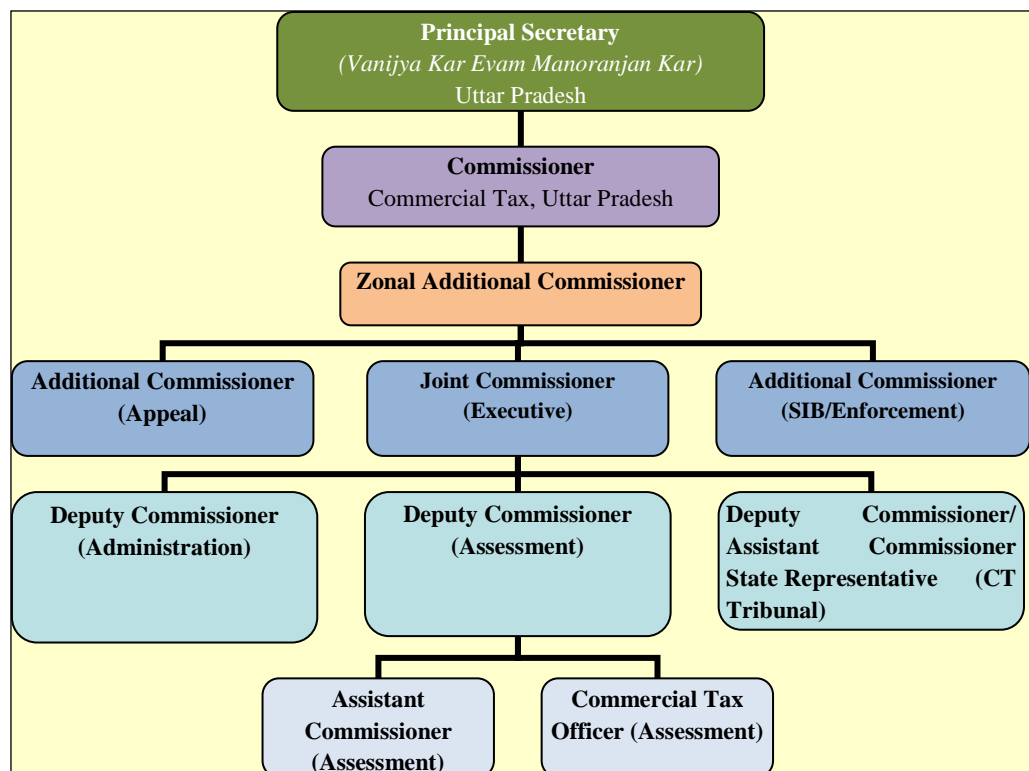


## CHAPTER-IV TAX ON SALES, TRADE ETC.

### 4.1 Tax administration

Sales Tax/Value Added Tax laws and rules framed thereunder are administered at the Government level by the Principal Secretary (*Vanijya Kar Evam Manoranjan Kar*) Uttar Pradesh. The Commissioner, Commercial Tax (CCT), Uttar Pradesh is the head of the Commercial Tax Department who is assisted by 100 Additional Commissioners, 157 Joint Commissioners (JCs), 494 Deputy Commissioners (DCs), 964 Assistant Commissioners (ACs) and 1,275 Commercial Tax Officers (CTOs). They are assisted by allied staff for administering the relevant Tax laws and rules.

**Chart 4.1 Organisational setup**



### 4.2 Internal audit

Internal controls are intended to provide reasonable assurance of proper enforcement of laws, rules and departmental instructions. The internal controls also help in creation of reliable financial as well as management information systems for prompt and efficient services and for adequate safeguards against evasion of taxes and duties. It is, therefore, the responsibility of the Department to ensure that a proper internal control structure is instituted, reviewed and updated from time to time to keep it effective.

#### 4.2.1 Position of internal audit of units

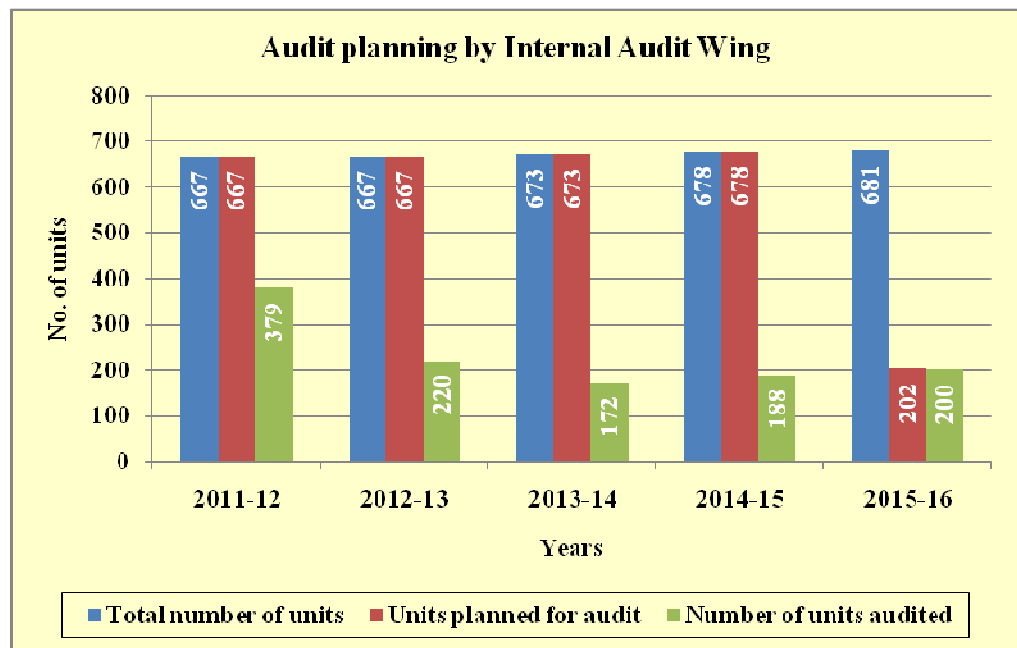
Internal audit of units conducted by internal audit wing of the Department during 2011-12 to 2015-16 are shown in **Table 4.1**.

**Table 4.1**  
**Position of internal audit of units**

Year	Total number of units	Units planned for audit	Number of units audited	Percentage of shortfall
2011-12	667	667	379	43
2012-13	667	667	220	67
2013-14	673	673	172	74
2014-15	678	678	188	72
2015-16	681	202	200	01

Source: Data furnished by the Commissioner Commercial Tax

**Chart 4.2**



This shows that audit planning of the internal audit wing for audit of units is not realistic as shortfall ranged from one to 74 per cent during the year 2011-12 to 2015-16.

#### **4.2.2 Shortage of manpower in internal audit wing**

**Entire posts of Assistant Audit Officers were lying vacant and there was heavy shortfall in the strength of Sr. Auditors/Auditors ranging from 56 to 75 per cent. No efforts were made by the Department to fill the posts.**

The internal audit wing functions under the administrative control of the CCT. In internal audit wing no Assistant Audit Officer was posted, only 23 Senior Auditors/Auditors were posted against the sanctioned post of 13 Assistant Audit Officers and 91 Senior Auditors/Auditors as detailed in **Table 4.2**.

**Table 4.2**  
**Shortage of manpower in internal audit wing**

Year	Sanctioned strength		Men in position		Post vacant		Percentage of short fall	
	Assistant Audit Officer	Sr. Auditor/Auditor	Assistant Audit Officer	Sr. Auditor/Auditor	Assistant Audit Officer	Sr. Auditor/Auditor	Assistant Audit Officer	Sr. Auditor/Auditor
2011-12	13	91	0	34	13	57	100	63
2012-13	13	91	0	24	13	67	100	74
2013-14	13	91	0	31	13	60	100	66
2014-15	13	91	0	28	13	63	100	69
2015-16	13	91	0	23	13	68	100	75

Source: Data furnished by the Commissioner Commercial Tax.

The above table shows that the entire posts of Assistant Audit Officers were lying vacant and there was a heavy shortfall in the strength of Sr. Auditors/Auditors ranging from 63 to 75 per cent. No efforts had been made by the Department to fill the post lying vacant in the internal audit wing.

### 4.2.3 Position of outstanding paras and recovery thereof

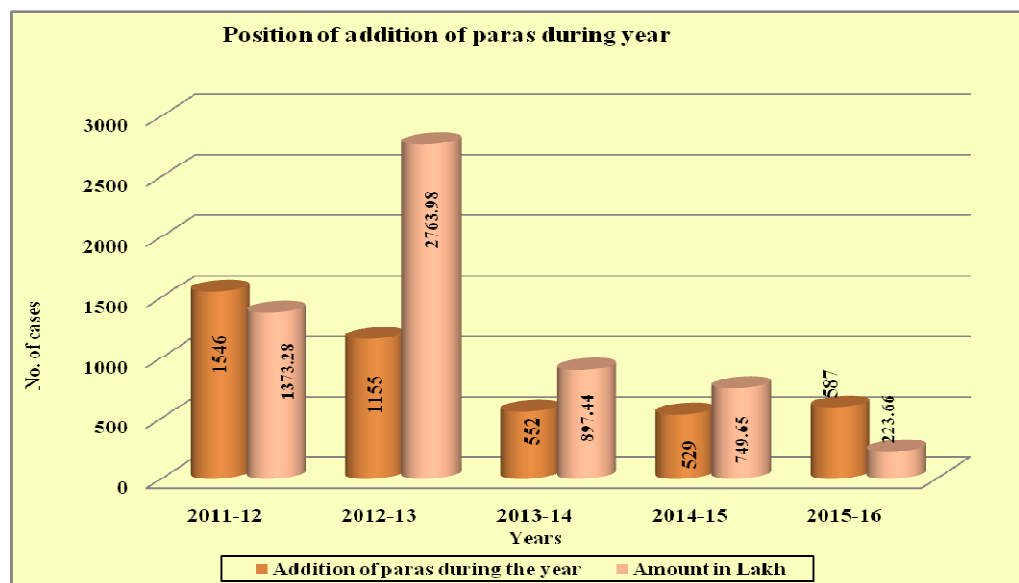
The detail of objections raised by internal audit wing, their compliance and recovery position are given in Table 4.3.

**Table 4.3**  
**Position of outstanding paras and recovery thereof**

Year	Opening balance		Addition during the year		Cases finalised during the year and recovery thereof		Closing balance	
	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2011-12	9,082	7,423.46	1,546	1,373.28	344	171.39	10,284	8,625.35
2012-13	10,284	8,625.35	1,155	2,763.98	130	15.11	11,309	11,374.22
2013-14	11,309	11,374.22	552	897.44	278	182.57	11,583	12,089.09
2014-15	11,583	12,089.09	529	749.65	510	147.91	11,602	12,690.83
2015-16	11,602	12,690.83	587	223.66	316	108.59	11,873	12,805.90

Source: Data furnished by the Commissioner Commercial Tax.

**Chart 4.3**



The above table shows that during this period heavy shortage of staff affected the performance of internal audit wing as the number of cases and amount significantly decreased.

### 4.3 Results of audit

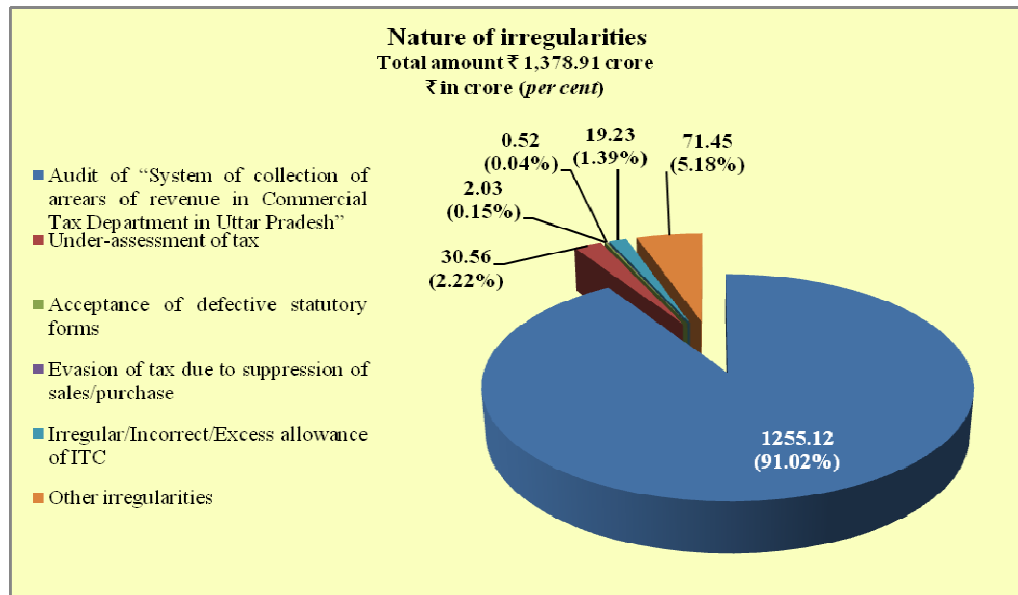
In 2015-16, the Department realised revenue of ₹ 47,692.40 crore. We planned audit of 167 annual units, 73 biennial units and 37 triennial units out of the total 1,536 units of Commercial Tax Department during 2015-16 and test checked all the above planned units which revealed under-assessment of tax and other irregularities involving ₹ 1,378.91 crore in 1,557 cases, which fall under the following categories as given in **Table 4.4**.

