

CHAPTER-II TRADE TAX DEPARTMENT

2.1 Results of audit

Test check of assessments and other records of trade tax offices conducted in audit during 2004-05 revealed under assessment of tax, non/short levy of penalty/interest, irregular exemption of tax etc. amounting to Rs.152.48 crore in 1,150 cases, which broadly fall under the following categories :

(Rupees in crore)			
Sl. No.	Categories	No. of cases	Amount
1	Non/short levy of penalty/interest	646	48.65
2	Irregular exemption	128	4.20
3	Non levy of additional tax/entry tax	44	0.53
4	Incorrect rate of tax	176	2.53
5	Misclassification of goods	15	0.06
6	Turnover escaping tax	23	0.07
7	Irregularities relating to Central Sales Tax	11	0.36
8	Computation mistake	19	1.12
9	Review on "Assessment and Collection of Trade Tax"	1	72.21
10	Other irregularities	87	22.75
	Total	1,150	152.48

During the year 2004-05, the departments accepted underassessment etc. of Rs.1.01 crore involved in eight cases out of which a sum of Rs.4.95 lakh involved in four cases had been recovered.

A few illustrative cases and one review on "Assessment and Collection of Trade Tax" involving Rs.85.02 crore, are mentioned in succeeding paragraphs:

2.2 Review on assessment and collection of trade tax

Highlights

- Non/short levy of tax amounting to Rs.5.11 crore in case of 32 dealers in 19 trade tax offices.

(Para 2.2.8)

- Non levy of entry tax amounting to Rs.2.51 crore in case of 14 dealers in 10 trade tax offices.

(Para 2.2.8)

- Penalty amounting to Rs.4.92 crore in the cases of 33 dealers in 32 trade tax offices was not levied.

(Para 2.2.8)

- Loss of revenue due to incorrect grant of eligibility/recognition certificate to new industrial units resulted in incorrect allowance of exemption or reduction from tax of Rs.57.86 crore.

(Para 2.2.9)

- Irregular exemption amounting to Rs.1.67 crore to four dealers in three trade tax offices.

(Para 2.2.10)

Introduction

2.2.1 The registration of dealers, levy, assessment and collection of tax are governed by Uttar Pradesh Trade Tax Act 1948 (UPTT Act) and Central Sales Tax Act, 1956 (CST Act), the Rules framed thereunder and administrative instructions issued from time to time by the Department. Registered dealers having an aggregate turnover of more than Rs.10 lakh and those having less than Rs.10 lakh are required to submit monthly/quarterly returns respectively to the assessing authorities. On receipt of the returns from the dealers, the Department is to ensure prompt completion of assessments in accordance with the provisions of law and executive instructions issued from time to time. Final assessment of the dealer is required to be completed before the expiry of two years from the end of the relevant assessment year, otherwise the assessment would become time barred. After assessment, a demand notice is served on the dealer to pay the balance tax, if any, within 30 days from the receipt of notice. For delayed payment of tax, simple interest at the rate of two *per cent* per month is payable by the dealer. Penalty is also leviable for violation of the provisions of the Act. Thus, tax, interest and penalty, which remain unpaid, constitute arrears in trade tax and are recoverable as arrears of land revenue.

Organisational set up

2.2.2 Overall control, direction and superintendence of Trade Tax Department vests with the Commissioner Trade Tax (CTT) with headquarters at Lucknow. There are 14 zones, each under the charge of an Additional Commissioner, Trade Tax (ACTT) in the state. The zones have been divided into 36 ranges each headed by Joint Commissioner (Executive) [JC(E)]. The range is further divided into circles and sectors each under the charge of departmental assessing authorities i.e. Deputy Commissioner (Assessment) [DC (A)] and Assistant Commissioner (AC).

For effective control over leakage of revenue, 14 zonal Joint Commissioners, Special Investigation Branch, [JC (SIB)], are posted all over the state. They are to conduct raids and submit their reports to assessing authorities in case adverse facts are noticed. The responsibility of collection of tax dues rests with Joint Commissioner (Collection), [JC (C)] at the headquarters, while in the field there are 16 Dy. Commissioners (Tax Recovery Officer) [DC (TRO)].

Scope of Audit

2.2.3 Test check of records of assessing authorities of 15 out of 36 ranges alongwith the concerned DC (TRO) and Assistant Commissioner, Sahayata Kendras (check posts/mobile squads) for the period from 1998-99 to 2002-03 assessed between 2000-01 and 2004-05 was conducted between July 2004 and March 2005.

Audit findings, as a result of review on "Assessment and Collection of Trade Tax" were reported to the State Government in June 2005 with a specific request for attending the meeting of Audit Review Committee for State Receipts (ARC SR) so that view points of the Government/Department was taken into account before finalising the review. The meeting of ARC (SR) was held on 1 August 2005 with Special Secretary (Finance/Kar Evam Nibandhan)

and the representatives of Trade Tax Department. The views expressed by the members have been taken into consideration during finalisation of the review.

Audit objectives

2.2.4 The review was conducted with a view to :

- ascertain as to what extent the Acts, Rules and departmental instructions are adhered to;
- evaluate the efficiency of the departmental machinery in assessment of cases and collection of revenue and
- assess the internal control mechanism for correct levy of taxes, timely assessment, collection and invoking of penal provisions in case of default.

