

CHAPTER II SALES TAX

2.1 Results of audit

Test check of records relating to sales tax, conducted during the year 2005-06, revealed underassessment of tax and other irregularities involving Rs.887.34 crore in 586 cases, which broadly fall under the following categories:

<i>(Rupees in crore)</i>			
Sl. No.	Categories	No. of cases	Amount
1.	Incorrect determination of turnover of sales	63	1.75
2.	Underassessment of tax due to incorrect deduction	47	1.43
3.	Irregular exemption	46	3.21
4.	Application of incorrect rate of tax and mistake in computation	55	1.22
5.	Non/short levy of interest and penalty	134	19.48
6.	Review on 'Evasion of Sales Tax'	82	846.74
7.	Others	159	13.51
Total		586	887.34

During the course of the year 2005-06, the concerned department accepted underassessment etc. of Rs.439.31 crore involved in 242 cases of which 211 cases involving Rs.435.63 crore were pointed out in audit during the year 2005-06 and the rest in earlier years. An amount of Rs.3.73 lakh was realised at the instance of audit.

A few illustrative cases involving Rs.21.28 crore highlighting important observations and a review involving financial effect of Rs.472.26 crore are given in the following paragraphs:

2.2 Review on ‘Evasion of Sales Tax’

Highlights

Inaction of the authority led to non raising of demand of evaded tax of Rs.15.62 crore

[Paragraph 2.2.6.2]

Non observance of provisions resulted in non imposition of minimum penalty of Rs.34.09 crore on suppressed/ concealed sales

[Paragraph 2.2.6.5]

Failure of the department to bring the brick manufacturers under the tax net led to evasion of tax of Rs.48.25 crore

[Paragraph 2.2.7]

Non pursuance of cases for recovery of dues from runaway dealers led to evasion of Government revenue of Rs.164.30 crore

[Paragraph 2.2.10]

Inordinate delay in disposal of appeal petitions resulted in evasion of tax of Rs.14.16 crore

[Paragraph 2.2.11.3]

Inadequate action by the authorities against transporters violating provisions of the Act led to evasion of tax and penalty of Rs.239.79 crore

[Paragraph 2.2.12.1]

Recommendations

The State Government may consider taking the following steps to detect and control the evasion of sales tax:

- evolve an internal control mechanism to monitor follow up action and timely disposal of cases of evasion of tax detected by the investigation wings;
- strengthen coordination between the sales tax and other Government departments by setting up a system for regular exchange of information to bring unregistered dealers under the tax net;
- amend the Act/Rules to fix a time limit for initiation of certificate proceedings and monitor the certificate cases initiated by the assessing authorities (AAs) to control evasion by defaulting dealers;
- prepare an updated departmental manual; and
- improve the functioning of the internal audit wing.

2.2.1 Introduction

Assessment, levy and collection of sales tax are governed under the West Bengal Sales Tax (WBST) Act, 1994, the Central Sales Tax (CST) Act, 1956 and the Rules made thereunder. Under the provision of the Acts, every dealer liable to pay sales tax is required to

- get himself registered for carrying on his business;
- file prescribed returns furnishing particulars of sales/purchases etc.; and
- pay assessed dues of tax, penalty and interest within the specified dates.

If a dealer fails to pay his assessed dues within the specified dates, the dues are recovered by initiating certificate proceedings under the provision of the WBST Act and the Bengal Public Demands Recovery (PDR) Act, 1913.

The Bureau of Investigation (BI) under Sales Tax Department has been set up under the Act to investigate the cases of suspicious dealers. The Central Section (CS) under the directorate deals with various functions related to sales tax and has also been entrusted with the work of investigation. Both BI and CS have jurisdiction over the whole of West Bengal and function for prevention of evasion of sales tax by collecting information regarding suspicious dealers, dealing with allegations and complaints, holding inspection, search and seizure after conducting raids on the business place of suspected dealers and investigating into affairs of particular dealers calling for special attention.

2.2.2 Audit objectives

The review was conducted to examine

- effectiveness of the department and its investigation machinery in detecting and controlling evasion of tax.
- performance of the department in properly and promptly assessing and realising tax, penalty and interest on detected cases of evasion; and
- efficacy of the internal controls in the department for realisation of dues from dealers.

2.2.3 Organisational set up

The overall control and superintendence of the sales tax organisation i.e. Directorate of Commercial Taxes is vested with the Commissioner of Commercial Taxes (CCT), who is assisted by two special commissioners, 25 additional commissioners, 89 deputy commissioners (DCCT), 325 assistant commissioners (ACCT), 666 commercial tax officers (CTO) and 1,220 assistant commercial tax officers (ACTO) for administering the provisions of the Acts and the Rules made thereunder. An internal audit wing was set up in May 1991 for ensuring compliance of internal control measures.

BI is headed by an Additional CCT also referred to as Special Officer. He is assisted by one DCCT, seven ACCTs, five CTOs and 26 ACTOs. CS is headed by an Additional Commissioner who is assisted by eight DCCTs, 47 ACCTs, 80 CTOs and 142 ACTOs.

2.2.4 Scope of Audit

The assessment and collection records for the years 2000-01 to 2004-05 of nine out of 17 circle offices and 21 out of 70 charge offices were reviewed during the period from September 2005 to March 2006. The volume of collection of revenue was the criterion for selection of the charge offices. In addition, office of the CCT, BI, CS, internal audit wing, five¹ out of nine range offices and 12² out of 27 check posts were also test checked.

2.2.5 Performance of BI and CS in detecting and realising evaded tax

During the review, case records of raids, inspections, searches, seizures and investigations conducted by BI and CS were scrutinized. It was noticed that no norms existed for conducting raids, inspections, seizures and investigations. The raids were conducted after getting information from departmental sources³. In the absence of an updated departmental manual, the controls to be exercised at various stages could not be ascertained.

¹ Durgapur, Kharagpur, Purulia, Raigunj and Siliguri

² Barakar, Berma, Chasmore, Tulin, Chichira, Dalkhola, Duburdih, Melly, Phansidewa, Netaji Subhas International Airport, Netaji Subhas dock and Khidirpur dock

³ Information from own sources and charge offices

2.2.5.1 Involvement of evaded tax vis-à-vis total sales tax revenue

BI and CS conducted 1,984 raids during 2000-01 to 2004-05 and detected evasion of tax in 1,169 cases. The tax involvement and realisation thereof from these 1,169 cases is detailed below:

(Rupees in crore)

Year	Total sales tax revenue of the State	Total tax involved in the detected cases	Percentage of involvement to the total revenue
2000-01	3,671.38	6.92	0.19
2001-02	3,802.46	7.40	0.19
2002-03	4,191.51	9.59	0.23
2003-04	4,830.58	19.61	0.41
2004-05	5,716.30	20.00	0.35
Total	22,212.23	63.52	0.29

2.2.6 Inadequate follow-up action on cases of evasion detected by BI and CS

Reports containing findings of investigation are sent by BI and CS to the assessing authorities (AAs) for assessment and realisation of evaded tax. Under section 80 of the WBST Act, where assessment of the dealer has already been completed, the assessments need be reopened for assessment and inclusion of the evaded tax.

Examination of case records disclosed that no system existed in any of the charge offices to record the reports of evasion of tax sent by BI and CS and to watch follow up action thereof.

