

CHAPTER-II : SALES TAX

2.1 Results of audit

Test check of assessments, refund cases and connected documents on sales tax and entry tax of Commercial Tax offices during the year 2004-05 revealed under assessment of tax, incorrect grant of exemption, non/short levy of tax etc. amounting to Rs.94.15 crore in 308 cases which may broadly be categorised as under: -

<i>(Rupees in crore)</i>			
Sl. No.	Categories	No. of cases	Amount
Sales Tax			
1.	Exparte assessment and pendency & disposal of appeal cases and its impact on revenue collection	1	6.48
2.	Short levy of tax due to incorrect computation of taxable turnover	101	37.36
3.	Underassessment of tax due to application of incorrect rate of tax	43	6.71
4.	Underassessment of tax due to irregular grant of exemption	31	16.13
5.	Non levy of surcharge	5	0.08
6.	Non levy of interest	6	0.90
7.	Other irregularities	79	22.89
Total		266	90.55
Entry Tax			
1.	Non/short levy of entry tax	15	1.72
2.	Non/short levy of penalty	16	1.49
3.	Application of incorrect rate of entry tax	4	0.32
4.	Short levy of entry tax due to irregular deduction	2	0.03
5.	Incorrect computation of taxable turnover	5	0.04
Total		42	3.60
Grand Total		308	94.15

During the year 2004-05, the Department accepted under assessment etc. of Rs.11.64 crore in 101 cases which were pointed out in audit in earlier years and Rs.7.14 crore in five cases pointed out in 2004-05. Out of these the Department recovered Rs.42.98 lakh in 37 cases.

A few illustrative cases highlighting important audit observations involving Rs.27.09 crore are discussed in the following paragraphs.

2.2 Exparte assessment and pendency and disposal of appeal cases and their impact on revenue collection

2.2.1 Introduction

Under the provision of Orissa Sales Tax Act, 1947 (OST Act) and Central Sales Tax Act, 1956 (CST Act) and Rules made thereunder, assessment of registered and unregistered dealers is done under Section 12 (4) and 12 (5) of the OST Act and Rule 12 (5) of the CST (Orissa) Rules respectively. For escapement of taxable turnover, reassessment is done under Section 12 (8) of OST Act and Rule 10 of CST (Orissa) Rules. In case of reassessment of escaped / concealed turnover, the OST Act provides for levy of penalty equal to one and half times of tax assessed. If a dealer fails to comply with the terms of the notice for assessment/reassessment issued to him for appearance in person with books of accounts, the assessing officer shall proceed to assess the dealer exparte to the best of his judgement.

Rule 28 of OST Rules, after amendment with effect from 20 July 2001, provides that all proceedings under Section 12 (5) & 12 (8) pending prior to 21 July 2001 shall be disposed of within one year and proceedings initiated thereafter shall be disposed within two years from the date of institution.

Under the provisions of Section 23 of OST Act, if a dealer is aggrieved against an order of assessment of tax, penalty or interest, he may prefer an appeal before the first appellate authority within 30 days from the date of receipt of demand notice served upon him. The first appellate authority in disposing of such appeal cases may reject, confirm, enhance, reduce and annul the assessment or set-aside the assessment and remand to the assessing officers with the direction for re-assessment after such further enquiry as may be directed.

The Commissioner of Commercial Taxes (CCT) in 1962/1994 issued guidelines to complete reassessment proceedings within three months from the date of receipt of appeal orders and instructed the inspecting officers to examine the set aside registers and reassessment cases in course of their inspection and report cases where there has been any deviation.

2.2.2 Non realisation of revenue due to delay in assessments

Under provisions of OST Act, if an unregistered dealer is liable to pay tax but fails to get himself registered and also if the turnover of a registered/unregistered dealer has escaped assessment or is under assessed, the CCT shall serve upon such dealer a notice asking the dealer to furnish a return within one month from the date of receipt of the notice and to attend in person with books of accounts. If the dealer fails to comply with the terms and conditions of such notice, the CCT shall, after allowing the dealer a reasonable opportunity,

assess the dealer exparte any time after expiry of prescribed period of one month, to the best of his judgment.

OST Act provides that after completion of assessment, demand notice is served upon the dealer with the direction to pay tax within 30 days from the date of receipt of demand notice. If any amount is not paid by the due date, the assessing officer shall issue a showcause notice to pay in addition to tax payable, penalty not exceeding one half of the total amount due within 30 days from the date of service of notice. The amount which remains unpaid after the due date of payment in pursuance of the above notice issued, shall be recoverable as an arrear of public demands through tax recovery proceedings.

