

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

### EXECUTIVE SUMMARY

<b>Marginal increase in tax collection.</b>	<p>In 2010-11 the collection of taxes from Orissa Value Added Tax (OVAT) including Orissa Sales Tax (OST)/Central Sales Tax (CST) and Orissa Entry Tax (OET) increased by 4.72 per cent and 27.01 per cent respectively where as it decreased by 8.08 per cent in case of Professional Tax (PT) in comparison to the previous year. The increase in collection of the above taxes was attributed by the Commercial Tax (CT) wing of the Finance Department (FD) to the increase in business activities of the industrial sector and vigorous collection drive by the Department; but no reason could be attributed to the decreasing trend in respect of PT.</p>
<b>Internal audit not conducted</b>	<p>Internal audit of the different auditable entities of the Commercial Tax wing of the Finance Department has not been conducted for the past several years due to non-functioning of the Internal Audit Wing (IAW). This had its impact in terms of the weak internal controls in the Department leading to substantial leakage of revenue as pointed out by us year after year. It also led to the omissions on the part of the Assessing Authorities (AAs) remaining undetected till we conducted our audit.</p>
<b>Very low recovery by the Department against the observations pointed out by us in earlier years</b>	<p>During the period 2005-06 to 2009-10 we had pointed out non/short levy and realization, irregular allowance of exemption/set off of tax, non/short levy of interest/penalty on tax with revenue implication of ₹ 893.06 crore in 26409 cases. Of these, the Department/Government accepted audit observations in 183 cases involving ₹ 56.68 crore; but recovered only ₹ 9.45 crore in 33 cases. The recovery position as compared to acceptance of objections was as low as 16.67 per cent.</p>
<b>Results of audit conducted by us in 2010-11</b>	<p>In 2010-11 we conducted a Performance Audit (PA) on “Utilisation of Declaration forms (C and F) in Inter State Trade and Commerce” and test checked the records of 60 units relating to OVAT,CST and OET and found non/short levy of tax/interest/penalty/surcharge etc. involving ₹ 94.07 crore in 275 cases.</p> <p>The Department accepted underassessment and other deficiencies of ₹ 22.11 crore in 16 cases which were pointed out by us during the year 2010-11 and in earlier years. An amount of ₹ 0.02 crore was recovered in one case during the year 2010-11.</p>

---

**What we have highlighted in this Chapter**

In this Chapter we present a PA report with audit observation of ₹ 2.56 crore and illustrative cases of ₹ 59.01 crore selected from the observations noticed during our test check of records relating to assessment and collection of VAT, CST and OET in the offices of the CT wing of the FD where we noticed that the provisions of the Acts/Rules were not observed.

It is a matter of concern that similar omissions have been pointed out by us repeatedly in the Reports of the CAG for the past several years, but the Department is yet to take adequate corrective action despite switching over to an IT-enabled system in all the CTOs. We are also concerned that though these omissions were apparent from the records which were made available to us, the AAs were unable to detect these mistakes.

---

**Our conclusion**

The Department needs to improve the internal control system including strengthening and functioning of IAW to reduce recurrence of such omissions.

It also needs to initiate immediate action to recover the non-realisation of tax etc. pointed out by us, more so in those cases where it has accepted our contentions.

---

**2.1.1 Tax administration**

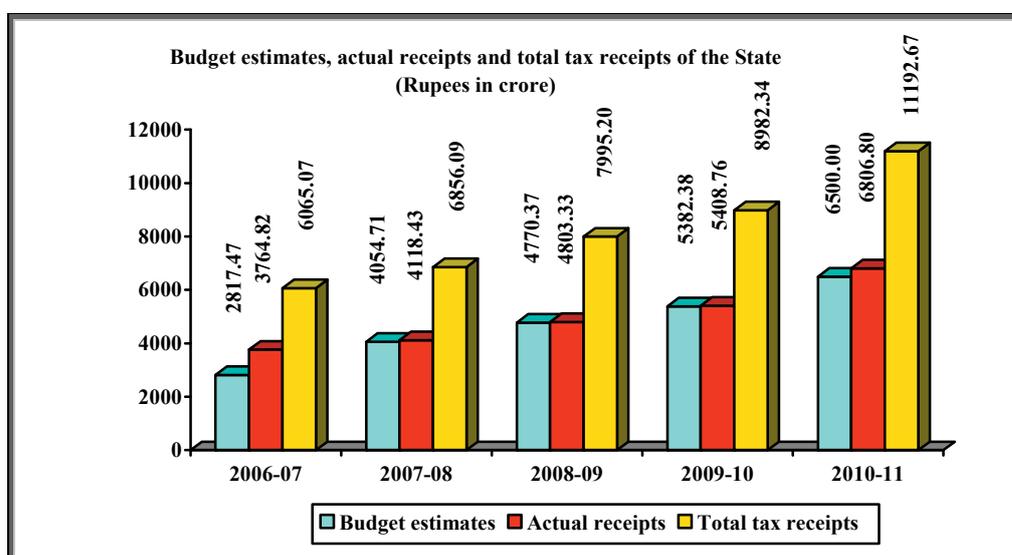
The assessment and collection of different taxes like Value Added Tax introduced with effect from April 2005 in lieu of the Orissa Sales Tax valid up to March 2005, Central Sales Tax, Orissa Entry Tax, Entertainment Tax, Luxury Tax and Profession Tax in the State are regulated under the Orissa Value Added Tax (OVAT) Act, 2004, the Central Sales Tax (CST) Act, 1956, 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 respectively. For smooth tax administration, the State is divided into 12 territorial ranges which are sub divided into 45 circles and 14 assessments units where tax assessments are made by the Joint CCTs (JCCTs) /Assistant CCTs (ACCTs)/ Commercial Tax Officers (CTOs) in the capacity of the Assessing Authorities (AAs). However, profession tax is assessed by the Assistant CTOs designated as Assistant Profession Tax Officers (APTOs) under the control of the CTOs who are declared as the PTOs. Besides, there is an Enforcement Wing at the Commissionerate headed by the special CCT (Enforcement) for checking of cases of tax evasion and cross checking of records relating to inter-State transaction.

### 2.1.2 Trend of receipts

The actual receipts from VAT including OST/CST, OET and PT during the last five years from 2006-07 to 2010-11 are as under:

#### A. OVAT including OST/CST

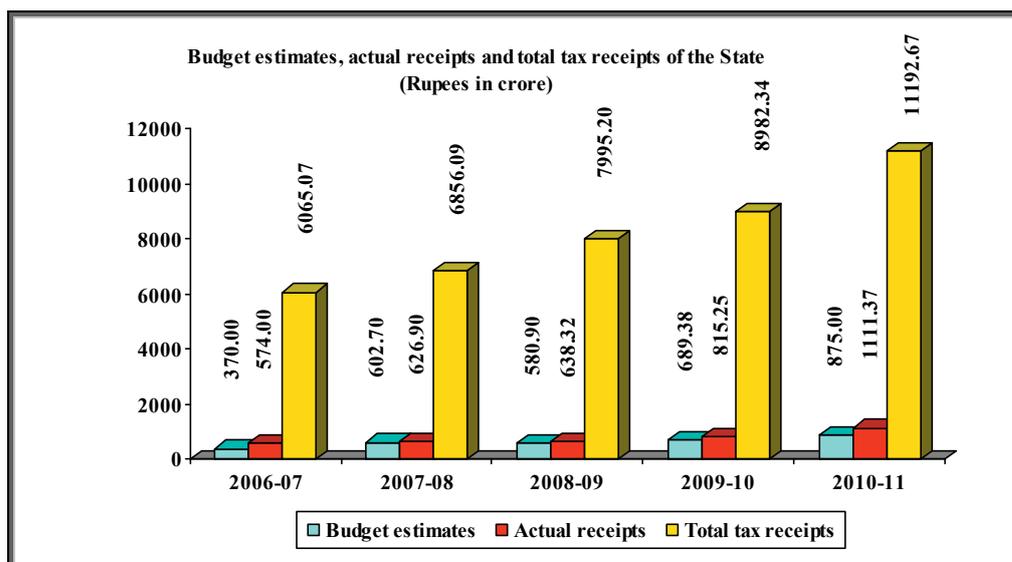
(Rupees in crore)						
Year	Budget estimates	Actual receipts	Variation excess (+) / shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2006-07	2,817.47	3,764.82	(+) 947.35	(+) 33.62	6,065.07	62.07
2007-08	4,054.71	4,118.43	(+) 63.72	(+) 01.57	6,856.09	60.07
2008-09	4,770.37	4,803.33	(+) 32.96	(+) 00.69	7,995.20	60.08
2009-10	5,382.38	5,408.76	(+) 26.38	(+) 00.49	8,982.34	60.22
2010-11	6,500.00	6,806.80	(+) 306.80	(+) 04.72	11,192.67	60.81



The trend of receipt showed that it increased from ₹ 3,764.82 crore in 2006-07 to ₹ 6,806.80 crore in 2010-11 (80.80 per cent) and its contribution to total tax revenue of the State varied between 60.07 per cent in 2007-08 and 62.07 per cent in 2006-07.

#### B. Entry Tax

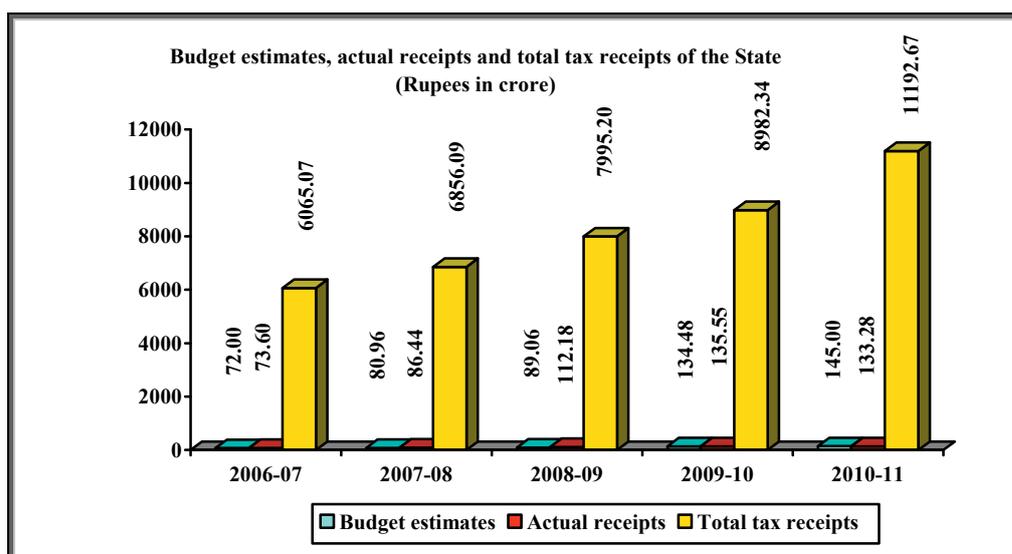
(Rupees in crore)						
Year	Budget estimates	Actual receipts	Variation excess (+) / shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2006-07	370.00	574.00	(+) 204.00	(+) 55.13	6,065.07	9.46
2007-08	602.70	626.90	(+) 24.20	(+) 04.02	6,856.09	9.14
2008-09	580.90	638.32	(+) 57.42	(+) 09.88	7,995.20	7.98
2009-10	689.38	815.25	(+) 125.87	(+) 18.26	8,982.34	9.08
2010-11	875.00	1,111.37	(+)236.37	(+) 27.01	11,192.67	9.93



The trend of receipt showed that it increased from ₹ 574 crore in 2006-07 to ₹ 1,111.37 crore in 2010-11 (93.62 per cent) and its contribution to total tax revenue of the State varied between 7.98 per cent in 2008-09 and 9.92 per cent in 2010-11.

### C. Profession Tax

(Rupees in crore)						
Year	Budget estimates	Actual receipts	Variation excess (+) / shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2006-07	72.00	73.60	(+) 01.6	(+) 02.22	6,065.07	1.21
2007-08	80.96	86.44	(+) 05.48	(+) 06.77	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	(+) 01.07	(+) 00.80	8,982.34	1.51
2010-11	145.00	133.28	(-) 11.72	(-) 08.08	11,192.67	1.19



The trend of receipt showed that it increased from ₹ 73.60 crore in 2006-07 to ₹ 135.55 crore in 2009-10 and decreased to ₹ 133.28 crore in 2010-11 and its contribution to total tax revenue of the State varied between 1.19 per cent in 2010-11 and 1.51 per cent in 2009-10. Further, the actual receipt under

Profession Tax and its contribution to the total tax receipt of the State for the year 2010-11 has declined in comparison to that of the previous year (2009-10).

### **2.1.3 Assessee profile under the 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	Number of large tax payers (LTU) dealers	Number of dealers other than LTUs having Tax Identification Number (TIN)	Number of dealers with Small Retailer Identification Number (SRIN)	Total Number of dealers registered under the OVAT Act	Number of dealers required to file returns	Number of dealers who furnished returns in time	Number of dealers who have not furnished/ belatedly furnished returns	Number of cases where notice was not issued to the defaulted dealers
2008-09	615	97187	27104	124906	123457	85669	48995	18754
2009-10	689	103319	27287	131295	130193	91847	51494	19525
2010-11	670	101268	24594	126532	126532	100706	25826	12026

The CCT contended that in order to ensure filing of returns by the dealers, the Government launched e-filing of return facility with effect from November 2010 and it was being made mandatory for different category of dealers in a phased manner. The officers of the Department were also taking statutory actions like suspension and cancellation of R.Cs of non-existing dealers. During the year 2010-11, around 12,000 R.Cs have been suspended and 6,000 R.Cs have been cancelled for non-filing of return by the dealers. However, despite the above contention of the Department, the fact remained that 12,026 periodical returns were not filed during 2010-11 and notices were not issued to the defaulting dealers as required under the Act.

### **2.1.4 Cost of collection**

The gross collection of tax revenue receipts under the CT wing of the Department, the expenditure incurred on their collection and percentage of such expenditure to the gross collection during the years 2008-09, 2009-10 and 2010-11 along with the all India average percentage for expenditure on collection to gross collection in the respective previous years are mentioned below.

Year	Gross Collection <sup>1</sup>	Expenditure on Collection of revenue	Percentage of expenditure of collection	(Rupees in crore)
				All India average percentage for the previous year
2008-09	5601.22	44.45	0.79	0.83
2009-10	6409.96	53.90	0.84	0.88
2010-11	8106.29	80.49	0.99	0.96

It is evident that the percentages of expenditure on collection of revenue had an increasing trend over last three years. However, it exceeded the all India average percentage of the previous year by 0.03 per cent during 2010-11.

<sup>1</sup> This collection includes all taxes collected under different Acts by the CT wing of the Finance Department as per the Finance Account which is at variance with the figure furnished by the Department.

**2.1.5 Analysis of collection**

As per the information furnished by the Department, the break ups of the total collection at the pre-assessment stage, collection after regular assessments, arrear collection and refunds allowed in respect of VAT including Sales Tax, Entry Tax and Profession Tax along with the net collections reflected in the Finance Accounts of the State for the last three years i.e. 2008-09 to 2010-11 are 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 columns 3 to 8
1	2	3	4	5	6	7	8	9
Sales Tax/VAT	2008-09	4790.08	15.19	32.26	34.19	4803.34	4803.33	99.72
	2009-10	5404.63	24.90	31.60	52.37	5408.76	5408.76	99.92
	2010-11	6762.33	45.17	18.09	18.79	6806.80	6806.80	99.34
Entry Tax	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
	2010-11	1080.26	6.83	3.45	1.50	1089.04	1111.37	97.20
Profession Tax	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
	2010-11	125.26	0.14	0.13	-	125.53	133.28	93.98

Thus, the percentage of collection of tax at the pre-assessment stage during the last three years ranged between 99.34 and 99.92 in VAT and sales tax, between 94.78 and 98.69 in entry tax and between 81.98 and 93.98 in profession tax.

**2.1.6 Analysis of arrears of revenue (OST cases)**

The position of arrears of revenue under the repealed Orissa Sales Tax Act, 1947 for the year from 2006-07 to 2010-11 is given below.

(Rupees in crore)					
Years	Opening Balances of arrears	Additions during the year	Arrear collection by the end of the year	Percentage of arrear collection	Closing balance of arrears
(1)	(2)	(3)	(4)	(5)	(6)
2006-07	904.08	91.26	32.13	3.23%	963.21
2007-08	963.21	91.36	20.52	01.95%	1034.05
2008-09	1034.05	38.66	11.33	01.06%	1061.38
2009-10	1061.38	34.31	10.79	00.98%	1084.90
2010-11	1084.90	01.37	05.16	00.48%	1059.62

\*NB-Amount of ₹ 21.49 crore was reduced in appellate forum during 2010-11 as informed by the CCT (O), Cuttack

Although the above Act was repealed on introduction of the OVAT Act, 2004 with effect from 1 April 2005, arrear tax revenue of ₹ 1059.62 crore under the Act was not realised from the dealers as of 31 March 2011. Further, collection of arrear of tax under the Act during the years from 2006-07 to 2010-11 was negligible ranging from 0.48 per cent to 03.23 per cent as would be evidenced from the above table.

The CCT, however, stated that the arrears were locked up at various stages such as (i) show cause (₹ 235.84 crore), (ii) stayed by the departmental authorities (₹ 314.45 crore), (iii) stayed by Hon'ble Supreme Court (₹ 19.90 crore), (iv) stayed by Hon'ble High Court (₹ 224.12 crore) and (v) involved in Revenue Recovery Certificate Cases (265.32 crore). Further he contended (September 2011) that for speeding up the collection of the arrear dues, the Government have passed the OST (Settlement of Arrears) Act with the expectation to settle a good number of pending disputes involving huge amount of arrear tax, interest and penalty, however the OST (settlement of Arrears) Rules is yet to be passed by the Government.

### **2.1.7 Working of internal audit wing**

The CCT stated (September 2011) that at present the IAW was not functioning and steps had been taken to revive the same.

**The Department ensure early revival of the IAW 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 2005-06 to 2009-10 and the impact of audit in terms of observations raised and acceptance and recovery thereof are given in the following table.

(Rupees in crore)								
Year	Act	No. of units audited	Objected		Accepted		Recovered	
			No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2005-06	ST/ VAT	31	196	58.46	60	17.13	13	5.57
	Entry Tax		54	5.49	20	2.22	5	0.20
	<b>Total</b>		<b>31</b>	<b>250</b>	<b>63.95</b>	<b>80</b>	<b>19.35</b>	<b>18</b>
2006-07	S T/ VAT	31	215	83.64	67	30.97	11	2.72
	Entry Tax		2050	43.74	12	4.292	3	0.60
	<b>Total</b>		<b>31</b>	<b>2265</b>	<b>127.38</b>	<b>79</b>	<b>35.262</b>	<b>14</b>
2007-08	Sales Tax/ VAT	38	155	160.16	14	0.74	1	0.36
	Entry Tax		34	112.13	Nil	Nil	Nil	Nil
	<b>Total</b>		<b>38</b>	<b>189</b>	<b>272.29</b>	<b>14</b>	<b>0.74</b>	<b>1</b>
2008-09	ST/ VAT	44	241	282.77	10	1.33	nil	Nil
	Entry Tax		99	27.84	Nil	Nil	Nil	Nil
	<b>Total</b>		<b>44</b>	<b>340</b>	<b>310.61</b>	<b>10</b>	<b>1.33</b>	<b>Nil</b>
2009-10	ST/ VAT	56	224	82.45	Nil	Nil	Nil	Nil
	Entry Tax		66	19.51	Nil	Nil	Nil	Nil
	Profession Tax		23075	16.87	Nil	Nil	Nil	Nil
	<b>Total</b>		<b>56</b>	<b>23365</b>	<b>118.83</b>	<b>Nil</b>	<b>Nil</b>	<b>Nil</b>
<b>Grand total</b>		<b>200</b>	<b>26409</b>	<b>893.06</b>	<b>183</b>	<b>56.68</b>	<b>33</b>	<b>9.45</b>

The recovery position as compared to the accepted amount during the last five years was very low, being only 16.67 per cent. **The Government may ensure prompt recovery of the amounts involved at least in the accepted cases immediately.**

### 2.1.9 Results of Audit

We conducted a PA on “Utilisation of declaration forms (‘C’ and ‘F’) in Inter State Trade and Commerce” and test checked the records of 60 units relating to OVAT, CST, and OET in commercial tax offices during the year 2010-11 and found non/short levy of tax/interest/penalty etc. amounting to ₹ 94.07 crore in 275 cases which fall under the following categories.

