

CHAPTER – II : SALES TAX

2.1 Results of audit

Test check of records of the sales tax offices, conducted during the year 2005-06 revealed turnover escaping assessment, non/short levy of tax due to incorrect grant of exemption, incorrect acceptance of declaration forms, non/short levy of interest, application of incorrect rate of tax etc. amounting to Rs. 91.51 crore in 170 cases, which fall under the following categories.

(Rupees in crore)			
Sl. No.	Category	Number of cases	Amount
1.	Non/Short levy of tax	9	1.53
2.	Incorrect grant of exemption	26	11.31
3.	Turnover escaping assessment	14	23.23
4.	Application of incorrect rate of tax	11	2.89
5.	Non/short levy of interest	17	0.49
6.	Incorrect acceptance of declaration forms	11	3.09
7.	Other irregularities	82	48.97
Total		170	91.51

During the year 2005-06, the department accepted non/short levy of interest, incorrect adjustment of challans amounting to Rs. 0.21 crore in seven cases pointed out during 2005-06 and recovered Rs. 0.11 crore in two cases.

A few illustrative cases involving Rs. 39.49 crore are given in the following paragraphs:

2.2 Escapement of turnover

Under the Assam General Sales Tax Act, 1993 (AGST Act), read with the Central Sales Tax Act, 1956 (CST Act), if any part of the turnover of a dealer in respect of any period has escaped assessment to tax, the assessing officer (AO) may within eight years from the end of the relevant year make a reassessment of the dealer. If a dealer fails to pay the full amount of tax payable by him by the due date, he is liable to pay interest at the rate prescribed on the amount of tax due.

2.2.1. Test check of assessment records of Superintendent of Taxes, Hailakandi revealed in September 2005 that the AO finalised assessment of a dealer for the year 1999-2000 in March 2004. While finalising the assessment under AGST Act, AO accepted turnover of Rs. 130.87 crore on account of interstate sale and noted the same in the assessment order sheet. But while finalising the assessment under the CST Act turnover of Rs. 69.02 crore was taken into account instead of Rs. 130.87 crore. This resulted in escapement of turnover of Rs. 61.85 crore under CST Act and short levy of tax of Rs. 6.18 crore besides interest of Rs. 8.04 crore.

The case was reported to the department and Government in March 2006 followed by reminder in June 2006; their replies have not been received (October 2006).

2.2.2. Test check of assessment record of Superintendent of Taxes, Nagaon in May - June 2005 revealed that the AO while finalising in March 2004 the assessment of a dealer engaged in manufacture of sugar and molasses for the year 2000-01 determined taxable turnover of Rs. 5.19 lakh. Cross verification by audit of assessment records of the dealer with the records of Central Excise Department (CED)[#] revealed that taxable turnover aggregating Rs. 71.43 lakh had escaped assessment. This resulted in short levy of tax and interest of Rs. 32.37 lakh.

The case was reported to the department and Government in March 2006 followed by reminder in June 2006; their replies have not been received (October 2006).

2.3. Evasion of tax due to concealment of turnover

Under the AGST Act, read with CST Act, if a dealer conceals the particulars of his turnover, he shall pay by way of penalty, in addition to tax, additional tax and interest, a sum not exceeding one and half times the amount of tax sought to be evaded.

[#] value/quantity of excisable goods clearance

2.3.1. Test check of records of Superintendent of Taxes, Guwahati 'D' revealed between April and September 2005 that while finalising the assessment of six dealers between March 2002 and January 2005 for the years from 1999-2000 to 2003-04, the AO assessed their turnover as Rs. 25.62 crore on account of stock transfer of goods. Scrutiny of records, however, revealed that dealers had actually received goods valued at Rs. 34.70 crore as stock transfer. This resulted in escapement of turnover of Rs. 9.08 crore and evasion of tax of Rs. 2.86 crore including interest and penalty.

After this was pointed out, the department stated in July 2006 that demand notice for Rs. 53.64 lakh was issued in one case. Report of realisation and reply in other cases has not been received (October 2006).

