

## CHAPTER 2 SALES TAX

### 2.01 Results of audit

Test check of records of the offices of the Commercial Taxes Directorate, conducted in audit during the year 2000-2001, revealed underassessments of tax and other irregularities involving Rs.50.83 crore in 551 cases, which broadly fall under the following categories :

*(Rupees-in-crore)*

Sl. No.	Nature of Irregularity	No. of cases	Amount
1.	Non/short levy of interest/penalty	211	25.86
2.	Application of incorrect rate of tax/mistake in computation	42	6.50
3.	Irregular deduction/exemption	83	4.38
4.	Incorrect determination of gross turnover/taxable turnover	47	4.06
5.	Non/short levy of additional sales tax/surcharge/additional surcharge	22	0.34
6.	Non/short levy of turnover tax	10	0.14
7.	Other cases	136	9.55
<b>Total</b>		<b>551</b>	<b>50.83</b>

During the course of the year 2000-2001, the Commercial Taxes Directorate accepted underassessments etc of Rs.21.69 crore in 267 cases of which 234 cases involving Rs.21.04 crore had been pointed out in audit during the year 2000-2001 and the rest in earlier years.

A few illustrative cases involving Rs.25.80 crore highlighting important observations are given in the following paragraphs:

## **2.02 Incorrect determination of gross turnover**

Under the Sales Tax Laws, a dealer is liable to pay tax at the prescribed rate on the amount of the turnover that remains after allowing the permissible deductions.

Scrutiny of records of 14 charge offices in Kolkata revealed (between July 1997 & October 2000) that gross turnover of 38 dealers in 56 cases was incorrectly determined at Rs.366.83 crore instead of Rs.390.49 crore at the time of assessment for various periods between June 1988 and March 1998. This resulted in short determination of gross turnover of Rs.23.66 crore with consequent short levy of tax of Rs.2.65 crore inclusive of turnover tax, additional sales tax and surcharge as detailed in Appendix 1.

On this being pointed out (between July 1997 and October 2000), the department stated (between July 1997 and June 2001) that in 17 cases (Rs.1.58 crore) proposal for revision/review/reopening had been sent to the higher authority, 2 cases (Rs.4.11 lakh) had been referred to the certificate officer/Tax Recovery Officer for realisation, in 2 cases (Rs.4.68 lakh) revised demand notice had been issued, in 13 cases (Rs.9.96 lakh) notices were issued to the dealers, 3 cases (Rs.43.29 lakh) were pending in appeal. In 19 cases (Rs.45.19 lakh) reply was not furnished. Report on final action taken in the cases has not been received (October 2001).

Government to whom the cases were reported between August 1997 and December 2000, endorsed (July 2001) the views of the department in 21 cases; their reply in the remaining cases has not been received (October 2001).

## **2.03 Underassessment of tax due to incorrect deduction**

### **(a) Under the Central Sales Tax Act, 1956**

Under the Central Sales Tax Act, 1956, in determining the taxable turnover of a dealer a deduction on account of tax collected by him is allowed from the

aggregate of sale prices in accordance with the prescribed formula provided that the tax collected has not otherwise been deducted. However, the deduction is restricted to the amount of tax collected and included in the gross turnover of the dealer.

Scrutiny of records of 7 charge offices in Kolkata revealed (between February 1999 and October 2000) that in 12 cases excess allowance of Rs.4.47 crore on account of such deduction resulted in underassessment of tax amounting to Rs.36.43 lakh as detailed below :

(Rupees in lakh)

