

Chapter - II: Sales Tax

2.1 Results of audit

Test check of records relating to sales tax, conducted in audit during the year 2004-05 revealed non assessment/under assessment of tax and other irregularities involving Rs.478.29 crore in 1,420 cases which broadly fall under the following categories:

(Rupees in crore)			
Sl. No.	Categories	No. of cases	Amount
1.	Non/short levy of interest and penalty	13	25.95
2.	Irregular deduction/exemption	72	19.15
3.	Application of incorrect rate and mistake in computation	49	15.06
4.	Incorrect determination of gross turnover/taxable turnover	52	6.55
5.	Performance appraisal of levy of Sales Tax in respect of Inter State Sales	1	151.61
6.	Other cases	1,233	259.97
Total		1,420	478.29

During the year 2004-05, the department accepted under assessments etc. of Rs.38.57 crore involved in 78 cases and raised additional demand of Rs.38.52 crore pointed out in audit during the year 2004-05 and in earlier years. An amount of Rs.5.11 lakh was realised at the instance of audit.

A few illustrative cases involving Rs.66.81 crore and a performance audit on 'Levy of Sales Tax in respect of inter state sales' with financial implication of Rs.151.61 crore are given in the following paragraphs.

2.2 Performance appraisal of Levy of Sales Tax in respect of Inter State Sales

Highlights

- **Grant of incorrect exemption and concessional rate of tax resulted in short realisation of Government revenue of Rs.11.74 crore.**

(Paragraphs 2.2.8, 2.2.9 & 2.2.10)

- **Grant of incorrect exemption from tax on transfer of goods to places other than those declared in registration certificates resulted in short realisation of tax of Rs.14.55 crore.**

(Paragraph 2.2.14)

- **Grant of exemption on invalid 'F' forms resulted in short realisation of tax of Rs.9.45 crore.**

(Paragraph 2.2.19)

- **Incorrect grant of exemption on inter state sale of Rs.568.36 crore was allowed though there was no proof of movement of goods resulting in loss of Government revenue of Rs.91.61 crore.**

(Paragraph 2.2.21)

- **The internal audit structures were weak and ineffective and afforded no assurance as to whether the provisions of the rules or departmental instructions were being adhered to by the various assessing authorities. The internal audit wing of the department had never conducted any cross verification of statutory forms relating to inter state sales which would have revealed the discrepancies and lacunae which had resulted in loss of revenue to the public exchequer.**

(Paragraph 2.2.7)

Recommendations

- *A system needs to be devised and linkages established for periodic cross verification of the statutory forms on test check basis from the assessment records of the issuing States.*
- *As it may not be possible to detect each and every case of evasion or false declaration, it is necessary that an element of deterrence be*

introduced by way of strict and rigorous imposition of penalties on persistent defaulters.

- *There should be no deviation from the rules and regulations governing inter state sales and assessing authorities should be held accountable for any deviations which may have either resulted in short collection of tax or raised the possibility of such short collection of tax.*
- *The internal audit system in the department needs to be urgently strengthened. Given the fact that over 70 per cent of the revenue of Government of Delhi is contributed by this department alone, the Directorate of Internal Audit should conduct an internal audit exercise in the sales tax department every year covering a certain number of wards/circles in a rotational manner.*

2.2.1 Introduction

The Central Sales Tax Act (CST Act), 1956, read with the Central Sales Tax (Registration and Turnover) Rules, 1957, and the Central Sales Tax (Delhi) Rules, 1957, stipulate that every dealer who in the course of inter state trade or commerce sells to a registered dealer, goods of the class or classes specified in the certificate of registration of the purchasing dealer, shall be liable to pay tax at a concessional rate of tax of four per cent if such purchases are made in the course of inter state sales and are supported by declarations in form 'C'. Further, purchases made in course of inter state trade or commerce by Government, not being a registered dealer, are also to be taxed at concessional rate of tax provided such purchases are supported by a declaration in form 'D.' Transfer of goods claimed otherwise than by way of sale made by a registered dealer to any other place of his business located outside the State is exempt from tax on production of prescribed declaration in form 'F' duly filled in and signed by the principal officer of the other place of his business or his agent as the case may be along with the evidence of despatch of such goods. The administration of these provisions and of ensuring that exemption from payment of sales tax is granted only when it is due and in conformity with the provisions of the Act and Rules framed thereunder is vested in the sales tax department.

2.2.2 Organisational set up

The sales tax department is headed by the Commissioner of Sales Tax who is assisted by four Additional Commissioners and six Deputy Commissioners. There are 10 zones each headed by an Assistant Commissioner and 106 wards headed by Sales Tax Officers to ensure compliance with the provisions of the Delhi Sales Tax Act, 1975 and the CST Act.

2.2.3 Audit objectives

The objectives of the audit appraisal were to:

- evaluate the adequacy, reliability and effectiveness of the system of receipt, issue and use of statutory forms and to detect short payment or evasion of sales tax in inter state sales;
- ascertain whether concessional rate of tax allowed on inter state sales/exemption of tax allowed on branch transfer was in conformity with the provisions of the Act/Rules and duly supported by valid statutory forms; and
- assess whether sufficient internal controls existed to ensure proper use of forms so as to prevent leakage of revenue.

2.2.4 Scope of audit

The audit exercise included check of all assessments with gross turnover of more than Rs.1 crore finalised by the sales tax officers during the years 2001-02 to 2003-04 in 27 out of 106 wards of the sales tax department. These 27 wards were selected on the basis of the tax collection i.e. 15 wards with tax collection ranging from Rs.12 crore to Rs.27 crore, six wards with tax collection ranging from Rs.7 crore to Rs.9 crore and six wards with tax collection ranging from Rs.3 crore to Rs.6 crore to ensure a representative coverage. In addition, all “key dealer units” which dealt with assessment cases of major dealers having tax collection of at least Rs.50 lakh and above were also selected to ensure coverage of all major dealers.

2.2.5 Audit methodology

The audit methodology included:

- scrutiny of the assessment records in the selected wards;
- cross verification of inter state transactions on form ‘C’ above Rs.10 lakh each and form ‘F’ aggregating to Rs.25 lakh per dealer in a financial year with the records in sales tax offices in seven States selected on the basis of volume of inter state sales viz. Haryana, Uttar Pradesh, Rajasthan, Punjab, Himachal Pradesh, Maharashtra and Gujarat;
- cross verification of cases in respect of 15 other States and three Union Territories through the respective State Accountants General; and

- cross verification of form 'D' above Rs.50,000 each with the records of the concerned Government departments.

Internal control

2.2.6 Inadequate system of maintenance of records by Form Branch

Rule 53 of the Delhi Sales Tax Rules, 1975 stipulates that all statutory forms are to be printed at Government press under the authority of the Commissioner. Such forms are obtainable from the Commissioner or his authorised agent on payment of such charges as may be specified by the Commissioner from time to time. It is incumbent upon the department to ensure proper receipt, custody and issue of these forms so as to obviate the possibility of misuse leading to leakage of revenue.

