

CHAPTER-II : VALUE ADDED TAX, SALES TAX, ENTRY TAX AND PROFESSION TAX

2.1.1. Tax administration

The assessment and collection of different taxes like sales tax, value added tax, entry tax, entertainment tax, luxury tax and profession tax in the State are regulated under the Orissa Sales Tax (OST) Act, 1947 valid up to March 2005, the Central Sales Tax (CST) Act, 1956, the Orissa Value Added Tax (OVAT) Act 2004, the Orissa Entry Tax (OET) Act, 1999, the Orissa Entertainment Tax (ET) Act, 2006, the Orissa Luxury Tax (OLT) Act, 1995 and the Orissa State Tax on Professions, Trades, Callings and Employments (PT) Act, 2000. The Commissioner of Commercial Taxes (CCT) under the administrative control of the Principal Secretary, Finance Department administers the above Acts and Rules made thereunder and is assisted by the Additional CCTs, Joint CCTs, Deputy CCTs, Assistant CCTs and Commercial Tax Officers (CTOs) at headquarters, zone, range and circle levels.

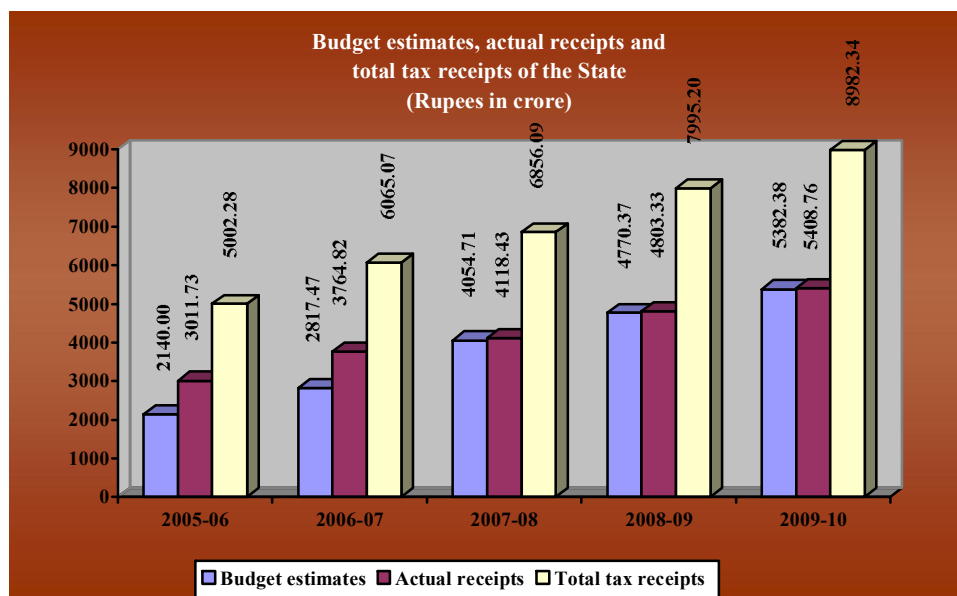
2.1.2 Trend of receipts

Actual tax receipts from OST/VAT/ CST/OET/PT and ET/OLT during the last five years from 2005-06 to 2009-10 are as under:

A. OST/OVAT/ CST

(Rupees in crore)						
Year	Budget estimates	Actual receipts	Variation excess (+)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2005-06	2,140.00	3,011.73	(+) 871.73	(+) 40.73	5,002.28	60.21
2006-07	2,817.47	3,764.82	(+) 947.35	(+) 33.62	6,065.07	62.07
2007-08	4,054.71	4,118.43	(+) 63.72	(+) 1.57	6,856.09	60.07
2008-09	4,770.37	4,803.33	(+) 32.96	(+) 0.69	7,995.20	60.08
2009-10	5,382.38	5,408.76	(+) 26.38	(+) 0.49	8,982.34	60.22

The trend of receipts showed that it increased from ₹ 3,011.73 crore in 2005-06 to ₹ 5,408.76 crore in 2009-10 (79.59 per cent) and its contribution to total tax revenue of the State varied between 60.07 per cent and 62.07 per cent. The bar graph of budget estimates (BE) and actual receipts vis-à-vis the total tax revenue receipts of the State for the above period are given in the following chart.



B. Entry tax

(Rupees in crore)						
Year	Budget estimates	Actual receipts	Variation excess (+)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2005-06	280.00	463.34	(+) 183.34	(+) 65.48	5,002.28	9.26
2006-07	370.00	574.00	(+) 204.00	(+) 55.13	6,065.07	9.46
2007-08	602.70	626.90	(+) 24.20	(+) 4.02	6,856.09	9.14
2008-09	580.90	638.32	(+) 57.42	(+) 9.88	7,995.20	7.98
2009-10	689.38	815.25	(+) 125.87	(+) 18.26	8,982.34	9.08

The trend of receipts showed that it increased from ₹ 463.34 crore in 2005-06 to ₹ 815.25 crore in 2009-10 (75.95 per cent).