As per information furnished, BI and CS sent 1,169 investigation reports involving evaded tax of Rs.63.52 crore to charge offices for assessment and realisation during 2000-01 to 2004-05. Out of these 271 reports related to the charge offices test checked. 107 reports involving tax effect of Rs.40.25 crore and cases having tax evasion of more than Rs. 3 lakh were cross verified with the respective assessment records in the charge offices. During cross verification, irregularities noticed in 35 cases are discussed below:

2.2.6.1 Non assessment of evaded tax

BI and CS detected suppression of sales of Rs.17.85 crore in three cases by three dealers and sent investigation reports to three⁴ charge offices for assessment of the evaded tax between January 2002 and August 2004. The charge offices, however, did not assess those cases of evaded tax till March 2006 i.e. lapse of a period ranging between 19 and 50 months from the date of receipt of the investigation reports. This resulted in non assessment of evaded tax of Rs. 2.75 crore including penalty of Rs.1.65 crore.

After this was pointed out, the department accepted the audit observation. Further report on action taken has not been received (October 2006).

2.2.6.2 Non raising of demand of evaded tax

CS detected suppression of sales of Rs. 194.09 crore by a dealer of Ultadanga charge for the assessment period of March 2000 and sent the investigation report to the charge office in December 2001. The AA assessed tax of Rs. 17.21 crore in March 2002. The dealer preferred appeal and the assessment order was set aside by the appellate authority in May 2003 for reassessment. Scrutiny further revealed that AA reassessed the case in May 2005 i.e. after a lapse of two years but no demand notice was served upon the dealer for Rs.15.62 crore of reassessed tax. This resulted in non raising of demand of evaded tax of Rs.15.62 crore.

After this was pointed in October 2005, the department while admitting the lapse on the part of AA stated that the demand notice was subsequently issued. However, the date of serving the demand notice has not been received (October 2006).

2.2.6.3 Short raising of demand of evaded tax

In two⁵ charge offices, AAs completed assessments of two cases of two dealers and assessed tax, penalty and interest of Rs.1.86 crore on suppressed turnover. Scrutiny revealed that the AAs served demand notice of Rs 1.34 crore instead of Rs.1.86 crore upon the dealers. This resulted in short raising of demand of evaded tax of Rs.53 lakh.

⁴ Ballygunje, Park Street and Siliguri

⁵ Esplanade and Lalbazar

After this was pointed out, the department admitted the audit observation and stated that there was lapse on the part of the AAs. However, report on raising of the demand has not been received (October 2006).

2.2.6.4 Non initiation for realisation of evaded tax

In two⁶ charge offices the AAs completed the assessments of two cases of two dealers and assessed tax, penalty and interest of Rs.2.24 crore on the suppressed sales of Rs.6.60 crore and served demand notices upon the dealers. Though the dealers defaulted in payment of assessed dues, for a period ranging between 38 and 82 months, no certificate proceedings were initiated by the AAs to realise the dues till March 2006. Thus, non initiation of certificate proceedings resulted in non realisation of evaded tax, penalty and interest of Rs.2.24 crore.

After this was pointed out, the department admitted the audit observation and stated that there was lapse on the part of the AAs. However, further report on action taken has not been received (October 2006).

2.2.6.5 Non imposition of penalty on concealed/suppressed sales

Under the WBST Act, where the AA is satisfied that any dealer with an intent to reduce the amount of tax payable has concealed any sales/purchases or furnished incorrect statement of his sales/purchases in his returns or otherwise; he may impose penalty of a sum which shall not be less than one and a half times and not more than thrice the amount of tax that would have been avoided by the dealer if the concealment had not been detected. According to instructions of the CCT issued in June 1991, where an AA did not initiate penal proceedings in a case, he should record the reasons for not doing so.

In CS and other six charge offices, the AAs assessed tax of Rs.22.72 crore in 27 cases of 10 dealers on suppressed and concealed sales/purchases of Rs.272.47 crore as detected and reported by BI and CS. But the AAs neither imposed a minimum penalty on the evaded tax nor recorded the reasons for not doing so in the assessment orders. Minimum penalty on the evaded tax works out to Rs.34.09 crore as detailed below:

⁶ Bhawanipur and Lalbazar

Audit Report (Revenue Receipts) for the year ended 31 March 2006

(Rupees in crore)

Circle / Charge office	No. of cases	Period of assessment between	Date of assessment between	Suppression of sales/purchases	Tax evaded	Minimum penalty not levied
Budge Budge	2	2000-01 and 2001-02	April 2003	27.41	2.26	3.39
Park Street	2	1995-96 and 2002-03	April 1998 and June 2005	13.70	0.87	1.30
Esplanade	1	1996-97	February 2002	4.01	0.48	0.72
Ultadanga	1	1999-00	May 2005	194.09	15.62	23.44
Salt Lake	6	1995-96 and 2000-01	September 2003	3.11	0.31	0.47
Central Section	6	1997-98 and 2000-01	June 2003	14.81	0.84	1.26
Bhawanipur	9	1996-97 and 2001-02	April 1999 and June 2004	15.34	2.34	3.51
Total	27			272.47	22.72	34.09

After this was pointed out, the department while admitting the audit observation stated that this was due to non existence of an updated departmental manual and misunderstanding the spirit of the word 'may' in the Act by the AAs. However, the reply of the department is not tenable since the instructions of the CCT issued in June 1991 were reiterated in December 2002, which directed the AAs to impose penalty in deserving cases and in case of non imposition of the penalty, to record the reasons thereof in the assessment order.

Registration

Under the sales tax laws of West Bengal, no dealer liable to pay tax shall carry on business unless he has been registered and possesses a certificate of registration issued by the sales tax authorities.

2.2.7 Evasion of tax due to non registration

Under the provisions of the WBST Act, a dealer shall get himself registered when his turnover exceeds the taxable turnover prescribed under the Act. The taxable quantum for a brick manufacturer is Rs. one lakh. The rate of tax on sale of bricks is 10 per cent.

A brick field owner is required to obtain permit for extraction of brick earth from the district land and land reforms offices (DL&LROs).

Cross verification of records of registration of dealers in five charge offices with those available from four⁷ DL&LROs in connection with extraction of earth revealed that 488 unregistered dealers extracted, between 2000-01 and 2004-05, brick earth of 19.52 crore cft. equal to 214.63 crore⁸ bricks valued at Rs.482.51 crore. The unregistered dealers engaged in the manufacture and sales of bricks escaped payment of tax in spite of their turnover being in excess of the taxable quantum. The charge offices failed to bring the brick manufacturers under the tax net since they did not monitor the collection of sales tax in coordination with the DL&LROs. This resulted in sales escaping assessment and consequent evasion of tax of Rs.48.25 crore as detailed below:

(Rupees in crore)

Charge office	No. of cases	Brick earth extracted (in crore cft)	Number of bricks sold (in crore)	Sale value of bricks	Tax evaded
Durgapur	57	1.37	15.04	33.09	3.31
Midnapore	108	7.35	80.82	177.80	17.78
Asansol	200	6.30	69.29	152.44	15.24
Purulia	73	1.08	11.84	21.31	2.13
Barasat	50	3.42	37.64	97.87	9.79
Total	488	19.52	214.63	482.51	48.25

After this was pointed out, the department while admitting the audit observation stated that there was need to set up a mechanism for exchange of information between the DL&LROs and the charge offices.

