

## CHAPTER-II: Sales Tax

### 2.1 Results of audit

Test check of records of the offices of the Commercial Taxes Department conducted during the year 2005-06 revealed under assessments etc. of tax amounting to Rs.207.48 crore in 2,305 cases, which broadly fall under the following categories:

Sl. No.	Category	Number of cases	Amount (Rs. in crore)
1.	Non assessment of taxable turnover	245	4.44
2.	Under assessment due to irregular or incorrect allowances of deduction	271	14.62
3.	Short levy of tax due to application of incorrect rate of tax	357	26.05
4.	Irregular grant of exemption	480	110.65
5.	Non levy of purchase tax	50	0.59
6.	Non levy of penalty/interest	164	1.28
7.	Other irregularities	738	49.85
	<b>Total</b>	<b>2,305</b>	<b>207.48</b>

During the year 2005-06, the department accepted under assessment etc., of Rs.12.53 crore involved in 440 cases of which 40 cases involving Rs.30.47 lakh were pointed out during 2005-06 and the rest in earlier years. Further the department recovered Rs.1.23 crore in 31 cases during the year 2005-06 of which six cases involving Rs.0.75 lakh related to the year 2005-06 and the rest to the earlier years.

A few illustrative cases involving Rs.100.98 crore highlighting important audit findings are given in the succeeding paragraphs:

## **2.2 Non withdrawal of benefit on breach of condition**

Under the 'Sales Tax Incentive/Exemption Schemes for Industries 1987 and 1998' industrial units exempted from payment of tax on sale of goods were required to continue their production at least for a period of five years. In case of breach of condition, the units were liable to be taxed on sale of finished goods as if there was no exemption. Moreover interest at the prescribed rates was also leviable under the Act.

In nine commercial taxes offices<sup>1</sup> (CTOs), it was noticed that 15 industrial units were granted eligibility certificate (EC) between February 1992 and June 1999. These units after having availed benefit of tax exemption of Rs.4.66 crore during 1992-93 to 2003-04 were required to continue their production for a period of further five years i.e. from 2004-05 to 2008-09. These units stopped their production between 2000-01 and 2003-04 but no action was taken by assessing authorities (AA) to withdraw the exemption already availed. This resulted in non recovery of tax of Rs.10.06 crore including interest of Rs.5.40 crore.

The omission was pointed out to the department between November 2004 and March 2006 and reported to Government between December 2004 and April 2006; their replies have not been received (July 2006).

## **2.3 Incorrect grant of exemption**

"Sales Tax Exemption Scheme for Industries 1998" provided that no unit shall be permitted to claim benefit under this scheme, if it was already availing benefit under any other specific or general tax exemption or tax deferment scheme.

In 14 CTOs<sup>2</sup>, it was noticed that 27 industrial units assessed between 2000-01 and 2004-05, were availing tax exemption benefits under tax exemption schemes but these units were further incorrectly sanctioned exemption benefit of Rs.24.97 crore under 1998 scheme. However, while finalising the assessments between 2000-01 and 2004-05, AA failed to detect the mistake. The units availed tax exemption of Rs.7.56 crore between 1998-99 and 2002-03 which was recoverable alongwith interest. In addition remaining exemption balance of Rs.17.41 crore retained for further availment was required to be withdrawn.

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<sup>1</sup>Special. Alwar (1), 'B' Bikaner (1), Bhiwadi (3), Churu (2), 'A' Jaipur (1), Special IV Jaipur (2), Special-II Jodhpur (1), 'A' Kota (1) and Pali (3).

<sup>2</sup> Ajmer (2), Spl. Alwar (1), Spl. Bikaner (3), 'A' Bikaner (1), Bhilwara (1), Bhiwadi (2), 'E' Jaipur (1), Spl.-II Jaipur (6), Jhalawar (1), Spl.-I Jodhpur (1), Spl.-II Jodhpur (5), Kishangarh (1), 'B' Kota (1) and Spl. Udaipur (1).

The omission was pointed out to the department between April 2005 and April 2006 and reported to Government between November 2005 and April 2006; their replies have not been received (July 2006).

## 2.4 Irregular grant of exemption to stone crushing units

Under Sales Tax Incentive Schemes 1987 and 1989, manufacturing units alone are eligible for exemption. It was judicially held<sup>3</sup> that preparation of stone *gitti* is not a manufacturing activity because stone continues to remain stone even after crushing. Consequently, such units are not eligible for the benefit of tax exemption under any of these two schemes.