Scrutiny of records relating to the maintenance of records in the office of the Commissioner of Sales Tax, Delhi, for the period 2000-01 to 2002-03 revealed that no action was being taken to properly account for and destroy unused forms or those rendered obsolete for any reason. There was a balance of 3,196 forms under series 12P in the stock register of form 'C' for the year 2002-03. These forms were no longer being used as forms under new series 13P had since been received and were in use.

The total number of defective forms lying with the department was not furnished to audit. However, it was seen that 500 'F' forms (sl.no.02Q 8001101 to 8001500 and 02Q894901 to 895000) were lying unutilised in the Stock Register of 'F' forms for the years 2001-02 and 2002-03 as their serial numbers were found to be defective. No action was taken to either return the defective forms to Government press or to destroy them to prevent their misuse.

Two 'C' forms bearing serial numbers 12P 848000 and 13P 45500 were found missing at the time of issue to the concerned ward which was indicative of improper taking over of stock on receipt from Government press.

'C' & 'F' forms were not being issued in serial order during 2001-02 and 2002-03 which again leaves open the possibility of misuse and makes tracking of forms problematic. For example form numbers 5855001 to 590000 were issued between the period 13 July 2001 to 25 July 2001 whereas form numbers 765001 to 770000 of similar series were issued between 29 June 2001 to 13 July 2001.

It was evident that department did not have any mechanism for periodic review of the stock of forms held by it so as to ensure that old, obsolete, defective or unused forms are either destroyed after obtaining the approval of the competent authority or otherwise secured so as to obviate the possibility of their misuse.

Issue of forms was also defective in as much that serial orders were not being maintained which again left open the possibility of manipulation or misuse.

Government stated in November 2005 that the department had streamlined the system of issuance of forms and they were now being issued in serial order. The procedure for receipt, custody and issue of statutory forms has also been laid down in October 2005. Further, the old, obsolete and unused forms would be disposed off within a month.

2.2.7 Internal audit

The Sales Tax department has an internal audit wing under the charge of the Joint Commissioner (Audit) in the office of the Commissioner of Sales Tax. This wing is to conduct periodic test checks of assessments done by the various assessing authorities so as to ensure adherence to the provisions of the Act and rules as well as departmental instructions issued from time to time.

In addition, the Directorate of Audit under the Finance Department of Government of Delhi is entrusted with the internal audit of all offices/departments of Government of NCT of Delhi including the Sales Tax department.

An appraisal of the functioning of these internal audit structures revealed that there was no evidence of an effective or meaningful internal check being exercised by the department in terms of prescribed procedures, periodicity of audit or accountability. The wing had never conducted any cross verification of statutory forms relating to inter state sales which would have revealed the discrepancies and lacunae which had resulted in loss of revenue to the public exchequer. Further, the Directorate of Internal Audit of the Finance Department had also never conducted an internal audit of the sales tax department during the period under review.

Government stated in November 2005 that the internal audit cell has been strengthened and the department has taken up cross verification of forms. It added that since the Internal audit cell was grossly understaffed, AC/DC/Additional Commissioners had been instructed to pick up some cases disposed off by the assessing authorities and submit monthly reports. This would add another tier to internal audit.

- **Short payment and evasion of tax in inter state sales**

The assessing authorities are required to ensure that concessional rate of tax or exemption of tax on branch transfers are allowed only on the basis of valid statutory forms issued by the respective assessing authorities of the issuing States. An audit appraisal revealed the following:

2.2.8 Grant of exemption/concessional rate of tax on fake forms

Section 4 read with section 8 of the CST Act provides that inter state sales to registered dealers are taxable at a concessional rate of four per cent when such sales are supported by declaration in form 'C.' Exemption of tax is granted in case of branch transfers provided they are supported by declaration in form 'F.' Concealment of sales or furnishing of inaccurate particulars or making false representation attracts interest and penalty not exceeding two and half times the taxable amount in addition to amount of tax payable by the dealers.

Cross verification of 42 'C' & 'F' forms available in assessment records of 19 dealers with records of sales tax offices of other States¹ revealed that form issuing dealers were either non existent or that the forms had not been issued by sales tax offices of States to the purchasing dealers. However, assessing authorities while finalising the assessments in these cases between 2001-02 and 2003-04 allowed concessional rate of tax/exemption from tax on the gross turnover of Rs.11.61 crore. Grant of concessional rate of tax/exemption from tax in these cases on the basis of these fake forms resulted in incorrect exemption of tax of Rs.1.16 crore. In addition, interest of Rs.52 lakh and penalty of Rs.2.90 crore was also leviable in these cases as detailed in appendix-I.

Similarly, three dealers in four cases claimed and were incorrectly allowed concessional rate of tax by three assessing authorities² on their turnover of Rs.2.35 crore on the basis of 'D' forms which were not actually issued by the concerned Government departments. This resulted in under assessment of tax of Rs.14 lakh. In addition, interest of Rs.7 lakh and penalty of Rs.35 lakh was also leviable.

After this was pointed out, the Government stated in November 2005 that the department had issued notices to the dealers seeking their explanations and that the cases would be finalised within three months.

It was added that instructions had been issued in June 2005 for cross verification of statutory forms submitted by dealers for the assessment year 2003-04 onwards and subsequently 86 forms amounting to Rs.37.20 crore were not found issued to the respective purchasing dealers from the concerned States.

2.2.9 Excess exemption claimed by dealers

Rule 4 of the CST (Delhi) Rules, provides that if some adverse material is found by the assessing authority suggesting any concealment of sale or

¹ *Andhra Pradesh; Bihar; Gujarat; Haryana; Himachal Pradesh; Jammu & Kashmir; Kerala; Madhya Pradesh; Maharashtra; Punjab; Rajasthan and Uttar Pradesh.*

² *Ward Nos. 8, 41 and 70*

purchase or furnishing of inaccurate particulars, he may report the matter to the Commissioner for appropriate action. Section 56 of the Delhi Sales Tax Act provides for imposition of penal rate of tax not exceeding two and half times the taxable amount on the dealer in addition to the tax payable in such cases.

Cross verification of 'C' & 'F' forms available in the assessment records of 43 dealers in 20 wards with the assessment records of sales tax offices of other States revealed that dealers claimed exemption on sale value of Rs.25.78 crore while details of purchases valued at Rs.11.58 crore were furnished by the dealers to the assessing authorities in their own States. Failure of the department to cross verify sales in other States resulted in grant of excess exemption on turnover of Rs.14.20 crore (detailed in appendix-II) having tax effect of Rs.1.42 crore. In addition, interest of Rs.67 lakh and penalty of Rs.3.56 crore was also leviable.

Government stated in November 2005 that the department had issued notices to the dealers and reverification where necessary was underway. It was added that the cases would be disposed off within three months.

2.2.10 Incorrect grant of excess exemption

Section 8(4) of the CST Tax Act read with Rule 12(1) of the CST (R&T) Rules stipulates that sale of goods by one registered dealer to another registered dealer may be allowed at the concessional rate of tax of four per cent if the dealer furnishes a declaration covering all the transactions of sales duly supported by statutory form 'C'. Any deviation attracts penalty not exceeding two and half times the tax avoided in addition to the tax payable along with interest.