**Table 4.4**  
**Results of audit**

(₹ in crore)			
Sl. No.	Categories	Number of cases	Amount
1	Audit of “System of collection of arrears of revenue in Commercial Tax Department in Uttar Pradesh”	1	1,255.12
2	Under-assessment of tax	433	30.56
3	Acceptance of defective statutory forms	52	2.03
4	Evasion of tax due to suppression of sales/purchase	21	0.52
5	Irregular/Incorrect/Excess allowance of ITC	229	19.23
6	Other irregularities	821	71.45
<b>Total</b>		<b>1,557</b>	<b>1,378.91</b>

Source: Information available in the Audit office.

**Chart 4.4**



During the course of the year, the Department accepted underassessment and other deficiencies of ₹ 860.41 crore in 522 cases, of which 242 cases involving ₹ 856.03 crore were pointed out in 2015-16 and rest in earlier years. An amount of ₹ 1.17 crore was realised in 193 cases of which 12 cases

involving ₹ 47.44 lakh was pointed out in 2015-16 and rest pertains to earlier years.

Audit of “System of collection of arrears of revenue in Commercial Tax Department in Uttar Pradesh” involving ₹ 1,255.12 crore and a few illustrative cases of compliance deficiency involving ₹ 20.07 crore are discussed in following paragraphs.

#### **4.4 Audit of "System of collection of arrears of revenue in Commercial Tax Department in Uttar Pradesh"**

##### **4.4.1 Introduction**

Commercial Tax is the major source of revenue contributing about 58 *per cent* of the total tax revenue of the State. The Uttar Pradesh Value Added Tax (UPVAT) Act provides that as soon as an assessment is done by the Assessing Authority (AA), he shall send the dealer a notice of demand under Rule 46 (3) of UPVAT Rules. The dealer shall pay the tax so assessed within 30 days from receipt of the notice. If the dealer fails to deposit the tax, it can be recovered as arrears of land revenue under the provisions of Uttar Pradesh *Zamindari Abolition and Land Reform Act, 1950* (UPZA & LR Act). The Department does not have any separate Act regarding recovery of arrears of revenue. If the amount of the arrears is not paid, the Revenue Recovery Certificate (RRC) is issued after 45 days of receiving of demand notice under Section 33 (12) of UPVAT Act. The AAs have been empowered to act as a recovery officer of their concerned sectors and entrusted with the work of recovery under UPZA and LR Act. The arrears can be recovered from bank balance and sale proceeds obtained after auctioning the attached property. In cases where the defaulters do not own any property in the State but have property in some other State, the concerned assessing authority is required to address the revenue authority of the other State for collecting the arrears as per the provisions of the Revenue Recovery (RR) Act, 1890. For this, the RRC is required to be forwarded to the Collectors of the districts of the States in which the defaulters possess properties.

##### **4.4.2 Audit objectives**

Audit was attempted with a view to ascertain whether:

- the provisions of Act and Rules are effectively complied with to ensure the timely collection of arrears;
- whether the system to collect the arrears of tax was effective and efficient; and;
- adequate internal control and monitoring mechanism existed for prompt realisation of arrears of revenue.

##### **4.4.3 Audit scope and methodology**

Audit of “System of collection of arrears of revenue in Commercial Tax Department in Uttar Pradesh” was conducted between December 2015 and May 2016 covering the period from 2011-12 to 2015-16. Out of 20 zones of Commercial Tax Department, five zones were selected for audit on the basis of higher revenue arrears after categorising them in high, medium and low risk

areas. There were 106 sectors in five selected zones involving revenue arrear of ₹ 13,780.15 crore out of total revenue arrear of ₹ 26,347.13 crore as on March 2015. Fifty-three sectors<sup>1</sup> with revenue arrear of ₹ 4,059.16 crore out of the total 106 sectors falling under above selected five zones were selected for detailed audit and collection of information.

An entry conference was held with the Government and the Department on 03 February 2016 in which Officer on Special Duty represented the Government and Additional Commissioner Commercial Tax represented the Department. They were apprised of the scope and methodology of Audit. An exit conference was held on 09 September 2016 with the Government/Department in which audit findings were discussed with the Officer on Special Duty, Government of Uttar Pradesh and Additional Commissioner, Commercial Tax Department. The response of the Government/Department has been incorporated in the relevant paragraphs.

#### **4.4.4 Acknowledgement**

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

#### **4.4.5 Position of arrears**

##### **4.4.5.1 Detail of arrear and recovery thereof**

**The amount of arrear increased from ₹ 16,665.41 crore as on 1 April 2011 to ₹ 27,188.58 crore as on 31 March 2016, thus registering an increase of 63.14 per cent.**

The positions of opening balance, addition, clearance and closing balance of arrears of revenue during the period 2011-12 to 2015-16 are depicted in the **Table 4.5.**

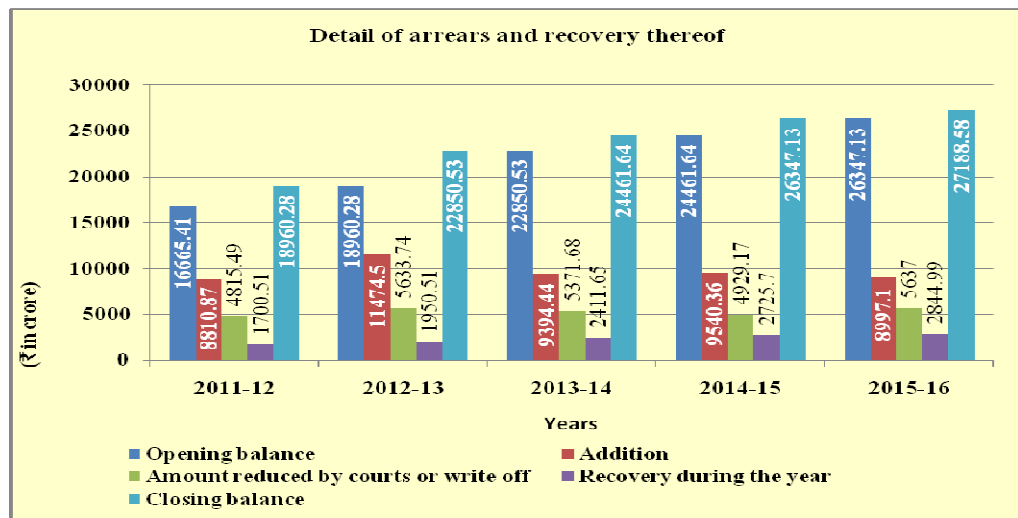
**Table 4.5**  
**Detail of arrear and recovery thereof**

(₹ in crore)					
Year	Opening balance	Addition	Amount reduced by courts or write off	Recovery during the year	Closing balance
2011-12	16,665.41	8,810.87	4,815.49	1,700.51	18,960.28
2012-13	18,960.28	11,474.50	5,633.74	1,950.51	22,850.53
2013-14	22,850.53	9,394.44	5,371.68	2,411.65	24,461.64
2014-15	24,461.64	9,540.36	4,929.17	2,725.70	26,347.13
2015-16	26,347.13	8,997.10	5,637.00	2,844.99	27,188.58
<b>Total</b>	<b>48,217.27</b>	<b>48,217.27</b>	<b>26,387.08</b>	<b>11,633.36</b>	

Source: Data furnished by the Commissioner Commercial Tax.

<sup>1</sup> Sec. 1, 3, 5, 8, 11, 12 & 14 Allahabad, Sec. 1 & 3 Basti, Sec. 1 Deoria, Sec. 1 Fatehpur, JC (CC), Sec. 1, 2 & 3 Gautam Buddha Nagar, Sec. 1, 2, 3, 4, 6, 9, 11 & 12 Ghaziabad, JC (CC), Sec. 1, 2, 4, 9 & 12 Gorakhpur, Sec. 3 Hapur, Sec. 1 & 2 Kusinagar, Sec. 1, 2, 3, 4, 7, 8, 9, 11 & 12 Lucknow, Sec. 2, 3, 4, 10, 13 & 14 Noida, Sec. 1 & 2 Pratapgarh, Sec. 2 Sant Kabir Nagar, Sec. 1 & 2 Siddharthnagar and Sec. 2 Raebareli.

Chart 4.5



It may be seen from the **Table 4.5** that at the beginning of the year 2011-12 there was an arrear of ₹ 16,665.41 crore. During the year 2011-12 to 2015-16 there was an addition of ₹ 48,217.27 crore, ₹ 26,387.08 crore was reduced by courts or written off and the recovery during the same period was ₹ 11,633.36 crore. The arrears increased by ₹ 8,228.30 crore<sup>2</sup> at the end of 2015-16, when compared with the arrears at the end of 2011-12. Out of ₹ 27,188.58 crore, demand for ₹ 4,270.19 crore had been certified for recovery as arrears of land revenue and recovery certificates for ₹ 1,195.28 crore have been sent to other States. Recoveries for ₹ 4,122.26 crore had been stayed by the courts/appellate authority and Government while recoveries for ₹ 587.59 crore were outstanding for Government/semi Government Department. For recovery of ₹ 1,514.74 crore the Department stated that it was likely to be written off on the basis of reports of joint committee constituted with one departmental officer and one officer from revenue department. From transporters ₹ 41.37 crore was outstanding on account of tax payable for transportation of goods without proper documents. For remaining amount of ₹ 15,457.15 crore, specific action was underway in the Department. During exit conference the Government/Department accepted our observation and stated that efforts are being made to recover the revenue arrears.

#### 4.4.5.2 Age wise position of arrear

The age-wise details of arrears of revenue furnished by the Department as on 31 March 2016 are as shown in the **Table 4.6**.

<sup>2</sup> Difference between the closing balance of 2015-16 (₹ 27,188.58) and closing balance of 2011-12 (₹ 18,960.28)

**Table 4.6**  
**Age wise position of arrear**

(₹ in crore)			
Periodicity of arrears	No. of cases	Amount	Percentage of arrears
10 years and above old	1,31,720	2,264.01	31.22
Five years and above but less than 10 years old	74,664	1,398.76	19.28
One year and above but less than five years old	88,796	2,165.54	29.86
Less than one year old	40,420	1,424.28	19.64
<b>Total</b>	<b>3,35,600</b>	<b>7,252.59<sup>3</sup></b>	<b>100</b>

Source: Data furnished by the Commissioner Commercial Tax.

It may be seen from the table that 51 *per cent* of the arrear was pending for recovery for more than five years.

### **Audit findings**

#### **4.4.6 Absence of separate recovery cell**

**Absence of separate recovery cell in the Department for dealing with the mounting arrears, led to abnormal delay in initiating action for recovery.**

The AAs are responsible for effecting recovery of arrears in respect of the UP VAT Act, 2008. Joint Commissioner at regional level and Additional Commissioner at zonal level are responsible for monitoring the recoveries under the overall control of CCT. There are 20 Tax Recovery Officers posted in 20 districts out of 75 districts of Uttar Pradesh to co-ordinate with the sectors, monitor the work of collection *amin* and speedy recovery of arrears. In remaining districts recovery of arrears is done by District Magistrate. There is no separate recovery cell to deal with the arrears. Absence of specific policy/machinery led to abnormal delay in initiating action for recovery in the remaining districts. Although there was an increase in the arrears during the coverage period but there was severe shortage of manpower ranging between 8 to 100 *per cent* directly involved in the collection of arrears of revenue.

It was evident that affecting the recoveries through the AAs alongwith their duties of revenue collection, administrative work, assessment of tax, survey work and allied work entrusted to them from time to time had proved ineffective and resulted in accumulation of arrears. Heavy shortage of staff ranging between 8 to 100 *per cent* in all the cadres of officials directly involved in recovery of arrears affected the collection of arrears of revenue.

During exit conference the Government/Department accepted our observation and stated that necessary steps will be taken to nominate nodal officer in 55 districts where tax is collected by the revenue authorities.

**The Government may consider to post Tax Recovery Officers in every district and putting in place a dedicated recovery machinery for focusing on recovery of arrears.**

<sup>3</sup> Reasons were sought far from the department for variance between the closing balance of the arrear for the year 2015-16 and total arrear provided in age wise arrear position. The reasons for variation were not made available by the Department despite our requests (October 2016).