Returns

Under the sales tax laws of West Bengal, a dealer liable to pay sales tax is required to file the prescribed returns within the stipulated time before the AAs furnishing the correct particulars of sales and purchase etc. therein.

2.2.8 Undue benefit to dealers on sales of Schedule IV goods

Under the WBST Act, goods mentioned in Schedule IV of the Act are taxable on the first point of sale in West Bengal. Resale of schedule IV goods, shown to the satisfaction of the CCT to have been purchased within West Bengal and already been taxed at the first point of sale, are exempted from tax. Further, the CCT in his circular issued in December 1999 clarified that the reselling dealers preferring claims of such exemption will have to furnish prescribed

⁷ Burdwan, Midnapore, North 24 Parganas and Purulia

⁸ Under the West Bengal Minor Mineral Rules, 1959 read with the Commerce and Industries Department notification issued in September 1969, 100 cft of brick earth is equal to 1,382 bricks and wastage of 282 bricks is allowed for processing loss.

Audit Report (Revenue Receipts) for the year ended 31 March 2006

purchase documents containing name and addresses of the selling dealers as proof of their claims, so that the sales tax officials can verify the payment of tax at the selling dealers' end.

Scrutiny of 7,844 assessment records of a circle office and six charge offices revealed that, in 390 cases, 122 dealers claimed sales of Rs.946.75 crore as resale of schedule IV goods purchased within West Bengal and preferred claim for exemptions of tax thereof in their returns.

2.2.8.1 Further scrutiny disclosed that in 309 cases of 89 dealers involving tax of Rs.65.53, crore the dealers either furnished incomplete purchase documents or did not furnish the purchase documents at all as detailed below:

(Rupees in crore)

Circle / Charge	No. of cases	Period of assessment between	Assessed between	Sale value of goods	Tax exempted
Asansol	44	1998-99 and 2002-03	May 2001 and March 2005	61.65	3.89
Chowringhee	7	1995-96 and 2000-01	February 2003 and November 2003	31.79	8.77
Durgapur	18	1997-98 and 2002-03	February 2000 and March 2005	27.89	1.80
Ultadanga	5	1997-98 and 2000-01	June 2000 and June 2003	30.37	2.44
Siliguri	156	1997-98 and 2002-03	June 2000 and March 2005	512.80	29.94
Purulia	70	1997-98 and 2002-03	November 2000 and March 2005	160.73	17.86
Midnapore	9	1999-00 and 2001-02	April 2002 and May 2004	12.02	0.83
Total	309			837.25	65.53

2.2.8.2 In the remaining 81 cases involving tax of Rs.7.52 crore, though 33 dealers furnished the purchase documents but no scrutiny or verification was conducted by the AAs to ascertain the correctness of the exemption allowed to the dealers as detailed below:

<i>(Rupees in crore)</i>					
Circle / Charge	No. of cases	Period of assessment between	Assessed between	Sale value of goods	Tax exempted
Asansol	37	1999-00 and 2002-03	May 2001 and March 2005	34.70	3.17
Durgapur	11	1999-00 and 2002-03	May 2002 and March 2005	36.70	1.71
Ultadanga	1	1999-00 and 2000-01	May 2005	0.24	0.02
Purulia	10	1999-00 and 2002-03	March 2001 and March 2005	8.21	0.61
Midnapore	22	1999-00 and 2002-03	June 2002 and March 2005	29.65	2.01
Total	81			109.50	7.52

After this was pointed out, the department stated that the AAs exempted such sales after checking the purchase bills. The reply of the department was not tenable since in 309 out of 390 cases the dealers defaulted in production of 'purchase documents'/ 'complete purchase documents' etc. required for availing exemption. Moreover, in the remaining 81 cases, though purchase documents were available no cross verification was conducted with the records of the selling dealers' allowing exemption as stipulated in the circular referred to.

2.2.9 Evasion by way of non/short disclosure of turnover

During the review, in 396 cases the turnover of sales and purchases etc. furnished by the dealers in their returns were cross verified with final accounts and other relevant records. The cross verification revealed the following:

2.2.9.1 Evasion by way of non disclosure of purchases

Scrutiny of final accounts and relevant records in 24 cases of three⁹ charge offices disclosed that 10 dealers purchased between March 1999 and March 2003 machinery, furniture, office equipment, electrical equipment etc. valued at Rs.216.16 crore involving a tax effect of Rs.8.65 crore. However, scrutiny of their respective returns and assessment orders made between April 2000 and March 2005 revealed that the dealers did not disclose such purchases in their returns. The AAs also failed to detect the mistake during the assessment proceedings. Consequently, there was evasion of tax of Rs.8.65 crore by way of non disclosure of purchases.

⁹ Asansol, Durgapur and Purulia

2.2.9.2 Evasion of tax by short disclosure of turnover

Scrutiny of final accounts of six dealers in four¹⁰ charge offices revealed that in 25 cases dealers earned miscellaneous income/receipts of Rs.136.65 crore during the assessment periods between March 1997 and March 2003. These sales were exigible to tax. However, scrutiny of returns and assessment orders revealed that the dealers neither disclosed such income in their returns nor was it detected by the AAs while finalising the assessment between June 2000 and June 2005. Thus, the dealers evaded tax of Rs.15.25 crore by not disclosing miscellaneous income/receipts in the returns and other records relating to assessment.

Payment of tax

Under the sales tax laws of West Bengal, a dealer is required to pay his dues within the dates specified in the demand notice. Any wilful attempt by a dealer in any manner to evade or defeat sales tax imposed under the laws is an offence and shall be punishable with imprisonment from three months to two years or with fine not exceeding Rs.10,000 or with both. Such an offence is cognizable and non bailable. However, no court shall take cognizance of such an offence except with the previous sanction of the CCT.

2.2.10 Evasion of tax by runaway dealers

The CCT in his circular issued in July 1968 directed all the AAs to pursue cases of defaulting dealers properly in time and take all administrative and legal action to collect the dues as early as possible.

During the review, cases of 189 defaulting dealers were examined. Scrutiny revealed that 20 dealers of nine charge offices in 43 cases defaulted in payment of dues of Rs.164.30 crore. The AAs neither pursued these cases for realisation of dues nor took any administrative/legal action even after a lapse of 14 months to 215 months from the dates specified for payment. The dealers, in the meanwhile, fled from their declared place of business and residence without making any payment. The authorities subsequently declared the dealers untraceable. Dues of Rs.164.30 crore involved in these cases are detailed below:

¹⁰ Asansol, Durgapur, Purulia and Salt Lake

<i>(Rupees in crore)</i>						
Charge office	No. of cases	Assessment period between	Date of assessment between	Date specified for payment between	Time lapsed without any action for recovery between	Total assessed dues
Alipur	6	1982-83 and 1993-94	March 1987 and June 1996	April 1988 and August 1996	115 and 215 months	13.69
Behala	7	1997-98 and 2000-01	June 2000 and June 2003	July 2000 and August 2003	31 and 68 months	5.30
Park Street	3	2000-01 and 2001-02	June 2003 and June 2004	August 2003 and January 2005	14 and 31 months	10.54
Salt Lake	4	1998-99 and 2001-02	June 2001 and May 2002	August 2001 and August 2002	43 and 55 months	1.36
Ultadanga	4	1996-97 and 2000-01	June 1999 and June 2003	August 1999 and August 2003	31 and 79 months	1.81
Bhawanipur	4	1995-96 and 1996-97	June 1998 and June 1999	July 1998 and August 1999	79 and 92 months	126.17
Budge Budge	11	1993-94 and 1998-99	May 1996 and April 2001	July 1998 and June 2001	57 and 116 months	2.55
Ballygunj	2	1996-97 and 1997-98	June 1999 and June 2000	August 1999 and July 2000	68 and 79 months	2.73
Siliguri	2	1999-00 and 2000-01	February 2002 and June 2003	August 2002 and August 2003	31 and 43 months	0.15
Total	43					164.30