In seven CTOs<sup>4</sup>, it was noticed that 19 units engaged in stone crushing were granted tax exemption benefit under tax incentive schemes between August 1994 and October 2000 for Rs.3.76 crore which was incorrect. However, while finalising the assessments between 2002-03 and 2004-05, AA failed to detect the mistake. The units availed tax exemption benefit of Rs.97.66 lakh between 2000-01 and 2002-03 which was recoverable alongwith interest. In addition remaining exemption balance of Rs.2.78 crore retained for future availment was required to be withdrawn.

The omission was pointed out to the department between October 2004 and January 2006 and reported to Government between November 2005 and May 2006; their replies have not been received (July 2006).

## 2.5 Incorrect grant of exemption to marble cutting units

It was judicially held<sup>5</sup> that cutting of marble blocks into slabs and tiles does not amount to manufacture.

In 14 CTOs<sup>6</sup>, it was noticed that 136 industrial units engaged in the cutting of marble, were granted tax exemptions of Rs.78.47 crore under tax incentive schemes between November 1994 and August 2003. However, while finalising assessments between 2000-01 and 2004-05, AA failed to detect the mistake. These units availed tax exemption benefit of Rs.23.19 crore between

<sup>3</sup> Commissioner Sales Tax Vs M/s Lal Kuan Stone Crusher Pvt. Ltd (SC) (2000) 118 STC 287.

<sup>4</sup> 'A' Bharatpur (2), 'B' Bharatpur (2), Churu (2), Gangapur city (1), 'B' Jaipur (1), 'C' Jaipur (8) and 'B' Jodhpur (3)

<sup>5</sup> CIT V/s Lucky Minerals (Pvt.) Ltd. I.T.R. 226 (1996) .

Rajasthan State Electricity Board Vs. Associated Stone Industries & Anr.JT 2000 (6) SC 522 M/s Aman Marble Industries V/s C.C.E. Jaipur 2003 (58) RLT 595 (S.C.).

<sup>6</sup> Banswara (5), 'A' Bhilwara (1), Chittorgarh (6), Spl-I Jaipur (2), Spl-II Jaipur (1), 'E' Jaipur (2), Kishangarh (16), 'B' Makrana (17), Nimbaheda (2), Rajsamand (74), Spl. Udaipur (2), 'A' Udaipur (2), 'B' Udaipur (2) and 'C' Udaipur (4).

1999-2000 and 2002-03 which was recoverable alongwith interest. In addition remaining exemption balance of Rs.55.28 crore retained for future availment was required to be withdrawn.

The omission was pointed out to the department between June 2005 and March 2006 and reported to Government between February 2006 and May 2006, their replies have not been received (July 2006).

## **2.6 Non levy of tax on irregular branch transfer**

Under the "Sales Tax Incentive/Exemption Schemes for Industries 1987 and 1998", branch transfers beyond a prescribed limit were to be treated as inter state sales and liable to tax.

Scrutiny of the assessment records in two CTOs revealed that two dealers effected branch transfer in excess of the permissible limit resulting in non levy of tax and interest aggregating to Rs.5.89 crore as detailed below:

(Rupees in lakh)

Sl. No.	Name of the circle/ No. of units	Assessment year/ month of assessment	Commo-dity	Total production	Total branch transfer	Branch transfer allowable	Excess branch transfer	Tax and interest chargeable thereon
1.	Special Rajasthan, Jaipur (1)	2000-01/ March 2004	Cement	9.16 MT	3.52 MT	2.29 MT	1.23 MT	552.35
2.	Special Ajmer (1)	2002-03/ December 2004	Yarn	4.15 lakh kgs	3.14 lakh kgs	0.83 lakh kgs	2.31 lakh kgs	37.12
<b>Total</b>	<b>2</b>							<b>589.47</b>

The irregularity was pointed out to the department between April 2005 and September 2005 and reported to Government in January 2006; their replies have not been received (July 2006).

## **2.7 Irregular grant of exemption to ineligible industry**

Under "Sales Tax Exemption Scheme for Industries 1998" industrial units manufacturing hydrogenated vegetable oil or *vanaspatti ghee*, excluding composite units manufacturing edible oil as well as hydrogenated vegetable oil, were not eligible for exemption from tax under the scheme.

In Jaipur, it was noticed in March 2004 that one industrial unit manufacturing hydrogenated vegetable oil was sanctioned in March 2001 tax exemption amounting to Rs.3.16 crore under 1998 scheme. As the unit was manufacturing only hydrogenated vegetable oil it was not eligible for

exemption under the scheme. The unit availed tax exemption of Rs.1.05 crore during 2001-02 which was required to be recovered alongwith interest chargeable thereon. In addition, balance exemption of Rs.2.11 crore retained for future availment was required to be withdrawn.

The omission was pointed out to the department in April 2004 and reported to Government in January 2005; their replies have not been received (July 2006).