2.3.2 Test check of records of Superintendent of Taxes, Tinsukia revealed in September 2005 that a dealer had shown the opening stock of finished goods of Rs.10.76 lakh during the year 2001-02. Scrutiny of records revealed that there was a closing stock of Rs. 67.09 lakh during 2000-01. Failure of the assessing officer to cross verify the records while finalizing the assessment in March 2005 resulted in escapement of turnover of Rs. 56.33 lakh and evasion of tax of Rs. 16.47 lakh including interest and penalty.

The matter was reported to the department and Government in March 2006, their replies have not been received (October 2006).

The cases were reported to Government in February – March 2006 followed by reminder in June 2006; their replies have not been received (October 2006).

2.3.3. As per instructions issued (January 1996/1998) by the Commissioner of Taxes, Assam, every AO while completing assessment of a tea estate should verify records maintained by the CED to prevent leakage of Government revenue.

Test check of assessment records of Superintendent of Taxes, Guwahati Unit-B, Sibsagar and Jorhat revealed between October 2004 and December 2005 that the AOs while finalising assessment between May 2002 and March 2005 of five dealers for the years 2000-01 to 2003-04 determined taxable turnover aggregating Rs. 46.04 crore. However cross verification by audit of assessment records of the dealers vis-à-vis value of excisable goods cleared by the manufacturers as per information obtained from the CED revealed that taxable turnover was Rs. 74.55 crore. As such turnover of Rs.28.50 crore was suppressed by the dealers. Thus, failure of the AO to cross verify the records of CED resulted in evasion of tax of Rs. 11.55 crore including interest and penalty.

The cases were reported to the department and Government in August, December 2005 and January 2006 followed by reminder in June 2006; their replies have not been received (October 2006).

2.3.4 Test check of assessment records of Superintendent of Taxes, Nagaon and Sibsagar revealed between May and December 2005 that the AOs while finalising assessments in March 2003 and March 2004 of three dealers for the years 1999-2000 to 2001-02 determined production/clearance of tea aggregating 22.94 lakh kgs. However, cross verification by audit of assessment records of the dealers with the records of CED revealed that 24.22 lakh kgs tea was cleared by the dealer. Thus 1.28 lakh kgs. tea valued at Rs. 95.89 lakh was suppressed by the dealers. This resulted in evasion of tax of Rs. 29.32 lakh.

The cases were reported to the department and Government in August 2005 and January 2006 followed by reminder in June 2006; their replies have not been received (October 2006).

2.4 Incorrect acceptance of declaration forms

2.4.1 The Commissioner of Taxes, Assam vide circular dated 2 February 2000 declared all the old declaration forms 'A' printed on plain paper, and not used by dealers before 21 February 2000, as obsolete and invalid.

Test check of assessment records of Superintendent of Taxes, Mangaldoi revealed in February - March 2005 that the AO while finalising assessment of a dealer between October 2002 and December 2003 for the years 1999-2000 and 2000-01 exempted turnover of Rs. 2.47 crore from levy of tax supported by six obsolete and invalid declarations in form 'A' used by dealers during the period between March 2000 and April 2001. This resulted in short levy of tax of Rs. 16.33 lakh and interest of Rs. 20.06 lakh.

The case was reported to the department and Government in March 2006 followed by reminder in June 2006; their replies have not been received (October 2006).

2.4.2. The Commissioner of Taxes, Nagaland, Dimapur vide letter dated 20 February 2002 intimated the Commissioner of Taxes, Assam, Guwahati that certain series of form 'C' and form 'F' had been declared obsolete and invalid with effect from 11 June 2001. The Commissioner of Taxes, Nagaland further clarified that the said declaration forms shall neither be used nor issued after 11 June 2001.

Test check of assessment records of four superintendents of taxes¹ revealed between April and September 2005 that the AOs while finalising the assessments of 11 dealers for the year 2001-02 and 2002-03 accepted 34 obsolete and invalid declarations in form 'C' and 'F' involving a turnover of Rs. 8.89 crore and allowed concessional rate of tax. The dealers had used these

¹ Guwahati Unit-A, Unit-C, Unit-D and Jorhat

forms after 11 June 2001. This resulted in short levy of tax of Rs. 1.23 crore including interest of Rs. 0.53 crore.