Cross verification was conducted in 35 cases of the dealers other than the aforesaid cases against whom certificate proceedings were initiated by TRO though declared untraceable by the AAs. Cross verification revealed that the TRO traced out the dealers in 16 cases involving dues of Rs.17.22 crore and started recovery. However, in the aforesaid 43 cases the AAs did not take any administrative steps for legal action including initiation of certificate proceedings for recovery of dues even after a lapse of 21 and 69 months subsequent to the dealers being declared untraceable by the AAs.

Thus, non pursuance of the cases of defaulting dealers for recovery of dues in time as well as non initiation of legal action against them led to evasion of tax of Rs.164.30 crore. This is clearly indicative of internal control failure of the department.

After this was pointed out, the department while admitting the audit observation stated that there is a need for establishing a mechanism through which the ACTOs regularly report on the activities of the dealers and coordination with banks, customs and income tax departments.

Appeal

Under the sales tax laws of West Bengal, if any dealer is aggrieved of any assessment by AA he may prefer an appeal before the appellate authority.

Further, the appellate authority shall not entertain an appeal unless he is satisfied that the appellant dealer has paid tax, penalty etc. admitted by him.

The appellate authority while disposing of any appeal case, may confirm or modify the assessment and direct the AA to make a fresh assessment. From September 2004, the maximum time limit for disposal of an appeal case was fixed at two years but prior to August 2004 no such time limit was prescribed in the laws.

2.2.11 Evasion of tax in appeal cases

During the review, 722 appeal case records of nine¹¹ appellate authorities were test checked and cross verified with the respective assessment records in the charge offices which revealed the following:

2.2.11.1 Evasion of tax in confirmed appeal cases

In nine¹² charge offices in 48 cases of 37 dealers involving disputed amount of Rs. 34.05 crore, the dealers filed appeal petitions before the appellate authority between August 1998 and November 2003. The appellate authorities confirmed the assessments between September 2001 and September 2005 and directed the dealers to pay the assessed tax on the disputed amount immediately. Further scrutiny revealed that the dealers continued to run their business without payment of their dues. However, the authorities did not initiate certificate proceedings till March 2006 to recover the dues against the defaulting dealers even after a lapse period of 6 to 61 months. As a result, tax of Rs. 34.05 crore could not be realised from the defaulting dealers.

After this was pointed out, the department accepted the audit observation. However, report on further action taken has not been received (October 2006).

2.2.11.2 Evasion of tax in rejected appeal cases

Scrutiny revealed that in 17 cases of four¹³ charge offices six dealers filed appeal petitions between July 1999 and September 2004 involving disputed amount of Rs.27.71 crore. The appellate authorities rejected the appeal

¹¹ DCCT/Chowringhee, 24 Parganas, Kolkata (South), Behala, Siliguri, Corporate Division, Durgapur, Asansol and Midnapur

¹² Midnapur, Corporate Division-I, II and III, Behala, Park Street, Bhawanipur, Alipur and Salt Lake

¹³ Corporate Division-I, II, III and Park Street

petitions between February 2001 and May 2005 due to non payment of admitted tax and directed the dealers to file fresh appeal petitions after paying the admitted tax. The dealers neither paid the admitted tax nor preferred fresh appeal petitions. The AAs did not initiate certificate proceedings till March 2006 against the dealers even after a lapse of time of 8 and 60 months which resulted in non realisation of tax of Rs.27.71 crore.

After this was pointed out, the department while accepting the audit observation stated that there was a lapse on the part of the authorities.

2.2.11.3 Evasion of tax due to delay in disposal of appeal cases

In seven cases, of three¹⁴ charge offices involving disputed amount of Rs.14.16 crore, four dealers filed appeal between October 1997 and December 2001 before the appellate authority. Thereafter, the dealers did not turn up before the appellate authority for hearing of the appeal cases. Further scrutiny revealed that the appellate authority confirmed three appeal cases after a considerable lapse of time ranging between 35 and 72 months and did not dispose of the remaining four cases even after a lapse of time between 47 and 57 months till March 2006.

In the meantime, all the dealers closed down their business and fled from their declared place of business. Subsequently, they were declared untraceable by the authorities. Inordinate delay in disposal of the appeal cases by the appellate authority resulted in evasion of tax of Rs.14.16 crore by the dealers.

After this was pointed out, the department accepted the audit observation. However, action taken to recover the amount has not been received (October 2006).

2.2.11.4 Loss of revenue due to delay in reassessment of set aside appeal cases

Under the provisions of the WBST Act, an appellate authority may set aside an assessment order of the AA in any appeal case. Thereafter, AA shall complete the reassessment within two years from the date of appellate order, otherwise the reassessment becomes barred by limitation of time.

¹⁴ Corporate Division-I, Durgapur and Siliguri

Scrutiny revealed that in two cases of two¹⁵ charge offices two dealers preferred appeal involving Rs.2.68 crore. The appellate authority set aside the assessment orders between May 2002 and May 2003 and directed the AAs to reassess the cases. Scrutiny, however, revealed that the AAs did not reassess the cases even after a lapse of 34 to 46 months respectively from the date of the appellate order. As a result, the reassessments became barred by limitation of time and there was loss of revenue of Rs. 2.68 crore.

After this was pointed out, the department accepted the audit observation.

Check posts

Under the sales tax laws of West Bengal, the State Government has set up check posts to ensure that there is no evasion of tax by transporters carrying goods into/out of/through West Bengal.

2.2.12 Evasion of tax by transporters carrying goods through West Bengal

Under the WBST Act, when a vehicle transporting goods enters into West Bengal and is bound for any place outside the State, the transporter shall furnish a transit declaration (TD) at the entry check post stating therein that the goods shall not be sold in West Bengal. He shall also declare in the TD the approximate date and name of the exit check post of West Bengal. The transporter who does not take exit within the date specified and contravenes the provisions of the Act is liable to pay penalty not exceeding 25 per cent of the value of the goods in addition to tax.

