

## CHAPTER II

### SALES TAX

#### 2.1 Results of Audit

Test check of records of departmental offices conducted in audit during the period April 2002 to March 2003 revealed under assessments/non-levy of tax, etc., amounting to Rs.393.89 crore in 1,986 cases as detailed below:

(in crore of rupees)			
Sl. No.	Categories	No. of Cases	Amount
1	Incorrect grant of exemption	472	37.09
2	Application of incorrect rate of tax	900	59.23
3	Incorrect computation of taxable turnover	170	8.29
4	Non-levy of penalty	145	1.91
5	Non-levy of interest	163	1.25
6	Review : <b>Exemptions under Sales Tax Acts</b>	1	244.86
7	Review : <b>Repayment of deferred sales tax</b>	1	34.33
8	Other irregularities	134	6.93
	<b>TOTAL</b>	<b>1,986</b>	<b>393.89</b>

During the year 2002-2003, the Department accepted under assessments, etc., of Rs.2.35 crore in 614 cases, of which 413 cases involving Rs.1.43 crore were pointed out during 2002-2003 and the rest in earlier years. A sum of Rs.83.85 lakh had been recovered.

Two reviews: **Exemptions under Sales Tax Acts and Repayment of deferred sales tax**, and few illustrative cases involving financial effect of Rs.290.66 crore are mentioned below.

## **2.2 Review : Exemptions under Sales Tax Acts**

### **Highlights:**

- **Incorrect grant of exemption of tapioca by treating it as vegetable resulted in non-levy of tax of Rs.82.44 crore.**

*[Paragraph 2.2.4 ]*

- **Incorrect grant of exemption on inter-state sale of common salt, wheat bran and hand made matches resulted in non-levy of tax of Rs.34.59 crore.**

*[Paragraph 2.2.5 ]*

- **Irregular allowance of exemption on local sale of wheat bran without satisfaction of the conditions specified in the notification resulted in the non-levy of tax amounting to Rs.20.19 crore.**

*[Paragraph 2.2.6 ]*

- **Failure to amend the Schedule in consonance with Additional Duties of Excise Act, 1957, resulted in notional loss of revenue of Rs.107.64 crore in respect of goods for which additional excise duty is nil.**

*[Paragraph 2.2.7 ]*

### **2.2.1 Introduction**

The Tamil Nadu General Sales Tax Act, 1959 (TNGST Act), provides for exemption, subject to such restrictions and conditions as may be prescribed, from payment of tax in respect of dealers dealing in goods specified in third schedule to the Act. While Part 'A' of the third schedule specifies certain goods as described in the first schedule to the Additional duties of Excise (Goods of Special importance) Act, 1957 (Central Act 58 of 1957), Part B of the schedule specifies certain other goods which are exempted from levy of tax under section 8 of TNGST Act. The TNGST Act also empowers the Government under section 17 to issue notification whether prospectively or retrospectively granting exemption or reduction from payment of tax on the sale or purchase of any specified goods at all point or at specified points in the series of sales by successive dealers; or by any specified class of persons, in regard to the whole or any part of their turnover; or on the sale or purchase of any specified classes of goods by specified classes of dealers in regard to the whole or part of their turnover.

The Central Sales Tax Act, 1956 (CST Act), also empowers the State Government to issue notification, in public interest, exempting any dealer from payment of tax, in respect of any goods or classes of goods sold in the course of interstate trade or commerce.

### **2.2.2 Organisational set up.**

The Secretary to Government, Commercial Taxes Department has the overall control over the Department at the Government level and the Commissioner of Commercial taxes is the Head of Department, who is assisted by Joint Commissioners, Deputy Commissioners and Assistant Commissioners in charge of different wings of the Department. There are 10 territorial divisions and 8 enforcement divisions (including one inter-state investigation cell) in the Department. For the conduct of assessment, levy and collection of taxes payable under the various Acts administered by the Department, there are 10 commercial taxes divisions in the State. Each division is headed by a Deputy Commissioner. These divisions are further divided into 40 commercial taxes districts each headed by a Territorial Assistant Commissioner. There are 323 assessment circles, including 6 fast track assessment circles (4 in Chennai and 2 in Coimbatore headed by Territorial Assistant Commissioners). Out of the 323 assessment circles, 6 are headed by Assistant Commissioners, 236 by Commercial Tax Officers and 81 by Deputy Commercial Tax Officers.

### **2.2.3 Audit Objective**

The records in Commercial Taxes Department at the government secretariat and in the Commissionerate relating to issue of notification/amendment to Third Schedule granting exemption, were scrutinised and the assessment records in 138 out of 323 assessment circles were test checked between December 2001 and June 2003. The audit review was conducted with a view to ascertain whether conditions governing grant of exemption under the Act and Rules were fulfilled and to assess its impact on Government revenue.

The results of test check are discussed in the succeeding paragraphs.

### **2.2.4 Incorrect exemption of tapioca as Vegetable**

As per the TNGST Act, every dealer who purchases from a registered dealer or from any other person, any goods in circumstances in which no tax is payable and consumes or uses such goods in or for the manufacture of other goods for sale or otherwise, is liable to pay purchase tax at the prescribed rates.

As per Entry 3 of Part B of Third Schedule to the TNGST Act ‘fresh vegetables and fruits including potatoes and garlic (other than branded packed items)’ are exempt from levy of tax.

Tapioca is a tuber crop predominantly used as a raw material for a number of value added industrial products such as starch, sago, liquid glucose, dextrin, gum, fructose syrup etc. Therefore, tapioca is not eligible for exemption from levy of tax as fresh vegetable falling under the above entry.

During a test check of records of nine assessment circles, it was noticed that 617 assessees (sago and starch factory owners) purchased tapioca valued at Rs.778.08 crore from agriculturists during the years 1996-97 to 2000-01 and used it in the manufacture of sago, starch etc. Though tax of Rs.82.44 crore was leviable on the purchase turnover, the Assessing Officers while finalising assessments between October 1997 and December 2002, did not levy the same. This resulted in under assessment of tax of Rs.82.44 crore.

On this being pointed out, the Department replied in April 2003 that as per the clarification of Commissioner of Commercial Taxes, given on 31 May 2000, tapioca was a vegetable falling under Third Schedule. The reply of the Department is not acceptable, since tapioca was predominantly purchased and used by industries as raw material in the manufacture of sago, starch etc., and not used as vegetable. Therefore, purchase tax should have been levied. Moreover, it has judicially<sup>1</sup> been held that vegetable is commonly understood as those class of vegetables, which are used for serving on tables. In these cases, tapioca was used for manufacturing sago and starch.

### ***2.2.5 Incorrect grant of exemption from levy of tax under CST Act.***

Under the CST Act, no tax is leviable on the inter-state sale of any goods, if the sale or purchase of such goods is exempt from tax generally under the sales tax law of the appropriate state. However, sale or purchase of any goods shall not be deemed to be exempt from tax, if the sale or purchase of such goods is exempt only in specified circumstances and under specific conditions. Further, on inter-state sale of goods (other than declared goods) which are not covered by declarations in the prescribed form, tax is leviable at the rate of 10 per cent or at the rate applicable to sale of such goods within the state whichever is higher. If the rate of tax of any goods is lower than 4 percent, then such goods are subjected to tax at such lower rates even without valid declaration. Inter-state sale of handmade matches are taxable at 2 per cent as per the notification issued in June 1962 under the CST Act.

As per Entry 76 of Part B of Third Schedule to the TNGST Act, sale of handmade matches are exempt from levy of tax. As the exemption granted to matches was under specified condition that it should be handmade, the exemption granted was not of a general nature but a conditional one. However, it was noticed that in fifteen<sup>2</sup> assessment circles, interstate sale of handmade matches amounting to Rs.1,551.10 crore made by 1,322 dealers during the years 1996-97 to 2000-01, whose assessments were finalised between June 1997 and October 2002, were erroneously exempted from levy of tax treating the commodity as generally exempted item. This resulted in non-levy of tax of Rs.31.02 crore.

