

CHAPTER II SALES TAX

2.1 Results of Audit

Test check of assessment files, refund records and other connected documents of Commercial Taxes Department conducted during 2004-05 revealed under assessments of sales tax amounting to Rs.135.87 crore in 1,531 cases, which broadly fall under the following categories.

(Rupees in crore)			
Sl. No.	Nature of irregularity	No. of cases	Amount
1	Short levy due to incorrect exemption	181	17.16
2	Short/Non levy of tax due to application of incorrect rate of tax	189	12.17
3	Short levy of tax due to misclassification of goods	42	1.32
4	Short levy of tax due to incorrect/excess allowance of set off	83	0.93
5	Short/non levy of tax on works contracts	244	22.47
6	Non/short levy of penalty/interest	82	17.82
7	Non levy of turnover tax (T.O.T)	217	4.07
8	Non forfeiture of excess tax collections	53	1.26
9	Sales Tax incentives to industrial units	86	40.44
10	Other irregularities	354	18.23
	Total	1,531	135.87

During the year 2004-05, the Department accepted under assessments etc., of Rs.52.75 crore in 1,202 cases of which 122 cases involving Rs.12.97 crore were pointed out in audit during the year 2004-05 and the rest in earlier years. Out of this, an amount of Rs.1.21 crore in 80 cases was realised.

A few illustrative cases involving Rs.65.65 crore and a review on 'Cross verification of C and F forms' involving Rs.19.95 crore are mentioned in the following paragraphs.

2.2 Review on 'Cross verification of 'C' and 'F' forms'

Highlights

- Exemptions from payment of tax of Rs.6.68 crore was allowed on branch/consignment transfers though transactions were either not supported by declarations or declarations furnished were liable to be rejected.

[Paragraph 2.2.8]

- Short levy of tax of Rs.1.33 crore due to exemptions allowed on ineligible components included in the value of goods involved in branch transfers.

[Paragraph 2.2.9]

- Short accounting of goods valued at Rs.9.58 crore transferred by manufacturers and goods brought to tax by branches/agents in other States resulted in short levy of tax of Rs.1.51 crore.

[Paragraph 2.2.10]

- Short levy of tax due to excess account of inter State sales turnover, amounting to Rs.7.16 crore, including penalty of Rs.5.74 crore.

[Paragraph 2.2.11]

- Short levy of tax due to application of incorrect rate of tax on inter State sales not covered by 'C' forms amounting to Rs.1.16 crore.

[Paragraph 2.2.12]

2.2.1 Introduction

Under Central Sales Tax Act, 1956, (CST Act) registered dealers are eligible to certain concessions and exemptions of tax on inter State transactions on submission of prescribed declarations in Forms 'C' and 'F'.

Under the provisions of CST Act, every dealer, who in the course of inter State trade or commerce, sells to a registered dealer, goods of the classes, specified in the certificate of registration of the purchasing dealer, shall be liable to pay tax at the concessional rate of four *per cent* of his turnover provided such sales are supported by declarations in form 'C'.

Under Section 6A of CST (Amendment) Act 1972, transfer of goods not by reason of sales by a registered dealer to any other place of his business outside

the State or to his agent or principal in other States is exempt from tax on production of declaration in form 'F', duly filled in and signed by the principal officer of the other place of business or his agent or principal as the case may be, along with evidence of despatch of such goods. Filing of declarations in form 'F' was not mandatory upto May 2002. However, the Act provided for the assessing authority to make such enquiries as he deemed necessary to satisfy himself about bonafides of the transfer such as sale patties^Δ, despatch particulars, way bills etc.

2.2.2 Recommendations

It is recommended that

- Records be maintained to depict concessional sales made on the basis of 'C' forms and revenue forgone on account of 'F' form transactions, year wise.
- Norms may be prescribed for conducting periodical cross verification of inter State transactions related to sales/purchases/branch transfers/consignment transfers with original records maintained in other States.
- At circle level a data bank on the forms declared invalid, dealers declared as fictitious or bogus and dealers who stopped their business or whose registrations were cancelled within the State and outside, may be maintained to enable assessing officers to check the genuineness of claims of dealers before allowing concessions or exemptions.
- There is a need to have a web based access with other States for verification of declaration forms at the time of assessment for speeding up the process.

2.2.3 Organisational set up

At the apex level, Commissioner of Commercial Taxes (CCT) is responsible for administration of Acts and Rules in Commercial Taxes Department, including printing, receipt and distribution of declaration forms to each division. He is assisted by four additional commissioners, six joint commissioners and 38 deputy commissioners. The Deputy Commissioner heads the Department at divisional level. He is responsible for receipt of declaration forms from the commissionerate and their distribution among circles under his jurisdiction. Divisions are further divided into 19 large tax payers units (LTUs), each headed by an Assistant Commissioner (AC) and 182 circles, each under the charge of a Commercial Tax Officer (CTO), assisted by Deputy Commercial Tax Officers (DCTO) and Assistant Commercial Tax Officers (ACTO) for registration, assessment and distribution of declaration forms to dealers. Further, Deputy Commissioner (DC), Inter State Investigation (ISI) Wing, assists CCT in cross verification of

^Δ List of sales effected by consignment agent in other State on behalf of principal/manufacturer

transactions with different States.

2.2.4 Audit methodology and scope of audit

Andhra Pradesh has a number of cement manufacturing units and it was being noticed in regular audit that exemptions/concessions were allowed on huge turnovers on 'F' forms/sale patties and 'C' forms issued by dealers from other States. On the other hand, Andhra Pradesh is a deficit State with respect to tea and marble; as such these commodities were being received from other States based on C/F forms issued by AP dealers. Hence these commodities viz., cement, tea and marble were selected for sample check in audit. Data of transactions related to these commodities was collected from eight LTUs and 43 circles and after analysis of such data, 224 dealers were selected for cross verification of exemptions/concessions claimed by AP dealers.

This review covers cross verification in respect of assessments finalised during the years 2000-01 to 2003-04. Cross verification of inter State sales/branch transfers of cement was conducted with basic records of dealers in Bangalore, Chennai and Pondicherry. For marble and tea, transactions were verified with the records of dealers of Rajasthan, Assam and West Bengal respectively. Further, cases of short levy of tax on inter State transactions noticed during local audit are also included in the review.

2.2.5 Audit objectives

Audit was conducted with a view to

- ascertain whether concessions and exemptions were allowed against valid, duly filled in and relevant declaration forms under CST Act,
- conduct cross verification of sample inter State transactions of dealers for selected commodities to verify concessions/ exemptions allowed by assessing authorities on declarations produced by dealers and
- ascertain whether adequate internal controls existed in the Department to verify genuineness of concessions/exemptions claimed by dealers on the basis of prescribed declarations.

2.2.6 Trend of revenue under CST Act

As per Article 9 of Andhra Pradesh Financial Code, the Department has to reconcile the accounts of amounts realised and paid into the treasury by them with those booked by Accountant General (A&E). As per para 19.7.1 of Andhra Pradesh Budget Manual, the Department should send a certificate to the Accountant General (A&E) stating that figures in his register had been reconciled with those in the books of the Accountant General (A&E). However, reconciliation certificates were pending from 1999-2000 to 2004-05.

The estimated and actual receipts under CST Act as per Finance Accounts and as per departmental figures during the years 2000-01 to 2003-04 are as under.