Audit findings

2.2.5 In order to assess the effectiveness of internal control mechanism in Trade Tax Department, factors like registration of dealers, monitoring of returns, assessment and recovery etc., were examined in audit. The audit findings of the above are discussed below :

Trend of revenue

2.2.6 The break up of actual receipt vis-a-vis the budget estimate of the Department during the years 1999-2000 to 2003-04 are given below:

(Rupees in crore)				
Years	Budget estimates	Actual receipts	Variation	Percentage of variation
1999-00	4,320.00	3,703.59	(-) 616.41	(-) 14.27
2000-01	4,900.00	5,436.52	(+) 536.52	(+) 10.95
2001-02	5,571.32	5,052.40	(-) 518.92	(-) 9.31
2002-03	5,493.70	6,850.93	(+) 1,357.23	(+) 24.71
2003-04	8,138.49	7,684.13	(-) 454.36	(-) 5.58

Registration

2.2.7 The UPTT Act read with Rules made thereunder provides that every dealer whose annual turnover is more than Rs.1 lakh in the case of a manufacturer and Rs.1.50 lakh in the case of others, is required to apply for registration in a prescribed form within 30 days of the date on which dealer becomes liable to registration.

Under the UPTT Act, if an officer, authorised to seize the goods, is satisfied that the value of goods was omitted from being shown in the accounts, registers and other documents, he shall pass an order imposing a penalty not exceeding 40 *per cent* of the value of such goods and release such goods after realisation of penalty. But there is no provision to get such unregistered dealers registered.

Test check of records of seven trade tax offices¹ revealed that in the case of 243 unregistered dealers goods valued at Rs.7.79 crore (ranging from Rs.1.5 lakh to Rs.58.31 lakh per consignment) were seized by authorities of

¹ AC (MS) Etah, AC (SK) TP Nagar Ghaziabad, AC (MS)-II Ghaziabad, AC (MS)-III Ghaziabad, AC (MS) Hapur, AC (MS)-I Noida and AC (MS)-II Noida.

Mobile Squads (MS)/Sahayata Kendra (SK) during the years from 2001-02 to 2003-04 and penalty of Rs.3.11 crore was levied and realised from them. But no efforts were made to get them registered.

It indicates that there is no internal control mechanism to get the unregistered dealers registered due to which the Department was being deprived of revenue.

Assessment

2.2.8 The UPTT Act provides that no assessment or reassessment for any assessment year shall be made after expiry of two years from the end of such year. Thus efficient assessment procedures have a vital bearing on the revenue of the state.

As per instructions of CTT issued on 12 December 1978 and 29 November 1985, the assessing authority while finalizing the assessment is required to ensure that the declared turnover of the dealer is according to the turnover shown in his books and with reference to survey/SIB report, if any. He is also to check whether the claim for exemption from tax is correct and the rate of tax imposed is at the rates prescribed.

Inspite of these instructions/guidelines, the assessing authorities failed to follow such instructions/orders which resulted in loss of revenue as discussed below :

Non/short levy of taxes

Under the Act, tax on goods at different rates is leviable in accordance with the schedule of rates notified by the Government from time to time. The goods not classified are taxable at the rate of 10 *per cent*.

- During audit of 19 trade tax offices, it was noticed that the assessing authorities while finalising the assessments of 19 dealers for the years from 1994-95 to 2001-02 during the period between December 2000 and March 2004 either failed to levy tax at correct rates or did not levy tax on the sale turnover of such goods. This resulted in non/short levy of tax amounting to Rs.2.88 crore as shown in Appendix-I.

After this was pointed out in audit, the Department levied tax of Rs.8.50 lakh in seven cases between December 2003 and September 2004; replies in remaining cases were awaited (August 2005).

The matter was reported to the Government between May 2002 and July 2004; their replies have not been received (August 2005).

- During audit of 13 trade tax offices, it was noticed between April 2003 to November 2004 that tax was levied on 13 dealers during the period from July 2001 to March 2004 at incorrect rates due to misclassification of goods. This resulted in short levy of tax amounting to Rs.2.23 crore as shown in Appendix-II.

After this was pointed out by audit between April 2003 and February 2004, the Department revised the assessment in three cases between March 2004 and October 2004 and raised demand of Rs.2.95 lakh. Replies in other cases were awaited (August 2005).

The matter was reported to the Government between December 2003 and July 2004; their replies have not been received (August 2005).

Non levy of Entry tax

Under the UP Tax on Entry of Goods Act, 2001 (which came into effect from 1 November 1999), entry tax on purchase of machinery and their spares valued at Rs.10 lakh and above is leviable at the rate of two *per cent* with effect from 1 November 1999 and paper at the rate of four *per cent* of value of goods with effect from 1 November 2001.

During the course of audit of records of 10 trade tax offices, it was noticed, that in 14 cases the Department failed to levy entry tax amounting to Rs.2.51 crore on the purchase of machinery and their spares, sugar and paper valued at Rs.124.88 crore during the period 1999-2000 to 2001-02 as detailed below:

(Rupees in crore)							
Sl No	Name of the Unit	No of dealers	Assessment year ----- Month of assessment	Name of Commodity	Value of Commodity	Rate of entry tax leviable (in <i>per cent</i>)	Entry tax
1.	D.C. (A)-III Varanasi	1	1999-2000 & 2000-01 ----- February 2002 and 2003	Machinery & their spares	97.94	2	1.96
2.	D.C.(A)-XI Lucknow	1	1999-2000 & 2000-01 ----- January 2003	-do-	2.35	2	0.05
3.	A.C.(A)-IX Lucknow	4	1999-2000 & 2000-01 ----- October 2001 & January 2003	-do-	11.29	2	0.23
4.	D.C. (A)-IV Noida	1	2000-01 & 2001-02 ----- January 2003 & December 2003	-do-	2.69	2	0.05
		1	2001-02 ----- December 2003	-do-	0.38	2	0.01
5.	D.C. (A)-V Varanasi	1	2000-01 ----- December 2002	-do-	0.95	2	0.02
6.	DC (A)-II Jhansi	1	2001-02 ----- July 2003	-do-	0.35	2	0.01
7.	DC (A) Rae Bareilly	1	2000-01 ----- January 2003	-do-	1.66	2	0.03
8.	TTO, Sect.1 Unnao	1	1999-2000 ----- March 2002	-do-	0.44	2	0.01
9.	DC (A) Badaun	1	2000-01 & 2001-02 ----- March 2002 & March 2003	Sugar	6.45	2	0.13
10.	A.C.(A)-III Lucknow	1	2001-02 ----- April 2003	Paper	0.38	4	0.01
	TOTAL	14			124.88		2.51

After this was pointed out in audit, the Department stated that entry tax amounting to Rs.0.88 lakh was levied in one case in July 2003, replies in the remaining cases were awaited (August 2005).