Test check of records revealed that eight assessing officers³ allowed concessional rate of tax on inter state sales of Rs.11.44 crore against statutory forms of Rs.8.10 crore submitted by nine dealers. This resulted in grant of excess exemption of Rs.3.34 crore and consequent short levy of tax of Rs.24 lakh. In addition, interest of Rs.11 lakh and penalty of Rs.60 lakh was also leviable.

Government stated in November 2005 that the department had issued notices to the dealers and based on their replies and documents, orders would be passed within three months.

³ Ward nos. 4, 24, 34, 41, 54, 60, 90, 93

2.2.11 Transfer of goods to branches prior to issue/after cancellation of registration certificate

In three cases, dealers were allowed exemption on inter state sales on the basis of statutory forms for transactions prior to their registration. In another two cases, the purchasing dealers issued statutory forms for transactions done after cancellation of their registration. In one of these two cases, the assessing authority of the issuing State stated that the form in question was destroyed at the time of cancellation of the registration of the dealer. This resulted in incorrect grant of tax exemption by five assessing authorities⁴ of Rs.61 lakh on sales value of Rs.8.07 crore. Besides, interest of Rs.38 lakh and penalty of Rs.1.53 crore was also leviable.

Government stated in November 2005 that department had issued notices to the dealers and the cases would be disposed off within three months.

2.2.12 Misutilisation of forms

Sub section 4 of Section 8 of the CST Act provides that exemption/concessional rates of tax on any sale in the course of inter state trade or commerce is admissible on furnishing of a declaration duly signed by the registered dealer to whom the goods are sold containing the prescribed particulars in the prescribed form obtained from the prescribed authority. Further, sub rule 7 of Rule 4 of CST (Delhi) Rules stipulates that no registered dealer to whom a declaration form is issued by the assessing authority shall either directly or through any other person transfer the form to another person.

Cross verification of 'C' & 'F' forms with the assessment records of the concerned dealers in other States revealed that exemption/concessional rate of tax was allowed by the assessing authorities in 19 cases on goods valued at Rs.25.40 crore purchased from 15 Delhi dealers on the basis of statutory forms issued to different dealers by the assessing authorities of eight states⁵ as detailed in appendix-III. This resulted in under assessment of tax of Rs.1.81 crore besides interest of Rs.82 lakh and penalty of Rs.4.53 crore.

Government stated in November 2005 that department had issued notices to the dealers and the cases would be finalised within three months.

2.2.13 Irregular branch transfer

Under the third proviso to section 4(2)(a) of the Delhi Sales Tax Act, 1975, goods purchased against statutory forms (ST-1 and ST-35) cannot be transferred to the branch offices or on consignment outside Delhi for resale.

⁴ Ward nos. 4, 8, 27, 89, 99

⁵ Bihar; Chattisgarh; Haryana; Jammu and Kashmir; Maharashtra; Rajasthan; Uttar Pradesh and West Bengal.

In one case, it was noticed that a dealer had purchased goods of Rs.2.87 crore against declaration in 22 ST-1 forms and transferred goods valued at Rs.1.79 crore against form 'F' to his branches outside Delhi during 2002-03. While framing the review assessment, the branch transfer of the above value was allowed by the assessing authority in contravention of the above cited provisions. This resulted in short levy of tax of Rs.18 lakh besides interest of Rs.7 lakh and penalty of Rs.45 lakh.

Government stated in November 2005 that department had issued notices to the dealers and based on their replies and documents, orders would be passed within three months.

2.2.14 Transfer of goods to places not declared in registration certificates

Sub section (1) of section 7 of the CST Act stipulates that every dealer has to declare his places of business in other States at the time of seeking registration. Further, sub section (1) of Section 6-A read with Rule 12(5) of the CST (R&T) Rules provides that a declaration in form 'F' has to be submitted for transfer of goods to other places of business or to his agent or principal.

Scrutiny of assessment records of nine dealers revealed that in nine cases, seven assessing authorities⁶, as detailed in appendix-IV, allowed exemption on goods valued at Rs.37.26 crore on account of branch transfer on the basis of 'F' forms to places other than those specified in the registration certificate of the dealers during 2000-01 to 2002-03. This resulted in under assessment of tax of Rs.3.74 crore. In addition, interest of Rs.1.46 crore and penalty of Rs.9.35 crore was also leviable.

Government stated in November 2005 that department had issued notices to the dealers and suitable orders would be passed within three months.

2.2.15 Non levy of tax

Rule 12 (10) (a) of CST (R&T) Rules, 1957, provides that goods sold in inter state trade for export are exempted from payment of tax if such sales are supported by form 'H.'

In one case, it was noticed that inter state sales on 11 'C' forms valued at Rs.48 lakh was incorrectly assessed for the year 2002-03 by the assessing authority of ward 74 as sales for export on the strength of form 'H' which is exempted from tax. Thus, the entire sales of Rs.48 lakh were not taxed. This resulted in non levy of tax of Rs.2 lakh besides interest of Rs.1 lakh.

⁶Ward nos. 2, 8, 32, 63, 76, 91, 97

Government stated in November 2005 that the department had issued notices to the dealers and suitable orders would be passed within three months.

2.2.16 Excess exemption

During cross verification of assessment records in the State of Rajasthan, it was noticed that gross turnover of two dealers 'X' and 'Y' for the year 2002-03 was assessed for only Rs.1.44 lakh and Rs.5.38 lakh respectively by the concerned assessing authority. However, one Delhi dealer claimed concessional rate of tax on sales of Rs.53 lakh and Rs.1.47 crore based on forms 'F' issued by the above dealers 'X' and 'Y' respectively. It is evident that a dealer with such small turnover cannot issue 'F' form for such heavy amounts. Thus, excess exemption of branch transfer amounting to Rs.1.93 crore was claimed and allowed by the assessing authority. This resulted in under assessment of tax of Rs.19 lakh. In addition, interest of Rs.7 lakh and penalty of Rs.48 lakh was also leviable.

Government stated in November 2005 that the department had issued notice to the dealer and suitable order would be passed within three months.

2.2.17 Irregular grant of concessional rate on duplicate forms

The Supreme Court had held in the case of CST vs. Prabhu Dyal Prem Narayan* that production of declaration forms is mandatory and secondary evidence such as duplicate forms is not permissible to replace the lost one.

In one case, the assessing authority allowed concessional rate of tax on inter state sales of Rs.2.24 crore during 2001-02 on the basis of 23 duplicate 'C' forms without any mention in the assessment order as to why exemption was allowed on the strength of duplicate forms. This resulted in short levy of tax of Rs.13 lakh besides interest of Rs.7 lakh and penalty of Rs.34 lakh.

Government stated in November 2005 that the department had issued notice to the dealer and suitable order would be passed within three months.

- ***Grant of exemption on inter state trade***

The concessional rate of tax or exemption of tax on branch transfers is required to be allowed by the assessing authorities on the strength of statutory forms submitted in proper form and duly filled in and signed by the authorised signatory. This is to be verified by the assessing authorities before allowing concessional rate of tax/exemption of tax.

