

## CHAPTER-II : SALES TAX

### 2.1 Results of Audit

Test check of assessments and refund cases and connected documents of the Commercial Tax offices during 2002-2003 revealed under-assessment of tax, incorrect grant of exemption, short levy of tax etc. amounting to Rs.101.74 crore in 620 cases which may broadly be categorised as under:

**( Rupees in crore )**

Sl. No.	Category	No. of cases	Amount
1	Review: Levy, Collection and Remittance of Sales Tax by Public Works Departments	1	68.08
2	Short levy of tax due to incorrect computation of taxable turnover	96	7.28
3	Under-assessment of tax due to application of incorrect rate	58	2.92
4	Incorrect grant of exemption	143	8.08
5	Non levy of surcharge	13	0.34
6	Non levy of interest	22	0.21
7	Other irregularities	287	14.83
<b>Total</b>		<b>620</b>	<b>101.74</b>

During the year 2002-2003, the department accepted under-assessment etc. of Rs.10.89 crore in 610 cases which were pointed out in audit in earlier years and Rs.14 lakh in one case pointed out in 2002-03. Out of these, the department recovered Rs.3.68 crore in 194 cases.

A few illustrative cases highlighting important audit observations involving Rs.11.60 crore and findings of a review, "**Levy, collection and remittance of Sales Tax by Public Works Departments**" involving Rs.66.82 crore are discussed in the following paragraphs.

## **2.2 Review: Levy, collection and remittance of sales tax by Public Works Departments**

### **2.2.1 Highlights**

(i) Award of work to 346 unregistered works contractors by splitting up each work into less than Rs.1.00 lakh resulted in loss of Rs.8.46 crore.

*{Para-2.2.8}*

(ii) Cross verification of records of sales tax office with that of Public Works Divisions revealed escapement of tax of Rs.2.86 crore including penalty due to concealment of gross turnover.

*{Para-2.2.9}*

(iii) Penalty of Rs.30.26 crore was not imposed against the defaulting Divisional Officers for delayed payment of tax deducted in 6,758 cases.

*{Para-2.2.10(b)}*

### **2.2.2 Introduction**

The Orissa Sales Tax Act (OST Act), 1947, the Rules made thereunder and executive instructions issued by the Finance Department and the Commissioner of Commercial Taxes (CCT), Orissa, govern the procedure for levy, collection and remittance of tax. The Act defines the taxable turnover in respect of works contract as the gross value received or receivable by a dealer for carrying out such contract, less the amount of labour and service charges incurred for execution of such contract. In order to expedite the process of collection and remittance of tax to Government Account and to prevent evasion of tax by works contractors, the Act imposes responsibilities on all paying authorities (including Government Departments) to deduct the sales tax at source while making payments to contractors and remit the same into the Government Treasury within one week from the date of deduction. The Government in Finance Department issues executive instructions from time to time in order to ensure recovery and prompt remittance of tax at source and to guard against evasion of tax.

### **2.2.3 Organisational set up**

The CCT being the Head of the Commercial Tax Department is in overall control of levy, collection and remittance of sales tax by Public Works Department. In so far as deduction of tax at source is concerned, in the cases

of works contract the deducting authorities i.e. the Executive Engineers under the control of Chief Engineers of all Public Works Departments are responsible for deduction and remittance into Government treasury. In respect of divisions under different irrigation projects concerned FA & CAOs are the deducting authorities.

#### **2.2.4 Audit objectives**

Audit was conducted in selected divisional offices of four Public Works Departments and concerned Commercial Tax circles to-

- (i) ascertain the extent to which provisions of the Act and Rules, notifications of the Finance Department and instructions of the CCT were followed in the matter of deduction of tax at source and its remittance to Government Accounts,
- (ii) evaluate effectiveness of the system to check the evasion of tax by works contractors,
- (iii) review the system of inter-departmental co-ordination and information sharing in the matter of liability to tax, between the Public Works Department and Sales Tax Department and
- (iv) assess the effectiveness of the internal control mechanism.

### 2.2.5 Scope of audit

A review levy, collection and remittance of sales tax by Public Works Departments for the period 1998-99 to 2001-02 was conducted between December 2002 and April 2003. Test check of the records of 64<sup>13</sup> out of 200 Divisions and Chief Engineer, World Bank Project, Bhubaneswar under the Departments of Works, Water Resources, Housing and Urban Development and Rural Development and 11<sup>14</sup> out of 29 Sales Tax circles in the State was made.

### 2.2.6 Trend of revenue collection from works contract

The comparative position of collection of Sales Tax on works contract vis-à-vis the total Sales Tax receipts for the four years ending March 2002 is as follows :-

(Rupees in crore)

Year	Total Sales Tax receipts	Amount of tax collected from Works contracts	Per centage of Col. 3 to 2
1	2	3	4
1998-99	971.09	65.77	6.77
1999-00	1,107.55	59.98	5.41
2000-01	1,342.12	56.73	4.22
2001-02	1,402.33	72.54	5.17

As would be seen from the above table, the collection of sales tax from works contracts ranged from 4.22 per cent to 6.77 per cent of the total tax collected

- 13 Rural Development Department  
 Rural works Division--Angul, Bhubaneswar, Baripada, Balasore, Bhawanipatna, Cuttack, Dhenkanal, Jajpur, Kendrapara and Keonjhar.  
 RWSS Division -- Balasore, Baripada, Bhanjanagar, Bhawanipatna, Cuttack, Keonjhar, Puri and Talcher.  
 Rural Works (Electrical) Division, Bhubaneswar  
 Works Department  
 NH Division-- Bhubaneswar, Baripada, Cuttack, Dhenkanal, Keonjhar and Kesinga.  
 R & B Division-- Bhubaneswar No. II & III, Balasore, Baripada, Bhawanipatna, Charbatia, Dhenkanal and Kendrapara.  
 Water Resources Department  
 Prachi Division, Bhubaneswar, Dam Safgety (M.P.) Division Bhubaneswar, Baitarani Division Keonjhar and Irrigation Divisions- Balasore, Bhawanipatna, Jajpur and Kendrapara  
 F.A. & C.A.O. R.I.P. Samal  
 Head Works Division Samal, Camps and Building Division, Rengali Dam Division, Over-seas Economic co-operation Fund Division No. I to IV, Purjang Canal Division.  
 Rengali Right Canal Division No. I to IV.  
 Upper Indravati Right Canal Division No. I to IV, Left Canal Division No. I to IV.  
 Housing & UD Department  
 P.H.Division No. I & II Bhubaneswar, Baripada, Cuttack No. I.
- 14 Balasore, Bhubaneswar -II, Bolangir-I, Cuttack-I (West), Cuttack-II, Cuttack-III, Dhenkanal, Ganjam-I, Kalahandi, Keonjhar and Mayurbhanj.

during the period 1998-99 to 2001-02. The tax from works contract had shown a declining trend over the years except during 2001-02.

### **2.2.7 Survey not conducted by Sales Tax Department**

In order to ensure proper account of Tax deducted at source, the CCT issued instructions on 21 April 1999 to all Commercial Tax Officers (CTOs) to undertake an exhaustive survey within their respective jurisdictions. The survey was to identify the deducting authorities, to ensure that tax was being deducted at source as per Act. Appropriate penal action was to be initiated in case of failure to deduct tax or to deposit the same in time.