C. Profession tax

(Rupees in crore)						
Year	Budget estimates	Actual receipts	Variation excess (+)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2005-06	60.05	66.46	(-) 6.41	(-) 10.67	5,002.28	1.33
2006-07	72.00	73.60	(+) 1.60	(+) 2.22	6,065.07	1.21
2007-08	80.96	86.44	(+) 5.48	(+) 6.77	6,856.09	1.26
2008-09	89.06	112.18	(+) 23.12	(+) 25.96	7,995.20	1.40
2009-10	134.48	135.55	(+) 1.07	(+) 0.80	8,982.34	1.51

The receipts increased from ₹ 66.46 crore in 2005-06 to ₹ 135.55 crore in 2009-10 (103.96 per cent).

D. Entertainment tax and Luxury tax

The actual receipts under entertainment tax and luxury tax are insignificant in comparison to the total tax receipts of the State.

2.1.3 Assessee profile under OVAT Act

The information furnished by the CCT on various types of dealers registered under the OVAT Act during the last three years is given below.

Year	No. of LTU dealers	No. of TIN dealers other than Large Tax Payer Unit (LTU)	No. of Small retailers Identification number (SRIN) dealers	Total No. of dealers registered	No. of dealers required to file returns	No. of dealers who furnished returns in time	No. of dealers who have not furnished/ belatedly furnished returns	No. of cases where notices were issued to the defaulted dealers	No. of cases where notices were not issued to the defaulted dealers
2007-08	615	88618	26815	116048	113767	74571	45432	27178	18254
2008-09	615	97187	27104	124906	123457	85669	48995	30241	18754
2009-10	689	103319	27287	131295	130193	91847	51494	31969	19525
Total	1919	289124	81206	372249	367417	252087	145921	89388	56533

Non-issuance of notices to 56,533 defaulters indicated that the provisions of the OVAT Act and Rules were not implemented by the department. The Government stated (October 2010) that the statutory authorities are empowered to take action against non-filers and in deserving cases action have been taken as per law.

2.1.4 Arrears in assessment

The details of the assessment cases i.e. cases due, disposed of during the year and pendency at the end of the year 2009-10 were as under.

2009-10	OST	CST	VAT	Entry Tax	Profession Tax	Entertainment Tax
Opening balance	13,374	4,596	1,300	1,664	1,04,587	212
New cases due for assessment during the year	67	2,186	4,061	5,458	9,276	117
Total assessment cases due for the year	13,441	6,782	5,361	7,122	1,13,863	329
Cases disposed of during the year	3,615	3,421	3,012	5,002	29,516	134
Balance cases at the close of the year	9,826	3,361	2,349	2,120	84,347	195
Percentage of finalisation	26.90	50.44	56.18	70.23	25.92	40.73

The above position indicated that the number of assessment cases disposed of under the OST and PT Acts were extremely low. The Government stated (October 2010) that the cases of assessments are disposed of under the provision of different Acts. Due to shortage of adequate number of assessing authorities, disposal of total assessments due for the year could not be completed by the Department

The department may take suitable measures to ensure early finalisation of the pending cases.

2.1.5 Cost of collection

The gross collection of tax revenue receipts under the Commercial Tax (CT) Department, the expenditure incurred on their collection and percentage of such expenditure to the gross collection during the years 2007-08, 2008-09 and 2009-10 along with the relevant all India average percentage of expenditure in collection to gross collection for the year 2008-09 is mentioned below.

(Rupees in crore)				
Year	Collection ¹	Expenditure in collection of the revenue	Percentage of expenditure to collection	All India average percentage for the year 2008-09
2007-08	4,863.36	30.11	0.62	0.88
2008-09	5,601.22	44.45	0.79	
2009-10	6,409.96	53.90	0.84	

The above table indicated that cost of collection in CT department was on an increasing trend although they were within the All India average.

2.1.6 Analysis of collection

The break up of total collection at the pre-assessment stage and after regular assessment of OST/CST/OVAT, OET, OLT, ET and PT for the year 2009-10 and the corresponding figures for the preceding two years as furnished by the department is mentioned in the following table:

(Rupees in crore)								
Head of revenue	Year	Amount collected at pre-assessment stage	Amount collected after regular assessment (additional demand)	Amount of arrear demand collected	Amount refunded	Net collection as per department	Net collection as per Finance Account	Percentage of column 3 to column 8
1	2	3	4	5	6	7	8	9
OST/ CST/ OVAT	2007-08	4,036.30	31.66	77.69	27.22	4,118.43	4,118.43	98.01
	2008-09	4,790.08	15.19	32.26	34.19	4,803.34	4,803.33	99.72
	2009-10	5,404.63	24.90	31.60	52.37	5,408.76	5,408.76	99.92
OET	2007-08	612.71	19.84	8.61	0.29	640.87	626.90	97.74
	2008-09	629.94	7.52	2.37	0.84	638.99	638.32	98.69
	2009-10	772.72	26.63	2.88	0.50	801.73	815.25	94.78
OLT	2007-08	0.01	--	--	--	0.01	0.01	100
	2008-09	0.03	--	--	--	0.03	0.03	100
	2009-10	0.05	--	--	--	0.05	7.57	0.66
ET	2007-08	2.45	0.01	0.19	--	2.65	2.22	110.36
	2008-09	2.33	-	0.07	--	2.40	18.58	12.54
	2009-10	2.76	0.01	0.05	--	2.82	9.28	29.74
PT	2007-08	76.85	0.11	0.20	--	77.16	86.44	88.91
	2008-09	91.96	0.02	0.08	--	92.06	112.18	81.98
	2009-10	116.43	0.54	0.74	--	117.71	135.55	85.89

