

CHAPTER-II: SALES TAX AND ENTRY TAX

2.1 Results of audit

Test check of the assessments, refund cases and other records on sales tax, value added tax (VAT) and entry tax of commercial tax offices during the year revealed underassessment of tax, irregular grant of exemption, non/short levy of surcharge/interest/penalty, incorrect computation of taxable turnover, application of incorrect rate of tax etc., amounting to Rs. 272.29 crore in 189 cases which fall under the following categories:

(Rupees in crore)			
Sl. No.	Category	No. of cases	Amount
Sales tax			
1.	“Concessions and exemptions on interstate sales and branch transfers” – A review	1	32.73
2.	Underassessment of tax due to irregular grant of exemption	39	65.04
3.	Short levy of tax due to incorrect computation of taxable turnover	20	35.93
4.	Underassessment of tax due to application of incorrect rate of tax	59	15.55
5.	Non/short levy of surcharge/interest/penalty	15	1.69
6.	Other irregularities	21	9.22
Total		155	160.16
Entry tax			
1.	Underassessment of tax due to application of incorrect rate of tax	13	3.83
2.	Non/short levy of penalty	5	1.34
3.	Underassessment of tax due to incorrect computation of taxable turnover	9	1.04
4.	Non/short levy of tax	4	0.10
5.	Other irregularities	3	105.82
Total		34	112.13
Grand total		189	272.29

During the year 2007-08, the department accepted underassessment, non/short levy of tax/surcharge/interest/penalty and other deficiencies of Rs. 10.59 crore in 89 cases, which were pointed out in audit in earlier years and recovered Rs. 1.19 crore in 14 cases.

A few illustrative cases highlighting important audit observations involving Rs. 65.04 crore including a review on **“Concessions and exemptions on interstate sales and branch transfers”** involving Rs. 32.73 crore are discussed in the following paragraphs.

Sales Tax

2.2 Concessions and exemptions on interstate sales and branch transfers

Highlights

Acceptance of defective/duplicate/manipulated declarations by the assessing officers led to underassessment of tax of Rs. 6.11 crore.

(Paragraph 2.2.6)

Irregular allowance of exemption/concession without supporting declarations, application of lower rate of tax after disallowing declarations, exemption on inadmissible items, etc., resulted in short levy of tax of Rs. 8.23 crore in 26 cases.

(Paragraph 2.2.9)

Due to irregular allowance of exemption on the basis of invalid/duplicate declaration forms, transfer of goods to places not included in the registration certificate of the dealer, etc., there was underassessment of tax of Rs. 18.40 crore.

(Paragraph 2.2.10)

2.2.1 Introduction

The Central Sales Tax (CST) Act, 1956 and the Rules framed thereunder regulate the assessment, levy and collection of tax on interstate transactions. Under the provisions of the Act and the Rules made thereunder, goods are purchased by a registered dealer from outside the State on payment of tax at a concessional rate of four *per cent* by issuing declaration in form 'C'. Similarly, on sale of goods to a registered dealer of another State, tax is leviable at a concessional rate of four *per cent* subject to furnishing of declaration in form 'C' obtained from the registered purchasing dealer. Thus, in case a dealer fails to obtain and produce such declaration, tax is leviable in respect of declared¹⁰ goods at twice the rate applicable to the sale or purchase of such goods inside the State and in case of other goods, at the rate of 10 *per cent* or at the rate applicable to the sale or purchase of such goods within the State, whichever is higher.

The Act also provides that goods transferred by a dealer outside the State to any place of his business or to his agent or principal are not liable to tax provided such transfer is supported by a declaration in form 'F' obtained from the transferee along with evidence of dispatch of such goods to substantiate the claim of transfer. If the dealer fails to furnish such declaration then the movement of such goods shall be deemed to have been occasioned as a result of sale under the CST Act.

¹⁰ Goods of special importance in interstate trade or commerce as described in Section 14 of the CST Act.

The provisions for levy of interest and penalty as per the State sales tax laws are applicable *mutatis mutandis* in case of failure to pay the tax by the dealer within the due date or due to other contravention of the provisions of the CST Act and the Rules made thereunder.

A review on concessions and exemptions on interstate sales and branch transfers revealed a number of system and compliance deficiencies, which have been mentioned in the succeeding paragraphs.

2.2.2 Organisational set up

The assessment and collection of sales tax is administered by the Commissioner of Commercial Taxes (CCT), Orissa who is assisted by three Additional Commissioners at the zonal levels, nine Assistant Commissioners (ACCT) at range levels, commercial tax officers (CTOs) and additional commercial tax officers (Addl. CTOs) working in various circles. There are 29 circles (reorganised to 44 circles with effect from 1 October 2006) and each circle is headed by a CTO. The assessments are finalised by the CTOs/Addl. CTOs.

2.2.3 Audit objectives

The review was conducted with a view to ascertain whether:

- claims of interstate sales/branch transfers allowed in the assessments were as per the provisions of the Act and the Rules;
- the system prescribed for cross verification and correlation of the declarations with the assessments made was adequate and effective; and
- internal control mechanism existed in the department and was adequate to prevent leakage of revenue.

2.2.4 Scope and methodology of audit

The review was conducted between August 2007 and March 2008 covering the period from 2003-04 to 2006-07. For this, 12¹¹ out of 29 circles were selected by stratified sampling method taking three strata based on population and range of weightage. Besides, information collected from five¹² more circles have also been included to increase the coverage of the review.

2.2.5 Acknowledgement

The Indian Audit and Accounts Department acknowledges the co-operation of the Finance Department in providing necessary information for audit. The audit observations were forwarded to the Government in June 2008 and discussed in the audit review committee meeting held in August 2008. The replies of the Government have been suitably incorporated in the review.

11 Bhubaneswar II, Bolangir II, Cuttack I (Central), Cuttack I (West), Cuttack III, Dhenkanal, Ganjam I, Keonjhar, Koraput II, Mayurbhanj, Rourkela I and Sambalpur III.

12 Balasore, Bhubaneswar I, Cuttack-I (East), Cuttack II and Rourkela-II.

System deficiencies

2.2.6 Acceptance of declaration forms on interstate sales

Interstate sales

As per the provisions of the CST Act and the Rules made thereunder, interstate sale of goods covered by valid declaration in form 'C' is exigible to tax at a concessional rate of four *per cent*. A dealer who claims concessional rate of tax is required to obtain the declaration in form 'C' marked as 'original' from the purchasing dealer and produce it before the assessing officer (AO) at the time of finalisation of the assessments. Further, penalty not exceeding one and a half times the tax assessed is also leviable for concealment/furnishing incorrect particulars of turnover.

To check the misuse of the form 'C' and various other malpractices associated therewith, the CCT issued instructions in October 1972 and December 1977 to all the AOs to select a certain percentage of the declaration forms for reference to the AOs of the concerned State for cross verification. In case of inordinate delay in getting the required information from the other State, it should be brought to the notice of the ACCT (Intelligence) for further action. Further, every circle and assessment unit is required to maintain two registers in the prescribed proforma, one for declaration form 'C' received from other states and the other for declaration form 'C' sent to other states, for verification.

Test check of records of the circles covered in the review revealed non-maintenance of register for cross verification of declaration forms, acceptance of defective, duplicate, photocopied and manipulated forms while allowing concessional rate of tax by the AOs at the time of finalising the assessments. This led to underassessment, non/short levy of tax mentioned in the succeeding paragraphs.

2.2.6.1 It was noticed that none of the circles except Bolangir II and Cuttack III took up any cross verification of the declaration forms during the period covered in the review. Besides, the prescribed registers, one for declaration form 'C' received from other states and the other for declaration form 'C' sent to other states were also not maintained in any of the circles covered in the review.

2.2.6.2 In Bolangir II circle, it was noticed that only three declaration forms were sent to the issuing authority of the forms at Delhi in October 2006. Although no reply was received till March 2008, the AO did not bring the fact to the notice of ACCT (Intelligence) for further action. The matter was left unattended till date.

