OENT Act and the remaining two were not registered. Further, no application for seeking registration was also received from the DTH Operators. The Department, though aware of the existence of these two DTH operators, had not initiated any action as per the provision of the Act. This led to continuation of DTH operators without registration and consequential evasion of tax.

After Audit pointed this out, ACET, Bhubaneswar-I Circle stated that show cause notices were issued (June 2015) to the operators and in one case, based on the show cause notice, a DTH Operator registered (September 2015) himself and paid entertainment tax amounting to ₹ 2.03 crore for the months from April to September 2015.

The matter was reported to the CCT, Odisha and the Government in August 2015. Their replies are awaited (December 2015).

2.5.4 Non-realisation / short realisation of tax, interest and penalty

As per Section 7(1) of OENT Act, 2006 read with Part II of Schedule to the Act, the proprietor of a cable TV network providing cable TV service shall be liable to pay entertainment tax at the rate of five *per cent* on his monthly gross receipt. The term 'gross receipt' as defined under the said schedule shall mean the aggregate amount received or receivable by the proprietor of a cable TV network from the subscribers. As per Section 16(2) of the Act, when the proprietor fails to file return along with full payment of tax as admitted in the said return, penalty not exceeding the amount of tax defaulted shall be levied for such default after giving the proprietor an opportunity of being heard. Section 20 of the Act further provides that if the proprietor fails to pay tax due under the provisions of the Act, he shall, in addition to tax due, be liable to pay interest at the rate of one and half *per cent* per month from the date immediately following the last date for payment of tax, for a period of one month, and at the rate of two *per cent* per month thereafter so long as he continues to make default in such payment. Further, as per Section 17(1) of the OENT Act read with Rule 31(1)(b) of OENT Rules, while assessing a proprietor after giving him a reasonable opportunity of being heard, if the assessing authority assesses any amount of tax payable, he may impose penalty equal to twice the amount of tax assessed.

Test check of assessment records and monthly returns revealed non-realisation / short realisation of tax, penalty and interest due to

[15] Bhubaneswar-I, Bhubaneswar-II, Bhubaneswar-III and Bhubaneswar-IV.

erroneous calculation, understatement of gross receipts etc. as discussed below.

2.5.4.1 Less payment of tax due to calculation of tax on net receipts instead of gross receipts

During test check of monthly returns in two circles[16], Audit noticed in 57 returns filed during 2011-12 to 2013-14 by three operators that as per the returns, they had received gross subscription amount of ₹ 53.37 crore on which entertainment tax of ₹ 2.67 crore was payable at the rate of five *per cent*. However, the operators paid ₹ 2.53 crore. The ACETs of the concerned circles could not detect such less payment of tax and did not take any action for realisation of the differential tax. This led to less payment of tax of ₹ 13.90 lakh. Besides, interest of ₹ 8.63 lakh and penalty were also leviable as per the provisions of the Act.

After Audit pointed (May 2015) this out, the ACETs agreed (June 2015) to examine the cases and take appropriate action.

The matter was reported to the CCT, Odisha and the Government in August 2015. Their replies are awaited (December 2015).

2.5.4.2 Less payment of tax due to understatement of gross receipts / erroneous calculation

During test check of monthly returns for the years 2011-12 to 2013-14, Audit noticed that in Bhubaneswar-III Circle, a cable TV operator received total receipt of ₹ 22.36 crore during four months[17] on which tax of ₹ 1.12 crore was payable. However, the operator disclosed total subscription as ₹ 16.99 crore in his return and paid tax of ₹ 80.89 lakh thereon. The ACET of above circle could not detect such understatement of gross receipt of ₹ 5.37 crore. This resulted in non-realisation of tax of ₹ 30.90 lakh. Besides, interest of ₹ 15.62 lakh and penalty were also leviable as per the provisions of the Act.

Similarly, in Bhubaneswar-II and Bhubaneswar-III Circles, Audit noticed that as against tax of ₹ 46.21 lakh payable at the rate of five *per cent* on gross subscriptions of ₹ 9.24 crore disclosed by two DTH operators and one cable TV operator in 18 returns relating to the period between October 2011 and October 2013, they paid tax of ₹ 41.50 lakh. The ACETs of above two circles could not detect such less payment of tax of ₹ 4.71 lakh. Besides, interest of ₹ 2.22 lakh and penalty were also leviable as per the provisions of the Act.

After Audit pointed out (May and June 2015) the above cases, the ACETs stated (June 2015) that action would be taken.

The matter was reported to the CCT, Odisha and the Government in August 2015. Their replies are awaited (December 2015).

---

16 Bhubaneswar-II and Bhubaneswar-III.

17 April 2011, February 2013, April 2013 and October 2013.

2.5.5 Non-realisation of security deposit

As per the provision of Section 10 of OENT Act, 2006, every proprietor before holding an entertainment on which tax is leviable, shall deposit such security as may be prescribed. Rule 14(2) of OENT Rules, 2006 prescribes for realisation of security deposit not exceeding twenty five *per cent* of the estimated amount of total tax chargeable for one month based on the gross receipt from the subscribers. As per the proviso under the said Rule, the amount of security deposit may also be fixed at an amount higher than that specified above in the interest of revenue.

