

CHAPTER II SALES TAX

2.1 Results of audit

Test check of records relating to sales tax, conducted in audit during the year 2003-04, revealed non-assessment/underassessments of tax and other irregularities involving Rs.1,536.49 crore in 512 cases, which broadly fall under the following categories:

| <i>(Rupees in crore)</i> | | | |
|--------------------------|--|--------------|-----------------|
| Sl. No. | Categories | No. of cases | Amount |
| 1. | Non/short levy of interest and penalty | 158 | 9.26 |
| 2. | Irregular deduction/exemption | 106 | 4.03 |
| 3. | Non/short levy of surcharge and additional surcharge | 17 | 0.25 |
| 4. | Incorrect determination of gross turnover/taxable turnover | 37 | 1.09 |
| 5. | Application of incorrect rate and mistake in computation | 26 | 0.68 |
| 6. | Review on "Internal control in assessment and collection of Sales Tax" | 127 | 1,519.60 |
| 7. | Other cases | 41 | 1.58 |
| Total: | | 512 | 1,536.49 |

During the course of the year 2003-04, the concerned Department accepted underassessments etc. of Rs.267.74crore involved in 268 cases of which 219 cases involving Rs.260.38 crore had been pointed out in audit during the year 2003-04 and the rest in earlier years. An amount of Rs.12.63 lakh was realised at the instance of audit.

A few illustrative cases involving Rs.20.76 crore and a review on 'Internal Control in assessment and collection of Sales Tax' involving financial effect of Rs.1,083.11 crore are given in the following paragraphs:

2.2 Review on “Internal Control in Assessment and Collection of Sales Tax”

Highlights

- Non-adherence to the provision of the Act led to loss of revenue of Rs.28.62 crore due to allowance of undue financial benefit in deemed assessment cases
(Paragraph 2.2.10)
- Non-conducting of post assessment scrutiny led to non/short levy of tax, penalty and interest of Rs.5.24 crore
(Paragraph 2.2.11)
- Non-fixing of time limit for payment of assessed tax led to loss of interest of Rs.2.28 crore
(Paragraph 2.2.12)
- Lack of internal control led to evasion of tax of Rs.2.44 crore on the goods transported through West Bengal to other states
(Paragraph 2.2.14)
- Failure to incorporate interest in certificate cases led to non-levy of interest of Rs.9.43 crore
(Paragraph 2.2.15)
- Non-fixing of time limit for initiation of recovery proceedings led to non realisation of dues of Rs.1,025.06 crore
(Paragraph 2.2.16)
- Inadequate pursuance of certificate demands led to non-recovery of Government dues in 1,284 cases.
(Paragraph 2.2.17)
- Non-fixing of minimum as well as maximum number of allowable instalments led to undue financial benefit of Rs.9.53 crore to the certificate debtors
(Paragraph 2.2.18)

2.2.1 Introduction

Assessment, levy and collection of Sales Tax, earlier governed under Bengal Finance (Sales Tax) Act, 1941 and West Bengal Sales Tax Act, 1954, are now governed under West Bengal Sales Tax (WBST) Act, 1994 and Rules made thereunder. Besides, Central Sales Tax (CST) Act, 1956 and rules made thereunder are in operation for interstate sales. Tax, interest and penalty are assessed and recovered under the provisions of the Acts and dues that remain unpaid, constitute arrears in sales tax. These are recoverable as arrears of land revenue under the Public Demands Recovery (PDR) Act, 1913.

2.2.2 Organisational set up

The overall control and superintendence of the Sales Tax Organisation is vested with the Commissioner of Commercial Taxes (CCT), who is assisted by two Special Commissioners, 21 Additional Commissioners, 77 Deputy Commissioners (DCCT), 288 Assistant Commissioners (ACCT) and 726 Commercial Tax Officers (CTO) for administering the provisions of the Acts and Rules made thereunder. An Internal Audit Wing was set up in May 1991 for ensuring compliance of different control measures.

2.2.3 Scope of Audit

The assessment and collection records for the years 1998-99 to 2002-03 of nine¹ Circles and 18² Charge Offices out of 17 circle offices and 70 charge offices, in addition to Office of the CCT, Central Section, Bureau of Investigation (BOI), Certificate Offices (CO) at Siliguri, Asansol, Durgapur, Tax Recovery Office (TRO), Kolkata and 24 Parganas, Range offices and Check Posts at Siliguri, Durgapur, Asansol and Kharagpur were test checked during October 2003 to March 2004.

2.2.4 Objectives

Detailed analysis of internal control in assessment and collection of Sales Tax was conducted with a view to ensure that:

- revenue in the shape of tax, penalty and interest has been properly assessed, levied, collected and remitted to Government account;
- no remission or exemption was allowed except under order of competent authority;
- departmental machinery was functioning properly for compliance of rules, procedure, departmental instructions to safeguard the revenue against errors, evasions and fraud; and
- internal Audit was functional and effective.

2.2.5 Trend of revenue

The position of budget estimates and actual collection of revenue during 1998-99 to 2002-03 was as under:

¹ Asansol, Behala, Chowringhee, Corporate Division, Durgapur, Kolkata (South), Kolkata (North), Siliguri and 24 Parganas.

² Alipur, Asansol, Ballygunj, Barrackpore, Bhawanipur, Behala, Corporate Div. I, II and III, Cossipore, Durgapur, Esplanade, Jorabagan, Lalbazar, Park Street, Salt Lake, Siliguri and Taltala.

Audit Report (Revenue Receipts) for the year ended 31 March 2004

| <i>(Rupees in crore)</i> | | | | |
|--------------------------|------------------------|------------------------|--|---|
| <i>Year</i> | <i>Budget estimate</i> | <i>Actual receipts</i> | <i>Variations increase (+) / shortfall (-)</i> | <i>Percentage of variation increase (+) / shortfall (-)</i> |
| 1998-1999 | 3,219.07 | 3,117.97 | (-)101.10 | (-)3.14 |
| 1999-2000 | 3,500.00 | 3,428.79 | (-)71.21 | (-)2.03 |
| 2000-2001 | 4,000.00 | 3,671.42 | (-)328.58 | (-)8.21 |
| 2001-2002 | 4,100.00 | 3,802.46 | (-)297.54 | (-)7.26 |
| 2002-2003 | 4,715.00 | 4,192.00 | (-)523.00 | (-)11.09 |

It would be seen from the above that variation between budget estimates and actuals was not significant but it showed an increasing trend. The reasons for variation though called for have not yet been received (December 2004).

2.2.6 Arrears of revenue

Arrears of revenue at the end of March 2003 as furnished by the department were as under:

| <i>(Rupees in crore)</i> | |
|--|--|
| <i>Year ending 31st March</i> | <i>Amount outstanding as on 31st March</i> |
| 1999 | Figures of the years 1999 and 2000 were not furnished by the department though called for. |
| 2000 | |
| 2001 | 1,609.54 |
| 2002 | 1,596.42 |
| 2003 | 1,304.09 |

The basis for compilation of arrears, though called for, was not produced to audit. But as per information collected by audit from 18 charge offices out of 70, nine Appellate authorities out of 17, four COs/TRO out of 20, the arrears of revenue at the end of March 2003 were Rs.1,811.89 crore as detailed below:

| <i>(Rupees in crore)</i> | | |
|---|---------------------------------------|--------------------------------------|
| <i>Nature of observation</i> | <i>No. of circles/ charge offices</i> | <i>Amount of arrears outstanding</i> |
| Failure to initiate follow up action for recovery of assessed dues | 18 charges | 831.89 |
| Unrealised dues in successive ex parte assessments | 15 charges | 150.94 |
| Failure in recovery of arrears following appellate order | 7 charges | 31.90 |
| Cancellation of registration without realising dues | 10 charges | 10.33 |
| Arrears as locked up in appeal cases on the basis of petitions filed in between 2001-02 and 2002-03 | 9 circles | 613.17 |
| Certificate cases remained out of accounts | 12 charges | 173.66 |
| Total: | | 1,811.89 |

In addition to the above, the arrears involved in certificate cases were shown by the department as Rs.1,395.86 crore which was more than the total arrears projected by the department itself.