(Rupees in crore)

Year	Budget estimates	Figures as per Finance Accounts	Revenue as per Dept. figures	Variations between		Percentage of variation between	
				BE and actuals (2-3)	BE and Dept. figures (2-4)	(2) and (3)	(2) and (4)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
2000-2001	667.30	981.63	625.00	(+) 314.33	(-) 42.30	(+) 47	(-) 6
2001-2002	756.19	646.07	605.50	(-) 110.12	(-) 150.69	(-) 15	(-) 20
2002-2003	921.50	580.75	657.80	(-) 340.75	(-) 263.70	(-) 37	(-) 29
2003-2004	974.56	791.23	852.96	(-) 183.33	(-) 121.60	(-) 19	(-) 12

The above table indicates that departmental figures fell short of budget estimates by six and 29 per cent indicating therein that budget estimates were not realistic. Variation of (-)19 to 47 per cent was noticed between budget estimates and actuals as per Finance Accounts.

2.2.7 Internal control system

For the purpose of monitoring issue and utilisation of declaration forms, records as prescribed under the Act are required to be maintained by Department. At circle level Department maintains two registers, one for receipt of forms from division and the other for issue of forms to dealers. Dealers are required to maintain a register to depict utilisation of forms received and furnish a statement based on this to the Department at the time of applying for issue of additional forms. There was no provision to note utilisation details in the register called 'Form Issue Register' and the statements were not filed in the assessment records.

Information was called for from all the circles and LTUs on maintenance of data for inter State transactions. Nil/Information not available replies were received from 14 circles and two LTUs. This indicated absence of maintenance of any data base for monitoring inter State transaction which was required for cross verification.

Government stated in August 2005 that proper registers were maintained showing statutory forms received and forms issued to dealers. Dealers were also furnishing statement of utilisation of statutory forms. The assessing authorities would undertake and cause cross verification of selected declared sales turnover with reference to books of accounts and take necessary action for assessment of tax. A separate Interstate Investigation Wing (ISI Wing) was formed in 2003, exclusively to monitor all inter State investigations, verifications of exemptions claimed on branch transfers/consignment sales.

The reply was not tenable as there was no provision in forms issue register to record the utilisation of declaration forms as such prima facie detection of suppression in turnovers was not ascertainable.

It was seen that utilisation certificates even though received from some dealers were not filed in their assessment records making cross linking difficult. Further assessing authorities accepted utilisation details annexed to Chartered Accountants' certificate, though these were either not filled at all or partially filled in. Department did not maintain any record to show year wise position of sales against C/F forms; as a result, revenue forgone on account of concessions/exemptions was neither known nor ascertainable. In the absence of this crucial data, no indicator for trend analysis on revenue forgone is available.

As per the provisions of 10(1) to (7) of CST (AP) Rules, if any declaration in forms 'C' and 'F' is found lost, destroyed, stolen by a dealer, it shall be reported to concerned authority for taking necessary action to declare such forms as invalid by giving wide publicity through issue of circulars to all divisions etc., including defective forms noticed by the Department. Similar action has to be taken by the Department in case of dealers who were found to be bogus or non existence. As per sub-rule (7) supra, notifications issued in such cases need to be intimated to other State Governments also for publication in their gazettes.

Though, all Deputy Commissioners were addressed to furnish information on forms declared invalid and/or dealers declared bogus, none of them furnished the same. There was no data bank on forms declared invalid or dealers found to be fictitious or whose registration certificates were cancelled within and outside the State. Test check by audit revealed that though circulars have been issued in some cases, they were not consolidated at the division level and hence the purpose for which these were issued, was defeated. In addition, there was no monitoring mechanism to ensure that such data was utilised in finalisation of assessments.

As a number of States have computerised sales tax functions, a web based method of communication among such States is possible. However, such a system has not been evolved to assist assessing authorities to check the genuineness of a declaration form/dealer issuing such forms.

The lacunae in the control mechanism and weakness in monitoring system resulted in several irregularities leading to short levy of tax as elaborated in the succeeding paragraphs.

Irregular grant of exemptions on branch/consignment transfers

Branch/consignment transfers not supported by 'F' forms are liable to tax at rates applicable to inter State sales not covered by 'C' form. To claim

exemption on branch transfers, dealers are required to furnish forms obtained from purchasing dealers with full details of goods transferred including quantity and value of goods at the time of transfer from the State concerned etc. Assessing authorities allow exemptions on value of goods transferred to other States as declared in form 'F'.

Further, as per provisions of CST Act, CST(R&T) Rules and CST (AP) Rules, a single declaration in form 'F' is sufficient to cover transfer of goods effected during the period of one calendar month to any other place of business or to an agent or principal as the case may be. As such, a single declaration issued to cover transfer of goods for more than one month is to be treated as invalid and the turnover has to be brought to tax treating it as inter State sales not covered by proper declarations.

2.2.8 Exemption allowed to branch/consignment transfers not supported by 'F' forms based on invalid declarations

During cross verification of exemptions allowed on branch transfers effected during 2000-2001 by one cement manufacturer in a circle^f, it was noticed that instead of allowing exemptions on Rs.42.40 crore being the value of goods transferred to branches and covered by 'F' forms, exemption was allowed on Rs.77.16 crore representing the sales turnover of goods at branches, resulting in excess exemption allowed on Rs.34.76 crore and consequent short levy of Rs.5.56 crore.

In four circles* it was observed that consignment sales valued at Rs.73.55 lakh were made by four dealers for assessment year 2001-02 on the basis of sale patties. However, it was noticed that these transactions did not pertain to relevant assessment year viz., 2001-02 in which these were exempted from levy of tax of Rs.6.97 lakh.

In five circles[♦] and one LTU[♥] it was observed in eight cases that exemptions on branch/consignment transfers were allowed on 'F' forms covering transactions of more than one month. The 'F' forms were liable to be rejected and attract tax of Rs.1.05 crore on these transactions valued at Rs.12.77 crore relating to years 1999-2000 to 2002-03. However, the assessing authority incorrectly allowed the deduction resulting in loss of revenue to that extent.

After this was pointed out, Government stated in August 2005 that the cases referred to, pertained to earlier period when production of forms was not mandatory and the assessing authorities were advised to rectify the procedural defects. The reply was not accepted as 'F' forms furnished by the assessee covered transactions of more than one calendar month and were not eligible for grant of exemption.

^f Kodad

* Ananthapur-I, Kasibugga, Kurnool-II and Tenali (Gandhi Chowk)

♦ Hyderabad (Punjugutta, Vidyanagar), Puttur, Rajam, Secunderabad (General Bazar)

♥ Eluru

2.2.9 Exemptions allowed on ineligible components included in the value of goods under branch transfers

Under Section 6A of CST (Amendment) Act, 1972, transfer of goods not by reason of sales by a registered dealer to any other place of his business outside the State or to his agent or principal in other States is exempt from tax on production of declaration in form 'F', duly filled in and signed by the principal officer of the other place of business or his agent or principal as the case may be, along with evidence of despatch of such goods. As such the value to be recorded in 'F' forms would be the value of goods at the time of transfer from one State to other States. Therefore, sales tax/other taxes paid in other States where the goods stand transferred would not form part of the value of goods transferred.

It was noticed in one circle[^] and in one LTU that exemptions on account of branch transfers amounting to Rs.56.86 crore in 2000-01 and Rs.3.99 crore in 2001-02 were allowed to two cement manufacturers on transfer of goods to their branches at Bangalore and Chennai. On cross verification of assessments at these branches, it was noticed that components like local taxes and cess paid on sales at branches were included in the value of goods noted in the 'F' forms. This resulted in short levy of tax of Rs.123.89 lakh in 2000-01 and Rs.8.80 lakh in 2001-02 as detailed below.