Test check of exparte assessment records for the years 2000-01 to 2003-04, in 15 circles¹ between October 2004 and March 2005 revealed the following:-

(Rupees in crore)

Sl. No.	Assessed U/s	Exparte demand		Amount Realised		Amount reduced/annulled/quashed/ set aside		Demands outstanding	
		3	4	5	6	7	8	9	10
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
1	12(5)	4006	50.77	24	0.31	87	0.65	3,895	49.80
2	12(8)	431	16.65	18	0.61	29	2.91	384	13.14
3	12(4)	879	32.13	3	0.13	34	6.85	842	25.15
Total		5,316	99.55	45	1.05	150	10.41	5,121	88.09

Cases covered under Tax Recovery Proceedings		Cases pending in Appeal		Cases where report on follow up action taken is awaited		Cases of closure of business (Out of col.15 &16)	
11	12	13	14	15	16	17	18
No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
87	10.35	114	19.32	3,694	20.13	3,160	17.89
42	2.74	39	0.65	303	9.75	212	6.05
26	3.81	62	4.54	754	16.80	NA*	NA
155	16.90	215	24.51	4,751	46.68	3,372	23.94

* Not available

It would be seen that out of 5,316 cases involving Rs.99.55 crore, the Department could realise only Rs.1.05 crore in 45 cases and initiated certificate proceedings for Rs.16.90 crore in 155 cases. Demands of Rs.88.09 crore in 5,121 cases remained outstanding. Report on follow up action in remaining 4,751 cases involving Rs.46.68 crore was awaited (July 2005) and possibility of recovery of Rs.23.94 crore in 3,372 cases where business had been closed was remote.

After this was pointed out in audit between October 2004 and March 2005, the assessing officers stated between October 2004 and March 2005 that unregistered dealers had already closed down their business and demanded tax could not be collected. In case of registered dealers, the assessing officers agreed to initiate tax recovery proceedings for realisation of demanded tax.

¹ Balasore, Bhadrak, Bhubaneswar-I, Bhubaneswar-II, Cuttack-I (East), Cuttack-I(Central), Cuttack-I (West), Cuttack-II, Cuttack-III, Dhenkanal, Ganjam-I, Puri-I, Rourkela-I, Rourkela-II and Sambalpur-I

2.2.3 Allowance of deductions in exparte assessments

Scrutiny of assessment records in three circles (Balasore, Cuttack-I (West), and Sambalpur-I) revealed that while finalising the assessments of eight dealers exparte, the assessing officers allowed between July 2002 and March 2005 deduction of Rs.5.07 crore towards sale of tax paid goods, tax free goods and labour and service charges without verification of books of accounts. This led to under assessment of tax to the extent of Rs.47.94 lakh.

After this was pointed out in audit, the assessing officer of Cuttack-I (West) circle reopened the case in September 2003 and assessing officers of Sambalpur-I and Balasore circle stated between November 2003 and November 2004 that deduction was allowed towards labour charges to the minimum extent and towards first point tax paid goods. The reply is not tenable since allowance of deductions was irregular as the assessing officers had no scope to verify the books of accounts of the dealer to determine the allowable deduction in exparte assessment.

2.2.4 Pendency and disposal of first appeal cases

The CCT issued instructions in 1962/1999 for disposal of first appeal cases within three months from the date of their filing and disposal of cases involving high money value on priority basis. As per norms fixed by the Commissioner in 1991 the Asst. Commissioner of Commercial Taxes (ACCT) in charge of range should write 10 substantive appeal orders and the ACCT should write 40 appeal orders per month exclusive of appeals and other miscellaneous orders passed under different Acts.

Scrutiny of monthly progress reports (MPRs) for the years 2000-01 to 2003-04 in five ranges revealed that demands of Rs. 169.49 crore in 11,453 cases were locked up in appeals as of March 2004, as detailed below:-

(Rupees in Crore)

Name of the range	No. of cases pending as on 01.04.2000/ No. of cases received during the year 2000-01 to 2003-04	Total No.	No. of cases disposed of during the year 2000-01 to 2003-04	No. of cases pending as on 31.03.2004	No. of cases pending for more than 3 months	Cases confirmed	Cases enhanced	Cases annulled/ Cases reduced/ Cases set-aside
				No./ Amount	No./ Amount	No./ Amount	No./ Amount	No./ Amount
Balasore	<u>3057</u> 1744	4801	2086	<u>2715</u> 12.40	<u>1729</u> 3.49	<u>919</u> 17.82	<u>6</u> 0.98	<u>787</u> 22.95
Cuttack-I	<u>2657</u> 2677	5334	3673	<u>1661</u> 37.43	<u>793</u> 5.84	<u>1444</u> 22.80	<u>8</u> 0.12	<u>2099</u> 61.91
Cuttack-II	<u>4233</u> 4384	8617	6772	<u>1845</u> 58.92	<u>1187</u> 30.86	<u>3768</u> 68.54	<u>74</u> 0.95	<u>2414</u> 136.57
Puri	<u>3868</u> 4796	8664	6942	<u>1722</u> 30.42	<u>939</u> 2.10	<u>2753</u> 64.21	<u>37</u> 4.64	<u>3365</u> 76.74
Sundargarh	<u>4617</u> 2595	7212	3702	<u>3510</u> 30.32	<u>2815</u> 12.44	<u>1633</u> 20.09	<u>11</u> 0.47	<u>2025</u> 90.83
Total	<u>18,432</u> 16,196	34,628	23,175	<u>11,453</u> 169.49	<u>7,463</u> 54.73	<u>10,517</u> 193.46	<u>136</u> 7.16	<u>10,690</u> 389.00