Thus, the percentage of collection of tax at the pre-assessment stage during the last three years ranged between 98.01 and 99.92 in sales tax, between 94.78 and 98.69 in entry tax and between 81.98 and 88.91 in profession tax. The

¹ This collection includes all taxes collected under different Acts by the CT department as per the Finance Account which is at variance with the figures furnished by the department.

Government stated in October 2010 that the increasing trend of collection of admitted tax was attributed to the voluntary tax compliance mechanism of the OVAT Act and the efficient tax administration.

2.1.7 Working of internal audit wing

The department stated (September and October 2010) that at present the Internal Audit Wing was defunct due to non-availability of adequate manpower; however, steps were being taken to revive the same.

The department may arrange for early functioning of the Internal Audit Wing with adequate staff.

2.1.8 Impact of audit

2.1.8.1 Revenue impact

The year-wise details of units audited under different Acts during the period 2004-05 to 2008-09 and the impact of audit in terms of objections, their acceptance and recovery of the amounts involved are given below.

Year	Act	No. of units audited	(Rupees in crore)					
			Objected		Accepted		Recovered	
			No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2004-05	ST/ VAT	33	266	90.55	53	21.75	15	2.49
	Entry Tax		42	3.60	7	0.53	1	0.01
	Total		308	94.15	60	22.28	16	2.50
2005-06	ST/ VAT	31	196	58.46	47	16.24	12	5.54
	Entry Tax		54	5.49	13	1.81	3	0.11
	Total		250	63.95	60	18.05	15	5.65
2006-07	ST/ VAT	31	215	83.64	51	30.10	8	2.60
	Entry Tax		2,050	43.74	11	4.29	3	0.60
	Total		2,265	127.38	62	34.39	11	3.20
2007-08	ST/VAT	38	155	160.16	9	0.66	1	0.36
	Entry Tax		34	112.13	Nil	Nil	Nil	Nil
	Total		189	272.29	9	0.66	1	0.36
2008-09	ST/ VAT	44	241	282.77	9	1.32	Nil	Nil
	Entry Tax		99	27.84	Nil	Nil	Nil	Nil
	Total		340	310.61	9	1.32	Nil	Nil
Grand total		177	3,352	868.38	200	76.70	43	11.71

The recovery position as compared to the accepted amount during the last five years was very low being only 15.27 *per cent*. The Department stated that the recovery of tax varied from the amount raised in the assessment order due to the availability of statutory provisions to a dealer for first/second appeals which reduced/enhanced the demands or quashed or set aside the assessment based on the merit of the case. **The Government may ensure prompt recovery of the amounts involved at least in accepted cases.**

2.1.8.2 Amendments in the Acts/Rules/notification order issued by the Government at the instance of audit

As a result of audit observation the prescribed proforma containing utilisation accounts of Form-C etc. was revised by the Government prescribing a new Form-"VI" by way of amendment of CST (Orissa) Rules 1957 on 1 August 2009.

2.1.9 Results of audit

We test checked the records of 56 units relating to ST, VAT, OET and PT in commercial tax offices during the year 2009-10 and found non/short levy of tax/interest/penalty/surcharge, etc. amounting to ₹ 118.83 crore in 23,365 cases which fall under the following categories:

(Rupees in crore)			
Sl. No.	Categories	No. of cases	Amount
Sales tax/VAT			
1.	Non/short levy of interest/ penalty/ surcharge	70	42.78
2.	Underassessment of tax due to incorrect grant of exemption	51	9.96
3.	Underassessment of tax due to application of incorrect/concessional rate of tax	57	6.76
4.	Short levy of tax due to incorrect computation of taxable turnover	17	1.54
5.	Incorrect allowance/adjustment of input tax credit	11	0.51
6.	Other irregularities	18	20.90
Total		224	82.45
Entry tax			
1.	Non/short levy of interest/penalty	31	17.28
2.	Incorrect computation of taxable turnover	14	1.33
3.	Non-levy and short levy of tax due to application of incorrect/concessional rate of tax	11	0.61
4.	Underassessment of tax due to incorrect grant of exemption/set off	6	0.23
5.	Other irregularities	4	0.06
Total		66	19.51
Profession tax			
1.	Non-levy of tax and penalty etc.	23,075	16.87
Total		23,075	16.87
Grand total		23,365	118.83

During the year, the department accepted underassessment and other deficiencies of ₹ 51.22 crore in 313 cases which were pointed out by us in earlier years. An amount of ₹ 13.47 crore was realised in 98 cases during the year 2009-10.