Thus it would be seen from the above that the department was not aware of the total arrears pending collection and these need reconciliation. A reference was

made to the Government in November 2002 followed by reminders issued in February 2003, May 2003 and June 2003 but no reply was received.

A mechanism needs to be developed to monitor the collection of arrears depicted as collection of revenue has a direct impact on the revenue of the state.

The amount of arrears outstanding of these charge/circle offices/TRO/COs as calculated by audit is discussed in the following paragraphs.

2.2.7 Non-imposition of penalty in Registering cases beyond the time limit

Under WBST Act, a dealer, liable to pay tax, shall get himself registered. The Assessing Authority may impose penalty on a dealer who fails to get himself registered within two months from the date of accrual of liability to pay tax. The minimum amount of penalty that can be imposed is Rs.500 and the maximum Rs.1,000/- per month of default. The CCT in a circular issued in June 1991 directed all the Assessing Authorities to justify and record the reasons in the assessment order in case of non-imposition of penalty. However, there was no mechanism to report the number of cases, where penalty was not imposed for delayed registration, to the next higher authority for verification.

Scrutiny of cases registered between 1998-99 and 2002-03 in 11³ charges revealed that in 118 cases, dealers got themselves registered beyond two months from the date of accrual of liability. Neither any penalty was imposed by the Registering authorities nor was any reason assigned by them. This resulted in non-realisation of Government revenue of Rs 10.91 lakh. This also escaped the notice of the higher authorities as they had no mechanism to verify and ascertain the levy of penalty.

After this was pointed out, two charge offices (Esplanade and Siliguri) accepted audit observations in 12 cases. However, five charge offices stated that the penalty was discretionary and was not levied. The reply was not tenable since the Registering authority did not record any reasons for applying discretion as required under the circular. The final reply from the remaining charge offices was not received (December 2004)

³ Ballygunj, Barrackpore, Bhawanipur, Behala, Durgapur, Esplanade, Jorabagan, Lalbazar, Salt Lake, Siliguri and Taltala.

2.2.8 Evasion of tax due to non-verification of returns and declaration forms

Under the Sales Tax Laws of West Bengal, registered dealers are required to submit their periodical returns in prescribed forms within a prescribed time-limit showing details of turnover, tax admitted and proof of payment of admitted tax. As per departmental circular issued in May 1990, CTOs and Inspectors posted in specified circles are entrusted with the responsibility of verification of returns immediately after their filing by the dealers in order to detect suppression of sales etc. The CCT in a circular issued in April 1970, instructed all the assessing officers to conduct cross verification of declaration forms in respect of inter state sales and branch transfers with the issuing states in the eastern region in 10 per cent cases and to maintain a register as prescribed.

Test check of records of eight⁴ Circle Offices and 13⁵ Charge Offices assessed between 1998-99 and 2002-03 revealed that no records were maintained for verification of returns and declaration forms. Consequently, the extent of cross verifications done could not be ascertained. However, it was noticed that 13 cases of fake inter-state sales and stock transfers involving Rs.49.97 crore were detected by the Bureau of Investigation during 1998-99 to 2002-03 after a delay of 14 to 110 months. Of these Rs.39.95 lakh became barred by limitation of time. This indicates that system regarding the verification of returns was weak and needs strengthening so that the fake cases of sales tax or inter state sales are detected in time.

2.2.9 Assessment

Assessment of sales tax is done by the designated officers on the basis of return filed by the dealers and on verification of books of accounts etc. under the provisions of Sales Tax Laws of the State. Best judgement assessment of tax is also made where a dealer fails to file any return and/or where the Assessing officer is satisfied that the returns furnished are incorrect and incomplete. In case, where the dealer fails to appear with books of accounts, assessment may be completed exparte to the best of judgement of the Assessing officer after giving him reasonable opportunity of being heard.

⁴ Asansol, Behala, Chowringhee, Durgapur, Kolkata (South), Kolkata (North), Siliguri and 24 Parganas.

⁵ Alipur, Asansol, Barrackpore, Bhawanipur, Behala, Cossipore, Durgapur, Esplanade, Jorabagan, Lalbazar, Salt Lake, Siliguri and Taltala.

Provisions have also been made in the Sales Tax Act for making deemed assessments by accepting the returns as filed up to the period of eligibility, without calling for the production of books of accounts.

- **Delay in assessments and consequent locking up of revenue**

Under the WBST Act, an assessment is required to be completed within 24 months from the end of the year in respect of which the assessment is made with an extension of time for three months viz. grace period, upto June of the respective year. However no norms have been fixed for monthly assessment of cases.

Scrutiny of assessment records of 15 charge offices revealed that 53,028 cases were assessed between 1998-99 and 2002-03 of which 40,821 cases were assessed during the grace periods. Charge wise percentage of assessments made in the last three months ranged between 66.22 per cent and 90.22 per cent as detailed below:

| <i>Name of the Charge</i> | <i>Total No. of assts completed during 1998-99 to 2002-03</i> | <i>No. of asstt. made during grace period</i> | <i>Percentage of asstt. made in grace period to the total assessments</i> |
|------------------------------|---|---|---|
| Ballygunj | 2,951 | 2,017 | 68.35 |
| Parkstreet | 4,272 | 3,237 | 75.77 |
| Cossipur | 1,062 | 858 | 80.79 |
| Salt Lake | 1,436 | 1,160 | 80.78 |
| Behala | 5,500 | 4,310 | 78.36 |
| Alipur | 4,996 | 3,478 | 69.62 |
| Siliguri | 9,345 | 8,431 | 90.22 |
| Lalbazar | 2,758 | 2,058 | 74.62 |
| Jorabagan | 1,699 | 1,125 | 66.22 |
| Taltala | 2,655 | 1,874 | 70.58 |
| Barrackpore | 5,401 | 4,167 | 77.15 |
| Corporate Div. I, II and III | 2,764 | 2,449 | 88.60 |
| Asansol | 8,189 | 5,657 | 69.08 |
| Total: | 53,028 | 40,821 | |

Clearance of huge number of assessment cases in the grace period resulted in non/short levy of tax, penalty and interest which is quite evident from the fact that 870 cases of which mistakes and errors involving money value of Rs.54.11 crore featured in last two Audit Reports of 2001-02 and 2002-03 of which 604 cases involving money value of Rs.41.09 crore were assessed in the grace period. This indicates that the assessments were made in a haste and there was a need for fixing monthly norms for finalisation of the assessments.

2.2.10 Deemed Assessments: Loss of revenue due to allowance of irregular financial benefit

Under the WBST Act, assessment cases of all the dealers for the periods ending March 1998 and March 1999, having turnover below Rs.3.00 crore would be deemed to have been completed on 31 December 1999 subject to the condition that the dealers shall submit all the declaration forms and certificates necessary for claiming concession/exemption to the assessing authority up to 31 March 2001. In case of failure to do so, they were liable to make payment of the balance tax in respect of such unsupported sales or the cases were liable to be reopened within four years i.e. up to December 2003. As per a judicial pronouncement⁶, if a return is not supported by declaration forms for claims of concessional rate of tax, it is to be treated as incorrect and the deemed assessment case is liable to be reopened. A register in Form 54 (control register) is required to be maintained by each charge office.