#### 4.4.7 Delay in initiating recovery proceeding

##### 4.4.7.1 Deficiencies in initiating follow up action for recovery of arrears

**Recovery proceedings were delayed in 979 cases involving an arrear of ₹ 217.51 crore as notices of demand were either not served or served after inordinate delay.**

According to the provisions of the Rule 46 of UPVAT Rules, a dealer is required to deposit the amount of tax assessed by the AA under section 25 or section 26 or section 28 if he has paid the tax short, within 30 days from the date of receipt of notice of demand, failing which the amount is to be recovered as arrears of land revenue. CCT vide circular dated 30 May 2011 had instructed that if the amount remains unpaid, RRCs are to be initiated within 45 days from the date of expiry of the period of notice.

We examined R-3<sup>4</sup> register of sampled sectors for the period 2011-12 to 2015-16 and observed that revenue recovery proceedings in 979 out of 79,761 cases involving an arrear of ₹ 217.51 crore were pending for recovery and were delayed due to not serving or delay in serving the notices of demand which ranged between two days to two years six months after assessment. Details are mentioned in the **Table 4.7**.

**Table 4.7**  
Delay/failure in serving of notices of demand

		(₹in lakh)
Period of delay/not served	No. of notices of demand	Amount
One year and above	15	66.91
Six month and above but less than one year	103	1,554.76
Less than six months	854	20,094.40
Not served to the dealers	7	35.25
<b>Total</b>	<b>979</b>	<b>21,751.32</b>

Source: Information available on the basis of R-3 register.

Delayed or not serving of notices of demand resulted in delay in starting of recovery proceedings which ultimately led to revenue arrear remaining unrecovered till date.

During exit conference the Government/Department accepted our observation and stated that instruction has been issued in August 2016 for timely serving of notices of demand.

##### 4.4.7.2 Delay in issue of RRCs

**Recovery proceedings were delayed due to belated issue of RRCs in 1,021 cases involving an arrear of ₹ 234.79 crore.**

We examined R-3 register of sampled sectors for the period 2011-12 to 2015-16 and observed that in 1,021 out of 79,761 cases pending for recovery which involved an arrears of ₹ 234.79 crore, RRCs were issued with delay ranging from one day to two years 11 months. Details are mentioned in the **Table 4.8**.

<sup>4</sup> Tax demand register.

**Table 4.8**  
**Delay in issue of RRCs**

(₹in lakh)		
Period of delay	No. of RRCs	Amount
Two years and above	20	133.16
One year and above but less than two years	23	119.04
Less than one year	978	23,227.18
<b>Total</b>	<b>1,021</b>	<b>23,479.38</b>

Source: Information available on the basis of R-3 register.

Due to laxity in issue of RRCs, recovery proceedings started belatedly which ultimately led to revenue arrear remaining unrecovered till date.

During exit conference the Government/Department accepted our observation and stated that instruction has been issued in August 2016 for timely issuance of RRCs.

**The Government may consider evolving a system for issuing RRCs timely.**

#### **4.4.7.3 RRCs not issued for recovery of arrears**

**RRCs for ₹ 84.90 lakh were not issued for recovery of arrears even after seven months to 15 years from serving the notices of demand had passed.**

We examined arrear records of sampled sectors and observed that in four sectors<sup>5</sup> four dealers had not paid assessed dues of ₹ 84.90 lakh for the period 1998-99 to 2010-11. Assessment of these dealers were finalised between March 2001 and April 2015. RRCs were not issued for recovery of arrears even though seven months to 15 years had passed after serving the notices of demand to the dealers. This resulted in delay in recovery of ₹ 84.90 lakh.



During exit conference the Government/Department accepted our observation and stated that direction for timely issuance of RRCs has been issued in August 2016.

#### **4.4.7.4 Date and rate of interest not mentioned in RRCs**

**Amount of interest could not be quantified as columns of rate of interest and date from which interest was due were not filled in 26 RRCs involving an arrear of ₹ 321.44 crore.**

We examined arrear records of sampled sectors and observed in eight sectors<sup>6</sup> that in cases of 20 dealers, 26 RRCs were issued for recovery of arrear of

<sup>5</sup> Sec.14 Allahabad, JC (CC) Gautam Buddh Nagar, Sec. 1 Gorakhpur and Sec. 2 Raebareli.

<sup>6</sup> Sec. 1 Allahabad, Sec. 2 & 3 Gautam Buddh Nagar, Sec. 6 Ghaziabad, Sec. 1 Kusunagar, Sec. 12 Lucknow and Sec. 3 & 4 Noida.

₹ 321.44 crore. Important columns of RRCs such as rate of interest and date from which interest was due were not filled in. Though it was prescribed in the Act, these were not mapped in the software. There was no provision in the software to generate rate automatically. The columns of rate of interest and date from which interest, was due were filled manually by the ledger keepers. We also observed in sector 2 and 3, G. B. Nagar that 2,193 RRCs were issued during 2015-16 for recovery of revenue arrear but in none of the RRCs column, the rate of interest and the date from which interest due was mentioned manually though rates have been prescribed in the Act. In the absence of above details amount of interest could not be quantified.

During exit conference the Government/Department accepted our observation and stated that instruction has been issued in August 2016 for mentioning date and rate of interest in RRCs.

#### 4.4.7.5 Incorrect date and rate of interest mentioned in RRCs

**Demanding interest at the rate of 15 per cent instead of 12 per cent in the RRCs led to incorrect demand of interest from dealers and incorrect accumulation of arrear.**

We examined arrear records of sampled sectors and in seven sectors<sup>7</sup> observed that 15 RRCs were issued for recovery of arrear of ₹ 189.86 crore demanding interest at the rate of 15 per cent instead of 12 per cent and in one case interest was demanded from 1 October 2008 instead of 10 February 2014. No reason was given for showing incorrect rate of interest and date in the prescribed columns. Thus incorrect rate of interest and date mentioned in the prescribed columns of RRCs led to incorrect demand of interest from dealers and incorrect accumulation of arrears (**Appendix-XXII**).

During exit conference the Government/Department accepted our observation and stated that in all the cases revised RRCs have been issued.

#### 4.4.7.6 Short charging of interest due to erroneous RRCs

**There was short charging of interest of ₹ 88.62 lakh in case of 10 dealers due to erroneous issue of recovery certificate.**

Under Section 33(2) of UPVAT Act every dealer liable to pay tax is required to deposit the amount of tax into the Government treasury before the expiry of due date failing which simple interest at the rate of one and quarter per cent per month shall become due and be payable on unpaid amount with effect from the day immediately following the last date prescribed till the date of payment.

We examined assessment orders and files of sampled sectors and in nine sectors<sup>8</sup> observed that in the case of 10 dealers the AAs while finalising the assessment between April 2013 and June 2015 for the year 2008-09 to 2013-14 levied tax on admitted/concealed sales and raised demand for tax of ₹ 2.01 crore. RRCs were issued demanding interest from the date of receipt of

<sup>7</sup> Sec. 3 Ghaziabad, Sec. 3 Hapur, Sec. 12 Lucknow, Sec. 2, 3 & 14 Noida and Sec. 2 Raebareli.

<sup>8</sup> Sec. 3, 5, 8 & 14 Allahabad, Sec. 1 Basti, Sec. 2 Ghaziabad, JC (CC) & Sec. 1 Gorakhpur and Sec. 2 Raebareli.

notice of demand instead of from the due date upto the date of deposit of tax. This resulted in short charging of interest of ₹ 88.62 lakh (**Appendix-XXIII**).

During exit conference the Government/Department accepted our observation and stated that in all the cases revised RRCs have been issued.

#### **4.4.7.7 Reconciliation of R-3 and R-27 register**

**Instruction of CCT regarding reconciliation of R-3 and R-27 register were not followed which resulted in discrepancy between the figures of R-3 and R-27 register.**

CCT vide letter dated 30 May 2011 had instructed that in every sector noter and drafter-I and ledger keeper will reconcile the R-3 register<sup>9</sup> and R-27 register<sup>10</sup> in the second week of every month and if any discrepancy in the figures is found it should be rectified immediately.

We examined R-3 and R-27 register of sampled sectors and in six sectors<sup>11</sup> observed that in 15 RRCs related to 14 dealers there were differences in figures shown in R-3 and R-27 register. In respect of 12 RRCs arrear of ₹ 1.14 crore was shown as disposed off in R-3 register whereas in R-27 register it was shown as outstanding.

Similarly in respect of three RRCs arrear of ₹ 9.47 lakh was shown as outstanding in R-3 register whereas in R-27 register it was shown as disposed off. This shows that instruction of the CCT was not followed by the officials of the sectors. The AAs also had not monitored the same which resulted in discrepancy between the figures of R-3 and R-27 register thereby affecting the recovery proceedings (**Appendix-XXIV**).

During exit conference the Government/Department accepted our observation and stated that instruction has been issued in August 2016 for reconciliation of R-3 and R-27 register.

#### **4.4.8 Failure in pursuance of RRCs sent to other districts**

**Failure in pursuance of RRCs sent to other districts resulted in dues of ₹ 79 crore remaining unrecovered in case of 99 RRCs.**

In cases where the defaulters do not own any property in the jurisdiction of the sector but have property in the jurisdiction of some other sector or district, the concerned assessing authority is required to address the revenue authority of that sector or district for collecting the arrears according to the provisions of the Revenue Recovery Act 1890. For this, the RRCs are required to be forwarded to the Collectors of the districts in which the defaulters possess properties.

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<sup>9</sup> After finalising the assessment if any amount remains due from the dealer it is noted in the R-3 register. RRCs issued for recovery of arrears is also mentioned in it. Any amount deposited by the dealer against the demand is also mentioned in the prescribed columns of R-3 register.

<sup>10</sup> All the RRCs issued for recovery of revenue arrear are noted in the register and the date on which it is handed over to *sangrah amin* for recovery is also mentioned. RRCs taken back from the *sangrah amins* are also noted in this register.

<sup>11</sup> Sec. 1,8,12 & 14 Allahabad, Sec. 1 G.B. Nagar and Sec. 1 Lucknow

We examined arrear records of sampled sectors and in 14 sectors<sup>12</sup> observed that 99 out of 15,632 RRCs test checked pertaining to 50 dealers, were forwarded by the AAs to the revenue authorities of other districts within the State for recovery of arrear of ₹ 79 crore as arrears of land revenue between 2011-12 and 2015-16. The cases were not pursued further by the AAs with the concerned authorities though one month to three year three months had passed after sending the RRCs to other districts. Failure in pursuance of RRCs by the AAs resulted in ₹ 79 crore remaining unrecovered.

During exit conference the Government/Department accepted our observation and stated that efforts are being made to recover the revenue arrears.

#### 4.4.9 Failure in pursuance of RRCs sent to other States

**Failure in pursuance of RRCs sent to other States resulted in dues of ₹ 233.60 crore remaining unrecovered in case of 604 RRCs.**

In case where the defaulters do not own any property in the State but have property in some other State, the concerned AA is required to address the revenue authority of that State for collecting the arrears according to the provisions of the RR Act. For this, the RRCs are required to be forwarded to the Collectors of districts of the States in which the defaulters possess properties. Further, the CCT had nominated various DCs as nodal officers to monitor the RRCs transmitted to the other States.

We examined arrear records of sampled sectors and in 18 sectors<sup>13</sup> observed that 604 out of 27,381 RRCs test checked pertaining to 413 dealers, were forwarded by the Department to the revenue authorities of the other States for recovery of arrear of ₹ 233.60 crore as arrear of land revenue between 2011-12 and 2015-16. But even in the offices where the nodal officers are appointed there was nothing on record regarding pursuance of such cases. Thus, cases were not followed up though two months to four year eight months had passed after sending the RRCs to other States. Failure in pursuance of RRCs by the AAs resulted in ₹ 233.60 crore remaining unrecovered.

During exit conference the Government/Department accepted our observation and stated that efforts are being made to recover the revenue arrears.

**The Government may consider evolving a system for regular coordination with their counterparts in other districts/States to whom RRCs have been issued so that arrears can be realised.**

<sup>12</sup> Sec. 3 Gautam Buddh Nagar, Sec. 1, 2, 3, 6, 9 & 11 Ghaziabad, Sec. 1 Kusinagar, Sec. 1 & 12 Lucknow, Sec. 3 & 10 Noida, Sec. 2 Raebareli and Sec. 1 Siddharthnagar.

<sup>13</sup> Sec. 1 Fatehpur, Sec. 1 & 3 Gautam Buddh Nagar, Sec. 1, 2, 3, 9 & 11 Ghaziabad, Sec. 1, 2 & 12 Lucknow, Sec. 2, 3, 4, 10, 13 & 14 Noida and Sec. 2 Raebareli.