Evasion of tax by suppressing taxable turnover

Under the Act, turnover means the aggregate amount for which goods are supplied or distributed by way of sale or sold, by a dealer including profit and other expenses incurred before sale of goods, either directly or through another on his account or on account of others, whether for cash or deferred payment or other valuable consideration.

During the course of audit of two trade tax offices¹, it was noticed that two dealers, assessed between February 2001 and October 2003, sold their goods at lesser rates as compared to the price at which these were purchased and suppressed their taxable turnover amounting to Rs 6.82 crore, during the period from 1998-99 to 2001-02. This undervaluation/suppression of sale turnover resulted in evasion of tax amounting to Rs.15 lakh.

Non levy of penalty

Under UPTT Act, if the assessing authority is satisfied that a dealer has concealed his turnover or has deliberately furnished incorrect particulars of his turnover, or has issued or furnished false certificates or declaration by reason of which a tax on purchase or sale ceases to be levied, he may direct such dealer to pay by way of penalty, in addition to tax, a sum not less than 50 *per cent* but not exceeding 200 *per cent* of the amount of tax which would thereby have been avoided.

The main function of the SIB is to raid, search and seize the accounts books of the dealers to prevent evasion of tax. In case of adverse facts noticed, a report is prepared and sent to assessing authority for necessary action. On receipt of the reports from SIB, the assessing authority is required to take action for levy of tax, penalty and interest etc. as per provisions laid down in circular dated 7 December 2000.

During audit of 11 trade tax offices², it was noticed that 12 dealers concealed their sales turnover of Rs.62.84 crore during 1984-85, 1996-97, 1998-99 to 2002-03 assessed between November 2000 and December 2003 on which the Department levied tax of Rs.7.84 crore, but failed to levy penalty of Rs.3.92 crore. This resulted in loss of revenue of Rs.3.92 crore.

After this was pointed out in audit, the Department imposed penalty amounting to Rs.10.66 lakh in two cases between September 2001 and May 2004. Replies in other cases were awaited (August 2005).

- UPTT Act provides for special relief in tax to manufacturer on purchase of raw material, machinery, plant and equipment required for use in the manufacture of notified goods subject to fulfillment of certain conditions on submission of Form III-B. In cases, where such goods are used for a purpose other than that for which the recognition certificate is granted or have been disposed of otherwise, the dealer shall be liable to pay by way of penalty a sum not less than the amount of relief in tax secured by him but shall not exceed three times of such relief.

During audit of five trade tax offices³, it was noticed between July 2003 and June 2004 that five dealers holding recognition certificates for manufacture of goods, purchased raw material valued at Rs.1.83 crore at concessional rate of tax against Form III-B during 1999-2000 and 2000-01. Raw materials were not used in the manufacture of such goods for which the recognition certificates were granted. The dealers were, therefore, liable to pay minimum

¹ DC (A)-VII Kanpur and DC (A)-XI Lucknow

² AC Sect.I Azamgarh, DC(A)-II Gorakhpur, DC(A)-V & XIII Kanpur, TTO Mugalsarai, DC(A)-II & IV Muzaffarnagar, DC(A) Pilibhit, AC Sect.II Sitapur, AC Sect.I Sant Kabir Nagar & DC(A)-I Varanasi.

³ AC Sect. X Agra, AC Sect. II Sitapur, DC (A) Sikandarabad, DC(A)-III & VI Varanasi.

penalty of Rs.6.47 lakh equal to the relief of tax availed of by them but it was not imposed by the Department.

After this was pointed out in audit, the Department levied penalty of Rs.1.50 lakh in September 2004 in one case. Replies in other cases were awaited (August 2005).

The matter was reported to the Government (between March 2004 and August 2004); their reply has not been received (August 2005).

- Under UPTT Act, every person responsible for making payment to any contractor for discharge of any liability on account of valuable consideration payable for the transfer of property in goods in pursuance of works contract, shall at the time of making such payments deduct an amount equal to four *per cent* and deposit the same in Government treasury before the expiry of the following month. In the event of default, the assessing authority may direct that such dealer shall pay by way of penalty, a sum not exceeding twice the amount deductible but not so deducted.

During the audit of six trade tax offices¹, it was noticed between November 2002 and November 2004 that seven dealers assessed between March 2002 and March 2004, deducted tax at source valued at Rs.43.14 lakh from contractors during the years from 1999-2000 to 2001-02 and deposited the tax in treasury belatedly. Thus penalty of Rs.86.28 lakh was leviable but was not levied.

After this was pointed out in audit, the Department raised the demand of Rs.9.19 lakh in one case in September 2004, replies in other cases were awaited (August 2005).

The matter was reported to the Government (between September 2004 and February 2005); their reply has not been received (August 2005).

- Under the UPTT Act if a dealer, without reasonable cause fails to deposit the tax due before furnishing the return or along with the return, he would be liable to pay, by way of penalty in addition to the tax payable by him a sum, which shall not be less than 10 *per cent* but not exceeding 25 *per cent* of the tax due if the tax is upto Rs.10,000 and 50 *per cent* if the tax is due above Rs.10,000.

It was observed in audit of nine trade tax offices², that during May 2002 and May 2004, nine dealers liable to pay the tax due amounting to Rs.83.46 lakh either deposited the tax late or failed to deposit the tax at all. The delay ranged from one day to 52 months for which the dealers were liable to pay minimum penalty of Rs.8.34 lakh, which was not levied.