Name of the charge	No. of cases	Assessment year/month of assessment	Tax collected by the dealer	Deduction allowed by the department	Excess deduction allowed	Under assessment of tax
Corporate Division-II	4	Between March 1996 and March 1997 Between December 1997 and June 1999	58.25	404.97	346.72	28.11
Alipore	1	March 1996 June 1998	32.54	46.87	14.33	1.15
Bowbazar	1	March 1997 June 1999	0.25	12.25	12.00	0.58
Esplanade	1	March 1997 June 1999	1.79	11.61	9.82	0.79
Radhabazar	2	March 1993 and March 1997 June 1994 and November 1998	9.36	57.83	48.47	4.52
Strand Road	1	March 1996 June 1998	0.58	7.31	6.73	0.54
Park Street	2	April 1995 and March 1996 June 1998	-	8.76	8.76	0.74
<b>Total</b>	<b>12</b>		<b>102.77</b>	<b>549.60</b>	<b>446.83</b>	<b>36.43</b>

On this being pointed out (between February 1999 and October 2000), the department stated (between February 1999 and June 2001) that 5 cases (Rs.6.62 lakh) were under appeal, in one case (Rs.0.79 lakh) certificate officer had been informed for realisation, one case (Rs.24.89 lakh) was not being re-opened in view of departmental circular of December 1998, in one case (Rs.1.15 lakh) the dealer had made short payment of tax for which interest had been charged, in 2 cases (Rs.1.86 lakh) proposal for revision had been sent to the appellate authority while in the remaining 2 cases (Rs.1.12 lakh) no specific reply was furnished. The reply of the local office on the unaccepted

case is not tenable since the circular of 1998 relates to the cases assessed under the State Act. Report on final action taken in the remaining cases had not been received (October 2001).

Government to whom the cases were reported between August 1999 and December 2000, endorsed (July 2001) the views of the department in 5 cases; their reply in the remaining cases has not been received (October 2001).

### **(b) Under the State Act**

Under the Sales Tax Laws, in determining the taxable turnover of a dealer, a deduction on account of tax collected by him is allowed from the aggregate of sale prices in accordance with the prescribed formula. The Commissioner, Commercial Taxes, West Bengal, reiterating the provisions in a circular of December 1998, instructed all the assessing officers to restrict the deduction to the amount of sales tax collected by the dealers and included in their turnover.

Scrutiny of records of 18 charge offices<sup>1</sup> in Kolkata, Howrah, Burdwan and South 24-Parganas districts revealed that in 47 cases of 43 dealers in respect of assessments made between May 1995 and June 1999 for various periods between March 1993 and March 1997, deduction was allowed for Rs.46.64 crore against actual collection of tax of Rs.25.22 crore leading to excess/incorrect allowance of Rs.21.42 crore. Such excess deduction resulted in underassessment of tax of Rs.2.35 crore.

On this being pointed out (between July 1999 and December 2000), the department stated (between July 1999 and June 2001) that in 14 cases (Rs.29.28 lakh) proposal for revision/review had been sent to the higher authority, 10 cases (Rs.9.52 lakh) were under appeal, in 8 cases (Rs.45.18 lakh) no specific reply was furnished. In 10 cases (Rs.88.13 lakh) the department stated that the gross turnover was inclusive of the tax element which is at variance with the Commissioner's order. In the remaining 5 cases

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<sup>1</sup> Behala, Bowbazar, Corporate Division I, Corporate Division II, Corporate Division III, Colootola, Durgapur, Esplanade, Manoharkatra, Naren Dutta Sarani, Park Street, Princep Street, Radhabazar, Rajakatra, Strand Road, Salkia, Taltala and Ultadanga

(Rs.63.10 lakh) the department stated that the cases were not reopened as per the Commissioner's circular. However, the reply is not tenable since as per judicial pronouncement\* the Commissioner is not competent to issue instructions regarding re-opening of the past cases. Report on final action taken in the cases has not been received (October 2001).

Government to whom the cases were reported between September 1999 and January 2001, endorsed (July 2001) the views of the department in 23 cases; their reply in the remaining cases has not been received (October 2001).

