

## CHAPTER II SALES TAX

### 2.1 Results of audit

Test check of the assessment files, refund records and other connected documents of the Commercial Taxes Department conducted during 2008-09 indicated underassessments and other deficiencies of sales tax amounting to Rs. 267.95 crore in 1,282 cases, which could be classified under the following categories:

(Rupees in crore)			
Sl. No.	Category	No. of cases	Amount
1.	Transition from APGST to APVAT (A review)	1	27.23
2.	Incorrect grant of exemption	117	108.70
3.	Non/short levy of tax	512	37.92
4.	Application of incorrect rate of tax	87	17.98
5.	Non-levy of interest	7	11.93
6.	Non-levy of penalty	20	3.91
7.	Short payment of VAT/excess input tax credit (ITC)	45	1.42
8.	Other irregularities	493	58.86
<b>Total</b>		<b>1,282</b>	<b>267.95</b>

During the year 2008-09, the department accepted underassessments and other deficiencies of Rs. 43.90 crore in 776 cases, of which 121 cases involving Rs. 20.25 crore were pointed out in audit during the year 2008-09 and the rest in the earlier years. Out of this, Rs. 1.19 crore in 21 cases has been realised.

A review on “**Transition from APGST to APVAT**” involving Rs. 27.23 crore and few illustrative audit observations involving Rs. 166.51 crore are mentioned in the succeeding paragraphs.

## **2.2 Transition from Andhra Pradesh General Sales Tax to Andhra Pradesh Value Added Tax**

### **Highlights**

- There was no provision in the Act/Rules for conducting periodical surveys for enforcing registration of the unregistered dealers. 30.24 per cent of the dealers registered under APGST Act in the jurisdictions test checked by audit remained unregistered under the VAT Act.

**(Paragraph 2.2.8.1)**

- In 24 circles, 109 dealers were not registered under the VAT Act though their turnover had exceeded the threshold limits. This resulted in non-realisation of revenue of Rs. 2.83 crore.

**(Paragraph 2.2.8.2)**

- VAT Audit module was not made operational and the data of dubious/risky dealers was not uploaded in the website TINSYS.com defeating the very purposes for which these modules were created.

**(Paragraph 2.2.9.3)**

- In one circle, 247 dealers did not file returns for certain period(s) during 2005-06 to 2008-09. Though demands were generated by the VATIS, these were not served. This resulted in non-realisation of revenue of Rs. 1.49 crore including penalty of Rs. 49.58 lakh.

**(Paragraph 2.2.9.5)**

- Input tax credit of Rs. 50.72 lakh claimed by seven dealers was *prima facie* fictitious. No sale of such goods was depicted in the VATIS ledgers of the selling dealer.

- Input tax credit of Rs. 4.05 crore was allowed to the Canteen Stores Department and Indian naval canteen services though these departments were not entitled to the input tax credit resulting in short realisation of revenue to that extent.

**(Paragraph 2.2.13)**

### **2.2.1 Introduction**

With a view to bringing more efficiency in tax administration and equal competition and fairness in the taxation system, a decision was taken by the Union Government in the year 1995 to introduce a taxation structure based on Value Added Tax in the country in place of the existing General Sales Tax Acts in force since the year 1957. By doing so, multiple points of taxation were proposed to be done away with and the overall tax burden was sought to be rationalised. The objectives of implementation of VAT were, *interalia*, to help common people, traders, industrialists and also the Government as the tax structure would be simpler and more transparent. The revised taxation system

was to replace the existing system of annual assessment by the assessing authority by a system of self-assessment by the dealers subject to scrutiny/audit by the Commercial Taxes Department.

Since the imposition of sales tax is a State subject as per entry 54 of the State List of the Constitution of India, the Union Government set up an Empowered Committee of State Finance Ministers (ECSFM) in 1999 to work out a common structure on which each state was to flesh out their respective VAT Acts. Apart from setting out the blueprint for State Level-VAT, the ECSFM had emphasised vigorous interaction between State Governments, departmental officers and most importantly with the dealers and the business community so as to ensure full cooperation as well as systemic preparedness for the transition to VAT.

### **2.2.1.1 White Paper on VAT**

The ECSFM came out with a unanimously approved “White Paper on VAT” in January 2005. The essence of the White Paper was that

- there would be self-assessment by dealers;
- other taxes viz., turnover tax, surcharge, additional surcharge, etc. would be abolished;
- overall tax burden will be rationalised, with the maximum tax rate at 12.5 *per cent* and for some commodities even at one *per cent*;
- set-off would be given for input tax as well as tax paid on previous purchases;
- transparency would increase;
- prices would fall in general; and
- there will be higher revenue growth.

The White Paper expected tax compliance, which would in turn augment the revenues.

The Andhra Pradesh Value Added Tax (APVAT) Bill 2003 received Presidential assent in December 2004 and the Act came into force from 1 April 2005 repealing the Andhra Pradesh General Sales Tax (APGST) Act, 1957.

### **2.2.1.2 Salient features of the APVAT Act**

The APVAT Act contains 81 sections and six Schedules and each schedule carries a definite rate of tax.

Under the AP VAT Act, the dealers are divided into three categories:

- dealers with annual taxable turnover of Rs. 40 lakh and above are liable to be registered as VAT dealers;

- dealers with annual taxable turnover between Rs. 5 lakh and Rs. 40 lakh are liable to be registered as Turnover Tax (TOT) dealers. TOT dealer is required to pay a composite tax at one *per cent* on total taxable sales;
- dealers with turnovers of less than Rs. 5 lakh are not liable for registration.

All the VAT dealers have been assigned an 11 digit unique Tax Identification Number (TIN) and the TOT dealers with General Registration Number (GRN). The VAT dealers are eligible to claim input tax credit (ITC) i.e., credit for tax paid at the preceding point of purchase of goods from VAT dealers and used in business, TOT dealers on the other hand are not eligible for ITC.

Through Section 78 of the Act, the Government promulgated the APVAT Rules, 2005 to carry out the purposes of the Act.

### **2.2.1.3 Major areas of deviation between the APGST and the APVAT Acts**

The major areas of deviation between the APGST and the APVAT Act are as follows:

- VAT is based on the value addition to the goods and the related VAT liability of the dealer is calculated by deducting input tax credit from tax collected on sales during the tax period (a calendar month);
- concept of giving credit of tax paid on purchases was introduced in the APVAT thereby avoiding double taxation;
- levy of tax at first and subsequent points of sale within the state, i.e. cascading taxation prevalent under the APGST Act was done away with the APVAT Act;
- self assessment by dealers replacing compulsory assessment of all returns of all the dealers by department under the APGST Act;
- abolition of various declaration forms used under previous tax administration to claim concession/exemption;
- audit of the selected dealers by the department was introduced in place of compulsory assessment;
- the filing of annual audited accounts existed under the APGST Act was dispensed with under the APVAT Act.

**A review of the “Transition from Sales Tax to Value Added Tax” was conducted by audit. It indicated a number of system and compliance deficiencies which are discussed in the subsequent paragraphs.**

### 2.2.2 Organisational set up

Commercial Taxes (CT) Department is under the purview of the Principal Secretary, Revenue Department at the Government level. At Commissionerate level, Commissioner of Commercial Taxes (CCT) is the head of the department and is assisted by Additional Commissioners, Joint Commissioners (JC), Deputy Commissioners (DC) and Assistant Commissioners (AC). Divisional offices at field level are headed by the Deputy Commissioners (DC) and are assisted by the Commercial Tax Officers (CTO), Deputy Commercial Tax Officers (DCTO) and Assistant Commercial Tax Officers (ACTO) at the circle level.

There are 218 offices (25 Large Tax Payer Units headed by the ACs and 193 circles headed by the CTOs) functioning under the administrative control of the DCs. The CTOs are entrusted with registration of the dealers and collection of tax while the DCs are controlling authorities with overall supervision of the circles under their jurisdiction.

### 2.2.3 Audit objectives

The review was conducted to ascertain whether

- planning for implementation and the transition from the APGST Act and Rules made thereunder to APVAT Act and Rules made thereunder was effected timely and efficiently;
- organisational structure was adequate and effective;
- whether the application of VATIS software met the requirement of APVAT Act with adequate security measures, IT control and data captured was sufficient, reliable, accurate and complete;
- provisions of the APVAT Act and Rules made thereunder were adequate and enforced properly to safeguard the revenue of the State; and
- internal control mechanism existed in the department and was adequate and effective to prevent leakage of revenue.

### 2.2.4 Scope of audit

Test check of the records of the CCT, AC (LTU) Guntur and 27 circles<sup>4</sup> out of 193 circles, selected based on revenue consideration and risk perception, was carried out for the period from 2005-06 to 2008-09 between April 2009 and August 2009.

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<sup>4</sup> Anantapur-I, Eluru, Hindupur, Hyderabad (Agapura, Basheerbagh, Charminar, Ferozguda, Hyderguda, Khairatabad, Punjagutta, Rajendranagar, Sultanbazar, and Vengalaraonagar), Jadcherla, Kamareddy, Kodad, Mahaboobnagar, Nellore-I, Nizamabad (I &II), Ongole-I, Patnambazar, Rajahmundry (Aryapuram), Secunderabad (S.D.Road, Ranigunj), Tadepalligudem and Vizianagaram (West).

### 2.2.5 Acknowledgement

The Indian Audit and Accounts Department acknowledges the cooperation of the CT Department in providing necessary information and records to audit. An entry conference was held in May 2009 with the CCT and other departmental officers in which the department was apprised about the scope and methodology of audit. The draft review report was forwarded to the Government and department in September 2009. An exit conference was held in November 2009 in which the audit results and recommendations were discussed with the representatives of the department and the Government. The Government was represented by an Officer on Special Duty while department was represented by an Additional Commissioner. The replies of the department and the Government received during the exit conference and at other points of time have been appropriately included in the respective paragraphs.

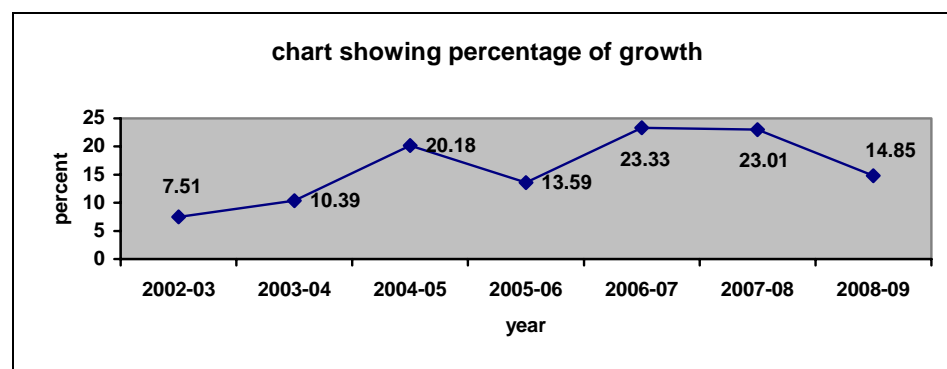
### 2.2.6 Trend of revenue

#### Analysis of the trend of revenue - pre-VAT and post-VAT

The comparative position of pre-VAT sales tax collection (2001-02 to 2004-05), post VAT tax collections (2005-06 to 2008-09) and growth rate of tax collections in each of the year are furnished in the following table:

Year	Actual collections (Rs. in crore)	Percentage of growth (over previous year)
<b>Pre-VAT</b>		
2001-02	7,740.89	--
2002-03	8,322.20	7.51
2003-04	9,186.93	10.39
2004-05	11,040.60	20.18
<b>Post-VAT</b>		
2005-06	12,541.61	13.59
2006-07	15,467.41	23.33
2007-08	19,026.49	23.01
2008-09	21,851.66	14.85

Thus, the growth in revenue over the previous year in the post VAT regime slid to 14.85 per cent in 2008-09 after attaining the levels of over 23 per cent in 2006-07 and 2007-08.