(Rupees in crore)

Year	Exemption allowed as branch transfer	Value of goods at the time of transfer to other State	Differential turnover	Short levy of tax
2000-01	56.86	49.12	7.74	1.24
2001-02	3.99	3.44	0.55	0.09
Total	60.85	52.56	8.29	1.33

Government replied in August 2005 that Section 6A relates to transfer of goods not by way of sale and it would suffice if the evidence of transfer of goods was produced by dealers to allow exemptions on transfer of goods. The reply was not tenable as exemption would be allowed on the value of goods transferred but not on the value of goods sold at branches or by consignment agents in other States.

2.2.10 Variations between value of goods transferred by manufacturers and goods brought to tax by branches/agents in other States

Under CST Act, full exemption from payment of tax is allowed on the value of goods transferred to other States not by reason of sale when the transfer is supported by 'F' forms. Norms have not been prescribed for periodic cross verification of inter State transactions.

[^] Kodad and LTU Nalgonda.

During cross verification of exemptions allowed on branch transfers claimed by two cement dealers in one circle[↔] and one tea dealer in one LTU[∞] from Andhra Pradesh (AP) to other States with assessments of respective branches in other States, significant variations between the value exempted as branch transfers and sales turnovers assessed to tax in their branches were noticed, resulting in short levy of tax of Rs.1.51 crore as detailed below:

(Rupees in lakh)

Sl. No.	Commodity	No. of dealers	Name of circle/ LTU	Destination of goods	Value of goods as per 'F' form	Amount accounted for as per asst. in branches	Value of goods short accounted	Short levy of tax
1	Cement	1	Kodad	Katpadi	1,542.41	810.61	731.80	117.09
2	Cement	1	Kodad	Chennai	2,372.54	2,179.29	193.25	30.92
3	Tea	1	LTU Hyderabad (rural)	Bangalore	87.52	54.66	32.86	3.29
Total		3			4,002.47	3,044.56	957.91	151.30

Government stated in August 2005, that it was not mandatory for the assessing authority to call for the details from other States to allow exemption on branch transfers. Thus absence of norms for cross verification of turnover gives scope to allow exemption on inflated turnover instead of actual value of goods transferred. Government may consider laying down parameters and deciding norms in this regard.

Irregularities noticed in inter State sales transactions

Under CST Act, inter State sales of goods made to registered dealers and supported by prescribed declaration forms i.e., 'Form C' are liable to tax at concessional rate of four *per cent* or at rates as applicable to the sale or purchase of the particular goods in the State, whichever is lower. As per amendment by Finance Act 2002, sub-section (2A) of Section 8 of CST Act was deleted; as such all goods having local rate of tax of four *per cent* or below were also to be taxed at 10 *per cent* in case not supported by 'C' form. Powers of the State Government to dispense with production of 'C' forms were also withdrawn. Tax on goods not covered by such declarations in the case of declared goods shall be calculated at twice the rate applicable in the State and in respect of other goods at 10 *per cent* or at the rate applicable in the State on such goods whichever is higher.

Further, as per CST Act, read with APGST Act, penalty is leviable at three times the tax due in the first instance and at five times the tax due in case of second and subsequent instances if any dealer is found to produce a false declaration or certificate or other document.

[↔] Kodad

[∞] Hyderabad (Rural)

2.2.11 Short levy of tax due to excess accountal of inter State sales turnover

In one LTU and three circles^o, six AP dealers claimed concessional rates of tax on their inter State sales valued at Rs.14.21 crore relating to 1999-2000 and 2000-01, supported by 16 'C' forms received from purchasing dealers of other States. However, on verification of assessment files and /or utilisation statements of purchasing dealers belonging to other States it was noticed that only Rs.1.75 crore were accounted for in their assessment orders by their respective assessing authorities. This resulted in excess claim of concessional rate on the turnover of Rs.12.46 crore. Short levy of tax due to claim of concessional rate on excess turnover amounted to Rs.1.42 crore and penalty thereon works out to Rs.5.74 crore. A few illustrative cases are given below:

(Rupees in lakh)

'C' form No.	Issuing State	Value as per 'C' form	Turnover accounted for in other State	Excess claimed turnover
TCK 1904441	Karnataka	146.85	19.35	127.50
TCK 0915453	Karnataka	111.14	24.86	86.28
TN/A 801513	Tamilnadu	53.99	17.60	36.39

In this regard Government stated in August 2005 that possibility of suppression of turnover was at both ends of the transaction i.e., the local dealer could have camouflaged local sales as inter State sales or the other State dealer might have suppressed their local sale turnovers to reduce their liability of local sales tax. Hence, the turnover pointed out needs to be verified and assessed carefully. Further reply is awaited.

2.2.12 Short levy of tax due to application of incorrect rate of tax on inter State sales not covered by 'C' forms

It was noticed in 12 circles[#] in 12 cases that on inter State transactions not covered by form 'C' declarations amounting to Rs.33.96 crore relating to the years 1999-2000 to 2002-03, tax was levied at rates lower than prescribed rates, resulting in short levy of tax of Rs.1.16 crore.

In reply Government accepted (August 2005) the audit observation. However, further report has not been received (October 2005).

2.2.13 Concessional rate of tax claimed on forms issued by dealers who stopped their business

As per Rules and provisions of the CST Act and CST (AP) Rules, every registered dealer under CST Act has to maintain registers with full details of his inter State transactions furnishing all the details of inter State sales, purchases and transfers of goods which should be made available to the

^o LTU –Vijayawada II, Circles – Hyderabad (Khairatabad), Kodad, Kurnool-III,

[#] Guntur (Patnam Bazar), Hyderabad (Agapura, Charminar, Ferozguda, Hissamgunj, Hyderguda, Lord Bazar, Nampally, Vidyanagar), Rajahmundry (Aryapuram), Secunderabad (Mahankali Street) and Vuyyuru

assessing authority as and when required to do so. The assessing authority could cause cross verification of doubtful inter State transactions if any. However, no such instances where the assessing authority initiated cross verification were noticed in audit.

It was noticed that in one LTU and two circles[&], three cement manufacturing dealers claimed concessional rate of tax on 'C' forms valued at Rs. 2.20 crore during years 1999-2000 to 2001-02 produced by four dealers of Bangalore. However, a cross verification of the 'C' forms with commercial tax office records of Bangalore revealed that purchasing dealers had either stopped their business or their licences had been cancelled by the Department or the dealers were found to be untraceable. This resulted in allowing ineligible concession and consequent short levy of tax of Rs.26.36 lakh and penalty of Rs.1.05 crore.

2.2.14 Short levy of tax due to non-accountal of purchases made on invalid/bogus forms

Cross verification of details collected from Assam on purchase of tea by two AP dealers on issue of 'C' forms revealed that dealers purchased tea valued at Rs.1.38 crore from dealers of Assam during the years 1999-2000 and 2000-01 on form 'C' declarations. However, the dealers did not account for the purchases in their respective turnovers during this period resulting in suppression of sale to that extent. This resulted in non levy of tax of Rs.13.80 lakh and penalty thereon amounting to Rs.41.39 lakh.

2.2.15 Claims of concessions/exemptions allowed on fake forms/fictitious dealers of other States

It was noticed in two circles and one unit office[‡], that three dealers claimed concessional rate of tax on their inter State sales amounting to Rs.31.45 lakh relating to years 2000-01 to 2002-03 producing 'C' forms issued by dealers/firms from Maharashtra and Karnataka States. However, it was informed by commercial taxes Departments of above States that dealers on whose 'C' forms concessions were claimed by a AP dealer were found to be non existent. Thus grant of incorrect concession resulted in short levy of tax and penalty of Rs.15.27 lakh.

