

CHAPTER II SALES TAX

2.1 Results of audit

Test check of the records of Commissionerate of Commercial Taxes, sales tax offices conducted during the year 2008-09 indicated underassessment of tax and other irregularities involving Rs. 96.22 crore in 395 cases which could be classified under the following categories:

(Rupees in crore)			
Sl. no.	Categories	No. of cases	Amount
1.	Transition from sales tax to VAT (A review)	1	0.37
2.	Non/short levy of penalty/surcharge/additional surcharge, interest	112	21.95
3.	Irregular allowance of tax remission, concessional rate of tax and transfer of goods	30	2.51
4.	Non/short levy of tax due to short determination of gross turnover	28	1.36
5.	Non/short levy of purchase tax	34	0.76
6.	Underassessment of tax due to incorrect deduction	28	0.66
7.	Other irregularities	162	68.61
Total		395	96.22

During the course of the year 2008-09, the concerned department accepted underassessment and other deficiencies of Rs. 6.48 crore in 110 cases of which 105 cases involving Rs. 6.45 crore were pointed out during the year 2008-09 and the rest in the earlier years. An amount of Rs. 7.93 lakh in 13 cases was realised at the instance of audit during the year.

A review on '**Transition from Sales Tax to Value Added Tax**' with a financial effect of Rs. 37 lakh and few illustrative audit observations involving Rs. 44.54 crore are mentioned in the following paragraphs.

2.2 Transition from Sales Tax to Value Added Tax

Highlights

- Failure of the assessing authority to scrutinise the returns resulted in short payment/determination of tax of Rs. 23.99 lakh.

(Paragraph 2.2.8.4, 2.2.8.5 and 2.2.8.6)

- Incorrect determination of average annual growth rate resulted in excess claim for compensation of Rs. 25.60 crore.

(Paragraph 2.2.14.1)

- Incorrect determination of tax revenue from non-VAT items resulted in excess claim for compensation of Rs. 113.13 crore.

(Paragraph 2.2.14.2)

2.2.1 Introduction

The Government of West Bengal repealed the West Bengal Sales Tax (WBST) Act, 1994 and enacted the West Bengal Value Added Tax (WBVAT) Act, 2003 for implementation with effect from 1 April 2005. However, levy and collection of tax on sale of petrol, diesel, liquor, lottery tickets and aviation turbine fuel (ATF) still continues to be governed under the WBST Act, 1994. The main objectives of the WBVAT Act were as follows:

- to generate more revenue by reduction of rate of tax;
- to eliminate cascading effect of tax on goods both on exports and on domestic sales; and
- to reduce evasion and avoidance of tax by revitalising administrative machinery by introducing transparency.

Value Added Tax is imposed on the value added to the goods at each stage of sales and on purchases of certain goods in West Bengal under some specified circumstances.

The major differences between the WBST Act and WBVAT Act are as under:

WBST Act	WBVAT Act
A single/double point tax system	A multi-point tax system
No provision for audit of dealers' books of accounts	Provisions for audit of dealers' books of accounts
Compulsory assessment of tax within a prescribed time limit	Dealers are selected for assessment of the tax only under specified conditions
Provision for concessional rate of tax on production of declaration forms	No provision for concessional rate of tax
Provision for exemption of tax on sale of goods purchased from a registered dealer in West Bengal	Dealers except those paying tax at compounded rate are eligible for input tax credit against the output tax payable on sale of goods

A review on 'transition from sales tax to VAT' was conducted which indicated a number of system and compliance deficiencies as discussed in the succeeding paragraphs.

2.2.2 Organisational set-up

The collection of tax under VAT Act is administered by the Directorate of Commercial Taxes (DCT) under the administrative control of the Principal Secretary to the Government of West Bengal, Finance (Revenue) Department. The overall control and superintendence of the Directorate is vested with the Commissioner of Commercial Taxes (CCT), West Bengal who is assisted by two Special Commissioners, 45 Additional Commissioners, 101 Senior Joint Commissioners (Sr. JCCT) 258 Joint Commissioners (JCCT), 209 Deputy Commissioners, 447 Sales Tax Officers and 1,220 Assistant Sales Tax Officers for administering the provisions of the Act and Rules made thereunder.

2.2.3 Audit objectives

The review was aimed to ascertain whether the

- planning for implementation and the transition from the WBST Act to WBVAT Act was effected timely and efficiently;
- provisions of the WBVAT Act and the Rules made thereunder were adequate and enforced properly to safeguard the revenue of the State;
- internal control mechanism existed in the department and was adequate and effective to prevent leakage of the revenue; and
- to check the status of the system after being in place for three years.

2.2.4 Scope and methodology of audit

For the purpose of the review, questionnaires were issued to the circles and charge offices and replies received from them were compiled and analysed. Further verification of replies was carried out during field audit. The various returns and reports along with individual assessment records of dealers were test checked in 23¹ out of 68 charge offices under nine circles² alongwith Finance (Revenue) Department and the DCT. The selection of charge offices was made on stratified random sampling method. The review was conducted during the period from June to September 2009.

2.2.5 Acknowledgement

Indian Audit and Accounts Department acknowledges the co-operation of the Finance (Revenue) Department and the DCT in providing necessary information and records to audit. The audit findings were reported to the Government in September 2009 and had been discussed with the Finance (Revenue) Department in the exit conference held in October 2009. The replies received from the department have been suitably incorporated in the relevant paragraphs. Replies of the Government have not been received (October 2009).

¹ Alipore, Asansol, Ballygunge, Bhowanipore, Beadon Street, Behala, Belgachia, Bowbazar, Budge Budge, College Street, Esplanade, Ezra Street, Jorabagan, Lal bazar, N.D.Sarani, New Market, Park Street, Postabazar, Radhabazar, Salkia, Salt Lake, Siliguri and Ultadanga.

² Asansol, Bally, Behala, Chowringhee, Dharmtala, Kolkata (North), Kolkata (South), 24- Parganas and Siliguri.

2.2.6 Pre-VAT and post-VAT tax collection

The comparative position of pre-VAT sales tax collection between 2002-03 and 2004-2005 with post-VAT tax collection between 2005-06 and 2007-08 is mentioned below:

Pre - VAT			Post - VAT		
Year	Actual collection (Rs. in crore)	Growth rate of actual collection over previous year (%)	Year	Actual collection (Rs. in crore)	Growth rate of actual collection over previous year (%)
2001-02	3,802.46				
2002-03	4,191.51	10.23	2005-06	6,108.78	6.87
2003-04	4,830.58	15.25	2006-07	7,079.03	15.88
2004-05	5,716.30	18.34	2007-08	8,060.46	13.86
			2008-09	8,955.09	11.10
Average growth rate – 14.61			Average growth rate – 11.93		

Pre-VAT period witnessed a constant increasing growth rate in actual tax collection. In the post-VAT period while the collection of revenue grew in comparison with the previous year, the rate of such growth which had touched 15.88 *per cent* in 2006-07 gradually declined to 11.10 *per cent* in 2008-09.

System deficiencies

2.2.7 Registration and database of dealers

2.2.7.1 Deficiency in the database of dealers

A database of registered dealers under the WBST Act was maintained by the DCT under its main application software ‘Information Management for Promotion of Administration in Commercial Taxes’ (IMPACT) to support decision making. The maintenance of the database was entrusted to the officials of the National Informatics Centre (NIC). The officers and staff of the Directorate utilised this database through 33 modules created by the NIC for this purpose. Though proper access to the database was not provided by the Directorate, audit observed following deficiencies in the database.

- There was absence of proper planning and pre-defined strategy at the time of creation of the database. No steering committee appeared to have been formed to define the structure and objectives of the database. Requirements of the Directorate in the form of Users Requirement Specification (URS) were not found documented and approved by the competent authority.
- The Directorate continued to use the same database under the VAT regime which was created for the purpose of Sales Tax. Though the two Acts have some major dissimilarities in their functioning, necessary changes have not been made in the database. For example - 100 *per cent* scrutiny of returns is mandatory under the WBVAT Act but columns like ‘date of completion of scrutiny of returns’, ‘date of issue of Form-20’, ‘date of submission of Form-16’ etc. had not been incorporated in the dealers’ database.

