

CHAPTER: 2 SALES TAX

2.1 Results of Audit

Test check of assessments and refund cases and connected documents of the Commercial Tax offices during 2001-2002 revealed under-assessment of tax, incorrect grant of exemption, short levy of tax etc. amounting to Rs.81.18 crore in 439 cases which may broadly be categorised as under:

(Rupees in crore)

Sl. No.	Category	No. of cases	Amount
1	Irregular/incorrect exemptions/deferment, concession and deductions under the Orissa Sales Tax Act	144	58.67
2	Under-assessment of tax due to application of incorrect rate	72	2.46
3	Non-levy of surcharge	37	2.99
4	Non-levy of interest	39	1.47
5	Other irregularities	136	15.23
6	Short levy of tax due to incorrect computation of taxable turnover	11	0.36
Total		439	81.18

During the year 2001-2002, the department accepted under-assessment etc. of Rs.1.15 crore in 109 cases which were pointed out in audit in earlier years. Out of these, the department recovered Rs.73.86 lakh in 62 cases.

A few illustrative cases highlighting important audit observations involving Rs.7.27 crore and findings of a review on "Exemption to industries under the Orissa Sales Tax Act" involving Rs. 39.46 crore are mentioned in the following paragraphs.

2.2 EXEMPTION TO INDUSTRIES UNDER THE ORISSA SALES TAX ACT

The findings of a review on "Exemption to industries under the Orissa Sales Tax Act" are enumerated below.

2.2.1 Highlights

- ◆ **10 defaulting units in 5 circles were allowed inadmissible exemptions of Rs.4.74 crore**

[Para 2.2.8]

- ◆ **8 units in 6 circles were granted excess exemption of Rs.7.77 crore by way of irregular revision and alteration of their installed capacities**

[Para 2.2.9]

- ◆ **5 units in 4 circles were allowed excess exemption of Rs.5.67 crore under the package scheme of IPR 1992 and 1996**

[Para 2.2.11]

- ◆ **60 units in 8 circles closed down their manufacturing activities after availing incentives which resulted in grant of futile financial benefit of Rs.20.08 crore**

[Para 2.2.12]

2.2.2 Introduction

In order to secure an accelerated growth in the industrial sector of the State, the Government of Orissa formulated various incentive packages from time to time by way of Industrial Policy Resolutions (IPR). The schemes stipulate benefits in the shape of exemptions from tax on purchase of raw materials and sale of finished products in case of small, medium and large scale industries. Large and medium scale industries may also opt for deferment of sales tax in lieu of exemption. To avail of the benefits under the schemes Eligibility Certificates (EC) are issued by Industries Department. Director of Industries (DI) is responsible for issue of EC in case of large and medium scale industries while in case of small scale industrial (SSI) units the Project Manager or General Manager (GM) of the concerned District Industries Centres (DIC) issues the EC based on which the exemption is granted by the Sales Tax Department. There are some classes of industries which are not eligible for benefits under the above scheme.

2.2.3 Organisational set up

At the apex level the Commissioner of Commercial Taxes (CCT), Orissa is responsible for administration of the Act and Rules in the Commercial Tax Department. He is assisted by 11 Additional Commissioners and 48 Assistant/Additional Assistant Commissioner of Commercial Taxes. Additional Assistant Commissioners (Assessment), Commercial Tax Officers and Additional Commercial Tax Officers working in the circles finalise assessments.

The power of registering the industrial units and issuance of EC vests with the Director of Industries, Orissa and the concerned General Manager/Project Manager of DIC under whose jurisdiction the industry is situated.

2.2.4 Scope of audit

In order to ascertain whether incentives were granted in accordance with the provisions made under the Orissa Sales Tax Act, 1947,(Act) and rules made thereunder, stipulations made in the IPR and operational guidelines issued by Industries Department, a review of assessments in 8⁸ out of the 29 circles of the State and test check in 3⁹ circles for the assessment period 1998-99 to 2000-2001 was conducted between August 2001 and March 2002.

2.2.5 Salient features of the scheme of incentives

In pursuance of industrial policies formulated by the Industries Department from time to time, the Government of Orissa, Finance Department, notifies the scheme of incentives under the OST Act, 1947. The salient features of scheme of exemptions/deferments provided under IPR 1989 to IPR 1996 are mentioned below :

8 Balasore, Bhubaneswar-I, Cuttack-I (West), Cuttack-II, Keonjhar, Koraput-I, Puri-II and Rourkela-II.

9 Bolangir-I Ganjam-III and Rourkela-I.

Sl. No	Scheme	Nature of sales tax relief	Period		Conditions for availing the benefit
2	IPR 1992	(a) Exemption of sales tax on purchase of raw materials, spare parts of machinery and on sale of finished products. Exemption applicable to industries commencing fixed capital investment on or after 1 August 1992. (b) New medium/large scale industries are allowed to defer payment of sales tax.	5 years		(i) The total tax exemption on both purchase and sale is limited to a specific percentage of Fixed Capital Investment (FCI) depending on the zonal location of the industry Zone percentage A 100 B 75 C 60 (ii) The unit has to furnish a certificate obtained from the Orissa State Financial Corporation/Industrial Promotion and Investment Corporation of Orissa Ltd. showing clearance of their defaulted dues. On expiry of the period of deferment, the deferred amount of tax is to be paid in 5 annual instalments.
			5 years		
3.	IPR 1996	Exemption of sales tax on purchase of raw materials, spare parts of machinery and sale of finished products. (For industries whose FCI has commenced on or after 01 March 1996 or between 01 April 1995 and 1 March 1996 where option has been exercised for availing benefits under this policy).	Zone	Year	The unit is to be issued with EC by the Director of Industries or the General Manager/Project Manager, DICs towards investment made in the fixed capital. The maximum amount of exemption is 100% of the fixed capital investment irrespective of the zonal location.
			A	7	
			B	6	
			C	5	

Under the provisions of IPR 1992 and 1996 the State was divided into three zones viz. A, B and C (classified in descending order of backwardness of the 58 subdivisions of the state) in order to give more preference to industrially underdeveloped areas.