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<sup>1</sup> (1962) 13 STC 1(SC) Motipur Zamindary Co (Pvt) Ltd., Vs. State of Bihar

<sup>2</sup> Dharmapuri, Ettaiyapuram, Gudiyatham (East), Gudiyatham (West), Kovilpatti I & II, Sankarankoil, Sattur, Sivakasi I to IV, Srivilliputhur and Virudhunagar I & III.

Similarly, as per Entries 7, and 57(v) (as amended with effect from 8 September 1998) of the Third Schedule to the TNGST Act, common salt including iodised or vitaminised salt for human consumption, other than salt for industrial use and wheat bran used for cattle feed respectively, are exempt from levy of tax. As the exemptions granted under the local Act were for use for specific purpose, the inter-state sales of these goods were taxable at the appropriate rates under CST Act.

However, it was noticed that in twenty one<sup>3</sup> assessment circles, inter-state sales of these goods viz., common salt/wheat bran not covered by declarations in form 'C', amounting to Rs.16.94 crore made by 50 dealers during 1996-97 to 2000-01 though taxable at appropriate rates, were incorrectly exempted from levy of tax treating the commodities as generally exempted items. This resulted in non-levy of tax amounting to Rs.1.81 crore.

In the case of common salt, Government accepted audit's contention and issued in December 1998 notification under the CST Act, for granting exemption on inter-state sale of common salt from 23 December 1998 onwards and directed the Assessing Officers to submit waiver proposals for the exemption granted on the inter-state sale for the period 1 April 1994 to 22 December 1998.

In the case of wheat bran, on being pointed out in audit, the Commissioner of Commercial Taxes stated in February 2002 that in a similar issue, the case of exemption granted for certified seeds for agriculture purpose, the same was judicially held<sup>4</sup> to be a general exemption, and on the same analogy, exemption on sale of wheat bran used for cattle feed is also general. The Department also contended in November 2000 that as per judicial decision<sup>5</sup> of the Madras High Court, wheat bran is cattle feed. The reply is not tenable because as per the judicial decision, certified and labelled seeds, used for agricultural purpose, were exempt from tax. The expression 'for agriculture purpose' was held as only qualifying the seeds. Therefore, it was held that the requirements of the Government Order were only indicative of the nature of goods which were entitled for exemption and did not specify a condition or circumstance under which the seeds were entitled for exemption. However, wheat bran, is a single commodity and exemption for the same is only for use as cattle feed and not for its other uses. Hence the judicial decisions quoted in reply is not applicable to the instant case. Further, the exemption granted to wheat bran became conditional after the amendment with effect from

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<sup>3</sup> Aruppukottai, Avarampalayam, Avinashi, Dharmapuri, Dindigul (Rural), Mettupalayam Road (CBE), Mylam-II (Trichy), Oppanakkara St. (CBE), Palani-I, Palayamkottai, Pollachi (West), Ranipet, Royapuram, Thirumangalam, Thuckalay (Madurai), Tondiarpet (Chennai), Tuticorin I, II and III, Velandipalayam (CBE) and Vengalakadai Street (Madurai),

<sup>4</sup> Pinakini seeds Vs. State of Andhra Pradesh – 98 STC 144  
Venkateswara Hybrid Seeds Co.Vs. State of Andhra Pradesh – 106 STC 34

<sup>5</sup> Balakrishna Flour Mill and another Vs. State of Tamil Nadu – 80 STC 106

8 September 1998 and the Madras High Court judgement quoted by the Department, being prior to this amendment is not applicable to the instant case.

- As per notification issued on 7 December 1998 under section 8(5) of the CST Act (effective from 23 December 1998), inter-state sale of common salt including iodised or vitaminised salt for human consumption, other than salt for industrial use, is exempt.

However, it was noticed that in 3<sup>6</sup> circles, inter-state sale of common salt valued at Rs.17.61 crore made by 42 dealers during 1998-99 to 2000-01 was allowed exemption by the Assessing Officers without satisfying themselves that the salt sold was solely for human consumption. The incorrect exemption resulted in non-levy of tax of Rs.1.76 crore.

On this being pointed out, the Assessing Officers of two circles stated that the condition for exemption for inter-state sale of salt could not be verified. In case of Tuticorin II, the assessing officer stated that matter would be examined.

### **2.2.6 Irregular allowance of exemption under TNGST Act**

As per entry 57(v) of Part B of Third Schedule to the TNGST Act as amended with effect from 8 September 1998, cattle feed and wheat bran used for cattle feed including compounded cattle feed other than those falling under item 12 of Part B of I Schedule are exempted from levy of tax. Accordingly, wheat bran used for purposes other than cattle feed is taxable. Therefore, before allowing exemption, it must be clearly established that the wheat bran sold by the dealer is for cattle feed only.

However, on test check of records in thirty eight<sup>7</sup> assessment circles, it was noticed that in the case of 46 dealers, local sale of wheat bran amounting to Rs.182.10 crore made to various dealers during the period 8 September 1998 to 31 May 2001, was allowed exemption by the Assessing Officers without satisfying themselves that the bran sold was for use as cattle feed. Therefore, the exemption allowed on the sale of wheat bran without ensuring that it was for use as cattle feed was in violation of the conditions specified in the notification. The irregular exemption resulted in non-levy of tax amounting to Rs.20.19 crore.

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<sup>6</sup> Tuticorin I, II & III.

<sup>7</sup> Aruppukkottai, Avarampalayam, Avinashi, Ayanavaram (Chennai), Dharmapuri, Dindigul (Rural), Fast Track Assessment Circle III (Chennai), Gudiyatham (East), Harur, Karaikudi, Loansquare I (Chennai), Mettupalayam Road (Coimbatore), Mylapore, Mylam II (Trichy), Nethaji Road (Madurai), Oppanakara Street (Coimbatore), Palayamkottai, Palani I, Ponneri, Pollachi (West), Ranipet, Rattan Bazaar, Royapuram, Salem Town (North), Saligramam, Srirangam, Srivilliputhur, Suramangalam, Tanjore, T.Nagar (East), Tondiarpet, Tirumangalam, Tirupparankundram (Madurai), Tiruthani, Thuckalay, Velandipalayam (Coimbatore), Vengalakkadai Street (Madurai) and Vellore (North).

### 2.2.7 Failure to amend the Schedule in consonance with Additional Duties of Excise Act, 1957.

The Additional Duties of Excise (Goods of Special Importance) Act, 1957 (ADE Act), was enacted by the Parliament, on the basis of an agreement between the Central Government and the State Governments by which the levy of sales tax on certain ‘Goods of Special Importance’ (GSI) like sugar, tobacco and textiles, etc., by states was replaced by levy of additional duty of Central Excise (AED), which is entirely distributable among the states. Consequently, no sales tax is leviable by the state in respect of goods for which AED is levied by Central Government.

The High Court of Madras clarified<sup>8</sup> that, it was not as if the states were deprived of their power to tax transaction in these goods, but if they do so they forfeit their right to share the proceeds of levy under ADE (GSI) Act, 1957. Accordingly, it is open for the State Governments to levy sales tax on goods covered by ADE (GSI) Act, 1957, if they are willing to forego the share of the proceeds of central levy. So sales tax is leviable, wherever duty under AED is not levied by the Central Government. While restructuring the Third schedule with effect from 11 August 1993 by specifying the commodities along with tariff number of Central Excise Schedule for which AED was leviable, the State Government had included certain commodities like unprocessed textile fabrics and un-manufactured tobacco, etc., for exemption of sales tax, where rate of AED is ‘nil’.

It was noticed during audit of 14<sup>9</sup> assessment circles that sale of grey cloth amounting to Rs.2,586.90 crore made by 508 dealers during the years 1996-97 to 2000-2001 was incorrectly exempted from levy of tax on the ground that the item was covered under Part A of Third Schedule for which AED was leviable by Central Government, whereas the rate of AED is Nil, as per tariff of Central Excise. A cross verification with Central Excise department revealed that these dealers had not paid AED under Additional Duties of Excise (GSI) Act. The incorrect exemption resulted in notional loss of revenue to the tune of Rs.107.64 crore (including Central Sales Tax).