2.2.6.3 In case of Cuttack III, it was noticed that 46 declaration forms were sent during 2002-03 to the ACCT (Intelligence) wing for cross verification, the results of which have not been received. The matter was not pursued with that wing to ascertain the latest progress made in the verifications.

2.2.6.4 Further, as there was no system of any report/return to be furnished by the AOs to the higher authorities, the CCT was unaware of the position of cross verification of the declaration forms by the AOs. Thus, the use of defective/duplicate/manipulated declaration forms remained undetected.

Test check of the assessment records in nine circles revealed that in 18 cases, concessional rate of tax was allowed on the turnover of Rs. 35.20 crore on the strength of defective/duplicate/photocopied/manipulated declarations in form 'C' resulting in underassessment of tax of Rs. 2.79 crore. It was noticed that declaration forms furnished by the dealers were being accepted and concessional rate/exemption of tax granted without any further verification/scrutiny by the AOs. Due to the absence of a monitoring mechanism, the CCT remained unaware of these omissions on the part of the AOs which led to underassessment of tax. The details are mentioned below:

(Rupees in crore)

Sl. No.	Name of the circle (Number of cases)	Year assessed (Month of assessment)	Turn-over	Tax under-assessed	Nature of irregularities
Defective forms					
1.	<u>Rourkela I</u> (3)	2002-03 to <u>2004-05</u> (Between December 2004 and January 2007)	24.10	1.69	In one declaration form for Rs. 6.77 lakh relating to 2002-03, there was no mention of the money value on the front side of the form and the money value mentioned on the reverse side was not authenticated. In 32 forms relating to 2003-04 and 2004-05, the seals and signatures of purchasing dealers on the front side were different from those on the reverse side or annexure to the forms. Further, out of these 32 forms, in one form relating to 2003-04, there was a difference of Rs. 4 lakh between the amount indicated on the front side and that recorded in the annexure.
2.	<u>Bhubaneswar I</u> (1)	<u>2002-03</u> (February 2006)	4.33	0.53	Declaration forms were issued by the dealers of states other than the purchasing dealers to whom the goods were sold.
3.	<u>Cuttack II</u> (1)	<u>2002-03</u> (April 2004)	0.24	0.02	

(Rupees in crore)

Sl. No.	Name of the circle (Number of cases)	Year assessed (Month of assessment)	Turn-over	Tax under-assessed	Nature of irregularities
4.	<u>Mayurbhanj</u> (2)	2003-04 and <u>2004-05</u> (November 2006 and August 2007)	2.75	0.26	The declaration forms were not furnished in favour of the selling dealers of Orissa but in favour of dealers of West Bengal, Tamil Nadu and Maharashtra.
5.	<u>Balasore</u> (3)	2003-04 and <u>2004-05</u> (Between March 2005 and February 2006)	0.73	0.05	
6.	<u>Dhenkanal</u> (1)	<u>2003-04</u> (March 2005)	0.13	0.01	Declaration forms furnished by the purchasing dealers did not contain the value of goods on the front side and the details furnished on the reverse side were not authenticated.
Sub total (11 cases)			32.28	2.56	
Duplicate/photocopied forms					
7.	<u>Mayurbhanj</u> (1)	<u>2005-06</u> (August 2007)	0.88	0.05	Three duplicate forms were accepted during assessment.
8.	<u>Cuttack I (Central)</u> (1)	<u>2003-04</u> (June 2005)	0.17	0.02	One duplicate declaration form furnished by the dealer for Rs. 16.77 lakh was accepted during assessment.
9.	<u>Rourkela I</u> (2)	2003-04 and <u>2004-05</u> (February and March 2007)	0.36	0.02	One duplicate declaration form for Rs. 19.12 lakh and photocopies of the counterfoils of two declaration forms for Rs. 16.42 lakh were accepted during assessment.
Sub total (Four cases)			1.41	0.09	
Manipulated forms					
10.	<u>Rourkela I</u> (1)	<u>2004-05</u> (March 2007)	1.03	0.07	The declaration form originally used for Rs. 20 lakh was reused by overwriting the amount as Rs. 1.03 crore on the front side and pasting the bill-wise details thereof on the reverse side.

(Rupees in crore)

Sl. No.	Name of the circle (Number of cases)	Year assessed (Month of assessment)	Turn-over	Tax under-assessed	Nature of irregularities
11.	<u>Keonjhar</u> (1)	<u>2002-03</u> (July 2004)	0.43	0.06	In one form relating to 2002-03, though an amount of Rs. 24.48 lakh was mentioned on the front side, the reverse side depicted a value of Rs. 18.08 lakh. The AO allowed concessional rate of tax by adding both the amounts.
12.	<u>Ganjam I</u> (1)	<u>2003-04</u> (November 2006)	0.05	0.01	In two declaration forms, the value of goods were enhanced by inserting additional entries in the original form without authentication.
Sub total (Three cases)			1.51	0.14	
Grand total (18 cases)			35.20	2.79	

Thus, failure of the AOs to verify/scrutinise the declaration forms furnished by the dealers led to underassessment of tax of Rs. 2.79 crore.

After the cases were pointed out, the Government stated in August 2008 that in respect of five cases of Rourkela-I circle involving Rs. 1.65 crore proceedings had been initiated between February and August 2008 and the remaining cases were under examination. A report on further development has not been received (November 2008).

2.2.6.5 Test check of the assessment records of a dealer registered in Bolangir II circle revealed that the dealer effected interstate sale of rice worth Rs. 19.83 crore during June to December 2004 and claimed exemption by furnishing declarations in five 'C' forms after having paid purchase tax on the corresponding paddy. The AO while completing the assessment in March 2005 allowed the exemption accordingly. Subsequently, based on a report of the ACCT (Enforcement), Orissa, Cuttack stating that two of the five 'C' forms¹³ submitted by the dealer were fake, reassessment was completed in June 2006 raising an additional demand for Rs. 65.10 lakh on the reassessed sale turnover of Rs. 8.14 crore. Though the dealer had submitted fake forms and deliberately tried to evade tax, penalty leviable at one and a half times the tax so assessed was not levied. In absence of a return, non-levy of penalty could not be watched by the CCT. This resulted in non-levy of penalty of Rs. 97.65 lakh.

Scrutiny of the remaining three¹⁴ declaration forms revealed that two forms did not contain essential details like series identification, and in other the

13 Form No. WB/96/563268: Rs. 6,08,03,422.22 and No. WB/96/563269: Rs. 2,05,69,151.60.

14 Form No. 12/P-463266: Rs. 1,51,84,313, No. 702903: Rs. 9,11,46,158 and No. 563268: Rs. 1,05,74,924.

prescribed details were not found, thus the forms were *prima facie* fake. The AOs did not notice the deficiencies in the forms and allowed concessional rate of tax on the sale turnover of Rs. 11.69 crore. Cross verification of these forms with the records of the sales tax authorities of Delhi by audit, however, revealed that these three 'C' forms were not issued to the purchasing dealers of Delhi by the sales tax authorities of that State. Thus, non-detection of the deficiencies in the declaration forms resulted in underassessment of tax of Rs. 2.34 crore including penalty.

After this was pointed out, the AO stated in March 2008 that the matter was referred to the sales tax authorities of the NCT of Delhi in October 2006 but reply had not been received. The reply was silent regarding failure of the AO to take up the matter with the ACCT (Intelligence) as required vide the CCT's circular of December 1977. A report on further development has not been received (November 2008).

The Government may consider installing a mechanism to ensure that cross verification of declaration forms is done by the concerned AOs. A periodic return to monitor the progress made from time to time in cross verification of the declaration forms and maintenance of the prescribed registers at CCTs' level may be prescribed for all the AOs. Besides, norms for carrying out cross verification of the declaration forms may be prescribed for each AO.

