

## CHAPTER II - COMMERCIAL TAX

### 2.1 Results of audit

Test check of the records of the Commercial Tax Department conducted during the year 2006-07 revealed underassessment, non/short levy of tax, interest, penalty, application of incorrect rate of tax etc. amounting to Rs. 18.09 crore in 176 cases, which broadly fall under the following categories:

(Rupees in crore)

Sl. No.	Category	Number of cases	Amount
1.	Non/short levy of tax	78	10.99
2.	Incorrect grant of exemption/deduction/ set off	31	2.73
3.	Application of incorrect rate of tax	10	1.58
4.	Other irregularities	57	2.79
<b>Total</b>		<b>176</b>	<b>18.09</b>

During the year 2006-07, the department accepted underassessment of tax of Rs. 11.05 crore in 97 cases.

A few illustrative cases involving revenue of Rs. 2.11 crore highlighting important audit findings are mentioned in the following paragraphs.

## **2.2 Short levy of tax on furnace oil**

According to Section 9 of the Chhattisgarh Commercial Tax Act<sup>5</sup>, 1994 (CGCT Act), commercial tax on light diesel oil (LDO) is leviable at 12 *per cent*. The MP Commercial Tax Tribunal in May 1999 had held that furnace oil was covered in the entry relating to LDO.

Test check of the records of the Commissioner, Commercial Tax (technical wing), Raipur in August 2006 revealed that the assessing officer (AO) while finalising the assessment in January 2005 of a dealer engaged in sale of petrol, diesel, kerosene oil, furnace oil for the period April 2001 to March 2002, levied tax on furnace oil at eight *per cent* instead of 12 *per cent*. This resulted in short realisation of tax of Rs. 95.02 lakh including surcharge.

After the case was pointed out, the AO stated in August 2006 that furnace oil and LDO were different commodities and furnace oil being a non-specified item was taxable at eight *per cent*. The reply is not tenable in view of the aforesaid decision of the MP Commercial Tax Tribunal.

The matter was reported to the Government in March 2007; their reply has not been received (November 2007).

## **2.3 Non-levy of interest**

Under the provisions of the CGCT Act, if a dealer fails to pay the amount of tax payable according to a return for any period in the manner prescribed under sub-section (2) of Section 32 without sufficient cause such dealer shall be liable to pay interest at two *per cent* per month in respect of the tax payable by him from the date the tax payable falls due, to the date of its payment.

Test check of the records of the Commissioner, Commercial Tax (technical wing), Raipur in August 2006 revealed that two dealers paid admitted tax of Rs. 57.69 lakh for the year 2002-03 after delays ranging between one and 32 months. The AO while finalising the assessments of the dealers in November 2005, did not levy interest of Rs. 35.77 lakh for the delayed payment of tax.

After the cases were pointed out, the department stated in August 2006 that none of the provisions for payment of interest were applicable. The reply is not tenable as the CGCT Act stipulates payment of interest for delayed payment of tax.

The matter was reported to the Government in January 2007; their reply has not been received (November 2007).

---

<sup>5</sup> The Government of Chhattisgarh adopted the Madhya Pradesh (MP) Commercial Tax Act, 1994.

## **2.4 Short levy of tax**

Under the provision of the CGCT Act, commercial tax on machines, machinery, machine parts etc. is eight *per cent* and on hair oil is 15 *per cent*. In addition, surcharge at the rate of 15 *per cent* is also leviable.

**2.4.1** Test check of the records of the Commissioner, Commercial Tax (technical wing), Raipur in August 2006 revealed that in case of a dealer assessed in December 2004 for the period from April 2001 to March 2002, commercial tax on the turnover of Rs. 1.52 crore on machines, machinery, machine parts etc. was levied at four instead of eight *per cent*. This resulted in short levy of commercial tax of Rs. 6.70 lakh including surcharge.

The matter was reported to the department and the Government in December 2006; their reply has not been received (November 2007).

**2.4.2** Test check of the records of the Commissioner, Commercial Tax (technical wing), Raipur revealed that in case of a dealer assessed in November 2005 for the year 2003-04, the AO assessed tax on turnover of Rs. 47.12 lakh pertaining to the sale of hair oil at 12 *per cent* though it was assessable to tax at the rate of 15 *per cent*. This resulted in short levy of commercial tax of Rs. 2.11 lakh including surcharge and interest.