The incentives and concessions granted under various industrial policies up to 1989 were withdrawn with effect from 1 August 1999. Industries except those which were availing benefits as of 1 January 2000 or in the pipeline by that date would no more be entitled to incentives under any policy resolutions.

2.2.6 Non-achievement of industrial growth

The information regarding grant of exemption/deferment under the schemes is compiled by the Commissioner of Commercial Taxes. The year-wise position of benefits availed is as follows :-

(Rupees in crore)

Year	No. of units availing benefits under various IPRs					Amount of tax exempted and deferred
	IPR 1986	IPR 1989	IPR 1992	IPR 1996	Total	
1996-1997	64	575	87	02	728	94.54
1997-1998	48	477	127	25	677	95.92
1998-1999	09	442	148	136	735	92.38
1999-2000	05	271	164	212	652	58.79
2000-2001	-	-	364 ¹³	-	364	40.64
Total	126	1765	890	375	3156	382.27

The overall position of closed industries was not available in the office of the Commissioner of Commercial Taxes, Orissa. However, in case of eight circles test checked in review, it was noticed that out of 840 units availing exemptions under various incentive packages up to IPR 1992, 358 units were closed as of 31 March 2001 as detailed below:

Name of the circle	IPR 1986		IPR 1989		IPR 1992		Total	
	Availed	Closed	Availed	Closed	Availed	Closed	Availed	Closed
Koraput-I	3	1	40	29	4	3	47	33
Cuttack-I West	27	16	16	4	2	0	45	20
Keonjhar	24	12	14	3	12	0	50	15
Balasore	32	19	81	41	8	1	121	61
Rourkela-II	54	26	144	62	24	6	222	94
Cuttack-II	52	23	98	30	28	5	178	58
Puri-II	12	6	39	18	10	3	61	27
Bhubaneswar-I	44	23	52	23	20	4	116	50
Total	248	126	484	210	108	22	840	358

It would be seen from above that 43 *per cent* of the industries were closed down either during the period of exemption or soon after its expiry. This indicates that the scheme failed to achieve its objectives of industrialisation.

2.2.7 Exemptions to ineligible units

Under the provisions of the IPR and notifications issued by the Finance Department of Government of Orissa, a unit is entitled to exemption on the basis of EC issued by the Director of Industries or General/Project Manager of District Industries Centres. However, iron and steel processing units, printing press and pulse mills are not entitled to the exemption under IPR 1992 and 1996 while an oil mill is entitled to exemption under IPR 1989 only if its input capacity is not less than 10 MTs.

A test check of records of 5 circles revealed that 5 units availed exemption of Rs.0.40 crore during the period from 1996-97 to 2000-01 though the units were not entitled to such benefit. This resulted in incorrect exemption of Rs.0.40 crore as detailed below :

13 Relates to both IPR 1992 and IPR 1996.

(Rupees in crore)

Sl. No	Name of the circle	Name of the dealer and scheme	Assessment year/month of assessment	Commodity/ Rate of tax (OST/CST)	Inadmissible turnover exempted	Amount of tax and surcharge exempted	Nature of irregularities
1	Bolangir-I	M/s. Ambika Oil Industries IPR 1989	1998-99 and 1999-2000/ August 2000	Oil seeds/4 Oil/4/10	3.10 2.28	0.12 0.19	An oil mill having input capacity of less than 10 MT was allowed exemption incorrectly.
2	Cuttack-I West	M/s. Radharaman Graphics IPR 1996	1997-98 to 1999-2000/ Between March 1999 and February 2001.	Calendar, Diary and Cards/12	0.25	0.05	The industry being a printing press is an ineligible industry.
3	Cuttack-II	M/s. Tarini Wires IPR 1996	1998-99 to 2000-2001/NA.	M.S. Wire Rods in Coils (Raw materials)/4	0.30	0.01	The industry is an iron and steel processing unit which was not eligible for exemption.
4	Koraput-I	M/s. Shiva Sankar Oil Mill and Shiva Sankar Modern Dal Industries IPR 1992	1999-2000/ March 2001.	Pulses/4	0.33	0.01	The unit is a pulse mill which is not eligible for exemption.
5	Bhubaneswar-I	M/s. Highland Ice Factory. IPR 1996	1996-97 and 1997-98/ November 1999 and February 2001	Ice slab/12	0.16	0.02	Exemption was allowed without supporting eligibility certificate from DIC.
Total :						0.40	

On this being pointed out in audit, all assessing officers except Cuttack-I (West) agreed to examine the case. Assessing officer Cuttack-I (West) stated that the exemption was allowed on the basis of DIC certificate. General Manager, DIC, Cuttack stated that printing work was different from making diary, calendar and cards. The reply is not tenable since the assessing officer in the assessment order has also treated the unit as a printing press.

2.2.8 Exemption to defaulting units

Provisions under the IPR 1992 and notifications issued by Finance Department, Government of Orissa stipulate that a new industrial unit located in the State, where FCI has been made on or after 1 August 1992, shall be eligible for exemption on purchase of raw materials, spare parts of machineries and on sale of finished products subject to production of certificate from the Orissa State Financial Corporation/Industrial Promotion and Investment Corporation of Orissa Limited showing clearance of their defaulted dues. A sick unit revived under IPR 1992, unless otherwise specified by State Level Inter Institutional Committee, can

only avail the exemption provided it fulfils the clearance criteria of defaulted dues.

Test check in 5 circles revealed that 10 industrial units were allowed exemption in assessment during the period from 1996-97 to 1999-2000 though they had defaulted in payment of their dues to the Orissa State Financial Corporation. This resulted in grant of irregular exemption of Rs.4.74 crore as detailed below.

