

CHAPTER - 2 : TRADE TAX DEPARTMENT

2.1 Results of Audit

Test check of assessments and other records of Trade Tax Offices, conducted in audit during 2001-2002 revealed under assessment of tax, non-levy or short-levy of penalty/interest, irregular exemption of tax etc. amounting to Rs. 157.68 crore in 1299 cases, which broadly fall under the following categories:

(Rupees in crore)

| Sl. No. | Categories | No. of cases | Amount |
|---------|--|--------------|---------------|
| 1. | Non-levy or Short-levy of penalty/interest | 626 | 12.89 |
| 2. | Irregular exemption | 180 | 8.55 |
| 3. | Non-levy of additional tax | 50 | 1.40 |
| 4. | Incorrect rate of tax | 191 | 4.61 |
| 5. | Misclassification of Goods | 38 | 0.30 |
| 6. | Turnover escaping tax | 53 | 0.34 |
| 7. | Irregularities relating to Central Sales Tax | 27 | 0.84 |
| 8. | Under assessment of tax | 20 | 0.10 |
| 9. | Exemption/ concession under UPTT Act, 1948 | 1 | 35.30 |
| 10. | Long D. P. on "Reopening of Assessment orders under Section 30 of UPTT Act, 1948". | 1 | 45.83 |
| 11. | Other irregularities | 112 | 47.52 |
| | Total | 1299 | 157.68 |

During the year 2001-2002, the department accepted under assessment etc. of Rs. 47.88 crore involved in 916 cases of which Rs. 43.03 lakh involving 109 cases had been pointed out in audit during 2001-2002 and rest in earlier years. Of this a sum of Rs. 5.80 lakh involved in 45 cases had been recovered upto March 2002.

A few illustrative cases and a Review on "**Exemption/concession under U.P. Trade Tax Act, 1948**" involving Rs. 100.37 crore are discussed in the following paragraphs:

2.2 Review on "Exemption/Concession under U.P. Trade Tax Act, 1948"

2.2.1 Introduction

Under the U.P. Trade Tax Act, 1948, (Act) State Government may, by notification, grant exemption from levy of tax on the sales or purchases of such goods by such other person or class of persons, with or without certain conditions, as may be prescribed.

With a view to increasing the production of certain goods or for promoting the development of industries, the Government of Uttar Pradesh introduced tax incentive schemes for the newly set-up industrial units for specified period under the provisions contained in Section 4-A of the Uttar Pradesh Trade Tax Act, 1948. The schemes offered several incentives and relief from taxation including exemption from or reduction in the rate of tax, moratorium from payment of admitted tax, exemption from levy of sales or purchase tax on purchase of raw materials and grant of interest free loans to the manufacturers holding eligibility certificate granted by the Industries Department. General Manager, District Industries Centre is responsible for issue of eligibility certificate in respect of units located in the district under his control while Area Development Officer is responsible for issue of eligibility certificate in respect of unit situated in Industrial Development Authority Area.

Section 4-B of the Act also provides for special relief in tax (Nil or concessional rate of tax) to manufacturers on purchase of raw materials, processing materials, and packing materials etc. required for the use in manufacture of notified goods on fulfilment of certain conditions.

The Act, further provides for levy of tax and penalty for non-compliance of recitals of declarations and conditions prescribed therein etc.

2.2.2 Organisational Set-up

The overall superintendence, control and direction of Trade Tax department vests with the Commissioner of Trade Tax, U.P., who is assisted by Additional Commissioners, Deputy Commissioners, Asstt. Commissioners and Trade Tax Officers. The State is divided into 14 zones[©] consisting of 36 ranges, each headed by Addl. Commissioner and Dy. Commissioner (Executive) respectively. The range is further divided into circles and sectors, each under the charge of an Asstt. Commissioner (Assessment) and Trade Tax Officer respectively.

2.2.3 Scope of Audit

With a view to ascertaining the extent of compliance with the provisions of the Act/Rules and departmental instructions regarding exemptions and

[©] After formation of State of Uttaranchal

incentives allowed to new industries from time to time and to prevent evasion of tax, a review was conducted from September 2001 to April 2002. For this purpose, test check of assessment records for the period from 1996-97 to 2000-2001, was carried out in the offices of the Asstt. Commissioners (Assessment) and Trade Tax Officers of 15 ranges out of 36 ranges.

2.2.4 Highlights

- **8 units in 6 circles were granted incorrect exemption from levy of tax amounting to Rs. 20.08 crore.**

(Para 2.2.5)

- **3 units in 2 circles were allowed excess grant of exemption from tax of Rs. 8.34 crore**

(Para 2.2.6)

- **5 units in 3 circles were allowed incorrect concessions of Rs. 3.02 crore on purchase of raw materials.**

(Para 2.2.7)

- **Grant of exemptions on sales or purchases of goods with retrospective effect resulted in forgoing of revenue of Rs. 96.45 lakh.**

(Para 2.2.8)

- **Irregular exemption on sales or purchases resulted in non-levy of tax of Rs. 2.11 crore.**

(Para 2.2.9)

- **Undue financial benefits of Rs. 115.81 crore accrued to dealers due to lacunae in Act/Rules/ Notifications.**

(Para 2.2.10)

2.2.5 Incorrect grant of exemption

Under Section 4-A of the Act, exemption from/reduction in the rate of tax is available to a new unit only if it furnishes to the assessing officer an eligibility certificate issued by the Industries Department. The name of goods to be manufactured, investment in fixed capital assets, installed annual production capacity, quantum of tax relief and period for which it can be availed of by the unit are specified in the eligibility certificate.

(I) Under Section 3-AAAA of the U.P. Trade Tax Act, 1948, the sale of dressed hides and skins or of tanned leather after dressing or of raw hides and skins, shall be deemed to be of same form and condition, as no manufacturing is involved.