A few illustrative audit observations involving ₹ 59.26 crore are discussed in the following paragraphs.

2.2 Audit observations

We test checked the assessment records of OVAT/OST, CST, OET and PT in the commercial tax range/circle offices of the State and noticed several cases of non-observance of provisions of the relevant Acts and Rules which led to non/short levy of tax and penalty on different counts as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out by us. We point out such omissions on the part of the assessing authorities (AAs) every year, but not only do the irregularities persist; these remain undetected till an audit is conducted. The Government needs to improve the internal control system including strengthening of internal audit to avoid recurrence of such omissions.

Value Added Tax

2.3 Non-observance/compliance of the provisions of OVAT Act and Rules read with Government notifications

The OVAT Act/Rules provide that:

- (i) *the audit assessments and turnover escapement assessments are required to be completed by the AAs on the basis of audit visit reports (AVRs) of range audit teams and vigilance squads and tax levied on the correctly assessed taxable turnover of outputs after giving due credit/adjustment of tax paid on inputs (ITC) as admissible on different counts; and*
- (ii) *penalty is to be imposed on different counts at prescribed rates in addition to the tax assessed.*

The AAs, while finalising the audit assessments or turnover escapement assessments of the dealers against the tax periods, did not observe some of the above provisions read with the Government notifications issued from time to time, as mentioned in the following paragraphs 2.3.1 to 2.3.2.2 which resulted in non/short levy and realisation of tax aggregating to ₹ 1.75 crore. Besides, penalty was not levied in some cases and the reasons for non-levy thereof were not recorded in the assessment orders.

2.3.1 Short levy of tax due to application of lower rate of tax

Under the OVAT Act, goods not specified in any of the schedules is taxable at the rate of 12.5 per cent. Goods like “Mosquito repellants in any form”, was not specified in the Schedules during the period from 1 July 2005 to 31 May 2007. While assessing a dealer for any tax period if the AA is satisfied that the escapement of tax was without any reasonable cause, he may levy a penalty of twice the amount of tax additionally assessed.

During test check of the records of Cuttack II circle in January 2010, we noticed that while finalising the assessments of a registered dealer in June 2008 for the period 1 April 2005 to 30 April 2008 based on the AVR, the AA levied tax at the lower rate of four per cent on the sales turnover of mosquito repellants of ₹ 49.88 lakh,

pertaining to the tax period from 1 July 2005 to 31 May 2007, instead of the appropriate rate of 12.5 *per cent*. This resulted in short levy of tax of ₹ 4.24 lakh. Moreover, the dealer was liable to be levied with a penalty of ₹ 8.48 lakh for payment of tax at lower rates without any reasonable cause as reflected in his periodical self assessed returns.

After we pointed out the case, the Government stated in August 2010 that a notice for assessment of tax on escaped turnover had been issued to the dealer. A report on further developments is yet to be received (December 2010).

2.3.2.1 Non-levy of penalty on audit assessments

As per the provisions of the OVAT Act, while assessing a dealer for any tax period, penalty of twice the amount of tax assessed in audit assessments shall be levied.

During test check of records of three ranges² and one circle³ between June and October 2009, we noticed that while finalising the assessments of five dealers for different periods between April

2005 and October 2008 the AAs levied additional tax of ₹ 23.72 lakh for purchase and sales suppression, application of lower rate of tax or erroneous claim of deductions including input tax credit, but did not levy penalty of ₹ 47.45 lakh leviable under the Act. The details are given below.

(Rupees in lakh)				
Name of Range/ Circle	Number of dealers/ cases	Period of assessment	Additional tax levied	Penalty leviable but not levied
Angul Range	1/1	April 2005 to December 2007	18.14	36.29
Jajpur Circle	2/2	April 2005 to October 2008	2.36	4.72
Balasore Range	1/1	June 2006 to March 2008	1.18	2.36
Bolangir Range	1/1	April 2005 to 30 March 2007	2.04	4.08
Total	5/5		23.72	47.45

An illustrative case is given below.

During test check of records of Angul Range, in August 2009, we noticed that while finalising the assessment of a dealer for the period April 2005 to December 2007, based on the findings of tax audit, the AA levied additional tax of ₹18.14 lakh for non disclosure of some transactions in the returns and application of lower rate of tax on certain goods utilised in execution of works contract, but did not levy penalty of ₹ 36.29 lakh as required under the Act.

After we pointed out the cases, the Government stated, in August 2010, that penalty of ₹ 4.07 lakh had been levied in respect of the dealer of Bolangir range. A report on recovery of the above demand and further development in respect of the remaining four dealers is yet to be received (December 2010).

² Angul, Balasore and Bolangir.

³ Jajpur.