However, it was observed that no survey was conducted by the concerned Sales Tax authorities resulting in evasion of tax by contractors either due to non-assessment by sales tax authorities or due to concealment of turnover and non-remittance/delay in remittance by the deducting authorities, causing blocking of Government revenues, as highlighted hereunder.

### **2.2.8 Evasion of tax due to non-assessment of unregistered contractors**

(a) Under the OST Act, a dealer engaged in execution of works contract is liable to pay tax with effect from the month immediately following a period not exceeding 12 months, during which his gross turnover exceeds rupees one lakh. Any dealer failing to get himself registered after accrual of liability is liable to pay penalty equal to one and half time of tax due, in addition to the amount of tax assessed. The Act provides for deduction of tax at source if the value of works contract exceeds rupees one lakh. The CCT vide circular in December 2001 directed that all CTOs to prepare a list of all the contractors working in the Public Works/Irrigation Divisions within their jurisdictions and assess them on the basis of turnover.

Test check of records in 22<sup>15</sup> divisions under Works and Rural Development Departments revealed that works valued at Rs.73.21 crore were executed by 346 unregistered contractors during 1998-99 to 2001-02 under the jurisdiction of 11 Sales Tax assessment circles. As the value of each individual works contract had been split up into less than Rs.1 lakh, no deduction of sales tax at source was made from the payments made to these contractors, though the income tax deduction certificates issued by the respective divisions revealed that turnover of the contractors had exceeded Rs.1 lakh and sales tax was required to be deducted at source. Moreover, these contractors being

15 R.W. Division Angul, Bhubaneswar, Cuttack, Dhenkanal, Keonjhar, Kendrapara, Baripada, Balasore, Bhawanipatna, Jajpur and R.W. (Elec) Division, Bhubaneswar  
R & B Division Bhubaneswar No. II, Charbatia, Dhenkanal, Bhawanipatna, Baripada Balasore and Kendrapara.  
N.H.Division Bhubaneswar, Cuttack, Keonjhar and Baripada.

unregistered under the OST Act, were also not assessed even though they were liable to pay tax. This resulted in evasion of tax and surcharge of Rs.8.46 crore including maximum penalty of Rs.4.93 crore as detailed below.

( Rupees in lakh )

Sl. No	Name of the circle	No. of Divisions	No. of contractors	Gross value of works received	Value of taxable materials involved	Sales Tax Surcharge	Penalty leviable	Total
1	Bhubaneswar-II	4	51	995.15	560.64	<u>44.85</u> 3.38	67.27	115.50
2	Cuttack-I (West)	1	1	19.75	10.86	<u>0.87</u> 0.02	1.30	2.19
3	Cuttack-II	5	78	2,207.57	1,214.16	<u>97.13</u> 7.72	1,45.70	2,50.55
4	Cuttack-III	1	23	162.06	89.13	<u>7.13</u> 0.49	10.70	18.32
5	Dhenkanal	3	29	416.82	229.25	<u>18.34</u> 0.89	27.51	46.74
6	Keonjhar	2	26	473.25	260.29	<u>20.82</u> 1.31	31.23	53.36
7	Kalahandi	1	23	418.54	230.20	<u>18.42</u> 1.50	27.63	47.55
8	Mayurbhanj	3	52	1,129.20	625.68	<u>50.05</u> 3.33	75.08	1,28.46
9	Balasore	2	59	1,235.04	679.27	<u>54.34</u> 3.57	81.51	1,39.42
10	Ganjam-I	1	3	128.10	102.48	<u>8.20</u> 0.82	12.30	21.32
11	Bolangir-I	1	1	135.94	108.75	<u>8.70</u> 0.87	13.05	22.62
<b>Total</b>			<b>346</b>	<b>7,321.42</b>	<b>4,110.71</b>	<b><u>328.85</u></b> <b>23.90</b>	<b>4,93.28</b>	<b>8,46.03</b>

Had the CTOs obtained the information as directed by CCT the evasion of tax could have been avoided.

**(b) Irregular issue of Sales Tax Non-Assessment Certificates (STNAC)**

As per the conditions stipulating acceptance of tender, a contractor, in order to be eligible for award of works contract is required to furnish alongwith tender Sales Tax Clearance Certificate (STCC) in the case of registered contractor and Sales Tax Non Assessment Certificate (STNAC) in the case of unregistered dealers obtained from the concerned sales tax authority.

Executive instructions<sup>16</sup> were issued by CCT from time to time for preliminary investigation to be conducted by CTOs regarding genuineness of such unregistered contractors to avoid misuse of STNAC. The CTOs were to enquire whether the contractors were awarded with any work and ascertain the amount received by them, before issue of STNACs.

It was observed in audit that there existed no system for monitoring the issue of STNAC to the unregistered works contractor. In most of the cases STNACs were issued in favour of the unregistered works contractors by the Sales Tax Departments without proper verification from the Works Department. The contractors obtained STNAC year after year from the same Sales Tax circle, and on the strength of such certificate, executed works and received large

16 CCT's Circular No. 16743 dated 31.07.1999 & No. 26145 dated 07.12.2001

payments but evaded tax liability. A few cases, having continuous tax liability out of the cases indicated in above para are given below by way of illustrations:

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

Sl. No	Name of the Sales Tax circle	Name of the contractor	Name of the division	Year	Amount received	Reference of STNAC issued.
1	C.T.O., Cuttack-II Circle, Cuttack.	Sri Basanta Kumar Sahoo	Executive Engineer, R & B Division, Kendrapada	1998-99 1999-00 2000-01	0.17 1.39 1.08	No. 3918 dated 13 September 2002.
2	-do-	Sibananda Patra	Executive Engineer, R & B division, Kendrapada	1998-99 1999-00 2000-01 2001-02	0.24 0.50 1.12 0.53	No. 428 dated 12 June 2001
3	-do-	Srinath Mishra	Executive Engineer R & B division, Kendrapara	1999-00 2000-01 2001-02	0.16 0.27 0.30	No. 100 dated 11 April 2001
4	CTO, Mayurbhanj, Baripada.	Bhaskar Chandra Das	Executive Engineer N.H. and R.W. Division, Baripada.	1998-99 1999-00 2000-01 2001-02	0.16 0.17 0.19 0.07	STNAC dated 26 June 02
5	-do-	Ratnakar Gochhayat	-do-	1999-00 2000-01 2001-02	0.16 0.35 0.08	No. 3832 dated 10 April 2002
6	Dhenkanal Circle, Angul	Deepak Kumar Mishra	Executive Engineer, R.W. Divn., Dhenkanal	1999-00 2000-01 2001-02	0.10 0.09 0.03	No. 208 dated 12 May 2000
7	CTO, Keonjhar circle, Keonjhar	Debananda Pradhan	Executive Engineer, N.H. Division, Keonjhar	1998-99 1999-00 2000-01 2001-02	0.11 0.09 0.09 0.02	No. 135/CT dated 6 April 2000 No. 1636/CT dated 19 April 2001

On this being pointed out in audit the concerned CTOs agreed to initiate proceedings against the contractors.

### 2.2.9 Escapement of tax due to concealment of turnover

Under the OST Act, where the evasion of tax is due to concealment of particulars of turnover the dealer shall pay, by way of penalty in addition to the tax assessed, a sum equal to one and half times of the tax so assessed.

