

CHAPTER-II: TAXES ON SALES, TRADE, ETC.

2.1 Results of audit

Test check of records of the Sales Tax Offices, conducted in audit during the year 2003-2004, disclosed under-assessments of tax, non-levy of penalty, etc. amounting to Rs.27.34 crore in 887 cases, under the following broad categories:

(Rupees in crore)			
Sl. No.	Category	Number of cases	Amount
1	Non-levy/short levy of tax	370	9.30
2	Incorrect grant of exemption/ concession	59	2.36
3	Non-levy/short levy of turnover tax	209	10.05
4	Non-levy of penalty	145	3.68
5	Non-forfeiture of excess tax collected	63	1.41
6	Other irregularities	41	0.54
	Total	887	27.34

During the course of the year 2003-2004, the Department accepted under-assessments of tax amounting to Rs.15.82 crore involved in 1,138 cases which had been pointed out in audit in earlier years and recovered Rs.9.27 crore involved in 899 cases.

A few illustrative cases (including certain cases noticed in earlier years which could not be included in previous Reports) involving Rs.12.02 crore are given in the following paragraphs. Of this, Rs.5.21 crore had been recovered.

2.2 Incorrect grant of exemption/concession

2.2.1 In accordance with the notifications issued from time to time under the Karnataka Sales Tax (KST) Act, 1957, and the Central Sales Tax (CST) Act, 1956, exemption from payment of tax by small scale (SSI)/medium and large scale industries is not allowed on turnover where no manufacturing activity is involved, or in respect of sales effected beyond the eligibility period or eligibility limits, or in respect of sales effected prior to the date of expansion,

or on turnovers on which tax has been collected by such units. Further, in cases of units undertaking expansion schemes, the tax exemption is to be limited to the difference between the total tax liability and the average tax liability of three years immediately preceding the year in which investment for expansion took place.

It was, however, noticed between July 2003 and January 2004, that in seven districts while finalising 24 assessments of 14 SSI/medium scale units between September 2000 and March 2003, for the years 1997-98 to 2001-2002, sales tax exemption of Rs.65.45 lakh was incorrectly granted resulting in short levy of tax of Rs.65.45 lakh, as detailed below:

(Rupees in lakh)				
Sl. No.	District (Number of cases)	Nature of irregularity	Assessment year (Date of assessment)	Tax incorrectly exempted
1	Bangalore (Urban) (1)	The assessee collected tax during the period covered by exemption.	1998-99 (May 2002)	13.86
2	Kolar (2)	Tax exemption was allowed even though no manufacturing activity was involved.	1999-2000 (between May 2002 and March 2003)	1.22
3	Bangalore (Rural) (1) Dakshina Kannada (1) Tumkur (1)	Tax exemption allowed beyond the eligibility limit/ period.	1998-99, 2000-2001 and 2001-2002 (between January 2002 and March 2003)	19.59
4	Bangalore (Rural) (7) Bangalore (Urban) (2) Dakshina Kannada (6) Dharwad (2) Hassan (1)	In respect of units under expansion schemes, against admissible tax exemption of Rs.1.43 crore, Rs. 1.74 crore was allowed.	1997-98 to 2001-2002 (between September 2000 and March 2003)	30.78
Total (24)				65.45

After these cases were pointed out to the Department between July 2003 and January 2004, Government stated in August 2004 that additional demand of Rs. 33.90 lakh has been created by revision of assessments in seven cases and recovered Rs.2.81 lakh in three of them. In respect of 14 cases involving Rs.23.45 lakh, notices have been issued. In respect of the remaining cases, final replies have not been received (January 2005).

2.2.2 Under the KST Act and CST Act, taxable turnover of every dealer shall be determined in accordance with relevant provisions of the Act and rules made thereunder after allowing prescribed deductions from the total turnover. Tax is leviable on the taxable turnover determined at the rates mentioned in the relevant Schedules to the Act. In addition, cess at the rate of five *per cent* of tax (from 1995-96 in Bangalore City Planning Area only and from 1998-99 throughout the State) and turnover tax (TOT) at prescribed rate are also leviable. Under the CST Act, tax at specified rates is levied on inter-State sale of goods.