After this was pointed out, the department stated in July 2006 that demand notice for Rs. 30.63 lakh was issued in one case. However report on realisation is awaited. Reply in other cases has not been received (October 2006).

The cases were reported to Government in November 2005 and January 2006 followed by reminder in June 2006; their replies have not been received (October 2006).

2.5 Excess allowance of credit of tax

Under the AGST Act, and Rules made thereunder, every registered dealer is required to submit a copy of treasury challans as a token of full payment of tax paid on his taxable turnover alongwith the monthly statement/annual return of turnover.

Test check of assessment records of Superintendent of Taxes, Guwahati Unit – A revealed in July - September 2005 that the AO allowed credit of tax of Rs. 1.44 crore in March 2005 against assessed tax of Rs. 0.70 crore to a dealer for the year 2001-02. It was however, observed that the dealer had actually paid tax of only Rs.1.08 crore during the year 2001-02 and Rs. 0.36 crore was either deposited during the year 1999-2000 and 2002-03. This resulted in excess allowance of credit of tax of Rs. 0.36 crore during the year 2001-02.

The case was reported to the department and Government in February 2006 followed by reminder in June 2006; their replies have not been received (October 2006).

2.6 Short levy of tax due to incorrect deduction of value of declared goods

Under the AGST Act, taxable turnover of a work contractor of the nature of civil work is determined after reducing the gross turnover by the turnover relating to declared goods purchased locally in Assam on payment of tax and charges incurred towards labour and other charges. No deduction is allowed in respect of declared goods purchased from outside the State.

Test check of assessment records of three superintendents of taxes² revealed between April and December 2005 that the AOs, while finalising assessments of three dealers in September 2003, May and October 2004 for the years 2000-01 and 2002-03 allowed deduction of Rs. 2.24 crore towards declared goods purchased from outside the state. This resulted in short levy of tax of Rs. 29.73 lakh including interest.

² Dibrugarh, Silchar and Unit 'C' of Guwahati unit

The cases were reported to the department and Government in February-March 2006 followed by reminder in June 2006; their replies have not been received (October 2006).

2.7 Non levy of tax on tax paid goods

Under the AGST Act, read with Rules made thereunder, where a person sells a substantial part of the goods manufactured or imported by him to another person for resale as distribution or selling agent and the price charged on resale exceeds 40 *per cent* of the original sale or purchase price, the resale of such goods by such person shall be deemed as first point of sale within the State and the rate of tax shall be levied at the rates specified in Schedule-II of such items. Interest at the rate of two *per cent* for each month on the amount by which tax paid falls short of the tax payable is also payable by the dealer.

Test check of assessment records of Superintendents of Taxes, Guwahati-Unit – A and Unit-D revealed between April and September 2005 that two registered dealers sold goods valued at Rs. 2.60 crore during the years 2001-02 and 2002-03, the purchase price of which was Rs. 1.61 crore. As the resale price exceeded 40 *per cent* of the original purchase price, the resale was, therefore, to be deemed as first point of sale within the State for the purpose of levy of tax. But the AO while finalising assessments in May 2004 and March 2005 did not levy tax on the ground that such sales were made out of tax paid goods. This resulted in non levy of tax of Rs. 20.85 lakh and interest of Rs. 13.13 lakh.

After this was pointed out, the department stated in July 2006 that demand notice for Rs. 7.88 lakh was issued in one case. However report on realisation is awaited. Reply in other cases has not been received (October 2006).

The cases were reported to Government in March 2006 followed by reminder in June 2006; their replies have not been received (October 2006).

2.8 Non/short levy of tax due to misclassification of goods

Under the AGST Act, tax shall be charged on the taxable turnover during such year at such rate or rates as specified in the schedules of the Act.