- Particulars of the dealers whose RCs were cancelled under the WBST Act, were not deleted from the database on the date of implementation of VAT in the State.

These deficiencies of the database lead to weak monitoring in respect of scrutiny of the returns and selection of the dealers for tax audit and resulted in short scrutiny of the returns and selection of non-existent dealers for tax audit as discussed in the succeeding paragraphs.

After this was pointed out, the Additional Commissioner stated (October 2009) that there was no provision in the database to know the date of completion of scrutiny of the returns. The department also admitted the audit observation.

2.2.7.2 Database of dubious/risky dealers

In order to prevent evasion of tax, a database in respect of dubious/risky dealers needs to be maintained by the Directorate on the basis of past history of the dealers under WBST Act, listing cases of fraud/concealment/usages of fake declaration forms to get exemption or reduction in rate of tax. Assessing authorities should consult the database before finalising any assessment.

No database in respect of dubious/risky dealers was maintained either at the charge office level or at the Directorate level (by ISD).

The department stated that there were separate wings viz. Bureau of Investigation and Central Section (Investigation) to deal with such cases. Hence, there was no need to create database of such dealers. Audit observed that the said two wings take action only upon information received against a dealer; hence the purpose of constant watch of risky dealers is not served by these wings.

2.2.7.3 Lack of connectivity

The Directorate had a policy to interlink the charges, circles, ranges and check posts with the main server installed at Information System Division (ISD) to monitor the collection of revenue, restrict tax evasion by cross verification of transactions and endorsement of waybill and to facilitate decision making. Under the Directorate, there are 17 circles, 68 charges, nine ranges and 28 check posts. As reported by the ISD, only 12 circles, 65 charges and seven check posts were connected to the ISD as on 31 March 2009 while none of the range got the connectivity. **Lack of connectivity affected the overall monitoring of the subordinate offices of the Directorate.**

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

2.2.7.4 Registration without verification

A dealer, who becomes liable to pay tax under the WBVAT Act, may apply for registration in Form-1 to the registering authority (RA) with court fee of Rs. 100 affixed thereon. Registration Certificate (RC) in Form-3 is to be issued by the concerned RA under section 24 of the Act after verification of information within 21 days (30 days w.e.f. 1 October 2006) from the date of receipt of such application.

Scrutiny of the registration records of two circles³ indicated that the registration was granted without verifying the information given in the Form-1 in respect of 286 dealers of four charge offices⁴. Even vital information like dealer's declared place of business and bank account number etc. had not been verified before granting the RC.

After this was pointed out, Senior JCCT, Kolkata (N) circle stated (October 2009) that RCs were granted after enquiry in cases of dealers dealing with timber, spices, iron and steel and hardware material. In other cases enquiry is not done excepting in cases where the RA had some suspicion. The reply is not tenable as no exemption from verification has been granted by the Act. The reply furnished by the department did not touch upon the issue raised by audit.

The Government may consider incorporating the essential data fields in the database for effective monitoring of revenue realisation.

2.2.8 Returns

Every dealer liable to pay tax under the WBVAT Act shall furnish quarterly return, within the next english calendar month, at the end of the relevant quarter.

2.2.8.1 Delay in filing returns

A dealer who fails to furnish returns within the prescribed time limit shall pay late fee for delay in filing the return. The amount of late fee from 1 April 2007 to 31 March 2008 was 50 *per cent* of net tax payable or Rs. 2,000 whichever is lower for delay of each month or part thereof. However, w.e.f. 1 April 2008 it was Rs. 2,000 in case of default by one month or part thereof and Rs. 500 for every subsequent month or part thereof.

The dealers furnish their returns at the central return receiving section under the Directorate. On receiving the returns the date of submission is recorded into the computerised system and sent to the respective charges for scrutiny.

- Data analysis of returns submitted by the dealers during the period between 2005-06 and 2008-09 in three charge offices⁵ of Kolkata North Circle as received from the ISD of the Directorate indicated that 12,139 dealers did not submit their returns within the prescribed date. As the charges failed to scrutinise cent *per cent* of returns and as monitoring cannot be done due to deficient database, the possibility of late fee escaping realisation can not be ruled out.

After this was pointed out, the department admitted the audit observation and stated that necessary steps are being taken. Further development has not been reported (October 2009).

- Scrutiny of the records of two charges⁶ indicated that three dealers furnished their quarterly returns/revised returns for the year 2007-08 after

³ Kolkata (North) and Kolkata (South).

⁴ Ballygunge, Beadon Street, Jorabagan and Postabazar.

⁵ Beadon Street, Jorabagan and Postabazar.

⁶ Alipore and Behala.

expiry of the prescribed date. The delay ranged between 1 and 13 months. The dealers paid late fee of Rs. 40,000 against the payable amount of Rs. 1.26 lakh. This resulted in short payment of late fee of Rs. 86,000. No action was taken by the charge officers to realise the late fee paid short by the dealers.

2.2.8.2 Non-maintenance of scrutiny register

Under the provisions of WBVAT Act and Rules made thereunder, every return furnished by a dealer shall be scrutinised to ascertain the correctness of the amount of tax and interest payable according to such return. Scrutiny is to be completed within four months from the date of filing of the returns.

No register was prescribed for the purpose of scrutiny of returns under the WBVAT Act and Rules made thereunder. As a result the charge offices failed to ascertain the actual number of returns scrutinised between April 2005 and March/December 2008. The CCT in April 2008 issued a circular and instructed all the charge officers under the Directorate to maintain a scrutiny register in a prescribed format, starting from scrutiny of returns filed for the fourth quarter of 2007-08. However, no column has been provided in the format for recording the date of receipt of the return in absence of which it was not possible to ensure that the returns filed by a dealer were scrutinised within the time limit prescribed under the provisions of the Act. Further, two charges⁷ did not start maintaining the scrutiny register even after the circular issued by the CCT in April 2008.

After this was pointed out, the department admitted the audit observation (October 2009).

2.2.8.3 Non/short scrutiny of returns

Information regarding scrutiny of returns for the period from 2005-06 to 2008-09 was sought for in May 2009 from 23 charges. Of these, 18 charges⁸ did not furnish any information while five charges⁹ furnished information for the year 2008-09 only. Analysis of information obtained from five charges indicated that with effect from April 2008, only Beadon Street charge conducted cent *per cent* scrutiny of the returns while other four charges scrutinised only 0 to 87 *per cent* of the returns filed by the dealers. Thus, the charge offices failed to comply with the provisions of cent *per cent* scrutiny of the returns as shown in the following table:

⁷ Belgachia and Salt Lake.

⁸ Alipore, Asansol, Bhowanipore, Behala, Belgachia, Bowbazar, Budge Budge, College Street, Esplanade, Ezra Street, Jorabagan, Lalbazar, N.D.Sarani, New Market, Park Street, Postabazar, Radhabazar and Salt Lake.

⁹ Ballygunge, Beadon Street, Salkia, Siliguri and Ultadanga.

Name of the charge	Returns furnished during				Scrutiny completed (Per cent of shortfall)			
	1 st quarter	2 nd quarter	3 rd quarter	4 th quarter	1 st quarter	2 nd quarter	3 rd quarter	4 th quarter
Ballygunge	3,934	3,972	4,215	4,348	1,144 (71)	159 (96)	318 (92)	148 (97)
Salkia	1,882	1,832	1,789	1,868	1,562 (17)	1,557 (15)	1,556 (13)	1,606 (14)
Siliguri	5,124	5,148	3,740	5,027	303 (94)	171 (97)	257 (93)	570 (89)
Ultadanga	1,100	1,133	1,169	932	44 (96)	34 (97)	42 (96)	Nil (100)

After this was pointed out, the department stated (October 2009) that due to infrastructural problem cent *per cent* scrutiny was not possible. However, priority had been given to scrutinise returns of big dealers.