#### **2.04 Incorrect exemption on account of stock transfer**

Under the Central Sales Tax Act, 1956 and the Rules made thereunder, a dealer claiming exemption from his turnover on account of stock transfer of goods outside the State, is liable to furnish declarations in prescribed form "F" duly filled in and signed by the principal officer or his agent of the other place of business as a proof of such transfer. Otherwise such transfer of goods is liable to be taxed at the normal rate.

Scrutiny of records of 3 charge offices in Kolkata revealed that in assessing (between June 1995 and June 1999) 13 dealers in 15 cases for various periods between March 1993 and June 1997 their claims of stock transfer of goods to their branches outside the State were allowed for Rs.307.13 crore on the basis of declarations in form 'F'. An examination of the declarations, however, disclosed that out of the total allowed claim of Rs.307.13 crore an amount of Rs.10.76 crore was not admissible. Incorrect allowance of stock transfer of goods worth Rs.10.76 crore resulted in short levy of tax of Rs.85.56 lakh inclusive of additional sales tax, turnover tax and surcharge as detailed below:

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\* {69 STC 213 (SC)}

*(Rupees in lakh)*

<b>Name of the charge</b>	<b>Period of assessment/month of assessment</b>	<b>No. of dealers/cases</b>	<b>Stock/Branch transfer allowed</b>	<b>Irregularities in the transfer</b>	<b>Amount involved</b>	<b>Short levy of tax</b>
Corporate Division I	Between March 1993 and June 1997 Between June 1995 and June 1999	10/11	28958.42	(i) 63 transactions involving Rs.230.33 lakh in 16 'F' forms covered transactions for more than one calendar month (ii) Excess allowance of Rs.80.19 lakh in 32 transactions not taken into account (iii) Stock transfer of goods of Rs.627.66 lakh though supported by declaration in form 'F', was fake as those transferee dealers were non-existent	938.18	73.44
Corporate Division II	March 1996 and March 1997 April 1998 and June 1999	2/2	1690.93	(i) 53 transactions involving Rs.71.21 lakh in 11 "F" forms covered transactions for more than one calendar month (ii) "F" forms not produced for Rs.35.05 lakh	106.26	9.56
Naren Dutta Sarani	March 1996 and March 1997 June 1998 and June 1999	1/2	64.07	33 transactions in 9 "F" forms covered transactions for more than one calendar month	32.05	2.56
<b>Total</b>		<b>13/15</b>	<b>30713.42</b>		<b>1076.49</b>	<b>85.56</b>

On this being pointed out (between March 1999 and August 2000), the department stated (between July 1999 and June 2001) that 12 cases (Rs.75.41 lakh) were under appeal, in one case (Rs.7.59 lakh) review proposal had been sent to the higher authority, and in the remaining 2 cases (Rs.2.56 lakh) the delivery of goods against transactions for different months were made in a single month. The reply is not tenable since the transactions in a particular month should be covered by a single declaration form. Report on final action taken in the cases has not been received (October 2001).

Government to whom the cases were reported between October 1999 and December 2000, endorsed (July 2001) the views of the department in 12 cases; their reply in the remaining cases has not been received (October 2001).

## **2.05 Non/short levy of turnover tax**

A dealer whose aggregate of the gross turnover under the Bengal Finance (Sales Tax) Act, 1941 and the West Bengal Sales Tax Act, 1954 exceeds Rs.25 lakh is liable to pay a turnover tax. Once a dealer becomes liable to pay turnover tax he continues to be so until the expiry of three consecutive years irrespective of whether gross turnover under both the Acts during those years exceeds Rs.25 lakh or not.

Scrutiny of records of 19 Sales Tax charge offices in 7 districts<sup>2</sup> revealed that in the cases of 41 dealers in 49 cases for the periods ending between March 1988 and March 1995 their turnovers had exceeded the prescribed limit in each case making the dealers liable to pay turnover tax. However, turnover tax amounting to Rs.1 crore was not levied/ levied short as detailed in Appendix 2.