Cross check of records in 6 cases of works contractors of different works divisions with the records of corresponding Sales Tax circles revealed that during 1998-99 to 2001-02 turnover of Rs.19.69 crore had been concealed by the assesseees which resulted in evasion of tax of Rs.1.24 crore including surcharge. Besides penalty of Rs.1.62 crore was also leviable for such concealment.

On this being pointed out all the assessing officers agreed to reopen the cases for reassessments.

## 2.2.10 Non/delayed remittance of tax deducted at source

As per the provisions of OST Act and Rules made thereunder the tax deducting authority is required to deposit the amount of tax deducted at source from the contractor's bill into the Government Treasury within one week from the date of deduction by a challan, with a copy endorsed to the CTO within whose jurisdiction the works contract is executed, alongwith a copy of certificate containing all relevant particulars of deduction. For contravention of these provisions of the Act, person found responsible is liable to pay a penalty not exceeding twice the amount required to be deducted by him and deposited into Government Treasury.

The CCT vide circular in April 1999 directed all the circle officers to undertake exhaustive survey within their jurisdiction to check whether the tax deducted at source by the deducting authority was being deposited in time.

Audit scrutiny revealed that neither the deducting authority furnished the above particulars of deduction nor any survey was conducted by the CTOs resulting in non remittance/delay in remittance of tax deducted at source as detailed below:

### (a) Non-remittance of tax deducted at source

Test check of records in 18 Public works Divisions revealed that in 579 cases sales tax of Rs.56.80 lakh deducted from the bills of contractors and suppliers during the period 1998-99 to 2001-2002 had not been remitted to Government account so far as detailed below :

Name of the Department (No. of divisions)	1998-99		1999-2000		2000-01		2001-02		Total	
	No. of cases	Amount not remitted	No. of cases	Amount not remitted	No. of cases	Amount not remitted	No. of cases	Amount not remitted	No. of cases	Amount not remitted
Works (7)	4	0.58	2	2.53	46	10.35	67	7.98	119	21.44
Water Resources (4)	10	0.22	27	2.02	64	5.77	140	11.23	241	19.24
Rural Development (5)	11	0.18	51	4.49	26	0.45	105	9.42	193	14.54
Housing and Urban Development (2)	4	0.34	6	0.53	3	0.37	13	0.34	26	1.58
<b>Total</b>	<b>29</b>	<b>1.32</b>	<b>86</b>	<b>9.57</b>	<b>139</b>	<b>16.94</b>	<b>325</b>	<b>28.97</b>	<b>579</b>	<b>56.80</b>

For non-deposit of tax deducted at source penalty amounting to Rs.1.14 crore was leviable

### (b) Delay in remittance of collected tax

Test check of records in 60 Public Works divisions revealed that in 6758 cases, there had been considerable delay in remittance of Rs.15.13 crore towards tax deducted at source during the period 1998-99 to 2001-2002. The Department-wise break up is given below.



( Rupees in crore )

Name of Department	No. of divisions	1998-1999		1999-2000		2000-2001		2001-2002		Total	
		No. of cases	Amount delayed	No. of cases	Amount delayed	No. of cases	Amount delayed	No. of cases	Amount delayed	No. of cases	Amount delayed
Works	15	523	1.48	545	2.30	554	1.94	620	1.17	2,242	6.89
Water Resources	29	451	1.57	341	1.82	864	1.78	835	1.03	2,491	6.20
Rural Development	14	181	0.14	297	0.40	558	0.66	733	0.73	1,769	1.93
Housing and Urban Development	2	-	-	36	0.02	98	0.05	122	0.04	256	0.11
<b>Total</b>	<b>60</b>	<b>1155</b>	<b>3.19</b>	<b>1219</b>	<b>4.54</b>	<b>2074</b>	<b>4.43</b>	<b>2310</b>	<b>2.97</b>	<b>6,758</b>	<b>15.13</b>

On further analysis, it was observed that delay ranged from 15 days to 2 years as given in the table below:

( Rupees in crore )

Name of the Department	Delay ranging from -					Penalty
	15 to 90 days	91 days to 6 months	6 months to 1 year	1 to 2 years	Total	
Works	4.53	1.07	1.10	0.19	6.89	13.78
Water Resources	3.23	1.53	1.27	0.17	6.20	12.40
Rural Development	0.83	0.40	0.66	0.04	1.93	3.86
Housing and Urban Development	0.09	0.01	-	0.01	0.11	0.22
<b>Total</b>	<b>8.68</b>	<b>3.01</b>	<b>3.03</b>	<b>0.41</b>	<b>15.13</b>	<b>30.26</b>

On this being pointed out in audit, all the Executive Engineers stated that the tax deducted could not be remitted in time for want of adequate letter of credit (LOC), and to enable them to make unavoidable payments. The reply is not tenable as the value of LOC also covers the tax component. Thus, the entire amount was utilised towards payment to contractors without observing the instructions of Finance Department circular of January 2000 for simultaneous issue of separate cheque for payment of Sales Tax while issuing cheques to contractors. So, penalty of Rs. 30.26 crore was leviable on the defaulting Divisional Officers for delayed payment of tax.

On this being pointed out in audit, most of the CTOs stated that the matter would be taken up with the Public Works Departments for deposit of the amount. The reply confirmed that the CTOs have failed to perform their survey duties since as per CCT Circular of April 1999 the CTOs were required to make an exhaustive survey within their jurisdiction to see if the tax deducted at source by the deducting authorities was being deposited in time or not.

### 2.2.11 Allowance of inadmissible deduction in works contract

Under the OST Act, "taxable turnover" in respect of works contract' shall be deemed to be the gross value received or receivable by a dealer for carrying out such contract, less the amount of labour charges and service charges

incurred for execution of the contract. It has been judicially held<sup>17</sup> that goods involved in execution of works contract when incorporated in the works contract could be classified into a separate category for the purpose of imposition of tax.

In course of cross checking of the assessment orders of 28 assesseees in 6 sales tax circles with their receipts from Government Departments, it was noticed that deductions of Rs.37.00 crore was allowed towards cost of materials used in execution of works contract on the ground that the goods had suffered tax which was incorrect as the entire turnover excluding labour and service charges was taxable. This resulted in short levy of tax for Rs.3.39 crore as detailed below :

( Rupees in crore )				
Name of the circle	No. of cases	Year	Deducted towards cost of materials	Tax and surcharge
Bhubaneswar-I	5	1998-99 and 1999-2000	4.48	0.41
Bhubaneswar-II	8	1997-98 to 2000-2001	18.97	1.74
Ganjam-III	1	1997-98	0.37	0.03
Jagatsinghpur	1	1999-2000	3.86	0.36
Kalahandi	11	1997-98 to 2000-01	3.19	0.29
Koraput-I	2	1998-99	6.13	0.56
<b>Total</b>	<b>28</b>		<b>37.00</b>	<b>3.39</b>

On this being pointed out in audit, the assessing officers stated that no goods could be taxed more than once in the same series of sales. In another similar case the Government stated in June 2002 that goods subjected to tax at one point shall not be taxed at subsequent point in the same series of sales. So the goods purchased on payment of tax and involved in the execution of work shall not be taxed again. This contention is not tenable since the Apex Court classifies goods utilised in works contract into a separate category for imposition of tax.