Scrutiny of the records indicated short payment/determination of the tax of Rs. 23.99 lakh due to non/short scrutiny of returns as discussed in succeeding paragraphs.

2.2.8.4 Short payment of tax on contractual transfer price

Under the provisions of WBVAT Act, a dealer intending to pay tax at compounded rate shall exercise his option in Form-16 to the competent authority within 90 days from the commencement of the year.

Scrutiny of the records indicated that a dealer registered in Alipore charge furnished returns for the year 2006-07 in Form-15 and paid tax of Rs. 5.40 lakh at the compounded rate of two *per cent* on the contractual transfer price (CTP) of Rs. 2.70 crore without exercising his option in Form-16. The dealer was, therefore, not eligible for paying tax at compounded rate. As per records made available to audit, taxable CTP of the dealer, after allowing deduction towards labour, service and other charges stood at Rs. 2.13 crore on which tax of Rs. 24.14 lakh was payable. There was no evidence on record to show that the returns furnished by the dealer were scrutinised. Thus, non-scrutiny of returns resulted in short levy of tax of Rs. 18.74 lakh.

After this was pointed out, the department admitted the audit observation and stated (October 2009) that steps were being taken to guard against such irregularities. However, report on recovery of tax has not been received (October 2009).

2.2.8.5 Short payment of tax

Scrutiny of the records indicated that a dealer registered in Behala charge paid tax of Rs. 2.41 lakh against net tax of Rs. 5.01 lakh payable in respect of return for the quarter ended 30 September 2007. Thus, the dealer made short payment of tax of Rs. 2.60 lakh. No demand notice was, however, served upon the dealer in Form-20. There was nothing on record to show that the return was scrutinised. Thus, due to non-scrutiny of return by the officer concerned, the tax could not be realised.

After this was pointed out, the department admitted the audit observation and stated (October 2009) that steps were being taken to realise the amount. Further development has not been reported (October 2009).

2.2.8.6 Short determination of tax by dealer

Scrutiny of the records indicated that a dealer registered in Alipore charge in his return for the quarter ended March 2008 made deduction on account of inter-state sales of Rs. 45.22 lakh from the turnover of sales of Rs. 2.87 crore but determined taxable turnover of sales at Rs. 1.76 crore instead of Rs. 2.42 crore. The dealer thus made short determination of taxable turnover of sales by Rs. 66 lakh and consequently calculated output tax as well as net tax payable short by Rs. 2.65 lakh. There was no evidence on record to show that the return furnished was scrutinised. As a result the tax assessed short by the dealer remained undetected and unrealised.

After this was pointed out, the department admitted the audit observation and stated (October 2009) that steps were being taken to realise the amount. Further development has not been reported (October 2009).

The Government may consider ensuring timely completion of *cent per cent* scrutiny of returns.

2.2.9 Audit of Accounts

Under the provisions of WBVAT Act and Rules made thereunder, the CCT shall select by 31st January every year a certain *percentage* of registered dealers for audit to verify the correctness of the returns furnished and admissibility of various claims including input tax credit or refund. After selection he shall send a list of such dealers to the appropriate audit authority for conducting audit. On receipt of the list of dealers, the appropriate officer shall issue a notice in Form-21 to the dealers concerned and normally within six months from the date of selection, prepare a report stating his observation about correctness of returns. If the dealer fails to comply with the notice, the audit officer may conduct audit at the dealer's place of business without giving him prior information.

2.2.9.1 Basis of selection

The Act provides for selection of dealers for audit of accounts on the following basis:

Sl. no.	Type of dealers	Percentage of dealers to be audited
1.	Gross Sales/CTP < Rs. 10 crore	Not less than 2%
2.	Gross Sales/CTP > Rs. 10 crore	Not less than 25%
3.	Eligibility Certificate holders u/s 118(1)(a)/(b)/(c)	Not less than 25%
4.	Paying tax at compounded rate	Not less than 2%

However, the master table of the registered dealers database does not provide for such classification of the dealers. In the absence of such classification the correctness of the basis of selection of the dealers for audit of accounts could not be ascertained in audit.

After this was pointed out, the department admitted (October 2009) the audit observation. Remedial measures taken/to be taken has not been reported (October 2009).

2.2.9.2 Delay in selection

During the course of review it was observed that selection of dealers for audit for the year 2005-06 in respect of four charges¹⁰ was delayed by two to three months while that for the year 2006-07 in respect of 15 charges¹¹ was delayed by three to six months indicating non-adherence to the time schedule prescribed for the purpose of selection.

After this was pointed out, the department stated (October 2009) that the delay was condoned by the Government. However, no document could be produced confirming the condonation.

2.2.9.3 Incorrect selection of dealer for the purpose of audit

Scrutiny of the records in four charges¹² indicated that out of 266 dealers selected for audit during the year 2005-06 and 2006-07, 16 dealers did not file their returns, five dealers were non-existent and RC of one dealer was found to have been cancelled before selection. Thus, selection procedure of the directorate was not in conformity with the provisions of the Act and was unable to restrict selection of non-existent dealers/dealers who did not furnish returns.

After this was pointed out, the department admitted the audit observation. However, action taken/to be taken to set right the lacunae pointed out by audit has not been reported (October 2009).

The Government may consider ensuring proper selection of dealers according to the provisions of the Act.

2.2.9.4 Audit not conducted at dealer's place of business

Scrutiny of the records indicated that 65 dealers under nine charges¹³ selected for audit during the year 2005-06 and 2006-07 did not produce their books of accounts before the departmental audit team within the specified dates. No action was, however, taken by the departmental audit team to visit the place of business of the defaulting dealers. Thus, audit was not completed and the purpose of selection was defeated.

After this was pointed out, the JCCT, Kolkata South circle stated (October 2009) that the dealers in question produced various documents on various dates and sought extension of time to produce remaining books of account till the end of January 2009. However, at the end of the audit period they failed to produce the books of accounts. At that stage, it was not possible to spare time to visit each and every such dealer as that would have prevented from

¹⁰ Alipore, Asansol, Behala and Budge Budge.

¹¹ Alipore, Asansol, Ballygunge, Bhowanipore, Beadon Street, Behala, Budge Budge, Esplanade, Jorabagan, N.D. Sarani, New Market, Park Street, Postabazar, Radhabazar and Siliguri

¹² Beadon Street, Budge Budge, Jorabagan and Postabazar.

¹³ Alipore, Ballygunge, Beadon Street, Behala, Bhowanipore, Budge Budge, Jorabagan, Park Street and Postabazar.

completing the rest of the reports in time. The reply is not tenable as the audit has to be conducted at the dealers place of business.

2.2.10 Deficiencies in provisions for cross verification

There is no provision under the WBVAT Act for cross verification of records of works/buying departments in case of work contractors/suppliers. No departmental circular or instruction has also been issued so far to make a certain *percentage* of such cases cross verifiable with the records of the works/buying departments.

After this was pointed out, the department stated (October 2009) that instructions were being issued to cross verify the information furnished by big dealers.

The Government may consider establishing a system for conducting cross verification of transaction and their monitoring by higher authorities.

2.2.11 Internal audit

Internal audit is generally defined as the control of all controls which enables an organisation to assure itself that the prescribed system are functioning reasonably well. It also provides a reasonable assurance of proper enforcement of law, rules and departmental instructions.

The DCT has an internal audit wing working under the direct supervision of the CCT. In spite of repeated observations featured in audit reports¹⁴, manual of internal audit wing has not been formulated and documented. Though a maximum quantum of 10 *per cent* of the files of registered dealers under different Acts in any charge has been fixed by the CCT, neither has the minimum percentage of scrutiny of files of a charge nor has the minimum number of charges to be audited annually has yet been fixed. During the year 2008-09 only three out of 68 charges were audited thus, covering less than five *per cent* of the total charges of the Directorate. This indicates that the department needed to streamline its internal audit.

After this was pointed out, the department admitted the observation and attributed (October 2009) the failure to inadequate infrastructure.

