

CHAPTER - II COMMERCIAL TAX

2.1 Tax administration

The Principal Secretary, Commercial Tax Department is the administrative head of the Department at the Government level. The Commissioner of Commercial Tax (CCT) is the head of the department. The Department is divided in four zones, each headed by Zonal Additional Commissioners. Each zone comprises of the divisional offices headed by 13 divisional Deputy Commissioners (DC). Under these divisions, there are 78 circle offices headed by the Commercial Tax Officers/Assistant Commissioners (CTO/AC).

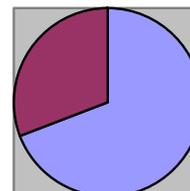
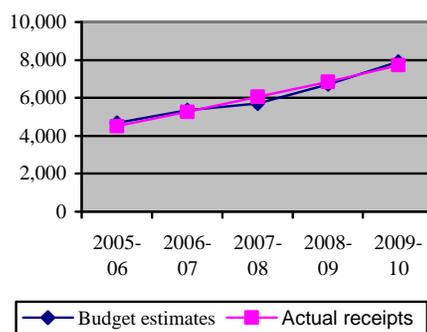
2.2 Trend of receipts

Actual receipts from VAT during the last five years 2005-06 to 2009-10 along with the total tax receipts during the same period is exhibited in the following table and graph.

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation Excess (+)/shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual Commercial Tax/VAT receipts vis-a-vis total tax receipts
2005-06	4,676.00	4,508.42	(-) 167.58	(-) 3.58	9,114.70	49.46
2006-07	5,357.00	5,261.41	(-) 95.59	(-) 1.78	10,473.13	50.24
2007-08	5,700.00	6,045.07	(+) 345.07	(+) 6.05	12,017.64	50.30
2008-09	6,720.00	6,842.99	(+) 122.99	(+) 1.83	13,613.50	50.27
2009-10	7,894.11	7,723.82	(-) 170.29	(-) 2.16	17,272.77	44.72

Receipts from VAT increased from ₹ 4,508.42 crore in 2005-06 to ₹ 7,723.82 crore in 2009-10 - an increase of 71.32 per cent. However, the share of VAT in total receipts declined from 50.30 per cent in 2007-08 to 44.72 per cent in 2009-10.



■ Total Tax receipts (2009-10)
■ VAT receipts (2009-10)

2.3 Assessee profile

The Department reported that during 2009-10 there were 2,16,555 (Provisional) registered dealers, of which approximately 20,588 were large tax payers and 1,95,967 were small tax payers. All registered dealers having turnover upto ₹ 20 lakh or paying annual tax upto ₹ 10,000 are required to file annual returns where as other dealers are required to file quarterly returns. In case of dealers who failed to furnish returns, advance tax notices are issued by the competent officer. The Department further informed that the number of returns received is not maintained at the Departmental headquarters. Thus, a vital monitoring mechanism is absent in the Department.

2.4 Cost of VAT per assessee

It was stated by the Department that such data is not available.

2.5 Arrears in assessment

The details of assessments relating to sales tax/VAT, profession tax, entry tax, luxury tax, tax on works contracts pending at the beginning of the year, additional cases becoming due for assessment during the year, cases disposed during the year and pending cases at the end of each year during 2007-08, 2008-09 and 2009-10 as furnished by the Commercial Tax Department are mentioned below:

Name of tax		Opening balance	New cases due for assessment during the year	Total assessments due	Cases disposed during the year	Balance at the end of the year	Percentage of column 5 to 4
(1)		(2)	(3)	(4)	(5)	(6)	(7)
Commercial Tax Department							
Sales tax/VAT	2007-08	3,63,487	2,81,575	6,45,062	3,41,769	3,03,293	52.98
	2008-09	3,03,293	3,41,838	6,45,131	3,78,096	2,67,035	58.61
	2009-10	2,67,035	3,53,048	6,20,083	3,72,161	2,47,922	60.02
Profession tax	2007-08	1,15,513	1,45,481	2,60,994	1,33,479	1,27,515	51.14
	2008-09	1,27,515	1,50,048	2,77,563	1,53,188	1,24,375	55.19
	2009-10	1,24,375	1,40,241	2,64,616	1,57,938	1,06,678	59.69
Entry tax	2007-08	1,85,094	2,23,297	4,08,391	2,19,980	1,88,411	53.87
	2008-09	1,88,411	2,36,999	4,25,410	2,55,054	1,70,356	59.95
	2009-10	1,70,356	2,29,913	4,00,269	2,48,537	1,51,732	62.09
Luxury tax	2007-08	698	1,007	1,705	1,007	698	59.06
	2008-09	698	1,330	2,028	1,364	664	67.26
	2009-10	664	1,026	1,690	1,052	638	62.25
Tax on works contracts	2007-08	3,501	3,211	6,712	2,965	3,747	44.17
	2008-09	3,747	5,160	8,907	6,366	2,541	71.47
	2009-10	2,541	6,273	8,814	6,183	2,631	70.15

Thus, there has been decrease in disposal of assessment cases relating to luxury tax and tax on works contracts during 2009-10 as compared to the previous year.

2.6 Cost of collection

The gross collection in respect of commercial tax/VAT, expenditure incurred on collection as furnished by the concerned Department and the percentage of expenditure to gross collection during the years 2007-08, 2008-09 and 2009-10 along with the relevant all India average percentage of expenditure on collection to gross collection for 2008-09 are mentioned below:

(₹ in crore)

Sl. No.	Head of revenue	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage for the year 2008-09
1.	Commercial Tax/VAT	2007-08	6,045.07	60.36	1.00	0.88
		2008-09	6,842.99	96.23	1.41	
		2009-10	7,723.82	85.33	1.10	

The above table indicates that the percentage of expenditure on collection in respect of commercial tax/VAT was more than the all India average percentage for the year 2008-09.

The Government needs to take appropriate measures to bring down the cost of collection.

2.7 Analysis of collection

The department informed that the analysis of collection is not maintained in the headquarters as well as in the subordinate offices.

2.8 Impact of audit

During the last five years, audit had pointed out non/short levy, non/short realisation, underassessment/loss of revenue, incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation etc., with revenue implication of ₹ 436.81 crore in 4,747 cases. Of these, the department/Government had accepted audit observations in 1,237 cases involving ₹ 102.14 crore and had since recovered ₹ 2.95 crore. The details are shown in the following table:

(₹ in crore)

Year of Audit Report	No. of units audited	Objected		Accepted		Recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2004-05	95	1,099	38.58	29	1.05	--	--
2005-06	91	789	94.84	43	33.67	07	0.71
2006-07	75	623	66.37	149	15.33	07	0.95
2007-08	106	1,002	55.99	519	12.12	22	0.47
2008-09	102	1,234	181.03	497	39.97	14	0.82
Total	469	4,747	436.81	1,237	102.14	50	2.95

The percentage of recovery as compared to the accepted cases has been abysmal over the last five years. We have brought this glaring issue to the notice of the head of the Department as well as the Finance Secretary of the Government.

2.9 Working of internal audit wing

In pursuance of the Government orders dated 11 October 1982, 15 posts (5 Assistant Commissioners, 5 Commercial Tax Officers and 5 Assistant Commercial Tax Officers) were sanctioned for internal audit in the Department. However, due to constant increase in the number of registered dealers and assessment cases, establishment of check posts and deployment of available staff in revenue work, system of internal audit is not working at present in the Department.