### 2.2.12 Non-recovery of tax on hire charges

Under the provisions of the OST Act, sale includes transfer of right to use any goods for any purpose for cash, deferred payment or other valuable consideration. Thus, hire charges are subject to levy of sales tax. The Government of Orissa, Finance Department in November 1997 and Works Department in December 1997 also stipulated that sales tax on hire charges of machineries is to be recovered from the contractors by the Public Works Divisions.

Test check of records in 20 Divisions of Works and Rural Development Departments revealed that sales tax amounting to Rs.42.51 lakh on hire charges of Rs.3.54 crore on account of hire of departmental machineries

17 The Supreme Court in the case of M/s. Gannon Dunkerley & Co. Vrs State of Rajasthan (1993)-88 STC-204

during the period 1998-99 to 2001-2002 had not been recovered as detailed below.

( Rupees in lakh )

Name of department (No. of divisions)	Amount of hire charges received					Amount of Sales Tax not recovered
	1998- 1999	1999- 2000	2000- 2001	2001- 2002	Total	
Works (10) <sup>18</sup>	29.33	21.35	33.13	25.87	109.68	13.16
Rural Development (10) <sup>19</sup>	65.38	60.30	61.47	57.44	244.59	29.35
<b>Total</b>	<b>94.71</b>	<b>81.65</b>	<b>94.60</b>	<b>83.31</b>	<b>354.27</b>	<b>42.51</b>

On this being pointed out, the concerned Executive Engineers stated that no tax deduction could be made due to absence of Departmental communication. The CTOs agreed to take action in this regard.

The reply of the Divisional Officers is not tenable as the above instructions were issued by the Finance Department and by Works Department to all the Chief Engineers in November 1997 and December 1997 respectively.

### 2.2.13 Non-recovery of tax from suppliers

As per OST Act, any person responsible to pay any sum to any dealer for supplies made by him to the State Government, shall deduct the amount of sales tax from bills or invoices, to avoid delay of payment of tax by the dealer concerned. The amount of tax deducted at source should be deposited into the Government Treasury within one week from the date of deduction and shall be adjusted by the concerned CTO towards the tax liability of the dealer. Any person contravening the provisions is liable to pay penalty not exceeding twice the amount required to be deducted and deposited.

Test check of records in 10<sup>20</sup> divisional offices in 3 Public Works Departments revealed that sales tax to the extent of Rs.1.53 crore as detailed in table below on supply of goods valued at Rs.16.08 crore was not deducted at source during 1999-2000 to 2001-02 from the suppliers. Penalty of Rs.3.06 crore for such contravention was also leviable.

18 R & B Divisions: Balasore, Choudwar, Dhenkanal, Kendrapara, Kalahandi, Mayurbhanj, N.H. Division: Bhubaneswar, Baripada, Dhenkanal, Keonjhar

19 R.W. Divisions: Angul, Bhubaneswar, Baripada, Balasore, Bhawanipatna, Cuttack, Dhenkanal, Kendrapara, Jajpur, Keonjhar,

20 R.W Division Baripada and Jajpur

R.W.S.S Divisions. Balasore, Bhanjanagar, Bhawanipatna, Cuttack-I, Keonjhar and Puri  
P.H Division –II Bhubaneswar and R& B Division-III Bhubaneswar

(Rupees in crore)

Sl. No.	Name of the Department (No. of Divisions)	1999-2000			2000-2001			2001-2002			Total		
		No. of suppliers	Gross value of supplies	Amount of Sales Tax not deducted	No. of suppliers	Gross value of supplies	Amount of Sales Tax not deducted	No. of suppliers	Gross value of supplies	Amount of Sales Tax not deducted	No. of suppliers	Gross value of supplies	Amount of Sales Tax not deducted
1	Rural Development (8)	16	3.94	0.24	27	6.84	0.72	10	3.86	0.40	53	14.64	1.36
2	Housing and Urban Development (1)	9	0.53	0.07	10	0.62	0.07	5	0.17	0.02	24	1.32	0.16
3	Works (1)	3	0.11	0.01	2	0.02	0.002				5	0.12	0.01
<b>Total (10)</b>		<b>28</b>	<b>4.58</b>	<b>0.32</b>	<b>39</b>	<b>7.48</b>	<b>0.79</b>	<b>15</b>	<b>4.03</b>	<b>0.42</b>	<b>82</b>	<b>16.08</b>	<b>1.53</b>

On this being pointed out in audit, the Divisional Officers who made purchases from 3 dealers of Balasore stated that goods supplied by them were first point tax paid goods. Hence, no tax was deducted at source. The reply of the Divisional Officer is not tenable, since these dealers being manufacturers were the first sellers in the state and they were liable to pay tax.

However, other Divisional Officers replied that due to late receipt of the departmental instructions tax could not be deducted at source.

#### **2.2.14 Lack of Internal Control mechanism**

(i) The Finance Department as well as the CCT, Orissa do not have any mechanism to collect, maintain or monitor the overall position of tax deducted at source and its remittance into Government Accounts. No attempt had been made to reconcile the amount of tax deducted at source and the amount of tax remitted into Government Account.

(ii) As per Finance Department circular issued in January 2000 each Head of the Department covered under LC arrangement was required to furnish to CCT the information regarding deduction and remittance of tax. He was also to furnish details of defaulting Drawing and Disbursing Officers/Divisional Officers by 20<sup>th</sup> of every month in respect of the preceding month in a prescribed proforma. The procedure had not been followed.

(iii) The deducting authorities were not sending copies of TDS certificates to the Sales Tax circles concerned to keep them informed of the activities of the contractors. On the other hand, there had been no concerted effort on the part of Sales Tax authorities to obtain copies of TDS certificates regularly.

#### **2.2.15 Recommendations**

The Divisional Officers of Works Divisions did not scrupulously follow the provisions of the Act, while the Commercial Tax Officers failed to initiate action leading to delayed remittance of collected tax. Lack of co-ordination between the executing departments and the Sales Tax Department and the absence of a well-devised control mechanism had kept a large number of works contractors outside the tax ambit. Audit observed that lack of proper management led to irregularities and consequently, loss of revenue, which

could have been avoided had there been monitoring and co-ordination. Despite the adverse impact of such loss on the ways and means position of the State, Finance Department did little to enforce the provisions of the Act and instructions issued thereon.

The State Government may consider the following to improve the effectiveness of the system-

- (i) enforce the instructions on conduct of survey by the Commercial Tax Circles regularly,
- (ii) issue of certificate showing tax deducted at source to the contractors concerned with a copy endorsed to the concerned Circle for follow up action,
- (iii) provide for periodical returns by the executing/deducting authorities to the Commercial Tax Circles in order to keep the Commercial Tax Department informed of the tax liability of the works contractors and
- (iv) strengthen and streamline monitoring to have a better managed system of levy, collection and remittance of tax.

The matter was referred to Government in June 2003; no reply was received (August 2003).

The matter was demi-officially brought to the attention of the Commissioner of Commercial Taxes and Principal Secretary, Finance. Remedial action if any taken has not been intimated (November 2003).