During test check of periodical returns in five[18] circles, Audit noticed that though three DTH and seven cable TV operators were continuing their services and filing monthly returns during the period 2010-14, the ACETs had not realised security deposits of ₹ 12.63 lakh as calculated by Audit taking into consideration the estimated tax as per the latest returns filed for the year 2013-14. Thus, the Department failed to adhere to the vital deterrent provision of the Act to check evasion of tax.

After Audit pointed out (between April and June 2015) the above cases, while the ACET, Bhubaneswar-IV Circle issued (May 2015) demand notice to one operator; ACETs of Balangir, Bhubaneswar-II, Bhubaneswar-III and Ganjam-I Circles agreed (June 2015) to take action.

The matter was reported to the CCT, Odisha and the Government in August 2015. Their replies are awaited (December 2015).

2.5.6 Conclusion

Audit of levy and collection of entertainment tax from cable TV and direct to home (DTH) broadcasting service operators revealed several deficiencies. Failure to obtain information from the Department of Posts as well as inadequacies within the Department led to continuation of operators without registration and consequential tax evasion. Due to ineffective examination of returns, underpayment of tax and interest by the operators and understatement of receipts in contravention of the provisions of Act and the Rules remained undetected, thereby pointing to a significant scope of tax revenue augmentation.

[18] Balangir, Bhubaneswar-II, Bhubaneswar-III, Bhubaneswar-IV and Ganjam-I.

2.6 Other Audit Observations

Audit test checked the assessment records relating to the OVAT, CST and OET Acts in commercial tax range / circle offices of the State and noticed several cases of non-observance of the provisions of the aforesaid Acts and Rules made thereunder which led to non-levy and short levy of tax and penalty as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and based on test checks carried out by Audit. Audit points out similar omissions on the part of the AAs every year, but not only do many of the irregularities persist, these also remain undetected until the next audit is conducted. This indicated that the internal control system in the Department was weak and ineffective. The Government needs to improve the internal control system including strengthening of internal audit so that occurrence of such cases can be detected, corrected and avoided in future.

Odisha Value Added Tax

2.7 Non-observance of the provisions of the Act and Rules read with Government notifications

The Odisha Value Added Tax (OVAT) Act, 2004 and the Odisha Value Added Tax Rules, 2005 made thereunder provide for:

- *completion of the audit assessments by the Assessing Authorities (AAs) on the basis of Audit Visit Reports (AVRs) and levy of tax on the correctly assessed Taxable Turnover (TTO) of outputs after giving due credit / adjustment of admissible Input Tax Credit (ITC);*
- *imposition of penalty at the prescribed rates in addition to the tax assessed at the audit assessment stage by the AAs;*
- *demand and collection of tax / interest / penalty as per the prescribed procedures; and*
- *imposition of penalty for non-submission of certified reports on annual audited accounts as well as statements of closing stock in trade within the prescribed date.*

The AAs, while finalising the audit assessments of the dealers for certain tax periods, did not observe some of the aforesaid provisions read with the Government notifications issued from time to time, as mentioned in the following paragraphs:

2.7.1 Short levy of tax and penalty due to application of lower rate of tax

As per Section 14 of the Odisha Value Added Tax Act, 2004 (OVAT Act), tax payable by a dealer under the Act shall be levied on his taxable turnover (TTO) in respect of different goods at the rates specified in Schedules B and C appended to the Act. Goods not specified in Part II or IIA of Schedule B as well as Schedule C are taxable at the rate of 12.5 *per cent* up to 31 March 2011 and at the rate of 13.5 *per cent* thereafter under Part III of Schedule B. Electrical goods and equipment not being specified under Part II or IIA of Schedule B or Schedule C are taxable at the prescribed rates. Further, as per Section 42(5) of the OVAT Act, if any tax is additionally assessed during the audit assessment, penalty equal to twice the amount of tax so assessed shall be imposed on the dealer.

During scrutiny of assessment records in Bhubaneswar-IV Circle, Audit noticed (August 2014) that the AA, while assessing a dealer for the tax periods from 12 September 2007 to 30 November 2012, determined TTO of electrical goods at ₹ 21.13 crore. However, while finalising the assessment (December 2013), the AA incorrectly levied tax of ₹ 0.89 crore at the rate of 4 *per cent* up to 31 March 2012 and 5 *per cent* thereafter instead of levying tax of ₹ 2.75 crore at the applicable rate of 12.5 *per cent* up to 31 March 2011 and 13.5 *per cent* from 1 April 2011 onwards due to misclassification. Thus, application of tax at lower rate resulted in short levy of tax of ₹ 1.86 crore. Besides, penalty of ₹ 3.72 crore was also leviable as per the Act.

After this was pointed out, the AA reopened (August 2014) the case for examination. The report on the result of reassessment was yet to be received.

Audit reported the matter to Commissioner of Commercial Taxes (CCT), Odisha in March 2015 and to the Government in May 2015. Their replies are awaited (December 2015).