2.10 Results of audit

Test check of the records of 90 units relating to Commercial Tax/VAT revealed underassessment of tax and other irregularities involving ₹ 365.51 crore in 1,237 cases which fall under the following categories.

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
1.	Non/short levy of tax.	398	117.22
2.	Application of incorrect rate of tax.	180	10.72
3.	Incorrect determination of taxable turnover.	121	8.63
4.	Incorrect grant of exemption/deduction/set off.	203	152.78
5.	Other irregularities.	335	76.16
	Total	1,237	365.51

During the course of the year, the department accepted underassessment and other deficiencies of ₹ 122.70 crore in 551 cases, which were pointed out in audit during the year 2009-10. An amount of ₹ 2.11 crore was realised in 107 cases during the year 2009-10.

A few illustrative audit observations involving ₹ 112.71 crore highlighting important audit findings are mentioned in the following paragraphs.

2.11 Non-recovery of tax from closed units

Two regional¹ and three circle² offices

A dealer holding eligibility certificate (EC) for exemption from payment of tax is required to keep his industrial unit running during the period of eligibility and also for a period of five years from the date of expiry of the period of eligibility, failing which the EC shall be cancelled by the District/State level Committee (DLC/SLC) empowered to issue the EC. The amount of tax exemption availed of by the dealer shall be recovered. If the circumstances warrant, such cancellation may be given retrospective effect.

We observed between January and October 2009 that out of six dealers, assessed/re-assessed between December 2007 and March 2009, holding EC for exemption from payment of tax, five dealers failed to keep their industrial units running during the period of eligibility while one dealer closed his industrial unit within five years after expiry of the eligibility period. The assessing authorities (AAs), however, did not take any action to refer the matter to the DLC/SLC for cancellation of ECs of such dealers.

This resulted in non-recovery of tax benefit of ₹ 102.28 crore which was availed of by the dealers upto the period between 2001-02 and 2005-06.

After we pointed out the cases, the AAs in case of three dealers stated (between March and September 2009) that action would be taken after verification. In one case it was stated (August 2009) that action is being taken for cancellation of the EC. In another case, it was stated (January 2009) that the power to cancel the EC vests with the Industries Department (ID). The reply does not explain why the AA did not refer the matter to the ID for requisite action. In the remaining one case it was stated (October 2009) that the EC could not be cancelled with retrospective effect as has been held in several judicial decisions. The reply is not in consonance with the condition stipulated in the exemption notification and no judicial decision was furnished in support of the contention.

We reported the matter to the Commissioner, Commercial Tax (CCT), Madhya Pradesh and the Government between March and November 2009; their replies have not been received (December 2010).

¹ Dewas and Shajapur.
² Gwalior (2) and Sagar.

2.12 Application of incorrect rate of tax

Six circle³ offices

The Madhya Pradesh *Vanijyik Kar Adhiniyam*, 1994 (*Adhiniyam*) and the MP VAT Act read with the Central Sales Tax (CST) Act, 1956 and notifications issued thereunder specify the rates of commercial tax and VAT leviable on different commodities.

We observed between December 2004 and March 2009 that in case of 11 dealers, assessed between April 2003 and March 2009 for the period 2001-02 to 2006-07, tax on the sales turnover of ₹ 5.52 crore was levied at incorrect rates.

This resulted in short levy of tax of ₹ 94.50 lakh including interest/penalty as detailed below:

(₹ in lakh)

Sl. No.	Name of Auditee unit/ No. of cases	Assessment period	Rate applicable/ applied (per cent)	Amount of short levy of tax	Observations	Reply of the Department/ further observations
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	RAC, Circle I <u>Jabalpur</u> 01	2005-06	<u>13.8</u> 4.0	75.94	Under entry no.50 of Part-III of Schedule-II to the <i>Adhiniyam</i> , towers are liable to tax at the rate of 13.8 per cent, whereas the AA levied tax on the sale of towers at the rate of four per cent treating the commodity as Iron & Steel. This resulted in short realisation of tax of ₹ 75.94 lakh.	After we pointed out, the AA stated that the dealer manufactured and sold galvanised steel structurals. Reply is not acceptable because from the sales agreement with different purchasing parties and balance sheet it was evident that the dealer had sold towers and parts/components thereof and not galvanised steel structurals. The Superintendent, Central Excise, Range-II, Jabalpur has also confirmed the same.
2.	CTO, Circle VI, <u>Indore</u> 01 CTO, Circle III, <u>Jabalpur</u> 01	2006-07 2006-07	<u>12.5</u> 4.0	4.66	Under MP VAT Act, batteries and invertors are taxable at the rate of 12.5 per cent. In two cases the AAs levied tax on the sale of batteries and invertors incorrectly at the rate of four per cent. This resulted in short levy of tax of ₹ 4.66 lakh.	After we pointed out, the AAs stated that the dealer sold UPS and mobiles which are taxable at the rate of four per cent. Reply is contrary to the facts on record.

³ Gwalior, Indore-IV and XIV, Jabalpur-I and III, Neemuch

(1)	(2)	(3)	(4)	(5)	(6)	(7)
3.	CTO, Circle XIV, <u>Indore</u> 01	2006-07	<u>12.5</u> 4.0	3.53	As per CCT, MPs circular dated 31 July 2006 acrylic sheets are taxable at the rate of 12.5 per cent. The AA in one case, however, levied tax on acrylic sheets at the rate of four per cent. This resulted in short levy of tax of ₹ 3.53 lakh.	After we pointed out, the AA stated that tax was levied after verifying purchase/sale bills. In view of the CCT's circular <i>ibid</i> , rate charged in the purchase/sale bills was also incorrect. Therefore, reply is not acceptable.
4.	CTO Circle II, <u>Neemuch</u> 01	2001-02 2003-04 2004-05 2005-06	<u>13.8</u> 9.2	3.00	As per entry no. 54 of part-III of schedule-II to the <i>Adhiniyam</i> , television and parts thereof are liable to tax at the rate of 13.8 per cent. In one case the AA levied tax on the sale of TV and parts thereof at the rate of 9.2 per cent incorrectly. This resulted in short levy of tax of ₹ 3 lakh.	After we pointed out, the AA stated that as the dealer held EC, therefore short levy of tax would have no impact on the exchequer. The reply is not relevant as it was an omission on the part of the AA to levy tax at the correct rate with a consequent omission of non-adjustment of the amount of short levy of tax against the quantum of exemption specified in the EC.
5.	CTO, Circle III, <u>Jabalpur</u> 02	2001-02 2004-05	<u>13.8</u> 9.2	2.56	RCC pipes are included in cement pipes which are taxable at the rate of 13.8 per cent under entry no. 17 of Part-III of Schedule-II to the <i>Adhiniyam</i> . The AA in case of two dealers of RCC pipes levied tax at the rate of 9.2 per cent instead of 13.8 per cent. This resulted in short levy of tax of ₹ 2.56 lakh.	After we pointed out, the AA replied that tax was levied correctly at the rate of 9.2 per cent. Reply is not acceptable because RCC pipes are manufactured out of cement and are therefore, included in goods made of cement for which there is a specific entry.
6.	CTO, Circle-I, <u>Gwalior</u> 01	2004-05	<u>13.8</u> 4.6, 9.2	2.45	Tax on sale of timber, ply and <i>sunmica</i> was levied at the rate of 4.6/9.2 per cent treating the goods as packing boxes which was not correct because from the record it was evident that the dealer had sold timber, ply and <i>sunmica</i> severally. This resulted in short realisation of tax of ₹ 2.45 lakh.	After we pointed out, the AA stated that the dealer manufactured and sold packing boxes. Reply is contradictory to the facts on record.
7.	CTO, Circle III, <u>Jabalpur</u> 01	2004-05	<u>9.2</u> 4.6	1.71	LCO is liable to tax at the rate of 9.2 per cent being unspecified commodity under part IV of Schedule-II. The AA, however, levied tax at the rate of 4.6 per cent. This resulted in short of levy of ₹ 1.71 lakh.	After we pointed out, the AA stated that the dealer sold LCO and not heavy creosote oil. Reply is not relevant in view of the CCT's order dated 1 August 1998 which holds that LCO is taxable at the rate of 9.2 per cent.

