

## CHAPTER - II

## EXECUTIVE SUMMARY

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**What we have highlighted in this Chapter**

In this Chapter we present a Performance Audit on “**Recovery of Revenue Arrears in Commercial Tax Department**” involving revenue implication of ₹ 49.30 crore and a few illustrative cases of ₹ 11.76 crore selected from observations noticed during our test check of records relating to assessment and collection of Commercial Tax in the office of the Commercial Tax Officers (CTOs) and Regional Assistant Commissioners (RACs), where we found 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 Audit Reports for the past several years, but the Department has not taken corrective action.

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**Tax collection**

In 2011-12 the collection from Commercial Tax increased by 22.03 *per cent* over the previous year, which was attributed by the Department to better tax compliance.

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**Very low recovery by the Department of observations pointed out by us in earlier years**

During the period from 2006-07 to 2010-11, through our Inspection Reports we had pointed out non/short levy, non/short realisation underassessment/loss of revenue due to incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation etc., with revenue implication of ₹ 858.40 crore in 5,111 cases. Of these, the Department/Government has accepted audit observations in 2,286 cases involving ₹ 249.60 crore and had since recovered ₹ 4.84 crore in 430 cases. The recovery position as compared to acceptance of objections was very low ranging from 0.74 *per cent* to 6.26 *per cent*.

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**Results of audit conducted by us in 2011-12**

In 2011-12 we test checked the records of 102 units relating to Commercial Tax and found underassessment of tax and other irregularities involving ₹ 128.02 crore in 872 cases.

The Department accepted underassessment and other deficiencies of ₹ 5.30 crore in 341 cases, which were pointed out by us during the year 2011-12. An amount of ₹ 1.17 lakh was recovered in three cases during the year 2011-12.

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**Our conclusion**

The Department needs to initiate immediate action to recover non/short levy of entry tax/purchase tax, incorrect grant of exemption, non recovery of tax from closed units, non-realisation of professional tax, non/short levy of penalty, non-levy of tax on transporters, non/short levy of tax on sale without declaration forms etc., pointed out by us, more so in those cases where it has accepted our contention.

## CHAPTER - II COMMERCIAL TAX

### 2.1 Tax administration

The Principal Secretary, Commercial Tax Department is the administrative head of the Department at the Government level. The Commissioner of Commercial Tax (CCT) is the head of the Department. The Department is divided in five zones, each headed by a Zonal Additional Commissioner. Each zone comprises of divisional offices headed by 15 divisional Deputy Commissioners (DCs). Under these divisions, there are 80 circle offices and 33 Regional assistant commissioner offices headed by the Commercial Tax Officers/Assistant Commissioners (CTOs/ACs). Levy and collection of Commercial Tax which includes Sales Tax/Value Added Tax, Central Sales Tax, Entry Tax, Profession Tax and Luxury Tax is administered under the provisions of the following Acts and Rules and notifications issued thereunder:

- Madhya Pradesh VAT (MPVAT) Act, 2002;
- Madhya Pradesh VAT (MPVAT) Rules, 2006;
- Madhya Pradesh *Vanijyik Kar Adhiniyam* 1994, (No. 5 of 1995);
- Madhya Pradesh Commercial Tax Rules, 1995;
- Central Sales Tax (CST) Act, 1956;
- CST Registration and Turnover (R&T) Rules, 1957;
- Madhya Pradesh Sales Tax (Central) Rules, 1957;
- Madhya Pradesh *Sthaniya Kshetra Me Mal Ke Pravesh Par kar Adhiniyam*, 1976;
- Madhya Pradesh *Sthaniya Kshetra Me Mal Ke Pravesh Par kar Niyam*, 1976;
- Madhya Pradesh Profession Tax Act, 1995;
- Madhya Pradesh Profession Tax Rules, 1995;
- Madhya Pradesh Luxury Tax Act, 1988; and
- Madhya Pradesh Luxury Tax Rules, 1988.