In two Trade Tax Circles (Agra and Kanpur) it was noticed that three units were granted eligibility certificate between September 1990 and September 1997 for exemption from tax for different periods for manufacture and sale of finished (tanned) leather. As tanned leather is not different from raw hides and skins under the Act, no manufacturing was involved. The irregular issue of eligibility certificate resulted in grant of incorrect exemption to these units amounting to Rs. 9.00 crore.

(II) A new unit established by a person after 31 March 1990, to be eligible for exemption, can not manufacture the same goods on or at an adjacent site of an existing factory manufacturing the same goods wherein such person has interest as promoter, director, as holding company or as subsidiary company, if such existing factory is closed.

In Trade Tax Circle Kanpur, a unit manufacturing M.S. Ingot was granted eligibility certificate for tax exemption of Rs. 2.31 crore with effect from 19 June 1995 to 18 June 2001. Test check of records revealed that another unit which was established on the same site was closed down in March 1996 after availing benefit of tax exemption of Rs. 76.50 lakh from 15 June 1988 to 29 May 1995. As the promoters / directors of both the units were the same, the eligibility certificate issued for grant of exemption of Rs. 2.31 crore was incorrect.

(III) The Government vide notification dated 27 May 1991 granted exemption from or reduction in rate of tax to new units and also to units which have undertaken expansion, diversification or modernisation. As per notification, units engaged in filtering oil after its purchase are not eligible for exemption.

(a) In two Trade Tax Circles (Kanpur & Lucknow) it was noticed that two units engaged in filtering lubricant oil were granted irregular eligibility certificate for tax exemption of Rs. 70.65 lakh.

(b) A unit engaged in manufacture of detergent cake and powder was granted eligibility certificate for manufacture of goods namely comboded cake and powder under diversification scheme in September 2000. Since the comboded cake and powder are also detergents and are of same nature as detergent cake and powder, the exemption granted was incorrect. Another unit engaged in the manufacture of soft drinks was also granted eligibility certificate under diversification scheme in April 1996 for manufacture of fruit juice (Slice) which is also a soft drink. As such the exemption allowed in these two cases was incorrect and resulted in incorrect grant of exemption of Rs. 8.06 crore.

2.2.6 Excess grant of exemption from Tax

As per notification dated 31 March 1995, exemption/reduction in rate of tax on sale of goods manufactured in a unit which has undertaken expansion/modernisation and diversification on or after 1 April 1995 but not

later than 31 March 2000 shall be limited to the additional Fixed Capital Investment (FCI).

During the audit of two Trade Tax Circles, (Ghaziabad and Meerut) it was noticed that three dealers were granted (September 1995 and September 2000) eligibility certificate for diversification and exemption for Rs. 24.51 crore, whereas the exemption was to be limited to additional FCI of Rs. 16.17 crore. This resulted in excess grant of tax exemption of Rs. 8.34 crore.

2.2.7 Incorrect Concessions

The U.P. Trade Tax Act, 1948 and notification dated 31 March 1995 issued thereunder provide that tax on the sale of finished goods/products of the exempted units shall be computed at the general rate of tax leviable under the Act, and adjusted accordingly against the exemption limits.

In three Trade Tax Circles, (Allahabad, Ghaziabad and Lucknow) it was noticed (October 2001) that five dealers holding eligibility certificate, sold the manufactured goods at concessional rate of tax against various declaration forms and the assessing authority adjusted the tax against the exemption limits instead of at prevalent rate of tax. This resulted in short adjustment of tax amounting to Rs. 3.02 crore as detailed below:

(Rupees in lakh)

| Sl. No. | Name of the unit | Assessment Year | Tax payable at normal rate | Tax paid at concessional rate | Short levy of tax |
|---------|-------------------------|-------------------------|----------------------------|-------------------------------|-------------------|
| 1 | 2 | 3 | 4 | 5 | 6 |
| 1. | A.C.(A)-6 Lucknow | 1995-96 to 1998-99 | 170.87 | 62.30 | 108.57 |
| 2. | A.C.(A)-12 Lucknow | 1997-98 to 1998-99 | 83.00 | 16.55 | 66.45 |
| 3. | T.T.O. XI Lucknow | 1997-98 to 1998-99 | 00.50 | 00.13 | 0.37 |
| 4. | T.T.O. VII Allahabad | 1997-98 to 1998-99 | 27.66 | 6.91 | 20.75 |
| 5. | A.C.(A)-I Ghaziabad | 1998-99 to 1999-2000 | 161.00 | 55.25 | 105.75 |
| | Total | | 443.03 | 141.14 | 301.89 |

2.2.8 Grant of exemption with retrospective effect

Under Section 25 of the Act, where the Government is satisfied that it is necessary so to do in public interest, it may issue a notification to make it effective from a date not earlier than six months from the date of such notification.

The Commissioner of Trade Tax vide circular dated 17 October 2001 exempted exporters of carpets from the levy of tax and interest thereon on the

purchase of carpets from the unregistered dealers during the period from 1 October 1997 to 14 February 1999 which was in violation of the provision of the Act.

During the test-check of records of Trade Tax Officer, Bhadohi, it was noticed that twenty six exporters of carpets who purchased carpets valued at Rs. 7.71 crore from unregistered dealers during 1998-99 were exempted from levy of sales tax and interest of Rs. 96.45 lakh on the basis of Commissioner orders dated 17 October 2001. This resulted in irregular exemption of Rs. 96.45 lakh.

2.2.9 Irregular grant of exemption

(i) Notification dated 27 February 1997 provides that exemption shall be available upto a turnover of Rs.50 lakh only, in any assessment year to an institution against certificate issued by KVIC[♦] or UPKVI[©] Boards. Certificate issued to an individual or firm shall not be eligible for availing exemption.

In the Trade Tax Circle, Kanpur, it was noticed (September 2001) that two dealers were issued certificate by UPKVI Board for manufacture and sale of specified products and were allowed exemption from tax during the years 1997-98 and 1998-99. As the dealers were partnership firms, the exemption of sales tax allowed to them was irregular. This resulted in loss of revenue amounting to Rs. 6.51 lakh.