Compliance deficiencies

2.2.12 Input tax credit

Under the provisions of the VAT Act and Rules made thereunder only a registered dealer shall be eligible to claim an input tax credit to the extent of the amount of tax paid or payable on his purchases of taxable goods subject to fulfilment of conditions and restrictions as prescribed under the Act. A dealer claiming ITC on purchases of taxable goods is required to disclose in his return the number of registered dealers from whom tax invoices were received and the number of tax invoices received from such dealers in respect of each tax period. Further, where the annual purchases of a dealer exceeds Rs. 40 lakh, he is required to furnish an annual statement of purchases made in West

¹⁴ (Paragraph 2.2.19 of 2003-04, Paragraph 2.2.15 of 2005-06 and Paragraph 2.2.11 of 2007-08).

Bengal showing the name of the dealers from whom goods were purchased and their RC numbers.

2.2.12.1 Irregular claim of ITC

Scrutiny of the returns indicated that a dealer registered in Alipore charge claimed ITC of Rs. 5 lakh in his returns for the year 2007-08 on purchase of taxable goods of Rs. 67.43 lakh. The dealer, however, neither furnished the number of registered dealers from whom purchases were made and the tax invoices received from such dealers, nor the annual statement of purchases in support of his claim; in the absence of which the ITC claimed by the dealer was not admissible. Further, there was no evidence on record to show that the returns filed by the dealer were scrutinised. Thus, non-scrutiny of the return resulted in allowance of inadmissible claim of ITC for Rs. 5 lakh.

After this was pointed out, the department admitted the audit observation and stated (October 2009) that the guidelines are being issued to deal with such cases.

2.2.12.2 Inadmissible claim of ITC on purchases of pre-registration period

Scrutiny of the records indicated that a dealer registered in Alipore charge whose liability to pay tax under the VAT Act accrued on 28 August 2005, was issued registration certificate on 9 February 2007. The dealer was, therefore, not eligible for input tax credit on purchases made during the period from 28 August 2005 to 8 February 2007. The dealer, however, in his returns filed for the pre-registration period claimed input tax credit of Rs. 6.99 lakh against the output tax of Rs. 6.80 lakh. The irregular claim of ITC and consequent non-payment of tax of Rs. 6.80 lakh remained undetected due to non-scrutiny of returns.

After this was pointed out, the department admitted the audit observation and stated (October 2009) that the guidelines were being issued to assess such type of dealers properly. However, report on recovery of tax has not been received (October 2009).

2.2.13 Irregular payment of tax under composition scheme

Under the provisions of WBVAT Act and rules made thereunder, every registered dealer who has opted to pay tax at a compounded rate shall be eligible to exercise his option for a maximum period of one year at a time. Such registered dealer can again exercise his option for subsequent years subject to the condition that he shall communicate such option in Form-16, to the appropriate authority within a prescribed time limit from the date of commencement of the year in respect of which the option is so exercised. The WBVAT Act and Rules made thereunder, however, does not provide for maintenance of any register to monitor submission of Form-16 by a dealer in exercise of his option to pay tax under the composition scheme. Nor was there any departmental circular to maintain such register to ensure that the dealer is eligible for paying tax at compounded rate.

Scrutiny of the records of three charges¹⁵ indicated that 19 dealers in 21 cases for the years 2005-06 to 2008-09 furnished returns in Form-15 and paid tax accordingly at the compounded rate without exercising their option in Form-16, whereas three dealers exercised their option by submitting Form-16 after the due date of submission. In the absence of register or other record, audit could not verify how eligibility to pay tax at compounded rate was ensured before accepting the return in Form-15.

After this was pointed out, the department admitted (October 2009) the audit observation and stated (October 2009) that guidelines were being issued to assess such type of dealers.

The Government may consider taking appropriate measures to verify the payment of tax under the composition scheme.

2.2.14 Claim for compensation of loss due to introduction of VAT

The Government of India (GOI) agreed to compensate the State Government for the loss of revenue consequent upon introduction of VAT in the State. According to the guidelines for compensation of loss, receipts from state sales tax on petrol, diesel, aviation turbine fuel (ATF), liquor and lottery ticket and input tax credit adjusted against CST were to be excluded. The compensation was allowable at 100 *per cent*, 75 *per cent* and 50 *per cent* of such loss of revenue for the years 2005-06, 2006-07 and 2007-08 respectively.

2.2.14.1 Excess claim of compensation due to incorrect determination of average annual growth rate

In determining the net tax revenue for the year 1999-2000, tax revenue of Rs. 647.98 crore was deducted from non-VAT items inclusive of tax of Rs. 32.25 crore on sale of country liquor which was non-taxable during that period. Thus, the average annual growth rate was determined at 10.87 *per cent* in place of the actual annual growth rate of 10.60 *per cent* for the purpose of determining the projected tax revenue. The projected tax revenue was determined at Rs. 3,947.68 crore and Rs. 4,376.79 crore instead of Rs. 3,938.06 crore and Rs. 4,355.49 crore for the years 2005-06 and 2006-07 respectively. This resulted in excess compensation claims of Rs. 9.62 crore and Rs. 15.98 crore for the years 2005-06 and 2006-07 respectively.

After this was pointed out, the average annual growth rate was revised to 10.60 *per cent*. The claim for compensation for the year 2006-07 was preferred to GOI in September 2008 of Rs. 33.56 crore without making any adjustment of Rs. 9.62 crore received in excess for the year 2005-06.

The department admitted the audit observation and stated (October 2009) that the GOI had been requested to adjust the compensation received in excess.

2.2.14.2 Excess claim of compensation due to incorrect determination of revenue from non-VAT items

As per information furnished in Proforma-III by the Government of West Bengal to the GOI on projected tax revenue, actual tax revenue and loss to be compensated for the years 2005-06 and 2006-07 were as follows:

¹⁵ Alipore, Behala and Postabazar.

(Rupees in crore)					
Year	Projected tax revenue	Total tax revenue (excluding CST)	Tax revenue from non-VAT items	Net tax revenue [(3)-(4)]	Loss during the year [(2)-(5)]
(1)	(2)	(3)	(4)	(5)	(6)
2005-06	3,938.06	5,394.81	1,729.53	3,665.28	272.78
2006-07	4,355.49	6,279.82	2,041.25	4,238.57	116.92

Scrutiny of the records of Corporate Division and Bhowanipore charge, where all petrol, diesel and ATF oil dealers were assessed, indicated that tax revenue from non-VAT items viz. petrol, diesel and ATF oil for the year 2005-06 and 2006-07 was Rs. 1,378.55 and Rs. 1,718.59 crore respectively. Revenue from non-VAT items viz. country liquor, foreign liquor and lottery ticket for the year 2005-06 and 2006-07 was Rs. 261.75 and Rs. 298.76 crore as ascertained from the Administrative Report of the Directorate. Thus, the total tax revenue from non-VAT items was only Rs. 1,640.30 crore and Rs. 2,017.35 crore during the year 2005-06 and 2006-07. But the revenue from the non-VAT items taken by the directorate for claiming compensation of loss from the GOI was Rs. 1,729.53 crore and Rs. 2,041.25 crore for the year 2005-06 and 2006-07 respectively. Thus, incorrect determination of revenue from non-VAT items resulted in excess claim of compensation from GOI of Rs. 89.23 crore and Rs. 23.90 crore for the year 2005-06 and 2006-07 respectively.

After this was pointed out, the department did not furnish any reply (October 2009).

2.2.15 Conclusion

Receipts from VAT constitute the main source of revenue of the State. The review indicated that the database of the directorate was not modified before implementation of VAT. No information regarding dubious dealers was maintained in the database. Lack of connectivity of circles, charges, ranges and checkpoints lead to weak monitoring of the subordinate offices. There were a number of systemic and compliance deficiencies. These included registration without verification, absence of monitoring of returns, allowance of ITC without scrutiny of returns, incorrect selection of dealers for the purpose of tax audit etc.