(Rupees in crore)			
Sl. No.	Categories	No. of cases	Amount
1.	Utilisation of declaration forms (‘C’ and ‘F’) in Inter State Trade and Commerce (A Performance Audit)	1	2.56
<b>VAT/CST</b>			
1	Short levy of tax due to incorrect computation of taxable turnover	7	0.13
2	Under assessment of tax due to application of incorrect rate of tax	35	5.19
3	Under assessment of tax due to incorrect grant of exemption	31	24.06
4	Non/short levy of interest/ penalty	90	39.04
5	Incorrect allowance/adjustment of Input Tax credit	32	6.62
6	Other irregularities	9	0.65
<b>Total</b>		<b>205</b>	<b>78.25</b>
<b>Entry tax</b>			
1.	In correct computation of taxable turnover	3	0.07
2.	Non-levy of Tax/Application of incorrect/ concessional rate of tax	21	9.50
3.	Under assessment of tax due to incorrect grant of exemption/Set off	13	1.80
4.	Non/short-levy of interest/penalty	31	4.44
5.	Other cases	2	0.01
<b>Total</b>		<b>70</b>	<b>15.82</b>
<b>Grand total</b>		<b>275</b>	<b>94.07</b>

During the year the Finance Department accepted irregular grant of concession/exemption of ₹ 2.56 crore against the performance audit. Further, the Department accepted underassessment and other deficiencies of ₹ 21.86 crore in 13 cases which were pointed out by us in 2010-11 and earlier years and an amount of ₹ 0.02 crore was realised in one case in respect of VAT assessment during the year. Similarly, during the year the Department accepted under assessment of ₹ 0.25 crore in three cases pointed in earlier years in respect of Entry Tax.

A Performance Audit on “Utilisation of declaration forms (‘C’ and ‘F’) in inter-State trade and commerce” involving financial effect of ₹ 2.56 crore and a few illustrative cases involving ₹ 59.01 crore are mentioned in the following paragraphs.

## 2.2 Performance Audit Report on “Utilisation of declaration forms (‘C’ and ‘F’) in inter-State trade and commerce”

### Highlights

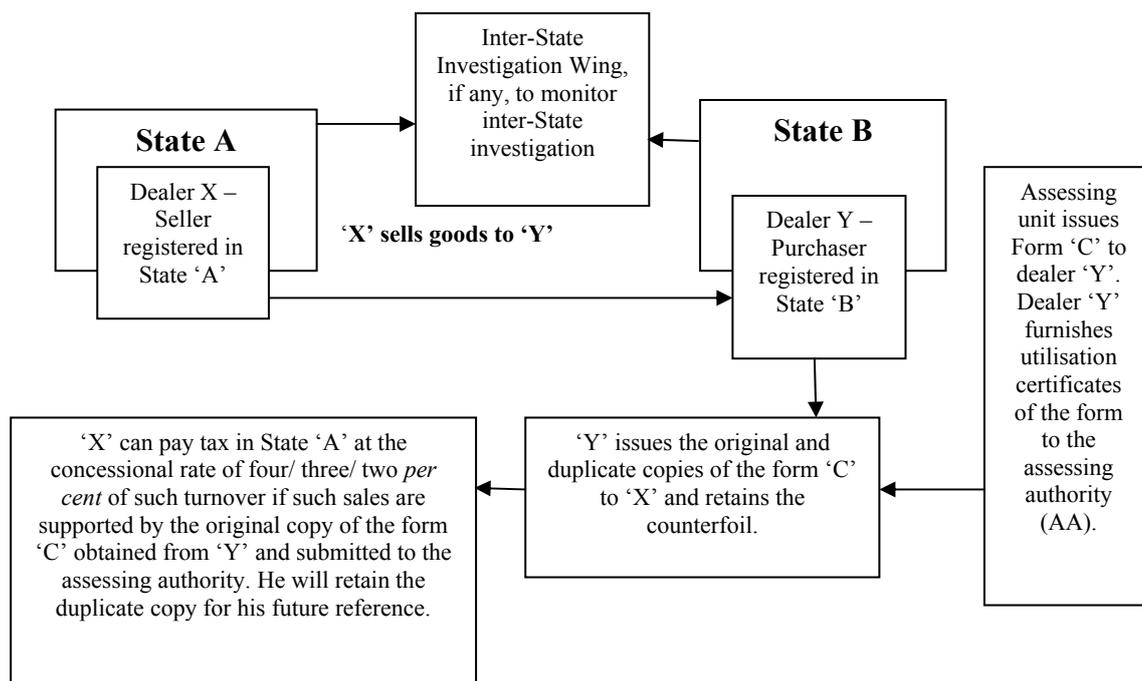
- Out of 556 declaration forms received from other States by the Enforcement Wing (EW) of the Commissionerate of Commercial Taxes during the period from 2007-08 to 2009-10, result of verification in respect of only 35 declaration forms were sent and the position of cross verification in respect of the remaining 521 declaration forms were not received by the EW from the Enforcement Ranges. Cross verification of the details of declaration forms with other States was neither done in the test checked circles nor any monitoring thereof was done by the EW.  
**(Paragraph 2.2.10)**
- Irregular grant of concession/ exemption of tax on sales/branch transfer of goods not supported by declaration forms resulted in short levy of tax and penalty of ₹ 0.19 crore.  
**(Paragraph 2.2.11)**
- Cross verification of declaration forms revealed that 14 dealers availed concession/exemption of tax of ₹ 0.12 crore against 40 declaration forms which were found to be fake.  
**(Paragraph 2.2.12)**
- Cross verification of the details of declaration forms revealed that 20 dealers inflated inter-State sales figures by ₹ 4.45 crore against 38 forms and 13 dealers suppressed such sales figure by ₹ 0.38 crore against 15 forms. This led to escapement of tax of ₹ 0.32 crore. Moreover, six dealers in six circles evaded tax and penalty of ₹ 0.25 crore by fraudulent use of eight declarations in form ‘C’ issued in the name of other dealers.  
**(Paragraph 2.2.13)**
- Irregular concession/exemption of tax against manipulated, photocopied, defective and duplicate forms resulted in short levy of tax of ₹ 1.69 crore.  
**(Paragraph 2.2.14)**
- Internal Control Mechanism of the Department was inadequate.  
**(Paragraph 2.2.16)**

**2.2.1 Introduction**

Under the Central Sales Tax (CST) Act, 1956 and the Rules made thereunder viz. the CST Registration and Turnover (R&T) Rules, 1957 and the CST (Orissa) Rules, 1957, the registered dealers of the State are eligible to certain concessions and exemptions of tax on inter-State transactions against submission of prescribed declarations in forms ‘C’ and ‘F’. The Government provide these incentives to the dealers for furtherance of trade and commerce. It is the responsibility of the CCT of the State to ensure proper accountal and provision of adequate safeguards against misutilisation of the above declaration forms on which tax relief is allowed since it involves the revenue interest of the Government. The steps involved in the process of granting concession/ exemption of taxes against declarations in Form ‘C’ and ‘F’ are given below.

**Form ‘C’**

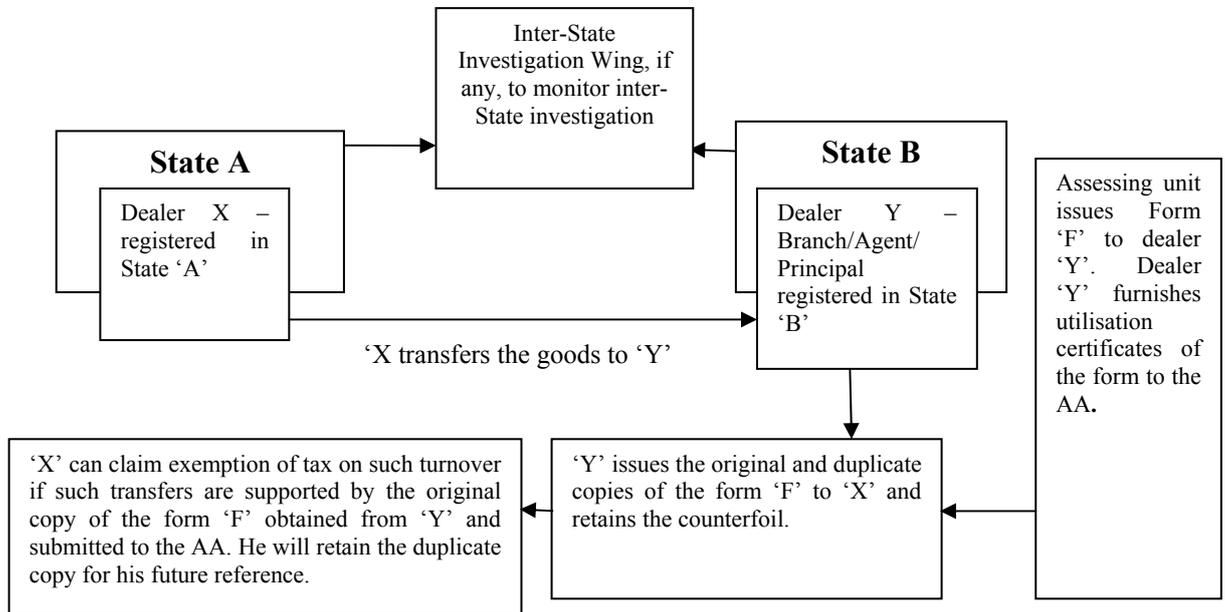
Under the CST Act, every dealer, who, in the course of inter-State trade or commerce, sells to a registered dealer, goods of the classes, specified in the certificate of registration (RC) of the purchasing dealer, shall be liable to collect and pay tax at the concessional rate of four *per cent* (three *per cent* from 1.4.2007 and two *per cent* from 1.6.2008) of such turnover provided that such sales are supported by declarations in form ‘C’.



**Form ‘F’**

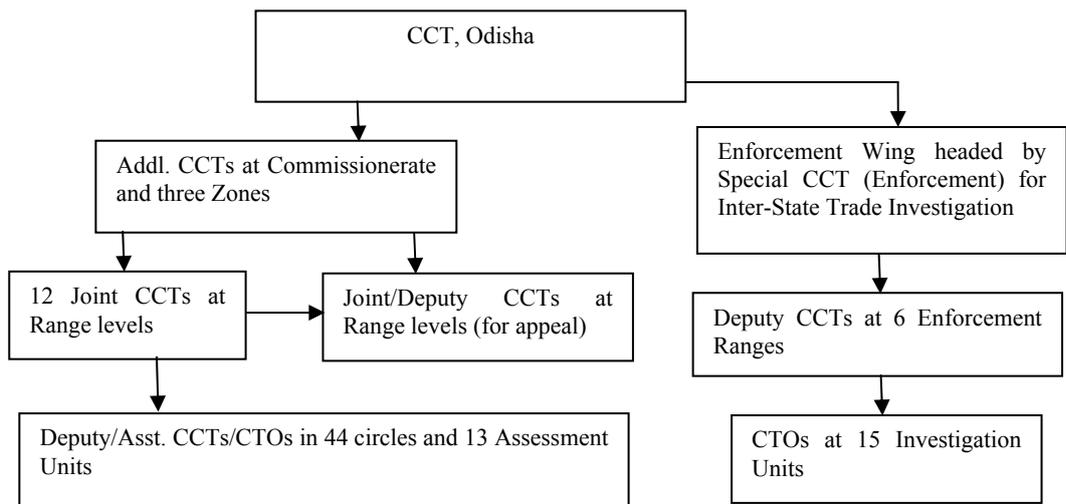
Under Section 6A of CST (Amendment) Act, 1972, transfer of goods not by reason of sales by a registered dealer to any other place of his business outside the State or to his agent or principal in other States is exempt from tax on production of declaration in form ‘F’, duly filled in and signed by the principal officer of the other place of business or his agent or principal as the case may be, along with the evidence of despatch of such goods. Filing of declarations

in Form 'F' has been made mandatory from May 2002. The Act authorises the AA to make such enquiries, as he deems necessary to satisfy himself about the bonafides of the transfers such as *sale patties*, despatch particulars, way bills etc.



**2.2.2 Organisational set up**

The assessment and collection of CST is administered by the CCT under the overall control of the Principal Secretary to the Government in Finance Department (FD). He is assisted by the Additional CCTs at the Commissionerate/Zonal levels, 12 Joint CCTs at the Range levels and 44 Deputy/Assistant CCTs/Commercial Tax Officers (CTOs) at the Circle/Assessment Unit levels. The Organisational set up of the CCT is given below.



### **2.2.3 Audit Objectives**

The PA aimed to ascertain whether:

- There exists a foolproof system for custody and issue of the declaration forms;
- Exemption/ concession of tax granted by the AAs was supported by the original declaration forms;
- There is a system for ascertaining the genuineness of the forms for preventing evasion of tax;
- There is a system of uploading the particulars in the TINXSYS website and the data available there is utilised for verifying the correctness of the forms;
- Appropriate steps are taken on receipt and detection of fake, invalid and defective (without proper or insufficient details) forms; and
- There exists an effective and adequate internal control mechanism.

### **2.2.4 Scope and methodology of audit**

The PA covered one Range (Cuttack-I) and 12 circles<sup>2</sup> in course of our audit conducted between November 2010 and January 2011 covering all assessments completed during 2007-08 to 2009-10 where exemptions/ concessions of tax were allowed under the CST Act 1956. Out of 2133 assessments completed by these circles / ranges during 2007-08 to 2009-10 under the Act, we requisitioned 1697 records for test check. The AAs however, produced 1487 assessment records for scrutiny and we noticed therefrom that in 1188 assessments, concessions / exemptions of tax were allowed to the dealers against submission of declaration forms by them. From these assessment records, we collected the details of 4252 'C' forms and 2202 'F' forms issued by the AAs of 28 other States / Union Territories (UTs) against which the dealers of the State had availed concession / exemption of tax on submission of the same before the AAs concerned. These details were sent to the concerned States for cross verification with reference to the records maintained by the AAs of the 28 States / UTs, who issued such forms, in order to ascertain the genuineness of those forms as well as the correctness of the value of goods. Similarly, we also received the details of 1269 'C' forms and 444 'F' forms from 22 other States and cross verified the same with reference to the records of the Deputy CCTs / Assistant CCTs of 36 Circles of the State. Besides, the PA also covered the audit observations made by us during the period from April to October 2010 in six other Ranges<sup>3</sup> and seven circles<sup>4</sup> on the assessments completed under the Act for the period covered in the PA.

---

2 Bargarh, Cuttack-I (East), Cuttack-I (West), Cuttack-I (City), Cuttack-I (Central), Deogarh, Jharsuguda, Kalahandi, Nuapada, Rourkela-II, Sambalpur-II and Sonepur.

3 **Ranges:** Angul, Bolangir, Balasore, Puri, Sambalpur and Sundargarh.

4 **Circles:** Angul, Barbil, Bhubaneswar-IV, Cuttack-II, Ganjam-II, Jatni and Rourkela-I.

### 2.2.5 Acknowledgement

The Indian Audit and Accounts Department (IA and AD) acknowledges the co-operation of the FD of the State in providing necessary information for the PA. Before commencement of the PA, an entry conference was held on 9 November 2010. The Principal Secretary of FD and the CCT represented the Government / Department. The scope and objectives of the review were discussed. The draft PA report was sent to the FD in September 2011 for their comments which are yet to be received. An exit conference was also held on 14 December 2011 with the above mentioned officers wherein the outcome of the PA was discussed and accepted by the Department/ Government.

### 2.2.6 Audit findings

#### Maintenance of accounts for receipts, issue and utilisation of declaration forms

##### 2.2.6.1 Printing and custody of declaration forms

- The declaration forms are to be obtained by the CCT from the Government Press of the State and supplied to the circle offices under his jurisdiction through the respective ranges.
- Declaration forms are to be issued to the registered dealers by circle offices to enable them to issue those forms to the registered dealers of other States for the purposes specified in their RCs for availing concession/exemption of tax. The receipt and issue of the aforesaid declaration forms are also accounted for in separate stock registers by the circle offices. When the forms are issued to the dealer, the signature of the dealer is to be obtained in the register as a token of receipt.
- The dealer has to maintain complete accounts of the declaration forms received and utilised by him showing the name of the dealers to whom the forms are issued, bill number and date along with the description of goods and purchase / sale / transfer value thereof, as the case may be, and submit the periodical accounts of the above forms to the circle office concerned and the same is to be properly recorded by the respective AA. On receipt of the account of utilisation of the said forms, relevant guard files are to be maintained by the AA to monitor and watch such issues with cross reference to the respective issue register.
- No second / subsequent issue of declaration form is to be made by the circle office to the dealer till accounts of the utilisation of forms issued earlier is submitted by him to the AA concerned who issued the same.

The CCT of the State places indents for printing of various declaration forms to the Director of Printing, Stationery and Publication, Odisha in phases giving a specific series and serial numbers well before the existing stock is exhausted and depending on the requirement of the circles. The forms, after printing, are received from the Government Press. An authorised person of the Commissionerate receives the above declaration forms and after detailed physical verification, the stock account of the forms is maintained manually and is kept in safe custody in steel almirahs placed in the strong room having

double lock facility and the details are also entered in the Value Added Tax Information System (VATIS). The forms are issued to the circles on proper authorisation and acknowledgement and the details of forms issued to the circles are also entered in the VATIS.

During scrutiny (November 2010) of the records in the Commissionerate office, we noticed that the prescribed system for printing of the declaration forms by the Government Press and for receipt and issue of the same to the circle offices was being adhered to.

**2.2.6.2 Issue and accounting of declaration forms**

Under the CST (Orissa) Rules, 1957, a registered dealer who wishes to purchase goods from another registered dealer of some other State for the purpose specified in his RC, shall obtain, on application, blank declaration forms prescribed under the CST (R&T) Rules for furnishing the same to the selling dealer. Each application should be affixed with a fee of ₹ 21 in court fee stamps for every 25 blank declaration forms applied for. The above Rules also provide that the dealer shall maintain a register in Form-V (for ‘C’ form) or Form-VC (for ‘F’ form) and furnish a true copy of the complete account of every such form received by him to the AA. No second or subsequent supply of declaration forms shall be made to him unless he furnishes a copy of the accounts of the forms last supplied to him. With effect from 1 April 2011, the Department has, however, introduced the system of electronic issue of pre-filled declaration forms and certificates through the State Government portal. The issue of blank declaration forms has also been dispensed with from April 2011.