(ii) During the audit of Trade Tax Circle, Lucknow, it was noticed (October-2001) that two dealers manufactured and sold washing soap valued at Rs. 81.68 lakh during 1998-99 without payment of tax. The assessing authority also exempted the goods from payment of tax treating it to have been covered under exemption granted by KVIC. The exemption granted was incorrect as no such certificate was issued either by KVIC or by District Gramodyog Adhikari, Lucknow. This resulted in incorrect exemption of tax of Rs. 6.13 lakh.

(iii) The manufacture and sale of footwear is not eligible for exemption, as this product is not specified in the schedule as Khadi and Village Industry.

In Trade Tax Circle, Agra, it was noticed that a dealer holding certificate from U.P. Khadi Gramodyog department made a tax-free purchase of raw material to the tune of Rs. 71.28 lakh and manufactured footwear which were sold tax-free amounting to Rs. 95.01 lakh during the year 1998-99. The assessing authority while finalising the assessment (March 2001) did not levy tax treating it as tax-free purchase and sale. This resulted in non-levy of tax of Rs. 10.24 lakh on purchase and sale of goods.

(iv) Section 4-A of the Act, provides for exemption from/reduction in the rate of tax to the new industrial unit holding eligibility certificate on the sale

[♦] KVIC - Khadi Village Industries Commission

[©] UPKVI - Uttar Pradesh Khadi Village Industries

of goods manufactured by it for specified period on the fulfilment of certain conditions.

During the audit of Trade Tax Circle, Lucknow it was noticed that a dealer was exempted from levy of tax on the sale of Rs. 15 crore of "self manufactured" asbestos sheet during 1998-99 for which the Industries Department had not issued any eligibility certificate. This resulted in the loss of revenue amounting to Rs.1.88 crore.

2.2.10 Undue benefit due to Lacunae in Act /Rules/Notification

Exemptions under Section 4-A of the Act, were introduced from time to time for the purpose of increasing the production of specified goods or for promoting development of specified industry in the State. Such incentives were introduced to motivate sustained growth and to generate employment for its inhabitants.

During Test-check, information collected in respect of 279 new units revealed that these units were closed either during the period of exemption or soon after availing of exemption. The units had already availed exemption of Rs. 115.81 crore between 1990-91 and 1999-2000. There was neither any deterrent provision in the Act and Rules to safeguard the fulfilment of objective nor any provision to recover the exempted amount in case the unit did not continue for certain period after the availment of the exemption. This led to undue benefit to the units.

2.2.11 Cross verification

Under the Act and Rules made thereunder registered dealers are entitled to the purchase of goods free of tax or at the concessional rate, if the goods so purchased are for re-sale or for use in manufacture of goods for sale provided the purchasing dealer furnishes prescribed declaration forms to the selling dealers.

A cross verification of the declaration forms pertaining to the purchases made by two dealers of Gautam Budha Nagar, revealed that a dealer of A.C.(A) II, Trade Tax, Noida, sold natural gas valued at Rs. 333.78 crore at the concessional rate of tax against the declaration forms during 1998-99 but the selling dealer had accounted for Rs. 317.88 crore only in his accounts. Thus, the sale turnover of Rs. 15.90 crore escaped assessment, which resulted in short levy of tax amounting to Rs.79.47 lakh.

2.2.12 Lack of internal control

Test check of relevant registers, records, files and assessment cases related to exemption / concession revealed that the Trade Tax Department/Finance Department neither estimated nor worked out the financial impact and revenue that would have forgone due to exemption/concession. No mechanism was in position to detect incorrect and irregular exemptions granted to new

industries. These clearly indicate that department failed to provide adequate internal controls in implementation of the prescribed procedure.

Data regarding total number of units which availed exemption, units that closed business, the amount of exemption allowed under the exemption schemes was not maintained. Consequently, the progress made in achievement of targets and objectives could not be ascertained.

2.2.13 Conclusion

The scheme of exemption/concession was contemplated with the intention that these policies would enhance industrialization in the state especially in the backward areas. This scheme failed since a large number of industries were either closed during the period of exemption or soon after availing of exemption. As there was no penal provision in the U.P. Trade Tax Act to bring these industries to book, no action could be taken by the department against them. Ineligible/defaulting units had been allowed exemptions on one pretext or another. There existed no co-ordination between the Trade Tax Department and the departments issuing the eligibility certificates. There was poor and inefficient internal control. As a result, incorrect exemptions were granted leading to loss of tax revenue.

The matter was reported to Department and Government (July 2002); their replies have not been received (November 2002).

2.3 Reopening of Assessment orders under Section 30 of U.P. Trade Tax Act, 1948

Section 30 of the U.P. Trade Tax Act, 1948 empowers the assessing authority to set aside an order of assessment passed ex-parte and reopen the same, provided the dealer applies to the assessing authority accompanied by satisfactory proof of the payment of admitted tax within 30 days of the service of the order, and the authority is satisfied that the applicant did not receive notice or was prevented by sufficient cause from appearing on the date fixed for hearing.

(A) Frequent use of provisions of Section 30

Test check of records of six Assistant Commissioners (Assessment) and one Trade Tax Officer revealed that in the case of seven dealers, reassessments were made ex-parte under Section 30 repeatedly (ranging between one time to seven times) during the years between October 1996 and June 2001. But the cases were still pending under this Section. This resulted in non-realisation of revenue of Rs. 45.29 crore for the period from March 1993 to March 1998 for the assessment years from 1987-88 to 1996-97 as detailed below:

(Rupees in lakh)

| S. N. | Name of offices | Assessment Year | Date of exparte assessment order | Tax levied on exparte assessment | Date on which last reassessed under Section 30 | Tax levied under Section 30 | Amount of tax deposited | Non-realisation of revenue | How many times reassessed |
|--------------|----------------------|-----------------|----------------------------------|----------------------------------|--|-----------------------------|-------------------------|----------------------------|---------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 1 | A.C.(A)IX, Agra | 1992-93 | 27.3.1996 | 13,512.01 | 7.2.2001 | 13,881.66 | 9738.18 | 4143.48 | 7 Times |
| 2 | AC(A)III, Lucknow | 1991-92 | 31.3.1994 | 6.00 | 27.10.1996 | 6.00 | -- | 6.00 | 5 Times |
| | | 1992-93 | 31.3.1994 | 6.00 | 27.10.1998 | 6.00 | -- | 6.00 | 5 Times |
| | | 1996-97 | 22.3.1998 | 3.75 | 31.3.2000 | 3.75 | -- | 3.75 | 2 Times |
| 3 | TTO XXI, Kanpur | 1993-94 | 20.3.1996 | 16.00 | 30.12.2000 | 16.00 | -- | 16.00 | 5 Times |
| | | 1994-95 | 27.3.1996 | 40.00 | 30.12.2000 | 40.00 | -- | 40.00 | 5 Times |
| 4 | AC(A)V, Kanpur | 1994-95 | 23.10.1997 | 22.80 | 7.6.2001 | -- | 17.02 | 5.78 | 2 Times |
| | | 1995-96 | 21.11.1997 | 4.80 | 7.6.2001 | -- | 1.46 | 3.34 | 2 Times |
| 5 | AC(A)V, Lucknow | 1995-96 | 28.3.1998 | 49.50 | 25.1.1999 | 49.50 | 22.25 | 27.25 | 1 Time |
| 6 | A.C.(A) III, Lucknow | 1990-91 | 25.5.1993 | 49.69 | 29.1.1998 | 49.69 | -- | 49.69 | 6 Times |
| | | 1992-93 | 25.5.1993 | 89.49 | 27.1.1998 | 89.49 | -- | 89.49 | 5 Times |
| | | 1993-94 | 12.3.1997 | 38.25 | 14.3.2000 | 38.25 | -- | 38.25 | 4 Times |
| | | 1995-96 | 30.3.1998 | 37.50 | 15.3.2000 | 37.50 | -- | 37.50 | 4 Times |
| | | 1996-97 | 30.3.1998 | 37.50 | 15.3.2000 | 37.50 | -- | 37.50 | 2 Times |
| 7 | AC (A) V, Lucknow | 1987-88 | 31.3.1993 | 13.60 | 26.12.2000 | 10.20 | 0.55 | 9.65 | 6 Times |
| | | 1988-89 | 31.3.1993 | 6.80 | 26.12.2000 | 4.86 | 0.05 | 4.81 | 5 Times |
| | | 1989-90 | 19.3.1994 | 5.45 | 21.12.2000 | 3.86 | -- | 3.81 | 5 Times |
| | | 1990-91 | 29.3.1995 | 2.93 | 27.12.2000 | 1.98 | -- | 1.98 | 5 Times |
| | | 1991-92 | 21.3.1996 | 2.79 | 27.12.2000 | 2.20 | -- | 2.20 | 5 Times |
| | | 1992-93 | 21.3.1996 | 2.96 | 26.12.2000 | 2.08 | -- | 2.08 | 5 Times |
| Total | | | | | | | | 4528.61 | |

(B) Irregular reopening of cases

Under the provisions of Section 30 of the Act, a dealer having deposited his admitted tax may apply to the assessing authority within 30 days of the service of the order to set aside an order passed ex-parte and if such authority is satisfied it may set aside the order and reopen the case for hearing.

Test check of records of 2 Trade Tax Offices revealed that the assessing officers admitted the cases for reopening under Section 30 though the admitted tax had not been paid in full by the dealers. This resulted in loss of revenue of Rs. 53.72 lakh, as detailed below:

(Rupees in lakh)

| Sl. No. | Name of offices | No. of dealers | Year of assessment | Admitted tax due | Admitted tax paid | Tax levied on ex-parte assessment | Tax levied u/s 30 | Loss of revenue |
|---------|----------------------|----------------|--------------------|------------------|-------------------|-----------------------------------|-------------------|-----------------|
| 1 | AC (A) XIX, Kanpur | One | 1994-95 1995-96 | 13.12 28.81 | 12.13 28.42 | 14.96 69.25 | 13.12 28.81 | 1.84 40.44 |
| 2 | AC (A) XIX, Kanpur | One | 1998-99 | 0.33 | 0.24 | 7.00 | 0.73 | 6.27 |
| 3 | TTO Sector-I, Jhansi | One | 1997-98 | 0.08 | 0.07 | 5.25 | 0.08 | 5.17 |
| | Total | | | 42.34 | 41.86 | 96.46 | 42.74 | 53.72 |

On this being pointed out in audit, the department replied (June 2001 and March 2002) that these cases were opened in accordance with the provisions of Section 30. The reply is not tenable as the admitted tax was not deposited in full.

2.4 Short levy of tax

(A) Misclassification of goods

Under the U.P. Trade Tax Act, 1948 (Act), tax is levied as per the schedule of rates notified by the Government from time to time.

During audit of 7 Trade Tax Offices, it was noticed (between January 1998 to November 2001) that due to misclassification of goods, correct rate of tax was not applied which resulted in short levy of tax amounting to Rs. 64.79 lakh (including of additional tax) as detailed below:

(Rupees in lakh)

| S. N. | Name of Offices | Assessment Year | Nature of misclassification | Taxable turnover | Rate of tax leviable (percent) | Rate of tax levied (Percent) | Tax short levied |
|-------|-----------------------------|-------------------------------------|--|------------------|--------------------------------|------------------------------|------------------|
| | | Month of assessment | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 1 | A.C.(A)-3, T.T., Varanasi | 1996-97 February 1999 | Mineral water classified as water | 12.18 | 10 | Nil | 1.22 |
| 2 | T.T.O., Sector-4, Agra | 1992-93 to 1993-94 July 1996 | A.D.V. hubs classified as agricultural implement | 10.42 | 10 | Nil | 1.04 |
| 3 | T.T.O. Sector-3, Varanasi | 1996-97 to 1997-98 December 1999 | Raw silk classified as fabrics | 483.42 | 10 | Nil | 48.34 |
| 4 | T.T.O., Sector-I, Allahabad | 1994-95 to 1995-96 March 1998 | Tendu leaves classified as leaves | 4.40 15.58 | 12.5 15 | Nil Nil | 0.55 2.34 |

| | | | | | | | |
|---|---------------------------|---------------|---|---------------|----|-----|--------------|
| 5 | A.C.(A)-8, T.T., Kanpur | 1998-99 | <i>Plastic bags exempted from levy of tax</i> | 65.97 | 10 | Nil | 6.60 |
| | | March 2001 | | | | | |
| 6 | T.T.O., Sector-3, Agra | 1998-99 | <i>P.V. leather cloth treating it as textiles</i> | 31.33 | 10 | Nil | 3.13 |
| | | March 2001 | | | | | |
| 7 | A.C.(A)-I, T.T., Bareilly | 1998-99 | <i>Toffee classified as sweetmeat</i> | 31.37 | 10 | 5 | 1.57 |
| | | February 2001 | | | | | |
| | | | Total | 654.67 | | | 64.79 |

On this being pointed out in audit (between January 1998 and December 2000) the department revised (March 1999) the assessment in one case and levied tax of Rs. 1.04 lakh. No reply had been received in other cases.

The matter was reported to the department and the Government (between December 1998 and September 2001); their replies have not been received (November 2002).

(B) Application of incorrect rate of tax

(i) During audit of 10 Trade Tax Offices, it was noticed (between March 1998 and November 2001) that while finalising assessments (between March 1996 to March 2001) the assessing officer levied tax at incorrect rate. This resulted in short levy of tax amounting to Rs. 71.57 lakh as per details given below:

(Rupees in lakh)

| S. N. | Name of Offices | Assessment year | Name of commodity | Taxable turnover | Rate of tax leviable (percent) | Rate of tax levied (Percent) | Tax short levied |
|-------|--|---|---------------------------------------|------------------|--------------------------------|------------------------------|------------------|
| | | Month of Assessment | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| 1 | T.T.O. Sector-6, Varanasi | 1993-94 to 1994-95 March 1996 | Scents and perfumes | 35.67 | 15 | 10 | 1.78 |
| 2 | A.C.(A)-6, T.T., Lucknow | 1998-99 | Fax Machine Cell phone Medicine | 123.60 | 7.5 | 5 | 3.09 |
| | | February 2001 1994-95 to 1995-96 May 1997 | | 95.00 | 10 | 7.5 | 2.37 |
| 3 | A.C.(A)2, T.T., Bareilly | 1998-99 | Cement | 28.22 | 12.5 | 10 | 0.71 |
| | | February 2001 | | | | | |
| 4 | A.C.(A)-I, T.T., Lucknow | 1993-94 | Cream and skimmed Milk powder | 69.02 | 5 | Nil | 3.45 |
| | | March 2000 | | | | | |
| 5 | T.T.O., Sector-2, Ballia T.T.O., Sector-2, Ballia | 1996-97 | Insecticides | 22.65 | 10 | 7.5 | 0.57 |
| | | October 1998 | Plastic pipes | 5.08 | 10 | 4 | 0.30 |
| | | 1996-97 | | 4.28 | 10 | 5 | 0.22 |
| | | March 1999 | | | | | |
| 6 | A.C.(A)-2, Trade | 1997-98 | Xerox & Fax | 1737.67 | 7.5 | 5 | 43.44 |

| | | | | | | | |
|----|---|--|------------------------------|----------------|------------|----------|--------------|
| | Tax, Rampur | February 2000 | machine Stablizer | 49.00 | 5 | 2.5 | 1.23 |
| 7 | A.C.(A)-I, T.T., Noida | 1998-99 March 2001 | Chilling plant | 17.98 | 15 | 7.5 | 1.35 |
| 8 | A.C. (A)-8, T.T., Kanpur (3 dealers) | 1999-2000 November 2000 1998-99 June 2000 | Makhana S.W.Pipe | 39.98 22.51 | 12.5 15 | 10 10 | 1.00 1.13 |
| 9 | A.C.(A) T.T., Deoria | 1996-97 to 1997-98 February 1999 | Atta, Maida, Suji | 218.91 | 2.5 | | 5.47 |
| 10 | A.C.(A), T.T., Mirzapur | 1998-99 January 2001 | Coal briquettes | 136.51 | 4 | | 5.46 |
| | | | Total | 2605.58 | | | 71.57 |

On this being pointed out in audit (between March 1998 and November 2001), the department accepted (between September 1998 & December 2001) the under assessment of Rs. 10.75 lakh in 5 cases and raised demands of Rs. 10.75 lakh.

The matter was reported to the department and Government (between May 1998 to May 2002); their replies have not been received (November 2002).

(ii) Under Section 8 (2-A) of the Central Sales Tax Act, goods taxable at the rate less than 4 per cent are taxable at the State rates for their inter-state sales. The provisions of Section 8(5) of the Central Act are not extended to reduce the rates of tax regulated under Section 8 (2-A). Further, electronic goods are taxable at the rate of 2.5 per cent from 1 October 1994 under the Act.