#### **4.4.10 Bank account not attached for recovery of arrears**

**Bank account of five defaulting dealers were not attached which resulted in arrear of ₹ 420.22 crore remaining unrecovered.**

The AAs have been empowered to act as a recovery officer of their concerned sectors and have been entrusted the work of recovery under UPZA and LR Act. If the dealer fails to deposit the due tax, order for attachment of the bank account and property of the defaulter is required to be issued. The arrears can be recovered from bank balance and sale proceeds obtained after auctioning the attached property.

We examined arrear records of sampled sectors and in four sectors observed that five dealers were in arrear of assessed tax of ₹ 420.22 crore for the period 2005-06 to 2010-11. RRCs for recovery of arrears were issued between July 2009 and September 2014, but dealers had not deposited the tax of ₹ 420.22 crore. After issuing the RRCs, one year six months to six year had passed, but no further action for attachment of bank account of these dealers was taken by the AAs for recovery of arrear. This resulted in arrear of ₹ 420.22 crore remaining unrecovered. Details are mentioned in the **Table 4.9**.

**Table 4.9**  
**Bank account not attached for recovery of arrears**

(₹ in lakh)					
Sl. No.	Name of the sector	Name of the dealer	Period of dues	Amount due	RRC no. and date of issue
1.	JC (CC) Gorakhpur	U.P. Project Corporation Limited	2008-09	5.52	21/27.09.2012
2.	Sec. 3 Lucknow	Rama Agencies	2010-11	5.00	16718/18.09.2014
3.	Sec. 11 Lucknow	Pragarti Marbles	2008-09	175.61	570/23.10.2013
		R.S. Enterprises	2009-10	14.91	315/31.07.13
4.	Sec. 12 Lucknow	Commissioner Food and Civil Supply	2005-06 to 2007-08	41,821.00	91/06.07.2009
	<b>Total</b>			<b>42,022.04</b>	

Source: Information available on the basis of dealers files.

During exit conference the Government/Department accepted our observation and stated that in three cases bank account of the dealer has been seized, in one case ₹ 5.52 lakh has been recovered and in one case the dealer-department went in departmental appeal and the recovery has been stopped by the appellate authority.

#### **4.4.11 Lack of follow up of action in cases pending with Board for Industrial and Financial Reconstruction (BIFR)**

**The arrear of ₹ 6.82 crore remained unrecovered due to not lodging the claim with BIFR.**

As per Sick Industrial Companies (Special Provision) Act, 1985 where a reference for declaration as sick unit is filed and proceeding thereon are pending before Board for Industrial and Financial Reconstruction (BIFR) , no

suit for recovery or enforcement of any dues against the company shall lie or be proceeded further, except with the consent of the Board. Where a company has been declared sick by the Board, the Department has to ensure inclusion of all the arrears in the statement of liabilities of the company furnished to the Board.

We examined arrear records of sampled sectors and in Sector 6 Ghaziabad observed that a dealer engaged in manufacturing and selling of CR coil and sheets was declared sick unit by BIFR in December 2006. The company was in arrear of assessed dues of ₹ 4.44 crore for the year 2006-07 and ₹ 2.38 crore for the year 2009-10. RRCs were issued for recovery of arrear of ₹ 4.44 crore and ₹ 2.38 crore in March 2009 and September 2013 respectively. Information regarding submission of claim of ₹ 6.82 crore before BIFR was not available in the records. It shows that claim for recovery of arrear was not submitted before BIFR and resulted in arrear of ₹ 6.82 crore remaining unrecovered.

During exit conference the Government/Department accepted our observation and stated that instruction to AA have been issued for submission of claim before Operating Agency.

#### **4.4.12 Inaction in lodging/pursuing claims with the Official Liquidator (OL)**

**Belated filing of claims and no pursuance with the OL resulted in dues of ₹ 61.43 crore remaining unrecovered.**

The official liquidators are officers appointed by the Central Government under Section 448 of the Companies Act. The primary function of the OL is to administer the assets of companies under liquidation, sale of the assets and realisation of all debts of the companies in liquidation for the purpose of distributing the same among various creditors and other shareholders of the companies and to finally dissolve such companies after the affairs are completely concluded. According to Section 530(i)(a) of the Companies Act, 1956, there shall be paid in priority to all other debts, all revenue taxes etc., due from the company to the Central or a State Government or to a local authority at the relevant date and having become due and payable within the twelve months next before that date.

We examined arrear records of sampled sectors and in two sectors<sup>14</sup> observed that three dealers were in arrear of ₹ 61.43 crore for the period 1981-82 to 2007-08. Hon'ble High Court Allahabad had appointed OL in these cases between August 1998 and July 2011. The Department lodged its claim before the OL after a delay of three year one month to four years five months. Thus, inordinate delay on the part of the Department resulted in arrear of ₹ 61.43 crore remaining unrecovered as mentioned in the **Table 4.10**.

<sup>14</sup> Sec. 12 Lucknow and Sec. 2 Raebareli.

**Table 4.10**

**Inaction in lodging/pursuing claims with OL**

(₹ in crore)					
Sl. No.	Name of the dealer	Period	Date of appointment of OL	Date on which claim lodged before OL	Amount of arrear
1.	M/s Uptron India Limited	1981-82 to 2007-08	15.07.2011	24.11.2015	49.18
2.	M/s U. P. Tyre Tube Limited	1989-90 to 1994-95	19.01.2000	31.03.2003	1.48
3.	M/s Rawal Paper Mills Limited	1984-85 to 1997-98	10.08.1998	24.02.2003	10.77
<b>Total</b>					<b>61.43</b>

Source: Information available on the basis of dealers files.

In case of M/s U.P. Tyre Tube Limited and M/s Rawal Paper Mills Limited property of the company was disposed off by the OL and the payment was made to secured creditors and employees and no amount was paid to Commercial Tax Department.

During exit conference the Government/Department accepted our observation and stated that efforts are being made to recover the revenue arrear.

**The Government may consider devising a system of regular liaison with the Board for Industrial and Financial Reconstruction and Official Liquidator who have attached the property of the defaulting dealers so that claims lodged with them are not lost sight of and recoveries affected.**

**4.4.13 Human Resource Management**

**Shortage in the cadres of collection supervisor, collection *amin* and *sangrah sevak* ranging between 8 to 100 per cent during 2011-12 to 2015-16 affected the collection of revenue arrears.**

Availability of manpower is a key factor for smooth and efficient working of a Department. It was noticed that although there was an increase in the arrears during the coverage period but there was severe shortage of manpower. The manpower position of the Department engaged for collection of arrears against the sanctioned strength is shown in the **Table 4.11**.

**Table 4.11**

**Shortage of manpower engaged in collection of arrears**

Designation	Sanctioned strength	Men in position					Percentage of shortfall (Min-Max)
		2011-12	2012-13	2013-14	2014-15	2015-16	
Collection supervisor	95	0	0	0	0	0	100
Collection <i>amin</i>	380	382	349	287	284	271	08-29
<i>Sangrah Sewak</i>	558	395	389	379	374	290	29-48

Source: Data furnished by the Commercial Tax Department.

From the table it could be seen that there was heavy shortage in all cadres of officials directly involved in recovery of arrears which adversely affected the collection of arrears of revenue as illustrated in earlier paragraphs.



During exit conference the Government/Department accepted our observation and stated that efforts are being made to promote the *collection amins* against vacant post of collection supervisor and 95 new *collection amins* have been appointed recently.

**The Government may consider deployment of manpower in accordance with sanctioned strength for effective recovery of arrears of revenue.**

## **Internal Control**

### **4.4.14 Review of arrear cases by Internal Audit Wing**

Internal Audit is vital component of the Internal Control Mechanism and is generally defined as the control of all controls to enable an organisation to assure itself of proper enforcement of laws, rules and departmental instructions. The Internal Audit Wing (IAW) functions under the administrative control of CCT. The IAW is required to audit accounts, assessments, recovery, remittances etc. IAW is required to examine the adequacy of recovery actions taken by Department in regard to lodging of claims with the proper authorities, auctioning of the attached property of defaulting dealers etc.

We examined Internal Audit Reports of sampled sectors and found that in 30 sectors no audit was conducted during 2011-12 to 2015-16 and in 23 sectors where internal audit was conducted there was nothing on record to indicate that IAW conducted any review of cases of arrears of revenue. As such the efficiency in recovery of the arrears could not be ascertained at apex level and arrears continued to be outstanding without any effective monitoring.

During exit conference the Government/Department accepted our observation and stated that due to shortage of staff and training, work of internal audit was not being performed effectively.

### **4.4.15 Failure in achievement of targets**

The CCT fixed targets for recovery of arrears through special drives and issued instruction from time to time in this regard. The specific target for recovery of arrear is fixed by increasing its percentage every year keeping in view previous year's recovery of arrears. It is monitored through monthly statement by the CCT.

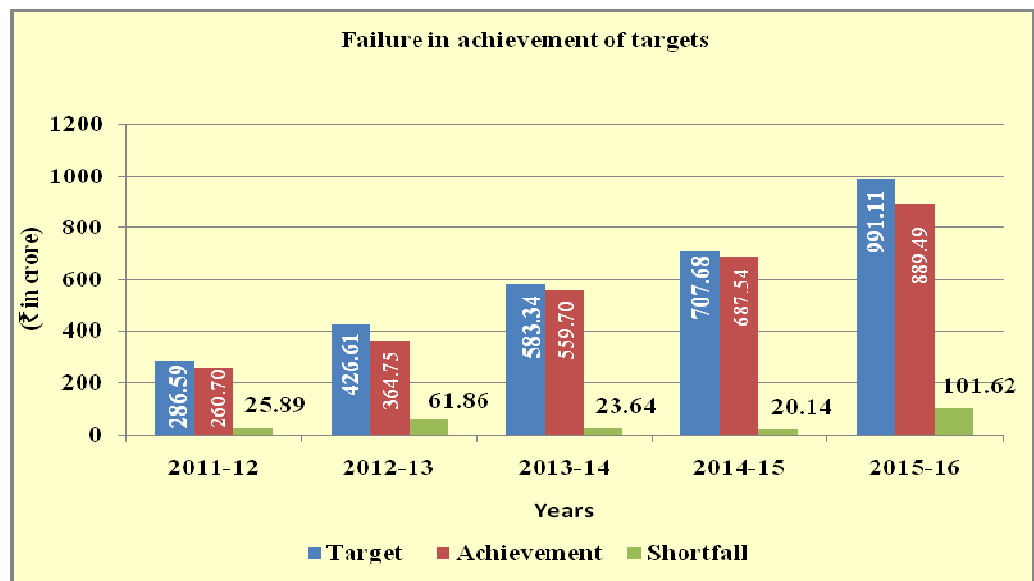
We examined arrear records of sampled sectors and observed that in 51 sectors there was shortfall in achievement of targets fixed for the recovery of arrear dues during the year 2011-12 to 2015-16 which ranged between 2.85 and 14.50 *per cent*. Only ₹ 2,762.18 crore could be recovered against the target of ₹ 2,995.33 crore. Only in two sectors targets of recovery were achieved. Details are mentioned in the **Table 4.12**.

**Table 4.12**  
**Failure in achievement of targets**

(₹ in crore)				
Year	Target	Achievement	Shortfall	Percentage of shortfall
2011-12	286.59	260.70	25.89	9.03
2012-13	426.61	364.75	61.86	14.50
2013-14	583.34	559.70	23.64	4.05
2014-15	707.68	687.54	20.14	2.85
2015-16	991.11	889.49	101.62	10.25
<b>Total</b>	<b>2,995.33</b>	<b>2,762.18</b>	<b>233.15</b>	

Source: Data furnished by the Commercial Tax Department.

**Chart 4.6**



It is evident from the above chart that the targets were not achieved by the sectors for the year 2011-12 to 2015-16.

During exit conference the Government/Department accepted our observation and stated that efforts are made to recover the revenue arrears constantly and speedily.

#### **4.4.16 Conclusion**

During Audit we observed that:

No policy or road map was set up for dealing with the arrears in 55 districts. RRCs/notices of demand were either not issued or issued late by the AAs which resulted in delay in starting of recovery proceedings involving an arrear of ₹ 452.30 crore. We also saw that the RRCs involving an arrear of ₹ 312.60 crore issued to other districts/States were not pursued. Claims lodged with the BIFR and OL involving an arrear of ₹ 68.25 crore were not pursued by assessing authorities for the last three to nine years. The Department stated (June 2016) an amount of ₹ 1,514.74 crore out of ₹ 27,188.58 crore (as on March 2016) would be written off. There was heavy shortage in all the cadres of officials directly involved in recovery of arrears. This resulted in huge arrears of taxes aggravated to ₹ 27,188.58 crore. These aspects reflect

weakness in the system which necessitates strong machinery for collection of arrears.