2.2.16 Summary of recommendations

The Government may consider the following recommendations to rectify the system and compliance deficiencies:

- incorporate the essential data fields in the database for effective monitoring of revenue realisation;
- ensure timely completion of *cent per cent* scrutiny of returns;
- ensure proper selection of dealers according to the provisions of the Act;
- establish a system for cross verification of transaction and monitoring of the same by higher authorities; and

- taking appropriate measures to verify the payment of tax under composition scheme.

2.3 Other audit observations

Scrutiny of the assessment records of sales tax/value added tax (VAT) indicated several cases of non-observance of provisions of Acts/Rules, non/short levy of tax/penalty/interest/acceptance of defective statutory forms/suppression of sales/irregular concession/incorrect application of rate of tax etc. as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on test check carried out in audit. Such omissions on the part of Assessing Authorities (AA) 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 improve the internal control system including internal audit so that such errors can be corrected timely and avoided in future.

Non-compliance with CCT's instructions

Commissioner, Commercial Taxes, West Bengal instructed all the Assessing Officers (AOs)

- 1. To verify the purchase documents furnished by the dealers in support of their claim for exemption on resale of locally purchased schedule IV goods in order to ascertain payment of due tax at the first point of sale¹⁶.*
- 2. To allow deduction to the extent not exceeding the amount of tax paid by the dealer¹⁷.*
- 3. To record reasons for non-levy of penalty in cases of concealment of sales/purchases¹⁸.*

Failure of the AOs to comply with the aforesaid orders of CCT resulted in non/short levy of tax of Rs. 10.90 crore as mentioned in the following paragraphs.

2.4 Incorrect determination of Gross Turnover

Under the West Bengal Sales Tax (WBST) Act, 1994, turnover of sales in relation to any period means the aggregate of the sale prices or parts of sale prices receivable by a dealer, or if a dealer so elects, actually received by the dealer during such period. A dealer is liable to pay tax at the prescribed rate on the amount of such turnover after allowing permissible deductions. In addition, the dealer is liable to pay surcharge and additional surcharge on the amount of tax payable from April and August 2002 respectively.

Scrutiny of the records of 14 charge offices¹⁹ between April 2005 and December 2008 indicated that while assessing/reassessing 33 cases of 30 dealers between June 2003 and June 2007 for assessment periods ending between March 2001 and March 2005, the AAs incorrectly determined the

¹⁶ Circular dated 10.12.1999.

¹⁷ Circular no. 667 dated 15.12.1998.

¹⁸ Memo No. 488 (300) CT/1A dated 12.06.1991.

¹⁹ Asansol, Ballygunge, Bankura, Behala, Bhowanipore, Colootola, Corporate Division (CD 2021 - CD 2030), Corporate Division (CD 2031 - CD 2040), Ezra Street, Park Street, Radhabazar, Raiganj, Salkia and Siliguri.

gross turnover (GT)/taxable balance (TB) at Rs. 2,709.54 crore instead of Rs. 2,772.54 crore due to errors/omissions/irregularities. Short determination of GT/TB by Rs. 63 crore resulted in short levy of tax of Rs. 5.85 crore including surcharge and additional surcharge as detailed below:

(Rupees in lakh)

Sl. no.	No. of cases/dealers	Assessment year	GT/TB to be determined GT/TB determined	Short determination of GT/TB	Tax effect	Nature of irregularity
1.	20/19	2000-01 2004-05	11,799.71 7,522.43	4,277.28	434.05	Sales claimed for exemption were not supported by documents.
The department admitted (between May 2008 and July 2009) the audit observation in four cases involving Rs. 3.06 crore, but report on levy and realisation has not been received (August 2009). In one case involving Rs. 2.30 lakh, the department stated (December 2007) that the amount allowed for deduction of sales of schedule IV goods was less than that demanded in the returns. In another case involving Rs. 2.76 lakh, it was stated (December 2007) that the dealer had been assessed <i>ex parte</i> to the best judgement of the AA and the claim had been allowed considering the dealer's nature of business and past assessment records. However, audit observed that in both the cases exemption of such claims of sales were allowed without supporting documents. In another case involving Rs. 1.49 lakh, it was stated (June 2008) that the exempted part represented security deposit against gas cylinders lent by the dealer; however, as per the summary of returns, the dealer himself disclosed these as sales of schedule IV goods instead of security deposit. In the remaining 13 cases involving Rs. 1.21 crore, the reply furnished by the department did not touch upon the issue raised by audit.						
2.	03/03	2003-04 2004-05	2,58,291.60 2,57,566.73	724.87	66.68	Non-inclusion of sale of assets in GT.
The department admitted (February 2008) one case involving Rs. 2.45 lakh, but did not report whether levy and realisation of tax had been made. In the remaining two cases involving Rs. 64.23 lakh, the reply furnished by the department did not touch upon the issue raised by audit.						
3.	01/01	2000-01	4,201.12 3,595.78	605.34	48.43	Non-inclusion of unreconciled difference of stock in GT.
The department admitted (January 2008) the case and stated that the proposal for <i>suo-motu</i> revision had been sent to the Additional CCT, WB. However, no report regarding levy and realisation of tax was received (October 2009).						
4.	03/01	2002-03 2004-05	173.82 0.00	173.82	15.86	Non-inclusion of suppressed turnover.
The reply furnished by the department did not touch upon the issue raised by audit .						
5.	03/03	2001-02 2003-04	1,180.53 788.16	392.37	10.45	Non-inclusion in GT of difference between sale figures in P/L accounts and returns.
The reply furnished by the department did not touch upon the issue raised by audit .						
6.	01/01	2004-05	681.38 640.00	41.38	5.53	Non-inclusion of damaged goods not supported by proper documents.
The department admitted (July 2009) the audit observation; but report on levy and realisation has not been received (October 2009).						
7.	02/02	2003-04 2004-05	925.47 840.87	84.60	3.89	Non-inclusion of hire charges.
The department admitted the cases between December 2007 and September 2008 and stated that proposals for revision had been sent to the appropriate authorities. Report on further development has not been received (October 2009).						
	33/30		2,77,253.63 2,70,953.97	6,299.66	584.89	

The cases were forwarded to the Government between July 2007 and February 2009 followed by reminders issued upto June 2009; their reply has not been received (October 2009).

2.5 Non-levy of penalty on evaded tax

Under the WBST Act, if a dealer has concealed any turnover or furnished incorrect particulars thereof with the intent to reduce the amount of tax payable by him, the AAs in addition to tax, may impose a penalty of not less than one and a half times and not more than thrice the amount of tax avoided. According to the instructions (June 1991) of the CCT, West Bengal, where an AA did not initiate penal proceedings in a case, he should record in the assessment order the reasons for not doing so.

2.5.1 Scrutiny of the records of seven charge offices²⁰ between December 2007 and December 2008 indicated that while assessing/reassessing 12 cases of nine dealers between June 2005 and June 2007 for the assessment periods ending between March 2000 and March 2005, the AAs detected concealment of Rs. 48.69 crore and levied tax of Rs. 2.36 crore, but did not levy minimum penalty of Rs. 3.54 crore. No reason was recorded in the assessment order for non-levy of minimum penalty. This resulted in non-realisation of revenue of Rs. 3.54 crore.

After the cases were pointed out, the department accepted (December 2007) audit observations in four cases involving Rs. 1.47 crore. In one case involving Rs. 12 lakh, the department stated (February 2008) that the dealer had admitted the omission at the assessment stage and as such penalty was not leviable. The fact remains that the suppression of purchase of raw hide was taxed by the AA and thus, penalty was leviable. Besides, the AA did not mention the reason for non-levy of penalty in the assessment order, which was mandatory as per CCT's circular. In the remaining seven cases involving Rs. 1.95 crore. The reply furnished by the department did not touch upon the issue raised by audit.