It would be seen that balance 7,463 cases involving Rs.54.73 crore were pending for more than three months. The instructions of CCT to dispose of appeal cases within three months were not followed by the appellate authorities. This resulted in accumulation of appeal cases and blocking of revenue.

2.2.5 Pendency of set aside cases

Test check of records in 13 circles² revealed that 2,269 set aside cases were pending as on 1 April 2000 and 1,323 fresh cases were received during the period 2000-01 to 2003-04. Out of 3,592 set aside cases, only 991 cases were disposed of between 2000-01 and 2003-04. Test check of 176 pending cases involving Rs.6 crore pertaining to six circles revealed that the cases were set aside by first appellate officers and remanded to the assessing officers. The pendency of the cases ranged between one and 15 years.

The inspecting officers did not scrutinise the set aside register at the time of inspection. No assessing officer completed reassessment within three months from the date of receipt of appeal orders. Inspecting officers also did not follow CCT's instructions, which indicated lack of internal control in the Department. Lacuna in the Act in not providing any specific time limit for disposal of remand cases led to accumulation of huge pendency.

After this was pointed out between March 2005 and April 2005, all the ACCTs, except ACCT Sundargarh Range, issued instructions between March 2005 and July 2005 to the assessing officers for disposal of remand cases on priority basis. The reply of ACCT Sundargarh Range was awaited (October 2005). The CCT has also issued necessary instructions to all concerned (April/ May2005).

The matter was reported to Government in May 2005; reply had not been received (October 2005).

2.3 Underassessment of tax due to grant of irregular exemption towards export sales

Under the CST Act, a dealer shall not be liable to pay tax on any sale of goods in the course of export of those goods out of the territory of India. Under the provisions of OST Act, penalty for any concealment of turnover equal to one and half times of the tax so assessed is payable in addition to tax. Tyres, tubes and flaps are taxable at 12 *per cent*.

During the audit of Balasore circle, it was noticed in August 2004 that the assessing officer while finalising assessment in May 2003 of a registered dealer for the year 2001-02 engaged in manufacture and sale of tyres, tubes and flaps allowed exemption on export sale of Rs.161.35 crore. Cross verification of records with the Central Excise Department revealed that the dealer had diverted goods worth Rs.5.30 crore for home consumption and paid excise duty of only Rs.1.65 crore. Since these goods were not actually exported, the entire transaction of Rs.6.95 crore was exigible to tax. Allowance of exemption in respect of goods diverted for home consumption

2 Balasore, Bhadrak, Bhubaneswar-I, Bhubaneswar-II, Cuttack-I(West), Cuttack-I(Central), Cuttack-I(East), Cuttack-II, Cuttack-III, Dhenkanal, Puri-I, Rourkela-I, Rourkela-II.

resulted in underassessment of tax of Rs.2.17 crore including surcharge and penalty.

After this was pointed out in audit in August 2004, the assessing officer completed the reassessment proceedings in February 2005 raising extra demand of Rs.5.88 crore after taking into account audit findings and the report of the intelligence wing of the Department. Report on recovery was awaited (October 2005).

The matter was reported to Government in January 2005; Government in March 2005 confirmed the fact of raising demand.

2.4 Underassessment of tax due to contravention of declaration

Under the OST Act, where a registered dealer purchases goods of the class or classes specified in his certificate of registration as being intended for use within the state of Orissa by him in the manufacture or processing of goods for sale at concessional rate of tax or free of tax after furnishing a declaration in the prescribed form, but utilises the same for any other purpose, he shall pay the difference in tax. Ore was taxable at 12 *per cent* upto 17 February 2000 and 16 *per cent* thereafter and cement at 12 *per cent*.