In Siliguri range office and Dalkhola, Duburdih, Netaji Subhas dock (NSD), Chichira and Netaji Subhash International Airport (NSIA) check posts, in 1,515 cases transporters carrying goods valued at Rs. 751.99 crore entered West Bengal furnishing TDs at the entry check post but did not report at the exit check post even after a lapse of a period ranging between 11 and 70 months from the specified dates of exit till March 2006. The authorities issued notices in 509 cases to the transporters asking them to appear for assessment. However, none of them responded. Of these, 120 cases pertained to transporters of West Bengal. Thereafter, the authorities did not take follow up

¹⁵ Alipore and Midnapore

action to trace out the transporters by taking up the matter with the concerned motor vehicle authorities. In the remaining 1,006 cases, the authorities did not even issue notices to the defaulting transporters till March 2006. As a result of inaction on the part of the department, the defaulting transporters evaded tax and penalty of Rs.239.79 crore as detailed below:

(Rupees in crore)

Range/ Check post	No. of cases	Specified date of exit from W.B. between	Lapse of period ranging between (in months)	Value of commodity	Tax leviable	Penalty leviable	Total evasion
Siliguri Range	45	May 2001 and April 2005	11 and 58	4.13	0.40	1.03	1.43
Dalkhola Check Post	129	February 2002 and February 05	13 and 49	6.06	0.47	1.52	1.99
NSD Check Post	406	July 2000 and July 2004	20 and 68	317.49	20.46	79.37	99.83
Duburdih Check Post	278	August 2001 and December 2004	15 and 55	18.93	1.43	4.73	6.16
Chichira Check Post	197	August 2001 and November 2004	16 and 55	72.97	3.60	18.25	21.85
NSIA Check Post	460	May 2000 and February 2004	25 and 70	332.41	25.43	83.10	108.53
Total	1,515			751.99	51.79	188.00	239.79

2.2.13 Non realisation of penalty from defaulting transporters

Under the WBST Act, no transporter can transport any goods into West Bengal without obtaining a prescribed document from the sales tax authorities. In case of contravention, such transported goods are liable to be seized. The goods so seized shall be released on payment of penalty. In case of default in payment of penalty, such seized goods are liable to be auctioned. Further, any amount of penalty which remains unpaid or unrecovered after the auction shall be recovered by initiating certificate case.

Scrutiny of seizure case records of CS revealed that in 137 cases detected between December 2001 and January 2005 goods were transported into West Bengal without prescribed documents. Consequently, the authorities seized the goods and imposed a penalty of Rs.2.82 crore of which the defaulters made part payment of Rs.0.47 crore. The balance penalty of Rs.2.35 crore was not paid by the defaulting transporters till March 2006. However, the authorities neither auctioned the seized goods nor initiated certificate proceedings to recover the amount. This resulted in non realisation of penalty of Rs.2.35 crore from the transporters who contravened the provisions of the Act.

Certificate proceedings

Under the sales tax laws of West Bengal, an AA is empowered to recover dues from a defaulting dealer by initiating certificate proceedings under the PDR Act. For this, a certificate of demand in the prescribed form is prepared and recorded in Register IX of the charge office. Thereafter, the certificate of demand is sent to the concerned CO/TRO who also records the same in Register X of his office. Thereafter, the CO/TRO serves a demand notice upon the defaulting dealer specifying date of payment therein. If the dealer defaults in payment within the prescribed date, the CO/TRO is empowered to recover the dues by attaching/selling the moveable/immovable property of the dealer.

2.2.14 Lack of coordination between charge offices and certificate offices

In a departmental circular issued in May 1944, the CCT directed the AAs for reconciliation of the entries in Register IX of the charge offices with those of Register X of the CO/TRO once in a month to sort out the difference for ensuring proper action in respect of each certificate of demand. The CCT also instructed in July 1968, to render all cooperation and liason to the certificate officers for efficient working in the certificate offices.

2.2.14.1 Certificate of demand cases not traceable

During review of Register IX of nine¹⁶ charge offices, it was noticed that 2,392 certificates of demand involving Rs. 555.83 crore were sent to the TRO, Kolkata between 2000-01 and 2004-05. However, verification of Register X of the TRO revealed that only 2,073 certificates of demand involving Rs. 483.61 crore were recorded. The remaining 319 certificates of demand involving Rs.72.22 crore were not traceable. The whereabouts of these cases were not on record.

Thus, absence of reconciliation between Register IX and X helped the dealers to evade tax of Rs. 72.22 crore.

¹⁶ Alipur, Behala, Budge Budge, Bhawanipur, Corp. Div.-I,II and III, Lalbazar and Park Street

After this was pointed out, the department stated that the cases were under scrutiny and the reply would be sent shortly. However, reply has not been received (October 2006).

2.2.14.2 Non furnishing of information by the charge office

Scrutiny of Register IX of Siliguri charge office revealed that the AAs sent 493 certificates of demand to the CO, Siliguri between 2000-01 and 2004-05 for recovery of Rs. 14.57 crore from the defaulting dealers. The CO, Siliguri returned 469 certificates of demand involving Rs. 14.16 crore to the charge office seeking further information regarding the dealers. The charge office, however, did not furnish the required information sought for by the CO even after a lapse of 12 to 60 months. Consequently, the dues of Rs.14.16 crore remained unrealised.

2.2.15 Performance of internal audit wing

Internal audit wing of the Directorate of Commercial Taxes started functioning from May 1991 as a permanent inhouse mechanism for scrutinizing and detecting irregularities in the assessments of sales tax cases as well as checking of different records/registers to ascertain whether internal control system as envisaged in the Act and Rules made thereunder are properly observed. The Wing is also required to examine the lacunae of the Act and Rules and recommend necessary revision/amendments of the same with copies to other administrative heads for necessary action as well as to take follow up action on audit observations of the IRs issued by the office of the Accountant General, West Bengal.

The wing is headed by the CCT who is assisted by an additional Commissioner, five DCCTs, four ACCTs and five ACTOs.

The wing does not have its manual. As reported, the wing usually conducts audit of around one third of the total charges annually and checks about 10 per cent of assessment cases in each office. The performance of the wing during the last five years is detailed below:

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Year	Total No. of charges under the directorate	No. of charges inspected	Opening balance of internal audit paras	Addition during the year	Disposal during the year	Closing balance of paras
2000-01	70	10	2066	396	17	2445
2001-02		4	2445	183	29	2599
2002-03		7	2559	148	16	2731
2003-04		NA				
2004-05	NA					

However, the wing stated that not a single case of evasion of tax was detected by it from 2000-01 to 2004-05.

Thus, the internal audit system was not effective in providing reasonable assurance to the department as regards the existence of adequate safeguards against evasion of tax.

2.2.16 Acknowledgement

Audit findings as a result of test check of records were reported in June 2006 to Government and a meeting of the Audit Review Committee, which included a nominee of the CCT and of the Finance Department, was held in August 2006. The results of the discussion have been suitably incorporated in the review.

2.2.17 Conclusion

The review has revealed that the authorities failed to safeguard the Government revenue due to

- non adherence of rules, regulations and instructions,
- lack of monitoring and internal control mechanism,
- absence of any statutory time limit for initiation of certificate proceedings.

Besides, no step was taken to amend the Acts and Rules to enable the department to plug leakage of revenue by evasion.

2.3 Incorrect determination of turnover of sales

Under the WBST Act and Rules made thereunder, a dealer is liable to pay tax at the prescribed rate on the amount of turnover after allowing permissible deductions.

Scrutiny of records of 19¹⁷ charge offices in six¹⁸ districts revealed that in assessing 33 cases of 32 dealers between February 2002 and June 2004, for different assessment periods ending between March 2000 and March 2002 the assessing authorities (AA) determined gross turnover (GT)/taxable balance (TB) at Rs.285.68 crore instead of Rs.319.55 crore. This was due to irregular exemption of various taxable goods from GT, erroneous calculation of taxable balance, escapement of TB from assessment, non consideration of return figures, non inclusion of excise duty/other income/packing charges etc. in the turnover. This resulted in short determination of GT/TB of Rs.33.87 crore and consequent short levy of tax including surcharge and additional surcharge of Rs.2.50 crore.