In the course of audit of records of 2 Trade Tax Offices, it was seen (December 2001) that the inter-state sale of electronic goods taxable at the rate of 2.5 per cent under Section 8 (2-A) was assessed at the rate of 2 per cent involving underassessment of Rs. 1.64 crore as detailed below:

(Rupees in lakh)

| Sl. No. | Unit | Name of commodity | Year | Turnover | Rate of tax leviable | Rate of tax levied | Short-levied |
|---------|------|-------------------|---------------------|----------|----------------------|--------------------|--------------|
| | | | Month of assessment | | | | |

| | | | | | | | |
|----|---------------------------------------|---------------------|-------------------------------------|----------|------|----|---------------|
| 1. | A.C.(A) Gautam Buddha- Nagar | Electronic goods | 1998-99 <hr/> (February 2001) | 31565.40 | 2.5% | 2% | 157.83 |
| 2. | AC (A) III T.T. Noida | Electronic goods | 1997-98 <hr/> (March 2001) | 581.17 | 2.5% | 2% | 2.91 |
| 3. | --do-- | Electronic goods | 1998-99 <hr/> (June 2001) | 327.14 | 2.5% | 2% | 1.64 |
| 4. | A.C.(A) Gautam Buddha- Nagar | Electronic goods | 1998-99 <hr/> (March 2001) | 188.54 | 2.5% | 2% | 0.94 |
| 5. | AC (A) III T.T. Noida | Electronic goods | 1995-96 <hr/> (April 2000) | 49.20 | 2.5% | 2% | 0.24 |
| | Total | | | | | | 163.56 |

On the omission being pointed out in audit the Department replied that the tax had correctly been levied in view of Government Notification dated 10 October 1995 which is not tenable as the notification issued by the Government was irregular as the goods bearing rate of tax below 4 per cent are taxable at the rate of State rates under Section 8(2-A). The Government has, however, accepted the audit objection (March 2002).

(C) Non - levy of tax due to irregular notification

Under Section 8 (2-A) of the Central Sales Tax Act, the goods taxable at rates less than 4 per cent are taxable at the State rates for their inter-state sales. The provisions of Section 8(5) of the Central Act are limited to Section 8(1) and 8(2) and can not be extended to reduce the rates of tax regulated under Section 8 (2-A). Thus, the Govt. Notification dated 31 March 1993 which exempted the inter-state sale of atta, maida and suji manufactured from tax paid wheat was not in conformity with the provisions of the Act, as these goods were

On this being pointed out in audit all the assessing officers have replied that the assessment orders have been passed under the Govt. Notification dated 31 March 1993, which is not tenable in audit as the aforesaid notification was issued contrary to the provisions of Section 8 (2A) of the Central Sales Tax Act 1956 as clarified above.

2.5 Non-levy of purchase tax

Under Section 3AAAA of the Act, every dealer who purchases any goods from any person other than a registered dealer, whether tax is payable or not by such person, shall be liable to pay purchase tax on the purchase of such goods at the same rate at which tax is payable on the sale of such goods.

During audit of seven[^] Trade Tax Offices, it was noticed (between May 2000 and November 2001) that 14 dealers purchased timber and paddy valued at Rs. 2.28 crore from unregistered dealers during the years 1997-98 and 1998-99 without payment of tax of Rs. 29.51 lakh. The assessing officers while finalising the assessments (between September 1999 and March 2001) failed to levy the tax. This resulted in non-levy of tax of Rs. 29.51 lakh.

On this being pointed out in audit (between May 2000 to November 2001) the assessing officer revised the assessments in 3 cases and levied purchase tax amounting to Rs. 7.19 lakh. The department stated that tax on sale of timber is leviable at the point of manufacture or import only from 1 December 1998 vide notification dated 23 November 1998. Hence purchase tax on timber was not leviable before 1 December 1998. The reply of the department is not tenable as the above notification deals with firewood and not timber.

The matter was reported to the department / Government (between July 2001 and March 2002); their replies have not been received (November 2002).

2.6 Non-levy of additional tax

Under the Uttar Pradesh Trade Tax Act, 1948, every dealer liable to pay tax is required to pay additional tax also at the rate of 25 per cent of tax with effect from 1 August 1990 on purchase and sale of goods.

During audit of Trade Tax Officer, Sector-4, Varanasi, it was noticed (July 2001) that a dealer purchased woollen carpets valued at Rs. 7.28 crore from unregistered dealers during the years 1997-98 and 1998-99 and though the tax was levied, additional tax was not levied. This resulted in non-levy of additional tax amounting to Rs. 18.22 lakh.

The case was reported to the department and the Government (August 2001 and June 2002); their replies have not been received (November 2002).

[^] Ambedkar Nagar, Gonda, Hardoi, Kanpur, Pilibhit, Sitapur and Varanasi.

2.7 Short levy of Central Sales Tax

Under Central Sales Tax Act, 1956, tax on inter-state sale of goods not covered by declaration in Form 'C' or 'D' is leviable at the rate of 10 per cent or at the rate applicable to the sale or purchase of such goods inside the State whichever is higher.

During audit of 5 Trade Tax Offices*, it was noticed (between December 1997 and November 2001) that tax was levied at incorrect rate on inter-state sale of goods valued at Rs. 3.20 crore not covered by declaration in Form 'C' or 'D'. This resulted in short levy of tax amounting to Rs. 19.13 lakh.

On this being pointed out in audit (between December 1997 and November 2001), the department stated (March 2002 and May 2002) that it had raised additional demand of Rs. 15.16 lakh (between March 1998 and February 2002) in three cases. The reply in other cases is awaited.

The matter was reported to the department and Government (between August 1999 and December 2001); their replies have not been received (November 2002).

2.8 Non-levy of interest

Under the Act, every dealer liable to pay tax is required to deposit the amount of tax due within the time prescribed. The tax admittedly payable by the dealer, if not paid by the due date, attracts interest at the rate of 2 per cent per month from the due date and upto the date of deposit.

(A) During audit of 6 Trade Tax Offices[©] it was noticed (between June 1999 and October 2001) that admitted tax amounting to Rs. 1.74 crore was deposited by the dealer after delay ranging from 10 months to 157 months, on which interest amounting to Rs. 1.18 crore was leviable but was not levied.

On this being pointed out in audit (between June 1999 and October 2001), the department levied interest amounting to Rs. 0.37 crore in 2 cases only (between July 2000 and December 2001). The reply in other cases is awaited (November 2002).

(B) During audit of A.C. (A), Gonda, it was noticed (August 2001) that admitted tax amounting to Rs. 0.43 crore was assessed by the department for the year 1988-89 in July 2000 but it was not deposited upto the date of audit (August 2001). Interest amounting to Rs. 1.34 crore (August 1988 to August 2001) was leviable for 157 months but the same was not levied.