2.4.1 During the audit of Rourkela-I circle in September 2004, it was noticed that in case of assessment of a registered dealer for the years 1999-2000 to 2000-01, the assessing officer allowed the purchase of raw materials (non agglomerated iron ore) valued at Rs.19.49 crore at concessional rate of four *per cent* against declaration in Form-IV. The assessee transferred the finished product "agglomerated iron ore"³ to his sponge iron unit located outside the state without fulfilling the condition of sale. Thus the dealer contravened the provisions of the declaration and was therefore, liable to pay the differential tax of Rs.2.31 crore on purchase price of raw material.

The matter was reported to the Department and Government between September 2004 and January 2005. Government stated in April 2005 that reassessment proceedings had been initiated against the dealer.

2.4.2 During the audit of assessment records of Cuttack-III circle in July 2004, it was noticed that a registered dealer engaged in manufacture of pig iron, purchased cement valued at Rs.3.31 crore at a concessional rate of four *per cent* against declaration in Form IV during the year 2000-01 and utilised it for own construction. The assessing officer while finalising the assessment for the year 2000-01 in March 2004 did not levy the differential tax of eight *per cent* on cost of the cement utilised in works though the purchases against declaration had contravened the provisions. This resulted in underassessment of tax of Rs.30.49 lakh including surcharge.

3 Non-agglomerated iron ore i.e. Iron ore lump.
Agglomerated : Sized iron ore in solid form.

After this was pointed out in July 2004, the Department stated that the assessing officer revised the assessment and raised an additional demand of Rs.30.49 lakh. Further report on recovery is awaited (October 2005).

The matter was reported to Government in January 2005; reply had not been received (October 2005).

2.5 Underassessment of tax in transit sale

Under the CST Act, where sale of any goods in the course of inter state trade or commerce has occasioned the movement of goods from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods to a registered dealer shall be exempt from tax, provided the dealer furnishes a certificate in the prescribed form obtained from the selling dealer from whom the goods were purchased. Electrical goods and machines and spare parts are taxable at the rate of 12 and eight *per cent* respectively under the OST Act.

2.5.1 During the audit of Rourkela-II circle it was noticed in September 2004 that the assessing officer while finalising assessment in December 2002 of a registered dealer dealing in electrical goods for the year 2001-02, rejected the claim of exemption towards transit sale for Rs.42.39 crore as the dealer did not furnish certificate in prescribed form. The transactions were taxed at the rate of four *per cent* treating it as inter state sale instead of 12 *per cent* applicable to intra state sale as the transactions were between the dealers of Orissa. This resulted in underassessment of tax of Rs.3.90 crore including surcharge.

After this was pointed out in September 2004, the assessing officer stated in September 2004 that the dealer had preferred an appeal against the original assessment and that the audit objection would be transmitted to the appellate authority for consideration.

The matter was reported to the Department and Government between September 2004 and January 2005. Government stated in April 2005 that the results would be intimated after finalisation of reassessment proceedings. Further reply has not been received (October 2005).

2.5.2 During the course of audit of Rourkela-II circle it was noticed in September 2004 that while finalising the assessment in January 2004 of a registered dealer dealing in heavy machinery/mechanical equipment for the year 2002-03, claim of exemption of transit sale of Rs.16.52 crore was rejected as the dealer could not furnish the prescribed certificate. The transactions were taxed at the rate of four *per cent* treating as inter state sale instead of eight *per cent* applicable to intra state sale as the transactions were between the dealers of Orissa. This resulted in underassessment of tax of Rs.79.31 lakh including surcharge.

The matter was reported to the Department and Government between September 2004 and January 2005. Government stated in April 2005 that the dealer had preferred an appeal. The assessment was set aside in appeal and returned for reassessment. The results of reassessment are awaited (October 2005).

2.6 Short levy of CST due to allowance of inadmissible concession

Under the CST Act, inter state sale of goods to a registered dealer is taxable at the concessional rate of four *per cent* provided such sale is supported by declarations in Form-C obtained from the registered dealer. Otherwise, in case of goods other than declared goods, tax is leviable at the rate of 10 *per cent* or at the rate applicable to sale of such goods inside the state whichever is higher. Ferro alloys are taxable at the rate of 12 *per cent* upto 31 March 2001 and eight *per cent* thereafter under the OST Act. Government of Orissa in their Finance Department notification of March 2001 prescribed a concessional rate of two *per cent* with effect from 1 April 2001 on inter state sale of ferro alloys supported by declaration in Form-C.

During audit of Dhenkanal circle, Angul in July 2004 it was noticed that while finalising assessments during November 2003 and February 2004 of a registered dealer under the CST Act for the years 2000-01 and 2001-02 the assessing officer allowed concessional rate of tax of four *per cent* on sale turnover of Rs.7.19 crore and Rs. 0.03 crore respectively, accepting invalid and defective declarations in Form-C. Thus, irregular acceptance of declarations for Rs.7.22 crore resulted in underassessment of tax of Rs.70.72 lakh.