2.7.2 Short levy of tax and penalty due to irregular allowance of input tax credit

As per Section 20(3) of the OVAT Act, 2004, input tax credit (ITC) shall be allowed for purchases made within the State from a registered dealer holding a valid certificate of registration in respect of goods intended, among other things, for the purpose of use as inputs or as capital goods in the manufacturing of goods, other than those specified in Schedule A, Schedule C and Schedule D for sale. Government of Odisha, Finance Department clarified (May 2006) that 'industrial inputs' shall be construed as those inputs which directly go into the composition of the finished products manufactured by the purchasing dealer for sale and shall include consumables directly used in such manufacturing process for production of finished products which the purchasing dealer is licensed to manufacture subject to the condition that such industrial inputs are specified in the certificate of registration (RC) of the purchasing dealer. Further, as per the

provisions of Section 42(5) of the Act, if any tax is additionally assessed during audit assessment, the dealer shall be imposed with penalty equal to twice the amount of tax so assessed.

On scrutiny of assessment records under the OVAT Act in Koraput Range, Audit noticed (January 2014) that during the tax periods from 1 October 2007 to 31 August 2009, a dealer engaged in manufacturing and trading of paper purchased 'steam' valued at ₹ 47.64 crore as an input for production of paper and availed ITC of ₹ 5.96 crore thereon at the rate of 12.5 *per cent.* It was noticed that during that period, the RC of the dealer did not include 'steam' as an input and hence he was not eligible to claim ITC towards tax paid on purchase of 'steam'. Further, as per the RC of the selling dealer from whom the instant dealer purchased 'steam', he was also not authorised to sell 'steam'. The AA, while finalising the assessment for the above tax period, though reversed ITC of ₹ 1.50 crore towards tax involved in finished goods transferred outside the State otherwise than by way of sale on which ITC was not admissible, yet he allowed and adjusted the remaining ITC of ₹ 4.45 crore from the output tax payable on sale within the State. This resulted in short levy of tax of ₹ 4.45 crore. Besides, the dealer was liable to pay a penalty of ₹ 8.90 crore at twice the tax so short levied as prescribed in the Act.

After Audit pointed this out, the AA stated (January 2014) that steam was a consumable and it fulfils the condition to qualify for availing credit of ITC in accordance with the provisions of law. The reply is not tenable as the RC of the dealer did not specify 'steam' as input and he was therefore not entitled to ITC.

The matter was reported to the CCT, Odisha in February 2015 and the Government in July 2015. Their replies are awaited (December 2015).

2.7.3 Short levy of tax and penalty due to irregular deduction towards labour and service charges

Rule 6 of the OVAT Rules, 2005 provides for determination of TTO of sales of dealers. According to Rule 6(e) of the said Rules, in case of a works contract, expenditure incurred under certain heads as specified therein shall be deducted from the gross turnover (GTO) to determine the TTO. These heads, however, do not include depreciation charges, transportation charges and repair of machinery.

Further, as per the provisions of Section 42(5) of the OVAT Act, if any tax is assessed during audit assessment, penalty equal to twice the amount of tax so assessed shall be imposed on the dealer.

During scrutiny of assessment records in Jharsuguda Circle and Koraput Range, Audit noticed (December 2014 and January 2015) that two dealers engaged in execution of works contracts were assessed (March 2014) under the OVAT Act for different tax periods between 1 April 2005 and 31 March 2012. The AAs determined the gross turnover of the two dealers at ₹ 758.11 crore (excluding tax). After allowing deduction of ₹ 417.16 crore towards labour and service charges, the AAs determined TTO at ₹ 340.96 crore and assessed appropriate tax thereon. However, on examination of the

deductions allowed to the dealers towards labour and service charges, it was noticed that the AA irregularly allowed deduction of ₹ 64.79 crore towards depreciation charges (₹ 20.87 crore), transportation charges (₹ 38.29 crore) and repair of machinery (₹ 5.63 crore) although these deductions are not specified under the above Rules. Thus, irregular allowance of the above deductions from gross turnover resulted in short levy of tax of ₹ 4.84 crore. Besides, penalty was also leviable under the Act.

In reply, Government stated (December 2015) that reassessment of both the dealers had been completed and in respect of the dealer of Koraput Range, extra demand has been raised. However, in respect of the dealer of Jharsuguda Circle, Government stated that the AA, after reassessment, did not raise any extra demand on the ground that 'depreciation charges' come under the scope of one of the deductible expenses provided under the OVAT Rules i.e. 'charges for obtaining on hire or otherwise machinery and tools used for the execution of the works contract'. The reply of the Government is not tenable as 'depreciation charges' and 'hire charges' of plant and machinery are two different charges and cannot be treated as the same.

2.7.4 Short levy of tax due to irregular allowance of input tax credit

As per Section 20(8)(c) of the OVAT Act, no ITC shall be allowed to a registered dealer in respect of capital goods used for the purposes and in the circumstances as specified in Schedule D. Second hand purchase or subsequent purchases of capital goods, being specified under Sl. No. 7 of Schedule D of the Act are therefore not eligible for ITC. Further, as per the provisions of Subsection (2) of Section 43 of the OVAT Act, if the AA, while assessing the escaped turnover of a dealer, is satisfied that the escapement or under assessment of tax is without any reasonable cause, he may direct the dealer to pay, by way of penalty, a sum equal to twice the amount of tax additionally assessed.