In seven districts, it was noticed between June 2003 and March 2004 that while finalising between February 1999 and March 2003, 20 assessments of 16 dealers for the years 1995-96, 1998-99 to 2001-2002, turnover aggregating Rs.11.23 crore was either incorrectly determined or exempted resulting in short levy of tax of Rs.52.52 lakh, as detailed below:

(Rupees in lakh)					
Sl. No.	District (Number of cases)	Period (Date) of assessment	Nature of irregularity	Turnover involved	Tax effect
1	Bangalore (Rural) (5)	1999-2000 to 2000-2001 (between April and October 2002)	<p>(1) HDPE^r woven fabric falling under Chapter 39 of the Central Excise Tariff Act was given exemption incorrectly, treating it as Additional Excise duty suffered goods (3 cases).</p> <p>(2) Consideration received for transfer of right to use of machinery was liable to tax. However, it was not reckoned as taxable turnover in the assessment order (one case).</p> <p>(3) Purchases of taxable goods from URDs^ø consumed in manufacture was liable to tax under the Act. However, no tax was levied on such purchase turnover (one case).</p>	536.44	24.28

^r High Density Poly Ethylene

^ø Un-Registered Dealers

(Rupees in lakh)

Sl. No.	District (Number of cases)	Period (Date) of assessment	Nature of irregularity	Turnover involved	Tax effect
2	Bangalore (Urban) (10)	1995-96, 1998-99 to 2001-2002 (Between February 1999 and March 2003)	(1) Exemption was incorrectly allowed under Section 5(3) of the CST Act on the sale of non-ferrous casting though the goods were not exported as such but in the manufactured form (one case). (2) Tax was omitted to be levied on the taxable turnover declared by the assessee (one case). (3) Taxable goods dealt by the assesseees were treated as exempted goods (four cases). (4) The purchase turnovers of goods liable to tax were not subjected to tax (four cases).	193.48	11.84
3	Belgaum (1)	1999-2000 (March 2002)	Sales turnover declared by the assessee was incorrectly adopted in the assessment order.	216.32	8.65
4	Bellary (1)	1999-2000 (December 2001)	-do-	99.11	3.96
5	Dharwad (1)	1998-99 (July 2002)	-do-	10.69	1.12
6	Hassan (1)	2000-2001 (July 2002)	Turnover of Indian Made Liquor held in the opening stock was liable to tax after allowing deduction towards tax suffered turnover. However, opening stock was incorrectly adopted.	2.13	1.36
7	Tumkur (1)	1998-99 (November 2000)	Purchases of taxable goods from URDs consumed in manufacture was liable to tax under the Act. However, no tax was levied on such purchase turnover.	65.30	1.31
Total (20)				1,123.47	52.52

After these cases were pointed out between June 2003 and March 2004, Government stated in August 2004 that additional demand of Rs.14.91 lakh has been created by revision of assessment in 13 cases and recovered Rs.3.46 lakh in seven of them. In respect of the other seven cases involving Rs.37.61 lakh, notices have been issued.

2.3 Non-levy/short levy of tax/turnover tax

Under the KST Act, tax is leviable on the purchases/sales at the rates mentioned in the relevant Schedules to the Act. Further, every registered dealer, whose total turnover in a year exceeds the prescribed monetary limits, is liable to pay TOT at the prescribed rate(s) on his total turnover, after such deductions as are admissible under the Act.

2.3.1 In 14^Ø districts, while finalising between June 1999 and March 2003, 117 assessments of 98 dealers for the years 1995-96 to 2001-2002, tax amounting to Rs.2.35 crore was levied short on the turnover of Rs. 100.87 crore due to application of incorrect rates.

After these cases were pointed out in audit, Government stated in August 2004 that additional demand of Rs.1.28 crore has been created by revision of assessments in 53 cases and recovered Rs.96.01 lakh in 36 of them. In respect of 55 cases involving Rs.85.66 lakh, notices for revision of assessments were served to the assesseees concerned.

In respect of two assessments of a dealer in Bangalore (Urban) involving tax effect of Rs.3.67 lakh, it was contended that the assessee sold machineries to SSI units against declarations in Form-37 and the tax was levied at two *per cent* under Section 5-A of the Act in accordance with the notification dated 31 March 1999. The reply was not tenable, as provision of Section 5-A of the Act was not applicable to machineries.

In respect of the other cases, final replies have not been received (January 2005).

^Ø Bangalore (Rural), Bangalore (Urban), Bellary, Bijapur, Chitradurga, Dakshina Kannada, Dharwad, Gulbarga, Hassan, Mysore, Shimoga, Tumkur, Udupi, Uttara Kannada

2.3.2. In 13[»] districts, while finalising 121 assessments of 104 dealers between December 1999 and March 2003, for the years 1992-93, 1994-95 and 1997-98 to 2001-2002, TOT was either not levied or levied short on the turnover of Rs.309.66 crore due to incorrect allowance of exemptions and application of incorrect rate, etc. This resulted in non-levy/ short-levy of TOT of Rs.4.35 crore.