During scrutiny of the records of the test checked circles, we noticed in Cuttack-I-East Circle that in contravention of the provisions laid down in the Rules, second and subsequent issues of declaration forms had been made to three dealers although utilisation accounts in respect of forms issued earlier had not been submitted by them. The details are given below.

Name of the Circle	Name of the dealer/ TIN	Date of earlier issue of forms	Number of forms issued	Date of subsequent issue of forms	Number of forms issued
Cuttack-I East	Arjun Traders/ 21791202170	24 October 2008	2	7 May 2009	2
Cuttack-I East	Motiwala Traders/ 21981202599	6 June 2006	8	16 October 2008	13
Cuttack-I East	Sanjay and Co 21091202167	9 June 2006	1	24 October 2008	1

We also noticed (December 2010) that, as on the date of our audit, these dealers had not submitted the utilisation accounts even in respect of the forms issued to them earlier. After we pointed this out, these dealers surrendered the unused forms between 27 December 2010 and 22 January 2011.

### **2.2.6.3 Issue of declaration forms after cancellation of the RC**

In Cuttack-I (East) Circle, we noticed that the RC of a dealer was cancelled in January 2010 after his death in November 2009. However, in contravention of the provisions of the above mentioned Rules, the AA issued (30 June 2010) 137 'C' forms<sup>5</sup> in the name of the deceased dealer for inter-State purchase of goods valued at ₹ 14.16 crore made by him during the period from 1 April 2006 to 31 December 2009 and handed over the same to a relative of the deceased dealer to whom a separate Taxpayers Identification Number (TIN) was issued after the death of the dealer. This indicated that the inter-State transactions made by the dealer prior to his death as well as the tax liability of the dealer were not verified by the AA at the time of cancelling his RC. Thus, issue of declaration forms in the name of the deceased dealer after the date of cancellation of the RC was irregular.

After we pointed out the above case, the AA stated (December 2010) that the 'C' forms were issued as per the wanting list of forms filed by the relative of the dealer covering transactions for the period from 1 April 2006 to 31 December 2009. The reply is, however, not acceptable as the wanting list was submitted after the cancellation of the RC by the relative of the deceased dealer and issue of forms, if any, should have been done before cancellation of the RC. As the instant dealer was required to issue those forms to the selling dealers while purchasing the goods from outside the State for submission of the same to their AAs within three months after the period of transaction, issue of declaration forms for transactions relating to earlier periods of more than three years of a dealer whose RC was cancelled was not in conformity with the provisions of the Act and Rules.

### **2.2.6.4 Non-return of unused declaration forms by the dealers whose RCs were cancelled**

Under the CST (R&T) Rules, 1957 read with the provisions of CST (Orissa) Rules, 1957, if the RC of a dealer is cancelled, the dealer shall forthwith surrender the RC and the copies thereof, if any, granted to him, to the notified authority along with the unused statutory declaration forms retained up to the date of cancellation of the RC.

During scrutiny of the records relating to cancellation of RCs of dealers under the CST Act, 1956 and the Rules made thereunder and from information furnished by the AAs of the test checked circles, we noticed (December 2010)

that in Cuttack-I East Circle, although RCs of 10 dealers were cancelled between 11 May 2009 and 30 December 2009, yet 76 unutilised blank 'C' forms issued to those dealers between 6 June 2006 and 6 September 2009 had neither been surrendered by the dealers nor had the registering authority of the circle insisted on getting back those forms from them before cancellation of the RCs. The details are given below.

---

5 'C' Forms: PQ/Y-777678 to 777814 (Total 137 forms).

Sl. No	Name of the Circle	Name of the dealer	TIN	Date of cancellation of RC	Type of forms issued to the dealer	Forms remained unused at the time of cancellation	Form Serial No.	Date of issue
1.	Cuttack-I (East)	M/s Arjun Traders	21791202170	9.12.2009	C	2	PQ/Y-214465 to 214466	24.10.2008
2.	Cuttack-I (East)	M/s Arjun Traders	21791202170	9.12.2009	C	2	PQ/Y-390597 to 390598	7.5.2009
3.	Cuttack-I (East)	M/s Purusottam Mohanty	21881202266	17.7.2009	C	2	PQ/Y-390269 to 390270	30.4.2009
4.	Cuttack-I (East)	M/s Mahavir Auto Agency (Pvt) Ltd	21891202212	11.5.2009	C	6	PQ/Y-287336 to 287341	6.6.2006
5.	Cuttack-I (East)	M/s Biogenetics	21891202309	21.12.2009	C	8	PQ/Y-42233 to 42240	6.9.2009
6.	Cuttack-I (East)	M/s Laxmi Timber Traders	21751202289	30.12.2009	C	2	PQ/Y-390439 to 390440	30.4.2009
7.	Cuttack-I (East)	M/s Motiwala Traders	21981202599	21.12.2009	C	8	PQ/X-287309 to 287316	6.6.2006
8.	Cuttack-I (East)	M/s Motiwala Traders	21981202599	21.12.2009	C	13	PQ/Y-214380 to 214392	16.10.2008
9.	Cuttack-I (East)	M/s Mahavir Agency	21721202160	19.12.2009	C	2	PQ/Y-390633 to 390634	7.5.2009
10.	Cuttack-I (East)	M/s Incite Marketing Private Ltd.	21471210009	17.7.2009	C	6	PQ/Y-390764 to 390769	7.5.2009
11.	Cuttack-I (East)	M/s Asian Trading Company	21271201874	15.5.2009	C	23	PQ/X-287603 to 287625	12.6.2006
12.	Cuttack-I (East)	M/s Sanjay and Co	21091202167	6.6.2009	C	1	PQ/X-287479	9.6.2006
13.	Cuttack-I (East)	M/s Sanjay and Co	21091202167	6.6.2009	C	1	PQ/Y-214464	24.10.2008
		<b>Total</b>				<b>76</b>		

Thus, retention of the unused 'C' forms by the dealers after cancellation of their RCs was fraught with the risk of misuse of the said declaration forms. The AAs also did not ensure surrender of unused forms before cancellation of the RCs.

After we pointed out the above cases, the AA stated (December 2010) that the Assistant Commercial Tax Officers (ACTOs) would be directed to obtain the same from the dealers and compliance thereof would be intimated to audit. However, on further examination of records during October 2011, we noticed that only three dealers at Sl. 1, 8 and 12 above had surrendered 13 unutilised 'C' forms. The AA stated (October 2011) that the remaining 63 unutilised 'C' forms would be obtained from the dealers.

### **2.2.7 Issue and accounting of declaration forms in the VATIS and uploading in TINXSYS**

As per the instructions issued by the CCT in February 2006, on receipt of stock of the declaration forms, stock entry shall be made by the circles in the Statutory Form Management Module of the VATIS after physical verification of the same. On receipt of requisitions from the dealers, declaration forms shall be issued through the VATIS and at the time of subsequent issue of forms, the details of utilisation submitted by the dealer in respect of the forms issued earlier shall also be entered in the said module.

#### **2.2.7.1 Accountal of stock of declaration forms in VATIS by the circles**

From the Forms Issue Register maintained manually in the Commissionerate, we noticed that during the period from 2007-08 to 2009-10, the CCT issued 176125 'C' forms and 37525 'F' forms to the 12 circles covered under the review. However, from the data generated from VATIS, we noticed that as

against the above, 174375 'C' forms and 35525 'F' forms had been entered in VATIS by the above circles during the above period. The circle-wise details of receipt of stock during 2007-08 to 2009-10 as per the Forms Issue Register of the CCT vis-à-vis the stock of declaration forms entered in VATIS by the test checked circles along with the non-accountal of stock of declaration forms 'C' and 'F' are given below.

Sl. No.	Name of the Circle	Number of 'C' forms issued by CCT to the Circle	Number of 'C' forms entered in VATIS by the Circle	Number of 'C' forms not entered in VATIS	Number of 'F' forms issued by CCT to the Circle	Number of 'F' forms entered in VATIS by the Circle	Number of 'F' forms not entered in VATIS
1.	Cuttack-I East	14250	14250	0	4000	4000	0
2.	Cuttack-I-City	21750	21750	0	10875	10875	0
3.	Cuttack-I West	17000	17000	0	5000	5000	0
4.	Cuttack-I Central	31000	31000	0	13650	13650	0
5.	Jharsuguda	20000	20000	0	0	0	0
6.	Kalahandi	9125	9125	0	1000	1000	0
7.	Rourkela-II	41500	41500	0	1000	1000	0
8.	Sambalpur-II	11000	11000		1000	0	1000
9.	Bargarh	9750	8000	1750	1000	0	1000
10.	Nuapada	750	750	0	0	0	0
11.	Sonepur	0	0	0	0	0	0
12.	Deogarh	0	0	0	0	0	0
	<b>Total</b>	<b>176125</b>	<b>174375</b>	<b>1750</b>	<b>37525</b>	<b>35525</b>	<b>2000</b>

Thus, we noticed that 70 booklets containing 1750 'C' forms of series PQ/Y having serial Nos. 727251 to 729000 issued by the CCT to Bargarh Circle on 15 October 2009 had not been entered in the VATIS. Similarly, 80 booklets containing 2000 'F' forms of series OGP/AY having serials 85501 to 86500 (1000) and serials 180001 to 181000 (1000) issued to Sambalpur-II Circle and Bargarh Circle on 10 March 2008 and 15 October 2009 respectively had not also been entered in the VATIS during that period.

After we pointed out the above, the Assistant CCT (IT) of the Commissionerate stated (October 2011) that the Bargarh Circle had entered the stock of 1750 'C' forms in VATIS in July 2011. Regarding the non-entry of 2000 'F' forms in VATIS, he stated that out of the stock of 2000 'F' forms sent to the Sambalpur-II Range, stock of 1000 forms had not been acknowledged by it and the remaining 1000 forms had not been distributed by it to the Sambalpur-II Circle till date (October 2011) and as a result the details of these forms are not available in VATIS.

#### **2.2.7.2 Data entry in VATIS in respect of issue of declaration forms to the dealers by the circles**

During test check of issue of declaration forms in the Forms Issue Register vis-à-vis the details of issue of forms entered in VATIS by four circles, we noticed that while 81821 'C' and 35214 'F' forms were issued to the dealers during the years from 2007-08 to 2009-10 by the said circles, issue details of 71615 'C' and 39814 'F' forms had been entered in VATIS during that period. The details are given below.

Name of the Circle	Number of forms issued to dealers			Number of forms entered in VATIS		
	'C'	'F'	Total	'C'	'F'	Total
Cuttack-I East	14529	5267	19796	2221	3523	5744
Cuttack-I-City	20453	9204	29657	20386	9156	29542
Cuttack-I Central*	30415	12525	43140	32584	18917	51501
Cuttack-I West	16424	8218	24642	16424	8218	24642
<b>Total</b>	<b>81821</b>	<b>35214</b>	<b>117235</b>	<b>71615</b>	<b>39814</b>	<b>111429</b>

\* The excess in data entry in Cuttack-I Central Circle was due to forms issued prior to 2007-08 entered in VATIS in subsequent years.

After we pointed out the shortfall / discrepancies in data entry in the VATIS, while the AA of Cuttack-I City Circle stated (October 2011) that the shortfall in data entry was due to inadequacy of data entry operators, the AA of Cuttack-I East Circle agreed (October 2011) to analyse the reasons for the shortfall and furnish the compliance later on.

### **2.2.7.3 Data entry in respect of utilisation of forms in VATIS**

As per the information furnished by the CCT in October 2011, the details of utilisation in respect of 1,65,009 declaration forms (Form 'C': 1,36,960 and Form 'F': 28,049) had been entered in VATIS during the period from 1 April 2007 to 14 October 2011.

### **2.2.7.4 Uploading of details of declaration forms in TINXSYS**

The CCT stated (January 2011) that the data regarding issue of declaration forms to the dealers are being uploaded to the TINXSYS website automatically once in a day after they are entered in the VATIS. We test checked the details of declaration forms entered in VATIS *vis-a-vis* the data uploaded in TINXSYS and found that in case of issue of forms to the dealers during the period from 2007-08 to 2009-10, the details of the forms that have been entered in VATIS have been uploaded in TINXSYS. Similarly, in case of utilisation of forms, the details of utilisation of the forms that have been entered in VATIS during the period from 2007-08 to 14 October 2011 had also been uploaded in TINXSYS.

### **2.2.8 Availment of concession / exemption against declaration forms (C and F)**

Under the CST (Orissa) Rules, 1957, every registered dealer filing return in respect of transactions in each quarter, shall furnish to the AA, statements in prescribed forms showing particulars of transactions such as inter-State sales against form 'C' and transfer of goods to branches outside the State against form 'F'. However, it is not mandatory for the dealer to furnish the relevant declaration forms along with the returns for the tax period to which such declarations relate. The declaration forms marked 'Original' in support of the transactions for a quarter are required to be furnished within three months after the end of such quarter. The CST Act, 1956 or the Rules made thereunder do not provide for any penal measures for non-submission or delayed submission of the declaration forms with the returns within the period of three months prescribed. During scrutiny of the returns, the AA is required to ensure that the declaration forms submitted by the dealer are in order and duly filled in. Where the dealer fails to furnish the declaration forms within the prescribed period or where the declaration forms are found to be defective, the return to

which such declaration forms relate shall not be accepted as self-assessed return and the same shall be referred to the tax audit.

### **2.2.9 System of verification of declaration forms through TINXSYS before allowing exemption / concession**

TINXSYS is a website designed to assist the CT Departments of various States and UTs to effectively monitor the inter-State trade. TINXSYS can also be used by any dealer to verify the bonafides of the counter party dealers in other States/UTs. Apart from the dealers' verification, the CT Department officials use this for verification of the Statutory Declaration Forms issued by the CT Departments of other States/UTs and submitted to them by the dealers of the State in support of the claim of concessions/exemptions. TINXSYS also provides the Management Information System (MIS) and Business Intelligence Report (BIR) to the CT Departments as well as the Empowered Committee (EC) to monitor the trends of movements of goods in the inter-State trade and commerce.

We noticed that though all the AAs of the State had access to TINXSYS with user-Ids and passwords, the Department has not made it mandatory for the AAs to verify all the declaration forms through it. The CCT stated (January 2011) that the AAs were at liberty to verify the database of TINXSYS before allowing exemption/concession. There was no system for submission of any reports or returns by the AAs regarding the details of cross verifications made by them in the TINXSYS website. We

also could not ascertain from the test checked circles as to whether the TINXSYS had in fact been utilised during the years from 2007-08 to 2009-10 for cross verification of declaration forms which were accepted during the assessments, as no records were maintained by these circles to that effect.

### **2.2.10 Inter-State Trade Investigation by Enforcement Wing**

We noticed that the CCT is not having a separate wing for Inter-State Trade Investigation (ISTI). The Enforcement Wing (EW) of the Commissionerate headed by the Special CCT (Enforcement), in addition to its regular work such as surprise inspection of business premises, search and seizure of unaccounted stock, mobile check of vehicles on road, survey of unregistered dealers, modernisation of check gates and border control etc., also looks after the monitoring of ISTI. Under the EW, six Enforcement Ranges (ERs) and 15 Investigation Units (IUs) are functioning in the State. The ERs are headed by the Deputy CCTs / Assistant CCTs whereas the IUs are manned by the CTOs along with other staff. As a part of monitoring ISTI, the EW receives the details of declaration forms from other States and sends them to the ERs for cross verification. The ERs, after cross verification, send the results of verification to the concerned States under intimation to the EW.

#### **2.2.10.1 Cross verification of declaration forms received from other States**

During the course of PA covering the period from 2007-08 to 2009-10, we noticed that the EW has maintained a register, only with effect from March 2010, for monitoring the cross verification of declaration forms received from

other States. Prior to that, the details of declaration forms were kept in files and sent to the ERs for cross verification. From the files relating to inter-State verification of 'C' and 'F' forms made available to audit, we noticed that during the period covered under the review, the EW had received 556 declaration forms ('C': 383 and 'F': 173) from other States for cross verification. We further noticed that while sending the details of these declaration forms to the ERs, the EW had not fixed any timeframe for completion of the cross verification. Due to absence of such an instruction, the respective circles had intimated the results of verification in respect of only 35 'C' forms to the EW out of 556 forms sent to them. The position in respect of verification of the remaining 521 declaration forms was not available in the records of the EW. We also noticed that the records / database under VATIS were not consulted to ascertain the jurisdiction of the form issuing dealers. As a result, we observed that the details of 10 declaration forms were wrongly sent between April 2008 and February 2010 to the ERs other than the ERs under whose jurisdiction the forms were issued and hence the result of verification thereof have not been received by the EW as of October 2011.

During test check in two ERs<sup>6</sup>, we called for the position of cross verification in respect of 78 declaration forms (Form 'C': 56 and Form 'F':22) which had been sent by the EW during the period from 2007-08 to 2009-10 to these ERs. While the Deputy CCT, ER, Bhubaneswar stated (October 2011) that they had not received the details of the 39 declaration forms (Form 'C': 34 and Form 'F': 5), the ACCT, ER, Cuttack stated that they have maintained the Reference Register from 1 April 2011 onwards for monitoring the verification and prior to that, the IUs were to send the result of verification directly to the EW. However, the fact remains that result of verification in respect of any declaration form had not been received by the EW from any of the two IUs (Cuttack-II and Angul) under the ER, Cuttack during the period from 2007-08 to 2009-10.

#### ***2.2.10.2 Cross verification of the details of declaration forms with other States***

To check the misuse of the declarations in form 'C' and 'F' and various other malpractices associated therewith, the CCT issued instructions (October 1972 and December 1977) to all the AAs to select a certain percentage of the declaration forms received from other States and submitted by the dealers of the State, as reflected in the assessment cases records, for reference to the AAs of the concerned State for cross verification. Further, every circle and assessment unit is required to maintain two registers in the prescribed proforma, one for declaration form 'C' received from other States and the other for declaration form 'C' sent to other States, for verification.

During scrutiny of the records of the test checked circles, we noticed that the circles neither maintained the prescribed registers for cross verification of declaration forms with other States nor conducted any cross verification by referring the details of declaration

---

6 Bhubaneswar ER and Cuttack ER.

forms to their counterparts in other States for establishing the genuineness of these forms which were accepted at the time of finalisation of assessments completed during the years from 2007-08 to 2009-10. As there was no system for furnishing the periodical reports / returns by the AAs to the higher authorities regarding cross verification of declaration forms, the genuineness of defective / duplicate / manipulated declaration forms were not ascertained by the Department. The CCT was, thus, unaware of the factual position of cross verification done, if any.

To our observations made in paragraph 2.2.6.1 of the Report of the CAG on the revenue receipts of the Government of Orissa for the year ended 31 March 2008, the Department had stated (September 2009) that cross verification was not practically feasible within the available resources and limited time period. They, however, added that the Department had been taking initiatives to do the same through the TINXSYS as well as demating of statutory declaration forms as a part of e-Governance. The fact, however, remained that during the PA, we did not notice the utilisation of the TINXSYS by the AAs. Further, the demating of declaration forms started only with effect from 1 April 2011.

We also noticed that there was no system in place for blacklisting the dealers who are found to have utilised invalid / fake declaration forms. During the years 2007-08 to 2009-10, the EW had also not detected any fake form. However, on cross verification conducted by us, we noticed some discrepancies as pointed out in paragraphs 2.2.12 and 2.2.13 infra.