During scrutiny of assessment records in Rayagada Circle, Audit noticed (March 2015) that the AA while finalising the assessment of a dealer under the OVAT Act for the tax period from 1 April 2008 to 31 March 2009 on the basis of a Fraud Case Report[19], allowed ITC of ₹ 10.63 lakh on machinery and equipment valued at ₹ 2.66 crore although the said machinery and equipment were initially purchased by another dealer and sold to the instant dealer during April and September 2008. Thus, allowance of ITC on the above 'second hand purchase' was irregular and in contravention of the provisions of the Act. This resulted in short levy of tax of ₹ 10.63 lakh. Besides, penalty was also leviable under the provisions of the Act.

After Audit pointed this out, the AA stated (March 2015) that the case would be re-examined.

[19] Fraud Case Report No. 8 dated 28 August 2012 submitted by the Sales Tax Officer, Investigation Unit, Jeypore.

The matter was reported to the CCT, Odisha and the Government in June 2015. Their replies are awaited (December 2015).

2.7.5 Non-levy of purchase tax on goods transferred otherwise than by way of sale

Under Section 12(ii) of the OVAT Act, 2004, every dealer who, in the course of his business, purchases or receives any taxable goods within the State from any person other than a registered dealer shall be liable to pay tax on the purchase price or the prevailing market price of such goods, if after such purchase or receipt, the goods are not sold within the State or in the course of interstate trade or commerce or in the course of export but are disposed of otherwise. Further, under Section 42 (5) of the Act, penalty equal to twice the amount of tax additionally assessed during audit assessment is also imposable. 'Gum' being unspecified goods under Part II and Part IIA of Schedule B of the OVAT Act, is taxable at the rate of 13.5 *per cent* with effect from 1 April 2011 under Part III of the said Schedule.

During scrutiny of assessment records under the OVAT Act in Kantabanji Circle, Audit noticed (February 2015) that during the tax periods from 1 April 2007 to 31 March 2012, a dealer purchased 'gum' valued at ₹ 33.74 crore from local unregistered dealers on which no tax was paid. Out of the same, it transferred 'gum' valued at ₹ 37.54 lakh during October 2011 otherwise than by way of sale to its branch in Maharashtra against Form 'F'. Although the said purchase value of ₹ 37.54 lakh was liable to tax under Section 12 of the Act, neither the dealer paid tax on such purchase value nor the AA while finalising the assessment in May 2013, levied tax of ₹ 5.07 lakh and penalty of ₹ 10.14 lakh thereon. This resulted in non-levy of tax and penalty of ₹ 15.21 lakh.

After Audit pointed this out, the AA stated (February 2015) that the case would be examined. Further compliance was awaited.

The matter was reported to the CCT, Odisha in June 2015 and the Government in July 2015. Their replies are awaited (December 2015).

2.7.6 Non-initiation of action against dealers for default in submission of Certified Annual Audited Accounts/ statements of closing stock

Under Section 65 (1) of the OVAT Act, 2004 read with the CCT, Odisha's Notification[20] in December 2012 and related Circular of August 2013, if the GTO of a dealer during a financial year exceeds ₹ 60 lakh, he shall get his accounts audited and furnish a true copy of the audited accounts for that year duly certified by a chartered / cost accountant by 31 October of the next financial year to the concerned AA. The CCT in his Circular[21] of September 2009 had also prescribed for maintenance of a register to monitor timely receipt of such accounts at the circle level and to use it as a reference at the time of tax audit and assessment.

[20] Notification No. III (III) 14/ 2012-21114/ CT dated 12 December 2012.

[21] Circular No. 18755 dated 22 September 2009.

Further, as per the provisions of Section 65(1-a) of the OVAT Act made effective from 1 June 2008, a dealer who is liable to pay tax under Section 11 but not liable to get his accounts audited under Section 65(1), shall furnish a statement of closing stock in trade held at the end of the year in the prescribed manner to the Commissioner within a period of three months from the date of expiry of that year.

Section 65(2) of the Act provides that in case the dealer fails to furnish or furnishes the certified annual audited accounts (CAAA) / statement of closing stock belatedly, the AA shall, after giving the dealer a reasonable opportunity of being heard, impose on him a penalty of rupees one hundred for each day of default in submission.

During scrutiny of registers relating to receipt of annual audited accounts in 33 circles[22], Audit noticed (between May 2014 and March 2015) that out of 18,156 dealers having GTO exceeding ₹ 60 lakh during 2012-13, as many as 5,510 dealers had not submitted the copies of CAAA till the dates of audit. Delays in submission of CAAA ranged from 181 to 502 days. However, the AAs neither monitored the timely receipt of CAAA nor did initiate any action for levy of penalty amounting to ₹ 18.88 crore prescribed under the Act till the date of audit.

After Audit pointed out (between May 2014 and March 2015) the above cases, AAs of all the circles assured (between June 2014 and March 2015) to take necessary action against the defaulting dealers.