On this being pointed out (between January 1997 and September 2000), the department stated (between January 1997 and June 2001) that in 2 cases (Rs.4.77 lakh) assessment orders had been revised and the demands had been referred to the certificate officer for realisation, in 12 cases (Rs.15.77 lakh) proposal for *suo motu* revision/reopening had been sent, in 2 cases (Rs.4.93 lakh) revised demand notice had been issued, 2 cases (Rs.20.81 lakh) were under appeal, in 4 cases Rs.1.04 lakh had been realised from the dealer against Rs.3.20 lakh, in 17 cases (Rs.15.56 lakh) action was being taken and in the remaining 10 cases (Rs.35 lakh) no specific reply was furnished.

Government to whom the cases were reported between April 1997 and November 2000, endorsed (July 2001) the views of the department in 19 cases; their reply in the remaining cases has not been received (October 2001).

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<sup>2</sup> Burdwan, Darjeeling, Howrah, Jalpaiguri, Kolkata, Malda and South 24-Parganas

## **2.06 Incorrect allowance of concessional rate of tax**

Under the Sales Tax Laws, a dealer is eligible for concessional rate of tax for sale of goods to registered reseller and manufacturer dealers if such sales are supported by prescribed declaration forms obtainable from the purchasing dealers. Further, intra-State sales of goods to Government departments are also exigible to tax at the concessional rate subject to production of a prescribed certificate obtainable from the purchasing Government departments.

Scrutiny of records of 7 charge offices<sup>3</sup> in Kolkata revealed that in assessing (between June 1997 and June 1999) 7 dealers in 8 cases for various periods between March 1994 and March 1997 they were allowed concessional rate of tax on Rs.48.63 crore being sales to registered dealers and Government departments on the basis of prescribed declarations and statements. An examination of the statements of declarations and sales, however, disclosed that in 3 cases claims of sales to registered dealers amounting to Rs.3.74 crore, in one case inter-State sales to Government department amounting to Rs.29.34 crore and in the remaining 4 cases intra-State sales to local Government departments amounting to Rs.2.25 crore were either allowed in excess or not supported by prescribed documentary evidences. Thus, incorrect concession was allowed on a total sum of Rs.35.33 crore with consequent short levy of tax of Rs.1.48 crore.

On this being pointed out (between November 1998 and August 2000), the department stated (between November 1998 and June 2001) that in 2 cases (Rs.21.26 lakh) proposal for revision/review had been sent to the higher authority, one case (Rs.4.25 lakh) was pending in appeal and in the remaining 5 cases (Rs.1.22 crore) no specific reply was furnished. Report on final action taken in the cases has not been received (October 2001).

Government to whom the cases were reported between January 1999 and December 2000, endorsed (July 2001) the views of the department in 5 cases; their reply in the remaining cases has not been received (October 2001).

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<sup>3</sup> Alipore, Ballygunge, Corporate Division - I & III, Manicktala, Sealdah and Ultadanga



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### **2.07 Application of incorrect rate of tax**

Scrutiny of records of 14 charge offices in 4 districts<sup>4</sup> revealed (between December 1996 and November 2000) that of 21 dealers in 29 cases in respect of assessments made between October 1992 and October 1999 for various periods ending between March 1991 and March 1999 there was short levy of tax amounting to Rs.52.10 lakh inclusive of surcharge and additional surcharge due to application of incorrect rate, as detailed in Appendix 3.

On this being pointed out (between February 1996 and December 2000), the department stated (between January 1997 and June 2001) that 5 cases (Rs.13.75 lakh) were pending in appeal, proposal for *suo motu* revision had been sent in 7 cases (Rs.4.24 lakh), assessment order revised and demand had been referred to the Certificate Officer/Tax Recovery Officer in 3 cases (Rs.7.74 lakh), accepted the audit observation in 5 cases (Rs.5.93 lakh), no specific reply was furnished in 8 cases (Rs.19.57 lakh) while in the remaining case (Rs.0.87 lakh) it was stated that storage battery should be taxed under BF (ST) Act, 1941 as per notification dated 29 March 1984. The reply is not tenable since storage battery was a notified commodity during the period covered under the objection and should have been taxed at the rate of 15 per cent. Report on final action taken has not been received (October 2001).