(1)	(2)	(3)	(4)	(5)	(6)	(7)
8.	CTO, Circle-III, Jabalpur 01	2006-07	9.2 4.6	0.65	As per CCT, MP's order dated 28 January 2002 craft paper is included in all kinds of paper and is taxable at the rate of 9.2 per cent. In case of one dealer the AA levied tax on the sale of craft paper at the rate of 4.6 per cent. This resulted in short levy of ₹ 64,847.	After we pointed out, the AA stated that the craft paper was sold for packing purpose; therefore tax was correctly levied at the rate of 4.6 per cent. Reply is not acceptable in view of the CCT's order <i>ibid</i> .
	Total			94.50		

We reported the matter to the CCT, MP and the Government between March 2005 and January 2010; their replies have not been received (December 2010).

2.13 Non/short levy of tax

2.13.1 Four regional⁴ and five circle⁵ offices

The *Adhiniyam* provides that every dealer, who in the course of his business purchases any goods without paying tax thereon, shall be liable to pay purchase tax on the purchase price of such goods at the concessional rate of four per cent or at prescribed lower rate, except in case of goods specified in Schedule III, if, after such purchase the goods are used or consumed in the manufacture or packing of other goods for sale.

We observed between February 2008 and October 2009 that in case of 11 dealers, assessed between January 2007 and March 2009 for the periods 2003-04 to 2005-06, purchase tax on goods valued at ₹ 13.01 crore was either not levied or was levied at incorrect rate. This resulted in non/short levy of tax of ₹ 1.94 crore including minimum penalty/interest of

₹ 37.75 lakh as shown below:

(₹ in crore)

Sl. No.	Our observation	Purchase value	Rate of tax applicable (per cent)	Amount of non/short levy of tax (penalty/interest)
(1)	(2)	(3)	(4)	(5)
1.	In case of one dealer, purchase tax on high speed diesel (HSD) specified in Schedule III, was levied incorrectly at the concessional rate of 4.6 per cent (including surcharge) instead of prescribed rate.	5.52	28.75	1.33
Reply of the AA is awaited.				

⁴ Bhopal, Chhindwara, Gwalior and Satna.
⁵ Gwalior (2), Indore and Ujjain (2).

(1)	(2)	(3)	(4)	(5)
2.	In case of nine dealers purchase tax was not levied on raw material/ packing material purchased without payment of tax and used in the manufacture/packing of other goods for sale.	3.61	4.6	0.20 (0.38)
		2.82	1	
		0.10	4	
<p>The AAs in case of two dealers raised demand of ₹ 3.97 lakh (between January 2009 and February 2010), out of which ₹ 2.82 lakh was adjusted against the cumulative quantum of exemption (February 2010), while in case of four dealers it was stated (between November 2008 and October 2009) that action would be taken after verification. In case of one dealer the AA stated (October 2008) that the purchased goods were tax paid. We do not agree with the reply because on verification of the records of the selling dealers we found that the goods were purchased against declarations without payment of tax. In one case it was stated (October 2009) that purchase tax is not leviable on packing material. We do not find the reply in consonance with the provisions of the Act. In case of one dealer, reply of the AA is awaited.</p>				
3.	A dealer purchased <i>ghee</i> without paying tax thereon and consumed the same in the manufacture of <i>ayurvedic</i> medicines. However, 51 <i>per cent</i> of the medicines so manufactured were not sold but transferred to other States. Accordingly, 51 <i>per cent</i> of the stock of <i>ghee</i> so purchased was liable to purchase tax at the prescribed full rate but the AA levied purchase tax thereon at the concessional rate of 4.6 <i>per cent</i> .	0.96	8	0.03
The AA adjusted ₹ 4,01,717 against the cumulative quantum of exemption (June 2010).				

2.13.2 Two regional⁶ and five circle⁷ offices

The *Adhiniyam* provides for levy of tax at concessional rate of four *per cent* on the sale of goods meant for use as raw material in the manufacture of tax free goods for sale, but if the purchasing dealer uses them contrary to the specified purpose, he shall pay tax in respect of such goods at the rate equal to the difference between the prescribed full rate and the concessional rate.

We observed between March 2008 and December 2009 that in case of seven dealers, assessed between October 2006 and January 2009 for the periods 2003-04 to 2006-07, there was non/short levy of tax of ₹ 31.74 lakh as shown below:

⁶ Ratlam and Satna.

⁷ Bhopal, Gwalior, Indore (2) and Satna.

(₹ in lakh)

Sl. No.	Our observation	Amount of non/short levy of tax	Department's reply	Our comments
1.	During 2004-05 and 2005-06 the dealer purchased molasses aggregating ₹ 1.17 crore after paying tax at the concessional rate of 4.6 per cent and used the same in the manufacture of tax-free liquor which was not sold but transferred to other States. As the very purpose/condition of selling the goods manufactured out of molasses was defeated, tax on molasses was leviable at the full rate of 23 per cent instead of the concessional rate. However, tax on molasses at the differential rate of 18.4 per cent was neither paid by the dealer nor levied by the AA.	21.45	In the case of 2004-05, the AA stated that action would be taken after verification (November 2008). In the case of 2005-06, the AA stated that manufactured goods (liquor) was tax-free. (October 2009).	Final action is awaited. Reply is not relevant as we pointed out short payment/levy of purchase tax on the raw material (molasses) and not on the manufactured goods (liquor), keeping in view of provisions of Act relating to purchase tax.
2.	In case of three dealers, there was mistake in computation of tax.	3.16	Action would be taken after verification. (between January and December 2009).	In one case the CCT, MP intimated (November 2010) that ₹ one lakh had been deposited. In other two cases final action is awaited.
3.	The dealer was allowed a deduction of ₹ 33.37 lakh on account of sale of spares and electrodes to the wholly exempted units. Scrutiny revealed that during the relevant period there was no sale of the said goods. The incorrect grant of deduction involved tax effect of ₹ 3.07 lakh at the rate of 9.2 per cent.	3.07	Action would be taken after verification. (March 2008).	Final action is awaited.
4.	Although water tank is liable to tax at the rate of 4.6 per cent, the AA failed to levy tax on sale of water tanks valued at ₹ 60.82 lakh.	2.80	The AA raised demand of ₹ 2.80 lakh and adjusted the same against the cumulative quantum of exemption (December 2008).	-
5.	The AA allowed levy of tax on the sale of electrical goods of ₹ 27.56 lakh at concessional rate of 4.6 per cent under a notification dated 4 May 2000. Scrutiny revealed that the said notification was not applicable in the case of the assessee dealer. This resulted in short realization of tax of ₹ 1.26 lakh at the differential rate of 4.6 per cent.	1.26	The AA raised demand of ₹ 1.26 lakh (April 2009).	Recovery particulars are awaited.

