

## **CHAPTER-II -COMMERCIAL TAX**

### **2.1 Result of audit**

Test check of assessment cases and other records relating to Commercial Tax Department during the year 2005-06 revealed under assessment, non/ short levy of tax, interest, penalty, application of incorrect rate of tax etc. involving Rs.19.70 crore in 263 cases which can broadly be categorised as under:-

*(In crore of rupees)*

<b>Sl. No.</b>	<b>Category</b>	<b>Number of cases</b>	<b>Amount</b>
1.	Non/ short levy of tax	122	3.74
2.	Application of incorrect rate of tax	18	0.78
3.	Incorrect determination of taxable turnover	07	0.45
4.	Incorrect grant of exemption/ deduction/ set off	21	2.55
5.	Others	95	12.18
	<b>Total</b>	<b>263</b>	<b>19.70</b>

During the year 2005-06, the department accepted under assessment of Rs.0.32 crore in two cases.

A few illustrative cases involving Rs.4.29 crore are mentioned in the succeeding paragraphs:

## **2.2 Application of incorrect rate of tax**

As per Central Sales Tax Act (CST Act), 1956, every registered dealer who in the course of inter state trade or commerce sells goods to a registered dealer, shall be liable to pay tax at the rate of four *per cent* subject to production of declaration in form C. Otherwise, tax shall be calculated at the rate of eight *per cent* in case of declared goods and at the rate of 10 *per cent* or at the rate applicable to sale of such goods inside the appropriate State whichever is higher.

Test check of records of the regional offices (RO), Bilaspur and Korba revealed that two dealers sold coal and machinery parts amounting to Rs.8.20 crore during the years 1997-98 and 2000-01 in course of inter State trade or commerce and paid tax of Rs.32.74 lakh at the rate of four *per cent* on the strength of declaration forms issued by the purchasing dealers. The assessing authority (AA) accepted the same and assessed the dealers between March 2003 and September 2004. Scrutiny of records, however, revealed that the purchasing dealers were not registered under the CST Act during the period of transaction. The entire turnover of both the dealers was, thus, covered by invalid declaration forms and was liable to tax at the prescribed rate. This resulted in short levy of tax of Rs.34.15 lakh.

The matter was reported to Commissioner and Government between July 2005 and February 2006; their reply had not been received (October 2006).

## **2.3 Non levy of purchase tax**

Chhattisgarh Commercial Tax Act, 1994 (CGCT Act) and rules/notifications issued thereunder, provide for levy of purchase tax on purchase of raw material, incidental goods purchased without payment of tax for consumption or use in the manufacture of goods. It was judicially held<sup>9</sup> by M.P. Board of Revenue, that exemption from sales tax will not exempt the goods from levy of purchase tax.

**2.3.1** Test check of records of RO, Durg revealed that in case of two manufacturers assessed in December 2003 and February 2004 for the period 1999-2000 and 2000-01, raw material amounting to Rs.4.05 crore was purchased from registered dealers without payment of tax for use in manufacture of MS pipe and machinery parts. Purchase tax of Rs.16.18 lakh leviable on raw materials was not levied.

After this was pointed out in December 2005, the AA replied in one case that raw material was purchased from exempted unit, therefore, purchase tax was not leviable. The reply was not tenable as sales tax and purchase tax are two different types of taxes and exemption from sales tax does not exempt the goods from levy of purchase tax as per judicial pronouncement *ibid*. Reply in other case was awaited (October 2006).

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<sup>9</sup> *Govind Prasad Agrawal v. STO (1997) 30 VKN 13 (MP) and Hindustan Steel Ltd. v. CST (1996) 29 VKN 267 (MP)*

The matter was reported to commissioner and Government in April 2006; their reply had not been received (October 2006).

**2.3.2** Test check of records of RO, Raigarh revealed in November 2005 that in the case of a dealer assessed in November 2002 for the period from April 1999 to March 2000, purchase tax leviable on rice bran valued at Rs.4.55 crore bought from unregistered dealers and consumed in production upto December 1999, was not levied. This resulted in non levy of purchase tax of Rs.20.94 lakh.

After this was pointed out, the AA stated in November 2005 that rice bran was tax free. Reply was not tenable as bran was made tax free only with effect from 1 January 2000 and purchase tax was thus leviable.

The matter was reported to the department and Government between January 2006 and May 2006; their reply had not been received (October 2006).