Government to whom the cases were reported between April 1997 and December 2000, endorsed (July 2001) the views of the department in 18 cases; their reply in the remaining cases has not been received (October 2001).

### **2.08 Non-levy of penalty**

Under the Sales Tax Laws of West Bengal, if in the course of assessment proceedings, the Commissioner is satisfied that a dealer has concealed any turnover or furnished incorrect particulars thereof with an intent to reduce the amount of tax payable by him, the Commissioner 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 the instructions (June 1991) of the Commissioner of Commercial Taxes, West Bengal where the assessing officer did not initiate penal proceedings in a case, he should record the reasons for not doing so.

Scrutiny of records of 10 charge offices in Kolkata revealed (between July 1999 and November 2000) that 23 dealers had either concealed sales or made fake claim of exemption aggregating Rs.54.23 crore for which penalty of Rs.6.02 crore (M/s Raju Trading Co. has the effect of penalty of Rs.3.08 crore) was leviable but not levied as under :

*(Rupees in lakh)*

Name of the charge	Period of assessment/month of assessment	No. of dealers/cases	Nature of offence as per assessment order	Amount involved Tax effect	Minimum penalty leviable	Penalty levied	Non/short levy of penalty
Manohar-katra	Between March 1996 and March 1997 Between June 1998 and January 1999	1/2	Suppression of sales	<u>1743.00</u> 205.43	308.14	Nil	308.14
Corporate Division-I	March 1997 Between May and June 1999	12/12	Fake stock transfer claimed by the dealer	<u>3113.66</u> 137.00	205.50	Nil	205.50
Park Street	Between March 1993 and March 1996 Between March 1996 and May 1998	1/5	Suppression of sales	<u>205.50</u> 22.29	33.43	Nil	33.43
Ultadanga	March 1996 June 1998	1/1	Suppression of purchase and sales	<u>95.38</u> 13.33	20.00	Nil	20.00
Belgachia	Between March 1995 and March 1997 Between June 1998 and September 2000	2/4	Suppression of purchase and sales	<u>59.56</u> 8.05	12.07	Nil	12.07
Naren Dutta Sarani	Between March 1996 and March 1997 Between September 1999 and March 2000	1/2	Suppression of sales	<u>56.85</u> 7.51	11.26	Nil	11.26
Corporate Division-II	March 1997 June 1999	1/1	The dealer had intended to avoid tax by making a fake claim of exemption	<u>95.07</u> 3.80	5.70	Nil	5.70
Lalbazar	Between March 1998 and March 1999 Between December 1999 and February 2000	2/2	(i) Suppression of sales	<u>12.56</u> 1.73	2.60	Nil	2.60
			(ii) Fake export sales claimed by the dealer	<u>31.30</u> 1.08	1.62	Nil	1.62
Esplanade	March 1995 June 1997	1/1	Suppression of sales	<u>7.42</u> 0.82	1.23	Nil	1.23
Sealdah	March 1997 June 1999	1/1	Suppression of sales	<u>2.58</u> 0.34	0.51	Nil	0.51
<b>Total</b>		<b>23/31</b>		<b><u>5422.88</u></b> <b>401.38</b>	<b>602.06</b>	<b>Nil</b>	<b>602.06</b>

<sup>4</sup> Darjeeling, Howrah, Kolkata and South 24-Parganas

On this being pointed out (between July 1999 and November 2000), the department stated (between August 1999 and June 2001) that in 2 cases (Rs.11.26 lakh) proposal for imposition of penalty had been sent, in one case penalty of Rs.0.51 lakh had been imposed against which payment of Rs.10,000 was made by the dealer, penalty was not levied in 8 cases (Rs.3.62 crore) as the assessments were made *ex-parte*/to the best of judgement, no specific reply was furnished in 7 cases (Rs.17.52 lakh), in one case (Rs.5.70 lakh) it was stated that as per court judgement certain sales wrongly claimed as exempted would not call the return as false and in 12 cases (Rs.2.05 crore) penalty was not levied using discretionary power. In the 12 cases no reasons for non-levy of penalty was recorded in the assessment order as per instructions of June 1991. Report on final action taken has not been received (October 2001).