We reported the matter to the CCT, MP and the Government between March 2006 and January 2010; their replies have not been received (December 2010).

2.14 Non-levy of tax on sales incorrectly treated as tax free/ exempted

Six regional⁸ and eleven circle⁹ offices

The *Adhiniyam* and the MP VAT Act read with the CST Act and notifications issued thereunder prescribe rates of commercial tax leviable on different commodities except those specified under Schedule I of the *Adhiniyam/Act* or exempted from whole of tax through notifications.

We observed between January 2008 and November 2009 that in 26 cases of 21 dealers, assessed between January 2007 and March 2009 for the periods 2000-01 to 2006-07, the AAs did not levy tax on sales turnover of ₹ 39.41 crore of taxable commodities like high density polyethylene

(HDPE)/poly propylene (PP) fabrics, *ayurvedic* medicines, cotton bandage etc. incorrectly treating them as tax free goods or exempted from tax. This resulted in non-levy of tax of ₹ 2.20 crore including interest as shown below:

(₹ in lakh)

Sl. No.	No. of dealers No. of cases	Commodity	Nature of sale	Turnover	Rate of tax applicable (per cent)	Amount of tax not levied
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	14 18	HDPE/PP fabrics	Intra-State	3,042.93	4.6	198.63
			Inter-State (without C forms)	571.43	10	
			Inter-State (with C forms)	37.61	4	
In case of two dealers the AA stated (October 2009) that action would be taken after verification. In case of four dealers it was stated (between February and November 2009) that HDPE fabrics is a kind of cloth, hence tax-free under Schedule I of the <i>Adhiniyam</i> . In case of two dealers it was stated (October and November 2009) that as per order of the Commissioner, Sales Tax, MP issued under Section 42-B of the repealed MP GST Act, HDPE fabric is a kind of cloth. We do not agree with the contention of the AAs because MP High Court ¹⁰ has held that HDPE fabric is not a kind of cloth but it is covered in plastic goods. In case of six dealers it was stated (between February and November 2009) that HDPE fabric is exempted from tax under notification no. 68 dated 24 August 2000. Reply does not correctly interpret the said notification which exempts all varieties of cloth and not HDPE fabric, which is plastic goods.						
2.	01 02	Potato <i>khapta</i> ¹¹	Intra-State	17.00	4	10.22
			Inter-State (without C forms)	95.35	10	
The AA stated (August 2009) that action would be taken after verification.						
3.	01 01	Chemical fertilizer	Intra-State	110.35	4.6	5.08
The AA stated (April 2008) that action would be taken after verification.						

⁸ Indore (5) and Jabalpur.

⁹ Bhopal, Gwalior (2), Indore (5), Jabalpur (2) and Ujjain.

¹⁰ M/s Raj Pack Well Ltd. v/s Union of India [1990 (50) - ELT- 201 (MP)].

¹¹ Chips of potato.

(1)	(2)	(3)	(4)	(5)	(6)	(7)
4.	02 02	Cotton rolled/gauze bandage	Intra-State	35.75	9.2	3.29
In case of one dealer the AA stated (January 2008) that besides cotton bandage, the dealer also sold loose cloth which is tax free under Schedule I of the <i>Adhiniyam</i> . We do not agree with the reply because on verification from the registration certificate (RC) of the dealer we found that his business was to manufacture and sell "rolled/gauze bandage" for which "cloth" was recorded as raw material. In another case it was stated (May 2009) that the dealer sold cloth as such without any processing thereon. We do not agree with the reply because from a review of the audited manufacturing account of the dealer we found that he was engaged in the production of cotton bandage by consuming/processing cotton, chemical, fuel etc.						
5.	01 01	Silk sarees	Intra-State	7.88	13.8	1.09
The AA stated (October 2009) that action would be taken after verification.						
6.	01 01	Readymade garments	Intra-State	16.87	4	0.98
The AA stated (September 2008) that action would be taken after verification.						
7.	01 01	Ayurvedic medicines	Intra-State	6.03	9.2	0.55
The AA replied (December 2008) that the dealer sold life saving drugs exempted under the notification dated 27 March 2001. Reply does not correctly interpret the said notification as it does not include ayurvedic medicines as life saving drugs.						

We reported the matter to the CCT, MP and the Government between April 2008 and January 2010; their replies have not been received (December 2010).

2.15 Non/Short levy of entry tax

Eleven regional offices¹² and 18 circle offices¹³

Under the MP *Sthaniya Kshetra Me Maal Ke Pravesh Par Kar Adhiniyam*, 1976 and rules and notifications issued thereunder, entry tax (ET) is leviable at the specified rates on the goods entering into a local area for consumption, use or sale therein.

We observed between May 2008 and December 2009 that in case of 36 dealers assessed/re-assessed between July 2007 and March 2009 for the periods 2004-05 to 2006-07, ET on goods like yarn, pulses, plant and machinery, motor vehicles, HSD, coal, furnace oil, timber etc. valued at ₹ 61.71 crore was either not levied or was levied at incorrect rate on their entry into local area. This resulted in non/short realisation of ET of ₹ 92.81 lakh including interest and penalty of ₹ 14.84 lakh.

After we pointed out the cases, the AAs recovered ₹ 1.93 lakh (September and December 2009) in case of two dealers. In one case the CCT, MP intimated (November 2010) that demand for ₹ 81,993 alongwith penalty of an equal amount had been raised. In case of 24 dealers it was stated (between May 2008 and December 2009) that action would be taken after verification.

¹² Chhindwara, Guna, Indore, Itarsi, Jabalpur, Mandasaur, Sagar, Satna(3), and Ujjain.

¹³ Chhindwara, Guna, Gwalior (3), Indore (4), Jabalpur (2), Katni, Naugaon, Neemuch, Sagar, Shahdol and Ujjain (2).

In remaining cases of nine dealers the departmental replies and our comments thereon are as follows:

Sl. No.	Name of auditee unit/ No. of dealers	Commodity	Departmental reply	Our comments
1.	CTO I, <u>Ujjain</u> 01	<i>Tuwar</i> (pulses)	The pulses purchased during 1 June 2004 to 31 March 2005 were exempted from ET. (February 2009)	We do not agree with the reply because the notification dated 23 April 2002, exempting pulses from ET, was in force only up to 31 May 2004.
2.	CTO III, <u>Gwalior</u> 01 RAC, <u>Mandsaur</u> 01	Raw material and incidental goods	The goods entered in the factory situated on railway's land and as per various judicial decisions ¹⁴ , railway sidings are not covered in local area. Therefore, ET was not leviable. (November 2008 and March 2010).	We do not agree with the reply because the said decisions do not discuss as to why the railway sidings are not included in a local area. However, the MP Board of Revenue, in two cases ¹⁵ , has categorically held that railway sidings and rail lines are covered in local area.
3.	<u>RAC, Satna</u> 01 CTO II, <u>Neemuch</u> 01	Tractor	As per entry no. 9 of Schedule I of the <i>Adhiniyam</i> , tractor is tax-free. (January and July 2009).	We do not agree with the reply because no such entry existed in Schedule I of the <i>Adhiniyam</i> during the relevant periods.
4.	CTO III, <u>Gwalior</u> 01	Tractor	Tractor parts are exempted from ET vide notification dated 30 April 2002. (October 2009).	The reply is not specific as our observation pertains to tractors and not to tractor parts. Moreover, tractors are not covered under the said notification.
5.	CTO XIII, <u>Indore</u> 01	Yarn	Yarn purchased for use as raw material was exempted from ET under notification dated 6 September 2001. (October 2009).	We do not agree with the reply because notification dated 6 September 2001 exempts raw materials meant for use in the manufacture of yarn and not the yarn itself.
6.	<u>RAC, Itarsi</u> 01	HSD	The dealer purchased light diesel oil (LDO), which is different from diesel, therefore ET was not leviable at enhanced rate under notification dated 26 December 2001. (November 2009).	Fact however remains that the word 'diesel' in the notification dated 26 December 2001 includes both LDO and HSD.
7.	CTO VI, <u>Indore</u> 01	HDPE and LDPE	HDPE/LDPE purchased for consumption as raw material, was ET paid. (June 2009).	Fact however remains that HDPE/LDPE, purchased for consumption, belongs to Schedule III of the Act, therefore can not be regarded as ET paid.

We reported the cases to the CCT, MP and the Government between May 2008 and January 2010; their replies have not been received (December 2010).

¹⁴ M/s Jai Prakash Associates Ltd. v/s State of MP and others [(2006)-8 STJ-415]
M/s Naval Ispat *Udhyog*, Kharsia v/s CST, MP [(1990) 23 VKN 537].

¹⁵ M/s Simical Engineering Co. v/s Appellate Dy. CCT [(2004) 4 STJ 519]
M/s Larsen and Tubro Ltd. v/s CCT [(2002) 35 VKN 50].

2.16 Non-realisation of profession tax

Under the MP *Vritti Kar Adhiniyam*, 1995, every person who carries on a trade either himself or by an agent or representative or who follows a profession or calling other than agriculture in MP shall be liable to pay profession tax (PT) at the rate specified in the Schedule of the Act. The Act further provides that such person liable to pay tax shall obtain a certificate of registration from the PT assessing authority in the prescribed manner.

On cross verification of information obtained from 30 circle offices¹⁶ of Commercial Tax Department (CTD) with (i) lists furnished in respect of liquor licencees, cinema houses, video parlours and cable operators by the State Excise Department and (ii) lists of beauty parlours furnished by the Customs & Central Excise Department, we observed that 3,682 persons remained unregistered with the CTD under the Act for the years 2003-04 to 2008-09, although they were

liable to pay PT. This resulted in non-realisation of PT of ₹ 76.94 lakh at the rate ranging from ₹ 1,000 to ₹ 2,500 per annum.

We reported the matter to the CCT, MP and the Government in March 2010; their replies have not been received (December 2010).

2.17 Incorrect determination of turnover

Five regional offices¹⁷ and two circle offices¹⁸

Under the *Adhiniyam* taxable turnover (TTO) is determined after deducting from the turnover, the sale price of tax paid goods and the amount of tax, included in the aggregate of sale prices. The *Adhiniyam* also provides for imposition of penalty of a sum not exceeding the amount of tax under-assessed in case of omission attributable to the assessee and penalty of a sum not exceeding five times of the tax evaded in case of furnishing false particulars by the assessee.

2.17.1 We observed between September 2008 and November 2009 that while determining TTO of five dealers, assessed between June 2007 and March 2009 for the periods 2004-05 and 2005-06, four dealers were allowed deduction of sales of tax paid goods valued at ₹ 2.40 crore which was not admissible because the said goods purchased by the dealers from unregistered dealers/a place outside the State were not in the nature

of tax paid goods. In case of one dealer, deduction of ₹ 12 lakh in excess of admissible amount of tax paid sale was allowed incorrectly. Thus, TTO was under-determined by ₹ 2.52 crore. This resulted in non-levy of tax of ₹ 21.39 lakh including maximum penalty of ₹ 2.58 lakh.

¹⁶ CTO, Indore (15); CTO, Gwalior (4); CTO, Ujjain (3); CTO, Mandsaur (2); CTO, Neemuch (2); CTO, Sagar (2); CTO, Shajapur and CTO, Tikamgarh.

¹⁷ Indore (3), Morena and Satna.

¹⁸ Indore and Jabalpur.

After we pointed out the cases, the AAs in case of four dealers stated (between September 2008 and November 2009) that action would be taken after verification. In one case it was stated (May 2009) that the deduction of tax paid sales was allowed after verification. Contention of the AA is not correct as we verified and confirmed that the goods sold were purchased from a dealer who was not registered during the relevant period.

2.17.2 During test check of the records of two regional offices¹⁹ and three circle offices²⁰ between January and December 2009 we observed that out of five dealers, assessed between January 2008 and March 2009 for the periods 2003-04 to 2006-07, turnover in case of four dealers was determined at ₹ 6.21 crore against the aggregate of sales of ₹ 6.91 crore recorded in their audited books of accounts/stock statement, while in one case the dealer deliberately misstated the opening stock in his books of accounts as ₹ 35 lakh against of ₹ 53 lakh. Thus, turnover aggregating ₹ 89 lakh was not assessed to tax and resulted in non-levy of tax of ₹ 13.92 lakh including minimum penalty of ₹ 6.75 lakh.

After we pointed out the cases, in one case the CCT, MP intimated (November 2010) that demand of ₹ 1.78 lakh alongwith penalty of an equal amount had been raised while in remaining cases the AAs stated (between January and December 2009) that action would be taken after verification.

2.17.3 During test check of the records of two regional offices and one circle office between January and November 2009 we observed that in case of three dealers, assessed between January 2008 and January 2009 for the periods 2004-05 and 2005-06, incorrect determination of TTO to the extent of ₹ 2 crore resulted in non-levy of tax of ₹ 10.86 lakh as shown below:

Sl. No.	Name of auditee unit	Our observation	Department's reply/ our comments
(1)	(2)	(3)	(4)
1.	RAC, Satna	Although sale aggregating ₹ 99.29 lakh was not part of the gross turnover, the AA incorrectly allowed deduction thereof. Thus, TTO was under determined by ₹ 99.29 lakh. This resulted in non-levy of tax of ₹ 4.57 lakh.	The AA stated (August 2009) that action would be taken after verification.
2.	RAC, Satna	The AA allowed deduction of deemed sale of conveyor belt material and retreading material valued at ₹ 43.38 lakh treating them as consumable goods. This was not correct as the materials do not lose their identity during the process of retreading. Thus, TTO was under determined by ₹ 43.38 lakh. This resulted in non-levy of tax of ₹ 3.99 lakh.	The AA stated (January 2009) that during the process of repairing, conveyor belt solution loses its identity. Reply is not specific as our observation refers to conveyor belt material and retreading material and not to conveyor belt solution.

¹⁹ Indore and Satna.

²⁰ Guna, Indore and Waidhan.