After these cases were pointed out in audit between May 2003 and March 2004, Government stated in August 2004 that additional demand of Rs.4.00 crore has been created by revision of assessments in 94 cases and recovered Rs.3.49 crore in 57 of them. In respect of 26 cases involving Rs.31.99 lakh, notices have been issued. In respect of one case, final reply has not been received (January 2005).

2.4 Short demand of tax

Under the KST /CST Act, if any amount is due from a dealer after final assessment, the assessing authority is required to serve upon him a notice demanding its payment.

In Bangalore (Urban) and Gulbarga districts, it was noticed between July 2002 and August 2003 that in respect of 10 assessments for the years 1998-99 to 2001-2002 concluded between December 2000 and March 2003, as against the aggregate tax of Rs.3.01 crore due, only Rs.2.85 crore was demanded. This resulted in short demand of Rs.15.40 lakh due to arithmetical errors, incorrect implementation of assessment order and error in computation of tax.

After these cases were pointed out in audit between July 2002 and August 2003, Government stated in August 2004 that additional demand of Rs.15.40 lakh has been raised in 10 cases and Rs.11.11 lakh recovered in eight of them.

[»] Bangalore (Rural), Bangalore (Urban), Belgaum, Bellary, Chitradurga, Dakshina Kannada, Dharwad, Gulbarga, Hassan, Mandya, Mysore, Raichur, Tumkur

2.5 Non-forfeiture of tax collected in excess

Under the KST Act, a registered dealer is prohibited from collecting any amount by way of tax in excess of that specified in the Act. Where any collection is made in contravention thereof, the assessing authority is required to forfeit the tax collected in excess. The assessing authority may also impose a penalty not exceeding one and a-half times the amount of tax so collected.

In four^r districts, the Assessing Authorities while finalising the assessments between March 2000 and March 2003 of 22 dealers for the years 1996-97 to 2001-2002, had failed to forfeit the excess collection of tax of Rs.0.86 crore. In addition, the Assessing Authorities failed to levy penalty of Rs.1.29 crore for such excess collection of tax.

After these cases were pointed out in audit between June and December 2003, Government stated in August 2004 that excess collection of tax of Rs.54.46 lakh has been forfeited in 13 cases and recovered Rs.46.95 lakh in nine of them. In one case involving Rs.1.94 lakh, it was replied that the tax collected includes TOT and hence forfeiture does not arise. Reply is not tenable as the TOT collected also needs to be forfeited. In respect of seven cases involving Rs.29.02, lakh notices have been issued. In respect of the remaining cases, final replies have not been received (January 2005).

2.6 Non-levy/short levy of penalty/interest

2.6.1 Under the KST Act, tax payable by a registered dealer in respect of sale of any industrial inputs or raw material or packing material of any other goods to another registered dealer is at concessional rate of three *per cent* (four *per cent* up to 31 March 1998) or the rate specified in the Act whichever is lower, on the turnover relating to such sale, on furnishing prescribed declarations. If any person uses such inputs contrary to such declaration, the assessing authority is required to impose penalty, a sum of not less than twice the amount of tax leviable but not exceeding thrice the amount of tax leviable under the Act.

In three^{*} districts, five dealers had purchased rough granite and paper valued at Rs.69.86 lakh at concessional rate of tax after furnishing the required declarations that it would be used as an industrial input. However, granite

^r Bangalore (Rural), Bangalore (Urban), Belgaum, Bellary

^{*} Bangalore (Urban), Bangalore (Rural), Belgaum

blocks were sold as such after cutting and polishing and paper was sold after converting them as note books which do not amount to manufacturing activity. However, while finalising seven assessments between March 2002 and January 2003, pertaining to years 1998-99 to 2001-2002, four Assessing Authorities did not levy a penalty of Rs.14.32 lakh resulting in short realisation of Government revenue to that extent.

After these cases were pointed out in November/December 2003, Government stated in August 2004 that additional demand of Rs.10 lakh has been created in six cases and Rs.0.46 lakh recovered in two of them. In respect of one case involving Rs.3.04 lakh, notice has been issued.

2.6.2 Under the KST Act, the tax or any other amount due is required to be paid within the prescribed time which, in the case of final assessments, is 21 days from the date of service of demand notice. In case of default in making payments, the assessee would be liable to pay interest at the rates prescribed from time to time.