#### 4.4.17 Summary of recommendations

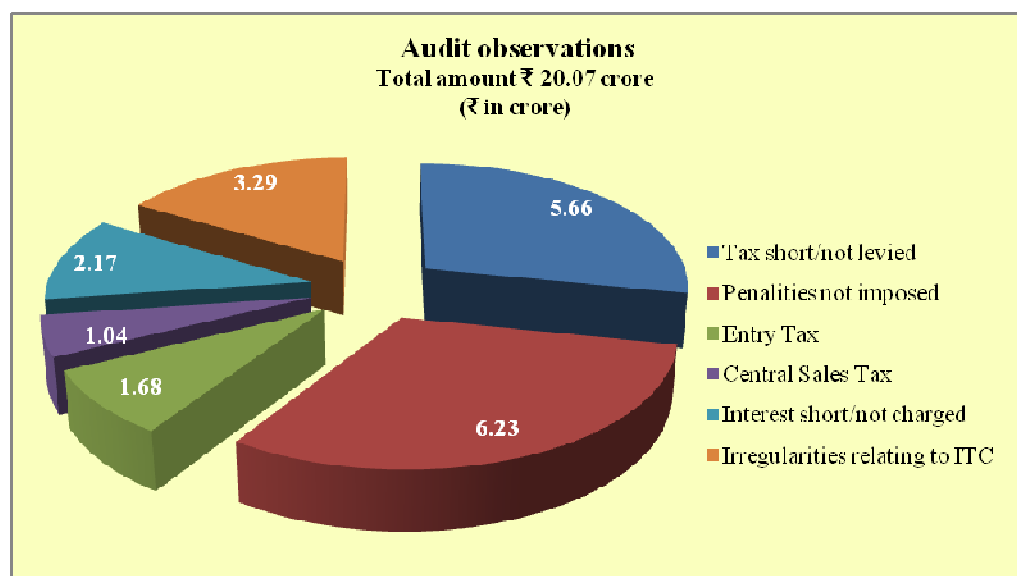
The Government may consider:

- **posting of Tax Recovery Officers in every district and putting in place a dedicated recovery machinery for focusing on recovery of arrears.**
- **evolving a system for issuing RRCs timely.**
- **evolving a system for regular coordination with their counterparts in other districts/States to whom RRCs have been issued so that arrears can be realised.**
- **devising a system of regular liaison with the Board for Industrial and Financial Reconstruction and Official Liquidator who have attached the property of the defaulting dealers so that claims lodged with them are not lost sight of and recoveries affected.**
- **deployment of manpower in accordance with sanctioned strength for effective recovery of arrears of revenue.**

#### 4.5 Audit observations

*Our scrutiny of the 30,368 out of 60,339 assessment orders relating to 277 Commercial Tax Offices showed several cases of not adhering to the provisions of the Acts/Rules, tax short/not levied, penalty/interest, irregular exemption, incorrect application of rate of tax, etc. as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on our test check. Such omissions on the part of Assessing Authorities (AAs) have been pointed out by us each year, but not only do the irregularities persist; they remain undetected by the Department till an audit is conducted.*

Chart 4.7



## **4.6 Tax short/not levied**

The Assessing Authorities while finalising the assessments, did not apply correct rate of tax given in the schedule of rates, in some cases lower rate of tax was applied due to misclassification of goods, short levy of composition money and in some cases no tax was levied, thus tax of ₹ 5.66 crore including penalty of ₹ 14.02 lakh in the cases of 69 out of 5,535 dealers in respect of 50 CTOs for the period 2008-09 to 2012-13 was not levied as mentioned in the following paragraphs:

### **4.6.1 Tax short/not levied due to erroneous rate of tax**

#### **4.6.1.1 Application of incorrect rate of tax**

**Assessing Authorities accepted the tax on sale of goods worth ₹ 44.33 crore as submitted by the dealers in their returns instead of rates mentioned in the schedule. Thus, tax amounting to ₹ 2.72 crore was short/not levied.**

Under Section 4(1) of Uttar Pradesh Value Added Tax (UPVAT) Act, 2008, goods mentioned in schedule I are tax free, goods mentioned in schedule II are taxable at the rate of four *per cent*, goods mentioned in schedule III are taxable at the rate of one *per cent* and those mentioned under schedule IV are taxable at the rate notified by the Government from time to time. Goods not mentioned in any of the above schedules are covered under schedule V and are taxable at the rate of 12.5 *per cent* with effect from 1 January 2008. In addition to the above under Section 3-A of UPVAT Act 2008 additional tax is also leviable as notified by the Government from time to time.

We examined (between April 2015 and February 2016) assessment orders and files in 30 Commercial Tax Offices (CTOs)<sup>15</sup> and observed that in the case of 35 out of 3,280 dealers test checked, the AAs while finalising the assessments for the year 2007-08 (1.1.2008 to 31.3.2008) to 2012-13 between January 2012 and March 2015 accepted the tax on sale of goods worth ₹ 44.33 crore as submitted by the dealers in their returns instead of rates mentioned in the schedule. Thus tax amounting to ₹ 2.72 crore was short/not levied (**Appendix-XXV**).

We reported the matter to the Department and Government (between May 2015 and April 2016). During exit conference the Government/Department accepted our observation and stated that tax amounting to ₹ 5.09 lakh has been levied in three cases. For the remaining cases Department stated that action is under process (September 2016).

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<sup>15</sup> DC Sec 16 Agra, DC Sec 4, 8 & 12 Allahabad, DC Sec 1 Banda, DC Sec 1 Deoria, DC Sec 6 & 11 Ghaziabad, DC Sec 5 Jaunpur, DC Sec 5, 12 & 24, AC Sec 9 Kanpur, DC Sec 1, 5 & 11 Lucknow, DC Sec 2, CTO Sec 8 Meerut, DC Sec Sardhana Meerut, CTO Sec 1 & 2 DC Sec 4 & 12 JC (CC) Noida, DC Sec 1 Raebareli, DC Sec 1 Rampur, DC Sec 2 Saharanpur, DC Sec 3 Shahjahanpur, DC Sec 1 Chandauli, Varansi, JC (CC) Zone-II Varansi at Robertsganj, Sonbhadra.

#### 4.6.1.2 Misclassification of goods

**Assessing Authorities accepted the classification declared by the dealers and applied incorrect rate of tax on sale of goods of ₹ 5.44 crore instead of classifying goods correctly and levying tax at the rates mentioned in the schedule. This resulted in short/not levy of tax of ₹ 63.26 lakh.**

We examined (between May 2015 and January 2016) assessment orders and files in eight CTOs<sup>16</sup> and observed that in the case of 13 out of 933 dealers test checked, the AAs while finalising the assessment for the year 2008-09 to 2011-12 between May 2012 and March 2015, accepted the classification declared by the dealers and applied incorrect rate of tax on sale of goods of ₹ 5.44 crore instead of classifying goods correctly and levying tax at the rates mentioned in the schedule. This resulted in short/not levying of tax amounting to ₹ 63.26 lakh (**Appendix-XXVI**).

We reported the matter to the Department and the Government (between June 2015 and March 2016). During exit conference the Government/Department accepted our observation and stated that tax amounting to ₹ 51,000 has been levied in one case for the remaining cases Department stated that action is under process (September 2016).

#### 4.6.1.3 Turnover escaping assessment

**The turnover of ₹ 15.28 crore was not disclosed by the dealers in their returns though available in their assessment files. The AAs while finalising the assessment disregarded this turnover which resulted in short levy of tax of ₹ 81.57 lakh.**

Under Section 28 of UPVAT Act, the AAs are required to finalise the assessment after examining the books, accounts and documents kept by the dealer in relation to his business and other relevant records.

We examined (between April 2015 and December 2015) trading and profit/loss account, annual balance sheet, current and previous year's assessment orders etc. in 13 CTOs<sup>17</sup> and observed that in the case of 15 out of 1,394 dealers test checked, the turnover of ₹ 15.28 crore was not disclosed by the dealers in their returns submitted to AAs for the year 2009-10 to 2012-13. The details of turnover were available in the respective assessment files of the dealers. The AAs while finalising the assessments of these dealers between May 2013 and March 2015 did not properly examine the books, accounts and documents and other relevant records which resulted in disregarding their turnover of ₹ 15.28 crore and consequently tax of ₹ 81.57 lakh was short levied (**Appendix-XXVII**).

<sup>16</sup> DC Sec 10 Ghaziabad, DC Sec 5, 8 and 14 Kanpur, AC Sec 9 Kanpur, DC Sec 20 Lucknow, DC Sec 10 Meerut and DC Sec 1 Noida.

<sup>17</sup> DC Sec 13 Agra, JC(CC), DC Sec. 4 & 12, AC Sec. 5 Allahabad, JC(CC) Bareilly, JC(CC)-II Ghaziabad, DC Sec. 2 Gorakhpur, DC Sec. 8 Kanpur, DC Sec. 4 & 10 Lucknow, DC Sec. 2 Meerut and CTO Sec 1 Noida.

We reported the matter to the Department and the Government (between May 2015 and January 2016). During exit conference the Government/Department accepted our observation and stated that tax amounting to ₹ 1.17 lakh has been levied in two cases, out of which ₹ 17,000 have been recovered. For the remaining cases Department stated that action is under process (September 2016).

#### **4.6.1.4 Short levy of composition money under UPVAT**

**The AAs accepted composition money at the rate of two *per cent* instead of six *per cent* on payment of ₹ 14.99 crore which resulted in short levy of composition money of ₹ 56.11 lakh.**

Under the provision of Section 6 of UPVAT Act, any dealer may opt to pay composition money in lieu of tax payable by him. As per compounding scheme introduced by the Government vide Notification No.1278 dated 9 June 2009 for civil and electrical contractors, if any contractor transfers imported goods upto five *per cent* of the value of work executed during the financial year the composition money was to be computed at the rate of two *per cent* upto 30.12.2010 and at the rate of four *per cent* from 31.12.2010. If the contractor transferred more than five *per cent* imported goods the composition money was to be computed at the rate of six *per cent*.

We examined assessment orders, consumption chart of imported goods and files in two sectors and observed that two civil contractors out of 276 dealers test checked, used imported material valued at ₹ 1.85 crore in execution of works contract during the year 2009-10, 2010-11 and 2012-13 which was more than five *per cent* of the contractual value of ₹ 14.99 crore. Since the imported goods used in execution of work contract were more than five *per cent* of the contractual value in financial year hence the composition money of ₹ 89.95 lakh at the rate of six *per cent* was leviable. However, the AAs while finalising the assessment between March 2013 and July 2014, levied composition money of ₹ 33.84 lakh (at the rate of two *per cent* on ₹ 13.07 crore and at the rate of four *per cent* on ₹ 1.93 crore). This resulted in short levy of composition money of ₹ 56.11 lakh as detailed in the **Table 4.13**.

**Table 4.13**  
**Short levy of composition money under UPVAT**

(₹ in lakh)										
Sl. No	Name of the unit	No. of dealers	Assessment year (month and year of assessment)	Taxable contractual value for the financial year	Imported material consumed/percentage of taxable contractual value for the financial year	Rate of tax leviable ( <i>per cent</i> )	Amount of tax leviable	Rate of tax levied ( <i>per cent</i> )	Amount of tax levied	Tax short levied
1	DC Sec-2 G.B.Nagar	1	2012-13 (June 2014)	192.58	87.85/45.62	6	11.55	4	7.7	3.85
2	DC Sec-3 G.B.Nagar	1	2009-10 (March 2013)	774.29	70.03/9.04	6	46.46	2	15.49	30.97
			2010-11 (July 2014)	532.37	26.80/5.03	6	31.94	2	10.65	21.29
<b>Total</b>		<b>2</b>		<b>1,499.24</b>	<b>184.68</b>		<b>89.95</b>		<b>33.84</b>	<b>56.11</b>

Source: Information available on the basis of assessment files.

We reported the matter to the Department and the Government (May 2015). During exit conference the Government/Department accepted our observation and stated that action is under process in all the cases (September 2016).

#### 4.6.1.5 Short levy of tax due to calculation mistake

**The AAs committed mistake in calculation of tax on taxable turnover of ₹ 43.63 crore which resulted in short levy of tax amounting to ₹ 74.89 lakh.**

Under Section 28 of UPVAT Act, 2008 and Section 9(4) of UP Tax on Entry of Goods into Local Areas Act, 2007 it is the duty of the AAs while scrutinising the returns/records filed by the dealer and passing the assessment orders to see that all the taxes are correctly levied and all the calculations are made accurately.

We examined (between June 2015 and November 2015) assessment orders and files in four CTOs and observed that in the case of five out of 365 dealers test checked, the Assessing Authorities (AAs) while finalising the assessments between June 2014 and March 2015 for the period 2008-09 to 2012-13, committed a mistake in calculation of tax on taxable turnover of ₹ 43.63 crore which resulted in short levy of tax amounting to ₹ 74.89 lakh. The details are mentioned in the **Table 4.14**.