After this was pointed out in audit, the Department imposed between December 2002 and March 2004 a penalty of Rs.1.63 lakh in two cases; replies in other cases were awaited.

The cases were reported to the Government in December 2002 and May 2004; their reply has not been received (August 2005).

¹ AC Sect. III Bhadohi, AC Sect. I Etawah, DC (A)-VI Ghaziabad, AC Sect. II Lucknow, AC Sect. VI Meerut & AC Sect. I Saharanpur.

² TTO Sect.I Ferozabad, DC (A)-II Gorakhpur, DC (A) Gonda, DC(A)-XVIII Kanpur, TTO Khatauli, DC (A)-IV Lucknow, AC Maunathbhanjan, AC Najibabad & DC (A)-I Noida.

Loss of revenue due to incorrect grant of eligibility/recognition certificates

2.2.9 Eligibility Certificate

Under the UPTT Act, read with CST Act, the State Government notified a scheme to grant exemption from or reduction in rate of tax to new industrial units and the existing units undertaking expansion or modernisation and diversification on or after April 1995. To avail the facility of exemption or reduction of tax, the applicant is required to file an application in prescribed form before the district/zonal/state level committees. Though the Industries Department is the authority to issue EC it does so on the recommendation of the Trade Tax Department. The committee also has a representative of Trade Tax Department. Trade Tax Department issued instructions on 18 March 1986 prescribing certain checks to be exercised while recommending the case for issue of EC so that only eligible units may be allowed the benefit. Further, if the Commissioner is of the opinion that new unit to which the EC has been granted is not entitled to the facility, he may, by an order in writing cancel or amend the EC from a date specified in the order and such date may be prior to the date of such order.

During the course of audit of trade tax offices¹, it was noticed that 13 units which were not eligible for EC, were issued EC. This resulted in loss of revenue amounting to Rs.57.86 crore to the Department. The cases are discussed below :

- Under the provisions of the UPTT Act read with Government instructions issued on 31 March 1995, exemption or reduction in rate of tax is to be allowed to such existing units which had undertaken diversification of goods of a nature different from those manufactured by the units earlier.

During the test check of trade tax offices, it was noticed that three units were granted EC for diversification of industries to manufacture such goods which were similar and identical to those goods, which were already being manufactured by these units. Thus, grant of EC for diversification in violation of existing provisions of the Act/notification resulted in grant of excess exemption of Rs.40.37 crore out of which the units have availed exemption of Rs.23.03 crore as detailed below :

(Rupees in crore)

Sl. No	Name of Circle	Period of Exemption	Name of goods manufactured previously by the unit	Name of goods manufacturing under diversification	Amount of exemption allowed through EC	Tax exemption availed
1.	D.C.(A) Gautam Buddha Nagar	September 1995 to September 2005	Automobile two wheeler	Three gear single speed mini motor cycle	16.46	15.72
		January 1996 to January 2006	-do-	Scooter & their parts	18.31	4.40
2.	D.C. (A)-IX Noida	March 1995 to March 2003	Switch fuse units and air circuit breakers and bus duct (electrical items)	H.R.C Fuse ² (electrical goods)	1.28	0.29
		September 1995 to June 2003	-do-	Electrical switch gears generator parts (electrical goods)	2.83	2.35
3.	DC (A)-IA Ghaziabad	March 1998 to March 2006	Paracetamol tablets (medicine)	Paracetamol IP tablets (medicine)	1.49	0.27
TOTAL					40.37	23.03

¹ DC (A)-XII Agra, DC(A) Gautambuddhanagar, DC(A)-II & XI Ghaziabad, DC(A)-I Kanpur, DC (A)-II Lucknow, DC(A)-IX Noida & DC(A)-V Varanasi.

² High Rapture Capacity

- It has been judicially¹ held that a unit engaged in the manufacture of tax free goods is not entitled to exemption of tax on the sale of byproducts/waste products.

During the course of audit of DC (A)-V at Varanasi it was noticed that a unit engaged in manufacture of sugar (tax free) was granted eligibility certificate on 20 December 2002 for 15 years allowing exemption of tax of Rs.75.36 crore of molasses, bagasse and press mud which are byproducts of sugar. This resulted in incorrect grant of exemption of tax of Rs.75.36 crore out of which the dealer has availed tax exemption of Rs.1.25 crore.

- As per the Government notification issued on 14 June 1996, industries engaged in manufacturing coal including coke in all forms and charcoal were not entitled to the facility of exemption from or reduction in the rate of tax.

During the course of audit of DC (A)-V at Varanasi, it was noticed that two units engaged in manufacturing of hard coke low ash and slow smoke fuel coke were granted EC on 27 April 1998 and 16 January 2001 allowing exemption of tax of Rs.2.16 crore on sale of goods. The units started production on 27 November 1993 and 3 January 1997. The units were not entitled for exemption of tax of Rs.2.16 crore out of which tax exemption of Rs.1.47 crore was availed by the dealer.

- Under the provisions of Act, exemption or reduction in rate of tax is to be allowed to such units which are not defaulters in making payment of any dues under the Act or the CST Act or under any loan scheme administered by Pradeshiya Industrial and Investment Corporation of Uttar Pradesh (PICUP) regarding trade tax on sale or purchases of goods and have undertaken expansion or diversification. As per instructions issued by CTT in July 2000, in case of stay of any dues by court, the dealer would be treated as defaulter in payment of tax.

During the course of audit of five trade tax offices², it was noticed that six dealers were granted EC for expansion and diversification to avail exemption of tax of Rs.69.20 crore though they were defaulters in paying their dues. This resulted in incorrect grant of exemption of tax of Rs.69.20 crore out of which the dealers have availed tax exemption of Rs.7.63 crore.

- Government vide notification dated 21 February 1997, introduced a scheme providing exemption from or reduction in tax to new units intending to invest fixed capital of Rs.50 crore and above for establishing new units or undertaking expansion, diversification, modernisation or backward integration from 1 December 1994 with certain conditions specified therein. The facility was, however, not admissible simultaneously to such units which were already enjoying such benefit of exemptions under any other notification issued under the Act for these purposes.