Thus, failure to amend the Third Schedule to the Act suitably on the lines of other states like Kerala and Gujarat for automatic levy of sales tax on goods of special importance, wherever no AED is levied, resulted in depriving the State Government from collection of revenue by levy of sales tax on these goods.

<sup>8</sup> (1984) 55 STC 47 (Madras) Nemichand Parasmal & Co Vs. DCTO Evening Bazaar Assessment circle, Madras

<sup>9</sup> Brough Road (Erode), Lakshmi Nagar (Tiruppur), Palladam, Mettur Road (Erode), P.N.Palayam (Coimbatore), Sathi Road (Erode), Sankagiri, Sivakasi-IV, Thiruchengode (Town) & (Rural), Thiruparankundram (Madurai), Tiruppur (Rural), Tiruppur (Central-II) and Udumalpet (North).

### **2.2.8 Recommendations**

The Government's failure to amend the Third Schedule for automatic levy of sales tax on goods which had not suffered AED and to prescribe control mechanism for allowing exemption, deprived the Government of substantial revenue. The government may consider the following for action in view of the above.

Whenever exemptions are granted with conditions attached thereto, mechanism should be prescribed by which the Assessing Officers satisfy themselves about compliance thereof, before granting such exemptions.

The Government may consider suitable amendment of Third Schedule so that goods which are actually subjected to AED alone are exempted from levy of tax.

The matter was reported to the Government in June 2003 and followed up with reminder in August 2003; their reply was not received (October 2003).



## **2.3 Review: Repayment of deferred sales tax**

### *Highlights*

- Delay in initiating action in time resulted in non-recovery of deferred tax amounting to Rs.9.17 crore and interest of Rs.6.46 crore.

*[Paragraph 2.3.6 ]*

- There was excess availment of deferred tax of Rs.55.96 lakh which has not been recovered so far.

*[Paragraph 2.3.7 ]*

- There was delay in realisation of deferred sales tax of Rs.8.86 crore consequent on the companies being declared sick by Board for Industrial and Financial Reconstruction.

*[Paragraph 2.3.9 ]*

- There was non-realisation of Interest Free Sales Tax (IFST) dues of Rs.2.78 crore, where properties of dealers were taken over by state financial institutions.

*[Paragraph 2.3.10 ]*

- Interest of Rs.2.70 crore was not included in the claim petition filed before official liquidators.

*[Paragraph 2.3.11 ]*

- Action was not initiated against the directors of companies under liquidation, to recover deferred tax of Rs.2.63 crore, eventhough provision existed in the Act.

*[Paragraph 2.3.12]*

- Interest of Rs.64.73 lakh was not levied on belated payment of deferred tax.

*[Paragraph 2.3.13]*

### 2.3.1 Introduction

With a view to accelerate industrial development in the state, the Government introduced a scheme of sales tax relief in May 1971, which was further liberalised from time to time. The liberalised scheme introduced from May 1990, envisaged interest free sales tax (IFST) deferral, both for new industries (small, medium and large) and expansion/diversification of existing industries. The deferred amount was treated as interest free loan. The deferred amount of sales tax for 5 years or 9 years as the case may be, had to be paid after the completion of the deferral period along with the current dues of the year i.e., first year dues being payable with the sales tax due in the 6<sup>th</sup> year or 10<sup>th</sup> year, the amount deferred in the second year being payable along with the sales tax dues in the 7<sup>th</sup> year or 11<sup>th</sup> year and so on.

As per Section 17-A of the Tamil Nadu General Sales Tax Act (TNGST Act), 1959, the Territorial Assistant Commissioners (Commercial Taxes) are empowered to sanction interest free sales tax deferral specifying the amount subject to certain conditions and the ceiling fixed on the basis of eligibility certificate issued by the implementing agencies viz., Director of Industries and Commerce in respect of small scale industries, State Industries Promotion Corporation of Tamil Nadu (SIPCOT) for medium and large industries and Tamil Nadu Industrial Investment Corporation Limited (TIIC) in respect of industries financed by them.

The salient features of various schemes of deferral of sales tax which was in vogue during different periods are given below:

Sl. No.	Year of Scheme/ Notification No. /date	Type of Industry	Period of deferral
1	2	3	4
1	G O Ms No 905 Industries (SIE)-2/dt. 26.7.88 G O Ms. 116 CT & RE dt.16.8.88.	Small, medium and large scale industries.	Deferral of sales tax for the first 3 years after commencement of production.
2	G O Ms 500 Industries (MIG.II) Department dt.14.5.1990	Industries in backward taluks.  Industries in other areas  Anywhere in Tamil Nadu with investment in fixed assets of more than Rs.50 crore.	New industries – Nine years to the extent of total investment in fixed assets. Existing industries – Nine years subject to ceiling of 80% of additional investment in fixed assets.  New Industries –Five years subject to ceiling of 60% of total investment in fixed assets. Existing Industries – Five years subject to ceiling of 50% of additional investment in fixed assets.  Deferral for nine years to the extent of total investment in fixed assets.

1	2	3	4
3	July 1991 and  February 1992	Large scale industries anywhere in Tamil Nadu.  Investment more than Rs.50 crore but below Rs.100 crore.  Investment more than Rs.100 crore but below Rs.300 crore.  Investment more than Rs.300 crore.	Deferral for 10 years  Deferral for 12 years  Deferral for 14 years
4	January 1996	Super Mega Industries set up any where in Tamil Nadu with investment more than Rs.1,500 crore.	Deferral for 14 years

### 2.3.2 Organisational set up

The Special Commissioner and Commissioner of Commercial Taxes (Commissioner) is the Head of the Department who is assisted by Deputy Commissioner at divisional level and by Territorial Assistant Commissioners at zonal level. The respective Assessing Officers duly taking into account the sanction order of deferral issued by the Territorial Assistant Commissioner, assess the industrial units and monitor the availment and collection of deferred tax.

### 2.3.3 Audit Objectives

Detailed scrutiny of the records of 124 out of 323 assessment circles was conducted between September 2002 and May 2003 to ascertain:

- whether proper monitoring of the implementation of the system was undertaken by the Department.
- whether prompt action was taken to withdraw the concession and to realise the amount already availed in cases of violation of agreement.
- whether prompt and effective action was taken to realise amounts which had fallen into arrears.

### 2.3.4 Position of deferred sales tax

As per the records of Commissioner of Commercial Taxes, the number of cases where deferred sales tax was availed of, the amount due and collected by the Department as on 31 March 2002 in respect of new industries and expansion/diversification of existing industries is given below:

(in crore of rupees)

Nature	Total no. of cases	Amount availed	No	Amount due for collection	Amount collected	Balance
New industries	2,533	2,433.43	633	165.13	115.21	49.92
Expansion/ diversification of existing industries	571	912.87	83	21.99	11.94	10.05
<b>Total</b>	<b>3,104</b>	<b>3,346.30</b>	<b>716</b>	<b>187.12</b>	<b>127.15</b>	<b>59.97</b>

### 2.3.5 Variation between DCB Statement and Performance Reports

The performance report as on 31 March 2002 submitted in Form 46 A and 46 B by the Deputy Commissioners to the Commissioner, indicated the amount of deferral recoverable as Rs.59.97 crore. However, the DCB statement for deferral maintained by the Commissioner, revealed the amount collectable as Rs.31.37 crore. Thus, there was a difference of Rs.28.60 crore between the figures furnished by the Deputy Commissioners and records maintained by the Commissioner.

On this being brought to the notice in June 2003 of the Commissioner, he admitted the variation and stated that further report would be sent after receipt of replies from the Deputy Commissioners.