On this being pointed out in audit (August 2001), the department levied interest amounting to Rs. 1.16 crore in December 2001. Against this order the

* Agra, Bareilly, Hapur, Mau and Noida

© Allahabad, Ambedkar Nagar, Gonda, Mathura, Raebareilly and Rampur

assessee had gone in appeal, stay has been granted by the Deputy Commissioner Appeal, Bahraich (November 2002).

The cases were reported to the department and the Government (between August 1999 to December 2001); their replies have not been received. (November 2002).

2.9 Misuse of declaration forms

Section 3-B of the Act provides that in the event of issue of false or wrong declaration Forms, the dealer shall be liable to pay a sum equal to the amount which would have been payable as tax on such transaction had such certificates or declaration not been issued.

During audit of 4 Trade Tax Offices[©], it was noticed (between June 1997 and December 2001) that 4 dealers holding recognition certificate for the manufacture of certain notified goods, had purchased raw materials, processing materials etc., free of tax or at concessional rate of tax by issuing wrong declarations during the period from 1996-97 to 1999-2000. But they were not authorised in their recognition certificate to purchase these goods. The dealers were, therefore, liable to pay tax of Rs. 22.56 lakh.

On this being pointed out in audit (between June 1997 to December 2001), the department stated that demand of Rs. 20.38 lakh had been raised in three cases between September 1997 and March 2001. No reply had been received in the other case (November 2002).

The matter was reported to the Department/Government (between November 2001 and March 2002); their replies have not been received (November 2002).

2.10 Non-levy of tax on turnover escaping assessment

Under the Trade Tax Act, tax is levied as per schedule of rates as notified by the Government from time to time. Besides this, additional tax at the rate of 25 per cent of tax is also leviable from 1 August 1990.

During the audit of 6 Trade Tax Offices , it was noticed (between July 1998 and August 2001) that turnover amounting to Rs. 3.80 crore for the period from 1993-94 to 1998-99 in respect of 7 dealers was not taken into account while finalising assessment (between December 1997 and March 2001) by the assessing officer. This resulted in short-levy of tax amounting to Rs. 46.10 lakh.

On being pointed out (between July 1998 and August 2001) in audit, the department has raised the demand of Rs. 1.21 lakh in two cases. No reply has been received in other cases (November 2002).

[©] Koshikalan (Mathura), Meerut, Moghulsarai and Varanasi.
Agra , Aligarh, Chandpur (Bijnore), Gonda, Fatehgarh and Lalitpur.

The matter was reported to the department and the Government (between December 1998 and October 2001); their replies have not been received (November 2002).

2.11 Incorrect Exemption

(A) Under Section 4-A of the U.P. Trade Tax Act, 1948, a unit engaged in the manufacture of goods and holding an eligibility certificate, is entitled to exemption or reduction in the rate of tax. It is judicially^{φ*} held that the grinding of mineral chips or crystal into mineral powder does not alter the nature of commodity and does not amount to manufacture.

During audit of Assistant Commissioner (Assessment) Trade Tax, Koshi Kalan (Mathura), it was noticed (between September 2000 and December 2001) that a dealer sold borax powder after grinding borax pieces (penta) during the period 1994-95 to 1998-99 on which he availed benefit of exemption from tax amounting to Rs. 39.74 lakh upto 1998-99. Since the grinding of borax pieces into borax powder is not manufacture, this resulted in incorrect exemption of tax amounting to Rs. 39.74 lakh.

The case was reported to the department and the Government (between January 2001 and February 2002); their replies have not been received (November 2002).

(B) Under Section 4-A of the U.P. Trade Tax Act, 1948 read with Government Notification dated 27 July 1991, a new unit (established between 1 April 1990 and 31 March 1995) holding eligibility certificate is entitled to the facility of exemption from or reduction in the rate of tax upto the specified period and monetary limit of the sale of goods.

During the audit of 2 Trade Tax Offices* (between December 1998 and October 2001), it was noticed that in the case of 4 dealers, tax liability amounting to Rs. 9.39 lakh during the period from 1994-95 to 1998-99 was not worked out and adjusted against the prescribed monetary limit. This resulted in irregular exemption of Rs. 9.39 lakh.

On this being pointed out in audit (between December 1998 and October 2001) the department levied tax of Rs. 7.44 lakh and adjusted it against the exemption limit.

The cases were reported to Government (between May 2001 and February 2002); replies have not been received (November 2002).

^φ (1980) 46 STC 208 (All) M/s Mineral Sales Corporation (1990) 79 STC 156 (MP)

^{*} Commissioner of Sales Tax U.P. V/s M/s Lal Kunwa Stone Crusher (P) Ltd. Etc. (STI) March 2000
SC - 53)

^{*} (1) T.T.O., Sector-2, Deoria (2) A.C.(A), Bharthana, (Etawah)

2.12 Non-levy of penalty

(A) Under Section 4-B (5) of the Act, read with Government Notification dated 21 May 1994, manufacturers are allowed to purchase raw materials, packing materials etc. required for use in the manufacture of notified goods for sale within the State without payment of tax or at the concessional rate. In case the raw materials or goods are disposed of for the purpose other than that for which recognition certificate was granted, the dealer shall be liable to pay by way of penalty, a sum which shall be not less than the amount of relief in tax so secured by him, but not more than three times of such relief.

During audit of 4 Trade Tax Offices[∞], it was noticed (between May 1999 and October 2001) that 4 dealers holding recognition certificates for the manufacture of notified goods, purchased raw materials for Rs. 100.79 crore tax free/at concessional rate during the period from 1994-95 to 1998-99 and got relief in tax to the tune of Rs.5.12 crore. Since the raw material was utilized for generation of electricity instead of manufacture of fertilizer and goods were sent out of state on consignment basis, the dealers were liable to pay a minimum penalty of Rs. 5.12 crore.