(Rupees in crore)

Sl.No	Name of the circle	No. of cases	Year	Amount
1	Koraput-I, Jeypore	1	1996-97	0.07
2	Balasore	1	1997-98 and 1998-99	0.12
3	Rourkela-II	2	1996-97 to 1999-2000	3.83
4	Cuttack-II	5	1996-97 to 1999-2000	0.20
5	Bhubaneswar-I	1	1996-97	0.52
Total		10		4.74

On this being pointed out in audit, in 4 out of 10 cases it was stated that the cases would be reopened for examination. In one case the assessing officer of Rourkela-II circle stated that the dealer being a sick unit was granted rehabilitation package by State Level Inter Institutional Committee and therefore general provision is not applicable. The reply is not tenable since the benefit on revival to be availed by the dealer has been limited by the Committee to provisions under IPR 1992. In reply in respect of 5 dealers of Cuttack-II circle it was stated that exemption was allowed on the basis of EC issued by the DIC. The reply is not tenable since admissibility of exemption is subject to certificate of clearance obtained from the Orissa State Financial Corporation/Industrial Promotion and Investment Corporation of Orissa Ltd. for which Sales Tax Department is responsible.

2.2.9 Incorrect grant of exemption

Under the OST Act, 1947 a registered industrial unit set up on or after 1 December 1989 and starting commercial production thereafter is entitled to exemption from payment of sales tax on purchase of raw materials and sale of finished products for a period of 7 years. The concerned DIC or the DI is to certify the installed capacity of the unit and the maximum quantity of raw material required by the industry. There is no provision in the IPR to amend the eligibility certificate issued by the DIC once issued unless it fulfils the expansion criteria.

In 6 circles involving 8 units it was noticed that the installed capacities had been enhanced in the ECs issued by the DICs without fulfilment of the expansion criteria. This resulted in grant of excess exemption for Rs.7.77 crore during the period from 1996-97 to 1998-99 as detailed below :

(R u p e e s i n c r o r e)

Sl. No.	Name of the circle	Assessment year/month of assessment	Commodity/ Rate of tax (%)	Inadmissible turnover exempted	Amount of tax and surcharge exempted
1	Bhubaneswar-I	1997-98/	Perfumed hair oil/20	12.66	2.83
		May 2000	Tooth Powder (Daburlal dantamanjan)/6	3.05	0.21
M/s. Maxcare Laboratories Ltd., an SSI unit under IPR 1989 started CP ¹⁴ in June 1993 and was entitled to exemption up to the installed capacity of 1000 KL of hair oil and 600 MT of tooth powder against which exemption up to 2949.50 KL and 883.854 MT respectively has been granted resulting in excess exemption on the sale of 1949.50 KL and 283.854 MT valued at Rs.15.71 crore. The assessing officer stated that the case would be reopened.					
2	Rourkela-II	1996-97 to	Iron and Steel (Raw materials)/4	11.36	0.46
		1998-99/ between January 1999 and February 2000	Electrical Stampings/12	11.50	1.55
M/s. Orient Industries, a unit of M/s Kalinga Processors and Suppliers under IPR 1989 started CP in July 1991 and was entitled to exemption of 1012.50 MT of finished product during the period from 1996-97 to June 1998. As against this the dealer was allowed exemptions of 7352.212 MT during the period. This resulted in grant of excess exemption on sale of 6339.712 MT valued at Rs.11.50 crore and on the corresponding raw material of 6553.389 MT valued at Rs.11.36 crore. On this being pointed out in audit, the assessing officer stated that the case would be reexamined.					
3	Rourkela-I	1996-97 to	Iron and Steel (Raw material)/4	7.11	0.28
		1998-99/ between December 1997 and July 2000	Tawa, Kadai etc (Finished Products)/12	7.96	1.08
M/s. Shree Raj Udyog a unit under IPR 1989 having its original installed capacity of 200 MT per annum was allowed exemption on finished product of 586.830 MT, 3346.900 MT and 1884.580 MT during 1996-97, 1997-98 and 1998-99 respectively. This resulted in grant of excess exemption on sale of 5218.31 MT valued at Rs.7.96 crore. The corresponding excess exemption on purchase of raw materials was for 5243.990 MT valued at Rs.7.11 crore. The assessing officer stated in reply that the exemption was allowed on the basis of EC issued by the DIC The reply is not tenable since the installed capacity had been increased though it did not fulfil the expansion criteria without E/M/D ¹⁵ and it is not admissible.					
4	Balasore	1997-98/	HDPE Woven sacks and Fabrics/12	3.72	0.92
		March 2000		3.12	
M/s. Balasore Polypack Enterprises, a unit under IPR 1989 was entitled to exemption on installed capacity of 46 lakh sacks. Against this the dealer was allowed exemption on sale price of 115.02 lakh sacks which resulted in excess exemption of 69.02 lakh sacks valued at Rs.3.72 crore and on the corresponding purchase of raw material valued at Rs.3.12 crore. On this being pointed out, the assessing officer accepted the observations of audit and stated that necessary action would be taken to reassess the case.					

14 CP- Commercial Production

15 E/M/D- Expansion/Modernisation/Diversification

(Rupees in crore)

Sl. No.	Name of the circle	Assessment year/month of assessment	Commodity/ Rate of tax	Inadmissible turnover exempted	Amount of tax and surcharge exempted
5	Cuttack-II	1997-98/ January 2001	Aluminium Ingot/4	1.80	0.07
			Aluminium Circles/12	1.98	0.27
<p>The unit of IPR 1989 is entitled to exemption on installed capacity of raw material up to 128.5 MT and finished product of aluminium utensils for 126 MT per annum. The dealer is not entitled to exemption on sale of aluminium circles. Against this the dealer availed exemption of 366.643 MT on purchase of raw materials and 230.556 MT on sale of aluminium circles. This resulted in excess exemption of 238.143 MT on purchase valued at Rs.1.80 crore and 230.556 MT on sale valued at Rs.1.98 crore.</p> <p>On this being pointed out, it was stated in reply that the matter would be taken up with the authorities granting EC for further action.</p>					
6	Cuttack-I (West)	1997-98/ March 2001	Triplex glass/12	0.39	0.05
<p>A unit under IPR 1989 was entitled to exemption of 7800 Sqm of Triplex glass, against which the dealer was allowed exemption on 17489.678 Sqm resulting in excess exemption on 9689.678 Sqm valued at Rs. 0.39 crore. The assessing officer accepted the audit observations and reopened the case.</p>					
7	Cuttack-II	1996-97 to 1998-99/ September 1997 and August 1999	Carded/ willowed Cotton/4	0.78	0.03
<p>A unit under IPR 1989 having started CP in July 1991 was entitled for exemption on sale of finished products of 600 MT per annum up to 1997-98 and on 200 MT for 1998-99 (up to July 1998) as per original installed capacity. Against this exemption was allowed on 2336.176 MT from 1996-97 to 1998-99 resulting in grant of excess exemption of 936.176 MT valued at Rs.0.78 crore.</p> <p>On this being pointed out, the assessing officer stated in reply that the matter would be taken up with the DIC for further action at his end.</p>					
8	Cuttack-II	1996-97 and 1997-98/ March 2000 and March 2001	Iron and Steel (Raw-material)/4,	0.10	0.02
			Wirenail and Fabricated items/12	0.11	
<p>Against admissible exemption of 500 MT for both the years, exemption was allowed on finished products of 586.989 MT. This resulted in excess exemption of 86.989 MT valued at Rs.0.11 crore and on corresponding raw-materials valued at 0.10 crore. The assessing officer stated to reopen the case.</p>					
Total					7.77