**Table 4.14**

#### Short levy of tax due to calculation mistake

(₹ in lakh)								
Sl. No.	Name of the units	No of dealers	Assessment year (month and year of assessment)	Taxable turnover	Rate of tax leviable/levied (per cent)	Tax leviable	Tax levied	Tax short levied
1	DC Sec 3 Buland Shahr	1	2011-12 (March 2015)	2,433.38	13.5 & 14.5	351.88	341.88	10.00
2	JC(CC) Jhansi	1	2008-09 (December 2014)	166.86	2	3.34	2.34	1.00
3	DC Sec 10 Lucknow	1	2011-12 (June 2014)	148.67	13.5	20.07	7.43	12.64
		1	2012-13 (November 2014)	517.85	4, 5, 13.5, 14 & 15.5	53.59	41.01	12.58
4	DC Sec 6 Noida	1	2011-12 (February 2015)	1,096.30	4, 5, 13.5 & 15.5	82.52	43.85	38.67
<b>Total</b>		<b>5</b>		<b>4,363.06</b>		<b>511.40</b>	<b>436.51</b>	<b>74.89</b>

Source: Information available on the basis of assessment files.

We reported the matter to the Department and the Government (between July 2015 and January 2016). During exit conference the Government/Department accepted our observation and stated that tax amounting to ₹ 35.22 lakh has been levied in three cases, out of which ₹ 22.58 lakh has been recovered. For the remaining cases Department stated that action is under process (September 2016).

#### **4.6.2 Irregular authorisation to purchase furnace oil at concessional rate for manufacturing of tax free goods**

**The AA while finalising the assessment allowed concession of ₹ 4.49 lakh on the purchase of furnace oil amounting to ₹ 28.04 lakh against form 'D' which was inadmissible as it was used in manufacturing of tax free goods worth ₹ 30.65 crore which resulted in short-levy of tax of ₹ 4.49 lakh and penalty at the rate of 50 per cent of value of furnace oil, amounting to ₹ 14.02 lakh was also not imposed.**

As per entry no. 7(b) of the Schedule IV issued under the provisions of Section 4(1) (c) of UPVAT Act 2008, tax on furnace oil is leviable at the rate of 21 per cent from 30 September 2008 and as per entry no. 7(a) of the Schedule IV manufacturers of any taxable goods other than non-VAT goods are entitled to purchase furnace oil at the concessional rate of tax at five per cent from 30 September 2008, against Form D, vide Government Notification no-2758 dated 29.09.2008.

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

We examined (July 2015) assessment orders and files in the office of DC Sec 4 Allahabad and observed that one out of 65 dealers test checked, claimed concession of ₹ 4.49 lakh on the purchase of furnace oil against form 'D'. The dealer was manufacturer of tax free goods like milk, curd and *mattha* alongwith other taxable commodities. The sale of tax free commodities was ₹ 30.65 crore (93.43 per cent out of total sale of ₹ 32.81 crore). The dealer purchased furnace oil worth ₹ 30.01 lakh at concessional rate. He was not eligible for concessional rate on purchase of furnace oil of ₹ 28.04 lakh (93.43 per cent of total purchase worth ₹ 30.01 lakh). The AA while finalising the assessment during January 2015 irregularly allowed concession against manufacturing of tax free goods which resulted in short levy of tax of ₹ 4.49 lakh. Further, penalty of ₹ 14.02 lakh, i.e. 50 per cent of the value of goods was also not imposed.

We reported the matter to the Department and the Government (August 2015). During exit conference the Government/Department accepted our observation and stated that action is under process (September 2016).

#### **4.7 Penalties not imposed**

Penal provisions are made to discourage the malafied practices of the dealers. The AAs while finalising the assessments, disregarded the offences committed by the dealers i.e. transactions out of accounts books, delayed deposit of tax, transactions against the provisions of the UPVAT Act and Rules made thereunder etc. Though there are clear cut provisions for imposition of penalties in the Act, the AAs concerned did not impose penalty amounting to ₹ 6.23 crore in respect of 50 CTOs in the cases of 74 out of 5,639 dealers for



the period 2007-08 (VAT) to 2013-14 as mentioned in the following paragraphs:

#### 4.7.1 Concealment of turnover

**The Assessing Authorities did not impose penalty of ₹ 1.02 crore on concealed turnover of ₹ 5.24 crore.**

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

We examined (between April 2014 and February 2016) final assessment order of dealers, accepted tax deposited by dealers and order of Commercial Tax Appellate Authorities in 19 CTOs<sup>18</sup> and observed that 23 out of 2,491 dealers test checked, concealed purchases and sales turnover of ₹ 5.24 crore during the year 2008-09 to 2013-14. As the dealers concealed their turnover they were liable to pay penalty a sum equal to three times of the tax concealed. The AAs while finalising the assessments between October 2011 and March 2015 levied tax of ₹ 33.90 lakh on this concealed turnover. Though in nine<sup>19</sup> cases the Appellate Authorities had confirmed (between June 2013 and October 2015) that the dealers had concealed the turnover/evaded payment of liable tax or the dealers had themselves accepted the same and deposited the tax due on the concealed turnover, the AAs concerned neither imposed the penalty of ₹ 1.02 crore nor recorded any reason for not imposing the penalty.

We reported the matter to the Department and the Government (between May 2014 and March 2016). During exit conference the Government/Department accepted our observation and stated that penalty of ₹ 56.97 lakh has been imposed in 12 cases. For the remaining cases Department stated that action is under process (September 2016).

#### 4.7.2.1 Delayed deposit of tax

**The AAs while finalising the assessments did not impose penalty of ₹ 1.45 crore on delayed deposit of admitted tax of ₹ 7.24 crore.**

Under Section 54 (1) (1) of UPVAT Act, if the AA is satisfied that any dealer or other person has, without reasonable cause, failed to deposit the tax due for any tax period within prescribed or extended time, he may direct the dealer to pay by way of penalty in addition to tax, if any payable by him, a sum equal to 20 per cent of the tax due.

<sup>18</sup> AC Sec. 3, DC Sec. 18 Agra, DC Sec. 3 Allahabad, DC Sec. 2 Ambedkar Nagar, DC Sec. 5 Faizabad, JC(CC) Firozabad, DC Sec. 9 & 15, AC Sec 17 Ghaziabad, DC Sec. 23 & 27 Kanpur, DC Sec. 4, 6 & 10 Lucknow, DC Sec. 6 Meerut, DC Sec. 8 Moradabad, JC(CC), DC Sec. 12 Noida, and DC Sec. 5 Saharanpur.

<sup>19</sup> AC Sec 3 Agra (2 cases), DC Sec 5 Faizabad, JC(CC) Firozabad, DC Sec 15 Ghaziabad, DC Sec 23 Kanpur, DC Sec 4 Lucknow, DC Sec 6 Lucknow & DC Sec 8 Moradabad.

We examined (between August 2014 and March 2016) assessment orders and files in 21 CTOs<sup>20</sup> and observed that 30 out of 1,572 dealers test checked, had not deposited their admitted tax of ₹ 7.24 crore for the period 2007-08(VAT) to 2012-13 in time. The delay ranged between five days to 1,388 days. As the tax was deposited late for which they were liable to pay the penalty a sum equal to 20 *per cent* of the tax due in addition to the tax levied, the AAs while finalising the assessments between January 2012 and March 2015 neither imposed penalty of ₹ 1.45 crore nor recorded any reason for not imposing the penalty (**Appendix-XXVIII**).

We reported the matter to the Department and the Government (between September 2014 and March 2016). During exit conference the Government/Department accepted our observation and stated that penalty of ₹ 27.99 lakh has been imposed in 13 cases. For the remaining cases Department stated that action is under process (September 2016).

#### **4.7.2.2 Delayed deposit of works contract tax**

**The AAs had not imposed penalty of ₹ 2.98 crore on dealers for not depositing the tax of ₹ 1.49 crore within prescribed time, deducted at source while making payment to the contractors.**

Under Section 34(8) read with 34(1) of UPVAT Act, 2008 a person responsible for making payment to a contractor, for discharge of any liability on account of valuable consideration payable for the transfer of property in goods in pursuance of works contract, shall deduct an amount equal to four *per cent* of such sum, payable under the Act, on account of such works contract. In case of failure to deduct the amount or deposit the amount so deducted into the Government treasury before the expiry of 20<sup>th</sup> day of the month following the month in which the deduction was made, the AAs may direct that such person shall pay by way of penalty a sum not exceeding twice the amount so deducted.

We examined (between May 2014 and January 2016) assessment orders and files in 11 CTOs<sup>21</sup> and observed that 14 out of 1,540 dealers test checked, deducted the tax of ₹ 1.45 crore at source while making the payment to contractors during the year 2009-10 to 2012-13 but did not deposit the same into Government treasury within the time prescribed. The delay ranged from three days to 387 days. In one case tax of ₹ 4.05 lakh was not deducted. The AAs while finalising the assessment between January 2013 and March 2015, neither imposed the penalty of ₹ 2.98 crore nor recorded any reason for not imposing the penalty.

We reported the matter to the Department and the Government (between June 2014 and March 2016). During exit conference the Government/Department

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<sup>20</sup> AC Sec 15 Agra, JC(CC) Allahabad, DC Sec Bharthana, DC Sec 1 Ghazipur, JC(CC)-II, DC Sec 3, 6 & 13 Ghaziabad, DC Sec 4 Hardoi, DC Sec 5 Jaunpur, JC(CC) Jhansi, JC(CC)-I Kanpur, DC Sec 4 Lucknow, DC Sec Koshikalan Mathura, DC Sec 2 Mathura, JC(CC) Moradabad, DC Sec 1, 5 & 6 Noida, DC Sec 5 Saharanpur and JC (CC)-II Varanasi (at Sonbhadra).

<sup>21</sup> DC Sec 3, AC Sec 2 & 3 Allahabad, AC Sec 1 Banda, AC Sec 4 Buland shahr, DC Sec 27 Kanpur, AC Sec 4 & 11 DC Sec 20 Lucknow, DC Sec 10 Meerut and DC Sec 12 Noida.

accepted our observation and stated that penalty of ₹ 48.52 lakh has been imposed in six cases out of which ₹ 91,000 have been recovered. For the remaining cases Department stated that action is under process (September 2016).

### 4.7.3 False purchase

**The Assessing Authorities while finalising the assessment reversed the ITC for receipt of tax invoices of ₹ 1.57 crore without making actual purchase of goods but did not impose the penalty of ₹ 78.37 lakh.**

Under Section 54(1) 11(iv) of the UPVAT Act, if the Assessing Authority is satisfied that any dealer or other person, as the case may be, receives a tax invoice or sale-invoice without actual purchase of goods, he may direct that such dealer or person shall, pay by way of penalty, a sum equal to fifty *per cent* of value of goods.

We examined (between September 2014 and February 2016) assessment orders and files in five CTOs and observed that six out of 757 dealers test checked had during the year 2008-09 to 2012-13 received tax invoice amounting to ₹ 1.57 crore and claimed ITC without making actual purchases. As the dealers claimed ITC without making actual purchases for which they were liable to pay penalty of a sum equal to fifty *per cent* of value of goods. However, the AAs while finalising the assessment between April 2012 and March 2015 reversed the ITC but did not impose the penalty of ₹ 78.37 lakh as shown in the **Table 4.15**.

**Table 4.15**  
**False purchase**

(₹ in lakh)					
Sl. No.	Name of the unit	Number of dealer	Assessment year (month & year of assessment)	Amount covered by Receiving of Sale/Tax invoice without actual purchase	Penalty leviable
1	DC Sec 18 Agra	1	2012-13 (June 2014)	96.83	48.41
2	DC Sec 1 Barabanki	1	2011-12 (March 2015)	29.98	14.99
3	DC Sec 16 Ghaziabad	1	2009-10 (April 2013)	12.39	6.20
4	AC Sec 6 Noida	1	2008-09 (April 2012)	3.01	1.51
		1	2008-09 (June 2012)	2.35	1.18
5	DC Sec 4 Saharanpur	1	2008-09 (March 2012)	12.15	6.08
<b>Total</b>		<b>6</b>		<b>156.71</b>	<b>78.37</b>

Source: Information available on the basis of assessment files.

We reported the matter to the Department and the Government (between September 2014 and March 2016). During exit conference the Government/Department accepted our observation and stated that action is under process in all the cases (September 2016).