### 2.3.6 Delay in initiating action for recovery of deferred taxes

As per Government Order issued by the Commercial Taxes and Religious Endowments Department in August 1997, the eligible unit availing deferral is to enter into a deed of agreement with the sanctioning authority which inter-alia stipulates that the industrial unit (i) should not stop normal production continuously for a period exceeding six months during the currency of the deferral period; (ii) should adhere to the schedule of repayment of the deferred tax after expiry of the deferral period and (iii) should produce audited balance sheet and profit and loss accounts every year. Any violation of the conditions and cancellation of registration of the dealer would entail cancellation of the deferral and the entire deferral amount availed shall be recoverable immediately in one lumpsum alongwith interest at prescribed rates. In case of default, the amount is to be recovered under the provisions of Revenue Recovery Act.

However, it was noticed in eighteen<sup>10</sup> assessment circles in respect of 31 dealers who had closed down their business during the period of deferral or had defaulted in repayment of deferred tax, that there was delay in recovering the deferral tax arrears under Revenue Recovery Act. This was due to belated issue of distraint orders, sending notices to wrong addresses, incorporating

<sup>10</sup> Alandur, Adyar-I, Annasalai, Chokkikulam, Dharmapuri, Fast Track Assessment Circle-I,(Chennai), Gugai (Salem), Hosur (North), Manali, Mandaveli, Paramakudi, Pollachi (Rural), Ponneri, Saligramam, Singanallur (Coimbatore), Sriperumbudur, Tuticorin-III and Tallakulam (Madurai).

defective/insufficient particulars in Form 30 (ODR) sent to other circles regarding assets to be acquired, delay in publication of notification in the district gazettes. The delay ranged from 1 to 7 years. An amount of Rs.9.17 crore had not yet been realised. Besides interest of Rs.6.46 crore was also recoverable. A few illustrative cases are detailed below:

(in lakh of rupees)

<b>Scheme:IFST Deferral Scheme</b>			
<b>Date of Commencement of Scheme: July 1988 and May 1990</b>			
<b>Name of the assessment circle(Number of dealers)</b>	<b>Period of deferral</b>	<b>Amount availed</b>	<b>Remarks</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
Fast Track Assessment Circle (One)	1 April 1989 to 31 March 1992	363.68	The application by the company for declaration as 'sick' unit, was dismissed by BIFR in October 2000. However, notice for recovery of tax was issued by the Department only in June 2002 i.e., after a delay of two years.
Tallakulam (One)	1 July 1994 to 30 June 2003	107.95	The dealer did not file audited accounts for 1999-2000 and 2000-2001 and Registration Certificate was not renewed from April 2001. However, notices for recovery were issued in February 2002 after a delay of two years.
Alandur (one)	7 March 1991 to 6 March 2000	70.25	The unit was closed and Registration Certificate was cancelled with effect from 1.4.98. However, recovery proceedings were initiated only in October 2001.
Hosur (North) (Two)	1 November 1992 to 31 October 1997	38.45	The dealer failed to abide by the due dates for repayment of deferral from November 1997. However, distriant order was issued in March 2001 only after a delay of three years.
	1 March 1997 to 28 February 2006	46.08	The business was stopped in 1999. However, notices to attach properties were issued to the dealer only in February 2002, after a delay of two years.
Manali (one)	1 August 1993 to 31 July 1998	4.53	The unit stopped business in 1997. Action under Revenue Recovery Act was taken only in 2001, after a delay of three years.

1	2	3	4
Pollachi (Rural) (One)	2 May 1995 to 1 May 2004	12.84	As Registration Certificate was not renewed, it was cancelled with effect from 1 April 2001 during the period of deferral itself. Action had not been taken as of March 2003 to recover the deferral availed.

### 2.3.7 Excess availing of deferral

As per Section 17A of the TNGST Act, 1959, the Territorial Assistant Commissioners (Commercial Taxes) are empowered to issue sanction for deferral specifying the amount, subject to the ceiling fixed in the eligibility certificate issued by the implementing agency.

The duty to monitor availment of deferral by eligible units, in accordance with the conditions stipulated in the Eligibility Certificate, rests on the Assessing Officers and the Territorial Assistant Commissioners concerned. For this purpose, requisite register is to be maintained and the recovery watched regularly until the entire amount of deferral is repaid. Further, the Commissioner has issued instructions for submission of quarterly report to have a close watch over the availment of deferral.

However, audit scrutiny revealed that in seven<sup>11</sup> assessment circles, deferral of sales tax of Rs.2.35 crore was allowed to 8 dealers against eligibility amount of Rs.1.79 crore. The failure of the Assessing Officers and the Territorial Assistant Commissioners concerned to ensure availing of deferral within the prescribed limits resulted in excess availing of Rs.55.96 lakh as detailed below.

(in lakh of rupees)

Sl. No.	Name of the assessment circle	Period of deferral	Eligible amount	Amount actually availed	Excess availment
1	2	3	4	5	6
1	Ponneri (Two)	January 1993 to December 2000	98.44	135.79	37.35
		December 1990 to November 1999	42.81	48.12	5.31
2	Nandanam	January 1993 to January 1998	8.41	12.84	4.43
3	Sriperumbudur	March 1993 to March 2002	12.74	17.13	4.39

<sup>11</sup> Ambattur, Manali, Nandanam, Ponneri, Singanallur, Sriperumbudur and Tiruvanmiyur.

1	2	3	4	5	6
4	Singanallur	April 1991 to March 1996	5.76	7.54	1.78
5	Ambattur	August 1991 to March 1999	4.06	5.84	1.78
6	Tiruvanmiyur	April 1993 to March 2002	1.98	2.51	0.53
7	Manali	August 1993 to July 1998	4.53	4.92	0.39
<b>Total</b>			<b>178.73</b>	<b>234.69</b>	<b>55.96</b>

### 2.3.8 Irregular availing of deferral

The conditions of the deed of agreement stipulate that the eligible unit while availing benefit of deferral shall not effect any change in name and/or constitution of unit without prior permission of Government atleast 30 days prior to the contemplated event. In case of violation of these conditions, the amount of deferred sales tax outstanding on the date of occurrence of such event, shall be recoverable immediately alongwith interest at the prescribed rate.

Test check of records however, revealed that in three assessment circles, though change in constitution of the unit/company was effected by three units during May 1997, October 1998 and May 1999, without obtaining prior permission of the competent authority, the units were allowed to avail deferral of Rs.26.05 lakh as detailed below:

(in lakh of rupees )

Sl. No.	Name of the assessment circle	Period of deferral	Date of change in constitution	Amount
1	Ponneri	1 April 1992 to 31 March 2001	May 1997	17.77
2	Chokkikulam	26 August 1996 to 1 August 2001	October 1998	3.15
3	Perundurai	1 April 1990 to 31 March 1999	April 1999	5.13
<b>Total</b>				<b>26.05</b>

### 2.3.9 Non-realisation of deferred tax from companies declared 'sick' by Board for Industrial and Financial Reconstruction

As per the Sick Industrial Companies (Special Provision) Act, 1985, where a reference for declaration as sick unit is filed and proceedings thereon is pending before the Board for Industrial and Financial Reconstruction (BIFR), no suit for recovery of money or enforcement of any dues against the company shall lie or be proceeded with further, except with the consent of the Board. Where a company has been declared 'sick' by the Board, the Department has not only to ensure the inclusion of IFST arrears pertaining to the period before the company was declared sick in the Rehabilitation Scheme, but also the realisation of the IFST arrears, where rehabilitation packages have been notified.

It was noticed that in six<sup>12</sup> assessment circles involving seven dealers, there was non-realisation of deferral of Rs.8.86 crore for periods ranging from 2 to 6 years as on 31 March 2003. A few illustrative cases are detailed below:

Sl. No.	Name of the assessment circle/No. of dealers	Remarks
1	Tallakulam (One)	A company was declared 'sick' in Board's order dated 12 August 1999. The Board had given two months time to the company to come out with rehabilitation package. The company had not brought to the notice of BIFR, the arrears of IFST loan amount of Rs.69.92 lakh. However, the Department took up the matter with the Board belatedly in February 2002, i.e. after two and half years of the passing of the order.
2	Valluvar-kottam (One)	The company was first declared sick by BIFR in February 1997 with cut off date as 30 June 1997, which was extended to 31 March 2000, in its order dated 23 March 2000. The company had availed deferral of Rs.3.86 crore till March 2000. The company was also allowed to avail deferral of Rs.11.07 lakh subsequent to the date of the order of the Board. The Department was not even aware whether the deferral amount of Rs.3.86 crore had been included by the company in the statement of liability furnished to BIFR, for rehabilitation package. However, the matter was taken up with the Board only in March 2002.
3	Manali (One)	It has been judicially <sup>13</sup> held that the Government has first charge over the properties in preference to other secured creditors. However, when a rehabilitation package was announced by BIFR, the Department failed to secure the interest of Government in preference to other secured creditors, with the result though the amount of Rs.2.00 crore was settled to Jammu and Kashmir Bank, the IFST dues of Rs.16.55 lakh remained outstanding.