In seven districts, 27 dealers in 41 cases did not pay the sums specified in the demand notices within 21 days of their service, but the interest of Rs.42.15 lakh as detailed below was not levied/levied short:

(Rupees in lakh)					
Sl. No.	District (Number of assesseees)	Period of assessment (Date of issue of demand notice)	Amount of tax involved	Delay in payment of tax (Months)	Interest due
1	Bangalore (Rural) (5)	1995-96 to 1998-99 (between September 1999 and March 2002)	131.04	1 to 20	14.63
2	Bangalore (Urban) (13)	1993-94, 1997-98 to 1999-2000 (between June 2000 and August 2002)	105.31	1 to 19	11.42
3	Belgaum (3)	1994-95 to 1998-99 (between February 2001 and February 2003)	19.98	1 to 23	2.40
4	Bellary (1)	1993-94 and 1994-95 (March 2002)	10.85	13	2.78
5	Dakshina Kannada (3)	1997-98 to 1999-2000 (between April and November 2001)	13.02	1 to 14	2.01
6	Dharwad (1)	1998-99 and 1999- 2000 (between November 2000 and January 2002)	17.48	12 to 22	5.67
7	Udupi (1)	1995-96 and 1997-98 (February 1999)	5.61	2 to 40	3.24
Total (27)			303.29	1 to 40	42.15

After these cases were pointed out in audit, Government stated in August 2004 that additional demand of Rs.11.41 lakh has been created in 13 cases and Rs.9.50 lakh recovered in 11 of them. In respect of 26 cases involving Rs.29.15 lakh, notices have been issued. Reports of action taken in respect of the remaining two cases have not been received (January 2005).

2.6.3 Under the KST Act, every dealer is required to pay the full amount of tax payable on the basis of the turnover computed by him for the preceding month within 20 days of close of that month. Further, the full amount of tax payable by a dealer in advance for the year as reduced by the amount of tax already paid is to be paid within 30 days after the close of the year to which such tax relates. In case of default beyond 10 days after that period, the assessee is liable to pay interest at the rates prescribed from time to time.

In six districts, though 24 dealers delayed the payment of monthly/annual taxes amounting to Rs.4.81 crore by one to 57 months during the years 1997-98 to 2000-2001, interest of Rs.2.37 crore was not levied or levied short by 11 Assessing Authorities, as detailed below:

(Rupees in lakh)					
Sl. No.	District (Number of assesseees)	Year/ Date of assessment	Amount of tax involved	Delay in payment of tax (months)	Interest due
1.	Bangalore (Rural) (10)	1997-98 to 2000-2001 (between December 2000 and February 2003)	197.10	1 to 53	51.89
2.	Bangalore (Urban) (7)	1998-99 to 2000-2001 (between May 2002 and March 2003)	31.34	2 to 48	22.18
3.	Bellary (2)	1997-98, 1999-2000 and 2000-2001 (between September 2002 and February 2003)	38.12	19 to 57	25.04
4	Dakshina Kannada (1)	1998-99 (February 2003)	204.11	2 to 55	130.00
5	Dharwad (2)	1999-2000 and 2000- 2001 (between May 2002 and March 2003)	4.27	10 to 46	3.17
6	Mysore (2)	1998-99 and 2000-2001 (between June and December 2002)	5.99	20 to 49	5.06
	Total (24)		480.93	1 to 57	237.34

After these cases were pointed out, Government stated in August 2004 that additional demand of Rs.1.37 crore has been created in the cases of six dealers and Rs.1.26 lakh recovered from three of them. In respect of 17 dealers involving Rs.97.23 lakh, notices have been issued. In respect of the remaining case final reply has not been received (January 2005).

2.7 Incorrect claim of concessional rate of tax on declarations

Under the KST Act and Rules made thereunder, sales effected by dealers to Government departments/undertakings are liable to tax at a reduced rate of four *per cent* subject to the condition that the dealer furnishes a declaration in the specified form obtained from the Government department/undertaking. Further, if a dealer deliberately furnishes false declaration/inaccurate particulars, he shall pay, by way of penalty, in addition to differential rate of tax, a sum not less than three times the tax due in respect of such transaction.

In Bangalore (Urban) district, while finalising between February 2002 and February 2003, three assessments of three dealers for the year 1999-2000, two Assessing Authorities allowed reduced rate of tax on a turnover of Rs.2.73 crore as sales effected against declaration. However, cross verification of the declarations by Audit between February and April 2004, with reference to the records of respective Government departments revealed that the declarations of Rs.76.17 lakh furnished by the dealers were incorrect. The short levy of tax involved on this turnover was Rs.4.80 lakh, besides penalty of Rs.14.39 lakh was also leviable.

After these cases were pointed out, Government stated in August 2004 that additional demand of Rs.16.96 lakh has been created by revision of assessments in two cases. In respect of one case involving Rs.2.23 lakh notice has been issued.