### 4.8 Entry tax

The AAs while finalising the assessments, did not apply correct rate of entry tax given in the schedule of rates, in some cases no entry tax was levied and in some other cases irregular rebate was allowed thus entry tax of ₹ 1.68 crore in

respect of 14 CTOs in the cases of 23 out of 1,465 dealers for the period 2009-10 to 2012-13 was not levied as mentioned in the following paragraphs:

#### **4.8.1 Entry tax short/not levied**

**The Assessing Authorities while finalising the assessment levied entry tax amounting to ₹ 5.82 lakh instead of ₹ 1.34 crore on purchase of goods worth ₹ 33.90 crore from outside the local area. This resulted in short/ not levy of entry tax of ₹ 1.29 crore.**

Under Section 4 of the UP Tax on Entry of Goods into Local Areas Act, 2007 entry tax on value of goods is leviable as per schedule of rates notified by the Government from time to time. As per notification No. 422 dated 31 March 2011 entry tax on iron and steel was leviable at the rate of five *per cent* w.e.f. 1 April 2011 and a rebate to the extent of the amount of tax payable by a dealer on sale or purchase under UPVAT Act was allowed.

We examined (between April 2015 and February 2016) assessment orders and files in 13 CTOs<sup>22</sup> and observed that 22 out of 1418 dealers test checked, purchased goods valued at ₹ 33.90 crore from outside the local area during the period 2009-10 to 2012-13 on which entry tax of ₹ 1.34 crore was leviable. The AAs while finalising the assessment between November 2011 and March 2015 levied entry tax amounting to ₹ 5.82 lakh in the cases of five dealers only. Thus entry tax of ₹ 1.29 crore was not/short levied (**Appendix-XXIX**).

We reported the matter to the Department and the Government (between May 2015 and April 2016). During exit conference the Government/Department accepted our observation and stated that action is under process in all the cases (September 2016).

#### **4.8.2 Irregular rebate in entry tax**

**The AA allowed benefit of inadmissible rebate amounting to ₹ 39.38 lakh on purchase of goods from outside the local area valued at ₹ 271.53 crore.**

Under Section 4 of the UP Tax on Entry of Goods into Local Areas Act, 2007 entry tax on value of goods is leviable as per schedule of rates notified by the Government from time to time. As per notification No. 422 dated 31 March 2011 entry tax on iron and steel was leviable at the rate of five *per cent* w.e.f. 1 April 2011 and a rebate to the extent of the amount of tax payable by a dealer on sale or purchase under UPVAT Act was allowed.

We examined (November 2015) assessment orders and files in the office of JC(CC)-II CT Ghaziabad and observed that during the period 2011-12 a dealer out of 47 dealers test checked, declared net entry tax leviable goods worth ₹ 261.69 crore after showing a loss of ₹ 9.85 crore, instead of the entry tax leviable goods of ₹ 271.53 crore. In determining entry tax, rebate of ₹ 39.38 lakh (four *per cent* of ₹ 9.85 crore) was allowed to dealer. The AA while

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<sup>22</sup> DC Sec 1 Ghazipur, DC Sec 2 & 3 G.B. Nagar, DC Sec 6 Ghaziabad, DC Sec 2 & 8 Kanpur, JC (CC)-II, DC Sec 11 Lucknow, JC(CC) Meerut, JC(CC), DC Sec 10 & 14 Noida and DC Sec 2 Saharanpur.

finalising the assessment in May 2014 did not consider this fact which resulted in excess rebate of entry tax of ₹ 39.38 lakh.

We reported the matter to the Department and the Government (December 2015). During exit conference the Government/Department accepted our observation and stated that action is under process (September 2016).

#### 4.9. Central Sales Tax (CST)

##### 4.9.1 Irregular concession against declaration forms

**The Assessing Authorities while finalising the assessment irregularly allowed concession amounting to ₹ 17.21 lakh against form 'C' on interstate sale of goods worth ₹ 1.71 crore.**

Under Rule 12(1) of CST (Registration & Turnover) Rules, 1957, a single declaration in Form 'C' may cover all transactions of sale, which takes place in a quarter of a financial year between the same two dealers.

We examined (July 2015) assessment orders and files in the office of JC(CC) Bareilly and observed that one out of 49 dealers test checked, made inter-State sale of goods worth ₹ 1.71 crore during year 2011-12 at concessional rate against four form 'C'. These covered transactions for more than one quarter of a financial year and as per the provisions of the Rule, the transactions covered beyond one quarter of a financial year and claimed for concession in same Form 'C' were not eligible for concession. In contravention of the rules, the AA while finalising assessment during April 2015 levied CST at concessional rate on the transactions of ₹ 56.46 lakh covered beyond one quarter. Thus concession of ₹ 17.21 lakh was irregularly allowed.

We reported the matter to the Department and the Government in August 2015. During exit conference the Government/Department accepted our observation and stated that action is under process (September 2016).

##### 4.9.2 Irregular purchase of capital goods at concessional rate

**The AA irregularly authorised the contractors to purchase capital goods under CRC, which resulted in undue benefit to the dealer and penalty of ₹ 59.75 lakh was also not imposed.**

As per Section 8(3)(b) of the CST Act, 1956 a registered dealer may purchase any goods from outside the State at concessional rate of tax against declaration in form 'C' for the purpose of re-sale, use in manufacturing or processing of goods for sale or in telecommunication network or in mining or in generation or distribution of electricity. If such goods are not covered by Registration Certificate under the CST Act or the goods purchased from outside the State at concessional rate of tax are used for the purpose other than that for which the registration certificate is granted, the dealer is liable to be prosecuted under Section 10 of CST Act. However, if the Assessing Authority deems it fit, he in lieu of prosecution may impose penalty up to one and a half

times of the tax payable on the sale of such goods under Section 10A of CST Act.

As per decision dated 12 March 2008 of Commissioner, Commercial Tax under Section 59 of UPVAT Act, contractors come under category of traders and not manufacturer, therefore the benefit of purchasing capital goods against form 'C' will not be given to them because the capital goods so purchased is neither being resold nor used in manufacturing or processing of goods for sale.

We examined (April 2015) assessment orders and files in the Office of DC Sector 3 G.B.Nagar and observed that a contractor out of 158 dealers test checked, purchased capital goods valued at ₹ 2.96 crore during the year 2008-09 to 2011-12 at concessional rate of tax against declaration in form 'C' and paid CST (Central Sales Tax) at concessional rate. Further we found that the contractors neither resold these goods nor used them in manufacturing of goods for sale etc. as prescribed U/s 8(3)(b) of the CST Act. The AA while finalising the assessment in October 2014 did not notice irregular use of form 'C' by the dealer and failed to impose penalty of ₹ 59.75 lakh.

We reported the matter to the Department and the Government (May 2015). During exit conference the Government/Department accepted our observation and stated that penalty of ₹ 59.75 lakh has been imposed (September 2016).

#### **4.9.3 Misuse of declaration forms**

**The dealers purchased goods valued at ₹ 1.59 crore at concessional rate of tax against declaration in form 'C' which were not covered by their certificates of registration. This fact was not scrutinised at the time of assessment. Thus penalty of ₹ 26.82 lakh was not imposed.**

Under Section 8 of the Central Sales Tax (CST) Act, 1956 a registered dealer may purchase any goods from outside the State at concessional rate of tax against declaration in form 'C'. If such goods are not covered by Registration Certificate (RC) under the CST Act or the goods purchased from outside the state at concessional rate of tax are used for the purpose other than that for which the registration certificate is granted, the dealer is liable to be prosecuted under Section 10 of CST Act. However, if the Assessing Authority deems it fit, he in lieu of prosecution may impose a penalty up to one and a half times of the tax payable on the sale of such goods under Section 10A of CST Act.

We examined (between April 2014 and October 2015) assessment orders and files in five CTOs and observed that seven out of 408 dealers test checked, purchased goods valued at ₹ 1.59 crore during the year 2009-10 to 2012-13 at concessional rate of tax against declaration in form 'C'. These goods were not covered by their certificates of registration for which they were liable to pay penalty one and half times of the tax payable on the sale of such goods, in lieu of prosecution. The AAs while finalising the assessments between May 2013 and March 2015 did not scrutinise the Registration Certificate and utilisation details of form 'C' and consequently penalty of ₹ 26.82 lakh was not imposed as shown in **Table 4.16**.

**Table 4.16**  
**Misuse of declaration forms**

(₹ in lakh)								
Sl. No.	Name of the unit	No of dealers	Assessment year (month and year of assessment)	Name of commodity not covered by registration certificate	Amount of purchase	Rate of Tax (per cent)	Rate of penalty (per cent)	Penalty leviable
1	DC Sec 4 Allahabad	1	2012-13 (June 2014)	Air Conditioner	41.66	13.5	20.25	8.44
2	DC Sec 14 Allahabad	1	2009-10 (May 2013)	D G Set	2.65	12.5	18.75	0.50
					7.60	13.5	20.25	1.54
3	DC Sec 13 Ghaziabad	1	2011-12 (January 2015)	Rubber, Rubber scrap	22.20	5	7.5	1.66
				Wood furniture	5.45	13.5	20.25	1.10
				Plywood, Thinner	6.18	5	7.5	0.46
4	JC (CC)-II Lucknow	1	2011-12 (July 2014)	Flow meter	20.09	13.5	20.25	4.07
5	DC Sec 8 Kanpur	1	2010-11 (July 2013)	Cement	15.51	15.5	23.25	3.61
				Roof sheet	17.33	5	7.5	1.30
			2011-12 (February 2015)	Cement	1.55	15.5	23.25	0.36
				Cooled chiller	10.30	13.5	20.25	2.09
			2011-12 (July 2014)	Air Conditioner	8.36	13.5	20.25	1.69
<b>Total</b>		<b>7</b>			<b>158.88</b>			<b>26.82</b>

Source: Information available on the basis of audit findings.

We reported the matter to the Department and the Government (between June 2014 and March 2016). During exit conference the Government/Department accepted our observation and in compliance DC Sec 13 Ghaziabad imposed penalty of ₹ 1.66 lakh and ₹ 0.96 lakh respectively in two cases. For the remaining cases Department stated that action is under process (September 2016).

#### 4.10 Interest short/not charged

**The dealers had deposited the admitted tax of ₹ 6.91 crore with delay, on which interest of ₹ 2.17 crore was chargeable, but it was not charged at the time of assessment.**

Under Section 8(1) of UPTT Act and Section 33(2) of the UPVAT Act 2008 read along with Section 13 of Uttar Pradesh Tax on Entry of Goods into Local Areas Act, 2007 every dealer liable to pay tax is required to deposit the amount of tax into the Government treasury before the expiry of due date failing which simple interest at the rate of two *per cent per men sum* upto 11 August 2004 thereafter 14 *per cent per annum* upto 31 December 2007 and at the rate of one and quarter *per cent per month* from 1 January 2008 shall become due and be payable on unpaid amount with effect from the day immediately following the last date prescribed till the date of payment.

We examined (between April 2015 and January 2016) assessment orders and files in eight CTOs<sup>23</sup> and observed that eight out of 643 dealers test checked, had deposited the admitted tax of ₹ 6.91 crore during the year 2006-07 to 2012-13 with delay ranging from 90 days to 3,080 days without interest. The belated payment of admitted tax attracted interest of ₹ 2.17 crore upto the date

<sup>23</sup> DC Sec 14 Allahabad, JC (CC)-II, DC Sec 15 Ghaziabad, DC Sec 3 G.B.Nagar, JC (CC) Jhansi, JC (CC) II Kanpur, DC Sec 12 Lucknow and DC Sec Sikandrabad.

of deposit of tax. The AAs while finalising the assessment between December 2013 and March 2015 did not charge interest of ₹ 2.17 crore (Appendix-XXX).

We reported the matter to the Department and the Government (between May 2015 and February 2016). During exit conference the Government/Department accepted our observation and stated that interest of ₹ 82.70 lakh has been charged in three cases of which ₹ 15.60 lakh has been recovered. For remaining cases Department stated that action is under process (September 2016).

#### **4.11 Irregularities relating to Input Tax Credit (ITC)**



Our scrutiny of records of the Department revealed several cases of irregularities regarding ITC claims like irregular/inadmissible ITC claims, excess claims, ITC not reversed, penalties not imposed and interest not charged thereon etc. amounting to ₹ 3.29 crore in respect of 35 CTOs in 45

cases out of 4,041 dealers for the period 2009-10 to 2012-13. A few cases are mentioned in the following paragraphs.

##### **4.11.1 ITC not/short reversed on exempted sale**

**The dealers had not reversed the ITC claim of ₹ 12.18 lakh in respect of purchase of those goods whose sale was exempt from tax. The same was not reversed by the AAs with interest amounting to ₹ 2.69 lakh at the time of assessment.**

Under section 13(7) read with Section 7 of the UPVAT Act, no credit of any amount of input tax shall be claimed by a dealer and no facility of ITC shall be allowed to the dealer in respect of purchase of such goods where sale of such goods by the dealer is exempt from payment of tax or such goods are to be used or consumed in manufacturing or packing of any goods and sale of such manufactured or packed goods by the dealer is exempt from payment of tax. If the ITC is claimed by the dealer, it will be reversible with interest at the rate of 15 per cent per annum.