(1)	(2)	(3)	(4)
3.	CTO, Circle-X, Indore	The AA allowed deduction of ₹ 57.51 lakh on account of discount given by the dealer through credit notes for rate difference. This was not correct because such discount could not be treated as cash discount. Thus, TTO was less determined by ₹ 57.51 lakh. This resulted in non-levy of tax of ₹ 2.30 lakh.	The AA stated (November 2009) that action would be taken after verification.

2.17.4 During test check of the records of four regional offices²¹ and two circle offices²² between December 2007 and November 2009 we observed that in case of seven dealers, assessed between December 2003 and January 2009 for the periods 2000-01 to 2001-02 and 2003-04 to 2005-06, although tax was not included in the aggregate of sale prices, the AAs, while determining TTO, allowed deduction of the amount of tax from turnover. This resulted in short levy of tax of ₹ 7.35 lakh including minimum penalty of ₹ 21,000.

After we pointed out the cases, in case of two dealers ₹ 80,132 was adjusted against the quantum of exemption (December 2008 and November 2010) while in another case ₹ 1.05 lakh was recovered (between November 2008 and June 2009).

In case of three dealers the AAs stated (between February and November 2009) that action would be taken after verification. In the remaining one case, the AA stated (February 2009) that the deduction allowed was correct. Reply is not acceptable because in order to determine the gross turnover, the amount of tax was deducted from the gross receipts and for determining TTO, the amount of tax was again deducted from the gross turnover so determined. Thus, we found that there was double deduction, which was not correct.

We reported the matter to the CCT, MP and the Government between March 2008 and January 2010; their replies have not been received (December 2010).

²¹ Gwalior, Indore, Itarsi and Sagar.
²² Sagar and Waidhan.

2.18 Incorrect grant of set off

One Regional and two circle offices

A registered dealer, who purchases any tax paid goods which are specified as raw material or incidental goods in his RC and consumed or used in the manufacture of other goods for sale, shall be entitled to set off at a rate equal to the difference between the tax at full rate and the tax at concessional rate of four *per cent* or such other concessional rate as may be notified, on the quantum of price of goods so purchased. Notification dated 1 April 1995 prescribes the other concessional rate of *zero per cent* in respect of iron and steel of any category meant for use as raw material in the manufacture of other goods of the same or any other category of iron and steel.

We observed between December 2008 and December 2009 that four dealers, assessed between June 2007 and March 2009 for the periods 2004-05 and 2005-06, were incorrectly allowed set off of ₹ 9.14 lakh as shown below:

S. No.	Name of Unit No. of dealers	Period Month of assessment	Our observation in brief	Department's reply/ our comments
1.	RAC, Indore 01	2005-06 March 2009	Set off of ₹ 6.26 lakh was granted under notification dated 1 April 1995 in respect of tax paid copper bars/rods consumed in the manufacture of other goods. This was not correct because copper bars/rods are not covered under the said notification.	The AA stated (June 2009) that action would be taken after verification.
2.	CTO, Circle III, Jabalpur 02	2005-06 January 2009	Set off of ₹ 1.90 lakh was incorrectly granted in respect of tax paid cement as the same was not consumed by the dealer in the manufacture of other goods but was transferred to MP State Electricity Board.	The AA stated (November 2009) that action would be taken after verification.
3.	CTO, Circle I, Jabalpur 01	2004-05 June 2007 2005-06 September 2009	Set off of ₹ 98,000 was incorrectly granted in respect of tax paid furnace oil as the same was not specified as raw material or incidental goods in the RC of the dealer.	The AA stated (December 2008) that action would be taken after verification.

We reported the matter to the CCT, MP and the Government between March 2009 and January 2010; their replies have not been received (December 2010).

2.19 Grant of inadmissible input tax rebate

Three Regional and three circle offices

MP VAT Act provides that input tax rebate (ITR) shall be allowed to a registered dealer who purchases any goods, specified in Schedule II except goods specified in Part III from another registered dealer after payment of input tax. The Act also provides for grant of ITR to a dealer in respect of tax paid raw material purchased by him on or after 1 April 2005 and held in stock on 1 April 2006 for consumption or use in the manufacture of other goods for sale.

We observed between May and December 2009 that six dealers were granted inadmissible ITR of ₹ 30.28 lakh as shown below:

Sl. No.	Name of auditee unit No. of dealers	Period of assessment Month of assessment/ order	Our observation
(1)	(2)	(3)	(4)
1.	CTO, Circle V, Bhopal 01 CTO, Betul 01 RAC, Indore 01	2006-07 October 2008 to February 2009	The dealers purchased goods valued at ₹ 37.89 crore after payment of input tax of ₹ 1.65 crore. However, the AAs incorrectly computed and allowed ITR of ₹ 1.85 crore on the said purchase value. This resulted in grant of inadmissible ITR of ₹ 19.76 lakh.
In one case the AA accepted (December 2009) our observation. In the remaining two cases the AAs stated (September and November 2009) that action would be taken after verification.			
2.	RAC, Indore 01	Order passed in July 2006 under Section 73 of the VAT Act	In the accounting period 2005-06, the dealer purchased viscose fibre valued at ₹ 8.51 crore in respect of which he was allowed set off. This implies that the said goods were consumed in the manufacturing process during 2005-06 and accordingly nothing out of the said goods was in stock of the dealer on 1.4.2006. However, the AA allowed ITR of ₹ 7.73 lakh on viscose fibre of ₹ 1.93 crore, which was included in the said purchase value of ₹ 8.51 crore. This resulted in grant of inadmissible ITR of ₹ 7.73 lakh.
In reply to our observation the AA stated (May 2009) that ITR was allowed after proper verification. Reply is contradictory to the facts contained in the assessment order of the dealer for the period 2005-06.			

(1)	(2)	(3)	(4)
3.	<u>RAC, Chhindwara</u> 01	<u>2006-07</u> November 2008	The AA allowed ITR of ₹ 2.26 lakh in respect of Cadbury products valued at ₹ 18.09 lakh. This was not correct because the purchase/sale of Cadbury products was not accounted for in the audited and certified trading account of the relevant period.
The AA stated (December 2009) that ITR was allowed because the dealer purchased goods after payment of input tax. The reply does not explain why ITR was allowed in respect of goods that were not included in the purchases recorded in the audited trading account.			
4.	<u>CTO, Circle II, Ujjain</u> 01	<u>2006-07</u> January 2009	The AA incorrectly allowed ITR of ₹ 53,000 in respect of timber, which is specified in Part III of Schedule II of the Act and thus did not qualify for input tax rebate.
The AA stated (August 2009) that ITR was correctly allowed as the dealer purchased wood after payment of tax and used the same in the manufacture of furniture. The reply does not explain why ITR was allowed on wood, i.e. timber, which is specified in Part III of Schedule II of the Act.			

We reported the matter to the CCT, MP and the Government between July 2009 and February 2010; their replies have not been received (December 2010).

2.20 Non levy of surcharge

Four Regional²³ and one circle²⁴ offices

Section 10-A of the *Adhiniyam* provides for levy of surcharge on the amount of tax payable under the *Adhiniyam* at the rate of 15 per centum of such amount. MP High Court has held that surcharge shall be treated as part of the rate of tax for the purpose of determining the rate of tax applicable on inter-State sales under the CST Act.

We observed between July 2008 and February 2009 that in six cases of five dealers, assessed between June 2007 and January 2008 for the periods 2004-05 and 2005-06, the AAs failed to levy surcharge on the amount of tax of ₹ 1.10 crore payable on the sale and purchase of various goods. This resulted in non-

levy of surcharge of ₹ 16.57 lakh at the rate of 15 per centum of the tax amount.