Scrutiny of records revealed that the Assessing Officers in 15⁷ charge offices did not maintain any register to watch the collection/submission of declaration forms etc. submitted by the deemed assesses. In the absence of said register, the correctness of concessions/exemptions claimed by the dealers could not be ascertained. However, test check of returns filed by the dealers revealed that in 822 cases the dealers availed of concessional rate of tax on a turnover of Rs.392.24 crore involving tax of Rs.28.62 crore without production of supporting declaration forms and certificates. This resulted in irregular allowance of financial benefit of Rs.28.62 crore, causing loss of revenue as the cases became barred by limitation of time in December 2003.

Failure to maintain control registers, acceptance of incorrect return as well as non-reopening of these incorrect cases are clearly indicative of the departmental failure to apply the provision of Acts/Rules.

2.2.11 Failure to conduct post assessment scrutiny

As per circular of April 1983 issued by the CCT, the DCCTs shall check 10 per cent of assessments made by an officer under him in a month by 10th of the following month. Similarly, the Addl. Commissioner shall scrutinise at least 10 percent of the cases checked by the DCCTs. A quarterly report on such checking was also to be sent to the CCT.

⁶ Joydev Marik V/S Commissioner of Commercial Taxes, West Bengal and others, 1999 (115 STC 435)

⁷ Alipur, Ballygunj, Barrackpore, Behala, Bhawanipur, Corporate Div I, II and III, Cossipore, Durgapur, Esplanade, Lalbazar, Park Street, Salt Lake and Siliguri.

It was noticed that in nine⁸ circles, no records were maintained to indicate whether any post-assessment scrutiny was conducted. Absence of post assessment scrutiny resulted in non-detection of mistakes and defects in assessments which is evident from a few instances cited below detected by audit.

| <i>(Rupees in crore)</i> | | | | |
|---|---------------------|---|---|---|
| <i>Name of charges</i> | <i>No. of cases</i> | <i>Period/ Date of assessment</i> | <i>Nature of observation</i> | <i>Non/short levy of tax/penalty/interest</i> |
| Alipur | 1 | <u>March 1998</u> June 2000 | Gross Turnover was Rs 1.94 crore as per returns but it was incorrectly shown as nil in the assessment order. | 0.15 |
| Remarks:-The department accepted the audit observation in March 2004. However, action taken to recover the amount has not been intimated (December 2004). | | | | |
| Ballygunj | 2 | <u>March 2000 and March 2001</u> June 2002 and June 2003 | Ordinary denatured spirit of Rs 5.29 crore though taxable was exempted from levy of tax. | 0.61 |
| Remarks:-The department accepted the audit observation in March 2004. However, action taken to recover the amount has not been intimated (December 2004). | | | | |
| Siliguri and Salt Lake | 2 | <u>March 1996 and March 2000</u> June 1998 and April 2003 | The dealers had not collected and paid any tax. However, they were allowed deduction of Rs.1.13 crore on this account | 0.11 |
| Remarks:-The department accepted the audit observation in one case in January 2004. However, action taken to recover the amount has not been intimated (December 2004). No specific reply was furnished in another case. | | | | |
| Esplanade | 1 | <u>March 1999</u> June 2001 | The dealer had not submitted any return. However, no interest was levied on tax payable of Rs.0.51 crore. | 0.26 |
| Remarks:-The department accepted the audit observation in February 2004. However, action taken to recover the amount has not been intimated (December 2004). | | | | |
| Esplanade | 1 | <u>March 1997</u> June 1999 | Export sale was allowed without supporting declaration of Rs 7.88 crore. | 1.09 |
| Remark: - The department stated in March 2004 that exports were exempted on the basis of last assessment records and nature of business. The reply was not tenable as the sales were not supported by the prescribed declarations as such exemption should have not been allowed. | | | | |
| Corp. Div., Esplanade, Park Street, Barrackpore Behala and Salt Lake | 12 | between <u>March 1997 and March 2001</u> between June 1999 and June 2003 | Minimum penalty was not imposed on suppressed sales and purchases having a tax effect of Rs 2.01 crore though suppression was confirmed in the assessment orders. | 3.02 |
| Remark: - It was stated in four cases between November 2003 and March 2004 that imposition of penalty was discretionary. The reply was not tenable as no reason for non-imposition of penalty was recorded in the assessment order despite specific instructions of the CCT. No specific reply was furnished in eight cases. | | | | |
| Total: | 19 | | | 5.24 |

2.2.12 Demand of Tax: Extension of undue financial benefit to the dealer

Under WBST Act and the rules made thereunder, the Assessing officer on completion of an assessment, issues a demand notice in prescribed form requiring the dealer to pay assessed dues within the time specified in the said notice. If a dealer fails to make payment within the specified time he is liable for payment of interest. As per

⁸ Asansol, Behala, Chowringhee, Corporate Division, Durgapur, Kolkata (South), Kolkata (North), 24 Parganas and Siliguri.

Act, the time for payment should be fixed at a date not earlier than 30 days from the date of service of demand notice. The Act, however, is silent about maximum time-limit to be prescribed in the demand notice by which payment should be made.

In 261 cases of 12⁹ charge offices assessed between April 1998 and March 2003, the assessing authorities issued demand notices in which time allowed for payment ranged between 76 days and 726 days. In the absence of any provision for fixing maximum time-limit which can be allowed by an assessing authority in a demand notice for payment of tax there was a blockage of revenue of Rs.61.18 crore and also loss of interest of Rs.2.28 crore calculated after allowing 45 days for payment..

After this was pointed out, the Department accepted audit observations in 47 cases. No specific reply was furnished in two cases while in the remaining cases the Department stated that demand notices were issued as per Statute.

2.2.13 Way Side checking: short levy of penalty

Under the WBST Act, no person, casual trader or dealer shall transport any consignment of goods through West Bengal violating the prescribed conditions. Range Offices, check posts/barriers are set up to check valid documents of such consignments. In case of contravention, the consignment of the transporter may be seized and a penalty at the rate not exceeding 30 per cent (where rate of tax is upto 10 per cent) or 50 per cent (where rate of tax exceeds 10 per cent) may be imposed. The Act , however, is silent about the minimum per cent of penalty leviable in such cases.

Consignments of 205 transporters carrying hide and skin valued at Rs.19.75 crore were seized with fake documents in Dhuburdih check post, Asansol, between July 2001 and November 2001. However, the Assessing Authority levied penalty at a flat rate of Rs. 15,000 in each case irrespective of the value of the goods seized. A few instances are given below:

⁹ Alipur, Asansol, Ballygunj, Barrackpore, Behala, Bhawanipur, Cossipore, Durgapur, Jorabagan, Park Street, Salt Lake and Taltala.

(Rupees in lakh)

| Sl. No. | Seizer date | Value of goods seized | Amount of penalty levied |
|---------|-------------|-----------------------|--------------------------|
| 1. | 25.07.01 | 4.08 | 0.15 |
| 2. | 22.07.01. | 6.67 | 0.15 |
| 3. | 01.08.01 | 9.96 | 0.15 |
| 4. | 09.08.01 | 11.73 | 0.15 |
| 5. | 14.09.01 | 13.74 | 0.15 |
| 6. | 27.08.01 | 15.80 | 0.15 |
| 7. | 15.08.01 | 17.06 | 0.15 |
| 8. | 25.09.01 | 24.11 | 0.15 |

It would be seen from the above that there is a need for fixing the norms for levy of minimum amount of penalty so that discretion is exercised properly.