The matter was reported to the department and Government (between August 1999 and February 2002); their replies have not been received (November 2002).

(B) Under the Central Sales Tax Act, 1956, a registered dealer may purchase goods from a dealer of another state at concessional rate of tax by furnishing declaration in Form 'C' provided such goods have been specified in his certificate of Registration. In case the dealer purchases goods not covered by registration certificate on the basis of declarations, penalty not exceeding one and a half times of the amount of tax is leviable.

During test check of records of 18 Trade Tax circles[▲], it was noticed (between September 1996 and December 2001), that 19 dealers had purchased goods valued at Rs. 5.71 crore against declaration in Form 'C' not covered by their certificates of registration, during the period between 1992-93 and 1998-99. Thus, penalty amounting to Rs. 89.44 lakh though leviable was not levied resulting in short realisation of government revenue to that extent.

On this being pointed out in audit, the department stated (between July 1999 and September 2001) that penalty amounting to Rs. 13.40 lakh had been imposed (between July 1999 and August 2001).

The cases were reported to the department and Government (between April 1998 and March 2002); their replies have not been received (November 2002).

[∞] Badaun, Bulandshaher, Khurja and Noida.

[▲] Agra, Bharthana, Deoria, Fatehpur, Hathras, Jhansi, Kanpur (4), Mathura, Meerut (2), Noida, Varanasi, Unnao (2), Shahjahanpur

2.13 Non-imposition of penalty

(A) Under Section 15-A (1) (C) of the Act, if the assessing authority is satisfied that a dealer has concealed his turnover or has deliberately furnished incorrect particulars of such turnover, he may direct that such dealer shall 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.

During test check it was noticed (between December 1999 and February 2000) in the offices of one Assistant Commissioner (A) and two Trade Tax Officers (A) that in the case of three dealers who had suppressed/concealed the turnover, the department levied tax of Rs. 13.68 lakh but no penalty was imposed, though the dealers were liable to pay a minimum penalty of Rs. 6.84 lakh. This resulted in non-levy of penalty of Rs. 6.84 lakh.

On this being pointed out in audit (between December 1999 and February 2000), the department imposed penalty of Rs. 5.42 lakh in two cases.

The cases were reported to the department and the Government (between May 2001 and April 2002); their replies have not been received (November 2002).

(B) Under Section 8-D (6) of the 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 deduct an amount equal to 4 per cent of such sum payable under the Act on account of such works contract. If any person fails to deposit the amount so deducted before the expiry of month following the month in which the deduction was made, the Assessing Authority may direct that such person shall pay by way of penalty, a sum not exceeding twice the amount so deducted.

During test check in audit it was noticed (between October 1998 and October 1999) in the offices of two Trade Tax Officers[#] (A) that 2 dealers deducted tax of Rs. 7.02 lakh from the contractors during the year 1996-97 but did not deposit the same into Government Treasury, within time prescribed, but the assessing authority did not levy the penalty of Rs. 14.04 lakh. Thus, Government sustained loss of revenue of Rs. 14.04 lakh.

On this being pointed out (between October 1998 and October 1999), the department levied penalty amounting to Rs. 1.63 lakh in case of one dealer.

The cases were reported to the department and the Government (between December 1998 and March 2001); their replies have not been received (November 2002).

[#] Allahabad and Badaun.

2.14 Loss of revenue due to irregular adjustment of tax realised in excess from the customers

Under Section 29-A (3) of the Act, excess tax realised by the dealer from the customers which has been deposited into the treasury can only be refunded to the customers from whom it was realised by the dealer in the manner prescribed. It has judicially* been held that it could not be adjusted against outstanding demand of the aforesaid dealer.

During audit of Assistant Commissioner (Assessment)-2, Trade Tax, Varanasi, it was noticed (June 2001) that a dealer had realised excess tax amounting to Rs. 32.56 lakh from the customers on sale of cement during the year 1997-98. This excess tax was adjusted by the dealer against his demand of tax of March 1998 instead of refunding the same to the customers. This resulted in loss of revenue of Rs. 32.56 lakh.

The case was reported to the department and the Government (September 2001); their replies have not been received (November 2002).

2.15 Short-levy of tax due to computation mistake

During the audit of 4 Trade Tax Offices, mistakes were noticed in computation of tax which resulted in short-levy of tax amounting to Rs. 5.28 lakh. Details are given in the table below:

(Rupees in lakh)

| Sl. No. | Name of Office | Assessment year | Taxable Turnover | Tax leviable | Tax levied | Tax short levied |
|--------------|--|---------------------|------------------|--------------|-------------|------------------|
| | | Month of Assessment | | | | |
| 1 | Assistant Commissioner (Assessment) Trade Tax, Karvi, Chitrakut | 1997-98 | 20.33 | 0.81 | 0.21 | 0.60 |
| | | May 2000 | | | | |
| 2 | Assistant Commissioner (Assessment) Trade Tax, Sikandrabad | 1996-97 | 45.62 | 2.11 | 1.11 | 1.00 |
| | | March 1999 | | | | |
| 3 | Trade Tax Officer, Najibabad | 1996-97 | 96.93 | 3.88 | 3.08 | 0.80 |
| | | March 1999 | | | | |
| 4 | Trade Tax Officer, Sector-I, Jaunpur | 1998-99 | 80.00 | 3.20 | 0.32 | 2.88 |
| | | March 2001 | | | | |
| Total | | | 242.88 | 10.00 | 4.72 | 5.28 |

* Commissioner of Trade Tax, U.P., V/s Kumar Aluminium Industry {(Sales Tax Revision No. 758 of 1994 decided on dated 3.11.1999 (STI 2000 - Allahabad H-C-58)}

On this being pointed out in audit (between November 1999 to October 2001) the Department rectified the mistakes and raised additional demand of Rs. 4.68 lakh in two cases.

The cases were reported to the department and Government (between January 2000 and May 2002); their replies have not been received (November 2002).