## Audit findings

### System deficiencies

#### 2.2.7 Restructuring of the CT Department for administering the VAT

For efficient administration of APVAT, the CT Department proposed to the Government for

- providing minimum staff structure in circles under VAT scenario as a measure of model re-organisation of the department;
- creation of five new divisions where jurisdiction of the existing divisions was more than one district; and
- creation of special groups within the Central Enforcement Wing for study of input output ratios, mark ups and trade practices to check the suppressions and evasion of taxes.

Also, the department sought for sanction of 463 additional posts against which the Government sanctioned 239 posts. Against the sanctioned strength of 2,227 in 2008-09 in the cadres of ACTO to JC, 1,474 were in position as of March 2009. Maximum vacancies were noticed in the cadres of DCTO/ACTO which were crucial in implementing the Act at the circle level.

#### 2.2.8 Registration of the dealers

##### 2.2.8.1 Absence of provision for conducting surveys

Section 17 of the APVAT Act, 2005 provides that every dealer other than a casual dealer shall be liable to be registered in accordance with the provisions of the Act. An application for registration is required to be submitted by a dealer to the prescribed authority as soon as his estimated taxable turnover exceeds the threshold limit. Thus, there was no automatic migration of the APGST dealers' database as available with the department on 31 March 2005, into VATIS<sup>5</sup>. **There is no provision in the Act or rules made thereunder to conduct periodical survey for enforcing registration of the unregistered dealers.**

Test check of the records indicated that 3,85,848 dealers were registered under the APGST Act as of March 2005 while only 2,69,153 dealers were registered under the APVAT Act as at the end of March 2009. Thus, 1,16,695 dealers being 30.24 *per cent* of the dealers registered under the APGST Act remain unregistered under the VAT Act. The department had not put in place any mechanism to conduct periodic surveys for detection of the unregistered dealers and for periodic verification of turnovers of the ToT dealers paying lumpsum tax so as to register them as VAT dealers.

The department stated (August 2009) that surveys were conducted only for a limited period from May to September 2008 under the orders of the CCT and

<sup>5</sup> Value Added Tax Information System.

thereafter instructions had been issued for conducting surveys at random with a view to not to disturb the field officers. As a result of the survey conducted for the period from May to September 2008, the department enforced 1,170 VAT and 2,719 TOT registrations with generation of additional revenue of Rs. 39.66 lakh. Thus, survey(s) if conducted at regular intervals would have enforced additional registrations and generated more revenue for the Government. However, no such surveys were conducted and no norms/targets were fixed for each CTO for enforcing registration of the unregistered dealers.

**The Government may consider framing a provision for conducting of periodical surveys to ensure that dealers liable for VAT registration are promptly detected and registered.**

#### **2.2.8.2 Failure to register on attaining threshold limits**

Under the provisions of the VAT Act, every dealer whose taxable turnover in the preceding three months exceeds the prescribed thresholds for registration needs to promptly apply for it. Any dealer who fails to apply for registration shall be liable to pay a penalty of 25 *per cent* of the amount of tax due prior to the date of registration. Further, there shall be no eligibility for ITC for sales made prior to the date from which the registration is effective. **Audit noticed that no monitoring mechanism existed in the department to watch the registration of the TOT dealers who have crossed the threshold limit, as VAT dealers.**

Test check of the records in 24 circles<sup>6</sup> indicated that during the period 2005-06 to 2008-09, the turnover of each of the 109 TOT dealers exceeded the prescribed threshold limits in the preceding three months. Thus, the dealers were liable to be registered under the VAT Act. But neither the dealers applied for registration nor were they registered by the AAs as VAT dealers. The dealers were liable to pay VAT of Rs. 2.26 crore and a penalty of Rs. 0.57 crore which could not be realised in absence of their registration. Thus, absence of a monitoring mechanism for registration of TOT dealers as VAT dealers resulted in non-realisation of revenue of Rs. 2.83 crore.

**The Government may consider putting in place a mechanism for prompt identification of the TOT dealers who have crossed the threshold limit and their registration as VAT dealers.**

#### **2.2.9 Computerisation in the CT Department**

Under APVAT a centralised software called 'Value Added Tax Information system' (VATIS) developed by M/s Tata Consultancy Services Ltd. (TCS) at a cost of Rs. 23 crore, was implemented in all the divisions and circle offices from 1 April 2005. Through this software all the activities starting from registration of a dealer, monitoring of monthly returns, calculation of taxes

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<sup>6</sup> Mahaboobnagar, Tanuku-I, Patnam bazaar, Nidadavole, Nellore-I, Brodipet, Hyderabad (Ashoknagar Hydernagar, Khairatabad, IDA Gandhinagar, Marredpally, MG Road, Mehidiapatnam, Sanathnagar), Kavali, Kurnool-II, Nizamabad-I, Piduguralla, Ramannapet, Sangareddy, Tirupati-II, Visakhapatnam (Dabagardens, Kurupam Market, Suryabagh).



etc., were proposed to be carried out. VATIS consists of 16 modules. The same software was installed at the ICPs<sup>7</sup> and the BCPs<sup>8</sup>.

Test check of the working of VATIS indicated the following:

### **2.2.9.1 Non-operation of the VAT Audit Module**

The VAT Audit Manual provided the criteria for selection of a dealer for general audit<sup>9</sup> during the year. For this purpose, VAT Audit Module was available in the VATIS package.

Test check in five circle offices<sup>10</sup> indicated that the VAT Audit module was not made operational and audit selections were done manually, thus defeating the very purpose of the module.

After this was pointed out, the concerned CTOs stated that the audit module could not be made operational due to improper working of the VATIS.

### **2.2.9.2 Insufficient training of staff**

The implementation of VAT Act was designed through the VATIS. Training was required to be imparted to the staff for operation of all the 16 modules.

Test check in 24 circles indicated that as against the 483 personnel to be trained for data entry, only 209 were trained. Thus, 56.73 *per cent* of the staff remained untrained.

### **2.2.9.3 Ineffective functioning of database of dubious/risky dealers**

The ECSFM had authorised the CT department for preparation of a database of dubious/risky dealers relying on the past history of the dealers under the APGST regime and uploading the details to a website viz., TINXSYS.com. The website was to be periodically updated to aid the department in effectively monitoring the inter-state trade.

Audit noticed that the data of dubious/risky dealers was not uploaded to the website and consequently it could not be utilised for the purpose it was collected.

**The Government may consider issuing instructions for utilising all the modules available in the VATIS and devise a time frame for training all the members of the staff.**

<sup>7</sup> Integrated check post.

<sup>8</sup> Border check post.

<sup>9</sup> Audits, which provide broad audit coverage of VAT dealers and form basis for special and specific audits.

<sup>10</sup> Hindupur, Hyderabad (Hyderguda and Sultanbazar), Nizamabad-II and Tadepalligudem.

#### **2.2.9.4 Scrutiny of monthly VAT returns/input tax credit claim**

Under Section 20 of the APVAT Act, every return in Form 200 shall be subjected to scrutiny to verify the correctness of arithmetical calculation, application of correct rate of tax and input tax credit claimed as well as full payment of tax and interest payable for delay in payment of tax by a dealer. **The dealers were not required to submit any documentary evidence in support of the transactions alongwith the return. The column for specifying the name of the commodity was also not provided in the Form (VAT 200).** In absence of these documents/details, the department can not properly scrutinise the returns and ensure the application of correct rate of tax as well as arithmetic accuracy.

Test check of the records in 16 circle offices indicated that 42,367 returns were not filed by the dealers out of 5,80,628 returns required to be filed by them for the period from 2005-06 to 2008-09. The circle offices had made no effort to call for the returns. Audit also noticed that the dealers did not furnish any details of purchases and sales made by them along with the returns. Consequently, the claims of input tax credits could not be verified. Thus, inadequate documentation led to inadequate checks and balances in the VAT regime.

After this was pointed out, the department stated (August 2009) that it would be useful for it if supporting documents alongwith the monthly returns were furnished to make them self sufficient for any future scrutiny in the interest of the revenue.

**The Government may consider issuing instructions for submitting the documentary evidence that would facilitate in the scrutiny of the returns and input tax credit claims and providing a column in the monthly return “Form 200” specifying the name and the details of commodities.**

#### **2.2.9.5 Failure to serve demand notices generated by the VATIS**

Under Section 21 read with rule 25(1) of APVAT Act, assessments shall be finalised unilaterally by the AAs of the dealers who fail to file monthly VAT returns where tax is due. **Audit noticed that no monitoring mechanism existed in the department by way of any return to ensure that the demands of assessments generated by the VATIS were raised by the concerned AAs.**

Test check of the records in Hyderguda circle indicated that 247 dealers had not filed returns for certain period(s) during 2005-06 to 2008-09. The VATIS automatically generated the assessments for a tax of Rs. 99.15 lakh and penalty of Rs. 49.58 lakh. But the AA did not serve the demand notices resulting in non-raising of demand of Rs. 1.49 crore. This was not detected due to the absence of a monitoring mechanism.

The department stated (August 2009) that due to time constraint, they relied upon identification of defaulters among major tax payers only and focused their attention on collecting the returns and taxes wherever due from such large tax payers.

**The Government may consider putting in a place a mechanism to ensure that the demand notices in respect of assessments generated by VATIS were issued to the concerned dealers.**

#### **2.2.9.6 Monitoring of transit passes not surrendered at the check posts**

The transit passes (TP) issued to the goods vehicles passing through the State at entry check post have to be surrendered at the exit check post as a proof of exit of the vehicles from the State. Under Section 47 of the APVAT Act, assessments of those vehicles that did not surrender the TPs should be finalised within a period of four years.

Test check of the records in four check posts<sup>11</sup> indicated that out of 2,31,919 unsurrendered TPs from 2005-06 to 2008-09, assessments were made only for 1,655 TPs (0.71 *per cent* of the TPs not surrendered). This indicated that the assessments of TPs not surrendered were negligible requiring urgent attention. In two divisions, 1,305 TPs involving tax of Rs. 1.66 crore on a turnover of Rs. 15.49 crore pertained to 2004-05. These cases being more than four years old have become time barred for assessment. Information regarding time barred cases in other divisions was not made available to audit though requested.