After this was pointed out in July 2004, the assessing officer agreed to initiate reassessment proceedings. Further reply has not been received (October 2005).

The matter was reported to Government in November 2004; reply had not been received (October 2005).

2.7 Evasion of tax due to suppression of sale turnover

Under the OST Act, every registered dealer shall keep a true account of the value of goods bought and sold by him. If for any reason, the turnover of a dealer for any period has escaped the assessment under relevant section due to concealment of turnover, the assessment proceedings have to be reopened and the dealer is liable to pay by way of penalty, in addition to the tax assessed, a sum of one and a half times of the tax assessed. Rice is taxable at the rate of four *per cent* under the OST Act.

Cross verification of the records of Food Corporation of India (FCI), Titilagarh division with the transactions made by three registered rice millers of Bolangir-I circle in September 2004 revealed that 2.15 lakh quintals of rice

valued at Rs. 19.09 crore were sold by three dealers to FCI between 2000-01 and 2002-03 against which the dealers disclosed sale of only 1.27 lakh quintals of rice valued at Rs. 11.32 crore in their returns. The assessing officers determined the sale turnover as per the returns furnished by the assesseees and levied tax accordingly. This resulted in suppression of sale turnover of Rs. 7.77 crore having tax effect of Rs. 77.67 lakh including penalty.

After this was pointed out in audit in September 2004, the assessing officer reopened the case. Further reply has not been received (October 2005).

The matter was reported to Government in February 2005; reply had not been received (October 2005).

2.8 Irregular grant of incentives under Industrial Policy

Under Industrial Policy Resolution (IPR) 1996, a unit undertaking processing of iron and steel is ineligible for any incentives. Further under the said policy, incremental sales of finished products of an existing medium scale industrial unit which had undergone expansion after 1 March 1996 shall be exempted from tax for a period of seven years from the date of commercial production. The highest sale recorded during the last five years prior to availing exemption shall be the basis for calculation of incremental sales. Iron and Steel and sponge iron are taxable at four *per cent* under the OST Act and in case of inter state sale of declared goods not supported with declaration the rate of tax is eight *per cent*.

2.8.1 During the audit of Rourkela-I circle in September 2004 it was noticed that the assessing officer while finalising assessment in March 2004 of a registered small scale industrial unit processing iron and steel (from HR/CR sheets and coils to MS strips, slit coils and strips) incorrectly allowed exemption of sales tax of Rs.69.90 lakh both on purchase of iron and steel and sale of its finished product during the years 2001-02 and 2002-03.

After this was pointed out in September 2004, the assessing officer stated that the exemption was based on the eligibility certificate issued by the District Industries Centre. The reply is not tenable as the assessing officer erred in allowing exemption to a unit ineligible for incentive under IPR-96 without bringing it to the notice of the Industries Department.

The matter was reported to Government in January 2005; reply had not been received (October 2005).

2.8.2 During the audit of Rourkela-I circle it was noticed in September 2004 that the assessing officer finalised assessment in February 2004 for the year 2001-02 of a registered unit manufacturing sponge iron. The dealer was allowed exemption of tax on sale turnover of 18,241.03 MT against 5,964.505 MT for the year 2001-02. The assessing officer determined the highest sale of 21,236.850 MT as against 35,513.400 MT which was the highest sale

registered during the last five years prior to 2001-02. This resulted in excess exemption for sale turnover of 12,276.55 MT valued at Rs. 7.51 crore calculated at average sale price of Rs. 6,114 per MT which led to underassessment of tax of Rs.60.05 lakh.

After this was pointed out in September 2004, the assessing officer stated in September 2004 that the case would be reopened for further examination. Further reply has not been received (October 2005).

The matter was reported to Government in February 2005; their reply had not been received (October 2005).

2.9 Allowance of inadmissible exemption

Government vide notification of February 2000, decided that no exemption from payment of tax on purchase of raw material, machinery and spare parts thereof, packing materials and on sale of finished products by any industrial unit shall be allowed under the provisions of IPR 96. However the units which are in pipeline as on 1 January 2000 shall be entitled to the incentives subject to fulfilment of certain criteria which stipulate that the industrial unit was registered under the OST Act and had applied for finance from regular financial institution.

During the audit of Cuttack-I (East) circle in September 2004, it was noticed that the assessing officer while finalising between November 2002 and September 2003 the assessment of a registered dealer (SSI manufacturing unit) dealing in detergent powder and liquid for the years 2000-01 to 2002-03 allowed exemption from payment of tax under IPR 1996. But the dealer was not registered as on 1 January 2000 under OST Act and had also not applied for finance from regular financial institution. Since the unit had not fulfilled the eligibility criteria, the exemption allowed was irregular and resulted in non levy of tax of Rs.17.84 lakh.