During the audit of DC (A)-IV, Noida, it was noticed that a unit engaged in manufacture of colour television was granted EC in November 1998 for exemption/reduction of tax of Rs.31.73 crore for eight years from June 1997 to June 2005 under the scheme of 1995 on fixed capital investment of Rs.31.73 crore. The unit was again granted EC for exemption/reduction of tax of Rs.76.58 crore for 15 years during the year 2001-02 on total fixed capital investment of Rs.51.05 crore under the scheme notified on 21 February 1997.

¹ Kisan Sahkari Chini Mill Ltd. Nainital V/s State of U.P.(STI-1989 Page -294-Alld.H.C.)

² DC(A)-X Kanpur, DC(A)-II Lucknow, DC(A)-II Ghaziabad, DC(A)-XI Ghaziabad & DC(A)-XII Agra

Further, due to additional capital investment of Rs.7.84 crore during the years 1999-2000 to 2001-02, the EC for exemption from tax of Rs.85.82 crore under new scheme was granted in August 1999. As the unit was already availing the benefit of exemption/reduction of tax under the scheme notified on 31 March 1995, the issuance of the EC under notification dated 21 February 1997 was irregular. This resulted in incorrect allowance of exemption of tax amounting to Rs.54.09 crore out of which the dealer has availed exemption of Rs.21.40 crore.

- Under the provisions of the UPTT Act read with Government notification issued on 31 March, exemption or reduction in rate of tax was to be allowed to such units which had undertaken diversification of goods of a nature different from those manufactured by the unit earlier. CTT, UP also clarified vide circular dated 13 August 2001 that black and white TV and colour TV were goods of a similar nature, as such the exemption/reduction of tax was not admissible.

During audit of Assistant Commissioner (Assessment)-II Trade Tax, Ghaziabad, it was noticed in August 2002 that a dealer holding EC for exemption/reduction of tax for the period from 8 May 1997 to 7 May 2005 to manufacture black and white TV under notification dated 31 March 1995, was again granted eligibility certificate to avail exemption/reduction of tax for the period from 17 January 1999 to 16 January 2007 under diversification to manufacture colour TV. Since colour TV is similar in nature to black and white TV, the grant of EC under diversification was irregular. The dealer sold colour TVs valued Rs.25.76 crore during 1999-2000 to 2001-02 on which tax amounting to Rs.3.08 crore was exempted. This resulted in loss of tax of Rs.3.08 crore.

The cases were reported to the Government and Department in May 2003; their replies have not been received (August 2005).

Irregular allowance of exemption

2.2.10 Section 4 A of the UPTT Act provides exemption/reduction of tax to new industrial units holding EC on sale of specified goods shown therein subject to fulfillment of certain conditions. If a dealer sells goods other than those specified in EC or violates the condition no exemption/reduction in the rate of tax is admissible. As per the terms and conditions of the EC issued under different schemes granting exemption/reduction of tax, a unit is entitled to exemption/reduction of tax only in respect of manufacturing/sale of such goods which are specified in the EC.

CTT issued instructions on 12 December 1978 and 29 November 1985 to the assessing authorities to carefully examine the claim of dealer for exemption from tax while finalising assessments.

Test check of records of DC(A)-V Kanpur revealed that a dealer was granted EC for manufacturing ghee and butter on 16 March 2000. While finalising the assessments for the year from 1998-99 to 2000-01 in March 2002 and May 2004, besides ghee and butter, the assessing authority also allowed exemption of tax of Rs.66 lakh on the sale of skimmed milk powder valued at Rs.10.63 crore which was not included in the EC. This resulted in irregular grant of exemption of Rs.66 lakh.

- Test check of records of DC(A)-V Ghaziabad, revealed that a dealer was granted EC for manufacturing PET¹ bottles and pet pre form² to be used in filling beverages and other liquid materials manufactured by him. While finalising the assessment for the year 2000-01 during March 2003 the assessing authority exempted the sale turnover of Rs.5.32 crore of above PET bottles and pet pre form though the dealer was not entitled for the same. This resulted in irregular grant of exemption of Rs 20.70 lakh.

The matter was reported to the Department and Government (June 2004); their replies have not been received (August 2005).

- Under the CST Act read with Rules made thereunder, where a dealer claims that he is not liable to pay tax under this Act, in respect of any goods on the ground that movement of such goods from one state to another was occasioned by reason of transfer of such goods by him to any other place of his business or his agent or principal as the case may be and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on the dealer and for this purpose he may furnish to the assessing authority a declaration in form 'F' duly filled and signed by the consignee for availing exemption from tax.

The Act also provides that if a dealer issues or furnishes a false certificate or declaration by reason of which a tax on sale or purchase ceases to be leviable under this act, he may be liable to pay penalty for a sum not less than 50 *per cent* but not exceeding 200 *per cent* of amount of tax.

During the course of audit of DC (A)-VII Kanpur, it was noticed that a dealer claimed exemption of tax on branch transfer of vanaspati and refined oil valued at Rs.11.71 crore during the years 1997-98 and 1998-99 against forms 'F'. The assessing authority while making assessment in February 1999 and June 2000 allowed exemption of tax of Rs.47 lakh to the dealer. On cross verification by SIB in September 2001, these 'F' forms were found to be fake and the dealers to whom the goods were transferred were not in existence. The Department did not take any action to reassess the cases. This resulted in incorrect exemption of tax of Rs.47 lakh besides non imposition of minimum penalty of Rs.23.50 lakh.

- Under the provision of CST Act, inter State sale or purchase of goods affected by transfer of documents of title to the goods during their movement from one State to another against form E1/C, is exempted from payment of tax. The exemption is not admissible if there exists any purchase order prior to date of transfer of title of goods.