Government to whom the cases were reported between December 1999 and December 2000, endorsed (July 2001) the views of the department in 20 cases; their reply in the remaining cases has not been received (October 2001).

## **2.09 Non-levy of tax on sale of import replenishment licence/import licence**

Import replenishment licence (REP) which is granted by the Chief Controller of Imports and Exports in recognition of export of certain products can be transferred by way of sale without endorsement by the licensing authority. It was also judicially held<sup>5</sup> that import replenishment licence and exim scrips are goods taxable under the Sales Tax Laws.

Scrutiny of assessment records of 5 charge offices<sup>6</sup> in Kolkata revealed that in assessing (between April 1993 and January 1999) 8 cases pertaining to 6 dealers for the years ending between March 1991 and March 1998, their sales of REP licence/import licence aggregating Rs.4.73 crore were not

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<sup>5</sup> Vikas Sales Corporation and another vs Commissioner of Commercial Taxes and another [STI-1996-100-114(sc)]

<sup>6</sup> Beliaghata, Bhowanipore, Beadon Street, Fairlie Place and Lyons Range

included in the gross turnover for the purpose of assessment. This resulted in non-levy of tax of Rs.61.05 lakh.

On this being pointed out (between January 1999 and June 2000), the department stated (between January 1999 and June 2001) that in 3 cases (Rs.55.89 lakh) revision proposal had been/was being sent to the higher authority, revised demand notice had been issued in 3 cases (Rs.0.94 lakh) while in the remaining 2 cases (Rs.4.22 lakh) no specific reply was furnished. Report on further action taken in the cases has not been received (October 2001).

Government to whom the cases were reported between February 1999 and July 2000, endorsed (July 2001) the views of the department in 7 cases; their reply in the remaining cases has not been received (October 2001).

## **2.10 Short realisation due to incorrect credit**

Under the Sales Tax Laws in West Bengal, a dealer is liable to pay tax on the basis of self-assessment before furnishing return of his sales. The amount of tax so paid is adjusted against the tax assessed at the time of final assessment.

Scrutiny of assessment records in 3 charge offices<sup>7</sup> in Kolkata revealed that in assessing (between June 1998 and June 1999) 5 dealers in 5 cases for the years ending between March 1993 and March 1997 the dealers were allowed credit of Rs.8.15 crore as payment of advance tax instead of Rs.7.05 crore as per tax payment challans. This resulted in allowance of incorrect credit of Rs.1.10 crore (M/s India Jute and Industries Ltd. has the tax effect of Rs.1.02 crore) with consequent short levy of tax for an identical amount.

On this being pointed out (between May 1999 and September 2000), the department stated (between November 1999 and June 2001) that 3 cases (Rs.8.05 lakh) were under appeal and in one case (Rs.1.02 crore) proposal for revision had been sent to the higher authority. In the remaining case

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<sup>7</sup> Corporate Division I, III and Burtolla

(Rs.0.60 lakh) no specific reply was furnished. Report on final action taken in the cases has not been received (October 2001).

Government to whom the cases were reported between October 1999 and November 2000, endorsed (July 2001) the views of the department in 3 cases; their reply in the remaining cases has not been received (October 2001).