After this was pointed out in September 2004, the assessing officer initiated reassessment proceedings. Further reply has not been received (October 2005).

The matter was reported to Government in March 2005; reply had not been received (October 2005).

2.10 Non levy of purchase tax

Under OST Act, sale of seeds certified by authorised agencies under the Seed Act, 1966 and marked poison was not exigible to tax up to 1 July 2000. As per the Seed Act, seeds being unfit for food, feed or oil purposes are marked poison. Paddy is subject to purchase tax of four *per cent*.

During audit of Bhubaneswar-I circle, it was noticed in June 2004 that the assessing officer while finalising the assessments of a registered dealer for the year 1999-2000 allowed the tax free sale of paddy seeds treating the same as poisonous. Since the seeds sold by the dealer were not marked poison, the sale of seeds did not satisfy the condition of tax free sale. The purchase of paddy procured from inside the state valued at Rs.16.11 crore was exigible to purchase tax. Non inclusion of the same resulted in underassessment of purchase tax for Rs.64.45 lakh.

After this was pointed out in June 2004, the assessing officer reopened the case and completed proceedings raising a demand of Rs.64.45 lakh in March 2005. Further report on recovery is awaited (October 2005).

The matter was reported to Government in February 2005; reply had not been received (October 2005).

2.11 Underassessment of tax due to grant of inadmissible deductions

Under the OST Act, "sale price" means the amount payable to a dealer as consideration for the sale or supply of any goods, less any sum allowed as cash discount according to ordinary trade practice, but including any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof.

Scrutiny of assessment records of Sambalpur-I circle in March 2005 revealed that the assessing officer while finalising the assessment of a registered dealer dealing in supply of ballast and stone dust in March 2003 and January 2004 for the years 2000-01 and 2001-02 respectively allowed deduction of Rs.2.60 crore towards transportation charges incorrectly. This resulted in underassessment of tax of Rs.30.32 lakh including surcharge.

After this was pointed out in March 2005, the assessing officer agreed to open the case for reassessment proceedings.

The matter was reported to Government in March 2005; reply had not been received (October 2005).

2.12 Short levy of tax due to misclassification of supply contract as works contract

Under OST Act, taxable turnover in respect of works contract shall be deemed to be the gross value received or receivable by a dealer for carrying out such contract less the amount of labour and service charges and the turnover is taxable at the rate of eight *per cent* and supply is taxed at the appropriate rate under the Act *ibid*. Machinery is taxable at 16 *per cent* under the Act.

During the audit of Rourkela-I circle in September 2004, it was noticed that a registered works contractor had received an amount of Rs.1.12 crore towards supply of machinery during the year 1999-2000. While completing the assessment in March 2003, the assessing officer incorrectly determined the divisible contract as composite contract and levied tax at eight *per cent* instead of 16 *per cent* applicable for supply of machinery. Misclassification of supply contract as composite works contract resulted in short levy of tax of Rs.10.30 lakh including surcharge.

After this was pointed out in September 2004, the assessing officer stated in September 2004 that the case would be reexamined. Further reply has not been received (October 2005).

The matter was reported to Government in March 2005; their reply had not been received (October 2005).

2.13 Underassessment of tax due to application of concessional rate of tax

Under the CST Act, small scale industrial units are eligible to avail concessional rate of tax at the rate of one *per cent* instead of four *per cent* on inter state sale of their finished products against declaration in form-C with effect from 1 April 2001. As per Industrial Policy 1989, registered dealers who are certified by the Director of Industries, Orissa as medium or large scale industrial units only, shall be allowed to defer payment of sales tax on the sale of finished products. As per the aforesaid provisions, any unit availing the benefit of deferment is not entitled to avail concessional rate.

During the audit of Balasore circle in July 2004, it was noticed that a medium scale industrial unit availing deferment facility had effected interstate sale of high density poly ethylene sacks amounting to Rs.9.46 crore during 2001-02 and 2002-03. The assessing officer while finalising the assessments in December 2003 taxed incorrectly the entire sale of Rs.9.46 crore at the concessional rate of one *per cent* instead of four *per cent*. This resulted in underassessment of tax of Rs.28.38 lakh.

After this was pointed out in July 2004, the assessing officer agreed to reopen the case. Further reply has not been received (October 2005).

The matter was reported to Government in February 2005; reply had not been received (October 2005).

2.14 Underassessment due to application of lower rate of tax

Under the OST Act, goods not specified in the schedule are subject to tax on sale at the general rate of 12 *per cent* w.e.f 1 July 1990. Tin being unspecified item is taxable at the rate of 12 *per cent*.