2.2.14 Evasion of Sales Tax on the goods transported through West Bengal for other states

Under the WBST Act, when a goods vehicle, transporting any goods, enters into West Bengal and is bound for any place outside the state, the transporter shall make a declaration that goods shall not be sold in the state. If the transporter fails to report with documents at his declared exit check post, it shall be presumed that the goods have been sold in West Bengal and he shall be taxed accordingly. However, there is no provision in the Act for taking security from such transporters at the time of entry of goods into West Bengal.

Scrutiny of records of three check posts¹⁰ under the DCCTs, disclosed that in 81,129 cases transporters did not report at the exit check post as per transit declaration (TD) between 1998-99 and 2002-03. The authorities could, however, detect only 2,587 such defaulting transporters and the remaining 78,542 cases could not be detected by the authorities as the information regarding the whereabouts of those transporters was not available with the check posts. Consequently, no tax could be levied as detailed below:

| Name of the Range/ Check post | No. of TDs issued | No. of exit cases noted by the deptt | Total unmatched cases | Cases detected by the department | Cases remaining undetected |
|----------------------------------|-------------------|--------------------------------------|-----------------------|----------------------------------|----------------------------|
| Siliguri | 34,607 | 81 | 34,526 | 49 | 34,477 |
| Dhuburdi | 84,650 | 38,121 | 46,529 | 2,464 | 44,065 |
| Kharagpur | 74 | Nil | 74 | 74 | Nil |
| Total: | 1,19,331 | 38,202 | 81,129 | 2,587 | 78,542 |

¹⁰ Asansol Circle, Kharagpur Range and Siliguri Range.

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As per transit records available in three check posts, in 209 cases out of 283 involving tax of Rs.2.44 crore checked by audit, the check post authorities issued notices to the defaulting transporters to appear before them on different dates between January 2002 and April 2003. However, no defaulting transporter appeared before such authorities even after a lapse of nine to 32 months from the date of entry of the vehicles in West Bengal. Tax of Rs.2.44 crore was recoverable from those transporters, of these 93 transporters were reported as 'non-traceable' by the postal authorities. Recovery proceedings had not been initiated against the defaulting dealers till March 2004 as detailed below:

(Rupees in crore)

| Name of the Range/ Check post | No. of cases | Date of entry into West Bengal between | Value of the commodity | Evasion of tax | Lapse of period between (in month) |
|----------------------------------|--------------|--|------------------------|----------------|---------------------------------------|
| Siliguri | 25 | April 2001 and March 2003 | 0.64 | 0.11 | 9 to 32 |
| Dhuburdih | 184 | July 2001 and December 2002 | 21.41 | 1.47 | 14 to 31 |
| Kharagpur | 74 | January 1999 and August 1999 | 8.08 | 0.86 | 53 to 62 |
| Total: | 283 | | 30.13 | 2.44 | |

Non existence of provisions of security from transporters, non initiation of recovery proceedings to realise the dues and absence of proper reconciliation between entry and exit check posts to ascertain and pursue the defaulting transporters for payment of tax led to non-realisation of revenue. These clearly indicate the non existence of internal control mechanism with respect to goods transported through West Bengal on the strength of TD.

2.2.15 Non levy of interest in certificate cases

Under the WBST Act, where any amount of tax, penalty or interest in respect of any period is due and recoverable from a dealer through certificate proceedings, the concerned officer has to determine up to date interest and incorporate the same in the certificate demand.

Scrutiny of records in 10¹¹ charge offices revealed that the assessing officers in 25 cases sent certificate demands to the TRO/CO between January 1999 and December 2003 without determining and incorporating up to date interest of Rs.9.43 crore.

¹¹ Ballygunj, Behala, Corporate Div I, II and III, Esplanade, Park street, Salt Lake, Siliguri and Taltala.

After this was pointed out in audit, the Department accepted audit observation involving Rs.8.88 crore in 12 cases. No specific reply was furnished in two cases and in 11 cases no reply had been received (December 2004).

2.2.16 Collection of Revenue

Collection of sales tax is made by pre-assessment tax deposited by the dealers in advance as per returns submitted by them, and balance tax, if any, after assessment and/or following an appellate order. The amount of tax due is to be deposited into Government Treasury/Reserve Bank of India by challan within the specified date. In case of default in payment of assessed dues, the Assessing Officer is required to send a requisition to CO for realisation of the dues under the provisions of the PDR Act. The District Collector/Sub-Divisional Officer acts as CO in respect of areas under his jurisdiction. The State Government has set up a separate certificate organisation attached to the Commercial Tax Directorate to deal with the certificate cases of Kolkata and 24 Parganas where the CTO functions as TRO for initiation of such recovery proceedings. The Act, however, does not prescribe any time-limit for initiation of such recovery proceedings.

- **Non-realisation of dues due to non-initiation of recovery proceedings**

Scrutiny of records relating to assessments, disposed of appeal cases and cancellation of registration in charge offices revealed that no recovery proceedings were initiated by the assessing authorities as provided in the Act to realise the dues in 2,293 cases even after a lapse of six to 69 months from the due date for payment resulting in non-realisation of dues of Rs.1,025.06 crore as detailed below:

Audit Report (Revenue Receipts) for the year ended 31 March 2004

| <i>(Rupees in crore)</i> | | | | | |
|---------------------------------------|---------------------------------|---|--|----------------------------|--|
| No. of charges No of cases | Period of asstt. | Months of delay (as of March 2004) between | Nature of observation | Amount involved | Date of assessment/ confirmation/ cancellation |
| $\frac{18^{12}}{2110}$ | June 1985 and March 2002 | 6 to 69 | Failure to initiate follow up action for recovery of assessed dues. | 831.89 | Cases were assessed between April 1998 and June 2003. |
| $\frac{15^{13}}{58}$ | March 1996 and March 2002 | 9 to 69 | Dues remained unrealised in successive ex parte assessments for two to six years | 150.94 | Assessed between June 1998 and May 2003 ex parte due to non-appearance of the dealers and non-production of books of accounts. |
| $\frac{7^{14}}{38}$ | March 1988 and March 2000 | 6 to 37 | Failure to recover arrears following appellate order. | 31.90 | These appeal cases were confirmed between November 2000 and September 2003. |
| $\frac{10^{15}}{87}$ | March 1990 and March 2001 | 10 to 66 | Cancellation of registration without realising dues. | 10.33 | Registrations were cancelled between September. 1998 and May 2003. |
| 2,293 | Total: | | | 1,025.06 | |

This clearly indicates lacunae in the Act in not prescribing the time limit by which certificate proceedings should be initiated against any defaulting dealer.

After this was pointed out, the Department accepted audit observations in 745 cases, while in 1,548 cases no reply had been received (December 2004).

2.2.17 Inadequate pursuance of Certificate Demands

On initiation of a certificate proceeding, an Assessing Officer sends a requisition to the CO/TRO and enters the details in Register IX. CO/TRO is also required to enter these cases in Register X. Reconciliation of the entries in Register IX with those of Register X is required to be done as per Departmental Circular issued in May 1944 in order to ensure that proper action was taken in respect of each demand. The CCT in another Circular issued in July 1968 had instructed all the CTOs to render all cooperation and liaison to the COs by supplying information promptly for smooth and efficient working in the certificate offices.

¹² Alipur, Asansol, Ballygunj, Barrackpore, Bhawanipur, Behala, Corporate Div. I, II and III, Cossipore, Durgapur, Esplanade, Jorabagan, Lalbazar, Park Street, Salt Lake, Siliguri and Taltala.