#### **2.4 Incorrect exemption from payment of tax**

**2.4.1** As per Exemption Scheme 1986 and 1994, tax exemption exceeding Rs.5 lakh in a year is available to a dealer provided a certificate of chartered accountant showing production in the unit is produced before the AA.

Test check of records of RO, Durg and circle office Korba revealed that in case of three dealers assessed between May 2003 to January 2004 for the period 1990-91 and 2000-2001, tax exemption of Rs.59.93 lakh was allowed to the dealers without production of certificate of chartered accountant as required. This led to incorrect grant of tax exemption of Rs.59.93 lakh.

After this was pointed out between May 2005 and December 2005 the AA replied in one case that exemption was correctly allowed as per eligibility certificate. The reply was not tenable as it was not in accordance with the terms and conditions of the exemption scheme. Reply in other cases was awaited (October 2006).

The matter was reported to commissioner and Government in July 2005 and January 2006; their reply had not been received (October 2006).

**2.4.2** Under Madhya Pradesh General Sales Tax Act (MPGST), 1958 and notifications issued thereunder (as adopted), an industrial unit is entitled for exemption from payment of tax on manufactured products specified in the eligibility certificate issued under tax exemption scheme.

Test check of records of RO, Bilaspur and Durg revealed that in case of two dealers assessed between October 2002 and May 2003 for the period from April 1999 to March 2001 sale of manufactured products\*, aggregating to Rs.10.63 crore was exempted from payment of tax though these products were not specified in their eligibility certificates. This resulted in irregular exemption of tax of Rs.69.83 lakh.

After this was pointed out AA, Durg stated in one case that exemption was correctly allowed in terms of eligibility certificate as amended in July 2002 and

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\* *Ferro manganese, Soyabean/ Mahua oil, Soyabean/ Mahua deoiled cake*

remand order passed in October 2003. Reply of the AA, Durg was not tenable as the amendment of eligibility certificate and remand order were passed in July 2002 and October 2003 respectively whereas the transactions pertained to the years 1999-2000 and 2000-01. Reply of AA Bilaspur is awaited (October 2006).

The matter was reported to commissioner and Government between July 2005 and January 2006; their reply had not been received (October 2006).

**2.4.3** Under MPGST Act (as adopted) and CGCT Act and notifications issued thereunder, a new industrial unit holding eligibility certificate duly issued by the Industry Department shall be entitled for exemption from payment of tax, if, commercial production of the unit commenced on or after 6 May 1994. Thus, new industrial unit which commenced commercial production before the above prescribed date shall not be eligible for exemption from payment of tax.

Test check of records of RO, Raipur revealed in December 2005 that an industrial unit holding eligibility certificate disclosed turnover of Rs.1.41 crore for the period from 1999 to 2000 and claimed exemption on the entire turnover under exemption scheme 1994. The AA allowed the exemption and assessed the dealer accordingly in November 2002. Further scrutiny, however, revealed that the unit actually started commercial production on 19 March 1994 which was prior to the date prescribed in the scheme. Exemption of tax of Rs.6.62 lakh allowed in this case was, thus, inadmissible.

After this was pointed out, the AA stated that eligibility certificate is binding on the AA in view of various court judgments. The reply is not tenable as the AA failed to take up the matter with Industries Department when it was apparent from records that exemption granted in the eligibility certificate was irregular.

The matter was reported to the department and Government in January 2006 and May 2006; their reply had not been received (October 2006).

## **2.5 Short levy of tax**

**2.5.1** As per CGCT Act read with Rules made thereunder, sale of goods enlisted in schedule II of the Act by a registered dealer to another registered dealer for use by him in the manufacture or processing of goods for sale is taxable at concessional rate of four *per cent* subject to the production of declaration as specified.

Test check of records of RO, Bilaspur and Korba revealed between May and June 2005 that in case of two dealers assessed in January 2003 and September 2003 for the period between April 1999 and March 2001, sale of lime and timber amounting to Rs.1.47 crore was not supported by prescribed declaration forms. Tax on such sale was however, incorrectly levied at concessional rate of four *per cent* against tax leviable at the rate prescribed. This resulted in short levy of tax Rs.9.48 lakh.

After this was pointed out the AA, Korba replied in one case that tax on lime was four *per cent* and declaration was not required. The reply was not tenable as sale

of lime without declaration form was taxable at the rate prescribed including surcharge. Reply from AA, Bilaspur is awaited (October 2006).

The matter was reported to commissioner and Government in July 2005; their reply had not been received (October 2006).