### **2.2.11 Irregular grant of concession / exemption of tax**

As per the CST Act, inter-State transactions not covered by the valid declarations were exigible to tax at the rate of eight *per cent* in case of declared goods and at the rate of 10 *per cent* or the State rate whichever was higher in case of other goods up to 31 March 2007. However, with effect from 1 April 2007, inter-State transactions not covered by declaration forms became exigible to tax at the rate at which the goods are taxable under the Orissa VAT Act. Further, penalty equal to twice the tax assessed in audit assessment is leviable under the CST (O) Rules with effect from July 2006 onwards.

During scrutiny of assessment records in test checked circles / ranges, we noticed short levy of tax and penalty of ₹ 18.72 lakh due to irregular allowance of concession / exemption of tax by the AAs in six cases on sales turnover / branch transfer of goods valued at ₹ 1.96 crore which were either not exigible to tax at the concessional rates or exempted from tax. The details are discussed in the

succeeding sub-paragraphs.

#### **2.2.11.1 Allowance of concessional rate of tax on inter-State sales not supported by declarations in form 'C'**

In three circles, we noticed that although two dealers did not furnish declarations in Form 'C' and two dealers were assessed ex-parte in respect of inter-State sales of goods valued at ₹ 1.55 crore relating to the tax periods between 1 April 2005 and 31 March 2007, the AAs allowed (March and November 2009) concessional rates of tax. This resulted in short levy of tax of

₹ 7.26 lakh. Besides, penalty of ₹ 7.35 lakh was also leviable. The details are given below.

Name of the Circle	Number of dealers	Name of the goods	Period/ Date of assessment	Value of goods excluding tax	(Rupees in lakh)		
					Tax	Penalty	Total
Nuapada	2	Rice bran	2005-06/31 March 2009	21.67	1.92		1.92
Bargarh	1	Rice and broken rice	April 2006 to June 2006/ 31 March 2009	41.65	1.66		1.66
Rourkela-II	1	Iron and Steel	April 2006 to June 2008/ 12 November 2009	91.93	3.68	7.35	11.03
<b>Total</b>	<b>4</b>			<b>155.25</b>	<b>7.26</b>	<b>7.35</b>	<b>14.61</b>

After we pointed out the above cases, the AAs of the concerned circles stated (March and November 2009) that the said cases would be re-examined. However, final compliances are yet to be received (January 2012).

#### **2.2.11.2 Allowance of exemption of tax on goods not exempted from tax**

During test check of assessment records in Bargarh Circle, we noticed that although rice bran was not exempted from tax under the CST Act, 1956 and Rules made thereunder, the AA exempted (March 2009) tax on inter-State sales turnover of such goods valued at ₹ 41.12 lakh of a dealer relating to the year 2005-06 by treating it 'mota kunda'<sup>7</sup> as a tax free item. We, also noticed that while doing the assessment (3 March 2010) of another dealer<sup>8</sup> of the same circle for the tax periods from April 2006 to June 2006, the AA levied tax on 'mota kunda' at the rate of four per cent treating it as a taxable item. Thus, exemption of tax on inter-State sale of 'mota kunda' resulted in short levy of tax of ₹ 4.11 lakh at the rate of 10 per cent being not supported with the declarations in form 'C'.

After we pointed out the above case, the AA agreed (December 2010) to re-examine the case. However, final compliance is yet to be received (January 2012).

#### **2.2.12 Evasion of tax by utilisation of fake forms**

**2.2.12.1** On cross verification of the records of the AAs of other States, we noticed that six declarations in form 'C' furnished by six dealers in three circles claiming concession of tax in respect of sales turnover of goods valued at ₹ 20.87 lakh relating to different periods ranging between 1 April 2004 and 31 March 2006 were fake. The issuing State i.e. Chhattisgarh certified that the said forms were not issued by them. The details are given below.

Name of the Circle	Number of dealers	Number of forms	Period of transaction	Value of goods (excluding tax)	(Rupees in lakh)
					Amount of tax escaped at differential rate of tax
Cuttack-I East	3	3	2004-05 and 2005-06	12.52	0.91
Kalahandi	2	2	2005-06	4.20	0.32
Sambalpur-II	1	1	2005-06	4.15	0.29
<b>Total</b>	<b>6</b>	<b>6</b>		<b>20.87</b>	<b>1.52</b>

7 'Mota kunda' is nothing but rice bran which is taxable.

8 M/s Pawan food products, TIN-21891700889.

Thus, there was escapement of tax of ₹ 1.52 lakh due to utilisation of these fake forms which also warranted penal action under the provisions of the Act.

After we pointed out the matter, the AAs of concerned circles agreed (July 2011) to verify the same and intimate the result thereof. Final compliances are yet to be received (January 2012).

**2.2.12.2** Similarly on cross verification of the details of declaration forms with the records of the AAs of other States, we noticed that 14 declaration forms (seven ‘C’ forms and seven ‘F’ forms) furnished by seven dealers in four circles claiming concession / exemption of tax on goods valued at ₹ 47.17 lakh relating to different periods ranging between 1 April 2004 and 30 November 2008 were certified by the AAs of the issuing state i.e. Chhattisgarh to be fake as those were not issued by their circles. The details are given below.

Name of the Circle	Number of dealers	Number of forms	Period of transaction	(Rupees in lakh)	
				Value of goods (excluding tax)	Amount of tax escaped at differential rate of tax
Bargarh	3	4	1 April 2006 to 30 November 2008	13.30	1.02
Cuttack-I East	2	8	1 April 2004 to 31 December 2007	10.69	0.68
Rourkela-II	1	1	1 April 2006 to 30 June 2006	10.95	0.66
Sambalpur-II	1	1	2005-06	12.23	0.49
<b>Total</b>	<b>7</b>	<b>14</b>		<b>47.17</b>	<b>2.85</b>

Thus, due to utilisation of these fake forms, there was escapement of tax of ₹ 2.85 lakh which also warranted penal action under the provisions of the Act.

After we pointed out the matter, the AAs of the concerned circles agreed (July 2011) to verify the same and intimate the result thereof. Final compliances are yet to be received (January 2012).

**2.2.12.3** On verification of ‘C’ forms which were accepted (March 2009) by the AA during the assessment of a dealer in Cuttack-I East Circle, we noticed (July 2011) that 20 ‘C’ forms of Andhra Pradesh (AP) State submitted by the dealers in respect of sale value of ₹ 2.01 crore (including tax) relating to the year 2005-06 were *prima facie* not genuine. These ‘C’ forms marked ‘Original’ were having the texts “(Note: to be retained by the selling dealer)” at the bottom instead of the texts “(Note: to be furnished to the prescribed authority in accordance with the rules framed under Section 13(4)(e) by the appropriate State Government.)” which are prescribed to be printed in the original part of the form as per the Act. Besides, the said forms were not having the usual watermark background and logo of the Government of AP and were having several typographical errors. During cross verification conducted by us, the details of these forms could also not be traced out from the records of the AAs of the concerned circles of AP.

As such, acceptance of the said declaration forms without proper scrutiny led to short levy of tax of ₹ 7.74 lakh at the differential rate of four *per cent* on the net taxable value of the goods i.e. ₹ 1.93 crore as per the provisions of the Act.

After we pointed out the above case, the AA agreed (July 2011) to examine the case. However, further compliance is yet to be received (January 2012).

**2.2.13 Variation between the figures of the forms as disclosed by the issuing dealers and those disclosed by the utilising dealers and other irregularities**

During PA and from cross verification of the records of the AAs of other States, we noticed wide variations in 55 declaration forms, between the figures as disclosed by the selling dealers of the State and those disclosed in the utilisation accounts of the purchasing dealers of other States who issued those forms. This indicated excess exhibition of inter-State sales turnover / branch transfer of goods worth ₹ 4.45 crore and suppression of inter-State sales turnover of goods worth ₹ 0.38 crore by the selling dealers which led to evasion of tax of ₹ 0.32 crore. Besides, we noticed that six dealers claimed concession of tax in respect of sales turnover of ₹ 3.72 crore by fraudulent utilisation of eight 'C' forms issued in the name of other dealers. This also led to short levy of tax and penalty of ₹ 0.25 crore. The details are discussed in the succeeding sub paragraphs.

**2.2.13.1 Evasion of tax by inflating inter-State sales turnover**

We noticed that 20 dealers in 10 circles exhibited inter-State sales turnover of ₹ 13.56 crore against 38 declaration forms (30 'C' forms and 8 'F' forms) during different periods ranging between April 2004 and March 2009. However, on cross verification of the above forms with the records of the concerned AAs of other States, we noticed that the purchasing dealers had disclosed purchases of goods worth ₹ 9.11 crore against these forms in the utilisation accounts. The circle-wise details are given below.

<i>(Rupees in lakh)</i>							
Name of the Circle	Number of dealers	Number of forms	Period of transaction	Amount as per the forms submitted by the selling dealers of the State	Amount as per the utilisation accounts of the purchasing dealers of other States	Difference	Amount of tax evaded at the differential rate of tax
Bargarh	2	4	1 April 2004 to 30 June 2006	618.74	466.67	152.07	14.88
Cuttack-I Central	4	11	1 April 2004 to 30 November 2008	151.72	69.56	82.16	5.51
Cuttack- City	1	2	2004-05	130.53	104.44	26.09	2.61
Cuttack-I East	1	2	2005-06	7.33	2.80	4.53	0.18
Cuttack-I West	3	4	1 April 2004 to 31 March 2009	19.33	9.21	10.12	0.65
Deogarh	1	3	1 April 2006 to 31 March 2008	113.25	93.97	19.28	1.04
Jharsuguda	5	7	1 April 2004 to 31 March 2007	251.68	124.59	127.19	5.09
Kalahandi	1	1	2005-06	2.87	0.79	2.08	0.08
Rourkela-II	1	1	2005-06	1.23	0.69	0.54	0.03
Sambalpur-II	1	3	1 April 2005 to 30 June 2008	59.73	38.74	20.99	0.21
<b>Total</b>	<b>20</b>	<b>38</b>		<b>1356.41</b>	<b>911.46</b>	<b>445.05</b>	<b>30.28</b>

The Department needs to investigate these cases to determine actual sales / purchases.

After we pointed out the above cases, the AAs of concerned circles agreed (July 2011) to verify the same and intimate the result thereof to audit. Final compliance is yet to be received (January 2012).

**2.2.13.2 Evasion of tax due to suppression of turnover of inter-State sales**

We further noticed that in six circles, 13 dealers disclosed less sales to the extent of ₹ 0.38 crore in 15 ‘C’ forms relating to different periods between April 2005 and November 2008 in comparison to the value disclosed by the purchasing dealers of other States in respect of those forms in their utilisation accounts. This indicated suppression of inter-State sales by the selling dealers which led to evasion of tax. The circle-wise details are given below.

(Rupees in lakh)							
Name of the Circle	Number of dealers	Number of forms	Period of transaction	Amount as per forms by selling dealers	Amount as per utilisation accounts of the purchasing dealers	Difference	Amount of tax evaded at the differential rate of tax
Bargarh	1	1	1 April 2006 to 30 June 2006	1.78	1.96	0.18	0.01
Cuttack-I Central	3	3	1 April 2005 to 30 November 2008	21.54	27.87	6.33	0.23
Cuttack-I East	1	1	2005-06	2.61	6.03	3.42	0.14
Jharsuguda	3	3	1 April 2005 to 31 March 2007	12.27	30.47	18.20	0.73
Kalahandi	1	3	1 April 2005 to 30 September 2007	107.29	112.36	5.07	0.16
Rourkela-II	4	4	1 April 2005 to 30 June 2008	8.52	13.66	5.14	0.20
<b>Total</b>	<b>13</b>	<b>15</b>		<b>154.01</b>	<b>192.35</b>	<b>38.34</b>	<b>1.47</b>

Thus, the above dealers had evaded tax of ₹ 1.47 lakh by suppression of inter-State sales turnover.

After we pointed out the matter, the AAs of concerned circles stated (July 2011) that the cases would be verified and result would be intimated to audit after verification. Final compliances are yet to be received (January 2012).

**2.2.13.3 Fraudulent utilisation of declarations in form ‘C’ issued in the name of other dealers**

During cross verification of the details of the declaration forms with those of the other States, we noticed that six dealers of six circles fraudulently utilised 8 ‘C’ forms which were not issued in their names for availing concession of tax on goods valued at ₹ 3.72 crore relating to the different periods between April 2005 and May 2009. This led to evasion of tax of ₹ 12.47 lakh and penalty of ₹ 12.47 lakh both aggregating to ₹ 24.94 lakh as detailed below.

(Rupees in lakh)						
Name of the Circle	Number of dealers	Number of forms	Nature of irregularities	Value of goods	Amount of tax escaped	Amount of penalty leviable
Bargarh	1	1	The forms were originally issued to another dealer	238.44	4.77	0
Cuttack-I Central	1	2	The forms were issued by the purchasing dealer to another dealer of Delhi	17.49	0.35	0.70
Cuttack-I City	1	1	The form was issued by the purchasing dealer to another dealer of Madhya Pradesh	98.04	5.88	11.76
Jharsuguda	1	1	The form was issued by the purchasing dealer to another dealer of West Bengal	4.62	0.28	0
Kalahandi	1	1	The form was issued by the purchasing dealer to another dealer of New Delhi	0.31	0.01	0.01
Sambalpur-II	1	2	The forms were issued by the purchasing dealer to other dealers	13.22	1.18	0
<b>Total</b>	<b>6</b>	<b>8</b>		<b>372.12</b>	<b>12.47</b>	<b>12.47</b>

After we pointed out the above, the AAs of concerned circles agreed (July 2011) to verify the cases. However, further compliances are yet to be received (January 2012).

**2.2.14 Irregular grant of concession / exemption on invalid forms**

Under the CST Act, 1956 and the Rules made thereunder effective from 1 October 2005, a dealer who claims concessional rate of tax is required to obtain valid declarations in form 'C' marked 'Original' from the purchasing dealers covering the sales turnover relating to a quarter and furnish the same to the AA within the next quarter. In case of any transaction of sale, where the delivery of goods is spread over to different quarters of a financial year or of different financial years, it shall be necessary to furnish a separate declaration in respect of the goods delivered in each quarter of a financial year. Similarly, in case of dealers claiming exemption of tax on transfer of goods to branches outside the State or on consignment sale, the declarations in form 'F' marked 'Original' shall be furnished covering transactions relating to one calendar month only.

During scrutiny of assessment records under the CST Act in the test checked units, we noticed (between April 2010 and January 2011) irregular allowance of concession / exemption of tax on manipulated, photocopied, duplicate, defective and invalid forms etc. which resulted in short levy of tax of ₹ 1.69 crore. The details are discussed in the succeeding sub-paragraphs.

**2.2.14.1 Allowance of concessional rate of tax against manipulated forms**

During test check of records, we noticed (August and November 2010) that in two circles, the AAs levied concessional rates of tax on sales turnover of goods worth ₹ 5.04 crore in respect of three dealers relating to different tax periods between July 2005 and October 2006 on the strength of six declarations in form 'C' which were found to be manipulated by erasing, cutting and over-writings etc. This resulted in short levy of tax of ₹ 0.30 crore. The details are given below.

(Rupees in lakh)							
Name of the Range/ Circle	Number of dealers	Number of 'C' forms	Period to which the forms relate (Date of assessment)	Nature of irregularities	Name of goods	Value of goods	Tax short levied
Kalahandi Circle	2	4	Between July 2005 and October 2006 (30 March 2009)	1. The 'C' forms were duplicate and the printed word 'Duplicate' had been torn off/ erased deliberately. 2. The original invoice numbers, value of goods and names of selling dealers had been erased by white fluid and new invoice numbers, value of goods and names of selling dealers inserted.	Rice	13.28	0.75
Barbil Circle	1	2	April 2006 to June 2006 (31 March 2009)	1. The name of the selling dealer, bill number, date and amount mentioned earlier in the form had been erased with white fluid and overwritten. In one form, the signature of the authorised signatory in the front side does not match with the signature on the reverse side of the form.	Iron ore	490.50	29.43
<b>Total</b>	<b>3</b>	<b>6</b>				<b>503.78</b>	<b>30.18</b>

After we pointed out the above cases, while the AA of Kalahandi Circle issued (November 2010) notices to the dealers for reassessment, the AA of Barbil Circle stated (August 2010) that action would be taken after re-examining the case. Final compliance is yet to be received (January 2012).

**2.2.14.2 Allowance of concessional rate of tax against photocopies of the counterfoils of declaration forms**

During test check of records in Kalahandi Circle we noticed (November 2010) that the AA allowed concessional rate of tax in two cases on the sales turnover of goods worth ₹ 12.99 lakh relating to 2005-06 supported with the photocopies of the counterfoils of nine declarations in Form 'C' instead of insisting on the production of the original portions of the declaration forms. This resulted in short-levy of tax of ₹ 1.11 lakh.

After we pointed out the above cases, the AA initiated (November 2010) proceedings under the Act for reassessment. The result of the proceedings is yet to be received (January 2012).

**2.2.14.3 Allowance of concession / exemption of tax against defective and invalid declaration forms**

During test check of records in three Ranges and nine Circles, we noticed (between April 2010 and January 2011) that the AAs allowed concession / exemption of tax in favour of 15 dealers on inter-State sales turnover / branch transfer of goods worth ₹ 19.82 crore relating to different periods between April 2005 and May 2007 against 46 declarations in form 'C' and 'F' which were found to be defective and invalid as per the provisions of the Act and hence were not acceptable. This resulted in short levy of tax of ₹ 1.26 crore as detailed below.

(Rupees in lakh)							
Name of the Circle/ Range	Number of dealers	Period assessed	Form type	Number of forms	Nature of irregularities	Value of goods on which concession inadmissible	Amount of tax short levied
Angul Range	1	July 2006 to Nov 2007	F	4	Single 'F' form covered transactions for more than one calendar month	162.07	20.26
Bolangir Range	1	2006-07	F	1	Single 'F' form covered transactions for more than one calendar month.	21.43	2.14
Balasore Range	1	July 2006 to March 2008	C	3	The 'C' form has not been signed by the authorised signatory.	3.87	0.37
Angul Circle	1	July 2006 to Sept 2008	C	2	The 'C' form did not contain the CST number of the purchasing dealer and the date from which the registration was valid.	19.50	1.17
Barbil Circle	1	2007-08	C	1	Single 'C' forms covered transactions for more than one quarter.	83.14	0.83
Bargarh Circle	1	1.4.2006 to 30.6.2006	C	1	Single 'C' form covered transactions for more than one quarter	9.07	0.73
Bhubaneswar-IV Circle	1	July 2006 to May 2009	F	1	Single 'F' form covered transactions for more than one calendar month.	19.26	0.77
Cuttack-I (West) Circle	1	July 2006 to December 2008	C	1	Single 'C' form covered transactions related to two financial years.	121.41	1.21
Cuttack-I (West) Circle	1	1.7.2006 to 31.3.2009	F	6	Single 'F' form covered transactions for more than one calendar month	8.76	0.35
Cuttack-II Circle	1	April 2005 to February 2009	C	5	'C' forms of Orissa (same State) obtained and submitted by the dealer was accepted for claim of concessional rate of tax	327.48	3.27
Jharsuguda Circle	2	2005-06 and 2006-07	F	18	Single 'F' forms covered transactions for more than one calendar month.	1121.79	89.74

(Rupees in lakh)							
Name of the Circle/ Range	Number of dealers	Period assessed	Form type	Number of forms	Nature of irregularities	Value of goods on which concession inadmissible	Amount of tax short levied
Rourkela-II Circle	2	1.4.2006 to 31.3.2007	C	2	Single 'C' form covered transactions for more than one quarter	10.33	1.09
Sambalpur-II Circle	1	2006-07	C	1	'C' form of Orissa (same State) obtained and submitted by the dealer was accepted for claim of concessional rate of tax	73.85	4.43
<b>Total</b>	<b>15</b>			<b>46</b>		<b>1981.96</b>	<b>126.36</b>

After we pointed out the above cases, the AAs of concerned circles agreed (between April 2010 and January 2011) to reassess the cases. Final compliance is yet to be received (January 2012).