## **2.11 Non/short levy of additional sales tax/surcharge/additional surcharge**

Under the Bengal Finance (Sales Tax) Act, 1941 additional sales tax was leviable during the period from 16 August 1991 to 10 April 1994 at the rate of 15 per cent on the total amount of sales tax payable by a dealer on sales of goods. Further, under the West Bengal Sales Tax Act, 1994, every dealer liable to pay sales tax is also liable to pay a surcharge at the rate of ten per cent on the total amount of sales tax payable by him with effect from 1 May 1995 and a dealer, liable to pay surcharge, is also liable to pay an additional surcharge at the rate of five per cent on the total amount of tax payable by him with effect from 1 May 1997. As per judicial decision<sup>8</sup> the levy of additional sales tax/surcharge/additional surcharge is also made applicable on certain transactions of inter-State sales when the rate of sales tax is fixed in accordance with the provisions of the State Act.

Scrutiny of records of 7 charge offices<sup>9</sup> in 4 districts<sup>10</sup> revealed that in assessing/re-assessing (between March 1995 and March 2000) 11 dealers in 13 cases for the years ending between March 1992 and March 1998, in 4 cases additional sales tax of Rs.11.84 lakh was not levied on sales tax of Rs.78.96 lakh, in 3 cases surcharge of Rs.2.72 lakh on the amount of tax of Rs.27.21 lakh was not levied while in 3 cases surcharge was levied short by Rs.32.07 lakh on total tax of Rs.11.08 crore and in the remaining 3 cases additional surcharge of Rs.5.67 lakh was not levied on total tax of Rs.1.13 crore. This resulted in non/short levy of additional sales tax/surcharge/additional surcharge of Rs.52.30 lakh.

On this being pointed out (between February 1999 and October 2000), the department stated (between March 1999 and June 2001) that proposal for *suo motu* revision/review/reopening had been initiated in 7 cases (Rs.11.57 lakh), 4 cases (Rs.29.54 lakh) were pending in appeal, in one case (Rs.10.73 lakh) demand notice was issued and the remaining case (Rs.0.46 lakh) was referred

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<sup>8</sup> Deputy Commissioner of Sales Tax (Kerala) vs. Aysha Hosiery Factory (P) Ltd. 85-STC-106(SC)

<sup>9</sup> Alipore, Beliaghata, Chinabazar, Corporate Division-I, Cooch Behar, Esplanade and Siliguri

<sup>10</sup> Cooch Behar, Darjeeling, Kolkata and South 24-Parganas

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to the certificate officer for realisation. Report on final action taken in the cases has not been received (October 2001).

Government to whom the cases were reported between November 1999 and November 2000, endorsed (July 2001) the views of the department in 7 cases; their reply in the remaining cases has not been received (October 2001).

### **2.12 Short levy of tax due to misclassification of goods**

Under the West Bengal Sales Tax Act, 1994 sales of general goods to unregistered dealers attract tax at the rate of twelve per cent whereas sales of chemicals to such dealers attract tax at the rate of five per cent.

Scrutiny of records of the Assistant Commissioner, Commercial Taxes, Cossipore charge, Kolkata revealed that in assessing (March 1999) a manufacturer dealer of Robin liquid bleach/Harpic liquid/Harpic powder for the year ending March 1997, has disallowed sales of Rs.78.34 lakh to registered reseller dealers and of Rs.1.30 crore claimed as sales prior to export out of India were charged to tax at the rate of 5 per cent treating the items as chemicals instead of general goods. This resulted in short levy of tax of Rs.15.94 lakh inclusive of surcharge.

The case was reported to the department/Government (between July and August 1999) followed by reminders issued up to July 2001; their reply has not been received (October 2001).