### 2.2 Trend of receipts

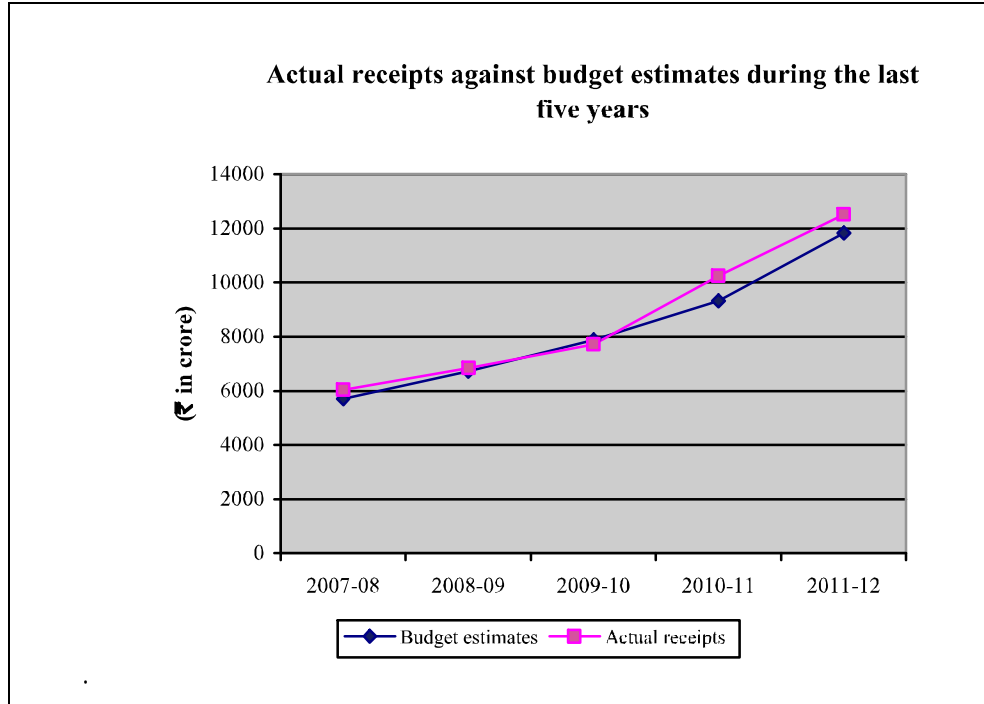
Actual receipts from Taxes on Sales, Trade etc. during the period 2007-08 to 2011-12 along with the total tax receipts during the same period are exhibited in the following table and line graph:

(₹ in crore)

| Year    | Budget estimates | Actual receipts | Variation excess (+)/shortfall (-) | Percentage of variation | Total tax receipts of the State | Percentage of actual VAT/Taxes on sales, trade receipts vis-a-vis total tax receipts |
|---------|------------------|-----------------|------------------------------------|-------------------------|---------------------------------|--|
| (1)     | (2)              | (3)             | (4)                                | (5)                     | (6)                             | (7)  |
| 2007-08 | 5,700.00         | 6,045.07        | (+) 345.07                         | (+) 6.05                | 12,017.64                       | 50.30  |
| 2008-09 | 6,720.00         | 6,842.99        | (+) 122.99                         | (+) 1.83                | 13,613.50                       | 50.27  |

| (1)     | (2)       | (3)       | (4)        | (5)       | (6)       | (7)   |
|---------|-----------|-----------|------------|-----------|-----------|-------|
| 2009-10 | 7,894.11  | 7,723.82  | (-) 170.29 | (-) 2.16  | 17,272.77 | 44.72 |
| 2010-11 | 9,320.00  | 10,256.76 | (+) 936.76 | (+) 10.05 | 21,419.33 | 47.89 |
| 2011-12 | 11,830.00 | 12,516.73 | (+) 686.73 | (+) 5.80  | 26,973.44 | 46.40 |

(Source: Budget Estimates and Finance Accounts of the Government of Madhya Pradesh)



It may be seen that though there was an increasing trend in actual receipts during the years from 2007-08 to 2011-12, the percentage of variation between the BEs and the actuals ranged between (-) 2.16 per cent and 10.05 per cent.

