

CHAPTER-II: SALES TAX

2.1 Results of audit

Test check of the records of the offices of the Commercial Taxes Department conducted during the year 2006-07 revealed underassessment of tax amounting to Rs. 611.86 crore in 1,456 cases, which broadly fall under the following categories:

(Rupees in crore)			
Sl. No.	Category	Number of cases	Amount
1.	Collection of sales tax revenue in Rajasthan	1	319.00
2.	Short levy of tax due to application of incorrect rate of tax	201	83.62
3.	Irregular grant of exemption	273	75.44
4.	Underassessment due to irregular or incorrect allowances of deduction	174	11.36
5.	Non-assessment of taxable turnover	192	2.34
6.	Non-levy of penalty/interest	55	0.43
7.	Non-levy of purchase tax	36	0.13
8.	Other irregularities	524	119.54
Total		1,456	611.86

During the year 2006-07, the department accepted underassessment and other deficiencies of Rs. 25.88 crore involved in 768 cases, of which 103 cases involving Rs. 64.86 lakh had been pointed out in audit during 2006-07 and the rest in earlier years. The department recovered Rs. 99.17 lakh in 74 cases during the year 2006-07 of which three cases involving Rs. 40,000 related to the year 2006-07 and rest to the earlier years.

A few illustrative cases involving revenue of Rs. 150.60 crore highlighting important audit findings are mentioned in the following paragraphs.

2.2 Short levy of tax on interstate sales

2.2.1 In exercise of powers conferred by section 8(5) of the Central Sales Tax, 1956 (CST) Act, the State Government by issue of notifications prescribed various concessional rates on interstate sale of various goods without furnishing of declaration in 'C' forms. The Central Government amended section 8(5) with effect from 11 May 2002 which stipulated that submission of 'C' form was mandatory for claiming concessional rate of tax on interstate sales. As such, interstate sales not supported by declaration forms attracted tax at the prescribed rates. In contravention of the above amendment, the Commissioner of Commercial Taxes (CCT) issued a circular in December 2005 dispensing with the requirement of furnishing such forms.

Scrutiny of the assessment records of 11 CTOs¹ revealed that 69 assessments pertaining to the period 11 May 2002 to March 2004 were not supported by prescribed declarations. These interstate sales were, therefore, not entitled to concessional rate of tax. But the assessing authorities (AA) while finalising the assessment between May 2004 to April 2006 levied concessional rate of tax. This resulted in short levy of tax of Rs. 117.05 crore.

2.2.2 Irregular reduction of demands under the CST Act

Test check of demand and collection registers maintained under the CST Act in 17 circles² revealed, that interstate sales in 129 cases, finalised between 2004-05 and 2005-06, were not supported by 'C' forms. The AAs levied tax at the prescribed rates and raised demand accordingly. However, in pursuance of the above circular, the demands were reduced by Rs. 18.25 crore. The reductions in demand were irregular and resulted in loss of revenue of Rs. 18.25 crore.

After the cases were pointed out, the CCT stated that the Government of Rajasthan had issued notifications under section 8(5) of the CST Act exempting the assesseees from the production of form 'C' and since these notifications were not withdrawn submission of declaration form 'C' was not mandatory. The reply is not tenable as after the amendment dated 11 May 2002 in section 8(5) of the CST Act, the notifications issued by the State Government under delegated power for relaxing conditions of submission of 'C' forms were impliedly repealed or rendered ineffective and thus interstate sale of goods without 'C' form was liable to tax at 10 *per cent* or state rate whichever was higher.

¹ Special Ajmer (1), Special Bhilwara (3), Special Rajasthan (1), 'C' Jaipur (2), Special Kota (1), Special Pali (4), Special Alwar (11), 'A' Bharatpur (20), Special-I Jaipur (10), Special-IV Jaipur (9) and Kishangarh (7).

² Special Alwar (4), Rajsamand (15), Special Pali (5), Special IV Jaipur (3), 'C' Udaipur (1) Nagaur (15), Special-II Jaipur (10), Hanumangarh (9), Special-V, Jaipur (3), 'A' Kota (4), Special Kota (9), 'B' Bikaner (12), Special-I Jaipur (8), Special Ajmer (6), Special Bhilwara (3), 'D' Jaipur (3) and 'A' Bikaner (19).