During the course of audit of AC Sector-V Kanpur it was noticed that a dealer sold goods valued at Rs.93 lakh against form E1/C in 2001-02 and was allowed exemption from tax of Rs.9 lakh. Scrutiny of these forms revealed that the goods were sold with purchase orders issued by purchasers prior to transfer of title of goods. Hence the exemption from tax of Rs.9 lakh allowed to the dealer was irregular.

- CTT issued instructions in 1978 that the purchases of big amount are required to be verified from the assessing authority in whose area the selling dealer is situated.

¹PET: Poly Ethelene Teraphthalate

² Pet pre form:- The processing material of PET bottle.

In five trade tax offices¹, it was noticed that in case of 27 dealers (more than Rs.25 lakh in each case), the sale turnover of Rs.488.54 crore was exempted from levy of tax during the period from 2002-03 to 2003-04 being tax paid goods purchased within UP. The assessing officers did not send verification memos to the respective assessing officers for verification under whose jurisdiction the seller dealers were doing business in disregard of the CTT instruction.

It indicates that there exists no internal control mechanism for the submission of sale list by the dealers and to check whether existing instructions were followed strictly.

Monitoring of recovery

2.2.11 After the assessment, the dealer is issued a notice to deposit the balance amount assessed within a period of 30 days of receipt of the notice. If the dealer fails to deposit the tax or any amount payable by him under the provisions of the Act within the period specified in the notice issued by the assessing authority, recovery certificate is issued authorising the DC (TRO) to recover the amount as arrears of land revenue.

Analysis of arrears and collection of revenue

2.2.12 The arrears of revenue and its recovery alongwith irrecoverable arrears likely to be written off for the year ending 31 March 1999 to 31 March 2003 are given below:

(Rupees in crores)

As on 31 st March	Amount of arrears	Arrears recovered during the year		Irrecoverable arrears likely to be written off	
		Amount	Percentage of Col. 3 to 2	Amount	Percentage of Col.5 to 2
1	2	3	4	5	6
1999	10,809.33	190.51	1.76	314.97	2.91
2000	9,415.87	168.58	1.79	389.99	4.14
2001	7,896.88	167.28	2.11	441.29	5.59
2002	8,406.44	190.80	2.27	503.97	5.99
2003	9,121.12	239.73	2.62	633.46	6.94

Institution of certificate proceedings

2.2.13 Tax, interest and penalty, which remain unpaid, constitute arrears in trade tax and are recoverable as arrears of land revenue.

The position of arrears of revenue and certified arrears of three zones during the period from 1998-99 to 2002-03 is as under :

(Rupees in crore)

Zone	As on	Total arrears	Certified cases	Percentage of certified cases to total revenue
Kanpur	31.03.1999	435.57	97.34	22.35
	31.03.2000	537.23	133.64	24.87
	31.03.2001	622.18	149.45	24.02
	31.03.2002	674.85	176.64	26.17
	31.03.2003	554.88	190.52	34.34
Agra	31.03.1999	846.75	391.64	46.25
	31.03.2000	735.68	561.61	76.64
	31.03.2001	729.39	600.96	82.39
	31.03.2002	624.94	361.63	57.87
	31.03.2003	370.36	191.71	51.76
Lucknow	31.03.1999	1,005.60	141.11	14.03
	31.03.2000	917.71	83.50	9.09
	31.03.2001	669.29	56.42	8.43
	31.03.2002	654.14	156.28	23.89
	31.03.2003	639.16	138.88	21.73

¹ AC-II & AC-V Ghaziabad, AC-I Hapur, AC-XIII Kanpur & AC- IX Lucknow.

Test check of records of above zones revealed that:

- details/records of revenue arrears more than five years old have not been maintained by any zone,
- percentage of certified revenue to total revenue arrears in respect of Kanpur and Lucknow zones is very much on lower side than Agra zone during the above period.

Though the position of arrears is reviewed by higher authorities through monthly/quarterly/annual returns, the overall arrears increased steadily from Rs.435.57 crore (1998-99) to Rs.674.85 crore (2001-02) in Kanpur zone.

Inordinate delay in implementation of Hon'ble Court's judgement

2.2.14 CTT issued a circular in January 2005 to all assessing authorities to levy tax on turnover of meter rent received from the consumers by Electricity Department in exercise of power under Transfer of Right to use Goods (TRUG) on the basis of judicial pronouncement¹ of Honourable Supreme Court in May 2000 and withdraw its previous circular issued in February 1996 regarding not to levy tax on such turnover with immediate effect.

During audit it was noticed that assessing authorities could not levy tax of Rs.11.48 crore on turnover of meter rent of Rs.229.54 crore from May 2000 to 2002-03 (upto the period of assessment) due to belated circulation of Supreme Court judgement. It is evident from the above that no proper mechanism for monitoring court judgement is in place at the commissioner level.

In reply it was stated that in February 2003 against the judicial pronouncement of Hon'ble Supreme Court of India, in case of Bharat Sanchar Nigam Limited, the Department referred the case to the Government in January 2004 for levy of tax on meter rent which was decided by Government in December 2004. Reply is not tenable as non initiation of effective measure to implement Court judgement resulted in avoidable delays and consequent non levy of tax.

Conclusion

2.2.15 Despite existence of provisions of UPTT Act and CST Act and Rules made thereunder to levy assessment and collection of trade tax, the Department failed to take effective and meaningful action in implementation of such provisions/rules. Non registration of dealers, incorrect assessment, incorrect grant of EC and RC and non follow up of prescribed procedure led to loss of revenue amounting to Rs.72.21 crore to the Department.

Recommendation

2.2.16 Government may consider taking following steps to enhance the effectiveness in levy, assessment and collection of revenue :-

- cases involving arrears of revenue may be reviewed periodically to avoid their becoming old and leading to defaulters becoming untraceable and
- develop a strong internal control mechanism to check the deficiencies and lapses in the implementation of the various provisions of Acts, Rules and instructions issues by the Government/Department.