## **2.8 Non recovery of deferred tax on default**

Under the "Rajasthan Sales Tax Deferment Scheme 1987" and the "Sales Tax New Deferment Scheme for Industries 1989", if any instalment of deferred tax is not paid on the prescribed date, the total deferred tax outstanding against the dealer shall be recoverable immediately as arrears of land revenue with interest.

In Udaipur, it was noticed that six industrial units were granted ECs between June 1995 and October 1997 to defer payment of tax of Rs.2.49 crore under these schemes. The units after having availed benefit of tax deferment of Rs.1.55 crore, repaid Rs.53.13 lakh between July 2002 and November 2004 and thereafter defaulted in payment of the instalments. The outstanding amount of deferred tax of Rs.1.02 crore was recoverable immediately as arrears of land revenue. Besides, interest of Rs.44.40 lakh was also leviable. However, AA while finalising the assessments between February 2005 and March 2005 for the year 2002-03, did not take any action to recover the tax due and the interest payable thereon. This resulted in non recovery of tax and interest of Rs.1.46 crore.

The omission was pointed out to the department in January 2006 and reported to Government in May 2006; their replies have not been received (July 2006).

## **2.9 Suppression of taxable turnover**

Rajasthan Sales Tax Act (RST Act) 1994, provides that every dealer liable to pay tax under this Act shall keep and maintain a true and correct account of his business activity. If a dealer has concealed any transaction of sale or purchase from his accounts or has avoided or evaded tax in any other manner, he shall pay by way of penalty, in addition to the tax payable by him under law, a sum equal to double the amount of tax avoided or evaded.

In Jaipur, it was noticed that a dealer imported batteries valued Rs.1.26 crore from outside the State during the year 2002-03. However, cross verification of details of 18A forms<sup>7</sup> with the trading account furnished by the dealer revealed

<sup>7</sup> Form 18 A is issued for purchase of taxable goods from outside the state.

that as against the purchase of Rs.125.52 lakh, the dealer accounted purchases of Rs.90.08 lakh in his book of account which resulted in short account of goods valued at Rs.35.44 lakh. The sale value of these goods after addition of 10 *per cent* profit worked out to Rs.38.99 lakh on which tax of Rs.5.38 lakh was leviable. In addition, penalty of Rs.10.76 lakh and interest of Rs.2.45 lakh was also chargeable. The AA while finalising in January 2005 the assessment of the dealer for the year 2002-03 failed to detect this suppression of turnover.

After this was pointed out in October 2005, the AA intimated in January 2006 that a demand of Rs.18.59 lakh (tax: Rs.5.38 lakh, interest and penalty: Rs.13.21 lakh) had been raised in October 2005. The progress of recovery was awaited (July 2006).

The matter was reported to Government in April 2006; their reply has not been received (July 2006).

## **2.10 Short levy of tax on inter State sales**

Under the Central Sales Tax Act (CST Act) 1956, inter State sale supported by prescribed declaration was leviable to tax at a concessional rate of four *per cent*. Such sales if not supported by prescribed declarations were liable to be taxed at the rate of 10 *per cent* or at the rate applicable to sale or purchase of such goods in the State whichever is higher. For claiming concessional rate of tax, submission of C/D forms was made mandatory with effect from May 2002. Inter State sales of cement/cement pipes without 'C' form were liable to tax at state rate of 16 *per cent*/12 *per cent* respectively with 15 *per cent* of surcharge on the amount of tax.

Scrutiny of records of four CTOs<sup>8</sup> revealed that four dealers made inter state sale of cement/cement pipes valued at Rs.39.13 crore without furnishing declaration in forms 'C'. However, AA while finalising in June 2004 and March 2005 the assessments of the dealers for the year 2002-03, incorrectly levied tax at the rate of six per cent as claimed by the dealers instead of the correct rate. This resulted in short levy of tax of Rs.5.15 crore; besides, interest of Rs.2.34 crore was also chargeable thereon.

The omission was pointed out to the department between September 2005 and March 2006 and reported to Government between January 2006 and April 2006; their replies have not been received (July 2006).

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<sup>8</sup> Special Ajmer, Special Bhilwara, 'E' Jaipur and Special-V Jaipur.

## 2.11 Irregular reduction of demand under CST Act

As per the amendment in May 2002 in the CST Act, submission of 'C' forms was made mandatory. Non submission of 'C' forms attracts tax at the prescribed rates. However, in contravention of the above amendment Commissioner Commercial Taxes issued a circular in December 2005 dispensing with the requirement of furnishing such forms.