**2.2.14.4 Allowance of concession against duplicate portion of form 'C'**

During test check of records in Puri Range and five circles<sup>9</sup>, we noticed (between June 2010 and January 2011) that the AAs allowed concessional rate of tax to six dealers on the sales turnover of ₹ 1.01 crore against 10 duplicate portion of the declarations in form 'C'. This resulted in short levy of tax of ₹ 3.80 lakh.

After we pointed out the above case, the AAs agreed (between June 2010 and January 2011) to re-examine the cases. Final compliance is yet to be received (January 2012).

**2.2.14.5 Allowance of concession and exemption of tax against declarations in form 'C' and 'F' issued after the dates of assessments**

During test check of records in Sambalpur Range and three circles<sup>10</sup>, we noticed (between May and November 2010) that the AAs allowed concession / exemption of tax on inter-State sales / branch transfer of goods valued at ₹ 67.82 lakh in respect of five dealers relating to different periods ranging between April 2004 and April 2009 against receipt of 11 declarations forms ('C': 10 and 'F': one). On verification, we however, noticed that the said forms were issued by the purchasing dealers belatedly ranging between eight and 323 days from the date of completion of the assessments. As these forms were issued by the purchasing dealers at a later stage and were not available to the selling dealers on the dates of assessments, acceptance of the same was irregular. This resulted in short levy of tax of ₹ 7.55 lakh.

After we pointed out the above cases, while the AA of Kalahandi Circle initiated (November 2010) proceedings under the Act for reassessment, the AAs of the Sambalpur Range and remaining two circles agreed (between May and November 2010) to re-examine the cases. Final compliance is yet to be received (January 2012).

---

9 (i) Bargarh Circle and (ii) Jharsuguda Circle, (iii) Rourkela-I Circle, (iv) Jatni Circle and (v) Bhubaneswar-IV Circle.

10 (1) Kalahandi Circle, (2) Jharsuguda Circle and (3) Ganjam-II Circle.

### 2.2.15 Misutilisation of declaration forms – non-levy of penalty

Under the CST Act, 1956 if any person being a registered dealer falsely represents when purchasing any class of goods which is not covered by his RC, he is liable to prosecution. However, the AA, in lieu of prosecution, may after giving him a reasonable opportunity of being heard, impose upon him by way of penalty a sum not exceeding one and a half times of the tax which would have been levied on such goods.

During scrutiny of the audit assessment records in Barbil Circle, we noticed (June 2010) that a dealer<sup>11</sup> engaged in crushing of iron ore lumps into sized iron ore and sale thereof was assessed (April 2009) under the CST Act for the period from 1 July 2006 to 31 March 2008. As per the RC of the dealer

prevalent during the period covered under the assessment, the dealer, being a manufacturer, was only entitled to purchase capital goods which were intended for use in his manufacturing activities. The said capital goods did not include earth moving equipment such as Loaders, Volvo excavators and L&T excavators as revealed from his RC. We, however, found that in contravention of the above provisions of the Act, the dealer purchased earth moving machinery such as Loader, Volvo Excavator and L&T Excavators valued at ₹ 1.54 crore between May 2007 and July 2007 paying concessional rate of tax of three per cent against declarations in Form 'C'. Though the dealer was liable to pay a penalty of ₹ 28.88 lakh being one and a half times of the tax of ₹ 19.26 lakh leviable on such goods (12.5 per cent of ₹ 1.54 crore) for misuse of declaration forms, the AA while finalising the assessment, did not levy such penalty in lieu of prosecution.

After we pointed out the above case, the AA stated (June 2010) that appropriate action would be taken after examining the case. However, further compliance is yet to be received (January 2012).

### 2.2.16 Internal Control Mechanism

We noticed that except reviewing the performances of the subordinate offices relating to revenue collection and other matters relating to tax administration in the meetings held periodically by the CCT, there was no other system in place in the Department for monitoring the adherence to the provisions of laws and executive instructions by the AAs of the subordinate offices. Internal Audit, a vital part of any organization, is also not functioning in the Department. Thus, due to inadequate internal control mechanism, absence of internal audit wing and non-adherence to the statutes and manuals, the reduction of the risk of committing errors and irregularities involving leakage of revenue as pointed out in earlier Reports of the CAG was not ensured.

### 2.2.17 Conclusion

The PA brought to light deficiencies in the administration of CST Act by the Department such as issue of second and subsequent declaration forms without receipt of the utilisation accounts of such forms issued earlier, issue of

11 M/s Lucky Minerals, TIN-21881402860.

declaration forms after cancellation of the RCs, non-return of unused declaration forms by the dealers whose RCs were cancelled, absence of penal measures for non / delayed submission of declaration forms, irregular allowance of concession / exemption of tax against defective, manipulated, photocopied and duplicate forms as well as without valid declarations, evasion of tax by fraudulent utilisation of non-genuine / fake forms and inflation / suppression of inter-State sales turnover, non-levy of penalty, inadequate enforcement measures and ICM etc. involving non / short levy and escapement of tax and penalty of ₹ 2.56 crore.

### **2.2.18 Recommendations**

For effective administration of the Central Sales Tax Act:

- The Department should make it mandatory for all the assessing authorities to cross verify the declaration forms from the TINXSYS website before allowing concessional rate of tax;
- The system of cross verification of declaration forms with other States should be strengthened and monitored through reports and returns at regular intervals;
- The assessing authorities should be directed not to accept manipulated, photocopied, duplicate declaration forms in support of the claim of the dealers for concession / exemption of tax.
- Internal Audit System should be put in place to detect and address the lacunae in the system and reduce the risk of committing errors and irregularities.

### **2.3 Other audit observations**

We test checked the assessment records relating to the Orissa Value Added Tax (OVAT), Central Sales Tax (CST) and the Orissa Entry Tax (OET) Acts in the Commercial tax Range / Circle offices of the State and noticed several cases of non-observance of the provisions of the above Acts and Rules made thereunder which led to non / short levy of tax, interest 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**

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

*The OVAT Act, 2004 / Rules made thereunder provide for:*

- *completion of the audit assessments by the AAs on the basis of Audit Visit Reports (AVRs) and levy of tax on the correctly assessed taxable turnover (TTO) of outputs after giving due credit / adjustment of tax paid on inputs (ITC) as admissible;*

- *assessment of tax on the sale of goods deemed to have taken place when the goods are incorporated in the course of execution of the works whether or not there is receipt of payment for such goods in case of works contract;*
- *assessment of tax on hire charges towards transfer of rights for use of goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration at prescribed rates applicable to such goods;*
- *levy of interest on short payment of tax and penal interest for delayed payment of tax detected during the regular scrutiny of monthly / quarterly returns by the AAs; and*
- *imposition of penalty at prescribed rates in addition to the tax assessed at the audit assessment stage by the AAs.*

*The AAs, while finalising the audit assessments of the dealers for certain 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 2.4.1.1 to 2.4.5.3 which resulted in non / short levy and realisation of tax, interest and penalty aggregating to ₹ 41.81 crore<sup>12</sup>. Besides, penalty was not levied in some cases and the reasons thereof were not recorded in the assessment orders.*

#### **2.4.1.1 Short levy of tax due to application of lower rate of tax**

Under the OVAT Act, 2004, goods not specified in any of the schedules are taxable at the rate of 12.5 per cent. Goods like “Mosquito repellants in any form” were not specified in the schedules during the period from 1 July 2005 to 31 May 2007. While assessing a dealer for any tax period, penalty equal to twice the amount of tax assessed in audit assessment shall be imposed against the dealer.

During test check of the audit assessment records (July 2010) of Cuttack II Range, we noticed that the assessment of a registered dealer, M/s Godrej Saralee Ltd. for the tax periods from April 2005 to March 2007 was made on 7

March 2007. It was not clear

as to how the period up to 31 March 2007 was covered in the assessment made on 7 March 2007. We also noticed that the AA levied tax at the lower rate of four per cent on the sales turnover of mosquito repellants valued at ₹ 30.80 crore<sup>13</sup>, pertaining to the tax periods from July 2005 to March 2007 instead of the applicable rate of 12.5 per cent for such goods. This resulted in short levy of tax of ₹ 2.62 crore. Moreover, the dealer was liable to be imposed with a penalty of ₹ 5.24 crore for payment of tax at lower rate. We could not ascertain the short levy of tax for the tax periods April and May 2007 in the

12 It does not include penalty of ₹ 3.29 lakh in paragraph 2.4.2.2.2 and ₹ 4.07 crore in paragraph 2.4.5.1

13 In the absence of exact sales turnover of mosquito repellant in the assessment case record, the ratio of purchases of such goods to total purchases during July 2005 to March 2007 disclosed by the dealer in the stock receipt statement for the said tax periods has been adopted to the discounted sales turnover figures to arrive at the minimum taxable sales turnover.

absence of details of sales figures as well as purchase figures for cross verification and hence it is required to be reassessed by the AA to arrive at the correct tax liability of the dealer up to May 2007.

After we pointed out the case, the Government stated (September 2011) that Mosquito Repellant has been decided as an insecticide as per the judgment of the Hon'ble High Court in OJC No. 8126 of 1992 in case of Sonic Electrochem (P) Limited Vrs State of Orissa and Others reported in (1994) 92 STC-117. Mosquito Repellent Coils are also insecticides as per the judgment in case of Bombay Chemicals (P) Limited (1990) 49 ELT 431 (Tribunal) and in case of Transelektra Domestic Products Limited (1992) 88 STC-497 (WBTT). Further, as per the Sl. No. 30 of the part-II of the Schedule-B of the Rate Chart under the OVAT Act, insecticides are taxable at the rate of four *per cent* and it is not taxed as per the Sl. No. 46 as per the observation made by Audit. The reply is not acceptable as in the instant case, during the period from 1 July 2005 to 31 May 2007, mosquito repellant in any form was specifically excluded from schedule "B" by notification issued on 1 July 2005 which was subsequent to the date of judicial pronouncement in March 1993 and therefore, the legislative intent was to tax mosquito repellant as unspecified goods attracting tax rate of 12.5 *per cent*.

#### **2.4.1.2 Short levy of tax due to application of lower rate of tax**

Under the OVAT Act, 2004, and Rules made thereunder, chemicals like ammonium nitrate being an unspecified item in any of the schedule is required to be taxed at the rate of 12.5 *per cent*. Further, the Act provides for scrutiny of the periodical returns filed by a dealer to ascertain the correctness of calculation and application of the rate of tax etc. and in case any mistake is detected, the AA shall serve a notice on the dealer to make payment of the extra tax leviable along with interest at the rate of one *per cent* per month from the due date of the return to the date of its payment or to the date of order of assessment, whichever is earlier. Further, in the tax audit assessment, penalty equal to twice the amount of tax assessed shall be imposed on the dealer.

During test check of the audit assessment records for the tax periods from April 2005 to March 2008 and the self-assessed returns for the tax periods from April 2008 to March 2010 of a dealer of Rourkela-II Circle, M/s Chemical Complex, registered for trading of ammonium nitrate (AN), we noticed (November 2010) that sale of AN valued at ₹ 2.89 crore<sup>14</sup> was taxed at the rate of four *per cent* treating it as "fertiliser." However, AN cannot be directly used as a fertiliser as per schedule-1 appended to the Fertiliser Control Order, 1985 as amended up to June 2010. We

also noticed that in Barbil Circle another dealer<sup>15</sup> dealing in AN was assessed for the tax periods from April 2005 to March 2008 with tax at the rate of 12.5 *per cent*, the goods being considered as an unspecified item. In the instant case

---

14 Sales turnover from 1 April 2005 to 31 March 2008: ₹ 20.48 lakh (Audit Assessment) plus Sales turnover from 1 April 2008 to 31 March 2010: ₹ 268.92 lakh (Self-assessed) totaling to ₹ 289.40 lakh.

15 M/s Shri Krishna Enterprises.

the AA completed the audit assessment (August 2009) for the tax periods from April 2005 to March 2008 by incorrectly applying a lower rate of four *per cent* instead of the applicable rate of 12.5 *per cent* on the taxable turnover of ₹ 20.48 lakh. This led to short levy and realisation of tax of ₹ 1.74 lakh in the audit assessment and penalty of ₹ 3.48 lakh. Further, self assessment returns for the tax periods from April 2008 to February 2010 were accepted by the AA with tax at the rate of four *per cent* applied on the taxable turnover of ₹ 2.69 crore and therefore differential tax of ₹ 23.06 lakh and interest of ₹ 2.58 lakh for the tax periods from April 2008 to February 2010 was also leviable. Thus, there was short levy of tax, interest and penalty aggregating to ₹ 30.86 lakh.

After we pointed out the above case, the AA initiated reassessment proceedings (November 2010). Further compliance is yet to be received (January 2012).

We brought the matter to the notice of the CCT (November 2010) and the Government (April 2011); Government stated (May 2011) that the case was under examination. No further reply is received (January 2012).

#### **2.4.2.1 Non-levy of tax on purchase of unprocessed paddy**

Under the OVAT Act, 2004, purchase of any taxable goods from any person other than a registered dealer was exigible to tax on the purchase price of such goods at the prescribed rate, if the goods so purchased are used as inputs in the manufacture of goods exempted from tax. Paddy is subject to tax at the rate of four *per cent* whereas paddy seed is exempt from tax under the Act. Further, penalty equal to twice the amount of tax assessed in audit assessment shall be imposed against the dealer.

During test check of the records of Bhubaneswar-I Circle (June 2010), we noticed that the Orissa State Seed Corporation Limited (OSSCL), registered as a dealer under the Act, disclosed tax exempted sale of paddy seeds worth ₹ 168.89 crore during the tax period from April 2005 to March 2009 which was manufactured (through a process of activities in its seed

processing plants and testing laboratory) from paddy worth ₹ 116.37 crore purchased from unregistered cultivators of the State. However, we noticed that while assessing the dealer (November 2009) for the above tax period, the AA accepted the non-payment of tax on the above purchase value of paddy in the audit assessment and no tax was levied thereon, although the same was taxable at the rate of four *per cent* as per the Act. Thus, the AA did not levy tax of ₹ 4.65 crore and impose penalty of ₹ 9.31 crore on purchase of input used for production and sale of tax exempted goods.

After we pointed out the case, the Government stated (March 2011) that extra demand of ₹ 13.96 crore including penalty had been raised against the OSSCL (January 2011). The report on details of realisation is yet to be received (January 2012).

### **2.4.2.2 Non-levy of tax on ‘gudakhu’**

Under the OVAT Act, 2004, ‘gudakhu’, a tobacco preparation, was exigible to tax at the rate of four *per cent* from 1 July 2005 to 31 May 2007 and from 1 June 2007 onwards it is taxable at the rate of 12.5 *per cent* as an unspecified item in any of the schedule. The Act also provides for levy of penalty equal to twice the tax assessed in audit assessment. Where a dealer fails to pay tax due as per the return, he shall be liable to pay interest at the rate of one *per cent* per month in respect of such tax, from the due date of the return to the date of its payment or the date of order of assessment, whichever is earlier. Further, the AA should scrutinise the periodical returns of the dealers to verify the application of correct rate of tax and interest and full payment of tax and interest payable by the dealer and in case of any discrepancy, he should serve a notice to the dealer in the prescribed form to make payment of the extra amount of tax with interest. If the dealer fails to pay the above tax and interest, the Commissioner may, after giving the dealer a reasonable opportunity of being heard, direct him to pay in addition to the tax and the interest payable by him, a penalty at the rate of two *per cent* per month on the tax and interest so payable, from the date it had become due to the date of its payment or the order of assessment, whichever is earlier.

**2.4.2.2.1** During test check of the audit assessment records in Bolangir and Rourkela-II Circles, we noticed (September and November 2010) that two dealers<sup>16</sup> manufacturing gudakhu did not pay tax of ₹ 3.85 lakh on sales turnover of gudakhu worth ₹ 96.22 lakh during the tax periods from July 2005 to May 2007. The AAs, while finalising the audit assessments (February 2010 and September 2009) did not detect the same which resulted in non-levy of tax of ₹ 3.85 lakh and non-imposition of penalty of ₹ 7.70 lakh.

**2.4.2.2.2** Similarly, from test check (July 2010) of the self assessed returns for the tax periods between July 2005 and May 2007 in Sambalpur-I Circle, we noticed that although four<sup>17</sup> manufacturing dealers did not pay tax on sale of

gudakhu valued at ₹ 54.14 lakh during the above tax periods, the AA did not demand tax of ₹ 2.17 lakh, interest of ₹ 1.09 lakh and penalty of ₹ 3.29 lakh on the tax and interest so payable.

After we pointed out the cases the Government stated (September 2011) in case of M/s Sobha Gudakhu Factory, Bolangir Circle that the reassessment had been completed raising extra demand of ₹ 10.40 lakh including penalty and reassessment proceeding in case of Konark Gudakhu Factory, Rourkela had been initiated. Replies in respect of other cases are yet to be received (January 2012).

---

16 Bolangir Circle: M/s Sobha Gudakhu Factory, and Rourkela-II Circle: M/s Konark Gudakhu Factory,

17 M/s Durga Gudakhu Factory, M/s Parwati Gudakhu Factory, M/s Shyam Gudakhu Factory and M/s Samaleswari Gudakhu Factory.

### 2.4.2.3 Non-levy of tax on handmade bidis

Under the OVAT Act, 2004, 'bidi manufactured without the aid of machines' was exigible to tax at the rate of four per cent from 1 July 2005 to 31 May 2007 and from 1 June 2007 onwards, it was exempt from tax. The Act further provides for levy of interest on short payment of tax, if any, detected during the scrutiny of monthly returns by the AA and penalty at twice the amount of tax assessed in audit assessment.

During test check of the self-assessed returns of Sambalpur I Circle and the audit assessment records of Cuttack I (West) Circle (July and December 2010), we noticed that four dealers<sup>18</sup> did not pay tax on the sale of handmade bidis valued at ₹ 2.84 crore during the tax periods from July 2005 to May 2007. The AAs, while

finalising the audit assessment (March 2010), in one case, for the tax periods from April 2005 to March 2009 and accepting the monthly returns in three cases for the tax periods from July 2005 to March 2007 did not detect the same which resulted in non-levy of tax of ₹ 11.35 lakh, interest of ₹ 3.96 lakh and penalty of ₹ 5.36 lakh

After we pointed out the above cases, the Government stated (September 2011) that the re-assessment proceeding in respect of M/s Town Bidi Company, Cuttack I (West) Circle was disposed of raising extra demand of ₹ 6.23 lakh where as the re-assessment proceedings in respect of M/s Gopal Bidi Works, M/s Mahesh Bidi Works and M/s A.N Guha & Co (Hindustani Bidi Works) of Sambalpur-I Circle were under process. Further compliance is yet to be received (January 2012).