2.2.7 Deficiency in the proforma prescribed for utilisation statement of declaration forms

According to the CST (Orissa) Rules, every registered dealer to whom any declaration forms 'C' and 'F' are issued shall maintain in a register in form-V (for declaration form 'C') and form-VC (for declaration form 'F') a true and complete account of utilisation of every such form. The Rules also provide that no second or subsequent supply of declaration form shall be made to any dealer unless he furnishes a true copy of the accounts certified by him under his signature to the notified authority.

The proforma prescribed in the CST (Orissa) Rules for utilisation accounts of the declaration forms does not provide columns for capturing basic information such as registration certificate (RC) number of the dealers to whom these forms are issued on purchase of goods or on receipt of goods by stock transfer. In absence of the above information, the scope for cross verification of the genuineness of the transactions covered in the declarations by referring the details to the assessing authorities of other states appears to be limited.

After the case was pointed out, the Government in August 2008 stated that action was being taken to amend the proforma.

The Government may take early steps for amending the proforma prescribed for utilisation accounts of declaration forms incorporating columns for all the necessary information to facilitate the cross verification.

2.2.8 Internal audit

Internal audit is one of the most vital tools of the internal control mechanism and functions as the 'eyes' and 'ears' of the management and evaluates the

efficiency and effectiveness of the mechanism. It also independently appraises whether the activities of the organisation/department are being conducted efficiently and effectively.

An internal audit wing (IAW) was introduced in the Sales Tax Department in 1975-76 with seven audit parties headed by the CTOs (Inspection). Initially there were 29 circles, 17 assessment units, 23 road check gates and eight railway receipts units under the jurisdiction of the IAW.

A mention was made in paragraph 2.18 of the Report of the Comptroller and Auditor General of India (Revenue Receipts) for the year ended 31 March 2003, Government of Orissa regarding non-functioning of the above IAW since 1999-2000 except for inspection of 15 units in 2001-02. It was recommended that the IAW may be revamped to check the leakage of revenue.

In course of this review, it was seen that the IAW did not carry out a single inspection during 2003-04 to 2006-07 and was rendered defunct. Thus, due to the failure of the Government to strengthen the IAW, adherence to the provisions of the statutes and instructions for reduction of the risk of committing errors and irregularities to guard against leakage of revenue was not ensured.

After this was pointed out, the Government, while agreeing to the audit observations, stated (August 2008) that over a period of time though the number of dealers had increased manifold, yet proportionately the number of field officials had remained more or less the same. They further stated that after introduction of tax audit under the Value Added Tax (VAT) system, revival of the internal audit would not be required as VAT itself was designed as audit oriented assessment. The reply was not tenable as tax audit system under VAT entails only verification of the records of the dealers whereas internal audit ascertains the adequacy of the internal control mechanism within the department and ensures adherence to the systems, provisions of statutes and instructions by the assessing/departmental officers.

The Government may take immediate steps to strengthen the IAW at the earliest to ensure strict compliance with the provisions of the Act and the rules by various wings of the department and to prevent leakage of revenue.

Compliance deficiencies

2.2.9 Interstate sales

As per the provisions of the CST Act, tax on interstate sale is leviable at the concessional rate of four *per cent* subject to production of declarations in form 'C'. Thus, in case a dealer fails to obtain and produce such declaration, tax is leviable in respect of declared¹⁵ goods at twice the rate applicable to the sale or purchase of such goods inside the State and in case of other goods, at the rate of 10 *per cent* or at the rate applicable to the sale or purchase of such goods within the State, whichever is higher.

¹⁵ Goods of special importance in interstate trade or commerce as described in Section 14 of the CST Act.

2.2.9.1 Test check of the records revealed that in 23 cases of seven circles, the AOs while finalising the assessments between May 2003 and August 2007 for the years between 2002-03 and 2004-05, allowed exemption/concession though the dealers did not produce supporting declarations in form 'C'. This irregular exemption resulted in short levy of tax of Rs. 6.23 crore. The details are mentioned in the following table:

(Rupees in crore)

Sl. No.	Name of the circle (Number of cases)	Year assessed (Month of assessment)	Turnover under-assessed	Amount of tax short levied	Nature of irregularities
1.	<u>Rourkela I</u> (7)	2002-03 and <u>2003-04</u> (March 2004 and December 2006)	49.97	4.00	Interstate sale of iron and steel not supported by declaration in form 'C' was exempted from tax instead of levying tax at the rate of eight <i>per cent</i> .
	<u>-do-</u> (1)	<u>2002-03</u> (March 2006)	0.45	0.04	Sale turnover of explosives not supported by declarations in form 'C' was assessed to tax at the rate of four <i>per cent</i> instead of 13.2 <i>per cent</i> including surcharge.
	<u>-do-</u> (1)	<u>2002-03</u> (January 2004)	0.21	0.01	Sale of rice not supported by declaration in form 'C' was assessed to tax at the rate of four <i>per cent</i> instead of eight <i>per cent</i> .
	<u>-do-</u> (1)	<u>2004-05</u> (October 2006)	0.15	0.01	Sale turnover of iron ore and fines not supported by declaration in form 'C' was assessed to tax at the rate of four <i>per cent</i> instead of 10 <i>per cent</i> .
2.	<u>Keonjhar</u> (1)	<u>2004-05</u> (July 2006)	9.21	0.74	Sale turnover of sponge iron/iron and steel although not covered by the declarations in form 'C' was exempted from tax instead of levying tax at the rate of eight <i>per cent</i> .
3.	<u>Rourkela-II</u> (2)	<u>2002-03</u> (March 2006)	3.56	0.29	
4.	<u>Bhubaneswar II</u> (1)	<u>2003-04</u> (March 2007)	5.29	0.67	Sale turnover of aluminium conductor and wire of an SSI unit not supported by declarations in form 'C' was exempted from tax instead of levying tax at the rate of 13.2 <i>per cent</i> including surcharge.

Sl. No.	Name of the circle (Number of cases)	Year assessed (Month of assessment)	Turnover under-assessed	Amount of tax short levied	Nature of irregularities
5.	<u>Dhenkanal</u> (1)	<u>2002-03</u> (August 2004)	8.65	0.35	Sale turnover of iron and steel not supported by declarations in form 'C' was assessed to tax at the rate of four <i>per cent</i> instead of eight <i>per cent</i> .
6.	<u>Ganjam I</u> (6)	2002-03 and <u>2004-05</u> (May 2003 and August 2006)	1.59	0.06	Sale of rice not supported by the declarations in form 'C' was assessed to tax at the rate of four <i>per cent</i> instead of eight <i>per cent</i> .
7.	<u>Mayurbhanj</u> (2)	2003-04 and <u>2004-05</u> (March and August 2007)	1.75	0.06	Sale turnover of glass not supported by declarations in form 'C' was assessed to tax at the rate of 10 <i>per cent</i> instead of the appropriate rate of 13.2 <i>per cent</i> including surcharge.
Total (23 cases)			80.83	6.23	

After the cases were pointed out, the Government informed in August 2008 that out of 23 cases, demand of Rs. 65 lakh was raised in January and March 2008 in four cases¹⁶ and 14 cases involving Rs. 4.10 crore had been reopened for reassessment. It was further stated that the remaining five cases involving Rs. 1.48 crore were under examination. A report on further development has not been received (November 2008).

2.2.9.2 Test check of the records revealed that in three cases of three circles, the AOs while finalising the assessments between November 2005 and October 2006 for the years 2002-03 and 2004-05, incorrectly allowed exemption from payment of tax, applied incorrect rate of tax after disallowing declarations etc. This resulted in non/short levy of tax of Rs. 2 crore as mentioned in the following table:

(Rupees in crore)

Sl. No.	Name of the circle (Number of cases)	Year assessed (Month of assessment)	Turnover under-assessed	Amount of tax non/short levied	Nature of irregularities
1.	<u>Cuttack III</u> (1)	<u>2002-03</u> (February 2006)	46.19	1.85	The AO after disallowing the declarations in form 'C' levied tax on pig iron at four <i>per cent</i> instead of the appropriate rate of eight <i>per cent</i> .