2.2.10 Inadmissible incentives under the expansion scheme

Under IPR 1989 and notifications of the Finance Department issued thereunder the industrial units undertaking E/M/D are allowed exemption to the extent of increased production over and above the existing installed capacity. Thus, an industrial unit undertaking E/M/D is to pay tax in respect of the original installed capacity after expiry of its exemption period and avail exemption on increased production as a result of E/M/D. Further, in the deferment scheme under IPR 1992 in case of E/M/D, the benefits of deferment should not have the effect of reducing the sales tax paid by the original unit prior to the commencement of E/M/D.

It was noticed in 3 circles that 4 units while availing the benefit of exemption/deferment on expansion did not pay tax on their original installed capacity. This resulted in grant of irregular exemption of Rs.0.80 crore as detailed below.

(Rupees in crore)

Sl. No.	Name of the circle	Year/month of assessment	Inadmissible turnover exempted	Amount of tax and surcharge exempted
1	Balasore	1997-98/ March 2001	16.89	0.68
The period of deferment of the unit in respect of Furnace No. 1 and 2 was completed during 1996-97. The unit was to avail the benefit of expansion in respect of Furnace No. 4 and 5 during 1997-98. The unit reduced the sale of Furnace No. 1 and 2 by Rs 16.89 crore which resulted in grant of excess deferment. On this being pointed out, it was stated in reply that the case would be reassessed.				
2	Cuttack-I (West)	1997-98 and 1998-99/ October 1999 and March 2000	0.46	0.06
The unit undertook expansion under IPR 1989 increasing the installed capacity from 100 MT to 150 MT of chanachur. The dealer though liable to pay tax on the original capacity of 100 MT valued at Rs.0.46 crore was incorrectly exempted from payment of tax after expiry of original exemption period.				
3	Rourkela-II	1996-97 to 1998-99/ between December 1997 and February 2000	1.37	0.05
The unit had the installed consumption capacity of raw material of 236 MT. On expansion the capacity was increased up to 627 MT. Though liable to pay tax on the original capacity of 236 MT valued at Rs.1.37 crore, the dealer was incorrectly exempted from payment of tax.				
4	Cuttack-I (West)	1997-98 and 1998-99/ October 1999	0.10	0.01
The unit undertook expansion and increased the installed capacity from 80,000 nos. of files to 1,20,000 nos. but was allowed incorrect exemption on the original quantity of product valued at Rs.0.10 crore.				
Total				0.80

On this being pointed out in audit, the assessing officers agreed to re-examine the cases.

2.2.11 Grant of excess exemption under the package schemes of IPR 1992 and 1996

As per incentives available to industrial units set up under IPR 1992 and 1996, the sum total of exemptions a unit is entitled to receive in respect of its purchases and sales within a period of 5 years are linked to investments made in acquisition of fixed capital. Under IPR 1996 the amount of exemptions during the period of eligibility should be certified at a time by the General Manager, DIC. In order to avail of exemption on purchase, a unit under IPR 1992 is to furnish a declaration in its own stationery whereas under IPR 1996 the declaration forms are supplied by the department.

Test check in 4 circles involving 5 cases revealed that excess adjustment towards exemption from tax had been allowed to industrial units which resulted in loss of

revenue of Rs.5.67 crore during the period from 1993-94 to 1999-2000 as detailed below :

(Rupees in crore)

Sl. No	Name of the circle	Assessment Year	Amount of excess benefit
1	Rourkela-I	1993-94 to 1997-98	3.44
The dealer M/s Prakash Industries was allowed incentive packages under IPR 1992. The unit purchases iron ore, reduces the size and sales them outside the State. The unit was entitled to avail incentives up to Rs.2.47 crore. Against this, due to application of a lower rate of tax (4 per cent instead of 16 per cent) the dealer was allowed a total benefit of Rs.5.91 crore resulting in excess exemption of Rs.3.44 crore over the exemption limit. On this being pointed out, no reply was furnished by the assessing officer.			
2	Cuttack-II	1996-97 to 1999-2000	1.90
The dealer M/s Jagannath Polymer was entitled for exemption of Rs. 73.61 lakh under IPR 1996. As against this he was allowed exemption of Rs.2.64 crore resulting in excess exemption of Rs.1.90 crore. On this being pointed out, the assessing officer replied that the case would be considered at the time of assessment proceedings. The assessment for 1998-99 has been completed in March 2002 and the excess exemption was allowed based on the revised EC issued by the DIC which is irregular.			
3	Cuttack-I (West)	1995-96 to 1997-98	0.19
M/s. Laxmi Polythene was a sick unit which was granted benefit under IPR 1992. It was to avail of exemption up to Rs.46.46 lakh (60 per cent of FCI of Rs.77.44 lakh). As against this, it was allowed exemption up to a limit of Rs.65.49 lakh which was in excess by Rs. 19.03 lakh. The assessing officer replied that being a sick unit he was not to be guided by the general rules. The reply is not tenable as the sanction order granting the extended benefits had not exonerated the unit from the general conditions of IPR 1992.			
4	Ganjam-III	1996-97 and 1997-98	0.10
The unit under IPR 1992 was eligible for exemption up to Rs.40.89 lakh on its purchases and sales against which it was allowed exemption of Rs.50.60 lakh which resulted in excess benefit of Rs.9.71 lakh. This was due to non accountal of purchases made against declarations in own stationery. The assessing officer agreed to reopen the case.			
5	Cuttack-II	1996-97 to 1998-99	0.04
The unit set up under IPR 1996 was entitled for exemption of Rs.10.25 lakh. Against this the dealer was allowed exemption of Rs.13.75 lakh resulting in excess exemption of Rs.3.50 lakh. The assessing officer accepted the observation of audit and agreed to reopen the case.			
Total			5.67

2.2.12 Absence of provision for recovery from closed unit

The Orissa Sales Tax Act, 1947 does not stipulate any time period up to which a unit has to maintain a certain level of production after it has availed exemptions under the various industrial policies. The Act also does not provide for recovery of amount of exemption availed by a unit closed during the period of exemption or thereafter.