**2.5.2** As per notification dated 4 December 1997, goods manufactured by a registered dealer in his new industrial unit in respect of which he holds an eligibility certificate are exempted from payment of tax provided sale thereof is supported by declaration as prescribed in the notification.

Test check of records of RO, Durg revealed in August 2005 that in case of a dealer assessed in September 2003 for the year 2000-01 exemption from payment of tax was allowed on sale of coal of Rs.83.12 lakh, though the sale was not supported by prescribed declaration. This resulted in short levy of tax of Rs.6.44 lakh.

The matter was reported to the commissioner and Government in January 2006; their reply had not been received (September 2006).

## **2.6 Incorrect deduction of turnover**

Under CGCT Act and rules made thereunder, taxable turnover is determined after allowing admissible deductions. Every dealer is required to maintain a correct account of his transactions and pay tax accordingly. Further, it was judicially held by Madras High Court<sup>#</sup> in July 1973 that discount paid at the end of the year cannot be termed as cash discount.

Test check of records of RO, Bilaspur in May 2005 revealed that a dealer disclosed taxable turnover of Rs.41.44 crore for the period between April 2002 and March 2003. Of this, the dealer claimed exemption of Rs.51.76 lakh (including tax) on account of discount given to the purchaser at the end of the year as cash discount. The AA accepted the same and assessed the dealer accordingly in October 2003. Since discount allowed at the end of the year cannot be termed as cash discount as per judicial pronouncement referred to above, exemption allowed was irregular and resulted in short levy of tax of Rs.5.55 lakh.

The matter was reported to the department and Government between July 2005 and May 2006; their reply had not been received (October 2006).

## **2.7 Non realisation of tax as taxable goods were treated as tax free**

**2.7.1** CGCT Act and notifications issued thereunder specify the rates of commercial tax on sale of different commodities. Tax on rice bran, being non specified item was leviable at the rate of 9.2 *per cent* including surcharge upto 31 December 1999. Rice bran was however, exempted with effect from 1 January 2000.

Test check of records of two ROs, Raipur and Raigarh revealed in November and December 2005 that 58 dealers sold rice bran (*kanda*) valued at Rs.5.52 crore

<sup>#</sup> *M/S India Piston Ltd. V/s State of Tamil Nadu- (1974) 33 STC 472 (MAD)*

during the period from April 1999 to December 1999 and claimed exemption on the entire turnover. The AA allowed the same and assessed the dealers accordingly between April 2002 and March 2003. This resulted in non realisation of tax of Rs.50.80 lakh.

After this was pointed out, both the AAs stated in December 2005 that rice bran is tax free. The reply was not tenable as rice bran was made tax free with effect from 1 January 2000 only and not from earlier date.

The matter was reported to the department and Government between January 2006 and May 2006; their reply had not been received (October 2006).

**2.7.2** As per provision of CGCT Act read with CST Act, tax on sale of deoiled rice bran as cattle feed was leviable at the rate of two *per cent* between April 1999 and December 1999 and four *per cent* between January 2000 and March 2000.

Test check of records of RO, Raipur in December 2005 revealed that a dealer sold deoiled rice bran valued at Rs.3.51 crore during the period between April 1999 and March 2000 and claimed exemption on the aforesaid sales. The AA also accepted the same and assessed the dealer in October 2002 which was irregular. This resulted in non realisation of tax of Rs.9.82 lakh.

After this was pointed out, the AA stated in December 2005 that rice bran and deoiled rice bran are the same commodities and it is tax free. The reply was not tenable as the Act provides that deoiled rice bran is taxable as cattle feed.

The matter was reported to the department and Government in January 2006 and April 2006; their reply had not been received (October 2006).

## **2.8 Incorrect deduction of turnover on account of tax paid goods**

As per CGCT Act, tax paid goods means any goods specified in Schedule-II which have been purchased by a dealer from a registered dealer inside the State.

Test check of records of Circle Office (III) Durg revealed in January 2006 that in case of a dealer assessed in February 2004, for the period between April 2000 and March 2001 exemption of tax was incorrectly allowed on sale of liquefied petroleum gas (LPG) valued at Rs.65.99 lakh purchased from Madhya Pradesh State after 1 November 2000 i.e. after formation of Chhattisgarh State. This resulted in short levy of tax of Rs.9.11 lakh.

The matter was reported to the department and Government between April 2006 and May 2006; their reply had not been received (October 2006).