**The Government may consider putting in place a system for monitoring timely finalisation of the assessments relating to transit passes not surrendered.**

#### **2.2.10 Cross-verification of records with the departments**

The white paper issued by the ECSFM emphasised cross verification of data between various taxation departments viz., Income Tax, Central Excise and CT so as to reduce tax evasion and ensure growth of tax revenue. However, **the APVAT Act does not have any provision for cross verification of document available in the department with the records of the other departments to ensure the correctness of the taxes paid by the dealers.**

Audit scrutiny revealed that the department had at no time made any effort to obtain any information relating to the sale or purchase made by a dealer, from any other department for cross verification with the transactions depicted in the returns to ascertain the correctness of the tax paid by the dealers.

**The Government may consider incorporating a provision for cross verification of the records of the dealer available in the department with the relevant records of other departments.**

#### **2.2.11 Internal control mechanism**

Internal Audit, which provides reasonable assurance of proper enforcement of laws, rules and departmental instructions, is a vital component of internal control. It is generally defined as the control of all controls to enable an organisation to ensure itself that the prescribed systems are functioning reasonably well.

<sup>11</sup> ICP, Bhemunivaripalem, Naraharipet, Purshottampuram and Saloora.

Under the APGST regime the CT Department had a system of annual internal audit. The APVAT Act does not have any provision for internal audit. However, the department relied upon a proforma based internal audit in which information was called for from each circle and this was called as “Annual Internal Audit”. Due to the absence of an internal audit wing, the department remained unaware of the areas of the malfunctioning of the systems and did not, therefore, have any opportunity of taking remedial action.

**The Government may consider installing a mechanism for conducting effective internal audit to ensure timely detection and correction of errors in the levy and collection of revenue.**

### **Compliance deficiencies**

#### **2.2.12 Shortfall in audit of the dealers**

As per Para 3.1(i) and 4.8.2 of APVAT Manual, all the VAT dealers in a circle should be audited in a period of two years and such audits shall not exceed 12.5 *per cent* in a quarter. The status of audits conducted as furnished by the department is mentioned in the following table:

Year	Total dealers	Dealers to be audited	Dealers actually audited	Shortfall in audits	Percentage of shortfall
2005-06	1,56,233	78,116	Not furnished		
2006-07	1,97,250	98,625	Not furnished		
2007-08	2,38,088	1,19,044	17,225	1,01,819	85.53
2008-09	2,69,153	1,34,576	18,693	1,15,883	86.11

The foregoing table indicates a shortfall of 86 *per cent* in audits for 2007-08 and 2008-09.

**2.2.12.1** Test check of the records in 10 circles<sup>12</sup> indicated that out of 9,212 dealers, audit of 7,678 dealers was not conducted at all while audit of 578 dealers was conducted after more than two years in contravention of the provisions of the manual.

After this was pointed out, the department stated (February 2010) that the shortfall in conducting departmental audit was due to lack of sufficient manpower and engagement of the existing staff in revenue collection.

#### **2.2.12.2 Defects in planning departmental audits and improper maintenance of records**

The following deficiencies were noticed in the test check of audit files in 28 offices.

- No programmes were drawn up for conducting audits in a time bound manner.

<sup>12</sup> Eluru, Hindupur, Hyderabad (Basheerbagh, Charminar, Hyderguda and Khairatabad), Nizamabad-II, Secunderabad (Ranigunj), Tadepalligudem and Vizianagaram (West).

- The audit file(s) maintained by the department did not contain VAT return of the dealers for the period for which the audit was conducted. Thus, whether mistakes were correctly pointed out by the departmental audit could not be ascertained.
- There was repetition in the selection of dealers for audit in Ananthapur division. Three dealers whose audit had been done in 2008-09 were again picked up for audit in the same year.
- No time schedule was set for the completion of audit.
- In the system of jumbling audit<sup>13</sup>, the departmental audit officers retained the audit files without transmitting these to the jurisdictional CTO concerned. This resulted in non-availability of the files in the concerned CTO office.

### **2.2.13 Input Tax Credit (ITC)**

The essence of VAT is in providing set-off for the tax paid earlier and this is given effect through the concept of ITC/rebate. This ITC in relation to any period means setting off the amount of input tax by a registered dealer against the amount of his output tax. The VAT is based on the value addition to the goods and the related VAT liability of the dealer is calculated by deducting the ITC from tax payable on sales during the payment period (say, a month). This ITC will be given for both manufacturers and traders for purchase of inputs/supplies meant for both sales within the state as well as to the other states, irrespective of the period of utilisation/sales. This also reduces immediate tax liability.

Test check of the records of seven dealers in three circles<sup>14</sup> indicated that the ITC of Rs. 50.72 lakh was claimed by the dealers on the purchases made by them during the year 2008-09. However, cross verification of the input tax credit claims with the VAT ledger in VATIS of the dealers from whom purchases were made, indicated that the selling VAT dealers had not made such sales. Thus, *prima facie* the ITC claims were fictitious.

After this was pointed out, the concerned AAs stated (April to August 2009) that the matter would be examined. Further development has not been reported (February 2010).

#### **2.2.13.1 Excess claim of ITC due to improper scrutiny of returns**

The VAT dealers shall not be entitled for ITC on sale of exempt goods i.e. goods falling under Schedule I of the APVAT Act. Under entry 58 of Schedule I to the APVAT Act, inserted vide G.O.No.1468 dated 23 November 2007, goods sold by the Canteen Stores Department (CSD) and the Indian Naval Canteen Services are exempt from tax with effect from 24 November 2007 and thus were not eligible for ITC.

<sup>13</sup> Audit of dealers authorised to officers other than the jurisdictional officers.

<sup>14</sup> Hyderabad (Khairatabad, Punjagutta) and Nizamabad – II.

- Test check of the records in Marredpally circle indicated that the CSD sold goods valued at Rs. 56.86 crore during 2008-09 without paying any tax. However, they claimed ITC of Rs. 4.05 crore on the purchases though they were not entitled to it. This resulted in short realisation of Rs. 4.05 crore.

After this was pointed out, the department stated (August 2009) that the matter of allowing ITC to the CSD had been referred to the Government and action would be taken as per the decision of the Government.

- Similarly, the sales made to a unit located in special economic zone (SEZ) were exempted from tax with effect from June 2008 and thus no ITC was admissible to such unit(s).

Test check of the records of three dealers in two circles<sup>15</sup> located in SEZ indicated that during 2008-09, ITC of Rs. 5.58 lakh was incorrectly claimed on sales made to SEZs resulting in short realisation of revenue to that extent.

#### **2.2.14 Excess claim of VAT compensation**

The Central Government had consented to compensate the State Government for loss of revenue consequent upon the implementation of the VAT. As per Government of India instructions issued in June 2005, the VAT compensation amount should be claimed by the state as per the tax rates recommended by the Empowered Committee (EPC). If the State deviated from the proposed rates, revenue loss due to such deviation would not be compensated.

The CCT noticed deviations in VAT rates of 23 commodities<sup>16</sup> from those prescribed by the EPC and submitted (September 2005) a proposal of VAT compensation claim to the Special Chief Secretary to the Government of Andhra Pradesh, Revenue Department indicating that the commodities would not qualify for the VAT compensation. The State Government forwarded the compensation claim intimating deviation in rates in respect of six commodities<sup>17</sup> only. The reasons for not intimating deviations in the rates of the remaining 17 commodities were neither found on record nor were intimated to audit. This resulted in claiming excess compensation amounting to Rs. 17.53 crore which was also allowed by the Government of India.

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<sup>15</sup> Hyderabad (Hyderguda and Khairatabad).

<sup>16</sup> 1) Casurina poles, eucalyptus logs & cut sizes thereof 2) Fittings of Hose Pipes 3) Fittings of all pipes 4) Hawaii chappals 5) UHT Milk 6) Tamarind seed, dal, powder 7) Maps, charts and globes 8) Electric motors upto 10 HP, starters, parts of pump sets 9) Drip irrigation systems 10) Bed sheets, pillow covers, towels and other made-ups 11) Accessories of sewing machines 12) Tractor tyres & tubes 13) Syringes, bandages etc., 14) Utensils other than Aluminium and enameled 15) Vermicelli & semiya 16) Rice bran 17) Geometry & colour boxes etc., 18) Writing ink 19) Garden umbrella 20) Sand, stone chips 21) Micro nutrients, plant growth promoters 22) Computer stationery 23) Bio-diesel.

<sup>17</sup> 1) Casurina poles, eucalyptus logs & cut sizes thereof 2) Fittings of Hose Pipes 3) Fittings of all pipes 4) Hawaii chappals 5) UHT Milk 6) Tamarind seed, dal powder.

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## **2.2.15 Industrial incentives**

### **2.2.15.1 Security of Fixed Assets**

As per paragraph 6.03 of the guidelines of the Sales Tax Deferment scheme issued vide G.O.Ms.No.108 dated 20 May 1996, deferred amount of sales tax was to be treated as deemed loan against the security of the fixed assets of the units availing of such incentive.

Test check of the records of nine dealers in the Benz circle indicated that the security was not obtained against the conversion of the deferment of Rs. 2.35 crore in violation of the guidelines of the deferment scheme.

### **2.2.15.2 Closure of production before the stipulated period**

According to the guidelines stipulated from time to time in respect of the deferment schemes, if a unit availing of deferment of sales tax goes out of production for a period exceeding one year during the period of deferment, the amount already availed of shall be recovered alongwith interest at 21.5 *per cent* per annum.

Test check of the records in the Benz circle indicated that a unit availing of deferment upto 2014 was closed in April 2005. The deferred sales tax amounting to Rs. 16.84 lakh for the period from 1999-2000 to 2004-05 though recoverable was not recovered by the department.

## **2.2.16 Penalties**

Sections 49 to 57 of the APVAT Act contained provisions for levy of penalty for various offences viz., failure to register, failure to file returns, failure to pay tax when due, failure to declare tax due, misuse of TIN/GRN, issue or use of false tax invoice, failure to maintain records and unauthorised collection of tax etc. Audit observed that the penalty though leviable was either not levied or was levied short as mentioned below.

### **2.2.16.1 Non-levy of penalty and interest for delayed payment/failure to pay tax due**

Under Section 20(1) of the APVAT Act, every dealer shall pay tax due alongwith the monthly return. Sections 50(3) and 51 of the Act provide for levy of penalty for the offences of delayed filing of monthly returns and for failure to pay the tax due on the basis of the return respectively. Under section 22(2) of the Act, interest at one *per cent* was payable on the amount of tax paid belatedly.