### 2.4.3.1 Short levy of tax due to under determination of taxable turnover for works contract

Under the OVAT Act, 2004, sale of goods shall be deemed to have taken place in the works contracts when the goods are incorporated in the course of execution of the works whether or not there is receipt of payment for such sale. In audit assessment, penalty equal to twice the amount of tax assessed shall be imposed against the dealer.

During test check of the audit assessment records of Bhubaneswar-II Circle (July 2010), we noticed that while assessing a registered dealer (July 2009), M/s Bapi Construction, engaged in execution of railway electrification works, the AA determined the gross turnover (GTO) at ₹ 8.91 crore for the value

of works executed during the tax periods from April 2005 to November 2008. After allowing deduction of ₹ 6.03 crore towards labour / service charges from the GTO, the AA levied tax at the rate of 12.5 per cent on the taxable turnover of ₹ 2.88 crore. However, on cross verification of the VAT assessment records with the Orissa Entry Tax (OET) assessment records of the dealer and further information obtained from the Circle (March 2011) for the above tax periods,

18 **Cuttack-I (West) Circle** : M/s Town Bidi.  
**Sambalpur-I Circle** : M/s. Gopal Bidi Works, M/s Mahesh Bidi Works and M/s A.N. Guha & Co. (Hindustani Bidi Works).

we noticed that the dealer actually received ₹ 12.64 crore towards execution of works which included ₹ 11.66 crore towards cost of materials utilised by him in the said works as per the material utilisation statement furnished by him. Thus, there was under determination of taxable turnover of ₹ 8.78 crore (₹11.66 crore - ₹ 2.88 crore) which resulted in short levy of tax of ₹ 1.10 crore at the rate of 12.5 *per cent* and non-imposition of penalty of ₹ 2.20 crore thereon.

After we pointed out the case, the Government stated (June 2011) that the reassessment was completed (May 2011) with raising of extra demand of ₹ 3.24 crore. The report on details of realisation is yet to be received (January 2012).

#### **2.4.3.2 Short levy of tax due to under determination of taxable turnover in intra-State sale of coal**

Under the OVAT Act, 2004, tax is payable by a registered dealer on his self assessed TTO at prescribed rates as per his monthly returns and it is subject to scrutiny and acceptance by the AA. Subsequently, tax audit and audit assessments are made in certain selected cases. The Act also provides for imposition of penalty equal to twice the amount of tax assessed in audit assessment.

During test check of the audit assessment records of Cuttack II Circle (August 2010), we noticed that while finalising the audit assessment (October 2009) for the tax periods from April 2005 to February 2009 in respect of M/s Sri Panchamukhi Minerals (P) Ltd., dealing in coal, the AA determined the TTO at ₹ 38.38

crore and levied tax of ₹ 1.54 crore thereon at the rate of four *per cent*. However, on further scrutiny of statements showing summary of monthly VAT returns and statement of purchases furnished by the dealer, we found that the dealer had actually transacted intra State sale of coal valued at ₹ 49.40 crore during the said tax periods. Thus, the AA did not detect the above discrepancy of TTO of ₹ 11.02 crore while accepting the monthly returns as well as finalising the audit assessment which led to short levy of tax of ₹ 44.08 lakh and non-imposition of penalty of ₹ 88.16 lakh.

After we pointed out the case, the Government stated (May 2011) that the reassessment was completed (March 2011) with raising of extra demand of ₹ 1.35 crore including penalty. The report on details of realisation is yet to be received (January 2012).

### 2.4.3.3 Short levy of tax on hire charges

Under the OVAT Act, 2004, sale includes transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration which shall be treated as sale price. Hire charges received in consideration for transfer of right to use earth moving equipment being an unspecified item in any of the schedule to the Act is taxable at the rate of 12.5 *per cent*. Further, penalty equal to twice the amount of tax assessed in audit assessment shall be imposed.

During test check of the audit assessment records (July 2010) in Cuttack-II Range, we noticed that M/s Pollutech Engineering, a dealer engaged in sale of spares and earth moving equipments etc. disclosed receipt of ₹ 1.60 crore towards hire charges of equipment in the profit and loss account certified by the Chartered Accountant for the year 2007-08 which is taxable at the rate of 12.5 *per cent* under the

Act. However, the dealer did not include the above sales turnover of hire charges in the gross sales turnover in the returns for the tax periods from April 2007 to March 2008 and pay tax thereon. The AA while finalising the audit assessment (September 2009) for the tax periods from April 2007 to January 2009 also did not detect the above omission by the dealer for levy of tax of ₹ 20.06 lakh and imposition of penalty of ₹ 40.11 lakh thereon although the profit and loss account of the dealer was available with him at the time of assessment.

After we pointed out the above case, the Government replied (September 2011) that no compliance has been received from the concerned Range. Further compliance is yet to be received (January 2012).

### 2.4.3.4 Short levy of tax due to incorrect deduction

Under the OVAT Act, 2004, a dealer shall be liable to pay tax at the prescribed rate on the TTO. The Act also provides for imposition of penalty equal to twice the amount of tax assessed in audit assessment.

During test check of the audit assessment records of Gajapati Circle, we noticed (May 2010) that while assessing (October 2009) a dealer, M/s Maa Manikeswari Store, for the tax periods from April 2005 to April 2008, the AA rejected the books of accounts of the dealer as the same were not maintained properly and determined the TTO at ₹ 13.93 crore against the sales turnover of ₹ 16.26 crore as disclosed by the dealer at the assessment stage for the said period. However, we calculated that TTO of the dealer should be ₹ 15.11 crore after adding ₹ 6.24 lakh towards suppression of turnover pointed out in the AVR and deducting ₹ 1.21 crore towards sales turnover of goods sold at the maximum retail prices. This led to under determination of taxable turnover by ₹ 1.18 crore and consequential short levy of tax of ₹ 10.75 lakh (calculated at the prescribed rates of four *per cent* on sales turnover of ₹ 47.23 lakh and 12.5 *per cent* on ₹ 70.85 lakh applying the ratio adopted by the AA) and non-imposition of penalty of ₹ 21.49 lakh.

After we pointed out the above case, the Government stated (October 2011) that the reassessment proceeding was disposed of raising demand of ₹ 33.89 lakh. The report on details of realisation is yet to be received (January 2012).

#### **2.4.4 Inadmissible Input Tax Credit**

Under the OVAT Act, 2004 and Rules made thereunder, a registered dealer shall be eligible to claim ITC to the extent of the tax paid or payable on his purchase of taxable goods inside the State for adjustment from the output tax subject to fulfilment of certain conditions and restrictions.

During test check (between April 2010 and November 2010) of the audit assessment records as well as the self assessed returns filed by the dealers in four Circles<sup>19</sup> and five Ranges<sup>20</sup> for different tax periods during April 2005 to

March 2010, we noticed that 71 dealers availed inadmissible ITC of ₹ 1.88 crore in contravention of the provisions of the Act and Rules either due to erroneous allowance of the claims of the dealers while completing the audit assessment or due to non-detection of inadmissible ITC and non-rectification of defects while accepting the self assessed returns by the concerned AAs. Besides, in four cases penalty of ₹ 58.14 lakh was also leviable. The details are discussed in the succeeding sub-paragraphs.

##### **1. Allowance of inadmissible ITC on capital goods**

Under the OVAT Act, 2004 and Rules made thereunder, ITC shall be allowed on the purchase of (i) raw materials directly used as input in manufacturing, (ii) plant, machinery and equipment (capital goods) used directly in the process of manufacturing of taxable goods.

During test check of records of Angul Range (April 2010), we noticed that M/s Bhushan Steel Limited, engaged in manufacturing and sale of sponge iron and mild steel billets, claimed ITC of ₹ 14.21 crore on purchase of capital

goods for the tax periods from April 2005 to December 2007 which included input tax of ₹ 42.36 lakh paid on intra State purchase of concrete sleepers used for railway lines inside the factory. While assessing the dealer (December 2009) for the above tax periods, the AA allowed the same. As the above goods were not used directly in the process of manufacturing of its end product, i.e., sponge iron and mild steel billets, the dealer was not entitled to avail ITC of ₹ 42.36 lakh on such purchases. This resulted in short levy of tax of ₹ 10.71 lakh due to the ITC availed by the dealer up to December 2007 and penalty of ₹ 21.42 lakh. Moreover, erroneous carry forward of the balance ITC of ₹ 31.65 lakh to subsequent tax periods needs to be reversed by the unit.

After we pointed out the case, the AA agreed (April 2010) to re-examine the case.

We brought the above matter to the notice of the CCT (February 2011) and the Government (May 2011); their replies are yet to be received (January 2012).

---

19 **Circles:** Ganjam-I, Koraput, Mayurbhanj and Sambalpur-II.

20 **Ranges:** Angul, Bhubaneswar, Cuttack-II, Koraput and Sundergarh.

**2. Allowance of inadmissible of ITC on purchase of spare parts of machinery purchased before the effective date of notification**

Under the OVAT Act, 2004 and Rules made thereunder read with Government Notification dated 28 May 2008, ITC shall be allowed on purchase of components and spare parts of plant and machinery purchased on or after 1 June 2008 and used directly in the process of manufacturing. The Act further provides for imposition of penalty equal to twice the amount of tax assessed in the audit assessment.

During test check of audit assessment records of Cuttack-II Range and Sambalpur-II Circle, we noticed (July and November 2010) that while finalising the audit assessments (July 2009 and May 2009), the concerned AAs allowed ITC on purchase of components and spare parts of plant and machinery which were purchased prior to 1 June

2008. This resulted in allowance of inadmissible ITC of ₹ 4.10 lakh and non-imposition of penalty of ₹ 8.20 lakh as per the details given below.

(Amount in rupees)					
Name of the Circle / Range	Name of the dealer	Tax period and date of audit assessment	Nature of irregularities noticed by audit	Amount of inadmissible ITC allowed	Extent of penalty imposable but not imposed
Cuttack-II Range	M/s Tripty Drinks (P) Ltd.	1 January 2007 to 31 August 2008. Assessed on 28 July 2009.	The AA allowed ITC on spare parts purchased prior to 1 June 2008 which was not admissible. These were also disallowed by the Tax Audit Team.	2,50,689	5,01,378
Sambalpur –II Circle	M/s Shanti Rice Mills (P) Ltd	1 April 2005 to 30 November 2008. Assessed on 8 May 2009.	As per the dealer's statement machinery spare parts were purchased prior to 1 June 2008. But the AA classified the same as plant and machinery and allowed ITC thereon which was inadmissible despite the fact that in AVRs these were recommended to be disallowed.	1,59,111	3,18,222
<b>Total</b>				<b>4,09,800</b>	<b>8,19,600</b>

After we pointed out these cases, the Government stated (September 2011) that the re-assessment proceeding in respect of M/s Shanti Rice Mill, Sambalpur-II Circle was disposed of raising extra demand of tax of ₹ 1.59 lakh and penalty of ₹ 3.18 lakh. However, the report on details of recovery is not available. The reply on the case relating to Cuttack-II Range is yet to be received (January 2012).

**3. Non-reversal of ITC on inputs used in the manufacturing of tax exempted goods.**

Under the OVAT Act, 2004 and Rules made thereunder, no ITC is admissible on purchase of goods, if such goods are utilised in manufacturing of goods which are exempted from tax under the Act.

During test check of audit assessment records (April 2010) in Angul Range, we noticed that a dealer, M/s Bindal Sponge, engaged in manufacturing and sale of sponge iron etc., claimed ITC of ₹ 29.77 lakh on purchase

of coal for the tax periods from April 2005 to December 2008. The AA, while assessing the dealer under audit assessment (February 2010) for the said tax periods, disallowed ₹ 18.76 lakh i.e. 63 *per cent* of ITC claimed, as coal was not a raw material for manufacturing of sponge iron, but allowed the balance 37 *per cent* of ITC of ₹ 11.02 lakh for coal consumed for generation of electricity in its plant. As electrical energy produced by the unit was exempt from tax under the OVAT Act, the allowance of ITC was irregular and it resulted in short levy of tax of ₹ 11.02 lakh and non-imposition of penalty of ₹ 22.03 lakh.

After we pointed out the case, the AA agreed (April 2010) to reopen the case for re-examination.

We brought the above matter to the notice of the CCT (February 2011) and the Government (May 2011); their replies are yet to be received (January 2012).

**4. Non-detection of excess ITC availed by the dealers in self-assessed returns**

Under the OVAT Act, 2004 and Rules made thereunder, the AA shall scrutinise and verify, among other things, the correctness of the ITC claimed by the dealer in his periodical returns and in case of any discrepancies, he shall issue notices to the dealers in the prescribed form to make payment of additional tax along with interest by the dates specified in such notices.

During test check of records of Koraput Circle (July and August 2010), we noticed that in the self-assessed returns relating to 69 tax periods from April 2009 to March 2010, 61 dealers availed ITC of ₹ 5.46 crore. However, during analysis of the data generated from the computerised VAT Information System (VATIS) as well as test check of the details furnished in

four self-assessed returns relating to three dealers<sup>21</sup> made available to us out of 61 dealers, we noticed that ITC of ₹ 4.87 crore only was admissible in these cases. As such, the dealers had claimed excess ITC of ₹ 59.59 lakh in their self-assessed returns which the AAs did not detect while accepting the returns. The details are given in the following table.

---

21 M/s Ballarpur Industries Unit Sewa for October 2009, M/s JMC Project for the tax periods from January to March 2010 and July to September 2010, M/s Krishna Engineering for August 2009.

(Amount in rupees)						
Sl. No.	No. of dealers	No. of tax periods	Audit observations	ITC availed	ITC admissible	Excess ITC availed
1.	33	39	ITC under “four per cent tax group purchase” was incorrectly computed and availed.	16,92,020	14,18,975	2,73,045
2.	11	12	ITC under “12.5 per cent tax group purchase” was incorrectly computed and availed.	67,45,736	66,67,519	78,217
3.	13	14	Dealers claimed excess ITC than the ITC admissible as per the provisions and the same was either adjusted against the output tax or carried forward to the subsequent tax period.	4,61,89,748	4,05,96,269	55,93,479
4.	4	4	Excess ITC carried forward and availed in the subsequent tax period.	13,968	-	13,968
	<b>61</b>	<b>69</b>	<b>Total</b>	<b>5,46,41,472</b>	<b>4,86,82,763</b>	<b>59,58,709</b>

After we pointed out the cases, the AAs agreed (August 2010) to reopen the cases for re-examination.

We brought the above matter to the notice of the CCT (February 2011) and the Government (May 2011); their replies are yet to be received (January 2012).

#### 5. Non-reversal of excess ITC availed

Under the OVAT Act, 2004 and Rules made thereunder as amended in May 2008 and February 2009 respectively, ITC admissible towards tax paid on purchase of goods inside the State shall be limited to the CST payable on the inter-State sales turnover of such goods from 1 June 2008. The concessional rate with the declaration form was prescribed at two per cent when the State rate is two per cent and above. In case the State rate is less than two per cent, the State rate would be applicable. The registered dealer is, therefore, required to furnish information on the inter-State sales transacted by him between June 2008 and February 2009 while filing the return for the month of February 2009 for reversal of ITC wherever inadmissible.

(a) During test check of the audit assessment records and cross checking the same with the CST assessment records (July 2010) in Cuttack-II Range, we noticed that a dealer, M/s Exide Industries Ltd., transacted inter-State sale of goods worth ₹ 2.72 crore supported with declarations in form ‘C’ during the tax periods between June 2008 and October 2008 on which CST of ₹ 5.44 lakh was payable at the concessional rate of two per cent. The corresponding purchase value of goods purchased inside the State relating to

such inter-State sales worked out to ₹ 2.25 crore on which tax of ₹ 9.01 lakh was paid by the dealer at the rate of four per cent and the same was irregularly availed by the dealer as ITC through the periodical returns under the OVAT Act instead of limiting it to ₹ 5.44 lakh payable by him towards CST as discussed above. The excess ITC of ₹ 3.57 lakh so availed under the Act was required to be reversed by the dealer while filing the returns for February 2009 which was not done. The AA of Cuttack-II Range also did not detect the above excess claim of ITC while assessing the dealer (July 2009) under the audit assessment for the tax period from July 2006 to October 2008.

After we pointed out the case, the AA of Cuttack-II Range stated (July 2010) that the above audit observation would be taken care of during subsequent tax audit which would cover the tax period February 2009. The reply is not tenable as the return for the tax period February 2009 was already available before the assessment was made on 28 July 2009 and the AA could have taken action for reversal of excess ITC by issuing of notice. Further replies are yet to be received (January 2012).

**(b)** Further, during test check of the self assessed returns (June 2010) in Mayurbhanj Circle, we noticed that a dealer, M/s Siva Shakti Sponge Iron, transacted inter-State sale of goods worth ₹ 22.19 crore supported with declarations in form 'C' during the tax periods between June 2008 and March 2010 on which CST of ₹ 44.37 lakh was payable at the concessional rate of two *per cent*. The corresponding purchase value of goods purchased inside the State relating to such inter-State sales worked out to ₹ 15.57 crore on which tax of ₹ 62.26 lakh was paid by the dealer at the rate of four *per cent* and the same was irregularly availed by the dealer as ITC under the OVAT Act through his periodical returns instead of limiting it to ₹ 44.37 lakh payable by him towards CST as discussed above. The excess ITC of ₹ 17.89 lakh so availed had to be reversed by the assessee while filing the returns for February 2009 and subsequent tax periods. The AA of Mayurbhanj Circle did not detect the above excess claim of ITC while accepting the self assessed returns for the said tax periods.

After we pointed out the case, the AA of Mayurbhanj Circle agreed (June 2010) to examine the case.

We brought the above matters to the notice of the CCT (February 2011) and the Government (May 2011); their replies are yet to be received (January 2012).

#### **6. Allowance of excess ITC due to non-adherence to the prescribed norm**

Under the OVAT Act, 2004 and Rules made thereunder, where a registered dealer sells or despatches goods, both taxable and exempted under the Act, ITC shall be allowed proportionately as per the norm.

During test check of the audit assessment records (April and May 2010) in Ganjam-I Circle, we noticed that the audit assessment of a registered dealer, M/s Lingaraj Flour Mills (P) Ltd, engaged in milling of wheat and sale of finished products on wholesale basis inside the State, was finalised (October 2009) for the tax periods from April 2005 to June 2008. Within the said tax periods, the dealer purchased goods valued at ₹ 5.34 crore within the State paying tax of ₹ 21.34 lakh and exhibited sales turnover of ₹ 13.65 crore. The above sales turnover included tax exempted sale of ₹ 2.08 crore and taxable sale of ₹ 11.57 crore (including zero rated sales turnover). As the taxable sale was 84.76 *per cent* of the total sales, the dealer was entitled to proportionate ITC of ₹ 18.09 lakh as per the above norm. However, the dealer claimed the total tax paid on inputs amounting to ₹ 21.34 lakh as ITC and the AA allowed the same which resulted in excess allowance of ITC of ₹ 3.25 lakh. Besides, the dealer was also liable to pay a penalty of ₹ 6.49 lakh.

After we pointed out the case (February 2011) the Government intimated (September 2011) that the reassessment proceeding was disposed of raising

extra demand of tax of ₹ 3.42 lakh and penalty of ₹ 6.84 lakh. The detail of realisation is yet to be received (January 2012).