¹⁶ Rourkela-I (One case): Rs. 1 lakh, Rourkela-II (Two cases): Rs. 29 lakh and Dhenkanal (One case): Rs. 35 lakh.

Sl. No.	Name of the circle (Number of cases)	Year assessed (Month of assessment)	Turnover under-assessed	Amount of tax non/short levied	Nature of irregularities
2.	Bolangir II (1)	2004-05 (November 2005)	1.66	0.13	No tax was levied on sale turnover of rice.
3.	Rourkela I (1)	2004-05 (October 2006)	0.57	0.02	Exemption was allowed on sale turnover of iron ore and fines although the same was not an admissible item for exemption.
Total (Three cases)			48.42	2.00	

After the cases were pointed out, the Government in August 2008 stated that the cases were under examination. A report on further development has not been received (November 2008).

2.2.10 Branch transfers

Under the CST Act read with the provisions of the CST (Orissa) Rules, where any dealer claims that he is not liable to pay tax under the Act in respect of any goods on the ground that the movement of such goods from one state to another was occasioned by reason of transfer of title by him to any other place of his business and not by reason of sale, such claim is admissible subject to the submission of the 'original' portion of the declaration in form 'F' to the AO at any time before the finalisation of the assessment along with the proof of dispatch. If the dealer fails to furnish the declaration, then the movement of such goods shall be deemed to have been occasioned as a result of sale. Further, as laid down in the CST (Registration and Turnover) Rules, 1957, the place of business of a dealer should be mentioned in the RC and any addition/alteration in it should be inserted in the RC by an amendment. The Rules also provide that a single declaration in form 'F' may cover transactions effected during one calendar month only. Besides, penalty equal to one and a half times the tax assessed is also leviable for concealment of turnover.

To guard against the leakage of revenue by way of exemption of tax on transfer of goods to other States against declarations in form 'F', the CCT issued instruction to the AOs in February 1989 to carefully verify the lorry receipt or railway receipt accompanied with the invoice to ascertain the genuineness of the transactions and to obtain essential evidence that the goods were actually dispatched on consignment on transfer basis to another State. Cases of irregular allowance of exemption on the basis of invalid/duplicate declaration forms, transfer of goods to places not included in the registration certificate of the dealer, etc., noticed during the course of the review are mentioned in the succeeding paragraphs.

2.2.10.1 During scrutiny of the records, it was noticed that in nine circles¹⁷, the AOs allowed exemption of tax on goods valued as Rs. 87.05 crore in 52 cases transferred to places outside the State during 2002-03 to 2004-05 against

¹⁷ Balasore, Bhubaneswar I, Bhubaneswar II, Bolangir II, Cuttack I (Central), Cuttack II, Ganjam I, Rourkela I and Sambalpur III.

declarations in form 'F' which were found to be defective as the forms were not supported with prescribed particulars of dispatch such as the mode of transport indicating lorry or railway receipt number and date, registration numbers of the transferee with effective date of registration, invoice numbers, date of delivery, etc. Hence, in absence of the above details, the movement of the goods outside the State on transfer was not established. Thus, despite specific provisions in the CST Act and also instruction of the CCT to this effect, the AOs allowed exemption without supporting proof of dispatch which resulted in non-levy of tax of Rs. 9.99 crore.

After this was pointed out, the Government in August 2008 stated that in respect of 12 cases of two circles (Rourkela-I and Ganjam-I) involving Rs. 1.46 crore, proceedings for reassessment were initiated between February and August 2008 and the remaining 40 cases involving Rs. 8.53 crore were under examination. A report on further development has not been received (November 2008).

2.2.10.2 Test check of the records revealed that seven dealers of six circles furnished declarations in form 'F' which covered transactions, of transfer of goods valued at Rs. 74.75 crore, of two to eleven calendar months for the years between 2002-03 and 2005-06. The AOs while finalising the assessments between September 2004 and February 2007 accepted the transaction in these declarations in contravention of the rules resulting in underassessment of tax of Rs. 7.55 crore. The details are mentioned below:

(Rupees in crore)

Sl. No.	Name of the circle (Number of dealers)	Year assessed (Month of assessment)	Value of goods on which exemption allowed	Value of goods on which exemption not admissible (beyond one month)	Amount of tax short levied
1.	<u>Keonjhar</u> (1)	2003-04 and 2004-05 (February 2006 and February 2007)	549.64	32.88	3.29
2.	<u>Cuttack-III</u> (2)	2002-03, 2003-04 and 2005-06 (Between September 2004 and February 2007)	27.41	26.52	2.41
3.	<u>Balasore</u> (1)	2003-04 (December 2006)	560.42	11.84	1.56
4.	<u>Sambalpur-III</u> (1)	2004-05 (March 2006)	13.84	2.12	0.17
5.	<u>Cuttack-II</u> (1)	2004-05 (June 2005)	1.36	1.12	0.09
6.	<u>Bhubaneswar-I</u> (1)	2002-03 (January 2006)	3.72	0.27	0.03
Total (seven dealers)			1,156.39	74.75	7.55

After this was pointed out, the Government stated in August 2008 that out of seven dealers, reassessment proceeding in respect of one dealer of Cuttack-III circle was finalised (February 2008) raising demand of Rs. 57.46 lakh and in the other case proceeding had been initiated in July 2008. It was further stated that the remaining cases were under examination. A report on further development has not been received (November 2008).

2.2.10.3 Test check of records of Bhubaneswar I circle, revealed that a registered dealer transferred aerated water and soft drinks valued at Rs. 4.36 crore during the year 2003-04 to its branches located in other States. The dealer was allowed exemption in December 2004 on the duplicate portion of the declarations in form 'F'. The exemption granted on the duplicate portion of the declaration form 'F' was irregular and resulted in underassessment of tax of Rs. 57.49 lakh including surcharge.

After the case was pointed out, the AO reopened the case in January 2008 for reassessment. A report on further development has not been received (November 2008).

2.2.10.4 Scrutiny of the CST assessment record for the year 2003-04 of a registered dealer of Cuttack-I (East) circle revealed that the dealer returned 'nil' turnover which was accepted by the AO while completing the assessment in March 2007. However, a verification of the case records of the dealer revealed that the dealer had effected commission sale of 'maida' and 'bran' valued at Rs. 94.87 lakh during the first quarter of 2003-04 outside the State. Since the transactions were not supported by declarations in form 'F', these should have been treated as interstate sales exigible to tax at the rate of 10 *per cent*. Non-detection of the concealed turnover while completing the assessment led to underassessment of tax of Rs. 9.49 lakh. Besides, penalty of Rs. 14.23 lakh was also leviable for concealment of turnover.

After the case was pointed out, the AO reopened the case in July 2007. A report on further development has not been received (November 2008).

2.2.10.5 Test check of records in Bolangir II circle, revealed that a dealer was allowed (between March and May 2005) exemption from payment of tax on consignment sale of *batra gram* valued at Rs. 55.43 lakh effected during the years 2002-03 and 2003-04 to places in West Bengal which were neither specified in his RC nor was any consignment agreement between the dealer and the consignees available in the case record. The grant of exemption on the basis of the declaration forms 'F' furnished by the dealer was irregular and resulted in underassessment of tax of Rs. 4.43 lakh.

2.2.11 Conclusion

The review revealed several deficiencies in observance of the system prescribed as well as non-compliance of the provisions of the CST Act and the Rules made thereunder. Declaration forms furnished by the dealers were not effectively scrutinised by the AOs. Registers prescribed were not maintained for facilitating cross verification of the genuineness of the declaration forms from the records of the AOs of other states. Defective, duplicate, photocopied, manipulated and fake forms were accepted during assessments in spite of existence of executive instructions to scrutinise the forms carefully. Due to

non-compliance of the provisions of the CST Act, rules and executive instructions of the CCT while finalising the assessments, there was underassessment, short levy and non-levy of tax which was detrimental to the interest of revenue of the State. Internal control in the department was weak as is evidenced by the absence of the IAW which is the control of all controls and a management tool for plugging leakages of revenue.