After we pointed out the cases, the AA, in two cases, raised demand of ₹ 7.83 lakh (August 2008 and July 2010) out of which ₹ 6.83 lakh in one case was adjusted against the ceiling of monetary limit of exemption of the dealers. In two cases it was stated (between January and February 2009) that action would be taken after verification. In one case the AA stated (August 2008) that the dealer sold declared goods, therefore surcharge was not leviable. We do not agree with the contention of the AA because the dealer

²³ Indore (2) and Jabalpur (2).

²⁴ Indore.

sold cotton waste, which is not included in the category of declared goods enlisted in the CST Act. In one case, the AA contended (September 2008) that surcharge is not leviable in case of inter-State sale. Contention of the AA is not in consonance with the judicial decision²⁵ *ibid*.

We reported the cases to the CCT, MP and the Government between August 2008 and May 2009; their replies have not been received (December 2010).

2.21 Short levy of tax on intra-State sale incorrectly treated as inter-State sale

Three circle offices ²⁶

As per the CST Act, sale of goods shall be deemed to take place in the course of inter-State trade, if the sale occasions the movement of goods from one State to another or is effected by a transfer of documents of title to the goods during their movement from one State to another. If the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another.

We observed between March 2008 and March 2009 that three dealers, assessed between October 2006 and January 2008 for the periods 2003-04 to 2005-06, sold minerals like bauxite, lime stone etc. valued at ₹ 1.42 crore to local registered dealers. The AAs,

however, while finalizing the assessments, incorrectly treated the local sale as inter-State sale on the basis of 'C' forms issued by the said local purchasing dealers and allowed levy of tax at the concessional rate of four *per cent*. This resulted in short levy of tax of ₹ 13.10 lakh at the differential rate of 9.8/5.2 *per cent*.

After we pointed out the cases, the AAs, in case of two dealers, stated (December 2008 and March 2009) that action would be taken after verification. In case of remaining one dealer, the AA did not offer any specific comment.

We reported the matter to the CCT, MP and the Government between May 2008 and April 2009; their replies have not been received (December 2010).

²⁵ CST, MP v/s M/s Raymond Cement Works, Bilaspur [(1996) 29 VKN 472].
²⁶ Jabalpur and Satna (2).

2.22 Incorrect grant of refund

Two Regional²⁷ and one circle²⁸ offices

Under the *Adhiniyam*, any amount collected by any person by way of tax not payable under any provision of the *Adhiniyam* shall be liable to forfeiture to the State Government.

We observed between September 2008 and August 2009 that four dealers, assessed between September 2008 and March 2009 for the periods 2004-05 and 2005-06, were liable to pay tax of ₹ 66.90 lakh but they collected

₹ 75.78 lakh by way of tax/surcharge. The AAs, instead of forfeiting the excess amount of tax of ₹ 8.88 lakh so collected by the dealers, incorrectly allowed refund of the same. This resulted in incorrect grant of refund of ₹ 8.88 lakh.

After we pointed out the cases, the AA in one case accepted the audit observation (March 2009). Further development has not been reported (December 2010). In two cases the AA stated (September 2008) that refund was correct as tax and surcharge was not shown as charged separately in the sales invoices. Fact, however, remains that excess tax collected in any manner, whether charged separately in the bills or otherwise, is liable to be forfeited. In the remaining one case, the AA stated (August 2009) that refund was correct because no tax/surcharge was shown as charged separately in the sales bills of tractors and tractor parts. For collection of tax at higher rate on the sale of leaf springs, he stated that the dealer deposited excess tax due to ignorance, therefore in view of decision of the Board of Revenue²⁹ the refund allowed was correct. We do not agree with the reply as it does not interpret the decision correctly. As per the decision, refund was allowed to such a dealer in whose case excess tax collection was not proved, whereas during scrutiny of the instant case, we found that the dealer collected surcharge and tax at higher rate which was not payable.

We reported the matter to the CCT, MP and the Government between November 2008 and October 2009; their replies have not been received (December 2010).

²⁷ Satna and Shajapur (2).

²⁸ Indore.

²⁹ M/s Rallis India Pvt. Ltd., Indore v/s CST, MP [(1999) 32 VKN 254].

2.23 Incorrect grant of exemption

One Regional and two circle offices

As per exemption notification dated 6 October 1994 a new industrial unit engaged in repacking of goods is not eligible for exemption. The MP High Court has held that bottling of LPG is not a process of manufacture but it is repacking of goods. Under the notification, benefit of exemption from payment of tax is available to the extent of maximum cumulative quantum of tax specified in the EC.

We observed between December 2007 and September 2009 that three dealers were incorrectly allowed exemption from payment of tax aggregating ₹ 7.66 lakh as shown below:

(₹ in lakh)

Sl. No.	Name of auditee unit	Period Month of assessment	Tax effect	Our observation in brief
(1)	(2)	(3)	(4)	(5)
1.	RAC, Sagar	2003-05 September 2006	4.08	A dealer engaged in bottling of LPG was allowed exemption from payment of entry tax on the basis of EC issued to him under notification dated 6 October 1994. As bottling of LPG, being repacking of goods, is not covered under the notification, grant of exemption was not correct.
The AA, stated (December 2007) that as per circular dated 16 June 1998, refilling of gas is a process of manufacture. Reply is not in consonance with the decision of MP high court ³⁰ referred to above.				
2.	CTO, Katni	2004-05 January 2008	1.04 1.04 (penalty)	The AA levied purchase tax of ₹ 1.04 lakh on raw material valued at ₹ 26.04 lakh and allowed exemption from payment of tax so levied on the basis of the EC issued to the dealer. Exemption allowed was not correct because the said goods were purchased after expiry of the EC. As the grant of incorrect set off of tax against the quantum of exemption on the basis of invalid declarations was attributable to the dealer, he was also liable to pay penalty of an equal amount of ₹ 1.04 lakh.
The AA stated (March 2009) that action would be taken after verification.				

³⁰ Modi Gas Service, Indore V/s MP State & others [2006-8-STJ-536 (MP)].

(1)	(2)	(3)	(4)	(5)
3.	CTO-II, Gwalior	2005-06 December 2008	0.90 0.60 (interest)	The dealer sold cement paint valued at ₹ 6.50 lakh after expiry of the eligibility period specified in the EC issued to him. However, the AA, on the basis of the expired EC, incorrectly allowed exemption from payment of tax of ₹ 89,700 payable by the dealer on the said sale. Since the dealer did not pay the tax on due dates, therefore he was also liable to pay interest of ₹ 60,373.
The AA stated (September 2009) that action would be taken after verification.				

We reported the matter to the CCT, MP and the Government in February 2008 and October 2009; their replies have not been received (December 2010).

2.24 Incorrect determination of value addition

Four Regional³¹ and four circle³² offices

Section 9-B of the *Adhiniyam* provides for levy of tax at prescribed rate on the value addition on resale of goods specified in Part II to VI of Schedule II of the *Adhiniyam*.

We observed between May 2007 and November 2009 that in case of eight dealers, assessed between April 2006 and October 2008 for the periods 2003-04 to 2005-06, value addition on resale of goods was less determined

by ₹ 1.07 crore. This resulted in short realisation of tax of ₹ 7.66 lakh.