2.5.2 Scrutiny of the records of Salt Lake charge office in March 2008 indicated that in assessing three cases of a dealer between June 2005 and June 2007 for the assessment periods ending between March 2003 and March 2005, the AAs allowed claims for the sale of locally purchased tax paid schedule IV goods of Rs. 13.43 crore. Cross-verification of the purchase documents of the assessee dealer with corresponding sale documents of the selling dealers confirmed that the dealer had preferred and got exemption on fake claim for the sale of locally purchased tax paid schedule IV goods of Rs. 4.44 crore leading to the evasion of tax of Rs. 35.56 lakh. The AAs neither levied the minimum penalty of Rs. 53.34 lakh nor recorded any reason in the assessment order for not doing so. This resulted in non-realisation of revenue of Rs. 88.90 lakh.

The cases were reported to the department and Government between February 2008 and February 2009 followed by reminders issued upto June 2009; their replies have not been received (October 2009).

²⁰ Ballygunge, Bhowanipore, Colootola, Salt Lake, Shibpur, Shyambazar and Siliguri.

2.6 Underassessment of tax due to incorrect deduction

Under the WBST Act and the Rules made thereunder, in determining the taxable turnover of a dealer, deduction of tax collected by him is allowable from the aggregate of sales turnover in accordance with the prescribed formula. The Commissioner, Commercial Taxes (CCT), West Bengal in December 1998, restricted the deduction to the extent of sales tax deposited and included in the turnover by the dealers. This provision is also applicable to the assessments made under the Central Sales Tax (CST) Act.

Scrutiny of the records of six charge offices²¹ between March 2007 and December 2008 indicated that in assessing/reassessing 18 cases of 16 dealers between May 2005 and June 2007 for assessment periods ending between March 2001 and March 2005, the AAs allowed deduction of Rs. 14.48 crore against actual deposit of tax of Rs. 5.07 crore as per the returns. The excess deduction of Rs. 9.41 crore resulted in underassessment of tax of Rs. 62.50 lakh including surcharge and additional surcharge.

After the cases were pointed out, the department accepted the audit observations (between December 2007 and July 2009) in four cases involving Rs. 14.98 lakh. Report on realisation of tax has not been received (October 2009). In one case involving Rs. 6.93 lakh, the department stated (June 2008) that the deduction was allowed as per provisions of the Act. The reply is not tenable as the deduction should have been restricted to the amount of tax deposited by the dealers as provided in the CCT's instruction of December 1998 *ibid*. In the remaining 13 cases involving Rs. 40.59 lakh, the reply furnished by the department did not touch upon the issue raised by audit.

The cases were reported to the Government between July 2007 and February 2009 followed by reminders issued upto June 2009; their replies have not been received (October 2009).

Non-compliance of provisions of Act

As per the provisions of the WBST Act 1994 and CST Act 1956, while finalising the assessments of a dealer, the AOs are required to follow the prescribed Acts and Rules and conduct verifications as under:

- 1. Assessments should be completed within the stipulated time limit.*
- 2. Deemed assessments should be made as per provisions of the Act.*
- 3. Books of accounts and other accounts, documents for exemption and lower rate of tax and any other information to support the facts contained in the books of accounts should be verified.*
- 4. Statements of declaration forms and export documents should be verified.*
- 5. Tax, surcharge & additional surcharge and interest should be levied at the prescribed rates.*
- 6. Tax benefits e.g. tax holiday, remission, set-off should be allowed as per the provisions of the Act.*

²¹ Bhowanipore, Corporate Division (CD 2021 – CD 2030), Jalpaiguri, Park Street, Salt Lake and Siliguri.

7. *Computation of tax should be made correctly.*

8. *Demand notices should be raised after assessment.*

Failure on the part of the AOs to comply with the above resulted in non/short levy of tax of Rs. 33.63 crore as mentioned in the following paragraphs.

2.7 Incorrect exemption on account of export sales

Under the CST Act, 1956, sales of goods made in course of export out of India are exempt from tax if supported by proper evidence of export. Sales not supported by the necessary evidence are to be taxed at the prescribed rates treating these as sales in the course of the inter-state trade.

Scrutiny of the records of three charge offices²² between January and November 2008 indicated that while assessing three cases of three dealers for assessment periods ending between March 2003 and March 2005, the AAs allowed exemption on account of export sales of Rs. 40.48 crore though export of Rs. 18.94 crore was not allowable being either not related to the period of assessment or not supported by relevant documents. This resulted in underassessment of tax of Rs. 2.14 crore.

The cases were forwarded to the department and Government between April 2008 and January 2009 followed by reminders issued upto June 2009; their replies have not been received (October 2009).

2.8 Mistake in computation of tax

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

Scrutiny of the records of three charge offices²³ between November 2007 and December 2008 indicated that while assessing four cases of four dealers between June 2005 and June 2007 for assessment periods ending between March 2003 and March 2005, the AAs assessed tax including surcharge and additional surcharge of Rs. 1.64 crore instead of Rs. 2.22 crore due to mistake in computation of taxable balance and purchase/sales tax payable. This resulted in short levy of tax including surcharge and additional surcharge of Rs. 58 lakh.

After the cases were pointed out, the department accepted (February 2008) audit observation in one case involving Rs. 1.52 lakh. The report on levy and realisation of tax has not been received (October 2009). In the remaining three cases involving Rs. 56.48 lakh, the reply furnished by the department did not touch upon the issue raised by audit.

The cases were forwarded to the Government between April 2008 and February 2009 followed by reminders issued upto June 2009; their replies have not been received (October 2009).

²² Ballygunge, Serampore and Salt Lake.

²³ Ballygunge, Corporate Division (CD 2031 – CD 2040) and Siliguri.

2.9 Non-levy of interest

Under the WBST Act, a dealer who

- furnishes return in respect of any period by the prescribed date or thereafter but fails to make full payment of tax payable in respect of such period by the prescribed date; or
- fails to furnish a return in respect of any period before assessment and on such assessment it is found that full amount of tax payable for such period have not been paid by him by such prescribed date; or
- fails to make payment of any tax demanded after assessment by the date specified in the demand notice,

is liable to pay simple interest at the prescribed rate for each calendar month of default. In case of non-payment, interest is to be included in the demand upto the month preceding the month of initiation of certificate proceedings. This provision is also applicable in case of the assessments completed under the CST Act.

Scrutiny of the records of 13 charge offices²⁴ between June 2007 and December 2008 indicated that in assessing/reassessing/initiating certificate proceedings in 48 cases of 45 dealers for different assessment periods ending between March 1994 and March 2005, the AAs levied interest of Rs. 71.10 lakh instead of Rs. 1.94 crore realisable on tax dues of Rs. 4.37 crore, resulting in non-levy of interest of Rs. 1.23 crore.

After the cases were pointed out, the department:

- in 26 cases involving Rs. 71.17 lakh, admitted the audit observation (September 2007 and July 2009) but report on realisation has not been received (October 2009).
- in two cases involving Rs. 12.16 lakh, stated between February and November 2008 that the interest was not levied since tax was not admitted by the dealer. In another case involving Rs. 1.03 lakh it stated (November 2008) that the dealer had been assessed *ex-parte* and the interest was levied on the tax payable. However, audit observed that these cases related to non-levy of interest for non-furnishing of returns and not for non-payment of admitted tax as contended.

In the remaining 19 cases involving Rs. 38.64 lakh, the reply furnished by the department did not touch upon the issue raised by audit.

All the cases were forwarded to the department and Government between February 2008 and February 2009 followed by reminders issued upto June 2009; their replies have not been received (October 2009).

²⁴ Asansol, Ballygunge, Bankura, Baruipur, Bhowanipore, Colootola, Corporate Division (CD 2021 – CD 2030), Jalpaiguri, Park Street, Salkia, Salt Lake, Serampore and Siliguri.

2.10 Incorrect exemption on account of transfer of goods

Under the CST Act and the Rules made thereunder, a dealer claiming exemption from his turnover on account of transfer of goods outside the State otherwise than by way of sale, is liable to furnish declarations in form 'F' duly filled in and signed by the principal officer or his agent of the other place of business as a proof of transfer along with evidence of despatch. Transfer of goods effected during a calendar month is to be covered in a single declaration. Otherwise, such transfer of goods is liable to be treated as inter-state sale and taxed accordingly. Production of 'F' form has been made mandatory from June 2002.