2.2.12 Summary of recommendations

The Government of Orissa may consider the following steps to enhance the effectiveness of the machinery for concessions and exemption on interstate sales and branch transfers.

- installing a mechanism to ensure that cross verification of declaration forms is done by the concerned AOs;
- prescribing a periodic return to monitor the progress made from time to time in cross verification of the declaration forms at CCTs' level and maintenance of the prescribed registers may be made mandatory for all the AOs. Besides, norms for carrying out cross verification of the declaration forms may be prescribed for each AO;
- taking early steps for amending the proforma prescribed for utilisation accounts of declaration forms incorporating columns for all the necessary information to facilitate cross verification; and
- taking immediate steps to strengthen the internal audit wing at the earliest to ensure strict compliance with the provisions of the Act and rules by the assessing/departmental officers.

2.3 Irregular/excess grant of exemption under the sales tax incentive scheme

2.3.1 Under the Orissa Sales Tax (OST) Act, 1947, read with the Industrial Policy Resolution (IPR), 1992, large scale industrial (LSI) units are eligible for exemption of sales tax on the purchase of raw materials, spare parts of machinery and on the sale of finished products for a period of five years from the date of commercial production as certified by the Director of Industries (DI). The Government vide notification of September 1992 extended the exemption to interstate sales also provided that the dealer was entitled to the exemption under the OST Act.

Test check of the records of Jajpur circle in November 2007 revealed that a registered LSI unit engaged in the manufacture and sale of pig iron was allowed in February 2007 exemption of Rs. 3.36 crore on the sale of iron scrap and slag valued at Rs. 65.39 crore for the year 2003-04. As exemption of tax on by-products is not admissible under the IPR, allowance of the exemption was irregular and resulted in short levy of tax of Rs. 3.36 crore including surcharge.

After the case was pointed out, the assessing officer (AO) stated in November 2007 that the case would be re-examined and appropriate action would be taken as per the provisions of law. A report on further development has not been received (November 2008).

The matter was reported to the Government in April 2008; their reply has not been received (November 2008).

2.3.2 Under the OST Act and the IPR 1996, a small scale industrial (SSI) unit is eligible for exemption from sales tax both on purchase of raw materials and sale of finished products to the extent of fixed capital investment (FCI) during a period of five years from the date of commercial production as certified by the General Manager, District Industries Centre (DIC). Further, as per the IPR 1996, iron and steel processors including cutting of sheets, bars, angles, coils, MS sheets, decoiling, straightening, corrugating, drop hammer units etc., are not eligible for sales tax exemption. Iron and steel is taxable at the rate of four *per cent* under the OST Act.

Test check of the records of Rourkela I circle in November 2007 revealed that a registered SSI unit processing hot rolled coils into cold rolled coils and strips was allowed (between December 2004 and January 2007) exemption of sales tax to the extent of Rs. 2.87 crore both on purchase of raw materials and sale of finished products for the years 2001-02 to 2004-05. Since iron and steel processing units are not eligible for exemption of sales tax, allowance of exemption was irregular and resulted in short levy of tax of Rs. 2.87 crore.

After the case was pointed out, the AO re-opened the case in December 2007 for reassessment. A report on further development has not been received (November 2008).

The matter was reported to the Government in March 2008; their reply has not been received (November 2008).

2.3.3 Under the OST Act read with the IPR 1996, an SSI unit located in zone B¹⁸ is eligible for the exemption of sales tax on the purchase of raw materials, spare parts of machinery, packing materials and sale of finished products subject to a ceiling of 100 *per cent* of the FCI for a period of six years from the date of commercial production. The Government vide notification of July 1996 extended the exemption to interstate sales also provided that the dealer was entitled to the exemption under the State Act. Sponge iron is taxable at the rate of four *per cent* under the OST Act.

Test check of the records of Keonjhar circle in July 2007 revealed that a registered SSI unit manufacturing sponge iron started commercial production on 6 December 2000 with FCI of Rs. 5.83 crore. During the years 2000-01 to 2003-04, the AOs allowed exemption (between March 2002 and February 2005) from payment of sales tax of Rs. 5.29 crore. The dealer was, thus, eligible to avail tax exemption of Rs. 54.60 lakh during the rest of the eligibility period. However, the AO while assessing the dealer under the OST and CST Acts for the year 2004-05 in July 2006 allowed tax exemption of Rs. 1.37 crore resulting in allowance of excess tax exemption of Rs. 82.76 lakh.

18 The State of Orissa is divided into different zones depending upon their industrial backwardness.

After the case was pointed out, the Government stated in August 2008 that on completion of reassessments in December 2007, demand of Rs. 2.01 crore including penalty was raised. The dealer while depositing Rs. 22.25 lakh in March 2008 had filed an appeal. A report on further development has not been received (November 2008).

2.4 Underassessment of tax due to suppression of purchase

2.4.1 Under the OST Act, goods of the class or classes specified in the certificate of registration of a registered dealer for use in the manufacture or processing of goods for sale can be purchased at the concessional rate of tax of four *per cent* subject to the production of declaration in form IV. In case the goods so purchased are utilised for any other purpose, the dealer shall be liable to pay the difference of the tax payable had he not furnished the declaration form. Under the Act, diesel is taxable at the rate of 18 *per cent* upto March 2001.

Test check of the records of Angul circle in November 2006 revealed that a registered dealer manufacturing polyester staple fibre and yarn disclosed purchase of machinery spares valued at Rs. 24.83 lakh against declaration in form IV during the year 2000-01 which was accepted by the AO at the time of finalising the assessment in March 2004. Cross verification of the records of a registered oil company of Cuttack I (East) circle revealed that the former dealer purchased diesel valued at Rs. 12.67 crore at the concessional rate of tax against declaration in form IV. Since diesel is neither a raw material nor a fuel for manufacture or processing of polyester staple fibre and yarn, it is not integrally connected with the ultimate production of goods and thus, the dealer was liable to pay the differential tax. This resulted in underassessment of tax of Rs. 2.04 crore including surcharge.

After the case was pointed out, the AO stated in November 2006 that the case would be sent to the Assistant Commissioner of Sales Tax for *suo motu* revision. A report on further development has not been received (November 2008).

The matter was reported to the Government in March 2008; their reply has not been received (November 2008).

2.4.2 As per the provisions of the OST Act, every registered dealer is required to keep true account of the goods bought and sold by him.

Test check of the records of Bhubaneswar I circle in December 2007 and subsequent collection of information in March 2008 revealed that a dealer in two wheelers and tractors disclosed purchase of two-wheelers and tractors worth Rs. 8.49 crore from outside the State during 2003-04 by using 127 way bills which included two-wheelers worth Rs. 7.74 crore. While finalising the assessment under the OST Act in February 2007, the AO considered the purchases covered under way bills and corresponding sale turnover of two-wheelers of Rs. 7.37 crore was assessed to tax. Scrutiny of the 'C' form account submitted by the dealer revealed that two-wheelers worth Rs. 2.30 crore purchased in 24 invoices were not included in the purchases taken into consideration in the assessment completed in February 2007. This led to suppression of purchases of Rs. 2.30 crore and consequential under assessment

of tax of Rs. 31.04 lakh calculated on the corresponding sale value by adding the profit margin disclosed by the dealer. Besides, penalty of Rs. 42.33 lakh was also leviable.

After the case was pointed out, the AO stated in May 2008 that the case has been re-opened and the points raised by the audit would be taken into consideration at the time of the reassessment. A report on further development has not been received (November 2008).

The matter was reported to the Government in June 2008; the Government in August 2008 stated that the case was under examination.

2.5 Non-levy of penalty

2.5.1 Under the Orissa Value Added Tax (OVAT) Act, 2004, penalty equal to twice the amount of tax assessed on account of suppression of sales or purchases, erroneous claims of deductions, evasion of tax or contravention of any provision of the Act is leviable without prejudice to any penalty or interest that may have been levied under any provision of the Act.