2.3 Non-withdrawal of benefit on breach of condition

Under the 'Sales Tax Incentive/Exemption Schemes for Industries 1987 and 1998', industrial units were exempted from payment of tax on sale of goods manufactured by them subject to the maximum quantum and period of benefit prescribed in the schemes. The schemes further provided that the beneficiary industrial units shall, after having availed of the benefit of the schemes, continue their production for the next five years. In the case of breach of condition, the units were liable to be taxed on the sale of finished goods as if there was no exemption. Moreover, interest at the prescribed rates was also leviable under the Rajasthan Sales Tax (RST) Act, 1994.

In six commercial taxes offices (CTOs)³, it was noticed between March 2006 and December 2006 that 17 industrial units were granted eligibility certificate (EC) between October 1994 and May 2002. These units after having availed of the benefit of tax exemption of Rs. 2.57 crore during 1994-95 to 2003-04 were required to continue their production for a period of further five years i.e. from 2005-06 to 2013-14. These units stopped their production between 2001-02 and 2004-05 but no action was taken by the AA to withdraw the exemption availed of by these units. This resulted in non-recovery of tax of Rs. 5.73 crore including interest of Rs. 3.16 crore.

The cases were pointed out to the department between April 2006 and January 2007 and reported to the Government between September 2006 and March 2007; their replies have not been received (September 2007).

2.4 Irregular grant of exemption to marble cutting and polishing units

It was judicially held⁴ by the Supreme Court that marble cutting and polishing does not amount to manufacture, as after cutting and polishing, marble remains marble. This view was reiterated in another decision in 2003. In the light of these decisions, marble cutting and polishing units are not entitled to exemption under the schemes.

In seven CTOs⁵, it was noticed between May 2006 and December 2006 that 19 industrial units engaged in the cutting of marble, were granted tax exemptions totalling Rs. 10.69 crore under tax incentive schemes between August 1997 and July 2003 incorrectly treating them as manufacturing units. These units had availed of tax exemption benefit of Rs. 3.35 crore between 1997-98 and 2003-04. However, while finalising the assessments between March 2005 and March 2006, the AA did not initiate any action to recover the tax exemption benefit of Rs. 3.35 crore availed of by these units in the light of the aforesaid

³ Barmer (2), Bhiwadi (7), 'B' Bikaner (2), Churu (2), 'B' Jaipur (2) and 'C' Jaipur (2).

⁴ CIT V/s M/s Lucky Minerals (P) Ltd. ITR 226 (1996)

M/s Aman Marble Industries V/s CCE Jaipur 2003 (58) RLT 595 (SC)

⁵ Special-II Jaipur (1), 'E' Jaipur (2), Chittorgarh (7), Kishangarh (3), Rajsamand (2) Sirohi (2), 'C' Udaipur (2)

decisions. In addition, the remaining exemption balance of Rs. 7.34 crore retained for using in future is also required to be withdrawn.

These cases were pointed out to the department between June 2006 and January 2007 and reported to the Government between September 2006 and April 2007; their replies have not been received (September 2007).

2.5 Incorrect grant of exemption from tax

Under the “Sales Tax New Incentive Scheme, 1989” and the “Sales Tax Exemption Scheme for Industries, 1998” issued on 6 July 1989 and 7 April 1998 respectively under the RST Act, oil extracting or manufacturing industries were not eligible for exemption on intrastate sales.

In two CTOs⁶, it was noticed between November 2006 and January 2007 that two industrial units availed of exemption under the aforesaid schemes and made intrastate sales of edible oil valued as Rs. 58.45 crore during the year 2003-04. Although the units were not entitled to exemption from payment of tax on these sales, yet the AA while finalising the assessments in August 2005 and February 2006 incorrectly allowed the exemption. This resulted in incorrect grant of exemption of tax and interest of Rs. 2.93 crore.

These cases were pointed out to the department between December 2006 and February 2007 and reported to the Government in March 2007; their replies have not been received (September 2007).

2.6 Excess grant of exemption from tax

Under the “Sales Tax Exemption Scheme for Industries, 1998” industrial units were eligible to the benefit of 125 *per cent* of eligible fixed capital investment (EFCI)⁷, in cases, where such investment was upto Rs. 1.50 crore and 100 *per cent*, in cases, where it exceeded Rs. 1.50 crore.

In Jaipur, it was noticed in October 2006 that an industrial unit availing of exemption under the above scheme had EFCI of Rs. 9.09 crore. The unit was therefore, entitled to tax exemption of 100 *per cent* of EFCI. Test check of the assessment records of the unit for the year 2003-04 finalised in November 2005, however, revealed that the AA incorrectly issued eligibility certificate for 125 *per cent* of the EFCI. This resulted in excess grant of exemption of Rs. 2.27 crore.