* (1988) 71 STC-1 (SC)

2.2.18 Concealment of purchase/sales

Under Section 38 of DST Act, every dealer should maintain true and correct accounts of sales and purchases made by him. If a dealer conceals the particulars of his purchase, sale or furnishes inaccurate particulars of his purchase/sale, he shall be liable to pay penalty not exceeding two and half times the amount of tax due in addition to the amount of tax and interest payable.

Check of records in 10 wards⁷ as well as during cross verification of assessment records of purchasing dealers in other States revealed that in cases of 11 dealers as detailed in appendix-V, assessing authorities while finalising the assessments assessed sale of only Rs.27.53 crore while actual sales as per utilisation statements were Rs.31.40 crore. Failure of the department to cross verify the sales in other States resulted in underassessment of sales of Rs.3.87 crore and consequent short levy of tax of Rs.39 lakh. In addition, interest of Rs.15 lakh and penalty of Rs.97 lakh was also leviable.

In another two cases, it was noticed that two dealers purchased goods valued at Rs.15.84 crore during 1999-2000 to 2002-03 on the strength of 'C' & 'F' forms from the States of Haryana; Jammu & Kashmir; Madhya Pradesh and Uttar Pradesh but accounted for purchases of only Rs.13.90 crore in their book of accounts thereby concealing purchases of Rs.1.94 crore. Failure of the assessing authorities of ward numbers 3 and 89 to cross verify in other States resulted in short levy of tax of Rs.8 lakh along with interest of Rs.6 lakh and penalty of Rs.19 lakh.

It was further noticed that consignment sales valued at Rs.16.27 crore were made during 1997-1998 to 2000-01 (detailed in appendix-VI) by four dealers of Tamil Nadu on the strength of nine 'F' forms issued by a dealers of Delhi. However, scrutiny of forms revealed that dealer of ward no. 26 who was shown to have issued the forms had since closed his business and his registration certificate had been cancelled in March 1997. Consequently, the corresponding sales of entire purchase of Rs.16.27 crore remained out of the scope of tax in Delhi. This resulted in non levy of tax of Rs.65 lakh besides interest of Rs.48 lakh and penalty of Rs.1.63 crore.

Government stated in November 2005 that the department had issued notices to the dealers and the cases would be finalised within three months.

⁷ Ward nos. 3, 8, 52, 63, 70, 83, 91, 94, 97, 105

2.2.19 Grant of exemption on invalid 'F' forms

Under Section 6-A of the CST Act read with Rule 12(5) of the CST (R&T) Rules, declaration in form 'F' may cover transfer of goods effected during a period of one calendar month by a dealer to any other place of his business or to his agent or principal outside the State as the case may be.

Scrutiny of assessment records revealed that 15 assessing authorities⁸ allowed exemption on taxable turnover of Rs.30.95 crore in 27 cases as detailed in appendix-VII on the basis of declarations which covered transactions for more than one calendar month. The acceptance of declaration forms covering more than one month's transactions was against the provisions of the Act and should have been rejected. However, failure of the assessing authorities to do so resulted in under assessment of tax of Rs.3.28 crore along with interest of Rs.1.24 crore and penalty of Rs.4.93 crore.

Government stated in November 2005 that the department had issued notices to the dealers and suitable orders would be passed within three months.

2.2.20 Irregular grant of exemption on form 'D'

Under section 8(4) of the CST Act read with Rule 12(i) of the CST (R&T) Rules, sale of goods by a registered dealer to Government departments in other States are allowed at the concessional rate of tax of four per cent provided such sales are supported by statutory form 'D'. Any deviation attracts penalty not exceeding two and a half times of tax avoided in addition to tax and interest payable.

In four cases, concessional rate of tax was allowed by the assessing authorities of ward nos. 61, 89, 91 and 94 on sales of Rs.4.17 crore made to Government departments in Delhi though no such concession is admissible to Government departments located in NCT of Delhi. This resulted in under assessment of tax of Rs.30 lakh. In addition, interest of Rs.21 lakh and penalty of Rs.75 lakh was also leviable.

In five cases, inter state sales valued at Rs.2.43 crore were made to Government departments on the strength of form 'D' issued prior to the date of transaction of sales in contravention of the codal provisions and hence were liable to be rejected as defective forms. However, these were accepted by five assessing authorities⁹ which resulted in short levy of tax of Rs.15 lakh. In addition, interest of Rs.7 lakh and penalty of Rs.36 lakh was also leviable.

Government stated in November 2005 that the department had issued notices to the dealers and the cases would be finalised within three months.

⁸ 3, 4, 9, 24, 27, 42, 43, 50, 62, 74, 87, 89, 94, 96, 101

⁹ ward nos. 24, 31, 89, 90, 98

2.2.21 Irregular grant of concessional rates/exemption on stock transfer

Sections 4 and 6 of the CST Act provides that when a dealer claims concessional rate of tax/exemption of tax on the ground that the movement of such goods from one State to another was on account of inter state sale/stock transfer, the onus of proof like goods receipts, railway receipts, challans, details of materials etc. shall be on the dealer. To establish his claim for exemption/concessional rate of tax, the dealer may furnish declaration in form 'C' & 'F' along with supporting evidence like goods receipts, railway receipts, challans, details of material received, etc. The Delhi Sales Tax Tribunal has held in the case of Jaico Industries vs.CST¹⁰ that in the absence of despatch particulars, inter state sales, even if supported by form 'C,' cannot be allowed as deduction and shall be treated as local sale.

Ninety six dealers in 37 wards as detailed in appendix-VIII were allowed concessional rate of tax/exemption on branch transfers valued at Rs.568.36 crore on the basis of C & F forms. A perusal of these forms and other relevant records revealed that essential details i.e. railway receipts, challan number etc., were not available in support of such transfer of goods. In absence of these details, the forms were liable to be rejected and tax leviable as per the provisions of the Act. This resulted in short levy of tax of Rs.30.32 crore besides interest of Rs.15.82 crore and penalty of Rs.45.47 crore.

Government stated in November 2005 that the department had issued notices to the dealers and suitable orders would be passed within three months. It was added that the department would ensure that assessing authorities adhered to the provisions of law and rules and stipulated procedures.

2.2.22 Irregular exemption on consignment sale

Section 6-A of the CST Act provides that any dealer who claims that he is not liable to pay tax under this Act in respect of any goods on the ground that the movement of such goods from one State to another was a branch transfer and not by reason of sale shall bear the burden of proof that the movement of those goods was so occasioned. The Supreme Court held in the case of Bhopal Sugar Industries vs. STO¹¹ that whether a transaction is sale or transfer to his agent will have to be determined having regard to the terms of the agreement, the intention of the parties and dealings between them.

Scrutiny of assessment records revealed that assessing authorities of ward nos. 97, 99 and 105 allowed exemption from tax to three dealers on consignment sales of Rs.2.97 crore. In two of these cases, the agreements entered upon by

¹⁰ (1993-94) 33 DST CJ-123

¹¹ (1997) 40 STC 42 (SC)

the dealers for consignment sales had expired in June 2000 and March 2002 while in the third case neither was any agreement available in the file nor was there any note to this effect in the registration certificate. In the absence of agreements, exemptions from levy of tax allowed by assessing officers was incorrect and resulted in non realisation of tax of Rs.32 lakh besides interest of Rs.12 lakh.