<sup>12</sup> Dharmapuri, Fast Track Assessment Circle-III (Chennai), Manali, Tallakulam (Madurai), Tiruparankundram (Madurai) and Valluvar-kottam.

<sup>13</sup> 96 STC 612 (SC) State Bank of Bikaner and Jaipur Vs. National Iron and Steel Rolling Corporation and 120 STC 610 (SC) M/s. Dena Bank Vs. Bhikhabhai Prabhudas Parekh & Co. and others.



### **2.3.10 *Non realisation of Sales tax dues where properties were taken over by State Financial Institutions.***

The TNGST Act, empowers the recovery of arrears of tax or any amount due under the Act, as arrears of land revenue under the Revenue Recovery Act. For the purpose of enforcing the provisions of the Tamil Nadu Revenue Recovery Act, 1864, (Act II of 1864) the Assistant Commissioners have been vested with the powers of Collector under the Act.

However, at a meeting held between Government and State Financial Institutions in May 1997, in case of arrears of tax due from companies financed by State Financial Institutions (SFIs), the SFIs were allowed to conduct auction to ensure better and quicker realisation of arrears. It was also agreed that SFI shall not transfer the title of the property to the purchaser until a clearance certificate is obtained from the Assessing Officer concerned that all dues had been paid. Where sale proceeds are not sufficient to cover the dues to Government as well as to SFIs, full adjustments towards sales tax is to be made first.

However, test check of records revealed that in nineteen<sup>14</sup> assessment circles involving 25 dealers, the IFST arrears of Rs.2.78 crore was not realised, even after a lapse of 1 to 10 years of the properties being taken over during the period October 1992 to April 2001 by SFIs. This was due to non-conducting of auction for want of bidders, or bid amount being less, etc. thus, defeating the very objective of entrusting the work of auction of properties to SFIs.

### **2.3.11 *Non-inclusion of interest in the claim petition filed before the official liquidator.***

The entire amount due from companies which have wound up business is to be recovered by addressing the Official Liquidator with whom the administration of the estate is vested.

Under the provisions of the TNGST Act, on any amount remaining unpaid after the date specified for its payment, the dealer or person shall pay, in addition to the amount due, interest at the prescribed rate for such amount for the period of default. Hence, wherever claims are made to the official liquidator, the claim should include in addition to the amount of IFST arrears, the interest accrued thereon upto the date of winding up of the company.

<sup>14</sup> Adyar-I, Ambattur, Ashok Nagar, Cuddalore Taluk, Dindigul (Rural), Harur, Koyambedu, Mandaveli, Nandanam, Nilakottai, Palani-I, Perambur, Perundurai, Pollachi (Rural), Ponneri, Saligramam, Srirangam, Tiruvanmiyur and Tiruverumbur.

However, test check of records in four<sup>15</sup> assessment circles, in respect of four companies which had gone into liquidation between November 1997 and November 2001, revealed that the claims preferred by the Department before the Official Liquidator did not include interest amount of Rs.2.70 crore which had accrued from the due date of payment of arrear upto the date of liquidation of the company.

### ***2.3.12 Failure to invoke Director's liability in cases of winding up of private company.***

The TNGST Act, provides that in cases of winding up of a private company, every person who is a director of such company at the time of such winding up shall, notwithstanding such winding up, be jointly and severally liable for the payment of tax, penalty or other amount payable under the Act by such company.

In Hosur (South) and Chithode assessment circles in respect of three companies, which wound up their business between July 2001 and February 2002, under the orders of High Court of Madras, no action under the above mentioned provisions of the Act was taken by the Department to fix liability of the Directors in respect of the IFST arrears of Rs.2.63 crore.

### ***2.3.13 Non-levy of interest***

As per the provisions of the deed of agreement, interest is to be levied in case of belated payment of deferred tax.

It was however, noticed in eight<sup>16</sup> assessment circles, in respect of eight dealers, interest of Rs.64.73 lakh was not levied for belated payment of deferred taxes, the delay ranging from 1 to 24 months during December 1996 and May 2000.

On this being pointed out, the Department agreed to levy interest after checking the payment details. In one case, the Department contended that interest for belated payment of central sales tax could not be levied for the period prior to 12 May 2000, as there was no provision under Central Sales Tax Act. The reply is not tenable as the validating Act provides for retrospective levy of interest for belated payment of central sales tax.

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<sup>15</sup> Chithode (Erode), Fast Track Assessment Circle-II (Chennai), Ponneri and Tiruverumbur (Trichy).

<sup>16</sup> Annasai-III, Fast Track Assessment Circle-II (Coimbatore), Mandaveli, Mylapore, Shevapet (Salem), Saligramam, Tuticorin-III and Udumalpet (South).

### 2.3.14 Period of repayment incorrectly mentioned in the Eligibility Certificate.

The eligibility certificate is issued by the implementing agencies, specifying therein the eligible amount of deferral, the period during which the same has to be availed and the period of repayment of the deferred taxes.

The Territorial Assistant Commissioners of Commercial Taxes are to scrutinise the eligibility certificate before according sanction of deferral and before entering into agreement with the eligible units.

It was however, noticed that in five cases, pertaining to three<sup>17</sup> assessment circles involving a sum of Rs.65.29 lakh, the repayment schedule had been incorrectly mentioned in the eligibility certificate and the same had been adhered to by the Department, resulting not only in extension of repayment period but also in avoidable financial accommodation to the units, by way of interest amounting to Rs.25.62 lakh.

(in lakh of rupees)

Sl. No.	Name of the assessment circle/No. of dealers	Period of deferral	No. of years	Period of repayment		Period of delay (No. of years)	Avoidable financial accommodation by way of interest on (Amount availed)
				As mentioned in the EC	As it ought to be		
1	Sali-gramam (Two)	20 January 19 91 to 31 March 2000	9	20 January 2001 to 22 April 2010	1 April 2000 to 31 March 2009	1	4.42/ (18.40)
		April 1994 To April 2003	9	April 2004	April 2003	1	5.92/ (24.66)
2	Hosur (North) (Two)	1 November 1999 to 30 October 2004	5	1 November 2008 to 30 October 2013	1 November 2004 to 31 October 2009	4	5.55/ (5.78)
		1989-90 to 1993-94	5	1995-96 to 2000-01	1994-95 to 1999-00	1	1.05/ (4.38)
3	Nanguneri (One)	1 April 1991 to 31 December 1991	9 (Moratorium period as per ST loans scheme converted into IFST)	On or before 25 March 2003	April 2000	3	8.68/ (12.07)
<b>Total</b>							<b>25.62/ (65.29)</b>

<sup>17</sup> Hosur (North), Nanguneri and Saligramam.

### **2.3.15 Defective maintenance of deferral register**

The dealers claim deferral of sales tax as per their monthly/annual returns which is allowed by the Department initially, the correct tax eligible for deferral determined only on completion of the assessment. Hence, the amount of sales tax deferred each month and at the end of the year, the progressive total and the corresponding repayment details, levy of interest for belated payments are to be properly recorded in the register maintained for this purpose. Postings made in the register are to be properly attested by competent authority.

It was noticed in nine<sup>18</sup> assessment circles, that the registers were not maintained and updated regularly, defeating the very object of maintenance of these records in the assessment circles.