### **2.3 Incorrect grant of exemption**

The OST Act, 1947, read with Industrial Policy Resolutions (IPR) of the State provides as follows:

- (a) Purchase of raw-materials by a new Small Scale Industry (SSI) unit shall be exempted from tax for a period of five years under IPR 1986 and seven years under IPR 1989 and 1992. Sale of finished products shall be exempted from tax for a period of seven years from the date of commercial production (CP) under IPR 1986, 1989 and 1992;
- (b) Sale of finished products only to the extent of increased commercial production of an existing SSI unit over and above the existing installed capacity (IC) shall be exempted from tax for a period of seven years from the date of commercial production provided that the expansion/modernisation/diversification (E/M/D) were undertaken on the basis of a separate project report duly appraised by a financial institution under

IPR 1989 where loan is taken and by the District Industry Centre (DIC) in the case of self financing projects;

(c) Sale of finished products of medium/large industrial unit set up on or after 1<sup>st</sup> December 1989 to the extent as certified by Director of Industries, Orissa shall be exempted from tax for a period of nine years in case of unit set up in the district of Bolangir.

Certain categories of industries were declared as ineligible units under the IPRs.

Audit scrutiny revealed short levy of tax of Rs.4.08 crore due to incorrect grant of exemption to SSI/large scale units as tabulated below:

( R u p e e s i n l a k h )					
Sl. No.	Name of the circle	Assessment year/month of assessment	Commodity/ Rate of tax OST/CST per cent	Inadmissible turnover exempted	Short levy of tax including surcharge
1	Cuttack-II	1997-98 & 1998-99 March 2000 and March 2002	Detergent powder and cake /12 (finished product) (raw material: soda ash, acid slurry etc.)	540.94 392.35	73.89 47.08
<p>M/s. Orissa Detergent Pvt. Ltd., a SSI unit manufacturing Detergent washing powder/cake was set up after 1 August 1980 with installed capacity of 750 MT. The capacity was revised in October 1995 by the General Manager, DIC without a separate appraisal report by the Financial Institution/DIC which was mandatory. The exemption was, however, allowed on 5079.77 MT of finished products over and above the installed capacity and on corresponding raw materials (beyond the period of five years) resulting in short levy of tax.</p> <p>On this being pointed out, the Department stated that reassessment for the year 1997-98 was initiated and case for 1998-99 would be sent to the ACST (Assessment) who had done the assessment. Further reply was awaited.</p>					
2	Cuttack-II	1997-98/ March 2001	Refined edible oil/4	1566.62	70.10
<p>M/s Mahaveer Oil and Refineries, a SSI unit started commercial production in September 1992 with installed capacity of 1200 MT. It undertook expansion without a separate appraisal report by a Financial Institution/DIC which was mandatory raising its installed capacity to 5700 MT. Exemption was allowed on the entire sale (5789.73 MT) of finished products instead of restricting it to the extent of the original installed capacity.</p> <p>On this being pointed out, the Department stated that reassessment proceeding had been initiated. The Commissioner of Commercial Taxes stated (August 2003) that in pursuance of audit observation the reassessment was completed raising extra demand of Rs.70.67 lakh.</p>					
3	Ganjam-III	(a) 1997-98 to 2000-01 between September 1998 and January 2002	Shrimp seeds/12 (finished products) raw materials/12	290.98 8.37	39.32 1.00
		(b) 1997-98 to 1998-99 between March 2000 to December 2001	Shrimp Seeds/12 (finished products) raw materials/12	144.11 1.53	19.02 0.12
<p>M/s. Deep Sun Hatchery (P) Ltd. and M/s. Srinivas Marine (P) Ltd. being "hatchery" units were not eligible for exemption under IPR.</p> <p>On this being pointed out, the Department stated that reassessment proceeding had been initiated. Further reply was awaited.</p>					

( R u p e e s i n l a k h )					
Sl. No.	Name of the circle	Assessment year/month of assessment	Commodity/ Rate of tax OST/CST(%)	Inadmissible turnover exempted	Short levy of tax including surcharge
4	Bolangir-II	1996-97 October 1999	High Speed Steel and Alloys/8	719.97	57.60
<p>M/s G.K.W Ltd. (Powmex Steels Ltd.) a large Industrial unit under IPR 1989 was allowed exemption on finished product of 3434.72 MT during 1996-97 against 3000 MT certified by the Director of Industries. This resulted in grant of excess exemption on 434.72 MT.</p> <p>On this being pointed out, the Department stated that demand of Rs.57.60 lakh was confirmed in first appeal. However, after making payment of Rs.29.61 lakh in November 2001 the dealer had preferred second appeal which was pending. Further reply was awaited.</p>					
5	Cuttack-I(West)	1996-97 to 1998-99 between February 2000 and February 2001	Rain coat, great coat, kit bag etc./12	297.83	39.64
<p>M/s Kalinga Industries being a tailoring unit is not eligible for exemption</p> <p>On this being pointed out, the CCT while confirming the fact of raising demand stated in March 2003 that the dealer had preferred appeal against the re-assessment which was pending. Further reply was awaited.</p>					
6	Rourkela-II	1998-99 November 2000	Chemicals/12	114.97	27.92
<p>M/s Crystal Towers, a unit under IPR 1989 started with installed capacity of 720 MT. During 1998-99, exemption was allowed on 1176.35 MT resulting in excess exemption on 456.35 MT.</p> <p>On this being pointed out, the Department stated in that compliance would be furnished after verification of records. Further reply was awaited.</p>					
7	Rourkela-II	(a) 1998-99 to 2000-01 between September 2000 and February 2002	Refractories/16	181.11	16.58
		(b) 1997-98 to 2000-01 between August 2001 and March 2002	Refractories/16	109.04	7.54
<p>Under IPR 1996 exemption of tax is admissible to the extent of fixed capital investment. To restrict the exemption upto the ceiling limit notional calculation of tax was made at the concessional rate of 4 per cent instead of the appropriate rate of 16 per cent.</p> <p>On this being pointed out, the Department stated that reassessment proceeding had been initiated. Further reply was awaited.</p>					
8	Cuttack-I(West)	1996-97 March 2000	Edible Oil/4/10	178.82	8.42
<p>M/s Utkal Refinery Ltd., a SSI unit, was entitled to exemption upto November 1996 on the original installed capacity of 3000 MT and upto October 1998 under expansion to the extent of increased production over 3000 MT. During 1996-97, exemption was allowed beyond November 1996, even though the production was 1472.195 MT which did not exceed the original installed capacity.</p> <p>The matter was reported to the Department, no reply was received. However, Government stated in May 2003 that tax recovery proceedings had been initiated against the dealer for realisation of dues. Further reply was awaited (August 2003).</p>					
<b>Total</b>					<b>408.24</b>

The above cases were reported to Government between November 2000 and April 2003; their reply (except Sl.No.2 and 8) was awaited (November 2003).

## **2.4 Non levy of tax on contravention of declaration**

Under the OST Act, where a registered dealer purchases goods of the class or classes specified in his certificate of registration as being intended for use within the state by him in the manufacture or processing of goods for sale at concessional rate of tax or free of tax after furnishing a declaration in the prescribed form, but utilises the same for any other purpose or transfer the same outside the State, he shall pay the difference in tax or the tax, as the case may be, payable, had he not furnished the declaration. Ammonium Nitrate is taxable at the rate of 12 *per cent* under the Act.