Similarly, from the information collected from the Value Added Tax Information System (VATIS) and subsequently confirmed by the AAs, Audit noticed (between May 2014 and March 2015) in 32 commercial tax circles[23] that out of 21,306 dealers who were liable to furnish statements of closing stock for the year 2012-13 by 30 June 2013, as many as 21,140 dealers had not submitted the same to the concerned AAs till the dates of audit. The period of delay ranged between 304 and 625 days. However, the AAs neither monitored timely receipt of statements of closing stock nor initiated any action for levy of penalty amounting to ₹ 98.16 crore prescribed under the Act till the date of audit.

After Audit pointed out these cases, 24 AAs assured (between May 2014 and March 2015) to take appropriate action for imposition of penalty and 8 AAs[24] stated (between June 2014 and March 2015) that there was no prescribed format for submission of the statement of closing stock. The

---

22 Barbil, Bargarh, Bhadrak, Bhanjanagar, Bhubaneswar-I, Bhubaneswar-II, Bhubaneswar-III, Bhubaneswar-IV, Balasore, Balangir, Cuttack-I-Central, Cuttack-I-City, Cuttack-I-East, Cuttack-II, Cuttack-I-West, Dhenkanal, Ganjam-I, Ganjam-II, Jagatsinghpur, Jajpur, Jatni, Jharsuguda, Kalahandi, Keonjhar, Koraput, Mayurbhanj, Nayagarh, Puri, Rayagada, Rourkela-I, Rourkela-II, Sambalpur-I and Sundargarh.

23 Barbil, Bargarh, Badrak, Bhanjanagar, Bhubaneswar-I, Bhubaneswar-III, Bhubaneswar-IV, Balasore, Balangir, Cuttack-I-Central, Cuttack-I-City, Cuttack-I-East, Cuttack-II, Cuttack-I-West, Dhenkanal, Ganjam-I, Ganjam-II, Jagatsinghpur, Jajpur, Jatni, Jharsuguda, Kalahandi, Keonjhar, Mayurbhanj, Nayagarh, Puri, Rayagada, Rourkela-I, Rourkela-II, Sambalpur-I, Sambalpur-II and Sundargarh.

24 Bhubaneswar-I, Bhubaneswar-IV, Cuttack-I City, Cuttack-I West, Dhenkanal, Kalahandi, Mayurbhanj and Sambalpur-II.

reply is not acceptable since absence of format for the statement of closing stock can not be treated as the ground of non-submission.

Audit reported the matter to the CCT, Odisha and the Government in June 2015. Their replies are awaited (December 2015).

Central Sales Tax

2.8 Non-observance of the provisions of the Central Sales Tax Act / Rules read with Government notifications / executive orders

The Central Sales Tax (CST) Act, 1956 and Rules made thereunder read with Government notifications and executive orders issued from time to time provide for:

(i) completion of audit assessment based on Audit Visit Report (AVR) and levy of tax at the assessment stage at the prescribed rates, subject to certain conditions on the Net Taxable Turnover (NTO) of goods correctly determined at such stage and adjustment of admissible Input Tax Credit (ITC); and

(ii) imposition of penalty at the prescribed rates, for contravention of provisions of the Act and Rules, on the tax liability determined by the AA in audit assessment including penalty for misutilisation of declaration in prescribed forms.

Audit noticed that while finalising the assessments, the AAs did not observe some of the above provisions read with Government notifications / orders as mentioned in the following paragraphs:

2.8.1 Short levy of tax and penalty due to application of lower rate of tax

As per Section 8 (1) read with Section 8(4) of the CST Act, 1956, sale of goods to a registered dealer in the course of interstate trade supported by the declarations in Form 'C' is taxable at the rate of three *per cent* up to 31 May 2008 and at the rate of two *per cent* thereafter. Further, as per Rule 12 (3) (g) of CST (Odisha) Rules, if any additional tax is assessed during audit assessment of a dealer, penalty equal to twice the amount of tax so assessed shall be levied.

During scrutiny of assessment records under the CST Act in Rourkela-II Circle, Audit noticed (December 2014) that during assessment of a dealer for the tax periods from 1 April 2007 to 31 March 2012, the AA determined total interstate sales turnover at ₹ 155.06 crore. This included ₹ 33.57 crore relating to the period from 1 April 2007 to 31 May 2008 which was taxable at the rate of three *per cent*. The AA, however, while finalising the assessment, levied tax at two *per cent* thereon instead of three *per cent*. Thus, irregular application of lower rate of tax resulted in short levy of tax of ₹ 33.57 lakh at the differential rate of one *per cent*. Besides, penalty of ₹ 67.14 lakh was also leviable on the dealer.

Government replied (June 2015) that as the assessment for the tax period in question has become barred by limitation of time, the DCCT, Sundargarh has referred the case to Joint Commissioner of Commercial Taxes, Sundargarh Range for *suo motu* revision as per the provisions of law.

2.8.2 Short levy of tax and penalty due to acceptance of tampered declaration forms

As per the provisions of Section 8 (1) read with Section 8(4) of the CST Act, 1956, interstate sale of goods made to registered dealers is taxable at the concessional rate of three *per cent* up to 31 May 2008 and at the rate of two *per cent* thereafter or at such lower rate as applicable to the sale or purchase of such goods within the State subject to condition that the selling dealer furnishes to the prescribed authority, a declaration in Form 'C' containing the prescribed particulars and duly filled in and signed by the registered dealer to whom the goods are sold. Further, as per Rule 12(3)(g) of CST (Odisha) Rules, 1957, if any tax is additionally assessed during audit assessment of a dealer, penalty equal to twice the amount of tax so assessed shall be imposed. The Additional Commissioner of Commercial Taxes (VAT), Odisha issued (March 2011) instructions to all assessing authorities to ensure cent *per cent* verification of declaration forms with Tax Information Exchange System (TINXSYS) at the time of assessment to avoid possibility of acceptance of bogus declaration forms leading to loss of revenue.