## **2.9 Incorrect grant of refund/ non forfeiture of excess collected tax**

Under CGCT Act, and Rules made thereunder, any amount collected by any person by way of tax or in any other manner not payable under provisions of this Act, shall be liable to forfeiture to State Government. Further, it was judicially held by the Hon'ble Supreme Court<sup>Y</sup> that only the person who ultimately bore the

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<sup>Y</sup> *State of Madhya Pradesh v/s Vyankat Lal and others (1987) 20, VKN-53*

liability to pay tax is entitled to claim refund thereof. Allowing refund to a dealer or middleman who had only passed on the burden to other would amount to unjust benefit.

Test check of records of AAs, Bilaspur, Durg and Korba between May and December 2005 revealed that in case of four dealers assessed between May 2002 and February 2004 for the years 1999-2000 and 2000-01, excess tax of Rs.84.54 lakh was collected and deposited with Government. Instead of forfeiting the excess tax collected as per provision of the Act, the AAs while finalising the assessments refunded the same to the dealers. This resulted in non forfeiture of tax of Rs.84.54 lakh.

After this was pointed out, AAs Durg and Korba stated between June and December 2005 that the tax collected by dealers was passed on to the purchasers by dealers through credit notes. The reply was not tenable as refund of tax was admissible to the purchasers from whom it was wrongly collected. Thus, refund of excess tax to the dealer was against the spirit of the Act and Apex Court's directions cited above. In other two cases, AA Bilaspur stated in May 2005 that out of refund of Rs.6.19 lakh, an amount of Rs.3.39 lakh would be treated as Government subsidy as decided by the Board of Revenue<sup>f</sup>. The reply was not tenable as the decision of the Board related to non levy of penalty for excess collection of tax and was, thus, not applicable in the instant case. Forfeiture of excess collected tax was to be made under provision of Act referred above. No reply was received for non forfeiture of the balance amount.

The matter was reported to the department and Government in July 2005 and in May 2006; their reply had not been received (October 2006).

### **2.10 Incorrect deduction of credit notes**

As per provision of CGCT Act, sale price means the amount payable to a dealer as valuable consideration for the sale of any goods less any sum allowed as cash discount. Tax due from a registered dealer shall be assessed separately for each year. It was judicially held<sup>\*</sup> by the Board of Revenue that deduction for credit notes can be claimed in the year in which the related sales have been made.

Test check of records of RO, Korba revealed in June 2005 that in case of an iron and steel dealer assessed in December 2002 for the period 1999-2000, credit notes of Rs.3.62 crore issued to the customers during the year 1998-99 were irregularly claimed as deduction from the turnover. Since these credit notes related to the previous year, deduction of the same was incorrect resulting in short levy of tax of Rs.16.65 lakh<sup>δ</sup>.

After this was pointed out, the AA stated that deduction was not made from gross sales. The reply was not tenable as the gross turnover was disclosed by the dealer

<sup>f</sup> *M/s Surana Traders Indore V/s Commissioner Sales Tax, Madhya Pradesh . (1991)24-VKN-715 dated 19.7.91.*

<sup>\*</sup> *Western coal field V/s CST (1993)11 TLD 285 (MP Board)*

<sup>δ</sup> *Calculated at the rate of 4.6 per cent on Rs. 3.62 crore*

after deducting the amount of credit notes. Further reply is awaited (October 2006).

The matter was reported to the commissioner and Government in July 2005; their reply had not been received (October 2006).

### **2.11 Incorrect waiver of interest**

Under provision of CGCT Act, if a dealer fails to deposit the amount of tax payable by him in time without sufficient cause, he shall be liable to pay interest at the rate of two *per cent* per month from the date the tax became payable to the date of its payment or to the date of order of assessment whichever is earlier.

Test check of records of the RO, Bilaspur revealed that a dealer deposited interest for delayed payment amounting to Rs.5.94 lakh alongwith payment of admitted tax for the year 1999-2000. Although no provision existed in the Act for waiver of interest, the AA waived the interest while finalising the assessment in February 2004. This resulted in irregular waiver of interest of Rs.5.94 lakh.

The matter was reported to commissioner and Government (July 2005); their reply had not been received (October 2006).

### **2.12 Non levy of penalty**

As per provision of CGCT Act read with Rules made thereunder, every registered dealer shall issue bill, cash memo or invoice recording a statement by affixing a rubber stamp that goods sold are manufactured by industrial unit holding eligibility certificate/eligible for exemption and are exempt from payment of tax. In case of contravention of provisions relating to affixation of seal, the dealer shall be liable to penalty equal to two times the amount of tax payable on such goods.