Test check of the records in three circles<sup>18</sup> indicated that during the period from 2005-06 to 2008-09, tax of Rs. 53.23 lakh was not paid by 433 dealers, while eight dealers paid tax belatedly. However, penalty and interest though leviable was not levied by the AAs. This had resulted in non-levy of penalty of Rs. 22.92 lakh and interest of Rs. 15.73 lakh.

<sup>18</sup> Ananthapur-I, Hindupur and Nizamabad-II.

### **2.2.16.2 Short levy of tax and penalty**

Under Section 53(1)(i) & (ii) of the APVAT Act, a penalty of 10 and 25 *per cent* on the tax underdeclared is leviable where the underdeclaration is less than 10 *per cent* and more than 10 *per cent* respectively, not by way of wilful neglect. Under Section 53(3), a penalty equal to the tax underdeclared is leviable for the fraud or wilful neglect of the dealers.

Test check of the records of Hyderguda circle indicated that a works contractor opted to pay composite tax at four *per cent* on his gross turnover. He was liable to pay a tax of Rs. 2.42 crore for the period from April 2005 to November 2008 against which he paid a tax of Rs. 2.28 crore. Thus, there was a short payment of tax of Rs. 14.41 lakh. For non-payment of tax, a penalty of Rs. 14.41 lakh equal to the tax due was leviable for the wilful neglect. However, the AA levied (February 2009) a tax of Rs. 7.48 lakh only and a penalty of Rs. 0.75 lakh. This resulted in short levy of tax of Rs. 7.23 lakh and penalty of Rs. 13.66 lakh.

### **2.2.17 Conclusion**

Though the APVAT Act has been introduced four years ago, many of the intended objectives have not been achieved. A number of deficiencies were noticed by audit. The department has not put in place any monitoring control to ensure migration of all the dealers from APGST to APVAT. Consequently, a sizeable number of the dealers remained unregistered under the VAT Act. Though the VATIS was implemented in all divisions and circle offices from 1 April 2005, audit selections were made manually. Besides, the TINXSYS was not updated thus defeating the very purpose for which it was created. The details of sales and purchases made by the dealers were not furnished by them. The inadequate documentation led to inadequate checks and balances in the VAT regime.

There was no effective system for prompt raising of the demands generated by the VATIS and for timely finalisation of the assessments relating to transit passes not surrendered at the exit gates of the check posts.

Defects were also noticed in planning departmental audits and in maintenance of the records. Input tax credit was allowed on those transactions that were *prima facie* fictitious. Neither penalty nor interest was levied for non/delayed payment of tax. There was heavy shortfall in conducting departmental audit and the audit methodology also did not give much assurance for plugging the loopholes and leakage of revenue. Due to the absence of the internal audit wing, the department was ignorant of the omissions and errors and their timely detection and correction.

### **2.2.18 Summary of recommendations**

The Government may consider:

- framing a provision for conducting of periodical surveys to ensure that dealers liable for VAT registration are promptly detected and registered;



- putting in place a mechanism for prompt identification of the ToT dealers who have crossed the threshold limit and their registration as VAT dealers;
- issuing instructions for utilising all the modules available in the VATIS and devise a time frame for training all the members of the staff;
- issuing instructions for submitting the documentary evidence that would facilitate scrutiny of the returns and input tax credit claims and providing a column in the monthly return “Form 200” specifying the name and the details of commodities;
- putting in place a mechanism to ensure that the demand notices in respect of assessments generated by VATIS are issued to the concerned dealers;
- putting in place a system for monitoring timely finalisation of the assessments relating to transit passes not surrendered;
- installing a mechanism for conducting effective internal audit to ensure timely detection and correction of errors in the levy and collection of revenue; and
- incorporating a provision for cross verification of the records of the dealer available in the department with the relevant records of other departments.

### **2.3 Other audit observations**

*Scrutiny of the records in the offices of the CT Department relating to revenue received from VAT, APGST and CST indicated several cases of non-observance of the provisions of the Acts/Rules resulting in non/short levy of tax/penalty and other cases as mentioned in the succeeding paragraphs in this Chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions are pointed out in audit each year, but not only do the irregularities persist; these remain undetected till an audit is conducted. There is need for the Government to consider directing the department to improve the internal control system including strengthening internal audit so that such omissions can be avoided, detected and corrected.*

### **2.4 Non-payment of Tax/VAT due to declaration of taxable turnover as exempted turnover**

**2.4.1** Under entry 45 of the First Schedule to the AP VAT Act, 2005/entry 5 of Fourth Schedule to the APGST Act, 1957, read with the explanations to the entries 'cotton fabrics, man made fabrics and woolen fabrics', were exempted from levy of tax, if additional duties of excise were levied on these goods under Additional Duties of Excise (Goods of Special Importance) Act, 1957. Otherwise, these are liable to tax at the rate of 12.5 *per cent* under Schedule V of the AP VAT Act and four *per cent* under Schedule III of the APGST Act.

According to the Government of India Notification No. 32/2004 - Central Excise dated 9 July 2004, cotton fabrics, etc. which were enumerated in the Schedule I to the Additional Duties of Excise (Goods of Special Importance) Act, 1957, were exempted from the levy of additional excise duty. As such, cotton fabrics and man made fabrics, etc., exempted from the levy of tax under Schedule I to the APVAT Act/ Schedule IV to the APGST Act are liable to tax at the rate of 12.5 *per cent* and four *per cent* respectively.

Test check of the records (May and November 2008) of seven circles<sup>19</sup> indicated that during the period from April 2005 to March 2008 in 16 cases, the assessee declared taxable turnover of Rs. 418.20 crore pertaining to the cotton fabrics and man made fabrics as exempted sales even though they were exempted from the levy of the additional excise duties. The AAs did not raise the demand for the tax not paid. This resulted in non-payment of VAT of Rs. 52.27 crore.

After the cases were pointed out, the AAs assured (July and November 2008) to examine the matter in eight cases and stated that the matter would be brought to the notice of higher authorities in five cases. In two cases, the AAs contended (August and November 2008) that cotton fabrics and man-made fabrics manufactured by the dealer were exempted under the VAT Act. The reply is not tenable as cotton fabrics and man made fabric are exempted from payment of the additional excise duty as such these are liable to be taxed under

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<sup>19</sup> Hyderabad (Barkatpura, Jeedimetla, Rajendranagar, Sanathnagar), Tirupati-I, Tirupati-II and Secunderabad (S.D. Road).

the APGST Act/APVAT Act. Reply in respect of the remaining case has not been received (February 2010).

The matter was referred to the department between January and March 2009 and to the Government in May 2009; their reply has not been received (February 2010).

**2.4.2** Test check of the records (May and November 2008) of five circles<sup>20</sup> indicated that the AAs while finalising the assessments in 13 cases between July 2007 and August 2008 for the assessment year 2004-05, incorrectly exempted the sales turnover of Rs. 88.50 crore pertaining to cloth, grey cloth, hosiery cloth and sarees even though they were exempted from the levy of additional excise duties. This resulted in non-levy of tax of Rs. 3.54 crore.

After the cases were pointed out (May 2009), the department and the Government accepted the audit observation in one case involving Rs. 3.41 lakh and stated (October 2009) that a show cause notice proposing revision had been issued. The replies in respect of the remaining cases have not been received (February 2010).

**2.4.3** Inter-state sale of these goods not supported by declarations were taxable under the CST Act at eight *per cent* up to 31 March 2005 and 12.5 *per cent* from 1 April 2005 onwards.

Test check of the records (May and November 2008) of four circles<sup>21</sup> indicated that the AAs while finalising the assessments in three cases between September 2007 and February 2008 for the assessment year 2004-05, incorrectly exempted the inter-state sales turnover of Rs. 28.91 crore pertaining to the cotton fabrics and cotton grey fabrics. Further, in other three cases during the period from April 2005 to March 2008, the dealers declared taxable inter-state sales turnover of Rs. 140.80 crore pertaining to cotton fabrics and man made fabrics as exempted turnover even though these were exempted from the levy of additional excise duties. This resulted in non-levy/ payment of tax of Rs. 19.91 crore.

After the cases were pointed out, in one case, the AA contended in November 2008 that the cotton fabrics manufactured by the dealer were exempted from CST in view of the provisions of the APGST/APVAT Acts. The reply is not tenable as the commodities are taxable under the APGST/APVAT Acts. The replies in respect of the remaining cases have not been received.

The matter was referred to the department between January and March 2009 and to the Government in May 2009; their reply has not been received (February 2010).

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<sup>20</sup> Hyderabad (Barkatpura, Lord bazaar, Rajendranagar), Tirupati-I and Secunderabad (S.D. Road).

<sup>21</sup> Hyderabad (Sanathnagar), Rajam, Secunderabad (S.D. Road) and Tirupati-II.

## **2.5 Misclassification of sales as works contracts**

Air conditioners, cement concrete pipes, carpets, elevators, lifts, pre-fabricated shelters, stone chips, spaces and beams, sound transmitting equipment and spare parts thereof are taxable at the rates prescribed in the APGST and the APVAT Acts.

The Supreme Court has held<sup>22</sup> that the contract for supply and installation of lifts and elevators constitute sale but not works contract since major component into the end product was the material consumed on producing the lift to be delivered and the skill and labour to be employed for converting the main component into the end product was only incidentally used.

**2.5.1** Test check of the records (October 2007 and August 2008) of three circles<sup>23</sup> indicated that during the period from April 2005 to March 2008, in four cases, the sale turnover of Rs. 61.87 crore pertaining to supply and erection of elevators, lifts and sales of air conditioners were misclassified as works contracts. This resulted in under declaration of tax of Rs. 5.36 crore.

After the cases were pointed out (March and May 2009), the department and the Government accepted (October 2009) the audit observations in two cases involving Rs. 3.67 crore and stated that the show cause notices proposing revision had been issued to the dealers. The replies in the remaining cases have not been received (February 2010).

**2.5.2** Test check of the records (November 2008) of nine circles<sup>24</sup> indicated that the AAs while finalising the assessments in 13 cases between March 2007 and March 2008 for the years 2003-04 and 2004-05, incorrectly treated turnover of Rs. 63.28 crore relating to sales of cement concrete pipes, air conditioners, carpets, lifts, pre-fabricated shelters, stone chips, spaces and beams, sound transmitting equipment and spare parts thereof as works contracts and levied tax of Rs. 3.46 crore instead of Rs. 8.38 crore. This resulted in short levy of tax of Rs. 4.92 crore.

After the cases were pointed out (March and May 2009), the department and the Government accepted (March and October 2009) the audit observations in nine cases involving Rs. 2.35 crore. Of these, assessments were revised in four cases involving Rs. 1.03 crore against which Rs. 6.88 lakh was collected in two cases. In the remaining five cases, the assessments have been proposed for revision. The replies in respect of the remaining cases have not been received (February 2010).

**2.5.3** 'Pre-printed stationery' falls under entry 225 of I schedule and 'Pre-fabricated shelters' falls under VII schedule to the APGST Act and are liable to tax at the rate of eight and 12 *per cent* respectively at the point of first sale in the State.