In Kota, it was noticed that in 16 cases while finalising the assessments for the year 2002-03 between July 2004 and March 2005, the AA raised a demand of Rs.6.51 crore on account of non submission of 'C' forms. However, this demand was subsequently reduced to nil in December 2005 in compliance with circular issued in December 2005. Since the circular was against the provisions of the CST Act, the reduction in demand was irregular and resulted in loss of revenue of Rs.6.51 crore.

The omission was pointed out to the department and reported to Government in April 2006; their replies have not been received (July 2006).

## 2.12 Short levy of tax due to application of incorrect rate of tax

Rates of taxes are provided in the schedules of the Act and notifications issued by Government from time to time.

Scrutiny of the assessment records in four CTOs revealed that in five cases due to application of incorrect rate of tax, there was short levy of tax, surcharge and interest aggregating to Rs.39.93 lakh as detailed below:

(Rupees in lakh)

Sl. No.	Name of the circle/ No. of units	Assessment year/ month of assessment	Commodity	Turnover	Tax, surcharge and interest leviable	Tax, surcharge and interest levied	Short levy of tax, surcharge and interest
1.	Spl. Kota (1)	2002-03/ May 2004	Computer parts	100.70	10.07	4.03	6.04
2.	Pali (2)	2002-03/ between January 2005 and February 2005.	Cotton yarn (declared goods)	197.63	20.91	3.95	16.96
3.	'A' Jodhpur (1)	2000-01/ February 2004	Pan masala	80.46	14.80	4.16	10.64
4.	Spl. Udaipur (1)	2001-02 and 2002-03/ between June 2004 and January 2005	Computer paper	136.73	12.58	6.29	6.29
<b>Total</b>	<b>5</b>				<b>58.36</b>	<b>18.43</b>	<b>39.93</b>

After this was pointed between April 2005 and April 2006, the department intimated between November 2005 and June 2006 that a demand of Rs.12.33 lakh had been raised in respect of cases at S.No. 1 and 4. Report on recovery and reply in respect of cases at S.No. 2 and 3 has not been received (July 2006).

The matter was reported to Government between April 2005 and April 2006; their reply has not been received (July 2006).

### **2.13 Irregular tax exemption on export sales**

Under the CST Act, no tax is leviable on sales made in the course of export. The last sale or purchases of any goods preceding the sale or purchase occasioning the export of these goods out of the territory of India is also deemed to be sale in the course of export, if such sale or purchase took place for the purpose of complying with the agreement in relation to export. Further, such exemption is available only when the sales are supported by certificate in form 'H' alongwith proof of export. Government prescribed (March 2002) a tax rate of 43 *per cent* on sale of opium in the state. Besides, surcharge is also leviable on the amount of tax.

In Kota, it was noticed in February 2006 that a dealer in his quarterly returns submitted under CST Act had shown sale of opium valued at Rs.46.49 crore in the course of export out of territory of India but neither submitted any 'H' form nor any proof in support thereof. However, AA while finalising in March 2005 the assessment for the year 2002-03 passed order under RST Act and ignored the transactions covered under CST Act. Consequently, no tax was levied. This resulted in non levy of tax of Rs.22.99 crore, Besides, interest of Rs.12.41 crore was also leviable.

The omission was pointed out to the department and reported to Government in April 2006; their replies have not been received (July 2006).

### **2.14 Non levy of tax on transfer of goods**

Under the CST Act, assessment should be based on returns and other related documents furnished by the dealer. By an amendment in the CST Act in May 2002, submission of F form is mandatory to prove stock transfer. Otherwise the transaction will be treated as 'sale' for all purposes of CST Act.

In Jaipur, it was noticed in November 2005 that a dealer transferred his stock of fertiliser valued at Rs.4.39 crore to his head office outside state during 2002-03 and claimed exemption from tax without submission of declaration in form 'F' in support thereof. The AA while finalising the assessment in December 2004 incorrectly allowed the exemption as claimed. This resulted in



non levy of tax of Rs.43.93 lakh besides interest of Rs.19.99 lakh was also leviable.

The omission was pointed out to the department in January 2006 and reported to Government in February 2006; their replies have not been received (July 2006).

### **2.15 Short levy of interest**

Under the RST Act, if a dealer defaults in making payment of any amount of tax payable under the Act, he shall be liable to pay interest at the prescribed rate for the period of default.

In Jaipur, it was noticed in November 2005 that AA while finalising in January 2004 the assessment of a dealer in pursuance of an appellate order for the year 1992-93, levied interest of Rs.1.47 crore against Rs.1.64 crore chargeable on belated payments of tax between November 1996 and July 2000. This resulted in short levy of interest of Rs.17.17 lakh.

The omission was pointed out to the department in November 2005 and reported to Government in March 2006; their replies have not been received (July 2006).