2.3.2.2 Non-levy of penalty on incorrect claim of input tax credit on opening stock

The OVAT Act, 2004 provides for levy of penalty of a sum equal to 10 times the amount of ITC claimed/availed of by any dealer to which he is later on found to be not admissible or to which he is not entitled.

During test check of assessment records of Jajpur Range and Jatni circle, between April and July 2009, relating to the tax periods between 1 April 2005 and 31 August 2008, we noticed that two dealers claimed/availed

excess ITC of ₹ 12.40 lakh on the opening stock as on 1 April 2005 after furnishing erroneous details. The AAs, while finalising the assessments, between November 2008 and February 2009, disallowed the said claims. However, penalty of ₹ 1.24 crore against the said dealers was not levied as detailed below, nor were reasons for non-levy recorded in the assessment orders.

(Rupees in lakh)				
Name of the Circle/Range Number of dealers	Year of accounts (date of assessment)	ITC claimed and availed on opening stock	ITC disallowed in assessment	Amount of penalty leviable but not levied
Jajpur Range 1	2005-06 (7.11.2008)	11.43	11.43	114.34
Jatni circle 1	April 2005 to August 2008 (26.2.2009)	0.97	0.97	9.69
Two dealers		12.40	12.40	124.03

After we pointed out the cases, the AA, Jajpur range stated, in May 2009, that the matter was being referred to the CCT and the result would be intimated after receipt of clarification from him. The AA, Jatni circle, stated in July 2009 that levy of 10 times tax as penalty under section 107(4) was subject to the discretion of the AA. The facts and circumstances of the case leading to non-levy of penalty would be examined and intimated to the audit. The AA's stand was self-contradictory since as per the discussions made in the assessment order, the dealer had deliberately claimed and availed ITC of ₹ 0.97 lakh without obtaining authority from the STO in form 608, which was against the provision of law. Therefore, availing of ITC was considered to be illegal and hence disallowed. The above observation of the AA in his assessment order left no scope for applying discretion in the matter of levy of penalty. Further no reason was recorded in the assessment order for non-levy of penalty. Reports on further developments in the cases are yet to be received (December 2010).

We reported the matter to the Government in February 2010; their reply is yet to be received (December 2010).

Sales Tax

2.4 Non-observance/compliance of the provisions of the OST/CST Acts/Rules read with Government notifications

The OST/CST Acts and Rules read with Government notifications issued from time to time provide for:

- (i) levy of tax/surcharge etc. correctly at the assessment/reassessment stages at the prescribed rates or concessional rates, subject to certain conditions, on the net taxable turnover of goods determined at such stages; and
- (ii) levy of penalty on different counts at prescribed rates.

We noticed that while finalising the assessments/reassessments the AAs did not observe some of the above provisions read with Government notifications/orders issued, in some cases, as mentioned in the following paragraphs 2.4.1.1 to 2.4.3 which resulted in non/short levy of tax and penalty of ₹ 23.24 crore.

2.4.1.1 Non/short levy of tax due to acceptance of defective declarations or in absence of valid declaration and other reasons

Under the CST Act, 1956 and rules made thereunder read with Government notification of 31 March 2001, inter-State sales turnover of goods by a registered dealer supported with the original copy of the valid declaration in form 'C' obtained from the prescribed authority duly filled up and signed by the purchasing dealer is exigible to tax at the concessional rate of four *per cent* (up to 31 March 2007) or at the rate applicable to the sale or purchase of such goods inside the State under the Sales Tax Act, whichever is lower. Further, inter-State sale of goods manufactured by small scale industrial (SSI) units supported with valid declarations in form 'C' duly filled up and signed by the purchasing dealer(s) shall be exigible to tax at the concessional rate of one *per cent* till 15 June 2006 and two *per cent* thereafter. Tax on sales turnover of goods not covered by valid declaration in form 'C', in case of declared goods, shall be calculated at twice the rate applicable to sale or purchase of such goods inside the State and in respect of other goods at 10 *per cent* or at the rate applicable to sale of such goods inside the State, whichever is higher upto 31 March 2007.

During test check of CST assessment records of two ranges⁴ and five circles⁵ between November 2008 and November 2009, we noticed that 13 dealers had either not furnished valid declarations or furnished invalid, defective, duplicate, photocopied and manipulated declarations in respect of their sales turnover of ₹ 18.92 crore for different periods between April 2004 and March 2007. Their claim for levy of tax at concessional rates

⁴ Angul and Balasore.

⁵ Angul, Bhadrak, Bhubaneswar-III, Cuttack and Rourkela-II.

was accepted by the respective AAs while finalising their assessments. This resulted in short levy of tax of ₹ 1.28 crore as detailed in **Annexure-I**.

After we reported the matter in February 2010, the Government stated in August 2010 that reassessment proceedings were initiated in respect of one dealer of Bhadrak circle and four dealers of Rourkela-II circle whereas additional demands of ₹ 17.50 lakh and ₹ 15.29 lakh were raised against two dealers of Cuttack-II circle and Angul circle in May 2009 and March 2010 respectively. The reply in respect of the remaining eight cases relating to six dealers viz: Angul range (one case), Balasore range (three cases) and Bhubaneswar-III circle (two cases) is yet to be received (December 2010).