**7. Allowance of inadmissible ITC related to another dealer**

Under the provisions of the OVAT Act and Rules made thereunder, only a registered dealer shall be eligible to claim ITC to the extent of the amount paid or payable on his purchases of taxable goods within the State subject to fulfilment of conditions and restrictions as prescribed under the Act.

During test check of audit assessment records (June 2010) in Bhubaneswar Range, we noticed that M/s HCL Info Systems Ltd, engaged in wholesale trading of computers, mobiles phones, digital cameras etc, was assessed (January 2010) for the

tax periods from April 2005 to September 2008. The dealer in the revised return for the month of April 2007 filed in May 2007 brought over ITC of ₹ 16.40 lakh of another company M/s Infinet Ltd, which was amalgamated with the instant dealer with effect from 1 April 2007. The AA allowed the above ITC at the audit assessment stage. However, we observed that although this brought over ITC had been reflected in the revised return of the instant dealer, the corresponding closing stock value of the goods of the amalgamated company worth ₹ 4.09<sup>22</sup> crore, as calculated by us from its return for March 2007, was not carried forward and exhibited in the statement annexed with the said revised return for the levy of the output tax on sale of such goods from April 2007 onwards. Availing of the said ITC of the amalgamated company without carrying forward of the closing stock for levy of output tax was not correct. The above accountal of inadmissible ITC could neither be detected by the Audit Visit Team nor the AA while assessing the dealer. Thus, acceptance of the inadmissible ITC claims of the dealer for ₹ 16.40 lakh needs reversal.

After we pointed out the case, the AA agreed (June 2010) to examine the case.

We brought the above matter to the notice of the CCT (February 2011) and the Government (May 2011); their replies are yet to be received (January 2012).

**8. Allowance of incorrect ITC**

Under the OVAT Act, 2004 and Rules made there under, ITC shall be allowed on purchase of inputs, used in manufacturing of goods for sale and in case a portion of the finished goods is used otherwise than by way of sale, ITC already availed on the corresponding purchase value of raw materials shall be reversed proportionately.

During test check of audit assessment records (September 2010) in Sundergarh Range, we noticed that a registered dealer, M/s OCL (INDIA) Ltd., engaged in manufacturing of cement, clinker, refractories, sponge iron and billets utilised the finished product i.e., refractories valued at ₹ 3.96 crore for self consumption in the kilns of cement, sponge iron and in the refractory units during the

---

<sup>22</sup> OB            1.01 crore    as on 1/3/2007  
Purchase    24.35 crore  
Sale            21.27 crore  
CB             4.09 crore    as on 31/3/2007

tax periods from April 2006 to March 2007 and availed ITC of ₹ 16.61 lakh on the corresponding purchase value of raw materials used as inputs for the production of the same. The above ITC was not admissible as pointed out in the AVR (June 2009). However, while finalising the audit assessment (February 2010) for the above tax periods, the AA did not take cognizance of the observation of the Audit Visit Team for reversal of the above amount of ITC. This resulted in incorrect allowance of ITC of ₹ 16.61 lakh.

After we pointed out the case, the Government stated (September 2011) that the case was under examination. Final reply is yet to be received (January 2012).

#### **9. Short deduction of inadmissible ITC**

Under the OVAT Act, 2004 and Rules made there under, in case of branch transfer of stock of taxable goods outside the State, the ITC on the corresponding purchases within the State from registered dealers shall be allowed only in excess of four *per cent* of the tax paid or payable. In other words, input tax calculated up to the rate of four *per cent* of the value of materials purchased shall not be claimed as ITC and hence it should be reversed in case of branch transfer of goods by any dealer.

During test check of the audit assessment records (July 2010) of M/s Ballarpur Industries Ltd, Koraput Range, engaged in manufacturing of paper out of raw materials like sabai rope, bamboo etc, which was assessed (July 2008) for the tax periods from April 2005 to September 2007, we noticed that out of the total sales turnover of the dealer for ₹ 718.62 crore, a turnover of ₹ 502.01 crore represented the value of goods transferred to other branches located outside

the State. We, however, observed that the above manufacturer declared reversal of ITC amounting to ₹ 1.65 crore on account of branch transfer of taxable goods. While assessing the manufacturer the AA disallowed ITC of ₹ 44.92 lakh on purchase of coal and gas being not considered as inputs in the production of finished goods. Since the dealer's branch transferred goods represented 69.80 *per cent* of the production, the ITC admissible was ₹ 31.38 lakh which was included in the disallowed ITC of ₹ 44.92 lakh. Instead of deducting the proportionately calculated disallowance of ITC of ₹ 31.38 lakh from the reversed ITC declared by the manufacturer, the AA deducted the full amount of ITC of ₹ 44.92 lakh from declared reversal of ITC of ₹ 1.65 crore. This resulted in excess reduction of reversal of ITC or excess allowance of ITC of ₹ 13.54 lakh. This led to excess allowance of ITC of ₹ 13.54 lakh.

After we pointed out the case, the AA agreed (July 2010) to reopen the case.

We brought the above matter to the notice of the CCT (February 2011) and the Government (May 2011); their replies are yet to be received (January 2012).

### 2.4.5.1 Non-levy of interest and penalty for delayed payment of tax

Under the OVAT Act, where a dealer who is required to file a return under the Act, fails without sufficient cause to pay the amount of tax due as per the return, he shall be liable to pay interest at the rate of one *per cent* per month in respect of the tax which he fails to pay according to the return, from the due date of the return to the date of its payment or to the date of order of assessment, whichever is earlier. The Act also provides for scrutiny of each and every return of the dealer by the AA to verify application of correct rate of tax and interest, full payment of tax and interest payable by the dealer and in case of any discrepancy, to serve a notice to the dealer in the prescribed form to make payment of extra tax liability with interest. If the dealer fails to pay the above amount of tax and interest the Commissioner may, after giving the dealer a reasonable opportunity of being heard, direct him to pay in addition to tax and interest a penalty at the rate of two *per cent* per month thereon from the date it had become due to the date of its payment or the order of assessment, whichever is earlier.

During verification (between March 2010 and January 2011) of the tax payment details generated from the VATIS and the self-assessed VAT returns, treasury schedules, progressive collection registers as well as analysis of tax payment details in the assessment records made available in two Ranges<sup>23</sup> and thirteen Circles<sup>24</sup> for different tax periods between 1 April 2005 and 31 March 2010, we noticed that in respect of 2562 tax periods, 927 dealers paid the tax due (₹ 47.66 crore) with delays ranging from six to 1120 days for which interest of ₹ 1.97 crore was leviable as calculated by us.

While accepting the returns for the relevant tax periods, the AAs did not levy the above interest dues against the dealers which led to non-levy of interest of ₹ 1.97 crore. Besides, penalty of ₹ 4.07 crore was also leviable after giving the dealers a reasonable opportunity of being heard.

After we pointed out these cases, the Government stated (September 2011) that the re-assessment proceedings in respect of M/s A.B Minerals, Ganjam-II Circle and M/s Samaleswari Industry Pvt. Ltd, Sambalpur-II Circle were disposed of imposing interest and penalty of ₹ 3.73 lakh and ₹ 2.08 lakh respectively. Government further stated a demand of ₹ 9.68 lakh was raised against 271 dealers of Keonjhar Circle and a demand of ₹ 2.51 lakh towards interest and penalty against 14 dealers of Boudh Circle. Interest and penalty of ₹ 1.23 lakh was collected from 21 dealers of Keonjhar Circle. The replies in respect of other cases are yet to be received (January 2012).

23 Bhubaneswar and Cuttack-II.

24 Angul, Balasore, Bhubaneswar-I, Bhubaneswar-IV, Boudh, Cuttack-II, Ganjam-II, Jharsuguda, Keonjhar, Mayurbhanj, Rourkela-II Sambalpur-I and Sambalpur-II.

### **2.4.5.2 Non-levy of penalty in audit assessments**

Under the OVAT Act, 2004 where the tax audit results in detection of any discrepancy such as suppression of purchases or sales or both, erroneous claims of deduction including claim of input tax credit (ITC), evasion of tax or contravention of any provision of the Act affecting the tax liability of the dealer, the AA is required to make audit assessment of the dealer wherein penalty equal to twice the amount of tax assessed shall be levied against the dealer. The Act also allows the dealer to disclose and pay a higher amount of tax due, if any, by filing revised returns in respect of any tax period(s). However, no such disclosure is acceptable after receipt of the notice for the tax audit.

During test check of audit assessment records of three ranges and four circles (between April and August 2010), we noticed that while finalising the assessments of nine dealers<sup>25</sup> for different tax periods between April 2005 and June 2009, the AAs assessed additional tax liability of ₹ 61.08 lakh for different discrepancies / contraventions of the Act. However, they did not levy penalty of ₹ 1.22 crore thereon as required under sub Section 5 of the Section 42 of the OVAT Act, 2004.

After we pointed out the above cases, the Government stated (September 2011) that the reassessment proceeding in respect of M/s Ajanta Agencies, Ganjam-I Circle was disposed of raising extra demand of penalty of ₹ 5.63 lakh out of which ₹ 1.88 lakh had been collected. Government further stated that the re-assessment proceedings in respect of M/s Shivsai Enterprises and M/s Anmol Tyres of Cuttack-II Circle and M/s Santosh Rice Mill Pvt Ltd of Bolangir Circle were initiated by issue of notices. Replies in respect of other dealers are yet to be received (January 2012).

---

25 **Balasore Range:** M/s Balasore Alloys Ltd. and M/s Bakasire Alloys Ltd., **Bolangir Range:** M/s Santosh Rice Mill and **Cuttack-II Range:** M/s Trupti Automatives. **Balasore Circle:** M/s Maa Laxmi Rice Mill and M/s Srikrishna Mill, **Cuttack-II Circle:** M/s Anmol Tyres, **Ganjam-I Circle:** M/s Ajanta Agency and **Mayurbhanj Circle:** M/s Puri Enterprises.

### 2.4.5.3 Non-levy of penalty for non-submission of the certified report on the audited accounts

Under the OVAT Act, 2004, a dealer having gross turnover exceeding ₹ 40 lakh during a financial year shall furnish a true copy of annual audited accounts for that year duly certified by a Chartered Accountant by 31 October of the next financial year to the concerned AA for his record in the register prescribed by the CCT. The Act further provides that in case the dealer fails to furnish or furnishes the same belatedly, the AA shall, after giving the dealer a reasonable opportunity of being heard, impose on him a penalty of rupees one hundred for each day of default in submission.

During test check of records of 11 Circles<sup>26</sup> (between May 2010 and January 2011), we collected the list of dealers having gross turnover in excess of ₹ 40 lakh each during the period 2008-09 and 2009-10 from the AAs of 11 Circles and requested the AAs to intimate whether the dealers had furnished annual audited accounts for that year duly certified by a Chartered Accountant indicating the date of receipt of that audited report. From the replies

received from the AAs we noticed

that 3,313 dealers whose gross turnover exceeded ₹ 40 lakh each during 2008-09 and 2009-10 did not submit the copies of the certified reports on the audited accounts of the relevant years to the respective AAs within the prescribed dates and also up to the date of audit which warranted levy of penalty under the Act. The delay in submission of copies of the above reports ranged from 61 days to 365 days for which penalty of ₹ 8.12 crore was leviable, but the same was not levied by the concerned AAs. The reasons for non-imposition of penalty were also not recorded in the relevant assessment orders or the register prescribed by the CCT for that purpose.

After we pointed out the above cases, the Government stated (September 2011) that ₹ 20.17 lakh and ₹ 13.94 lakh have been imposed as penalty against 32 dealers of the Cuttack-I, City Circle and 77 dealers of Keonjhar Circle respectively out of which ₹ 0.30 lakh was recovered from 12 dealers of Cuttack-I, City Circle and show cause notices have been issued against 467 defaulting dealers of Rourkela-II Circle. Government further stated (October 2011) that penal proceedings have been completed in respect of 99 dealers of Barbil Circle raising demand of ₹ 20.98lakh. Replies in respect of the other dealers of the remaining Circles are yet to be received (January 2012).

26 Barbil, Bhubaneswar-I, Bhubaneswar-II, Bhubaneswar-III, Cuttack-I (City), Keonjhar, Mayurbhanj, Nayagarh, Rayagada, Rourkela-I and Rourkela-II Circles.

## **Central Sales Tax**

### **2.5 Non-observance / compliance of the provisions of the CST Act / Rules read with Government notifications / executive orders**

*The CST Act, 1956 and Rules made thereunder read with Government notifications and executive orders issued from time to time provide for:*

- *levy of tax at the assessment stage at the prescribed rates or concessional rates, subject to certain conditions, on the net taxable turnover (NTO) of goods determined at such stage;*
- *exemption of tax in respect of sales turnover of goods exported outside the country including their penultimate transaction; and*
- *levy of penalty at the prescribed rates for contravention of provisions of the Act and Rules on the tax liability determined by the AA in audit assessment.*

*We noticed that while finalising the assessments, the AAs did not observe some of the above provisions read with Government notifications / orders as mentioned in the following paragraphs 2.5.1 to 2.5.3 which resulted in non / short levy of tax and penalty of ₹ 14.13 crore.*

#### **2.5.1 Short levy of tax due to allowance of inadmissible concessional rate of tax**

Under the CST Act, 1956 read with Government notifications dated 31 March 2005 and 16 June 2006, inter-State sale of goods manufactured by the Small Scale Industries (SSIs) of the State are taxed at a concessional rate of one *per cent* up to 15 June 2006 and at two *per cent* thereafter against declarations furnished by the purchasing dealer in form 'C'. As per the provisions of the order dated 24 December 1999 of the Ministry of Commerce and Industries, Department of Industrial Policy and Promotion read with the notifications dated 18 July 2006 and 29 September 2006 of the Ministry of Small Scale Industries of the Central Government, industrial units with Fixed Capital Investment (FCI) in plant and machinery up to rupees one crore between 24 December 1999 and 1 October 2006 and rupees five crore thereafter are considered as SSI units. Inter State sale of goods supported with declaration in form 'C' are exigible to tax at the rate of four *per cent* up to 31 March 2007.

**2.5.1.1** During test check of the audit assessment records (February 2010) in Rourkela-I Circle, we noticed that a dealer M/s Anurag Ferro Products (P) Ltd. dealing in declared goods such as cold rolled coils, strips and galvanised (plain and corrugated) sheets etc. was assessed (February 2008) for the years 2005-06 and 2006-07. On scrutiny of the certified audited accounts filed by the dealer, we observed that the dealer's FCI on plant and machinery stood at ₹ 8.41 crore as on 1 April 2005 and ₹ 7.18 crore as on 1 April 2006 which exceeded the limit

of one crore up to 1 October 2006 and five crore thereafter. Thus it is evident that it was not an SSI unit and hence not eligible to avail concessional rate of tax during the period assessed. However, overlooking the above audited accounts kept on record, the AA assessed tax of ₹ 61.97 lakh only at the concessional rate ranging from one to two *per cent* instead of assessing tax of ₹ 179.89 lakh at the prescribed rate of four *per cent* on sale of above goods worth ₹ 44.97 crore supported with valid declarations in form 'C.' This led to short levy of tax of ₹ 1.18 crore and non-imposition of penalty of ₹ 2.36 crore. Under the pre-amended CST (O) Rules, 1957 valid up to June 2006 a separate assessment was required to be made for the tax periods from July 2006 to March 2007. We, however, noticed that only one assessment was made for the tax periods from April 2006 to March 2007 which was irregular and needs rectification.

**2.5.1.2** During test check of the audit assessment records of Rourkela-II Circle (March 2010), we noticed that a dealer, M/s Shree Ram Sponge and Steel Ltd., a manufacturer of Mild Steel ingots, was assessed on 31 March 2009 for the year 2005-06. We observed from the certified audited accounts submitted by the dealer, that the dealer's FCI on plant and machinery stood at ₹ 1.13 crore as on 1 April 2005 and ₹ 1.99 crore as of 31 March 2006 which exceeded the limit of one crore. Thus, it was not an SSI unit and hence not eligible to avail concessional rate of tax during the period assessed. However, overlooking the above audited accounts kept on record, the AA assessed tax of ₹ 24.98 lakh only at the concessional rate of one *per cent* instead of assessing tax of ₹ 99.93 lakh at the prescribed rate of four *per cent* on sale of above goods worth ₹ 24.98 crore supported with valid declarations in form 'C' under the pre-amended CST (O) Rules, 1957 valid up to June 2006. This led to short levy of tax of ₹ 74.94 lakh and non-imposition of penalty of ₹ 1.50 crore.

**2.5.1.3** During test check of audit assessment record of Dhenkanal Circle (May 2010), we noticed that a dealer M/s Sourav Alloys and Steel (P) Ltd., manufacturer of iron ingots was assessed (September 2007) for the tax periods from April 2005 to February 2007 by treating it as an SSI unit. However, it had lost its SSI unit status after 29 September 2005 as the value of FCI in plant and machinery stood at ₹ 1.58 crore on that date as seen from the audited accounts submitted by the dealer. Overlooking the above audited accounts kept on record, the AA completed the assessment by applying the concessional tax rate of one *per cent* on the inter-State sales turnover of ₹ 10.08 crore during the tax periods from October 2005 to September 2006 instead of applying the prescribed rate of four *per cent*. This resulted in short levy of tax of ₹ 30.25 lakh at the differential rate of three *per cent* on the above sales turnover. Besides the dealer was liable to pay penalty of ₹ 60.50 lakh.

After we pointed out these cases, the Government stated (March and May 2011) that the reassessment proceedings in respect of two dealers viz M/s Sourav Alloys and Steel (P) Ltd. and Shree Ram Sponge and Steel Ltd. were completed raising extra demands of ₹ 1.01 crore and ₹ 1.86 crore respectively and reassessment proceeding against M/s Anurag Ferro Products (P) Ltd. had not been completed. Further reply is yet to be received (January 2012).

### **2.5.2 Short levy of tax due to allowance of inadmissible exemption**

Under the CST Act, 1956, the last sale of goods preceding the export sale is exempted from levy of tax, if it is supported with a declaration in prescribed form-H filed by the ultimate exporter in respect of purchase of such goods for export along with relevant documents in proof of such export sale to have taken place after, and was for the purpose of complying with, the agreement or order for or in relation to such export. Inter-State sale of iron ore fines without supporting declarations were taxed at the rate of 10 per cent up to 31 March 2007.

During test check of the audit assessment records (June 2010) in Barbil Circle, we noticed that four dealers<sup>27</sup> sold iron ore fines worth ₹ 19.08 crore to the penultimate exporters in course of export during the tax periods from April 2005 and June 2006 and paid no tax thereon claiming exemption of tax under the Act. While finalising the audit assessments (March 2009 and March 2010) the AA allowed the dealers to avail the above exemption. However, we noticed that the above dealers sold goods valued at ₹ 5.87 crore and ₹ 5.77 crore to the exporters before the purchase orders were placed on the

exporters by the foreign buyers and after the date of shipment of the goods as noticed from the bills of lading furnished by the dealers. This resulted in short levy of tax of ₹ 1.16 crore as the sales were not exempted from tax.

After we pointed out these cases (May 2011), the Government stated (June 2011) that the reassessment proceedings in respect of three dealers viz M/s Global Associates, Bansapani Iron Ltd. and Tarini Minerals were completed raising extra demands of ₹ 1.02 crore, ₹ 1.15 lakh and ₹ 4.96 lakh respectively and reassessment proceeding against M/s Indu Ingot and Re-Roller (P) Ltd. had not been completed. Further reply is yet to be received (January 2012).