⁶ Jaipur and Kota

⁷ It includes investment made in land, building, plant and machinery and other miscellaneous fixed assets as determined by the district level screening committee/state level screening committee (DLSC/SLSC).

The case was pointed out to the department in December 2006 and reported to the Government in March 2007; their replies have not been received (September 2007).

2.7 Non-levy of tax on supply/installation of elevators in works contract

By the issue of a notification on 29 March 2001, the Government exempted from tax the transfer of property in goods involved in the execution of works contract on payment of exemption fee. It was judicially held⁸ that supply and installation of elevators was sale and did not fall in the category of works contract and such dealers were liable to pay sales tax at the prescribed rates and not exemption fee. The sale of elevators was liable to tax at 12 *per cent* with 15 *per cent* surcharge on the amount of tax.

In Jaipur, it was noticed in November 2006 that two contractors involved in the execution of works contract, installed elevators valued as Rs. 4.12 crore. Of these, one contractor did not pay tax at all, while the other claimed exemption by paying exemption fee at three *per cent* which was allowed. The AA while finalising the assessment in March 2006 for the year 2003-04 failed to detect the mistake and levy tax. This resulted in non/short levy of tax amounting to Rs. 52.16 lakh besides interest of Rs. 21.65 lakh.

After the cases were pointed out, the AA intimated in June 2007 that a demand of Rs. 11.93 lakh had been raised in one case. The progress of recovery has not been received. The reply in the other case has not been received (September 2007).

The matter was reported to the Government (March 2007); their reply has not been received (September 2007).

2.8 Irregular grant of exemption to a stone crushing unit

Under Sales Tax Incentive Scheme 1989, manufacturing units alone are eligible for exemption. It has been judicially held⁹ that preparation of stone *gitti*¹⁰ 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 the scheme.

In Jaipur, it was noticed in October 2006 that an industrial unit engaged in stone crushing was granted tax exemption benefit in May 2003 under the tax incentive scheme for Rs. 45.26 lakh which was incorrect. While finalising the

⁸ State of Andhra Pradesh V/s M/s Kone Elevators (India) Ltd. 140 STC 22 (SC)

⁹ Commissioner Sales Tax V/s M/s Lal Kuan Stone Crusher Pvt. Ltd (SC) (2000) 118 STC 287.

State of Maharashtra V/s Mahalaxami Stores (2003) 129 STC 79 (SC).

¹⁰ Small pieces of stone obtained by crushing bigger pieces of stones.

assessment in December 2005, the AA failed to detect the mistake. The unit availed of tax exemption benefit of Rs. 6.50 lakh upto 2003-04 which was recoverable alongwith interest. In addition, the remaining exemption balance of Rs. 38.76 lakh retained for future use is also required to be withdrawn.

The case was pointed out to the department in November 2006 and reported to the Government in March 2007; their replies have not been received (September 2007).

2.9 Short levy of interest

Under the RST Act, if a dealer did not pay the tax as per return within the prescribed time, he was liable to pay interest on such amount at the rate prescribed from time to time, from the date by which he was required to pay the tax, till the date of payment.

In Anti Evasion Zone-I of Jaipur, scrutiny of the assessment record of a dealer of Sirohi in March 2006 revealed that a survey was conducted on 13 September 2002 by the CTO, Sirohi and a provisional assessment order was passed by him in March 2003 on the escaped turnover of Rs. 12.37 crore and levying tax of Rs. 54.48 lakh and interest of Rs. 7.18 lakh upto the date of provisional assessment. Thereafter, jurisdiction of the assessment fell under the Assistant Commissioner, Anti Evasion Zone-I, Jaipur and final assessment order was passed by him on 9 February 2005. The provisional assessment order was merged in this order, but the interest leviable was not revised upto the date of the final assessment order. This resulted in short levy of interest of Rs. 13.66 lakh.

The case was pointed out to the department in April 2006 and reported to the Government in March 2007; their replies have not been received (September 2007).

2.10 Non/short levy of turnover tax

The Government notified on 30 March 2000, that every dealer whose total turnover was not less than Rs. 50 lakh in a year shall be liable to pay turnover tax at the rate of 0.25 *per cent* of such turnover and surcharge. Further, the Government by issue of another notification on 28 June 2003 notified that a dealer who opts for exemption from such turnover tax shall deposit exemption fee on the basis of his turnover.