¹³ Ballygunj, Barrackpore, Bhawanipur, Behala, Corporate Div. I, II and III, Cossipore, Durgapur, Esplanade, Jorabagan, Lalbazar, Park Street, Siliguri and Taltala.

¹⁴ Corporate Div. I, II and III, Durgapur, Jorabagan, Lalbazar and Salt Lake.

¹⁵ Alipur, Ballygunj, Barrackpore, Bhawanipur, Behala, Durgapur, Esplanade, Lalbazar, Salt Lake and Taltala.

Scrutiny of records relating to certificate cases for the period between 1998-99 and 2002-03 in charge offices and COs Siliguri and Durgapur and TRO Salt Lake revealed the following position:

| <i>No. of charges</i> | <i>Nature of observation</i> | <i>No of cases</i> | <i>Remarks</i> |
|-----------------------|--|--------------------|---|
| 14 ¹⁶ | Certificate cases remained out of account | 895 | These cases were sent by the charge offices between 1998-99 and 2002-03 but were not received by the COs / TRO thus escaped realisation. |
| 8 ¹⁷ | Non realisation due to inadequate information of the certificate debtors | 167 | The charge offices failed to furnish sufficient information about the dealers to CO/ TRO even after a lapse of period between five and 37 months and as a result certificate demand could not be realised. |
| 15 ¹⁸ | Non realisation of certificate demand due to inadequate pursuance | 182 | Certificate debtors did not respond to first demand notices. But no further action such as attachment of property, arrest, etc was taken by COs/ TRO even after a lapse of period between 12 and 69 months. |
| 10 ¹⁹ | Loss of revenue due to failure in tracing out certificate debtors. | 40 | Certificate debtors could not be traced out by either postal authorities or departmental office No further action was taken for realisation even after a lapse of period between six and 51 months. |
| 47 | Total: | 1,284 | |

Hence, certificate demand in these 1,284 cases remained unrealised as of March 2004.

After these were pointed out, the Department accepted audit observations in 613 cases while in 671 cases no specific reply was furnished.

2.2.18 Undue financial benefit to the certificate debtors due to fixation of unrealistic instalments of payment

Under the provisions of the PDR Act and the rules made thereunder, instalment payment can be allowed to a certificate debtor to clear the dues. However, the Act is silent about the minimum as well as maximum number of instalments which can be fixed.

Review of records of TRO Kolkata and 24 Parganas revealed that notices of certificate demand were issued against two private limited companies for Rs.5.98 crore and Rs.3.55 crore between June 1999 and March 2001. Orders for payment of dues in instalments were passed between September 2000 and June 2001 directing the debtor to pay Rs.30,000 and Rs.5,000 per month

¹⁶ Alipur, Ballygunj, Bhawanipur, Behala, Corporate Div. I, II and III, Cossipore, Durgapur, Jorabagan, Lalbazar, Salt Lake, Siliguri and Taltala

¹⁷ Alipur, Ballygunj, Bhawanipur, Behala, Jorabagan, Park Street, Salt Lake and Siliguri.

¹⁸ Ballygunj, Bhawanipur, Behala, Corporate Div. I, II and III, Cossipore, Durgapur, Esplanade, Jorabagan, Lalbazar, Park Street, Salt Lake, Siliguri and Taltala. ¹⁹ Ballygunj, Bhawanipur, Behala, Corporate Div. I, II and III, Esplanade, Jorabagan, Park Street and Taltala.

¹⁹ Ballygunj, Bhawanipur, Behala, Corporate Div. I, II and III, Esplanade, Jorabagan, Park Street and Taltala.

respectively which would take more than 166 and 590 years respectively. Besides, interest at the rate of 6.25 per cent per annum would also accrue on the outstanding balance of above dues of Rs.9.53 crore covering periods varying between 166 and 590 years.

After this was pointed out in audit, the local office furnished no specific reply.

2.2.19 Poor performance of Internal Audit

Internal Audit Wing of the Directorate of Commercial Taxes started functioning from May 1991 as a permanent in-house mechanism for scrutinising 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 there under are observed properly. The wing is also required to examine the lacunae of the Act and Rules and recommend necessary revision/amendments of the same wherever necessary. A synopsis of the findings is to be submitted to the CCT with copies to other administrative heads for necessary action. It is also responsible for taking follow-up action on audit observations of the inspection reports made by the office of the Accountant General, West Bengal.

The wing is headed by the CCT, who is assisted by one Addl. Commissioner, four DCCTs and four ACCTs.

The wing does not have its manual for conducting audit. As reported, the wing usually conducts audit around one third of the total charges annually and checks about ten percent of assessment cases in each office. Actual performance of the wing during the last five years is shown below:

| 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 |
|-----------|--|--------------------------|---|--------------------------|--------------------------|--------------------------|
| 1998-99 | 70 | 21 | Not available | Not available | Not available | 1,692 |
| 1999-2000 | | 18 | 1692 | 446 | 72 | 2,066 |
| 2000-01 | | 10 | 2066 | 396 | 17 | 2,445 |
| 2001-02 | | 4 | 2445 | 183 | 29 | 2,599 |
| 2002-03 | | 7 | 2559 | 148 | 16 | 2,731 |

The wing, however, could not furnish the number of assessment cases checked (charge wise), money value of objection raised and number of paras issued during the said period. Further, Corporate Division, which is a major source of sales tax revenue, had never been audited on the plea that the said Division was being audited by statutory audit continuously. This argument is not tenable since more than 50 per cent of total revenue collected by the Directorate is contributed by the said Division. It is evident from the above

table that performance in terms of coverage, periodicity and no. of objections raised was very meagre. Further, the wing did not furnish any inspection report to audit though called for. As such it could not be ascertained in audit whether:

- Internal Audit had pointed out any irregularity in the maintenance of records/registers and periodical review of the same by the higher authority
- it had detected any case of failure of Internal Control Mechanism in following Acts and Rules and Departmental Circulars
- any suggestion had been given by it for revision/amendment of the Acts and Rules etc., and its acceptance by the department

Thus, Internal Audit System prevailing in the department was not quite effective in providing reasonable assurance to the department for prompt, effective and efficient service for adequate safeguards against evasion of tax.

In reply Additional Commissioner, Internal Audit stated that the manual was under preparation but did not furnish any reply to other points raised in audit.

2.2.20 Conclusion and recommendations

The department failed to provide proper control mechanism to provide adequate safeguards against evasion of taxes. Despite specific provision in the Acts and Rules and several departmental circulars issued from time to time the authority could not implement the same in many cases resulting in failure of the system in regard to prompt assessment and collection of revenue. No step was also taken to make required amendments in the Act and Rules to enable the department to become more effective and to make the exchequer healthy.

The State Government may consider taking the following steps for improving internal control mechanism in sales tax department for proper and effective assessment and collection of sales tax:

- proper maintenance of control register, demand register and monitoring thereof through periodical review for control over the process of assessment and collection of sales tax;
- departmental instructions should be strictly followed in regard to verification of returns and conducting post assessment scrutiny;
- norms need be fixed for monthly disposal of assessment cases;
- necessary amendments need be considered in the Act/Rules to fix time-limit for initiation of recovery proceedings; and

- certificate cases need be monitored and reconciled by the charge offices and COs/TRO.

All the points mentioned in the foregoing paragraphs were reported to Government in May 2004; their reply has not been received (December 2004).