Test check of records of RO, Durg and Circle Office, Korba revealed between June and December 2005 that in case of two dealers assessed in November 2003 and January 2004 for the period 2000-01, goods sold on bills/invoices were exempted from payment of tax being manufactured by industrial units holding eligibility certificates under exemption scheme, but the dealers did not record requisite statements by affixing rubber stamp on bills/invoices. For contravention of provision of the Act, the dealers were liable to pay minimum penalty of Rs.12.54 lakh equal to two times of the amount of tax of Rs.6.27 lakh for which no proceedings were initiated by the department.

The matter was reported to commissioner and Government in July 2005 and January 2006; their reply had not been received (October 2006).

### **2.13 Non recovery of professional tax**

As per provision of Professional Tax Act 1995, every person who carries on a trade either himself or by an agent or representatives or who follows a profession or calling other than agriculture or who is in employment either wholly or in part in Chhattisgarh shall be liable to pay professional tax at the rate prescribed.



Cross verification of records of 17 commercial tax officers\* with the list of licensees of liquor, cinema houses, video and cable operators provided by the Excise Department for the years 2001-02 to 2005-06 revealed that 974 liquor licensees, 374 licensees of cinema houses, 421 video licensees and 1,479 licensees of cable operators were unregistered. As a result professional tax amounting to Rs.52.70 lakh remained unrealised<sup>Σ</sup>.

The matter was reported to the commissioner and Government in May 2006. Reply has not been received (October 2006).

#### **2.14 Short levy of entry tax due to under valuations of goods**

As per Madhya Pradesh Entry Tax Act, 1976 (MPET Act) (as adopted), value of goods in relation to a dealer who has effected entry of goods into a local area shall mean the market value of such goods if they have been acquired or obtained otherwise than by way of purchase. The “market value” denotes the value of goods normally receivable on sale of such goods in the open market during the relevant period.

Test check of records of RO, Korba revealed in June 2005 that in case of a dealer assessed in December 2003 for the period 2000-01, the AA determined market value of 2.47 lakh MT bauxite at Rs.17.40 crore at the rate of Rs.703.90 per MT raised from own mines and levied entry tax accordingly. Cross verification of records however, revealed that during the aforesaid period market value of bauxite purchase by the dealer from market was Rs.871.30 MT. This resulted in under valuation of purchase value of bauxite amounting to Rs.4.14 crore at differential market rate of Rs.167.40 per MT with consequent short levy of entry tax of Rs.41.39 lakh.

After this was pointed out, the AA stated in June 2005 that the assessment and valuation of goods was done as per decision of the M.P. Board of Revenue delivered in 1987. The reply was not tenable, as market value was to be determined in relation to the dealer who effected entry of goods into local area and the decision of the board cited by the AA was not applicable in this case. Moreover, market value of bauxite at Rs.871.30 per MT i.e. price at which the dealer procured bauxite from within and outside the state during the same year was available in the case records of the dealer itself.

The matter was reported to the commissioner and Government (May 2006); their reply had not been received (October 2006).

#### **2.15 Non levy of entry tax**

Under MPET Act (as adopted) and notifications issued thereunder, entry tax is leviable on goods entering into local area for sale, use, or consumption as raw material or as incidental goods or as packing material at the rate specified in Schedule. Being a schedule III item, entry tax on rice bran consumed in the manufacturing process is leviable at the rate of one *per cent*.

\* CTO Raipur (5), CTO Durg (3), CTO Raigarh (1), CTO Bilaspur (2), CTO Korba (1), CTO Dhamtari (1), CTO Jagdalpur (1), Dantewara, Kanker, CTO Ambikapur (1), CTO Mahasamund (1), CTO Korea (1), Jashpur

Σ Professional tax ranged between Rs.1,000 and Rs.2,500 per annum

Test check of records of the RO, Raigarh revealed in November 2005 that in case of a dealer assessed in November 2002 for the period April 1999 to December 1999, entry tax on rice bran though leviable was not levied. This resulted in non levy of entry tax of Rs.4.55 lakh on purchase value of Rs.4.55 crore of rice bran consumed in production.

After this was pointed out, the AA stated in November 2005 that rice bran is tax free as per Schedule-I of Commercial Tax Act. The reply was not tenable as bran was brought to the nontaxable category in Schedule-I with effect from 1 January 2000 only.

The matter was reported to the department and Government in January 2006 and May 2006; their reply had not been received (October 2006).