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<sup>22</sup> A.P. State Vs M/s Kone Elevators (I) Limited, Secunderabad (140 STC 22SC 2005).

<sup>23</sup> Hyderabad (Agapura, Somajiguda and Srinagar colony).

<sup>24</sup> Hyderabad (Basheerbagh, Begumpet, Khairatabad, Sanathnagar, Somajiguda, Srinagar colony, Vengalaraonagar), Proddatur and Secunderabad (R.P. Road).

Test check of the records (June and November 2008) of two circles<sup>25</sup> indicated that the AAs while finalising the assessments in two cases between March 2007 and March 2008 for the years 2003-04 and 2004-05, incorrectly treated the inter-state sales of printed stationery and pre-fabricated shelters valued as Rs. 6.97 crore as works contracts and levied tax of Rs. 54.97 lakh instead of Rs. 76.28 lakh. This resulted in short levy of Central Sales Tax of Rs. 21.31 lakh.

After the cases were pointed out (March and May 2009), the department/Government accepted (October 2009) the audit observation in one case involving Rs. 6.50 lakh and issued a show cause notice proposing revision. The reply in the other case has not been received (February 2010).

## **2.6 Non/short payment of VAT on works contracts**

**2.6.1** According to Section 4(7)(b) and (c) of the APVAT Act, every dealer executing works contract may opt to pay tax by way of composition at the rate of four *per cent* on the total works contract receipt. However, when a dealer opts for composition of tax, no deduction is admissible and tax is payable on the total amount paid or payable to the dealer towards execution of works contract except amounts paid to the sub-contractor.

Under Section 4(7)(a) of the APVAT Act, every dealer shall pay tax on the value of goods at the time of incorporation of such goods in the works executed at the rates applicable to the goods under the Act subject to the deductions allowed under Rule 17(e) of the APVAT Rules. If the accounts are not maintained to determine the correct value of goods at the time of incorporation, such dealer shall pay tax at the rate of 12.5 *per cent* on the total consideration subject to the deductions specified under Rule 17(g) of the APVAT Rules and the dealer is not eligible to claim input tax credit also.

Test check of the records (June and October 2008) of AC (LTU<sup>26</sup>) Secunderabad and 10 circles<sup>27</sup> indicated that during the period from January 2006 to March 2008, 19 dealers had not maintained the accounts to ascertain the correct value of goods and had declared VAT less by Rs. 1.45 crore by claiming ineligible deductions on account of the ITC and VAT. This resulted in short payment of tax to that extent. The AAs did not raise the demands for the short paid tax.

After the cases were pointed out (December 2008 and May 2009), the department/Government (July 2008 and October 2009) accepted the audit observations in six cases involving Rs. 43.42 lakh and stated in one case that the short paid tax would be collected. Notices had been issued proposing revision in the remaining five cases. The replies in respect of the remaining cases have not been received (February 2010).

<sup>25</sup> Hyderabad (Sanathnagar) and Vuyyur.

<sup>26</sup> Large Tax Payers Unit.

<sup>27</sup> Ananthapur, Bhongir, Hindupur, Hyderabad (Agapura, Hydernagar), Karimnagar-I, Nellore, Secunderabad (Marredpally, S.D. Road) and Tadepalligudem.

**2.6.2** Test check of the records (May and June 2007) of Nacharam circle indicated that during the period from April 2006 to March 2007, a contractor had incorrectly declared VAT of Rs. 27.30 lakh instead of Rs. 88.77 lakh by claiming ineligible deductions such as VAT and ITC from the taxable turnover. This resulted in short payment of VAT of Rs. 61.47 lakh. The AA did not raise the demand for the short paid tax.

The matter was referred to the department in April 2009 and the Government in May 2009; their reply has not been received (February 2010).

**2.6.3** Test check of the records (November 2008) of Market Street circle indicated that during the period from April 2007 to March 2008, a dealer incorrectly claimed exemption of turnover of Rs. 2.10 crore relating to value of goods purchased from other states and incorporated in the works contract. The AA did not raise the demand for this amount. This resulted in non-realisation of tax of Rs. 26.28 lakh.

The matter was referred to the department in February 2009 and the Government in May 2009; their reply has not been received (February 2010).

**2.6.4** According to Section 2(38) of the APVAT Act, taxable turnover means the aggregate of sale prices of all taxable goods.

Test check of the records (October 2008) of Hissamgunj circle indicated that during the period from April 2007 to March 2008, Rs. 2.71 crore was incorrectly deducted from taxable turnover as margin money<sup>28</sup> by a contractor. This amount did not qualify for exemption and resulted in short payment of tax of Rs. 10.85 lakh.

After the case was pointed out (May 2009), the Government/department accepted the audit observation and stated (October 2009) that assessment was being made for the short paid tax. Further progress has not been reported (February 2010).

## **2.7 Non/under declaration of VAT due to application of incorrect rate**

VAT is leviable at the rates prescribed in schedules I to IV & VI to the APVAT Act. Commodities not specified in any of the schedules fall under schedule V and are liable to VAT at 12.5 *per cent* from 1 April 2005.

According to Section 20(3) every monthly return submitted by a dealer shall be subjected to scrutiny to verify the correctness of calculation, application of correct rate of tax and ITC claimed therein and full payment of tax payable for such tax period.

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<sup>28</sup> Margin money means profit element received in entrusting the work to another contractor.

Test check of the records (May 2007 and November 2008) of 11 circles<sup>29</sup> indicated that during the period from April 2005 to March 2008, 14 dealers declared VAT of Rs. 1.03 crore at four *per cent* on the turnovers of Rs. 19.56 crore relating to bio-fertilizers, cast iron components, cooked food, purification systems etc. These goods were not specified in schedules and were liable to tax of Rs. 2.40 crore at the rate of 12.5 *per cent*. This resulted in under declaration of VAT of Rs. 1.37 crore.

Further, the turnover of welded items taxable at 12.5 *per cent* was not declared by a dealer resulting in non-declaration of VAT of Rs. 3.09 lakh. The AA did not raise the demands for the short paid tax of Rs. 1.40 crore. Failure of the authorities to scrutinise the monthly returns at the time of submission by the dealers resulted in non/under declaration of VAT of Rs. 1.40 crore.

After the cases were pointed out (March and May 2009), the department/Government accepted (October 2009) the audit observations in five cases involving Rs. 11.35 lakh and stated that the assessments had been revised in three cases involving Rs. 7.45 lakh, out of which Rs. 3.98 lakh had been collected in two cases. In the remaining two cases, show cause notices had been issued proposing revision. In one case, the department stated that since there was no separate entry for mosquito repellants, it was taxed under entry 20 of schedule IV relating to pesticides, insecticides, fungicides, herbicides and weedicides. The reply is not tenable since in the absence of any entry, it was taxable at the rate of 12.5 *per cent* under schedule V. In another case, it was stated that the wire mesh manufactured and sold by the dealer was a hardware item falling under entry 105 of schedule IV. The reply is not tenable as the 'wire mesh' mentioned in entry 105 is a woven mesh, whereas the mesh sold by the dealer was a 'welded mesh' manufactured from rods of different gauges welded together as per the specifications of the customers and was liable to be taxed at the rate of 12.5 *per cent* as an unspecified item. The replies in respect of the remaining cases have not been received (February 2010).

## **2.8 Excess claim of ITC**

Under the provisions of the APVAT Act, ITC should be allowed to the VAT dealer for the tax charged in respect of all purchases of taxable goods made by that dealer during the tax period if such goods were used in the business of the VAT dealer. Further, under the APVAT Rules, no ITC is eligible on goods used in construction of buildings and sheds for the purpose of the business, PDS<sup>30</sup> kerosene, goods used as inputs in job works and goods used in works contracts under composition. Further, where transactions involve sale of taxable goods as well as exempt transactions of taxable sales, the claim for the eligible ITC should be restricted as per the formula prescribed<sup>31</sup>.

<sup>29</sup> Gadwal, Hindupur, Hyderabad (Jeedimetla, Mehidipatnam, Osmangunj), Kamareddy, Peddapally, Secunderabad (Marredpally, Nacharam, R.P. Road) and Vijayawada (Autonagar).

<sup>30</sup> Public distribution system.

<sup>31</sup>  $A \times B/C$  where A is input tax for common inputs for each tax rate, B is taxable turnover and C is the total turnover.

Test check of the records (June and October 2008) of five circles<sup>32</sup> indicated that in case of 10 dealers, ITC during the period from April 2006 to March 2008 on goods used in construction of buildings and sheds for the purpose of the business, PDS kerosene, goods used as inputs in job works and goods used in works contracts under composition was claimed and allowed by the AAs. This resulted in short payment of tax of Rs. 65.52 lakh.

After the cases were pointed out (March and May 2009), the Government/department accepted (July 2008 and October 2009) the audit observations in seven cases involving Rs. 29.09 lakh and stated that in one case the assessment involving Rs. 4.86 lakh had been revised and tax collected. The report on further action taken and the replies in respect of the remaining cases have not been received (February 2010).

## **2.9 Non/short levy of tax on inter-state sales**

The Central Sales Tax Act, 1956 provides that the inter-state sales/consignment transfers not supported by a declaration in Form 'C', 'D' & 'F' are taxable at twice the rate applicable to the sale or purchase of these goods inside the State in respect of the declared goods and in respect of the other goods at 10 *per cent* or at the rate applicable to the sale or purchase of such goods within the State whichever is higher.

### **2.9.1 Incorrect exemption on fake and invalid declaration**

**2.9.1.1** As per Section 9(2A) of the CST Act read with Section 7-A (2) of the APGST Act, if any dealer produces false/fake declarations and claims exemption/reduced rate of tax in support of these documents, he is liable to pay a penalty of three to five times of the tax due for such transaction.

Test check of the records (January 2007 and January 2008) of AC (LTU) Adilabad and two circles<sup>33</sup> indicated that in nine cases, inter-state sales/consignment sales<sup>34</sup>/branch transfers of goods valued as Rs. 63.45 crore were supported by fake 'C' and 'F' Forms. The fact that the forms were fake was confirmed by the sales tax departments of the State Governments<sup>35</sup> concerned. But the AAs while finalising the assessments between March 2006 and March 2007 for the years 2003-04 and 2004-05, either levied tax at the concessional rate of four *per cent* or did not levy tax in the case of the consignment transfers. This resulted in non-levy of tax of Rs. 10.19 crore and a minimum penalty of Rs. 31.32 crore.

After the cases were pointed out (May 2009), the Government/department accepted (October 2009) the audit observation in one case involving Rs. 13.24 lakh. A report on recovery and replies in respect of the remaining cases have not been received (February 2010)

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<sup>32</sup> Bhongir, Hindupur, Hyderabad (Agapura, Maharajgunj) and Special commodities circle.

<sup>33</sup> Special Commodities circle and Tenali (Gandhi chowk).

<sup>34</sup> Sales through agents.