### **2.5.3 Non-levy of penalty in audit assessment**

Under the CST Act, 1956 read with CST (O) Rules, 1957 as amended on 6 July 2006, where the tax audit results in detection of suppression of purchases or sales or both, erroneous claims of deduction, evasion of tax or contravention of any provision of the Act affecting the tax liability of the dealer, the AA is required to make audit assessment of the dealer. The Act/Rules further provide for imposition of penalty equal to twice the amount of tax so assessed.

During test check of the audit assessment records of two Ranges and one Circle (between April and June 2010), we noticed that in three cases pertaining to three registered dealers<sup>28</sup>, the concerned AAs while assessing the dealers for

27 (1) M/s Bansapani Iron Ltd., M/s Global Associates, M/s Indu Ingot and Re-Roller (P) Ltd. and Tarini Minerals

28 (i) M/s R J Exports of Ganjam Range, (ii) M/s Sree Metaliks of Jajpur Range, and (iii) M/s Big Boss Steel Alloys Ltd. of Mayurbhanj Circle.

different tax periods between April 2006<sup>29</sup> and March 2009, assessed tax of ₹ 3.13 crore due to purchase and sale suppression, payment of concessional rate of tax without any supporting declarations and discrepancies in accounts etc.. Although the tax levied for these irregularities warranted imposition of penalty, the AAs did not impose penalty of ₹ 6.27 crore as required under sub Rule (3) (g) of the Rule 12 of the CST (O) Rules, 1957.

After we pointed out the above cases, Government stated (September 2011) that the re-assessment proceeding in respect of M/s R.J Export was completed imposing penalty of ₹ 5.04 crore. Replies in respect of other dealers are yet to be received (January 2012).

### Entry Tax

#### 2.6 Non-observance/compliance of the provisions of OET Act/ Rules read with Government notifications

*The OET Act, 1999 as amended and Rules made thereunder read with Government notifications issued from time to time provide for:*

- *completion of audit assessment based on Audit Visit Report (AVR) and levy of tax at the prescribed rates (normal or concessional subject to certain conditions) on entry of scheduled goods into any local area for sale, use or consumption therein;*
- *levy of tax on the sale value of manufactured scheduled goods at the prescribed rates;*
- *allowance of set off of tax paid on purchase of scheduled goods by the manufacturers as raw materials against the ET payable on the sale value of taxable finished goods; and*
- *levy of penalty at prescribed rates for the tax levied in audit assessment.*

*We noticed that while finalising the assessments, the AAs did not observe some of the above provisions in some cases as mentioned in the following paragraphs 2.6.1 to 2.6.5 which resulted in non / short levy of tax, interest and penalty of ₹ 3.07 crore.*

#### 2.6.1 Escapement of tax on ‘Gold jewellery’ and ‘Acid slurry’

Under the amended OET Act, 1999 and Rules made thereunder, tax on the purchase value of goods entering into a local area for consumption, use or sale therein is leviable at the prescribed rates as per the schedule. “Jewellery made out of gold” and “chemicals used for any purpose” are exigible to tax at the rate of one *per cent*. The Act further provides for levy of penalty equal to twice the amount of tax assessed in audit assessment with effect from 19 May 2005.

**2.6.1.1** During test check of the audit assessment records (June 2010) of Bhubaneswar Range, we noticed that M/s Lalchand Jewellery Pvt. Ltd., a registered dealer in gold and silver ornaments, jewellery,

29 The period April 2006 to June 2006 of (i) M/s R.J. Exports was erroneously tagged in the audit assessment made {(quoting the pre-amendment provisions of CST (O) Rules)} for the tax periods July 2006 to July 2007 pertaining to the post amended Rules.

old gold, gold bullion and diamond studded gold ornaments etc., purchased diamond studded gold jewellery worth ₹ 20.49 crore from outside the State during the tax period from August 2006 to May 2009 which is exigible to tax at the rate of one *per cent*. While finalising the audit assessment (December 2009) for the above period the AA did not levy tax on the above purchase turnover by treating the same as non-scheduled goods. Thus, non-assessment of tax on entry of the above scheduled goods led to escapement of tax of ₹ 20.49 lakh and penalty of ₹ 40.98 lakh.

We brought the matter to the notice of the CCT (February 2011) and the Government (March 2011). The Government stated (April 2011) that *suo motu* proceeding had been initiated against the dealer (April 2011) for reassessment. Result of reassessment is yet to be received (January 2012).

**2.6.1.2** During test check of the audit assessment records (August 2010) of Cuttack II Circle, we noticed that a registered dealer, M/s Oritrade Private Limited purchased scheduled goods i.e. “Acid Slurry” worth ₹ 7.39 crore during the tax periods from 2005-06 to 2007-08, but did not pay tax thereon treating the same as non-scheduled goods which was accepted by the AA while assessing the dealer (December 2009) for the above tax period. ‘Acid Slurry’ known as ‘Linear Alkyl Benzene Sulphonic Acid’ (LABSA), being an “industrial chemical” generally used in manufacturing of various detergents is a chemical and hence it is exigible to tax at the rate of one *per cent*. Therefore non-assessment of tax on entry of scheduled goods led to escapement of tax of ₹ 7.39 lakh. Besides, the dealer was liable to pay a penalty of ₹ 9.06 lakh for non-payment of tax of ₹ 4.53 lakh against entry of scheduled goods worth ₹ 4.53 crore during the period 19 May 2005 to 31 March 2008.

After we pointed out the case, the Government replied (October 2011) that the reassessment proceeding has been disposed of raising extra demand of ₹ 22.17 lakh towards tax and penalty. The report on details of realisation is yet to be received (January 2012).

## **2.6.2 Short levy of tax on ‘mohua flower’**

The OET Act, 1999 as amended (May 2005) and Rules made thereunder provide that scheduled goods brought for use by a manufacturer on first entry into a local area from another local area as raw materials against production of declaration in prescribed form shall be exigible to tax at a concessional rate of fifty *per cent* of the rate specified in the schedule. Further, a penalty equal to twice the amount of tax assessed by the AA on audit assessment is also leviable. Mohua flower is exigible to tax at the normal rate of one *per cent*.

During test check of the audit assessment records (October 2009 and June 2010) in two ranges (Bolangir and Sambalpur), we noticed that 11 manufacturers<sup>30</sup> of outstill liquor purchased mohua

---

<sup>30</sup> **Bolangir Range:** (i) M/s Laxmi Shankar Prasad, Bolangir (ii) M/s Umashankar Prasad, Bolangir. (iii) M/s Ram Murty Prasad, Bolangir (iv) M/s Shiv Shankar Sahu, Sonapur (v) M/s Bholanath Sahoo, Bolangir (vi) M/s Sudarsan Sahu, Sonapur and (vii) M/s Anil Kumar Sahoo.

**Sambalpur Range:** (i) M/s Gopal Prasad (ii) M/s Santosh Kumar Jaiswal (iii) M/s Harihar Prasad Sahu and (iv) M/s Sunil Kumar.

flower valued at ₹ 15.55 crore ( ₹ 7.34 crore under Bolangir Range and ₹ 8.21 crore under Sambalpur Range) from mohua pickers<sup>31</sup> of the State in different tax periods between April 2005 and January 2009. Hence, the purchase turnover of the above manufacturers on account of mohua flower was liable to be taxed at the rate of one *per cent*. While finalising the assessments of the above dealers, the AA, however, assessed tax at the concessional rate of 0.5 *per cent* instead of the correct rate of one *per cent* on the aforesaid purchase turnover. This resulted in short levy of tax of ₹ 7.78 lakh and non-imposition of penalty of ₹ 15.55 lakh.

After we pointed out these cases, the Government stated (September 2011) that after completion of reassessment proceedings demands of ₹ 6.84 lakh including penalty of ₹ 4.56 lakh was raised against six dealers of Bolangir Range and no demand was raised against one dealer of that Range. As regards the dealers of Sambalpur Range, three dealers had been assessed with nil demands and in another case, although it was re-opened, the orders thereon was reserved. The non-raising of demands by the AA of the Sambalpur Range does not appear to be correct as in six similar cases of Bolangir Range, the AA accepted our views and raised the demand as stated above.

### 2.6.3 Short levy of tax due to erroneous determination of purchase turnover

Under the OET Act, 1999 as amended (May 2005) tax is levied on the purchase value of scheduled goods on their entry into a local area for consumption, use or sale therein. If the scheduled goods are obtained otherwise than by way of purchase, the sale value or the value at which such goods are capable of being sold in the open market shall be taken as the purchase value. Thus, scheduled goods received on branch transfer are liable to be taxed on their sale value. In case of audit assessment, penalty equal to twice the tax assessed shall be imposed against the dealer assessed. Health and beauty care products such as soap, tooth paste and tooth brush are exigible to tax at the rate of one *per cent* under the Act.

During test check of the audit assessment records (February 2010) in Cuttack-I Range, we noticed that M/s Anchor Health and Beauty Care Pvt. Ltd., a dealer in health and beauty care products, received scheduled goods valued at ₹ 29.36 crore on branch transfer from outside the State and the same was sold for ₹ 38.21 crore during the tax periods from 9 November 2005 to 30 September 2008. But while finalising the assessment (March 2009) for the above tax periods, the AA instead of assessing tax on the sale value of ₹ 38.21 crore, levied tax on purchase value of ₹ 29.36 crore. This resulted in short determination of purchase turnover by ₹ 8.85 crore and consequential short-levy of tax of ₹ 8.85 lakh, besides non-imposition of penalty of ₹ 17.70 lakh.

After we pointed out these cases, the Government stated (September 2011) that the re-assessment proceeding was completed raising demand of

31 **Mohua pickers:** Village people earning livelihood by selling mohua flowers picked up from the ground beneath the mohua trees.

₹ 7.40 lakh towards tax and ₹ 14.80 lakh towards penalty. The report on details of realisation is yet to be received (January 2012).

### **2.6.4 Excess allowance of set off**

Under the OET Act, 1999 as amended (May 2005) and Rules made thereunder, the manufacturers of scheduled goods, while selling the finished products, shall collect ET on the sale value of goods. The entry tax paid by the manufacturer of scheduled goods on the purchase of raw materials which directly go into the composition of finished products by the manufacturer is permitted to be set off against entry tax payable. Further, where no ET is payable on a part of the sales (due to local sale, inter-State sale, branch transfer etc.), the set off admissible shall be reduced proportionately. Further, each and every return filed by the dealer shall be subject to scrutiny and as a result of scrutiny, if the dealer is found to have made payment of tax less than what is payable, the AA shall serve a notice in the prescribed form upon the dealer directing him to pay the balance tax due and interest thereon by the specified date. The Act also provides for levy of penalty equal to twice the amount of tax assessed on audit assessment.

During test check of the audit assessment records and self-assessed returns of the dealers for different tax periods, we noticed excess set off of ET of ₹ 20.76 lakh against ET payable by the dealers as discussed below.

**2.6.4.1** We noticed in Cuttack-I Range (November 2010) and Jatni Circle (July 2009) that during the tax periods between April 2005 and November 2008, two manufacturing dealers sold finished goods valued at ₹ 89.60 crore which included goods valued at ₹ 52.85 crore on which ET was not payable (due to inter-State sale, branch transfer etc.). As such, set off of ET of ₹ 4.97<sup>32</sup> lakh out of the total ET of ₹ 10.14 lakh paid on purchase of raw materials was not admissible in respect of those goods on which ET was not payable at the sale point. However, the AAs while finalising the assessments of the above dealers (December 2008 and January 2010), allowed the entire ET of ₹ 10.14 lakh towards set off against ET payable by the dealers resulting in excess set off of ₹ 4.97 lakh and non-imposition of penalty of ₹ 9.94 lakh as given below.

(Rupees in lakh)								
Name of the Circle / Name of manufacturing dealer	Tax periods assessed	Total sales	Sale for which ET not payable	ET paid on purchase of raw materials	Set off of ET admissible	Set off of ET availed	Excess set off availed	Penalty imposable but not imposed
<b>Cuttack-I Range</b> M/s Om Oil and Flour Mills Ltd.	April 2007 to November 2008	8622.78	5223.97	7.39	2.91	7.39	4.48	8.96
<b>Jatni Circle</b> M/s AADI India (P) Ltd.	April 2005 to August 2008	337.34	61.01	2.75	2.26	2.75	0.49	0.98
<b>Total</b>		<b>8960.12</b>	<b>5284.98</b>	<b>10.14</b>	<b>5.17</b>	<b>10.14</b>	<b>4.97</b>	<b>9.94</b>

32 Admissible set off has been calculated on the entire period in the absence of tax period wise details.

After we pointed out these cases, the Government stated (September 2011) that the re-assessment proceeding in respect of M/s Aadi India Pvt. Ltd was disposed of raising extra demand of ₹ 1.71 lakh towards tax, penalty and interest and the re-assessment proceeding in respect of the M/s Om Oil and Flour Mills had been initiated in January 2011. Further reply is yet to be received (January 2012).

**2.6.4.2** Similarly, on test check of self-assessed returns (between December 2009 and May 2010) of the dealers in three Circles<sup>33</sup>, we noticed that although sales turnover of three manufacturing dealers for different tax periods ranging between October 2005 and September 2009 included sale of goods on which ET was not payable (due to inter-State sale, branch transfer etc.), yet they had availed set off of the entire ET paid by them on purchase of raw materials. As the returns were deemed to have been accepted, the excess set off so availed of by the dealers, thus, remained undetected. This resulted in excess availing of set off of ET of ₹ 14.68 lakh by the dealers besides interest and penalty leviable under the Act. The details of excess set off of ET of ₹ 14.68 lakh are given below.

(Rupees in lakh)							
Name of the Circle / Name of manufacturing dealer	Tax periods assessed	Total sales	Sale for which ET not payable	ET paid on purchase of raw materials	Set off of ET admissible	Setoff of ET availed	Excess set off availed
<b>Rourkela-I Circle</b> M/s Utkal Steel (P) Ltd.	October 2005 to March 2009	12510.02	4,715.38	37.55	25.19	37.55	12.36
<b>Kalahandi Circle</b> M/s Bansal Tyre (P) Ltd.	October 2005 to June 2008	889.34	617.65	2.22	0.68	2.22	1.54
<b>Balasore Circle</b> M/s Utkal Polywave Industries (P) Ltd.	June 2008 to March 2009 and September 2009	2695.68	1,539.34	1.47	0.69	1.47	0.78
<b>Total</b>		<b>16095.04</b>	<b>6872.37</b>	<b>41.24</b>	<b>26.56</b>	<b>41.24</b>	<b>14.68</b>

After we pointed out the above cases of availing of excess set off by the dealers in the self-assessed returns, while the AA of Rourkela-I Circle stated (February 2010) that the case would be referred for tax audit, the AA of Balasore Circle stated (May 2010) that the case would be referred to Balasore Range as the dealer was then under that Range. The AA of Kalahandi Circle stated (December 2009) that the dealer had filed returns in the prescribed form in which there is no such provision for proportionate reduction of set off of ET. The reply of the AA, Kalahandi Circle was not tenable as allowance of set off of ET on inter-State sales / branch transfer of scheduled goods contravened the provisions of the OET Rules. However, the CCT stated (June 2011) that the case was under examination. The final compliance is yet to be received (January 2012).

33 Balasore Circle in May 2010, Kalahandi Circle in December 2009 and Rourkela-I Circle in February 2010.

We brought the matter to the notice of the CCT (March 2011) and only one reply in respect of Kalahandi Circle has been received as discussed above. We also brought the matter to the notice of the Government (May 2011), their reply is yet to be received (January 2012).

**2.6.4.3** In Bolangir Range, we noticed (October 2009) that the AA, during audit assessment (April 2008) of a manufacturing dealer, M/s Shree Bajarangbali Metal Industries for the tax periods from April 2005 to December 2006 allowed set off of ET of ₹ 0.99 lakh against ₹ 1.11 lakh claimed by the dealer. However, while finalising the assessment, the AA erroneously deducted both the amounts as set off against the ET payable. This resulted in excess set off of ₹ 1.11 lakh.

After we pointed out the above lapses, the CCT stated (June 2011) that the case was under examination. The final compliance is yet to be received (January 2012).

We brought the matter to the notice of the Government (May 2011), their reply is yet to be received (January 2012).

### **2.6.5 Non-imposition of penalty on tax found payable in audit assessment**

The OET Act, 1999 as amended (May 2005) and Rules made thereunder as amended from time to time, ET at the prescribed rate is leviable on the purchase value of the scheduled goods on their first entry into a local area for consumption, use or sale therein. Purchase value, as defined under the Act, includes freight, insurance, excise duty and other incidental charges incurred by the dealer. In case of goods brought from outside the State by branch transfer, the sale value of such goods shall be taken as the purchase value for the purpose of levy of entry tax. Besides, penalty equal to twice the amount of tax assessed in audit assessment of any dealer is also imposable. The OET Rules, 1999 as amended in 2005 further provides that for any other matter not specified thereunder but required for carrying out the purposes of the Act and the Rules, the provisions under the OVAT Act, 2004 and Rules made thereunder shall, *mutatis mutandis*, be applicable. Under the OVAT Act, if any dealer after furnishing a return discovers that a higher amount of tax was due than the amount of tax admitted by him in original return, he may voluntarily disclose the same by filing a revised return and pay the higher amount of tax. However, no such voluntary disclosure shall be made after receipt of the notice for tax audit or as a result of such audit.

**2.6.5.1** During test check of audit assessment records (between April 2010 and November 2010) in one Circle<sup>34</sup> and four Ranges<sup>35</sup> for different tax periods between April 2005 and March 2009, we noticed that in five cases, penalty of ₹ 1.45 crore was leviable on the tax of ₹ 72.43 lakh assessed (between January 2008 to March 2010) against five dealers, but the concerned AAs did not

---

34 Kantabanji.

35 Cuttack-I, Ganjam, Jajpur and Sambalpur.

impose penalty required to be levied under sub-Section 5 of the Section 9C of the OET Act.

After we pointed out these deficiencies , the Government stated (September 2011) that only in case of M/s Aristo Pharmaceuticals Pvt. Ltd of Cuttack-I Range, the re-assessment proceeding had been completed with raising of extra demand of ₹ 2.89 lakh. The replies in respect of remaining cases of other Ranges / Circles are yet to be received (January 2012).

**2.6.5.2** During test check of assessment records (between June and September 2010) of Sambalpur Range and Bolangir Circle, we noticed that three dealers had not paid the full amount of tax due along with the returns and the fact of non-payment was pointed out by the tax audit. The concerned dealers deposited the differential tax after the tax audit; but before the assessment. During assessment, the AAs, instead of adjusting the tax paid up to the date of receipt of notice of tax audit, irregularly adjusted the entire amount of tax of ₹ 2.08 lakh paid after the tax audit in contravention of the provision of the Act. As a result, the tax due at the time of assessment was reduced to that extent. This resulted in non-imposition of penalty of ₹ 4.15 lakh on the defaulting dealers.

After we pointed out the above cases, the AA of Sambalpur Range stated (June 2010) that the case would be reopened, while the AA of Bolangir Circle issued notice (September 2010) to the dealers for reassessment.

We reported the matter to the CCT (March 2011) and the Government (May 2011); their replies are yet to be received (January 2012).