Test check of assessment records of five offices of the superintendent of taxes, revealed between December 2004 and September 2005 that while finalising the assessments between November 2003 and September 2005, the AOs levied lower rate of tax on turnover of Rs. 6.24 crore of six dealers relating to the period between 2000-01 and 2003-04. This resulted in non/short levy of tax amounting to Rs. 61.05 lakh including interest as detailed below:

(Rupees in lakh)							
Sl. No.	Name of unit	Assessment year Month of assessment	Commodity	Taxable turnover	Rate of tax leviable	Rate of tax levied	Short levy of tax and interest
1.	Superintendent of Taxes, Dhekiajuli	2002-03 November 2003	Mustard oil Cake	35.31	4.4	Nil	2.45
2.	Superintendent of Taxes, Unit – A Guwahati.	2002-03 September 2005	Home care products	132.00	8.8	4.4	8.83
3.	Superintendent of Taxes, Unit – B Guwahati.	2000-01 March 2004	Aluminum coil	26.16	8.8	Nil	2.82
			Aluminum corrugated sheets	34.49	4.4	Nil	4.28
4.	Superintendent of Taxes, Unit – C Guwahati.	2002-03 December 2004 2003-04 December 2004	Works contract	169.00	8.8	4.4	6.21
5.	Superintendent of Taxes, Unit – D Guwahati.	2000-01 March 2004	Rectified Spirit	53.91	22.0	Nil	24.43
		2002-03 February 2004	Soap material (tallow)	173.05	8.8	4.4	12.03
Total				623.92			61.05

After this was pointed out, the department stated in July 2006 that demand notice for Rs. 12.91 lakh was issued in one case. However report on realisation is awaited (September 2006) and in another case the department stated that oil cake when used as an ingredient of cattle feed is exempted. The reply is not tenable as there is no such exemption of oil cake mentioned in AGST Act. Reply in other cases has not been received (October 2006).

The cases were reported to Government between January and March 2006 followed by reminder in June 2006; their replies have not been received (October 2006).

2.9 Non/short levy of interest

Under the AGST Act, read with CST Act, if a dealer fails to pay the full amount of tax payable by the due date, he is liable to pay simple interest at the prescribed rate.

Test check of assessment records of four superintendent of taxes³, revealed between April and September 2005 that in 11 cases of assessments of eight dealers finalised between October 2003 and March 2005 relating to the periods ending 1998-99 to 2002-03, the AOs either failed to levy or levied short interest amounting to Rs. 21.93 lakh on tax of Rs. 1.96 crore. The delay ranged between one and 63 months.

³ Guwahati Unit 'A', 'D', Kokrajhar and Sibsagar.

After this was pointed out, the department stated in July 2006 that in one case Rs. 1.67 lakh was realised. Reply in other cases has not been received (October 2006).

The cases were reported to Government in February-March 2006 followed by reminder in June 2006; their replies have not been received (October 2006).

2.10 Non deposit of tax deducted at source

Under the AGST Act, and the Rules made thereunder, the amount of tax payable by a supplier/works contractor shall be deducted at source by the drawing and disbursing officer who shall deposit the same into Government account within 10 days from the expiry of each calendar month. In case of failure of a person to deposit the tax deducted at source, the AO may recover the same as arrear of land revenue. The Act was amended with effect from June 1999 which provides that a person if after making deduction at source fails to deposit the same within the stipulated time shall on conviction be punishable in a case where the amount of tax is below Rs. 1 lakh, with imprisonment not exceeding six months, and for any other cases, with imprisonment for a term which may extend to one year.

Test check of assessment records of the superintendent of taxes, Jorhat revealed between July - September 2005 that Rs. 12.16 lakh was deducted at source from the bills of two suppliers by Assam Small Industries Development Corporation Ltd./Executive Engineer, Public Works Department/Assam Industrial Development Corporation/ Central Institute of Plastic Engineering and Technology, Guwahati during the year 2003-04, but was not deposited into Government account till date. No action was initiated to recover tax deducted at source as arrear of revenue and initiate proceedings against the persons at fault.