### **2.3.16 Internal control system**

The financial burden in implementing the IFST scheme entirely lies on the Government. While the beneficiaries are allowed to defer payment of sales tax collected on the strength of the eligibility certificate, the Government has to realise the amounts due to it, in cases of default, by way of sale/disposal of assets.

The amount of deferral sanctioned is based on the value of fixed assets created. Though the agreement governing the scheme provides for maintenance of fixed assets at their market value, this is not sufficient to safeguard the interest of revenue as the value of assets gets depreciated due to efflux of time and the assets, even if they are maintained at market value do not cover the entire amount of deferral availed.

The system provides for maintenance of requisite registers to monitor the tax deferred. Further, the Commissioner had also issued instructions for submission of quarterly report to have a close watch over the availing of deferral. However, as assessed in the review, the allowance of deferral over and above the sanctioned amount indicates, that this area of internal control required effective enforcement.

The non existence of management information system was commented upon in Audit Report 1993-94. However, the large variation between the DCB statement maintained by the Commissioner and the performance report submitted by the Deputy Commissioners, in the amount of deferral due for recovery is indicative of the inadequacy or the ineffectiveness of the existing system to generate accurate data.

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<sup>18</sup> Hosur (North), Hosur (South), Mandaveli, Palani-I, Ponneri, Salem Town (North) Singanallur, Srirangam and Tallakulam.

### **2.3.17 Recommendations**

The Department had failed to secure the interest of Government by not initiating action against defaulters violating conditions of agreements, not preferring claim of deferral before the BIFR in time, not preferring first charge for the realisation of Government dues and by not including interest due upto the date of liquidation.

In view of these observations, Government may consider taking following steps:

- 1) With a view to ensuring effective recovery of deferred amount, industrial units availing deferral may be required to furnish security to the extent of deferral sanctioned.
- 2) A well defined system of reporting/monitoring may be kept in place to secure future repayment of deferred taxes.
- 3) Ensure proper maintenance of records to prevent excess availing of deferral by beneficiaries.

The matter was reported to Department/Government and followed up with reminder in August 2003, their reply was awaited (October 2003).

## **2.4 Incorrect grant of exemption from levy of tax**

The Tamil Nadu General Sales Tax Act, 1959, (TNGST) provides that the turnover of a dealer shall not include the proceeds of sale of agricultural produce, except such produce as has been subjected to any physical, chemical or other process for being made suitable for consumption. The Act also provides for exemption of sales tax to certain commodities listed in the Third Schedule to the Act.

Under the Central Sales Tax Act, 1956, (CST) the last sale or purchase preceding the sale occasioning export is deemed to be sale in the course of export and exempt from tax subject to the condition that the goods exported should be the same as that purchased as per agreement with the foreign buyers.

In twenty one assessment circles, exemptions were incorrectly granted to twenty one dealers on the turnover of Rs.26.78 crore pertaining to the years 1996-97 to 2000-2001, assessed between March 1999 and March 2002, which resulted in non-levy of tax of Rs.1.48 crore as detailed below:

(in lakh of rupees)

Sl. No.	Name of the assessment circles/No. of dealers	Year of transactions/ Month of assessment	Tax-able turn-over	Nature of irregularity	Amount of tax	Remarks
1	2	3	4	5	6	7
1	Gudalur (1)	1998-99 (December 1999) 1999-00 (February 2001)	792.76	Sale of cured coffee by the assessee (plantation owner) was allowed exemption as sale of agricultural produce.	63.42	On this being pointed out, the Department accepted the audit contention and raised demand in July 2003. The report on recovery is awaited (September 2003).
2	Fourteen <sup>19</sup> (14)	17 July 1996 to 2000-01 (Between March 1999 and March 2002)	1,733.03	Sale of computer stationery was allowed exemption as second sales of tax suffered paper	69.32	The Government stated in March 2003 that conversion of ordinary paper into computer stationery does not amount to manufacture and that the exemption was in accordance with the clarification of the Head of the Department. The Government further stated that as per Andhra Pradesh High Court decision <sup>20</sup> , computer stationery would fall under the category of paper. The reply is not tenable as the entry relating to computer stationery does not provide for exemption where paper had suffered tax and a separate entry for computer stationery indicates the Legislative intent to treat it as commercially different commodity. Further, the Andhra Pradesh High Court decision is not applicable to the TNGST Act, in view of the specific entry for computer stationery.

<sup>19</sup> Alandur, Avinashi, Egmore-I, Gandhipuram, Mettupalayam Road, Porur, Royapettah-I, Salem Town (North), Sattur, Tambaram-II, T.Nagar (South), Tondiarpet, Vadapalani and Woraiyur.

<sup>20</sup> Andhra Pradesh Computer Stationery Manufacturers' Association and others Vs. State of A.P. and another – 115 STC 173 (AP High Court).

1	2	3	4	5	6	7
3	Kamarajar Salai (Madurai)	1999-00 (October 2000),	91.46	Sale of braided cord effected during 1999-2000 erroneously exempted from levy of tax, though exemption was available only from the year 2000-2001.	8.54	In respect of Kamarajar Salai, the Department revised the assessment in May 2002 and stated that waiver proposals had been submitted. In respect of Sowcarpet II, the Department revised the assessment in May 2003 and collected the additional demand of Rs.1.24 lakh. The Department in respect of Palladam, stated in February 2003, that the goods being consumables are eligible for exemption. The reply is not tenable as the goods were not consumables but accessories to textile machinery and as per Commissioner's clarification issued in September 2001 textile machinery spares are not eligible for exemption on sale to 100% EOU. Reply of the Department in respect of Kilpauk is awaited (October 2003).
	Palladam	1999-00 (April 2001) & 2000-01 (February 2002)		Sale of metallic card clothing (textile accessory) to 100 per cent Export Oriented Unit (EOU) was allowed exemption.		
	Sow carpet-II,	2000-01 (January 2002)		Sale of cane and rattans was erroneously allowed exemption.		
	Kilpauk (Chennai) (4)	2000-01 (March 2002)		Sale of 'wedges', erroneously exempted by treating it as fresh vegetable falling under the Third Schedule to the Act, instead of assessing it as food preparation of vegetable.		





(in lakh of rupees)

Sl. No.	Name of the assessment circle /No. of dealers	Year of transactions/ Month of assessment	Name of goods/ Transactions	Taxable turn-over	Rate of Tax (in %)		Amount short levied	Remarks
					Applicable	Applied		
1	2	3	4	5	6	7	8	9
1	Amain-dakarai ,  Anna-salai-III,  South Avani Moola Street, Madurai,  Brough Road, Erode (Five )	1998-99 (October 1999), 2000-01 (March 2002)  1999-00 (July 2001)  1998-99 (August 2000)  2000-01 (December 2001)	Catering sales of food and drinks	69.25 (branded food) 96.89 (unbranded food)	16 8	2	15.87	The Department revised the assessment in one case (Amaindakarai) in January 2003 against which, the appeal filed by the dealer before AAC-IV, Chennai is pending. In respect of the other cases, the Department replied between July and October 2002 that the assessment was made in accordance with the clarification of the Head of the Department that food and drinks delivered and served by hotels and restaurants, etc., at customer's place was also eligible for the compounded rate of tax. The reply is not tenable as the assessments had been finalised prior to the issue of clarification and as per the provisions of the Act, compounded rate of tax was eligible only for sale effected in hotels, restaurants, etc. In this case, the sale was effected at the premises of the customers placing orders. Hence, the clarification was not in accordance with the provisions of the Act. Further, catering sales are taxable at the rate of two per cent only with effect from 1 April 2002.