2.2.16 Exemptions/concessions allowed on duplicate/invalid forms

On a scrutiny of declarations, it was noticed in three circles and one LTU[¶] that in four cases, exemptions/concessions were allowed on Rs.1.44 crore relating to years 1999-2000, 2000-01, 2001-02 and 2002-03 against duplicate/incomplete/invalid declarations resulting in short levy of tax of Rs.8.55 lakh. After this was pointed out, Government stated in August 2005 that genuineness or correctness of 'C' or 'F' forms and its verification by the

[&] LTU – Vijayawada II, Circles – Kodad, Dharamavaram

[‡] Circles - Kodad, Vijayawada (Seethampuram), Unit office- Vijayawada (Seethampuram)

[¶] Circles – Hyderabad (Nacharam, Rajendranagar) and Rajam, LTU - Adilabad

assessing authority had become one of the specialised technical subjects by assessing authority in the State. This aspect had been entrusted to ISI Wing in the Enforcement Wing of Commissionerate. Further reply is awaited (September 2005).

2.2.17 Acknowledgement

The findings of the review were forwarded to Department and Government in June 2005, with request to attend the Audit Review Committee meeting. The meeting was held on 4 August 2005, where Government was represented by Special Chief Secretary Revenue alongwith Commissioner of Commercial Taxes and Additional/Joint Commissioners.

Government was in full agreement with the recommendation on maintenance of record to depict extent of exemptions/concession. It was stated that assessing authorities were instructed to discuss the utilisation of not only 'C' forms, but all statutory forms utilised by the dealer with reference to the turnover reported and tax paid by that dealer in the assessment order. With regard to recommendation on norms for periodical cross verification, it was stated that it would be difficult to prescribe such norms and assessing authorities are at liberty to carry out cross verification, which is being done also. The recommendation of web based access was also agreed to and it was intimated that to prevent misutilisation of declaration forms, Government wanted to introduce additional security features to be incorporated in statutory forms and to computerise the same to be downloaded as per requirement for better electronic monitoring. It was further, informed that a proposal to introduce dematerialising 'C' forms and payment through credit card on inter State transactions is also being contemplated by Government.

2.2.18 Conclusion

Internal Controls existing in the Department were not adequate to prevent incorrect allowance of concessions/exemptions in the course of inter State sales. Further, provisions in the Act/Rules were also not being followed uniformly. As a result there was loss of revenue to the State.

2.3 Short levy of tax on works contracts

Under Section 5F of the Andhra Pradesh General Sales Tax (APGST Act), 1957, every dealer has to pay tax at the prescribed rate on his turnover of transfer of property either as goods or in some other form involved in the execution of works contract subject to exemptions and deductions provided

for under sub clauses (a) to (l) of Rule 6(2) of APGST Rules. Further every dealer, who in the course of business purchases any goods from unregistered dealers and consumes such goods in the manufacture of other goods for sale or otherwise, shall pay tax on the turnover relating to purchase at the same rate at which the tax would have been leviable under the provisions of the APGST Act. Under Section 5A of the Act, every dealer whose total turnover in a year exceeds Rs.10 lakh is liable to pay turnover tax on works contracts at one *per cent* on taxable turnover from 1 August 1996 to 2 January 2000.

2.3.1 *Incorrect computation of turnover*

In determining turnover of a dealer, deductions specified under APGST Rules, 1957 shall be allowed from turnover of the dealer if accounts are maintained as required under Rule 45 (1-C) of APGST Rules. If detailed accounts are not maintained and the amounts specified under Rule 6(2) are not ascertainable from the accounts of dealer his turnover shall be determined after deducting the amount calculated at percentage prescribed under Rule 6(3)(ii). For determining values of materials, under Rule 6(3)(i) expenditure incurred on material before incorporation shall be included. Material supplied by the contractee on recovery basis shall also be included in the taxable turnover.

During the course of audit of AC LTU Abids, 60[∇] circles and four[#] unit offices, it was noticed between May 2003 and December 2004 that assessing authorities while finalising between August 2001 and March 2004 the assessments in 179 cases relating to assessment years 1999-2000 to 2002-03 incorrectly determined taxable turnover as Rs.261.37 crore instead of Rs.567.54 crore. The short determination of taxable turnover of Rs.306.17 crore having a tax effect of Rs.25.87 crore was due to allowance of inadmissible deductions on account of printing, postage, bank charges, cost of establishment, labour charges, tools and plant etc.

After this was pointed out, assessments were revised in 14 cases out of which an amount of Rs.0.87 lakh was collected. Action was initiated for revision in 99 cases. Seven assessing authorities did not accept audit observation in 15 cases involving tax of Rs.19.86 lakh. Of these in 11 cases assessing authorities stated that exemption was correctly worked out. The reply was not tenable as assesseees were entitled to a deduction of Rs.6.36 crore against which

Rs.7.83 crore was allowed. In remaining cases assessing authorities stated

[∇] Adilabad, Anakapalli, Ananthapur-I, II, Bapatla, Chirala, Chilakaluripet, Chittoor-II, Gadwal, Guntur (Brodipet, Lalapet), Hindupur, Hyderabad (Agapura, Ashoknagar, Barkatpura, Basheerbagh, Hyderguda, Hydernagar, Jubilee Hills, Khairatabad, Musheerabad, Nacharam, Nampally, Narayanaguda, Punjagutta, Sanathnagar, Saroornagar, Tarnaka, Vidyanagar), Janagaon, Kakinada, Kamareddy, Khammam-II, Kothagudem, Mahaboobabad, Mandapet, Naidupet, Nandyal-II, Narsapur, Nellore, Nizamabad-III, Ongole, Peddapuram, Podili, Rajahmundry (Aryapuram), Rajam, Ramachandrapuram, Secunderabad (Mahankali Street, Malkajgiri, Marredpally, S.D. Road), Suryapet, Tanuku, Tenali, Vijayawada (Autonagar, Benz circle), Visakhapatnam (Chinna waltair, Daba Gardens, Gajuwaka, Kurupam Market)

[#] Hyderabad (Saroornagar), Nalgonda, Hanumakonda and Secunderabad (Malkajgiri)

that deduction was allowed under Rule 6(3)(i). The reply was not tenable as no separate accounts as required under Rule 45(1-C) were maintained by assessees, as such the cases were required to be finalised as per Rule 6(3)(ii) under which no exemption was admissible.

In two cases, assessing authority Saroornagar stated in June 2004 that assessee had taken work on sub contract and main contractor was taxed under section 5(G) and deduction was admissible. The reply was not tenable as in these cases contractor had received payment from sub contractors and this income was taxable and was not entitled to exemption under the Act.

In one case Government replied (August 2005) that no purchase tax is leviable under section 6A on purchases made from unregistered dealers as the corresponding turnover is assessed to tax under Section 5F and 5G of the Act. The reply is not tenable, as the material that went into works contract directly was not taxed at any stage and they should be taxed similar to other goods before and after utilisation in works contract.

In 30 cases it was stated that matter would be examined. Final reply in remaining 18 cases was not furnished by the Department.

2.3.2 Incorrect composition of tax

The tax payable on works contracts can be compounded under Section 5-G at four *per cent* from 1 January 2000. However, when an assessee opts for composition of tax, no deduction is admissible and tax is payable on the total amount paid or payable to the dealer towards execution of works contract subject to deduction of turnover entrusted to registered sub contractors.