After this was pointed out, the Department accepted between December 2004 and August 2006 audit observations in 21 cases involving tax of Rs.87.56 lakh. In the remaining 12 cases involving Rs.1.63 crore the department did not furnish any reply/specific reply.

Government to whom the cases were reported between May 2003 and November 2005 accepted audit observation in six cases involving Rs.56.69 lakh in August 2006. Replies in the remaining cases have not been received (October 2006).

2.4 Short levy of tax due to incorrect deduction

Under the WBST Act and the Rules made thereunder, in determining the taxable turnover of a dealer, deduction on account of tax collected by him, is allowable from the aggregate of sales turnover in accordance with the prescribed formula¹⁹. Commissioner, Commercial Taxes (CCT), West Bengal, reiterating the provisions in circulars of December 1998 and December 2002 instructed all the AAs to restrict the deduction to the amount of sales tax collected by the dealers and included in their turnover.

¹⁷ Alipore, Asansol, Behala, Ballygunge, Bowbazar, Corporate Division-I & III, Darjeeling, Durgapur, Esplanade, Maniktala, Medinipur, Monohar Katra, Park Street, Posta Bazar, Salt Lake, Siliguri, Taltala and Ultadanga.

¹⁸ Burdwan, Darjeeling, Kolkata, North 24 Parganas, Paschim Medinipur and South 24 Parganas.

¹⁹ $\frac{\text{rate of tax} \times \text{the balance of his gross turnover of sales after making deduction therefrom under clause(a)}}{100 \text{ plus rate of tax}}$

Scrutiny of records of 16²⁰ charge offices in six²¹ districts revealed that while assessing 41 cases of 41 dealers between February 2002 and February 2005 for different assessment periods ending between March 1994 and March 2003, AAs allowed deduction of Rs.38.60 crore against actual collection of tax of Rs.26.55 crore. Thus excess allowance of deduction of Rs.12.05 crore resulted in short levy of tax of Rs.1.16 crore including surcharge, additional surcharge and additional sales tax.

After this was pointed out, the department accepted between November 2004 and August 2006 audit observations in 20 cases involving tax of Rs.69.82 lakh. In 15 cases involving Rs.31.41 lakh, the department did not furnish any specific reply. In the remaining six cases involving tax of Rs.14.93 lakh, the department stated that deduction was allowed as GT was inclusive of all taxes. The reply was not tenable as the AAs in those cases allowed a deduction of Rs.12.25 crore against actual collection of Rs.10.81 crore resulting in excess allowance of deduction of Rs 1.44 crore involving tax effect of Rs 14.93 lakh.

Government to whom the cases were reported between May 2003 and November 2005 accepted audit observation in 14 cases involving Rs.27.12 lakh in August 2006. Replies in the remaining cases have not been received (October 2006).

2.5 Loss due to assessment barred by limitation of time

Under the Bengal Finance (Sales Tax) Act, 1941, fresh assessment in pursuance of an order of the appellate authority is required to be completed within a period of four years from the date of passing such order and any assessment made thereafter becomes barred by limitation of time. This provision is also applicable to the assessments made under the CST Act.

Scrutiny of records in two²² charge offices in Kolkata revealed between July 2004 and January 2005 that while disposing of three appeal petitions of two dealers under the State Act and the Central Act for different assessment periods ending between March 1990 and March 1994, the appellate authority

²⁰ Alipore, Asansol, Beadon Street, Chandney Chowk, Colootola, Corporate Division – I, II and III, Durgapur, Esplanade, Jorabagan, Park Street, Salt Lake, Siliguri, Tamluk and Ultadanga.

²¹ Burdwan, Darjeeling, Kolkata, North 24 Parganas, Purba Medinipur and South 24 Parganas.

²² Beliaghata and Corporate Division – III.

directed the AA between February and July 2000 to complete fresh assessment. But fresh assessment was not completed within four years from the date of appellate order as a result of which the assessments were barred by limitation of time. This resulted in loss of revenue of Rs.35.05 lakh.

The cases were reported to the department/Government between August 2004 and November 2005 followed by reminders issued up to April 2006; their reply has not been received (October 2006).

2.6 Incorrect exemption on account of stock transfer

Under the CST Act and the Rules made thereunder, a dealer claiming exemption from his turnover on account of transfer of goods outside the state otherwise than by way of sale is liable to furnish declaration in form 'F' duly filled in and signed by the principal officer or his agent of the other state as a proof of transfer along with evidence of despatch. Transfer of goods effected during a calendar month is covered in a single declaration, otherwise, such transfer of goods is liable to be taxed at the normal rate.

Further, under the WBST Act, if a dealer has concealed any turnover or furnished incorrect particulars thereof with an intent to reduce the amount of tax payable by him, the CCT may impose by way of penalty a sum which shall not be less than one and a half times and not more than thrice the amount of tax that would have been avoided by him. According to instructions of the CCT issued in June 1991, where the AA did not initiate penal proceedings in a case, he should record the reasons for not doing so.

Scrutiny of records of 15²³ charge offices in seven²⁴ districts revealed that in assessing 45 cases of 44 dealers between May 2001 and March 2005 for different assessment periods between March 1997 and March 2003, the AAs allowed dealers' claim of stock transfer of goods to their branches outside the state for Rs.819.73 crore on the basis of declaration in form 'F'. Scrutiny of statement of declaration disclosed that out of the claim allowed, an amount of Rs.24.43 crore was not admissible as the transactions were either found to

²³ Alipore, Balurghat, Burtolla, Corporate Division-I, II and III, Durgapur, Esplanade, Ezra Street, Jorabagan, Krishnagar, Lalbazar, Park Street, Salt Lake and Siliguri.

²⁴ Burdwan, Dakshin Dinajpur, Darjeeling, Kolkata, North 24 Parganas, Nadia and South 24 Parganas.

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have been made to non existent/fake dealers or were not supported by 'F' form or 'F' form covered transactions beyond one calendar month. Incorrect allowance of exemption of such stock transfer resulted in underassessment of tax of Rs.1.80 crore, including surcharge and additional surcharge and non imposition of minimum penalty of Rs 81.59 lakh in respect of 12 cases of fake dealers, having tax effect of Rs 54.39 lakh.

After this was pointed out, the department admitted between March 2004 and August 2006 audit observations in 12 cases involving tax of Rs.35.53 lakh. In 12 cases involving tax of Rs.54.39 lakh and penalty of Rs 81.59 lakh, the department stated that dealers were not fake. The reply is not acceptable as the dealers have been declared fake by sales tax authorities of the respective states. In seven cases involving tax of Rs.28.05 lakh, the department stated that production of 'F' form was not mandatory and exemptions were allowed on the basis of alternative evidence. The reply is not tenable in view of the fact that 'F' form where produced by the dealer should be regular in all respects and there was nothing on the record that the exemption was allowed on the basis of alternative evidence. In 14 cases involving tax of Rs.62.04 lakh, the department did not furnish any specific reply.

Government to whom the cases were reported between May 2003 and November 2005 accepted audit observation in six cases involving Rs.18.35 lakh in August 2006 and in two cases involving Rs.8.03 lakh they did not furnish any specific reply. Replies in the remaining cases have not been received (October 2006).