Scrutiny of the records of six charge offices²⁵ between September 2007 and May 2008 indicated that while assessing/reassessing 15 cases of 12 dealers for different assessment periods ending between March 2001 and March 2005, the AAs allowed exemption on account of transfer of goods to the branches/agents outside the State for Rs. 51.97 crore. Of these, in 13 cases of transfer of goods of Rs. 10.58 crore single 'F' form covered transactions beyond one calendar month or transactions covered in the forms were not related to the period of assessment. In one case transfer of goods of Rs. 1.66 crore was not supported by 'F' form. In another case, the claim was allowed in excess by Rs. 18.36 lakh. Thus, incorrect exemption on transfer of goods of Rs. 12.42 crore resulted in underassessment of tax of Rs. 1.25 crore.

After the cases were pointed out, the department admitted between December 2007 and July 2009 audit observations in seven cases involving Rs. 79.69 lakh. Report on realisation of tax has not been received (October 2009). In the remaining eight cases, the reply furnished by the department did not touch upon the issue raised by audit.

The cases were reported to the Government between February and August 2008 followed by reminders issued upto June 2009; their reply has not been received (October 2009).

2.11 Application of incorrect rate of tax

Under the WBST Act, the rate of tax depends on the nature of sales and also on the nature of goods/commodities sold. Under the CST Act, inter-state sales supported by declaration forms are taxable at the rate of four *per cent*. Otherwise, tax is leviable at the rate of ten *per cent* or the rate of tax applicable in the concerned State, whichever is higher, and in case of declared goods, double the rate of tax.

Scrutiny of the records of eight charge offices²⁶ between November 2007 and December 2008 indicated that in assessing 12 cases of 11 dealers for assessment periods ending between March 2002 and March 2005, the AAs short levied tax of Rs. 70.57 lakh inclusive of surcharge and additional surcharge due to application of incorrect rate.

²⁵ Baruipur, Colootola, Corporate Division (CD 2031 – CD 2040), Jalpaiguri, Park Street and Siliguri.

²⁶ Asansol, Ballygunge, Behala, Bhowanipore, Colootola, Salkia, Shibpur and Siliguri.

After the cases were pointed out, the department between February and July 2009 accepted audit observations in five cases involving Rs. 55.11 lakh but the report on levy and realisation has not been received (October 2009). In the remaining seven cases involving Rs. 15.46 lakh, the reply furnished by the department did not touch upon the issue raised by audit .

The cases were forwarded to the Government between February 2008 and February 2009 followed by reminders issued upto June 2009; their reply has not been received (October 2009).

2.12 Incorrect allowance of concessional rate of tax

Under the WBST Act and the Rules made thereunder, a dealer is eligible for concessional rate of tax on sales of goods to registered resellers or manufacturing dealers/Government departments, if such sales are supported by prescribed declaration forms or certificate furnished by such purchasing dealers/Government departments. Further, as per the CST Act, inter-state sales of goods are also exigible to tax at the concessional rate subject to production of prescribed forms 'C' and 'D' by the selling dealers.

Scrutiny of the records of seven charge offices²⁷ between August 2007 and December 2008 indicated that in assessing/reassessing nine cases of nine dealers between June 2005 and June 2007 for assessment periods ending between March 2003 and March 2005, the AAs incorrectly levied tax on sale of Rs. 9.81 crore at concessional rate instead of the prescribed rate though the sales were either not supported by the requisite declaration forms/statements/certificates or were made to unregistered dealers/non-Government organisations. Incorrect allowance of concessional rate resulted in short levy of tax of Rs. 50.78 lakh.

After the cases were pointed out, the department accepted (May 2008) the audit observation in one case involving Rs. 46,000. Report on realisation has not been received (September 2009). In another case involving Rs. 96,000, it was stated (December 2007) that the claim has been allowed on the basis of date of despatch of goods instead of the date of bill/invoice. The reply is not tenable as according to the rules the claims should be allowed on the basis of the date of raising the bill/invoice. In the remaining seven cases involving Rs. 49.36 lakh, the reply furnished by the department did not touch upon the issue raised by audit.

The cases were reported to the Government between February 2008 and January 2009 followed by reminders issued upto June 2009; their reply has not been received (October 2009).

2.13 Non/short levy of purchase tax

Under the WBST Act, a manufacturer dealer is liable to pay purchase tax at the rate of four *per cent* on all purchases of goods from unregistered dealers for use in manufacture of goods for sale in the West Bengal. A registered dealer, who is not a manufacturer, is also liable to pay purchase tax on purchases from unregistered dealers at the rate applicable on sale of such

²⁷ Asansol, Ballygunge, Corporate Division (CD 2021 - CD 2030), Park Street, Radhabazar, Salt Lake and Siliguri.

goods within the State. The dealers making such purchases shall furnish annexure P with the return indicating the taxable specified purchase price and tax payable.

Scrutiny of the records of seven charge offices²⁸ between March 2007 and December 2008 indicated that in assessing/reassessing 22 cases of 22 dealers for assessment periods ending between March 2000 and March 2005, the AAs incorrectly assessed the taxable purchase price of Rs. 1.73 crore instead of Rs. 10.31 crore. This resulted in underassessment of the taxable purchase by Rs. 8.58 crore and consequent non/short levy of purchase tax of Rs. 50.43 lakh.

After the cases were pointed out, the department between February and July 2009 accepted the audit observations in 10 cases involving Rs. 13.43 lakh. Report on realisation has not been received (October 2009). In the remaining 12 cases involving Rs. 37 lakh, the reply furnished by the department did not touch upon the issue raised by audit.

The cases were forwarded to the Government between July 2007 and February 2009 followed by reminders issued upto June 2009; their reply has not been received (October 2009).

2.14 Non/short levy of surcharge and additional surcharge

Under the WBST Act, a dealer has to pay a surcharge of 10 *per cent* from April 2002 and additional surcharge of five *per cent* from August 2002 on the amount of sales tax payable by him. Under the CST Act, surcharge and additional surcharge are leviable on interstate sale of goods on which the State rate is lower than four *per cent* and also where such rate exceeds 10 *per cent*.

Scrutiny of the records of six charge offices²⁹ between January 2007 and November 2008 indicated that in assessing 15 cases of 15 dealers for assessment periods ending between March 2004 and March 2005, the AAs levied tax of Rs. 2.68 crore but surcharge and additional surcharge were not levied in 14 cases involving Rs. 22.46 lakh and in one case levied short by Rs. 5.36 lakh. This resulted in non/short levy of surcharge and additional surcharge of Rs. 27.82 lakh.

After the cases were pointed out, the department between December 2007 and July 2009 accepted audit observations in 12 cases involving Rs. 25.15 lakh. Report on realisation has not been received (October 2009). The reply furnished by the department did not touch upon the issue in the remaining three cases raised by audit.

The cases were forwarded to the Government between February 2008 and January 2009 followed by reminders issued upto June 2009; their reply has not been received (October 2009).

²⁸ Ballygunge, Baruipur, Bhowanipore, Corporate Division (CD 2031-CD 2040), Salt Lake, Serampore and Siliguri.

²⁹ Asansol, Bhowanipore, Colootola, Park Street, Salkia and Siliguri.

2.15 Incorrect allowance of remission of tax

Under the provisions of the WBST Act and Rules made thereunder, a registered dealer holding an eligibility certificate (EC) in prescribed form and engaged in manufacture of goods mentioned in the eligibility certificate, may avail the benefit of remission of tax on sale of such goods manufactured by him provided all prescribed conditions and restrictions are fulfilled. However, the dealer shall not be eligible for remission of tax on any unregistered inter-state sale of goods manufactured by him.