### **2.13 Mistake in computation of tax**

Scrutiny of records of 7 charge offices in Kolkata revealed between November 1997 and June 1999 short realisation of tax amounting to Rs.51.36 lakh due to mistake in computation in 10 cases in respect of 10 dealers as mentioned below:

(Rupees in lakh)

Name of the Charge	Assessment year ending/month of assessment/re-assessment	No. of dealers/ No. of cases	Gross/ Taxable turnover	Tax assessable	Tax assessed	Tax assessed short
Princep Street	<u>March 1996</u> Between June and September 1998	2/2	1187.49	55.34	15.84	39.50
Alipore	<u>March 1996</u> November 1997	1/1	10.00	1.32	NIL	1.32
Maniktala	<u>March 1997</u> March 1999	1/1	37.41	2.13	1.56	0.57
Corporate Div.-III	<u>March 1997</u> June 1999	1/1	15452.89	145.43	142.03	3.40
Corporate Division I	<u>March 1997</u> June 1999	2/2	563.91	32.54	27.51	5.03
Strand Road	Between April 1995 and <u>March 1997</u> Between June 1998 and March 1999	2/2	10.48	1.18	0.10	1.08
Park Street	<u>March 1996</u> November 1998	1/1	12.06	0.46	NIL	0.46
<b>Total</b>		<b>10/10</b>	<b>17274.24</b>	<b>238.40</b>	<b>187.04</b>	<b>51.36</b>

On this being pointed out (between June 1999 and December 2000), the department stated (between June 1999 and June 2001) that in 4 cases (Rs.43.47 lakh) proposal for revision had been sent to the appellate authority, 5 cases (Rs.6.57 lakh) were under appeal and in one case (Rs.1.32 lakh) demand had been referred to Certificate Officer for realisation. Report on further action taken in the cases has not been received (October 2001).

Government to whom the cases were reported between August 1999 and January 2001, endorsed (July 2001) the views of the department.

## **2.14 Incorrect determination of contractual transfer price**

Under the West Bengal Sales Tax Laws, any transfer of property in goods for valuable consideration involved in the execution of works contract shall be deemed to be a sale of those goods by the person making such transfer and tax at the rate of four per cent is leviable on such contractual transfer price.

Scrutiny of records of the Assistant Commissioner, Commercial Taxes, Lalbazar charge, Kolkata revealed that in assessing (between June 1996 and June 1998) a contractor dealer for the years ending between March 1994 and March 1996 his contractual transfer price for execution of works contract was



determined at Rs.1.88 crore and tax was computed accordingly. An examination of final accounts of the dealer for the respective periods, however, disclosed that his purchases of materials involved in the execution of works contract were shown short by Rs.2.28 crore. This resulted in short determination of contractual transfer price to that extent with consequent short levy of tax of Rs.9.16 lakh.

On this being pointed out (April 1999), the department stated (June 2001) that proposal for *suo motu* revision had been sent (April 2001) to the higher authority. Report on final action taken in the case has not been received (October 2001).

Government to whom the cases were reported in July 1999, endorsed (July 2001) the views of the department.

### **2.15 Non/short levy of interest**

Under the Sales Tax Laws in West Bengal, a dealer (i) 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 (ii) 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 periods is found not to have been paid by him by such prescribed date or (iii) 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 month of default.

Scrutiny of records of 46 charge offices in 14 districts revealed that in 210 cases of 159 dealers in respect of assessments made between September 1994 and February 2000 for the years ending between June 1984 and March 1998, interest amounting to Rs.7.55 crore though leviable for delay in payment of tax was not levied or levied short as detailed in Appendix 4.

On this being pointed out (between August 1996 and December 2000), the department stated (between August 1996 and June 2001) that in 12 cases (Rs.30.74 lakh) demand notices had been/were being issued, in 15 cases (Rs.16.20 lakh) the matter had been/was being referred to the Certificate Officer, in 25 cases (Rs.23.57 lakh) proposals for revision/reopening had been sent to higher authority, 8 cases (Rs.96.68 lakh) were pending in appeal and in the remaining 150 cases (Rs.5.88 crore) no specific reply had been furnished (October 2001).

Government to whom the cases were reported between September 1996 and January 2001, endorsed (July 2001) the views of the department in 52 cases; their reply in the remaining cases has not been received (October 2001).