<sup>35</sup> Assam, Chattisgarh, Delhi, Gujarat, Haryana, Karnataka, Kerala, Uttar Pradesh, Maharashtra, Madhya Pradesh, Orissa and Tamilnadu.



**2.9.1.2** Under section 6-A of the CST Act read with Rule 9A(2) of the CST (AP) Rules, each declaration in Form 'F' shall cover transactions effected during a period of one calendar month. Therefore, a single declaration issued to cover transfer of goods for more than one month is to be treated as invalid and the turnover has to be brought to tax treating it as inter-state sales not covered by proper declarations.

Test check of the records (October 2007 and March 2008) of four AC (LTUs)<sup>36</sup> and 18 circles<sup>37</sup> indicated that in 29 cases, consignment sales/branch transfers of goods valued at Rs. 10.69 crore were supported by 'F' Forms covering transactions of more than one month and the same were liable to be treated as invalid. But the AAs while finalising the assessments between June 2006 and April 2008 for the years 2003-04 and 2004-05, incorrectly exempted the turnover from the levy of tax. This resulted in non-levy of tax of Rs. 1.03 crore.

After the cases were pointed out (March 2008 and May 2009), the Government/department accepted (October 2007 and October 2009) the audit observations in 14 cases involving Rs. 55.99 lakh and stated that in one case, the assessment involving Rs. 1.10 lakh had been revised and the remaining 13 cases had been proposed for revision. The report on further action taken and replies in respect of the remaining cases have not been received (February 2010).

**2.9.1.3** According to section 8(4)(b) of the CST Act read with the CST (R&T) Rules 12(1), if the goods are sold to the Government not being a registered dealer, a certificate in Form 'D' duly filled and signed by a duly authorised officer of the Government shall be submitted. This concession is not admissible to public sector undertakings.

Test check of the records (May and August 2008) of two circles<sup>38</sup> indicated that the AAs while finalising the assessments in three cases between November 2007 and March 2008 for the year 2004-05, incorrectly levied concessional rate of tax at the rate of four *per cent* instead of 10 *per cent* on turnover of Rs. 3.70 crore relating to the inter-state sales of brake linings, electronic testing equipment, electronic analytical equipment etc., by accepting 'D' Forms from public sector undertakings which were not Government departments. This resulted in short levy of tax of Rs. 22.19 lakh.

After the cases were pointed out (May 2009), the Government accepted (October 2009) the audit observations and stated that the assessments had been revised in two cases involving Rs. 18.54 lakh out of which Rs. 9.68 lakh had been collected and the assessment was being revised in one case. Further report has not been received (February 2010).

<sup>36</sup> Nellore, Nizamabad, Saroornagar and Secunderabad.

<sup>37</sup> Adoni-I, Chirala, Gandhi Chowk, Hyderabad (Malakpet, M.J. Market, Sanathnagar), Kodad, Kothapet, Kurnool-II, Mahaboobnagar, Peddapuram, Proddatur, Secunderabad (M.G. Road, R.P. Road), Seetharamapuram, Special Commodities circle, Tirupati-I and Warangal (Beet Bazaar).

<sup>38</sup> Hyderabad (Bowenpally and Sanathnagar).

**2.9.2** Test check of the records (March 2007 and November 2008) of two AC (LTUs<sup>39</sup>) and 17 circles<sup>40</sup> indicated that in 25 cases, inter-state sales valued at Rs. 117.49 crore were not supported by the 'C' Forms. The AAs while finalising the assessments for the years 2002-03 to 2004-05 between February 2006 and March 2008 either omitted to levy tax or levied tax at concessional rate. This resulted in non/short levy of tax of Rs. 2.60 crore.

After the cases were pointed out (November 2007 and June 2009), the department/Government accepted (March 2007 and October 2009) the audit observations in 11 cases involving Rs. 73.95 lakh and stated that the assessments had been revised in eight cases involving Rs. 61.15 lakh against which Rs. 8.84 lakh was collected/adjusted against the excess tax paid in three cases and the assessment had been proposed for revision in three cases. In one case, it was noticed that the goods were imported from outside the country under an agreement with contractee and these were transferred alongwith the documents while the goods were in transit. The reply is not tenable since the goods were received by the assessee in March 2005 at Kakinada Port and the title of the goods did not change in transit. As such, these cannot be termed as high sea sales. The replies in respect of the remaining cases have not been received (February 2010).

## **2.10 Non/short levy of tax due to incorrect exemption**

**2.10.1** The APGST and the APVAT Acts provide for the levy of tax on asbestos cement sheets, cold rolled strips, digital cameras and tender schedules.

Test check of the records (October 2007 and June 2008) of three circles<sup>41</sup> and one Urban Development Authority<sup>42</sup> (UDA) indicated that the AAs while finalising the assessments in three cases between June 2007 and February 2008 for the year 2004-05, incorrectly exempted the turnover of Rs. 4.70 crore relating to asbestos cement sheets, CR strips and digital cameras. Further, during the years 2002-03 to 2006-07, tax of Rs. 6.24 lakh on sales of tender schedules amounting to Rs. 51.97 lakh was not levied by the UDA. This resulted in non/short levy of tax of Rs. 24.79 lakh.

After the cases were pointed out (April and May 2009), the Government/department accepted the audit observations in three cases involving Rs. 18.55 lakh and stated (October 2009) that the assessment had been revised in June 2009 in one case and show cause notices had been issued in two cases. The reply from the UDA has not been received (February 2010).

**2.10.2** According to Section 6C of the APGST Act, the rate of tax on packing material sold with goods shall be the same as that of the goods packed or

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<sup>39</sup> Karimnagar and Nalgonda.

<sup>40</sup> Adoni-II, Hyderabad (Basheerbagh, Khairatabad, Lord bazaar, Malakpet, Marredpally, Punjagutta, Sanathnagar, Somajiguda, Vidyanagar), Nizamabad-II, Ramannapet, Secunderabad (Maharajgunj, Ranigunj, S.D. Road), Special commodities circle and Visakhapatnam (China waltair).

<sup>41</sup> Hyderabad (Basheerbagh, Punjagutta and Sanathnagar).

<sup>42</sup> Vijayawada, Guntur, Tenali and Mangalagiri UDA.

filled. Further, under entry 19 of schedule (I) to the Act, packing material is taxable at the rate of four *per cent* when sold without contents and the rate at which the content is liable to tax when sold containing contents. It was judicially held<sup>43</sup> that gunnies, which have suffered tax, could again be subjected to tax when sold along with content.

Test check of the records (May and August 2008) of two circles<sup>44</sup> indicated that the AAs while finalising the assessments in six cases for the year 2004-05 between November 2005 and November 2006, incorrectly exempted turnover of Rs. 157.45 lakh relating to gunnies sold alongwith content. This resulted in non-levy of tax of Rs. 6.30 lakh.

After the cases were pointed out, the AA accepted the objection in one case and revised the assessment in December 2008. The replies in respect of the remaining cases have not been received (February 2010).

The matter was referred to the department in December 2008 and to the Government in April 2009; their reply has not been received (February 2010).

### **2.11 Non-levy of interest on belated payments**

Under Section 16(3) of the APGST Act, if any dealer fails to pay tax alongwith the return or fails to pay tax on final assessment within the time prescribed, he shall pay interest in addition to the amount of such tax. Interest is payable at the rate of 18 to 36 *per cent* up to 11 January 2005 and at the rate of one rupee for every one hundred rupees or part thereof for each month or part thereof from 12 January 2005 onwards.

Test check of the records (October 2007 and November 2008) of four circles<sup>45</sup> indicated that five dealers either paid tax on final assessment or alongwith returns with delays ranging from 3 days to 139 months for the assessment years 1991-92 to 2004-05. The AAs did not levy interest of Rs. 11.50 crore for the delay in payment of tax.

After the cases were pointed out (October 2008 and May 2009), the Government/department stated (October 2008 and October 2009) that interest of Rs. 2.16 lakh had been levied in one case, while in another case involving a tax effect of Rs. 10.93 crore, show cause notice would be issued and in the remaining three cases, action would be taken to levy interest. Further report has not been received (February 2010).

### **2.12 Non/short levy of tax on the works contracts**

Under Section 5F of the APGST Act, every dealer has to pay tax at the prescribed rate on his turnover of transfer of property either as goods or in some other form involved in the execution of works contract subject to exemptions and deductions provided for, under sub clauses (a) to (l) of Rule 6(2) of the APGST Rules.

<sup>43</sup> The A.P. High Court in the case of M/s Gowri Sankar Modern Rice Mill Vs. State of A.P. (147 STC 370).

<sup>44</sup> Narsapur and Nizamabad-II.

<sup>45</sup> Hyderabad (Agapura, Mehidipatnam and Somajiguda) and Chittoor (Tirupati-I).

### **2.12.1 Incorrect grant of exemption on the inter-state purchases**

Under the proviso to Section 5F of the APGST Act, tax shall be leviable on the turnover of goods either obtained or purchased from other states by the contractor and used in the execution of the works contracts.

Test check of the records (November 2006 and November 2008) of five circles<sup>46</sup> indicated that in five cases, the contractors purchased material from other States and used these in the execution of the works contracts within the State. The goods so used were liable to tax under the proviso to Section 5F of the APGST Act. However, the AAs while finalising the assessments between June 2005 and February 2008 for the years 2003-04 and 2004-05, exempted the turnover of Rs. 60.75 crore relating to the material purchased from the other States by the contractors and used in the execution of the works contracts. Incorrect exemption of turnover resulted in short levy of tax of Rs. 4.86 crore.

After the cases were pointed out (September 2007 and May 2009), the Government/department accepted (November 2008 and October 2009) the audit observations in three cases involving Rs. 26.97 lakh and stated that the assessment had been revised and Rs. 6.98 lakh had been collected in one case. Report on recovery of the balance amount and reply in respect of the remaining cases have not been received (February 2010).

### **2.12.2 Incorrect computation of turnover**

In determining the turnover of a dealer, deductions specified under Rule 6(2) of the APGST Rules shall be allowed from the turnover of the dealer if accounts are maintained as required under the Rule 45(1-C) of the APGST Rules. Deductions on account of cost of administrative expenses, income tax, inter-state purchases, sales tax etc., are not admissible under the Rules. If detailed accounts are not maintained and the amounts specified under the Rule 6(2) are not ascertainable from the accounts of a dealer, the turnover of the dealer shall be determined after deducting the amount calculated at percentages prescribed under Rule 6(3) (ii). Where the execution of the works contract extends over a period of more than one year, the value of material at the time of incorporation in works contract during that year shall be taxable turnover under Rule 6(3)(i).

Test check of the records (May 2006 and November 2008) of three LTUs<sup>47</sup> and 40 circles<sup>48</sup> indicated that the AAs while finalising the assessments in

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<sup>46</sup> Hyderabad (Begumpet, Jubilee Hills, Khairatabad, M.J. Market) and Visakhapatnam (Dwarakanagar).