During the course of audit of two LTUs^f and 13 circles^{*}, it was noticed between August 2003 and February 2005 that assessing authorities while finalising assessments between January 2003 and February 2005 in 16 cases relating to years 2000-01 to 2002-03 allowed inadmissible deduction of Rs.6.06 crore resulting in non/short levy of tax Rs.37.05 lakh.

After this was pointed out between January 2003 and January 2004, the assessing authority, Jubilee Hills revised the assessment and raised a demand of Rs.1.76 lakh in November 2004 while seven assessing authorities^g stated between December 2003 and November 2004 that deduction on account of labour charges, sales tax, wastage etc., allowed in 11 cases were admissible deductions. The reply of the Department was not tenable as assessees had opted for composition of tax and as such no deduction was admissible on account of these charges under the Act. The claims should have been disallowed and taxed accordingly.

^f Kakinada, Nizamabad

^{*} Hyderabad (Hyderguda, Jubilee Hills, Khairatabad, Nacharam, Punjagutta, Rajendranagar, Saroornagar) Nizamabad-III, Secunderabad (S.D. Road, Marredpally) and Vijayawada (Autonagar, Governorpet, Seetharamapuram)

^g Hyderabad (Punjagutta), Kakinada, Nizamabad, Nizamabad-III, Secunderabad (S.D. Road) and Vijayawada (Autonagar, Seetharamapuram)

Replies in remaining four cases have not been received.

The above matter was referred to Government in July 2005; replies wherever received have been incorporated.

2.4 Sales tax incentives for industrial units

With a view to encourage growth of industries in the State, the Industries Department in Government of Andhra Pradesh has been notifying various incentive schemes from 1989 providing sales tax incentives in the form of sales tax deferment and sales tax holiday (exemption) to industrial units.

For according sanctions under various incentive schemes, Government constituted state level committee (SLC) and district level committees (DLCs). Commissioner of Commercial Taxes and Deputy Commissioners represent the Commercial Taxes Department as members of SLC and DLCs respectively. On the basis of sanctions, Commissioner of Industries issues final eligibility certificates (FECs) indicating the extent and duration of incentives for implementation by the Commercial Taxes Department.

Irregularities in course of sanction and availment of sales tax incentives noticed during local audit of Commercial Taxes Department are enumerated in the following paragraphs.

2.4.1 Incorrect availment of incentives

One of the incentive schemes 'Target-2000'[^] was part of the New Industrial Policy, 1995 operative from 15 November 1995 to 31 March 2000. However, Government extended[♦] the benefit under the scheme to those units, which were in the pipeline as on 31 December 1999 and went into commercial production before 31 March 2002.

During the course of audit of Saroornagar circle, it was noticed in June 2004 that unit had not started commercial production upto 31 March 2002. As such it was not entitled to any benefit of exemption from tax under the scheme 'Target-2000'. However the unit was incorrectly sanctioned tax exemption of Rs.132.13 crore against which it availed Rs.8.44 crore during 2002-03. Thus grant of incorrect exemption resulted in short realisation of Government revenue of Rs.8.44 crore during 2002-03.

Government replied (August 2005) that unit started commercial production before the stipulated date and the sanction under scheme is in order. The reply is not correct, as the assessing authority in its assessment order dated 10 July 2002 stated that the commercial production was not started even on 4 April 2002. Therefore grant of eligibility certificate was incorrect and incentive availed of was to be recovered.

[^] G.O.Ms.No.108 Industries & Commerce (IP) Department dated 20 May 1996

[♦] G.O.Ms.No.588 Industries & Commerce (IP) Department dated 20 November 2000

2.4.2 Irregular sanction without fixing base turnover

According to the guidelines, the quantum of incentives to different units for manufacture of the same end product or for manufacturing of intermediate product of the same end product set up by the same group of management, from time to time in the same district or within 150 km. radius, will be limited to the maximum allowed to the new industrial unit. Such cases were to be treated as expansion to the existing unit, allowing incentive over and above the base turnover. Base turnover for this purpose shall be the best production achieved during the three years preceding the year of expansion or the maximum capacity expected to be achieved by the industry, whichever is higher.

During the course of audit of two circles, it was noticed between June and September 2004, that while finalising assessments between February and March 2004, assessing authorities allowed incorrect/excess availment to two units. This resulted in irregular availment of incentives of Rs.2.13 crore as shown below:

(Rupees in crore)			
Sl. No.	Name of the circle/period (Month and year of assessment)	Nature of irregularity	Amount availed
1	Saroor Nagar, Hyderabad 2000-01 (February 2004) 2001-02 (February 2004)	An assessee set up a new unit within 150 km radius of a unit earlier established by him for the same activity i.e., for the same class of production. The unit was to be treated as an expansion of the existing unit for the purpose of benefit of tax exemption. However it was incorrectly treated as a new unit and its exemption limit worked out afresh. The incorrect sanction of sales tax exemption resulted in excess availment of Rs1.10 crore.	1.10
2.	Gandhi Chowk, Tenali 2002-03 (March 2004)	Sales tax exemption was incorrectly sanctioned to three units separately for the same end product though they were situated within the radius of 150 Kms.	1.03
Government replied in August 2005 that second unit was a new unit and no expansion had taken place as it was situated in another plot of land. The reply was not tenable as the second unit fulfilled all conditions of expansion for the purpose of benefit of tax exemption in respect of above circles. As such it should have been treated as a case of expansion and not as a new unit for tax exemption purposes.			
Total			2.13

2.4.3 Incorrect allowance of sales tax incentive on base turnover

Commissioner of Commercial Taxes issued instructions* to recover tax on base production first and then allow incentive on turnover in excess of base production.

During the course of audit of two[⊗] offices, it was noticed between April and November 2004 that assessing officers incorrectly allowed exemptions from

* A 11(3)/2846/96 dated 2 May 1997

⊗ AC LTU Chittoor and CTO Ongole-II

gross turnover resulting in short recovery of tax of Rs.6.95 crore as detailed below:

(Rupees in crore)

Sl. No.	Name of the office/ period (Month/year of assessment)	Base turnover fixed	Taxable turnover achieved	Turnover eligible for incentive	Turnover on which incentive was incorrectly allowed	Incorrect adjustment of tax incentive and non-recovery of tax upto base turnover
1.	Asst. Commissioner (LTU), Chittoor 2000-01 (June 2003) (2 cases)	Cement 5,64,700 MTs	5,25,291.85 MTs	NIL	5,25,291.85 MTs	6.91
Assessing authority stated (November 2004) that files would be sent to DC (CT) Kadapa.						
2.	CTO Ongole-II 2002-03 (January 2004)	30,000 sft. Polished granite tiles	88,108 sft.	58,108 sft.	30,000 sft.	0.04
Commissioner of Commercial Taxes stated (September 2005) that assessment was revised.						
Total						6.95

2.4.4 Non recovery of sales tax due to closure of production before the stipulated period

Incentives granted to an industrial unit shall be liable to be recovered if the unit goes out of production for a period exceeding[∞] one year during the period of availment. Further unit has to be in continuous production upto the period stipulated in FEC.

During the course of audit of Mangalagiri circle, it was noticed in September 2004 that one unit, availing industrial incentive stopped production for a period exceeding one year. The unit also violated the condition that it had to be in continuous production upto the stipulated date of 4 January 2005. The unit availed sales tax exemption of Rs.53.81 lakh upto 2001-02, which was not recovered by the Department.

Government replied in August 2005 that it was judicially held[♦] in writ petition No.22680 of 2000 that the liability to pay the tax arising out of cancellation of incentives would start from the date on which such orders become operative and it shall be open to the Government to recover any tax from such units if it is found that they have collected sales tax on such product during the subsistence of incentives. Reply is not tenable as the nature of the case in which judgement has been delivered is different from instant case where there has been breach of scheme conditions under which liability to recover tax was provided. The case under judicial consideration is regarding withdrawal of incentive suo motu by the State Government where there was no breach of conditions shown by the dealer.