Scrutiny of assessment records in Rourkela-II circle revealed that in case of assessment of a registered dealer for the year 2000-01, the assessing officer allowed (March 2002) the purchase of raw material (Ammonium Nitrate) valued at Rs.21.67 crore at concessional rate of 4 *per cent* against declaration. The assessee had transferred the finished product, "bulk premix", valued at Rs.25.98 crore to his branches outside the State. Thus, the dealer had contravened the provisions of the Act and was liable to pay the differential tax of Rs.1.20 crore on proportionate value of raw materials valued at Rs.15.00 crore utilised in the manufacture of finished goods worth Rs.25.98 crore.

On this being pointed out in audit, the assessing officer agreed in November 2002 to re-examine the case. No further reply has been received (August 2003).

The fact was intimated to Government in March 2003; their reply was awaited (November 2003).

## **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 conditions (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.

Scrutiny of assessment records in Dhenkanal circle revealed that while finalizing in July 2001 the assessment for the year 2000-2001 of a registered dealer, dealing in iron and steel, inter-state sale of iron and steel valued at Rs.5.49 crore was exempted from tax without ensuring the fulfillment of the prescribed conditions. Cross-verification of the records of CTOs Rourkela-I and II circles in audit revealed that the dealers from whom purchases were shown to have been made had either made no transactions with this dealer or



their registration certificates had been cancelled prior to the year 2000-2001. Thus, incorrect exemption from tax resulted in short levy of tax of Rs.43.93 lakh. Besides, the dealer was also liable to pay penalty of Rs.65.90 lakh.

On this being pointed out in audit, the assessing officer stated in October 2002 that the matter had been referred to concerned circles for verification, and necessary proceeding would be initiated after establishment of fact. Further reply in the matter was awaited (August 2003).

The matter was reported to Government in December 2002; their reply was awaited (November 2003).

## **2.6 Under-assessment of tax**

Under the Central Sales Tax Act, 1956 where sale of any goods in the course of inter-state trade or commerce has occasioned the movement of goods from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods to a registered dealer shall be exempt from tax, provided the dealer furnishes a certificate in the prescribed form obtained from the selling dealer from whom the goods were purchased. Electrical goods are taxable at the rate of 12 *per cent* under the State Act. Surcharge at the rate of 10 *per cent* where the gross turnover (GTO) does not exceed Rs.1.00 crore and 15 *per cent* where the GTO exceeds Rs.1.00 crore is also leviable on tax assessed.

During the course of audit of Rourkela-II circle it was noticed that in the assessment of a registered dealer dealing in electrical goods for the year 2000-01, claim of exemption of inter-state sale of Rs.10.60 crore was rejected as the dealer did not furnish the prescribed certificate, and the same was taxed at the rate of 4 *per cent* applicable to inter-state sale. Scrutiny revealed that the transactions were between the dealers of Orissa and should have been treated as intra-State sale instead of inter-state sale. This resulted in under-assessment of tax of Rs.1.04 crore including surcharge of Rs.19.08 lakh.

On this being pointed out in audit, the assessing officer replied in November 2002 that the case would be examined. Further, reply was awaited (August 2003).

The matter was intimated to Government in March 2003; their reply was awaited (November 2003).

## **2.7 Under-assessment of tax due to escapement of taxable turnover**

Under the OST Act, taxable turnover means that part of a dealer's gross turnover during any period which remains after deducting (i) sale of any goods

notified as tax free and (ii) sales to registered dealer on strength of declaration. The Act provides that no dealer shall carry on business other than the goods specified in the certificate of registration.

Scrutiny of assessment records for the year 1996-97 and 1997-98 in Jagatsingpur circle revealed that a dealer received cotton valued Rs.16.44 crore from outside the state for commission sale. The dealer, however, utilised the same for manufacture of cotton yarn. Since the registration certificate of the dealer did not include manufacturing of cotton yarn, the dealer contravened the provisions and was liable to pay tax. Non-levy of tax by the assessing officer resulted in under-assessment of tax of Rs.65.77 lakh.

On this being pointed out in audit, the assessing officer reassessed the case in September 2001 and raised demand of Rs.65.77 lakh. The Hon'ble High Court quashed this assessment on 29 January 2002 and ordered reassessment the case. The assessing officer in reassessment on 26 February 2002 dropped the proceedings.

The matter was reported to Government/CCT(O). The CCT(O) replied in April 2003 that ACCT, Cuttack-II range Cuttack had been directed in February 2003 to initiate suo-motu revision proceedings against the dealer as the reassessment order was erroneous and prejudicial to the interest of revenue. Further reply was awaited (November 2003).

## **2.8 Short levy of tax due to under-assessment of taxable turnover**

(a) Under the OST Act, sale price means amount payable to a dealer as consideration for the sale or supply of any goods, including excise duty, profit margin etc. in respect of goods at the time of or before delivery thereof.

Scrutiny of assessment records in Sambalpur-II circle revealed that a wholesale dealer of India Made Foreign Liquor (IMFL) and beer disclosed his taxable sales turnover of Rs. 1.03 crore during the period 1998-99 to 2000-01 on the basis of purchase turnover of Rs.83.50 lakh. On verification of purchase particulars, it was noticed that the taxable turnover actually worked out to Rs.1.66 crore taking into account excise duty, etc. of Rs. 67.12 lakh including profit margin which was also to be included while arriving out the turnover. This resulted in short determination of taxable turnover by Rs.62.99 lakh with resultant short levy of tax Rs.14.49 lakh including surcharge. Further a penalty of Rs.21.74 lakh was leviable for suppression of taxable turnover.

On this being pointed out in audit, the Department stated in July 2003 that additional demand of Rs.21.48 lakh had been raised. Further, reply was awaited.

The matter was reported to Government in March 2003. Government stated (September 2003) that a demand of Rs.49.50 lakh was raised against the assessee.

(b) Under the OST Act, taxable turnover in respect of works contract shall be deemed to be the gross value received or receivable by a dealer for carrying out such contract, less the amount of labour and service charges incurred for execution of the contract. Works contract is taxable at the rate of eight *per cent*.

Scrutiny of assessment records in Cuttack-II circle revealed that a registered works contractor, during the year 1998-99, utilised materials valued at Rs.6.66 crore in execution of a works contract. The records, however, revealed that only materials worth Rs.4.86 crore had been considered in assessment leaving aside materials for Rs.1.80 crore purchased from outside the State. Adopting a profit margin of 10 *per cent* (as claimed by the assessee in respect of the particular work) the materials valued at Rs.1.98 crore remained unassessed resulting in short levy of tax for Rs.18.18 lakh including surcharge.

On this being pointed out in audit, the assessing officer stated in September 2002 that appropriate action would be taken up after examination of the contract, books of accounts and judicial decision. Further reply was awaited till August 2003.

The matter was reported to Government in January 2003; their reply was awaited (November 2003).

## 2.9 Short levy of tax due to allowance of inadmissible concession

Under the OST Act, sale of goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for use by him in the manufacture or processing of goods for sale, is taxable at a concessional rate of 4 *per cent* subject to production of declaration in the prescribed form. The liability of a registered dealer to sales tax would arise if the facts necessary to establish exemption are not found established, irrespective of whether a declaration was obtained<sup>21</sup>. Cement is taxable at the rate of 12 *per cent* under the Act.