Scrutiny of the records of three charge offices³⁰ between August 2004 and December 2007 indicated that in assessing five cases of four dealers for different assessment periods ending between March 2001 and March 2004, the AAs incorrectly allowed remission of tax of Rs. 3.50 crore instead of Rs. 3.27 crore. This resulted in incorrect remission of tax of Rs. 22.90 lakh.

After the cases were pointed out, the department between May 2005 and May 2006 accepted the audit observations in three cases involving Rs. 9.92 lakh, but report on levy and realisation has not been received (October 2009). The reply furnished by the department did not touch upon the issue in the remaining two cases raised by audit.

The cases were forwarded to the Government between September 2004 and February 2008 followed by reminder issued upto June 2009; their reply has not been received (October 2009).

2.16 Loss of revenue due to non-completion of assessment within the stipulated period

Under the WBST Act, assessments shall be made by the AAs within 30th June next following the expiry of two years from the end of the assessment period. Reassessment in pursuance of an order of the appellate authority shall be made within two years from the date of the appellate order; otherwise both types of assessment are barred by limitation of time.

2.16.1 Scrutiny of the records of two charge offices³¹ between March 2006 and April 2007 indicated that reassessment of three cases of two dealers was not completed within two years from the date of appellate orders between January and May 2004. The cases became barred by limitation of time which resulted in loss of revenue of Rs. 14.38 lakh.

After the cases were pointed out, the AAs stated in May 2006 that in two cases involving Rs. 5.78 lakh, demand notices were issued to the dealers in Form 33 and 4A on 22 May 2006. The reply is not tenable as in both the cases reassessments were completed after expiry of two years from the date of appellate order and thus the cases became barred by limitation of time. In the remaining case, the department did not furnish any reply (October 2009).

2.16.2 Scrutiny of the records of Bhowanipore charge office indicated (September 2008) that the assessment of one case of a dealer for the assessment period ending March 2005 was not completed within June 2007.

³⁰ Chandney Chawk, Jalpaiguri and Park Street.

³¹ Corporate Divisions (CD 2031 – CD 2040 and CD 2021 – CD 2030).

Since, the assessment has become barred by limitation of time, this resulted in loss of revenue of Rs. 8.02 lakh.

The reply furnished by the department did not touch upon the issue raised by audit.

The cases were forwarded to the Government between March 2007 and October 2008 followed by reminders issued upto June 2009; their reply has not been received (October 2009).

2.17 Inadmissible tax benefit to the dealers who used logo/brand name of other industrial units

Under the provisions of WBST Act and Rules made thereunder, the validity of eligibility certificate is liable to be ceased when a dealer uses the brand name or trade mark or logo of other industrial unit.

Scrutiny of the records of Baruipur, Burdwan and New Market charge offices between January and February 2009 indicated that while assessing six cases of three dealers for different assessment periods ending between March 2000 (from 01 October 1999) and March 2004, the AAs in three cases of two dealers allowed benefit of exemption of tax though the eligibility certificate of the dealers were liable for cancellation for using brand name/logo of other industrial units. In three cases of M/s Hi Tech Foods Pvt. Ltd., the AA allowed the benefit of exemption of tax, though the validity of eligibility certificate was liable for termination as the dealer manufactured goods on behalf of another industrial unit. This has resulted in inadmissible tax benefit of Rs. 2.45 crore to the dealers including interest.

After the cases were pointed out, the Joint Commissioner, Sales Tax, New Market and Baruipur Charge Offices admitted the observations between January 2009 and February 2009 in three cases involving Rs. 1.98 crore. Further developments have not been reported (October 2009). The reply furnished by the Joint Commissioner, Sales Tax, Burdwan Charge did not touch upon the issue raised by audit in the remaining three cases.

The cases were forwarded to the Government in April 2009 followed by reminder issued in June 2009; their reply has not been received (October 2009).

2.18 Non-assessment of interest and non-raising of demand

Under the provisions of the WBST Rules, 1995, the assessing authority shall serve a notice of demand in the prescribed form to the dealer after final assessment showing the amount of tax, interest, penalty etc. and specifying the date of payment.

Scrutiny of the records of Budge Budge charge office in March 2009 indicated that in assessing three cases of three dealers for the assessment periods ending between March 2001 and March 2005, the AA assessed tax in respect of two dealers but did not assess interest amounting to Rs. 1.04 crore for the year ending March 2001 in two cases and for the year ending March 2005 in one case. No demand notice was issued by the AA in respect of tax and interest assessed amounting to Rs. 23.06 crore on the plea that the West Bengal Taxation Tribunal (WBTT) had issued an interim stay order for realisation

proceedings in respect of those cases where the dealers had contravened the provisions of Act/Rules using brand name/logo of other industrial units. However, the demands were not issued even after the WBTT vacated the interim orders for all such cases on 25 January 2008. This resulted in non-assessment of interest and non-raising of demand of Rs. 23.06 crore.

The cases were forwarded to the department and Government in April 2009 followed by reminder issued in June 2009; their replies have not been received (October 2009).

2.19 Irregular deemed assessment

Under the WBST Act and Rules made thereunder, returns furnished by a registered dealer disclosing turnover for a year below Rs. 3 crore shall be accepted as correct and complete and assessments be deemed to have been made. Returns not supported by receipted challans showing payment of tax due etc. and claims for concessional rate of tax preferred in the returns not supported by requisite declaration forms shall be treated as incorrect and the deemed assessment case shall be reopened for fresh assessment.

Scrutiny of the records of Jalpaiguri charge office in December 2007 indicated that in two cases of a dealer for assessment periods ending between March 2004 and March 2005, though the returns were not supported by receipted challans and requisite declaration forms, yet the AAs did not reopen the cases and assess tax payable by the dealers. This resulted in irregular acceptance of return for deemed assessment involving tax of Rs. 21.18 lakh.

The cases were forwarded to the Government in February 2008 followed by reminders issued upto June 2009; their reply has not been received (October 2009).

2.20 Misclassification of goods/transaction

Under the provisions of the WBST Act, goods/commodities are taxed according to the nature and/or classification of such goods and the nature of transaction as classified and listed under different schedules.

Scrutiny of the records of three charge offices³² between August 2006 and May 2008 indicated that in assessing three cases of three dealers between June 2005 and June 2006 for different assessment periods ending between March 2003 and March 2004, the AAs short levied tax of Rs. 15.43 lakh due to misclassification of goods/transaction.

After the cases were pointed out, the department between August 2007 and July 2009 accepted the audit observations in two cases involving Rs. 9.14 lakh. Report on realisation has not been received (September 2009). In the remaining case involving Rs. 6.29 lakh, the department stated in July 2009 that the sales figure of Rs. 1.44 crore represented the sales of PVC pipes and not roof tiles. Hence it had been taxed at the rate of four *per cent*. The reply is untenable as the aforesaid sales figure is the sales of roof tiles as indicated in the profit and loss account of the dealer and is liable to be taxed at the rate of eight *per cent*.

³² Colootola, Park Street and Siliguri.

The cases were forwarded to the Government between December 2006 and July 2008 followed by reminders issued upto June 2009; their reply has not been received (October 2009).

2.21 Incorrect allowance of set-off of tax

Under the provisions of the WBST Act and the Rules made thereunder, if a registered dealer purchases goods for direct use in manufacture, from a registered dealer, he may, under certain conditions, set-off the amount of tax paid by him on his purchases against the amount of tax payable by him on sales of such manufactured goods within West Bengal.

Scrutiny of the records of three charge offices³³ between August 2005 and December 2007 indicated that in assessing three cases of three dealers for assessment periods ending between March 2003 and March 2004, the AAs incorrectly allowed set-off of tax of Rs. 18.18 lakh instead of Rs. 7.28 lakh. This resulted in short levy of tax of Rs. 10.90 lakh.

After the cases were pointed out, the department between August 2005 and December 2007 accepted the audit observations in all the cases. Report on recovery of tax has not been received (October 2009).

The cases were forwarded to the Government between November 2006 and February 2008 followed by reminders issued upto June 2009; their reply has not been received (October 2009).

³³ Alipore, Bhowanipore and Shibpur.