2.7 Undue allowance of benefit to the dealer

Under the provisions of the WBST Act, if a dealer, liable to pay tax for sale of any goods collects any amount in excess of the amount of tax payable by him for such sale, is required to deposit such excess collected tax into Government account within 30 days from the date of collection under intimation to the CCT for arranging refund to the purchaser on application and submission of relevant documents.

Scrutiny of records of four²⁵ charge offices in Kolkata revealed that 47 dealers in 48 cases for different assessment periods ending between March 1995 and March 2001, collected tax of Rs.40.85 crore against tax of Rs.37.27 crore resulting in excess collection of tax of Rs.3.58 crore. While assessing those cases between June 2000 and January 2004, the AAs allowed the dealers to adjust the excess collected tax against their assessed tax dues. This resulted in undue benefit of Rs.3.58 crore to the dealers.

After this was pointed out, the department in 12 cases involving tax of Rs.47.56 lakh stated that the collected tax was deposited in Government account. The reply was not tenable as the excess collected tax though deposited in Government account, was adjusted against assessed tax dues of the dealers resulting in excess credit in favour of the dealers. In the remaining 36 cases involving Rs.3.10 crore, the department did not furnish any reply/specific reply.

All the cases were reported to Government between February 2004 and November 2005 followed by reminders issued upto April 2006; their reply has not been received (October 2006).

2.8 Non levy of penalty for concealment of sales/purchases

Under the WBST Act, if a dealer has concealed any turnover or furnished incorrect particulars thereof with intent to reduce the amount of tax payable by him, the CCT may impose by way of penalty a sum which shall not be less than one and a half times and not more than thrice the amount of tax that would have been avoided by him. According to instructions of the CCT

²⁵ Corporate Division – I, II and III and Lalbazar

issued in June 1991, where the AA did not initiate penal proceedings in a case, he should record the reasons for not doing so.

Scrutiny of records of nine²⁶ charge offices in Kolkata revealed that in assessing 16 cases of 15 dealers between December 2001 and July 2005 for different periods ending between March 1995 and March 2004, the AAs observed concealment of sales/purchases of Rs.26.62 crore. Though the AAs levied tax of Rs.2.23 crore, they did not impose minimum penalty of Rs.3.34 crore. Reasons for non imposition of penalty were not recorded in the assessment order.

After this was pointed out, the department stated in five cases involving Rs.1.48 crore that imposition of penalty was not mandatory. The reply is not tenable as the reasons for non imposition of penalty were not recorded in the assessment orders. In one case involving Rs.22.78 lakh, the department stated that the dealer disclosed suppressed turnover in the revised return. The reply is not tenable as disclosure has been made after the search and seizure of the accounts of the dealer by the Bureau of Investigation. In the remaining 10 cases involving Rs.1.63 crore, the department did not furnish any reply/specific reply.

All the cases were reported to Government between December 2004 and November 2005 followed by reminders issued upto April 2006; their reply has not been received (October 2006).

2.9 Incorrect determination of contractual transfer price

Under the WBST Act, any transfer of property in goods for valuable consideration involved in the execution of works contract shall be deemed to be a sale of these goods by the person making such transfer attracting levy of tax at four *per cent* on such contractual transfer price (CTP).

Scrutiny of records of three²⁷ charge offices in Kolkata revealed that in assessing three cases of three dealers between April and June 2002 for the assessment period ending March 2000, the AAs determined CTP at

²⁶ Armenian Street, Corporate Division – I and II, Beadon Street, Belgachia, Colootola, Ezra Street, Lalbazar and Maniktala

²⁷ Beadon Street, Belgachia and Sealdah.

Rs.1.99 crore instead of Rs.3.18 crore due to less inclusion of value of taxable materials involved in the execution of works contract. This resulted in short determination of CTP of Rs.1.19 crore having a tax effect of Rs.5.50 lakh including surcharge and additional surcharge.

After this was pointed out, the department admitted between October 2003 and January 2004 audit observations in two cases involving Rs.4.80 lakh. In one case involving Rs.0.70 lakh, the department did not furnish any specific reply.

The cases were reported to Government between November 2003 and March 2004 followed by reminders issued upto April 2006; their reply has not been received (October 2006).

2.10 Incorrect exemption in course of export

Under the CST Act, sales of goods made in the course of export out of India are exempt from tax if such sales are supported by proper evidence of export. Sales not supported by necessary evidence are to be taxed at the normal rate. Scrutiny of records in eight²⁸ charge offices in three²⁹ districts revealed that in assessing 19 cases of 19 dealers for different assessment periods ending between March 2001 and March 2002, the AAs allowed exemption on account of export sales for Rs.428.29 crore instead of Rs.393.83 crore as these transactions were either not supported by evidence or were not covered by the period of assessment. This resulted in excess allowance of export sales of Rs.34.46 crore with consequent short levy of tax of Rs.2.72 crore.

After this was pointed out, the department admitted in August 2006, audit observations in three cases involving tax of Rs.80.72 lakh. In three cases involving tax of Rs.1.07 crore, the department stated that there was no hard and fast rule that the bill date must be prior to the date of the bill of lading. The reply was not tenable as bills of lading, also known as shipping bills, are required to be filed alongwith all original documents such as invoices etc. in the absence of which shipping bills cannot be processed as per the Custom Law Manual. In one case involving Rs.20.54 lakh, the department stated that the dealer was not a direct exporter. The reply is not tenable as the AA has himself stated that the assessee dealer and the exporting dealer are the same.

²⁸ Alipore, Corporate Division-I, II and III, Bowbazar, Colootola, Park Street, Salt Lake.
²⁹ Kolkata, North 24 Parganas and South 24 Parganas.

In the remaining 12 cases involving Rs.63.49 lakh, the department did not furnish any specific reply.

The cases were reported to Government between May 2003 and November 2005; their reply have not been received (October 2006).

2.11 Non/short levy of purchase tax

Under the WBST Act, a dealer is liable to pay purchase tax at the rate specified from time to time on all purchases of goods from an unregistered dealer, intended for direct use in the manufacture of goods for sale in West Bengal. Further, purchase tax is also payable by a manufacturer dealer if such manufactured goods are transferred by him to any place outside the state or disposed of otherwise than by way of sale within the State.

Scrutiny of records of nine³⁰ charge offices in three³¹ districts revealed that in assessing 15 cases of 15 dealers between December 2001 and June 2004 for different assessment periods between March 2000 and March 2002, the AAs incorrectly allowed exemption of purchase tax on purchases worth Rs.18.62 crore. Of these, in nine cases purchases valued at Rs.3.25 crore were made from unregistered dealers but the purchase tax of Rs 16.69 lakh was not levied. In six cases, tax was incorrectly assessed at Rs.26.78 lakh instead of Rs.79.23 lakh on purchase of Rs.15.37 crore. This resulted in non/short levy of purchase tax of Rs.69.14 lakh.

After this was pointed out, the department accepted audit observations between October 2002 and September 2005, in eight cases involving Rs.26.77 lakh. Specific reply in the remaining seven cases involving tax of Rs.42.37 lakh were not furnished.

The cases were reported to Government between December 2002 and October 2005, followed by reminders issued upto April 2006; their reply has not been received (October 2006).