After the case was pointed out, the department stated in July 2006 that hair oil was taxable at 12 *per cent* vide entry no. 49 of Schedule II, as the item "hair oil" was deleted from entry no. 41 vide notification dated 5 April 2002. The reply is not tenable as according to the notification of April 2002, hair oil was not excluded from entry no. 41 and was taxable at 15 *per cent*.

The matter was reported to the department/Government in March 2007; their reply has not been received (November 2007).

## **2.5 Non-levy of commercial tax**

According to the provisions of the CGCT Act, commercial tax on pumps was leviable at eight *per cent*. Pumping sets upto three HP were exempted from tax upto 9 August 2001 and, thereafter, tax was leviable at four *per cent*<sup>s</sup>.

Test check of the records of the Commissioner, Commercial Tax (technical wing), Raipur in July 2006 revealed that the dealer dealing in sale of pumps, pump sets etc. was assessed in January 2005 for the period from April 2001 to March 2002. Commercial tax on sale of pumps upto three HP valued as Rs. 80.66 lakh was not levied though, as per the CGCT Act, tax on such goods was leviable at eight *per cent*. This resulted in non-levy of commercial tax of Rs. 7.42 lakh.

After the case was pointed out, the department stated in July 2006 that pumps upto three HP were exempt from tax for the period 1 April 2001 to 9 August 2001<sup>s</sup>. The reply is not tenable as the said notification

---

<sup>s</sup> Notification no. 22 dated 29 March 2000

exempted “pumping sets” upto three HP from tax and not “pumps” upto three HP as contended.

The matter was reported to the Government in December 2006; their reply has not been received (November 2007).

## **2.6 Incorrect computation of tax**

Under the provisions of the CGCT Act, if any turnover of a dealer has escaped assessment, the Commissioner may, at any time within five calendar years from the date of order of the assessment, proceed to reassess the tax payable by the dealer. Commercial tax on timber is leviable at 12 *per cent*.

Test check of the records of the Commissioner, Commercial Tax (technical wing), Raipur in August 2006 revealed that a dealer sold timber worth Rs. 2.88 crore during the period from April 2003 to March 2004 for which tax and surcharge of Rs. 34.86 lakh was payable. The AO while finalising the assessment of the dealer in October 2005 incorrectly levied tax and surcharge of Rs. 28.75 lakh. Thus, incorrect computation of tax resulted in short realisation of tax and surcharge of Rs. 6.11 lakh.

After the case was pointed out, the AO while accepting the audit observation stated in August 2006 that reassessment would be made under Section 28(1). Further report has not been received (November 2007).

The matter was reported to the Government in January 2007; their reply has not been received (November 2007).

## **2.7 Short realisation of tax due to inadmissible deduction from gross turnover**

Under the provisions of the CGCT Act, taxable turnover of a dealer is worked out after allowing the prescribed deductions from the gross turnover of the dealer.

Test check of the records of the Commissioner, Commercial Tax (technical wing), Raipur in August 2006 revealed that the AO while assessing a dealer engaged in manufacture and sale of refractory/silica bricks for the assessment year 2003-04, allowed deduction of Rs. 44.46 lakh for payment of income tax and printing of tender forms. These deductions are inadmissible under the provisions of the CGCT Act. This resulted in short realisation of tax of Rs. 4.09 lakh including surcharge.

The matter was reported to the department and the Government in January 2007; their reply has not been received (November 2007).

## **2.8 Non-levy of penalty**

Under the provisions of the CGCT Act, any registered dealer purchasing goods exempted in whole or in part from payment of tax, shall furnish a declaration to the effect that goods purchased are specified as raw material and are for use by him for manufacture of other goods and

goods to be manufactured are for sale in the course of interstate trade or commerce or in the course of export out of the territory of India. In case of non-compliance with the above declarations, the dealer shall be liable to pay the difference between the tax already paid at the time of the purchase of goods and the tax payable on sale at the rate mentioned in schedule II of the CGCT Act. Besides, he shall also be liable to pay the minimum penalty equal to 25 *per cent* of the tax payable.