Government stated in November 2005 that the department had issued notices to the dealers and suitable orders would be passed within three months.

2.2.23 Acceptance of defective forms

Section 6(2)(B)(a) & (b) of the CST Act stipulates that any sales in the course of inter state trade or commerce shall be exempted from tax or be allowed concessional rate of tax if the sales are made to registered dealers and are supported by the prescribed declaration. The purpose of this stipulation is to guard against submission of fraudulent forms and to ensure the genuineness of the claims on which concessional rate of tax or exemption of tax is granted.

Scrutiny of assessment records revealed that concessional rate of tax on 18 'C' forms valued at Rs.2.85 crore and exemption of tax on 37 'F' forms valued at Rs.32.94 crore was allowed by nine assessing authorities¹² though the forms produced in support of sales were incomplete so much so that they did not contain seller's name, registration number of the purchasing dealers, details of invoices and dates. In absence of these details, the validity of the forms could not be confirmed. The details of defective forms are given in appendix-IX. Acceptance of such invalid forms for grant of exemption/concessional rate of tax not only resulted in short levy of tax of Rs.4.14 crore besides interest of Rs.1.54 crore but also undermined the intent and purpose of the Act of ensuring the genuineness of claims for grant of concessional rate of tax/exemption of tax.

Government stated in November 2005 that the department had issued notices to the dealers and the cases would be finalised within three months. It added that instructions had also been issued in October 2005 to all the assessing authorities to ensure that complete details are available on the statutory forms.

2.2.24 Acknowledgment

The audit findings were brought to the notice of the Government and the department in July 2004. The draft report and recommendations were discussed with the representatives of the Sales Tax department and the Finance department at a meeting held on 6 October 2005. The views expressed at the

¹² Ward nos, 8, 41, 48, 64, 67, 70, 91, 99, 101

meeting and the comments of the Government received in November 2005 have been incorporated in the review.

2.3 Short recovery of tax due to fake statutory forms (H Forms)

Sales Tax Act, 1975, stipulates that if any person commits an offence willfully or has reason to believe that a declaration submitted is false, then he is liable inter alia to pay by way of penalty a sum not exceeding two and a half times of the amount of tax under section 56 of the Delhi Sales Tax Act in addition to the tax payable.

Test check of the records of two* wards of the office of the Commissioner of Sales Tax, Delhi conducted between April 2004 and March 2005 for the assessment years 1999-2000 to 2003-04 revealed that in 13 cases the assessing officers while finalising assessment, between October 2001 and October 2003, allowed tax exemption of Rs.55.06 crore on the basis of 31 'H' forms issued by seven exporters of Punjab state. On cross verification by audit, it was found that none of these forms had ever been issued by the sales tax authority of that State. As such, the forms were fake and liable to be rejected and grant of exemption from levy of tax in these cases by the assessing authorities was incorrect. This resulted non levy of tax of Rs.25.96 crore including interest and penalty.

After this was pointed out in June 2005, department accepted the audit observations and raised an additional demand of Rs.25.05 crore in September 2005. The department added that further action i.e. lodging of First Information Report (FIR) against the defaulting dealers and checking of other cases under which exemption on 'H' forms were allowed was being taken.

2.4 Incorrect application of rate of tax

The Delhi Sales Tax Act, specifies the rates of sales tax payable by a dealer in respect of goods or classes of goods either specified in various schedules appended to the Act or to other goods. Any deviation attracts penalty not exceeding two and a half times the tax avoided under section 56 of the Act *ibid*. In case of deviation in central sales tax rates, penalty not exceeding one and a half times of tax avoided is chargeable under section 10 of the Central Sales Tax Act in addition to the tax payable.

Test check of records of 11* wards of the office of the Commissioner of Sales Tax, Delhi conducted between April 2004 and March 2005 revealed that in 22 cases relating to assessment years 2000-01 to 2002-03 assessed between June 2002 and March 2004, the assessing authority levied tax on sales valued at Rs.44.87 crore at a lower rate than that prescribed resulting in short levy of tax

* Ward Nos. 78, 19 (2 wards) (13 cases)

* Ward Nos. 32,44,50,98,85,10,5,45,89,54,100 (11 wards) (22 cases)

amounting to Rs.3.88 crore along with interest of Rs.1.63 crore. Penalty of Rs.6.89 crore was also leviable.

After this was pointed out, the department admitted the audit observations in 11 cases in September 2005 and raised an additional demand of Rs.1.96 crore in 10 cases while reassessment proceeding was started in the remaining case.

The department did not accept the audit observations in four cases. In one case, the department stated that “floron” gas was used as a cooling medium raw material to manufacture benzomethanol, solvents and floro carbon resins apart from being used as a refrigerant. Hence, the item was taxable at four per cent. The reply is not tenable as the rate of tax in such case was itself specified as 12 per cent as evident from the requisition account of the dealer and the report of the enforcement officer of the sales tax department that the dealer dealt in ‘floron gas’ and not ‘chemicals’ which is a last point item and should have been taxed accordingly. In two cases, the department endorsed the reply of the dealer stating that he was dealing only in satellite equipments though he was registered for telecom equipments and tax was leviable at eight per cent. The levy of tax at the lesser rates was not however correct because as per the registration certificate, assessment order, order sheet and audit report of the company, the dealer was in the business of telecommunication equipments and hence taxable at the rate of 12 per cent. In the fourth case, the department stated that PVC pipes were sold for agricultural purposes and hence taxed at 10 per cent as inter state sale. The reply of the department is not tenable as the records showed that dealer was selling PVC pipes for sanitary purposes also. There was nothing on record to show that sales were made for agriculture purposes only and as such levy of tax at lower rate was incorrect.

The replies in the remaining seven cases were awaited as of December 2005.

2.5 Irregular sale of goods against statutory forms (ST 35)

Under the proviso of Rule 11 of the Delhi Sales Tax Rules and various notifications issued from time to time, “listed goods” purchased against statutory form (ST-35) cannot be further sold against the statutory form (ST-35) by the dealer to another dealer. “Plastic raw material, plastic goods, electronic and electric goods” fall in the category of listed goods.

Test check of the records of three* wards of the office of the Commissioner of Sales Tax conducted during April 2004 to March 2005 for the assessment years 2000-01 to 2002-03 assessed during September 2002 to March 2004 revealed that four dealers made purchases of above goods against statutory form (ST 35) and subsequently resold the same goods valued at Rs.8.79 crore against the

* Ward Nos.70,78,85 (3 wards) (5 cases)

statutory forms (ST 35) which was irregular. This resulted in non levy of tax of Rs.36.14 lakh along with interest of Rs.12.53 lakh.

The department stated in September 2005 that in one case the dealer was manufacturing wire of non alloy steel coated with zinc from wire rods which is a manufacturing activity and hence, the exemption had been correctly allowed. The reply is not tenable as the process of drawing of the wire out of the wire rods is not a manufacturing activity*. Wires are considered to be an integral part of rods and are not distinct from rod. Replies in the remaining four cases were awaited as of December 2005.