A test check of 8 circles revealed that 47 units had been closed after availing exemption of Rs.17.21 crore while 13 units closed their manufacturing activities during the currency of exemption after availing the benefits for Rs.2.87 crore as detailed below:-

(Rupees in crore)

Sl No	Name of the circle	Closed during operative period of exemption		Closed after availing exemption		Total	
		No. of units	Amount of exemption availed	No. of units	Amount of exemption availed	No. of units	Amount of exemption availed
1	Koraput-I	--	--	12	1.72	12	1.72
2	Cuttack-I West	--	--	1	0.20	1	0.20
3	Keonjhar	--	--	1	1.87	1	1.87
4	Balasore	3	0.19	5	0.73	8	0.92
5	Rourkela-II	3	2.33	6	2.79	9	5.12
6	Cuttack-II	4	0.30	9	7.85	13	8.15
7	Bhubaneswar-I	1	0.04	8	0.81	9	0.85
8.	Puri-II	2	0.01	5	1.24	7	1.25
Total		13	2.87	47	17.21	60	20.08

The table below gives the period of operation after availing exemptions in respect of the above 47 units which were closed.

Sl. No.	Period of operation before closure	No. of units closed
1	1-6 months	14
2	7-12 months	11
3	13-24 months	14
4	25-44 months	8
Total		47

Thus, it would be seen that 60 units after availing exemption of Rs.20.08 crore closed down and did not contribute towards industrialisation of the State. In absence of any provision, no action could be taken against them.

2.2.13 Conclusion

The preamble of IPR 1989 contemplated that since the previous two policies had led to a remarkable upsurge in the industrial climate of the State further liberalisation of the package of incentives would be able to maintain and enhance the tempo of industrialisation in the State. This was however belied since a large number of industries could walk off unfettered after availing benefits to the fullest extent since there was no penal provisions either in the IPR or in the OST Act to bring them to book. Eligibility Certificates issued by the DIC had been altered or modified liberally by them. Ineligible/defaulting units had been allowed exemptions on one pretext or the other due to absence of proper guiding principles. There existed no co-ordination between the nodal agencies and the tax authorities. As a result, the pace of industrialisation received a set back and the unbridled grant of incentives led to loss of tax revenue.

2.3 Non realisation of deferred tax

As per Government of Orissa, Finance Department Notification dated 16 August 1990, large and medium scale units set up in the districts of Balasore and Puri on or after 1 December 1989 are allowed to defer payment of sales tax collected and admitted as payable on sale of their finished products for a period of 7 years from the date of commercial production. Deferred amount of tax in respect of each year is to be paid in full in the month following the month of commercial production every year in one annual instalment, commencing immediately after the expiry of the period of deferment. In case of breach of conditions the benefit of deferment is to be revoked from the date it was allowed and the entire amount not paid by way of deferment shall be paid at once in one instalment.

(i) In course of audit of Balasore circle it was noticed (May 2001) that M/s Nilagiri Sleepers Ltd. was allowed deferment of tax of Rs.5.18 crore for seven years for the period from 1990-91 to 1996-97 payable from December 1997. The dealer paid Rs.1.24 crore between January 1998 and December 2001, thus defaulting in payment from the very first instalment. Despite breach of conditions by way of non-payment of the deferred tax the order of deferment was neither revoked nor the balance amount collected. This resulted in non-realisation of deferred tax of Rs.3.94 crore.

On this being pointed out (May 2001), the assessing officer stated that the Commissioner has allowed the dealer to repay in monthly instalments and the dealer has agreed to clear the balance amount in phased manner. The reply of the assessing officer is not tenable since there is neither any provision for allowing instalment after breach of conditions nor was the dealer regular in repayment even after allowing him to repay the amount in monthly instalments.

The matter was reported to Government (April 2002); no reply was received (November 2002).

(ii) In course of audit of Bhubaneswar-I circle (September 2000) and further information collected (March 2001) from the circle it was noticed that a registered dealer manufacturing AB switch system was allowed deferment of tax of Rs.79.10 lakh¹⁶ for the period from December 1989 to November 1997. Although payment of first instalment due in December 1997 was defaulted by the dealer, no action was initiated by the assessing officer till February 2001 to revoke the order of deferment and to realise the entire amount in one instalment. By the time action was taken to realise the Government dues, the dealer had closed down the business and Rs.7,568 only was realised through attachment (March 2001). Thus, delay of three years in initiation of recovery proceedings resulted in non-realisation of Rs.79.02 lakh.

16 This includes Rs.2.52 lakh reported in Para 2.3 (SI.9) of Audit Report 2000-2001.

The matter was reported to Government (April 2002); their reply has not been received (November 2002).

2.4 Sales escaping assessment for want of survey

(a) Under the Orissa Sales Tax Act, 1947, a dealer who manufactures any goods shall be liable to pay tax on sales with effect from the month immediately following a period not exceeding twelve months during which his gross turnover exceeds rupees one lakh. According to the Orissa Commercial Tax Manual, the Inspectors of Sales Tax are required to survey business localities to detect persons who are liable to pay tax but have not been brought into the tax net. Bricks are taxable at the rate of 12 *per cent*.