Test check of the records of the Commissioner, Commercial Tax (technical wing), Raipur in August 2006 revealed that during the period April 2002 to March 2003, a dealer engaged in the manufacture of iron and steel, sold goods valued at Rs. 7.01 crore within the State of Chhattisgarh. The goods were manufactured out of raw material purchased at concessional rate of tax against declaration and he claimed exemption from payment of tax. Since the goods manufactured out of the raw material purchased at concessional rate were to be sold in the course of interstate trade or in the course of export out of the territory of India to avail of such exemption, the AO rejected the claim and levied tax of Rs. 14.02 lakh at the differential rate but did not levy the minimum penalty of 25 *per cent* of the tax payable. This resulted in non-levy of penalty of Rs. 3.51 lakh.

The matter was reported to the department and the Government in January 2007; their reply has not been received (November 2007).

## **2.9 Incorrect application of rate of tax**

According to the CGCT Act read with schedule II, commercial tax on craft paper is leviable at eight *per cent*.

Test check of the records of the Assistant Commissioner, Commercial Tax, Raipur in February 2007 revealed that the AO while assessing a dealer engaged in manufacture and sale of craft paper in June 2003 for the period from April 2000 to March 2001, levied commercial tax at the rate of four instead of eight *per cent* on the sale of craft paper valued as Rs. 57.88 lakh. This resulted in short levy of tax of Rs. 2.66 lakh.

The matter was reported to the department and the Government in May 2007; their reply has not been received (November 2007).

## **2.10 Short levy of entry tax**

Under the provisions of the Entry Tax (ET) Act, 1976 read with the Central Sales Tax (CST) Act, 1956, entry tax at the rate of 2.5 *per cent* shall be levied on the entry of iron and steel, in the course of business of a dealer, into each local area for consumption, use or sale therein. As per the notification of April 2000, entry tax at concessional rate of 1.5 *per cent* was leviable on iron and steel brought into the local area for consumption or use as raw material in the manufacture of goods not covered by any category of iron and steel specified in the CST Act or for re-sale within the State.

**2.10.1** Test check of the records of the Commissioner, Commercial Tax (technical wing), Raipur in August 2006 revealed that an assessee

engaged in the excavation and sale of coal, imported iron and steel worth Rs. 24.91 crore. The AO while finalising the assessments between April 2004 and December 2005 for the period April 1990 to March 2003, levied entry tax on iron and steel at the concessional rate of 1.5 *per cent*. Since the assessee was engaged in the excavation and sale of coal, and the imported articles were not consumed/used as raw material, levy of tax at concessional rate was irregular. This resulted in short levy of entry tax of Rs. 24.91 lakh.

The matter was reported to the department and the Government in March 2007; their reply has not been received (November 2007).

**2.10.2** Test check of the records of Commissioner, Commercial Tax (Technical wing), Raipur in August 2006 revealed that in case of a dealer assessed in January 2005 for the period April 2001 to March 2002, entry tax was incorrectly levied as one *per cent* on iron and steel worth Rs. 8.68 crore. As the dealer was engaged in power transmission, iron and steel goods (towers and line materials) brought into local area and which was subsequently used in the process of power transmission, entry tax should have been levied at 1.5 *per cent* instead of one *per cent*. This has resulted in short levy of entry tax of Rs. 4.34 lakh.

After the case was pointed out, the department stated that entry tax at 1.5 *per cent* was not levied as the dealer had purchased towers. The reply is not tenable as towers are not covered under the Section 14 of the CST Act.

The matter was reported to the Government in March 2007; their reply has not been received (November 2007).

## **2.11 Irregular grant of exemption of entry tax**

According to Section 3(1)(b) of ET Act, entry tax at one *per cent* shall be levied on the entry of goods in the course of business of a dealer, into each local area for consumption or use of such goods but not for sale therein.

Test check of the records of the Commissioner, Commercial Tax (technical wing), Raipur in July 2006 revealed that entry tax of Rs. 18.25 lakh was levied on an assessee for the import of plant and machinery brought into the local area. The revisional authority (Additional Commissioner of Commercial Tax) in contravention of the provisions of the ET Act, waived the entry tax in November 2004 on the ground that the plant and machinery were not used in the production but were used for the production and hence no entry tax was leviable. The irregular grant of exemption resulted in non-realisation of entry tax of Rs. 18.25 lakh.

After the case was pointed out, the department stated in August 2006 that the grant of exemption of entry tax had been withdrawn and original assessment levying tax of Rs. 18.25 lakh restored. A report on recovery has not been received (November 2007).

The matter was reported to the Government in January 2007; their reply has not been received (November 2007).