During the audit of Bhubaneswar-I circle, it was noticed in June 2004 that while finalising assessment in March 2004 of a dealer for the year 2000-01, the assessing officer assessed the sale turnover of tin amounting to Rs.1.28 crore at the rate of four *per cent* instead of 12 *per cent*. This resulted in short levy of tax of Rs.11.79 lakh including surcharge.

After this was pointed out in June 2004, the assessing officer raised an additional demand of Rs.11.79 lakh.

The matter was reported to Government in February 2005. Government confirmed in April 2005 the fact of raising extra demand of Rs. 11.79 lakh and stated that the dealer had paid Rs.0.73 lakh in December 2004 and had gone in appeal. Further reply had not been received (October 2005).

2.15 Underassessment of tax due to short determination of taxable turnover in works contract

Under OST Act, transfer of property in goods involved in works contract is exigible to tax. Further as held⁴ by the apex Court, the value of goods at the time of incorporation in the works, constitutes the measure for levy of tax. Thus the value of material utilised and profit relatable to material taken together constitutes the taxable turnover in works contract. It has also been held that the amount of royalty paid is also includible⁵ in the taxable turnover. Works contract is taxable at eight *per cent* under the Act.

2.15.1 During the audit of Koraput-I circle, it was noticed in December 2004 that in the assessment of a registered dealer engaged in works contract for the year 2002-03 the assessing officer determined taxable turnover of Rs.148.68 crore. Cross verification of profit and loss account of the dealer for the year 2002-03 revealed that the dealer disclosed consumption of raw materials valued at Rs.180.96 crore in works and earned a profit of Rs.47.66 crore. Actual utilisation of materials in works and the proportionate profit to the material utilised were not taken into account in the assessment due to which there was short determination of taxable turnover of Rs.51.88 crore. This resulted in underassessment of tax of Rs.4.56 crore including surcharge.

After this was pointed out in audit in December 2004, the assessing officer stated that the value of materials shown in profit and loss (P/L) account was the cost of materials issued from the store head to work head. The reply was not tenable as the P/L account reflected the value of materials utilised but not

4 M/s. Ganon Dunkerly & Co. Vs. State of Rajsthan (88 STC p/204)

5 M/s Cooch Bihar Contractors Association Vs.State of West Bengal, 103 STC-P/477

issued and the proportionate profit to the material utilised in works contract was not taken into account in the assessment.

The matter was reported to Government in February 2005; reply had not been received (October 2005).

2.15.2 Cross check of the assessment order with the entry tax records of a dealer of Cuttack III circle in July 2004 revealed that the dealer purchased goods valued at Rs.7.32 crore including entry tax from outside the state and utilised the same in the execution of a contract during 2002-03. Besides, the dealer had also paid royalty of Rs.70.47 lakh. Thus, the dealer was liable to pay tax of Rs.70.58 lakh including surcharge on his taxable turnover of Rs.8.02 crore. However, the assessing authority assessed the dealer for Rs.5.63 crore and levied a tax of Rs.49.52 lakh including surcharge. This resulted in under assessment of Rs.2.39 crore having a tax effect of Rs.21.06 lakh including surcharge.

After this was pointed out in July 2004, the assessing officer stated in July 2004 that the case would be reexamined.

The matter was reported to Government in February 2005; reply had not been received (October 2005).

2.16 Underassessment of tax due to short determination of taxable turnover

According to Rule 18(1) of Orissa Entry Tax (OET Rules) Rules, 1999 a dealer in motor vehicles becomes liable to pay tax under Sales Tax Act by virtue of sale of such motor vehicles and his tax liability under the Act, shall be reduced to the extent of the tax paid under these rules and entry tax paid/payable shall from part of sale price of motor vehicle. Motor vehicles are taxable at the rate of 12 *per cent* under the OST Act.

During the audit of Rourkela-II and Cuttack-II circles between July 2004 and September 2004, it was noticed from the assessments of two registered dealers of motor vehicles for the years 1999-2000 to 2002-03 that the dealers did not include the entry tax paid in their taxable sale turnover, but disclosed the amount of entry tax set off against the sales tax. The assessing officers also while determining the taxable turnover under the OST Act did not include the entry tax of Rs.9.59 crore paid on the purchase price of the vehicles. This resulted in underassessment of sales tax of Rs.66.33 lakh including surcharge after set off of entry tax.

After this was pointed out in audit in September 2004, the assessing officers agreed to re-examine the cases. Further reply has not been received (October 2005).

The matter was reported to Government in April 2005; reply had not been received (October 2005).