Cross verification of the records of Bhubaneswar-I circle with the information collected (January 2002) from the Tahasildar, Bhubaneswar revealed (February 2002) that 15 dealers were engaged in the manufacture and sale of kiln burnt bricks during the years 1996-97 to 2000-2001 after obtaining permits on payment of royalty. Though their estimated sale exceeded the non-taxable limit, they escaped tax liability as they had neither got themselves registered nor had the department conducted any market survey to bring them into the tax net. The escaped taxable turnover is estimated at Rs.4.23 crore on 3.38 crore bricks determined on the basis of royalty paid. This led to non-levy of tax estimated at Rs.52.50 lakh.

On this being pointed out in audit, the assessing officer initiated proceedings (February 2002) for assessment of the dealers. The Commissioner of Commercial Taxes, Orissa stated (August 2002) that the assessment proceedings were pending disposal.

The above matter was referred to the Government (April 2002). Government confirmed (October 2002) the fact of pendency of assessment proceedings.

(b) The Orissa Sales Tax Act, 1947 states that a dealer shall be liable to pay tax on sales with effect from the month immediately following a period not exceeding twelve months during which his gross turnover exceeds rupees two lakh. According to the Orissa Commercial Tax Manual, the Inspectors of Sales Tax are required to survey business localities to detect persons who are liable to pay tax but have not been brought into the tax net. Granite stones are taxable at the rate of 12 *per cent*.

During the course of audit of Puri-II circle, Jatni (February 2002), cross verification of the records of the circle office with the information collected from Tahasildar, Khurda revealed that one dealer engaged in extraction of granite stone extracted 3.39 lakh cubic meters of stone during the years from 1996-97 to 2000-2001 after taking lease of the stone quarry on payment of royalty. Though his

estimated sale exceeded the non-taxable limit of Rs 2 lakh, he escaped the tax liability as he had neither got himself registered nor the department could bring him into the tax net by conducting market survey. The escaped taxable turnover is determined at Rs.1.29 crore on 3.39 lakh cubic meter of stone extracted during the above period. This led to non-levy of tax estimated at Rs.16.95 lakh including surcharge of Rs.1.49 lakh.

On this being pointed out in audit (February 2002), the Department raised (July 2002) demand of Rs.21.44 lakh.

The above matter was referred to the Government (May 2002). Government confirmed (October 2002) the fact of raising demand.

2.5 Irregular exemption from Central Sales Tax

Under the Central Sales Tax Act, 1956, inter-State sale of iron and steel (declared goods) not supported by the prescribed declaration in Form-C is taxable at the rate of 8 *per cent*. Government of Orissa in their notification dated 6 April 1991 as amended by notification dated 16 September 1991 exempted inter-State sale of iron and steel made to registered dealers from levy of tax subject to the fulfilment of the prescribed conditions viz. (i) that the tax under the State Act has been paid in respect of such iron and steel, (ii) that such iron and steel has been sold in the same form in which it was purchased inside the State and (iii) the dealer does not claim reimbursement of the tax paid under the State Act.

During the course of audit of Keonjhar circle it was noticed (June 2001) that the assessing officer while finalising (November 2000) the assessment of a registered dealer under the Central Sales Tax Act for the year 1999-2000, exempted sale turnover of iron of Rs.3.71 crore from tax without verifying whether such iron and steel has suffered tax under the State Act and was sold in the same form in which it was purchased. On cross verification by audit conducted through the Commercial Tax Officer, Rourkela-II circle it was noticed that the dealers from whom purchases were shown to have been made had either made no transaction to this dealer or their registration certificates were cancelled with effect from 1 April 1999. Only two transactions of Rs.8.93 lakh were found to be eligible for exemption. Thus, allowance of exemption of Rs.3.62 crore was irregular and led to short levy of tax of Rs.28.99 lakh.

On this being pointed out in audit (June 2001), Government stated (June 2002) that in pursuance to audit objection extra demand of Rs.75.71 lakh including penalty of Rs.45.91 lakh was raised (March 2002).

2.6 Incorrect treatment of supply contract as works contract

Under the Orissa Sales Tax Act, 1947, 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 incurred and the turnover is taxable at the rate of 8 *per cent*. Stone ballast supplied to Railways is a transaction of sale and is taxable at the rate of 12 *per cent*.

During the course of audit of Keonjhar circle, it was noticed (May 2001) that a dealer received payment of Rs.2.66 crore from the Railways during the years from 1997-98 to 1999-2000 towards supply and stacking of machine crushed hard stone ballast. The assessing officer while completing assessment (March 2001) allowed deduction of Rs.1.53 crore towards security deposit and labour and service charges and taxed the balance amount of Rs.1.13 crore at the rate of 8 *per cent* applicable to works contract instead of taxing the whole amount (Rs.2.66 crore) at 12 *per cent*. This irregular assessment resulted in short levy of tax of Rs.26.00 lakh including surcharge of Rs.3.13 lakh.

On this being pointed out in audit (May 2001), Government stated (June 2002) that in pursuance to audit objection re-assessment was completed (March 2002) raising extra demand of Rs.25.24 lakh.

2.7 Under-assessment of purchase tax

Under the Orissa Sales Tax Act, 1947, certain goods have been specified to be taxed on the turnover of purchases. Turnover of purchases means the aggregate of the amounts of purchase prices paid and payable by a dealer in respect of the purchase or supply of goods so specified. Tamarind produced and purchased within the State is taxable at the rate of 8 *per cent*.

During the course of audit of two circles (Koraput-I & Koraput-II), it was noticed (February 2001) that the assessing officers, while completing the assessments (between September 1997 and November 1999) of two registered dealers for the years 1995-96, 1996-97 and 1998-99, determined purchase turnover of tamarind produced and purchased inside the State after taking into account the royalty paid to Government. Scrutiny revealed that the dealers were required to pay minimum procurement price of Rs.1.63 crore to the primary collectors in addition to royalty paid to Government which was not taken into account in determination of the purchase turnover. This led to under-assessment of purchase tax of Rs.14.31 lakh including surcharge of Rs.1.30 lakh.

On this being pointed out (February 2001), the assessing officers raised (December 2001 and January 2002) extra demand of Rs.12.90 lakh.

Government while confirming the fact of raising extra demand stated (June 2002) that the concerned assessing officers have been directed to take follow up action for realisation of the demanded dues.