Test check of the records of Bargarh circle in March 2008 revealed that a registered dealer manufacturing sugar had evaded payment of tax on the purchases made; claimed excess deductions etc., for the period from April 2005 to May 2006. The AO while finalising the assessments in January 2007 detected this and levied tax of Rs. 48.46 lakh, but omitted to levy penalty of Rs. 96.92 lakh.

After the case was pointed out, the AO reopened the case in March 2008. A report on further development has not been received (November 2008).

The matter was reported to the Government in April 2008; their reply has not been received (November 2008).

2.5.2 Under the provisions of the CST Act, if any person purchases goods not specified in his certificate of registration by furnishing declaration in form 'C', the authority which granted him or is competent to grant a certificate of registration under the Act may impose upon him, by way of penalty, a sum not exceeding one and a half times the tax which would have been levied had he not furnished the declaration.

Test check of records of Jharsuguda circle in February 2007, revealed that a registered dealer engaged in execution of works contract purchased goods valued at Rs. 1 crore on the strength of declaration in form 'C' during 2004-05. The goods purchased were not specified in the certificate of registration of the dealer. The dealer was liable to pay a penalty of Rs. 15.04 lakh. The AO, however, did not levy the same while finalising the assessment in March 2006.

After the case was pointed out, the Government stated in March 2008 that penalty for misutilisation of declaration form was levied in February 2008. A report on recovery has not been received (November 2008).

2.6 Evasion of tax

Under the OST Act, taxable turnover is that part of a dealer's gross turnover during any period which remains after deducting therefrom, among other elements, the turnover during that period in respect of goods where tax is levied at the first point of sale. If for any reason, the dealer furnishes incorrect particulars of turnover, he is liable to pay penalty equal to one and a half times the tax so assessed.

Test check of records of Bhubaneswar II circle, in January 2008 revealed that the AO while finalising the assessment of a dealer in February 2007 allowed a deduction of Rs. 10.64 crore on account of tax paid goods purchased by the dealer from another dealer during the year 2003-04. Cross verification of the records of the dealer with the records of the selling dealer revealed that the dealer had purchased tax paid goods valued at Rs. 2.24 crore from the other dealer during April and May 2003, the corresponding sale turnover of which works out to Rs. 2.46 crore. Thus, the deduction of Rs. 8.18 crore claimed by the dealer and allowed by the AO was incorrect. This resulted in underassessment of tax of Rs. 35.97 lakh including surcharge. Besides, penalty of Rs. 49.06 lakh was also leviable for furnishing incorrect particulars of turnover.

After the case was pointed out, the AO reopened the assessment in January 2008. A report on further development has not been received (November 2008).

The matter was reported to the Government in March 2008; their reply has not been received (November 2008).

2.7 Non-levy of tax for contravention of declaration

Under the OST Act, a registered dealer can purchase goods mentioned in his certificate of registration for use within the State of Orissa in the manufacture or processing of goods for sale or in mining or in generation or distribution of electricity or any other form of power at concessional rate of tax after furnishing a declaration in form IV. If the dealer after purchasing the goods utilises the same for any other purpose, he shall be liable to pay the difference of the tax payable had he not furnished the declaration. Light diesel oil and high speed diesel are taxable at the rate of 20 *per cent* under the Act.

Test check of the records of Angul circle in October 2006, revealed that a registered dealer engaged in generation of electricity purchased high speed diesel valued at Rs. 4.83 crore during 2003-04. Of this, diesel valued at Rs. 4.53 crore was utilised in the transportation of coal from the purchase point to the point of generation of electricity. Since diesel was not consumed in the generation of electricity, it was liable to be taxed at the rate of 20 *per cent*. However, the dealer furnished a declaration in form IV and incorrectly paid tax at the rate of four *per cent*. The AO while finalising the assessment in November 2005 did not detect the mistake. This resulted in non-levy of differential tax of Rs. 79.81 lakh including surcharge.

After the case was pointed out, the Government intimated in February 2008 that reassessment has been completed in December 2007 and an additional demand of Rs. 2.09 crore had been raised which included other points

considered during the reassessment. A report on recovery has not been received (November 2008).

2.8 Underassessment of tax due to non-inclusion of entry tax in the taxable turnover

Under the Orissa Entry Tax (OET) Rules, 1999, when a dealer of motor vehicles becomes liable to pay tax under the OST Act by virtue of sale of such motor vehicles, his sales tax liability is reduced by the amount of tax paid under the OET Act. As clarified by the Finance Department, entry tax paid and allowed set off shall form part of the sale price of the motor vehicles. Motor vehicles are taxable at the rate of 12 *per cent* under the OST Act.

Test check of the records of Rourkela II circle in September 2006, revealed that a registered dealer of motor vehicles did not include entry tax of Rs. 4.21 crore paid on motor vehicles in his taxable turnover for the years 2003-04 and 2004-05. The AO while determining the taxable turnover in December 2005 did not detect the mistake, though the particulars relating to payment of entry tax were available in the case record. This resulted in underassessment of tax of Rs. 55.59 lakh including surcharge.

After the case was pointed out, the Government stated in August 2008 that demand of Rs. 18.02 lakh was raised on completion of reassessments. A report on realisation and reasons for variation in demand has not been received (November 2008).

2.9 Short levy due to application of lower rate of tax

Under the OST Act, different rates of tax are applicable in respect of different commodities as notified from time to time. As per the Government of Orissa notification of March 2001, the portion of the turnover of the works contract equaling the purchase value of the goods purchased by the dealer for use in works contract free of tax or at concessional rate of tax against declaration forms prescribed under the OST Act or the CST Act are taxable at the rate applicable for sale of such goods under the OST Act. Cement and chemicals are taxable at the rate of 12 *per cent* under the OST Act.

2.9.1 Test check of the records of Ganjam II circle in January 2008 revealed that a works contract dealer had purchased cement and chemicals valued at Rs. 6.82 crore on the strength of declarations in form 'C' during 2003-04 and 2004-05 and utilised these in works contract. The AO while finalising the assessment of the dealer for both the years in September 2006 levied tax at the rate of eight *per cent* instead of 12 *per cent*. This resulted in underassessment of tax of Rs. 30.01 lakh including surcharge.

After the case was pointed out, the Government stated in July 2008 that reassessment had been completed raising additional demand of Rs. 30.01 lakh. A report on recovery has not been received (November 2008).

2.9.2 Test check of the assessment records in two circles between June 2004 and May 2006 revealed that in two cases the dealers misclassified the goods valued at Rs. 1.86 crore sold during the years between 2001-02 and 2003-04 and paid tax at a lower rate. The AOs also accepted the returns and completed the assessments between October 2002 and December 2005 accordingly.

Thus, application of incorrect rates of tax resulted in short levy of tax of Rs. 22.81 lakh including surcharge and penalty. The details are mentioned below:

(Rupees in lakh)

Sl. No.	Name of the circle Number of cases	Year assessed Month of assessment	Turnover involved	Short levy of tax/ surcharge/ penalty	Remarks
1.	Cuttack I (East) 1	2003-04 (December 2005)	153.24	15.93	Sale of vaseline was incorrectly taxed at the rate of eight <i>per cent</i> treating it as medicine instead of the appropriate rate of 12 <i>per cent</i> .
2.	Bhubaneswar II 1	2001-02 and 2002-03 (October 2002 and September 2003)	33.04	6.88	Non-stick cookware was assessed to tax at the rate of four <i>per cent</i> treating it as aluminium utensil instead of the appropriate rate of 12 <i>per cent</i> .
Total (Two cases)			186.28	22.81	

After the cases were pointed out, the Government stated in February and March 2008 that demand of Rs. 40.55 lakh was raised in both the cases. A report on realisation has not been received (November 2008).

2.10 Evasion of purchase tax

Under the OST Act, prawn is subject to purchase tax at the rate of eight *per cent*. In case of concealment of turnover, a dealer is liable to pay penalty equal to one and a half times of the tax assessed.