1	2	3	4	5	6	7	8	9
2	Hosur (South),  Roya-pettah-I,  Salem-Town (West),  Avinashi Road, Coim-batore (Five)	1995-96 (October 1997, March 1998) 1998-99 (October 2001) 1998-99 (September 1999)  2000-01 (October 2001)	Emergency light,  computer peripherals,  Sale of medicines to state government department after 6.1.99.  Pay phones and Tele Con-ferences.	131.17	12  4  8  12	3  2  4  4	5.37	The Department revised the assessments in two cases [Royapettah-I and Salem-Town (West)] and raised an additional demand of Rs.2.17 lakh of which a sum of Rs.0.37 lakh was collected (August 2001). Reply of the Department in respect of the other two cases [Hosur (South) and Avinashi Road] and position of recovery was awaited (October 2003).
3	Avinashi Road (Coim-batore) Nungambakkam  Thiruvaniyur  Udumalpet  Velachery  Villivakkam (Six)	1994-95 (May 1999) 1998-99 (April 2001) 1999-00 (September 2001) 2000-01 (March 2002)  2000-01 (December 2001)  2000-01 (December 2001)	Condemned articles  Mouth washes  Computer printer ribbon  Contract for upgradation and improvement to roads  Sale of RCC troughs to non-government department  Contract for manufacture and erection of effluent treatment plant.	127.76	8  16  8  4  16  4	3  8  4  2  4  2	5.41	The Department revised between January 2002 and October 2002 the assessments in three cases (Avinashi Road, Velachery and Villivakkam) and raised an additional demand of Rs.3.52 lakh which was also collected between February 2002 and October 2002. The Department in the case of Thiruvaniyur stated in September 2002, that computer printer ribbon was taxable at 4 per cent only. The reply is not tenable as computer printer ribbon as per Entry 62/Part C/I Schedule attracts tax at the rate of 8 per cent. In respect of Udumalpet, the Department replied in December 2002 that revision of assessment under Section 3B would involve additional demand of Rs.0.11 lakh only. The reply is not acceptable, as the dealer had opted to pay tax at compounded rate and the option filed cannot be withdrawn. Reply in respect of other case was awaited (October 2003).

1	2	3	4	5	6	7	8	9
4	Rasi-puram	1999-00 (November 2001)	Poly-propylene sacks	127.62	8	4	5.21	The Department in the case of Rasipuram replied in February 2003 that the product was taxable at 4 per cent only. The reply is not tenable as Entry 32 of Part B covers HDPE. and Polythene woven sacks only. On an earlier occasion, when the rate of tax on HDPE and polythene woven sacks was reduced by issue of notification, Government accepted audit's observation that the same was not applicable to polypropylene sacks and stated that amendment to the notification was under consideration. Reply of the Department in respect of other cases was awaited (October 2003).
	Purasa-wakkam	2000-01 (December 2001)	Hawai rubber sheets and pads		11	8		
	Korattur	2000-01 (October 2001)	Sale of electrical transformer to non-Government department		16	4		
	Manali (four)	2000-01 (December 2001)	P.V.C. lay flat tubings		12	8		
<b>Total</b>							<b>31.86</b>	

The matter was reported to Government between December 2001 and May 2003. Government accepted between July 2002 and June 2003 the audit observations in 8 cases and stated that an amount of Rs.1.33 lakh in respect of four cases had been collected. Reply of the Government in respect of other cases was awaited (October 2003).

**2.5.2** Under the Central Sales Tax Act, (CST Act), 1956, on inter-state sale of goods not covered by declaration in Form 'C', tax is leviable at 10 per cent or at the rate applicable to sale of such goods within the state, whichever is higher.

In Fast Track Assessment Circle-I, Chennai, in case of a dealer of motor vehicle parts, on the turnover of Rs.3.47 crore for the year 1997-98 not covered by declaration in Form C, tax of Rs.8.68 lakh was short levied, due to application of incorrect rate of tax.

On this being pointed out, the Department revised in February 2003 the assessment and raised an additional demand of Rs.8.68 lakh, the collection particulars of which were awaited (October 2003).

Government to whom the matter was reported in December 2002, accepted the audit observations (March 2003).

## **2.6 Intra-state sales taxed as inter-state sales**

As per the TNGST Act, 1959, the sale or purchase of goods shall be deemed for the purpose of this Act, to have taken place in the state, wherever the contract of sale or purchase might have been made, if the goods are within the state in the case of specific goods or ascertained<sup>21</sup> goods at the time the contract of sale or purchase is made. The Supreme Court has held<sup>22</sup> that, if the auction is unconditional and is in respect of specific ascertained goods, the property in the goods would pass to the purchaser upon the acceptance of the bid. It has also been judicially held<sup>23</sup> by Madras High Court, that auction sale of tea at Coonoor is local sale only. Further as per the Rules of the Coonoor Tea Traders Association which governs the auction of tea at Coonoor, sale is concluded at the fall of the hammer.

During audit of the records of the Commercial Tax Officer, Coonoor, it was noticed that, sales of tea amounting to Rs.134.72 crore and which were ex-godown, Coonoor, was effected by six brokers during 1999-2000 and sent outside the state. These sales were erroneously treated as inter-state sales, instead of local sale. This resulted in short-levy of tax of Rs.8.36 crore (inclusive of additional sales tax).

On this being pointed out in audit, the Department stated in September 2002 that there was movement of tea to other states and contended that, as judicially held<sup>24</sup> the sale by the broker-assessees were only inter-state sales. The reply is not tenable in view of the judicial decision of the Madras High Court already cited that, where sale of tea in auction at Coonoor was ex-godown at Coonoor, the sale was to be treated as local sale.

The matter was reported to Government in December 2002 and followed up with reminder in August 2003; their reply was awaited (October 2003).

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<sup>21</sup> ascertained goods – goods which are identifiable and in existence at the time the contract of sale or purchase is entered into.

<sup>22</sup> Consolidated Coffee Ltd. Vs. Coffee Board – 46 STC 164.

<sup>23</sup> Moti and Company Vs. State of Tamil Nadu (1999) 113 STC 51.

<sup>24</sup> A.V.Thomas and Company Vs. Deputy Commissioner of AIT – 14 STC 363.  
Indian Oil Company Vs. Union of India – 47 STC 1  
State of Gujarat Vs. Bombay Metal Alloys and Manufacturers Co. – 54 STC 45

## **2.7 Incorrect assessment involving compounding system of levy**

As per the provisions of the TNGST Act, 1959, the turnover representing value of goods involved in the execution of works contract and which had not suffered tax earlier inside the state is assessable to tax, at the rates specified for such goods in the Schedules to the Act. However, a dealer may, opt to pay tax at compounded rate of four per cent, on the total value of the works executed in respect of contracts, other than civil works contract. The option shall be exercised along with the first monthly return for the financial year.

In Saligramam assessment circle, though a dealer had not exercised option to pay tax at compounded rate for the financial year 2000-2001, tax was levied at the compounded rate of four per cent on the turnover of Rs.2.27 crore of electrical works contract instead of at the rate of sixteen per cent on the deemed sale value of generators amounting to Rs.2.11 crore, involved in the execution of such contract. This resulted in short levy of tax of Rs.24.67 lakh.

On this being pointed out in audit, the Department stated in December 2002 that the dealer had exercised option to pay tax at compounded rate in April 2000. The reply is not tenable as the dealer had got himself registered under the Act, only on 30 August 2000 and hence option could not have been exercised by him in April 2000, when he was not a registered dealer under the Act.

The matter was reported to Government in March 2003 and followed up with reminder in August 2003; their reply was awaited (October 2003).

## **2.8 Non levy of tax**

**2.8.1** Under the CST Act, 1956, on inter-state sale of goods not covered by valid declaration in Form 'C', tax is leviable at the rate of ten per cent or at the rate applicable to the sale of such goods inside the state, whichever is higher.

In Bodinayakanur assessment circle, while finalising the assessment in February 2001 of an assessee for the year 1995-96, the turnover representing export sale and inter-state sale of goods amounting to Rs.72.99 lakh not covered by documentary evidence were omitted to be considered for levy of tax. This resulted in short levy of tax of Rs.7.30 lakh.

On this being pointed out, the Department revised in December 2001 the assessment and raised additional demand of Rs.7.30 lakh. Further reply was awaited (October 2003).

The matter was reported to Government in May 2003 and followed up with reminder in August 2003, their reply is awaited (October 2003).

**2.8.2** Section 3(4) of the TNGST Act, provides that where any dealer after purchasing raw materials at concessional rate of tax, transfers goods so manufactured outside the state, he shall pay, in addition to concessional rate of tax, tax at the rate of one per cent (two per cent upto 31 March 1999) on the value of raw material so purchased.