<sup>47</sup> Hyderabad Rural, Secunderabad and Warangal.

<sup>48</sup> Ananthapur-II, Chittoor (Puttur), Gadwal, Guntur (Brodipet), Hyderabad (Agapura, Ashoknagar, Basheerbagh, Begumpet, Charminar, Fathenagar, Ferozguda, Hyderguda, Jubilee Hills, Khairatabad, Malakpet, Mehidipatnam, Punjagutta, Rajendranagar, Somajiguda, Vengalaraonagar, Vidyanagar), Kamareddy, Kothagudem, Mandapeta, Medak (Siddipet), Nellore (II & III), Prakasam (Markapur), Secunderabad (Marredpally, R.P. Road, S.D. Road), Vijayawada (Seetharamapuram), Visakhapatnam (Dwarakanagar, Gajuwaka, Kurupam Market), Warangal (Beet bazaar, Fort Road, Jangaon, Mahabubabad and Ramannapet).

70 cases between April 2005 and March 2008 for the years 2003-04 and 2004-05, incorrectly arrived at the taxable turnover of Rs. 145.91 crore instead of Rs. 172.57 crore. The short determination of taxable turnover of Rs. 26.66 crore with a tax effect of Rs. 4.19 crore was due to allowance of inadmissible deductions on account of the administrative expenses, income tax, inter-state purchases, sales tax etc.

After the cases were pointed out (March 2007 and May 2009), the Government/department accepted (June 2006 and October 2009) the audit observations in 32 cases involving Rs. 2.07 crore and stated that the assessments had been revised in eight cases involving Rs. 29.65 lakh against which Rs. 7.91 lakh had been collected in three cases. The replies in respect of the remaining cases have not been received (February 2010).

### **2.12.3 Short levy of tax under composition**

The rate of tax payable on the works contracts under Section 5F of the APGST Act was eight *per cent* and under Section 5G of the Act, the tax could be compounded at the rate of four *per cent* with effect from 1 January 2000. However, when an assessee opts for composition of tax, no deduction is admissible and tax is payable on the total amount paid or payable to the assessee towards the execution of works contract excluding the payments made to registered sub-contractors.

Test check of the records (October 2006 and September 2008) of seven circles<sup>49</sup> indicated that eight works contractors opted for composition of tax. Hence, they were not entitled to any deduction from their taxable turnover. However, the AAs while finalising the assessments between July 2005 and March 2008 relating to the years 2003-04 and 2004-05, incorrectly allowed deductions relating to the sales tax and labour charges in five cases and in one case, the assessment was finalised under section 5F instead of 5G to the advantage of the assessee. In another case, the turnover of the dealer corresponding to the TDS made by the contractee was not adopted as taxable turnover and in the remaining one case, the AA adopted incorrect rate of tax. This resulted in short levy of tax of Rs. 31 lakh.

After the cases were pointed out (October 2007 and May 2009), the Government/department accepted (February 2008 and October 2009) the audit observations in six cases involving Rs. 27.34 lakh and stated that the assessments had been revised in three cases and revision had been proposed in three cases. The replies in respect of the remaining cases have not been received (February 2010).

### **2.13 Short levy of tax due to application of incorrect rate**

Tax at the rates specified in schedules I to VI to the APGST Act, 1957, is leviable on the commodities included in these schedules. Commodities not specified in any of the schedules fall under VII schedule and are taxable at 12 *per cent* from 1 January 2000.

<sup>49</sup> Hyderabad (Basheerbagh, Jubilee Hills, Khairatabad, Malkajgiri), Kurnool-I, Secunderabad (S.D. Road) and Visakhapatnam (Dwarakanagar).

Test check of the records (October 2007 and November 2008) of 17 circles<sup>50</sup> indicated that the AAs while finalising the assessments in 20 cases between May 2006 and March 2008 for the years 2003-04 and 2004-05, levied tax on air conditioners, colour televisions, electronic goods, fitness equipment, gypsum boards, industrial valves, jointing kits, nutrition food stuff, tractors, water management products etc., at rates lower than those specified in the Act resulting in short levy of tax of Rs. 2.74 crore.

After the cases were pointed out (March 2008 and May 2009), the Government/department accepted (October 2007 and October 2009) the audit observations in 14 cases involving Rs. 2 crore and revised the assessments in four cases involving Rs. 6.99 lakh against which Rs. 1.68 lakh was collected in three cases. In the remaining 10 cases revision was being done. The replies in respect of six cases have not been received (February 2010).

## **2.14 Sales tax incentives for industrial units**

With a view to encouraging the growth of industries in the State, the Industries Department has been notifying various incentive schemes from time to time providing sales tax incentives in the form of sales tax deferment and sales tax holiday (exemption) to industrial units.

For according sanctions under the various incentive schemes, the Government constituted State Level Committee (SLC) and District Level Committee (DLC). On the basis of sanctions, the Commissioner of Industries issues Final Eligibility Certificate (FEC) indicating the extent and duration of the incentives for implementation by the CT Department.

### **2.14.1 Incorrect allowance of sales tax incentives**

Under the incentive schemes, the exemption is to be availed by a unit during the period specified and up to the eligibility limit mentioned in the FEC.

**2.14.1.1** Test check of the records (January 2008) of CTO, Vanasthalipuram indicated that the AA while finalising the assessment in one case in May 2006 for the year 2004-05, incorrectly allowed sales tax exemption of Rs. 1.12 crore up to December 2004 instead of Rs. 66.21 lakh by debiting lesser amounts to the eligibility limit than actually availed of during the years 1998-99 and 1999-2000. This resulted in excess availing of sales tax exemption of Rs. 46.23 lakh.

After the case was pointed out (March 2009), the Government accepted (October 2009) the audit observation and stated that a notice issued could not be served to the assessee due to closure of his business and added that further action was in progress.

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<sup>50</sup> Hyderabad (Abids, Agapura, Basheerbagh, Begumpet, Ferozguda, Gandhinagar, Hydernagar, Jubilee Hills, Malakpet, Nampally), Medak, Nidadavole, Nizamabad-I, Puttur, Rajahmundry (Aryapuram), Secunderabad (S.D. Road) and Visakhapatnam (Suryabagh).

**2.14.1.2** Test check of the records (June 2008) of S.D. Road circle indicated that the AA while finalising the assessment in one case in March 2008 for the year 2004-05, incorrectly allowed sales tax exemption of Rs. 26.49 lakh after expiry of the period of availment on 14 April 2004. This resulted in short levy of tax of Rs. 26.49 lakh.

After the case was pointed out (March 2009), the Government/department accepted (October 2009) the audit observation and stated that a show cause notice for revision had been issued. Further report has not been received (February 2010).

### **2.14.2 Incorrect adjustment of deferred tax**

According to the Target 2000 scheme<sup>51</sup> guidelines, in case of expansion of an industrial unit, the deferment is eligible over and above the base turnover<sup>52</sup> fixed to the unit. The benefit of deferment is not admissible up to the base turnover.

Test check of the records (December 2007) of AC (LTU) Nalgonda indicated that the AA in two cases for the years 2003-04, 2005-06 and 2006-07 adjusted the tax due on the entire turnover to tax deferment instead of limiting it to over and above the base turnover fixed. This resulted in non-collection of tax of Rs. 69.84 lakh up to base turnover.

The matter was referred to the department in October 2008 and the Government in April 2009; their reply has not been received (February 2010).

### **2.14.3 Incorrect allowance of sales tax exemption/deferment**

According to the various sales tax incentive schemes promulgated by the Government from time to time, sales tax incentives are available for the products which are specified in the FEC and manufactured by the industrial units.

Test check of the records (June and November 2007) of AC (LTU) Nizamabad and CTO Anakapalli indicated that the AAs while finalising the assessments in two cases for the year 2003-04, incorrectly allowed sales tax deferment though the item 'adhesives' was not covered by the FECs. Further, during the period from April 2005 to March 2007, a dealer claimed tax deferment for the item 'mortar' in one case, which was not covered by the FEC. This resulted in incorrect allowance of tax deferment of Rs. 24.60 lakh.

After the cases were pointed out (November 2007 and May 2009), the Government/department accepted (November 2007 and October 2009) the audit observations in two cases involving Rs. 9.07 lakh and stated that show cause notice had been issued in one case and in another case assessment would be revised. The reply in respect of the remaining case has not been received (February 2010).

<sup>51</sup> G.O.Ms.No.108, Industries and Commerce (IA) Department dated 20 May 1996.

<sup>52</sup> Base turnover means best production achieved during the three years preceding the year of expansion or the maximum capacity expected to be achieved by the industry, whichever is higher.

#### **2.14.4 Short debit to sales tax exemption**

According to the Target 2000 scheme guidelines, the amount of tax payable by the unit during the period of availing of sales tax exemption shall be debited correctly to the tax exemption/deferment account of that unit.

**2.14.4.1** Test check of the records (December 2008) of AC (LTU) Nalgonda indicated that the assessee was sanctioned sales tax exemption of Rs. 458.44 lakh to be availed of during the period from 29 September 2001 to 28 September 2008. The AA levied tax of Rs. 1.23 crore on the turnover of inter-state sales for the assessment year 2004-05. Out of the tax levied, assessee paid Rs. 39,859 and an amount of Rs. 1.08 crore only was debited to the scheme. This resulted in short debit of Rs. 14.76 lakh.

The matter was referred to the department and the Government in May 2009; their reply has not been received (February 2010).

**2.14.4.2** Test check of the records (June 2008) of Basheerbagh circle indicated that the AA while finalising the assessment in one case in April 2007 for the year 2004-05, incorrectly allowed sales tax deferment for an amount of Rs. 2.58 crore instead of Rs. 2.49 crore. This resulted in incorrect adjustment of tax due of Rs. 9.54 lakh to tax deferment.

The matter was referred to the department in December 2008 and to the Government in March 2009; their reply has not been received (February 2010).

#### **2.14.5 Non-remittance of tax collected during the period of sales tax holiday**

According to the Target 2000 scheme guidelines, industrial units availing sales tax holiday (exemption) are not allowed to collect tax from consumers during the period of availment of the sales tax exemption. In case tax is collected, it has to be remitted to the Government.

Test check of the records (November and December 2008) of AC (LTU) Nalgonda and Tirupati-I circle indicated that in two cases, the tax collected while availing of the sales tax exemption, was not remitted to the Government during the assessment year 2004-05. This resulted in non-remittance of tax of Rs. 16.07 lakh.

After the cases were pointed out (May 2009), the Government accepted the audit observation in one case involving Rs. 1.31 lakh and stated (October 2009) that a show cause notice had been issued for revision. Further development in this case and reply in the remaining case have not been received (February 2010).



### **2.15 Non-levy of tax due to misclassification of the supply contract as transit sale**

Electrical goods fall under entry six of VI Schedule to the APGST Act and are liable to tax at the rate of eight *per cent* at every point of sale.