During scrutiny of assessment records in Jajpur Range, Audit noticed (October 2014) that while assessing a dealer associated with mining and sale of iron ore and manganese ore, under CST Act for the tax periods from 1 April 2006 to 31 March 2010, the AA determined the Net Taxable Turnover (NTO) at ₹ 89.42 crore. Of the same, the dealer submitted declarations in Forms 'C' for ₹ 69.48 crore on which the AA allowed concessional rate of tax. However, on verification of the declarations in Form 'C' against which concessional rate of tax was allowed on a sales turnover of ₹ 69.48 crore, Audit noticed (October 2014) that five declarations, covering interstate sale of goods valued at ₹ 51.95 crore stated to have been sold against 260 invoices, were tampered with. Audit cross verified these forms in the TINXSYS and found that the said declarations in Form 'C' were issued by one purchasing dealer of West Bengal for ₹ 15.17 crore against 163 invoices. Though the dealer inflated sales turnover to the tune of ₹ 36.78 crore in the declaration forms 'C' by tampering and availed concessional rate of tax thereon, the AA could not detect the same due to non-verification of the said forms in TINXSYS. Thus, failure of the AA to verify the declaration forms before allowance of concessional rate of tax resulted in short levy of tax of ₹ 0.51 crore at the rate of one *per cent* up to 31 May 2008 and two *per cent* thereafter. Besides, penalty of ₹ 1.02 crore was also leviable as per the Act.

After Audit pointed out (June 2015) the case, Government stated (December 2015) that the case has been reassessed by the AA and extra demand raised.

2.8.3 Short levy of tax and penalty due to irregular allowance of concession under Central Sales Tax Act

Under Section 8(1) read with Section 8(4) of the CST Act, interstate sale of goods supported with declarations in form 'C' is taxable at the rate of three *per cent* from 1 April 2007 to 31 May 2008 and at the rate of two *per cent* thereafter. However, as per Government of Odisha Notifications dated 31 March 2005 and 16 June 2006 issued under Section 8(5) of the Act *ibid*, interstate sale of goods manufactured by Small Scale Industrial (SSI) units of the State supported by declarations in Form 'C' were taxable at a concessional rate of one *per cent* up to 15 June 2006 and at the rate of two *per cent* thereafter. As per Government of India order[25] dated 24 December 1999, read with Notification[26] dated 29 September 2006, industrial units with fixed capital investment (FCI) in plant and machinery up to rupees five crore are considered as small enterprises. As per Rule 12(3)(g) of CST (Odisha) Rules, 1957, if any tax is additionally assessed during audit assessment of a dealer, penalty equal to twice the amount of tax so assessed shall be imposed.

During scrutiny of assessment records in Rourkela-I Circle, Audit noticed (November 2014) that the AA determined NTO of a dealer under the CST Act at ₹ 250.39 crore for the tax periods from 1 April 2007 to 31 March 2012 and levied tax at the rate of two *per cent* on ₹ 100.54 crore supported by declaration forms and at the rate of four *per cent* on ₹ 149.85 crore for which declaration forms were not submitted by the dealer. It was noticed that the turnover of ₹ 100.54 crore on which tax was levied at the rate of two *per cent* included ₹ 33.42 crore relating to the tax periods from 1 April 2007 to 31 May 2008. As such, the said turnover was taxable at the rate of three *per cent* instead of two *per cent* since the FCI in plant and machinery had exceeded the limit of rupees five crore as on 31 March 2007 as revealed from the annual audited accounts submitted by the dealer. Thus, allowance of concessional rate of tax without cross verification with the annual audited accounts resulted in short levy of tax of ₹ 33.42 lakh at the differential rate of one *per cent*. Besides, penalty of ₹ 66.84 lakh was also leviable under Rule 12(3)(g) of the CST (Odisha) Rules.

After Audit pointed this out, the AA stated (November 2014) that concessional rate of tax was levied on the basis of exemption certificate issued by District Industries Centre (DIC) of Industries Department which could not be cancelled by the Sales Tax authorities in view of the judgement of Hon'ble Supreme Court in the case of M/s Vadilal Chemical Ltd vrs. State of Andhra Pradesh and others (142 STC 2005). He further added that as per the pronouncement of Hon'ble High Court of Odisha in the case of M/s Bhushan Power and Steel Ltd vrs. State of Odisha [(2012) 47 VST 466 (Ori)], the AA cannot utilise adverse report other than the Audit Visit Report (AVR) while making audit assessment. The reply is not tenable as the AA was not bound to accept the certificate irregularly issued

[25] Government of India, Ministry of Commerce and Industries, Department of Industrial Policy and Promotion (GoI) order dated 24 December 1999.