¹ STI 2000 Supreme Court: 20th Century Finance Corporation Ltd. & Anr. etc. etc. V/s State of Maharastra dated 09.05 .2000

The review has been sent to the Department/Government (June 2005); their replies have not been received (August 2005).

2.3 Non levy of purchase tax

Under Section 3 AAAA of UPTT Act, every dealer who purchases any taxable goods from any person other than a registered dealer, shall be liable to pay purchase tax at the same rate at which tax is payable on the sale of such goods.

During the course of audit of Assistant Commissioner, Sector II, Jaunpur it was observed in July 2003, that three dealers purchased 'unfinished carpets' valued at Rs.1.25 crore from unregistered dealers during 2000-01. The assessing authority while finalising assessments between April 2002 to February 2003 did not levy purchase tax. This resulted in non levy of purchase tax amounting to Rs.15.59 lakh.

After this was pointed out in audit, the Department stated in March 2004 that demand of tax of Rs.15.59 lakh was raised in January 2004. Further progress of the cases was awaited (August 2005).

The matter was reported to the Government in December 2003; reply has not been received (August 2005).

2.4 Non levy of tax due to turnover escaping assessment

Under the UPTT Act, turnover means the aggregate amount for which goods are supplied or distributed by way of sale, or sold by a dealer, whether for cash or deferred payment or other valuable consideration under the Act. Further, it is the duty of the assessing authority to ascertain the total turnover of the dealer from the records maintained by him irrespective of the fact that it is taxable or not.

During audit of five trade tax offices, it was noticed between August 2002 to September 2004, that while finalising the assessment of eight dealers for the year 1999-2000 to 2001-02, between November 2001 and March 2004, taxable turnover amounting to Rs.4.15 crore escaped assessment. This resulted in non levy of tax amounting to Rs.46.25 lakh as shown below :

(Rupees in lakh)							
Sl. No.	Name of office (No. of dealers)	Assessment year Month of assessment	Escaped turnover	Commodity	Rate of tax (in per cent)	Amount of tax not levied	Remark
1.	DC (A) XI, TT Agra (2)	2000-01 February 2003 and 2001-02 and March 2004	22.10	Indian Made Foreign Liquor	32.5	7.19	Licence fee was not included in turnover
2.	DC(A)II, TT Hapur (3)	1999-2000 March 2002	45.91	-do-	-do-	14.92	- do -
		2000-01 January 2003					
		2000-01 February 2003	119.37	Paper cone and paper scrap	10	11.94	Turnover shown in balance sheet differs from the turnover assessed
		2000-01 February 2003	11.90	Timber	20	2.38	Cutting charges were not included
3.	DC(A)I, TT Saharanpur (1)	2000-01 December 2002	54.08	Tractor and Farmers kit	5	2.70	Insurance charges were not included
4.	DC(A)I, Jhansi (1)	1999-2000 November 2001	96.57	Food grain	4	3.86	Assessed turnover was less than shown in account

Sl. No.	Name of office (No. of dealers)	Assessment year Month of assessment	Escaped turnover	Commodity	Rate of tax (in per cent)	Amount of tax not levied	Remark
5.	DC(A)VI, TT Ghaziabad (1)	1997-98 November 2001	65.20	Burnt Transformer Oil	5	3.26	Turnover shown in balance sheet differ from the turnover assessed
		1998-99 March 2001					
		Total	415.13			46.25	

The matter was reported to the Department and the Government in July 2003 and July 2004; their replies have not been received (August 2005).

2.5 Non levy of interest

- Under UPTT Act, every dealer liable to pay tax, is required to submit returns of his turnover at prescribed intervals and to deposit the amount of tax due, on the turnover disclosed in the returns. The tax admittedly payable by the dealer, if not paid by the due date, attracts interest at the rate of two *per cent* per month till the date of deposit.

Test check of the records of 10¹ Asstt. Commissioner (A) / Dy. Commissioner (A) revealed that assessment of 12 dealers for the year 1987-88 to 2002-03 were finalized between March 2001 to November 2003. Scrutiny of the assessment records revealed that the dealers belatedly deposited admitted tax of Rs.4.72 crore and the delay ranged between 11 month and 24 days to 191 months and 25 days on which interest of Rs.5.71 crore was leviable but not levied by assessing authorities.

After this was pointed out, the Department levied interest amounting to Rs.10.91 lakh in three cases between September 2003 and July 2004 out of which Rs.0.54 lakh has been recovered. Further reply was awaited (August 2005).

The cases were reported to the Department and Government between June 2002 and September 2004; reply of the Government in all the cases and of the Department in rest of the cases is awaited (August 2005).

- Under the UPTT Act, every person responsible for making payment to any dealer for discharge of any liability on account of valuable consideration payable for the transfer of property in goods in pursuance of a works contract should deduct an amount equal to four *per cent* of such sum and deposit the same in Government treasury before the expiry of the following month. If such person fails to deposit the amount so deducted into treasury within the time prescribed, he shall be liable to pay simple interest at the rate of 18 *per cent* per annum on the amount not deposited.

During the audit of trade tax offices, Bhadohi and Lucknow it was noticed between July 2004 and September 2004 that in the case of two dealers, the Executive Engineers deducted the tax at source amounting to Rs.30.56 lakh during the years 1999-2000 and 2000-2001 and deposited it in treasury after the due dates. The delay ranged from 18 days to 36 months. Thus, interest amounting to Rs.8.53 lakh was leviable but was not levied.

The matter was reported to the Department and the Government (September 2004 to December 2004); their replies have not been received (August 2005).

¹ DC(A)-III Kanpur, DC (A) Karvi, DC(A) Sonbhadra, DC(A) Mugalsarai, AC Sect.VI & VII Allahabad, AC Sect.II Kanpur, AC Sect.IX Lucknow, AC Sect. II Bareilly, AC Pokhrayan.