[∞] Para 22.2 of guidelines issued in G.O.Ms.No.317, Ind. & Com. Department dated 14 September 1993 read with G.O.Ms.No.243 dated 15 July 1998

[♦] M/s. Panchalingal Carbonic Gas Private Limited Vs State of Andhra Pradesh writ petition No.22680 of 2000

2.4.5 Incorrect allowance to products not involving manufacturing activity/not covered by sanction

According to the schemes, sales tax incentives are available to products, manufactured by industrial units and specified in FECs and incentives are admissible only on goods manufactured and sold by industrial unit. Works contracts are not entitled to exemption under any scheme framed under the Act.

During the course of audit of nine[±] circles it was noticed in 17 cases finalised between January 2003 and December 2004 that sales tax exemption of Rs.1.32 crore for the period from 1999-2000 to 2001-02 though the products were either not covered by FECs or there was no manufacturing activity as detailed below:

- Exemption from payment of sales tax of Rs.62.86 lakh was claimed and granted by five assessing authorities in five cases though the products for which exemption was granted were not mentioned in their FECs.

After this was pointed out, assessing authority accepted the observation in two cases; of these in one case it was stated in December 2003 that the adjustment of Rs.0.71 lakh relating to sales not specified in FEC would be withdrawn while in other case assessment would be revised. Industries Commissioner replied in August 2005 in another case that 'mineral oil' was covered by sanction. The reply was not tenable as the product was not specified in FEC under which exemption was sanctioned. In another case assessing authority replied (November 2003) that matter would be examined.

- Exemption from payment of sales tax of Rs.32.31 lakh was claimed and granted by three assessing authorities in three cases though the products for which exemption was granted did not involve any manufacturing activity. For example, exemption of Rs.29.48 lakh was given on gauge wire purchased locally and sold in the same form. Similarly, bright bars made from steel bars were incorrectly treated as manufacturing activity.

After this was pointed out, assessing authority accepted the observation in one case. However in case of gauge wire and bright bars the assessing authorities stated in December 2003 that tax exemption was admissible to the units. The reply was not tenable as gauge wire was sold in the same form in which it was purchased. In case of bright bars no new commodity was manufactured. As such exemption claimed should have been disallowed in both cases.

- Exemption from payment of sales tax of Rs.37.59 lakh was claimed and granted by five assessing authorities in nine cases though all these cases related to works contract and were not covered by any incentive scheme.

[±] Hyderabad (Hydernagar, Khairatabad, Punjagutta, Saroornagar), Kakinada, Mandapeta, Nizamabad-II, Vijayawada (Benz circle), Vuyyuru

Government replied in August 2005 in five cases that retreading of tyres was a manufacturing activity as such exemption was allowed. The reply was not tenable as the irregularity objected to by audit was on availment of tax incentive on execution of works contract by these units for which no tax exemption was admissible under the Act. Reply in the remaining cases has not been received.

2.4.6 Irregular collection of sales tax during holiday period

Industrial units availing sales tax exemption (holiday) were not entitled to collect sales tax from consumers. In case they collect sales tax while availing sales tax exemption, they would be liable to remit the collected amount to Government.

Two industrial units availing sales tax exemption (holiday) were not entitled to collect sales tax from consumers. However they collected sales tax of Rs.12.16 lakh during the period of exemption, which was required to be remitted to Government. The tax collected by them was neither remitted in Government account nor did the assessing authorities while finalising assessments in July and December 2003 forfeit the same, resulting in short realisation of Government revenue to that extent.

After this was pointed out, Department in one case stated (June 2004) that the amount related to tax due only and not tax collection. The reply is not tenable as the amount was shown in form XXXVII certified by Chartered Accountant as tax collected and exempted while finalising the assessment. In another case, it was stated (August 2004) that the matter would be examined.

The matter was referred to Government in July 2005, replies wherever received have been incorporated.

2.5 Non levy of interest

According to Section 16(3) of APGST Act, interest is leviable on tax, penalty or any other amount due to Government if such dues are not paid within the time specified for payment. These provisions are also applicable to the dues under the Central Sales Tax (CST) Act, 1956 with effect from 12 May 2000. The dues are recoverable as if they were arrears of land revenue. Failure to pay taxes on due dates attracts levy of interest at the rates applicable from time to time.

2.5.1 During the course of audit of three LTUs^f and five circles[⊕] it was noticed between November 2003 and January 2005 that in 15 cases, 13 dealers failed to pay monthly tax along with their returns. It was paid after

^f Abids, Guntur, Secunderabad.

[⊕] Hyderabad (Gowliguda), Janagaon, Secunderabad (Ramgopalpet), Vijayawada (Governorpet, Seetharamapuram)

a

delay ranging from three days to 29 months. However, while finalising assessments between September 2001 and March 2004 assessing authorities did not levy interest. This resulted in non realisation of interest of Rs.6.48 crore. A few instances are given below:

(Rupees in lakh)

Name of the circle/ period (Month and year of assessment)	Amount of tax not remitted to Govt. account/ belated payment	Period of delay/rate of interest (in percentage)	Interest leviable
1) AC/LTU Abids, Hyderabad 2001-02 (April 2003) 2002-03 (February 2004) (2 cases)	1,660.80	3 to 16 days/ (18)	298.76
Assessing authority stated (June 2004) that matter would be examined.			
2) AC/LTU, Secunderabad 2000-01 (March 2004) (2 cases)	i) 1,231.36 ii) 319.78	5days/ (18) 5days to 12 days/ (18)	221.64 57.56
Commissioner stated in September 2005 that revision show cause notice was issued.			
3) Janagaon 1999-2000 (September 2001)	96.70	29 days to 25 months/ (18 to 36)	20.19
Assessing authority stated (November 2003) that the matter would be examined.			
4) Gowliguda, Hyderabad 2000-01 (October 2002) 2001-02 (December 2002) (3 cases)	i) 1,098.48 ii) 42.93 iii) 24.82	4 to 8 days/ (18) 4 to 13 days/ (18) 4 to 8 days/ (18)	19.77 7.73 4.47
Commissioner stated in September 2005 that assessments were revised by levying penal interest. Based on appeal preferred by Appellate Deputy Commissioner the case was partly dismissed and partly remanded with a direction to requantify the actual interest.			

After this was pointed out, in one case an amount of Rs.8.52 lakh was collected in August 2004. Final reply in remaining cases was awaited.

2.5.2 During the course of audit of 19 circles[®] and one unit office at Piduguralla it was noticed between June 2003 and September 2004 that interest amounting to Rs.2.39 crore was not levied on sales tax collected from customers and retained by assesseees without remitting to Government in 27 cases under APGST and CST Acts for the years 1999-2000 to 2001-02 finalised between June 2002 and March 2004.

After this was pointed out, assessments were revised in nine cases and action was initiated for revision in four cases. In another case, action was initiated under Revenue Recovery Act. In two cases, Commissioner stated in

[®] Ananthapur-I, Bhongir, Guntur (Kothapet), Hyderabad (Abids, Begumpet, Gandhinagar, Hyderguda, Khairatabad, Lord Bazar, Nacharam, Nampally, Sanathnagar, Saroornagar), Narsampet, Nizamabad-I, Piduguralla, Secunderabad (Malkajgiri, Mahankali Street and Ramgopalpet)

September 2005 that when there was no provisional demand raised and payments were made as per monthly returns within stipulated time the question of interest does not arise. The reply was not tenable as interest is leviable for the period sales tax was retained under the provisions of the Act. In remaining cases it was stated between August 2003 and September 2004 that matter would be examined.