2.8 Tax evasion due to undervalued sales to favoured buyer

Under the Orissa Sales Tax Act, 1947, if the Commissioner is satisfied that any dealer has, with a view to evading or avoiding payment of tax, effected sales of any goods or class of goods to favoured buyers or shown in his accounts, sales or purchases at prices, which are unreasonably low compared to the prevailing market price of such goods, he may estimate the price of such goods on the basis of market price thereof prevailing at the time when such sales were effected and re-assess the dealer to the best of his judgement. Toothpaste, and toothbrush are taxable at the rate of 12 *per cent* at the first point of sale.

During course of audit of Cuttack-II circle, it was noticed (August 2001) that in the year 1998-99 a registered dealer dealing in toothpaste, and toothbrush sold such goods of Rs.1.12 crore to another dealer for Rs.1.25 crore and paid tax thereon as the first seller. The second dealer, (the purchaser) in turn, sold the same goods in the same locality at Rs.2.22 crore with 77 *per cent* increase which is very high. Thus, the sale turnover of first point tax paid goods, returned by the first seller was unreasonably low. This led to evasion of tax of Rs.10.53 lakh including surcharge.

On this being pointed out in audit (August 2001), the department raised (August 2002) a demand of Rs.33.30 lakh including penalty of Rs. 19.98 lakh.

The matter was referred to the Government (May 2002). Government confirmed (October 2002) the fact of raising demand.

2.9 Grant of inadmissible concession

Under the Orissa Sales Tax Act, 1947 concessional rate of tax (4 *per cent*) is admissible to a registered purchasing dealer, provided a declaration in the prescribed form is furnished by him to the selling dealer that goods so purchased will be used by him in manufacture, processing or packing of goods for sale or in mining or in generation or distribution of electricity.

Test check in 6 circles revealed that in 10 cases sales during the period from 1996-97 to 1999-2000 at concessional rates had been effected to dealers either not engaged in manufacturing activities or were unregistered. This resulted in grant of inadmissible concessional tax of Rs.21.33 lakh including surcharge as enumerated below :

(Rupees in lakh)

Sl. No.	Name of the circle	Assessment year/month of assessment	Name of goods/rate of tax	Turnover taxed at concessional rate	Tax short levied including surcharge	Remarks
1	Rourkela-I	1997-98 to 1999-2000 /NA	Photographic material/16	23.91	3.16	¹⁷ Taking of photographs is a contract for service and not sale.
2	Cuttack-I West	1998-99/ December 1999	Photographic material/16	9.56	1.32	
3	Cuttack-I- West	1997-98/ March 2001	Paper/8	21.26	0.96	The paper was sold to an unregistered dealer.
4	Balasore	1997-98/ March 2001	Prawn feed & seeds/ 12	3.80	0.33	Prawn culture does not come under manufacture ¹⁸ . However prawn feed was sold at the concessional rate of 4 per cent instead of 12 per cent
5	Balasore	1997-98/ March 2000		1.78	0.16	
6	Dhenkanal	1999-2000/ August 2000	Repair of transformer/8	98.42	4.53	Repair work has been taxed at the rate of 4 per cent instead of 8 per cent.
7	Bolangir-I	1996-97 to 1998-99/ March 1999 and July 2000		46.61	2.04	
8	Bolangir-I	1998-99 and 1999-2000/ March 2000 and July 2000		58.56	2.58	
9	Bhadrak	1996-97 and 1997-98/ March 2000 and March 2001	Paper/8	72.90	3.21	The purchasing dealers are themselves not engaged in manufacture and are getting the printing work done from other printing presses.
10	Bhadrak	1996-97 and 1997-98/ March 2000 and March 2001	Paper/ 8	69.09	3.04	
Total					21.33	

On this being pointed out, the assessing officers agreed to re-examine the cases.

The matter was reported to Government (June 2002); their reply was awaited (November 2002).

2.10 Evasion of tax through statutory declarations

Under the provisions of Orissa Sales Tax Act, 1947 the taxable turnover of a registered dealer is determined after deducting therefrom sales made to registered dealers against statutory declarations to the effect that goods so purchased shall be resold in the State subject to levy of tax under the Act.

17 M/s. Rainbow Colour Lab. and another Vs. State of Madhya Pradesh [118-STC-P-9(SC)]

18 Clarification issued by the Commissioner of Commercial Taxes, Orissa vide No.6266 Dated -15.2.1999.

(i) Test check in 2 circles revealed that during 1998-99 and 1999-2000, 4 dealers purchased goods valued at Rs.41.79 lakh furnishing declaration (in Form XXXIV) for resale of the goods in the State. As against this they had accounted for goods valued at Rs.0.59 lakh which resulted in under assessment of turnover of Rs.41.20 lakh and evasion of tax of Rs.5.65 lakh as shown below:

(Rupees in lakh)

Sl. No	Name of the circle	Assessment year	Turnover escaped	Commodity/ rate of tax	Amount of tax
1	Puri-II	1998-99 and 1999-2000	16.28	Pens, ball pens/ 12	2.08
2	Mayurbhanj	1998-99	13.37	Non-ferrous metals/ 12 Cosmetics/20	2.15
3	Puri-II	1999-2000	7.87	Pens, ball pens/ 12	1.03
4	Puri-II	1998-99	3.68	Pens, ball pens/ 12	0.39
Total			41.20		5.65

(ii) A registered dealer M/s Shankar Trading Co. in Cuttack-I circle was allowed deduction of Rs.41.70 lakh from his gross turnover against statutory declarations during 1996-97 and 1997-98 towards sales to 11 registered dealers located in 6¹⁹ circles against declarations for re-sale. As stated by the assessing officers of the purchasing dealers, the said forms had not been issued by them. This resulted in avoidance of tax of Rs.5.51 lakh since such forms had been fraudulently used by the purchasing dealers.

(iii) In 3 circles during 1998-1999 and 1999-2000, 4 registered dealers who effected purchases against statutory declarations had closed down their business between September 1998 and April 2002. However, the dealers could not be assessed or in case of assessment, the demand notice could not be served since the dealers had discontinued their business. This resulted in loss of tax of Rs.28.64 lakh as detailed below.