We examined assessment orders and files in the office of DC Sec 7 Kanpur and observed that a dealer out of 152 dealers test checked, had wrongly availed ITC of ₹ 12.18 lakh during the year 2010-11 to 2012-13 on purchase of those goods whose sale valuing ₹ 5.34 crore was exempt from payment of tax. The AA while finalising the assessments between June 2012 and February 2015 neither reversed this inadmissible ITC nor raised demand of interest. Thus, ITC ₹ 12.18 lakh was not reversed and interest of ₹ 2.69 lakh was also not charged. The details are mentioned in the **Table 4.17**.



**Table 4.17**  
**ITC not/short reversed on exempted sale**

(₹ in lakh)							
Sl. No.	Name of the unit	No of dealers	Assessment year (month and year of assessment)	Total Sale	Exempted Sale	RITC not done/short done by AAs	Interest Chargeable
1	DC Sec 7 Kanpur	1	2010-11 (June 2012)	349.67	204.90	5.51	0.94
			2011-12 (October 2013)	862.84	140.39	2.04	0.47
			2012-13 (February 2015)	923.45	188.77	4.63	1.28
	<b>Total</b>	<b>1</b>		<b>2135.96</b>	<b>534.06</b>	<b>12.18</b>	<b>2.69</b>

Source: Information available on the basis of assessment files.

We reported the matter to the Department and the Government in July 2015. During exit conference the Government/Department accepted our observation and stated that action is under process (September 2016).

#### **4.11.2 False/fraudulent claim of ITC**

**On cross verification, ITC of ₹ 30.89 lakh claimed by the dealers was found false. Though it was reversed by the AAs but no penal action was taken against the dealers.**

Under Section 13 of UPVAT Act, 2008 read with Rule 24 of UPVAT Rules, 2008, tax paid on purchase of goods from registered dealers against tax invoice or deposited cash on purchase of goods from the unregistered dealers, ITC is allowed to the extent of the tax paid or payable by the dealer on such sale or purchase. Under the provisions of Section 54(1) (19) of the VAT Act, if the AA is satisfied that any dealer or any other person, as the case may be, falsely or fraudulently claims an amount as ITC, he may direct that such dealer or person shall, in addition to the tax, if any, payable by him, pay by way of penalty, a sum equal to five times of amount of ITC.

We examined (between November 2014 and January 2016) assessment orders and files in 11 CTOs<sup>24</sup> and observed that in the case of 13 out of 1,206 dealers test checked, the AAs cross verified the ITC claim of the dealers and found that the dealers had falsely/fraudulently claimed ITC amounting to ₹ 30.89 lakh during the year 2009-10 to 2011-12. Since the dealers had claimed ITC falsely/fraudulently, they were liable to pay penalty of a sum equal to five times of amount of ITC. Though the AAs while finalising the assessment between March 2013 and March 2015 reversed the ITC but did not impose the penalty amounting to ₹ 1.54 crore (**Appendix-XXXI**).

We reported the matter to the Department and the Government (between January 2015 and February 2016). During exit conference the Government/Department accepted our observation and stated that penalty of ₹ 18.58 lakh has been imposed in three cases. For remaining cases Department stated that action is under process (September 2016).

<sup>24</sup> DC Sec 4 & 8 Allahabad, JC(CC)-II, DC Sec 10 Ghaziabad, DC Sec 2 Gonda, AC Sec 1 Hapur, DC Sec 3 AC Sec 4 Kanpur, DC Sec Koshikalan, Mathura, DC Sec 5 Mathura and DC Sec 6 Meerut.

### 4.11.3 Irregular adjustment of ITC and interest not charged

The AAs while finalising the assessment reversed the inadmissible ITC and adjusted it with the balance ITC of the dealers instead of raising demand of ₹ 30.23 lakh with interest.

Under section 14(2) of UPVAT Act 2008, if any dealer notices *suo moto* that he had claimed the ITC which is not according to the provisions of the Act and Rules, he shall reverse it at the time of submitting the next tax return after noticing such event. The dealer is liable to deposit the amount of reversed ITC alongwith simple interest at a rate of 15 *per cent* per annum in the treasury.

We examined (November 2015) assessment orders and files in JC(CC)-II Ghaziabad and observed that three out of 47 dealers test checked, had claimed ITC of ₹ 30.23 lakh during the year 2010-11 to 2011-12 which was not in accordance with the provisions of the Act. The AAs while finalising the assessments between March 2014 and March 2015 reversed this inadmissible ITC and adjusted it with the balance ITC of the dealer without charging interest payable on it, whereas as per provisions of the Act dealers were liable to deposit the amount of reversed ITC alongwith simple interest. This resulted in irregular adjustment of ITC of ₹ 30.23 lakh and consequently interest of ₹ 14.24 lakh was not charged as shown in the **Table 4.18**.

**Table 4.18**  
**Irregular adjustment of ITC and interest not charged**

(₹ in lakh)							
Sl. No.	Name of the unit	Number of dealers	Assessment year (month and year of assessment)	Amount of RITC adjusted with ITC	Period	Days	Interest leviable
1.	JC(CC)-II Ghaziabad	1	2011-12 (September 2014)	2.72	01.04.12 to 02.09.14	885	0.99
				12.58	01.10.11 to 02.09.14	1,068	5.52
		1	2010-11 (March 2014)	5.81	01.10.10 to 20.03.14	1267	3.02
				5.21	01.10.11 to 31.03.15	1,278	2.74
		1	2011-12 (February 2015)	3.91	01.10.11 to 01.02.15	1,220	1.97
<b>Total</b>		<b>3</b>		<b>30.23</b>			<b>14.24</b>

Source: Information available on the basis of assessment files.

We reported the matter to the Department and the Government (December 2015). During exit conference the Government/Department accepted our observation and stated that interest of ₹ 5.76 lakh has been charged in one case. In this case amount of reverse input tax credit (RITC) was not deposited. In the case of one dealer the Department stated that interest on ₹ 11.34 lakh had been charged earlier. We do not agree with the reply of the Department as RITC of ₹ 12.58 lakh and ₹ 2.72 lakh was done by AA at the time of assessment on which interest was chargeable. In the case of another dealer the Department stated that reverse ITC was deposited in the same year hence

interest was not chargeable. We do not agree with the reply of the Department as RITC of ₹ 3.91 lakh was done by AA at the time of assessment on which interest was chargeable. (September 2016).

#### 4.11.4 Inadmissible ITC

**The dealers had wrongly claimed ITC of ₹ 56.51 lakh which was not reversed with interest at the time of assessment. This resulted in ITC of ₹ 56.51 lakh short/not reversed and interest of ₹ 20.64 lakh was also not charged.**

Under Section 13 of UPVAT Act, 2008 ITC to the extent of tax paid or payable by a registered dealer on purchase of taxable goods from within the State is allowed at the rates prescribed under Schedule I to V of the Act. Further under Section 14(2) of the Act if any dealer has wrongly claimed ITC in respect of any goods, benefit of ITC to the extent it is not admissible, shall stand reversed alongwith simple interest at the rate of 15 per cent per annum.

We examined (between March 2015 and January 2016) assessment orders and files in 13 CTOs<sup>25</sup> and observed that 15 out of 1,570 dealers test checked, had wrongly claimed ITC of ₹ 56.51 lakh during the year 2009-10 to 2012-13 which was not admissible to them. The AAs while finalising the assessment between December 2012 and March 2015 were required to reverse this inadmissible ITC and direct the dealers to pay such amount of reverse input tax credit along with simple interest, which was not reversed. This resulted in short/not reversal of ITC of ₹ 56.51 lakh and interest of ₹ 20.64 lakh was not charged (**Appendix-XXXII**).

We reported the matter to the Department and the Government (between April 2015 and February 2016). During exit conference the Government/Department accepted our observation and stated that ITC amounting ₹ 14.91 lakh has been reversed in two cases. In the instance cases interest was not charged by the Department. For the remaining cases Department stated that action is under process (September 2016).

#### 4.11.5 ITC on goods sold on lower price than purchase price not reversed

**The AAs had not reversed the ITC of ₹ 9.03 lakh claimed by the dealers in respect of those goods which were sold at the price lower than purchase price by the dealers.**

Under Section 13(1) (f) of UPVAT Act where goods purchased are resold or goods manufactured or processed by using or utilising such goods are sold, at the price which is lower than purchase price of such goods in case of resale or cost price in case of manufacture, the amount of input tax credit shall be claimed and be allowed to the extent of tax payable on the sale value of goods or manufactured goods. If the dealer claims full amount of ITC, the ITC in

<sup>25</sup> DC Sec 8 Allahabad, DC Sec 2 Auriya, DC Sec Bharthana, DC Sec 3 G.B.Nagar, DC Sec 1 Hapur, DC Sec 2 Hardoi, JC(CC)-I, II DC Sec 10, 16 & 28 Kanpur, DC Sec. 2 Meerut and DC Sec. 5 Noida.

excess of tax payable on the sale value of goods will be reversible with simple interest at the rate of 15 per cent per annum.

We examined (between May 2015 and February 2016) assessment orders and files in four CTOs and observed that six out of 582 dealers test checked, had purchased goods worth ₹ 23.70 crore during 2011-12 and claimed ITC of ₹ 1.70 crore and sold it for ₹ 22.49 crore. The dealers availed ITC on the purchase price of the goods instead of to the extent of ₹ 1.61 crore, tax payable on sale value of goods. The AAs while finalising the assessment between March 2014 and March 2015 neither reversed this inadmissible ITC nor created demand with simple interest. Thus, ITC ₹ 9.03 lakh was not reversed and consequently interest of ₹ 4.30 lakh was also not charged as detailed in the **Table 4.19**.

**Table 4.19**  
**ITC on Goods sold on lower price than purchase price not reversed**

(₹ in lakh)							
Sl. No.	Name of the unit	Number of dealers	Assessment year (month and year of assessment)	ITC claimed by the dealer	Tax on Sale	Amount of RITC not done by AAs	Interest leviable
1	DC Sec 1 Kanpur	1	2011-12 (February 2015)	18.53	15.85	2.68	1.37
2	DC Sec 8 Kanpur	1	2011-12 (March 2014)	6.26	4.74	1.52	0.57
		1	2011-12 (January 2015)	61.79	60.20	1.59	0.79
		1	2011-12 (March 2015)	2.30	0.55	1.75	0.90
3	DC Sec 27 Kanpur	1	2011-12 (February 2015)	1.43	0.97	0.46	0.23
4	DC Sec 1 Lucknow	1	2011-12 (July 2014)	79.67	78.64	1.03	0.44
<b>Total</b>		<b>6</b>		<b>169.98</b>	<b>160.95</b>	<b>9.03</b>	<b>4.30</b>

Source: Information available on the basis of assessment files.

We reported the matter to the Department and the Government (December 2015). During exit conference the Government/Department stated that action is under process in all the cases (September 2016).

#### **4.11.6 Incorrect claim of ITC on goods purchased which were taxable at lower rates than claimed by dealers**

**The AAs had not reversed the ITC of ₹ 16.57 lakh claimed by the dealers in respect of those goods which were taxable at lower rates than claimed by the dealers.**

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

of tax applicable to each commodity is prescribed under Schedule I to V of the Act. Under Section 14(2) of the Act if any dealer has wrongly claimed ITC in respect of any goods, benefit of ITC to the extent it is not admissible, shall stand reversed alongwith simple interest at the rate of 15 *per cent* per annum.

We examined (between April 2015 and January 2016) assessment orders and files in six CTOs<sup>26</sup> and observed that seven out of 681 dealers test checked, had wrongly claimed ITC of ₹ 16.57 lakh on purchases of ₹ 2.71 crore at the rate of 13.5 to 15.5 *per cent* during the year 2010-11 to 2012-13. These items are mentioned in Schedule II of UPVAT Act and list of Section 14 of CST Act and rate of tax applicable is four to five *per cent*. The AAs while finalising the assessments between January 2014 and March 2015 did not notice this fact and without any cross verification and through examination that dealers were claiming ITC at the rate of 13.5 to 15.5 *per cent* on the goods taxable at the rate of four to five *per cent* allowed the excess inadmissible ITC to the dealers. This incorrect claim attracts reversal of ITC and interest of ₹ 24.72 lakh (ITC ₹ 16.57 lakh and interest ₹ 8.15 lakh) (**Appendix-XXXIII**).

We reported the matter to the Department and the Government (between May 2015 and March 2016). During exit conference the Government/Department accepted our observation and stated that ITC amounting ₹ 6.09 lakh has been reversed in one case. In the said case interest was not charged by the Department. For the remaining cases Department stated that action is under process (September 2016).

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<sup>26</sup> DC Sec 2 Ambedkarnagar, DC Sec 2 G.B.Nagar, DC Sec. 12, 14 & 29 Kanpur and DC Sec. 4 Lucknow.