2.3 Incorrect determination of Gross Turnover

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

Scrutiny of records of 19²⁰ charge offices in six²¹ districts revealed that gross turnover of 55 dealers in 60 cases was incorrectly determined at Rs.3,699.71 crore instead of Rs.3,763.91 crore at the time of assessments made between April 1998 and March 2003 for different assessment periods ending between March 1993 and March 2001 due to non-inclusion of sale value, incorrect deduction of the amount of unbilled challan, excess allowance of consignment sale, sale of inadmissible stock transfer etc. in the gross turnover. This resulted in short determination of gross turnover of Rs.64.20 crore with consequent short levy of tax including surcharge and additional surcharge of Rs.4.98 crore.

After this was pointed out, 15 charge offices accepted the audit observation in 38 cases involving Rs.1.48 crore. Of these, 17 cases were being proposed for revision/suo motu revision and in one case out of Rs.0.52 lakh, Rs.0.30 lakh was realised. Final reply in the remaining 22 cases has not been received (December 2004).

The cases were reported to Government between June 2000 and February 2004, followed by reminders issued upto July 2004, their reply has not been received (December 2004).

2.4 Underassessment of tax due to incorrect deduction

2.4.1 Under the State Act

Under the WBST Act and rules made thereunder, in determining the taxable turnover of a dealer, a deduction on account of tax collected by him is allowable from the aggregate of sales turnover in accordance with the

²⁰ Amratola, Asansol, Burdwan, Burtola, Colootola, Corporate Division-I, II & III, Durgapur, Lyons Range, Medinipur, New Market, Park Street, Postabazar, Radhabazar, Salt Lake, Shibpur, Siliguri and Taltola.

²¹ Burdwan, Darjeeling, Howrah, Kolkata, North 24 Parganas and Paschim Medinipur.

prescribed formula. The CCT, West Bengal, reiterating the provisions in a circular of December 1998, instructed all the Assessing Officers to restrict the deduction to the amount of the sales tax collected by the dealer and included in their turnover.

Scrutiny of records of 22²² charge offices in nine²³ districts revealed that in 44 cases of 38 dealers assessed between May 1998 and June 2002 for different assessment years ending between March 1996 and March 2000, the Assessing Officers allowed deduction of Rs.14.34 crore against their actual collection of tax of Rs.7.80 crore. The excess allowance of deduction of Rs.6.54 crore resulted in short levy of tax of Rs.77.36 lakh including surcharge and additional surcharge.

After this was pointed out, the department accepted between March 2002 and November 2003 audit observations in 26 cases, of which in seven cases fresh demand notice was being/has been served. In nine cases, the department did not furnish specific reply. In the remaining nine cases, it was stated that deduction was allowed as gross turnover was inclusive of all taxes. The reply is not tenable as no tax was collected in four cases and in five cases deduction allowed was more than the tax collected, by the assessing authority which was in contravention of the departmental circular of December 1998.

All the cases were reported to Government between January 2001 and September 2003, followed by reminders issued upto July 2004; their reply has not been received (December 2004)

2.4.2 Under Central Sales Tax Act

Under the CST Act, 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.

²² Asansol, Bally, Bankura, Barrackpore, Beadon Street, Behala, Belgachia, Beliaghata, Budge Budge, Burtola, College Street, Durgapur, N.D.Sarani, N..S.Road, Postabazar, Purulia, Rajakatra, Salkia, Salt Lake, Serampore, Siliguri and Strand Road.

²³ Bankura, Burdwan, Darjeeling, Hooghly, Howrah, Kolkata, North 24 Parganas, Purulia and South 24 Parganas.

Scrutiny of records of five²⁴ charge offices in Kolkata revealed that while assessing between June 1999 and June 2003 eight dealers for different assessment years ending between March 1995 and March 2001, the Assessing authorities allowed deduction of Rs.9.22 crore against actual collection of tax of Rs.7.17 crore. The excess allowance of deduction of Rs.2.06 crore resulted in short levy of tax of Rs.15.08 lakh.

After this was pointed out, the department admitted between February 2001 and December 2003 audit observations in six cases, of which in four cases proposal for revision/*suo motu* revision was being sent to concerned authority. In the remaining two cases, the department did not furnish specific replies.

The cases were reported to Government between March 2001 and February 2004 followed by reminders issued upto July 2004, their reply has not been received (December 2004).

2.5 Incorrect allowance of exemption from gross turnover

2.5.1 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 place of business as a proof of transfer along with evidence of despatch. Otherwise, such transfer of goods is liable to be taxed at the normal rate.

Scrutiny of records in three²⁵ charge offices in Kolkata revealed that in assessing 18 dealers between June 2000 and January 2003 for assessment years ending between March 1998 and March 2001, the Assessing authorities allowed dealers' claim of stock transfer of goods to their branches outside the State for Rs.495.23 crore on the basis of declarations in Form 'F'. However, declarations allowed for Rs.5.01 crore were not admissible as the transactions were either found to have been made to non-existent dealers or were not covered by the period of assessment or were not supported by 'F' form or other documentary evidences. Incorrect allowance of exemption of such stock

²⁴ Belgachia, College Street, Corporate Division I and II, Jorabagan.

²⁵ Corporate Division I, Park Street and Strand Road

transfer resulted in underassessment of tax of Rs.22.73 lakh including surcharge and additional surcharge.

After this was pointed out, the department admitted between January and August 2003 audit observations in 13 cases involving Rs.12.64 lakh, of which, 10 cases had been/were being proposed for revision by the concerned authorities. In three cases the department did not furnish specific reply, while in the remaining two cases, the department stated that there was no reason to suggest that the dealers were fake. The reply is not tenable as both the dealers had claimed exemption on account of stock transfer to a dealer in Delhi who was declared fake by the Sales Tax Authority of Delhi as per the Assessment Order of the dealer.

All the cases were reported to Government between April 2002 and October 2003 followed by reminders issued upto July 2004; their reply has not been received (December 2004).

2.5.2 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 evidences are to be taxed at the normal rate.

Scrutiny of records in five²⁶ charge offices in Kolkata revealed that in assessing six dealers for different assessment years ending between March 1997 and March 2001, the assessing authorities allowed exemption on account of export sales for Rs.63.13 crore instead of Rs.60.88 crore. This resulted in excess allowance of export sales of Rs.2.25 crore as these transactions were either not supported by evidence or were not covered by the period of assessment or due to mistake in calculations. This resulted in short levy of tax of Rs.17.01 lakh.

After this was pointed out, the Department admitted between September 2000 and December 2003 audit observations in five cases involving Rs.15.96 lakh, of which, in three cases proposals for revision were being/had been sent to

²⁶ Bhowanipore, Corporate Division-I & III, Esplanade and Naren Dutta Sarani.

higher authority. No specific reply was received in the remaining case (December 2004).

The cases were reported to Government between November 2000 and December 2003, followed by reminders issued upto July 2004; their reply has not been received (December 2004).

2.6 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 unregistered dealers, intended for direct use in manufacture of goods for sale in West Bengal. Further, purchase tax is also payable by a manufacture 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 20²⁷ charge offices in eight²⁸ districts revealed that in assessing between April 1998 and June 2002, the Assessing authorities incorrectly allowed purchases worth Rs.31.25 crore from purchase tax in 32 cases for the years ending between March 1996 and March 2000. Out of these, in 25 cases unregistered purchase of Rs.25.47 crore was allowed as registered though it was not supported by relevant documentary evidence. Four cases of purchase of Rs.5.20 crore from registered dealers against declaration form were also allowed although the goods were disposed of otherwise than by way of sale in the State. In the remaining three cases, purchases of Rs.58.33 lakh from persons other than registered one were taxed at lower rate instead of higher rate applicable to goods concerned. This resulted in non/short levy of purchase tax of Rs.1.16 crore.