The matter was referred to Government in July 2005, reply was not received (September 2005).

2.6 Short levy of tax due to misclassification of goods

Tax is leviable at the rates prescribed in schedules to APGST Act.

During the course of audit of 24* circles and three^ψ unit offices between September 2003 and December 2004, it was noticed in 63 cases while finalising assessments between January 2003 and July 2004 for the years 1999-2000 to 2002-03, that assessing authorities incorrectly levied tax of Rs.4.69 crore instead of Rs.11.98 crore on audio cassettes, prosound systems and spares, hand tools other than agricultural tools and M.S. wire nails and red oxide, due to misclassification. This resulted in short levy of tax of Rs.7.29 crore.

A few illustrative cases are tabulated below:

(Rupees in lakh)					
Sl. No.	Name of the circle/ period (Month and year of assessment)	Nature of irregularity	Tax leviable	Tax levied	Short levy
1	M.G. Road, Secunderabad 2000-01 (February 2004)	Jelly filled telephone cables, optic fibre cables, jointing kits valued at Rs.59.87 crore taxable at 12 per cent were classified as electronic goods and taxed at four/ eight per cent.	718.38	242.05	476.33
Commissioner stated in September 2005 that assessment files were submitted to Deputy Commissioner for perusal. Final reply has not been received					
2	Nampally, Hyderabad 2001-02 2002-03 (December 2003) (3 cases)	Audio cassettes valued at Rs.6.29 crore taxable at 16 per cent under the Act were treated as electronic goods and taxed at eight per cent	100.60	50.30	50.30
Department replied in September 2005 that revised show cause notice was issued					

* Hindupur, Hyderabad (Abids, Agapura, Barkatpura, Hyderguda, Jeedimetla, Jubilee Hills, Khairatabad, Malakpet, Nacharam, Nampally, Punjagutta, Rajendranagar, Sanathnagar, Tarnaka, Vidyanagar), Medak, Secunderabad (M.G. Road, Ranigunj, S.D. Road), Tirupati-II, Vijayawada (Benz Circle) and Visakhapatnam (Gajuwaka, Steel Plant)

^ψ Hanumakonda, Hyderabad (Hydernagar, Rajendranagar)

(Rupees in lakh)					
Sl. No.	Name of the circle/ period (Month and year of assessment)	Nature of irregularity	Tax leviable	Tax levied	Short levy
3	Ranigunj, Secunderabad 2000-01 (October 2003) 2001-02 (April 2003) (2 cases)	Hand tools other than agricultural tools valued at Rs.1.57 crore taxable at 12 per cent under the Act were taxed at eight per cent/ four per cent	18.86	12.57	6.29
Assessing authority stated (August 2004) that the matter would be examined.					
4	Malakpet, Hyderabad 2002-03 (March 2004)	Misclassification of Thermocole Sheets and moulds valued at Rs.76.90 lakh taxable at 12 per cent was taxed at four per cent	9.23	3.08	6.15
Department stated in September 2005 that assessment was revised.					

After this was pointed out, Department accepted audit observations in 23 cases out of which, assessments in 10 cases were revised while remaining cases were stated to be under revision. Final reply in other cases has not been received (October 2005).

The above matter was referred to Government in May/July 2005, reply was not received (September 2005).

2.7 Non levy of turnover tax

According to Section 5A of APGST Act, when total turnover of a dealer in a year exceeds rupees 10 lakh, turnover tax (TOT) at one per cent is leviable with effect from 1 August 1996 on second and subsequent sales of goods specified in first, second, fifth and seventh schedules to the Act. TOT on cell phones was exempted from 4 June 2004.

During the course of audit of 29* circles, it was noticed between May 2003 and January 2005 that assessing authorities while finalising assessments between January 2002 and July 2004 for the years 2000-01 to 2002-03 in 48 cases failed to levy TOT of Rs.1.24 crore relating to telephones, cell phones, phone cards, surgical goods, amplifiers, audio cassettes and beedi leaves though turnover of each dealer during a year exceeded Rs.10 lakh.

* Hyderabad (Abids, Ashoknagar, Barkatpura, Basheerbagh, Charminar, Hyderguda, Jubilee Hills, Mehdipatnam, M.J. Market, Nampally, Narayanaguda, Osmangunj, Sanathnagar), Kakinada, Kurnool-II, Nalgonda, Nizamabad, Nizamabad-III, Ongole-I, Rajahmundry, Rajampet, Secunderabad (S.D. Road, Malkajgiri and Ramgopalpet), Vijayawada (Convent Street, Governorpet and Seetharamapuram), Visakhapatnam (Daba Gardens, Suryabagh)

After this was pointed out, Department accepted audit observation in 27 cases, of which assessments in six cases were revised and remaining cases were stated to be under revision. In five cases, Department stated in September 2005 that cell phones, recharge coupons, wireless systems were electronic goods and as such tax was not leviable while in two cases it was stated in April 2005 that voltage stabilizers were electronic goods and TOT was not leviable. The reply was not tenable as TOT on cell phones was exempted only with effect from 4 June 2004 and all the assessments pertain to prior periods and as such were liable to tax. Besides voltage stabilizers, cell phones, recharge coupons, wireless system etc., were not classifiable under electronic goods but are covered under specific separate entries in the Act. In remaining cases, final reply has not been received.

The above matter was referred to Government in July 2005, reply was not received (September 2005).

2.8 Incorrect grant of exemption

APGST Act, and Rules made thereunder provide for certain exemptions from turnover before the turnover is assessed to tax. Further, the Act provides for grant of exemption by State Government through a gazette notification.

During the course of audit of one LTU, Vijayawada, 11[∅] circles and two unit offices[€], it was noticed between August 2003 and July 2004 that assessing authorities while finalising assessments in 22 cases between September 2002 and February 2004 for the years between 1999-2000 and 2001-02 incorrectly exempted turnover of Rs.9.33 crore on account of bitumen, computer peripherals, tower structures, ghee, foot wear, gunnies, fire bricks, egg trays, liquor, rejected coal, cosmetics, soaps and rough iron castings from levy of tax. This resulted in non/short levy of tax of Rs.85.47 lakh.

After this was pointed out, Department accepted audit observation in 10 cases, of which, assessments were revised in eight cases and show causes were issued in two cases.

In two cases, assessing authority, Saroornagar, Hyderabad stated in June 2004 that tax on materials purchases from outside State to be used in works contract were not liable to tax as per judicial decision^γ. Reply was not tenable as the judicial decision referred to was based on the provisions of section 5F of the

[∅] Bhimavaram, Eluru, Hyderabad (Sanathnagar, Saroornagar), Mangalagiri, Medak, Nizamabad-III, Peddapuram, Secunderabad (Malkajgiri) and Vijayawada (Autonagar, Benz Circle)

[€] Chintalapudi and Narsaraopeta

^γ Dwaraka Prasad Radhey Ramanlal Vs State of Andhra Pradesh (2000) 31 APSTJ 19

Act that existed prior to 1995. The provision 'section 5F' was amended with effect from 1 April 1995. As per the amended provision, turnover of bitumen purchased from outside the State used in works contract was liable to be taxed.

Assessing authority Autonagar, Vijayawada stated in August 2003 that dealer was registered under APGST Act for retail sales of beer and liquor; it was a wine shop but not bar and restaurant and provisions of 5C of APGST Act were not applicable. The reply is not tenable as food stuffs and liquor were served/supplied as seen from records; as such the dealer was liable to be taxed under section 5C of the Act. Reply in the remaining cases was not received.