The case was reported to the department and Government in December 2005 followed by reminder in June 2006; their replies have not been received (October 2006).

2.11 Incorrect determination of turnover

Under the AGST Act, “taxable turnover” in respect of works contract is determined by reducing the gross turnover by the turnover relating to declared goods and thereafter deducting the labour and other charges incurred by the dealer or at the option of the dealer subject to rates applicable in the Act.

Test check of assessment records of the Superintendent of Taxes, Guwahati Unit ‘C’ revealed in July and August 2005 that the AO while finalising the assessment of a dealer for the years 1999-2000 to 2002-03 allowed deduction of Rs. 1.90 crore at the prescribed percentage of the gross turnover towards labour and other charges. Whereas as per Act, the value of declared goods was

required to be deducted from gross turnover for arriving at labour and other charges which worked out to Rs. 1.40 crore. Thus, excess deduction of labour charge of Rs. 0.50 crore resulted in short levy of tax and interest of Rs. 8.58 lakh.

The case was reported to the department and Government in March 2006 followed by reminder in June 2006; their replies have not been received (October 2006).

2.12 Non levy of tax

Under the AGST Act, and Rules made thereunder, sale price of containers or packing materials used in sale of exempted goods are taxable at prescribed rate. Where no accounts of such sales of containers or packing materials are maintained or where such sales are shown at a price lower than the market price, sale price shall be determined at one *per cent* of the sale value of exempted goods sold.

Test check of records of Superintendent of Taxes, Silchar and Jorhat revealed between May and September 2005 that the assessments of two dealers of IMFL for the year 2000-01 and 2001-02 was finalised in May 2003 and March 2004. The AOs while finalising the assessments exempted turnover of Rs. 15.74 crore from tax. This turnover consisted the sale price of containers or packing material which worked out to Rs. 15.74 lakh on which tax of Rs. 2.67 lakh including interest was leviable.

After this was pointed out, the department stated in July 2006 that in one case Rs. 1.37 lakh was realised in May 2006. Reply in other cases has not been received (October 2006).

The cases were reported to Government in February 2006 followed by reminder in June 2006; their reply has not been received (October 2006).

2.13 Loss of revenue due to non conducting cross verification of transactions

Under CST Act read with Rules made thereunder, interstate sale of goods, other than declared goods, to registered dealers are taxable at the rate of four *per cent* if such sales are supported by prescribed declaration form furnished by purchasing dealers. Otherwise, tax is leviable at the rate of 10 *per cent* or at the rate of tax applicable under State Act whichever is higher. In addition, interest at the prescribed rate is also leviable. The Commissioner of Taxes, Assam vide circular⁴ of May 1999 instructed the assessing authority to cross verify transactions made with registered dealers of north eastern states particularly Arunachal Pradesh and Mizoram.

⁴ Circular No. CV-4/97/161 (Circular No. 14/99) dated 6 May' 1999

2.13.1. Test check of records of Superintendent of Tax, Unit 'B' revealed between October and December 2004 that while finalising the assessments of two dealers for the year 1999-2000 and 2000-01 in December 2001, January 2002 and April 2002 concessional rate of tax of four *per cent* was levied on turnover of Rs. 2.20 crore. Cross verification by audit with the records of Commissioner of Taxes, Mizoram revealed that registration certificate of one dealer was cancelled on 2 May 1997 whereas in the case of other dealer there was no such dealer in existence. This resulted in evasion of tax of Rs. 30.86 lakh including interest.

After this was pointed out, the department stated in July 2006 that demand notice for Rs. 22.76 lakh in one case was issued in June 2006. However report on realisation is awaited. Reply in other case has not been received (October 2006).

The cases were reported to Government in January 2006 followed by reminder in June 2006; their reply has not been received (October 2006).