2.6 Short levy of CST

Under the CST Act, tax on interstate sale of goods not covered by declaration form 'C' is leviable at the rate of 10 *per cent* or at the rate applicable on sale or purchase of such goods within the State, whichever is higher. In case of sale of goods, which are taxable at a rate lower than four *per cent*, the tax shall be calculated at the lower rate as the case may be.

During audit of two trade tax offices¹ it was noticed in October 2003 and July 2004, that during the year 2000-01 and 2001-02, two dealers assessed between February 2003 and December 2003, made inter State sales of potato chips and body of the bus (mounted on the chassis) respectively valued at Rs.2.80 crore without declaration in Form 'C' and levied tax at the rate of four and 10 *per cent* instead of 12 *per cent*. This resulted in short levy of tax amounting to Rs.9.55 lakh.

The matter was reported to the Department and the Government (between November 2004 to June 2005); their replies have not been received (August 2005).

2.7 Non imposition of penalty under CST Act

Under CST Act, if a registered dealer purchases any goods from outside the state at concessional rate of tax on the strength of declaration in form 'C', by falsely representing that such goods are covered by his registration certificate or if goods so purchased are used for a purpose other than specified in registration certificate, the dealer is liable to be prosecuted. However, in lieu of prosecution, if the assessing authority deems fit, he may impose a penalty upto one and a half times of tax payable on sale of such goods.

Audit of assessment records of 27 trade tax offices² revealed that 29 dealers assessed between January 2001 to March 2004 for the year 1998-99 to 2002-03, purchased goods valued at Rs.23.24 crore against declaration in form 'C' which were either not covered by their certificates of registration, or were used for purpose other than that for which registration certificate was granted. The dealers were, therefore, liable to pay penalty of Rs.3.99 crore.

After this was pointed out in audit, the Department stated that in six cases penalty amounting to Rs.18 lakh had been imposed between January 2002 to July 2004. The report regarding recovery and replies in the remaining cases had not been received (April 2005).

The matter was reported to the Department and the Government (between September 2001 to October 2004); their replies have not been received (August 2005).

2.8 Non levy of composition money

Under the provisions of compounding scheme for vegetable ghee manufacturers for the year 1998-99, composition money was to be calculated at the rate of Rs.600 per MT of the installed capacity. If the manufacturer increases the installed capacity, he has to inform the Department within 30

¹ DC(A)-IV TT Noida, DC (A)-II Meerut

² A.C.Sector 4 Agra, A.C. (A) T.T, Amroha, D.C. (A) Gonda, D.C.(A) 18 Kanpur, D.C.(A)5 Meerut, D.C.(A) Mainpuri, D.C. (A)2 NOIDA, D.C. (A) Pilibhit, D.C.(A)4 Saharanpur. DC(A)-1 Ghaziabad, DC(A)-2 Meerut. TTO Mogalsari, DC(A)-I TT Jhansi, DC(A)-I Orai, DC(A) Azamgarh, AC(A) Sector-I Gorakhpur, AC(A) Sector-6 Moradabad, DC(A)-4 Lucknow, TTO Sector-6 Varanasi, AC(A) Mawana, AC Sector-6 Ghaziabad, AC(A) Sector-2 Khurja, DC(A)-9 Noida, DC(A)-5 Noida, AC Sector-10 Agra, DC (A)-IV Noida and DC (A)-VII Kanpur.

days and the composition money would be revised accordingly, which is to be deposited by the dealer within the stipulated period failing which he has to pay simple interest at the rate of two *per cent* per month for the delayed period.

During the audit of trade tax circle of Kanpur, it was observed in September 2004 that a dealer manufacturing vegetable ghee opted for compounding scheme for the period 1998-99 and 1999-2000. The installed capacity for production of vegetable ghee for 1998-99 was 15,000 metric tons, which was enhanced to 24,000 metric tons in 1999-2000. Scrutiny of the assessment revealed that the dealer produced 21,850.79 metric tons during 1998-99 and 33,492.66 metric tons during 1999-2000 of vegetable ghee. He did not inform the assessing authorities about the increase in the production capacity as per the scheme. Though the Department was fully aware of the fact regarding enhanced capacity as shown in the assessment, the assessing authority while assessing the dealer in March 2001 and December 2001 did not levy composition money on enhanced production. This resulted in non levy of composition money amounting to Rs.98.06 lakh on additional production. Besides, interest amounting to Rs.1.26 crore was also leviable.

The matter was reported to the Department and Government in June 2005; their replies have not been received (August 2005).

2.9 Irregular benefit of compounding scheme to undivisible electrical contractors

Under the compounding scheme for undivisible electrical contractors, it is provided that the benefit of the scheme will be admissible only to the contracts which are undivisible i.e. for a works contract in which the amount for supply of goods and their works are not specified separately, but are undivisible. It has judicially¹ been held that if the amount for supply of goods and their works are specified separately, the contract will not be undivisible and it would be a complete sale of goods involved in the execution of works contract.

Test check of records of a trade tax circle at Gorakhpur revealed in February 2004, that during 2000-01 in the case of a dealer in respect of two contracts, payment for supply of electrical goods for Rs.86.92 lakh and payment for installation of these goods for Rs.19.50 lakh was received by him on which Department levied composition money of Rs.2.13 lakh in February 2003.

In view of the provisions of scheme and judicial decision the work was not undivisible and the dealer was liable to pay tax of Rs.8.69 lakh on the sale of goods for Rs.86.92 lakh at the rate of ten *per cent* instead of assessing under compounding scheme. This resulted in short levy of tax of Rs.6.56 lakh.

The matter was reported to the Department and Government in June 2005; their replies have not been received (August 2005).

¹ Gannon Duncan and Company V/S State of Rajasthan (1993) 88-STC 204 (S.C.)