Test check of the records of Balasore circle in May 2006 revealed that a registered dealer did not file any return of turnover for the year 2002-03. The AO while assessing the dealer *ex-parte* in March 2006 determined the turnover of the dealer as 'nil'. Cross verification of the assessment records of the dealer with the records of another dealer registered in the same circle revealed that the assessee dealer had purchased prawn valued at Rs. 1.53 crore during the year 2002-03. Thus, the dealer evaded payment of purchase tax of Rs. 13.46 lakh including surcharge which was not detected by the AO. In addition, the dealer was also liable to pay penalty of Rs. 18.35 lakh.

After the case was pointed out, the Government stated in March 2008 that the reassessment was completed in December 2007 raising an additional demand of Rs. 12.23 lakh. The reassessment order was, however, not found correct as surcharge of Rs. 1.23 lakh leviable was also not levied by the AO. Besides, penalty for concealment of turnover though leviable was not levied. Further reply on these and a report on realisation of the tax levied has not been received (November 2008).

2.11 Underassessment due to incorrect application of concessional rate of tax

Under the OST Act, concessional rate of tax on sale of packing materials against declaration in form IV was withdrawn with effect from 1 April 2001. Wooden pallets and crates being packing materials are taxable at the rate of 12 *per cent* under the Act as an unspecified item.

Test check of the records of Rourkela II circle in December 2006, revealed that the AO while finalising the assessments in March 2006 of a registered dealer for the years 2003-04 and 2004-05 levied tax on the sale turnover of wooden pallets and crates valued at Rs. 2.34 crore made against declarations in form IV at the concessional rate of four *per cent* instead of 12 *per cent* though the provision was withdrawn from 1 April 2001. This resulted in underassessment of tax of Rs. 20.57 lakh including surcharge.

After the case was pointed out, the Government intimated in February 2008 that on completion of reassessment in November 2007 additional demand of Rs. 20.57 lakh had been raised and the dealer had filed a writ petition in the High Court for stay of the entire demand. A report on further development has not been received (November 2008).

Entry Tax

2.12 Underassessment of entry tax

Under the Orissa Entry Tax (OET) Act, 1999 and the Rules made thereunder, goods specified in part I and II of the schedule are exigible to tax at a concessional rate of 50 *per cent* of the appropriate rate when such goods are brought inside the local area for use as raw material. Under the Act, coal and coke are exigible to tax at the rate of one *per cent*. As per the amended provisions of the Act effective from May 2005, penalty equal to twice the amount of tax assessed due to suppression of sales or purchases, erroneous claims of deductions, evasion of tax or contravention of any provision of the Act is also leviable. Further, the manufacturer of scheduled goods is required to collect the entry tax on sale of finished products from the buying dealers and deposit it into the Government account.

2.12.1 Test check of the records of Jajpur and Rourkela I circles in December 2007 and February 2008 revealed that the assessing authorities (AAs) while finalising the assessments for the years 2002-03 and 2003-04 between December 2005 and March 2007 of two dealers engaged in manufacture and sale of chrome product and alloys and iron and steel levied entry tax on the imported/purchase value of coal and coke worth Rs. 650.87 crore at a concessional rate of 0.5 *per cent* instead of the appropriate rate. Coal and coke being fuel, application of concessional rate treating the same as raw material was irregular. This resulted in underassessment of entry tax of Rs. 3.25 crore.

After the cases were pointed out, the AA Jajpur circle stated in December 2007 that the case would be reopened, the AA of Rourkela I circle stated that the cases were barred by limitation of time and could not be reopened. The reply is not tenable as the cases can be reassessed within five years under the

Act or the short levy can be made good through *suo motu* revision of the assessment. Further replies have not been received (November 2008).

2.12.2 Test check of the records of Sambalpur Range in March 2008, revealed that a dealer engaged in manufacture and sale of aluminium ingot and alumina, consumed coal valued at Rs. 111.69 crore during the period from April 2005 to June 2006 and paid tax at the concessional rate of 0.5 *per cent*. The AA while finalising the assessment in February 2007 accepted the return and levied tax of Rs. 55.85 lakh. Coal, being a fuel, does not come under the purview of raw material and application of concessional rate of tax was thus irregular. This resulted in underassessment of entry tax of Rs. 55.85 lakh. Besides, the dealer was liable to pay penalty of Rs. 1.12 crore.

Further, the dealer effected sale of finished goods worth Rs. 8.99 crore inside the state on which he did not pay entry tax. The AA also failed to detect the suppression and levy the tax resulting in underassessment of tax of Rs. 8.99 lakh. In addition, the dealer was also liable to pay penalty of Rs. 17.99 lakh.

After the case was pointed out, the AA stated (March 2008) that the case would be re-examined. Further reply has not been received (November 2008).

The matter was reported to the Government in April 2008; their reply has not been received (November 2008).

2.13 Loss/non-realisation of entry tax

Under the OET Rules read with the schedule of rates appended to the OET Act, motor vehicles are taxable at the rate of two *per cent* on their purchase value with effect from 1 June 2004. The Transport Commissioner (TC), Orissa in his circular letter of January 2003 (reiterated in June 2005) instructed that at the time of registration of vehicles purchased from outside the State the owners should be asked to furnish proof of payment of entry tax. The Finance Department in June 2005 advised the TC, Orissa about the need for sustained co-operation between the Transport and the Commercial Tax departments and requested that necessary guidelines be issued to the regional transport officers (RTOs) for ensuring recovery of entry tax at the time of registration of the vehicles.

Test check of the records of 17 RTOs¹⁹ between May 2007 and February 2008 revealed that 1,287 motor vehicles purchased from outside the State were registered between December 2004 and March 2007 on which entry tax was not realised. Of these, the owners of 22 motor vehicles were issued no objection certificates (NOC) to other states without payment of entry tax. The RTOs neither insisted upon furnishing the proof of payment of entry tax before registration/granting NOC to the vehicles nor referred the cases to the concerned commercial tax officers (CTOs) for recovery of the dues. In the remaining cases, entry tax was not recovered. This resulted in non-realisation of revenue of Rs. 2.72 crore.

After the cases were pointed out, all the RTOs except Bargarh, Dhenkanal and Ganjam stated between June 2007 and February 2008 that the list of vehicles

¹⁹ Bargarh, Bhadrak, Bolangir, Chandikhol, Cuttack, Dhenkanal, Ganjam, Jagatsinghpur, Jharsuguda, Keonjhar, Koraput, Nabarangpur, Nayagarh, Nuapada, Rourkela, Sambalpur and Sundargarh.

as pointed out by audit would be sent to the CTOs. The RTOs of Bargarh, Dhenkanal and Ganjam stated between June 2007 and December 2007 that demand notices would be issued for realisation of the dues. Further developments have not been reported (November 2008).

The matter was reported to the Government/TC, Orissa in April 2008; their replies have not been received (November 2008).

2.14 Short levy of entry tax due to application of lower rate

As per the provisions of the OET Act, goods specified in part III of the schedule are exigible to tax at the same rate as applicable to such goods under the OST Act subject to the maximum of 12 *per cent*. Under the OET Act, motor vehicles are included in part III of the schedule. Excavator, dumper, loader and crane come under the definition of motor vehicles as per the Motor Vehicles Act, 1988. Under the OST Act, electrical goods/machineries, tipper/loader/excavator and crane are exigible to tax at the rate of two, eight and 12 *per cent* respectively. Besides, penalty not exceeding one and a half times the amount of tax due on turnover that was not disclosed by the dealer in his return is also leviable.

2.14.1 Test check of the assessment records of six circles²⁰ between November 2007 and March 2008 revealed that 17 registered dealers had procured excavators, dumpers, loaders and cranes of Rs. 11.80 crore from outside the State during the years between 2002-03 and 2004-05 and paid entry tax at the rate of one/two *per cent*. While completing the assessments of the above periods between March 2005 and March 2007, the AAs also levied tax at the rate of one/two *per cent* on the above goods instead of the appropriate rates which resulted in short levy of tax of Rs. 90.16 lakh. Besides, penalty of Rs. 1.35 crore was also leviable.