In 2011-12, the collection from Taxes on Sales, Trade etc. increased by 22.03 per cent over the previous year which was attributed by the Department to better tax compliance.

### 2.3 Assessee profile

The Department reported that during 2011-12 there were 2,35,848 registered dealers, of which 51,916 were large tax payers and 1,83,932 were small tax payers. All registered dealers having turnover upto ₹ 20 lakh or paying annual tax upto ₹ 10,000 are required to file annual returns whereas other dealers are required to file quarterly returns. In case of dealers who fail to furnish returns, advance tax, etc. notices are issued by the competent officer. The Department further informed that the number of returns received was not maintained at the Headquarters office. Thus, a vital monitoring mechanism was absent in the Department.

## 2.4 Arrears of Taxes on Sales, Trade etc.

Position of arrears of Taxes on Sales, Trade etc., during the period 2007-08 to 2011-12, as furnished by the Commercial Tax Department, is given in the following table:

(₹ in crore)

| Year    | Opening balance of arrears | Additions during the year | Collection by the end of the year | Closing Balance |
|---------|----------------------------|---------------------------|-----------------------------------|-----------------|
| 2007-08 | 584.25                     | 739.77                    | 752.48                            | 571.54          |
| 2008-09 | 571.54                     | 1,086.23                  | 1,111.73                          | 546.04          |
| 2009-10 | 546.04                     | 1,206.32                  | 1,165.41                          | 586.95          |
| 2010-11 | 586.95                     | 1,214.02                  | 1,271.17                          | 529.80          |
| 2011-12 | 529.80                     | 1,667.19                  | 1,679.06                          | 517.93          |

## 2.5 Arrears in assessment

The details of assessments relating to Sales Tax/VAT, Profession Tax, Entry Tax, Luxury Tax, Tax on works contracts pending at the beginning of the year, additional cases becoming due for assessment during the year, cases disposed during the year and pending cases at the end of each year during 2009-10, 2010-11 and 2011-12, as furnished by the Commercial Tax Department, are mentioned in the following table:

| Name of tax    | Year    | Opening balance       | New cases due for assessment during the year | Total assessments due | Cases disposed of during the year | Balance at the end of the year | Percentage of column 6 to 5 |
|----------------|---------|-----------------------|--|-----------------------|-----------------------------------|--------------------------------|-----------------------------|
| (1)            | (2)     | (3)                   | (4)  | (5)                   | (6)                               | (7)                            | (8)                         |
| Sales tax/VAT  | 2009-10 | 2,67,035              | 3,53,048                                     | 6,20,083              | 3,72,161                          | 2,47,922                       | 60.02                       |
|                | 2010-11 | 2,47,922              | 2,53,990                                     | 5,01,912              | 3,74,824                          | 1,27,088                       | 74.68                       |
|                | 2011-12 | 1,24,088 <sup>1</sup> | 2,94,265                                     | 4,18,353              | 3,30,229                          | 88,124                         | 78.94                       |
| Profession tax | 2009-10 | 1,24,375              | 1,40,241                                     | 2,64,616              | 1,57,938                          | 1,06,678                       | 59.69                       |
|                | 2010-11 | 1,06,678              | 88,196                                       | 1,94,874              | 1,27,626                          | 67,248                         | 65.49                       |
|                | 2011-12 | 67,248                | 1,19,154                                     | 1,86,402              | 1,22,991                          | 63,411                         | 65.98                       |
| Entry tax      | 2009-10 | 1,70,356              | 2,29,913                                     | 4,00,269              | 2,48,537                          | 1,51,732                       | 62.09                       |
|                | 2010-11 | 1,51,732              | 2,00,164                                     | 3,51,896              | 2,62,535                          | 89,361                         | 74.61                       |
|                | 2011-12 | 89,361                | 2,27,878                                     | 3,17,239              | 2,55,173                          | 62,066                         | 80.44                       |
| Luxury tax     | 2009-10 | 664                   | 1,026  | 1,690                 | 1,052                             | 638                            | 62.25                       |
|                | 2010-11 | 638                   | 3,619  | 4,257                 | 3,234                             | 1,023                          | 75.97                       |
|                | 2011-12 | 1,023                 | 308  | 1,331                 | 911                               | 420                            | 68.44                       |