(Rupees in lakh)

Sl. No	Name of the circle	Year	Turnover	Commodity/rate of tax	Amount of revenue loss
1	Dhenkanal	1999-2000	65.70	Photographic materials/16	11.56
2	Kalahandi	1999-2000	22.28	Ball pen/12	3.92
3	Koraput-I	1998-99	70.63	Photographic materials/16	12.43
4	Koraput-I	1998-99	5.54	Ball Pen/12	0.73
Total					28.64

On this being pointed out, the assessing officers agreed to re-examine the cases.

The matter was reported to Government (June 2002); their reply is awaited (November 2002).

2.11 Short levy of tax due to application of incorrect rate

Under the Orissa Sales Tax Act, 1947, different rates of tax are applicable in respect of different commodities.

It was, however, noticed that in 5 cases application of incorrect rate of tax resulted in short levy of tax of Rs.27.92 lakh as shown below:

(Rupees in lakh)							
Sl. No.	Name of the circle	Year assessed/ Month of assessment	Commo- dities	Taxable turnover	Rate of tax leviable	Rate of tax levied	Short levy of tax including surcharge
1	Bhubaneswar-I	1997-98/ November 2000	Boroplus	67.17	20	6	10.34
2	Cuttack-II	1997-98/ March 2001	Glass tumblers and bottles	35.90 ²⁰ 36.00 ²¹	12 12	4 Nil	8.00
3	Cuttack-I(East)	1998-99 & 1999-2000/ February 2000 and January 2001	Cycle parts	67.72	12	4	5.96
4	Sambalpur-I	1999-2000/ December 2000	Cycle parts	13.57	12	4	1.25
5	Bhubaneswar-II	1997-98/ March 2001	IMFL	7.00 17.31	10 (upto 25 June 1997) 20 (from 26 June 1997)	4 10	2.37
Total							27.92

On this being pointed out in audit (between July 2001 and January 2002), Government stated (between February 2002 and July 2002) that extra demands of Rs.28.70 lakh were raised after re-assessment proceedings.

2.12 Non-levy of surcharge

Under the Central Sales Tax Act, 1956, on inter-State sales of goods other than declared goods which are not covered by prescribed declarations, tax is leviable at the rate of 10 per cent or at the rate applicable to sale or purchase of such goods inside the appropriate State whichever is higher. Rate of tax on sale or purchase of such goods inside the State includes 'surcharge' leviable under the State Act; where in any year his gross turnover exceeds rupees ten lakh.

20 Inter-State sales not supported by declaration in Form-'C'.

21 Branch transfer of goods not supported by declaration in Form-'F'.

During the course of audit of 5²² circles it was noticed that in 11 cases surcharge of Rs.4.46 lakh though leviable was not levied where the gross turn over of the dealer had exceeded the prescribed limit.

On these being pointed out in audit, the department raised demand of Rs.4.66 lakh in all the cases.

The matter was referred to the Government (April 2002). Government communicated (September 2002) the fact of raising demand.

2.13 Short levy of tax due to under statement of taxable turnover

Under the Orissa Sales Tax Act, 1947, 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 charges and service charges incurred for execution of the contract. Under the Act the taxable turnover of works contracts is eligible to tax at the rate of 8 *per cent*. The Supreme Court in the case of *M/s Gannon Dunkerly & Co. Vs. the State of Rajasthan (1993-88-STC-204)* held that goods involved in the execution of works contract when incorporated in the works contract, could be classified into a separate category for the purpose of imposing tax.

(a) During the course of audit of Kalahandi circle, it was noticed (October 2001) that while finalising (July 2000) the assessment of a contractor for the year 1999-2000, deduction of Rs.66.54 lakh was allowed towards cost of cement utilised in the execution of works contract on the ground that such goods had suffered tax earlier, which was incorrect as the entire turnover, excluding labour and service charges is taxable. Since the tax paid materials were not purchased by the contractor but were supplied by the contractee (a Government Corporation) there was no evidence that the assessing officer had satisfied himself that the materials were not received from PWD Division at concessional rates. This resulted in under-assessment of tax of Rs.6.12 lakh including surcharge of Rs.0.80 lakh.

On this being pointed out in audit (October 2001), the assessing officer agreed to reopen the case after consultation with the higher authorities.

The matter was reported to Government (April 2002); their reply is awaited (November 2002).

(b) During the audit of Kalahandi circle, it was noticed (October 2001) that while completing assessment of a works contractor for the year 1999-2000 the assessing officer assessed (March 2001) gross turnover of Rs.11.17 crore after

deducting the withheld amount of Rs.27.59 lakh from the gross value of work of Rs.11.44 crore received during the year. This led to under statement of taxable turnover of Rs.18.76 lakh after allowing deduction towards labour and service charges as adopted by the assessing officer, resulting in short levy of tax of Rs.1.73 lakh including surcharge of Rs.0.23 lakh.

On this being pointed out (October 2001), the department raised (June 2002) demand of Rs. 10.78 lakh including surcharge.

The above matter was reported to the Government (May 2002). Government confirmed (October 2002) the fact of raising extra demand.

2.14 Non-levy of tax due to incorrect calculation of taxable turnover

Under the Orissa Sales Tax Act, 1947, sale includes transfer of the right to use any goods for any purpose (whether or not for specified period) for cash, deferred payment or other valuable consideration. The Commissioner of Commercial Taxes, Orissa, clarified (July 1988) that hire charges of any goods should be taxed at the same rate as applicable to the goods hired out. Under the Act, electric meter is taxable at the rate of 12 *per cent*.

During the course of audit of Sambalpur-III circle, Jharsuguda, it was noticed (August 2001) that a registered dealer collected Rs.21.88 lakh during the year 1996-97 and 1997-98 towards hire charges of electric meters as meter rent from the consumers. The amount received towards meter rent escaped assessments completed during March 1999 and March 2001 which resulted in non-levy of tax of Rs.2.92 lakh including surcharge of Rs.0.29 lakh.

On this being pointed out in audit (August 2001), the department raised (June 2002) a demand of Rs.1.85 lakh for 1997-98. Reply for 1996-97 was awaited (November 2002).

Government confirmed (August 2002) the fact of raising of the above demand.