After this was pointed out, the department admitted between January 2000 and January 2004 audit observations in 24 cases valued at Rs.1.05 crore of which in 11 cases proposal sent for revision to concerned authorities and issued demand notice in two cases. In the remaining cases the department did not

²⁷ Alipore, Armenian Street, Asansol, Barasat, Beadon Street, Bhowanipore, Burtola, Budge Budge, Colootola, Corporate Division-I, Cossipore, Jalpaiguri, Jorasanko, Lalbazar, Medinipur, N.D. Sarani, Princep Street, Purulia, Siliguri and Strand Road.

²⁸ Burdwan, Darjeeling, Jalpaiguri, Kolkata, North 24 Parganas Paschim Medinipur, Purulia and South 24 Parganas.

furnish any specific reply. Further report on final action taken to revise the assessment has not been received (December 2004).

The matter was reported to Government between April 2000 and December 2003 followed by reminders issued upto July 2004; their reply has not been received (December 2004).

2.7 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). In addition, where goods are purchased against declaration form or procured from the contractee otherwise than by way of purchase for direct use in execution of a works contract, tax is leviable at 12 per cent on CTP of electrical goods and at eight per cent in case of other goods. In case, a dealer enters into contract with another contractor dealer for execution of a part or full contract, the payment made to the contractor dealer is exempted from levy of tax, if the sub-contractor furnishes a proof of payment of tax.

Scrutiny of records of four²⁹ charge offices in four³⁰ districts revealed that in assessing between May 1999 and April 2003, six dealers in six cases for different assessment years ending between March 1997 and March 2000, the assessing authorities determined CTP at Rs.14.04 crore instead of Rs.20.01 crore due to non-inclusion of sale value of items, loading/transporting charges and sub-contractor's payment in absence of proof of payment, to the extent of Rs.5.97 crore. This resulted in short determination of CTP to that extent and short levy of tax of Rs.45.68 lakh.

After this was pointed out, the department admitted between July 2000 and September 2003 the audit observation in three cases involving Rs.3.45 lakh of which, in two cases proposal for *suo moto* revision had been sent to the higher authority. In one case the department stated that as per law sub-contractor's CTP was deductible from the CTP of the works contractor. The reply is not

²⁹ Alipore, Barrackpore, Durgapur and Suri.

³⁰ Birbhum, Burdwan, North 24 Parganas and South 24 Parganas.

tenable as sub-contractor had not produced any proof of payment of tax. As such the deduction allowed was incorrect. In the remaining cases the department did not furnish specific reply (December 2004).

The cases were reported to Government between July 2000 and October 2003 followed by reminders issued upto July 2004; their reply has not been received (December 2004).

2.8 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 seven³¹ charge offices in Kolkata revealed short levy of tax including surcharge, additional surcharge, interest and penalty of Rs.48.57 lakh due to mistake in computation in case of eight dealers for the assessment years 1995-96 to 1999-2000 assessed between June 1998 and June 2002.

After this was pointed out, the Department accepted between February and December 2003 audit observations in five cases involving Rs.34.85 lakh, of which, in four cases proposal for revision/necessary action was being/had been sent to higher/appellate authority and in one case certificate case had been initiated. In remaining cases, the department did not furnish specific reply (December 2004).

The cases were reported to Government between March 2001 and February 2004 followed by reminders issued upto July 2004; their reply has not been received (December 2004).

2.9 Non/short raising of demand

Under the provision of the WBST Act, the assessing authority shall serve a notice of demand in the prescribed form to the dealer after final assessment showing the amount of demand for tax, interest, penalty etc. and specifying the date of payment therein.

³¹ Corporate Division-II, Bhowanipore, Park Street, Ultadanga, Bowbazar, Manicktala and Jorabagan.

Scrutiny of records of six³² charge offices in Kolkata revealed that while assessing between September 1999 and May 2002 seven dealers for different assessment periods ending between March 1996 and March 2000, the assessing authorities assessed tax including interest and penalty at Rs.1.38 crore whereas demand notices were issued for Rs.1.10 crore. This resulted in non/short raising of demand of Rs.28.42 lakh.

After this was pointed out, the department admitted between March 2002 and November 2003 audit observations in four cases involving Rs.24.25 lakh and sent proposal for revision/realisation of the same to higher/appellate authority/certificate officer. In the remaining three cases, the Department did not furnish specific reply (December 2004).

The cases were reported to Government between March 2001 and February 2004, followed by reminders issued upto July 2004; their reply has not been received (December 2004).

2.10 Application of incorrect rate of tax

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

Scrutiny of records of 15³³ charge offices in four³⁴ districts revealed that in 21 cases of 20 dealers in respect of assessments made between June 1998 and March 2003 for different assessment periods ending between March 1996 and March 2002, there was short levy of tax amounting to Rs.40.26 lakh including surcharge and additional surcharge due to application of incorrect rate of tax. A few instances showing the application of incorrect rate of tax is given below:

³² Corporate Division-I, II and III, Park Street, New Market and Jorabagan.

³³ Alipore, Barrackpore, Behala, Beliaghata, Bowbazar, Corporate Division I, II and III, Medinipur, Posta Bazar, Princep Street, Radhabazar, Strand Road, Taltala and Ultadanga.

³⁴ Kolkata, North 24 Parganas, Paschim Medinipur and South 24 Parganas.

Audit Report (Revenue Receipts) for the year ended 31 March 2004

(Rupees in lakh)

| Name of the Charge | Assessment year Month of assessment | No. of dealers | Nature of sales | Taxable turnover | Rate of tax | | Short levy |
|---|--|----------------|--|------------------|----------------|-------------|------------|
| | | | | | Applicable (%) | Applied (%) | |
| Barrackpore | <u>March 2001</u> August 2002 | 1 | Cement procured from contractee | 57.59 | 8 | 4 | 0.72 |
| Departmental reply: Suo motu review had been proposed. | | | | | | | |
| Corporate Division-II | <u>March 2000</u> June 2002 | 1 | Switch, circuit braker, meter, pump motors etc. | 80.00 | 12 | 2 | 9.02 |
| Departmental reply: Proposal for consideration of audit objection had been sent to appellate authority. | | | | | | | |
| Corporate Division-III | Between March 1997 and March <u>1999</u> | 2 | Disallowance of Dealers claim Chocolates products | 17.26 | 15 | 4 | 2.01 |
| | Between January 2001 and June 2001 | | | 21.12 | 15 | 12 | 0.65 |
| Departmental reply: Proposal for revision had been/was being sent to the concerned authority. | | | | | | | |
| Medinipur | Between March 2000 and March <u>2001</u> | 2 | Grocery items Carpets | 28.88 | 7 | Nil | 2.33 |
| | Between October 2001 and April 2002 | | | 10.80 | 15 | 10 | 0.54 |
| Departmental reply: In one case the department issued demand notice while in another case did not furnish specific reply. | | | | | | | |
| Postabazar | <u>March 1999</u> April 2002 | 1 | Steel | 56.00 | 8 | 4 | 2.24 |
| Departmental reply: Proposal for consideration had been sent to the appellate authority. | | | | | | | |
| Ultadanga | <u>March 1999</u> April 2001 | 1 | Glazed tiles | 18.55 | 15 | 12 | 0.57 |
| Departmental reply: The department intimated that in absence of specific entry in the schedule, rate of 12 percent on glazed tiles was charged. Reply is not tenable since glazed tiles are nothing but wall tiles attracting tax @ 15 per cent. | | | | | | | |
| Behala | <u>March 1996</u> June 1998 | 1 | Transformer | 13.20 | 20 | 12 | 1.04 |
| Departmental reply: Dealer's nature of business was inadvertently described as manufacturer of transformer and so tax at general rate was applied. Reply is not tenable as the sale of transformer, confirmed on verification of books of accounts, attracts levy of tax at 20 per cent. | | | | | | | |

The cases were reported to Government between February 2000 and February 2004 followed by reminders issued upto July 2004; their reply has not been received (December 2004).