2.13.2. Similarly, while finalising the assessments of another two dealers for the year 2000-01 in April 2002, the AOs levied tax at concessional rate on turnover of Rs. 1.82 crore supported by form 'C'. Cross verification of records with Commissioner of Tax, Mizoram, revealed that the purchasing dealers had actually purchased goods valued at Rs. 17.51 lakh against these declaration forms. This resulted in evasion of tax of Rs. 17.63 lakh including interest on turnover of Rs. 1.64 crore. Failure of AOs to cross verify the transactions resulted in loss of revenue of Rs. 17.63 lakh including interest.

The cases were reported to the department and Government in January 2006 followed by reminder in June 2006; their reply has not been received (October 2006).

2.14	Non/short levy of tax
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As per CST Act, interstate sales made to registered dealers or to a Government department supported by declaration in form C or D are taxable at the rate of four *per cent*. Otherwise, tax is payable by the dealer at the rate of 10 *per cent* or at the rate applicable under the State Act whichever is higher. Furnishing of form 'C'/'D' has been made mandatory with effect from 11 May 2002.

Test check of assessment records of five⁵ sales tax offices revealed in between April 2004 and December 2005 that the AOs finalised the assessment of 13 dealers for the years 2002-03 and 2003-04 between June 2003 and March 2005. The dealers were engaged in sale of goods in course of inter state trade or commerce. While finalising the assessments, the AOs did not levy or levied short tax on interstate sales turnover of Rs. 28.58 crore which were not

⁵ Guwahati Unit-A, Unit-B, Unit-D, Dibrugarh and Tinsukia

supported by declarations in form C or D as the dealers were exempted from payment of tax under Industrial (Sales Tax) Concession Scheme, 1997. The exemption allowed from payment of tax was irregular as the inter state sales were not supported by required forms which were mandatory. This resulted in non/short levy of tax of Rs. 3.34 crore. Besides, interest of Rs. 1.47 crore was also leviable.

After this was pointed out, the department stated in July 2006 that demand notice for Rs. 9.40 lakh in three cases was issued. However report on realisation is awaited. Reply in other cases has not been received (October 2006).

The cases were reported to Government in January-March 2006 followed by reminder in June 2006; their replies have not been received (October 2006).

2.15 Incorrect grant of exemption

Under the CST Act, when any dealer claims exemption of tax in respect of any goods by reason of transfer of such goods to any other place of his business out of the State, he may furnish to the AO, a declaration in form 'F' duly filled in and signed by the transferee, along with the evidence of despatch of such goods failing which tax at the prescribed rate is to be charged. Further, as per amended provision of CST Act, declaration form 'F' is mandatory with effect from 11 May-2002.

Test check of assessment record of four⁶ superintendents of taxes revealed in January – December 2005 that the AOs while finalising assessments between September 2003 and April 2005 of five dealers for the years 2002-03 and 2003-04 exempted them from payment of tax on account of goods transferred by dealers to place of their business outside the state. Scrutiny of the assessment records, disclosed that stock transfer were not supported by form 'F'. Incorrect allowance of exemption resulted in short levy of tax of Rs. 1 crore including interest of Rs. 0.36 crore.

After this was pointed out, the department stated in July 2006 that demand notice for Rs. 16.60 lakh was issued in one case. However report on realisation is awaited. Reply in other cases has not been received (October 2006).

The cases were reported to Government in March 2006 followed by reminder in June 2006; their replies have not been received (October 2006).

⁶ Dhubri, Dibrugarh, Doomdoma and Jorhat

2.16 Non registration of dealers under CST Act

Under the CST Act, every dealer making interstate sale or transfer of goods is required to get himself registered.

Test check of assessment records of Superintendent of Taxes, Barpeta Road revealed in September 2005 that the AO while finalising assessments under the AGST Act between November 2003 and August 2004 of three dealers for the year 2002-03 levied purchase tax on declared goods of Rs. 2.17 crore which were transferred out of the state. Cross verification by audit revealed that these dealers were not registered under the CST Act and these goods were not covered by form 'F' which is mandatory. Thus, non registration of dealers resulted in non realisation of tax and interest of Rs. 13.13 lakh.

The case was reported to the department and Government in February 2006 followed by reminder in June 2006; their replies have not been received (October 2006).