2.17 Non levy of interest

Under OST Act, if the assessing officer is satisfied that a dealer has knowingly or without sufficient cause furnished incorrect returns or information affecting or intended to effect the quantum of tax payable by him or his liability to pay tax for the period for which such assessment is made, he may direct that the dealer shall, in addition to the tax assessed, pay interest at the rate of 10 *per cent* per annum on the tax payable in respect of the taxable turnover not incorporated in the return for a period of 90 days or for the period beginning from the date on which the return was due and ending on the date of assessment whichever is less.

During the audit of Bhubaneswar-II circle, it was noticed in June 2004 that a dealer engaged in providing cellular mobile telephone facilities in Orissa disclosed his sale turnover less than the figure in his books of accounts. The assessing officer while finalising the assessment in October 2003, determined the taxable turnover at Rs.45.94 crore for the year 2002-03 and demanded a tax of Rs.6.06 crore after verifying the books of accounts of the dealer. Though the assessing officer recorded in the assessment order that the gross turnover disclosed by the dealer did not reflect the true picture of the business, yet no interest was levied against the dealer. This resulted in non levy of interest of Rs.14.95 lakh.

After this was pointed out in June 2004, the assessing officer stated in June 2004 that the dealer was not supposed to pay interest. The reply was not tenable since, the dealer had furnished incorrect returns as observed in the assessment order.

The matter was reported to Government in February 2005; reply had not been received (October 2005).

2.18 Loss due to payment of avoidable interest

Under the OST Act, no claim for refund of any tax, penalty or interest paid under this Act shall be allowed in case where there is an order for reassessment until the reassessment is finalised. As per standing orders of CCT of 1962 and September 1994, reassessment proceedings are to be completed within three months from the date of receipt of appeal order.

During the audit of Sambalpur-III circle, Jharsuguda it was noticed in August 2004 that a registered dealer filed second appeal (1994-95) before the Sales Tax Tribunal and got stay order in 15 March 1995 from Hon'ble High Court on the condition to deposit Re.1 crore which would carry 18 *per cent* interest in case of refund. In the second appeal, the case was set aside in March 1996 with the direction for reassessment. The reassessment was completed after lapse of four years in March 2000 resulting in refund of tax of Rs.1.42 crore. In addition the Department paid Re.1 crore towards interest on Re.1 crore deposited as per stay order. Non adherence to the instruction of

CCT to complete reassessment in three months led to payment of avoidable interest of Rs.77.52 lakh for the period between July 1996 and October 2000.

After this was pointed out in audit in August 2004, the assessing officer did not furnish any specific reply in this context.

The matter was reported to Government in February 2005; reply had not been received (October 2005).

Entry Tax

2.19 Underassessment of entry tax due to application of incorrect rate

Under the OET Act, scheduled goods brought into local area for use as raw materials in manufacture are exigible to entry tax at the rate of 50 *per cent* of the rate applicable to such goods with effect from 6 November 2000. Entry tax at the rate of two *per cent* is leviable on electrical goods including motors, materials for transmission tower and conductors/cable for manufacture. Aluminium wire sold as raw material for manufacture of conductors and cables is exigible to tax at the rate of one *per cent*.

Scrutiny of assessment records of Balasore circle in July 2004 revealed that a dealer sold aluminium wires amounting to Rs.35.70 crore during the years 2001-02 to 2002-03 as raw material for manufacture of conductors and cables. The assessing officer while finalising the assessment of the registered dealer engaged in manufacture of aluminium wires levied entry tax at the rate of 0.5 *per cent* instead of one *per cent*. This resulted in short levy of entry tax of Rs.17.85 lakh.

After this was pointed out in audit in July 2004, the assessing officer raised in February 2005 an additional demand of Rs.17.85 lakh. Position of recovery was awaited (October 2005).

The matter was reported to Government in January 2005. Government confirmed in April 2005 the fact of raising extra demand of Rs.17.85 lakh.

2.20 Short levy of entry tax

Under OET Act, every registered dealer is liable to file return to the assessing authority within specified period along with satisfactory proof of payment of full amount of tax payable by him on the basis of such return. 'Biri' a "tobacco product" is exigible to entry tax at the rate of one *per cent*.

Scrutiny of assessment records in Cuttack-I (East) circle and Sambalpur-I circle revealed between October 2004 and February 2005 that while finalising assessments in September 2003 for the years 2000-01 to 2002-03 in respect of three dealers engaged in manufacture and trading of 'Biri', the assessing officer levied entry tax of Rs.2.87 lakh on their sale turnover of Rs.20.94 crore against the leviable amount of Rs.20.94 lakh. This resulted in short levy of entry tax of Rs.18.07 lakh.

After this was pointed out in October 2004 and February 2005, the assessing officers agreed to reopen/reexamine the cases. Further reply has not been received (October 2005).

The matter was reported to Government in March 2005; reply had not been received (October 2005).