2.4.1.2 Non-levy of differential tax for contravention of declaration

Under the OST Act, if a registered dealer purchasing goods mentioned in his certificate of registration for use within the State in the manufacture or processing of goods for sale at concessional rate of tax after furnishing a declaration in form IV utilises such goods for any other purpose, he shall be liable to pay the difference of tax i.e. normal tax payable without declaration less tax paid at concessional rate of tax, for contravention of declaration. Conductors are taxable at the general rate of 12 *per cent* under the OST Act.

During test check of records of Jharsuguda circle in January 2009 we noticed that a registered dealer, engaged in manufacture and sale of different types of conductors purchased All Aluminium Alloy (AAA) conductors valued at ₹ 1.33 crore from another registered dealer during 2004-05 on payment of tax at the concessional rate of four *per cent* furnishing declaration in form IV. The AAA conductors were resold by the dealer for ₹ 1.47 crore

during 2004-05 and deduction was claimed towards sales turnover of first point tax paid goods. Thus the dealer contravened the declaration in form IV by not using those AAA conductors for manufacturing or processing of finished goods. The AA while finalising the assessment in February 2008 did not levy the difference of tax at the rate of eight *per cent* on the purchase value of the AAA conductors. This resulted in non-levy of differential tax of ₹ 11.72 lakh including surcharge.

After we pointed out the case, the Government replied, in July 2010, that the AA has reassessed the case raising extra demand of ₹ 11.72 lakh on 22 January 2010. A report on recovery is yet to be received (December 2010).

2.4.2 Short levy of tax due to irregular deduction

Under the CST Act, tax on inter State sale of goods, other than declared goods not covered by declaration in form C, shall be calculated at the rate of 10 *per cent* or at the rate applicable to the sale of such goods inside the State, whichever is higher upto 31 March 2007 and at the rate applicable to the sale of such goods inside the State from April 2007. Gudakhu was not a declared goods under the CST Act and was exigible to tax at the rate of four *per cent* under OVAT Act from July 2005 to May 2007 irrespective of the place of manufacture.

During test check of assessment records of Mayurbhanj circle in July 2009, we noticed that the total sales turnover of gudakhu of a registered dealer, who was a manufacturer of gudakhu, was determined at ₹ 2.96 crore including tax for the period 1 April 2005 to 20 May 2008. But sale of gudakhu worth ₹ 86.35 lakh

only, during 1 June 2007 to 20 May 2008 was taxed at the appropriate rates while the sale of gudakhu worth ₹ 1.88 crore during 1 July 2005 to 31 May 2007 was treated as tax free and allowed as deduction from total sales turnover. This resulted in short levy of tax of ₹ 17.96 lakh.

After we pointed out the case, the Government replied, in August 2010, that the proceedings initiated against the dealer was disposed of raising demand of ₹ 17.96 lakh on 22 December 2009. Report on recovery is yet to be received (December 2010).

2.4.3 Non-levy of penalty under audit assessment/turnover escaping assessment

The CST (Orissa) Rules, 1957 as amended on 6 July 2006 provide for imposition of penalty equal to twice the amount of tax assessed in audit assessments.

During test check of assessment records of one range and one circle, in May and October 2009, we noticed that while finalising different assessments for the periods between July 2006 and September

2007, though the AAs established purchase and sales suppression and application of lower rate of tax etc. by four assessees in four cases and assessed tax of ₹ 10.83 crore; they did not levy penalty of ₹ 21.66 crore as required under the rules. The reasons for non-levy of penalty were not discussed in the assessment orders. The range/circle wise non-levy of penalty in respect of these four assessees are given below.

Name of Range/ Circle	Number of dealers/cases	Period of assessment	(Rupees in crore)	
			Tax levied	Penalty leviable but not levied
Angul Range	1/1	July 2006 to September 2007	1.37	2.74
Barbil Circle	3/3	July 2006 to March 2007	9.46	18.92
Total	4/4		10.83	21.66

After we pointed out these cases, the AAs agreed to reopen the cases for examination. A report on further developments is yet to be received (December 2010).

We reported the matter to the Government in February 2010; their reply is yet to be received (December 2010).

Entry Tax

2.5 Non-observance/compliance of the provisions of OET Act/Rules read with Government notification

The OET Act/Rules read with Government notifications issued from time to time provide for:

- (i) levy of tax at prescribed rates on entry of scheduled goods into any local area for sale, use or consumption therein; and*
- (ii) levy of penalty at prescribed rates on different counts over and above the tax levied.*

We noticed that while finalising the assessments/reassessments the AAs did not observe some of the above provisions in some cases as mentioned in the following paragraphs 2.5.1 to 2.5.3 which resulted in non/short levy of tax and penalty of ₹ 17.40 crore.