In three<sup>25</sup> assessment circles, 3 dealers had purchased raw materials at concessional rate during 1998-99 and 1999-2000 and had transferred the manufactured goods outside the state. However, tax on the purchase value of Rs.3.32 crore was omitted to be levied. This resulted in non-levy of tax of Rs.6.08 lakh.

On this being pointed out, the Department revised in February 2000 and June 2002 the assessments in two cases and raised an additional demand of Rs.2.06 lakh, which was also collected. Reply in respect of the other case was awaited (October 2003).

**2.8.3** The TNGST Act provides for levy of tax on certain commodities at the point of last purchase inside the State.

In four<sup>26</sup> assessment circles in respect of four dealers, on last purchase of raw hides and skins, waste paper, raw rubber and glass bottles amounting to Rs.2.25 crore pertaining to the assessment years 1998-1999 to 2000-2001, tax was omitted to be levied. This resulted in non-levy of tax of Rs.9.55 lakh.

On this being pointed out, the Department revised the assessments in April and December 2002 in three cases and raised an additional demand of Rs.9.04 lakh; of which an amount of Rs.1.31 lakh was collected. Reply of the Department in respect of another case was awaited (October 2003).

The matter was reported to Government between March 2003 and June 2003 and followed up with reminder in August 2003. Government accepted the audit observation in September 2003 in one case. Reply in respect of the other cases was awaited (October 2003).

## **2.9 Incorrect grant of concessional rate of tax**

Section 3(5) of the TNGST Act, provides for concessional rate of tax of 3 per cent on sale by one dealer to another of goods mentioned in the Eighth Schedule for installation of, and use in factory, for the manufacture of any good subject to the production of declaration in prescribed form.

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<sup>25</sup> Avinashi, Manali and Trichy Road (Coimbatore)

<sup>26</sup> Panruti (Rural), Pollachi (West), West Veli Street (Madurai) and Trichy Road (Coimbatore).

In 3<sup>27</sup> assessment circles, concessional rate of tax of three per cent was allowed on a turnover of Rs.1.05 crore on sale by four dealers of steam iron boxes, 'O' rings for excavators, hose assembly for earth moving equipments and electrical control panel boards and cable trays not mentioned in the Eighth Schedule, during the years 1998-99 to 2000-01. This resulted in short levy of tax of Rs.7.07 lakh.

On this being pointed out, the Department in two cases revised the assessments between February 2002 and October 2002 and raised an additional demand of Rs.2.98 lakh, which was also collected. In respect of another case, the Department stated in January 2003 that the concessional rate allowed was in order. The reply is not tenable, as Section 3(5) of the Act, precludes the sale of goods, other than those mentioned in the Eighth Schedule at concessional rate.

The matter was reported to Government between March 2002 and May 2003 and followed up with reminder in August 2003. Government accepted in July 2002 and June 2003 the audit observation in two cases and reply in other cases was awaited (October 2003).

## **2.10 Non/short levy of additional sales tax**

Under the Tamil Nadu Additional Sales Tax Act, 1970, additional sales tax is leviable at the rates prescribed from time to time, depending upon the taxable turnover.

In three<sup>28</sup> assessment circles, on the taxable turnover of Rs.97.77 crore in respect of three assesseees representing sale of cars, dairy products and cotton waste during the year 1998-99 and 1999-2000, the Assessing Officers while finalising the assessment between May 2001 and December 2001, either did not levy or levied short the additional sales tax of Rs.31.82 lakh.

On this being pointed out, the Department revised between May and November 2002 the assessment in two cases and raised an additional demand of Rs.7.69 lakh which was also collected. Reply of the Department in respect of the other case was not received (October 2003).

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<sup>27</sup> Adyar-II, Arisipalayam and Avinashi.

<sup>28</sup> Dindigul, Fast Track Assessment Circle-III (Chennai), and Fast Track Assessment Circle-IV (Chennai).

The matter was reported to Government in January/May 2003 and followed up with reminder in August 2003. Government accepted the audit observations in September 2003 in respect of two cases. Reply in respect of the other case was awaited (October 2003).

## **2.11 Loss of revenue due to revision barred by limitation of time**

As per the provisions of Section 16(1)(b) of the TNGST Act, 1959, read with Section 9(2-A) of the CST Act, 1956, the time for revision of assessment is limited to five years from the expiry of the year to which the tax relates.

As per the CST Act, 1956, inter-state sale of declared goods covered by valid declarations in Form 'C' shall be assessed to tax at the rate of 4 per cent or at the rate applicable to sale of such goods inside the state, whichever is lower. The elements of additional surcharge and additional sales tax shall also be taken into consideration for the purpose of determining the local rate of tax.

In Vepery assessment circle, in respect of an assessee for the year 1994-95, the elements of additional surcharge and additional sales tax were not taken into consideration for determining the local rate of tax applicable on inter-state sale of finished leather covered by valid declarations in Form 'C' and as a result, the turnover of Rs.6.65 crore was erroneously assessed (December 1995) to tax at the rate of 1 per cent instead of at the correct rate of 3.30 per cent. This resulted in short levy of tax of Rs.15.30 lakh.

However, necessary revision of assessment could not be made in this case, as the time limit for revision of assessment had elapsed even at the time of production of assessment file to audit (July 2002). This was pointed out to the department (September 2002).

Government, to whom the matter was reported, accepted in March 2003 the audit observation and stated that revision of assessment was barred by limitation of time.

The assessment file which was called for as early as in April 1996 was produced to audit only in July 2002. Thus, the failure of the Department to levy tax at correct rate and to produce the assessment file to audit in time, resulted in revenue loss of Rs.15.30 lakh.



## **2.12 Non-levy of interest for belated payment of tax**

Under the provisions of the TNGST Act, 1959, the tax payable shall become due without any notice of demand to the dealer on the date of receipt of return or on the last due date as prescribed, whichever is later. On any amount remaining unpaid after the date specified for its payment, the dealer or person shall pay, in addition to the amount due, interest at prescribed rates for the period of default.

In seven<sup>29</sup> assessment circles, tax of Rs.26 lakh pertaining to the assessment years 1993-94 to 1999-2000, which were finalised between October 1997 and March 2002, was paid belatedly by eight dealers involving delay ranging from 1 month to 45 months. However, interest of Rs.8.99 lakh though leviable for such belated payment, was not levied.

On this being pointed out, the Department levied interest of Rs.6.22 lakh in seven cases, of which an amount of Rs.4.17 lakh was collected. Collection particulars in respect of the balance amount and reply in respect of other case had not been received (October 2003).

The matter was reported to the Government between March and May 2003 and followed up with reminder in August 2003. Government accepted the audit observations in September 2003 in three cases. Reply in respect of other cases was awaited (October 2003).

## **2.13 Non-levy of penalty**

Under the CST Act, 1956, a registered dealer buying goods from other states is entitled to a concessional rate of tax at four per cent, provided he furnishes to the seller, a declaration in Form 'C' certifying that the goods are of the class specified in his certificate of registration. If the goods indicated in the declaration are not covered by the certificate of registration, it amounts to misuse of Form 'C' and the assessee renders himself liable to penalty not exceeding one and a half times of the tax due.

In Fast Track Assessment Circle-II, Coimbatore a dealer had purchased furnace oil amounting to Rs.48.29 lakh during the years 1996-97 and 1997-98 from other states on the basis of declaration in Form 'C', although the commodity purchased was not covered by his certificate of registration. For misuse of 'C' forms, penalty amounting to Rs.11.37 lakh was leviable, but was not levied.

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<sup>29</sup> Annasalai-III, Dindigul (Rural), Fast Track Assessment Circle-III, Kothagiri, Royapettah-I, Shencottah and Washermanpet-II.

On this being pointed out, the Department raised the additional demand in April 2002, the collection particulars of which were awaited (October 2003).

The matter was reported to Government in June 2003 and followed up with reminder in August 2003; their reply was awaited (October 2003).