In CTO, Banswara, it was noticed that the turnover of a dealer for the year 2001-02 was Rs. 14.91 crore. He was liable to pay turnover tax of Rs. 4.29 lakh but it was neither paid by the dealer nor assessed by the AA while finalising the assessment in December 2003. Similarly, in Ajmer, the turnover of a dealer for the year 2003-04 was Rs. 306.35 crore. The dealer opted for payment of exemption fee. He was liable to pay exemption fee of

Rs. 9 lakh. However, while finalising the assessment the AA incorrectly levied exemption fee of Rs. 4.50 lakh. This resulted in non/short levy of turnover tax and surcharge of Rs. 8.79 lakh.

After the cases were pointed out in October 2005 and March 2007, the department intimated in May 2006 that in case of Banswara, a demand for Rs. 7.04 lakh including interest had been raised in May 2006. The reply in the case of Ajmer has not been received (September 2007).

The cases were reported to the Government (March 2006 and March 2007); their replies have not been received (September 2007).

2.11 Non-disposal of attached properties

The RST Act provides that subject to the provisions of the Rajasthan Land Revenue Act, 1956, action for sale of attached property through public auction should be taken at the time/date mentioned in the proclamation of sale. For sale of property, wide publicity should be given to attract the bidders and to fetch a good price. Test check of the recovery records in audit revealed that:

2.11.1 In circle Gangapur City, a demand of sales tax for Rs. 21.52 crore, pertaining to the period 1970-71 to 1985-86 was pending for recovery from a firm and its four subsidiaries. The department attached the immovable property of the firms in December 1989 but did not make any effort thereafter to auction the property to realise the outstanding amount. The firm was also liable to pay interest of Rs. 38.25 crore as on 30 November 2005. Thus, inaction on the part of department resulted in non-realisation of revenue of Rs. 59.77 crore.

2.11.2 In Bhiwadi, a demand of Rs. 3.45 crore pertaining to the period between March 1995 and September 1999 was outstanding against seven dealers. As the dealers failed to deposit the dues, their properties were attached by the department between December 1998 and February 1999 but thereafter no action was taken to auction the said properties to realise the tax. These cases were also pointed out in paragraph 2.2.8 (b) & (c) of the Report of the Comptroller and Auditor General of India for the year ended 31 March 2000 (Revenue Receipts). During discussion of these cases by the Public Accounts Committee, the Government had intimated (September 2003) that these properties would be auctioned soon. Such action, however, has not been taken even after four years.

2.11.3 In circle 'D' Jodhpur, a demand of Rs. 52.74 lakh pertaining to the period 1990-91 to 1997-98 was outstanding against a dealer. As the dealer failed to deposit the dues, the factory building was attached in August 2000. Although the property was notified for auction but it has not been disposed of so far (September 2007).

After the cases were pointed out, the CCT accepted (July 2007) the fact that department had not been able to dispose off the properties attached under the

LR Act and further stated that post of an Additional Commissioner has been created to look after such matters.

The cases were reported to the Government in May 2007. Government stated in July 2007 that efforts were being made for recoveries/auction.

2.12 Non-recovery of outstanding dues of sales tax as the first charge

The RST Act provides that any amount of tax or any other sum payable by a dealer under this Act shall have the first charge on the property of such dealer.

Test check of the records relating to the recovery of outstanding dues of sales tax revealed that banks/financial institutions auctioned the properties of dealers and retained the sale proceeds without making payments towards sales tax, though statutory dues were the first charge as per the Act. Some cases noticed by audit are briefly mentioned below:

2.12.1 In circle 'A' Bhilwara, sales tax of Rs. 14.86 lakh was outstanding against a dealer from 1995-96 to 1997-98. The bank auctioned the property of the dealer and retained the entire sale proceeds.

2.12.2 In circle 'A' Bhilwara, sales tax of Rs. 1.43 crore was outstanding against a dealer from 1992-93 to 1997-98. The Rajasthan Finance Corporation took possession of the property of the dealer and sold it through auction in March 2002 and deposited only Rs. 90,000 towards sales tax dues.

2.12.3 In Bhiwadi circle, sales tax of Rs. 1.42 crore was outstanding against a dealer from 1988-89 to 1991-92. The dealer closed his business in 1993. His assets were taken over by the Rajasthan State Industrial Development and Investment Corporation Limited (RIICO) and sold through auction in August/September 1998. The entire sale proceeds were retained by RIICO.

Thus, non-observance of the provisions of first charge of sales tax in the above cases resulted in non-recovery of tax of Rs. 3 crore.

The cases were reported to the department/Government in May 2007. Government stated in July 2007 that efforts were being made for recovery.