<sup>1</sup> The Department stated (October 2012) that opening balance of the arrears in assessment for the year 2011-12 was 1,24,088. However, this did not match with the closing balance of arrears in assessment (1,27,088) for the year 2010-11 reported on an earlier occasion. The Department did not furnish any reason for this difference.

| (1)                    | (2)     | (3)   | (4)   | (5)   | (6)   | (7)   | (8)   |
|------------------------|---------|-------|-------|-------|-------|-------|-------|
| Tax on works contracts | 2009-10 | 2,541 | 6,273 | 8,814 | 6,183 | 2,631 | 70.15 |
|                        | 2010-11 | 2,631 | 6,704 | 9,335 | 6,593 | 2,742 | 70.63 |
|                        | 2011-12 | 2,742 | 5,328 | 8,070 | 5,450 | 2,620 | 67.53 |

## 2.6 Cost of collection

The gross collection from Taxes on Sales, Trade etc., expenditure incurred on its collection and the percentage of expenditure to gross collection during the years 2009-10, 2010-11 and 2011-12 along with the relevant all-India average percentage of expenditure on collection for the relevant preceding year are mentioned below:

(₹ in crore)

| Year    | Collection | Expenditure on collection of revenue | Percentage of expenditure on collection | All India average percentage of expenditure on collection for the previous year |
|---------|------------|--------------------------------------|---|---|
| 2009-10 | 7,723.82   | 89.55                                | 1.16                                    | 0.88  |
| 2010-11 | 10,256.76  | 98.10                                | 0.96                                    | 0.96  |
| 2011-12 | 12,516.73  | 111.36                               | 0.89                                    | 0.75  |

(Source: Finance Accounts of the Government of Madhya Pradesh)

During the years 2009-10 and 2011-12, the percentage of expenditure on collection in respect of taxes on Sales, Trade etc. was higher than the all-India average percentage whereas during 2010-11 it was at par with the all-India average percentage for the previous year.

## 2.7 Impact of audit

### 2.7.1 Position of Inspection Reports (IRs)

During the period 2006-07 to 2010-11, through our IRs, we had pointed out non/short levy, non/short realisation, underassessment/loss of revenue due to incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation etc., with revenue implication of ₹ 858.40 crore in 5,111 cases. Of these, the Department/Government had accepted audit observations in 2,286 cases involving ₹ 249.60 crore and had since recovered ₹ 4.84 crore in 430 cases (as on 30 November 2012). The details are shown in the following table:

(₹ in crore)

| Year of Audit Report | No. of units audited | Objected     |               | Accepted     |               | Recovered    |             | Percentage of recovery to amount accepted |
|----------------------|----------------------|--------------|---------------|--------------|---------------|--------------|-------------|---|
|                      |                      | No. of cases | Amount        | No. of cases | Amount        | No. of cases | Amount      |   |
| 2006-07              | 75                   | 623          | 66.37         | 149          | 15.33         | 09           | 0.96        | 6.26                                      |
| 2007-08              | 106                  | 1,002        | 55.99         | 519          | 12.12         | 24           | 0.48        | 3.96                                      |
| 2008-09              | 102                  | 1,234        | 181.03        | 497          | 39.97         | 15           | 0.83        | 2.08                                      |
| 2009-10              | 90                   | 1,237        | 365.51        | 551          | 122.70        | 110          | 2.13        | 1.74                                      |
| 2010-11              | 100                  | 1,015        | 189.50        | 570          | 59.48         | 272          | 0.44        | 0.74                                      |
| <b>Total</b>         |                      | <b>5,111</b> | <b>858.40</b> | <b>2,286</b> | <b>249.60</b> | <b>430</b>   | <b>4.84</b> |   |

The percentage of recovery as compared to the accepted cases has been extremely low over the last five years.