2.6 Irregular grant of excess exemption on tax paid goods

Delhi Sales Tax Act provides that sale of goods made by one registered dealer to another registered dealer is to be allowed as deduction from the turnover of the selling dealer if due tax has been paid on the purchase of such goods to the satisfaction of the Commissioner, Sales Tax.

Test check of records of seven* wards of the office of the Commissioner of Sales Tax, Delhi conducted during April 2004 to March 2005 revealed that in 10 cases while finalising the assessments during February 2003 to March 2004, the assessing officer allowed exemption on sale of tax paid goods of Rs.29.64 crore against the admissible sale of Rs.21.34 crore resulting in excess exemption of Rs.8.30 crore and consequent short levy of tax of Rs.66.94 lakh. Besides interest of Rs.25.04 lakh was also leviable.

The matter was reported to Government in June 2005. The department stated in September 2005 that there was no irregularity in one case as the dealer had made tax free purchases and sold the same. The reply is not tenable as the dealer had made inter state purchases valued at Rs.14.65 lakh which were liable to be taxed. Besides, no tax free sale was allowed in the assessment order. Replies in the remaining nine cases were awaited (December 2005).

2.7 Misutilisation of statutory forms (ST-1 instead of ST-35 in respect of first point goods)

Delhi Sales Tax Act read with Delhi Sales Tax Rules provide that “electrical goods of all kinds, sanitary/surgical goods, PVC pipes other than those used for agriculture purpose and aluminium in all forms” are taxable at first stage under the Act and cannot be sold/purchased on ST 1*** form.

** *Telangana Steel Industries vs State of AP(1994)93 STC 187(SC)*

* *Ward Nos./Cases) 4,31,58,60,81,65,90 9 (7 wards) (10 cases)*

*** *Statutory form,(ST 1) is used for last point goods*

Test check of the records of five* wards of the office of the Commissioner of Sales Tax conducted during April 2004 to March 2005 revealed that six dealers assessed between February 2004 to March 2004 were granted exemption of Rs.6.07 crore from their gross turnover for the assessment year 2002-03 on the sale/purchase of above noted goods which was incorrect resulting in short levy of tax of Rs.49.82 lakh and interest of Rs.16.55 lakh.

The matter was reported to Government in June 2005. The department did not accept audit observations in two cases. In the first case, the department stated that the dealer dealt in PVC pipes used for agriculture purpose which was taxable at the last stage. The reply is not tenable as in the instant case the sale was made to a sanitary store and hence it was taxable at first stage. In another case, the department stated that the dealer dealt in CI pipes which are taxable at last point. The reply is not tenable as the dealer purchased "sanitary goods" which are taxable at first point.

Replies in the remaining four cases were awaited as of December 2005.

2.8 Grant of exemption on invalid statutory forms

Under Delhi Sales Tax Rules, a dealer may deduct from his turnover the amount of sales on the ground that he is entitled to make such deduction under the Delhi Sales Tax Act on production of statutory forms (ST I/ST 35/ST-49) provided that no single declaration shall cover more than one transaction of sale except in cases where the total amount of sale made in a year covered by one declaration is equal to or less than Rs.50 lakh (limit raised from Rs.30 lakh w.e.f. 24 April 2002). Acceptance of invalid statutory forms attracts tax and interest.

Test check of the records of 22** wards of the office of the Commissioner of Sales Tax Delhi conducted during April 2004 to March 2005 revealed that in 50 cases, the dealers were allowed exemption amounting to Rs.214.24 crore on statutory forms beyond the prescribed limit having more than one transaction for the assessment years 2000-01 to 2002-03, assessed between June 2002 to March 2004. The exemption allowed on invalid statutory forms resulted in short realization of tax amounting to Rs.11.38 crore and interest of Rs.3.96 crore.

Department stated in September 2005 that reassessment proceedings have been started in one case while an additional demand of Rs.27.40 lakh was raised in another case. In respect of 37 cases, it was stated that the issuing authority of the statutory forms might have verified the purchase orders before issue. The

* Ward Nos/Cases) 3,8,20,78,100 (5 wards) (6 cases)

** Ward Nos 3,4,5,7,9,11,19,21,23,25,27,31,34,35,44,45,60,83,90,94,96,98(22 wards) (50 cases)

reply of the department is not tenable because the Act/ Rules do not envisage waiver of the monetary limit of statutory forms having multiple transactions. While examining similar paras which had appeared in the Audit Report for the year ended March 2004, the Public Accounts Committee in its 2nd Report on the Sales Tax Department adopted by the Delhi Legislative Assembly (September 2005) had reiterated that once departmental instructions are issued, it should be mandatory for each assessing officer to strictly follow them without exception. Replies in the remaining 11 cases were awaited as of December 2005.

2.9 Irregular grant of exemption on transit sale

Section 6(2) of the Central Sales Tax Act, 1956, read with Rule 12(4) of the Central Sales Tax (Registration and Turnover) Rules, 1957, provides that the dealer should obtain a certificate in form E-I or E-II as the case may be, from the selling dealer and submit it along with evidence about the sale effected when the goods are in transit from one State to another in order to avail of exemption on sale in transit.

Test check of the records of ward No. 85* of the office of the Commissioner of Sales Tax Delhi conducted in the month of April 2004 revealed that in two cases of a dealer, the assessing officer, while finalizing the assessments during the month of September 2002 to March 2003 for the assessment years 2000-01 to 2001-02, allowed exemption for goods in transit though the requisite form and other evidence were not produced as required under the rules. This resulted in short levy of tax of Rs.1.24 crore along with interest of Rs.83.50 lakh.

The department admitted the audit observations and raised an additional demand of Rs.19.91 lakh in one case. Reply in the remaining case was awaited as of December 2005.

2.10 Irregular grant of exemption on unauthorized sale/purchase

Delhi Sales Tax Act stipulates that sale/purchase of goods on the strength of statutory forms made by one registered dealer to another is exempted from tax on his furnishing along with his returns a complete list of such sales/purchases which are duly authorised in the registration certificate. In case of need of any addition or modification in the description of any goods or class of goods in the certificate of registration, the dealer has to submit an application within a period of 30 days from the date of the contingency under section 19 of DST Act. The application for seeking amendment shall be disposed off by the appropriate assessing authority within a period of one month/three months as the case may be according to the departmental instructions. If the dealer

* Ward No/ 85 (2 cases)

misutilises the statutory form, he shall be liable to pay tax and interest on the tax under section 27 of the Act *ibid*.

Test check of the records of three* wards of the office of the Commissioner of Sales Tax Delhi conducted during April 2004 to March 2005 revealed that in four cases, dealers sold and purchased goods valued at Rs.1.21 crore and Rs.0.42 crore respectively during the period 2002-03 which were not covered by their registration certificate. The assessing authority while finalising the assessment in March 2004 however failed to detect that these transactions were not covered under their certificate of registration. This resulted in non levy of tax amounting to Rs.13.06 lakh along with interest of Rs.4.34 lakh and penalty of Rs.32.64 lakh.