³⁰ Asansol, Burdwan, Cossipore, Jorabagan, N.D. Sarani, Park Street, Posta Bazar, Siliguri and Taltala.

³¹ Burdwan, Darjeeling and Kolkata.

2.12 Mistake in computation of tax

Under the WBST Act, tax, surcharge and additional surcharge are to be levied at the rate applicable from time to time along with interest and penalty, if any, on the goods/commodities sold.

Scrutiny of records of 10³² charge offices in three³³ districts revealed short levy of tax including surcharge, additional surcharge, interest and penalty of Rs.70.31 lakh due to mistake in computation in 14 cases of 14 dealers for the assessment periods ending between March 1994 and March 2003, assessed between May 2002 and March 2005.

After this was pointed out, the department accepted between June 2003 and September 2005 audit observations in 11 cases involving Rs.56.20 lakh. In the remaining three cases involving Rs.14.11 lakh, the department did not furnish any specific reply.

All the cases were reported to Government between October 2003 and November 2005 followed by reminders issued upto April 2006; their reply has not been received (October 2006).

2.13 Non/short raising of demand

Under the provision of the WBST Act, the AA shall serve notice of demand in the prescribed form to the dealer showing the amount of demand of tax, interest, penalty etc.

Scrutiny of records of two³⁴ charge offices in Kolkata revealed that while assessing two cases of two dealers between June 2003 and January 2004 for different assessment periods between December 1999 and March 2001, the assessing authorities assessed tax including interest and penalty at Rs.26.51 lakh whereas demand notices were issued for Rs.11.21 lakh only. This resulted in non/short raising of demand of Rs.15.30 lakh.

The cases were reported to the Government between June 2005 and November 2005, followed by reminders upto April 2006; their reply has not been received (October 2006).

³² Alipore, Asansol, Behala, Bowbazar, Corporate Division I and III, Durgapur, Jorabagan, Park Street and Taltala.

³³ Burdwan, Kolkata and South 24 Parganas.

³⁴ Corporate Division II and III.

2.14 Application of incorrect rate of tax

Under the WBST Act, rate of tax depends on nature of sales and also on the class of goods/commodities sold.

Scrutiny of records of 17³⁵ charge offices in six³⁶ districts revealed that while assessing 38 cases of 37 dealers between June 2000 and February 2005 for different assessment periods ending between March 1998 and March 2003, there was short levy of tax of Rs.80.85 lakh inclusive of surcharge and additional surcharge due to application of incorrect rate of tax.

After this was pointed out, the department admitted audit observations between November 2004 and August 2006 in 16 cases involving tax of Rs.47.12 lakh. In two cases involving Rs.3.17 lakh it was stated that rubberised cloth was declared good taxable at the rate of 4 *per cent*. The reply was not correct as rubberised cloth is taxable at the rate of 10 *per cent* vide code no 1717100 under WBST Act. In the remaining 20 cases involving tax of Rs.30.56 lakh, the department did not furnish any reply/specific reply.

The cases were reported to Government between May 2003 and November 2005; their reply have not been received (October 2006).

2.15 Non/short levy of interest

Under the WBST Act, a dealer who furnishes return in respect of any period by the prescribed date, or thereafter, but fails to make full payment of tax payable in respect of such period by such prescribed date or fails to furnish a return in respect of any period by the prescribed date or thereafter before assessment in respect of such period and on such assessment full amount of tax payable for such period is found not to have been paid by him by such prescribed date or fails to make payment of any tax demanded after assessment by the date specified in the demand notice, is liable to pay simple interest at the prescribed rate for each calendar month of default.

³⁵ Alipore, Asansol, Ballygunge, Behala, Bhowanipore, Burtola, Colootola, Corporate Division-I & II, Cossipore, Darjeeling, Jorabagan, Lyons Range, Maniktala, Park Street, Salt Lake and Shibpur.

³⁶ Burdwan, Darjeeling, Howrah, Kolkata, North 24 Parganas, and South 24 Parganas.

Scrutiny of records of 30³⁷ charge offices in six³⁸ districts revealed between April 2003 and September 2005 that while assessing/initiating certificate proceedings between October 2000 and March 2005 in 90 cases of 80 dealers for different assessment periods ending between March 1992 and March 2002, the AAs did not levy or short levied interest of Rs.3.42 crore for delay in payment/non payment of assessed/advance tax of Rs.9.85 crore.

After this was pointed out, the department accepted audit observations in 60 cases involving Rs.2.24 crore. In the remaining 30 cases involving Rs.1.18 crore, the department did not furnish any reply/specific reply.

Government to whom the cases were reported between May 2003 and November 2005 accepted audit observations in 27 cases involving Rs.36.55 lakh in August 2006 and in one case involving Rs.3.31 lakh they did not furnish any specific reply. Replies in the remaining cases have not been received (October 2006).

2.16 Failure of Decision Support System (DSS) to monitor transport of goods imported against declaration

Under West Bengal sales tax laws when goods are transported into West Bengal and such goods are bound for any place outside the State the transporter shall make a declaration in the prescribed manner. Under Sub-Section (6) of Section 72 of the WBST Act, the transporter is liable to pay penalty, not exceeding 25 *per cent* of the value of the goods transported, for contravention of the provisions of the Act. The “Transit Pass” (declaration) of the Decision Support System (DSS) maintained by Information System Division (ISD) of the Directorate of Commercial Taxes, West Bengal was introduced to capture data regarding consignments which entered West Bengal and their exit from the State through different check posts within the prescribed period. The system is required to match data of entry check-posts with that of exit check post with the object of ensuring exit of consignments bound for other States.

³⁷ Alipore, Asansol, Ballygunj, Behala, Belgachia, Bhowanipore, Burdwan, Corporate Division - I, II and III, Cossipore, Darjeeling, Ezra Street, Fairlie Place, Jalpaiguri, Jorabagan, Jorasanko, Lalbazar, Lyons Range, Manohar Katra, N.D. Sarani, Postabazar, Princep Street, Salkia, Salt Lake, Sealdah, Shyambazar, Siliguri, Strand Road and Taltala.
³⁸ Burdwan, Darjeeling, Howrah, Jalpaiguri, Kolkata and North 24 Parganas.

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IT enabled scrutiny of DSS revealed that 4,100 consignments with a value of Rs.402.20 crore entered West Bengal between October 2002 and March 2003 through Khidirpur Dock check post of Kolkata. As per transit declarations, these consignments were to be transported out of West Bengal through different exit check posts. But details of exit of 3,047 consignments with a value of Rs.336.63 crore were not available in the DSS.

A sample of 13 cases each in Chichira and Sonakania check posts was taken for cross verification. Of these, in 23 cases involving Rs.1.36 crore, consignments had not exited as per the manual exit register involving a loss of Rs.34.05 lakh due to non imposition of penalty as per rules. In the other three cases (two in Chichira and one in Sonakania), manual exit registers depicted exit of the consignment though the same was not captured in the DSS. Failure of DSS to monitor movement of goods not only reflects control weakness but also had an adverse impact on revenue collection.

After this was pointed out, ISD stated (June2006) that information as provided might be inadequate or incomplete but in no way was responsible for any loss or leakage of revenue. Reply is not tenable as non exit of the transporter through the exit check post could not be detected in time which resulted in non imposition of penalty.

The matter was reported to Government in May 2006, their reply has not been received (October 2006).