(i) Scrutiny of assessment records in Cuttack-I (East) circle revealed that in the case of a registered dealer dealing in cement, the assessing officer while completing between November 2001 and March 2002 the assessments for the period 1998-99 to 2000-01 allowed concessional rate of tax of 4 *per cent* against form prescribed on sale of cement valued at Rs.3.61 crore made to a registered dealer manufacturing chemical fertilizers and to a works contractor. Since cement is not used in the manufacture of chemical fertilizer<sup>22</sup>, and construction is neither manufacture nor processing of goods for sale, allowance of concessional rate was irregular. This resulted in short levy of tax of Rs.33.19 lakh including surcharge.

21 Netranand Vs. CCT, Orissa [12 STC-169 (Orissa)].

22 J.K. Cotton Spinning and Weaving Mills Co. ;Ltd. Vs. Sales Tax Officer, Kanpur [16STC-563 (S.C)].

On this being pointed out in audit, the assessing officer agreed in October 2002 to reopen the case. Further reply was awaited (August 2003).

The matter was reported to Government in March 2003; their reply was awaited (November 2003).

**(ii)** Scrutiny of assessment records for the year 2000-01 in Ganjam-I circle revealed that in the case of a registered dealer dealing in cement, the assessing officer allowed concessional rate of tax of 4 *per cent* on sale of cement worth Rs.1.51 crore made to a registered works contractor of Cuttack-II circle. Since, construction is neither manufacture nor processing of goods for sale, allowance of concessional rate was irregular. This resulted in short levy of tax of Rs.13.89 lakh including surcharge.

On this being pointed out in audit, the assessing officer raised in September 2002 extra demand of Rs.13.89 lakh out of which the dealer had paid Rs.2.50 lakh in May 2003 and had gone in appeal.

The above matter was referred to Government in February 2003. Government stated (July 2003) that extra demand of Rs.13.89 lakh was raised against the dealer.

**(iii)** Scrutiny of the assessment records for the year 2001-02 in Cuttack-II circle revealed that in the case of a registered dealer the assessing officer allowed concessional rate of tax of 4 *per cent* on sale of calcined clay valued at Rs.70.13 lakh to a registered purchasing dealer. As calcined clay was not specified in the certificate of registration of the purchasing dealer, the allowance of concessional rate of tax to the said dealer was irregular. This resulted in short levy of tax of Rs.6.17 lakh including surcharge.

On this being pointed out in audit, the assessing officer stated in June 2002 that action would be taken. Further reply was awaited (August 2003).

The matter was reported to Government in April 2003; their reply was awaited (November 2003).

## **2.10 Under-assessment of tax due to application of lower rate**

Under the OST Act, concessional rate of tax (4 *per cent*) is admissible to a registered purchasing dealer, provided a declaration in form-IV 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. The benefit of use of Form-IV for purchases by registered dealer through works contract was available with effect from April 2001. Under the Act, taxable turnover of works contract is subject to tax at the rate of 8 *per cent*.

Test check of records of Rourkela-II circle revealed that in case of registered dealer engaged in execution of works contract, taxable turnover for the year 2000-01 was determined at Rs.6.28 crore. Out of this Rs.6.15 crore was

assessed to tax at the concessional rate of 4 *per cent* against declaration in form-IV. Audit scrutiny revealed that out of Rs.6.15 crore turnover of Rs.6.10 crore related to the works contract being executed by the assessee. This resulted in under-assessment of tax of Rs.28.08 lakh including surcharge.

On this being pointed out in audit, the assessing officer agreed in November 2002 to examine the case. Further reply was awaited till August 2003.

The matter was reported to Government in March 2003; their reply was awaited (November 2003).

### **2.11 Under-assessment of purchase tax**

Under the OST Act, certain goods have been specified to be taxed on the turnover of purchases. Turnover of purchases means the aggregate of the amount of purchase prices paid and payable by a dealer in respect of the purchase or supply of goods so specified. Bamboos agreed to be severed are subject to purchase tax at the rate of 10 *per cent*.

In course of audit of Koraput-II circle, it was noticed from the assessments of two registered dealers engaged in purchase and sale of forest produce that the dealers did not disclose the payment of royalty of Rs.2.42 crore to Forest Department towards purchase of bamboo agreed to be severed during the years 1995-96, 1996-97 and 1997-98. Cross verification of records revealed that the above payments were made at their head office based on the total sale units of bamboo felled by the divisions. Since royalty is the purchase price of bamboo, non-inclusion of Rs.2.42 crore in their purchase turnover resulted in under-assessment of purchase tax of Rs.26.46 lakh including surcharge of Rs.2.41 lakh.

On this being pointed out in audit, the assessing officer raised between September 2001 and October 2001 extra demands of Rs.63.01 lakh including penalty of Rs.35.08 lakh. Position of recovery was awaited till August 2003.

The matter was reported to Government in January 2003. Government stated in May 2003 that the dealers had paid Rs.10 lakh and stated (September 2003) that the realisation of balance amount was stayed in 2nd appeal.

### **2.12 Under-assessment of Central Sales Tax**

Under the Central Sales Tax Act, 1956 inter-state sale of goods other than declared goods not supported by declaration in form 'C' is taxable at the rate of 10 *per cent* or at the rate applicable to sale of such goods inside the appropriate state, whichever is higher. News print is taxable at the rate of 8 *per cent* under the State Act.

During the audit of Balasore circle, it was noticed from the assessment, for the year 1998-99 under CST Act, of a registered dealer manufacturing different kinds of papers that the assessing officer levied tax at the rate of 5 per cent on sale of newsprint valued at Rs.4.31 crore in inter-state trade and commerce without declaration in form 'C'. This resulted in under-assessment of tax of Rs.21.57 lakh at the differential rate of 5 per cent.

On this being pointed out in audit, the Department stated in April 2003 that additional demand had been raised and adjusted against the exemption limit of the dealer under IPR 1992.

The matter was intimated to Government in January 2003; their reply was awaited (November 2003).

### **2.13 Short levy of tax due to misclassification of goods**

Under the OST Act, mill made fabrics of certain varieties and as described in the first Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957, are exempted from tax. High density poly ethylene (HDPE) sacks made out of HDPE fabrics, being not covered under the above description and judicially held<sup>23</sup> as plastic products, are taxable.

Scrutiny of assessment orders in Rourkela-II circle revealed in case of a registered manufacturer that, while completing the assessments for the periods 1998-99 to 2000-01, the assessing officer treated HDPE sacks as tax free goods and allowed exemption of tax on goods valued Rs.1.82 crore, classifying the same as mill made fabrics instead of plastic goods. This led to short levy of tax of Rs.15.59 lakh including surcharge.

On this being pointed out in audit, the assessing officer stated in November 2002 that matter would be examined. Further reply was awaited till August 2003.

The matter was intimated to Government in April 2003; their reply was awaited (November 2003).

### **2.14 Incorrect treatment of supply contract as works contract**

Under the OST Act, taxable turnover in respect of works contract shall be deemed to be the gross value received or receivable by a dealer for carrying out such contract less the amount of labour charges and service charges. It has been judicially held<sup>24</sup> that contract for supply of chips and stone after quarrying them is a transaction of sale, and not that of work and labour. Hard

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23 In case of M/s Sooshree Plastics (P) Ltd. V. Union of India (Orissa)(OJC No.2755 of 1988)

24 State of Orissa Vs. Utkal Distributors Ltd.(1974)34-STC-347(Orissa).

M/s Anamolou Seshagiri Rao & Co. Vs. State of Andhra Pradesh(1980) [45 STC-388(AP)].

granite and similar quality stone ballast is taxable at the rate of 12 *per cent* under the Act.