2.5.1 Short levy of tax due to purchase suppression

Under the OET Act, 1999 where for any reason scheduled goods brought by a registered dealer escaped assessment to tax, the AA may assess the dealer to the best of his judgement within the prescribed period and direct him to pay the tax assessed on entry of such goods and penalty not exceeding one and a half times the tax so assessed in case of willful non disclosure of the entry of such goods by the dealer. Two wheelers are exigible to entry tax at the rate of 12 per cent.

During test check of the assessment records in Bhubaneswar-I circle in December 2007, we noticed that the AA determined the purchase turnover of a registered dealer of two wheelers at ₹ 7.74 crore for the year 2003-04. On cross verification of the declarations on purchase of goods from outside the State at concessional rate of tax

with the way bills submitted by the dealer, we found that he had actually purchased two wheelers valued at ₹ 10.04 crore. Thus, the dealer had suppressed purchase and entry of two wheelers valued at ₹ 2.30 crore. This resulted in under assessment of entry tax of ₹ 27.61 lakh. Besides, the dealer was liable to pay maximum penalty of ₹ 41.41 lakh for willful non-disclosure of purchase and entry of scheduled goods.

After we pointed out the case, the Government replied, in July 2010, that the AA reassessed the case in November 2009 raising extra demand of ₹ 69.02 lakh including penalty of ₹ 41.45 lakh. A report on recovery is yet to be received (December 2010).

2.5.2 Non-levy of entry tax due to escapement of taxable turnover

Under the OET Act, and Rules made thereunder, tax on the purchase value of scheduled goods while entering into a local area for consumption, use or sale therein is leviable at the prescribed rates and it shall be paid by the concerned dealer or any other person who brings or causes to bring such goods whether on his own account or on account of his principal or customer or who takes delivery or is entitled to take delivery of such goods on such entry. Further, penalty equal to twice the amount of tax additionally assessed is leviable in case of escapement of turnover of scheduled goods without any reasonable cause, effective from May 2005. Coal including coke in all its forms is exigible to tax at the rate of one *per cent*.

During test check of records of Cuttack II range, between December 2009 and January 2010, we noticed that a registered dealer engaged in manufacturing 'beehive hard coke' from imported coking coal and coal dust as well as undertaking conversion work on behalf of others took delivery of 24,281.890 MT of imported coking coal (raw material) brought from a dealer of outside State, between the period from 21 September 2005 and 4 April 2006, for

conversion in his factory premises. As such, the dealer was liable to pay entry tax on the purchase value of the imported coking coal. But while assessing the dealer for the tax period April 2005 to June 2007 under the OET Act, the AA did not levy tax on entry of such scheduled goods. In absence of the purchase value of goods which entered into the local area, audit estimated the same at ₹ 10.17 crore considering the rate at ₹ 4,190 per MT as adopted by the AA, while assessing the dealer under the OVAT Act for the same tax period. Thus, non-inclusion of entry of scheduled goods worth ₹ 10.17 crore in the Gross Turnover (GTO)/Taxable Turnover (TTO) of the dealer resulted in non-levy of entry tax of ₹ 10.17 lakh. Further, for escapement of turnover and non-payment of such tax at the self-assessment stage without any reasonable cause, the dealer was also liable to pay penalty of ₹ 20.35 lakh calculated at twice the amount of tax due.

After we pointed out the case, the Government stated, in August 2010, that the proceedings for re-examination had been initiated. A report on further development is yet to be received (December 2010).

2.5.3 Non-levy of penalty on different counts

The OET Act, and the Rules made thereunder provide for levy of penalty-

1. equal to twice the amount of tax assessed by the AA in audit assessment based on the audit visit report (AVR).
2. equal to twice the amount of tax additionally assessed by the AA on assessment of escaped turnover if he is satisfied that the escapement was without any reasonable cause.
3. equal to the amount of tax assessed against the dealer by the AA, for failure to get himself registered in respect of the period during which he was liable to pay tax and all subsequent periods, if he is satisfied that the default is without any reasonable cause.
4. not exceeding one and a half times the differential tax between the tax payable and the tax paid for the year if, at the end of the year, it is found that the amount of tax paid in advance by any dealer for any tax period was less by more than 15 *per cent* than the tax finally assessed.

During test check of records of four ranges⁶ and six circles⁷, between February and December 2009, we noticed that the AAs did not levy penalty of ₹ 16.40 crore at the prescribed rates on different counts while finalising the assessments during February 2007 and March 2009 in respect of 20 cases of 18 registered dealers, for different periods between April 2003 and January 2009. The reasons for non-levy of penalty were not recorded in the assessment orders. The range/circle wise details are at **Annexure-II**. Illustrative cases are given below:

2.5.3.1 Non-levy of penalty on audit assessment

During test check of records of Angul range, in August 2009, we noticed that while finalising the assessment of a registered dealer in December 2008 for the period 1 April 2005 to 31 December 2007 on the basis of AVR, the AA assessed tax liability of ₹ 12.30 lakh due to application of lower rate of tax and non-inclusion of taxable turnover in the returns filed. But the AA did not impose penalty of ₹ 24.60 lakh as required under the Act. The reason for non-levy of penalty was also not recorded in the assessment order.