After we pointed out the cases, the AAs in three cases raised demand of ₹ 2.22 lakh (between July and October 2008), while in three cases it was stated (between March 2008 and August 2009) that action would be taken after verification. In one case, the AA stated (February 2009) that a notification exempts oil seeds from tax leviable under Section 9-B of the *Adhiniyam*. Our observation remains unreplied because the AA failed to specify the notification which exempts oil seeds from the tax leviable under the Section *ibid*. In the remaining one case, the AA did not offer any specific comment.

We reported the cases to the CCT, MP and the Government between June 2007 and January 2010; their replies have not been received (December 2010).

³¹ Indore, Khandwa and Satna (2).

³² Indore (2), Sagar and Vidisha.

2.25 Non/short levy of tax under the CST Act

As per CST Act, every selling dealer who fails to furnish declaration, duly filled and signed by the purchasing registered dealer in Form 'C' obtained by the latter from the prescribed authority, shall be liable to pay tax in respect of inter-State sale of declared goods at twice the specified rate and in respect of other goods at the rate of 10 per cent or at the specified rate, whichever is higher, instead of concessional rate of four per cent. Further, inter-State sale of tax paid goods is exempted from payment of tax subject to the fulfillment of requirement of furnishing declaration in Form 'C'

2.25.1 We observed in respect of six regional offices and six circle offices between May 2007 and December 2009 that in case of 14 dealers tax on inter-State sale of ₹ 19.10 crore, in respect of which declarations in Form 'C' were not furnished, was either not levied or was levied at incorrect rate. This resulted in non/short levy of tax of

₹ 1.48 crore as shown below:

(₹ in crore)

Sl. No.	Name of auditee unit No. of dealers	Period Month of assessment	Commodity Turnover	Rate of tax applicable (per cent)	Rate of tax applied (per cent)	Amount of non/short levy of tax
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	RAC, Chhindwara 01	2002-03 July 2008 (Reassessment)	Soya flour 12.34	10	-	1.23
The AA, referring to a decision of MP Board of Revenue ³³ , stated (December 2009) that soya flour is tax free under the entry namely, "Atta, maida, suji, rawa and flour" of Schedule I of the Adhiniyam. Contention of the AA is not correct because the said entry has been deleted from Schedule I (effective from 15 March 2000) with effect from 23 April 2002 and inserted in part V of Schedule II vide MPCT (Amendment) Act, 2002 from the same date.						
2.	RAC, Indore 01	2003-04 January 2007	Wheat 2.58	2	-	0.05
The AA raised demand of ₹ 5.15 lakh (April 2008).						

³³

M/s S. M. Dye Chem Ltd., Vidisha v/s CCT, MP [(2004) 3 CT-STJ 245].

(1)	(2)	(3)	(4)	(5)	(6)	(7)
3.	CTO, Katni 02	2005-06 December 2008	Explosives 0.39	13.8	4	0.05
		2003-04 January 2007	Hessian cloth and packing material 0.75	10	8	
In case of one dealer the AA raised demand of ₹ 1.50 lakh (August 2009) and in case of the other dealer the AA stated (October 2009) that action would be taken after giving reasonable opportunity to the dealer. Further reply has not been received (December 2010).						
4.	RAC, Guna 01	2005-06 April 2008 and 2006-07 December 2008	Transfor- mers 0.50	10	4	0.03
The AA stated (September 2009) that out of the aggregate of sale value of ₹ 12.79 crore, the dealer had furnished 'C' forms for ₹ 12.29 crore, on the bare value of goods, excluding the amount of tax of ₹ 50 lakh for which furnishing of 'C' forms was not required. Contention of the AA is not correct because 'C' form is required to be furnished to cover the entire amount receivable by the selling dealer.						
5.	RAC, Indore 01	2004-05 September 2007	PP fabric 0.26	10	-	0.03
The AA stated (February 2009) that PP fabric is tax-free vide notification dated 24 August 2000. The contention of the AA is not correct as the said notification exempts all varieties of cloth and not PP fabric, which is manufactured in <i>power looms</i> on which duty is leviable under Central Excise Act.						
6.	CTO I, Ujjain 02	2004-05 January 2008	Disposable containers 0.28	10	4	0.03 (including penalty)
		2004-05 January 2008	Machinery and parts thereof 0.07	10	4	
In case of one dealer the AA stated (February 2009) that action would be taken after verification, while in case of the other dealer the AA stated (February 2009) that the 'C' form furnished by the dealer involves sale value of ₹ 7,59,220. We do not agree with the reply because from the 'C' form it was evident that the issuing authority issued the same only for ₹ 75,922. However, the 'C' form was subsequently <u>tampered</u> to be read as ₹ 7,59,220.						
7.	RAC, Itarsi 01	2004-05 December 2007	Sulphur 0.89	10	8	0.02
The AA stated (November 2009) that the dealer sold <i>khandsari</i> sugar (declared goods) on which tax was correctly levied at the rate of eight <i>per cent</i> . Reply is not acceptable because in the appeal order dated 2 January 2009 of Dy. Commissioner (Appeal), Bhopal, it was stated that the dealer sold sulphur, which is not included in declared goods.						

(1)	(2)	(3)	(4)	(5)	(6)	(7)
8.	<u>CTO, Mandla</u> 01	<u>2002-03</u> November 2005	<u>Plywood</u> 0.23	13.8	8	0.01
The AA raised demand of ₹ 1.47 lakh (January 2008).						
9.	<u>CTO I, Satna</u> 01	<u>2005-06</u> March 2009	<u>Iron scrap</u> 0.35	8	4	0.01
The AA stated (December 2009) that action would be taken after verification.						
10.	<u>CTO-X & XI,</u> <u>Indore</u> 02	<u>2004-05</u> January 2008	<u>Soap</u> 0.13	13.8	10	0.01 (including interest)
		<u>2004-05</u> January 2008	<u>Yarn</u> 0.05	10	4	
The AAs, in case of both dealers, stated (March and November 2009) that action would be taken after verification.						
11.	<u>RAC, Indore</u> 01	<u>2005-06</u> March 2009	<u>Tendu leaves</u> 0.29	25.3	23	0.01 (including interest)
After the matter was pointed out the CCT, MP intimated (November 2010) that demand for ₹ 1.12 lakh had been raised.						

2.25.2 During test check of the records of two circle offices³⁴ between February and October 2008 we observed that in case of four dealers, assessed between January 2007 and January 2008 for the periods 2003-04 and 2004-05, tax on inter-State sales of ₹ 4.49 crore against 11 number of 'C' forms was either not levied or was levied at concessional rate. We verified and confirmed from the issuing States that out of these 'C' forms, eight forms were not issued by the issuing authorities to the purchasing dealers mentioned therein and one was not issued by the purchasing dealer to the selling assessee dealer, while the dealers mentioned in two 'C' forms were not found registered in the concerned offices. Thus, all the 11 number of 'C' forms were not valid and therefore the entire sale value of ₹ 4.49 crore involved therein was chargeable to tax at full rate. This resulted in short realisation of revenue of ₹ 37.68 lakh.

We reported the matter to the AAs between September 2009 and March 2010; their replies have not been received (December 2010).

We reported the cases to the CCT, MP and the Government between February 2006 and March 2010; their replies have not been received (December 2010).

³⁴ Gwalior and Indore.