Test check of the records (June 2005) of the S.D. Road circle indicated that the AA while finalising the assessment in one case in June 2004 for the year 2002-03, incorrectly exempted a turnover of Rs. 23.99 crore relating to supply contract of electrical goods as transit sale. This resulted in non-levy of tax of Rs. 1.92 crore.

After the case was pointed out (February 2009), the Government stated (October 2009) that the assessment had been revised and Rs. 48.45 lakh had been recovered. Report on recovery of the balance amount has not been received (February 2010).

### **2.16 Excess set-off against tax due**

Under the provisions of the APGST Act, 1957 and notifications issued thereunder, set-off can be allowed against tax due on the sale of finished goods in which the tax paid raw material is used in the manufacture of such finished goods, provided transactions at both ends take place within the State.

Test check of the records (August 2005 and October 2008) of two LTUs<sup>53</sup> and 13 circles<sup>54</sup> indicated that set-off of Rs. 11.29 crore was allowed between December 2004 and March 2008 against the admissible set-off of Rs. 10.09 crore during the assessment years 2003-04 and 2004-05 in 17 cases relating to gold, iron, plastic goods, soft drinks, rentals of crates etc. This resulted in short levy of tax of Rs. 1.20 crore.

After the cases were pointed out (April 2006 and June 2009), the Government/department accepted (August 2005 and October 2009) the audit observations in seven cases involving Rs. 66.65 lakh and stated that the assessments had been revised in four cases involving Rs. 3.98 lakh out of which Rs. 0.97 lakh had been collected in two cases. The assessments in three cases were being revised by the concerned DC (CT). The replies in respect of the remaining cases have not been received (February 2010).

### **2.17 Non-levy of turnover tax**

**2.17.1** According to Section 5A of the APGST Act, when the total turnover of a dealer in a year exceeds Rs. 10 lakh, turnover tax at one *per cent* is leviable with effect from 1 August 1996 on second and subsequent sales of goods specified in the first, second, fifth and seventh schedules to the Act.

<sup>53</sup> Nalgonda and Saroornagar.

<sup>54</sup> Chittoor-II, Guntur (Brodipet), Hyderabad (Barkatpura, Basheerbagh, Jeedimetla, Punjagutta, Rajendranagar, Ramachandrapuram, Ramagopalapet), Kamareddy, Seetharamapuram, Siddipet and Special Commodities circle.

Test check of the records (October 2007 and October 2008) of AC (LTU) Begumpet and six circles<sup>55</sup> indicated that the AAs while finalising the assessments in seven cases between June 2006 and March 2008 for the years 2003-04 and 2004-05, failed to levy turnover tax on a turnover of Rs. 29.19 crore relating to cars, electronic toys, electronic goods, soaps, surgical goods, machinery parts and spices etc., though the turnovers in each of these cases exceeded Rs. 10 lakh. This resulted in non-levy of turnover tax of Rs. 29.19 lakh.

After the cases were pointed out (February and May 2009), the Government accepted (October 2009) the audit observations in five cases involving Rs. 11.54 lakh and stated that the assessments were proposed for revision. In one case, the department stated that since the purchases were made from an SSI unit turnover tax was not levied. The reply is not tenable as in this case the sales have not been made by an SSI unit but by an individual dealer. As such, he was liable to turnover tax. The reply in respect of the remaining case has not been received (February 2010).

**2.17.2** According to Section 5A(1-A) of the APGST Act, every dealer shall in addition to the tax payable, pay a turnover tax each year on his turnover liable to tax at the rate of two *per cent* on the first sale turnover of lubricant oils.

Test check of the records (February and November 2008) of two LTUs<sup>56</sup> and two circles<sup>57</sup> indicated that the AAs while finalising the assessments in four cases between March 2007 and March 2008 for the years 2003-04 and 2004-05, did not levy turnover tax on the first sale turnover of Rs. 10.89 crore relating to lubricant oils. This resulted in non-levy of tax of Rs. 21.79 lakh.

After the cases were pointed out (February and May 2009), the Government accepted (October 2009) the audit observations. Of these, two assessments were revised involving Rs. 18.82 lakh out of which Rs. 18.30 lakh was collected in one case. The remaining cases were stated to have been proposed for revision. Further report has not been received (February 2010).

### **2.18 Non/short levy of tax at every point of sale**

Goods enumerated in the Schedule VI to the APGST Act, 1957, are taxable at every point of sale at the rates mentioned in the schedule. Under the proviso to the Schedule VI, tax to be paid at any point of sale other than first point of sale shall be determined after deducting the tax levied on the turnover of such goods at the immediately preceding point of sale by a registered dealer from the tax leviable on the turnover of the same goods at the point of sale by the selling dealer. Cable trays, mattresses, printing inks, soft drinks, plywood and wooden furniture are included in the Schedule VI of the Act.

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<sup>55</sup> Hyderabad (Barkatpura, Jubilee hills, Mehidipatnam, Osmangunj, Sanathnagar and Somajiguda).

<sup>56</sup> Begumpet and Visakhapatnam.

<sup>57</sup> Hyderabad (Malakpet and Marredpally).

Test check of the records (December 2005 and October 2008) of seven circles<sup>58</sup> indicated that the AAs while finalising the assessments in seven cases between January 2005 and March 2008 for the years 2003-04 and 2004-05, incorrectly exempted the turnover relating to the second point sales of cable trays, mattresses, printing inks, soft drinks, ply wood and wooden furniture. This resulted in non/short levy of tax of Rs. 25.79 lakh.

After the cases were pointed out (November 2006 and May 2009), the Government/department accepted (December 2005 and October 2009) the audit observations in seven cases involving Rs. 25.79 lakh and stated that the assessments had been revised in three cases and had been proposed for revision in four cases.

### **2.19 Non-levy of penalty**

**2.19.1** Under Section 53(3) of the APVAT Act, any dealer who has under declared tax, and where it is established that fraud or wilful neglect has been committed, he shall be liable to pay penalty equal to the tax underdeclared.

According to Section 9(2) of the CST Act, the authorities empowered to assess, reassess, collect and enforce payment of tax under general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, reassess, collect and enforce payment of tax, including any interest or penalty payable by a dealer under the Act as if the tax or interest or penalty is payable under the general sales tax law of the State.

Test check of the records (May and June 2008) of two circles<sup>59</sup> indicated that the departmental officers had detected underdeclared tax of Rs. 12.46 lakh in respect of three VAT dealers for the period from April 2005 to March 2008. Though penalty of Rs. 12.46 lakh was leviable, it was not levied.

The matter was referred to department in April 2009 and to the Government in May 2009; their reply has not been received (February 2010).

**2.19.2** Under Section 14(8)(a) of APGST Act, 1957, the penalty leviable shall not be less than three times which may extend to five times the tax due in a case where the AA is satisfied that the failure of the dealer to disclose the whole or part of the turnover or any other particulars correctly, or to submit the return before the prescribed date was wilful.

Test check of the records (December 2006 and January 2007) of Gowliguda circle indicated that in one case the AA noticed (June 2005) wilful suppression of taxable turnover of Rs. 49.23 lakh for the years 2002-03 and 2003-04. Though tax of Rs. 3.94 lakh was levied, the department did not levy penalty of Rs. 11.81 lakh.

<sup>58</sup> Hyderabad (Agapura, Begumpet, Jubilee hills, Khairatabad, Tarnaka), Kurnool-III and Special Commodities circle.

<sup>59</sup> Secunderabad (Lord bazaar and S.D. Road).

After the case was pointed out (March 2009), the Government accepted (October 2009) the audit observation and stated that the assessment had been revised and Rs. 1.88 lakh had been collected. Report on recovery of the balance amount has not been received (February 2010).

## **2.20 Short levy of tax due to incorrect application of concessional rate**

As per the Government order<sup>60</sup> dated 13 January 2000, tax at the concessional rate of four *per cent* shall be levied on the sales effected to the departments of the State and Central Governments situated within the State of Andhra Pradesh subject to production of declarations in the Form 'N'.

Test check of the records (August and November 2007) of two circles<sup>61</sup> indicated that the AAs while finalising the assessments in two cases between August 2006 and March 2007 for the years 2003-04 and 2004-05, levied tax on sewing machines and steel furniture at the concessional rate of four *per cent* even though the sales of Rs. 1.19 crore were not supported by the 'N' Forms in one case and in another case, sales of Rs. 94.47 lakh were made to the local bodies. This resulted in short levy of tax of Rs. 13.27 lakh.

After the cases were pointed out (February 2009), the Government accepted (October 2009) the audit observations in both cases and collected Rs. 3.78 lakh in one case by transfer adjustment of the tax refundable to the dealer and the assessment had been proposed for revision in the other case. Report on recovery of the balance amount has not been received (February 2010).

## **2.21 Non-remittance of sales tax deducted at source**

As per Section 5H of the APGST Act, 1957 and Section 22 of the APVAT Act, tax shall be deducted at source out of the amounts payable to a dealer in respect of the work executed by him which shall be remitted to the State Government. Non-remittance of sales tax within 15 days from the expiry of the month during which tax is deducted attracts interest under Section 16 of the APGST Act.

Test check of the records (September 2007) of Integrated Tribal Development Agency, Utnoor indicated that during the period from 2000-01 to 2005-06, the Executive Engineer (EE), Tribal welfare, Utnoor recovered Rs. 60.81 lakh towards sales tax from the bills paid to the works contractors. Against this, Rs. 51.66 lakh only was remitted to the State Government leaving a balance of Rs. 9.15 lakh yet to be remitted. Besides, interest of Rs. 1.68 lakh was also leviable under the APGST Act. This resulted in non-realisation of revenue of Rs. 10.83 lakh.

After the case was pointed out, the EE stated (September 2007) that the amount would be remitted.

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<sup>60</sup> G.O.Ms.No.26 Revenue (CT-II) department 13 January 2000.

<sup>61</sup> Hyderabad (Begumpet) and Medak.

The matter was referred to the department in April 2009 and to the Government in May 2009; their reply has not been received (February 2010).

### **2.22 Non-forfeiture of excess tax collection**

Under Sections 30 B and 30 C of the APGST Act, no dealer shall collect any amount by way of tax in excess of the amount of tax payable by him on the sale under the provisions of the Act. If any person collects tax in contravention of these provisions, any sum so collected shall be forfeited to the State Government within three years from the date of collection.

Test check of the records (December 2007 and September 2008) of AC (LTU) Nellore and two circles<sup>62</sup> indicated that in three cases, excess tax of Rs. 7.67 lakh collected during the years 2003-04 and 2004-05 was not forfeited to the Government within three years from the date of collection.

After the cases were pointed out (March and May 2009), the Government accepted (October 2009) the audit observations in two cases involving Rs. 1.24 lakh and stated that the assessments had been revised. In one case, it was stated that the excess collection could not be forfeited as the maximum period of three years had lapsed from the date of collection of the amount. Failure of the department to notice the excess tax collection and take timely action thus resulted in loss of revenue.

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<sup>62</sup> Hyderabad (Barkatpura and Punjagutta).