2.5.3.2 Non-levy of penalty on assessment of escaped turnover

During test check of records of Koraput range, in November 2009, we noticed that while finalising the assessment of a registered dealer for the period February to October 2008, the AA determined the taxable turnover at ₹ 1,055.48 crore and assessed the tax payable at ₹ 11.67 crore against ₹6.14 crore of tax declared and paid by the dealer. Though the AA assessed the

⁶ Angul, Ganjam, Jajpur and Koraput.

⁷ Barbil, Bargarh, Jajpur, Keonjhar, Koraput and Phulbani.

dealer to pay additional tax of ₹ 5.53 crore, penalty of ₹ 11.05 crore was not levied as required under the Act. The reason for non-levy of penalty was also not recorded in the assessment order.

2.5.3.3 Non-levy of penalty on assessment for unregistered period

During test check of records of Koraput circle, in November 2009, we noticed that an unregistered dealer applied for grant of registration under the OET Act on 28 March 2007, eight months after starting his business on 28 July 2006 and without furnishing any returns for the intervening period when he was liable to pay tax. While finalising the assessment for the period from 28 July 2006 to 27 March 2007 along with the subsequent tax periods, in August 2008, the AA assessed the tax liability of the dealer for the pre-registration period at ₹ 15.17 lakh; but did not direct the dealer to pay penalty of ₹ 15.17 lakh which is equal to the amount of tax so assessed. Moreover, the reason for non-levy of penalty was not recorded in the assessment order.

2.5.3.4 Non-levy of penalty for shortfall in advance payment of tax

During test check of records of Barbil circle, in July 2009, we noticed that while assessing a registered dealer for the year 2003-04, the AA assessed ₹ 3.39 lakh against which the dealer had paid ₹ 2.77 lakh only leaving 18.46 *per cent* of the total amount due for the whole year. But penalty of ₹ 93,961 being one and a half times of the unpaid amount was not imposed against the dealer. There was also no mention in the assessment order of the reasons for non-levy of penalty.

After we pointed out these cases, the AAs agreed to re-examine the cases. A report on further developments is yet to be received (December 2010).

The matter was reported to the Government in February 2010, their reply is yet to be received (December 2010).

Profession Tax

With a view to augmenting the collection of revenue the CCT who also functions as the Commissioner of Profession Tax, Orissa instructed the field functionaries in November 2004 to collect information from specified sources to identify the persons liable to pay tax and get them registered with profession tax cells in each circle. These cells were created (December 2004 onwards) to identify potential tax payers and to assist, enroll and register the drawing and disbursing officers and assessees for mobilising collection of the tax.

2.6 Non-levy of profession tax

As per the Orissa State Tax on Professions, Trades, Callings and Employments (PT) Act, 2000, every person liable to pay tax is required to obtain a certificate of enrolment from the AA and failure to apply for such certificate attracts levy of penalty not exceeding rupees five for each day of delay in enrolment. Moreover, periodical tax at prescribed rates is leviable against different classes of assessees enrolled under the Act.

During test check of records, between July and December 2009 in respect of the profession tax officers (PTOs) relating to 19⁸ circles, we noticed that 23,075 assessees under 10 classes liable to come under the tax net and pay tax of ₹ 3.14 crore for the period April 2004 to March 2009 had

not applied for enrolment under the Act and obtained certificates of enrolment from the PTOs concerned. Hence they were liable to pay penalty of ₹ 13.73 crore besides tax of ₹ 3.14 crore as stated above. Details of non levy of tax and penalty aggregating to ₹ 16.87 crore under the Act are given in the **Annexure-III**. This shows that the administration of the Act in the State suffered due to absence of an effective mechanism for conducting surveys and collecting information in order to bring the eligible persons into the tax net.

After we pointed out these cases, the CCT Orissa stated in May 2010 that out of 597 LIC agents and 44 pathological laboratories, diagnostic, x-ray & scanning centers of Jeypore circle, 110 agents and four pathological laboratories, diagnostic, x-ray & scanning centers had been enrolled and had paid profession tax of ₹ 1.32 lakh. The response from the CCT in respect of the balance cases is yet to be received (December 2010). However, the Government stated, in August 2010, that instructions had been issued to the field offices in May 2009 for restructuring the work in the circle offices. It was directed that for PT work the concerned CTO/ACTO (PT) and PT clerk should be held responsible as profession tax is being monitored in circle offices. Moreover, profession tax had not been exclusively monitored by dedicated officials due to lack of adequate manpower and other workload of the offices.

⁸ Angul, Bhadrak, Balasore, Barbil, Bhanjanagar, Dhenkanal, Ganjam-I, Ganjam-II, Gajapati, Jagatsinghpur, Jajpur, Koraput-I, Koraput-II, Keonjhar, Kendrapara, Mayurbhanja, Phulbani, Sambalpur-I and Sambalpur-II.