[26] Government of India, Ministry of Small Scale Industries Notification No. SO 1642(E), dated 29 September 2006.

by DIC as investment in plant and machinery had crossed the limit of rupees five crore and hence the turnover was taxable at the higher rate. Further, Rule 12(3) provides for completion of audit assessment by the AA based on the materials available in the AVR and such other materials as may be available. Thus, even if inadmissibility of concession could not be pointed out in the AVR, this could have been pointed out by the AA during the assessment based on the annual audited accounts which was available with him.

The matter was reported to the CCT, Odisha in December 2014 and the Government in June 2015. Their replies are awaited (December 2015).

Entry Tax

2.9 Non-observance of the provisions of Odisha Entry Tax Act / Rules and Government notifications

The Odisha Entry Tax (OET) Act, 1999 and Rules made thereunder read with Government notifications issued from time to time provide for levy of tax on the entry of scheduled goods into a local area[27] for consumption, use or sale therein at the prescribed rates and imposition of penalty at the prescribed rates for the tax levied in audit assessment.

Audit noticed that while finalising the assessments, the AAs did not observe the above provisions in some cases as mentioned in the following paragraphs:

2.9.1 Non-levy of Entry Tax on carbon black

As per Sl. No. 73 of Part I of Schedule to Odisha Entry Tax Act, 1999 (OET Act), 'chemicals used for any purpose' are taxable at the rate of one *per cent*. As per Central Excise Tariff Act (Chapter 28- Products of the Chemical or Allied Industries), 'carbon black' is a tariff item classified as a chemical element under heading No. 2803 00 10 of the said Act. Further, as per Government of India, Ministry of Finance, Department of Economic Affairs Notification[28] dated 12 November 1958, 'carbon black' is a chemical used in rubber and rubber manufacturing industries. Thus, 'carbon black' being a chemical, is a scheduled item and therefore taxable under the OET Act. Further, as per the provisions of Section 9C(5) of the OET Act, if any additional tax is assessed during audit assessment, penalty at twice the amount of tax so assessed shall be leviable on the dealer.

During scrutiny of assessment records in Balasore Range, Audit noticed (July 2014) that a dealer engaged in manufacture and sale of tyres, tubes and flaps, purchased 'carbon black' valued at ₹ 129.65 crore during the tax periods 1 April 2009 to 31 March 2010 on which entry tax of ₹ 1.30 crore was leviable at the rate of one *per cent*. However, the AA, while finalising the assessment of the dealer for the above period in August 2013, did not levy any entry tax on such purchase turnover of 'carbon black' treating the same as non-scheduled goods. This resulted in non-levy of entry tax of ₹ 1.30 crore. Besides, penalty of ₹ 2.60 crore was also leviable on the dealer as per the provisions of OET Act.

After Audit pointed this out (July 2014), the AA stated (April 2015) that the case had been reassessed and demand of ₹ 3.89 crore had been raised against the dealer in November 2014, but the dealer after depositing ₹ 0.50 crore, had preferred appeal before the Hon'ble High Court of Odisha.

The matter was referred to the CCT, Odisha in April 2015 and the Government in May 2015. Their replies are awaited (December 2015).

---

27 Local area means the area within the limits of any municipality, Grama Panchayat, other local authority by whatever name called, constituted or continued in any law for the time being in force and includes the area within an industrial township constituted under Section 4 of the Odisha Municipal Act, 1950.

28 Notification No. F9(88)-ST-/57 dated 12 November 1958.

2.9.2 Non-levy of Entry Tax on Minor Minerals

As per Section 3(1) of the OET Act, 1999, scheduled goods entered into a local area for consumption, use or sale therein are taxable at the rates prescribed in the Schedule appended to the Act. As per Section 3(a) of Mines and Minerals (Development and Regulation) Act, 1957, "minerals" include all minerals except mineral oils. As per Odisha Minor Minerals Concession Rules (OMMC Rules), 2004, ordinary clay, sand, *morrum*[29] and chips etc. are minor minerals. Minerals are taxable at the rate of one *per cent* as per entry No. 59 of Part I of Schedule to the OET Act. As envisaged under Section 26 of the OET Act, every manufacturer of scheduled goods who is registered under the VAT Act shall collect by way of tax, an amount equal to the tax payable on the value of such finished products. Further, Section 9C (5) of the Act provides for imposition of penalty equal to twice the amount of tax assessed during audit assessment.

During scrutiny of assessment records in eight circles[30] and one range[31], Audit noticed (between May 2014 and February 2015) that 12 registered dealers purchased stone products, sand, *morrum*, chips etc. valued at ₹ 69.71 crore from unregistered dealers of Odisha between April 2005 and March 2013 for utilisation in various works related to works contracts. Similarly, four dealers engaged in excavation and sale of stone chips, sold stone chips valued at ₹ 15.72 crore during the period between April 2007 and December 2012. However, the above dealers did not pay Entry Tax of ₹ 85.43 lakh payable at the rate of one *per cent* on the above purchase / sales turnover while filing returns. Audit noticed that though AAs finalised assessments of these dealers under the OVAT Act, they however failed to assess the dealers under the OET Act or completed the assessments treating these minor minerals as non-scheduled goods. This resulted in non-levy of entry tax of ₹ 0.85 crore. Besides penalty of ₹ 1.70 crore was also leviable.