### 2.7.2 Position of Audit Reports

In the Audit Reports 2006-07 to 2010-11, we had pointed out non/short levy, non/short realisation, underassessment/loss of revenue due to incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation etc., with revenue implication of ₹ 337.19 crore in 73 paragraphs. Of these, the Department/Government had accepted audit observations in 54 paragraphs involving ₹ 139.65 crore and had since recovered ₹ 107.34 crore in 28 paragraphs. The details are shown in the following table:

(₹ in crore)

| Year of Audit Report | Number of paragraphs | Money value   | No. of accepted paragraphs | Money value of accepted paragraphs | No. of paragraphs against which recovery made | Amount recovered up to 31.03.12 |
|----------------------|----------------------|---------------|----------------------------|------------------------------------|---|---------------------------------|
| 2006-07              | 12                   | 21.20         | 9                          | 16.62                              | 5   | 0.49                            |
| 2007-08              | 16                   | 98.69         | 14                         | 16.47                              | 10  | 3.63                            |
| 2008-09              | 16                   | 19.48         | 12                         | 2.29                               | 8   | 0.81                            |
| 2009-10              | 15                   | 112.71        | 9                          | 102.74                             | 5   | 102.41                          |
| 2010-11              | 14                   | 85.11         | 10                         | 1.53                               | Nil   | Nil                             |
| <b>Total</b>         | <b>73</b>            | <b>337.19</b> | <b>54</b>                  | <b>139.65</b>                      | <b>28</b>                                     | <b>107.34</b>                   |

The percentage of recovery as compared to the accepted cases has been very low during the years 2006-07 to 2010-11, except in 2009-10.

**We recommend that the Government should take appropriate steps to improve the recovery position, at least against the accepted cases.**

### 2.8 Working of internal audit wing

In pursuance of the Government orders dated 11 October 1982, 15 posts (five Assistant Commissioners, five Commercial Tax Officers and five Assistant Commercial Tax Officers) were sanctioned for internal audit in the Department. However, due to constant increase in the number of registered dealers and assessment cases, establishment of check posts and deployment of available staff in revenue work, the system of internal audit is not working as far as internal audit of assessments are concerned. During the year 2011-12 internal audit of only the establishment records was done.

### 2.9 Results of audit

Test check of the records of 102 units relating to Commercial Tax during the year 2011-12 revealed underassessment of tax and other irregularities involving ₹ 128.02 crore in 872 cases which fall under the following categories:

(₹ in crore)

| Sl. No.      | Categories  | No. of cases | Amount        |
|--------------|---|--------------|---------------|
| 1.           | <b>Recovery of revenue arrears in Commercial Tax Department – A Performance Audit</b> | 1            | 49.30         |
| 2.           | Non/Short levy of tax   | 255          | 19.12         |
| 3.           | Application of incorrect rate of tax  | 220          | 15.83         |
| 4.           | Incorrect determination of taxable turnover   | 71           | 10.28         |
| 5.           | Incorrect grant of exemption/deduction  | 126          | 9.74          |
| 6.           | Other irregularities  | 199          | 23.75         |
| <b>Total</b> |   | <b>872</b>   | <b>128.02</b> |

During the course of the year, the Department accepted underassessment and other deficiencies of ₹ 5.30 crore in 341 cases, which were pointed out in audit during the year 2011-12. An amount of ₹ 1.17 lakh was realised in three cases during the year 2011-12. Besides, the Department recovered the entire amount of ₹ 58,009 in one case relating to inter-State sale not supported by declaration form 'C' pointed out through a draft paragraph.

A Performance Audit on “**Recovery of revenue arrears in Commercial Tax Department**” involving revenue implication of ₹ 49.30 crore and a few other illustrative cases with financial impact of ₹ 11.76 crore are mentioned in the following paragraphs.



## 2.10 Recovery of revenue arrears in Commercial Tax Department

### Highlights

- The arrears of ₹ 288.46 crore (54.44 *per cent* of the arrears outstanding as on 1 April 2011) in respect of 1,70,881 cases were pending for recovery for more than five years.