The matter was reported to Government in June 2005. The department raised an additional demand of Rs.8.32 lakh in one case. The department stated in September 2005 that in two cases, the dealer had applied for addition of items in their registration certificate in time and hence there was no irregularity. The reply of the department is not tenable because the addition of items in their registration certificate was made in March 2004 in one case and August 2005 in the other case but made effective retrospectively from October 1994 and August 2004 respectively while the assessment related to the period 2002-03. Such retrospective amendment was not only improbable but was also not in consonance with the provisions of the Act. In the remaining case, the department stated that the dealer had purchased 'leather' and resold it as 'leather' to a registered dealer on statutory form due to cancellation of export order of 'leather garments' which is also not acceptable because the sale of 'leather' was not allowed in the registration certificate of the dealer and hence sale on statutory form should be taxed.

2.11 Short accountal of purchase/sale/stock

Delhi Sales Tax Act provides that every dealer should maintain true and correct accounts of sales and purchases made by him. If a dealer conceals the particulars of his purchase/sale/stock or furnishes inaccurate particulars of his sale, he shall be liable to pay by way of penalty in addition to the amount of tax payable a sum not exceeding two and a half times of the amount of tax under Section 56(1) of the Act *ibid* and not less than one and a half times of the amount of tax under section 10 of the Central Sales Tax Act.

2.11.1 Test check of records of 22** wards of the office of the Commissioner of Sales Tax Delhi conducted during April 2004 to March 2005 revealed that in

* Ward Nos/(Cases),45,57, 96(2)

** Ward Nos 3,8,10,12,20,23,24,25,27,31,49,83,88,90,94,101,45,50,54,58,60,69= (22 wards)
(31 cases)

31 cases, dealers purchased goods valued at Rs.117 crore on the strength of statutory forms or otherwise but accounted for only Rs.107.37 crore in their books of accounts thereby concealing purchases amounting to Rs.9.63 crore. The assessing authority while finalizing the assessments between September 2002 and March 2004 failed to detect the suppression of corresponding sales of Rs.10.47 crore after including margin of profit which resulted in short levy of tax of Rs.64.24 lakh along with interest of Rs.23.12 lakh. In addition, penalty of Rs.160.59 lakh was also leviable.

After this was pointed out, the department admitted audit observations in five cases in September 2005 and raised an additional demand of Rs.10.33 lakh. The replies of the department in four cases were not tenable as tabulated below:

Sl. No.	Brief of cases	Ward No Assessment year date of assessment	Reply of the department	Reasons for being not tenable
1.	Dealer dealt in resale of frames, glasses and lenses, purchased Rs.285.27 lakh on statutory forms but depicted Rs.276.26 lakh as purchases in his "Trading Account".	Ward No 3 (2002-03) 24.3.04	Dealer made purchases of packing material worth Rs.10.82 lakh but erroneously reflected it in the P&L Account. Hence dealer has committed only an accounting mistake.	According to the issue sheet available in the file of the department, only "optical goods" worth Rs.147.12 lakh and Rs.138.14 lakh were purchased by the dealer on statutory form "C" & form ST I respectively. No packing material was purchased on statutory forms.
2	The dealer dealt in hardware and tools, purchased goods worth Rs.498.13 lakh on statutory forms but accounted for Rs. 481.18 lakh.	Ward No 20 (2002-03) 31.3.04	Debit note of Rs.18.44 lakh was furnished by the dealer.	Credit note for Rs.10.56 lakh was only available on record. Out of Rs.10.56 lakh, credit note of Rs.4.42 lakh was not acceptable as the same was relating to one firm against whom no purchase on statutory form was made by the dealer.
3	The dealer dealt in yarn, purchased goods worth Rs.148.38 lakh on statutory forms but accounted for Rs.138.83 lakh.	Ward No 31 (2002-03) 31.3.04	Total purchase as per "Trading Account" of the dealer is Rs.143.02 lakh and "Goods in Transit" is Rs.5.38 lakh. Hence total purchase comes to Rs.148.40 lakh.	As per "Trading Account" submitted by the dealer, total purchase comes to Rs.138.83 lakh and not Rs.143.02 lakh as stated by the department. No supporting documents for "Goods in Transit" for Rs.5.38 lakh were on record.
4	The dealer dealt in electrical appliances, purchased goods worth Rs.97.84 lakh on statutory forms or otherwise but accounted for Rs.89.48 lakh.	Ward No 69 (2002-03) 31.3.04	Purchase in "Trading Account" represented the value without excise duty whereas statutory forms taken by the assessee includes value of excise duty.	As per "Trading Account" of the dealer, an amount of Rs.33,46,276 was shown as excise duty. If the concealment of Rs.8.36 lakh was treated as excise duty as stated by the department, then the tax on proportionate purchase on the balance excise amount of Rs.25.10 lakh should also be levied.

Replies in the remaining 22 cases were awaited as of December 2005.

2.11.2 Test check of records of 14** wards of the office of the Commissioner of Sales Tax Delhi conducted during April 2004 to March 2005 revealed that in 17 cases, the assessing authority, while finalizing assessment for the assessments years 2001-02 to 2002-03 between March 2003 to March 2004, assessed sale of Rs.53.58 crore (local sale) and Rs.15.16 crore (central sale) against actual sale of Rs.71.68 crore (local) and Rs.19.42 crore (central) respectively. There was thus underassessment of sale of Rs.18.10 crore (local) and Rs.4.26 crore (central) resulting in short levy of tax of Rs.1.07 crore. In addition, interest of Rs.36.36 lakh and penalty of Rs.2.23 crore were also leviable.

The department admitted (September 2005) audit observations in three cases and raised an additional demand of Rs.4.70 lakh in two cases while reassessment proceedings were initiated in another case. The replies in the remaining 14 cases were awaited as of December 2005.

2.11.3 Test check of the records of two*** wards of the office of the Commissioner of Sales Tax Delhi conducted during April 2004 to March 2005 revealed that in four cases for the assessment year 2001-02 assessed between September 2002 to March 2003, the closing balance of stock as per "Trading Account" was shown as Rs.10.12 crore whereas the actual total balance of stock as per trading account worked out to Rs.12.14 crore indicating concealment of stock of Rs.2.02 crore. This resulted in short levy of tax of Rs.10.13 lakh, interest of Rs.5.19 lakh and penalty of Rs.25.34 lakh.

The department admitted audit observations in three cases in September 2005 and raised an additional demand of Rs.5.46 lakh in one case while in other two cases, the department accepted the revised "Trading Account" of the firms for last four years viz. 1999-2000 to 2002-03 consuming the concealment of stock of Rs.1.16 crore. The reply of the department is not tenable as no reasons were furnished by the department for acceptance of revised "Trading Accounts" which were not even certified by the chartered accountant of the firms. Reply in the remaining case was awaited as of December 2005.

2.12 Irregular grant of exemption due to misutilisation of statutory forms

Delhi Sales Tax Act stipulates that a registered dealer is eligible to purchase raw material against the strength of statutory forms without payment of tax if the same is used for the manufacture of some taxable goods. Otherwise, he

** Ward Nos 4,7,26,31,45,50,54,68,70,78,90,93,98,87 (14 Wards) (17 cases)

*** Ward Nos 85,34,(2 wards) (4 cases)

shall be liable to pay tax and interest thereon on the purchase of raw material made on the statutory forms.