After Audit pointed out (between May 2014 and February 2015) these cases, all the AAs except the AA, Bhubaneswar-I stated (between June 2014 and February 2015) that the cases would be re-examined and compliance would be intimated to Audit. The AA of Bhubaneswar-I Circle, however, stated (May 2014) that he had no scope to investigate the matter beyond the purview of AVR. The reply was not tenable since Section 9C(4) of the OET Act provides for assessment basing on the materials available in the AVR and such other materials as may be available. As such, the books of accounts produced by the dealer during assessment being vital for assessment should have been examined in addition to the observations made in the AVR.

The matter was reported to the CCT, Odisha in April 2015 and the Government in May 2015. Their replies are yet to be received (December 2015).

---

29 '*Morrum'* is a minor mineral used in construction of roads.

30 Balasore, Bhubaneswar-I, Bhubaneswar -III, Bhubaneswar -IV, Cuttack-I Central, Jharsuguda, Koraput and Mayurbhanj.

31 Koraput Range.

2.9.3 Non-levy of Entry Tax on generator sets

Under Section 3(1) of the OET Act, 1999, there shall be levied and collected a tax on purchase value of scheduled goods entered into a local area for consumption, use or sale therein, at the rates specified by the State Government. As per Sl. 13 of Part II of Schedule appended to the Act, generator sets are taxable at the rate of two *per cent*. Further, as per the provisions of Section 10(2) of the Act, if the AA is satisfied that the escapement is without any reasonable cause, he may direct the dealer to pay, in addition to the tax assessed under Subsection (1), a penalty equal to twice the amount of tax additionally assessed.

During scrutiny of assessment records under the OVAT Act in Bhubaneswar-I Circle, Audit noticed (May 2014) that a dealer purchased diesel generator sets valued at ₹ 9.07 crore from outside the State and sold the same inside the State for ₹ 10.19 crore during the tax periods from 1 April 2008 to 30 September 2010. However, the dealer did not pay tax on the said sales turnover claiming such sale as sale during transit under Section 6(2) of the CST Act. The Assistant Commissioner of Commercial Taxes, Vigilance, Cuttack detected evasion of tax by the said dealer in a Tax Evasion Case Report. Based on this, the AA assessed (January 2014) the escaped sales turnover of the dealer and disallowed the claim of the dealer for exemption of tax on sales turnover of ₹ 10.19 crore and levied tax under the OVAT Act. Since the diesel generator sets were purchased from outside the State at a cost of ₹ 9.07 crore, the same was also taxable under the OET Act which the AA failed to assess. This resulted in non-levy of tax of ₹ 18.15 lakh at the rate of two *per cent*. Besides, penalty was also leviable as per the provision of the Act.

After Audit pointed this out, the AA stated (May 2014) that the case would be examined.

The matter was reported to the CCT, Odisha in June 2015 and the Government in July 2015. Their replies are awaited (December 2015).

2.9.4 Irregular exemption of Entry Tax

As per Section 3(1) of OET Act, 1999, entry of scheduled goods into a local area for consumption, use or sale therein is taxable at rates prescribed in the Schedule appended to the Act. Government of Odisha, Finance Department, in their notification[32] dated 7 June 2011, exempted entry tax on plant and machinery brought into the local area by new micro and small enterprises in pursuance with Para 18.2 of the Industrial Policy Resolution (IPR), 2007. As per the provisions[33] of Micro, Small and Medium Enterprises Development Act, 2006, industrial units with Fixed Capital Investment (FCI) in plant and machinery up to rupees five crore are considered as small enterprises. 'Machinery and Equipment' are taxable at the rate of two *per cent* under Sl. 9 of Part II of the Schedule. Further, as per the provisions of Section 9C(5) of the OET Act, if any additional tax is

[32] Finance Department Notification S.R.O No.434/ 2011 dated 07.06.2011

[33] Section 7(1)(a)(ii) of the Micro, Small and Medium Enterprises Development Act, 2006.

assessed during audit assessment, penalty at twice the amount of tax so assessed shall be leviable on the dealer.

During scrutiny of assessment records under OET Act in Rayagada Circle, Audit noticed (March 2015) that a dealer registered in March 2007 under the Act for processing / extraction of crude palm oil, purchased plant and machinery worth ₹ 7.31 crore from outside the State for its crude palm oil plant and started its commercial production from May 2008. The plant and machinery worth ₹ 7.31 crore being scheduled goods, were taxable at the rate of two *per cent*. The AA, however, while assessing the dealer under the OET Act, did not levy entry tax treating the dealer as a small enterprise. Exemption of entry tax under IPR 2007 on the ground that the dealer was a small enterprise was irregular since the investment of the dealer in plant and machinery exceeded the limit of rupees five crore. Thus, allowance of exemption irregularly resulted in non-levy of entry tax of ₹ 14.63 lakh. Besides, penalty of ₹ 29.26 lakh was also leviable.

After Audit pointed this out, the AA stated (March 2015) that the case would be examined.

The matter was referred to the CCT, Odisha in June 2015 and the Government in July 2015. Their replies are awaited (December 2015).