The matter was referred to Government in July 2005, reply was not received (September 2005).

2.9 Non levy of penalty

2.9.1 Under section 15(4) of APGST Act, any dealer liable to pay tax who fails to submit a return or fails to pay the tax due on the basis of the return submitted by him shall be liable to pay penalty equal to 30 *per cent* of the tax due.

During the course of audit of two[^] circles it was noticed in June and July 2004 that assessing authorities while finalising assessments of two dealers in July 2003 and January 2004 for the assessment year 2001-02 failed to levy penalty of Rs. 44.45 lakh.

After this was pointed out, assessment was revised in one case and taken to DCB Register. In remaining one case it was stated (June 2004) that matter would be examined.

2.9.2 Under Section 14(8) of APGST Act, penalty not less than three times of tax, which may extend upto five times of tax is leviable where the assessing authority is satisfied regarding wilful failure of the dealer to disclose turnover or any other particulars correctly.

During the course of audit of AC (CT) LTU Eluru and two[♦] circles it was noticed between November 2003 and January 2005 in three cases that assessing authorities while finalising assessments between March 2003 and March 2004 for the assessment years 1999-2000, 2001-02 and 2002-03 did not levy penalty of Rs.17.29 lakh though the dealers had not disclosed correct turnover in their returns.

After this was pointed out, in one case an amount of Rs.1.38 lakh was collected in March 2004. Remaining assessing authorities stated in May 2004 and January 2005 that action would be taken after examining the matter.

[^] Hyderabad (Khairatabad) and Secunderabad (Ramgopalpet)

[♦] Hyderabad (Begumpet) and Vijayawada (Autonagar)

The matter was referred to Government in July 2005, reply was not received (September 2005).

2.10 Short levy of tax on trade mark holder

Under section 5AA of APGST Act, with effect from 1 August 1996 whenever a dealer, holding trade mark or patent thereof, sells goods other than declared goods at any point of sale other than first point of sale, he shall be deemed to be the first seller in the State and shall be liable to pay tax accordingly. The tax levied and collected at the preceding point of sale if any, on the same goods shall be deducted from the tax payable by him at that point of sale.

During the course of audit of offices of AC (LTU), Abids and Guntakal circle, it was noticed between June and July 2004 in five cases that sale turnover of branded goods where the assesseees were holding trade mark rights on television sets and chicory powder was incorrectly exempted as second sales. Incorrect exemptions resulted in short levy of tax of Rs.29.42 lakh.

After this was pointed out, show cause notice was issued in three cases and in two cases it was stated (July 2004) that matter would be examined.

The above matter was referred to Government in July 2005, response was not received (September 2005).

2.11 Short levy of tax due to arithmetical mistakes

Under APGST Act and Rules made thereunder, tax on goods/commodities sold is to be levied at rates specified under various schedules to the Act.

During the course of audit of one[♦] LTU and two[≡] circles it was noticed between November 2003 and December 2004 that assessing authorities while finalising assessments in March 2003 and March 2004 for the years from 1998-99 to 2002-03 in six cases had erroneously worked out tax payable by assesseees as Rs.63.53 lakh against the correct amount of Rs.90.20 lakh. Arithmetical mistakes resulted in short levy of tax of Rs.26.67 lakh.

After this was pointed out, in one case assessment was revised and additional demand adjusted to tax holiday. In remaining cases assessing authorities stated between November 2003 and December 2004 that assessments would be revised.

[♦] Kurnool

[≡] Hyderabad (Rajendranagar), Proddutur-II

The matter was referred to Government in July 2005, reply was not received (September 2005).

2.12 Short levy of tax on inter State sales

Under Section 8(2) of CST Act, inter State sales not supported by declaration in form 'C' are taxable at twice the rate applicable to sale or purchase of these goods inside the appropriate State in respect of declared goods and in respect of other goods at 10 *per cent* or at the rate of tax applicable to the sale or purchase of such goods within the State under State laws whichever is higher.

During the course of audit of two* circles it was noticed between April and November 2004, in two cases relating to assessment year 2000-01 finalised in February and March 2004 that tax was levied at concessional rate though the transactions were not supported by 'C' forms resulting in short levy of tax of Rs.18.11 lakh during the year 2000-01.

After this was pointed out, assessing authority in May 2004 stated in one case that action would be taken to revise the assessment. In another case it was stated in November 2004 that matter would be examined.

The matter was referred to Government in July 2005, reply was not received (September 2005).

2.13 Non forfeiture of excess tax collections

Under Section 30B of APGST Act, dealers shall not collect any amount by way of tax in excess of the amount of tax already paid by them at the time of purchase and payable on sales under provisions of the Act. Any sum so collected in contravention shall be forfeited to Government in terms of Section 30 C.

During the course of audit of one[⊗] AC (CT) LTU and two^ψ circles between July and December 2004 it was noticed in three cases that excess tax amounting to Rs.12.71 lakh collected during the years 2000-01 to 2002-03 was not forfeited to Government account.

After this was pointed out, Commissioner stated in September 2005 that due to allowing of trade discounts, levy of tax was worked out on reduced turnover as such there was no excess collection. The reply was not tenable, as tax should have been collected on actual sale price. Besides tax collected in excess should have been deposited in the Government account and should

* Ananthapur - I, Hyderabad (Nacharam)

⊗ Eluru

ψ Hyderabad (Khairatabad) and Nizamabad-I

not have been retained by the dealer. In remaining cases show cause notices were issued.

The above matter was referred to Government in July 2005, reply was not received (September 2005).

2.14 Application of incorrect rate of tax

Tax at rates specified in schedules I to VI of the APGST Act is leviable on commodities included in the schedules. Commodities not specified in any of these schedules were taxable at 10 *per cent* between 1 April 1995 and 31 December 1999 and 12 *per cent* thereafter.

During the course of audit of two LTUs[▼] and Ananthapur-II circle it was noticed between June 2004 and January 2005 that assessing authorities while finalising assessments between December 2003 and March 2004 in four cases for the years 1999-2000, 2000-01 and 2002-03 levied tax on exercise note books, paper cups, industrial gas at lower rates than specified in the Act resulting in short levy of tax amounting to Rs.9.79 lakh.

After this was pointed out, assessments were revised in two cases. Final reply in the remaining cases has not been received.

The matter was referred to Government in July 2005, reply was not received (September 2005).

2.15 Incorrect application of concessional rate

Under section 5B of APGST Act, consequent upon sale of goods by a dealer to another for use by the latter as raw material, component part, sub assembly part, intermediary part, consumables or packing materials of any other goods which he intends to manufacture inside the State, tax at four *per cent* shall be paid subject to production of 'G' form issued by the purchaser who has to get himself registered as a manufacturer.

During the course of audit of office of AC (CT) LTU Nizamabad and two circles^Ψ, it was noticed that concessional rate of tax was allowed between December 2002 and March 2004 in three cases for the years 1999-2000, 2000-01 and 2002-03, though the purchasers were not registered to avail concessional rate or goods sold were not entitled for concessional rate. This resulted in short levy of tax of Rs.6.90 lakh.

▼ Eluru and Hyderabad (Rural)

Ψ Hyderabad (Jeedimetla) and Vijayawada (Benz circle)

After this was pointed out, assessment was revised in one case and in remaining two cases it was stated (October 2003 and July 2004) that matter would be examined.

The matter was referred to Government in July 2005, reply was not received (September 2005).