Test check of the records of ward no. 10 of the office of the Commissioner of Sales Tax Delhi conducted during April 2004 to March 2005 for the assessment years 2001-02 and 2002-03 assessed between March 2003 to March 2004, revealed that in two cases, the dealer made purchases of Rs.2.78 crore against statutory forms and sold the manufactured goods as tax free. This resulted in non levy of tax of Rs.24.79 lakh. Besides, interest of Rs.8.38 lakh and penalty of Rs.39.25 lakh were also leviable.

After this was pointed out in June 2005, the department raised an additional demand of Rs.41.33 lakh in one case and started the reassessment proceeding in another case in September 2005.

2.13 Short levy of tax due to calculation mistake

Delhi Sales Tax Act and Rules made thereunder provides that a dealer may be reassessed within a specified period if the Commissioner has reason to believe that the dealer has been under assessed under Section-23 of the said Act.

Test check the records of ward no. 88 of the office of the Commissioner of Sales Tax Delhi conducted in September 2004 revealed that tax of Rs.21.22 lakh was erroneously assessed on inter state sale of Rs.258.96 lakh under central assessment order against tax due of Rs.22.94 lakh while finalising the assessment of a dealer for the assessment year 2002-03 due to calculation mistake. This resulted in short levy of tax of Rs.1.72 lakh besides interest of Rs.0.57 lakh which was also leviable.

After this was pointed out, the department raised an additional demand of Rs.1.21 lakh in the revised assessment order on left over taxable amount at the rate of four per cent on Rs.30.17 lakh (December 2004). The reasons for not raising the additional demand at the rate of 10 per cent on Rs.5.12 lakh on the calculation mistake and interest thereon were not furnished.

2.14 Non levy of tax on sale of tradable licenses

Under section 2(g) of the Delhi Sales Tax Act, replenishment licences (REP), duty entitlement pass book licences (DEPB), special import licences (SIL) quotas and other tradable licences which are granted by the Director General of Foreign Trade (DGFT) in recognition of export of certain goods can be transferred by way of sale. It has been judicially held by the Supreme Court* that the above said licenses are “goods” and the price received by the holder by the transfer thereof to another person is liable to sales tax.

* *Vikas Sales Corporation Vs Commissioner of Commercial Taxes (ST 1 1996-SC-1001)*

Test check of records of six^{**} wards of the office of the Commissioner of Sales Tax Delhi conducted during April 2004 to March 2005 revealed that in 14 cases for the assessment years 2000-01 to 2003-04, the dealers sold DEPB licences for Rs.12.17 crore which were not taxed while finalising assessments between May 2002 and March 2004. This resulted in non levy of tax amounting to Rs.54.81 lakh and interest of Rs.25.04 lakh.

The department stated in September 2005 that reassessment proceedings have been started in two cases. In respect of five cases, it was stated that DEPB licences were sold in other States and hence were not taxable in Delhi which is not tenable since export was made from Delhi branch office and exemption of export was allowed under DST Act. Therefore, tax on the sale of DEPB licences should also be credited to Government of NCT Delhi and not in other State. In one case, it was stated that DEPB licence was not taxed as it was not received during the financial year which is also not tenable because the case related to export made during 2000-01 and was not taxed as of October 2005. Replies in the remaining six cases were awaited as of December 2005.

2.15 Irregular grant of excess exemption on export

The Central Sales Tax Act read with the Rules made thereunder provides that sale of goods made by one registered dealer to another registered dealer for export are to be allowed as deduction from the turnover of the selling dealer on his furnishing the complete list of such sales duly supported by statutory forms 'H'/ST -49 filled in and signed by the exporter along with evidence of export of such goods viz., bill of lading/bill of export/shipping bills, etc. countersigned by customs authorities establishing the export of such goods out of the country. Acceptance of defective/incomplete documents attracts tax and interest thereon.

Test check of records of three^{*} wards of the office of the Commissioner of Sales Tax Delhi conducted during April 2004 to March 2005 revealed that in four cases, the assessing officer, while finalizing the assessment for the assessment years 2000-01 to 2002-03 between September 2002 to March 2004, allowed tax exemption on taxable turnover of Rs.1.14 crore without verifying in four cases that the same goods were exported. In another case, the documents in proof of export were not obtained. This resulted in non levy of tax of Rs.11.38 lakh as well as interest of Rs.5.10 lakh which was also leviable.

The matter was reported to Government in June 2005. The department admitted the audit observation in three cases in September 2005 and initiated

^{**} Ward Nos 45,85,87,88,89, 93 (6 wards) (14 cases)

^{*} Ward Nos. 3,31,32 (3 wards) (5 cases)

reassessment proceedings. Replies in the remaining two cases were awaited as of December 2005.

2.16 Non levy of tax on sale of assets

Delhi Sales Tax Act stipulates that “business” includes any transaction in connection with or incidental or ancillary to such trade, commerce, manufacture, adventure or concern. Sale of any material which is connected with or incidental to the business of the dealer is liable to be taxed.

Test check of the records of three* wards of the office of the Commissioner of Sales Tax Delhi conducted during April 2004 to March 2005 revealed that in three cases, dealers sold air conditioners, faxes, computers, etc. for Rs.59.06 lakh during the period from 2001-02 to 2002-03 which were in connection with their businesses. The assessing officers however failed to levy tax while finalising the assessments between March 2003 and March 2004. This resulted in non levy of tax amounting to Rs.4.79 lakh. In addition, interest of Rs.1.74 lakh was also leviable.

The matter was reported to Government in June 2005. The department informed (September 2005) that reassessment proceedings have been initiated in two cases. In the remaining case, it was stated that the main business of the dealer was executing works under works contracts and assets sold were not incidental or ancillary to his business. The reply is not tenable because items sold were depicted by the dealer in his balance sheet under the head ‘Plant & Machinery’ which clearly indicates that these items were ancillary to the business of the dealer.

2.17 Irregular grant of excess exemption on high sea sale

Central Sales Tax Act read with the Rules made thereunder provides that sale of goods made by one registered dealer to another registered dealer are to be allowed as deduction from the turnover of the selling dealer when the goods are sold before they cross the customs frontier of India (high sea sale) by endorsement on documents viz. purchase agreement, bill of entry, etc. Acceptance of defective/incomplete documents attracts tax and interest thereon.

Test check of the records of Ward no. 60 of the office of the Commissioner of Sales Tax Delhi conducted in the month of December 2004 revealed that in one case, the assessing authority, while finalizing the assessment for the assessment year 2002-03 in December 2003, allowed tax exemption on taxable turnover of Rs.1.11 crore without obtaining any export documents. This resulted in non levy of tax of Rs.11.11 lakh and interest of Rs.3.69 lakh.

* Ward Nos. 87,89,100 (3 wards) (3 cases)

Audit Report (Revenue Receipts) on Government of NCT of Delhi of 2006

The matter was reported to Government in June 2005; reply was awaited as of December 2005.