Scrutiny of assessment records in Cuttack-II circle revealed that a dealer executed contracts with Railways for supply and stacking of hard granite and similar quality stone ballast and received payment of Rs.2.41 crore during 1997-98. The assessing officer while completing assessment in March 2001 allowed deduction of Rs.28.94 lakh towards labour and service charges and taxed the balance amount of Rs.2.12 crore at the rate of 8 *per cent* applicable to works contract instead of taxing the whole amount of Rs.2.41 crore at the appropriate rate of 12 *per cent*. This resulted in short levy of Rs.13.38 lakh including surcharge of Rs.1.42 lakh.

On this being pointed out in audit, the assessing officer stated in June 2002 that proceeding would be initiated. Further, reply was awaited (August 2003).

The matter was reported to Government in February 2003; their reply was awaited (November 2003).

### **2.15 Short levy of penalty**

Under the OST Act, as amended from 3 October 2000, where the Sales Tax Officer assesses to the best of his judgement the amount of tax, if any, due from the dealer, he may also direct that the dealer shall pay, by way of penalty, in addition to the tax assessed, a sum equal to one and half times of the tax so assessed.

Scrutiny of assessment records in three circles (Balasore, Dhenkanal and Sambalpur-II) revealed that while completing the assessments of three unregistered dealers and reassessment of two registered dealers after October 2000, the assessing officers levied penalty of Rs. 18,500 as against Rs. 12.49 lakh being equal to one and half times of tax assessed. This resulted in short levy of penalty of Rs.12.31 lakh.

On this being pointed out in audit, the assessing officers of Balasore circle stated in June 2002 that penalty in one case was imposed on best judgement applying discretionary power and in another case, the assessment was re-opened. The assessing officer of Dhenkanal circle stated in May 2002 that penalty in one case was imposed applying discretionary power and in another case, a token penalty was imposed as the dealer got himself registered. The assessing officers of Sambalpur-II circle reopened the assessment in November 2002. The replies in respect of three dealers were not tenable as the actions of assessing officer violated the amended provisions of the Act.

The matter was reported to Government in April 2003. Government stated (September 2003) that extra demand of Rs.13.40 lakh was raised against the assesses.

### **2.16 Loss of revenue due to non-observance of prescribed procedure for cancellation of Registration Certificate**

Under the OST Act, every year by the end of May and November, the Sales Tax Officer shall send to the Commissioner a list of registered dealers whose registration certificates have been cancelled. The Commissioner shall, after such verification and modification publish the name of the dealer whose registration certificate has been cancelled in the Commercial Taxes Gazette.

Scrutiny of assessment records in Koraput-II circle revealed that a registered dealer had sold paper valued at Rs.51.02 lakh during the year 1995-96 to another dealer of Keonjhar circle on the strength of declaration in form-IV and collected tax at the concessional rate of 4 *per cent* which was allowed in the assessment. A cross verification by audit revealed that the registration certificate of the purchasing dealer was cancelled with effect from September 1992. Thus allowance of inadmissible concessional rate of tax resulted in under-assessment of tax of Rs.2.24 lakh including surcharge.

On this being pointed out in audit, the Commercial Tax Officer stated in September 2002 that, as held by the Sales Tax Tribunal (SA No.1487 of 1999-2000), the selling dealer was not responsible since the fact of cancellation of registration certificate of the purchasing dealer was not published in the Commercial Taxes Gazette.

Thus, due to non-observance of the prescribed procedure, government had to incur loss of revenue of Rs.2.24 lakh.

The matter was reported to Government in April 2003; their reply was awaited (November 2003).

### **2.17 Non-levy of tax on sale of tender paper**

Under the OST Act, a Government organisation is a dealer when it, whether or not in the course of business, purchases, sells supplies or distributes goods for cash, deferred payment or valuable consideration. Further as judicially held<sup>25</sup>, sales tax is leviable on the cost of tender paper. Tender paper is exigible to tax at general rate of 12 *per cent* under the residual entry for all other goods.

Test check of records in 61 Public Works Divisions, revealed that no tax had been levied and collected on the sale of tender papers valued at Rs.10.45 crore during the period 1998-99 to 2001-2002. This had resulted in non-levy of tax amounting to Rs.1.25 crore as detailed below:

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M/s Hindustan Zinc Ltd. Vs. Commercial Tax Officer, Udaipur reported vide 82-STC(5)-1990.



( Rupees in lakh )

Name of the Department	No. of Divisions	Cost of tender papers sold				Total	Amount of tax not levied
		1998-1999	1999-2000	2000-2001	2001-2002		
Works	14	31.69	50.48	93.81	63.49	239.47	28.74
Water Resources	29	33.67	63.86	94.00	70.25	261.78	31.41
Rural Development	16	74.34	92.18	171.27	201.32	539.11	64.69
Housing & Urban Development	2	0.50	0.42	0.92	2.46	4.30	0.52
<b>Total</b>	<b>61</b>	<b>140.20</b>	<b>206.94</b>	<b>360.00</b>	<b>337.52</b>	<b>1044.66</b>	<b>125.36</b>

On this being pointed out in audit, most of the Executive Engineers and the concerned CTOs stated that tax on sale of tender papers was not realised for want of specific provision in the Act or instructions from Government. It was, however, stated that clarifications from departmental authorities would be sought.

## 2.18 Internal Audit System in Commercial Tax Department

The system of internal audit for sales tax was introduced from the year 1975-76 in Finance Department with seven audit parties headed by Commercial Tax Officers (Inspection) to cover 29 circles, 17 assessment units, 23 road check gates and 8 railway receipts (RR) Units.

A review of the internal audit system in the Office of the Commissioner of Commercial Taxes, Orissa revealed that although the periodicity of internal audit was annual, no audit had been conducted since 1999-2000 except for 15 units in 2001-02.

Discontinuance of internal audit resulted in increase of arrears year after year. As of 31 March 2003 there were 1177 unaudited units as detailed below:

Year	OB (Units)	Addition during the year	Clearance during the year	Balance at the close of the year	Percentage of Disposal
1	2	3	4	5	6
1999-2000	886	76	Nil	962	Nil
2000-2001	962	76	Nil	1,038	Nil
2001-2002	1,038	77	15	1,100	1.4
2002-2003	1,100	77	Nil	1,177	Nil

Scrutiny revealed that three posts of Commercial Tax Officer (Inspection) were vacant for 8 years. Even in Cuttack where significant revenue is collected, the post of CTO (Inspection) was kept vacant for 9 years while the Bhubaneswar post was vacant for 5 years and another post kept vacant for 12 years. Consequently 14,028 internal audit paragraphs in 488 Inspection Reports are pending for the period from 1976-77 to 2002-03 without follow up for securing compliance. This shows that the internal audit system under the Commissioner of Commercial Taxes was non-functional. The Department agreed that the internal audit was totally defunct and there would be no possibility of revival due to non filling up of the vacant posts.

There is an urgent need for revamping the internal audit wing since recurring irregularities of underassessment, and non-assessment of sales tax revenue are being pointed out in successive Audit Reports.