2.11 Incorrect allowance of concessional rate of tax

Under the WBST Act and the rules made thereunder, a dealer is eligible for concessional rate of tax for sales of goods to registered reseller and manufacturing dealers if such sales are supported by prescribed declaration forms obtainable from the purchasing dealers. Further, intra-state as well as inter-state sales of goods to Government Departments are also exigible to tax at the concessional rate subject to production of prescribed certificate from the purchasing Government Department.

Scrutiny of records of 11³⁵ charge offices in Kolkata, Jalpaiguri and North 24 Parganas revealed that in assessing 16 dealers between May 1999 and June 2003, the Assessing authorities incorrectly levied tax at concessional rate instead of prescribed rate as the sales were either not supported by requisite declaration forms/statement/certificate or were made to non-government organization. Thus incorrect concessions allowed on Rs.8.52 crore resulted in short levy of tax of Rs.88.87 lakh as detailed below:

| Date of assessment | No. of dealers | Nature of observation | Excess allowance (Rs. in crore) | Tax effect (Rs. in lakh) |
|---------------------------------|-----------------------|--|--|-------------------------------------|
| Between May 1999 and June 2002 | 3 | Sales valued at Rs.1.95 crore were allowed as sales to Government Department out of which Rs.41.61 lakh were sales to non-Government organisations | 0.42 | 2.52 |
| Between June 1999 and June 2003 | 13 | Sales valued at Rs.153.11 crore were allowed as sales to registered dealers out of which an amount of Rs.8.10 crore was not supported by declaration forms/statements/ certificates. | 8.10 | 86.35 |
| | 16 | | 8.52 | 88.87 |

After this was pointed out, the Department accepted between May 2001 and January 2004 the audit observations in six cases involving Rs.76.33 lakh of which in one case demand was raised. Final reply in the remaining cases has not been received (December 2004).

All the cases were reported to Government between August 2001 and December 2003 followed by reminders issued upto July 2004; their reply has not been received (December 2004).

2.12 Non/short levy of penalty:

2.12.1 Penalty on retention of excess collected tax

Under the provision of the WBST Act, if a dealer fails to deposit the amount of tax collected in excess of the amount payable into Government account, within thirty days from the date of collection, the CCT shall impose penalty on the dealer by an amount which is not less than the amount of tax so collected but not exceeding double the amount of tax so collected by him.

Scrutiny of records of four³⁶ charge offices in Kolkata revealed that 16 dealers assessed between June 2000 and June 2002, collected from time to time tax of Rs.2.62 crore against tax payable of Rs.1.14 crore and retained excess collection of tax of Rs.1.48 crore. While assessing such dealers between June

³⁵ College Street, Corporate Division I & III, Esplanade, Fairlie Place, Jalpaiguri, Lalbazar, Lyons Range, Park Street, Salt Lake and Taltola.

³⁶ Corporate Division (I, II and III) and Park Street

2000 and June 2002, the Assessing authorities did not levy penalty though a minimum penalty of Rs.1.48 crore was leviable for retention of such excess collection of tax.

After this was pointed out in audit, the Department admitted between April 2002 and August 2003 audit observations in 13 cases involving Rs.1.15 crore of which in eight cases proposal for revision was sent to concerned authorities. No specific reply was received in two cases, while in one case the department stated that the excess tax collected could not be deposited due to absence of such provisions in CST Act. The reply is not tenable as the dealer was required to deposit the tax under WBST. Final action taken for realisation of Government dues has not been intimated (December 2004).

The cases were reported to Government between October 2002 and October 2003 followed by reminders issued upto July 2004; their reply has not been received (December 2004).

2.12.2 Penalty for concealment of sales/purchases

Under the WBST Act, if a dealer has concealed any turnover or furnished incorrect particulars thereof with an intention 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 the instructions (June 1991) of the CCT 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 12³⁷ charge offices in five³⁸ districts revealed that in assessing between March 2000 and June 2002, 37 cases for the years ending between March 1994 and March 2000, the Assessing authorities observed that the dealers had concealed sales/purchases of Rs.25.82 crore. Though the Assessing authorities levied tax of Rs.2.24 crore they did not levy/short levied penalty of Rs.3.35 crore.

After this was pointed out, the Department accepted the audit observations in seven cases involving Rs.19.25 lakh. Of these in three cases demand of Rs.3.98 lakh was raised. However, in 18 cases department stated that the levy of penalty was discretionary and as such was not levied. The reply is not

³⁷ Amratola, Behala, Belgachia, Budge Budge, Corporate Division-I & II, Jorabagan, New Market, Salkia, Salt Lake, Serampore and Shyambazar.

³⁸ Hooghly, Howrah, Kolkata, North 24 Parganas and South 24 Parganas.

correct as the reasons for non-imposition of penalty were not mentioned at all in the assessment orders which was a clear violation of the 1991 instructions of the CCT. In the remaining cases the department did not furnish any specific reply (December 2004).

The cases were reported to Government between May 2002 and February 2004, followed by reminders issued upto July 2004; their reply has not been received (December 2004).

2.13 Non/short levy of interest

Under the WBST Act, 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 period 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 calendar month of default.

Scrutiny of records of 36³⁹ charge offices in 10⁴⁰ districts revealed that while assessing/initiating certificate proceedings between February 1998 and June 2003, 225 cases of 178 dealers for different assessment periods ending between March 1984 and March 2001, the assessing authorities did not levy/levied short interest of Rs.5.95 crore leviable for delay in payment/non-payment of assessed/advance tax of Rs.24.55 crore.

After this was pointed out, the Department admitted the audit observations in 172 cases. Of these, in 38 cases proposal for revision was sent to concerned authorities; in 86 cases demand notices were either issued/were being issued to the dealers/Certificate Officer for realisation. In 50 cases the department did

³⁹ Asansol, Bally, Ballygunge, Bankura, Barrackpore, Behala, Belgachia, Beliaghata, Berhampore, Bowbazar, Budge Budge, Burdwan, Chandney Chawk, China Bazar, College Street, Corporate Division-I, II & III, Drugapur, Fairlie Place, Howrah, Kadamtala, Lalbazar, N.D. Sarani, N.S. Raod, New Market, Park Street, Princep Street, Purulia, Radhabazar, Salkia, Salt Lake, Sealdah, Serampore, Siliguri and Strand Road.

⁴⁰ Bankura, Burdwan, Darjeeling, Hooghly, Howrah, Kolkata, Murshidabad, North 24 Parganas, Purulia and South 24 Parganas.

not furnish specific reply. In two cases it was stated that no interest was levied as no return was submitted. The reply is not tenable as in absence of return, interest is leviable on assessed tax under the provision of Sales Tax Laws. In the remaining case it was stated that the dealer was not liable to pay any interest on tax due as eligibility certificate for deferment was granted to the dealer. The reply is not tenable as Rs.4.27 crore was allowed as deferment out of assessed tax of Rs.7.64 crore. There was delay in payment of Rs.3.35 crore attracting levy of interest.

All the cases were reported to Government between August 2001 and September 2003 followed by reminders issued upto July 2004; their reply has not been received (December 2004).