After the cases were pointed out, the AA of Sambalpur I circle reopened the case in January 2008. The AAs of Jharsuguda and Jajpur circles stated (November 2007 and January 2008) that the cases will be re-examined. The AA of Rourkela I in February and March 2008 stated that five cases will be re-examined and disagreed to reopen one case on the ground that the case was barred by limitation of time. The contention of AA Rourkela I is not tenable since the case can be reassessed within five years under the amended provision of the Act or by *suo motu* revision. The AA of Rourkela II circle initiated action in April 2008 in all the four cases for *suo motu* revision of the assessments. Reports on results of re-examination and further replies in the remaining cases have not been received (November 2008).

2.14.2 Test check of the records of four circles²¹ between November 2007 and March 2008 revealed that in six cases the dealers purchased machinery and electrical goods worth Rs. 1.72 crore during the years 2002-03 to 2004-05 and paid tax at a lower rate of one *per cent* instead of the appropriate rate of two *per cent*. The AAs also completed the assessments between March 2004 and January 2006 accepting the returns. This resulted in short levy of tax of Rs. 4.30 lakh including maximum penalty of Rs. 2.58 lakh.

20 Cuttack II, Jajpur, Jharsuguda, Sambalpur I, Rourkela I and Rourkela II.

21 Bhubaneswar I, Cuttack II, Jharsuguda and Rourkela I.

After the cases were pointed out, the AAs of Jharsuguda and Rourkela I circles stated between November 2007 and February 2008 that the cases will be re-examined. The AAs of Bhubaneswar I and Cuttack II circles stated (February and March 2008) that action would be taken. Report on further development has not been received (November 2008).

The matter was reported to the Government in March and May 2008. In respect of the case under Sambalpur I circle the Government stated in April 2008 that demand of Rs. 64.01 lakh has been raised in February 2008. A report on realisation and reply in the other cases have not been received (November 2008).

2.15 Non-levy of penalty

Under the OET Act and the Rules made thereunder, every registered dealer shall submit to the concerned AA a statement containing the particulars of scheduled goods brought into the local area during the month or quarter as the case may be within the prescribed time limit accompanied by a receipt towards the full payment of the admitted tax. Further, at the close of the year he shall also submit a return in the prescribed form within one calendar month of the expiry of the year along with the proof of payment of the balance amount of tax payable, if any, on the basis of the return. If, at the end of the year, it is found that the amount of tax paid in advance by any dealer for any tax period was less than the tax payable as finally assessed, by more than 15 *per cent*, the AA may direct such dealer to pay, in addition to the tax, by way of penalty, a sum not exceeding one and a half times the differential amount between the tax payable and the tax paid for the year.

Test check of the assessment records of 57 dealers in seven circles²² between November 2007 and March 2008 revealed that against tax of Rs. 8.19 crore assessed in 68 cases for the years 2002-03 to 2004-05, the dealers paid only Rs. 4.50 crore and the balance unpaid amount of tax was more than 15 *per cent* of the tax payable in each case aggregating Rs. 3.69 crore. While assessing the dealers between August 2002 and March 2007, neither any penalty was levied by the concerned AAs nor was any mention made in the assessment order justifying the reasons for non-levy of penalty. This resulted in non-levy of penalty of Rs. 5.53 crore.

After the cases were pointed out, the AAs of Angul, Jharsuguda and Jajpur circles stated between November 2007 and March 2008 that the cases will be re-examined. The AAs of Rourkela circle I in February 2008 stated that six cases will be re-examined. However, in nine cases he stated that the cases were barred by limitation of time. The reply is not tenable as the cases could be reassessed within five years under the provision of the Act. The AA of Rourkela II circle stated (March 2008) that 12 cases will be re-examined. A report on further development and the reply in the remaining cases has not been received (November 2008).

The matter was reported to the Government in April 2008; their reply has not been received (November 2008).

²² Angul, Bhubaneswar I, Cuttack II, Jajpur, Jharsuguda, Rourkela I and Rourkela II.

2.16 Non-levy of entry tax due to escapement of taxable turnover

Under the OET Act, entry tax at the prescribed rate is leviable on entry of scheduled goods into a local area for consumption, use or sale therein on the purchase value of the scheduled goods. Further, the manufacturer of scheduled goods is required to collect and deposit the tax on sale of finished products. Where, for any reason, all or any of the scheduled goods brought by a dealer escaped assessment of tax due to wilful non-disclosure of the entry of such goods, the AA may assess the dealer to the best of his judgment and direct him to pay in addition to tax, penalty not exceeding one and a half times of the tax so assessed up to 18 May 2005 and equal to twice the amount of tax thereafter.

Test check of the entry tax assessment records between August 2006 and March 2008 with reference to way bill account, sales tax assessment records, utilisation account of declaration forms etc., of seven circles²³ for the years between 2002-03 and 2005-06 finalised between August 2003 and March 2007 revealed that in 23 cases, scheduled goods worth Rs. 40.50 crore brought into the respective local areas and sale turnover of Rs. 12.54 crore escaped assessment due to non-disclosure by the assesseees. This led to non-levy of tax of Rs. 54.10 lakh. Besides, penalty of Rs. 81.47 lakh was also leviable.

After the cases were pointed out, the AAs of Angul, Bhubaneswar I, Jharsuguda and Sambalpur II circles stated between November 2007 and March 2008 that the cases will be re-examined. The AA of Cuttack II circle accepted (February 2008) to initiate proceedings in nine cases. The AA of Rourkela I accepted (March 2008) to re-examine one case and stated that three cases were barred by limitation of time. The contention was not tenable as the cases could be reassessed under the amended provision or by *suo motu* revision. The AA of Rourkela II circle initiated action (May 2008) for *suo motu* revision in four cases and stated (June 2008) that the remaining cases will be re-examined. Reports on further development have not been received (November 2008).

The matter was reported to the Government in May 2008; their reply has not been received (November 2008).

2.17 Short levy of entry tax due to incorrect determination of taxable turnover

The OET Act and the Rules made thereunder provide for levy and collection of tax on entry of scheduled goods into a local area for consumption, use or sale therein at the prescribed rates on the purchase value inclusive of incidental charges, excise duties, countervailing charges, sales tax, transport charges, etc. Where purchase value of any scheduled goods is not ascertainable or if the scheduled goods are acquired or obtained otherwise than by way of purchase, then the purchase value shall be the value or the price at which the scheduled goods of like kind or quality is sold or is capable of being sold in the open market. In case of submission of incomplete or incorrect returns, penalty not exceeding one and a half times the tax due on the turnover that was not disclosed by the dealer is also leviable.

²³ Angul, Bhubaneswar I, Cuttack II, Jharsuguda, Rourkela I, Rourkela II and Sambalpur II.

Test check of the assessment records between June 2007 and March 2008 of six circles²⁴ for the years between 2002-03 and 2004-05 finalised between November 2003 and February 2006 revealed that in six cases the purchase value of the scheduled goods received on stock transfer were determined by the AAs without taking the sale price as purchase price and in seven cases sales tax, surcharge, customs duty and transportation charges were not added to the purchase value resulting in short determination of taxable turnover by Rs. 37.84 crore. This resulted in short levy of entry tax of Rs. 40.27 lakh. Besides, penalty to the extent of Rs. 60.41 lakh was also leviable.

After the cases were pointed out, while the AA of Cuttack I (Central) circle reopened the cases in June 2007, the AA of Angul circle stated (November 2007) that the case will be re-examined. The AAs of Rourkela I and Rourkela II circles stated (between February and June 2008) that the cases were barred by limitation for reassessment. The contention of the AAs of Rourkela I and II circle is not tenable as reassessment of the cases could be done under the amended provision of the Act. A report on further development and reply in the remaining cases has not been received (November 2008).

The matter was reported to the Government in May 2008; their reply has not been received (November 2008).

²⁴ Angul, Bhubaneswar I, Cuttack I (Central), Cuttack II, Rourkela I and Rourkela II.