**(Paragraph 2.10.6.3)**

- Absence of a separate recovery machinery led to mounting arrears and abnormal delays in initiating action for recovery.

**(Paragraph 2.10.7)**

- There was delay in initiating recovery proceedings up to four years and six months in 38 cases involving arrears of tax of ₹ 2.86 crore.

**(Paragraph 2.10.9)**

- Delay in issuing the RRCs outside the State and inadequate action taken by the Department resulted in non-realisation of dues of ₹ 28.44 crore in 31 cases.

**(Paragraph 2.10.11)**

- Inaction in lodging/pursuing cases pending with the Official Liquidator (OL) resulted in non-realisation of dues of ₹ 1.50 crore in three cases.

**(Paragraph 2.10.12)**

- The Department did not take action to attach property in six cases which resulted in non-realisation of dues of ₹ 62.12 lakh.

**(Paragraph 2.10.13)**

- Abnormal delay in auctioning the attached properties resulted in non-realisation of dues of ₹ 7.11 crore in case of 12 dealers.

**(Paragraph 2.10.14)**

- The Department did not take follow up action of submission of Modified Debt Rehabilitation Scheme (MDRS) in respect of the cases pending with BIFR involving recovery of dues amounting to ₹ 3.29 crore.

**(Paragraph 2.10.15)**

### 2.10.1 Introduction

Tax/Value Added Tax (VAT) on sales, trade etc. is a major source of revenue of the State and constituted 47.89 *per cent* (₹ 10,256.76 crore) of the total tax revenue (₹ 21,419.33 crore) raised by the State during 2010-11. The Madhya Pradesh *Vanijyik Kar Adhiniyam*, 1994 (*Adhiniyam*) which was in existence up to 31 March 2006 was replaced by The Madhya Pradesh Value Added Tax Act, 2002 (MP VAT Act), with effect from 1 April 2006. The Act and allied Acts as well as rules framed thereunder govern the laws relating to levy and collection of tax on sales/purchase. Every registered dealer liable to pay tax is required to file prescribed periodical returns along with proof of payment of tax due from him.

Under the *Adhiniyam*/MP VAT Act, tax assessed is required to be paid by the assessee in a manner and within the time specified in the notice of demand. Any dealer not satisfied with the demand may prefer an appeal with the Appellate Authorities in the prescribed manner. In case of failure on the part of the assessee to pay the amount within the period specified in the notice of demand, the Department is required to recover the amount which remains unpaid as if it were arrears of land revenue. If the amount of arrears is not paid within the prescribed period mentioned in the demand notice issued after instituting the Revenue Recovery Certificate (RRC), order for attachment of the property of the defaulter is required to be issued. The arrears can be recovered from the sale proceeds obtained after auctioning the attached property.

According to Section 24(11)(b) of the MP VAT Act, for the purpose of effecting recovery of the amount of tax, penalty, interest and amount forfeited, which is due and recoverable from any dealer as arrears of land revenue, the Commissioner of Commercial Tax (CCT) shall have and exercise all the powers and perform all the duties as given under the Madhya Pradesh Land Revenue Code, 1959 (MPLRC).

We conducted a Performance Audit on "**Recovery of Revenue Arrears in the Commercial Tax Department**" which indicated a number of system and compliance deficiencies.

### 2.10.2 Organisational set up

The Principal Secretary, Commercial Tax Department is the Administrative head of the Department at the Government level. The CCT is the head of the Department. The Commercial Tax Department functions under the overall control of CCT assisted by Additional Commissioner of Commercial Tax (Addl. CCT), Deputy Commissioners (DCCT), Assistant Commissioners (ACCT), Commercial Tax Officers (CTO), Assistant Commercial Tax Officers (ACTO) and Inspectors of Commercial Tax (CTI) in performance of such functions as may be assigned by him under the Act. The Department is divided into five zones, each headed by an Addl. CCT. Each zone comprises of the divisional offices. There are 15 divisional offices, each headed by a DCCT. Under these divisions, there are 80 circle offices headed by the CTO/ACCT.

For the purpose of recovery of outstanding dues as arrears of land revenue, the CTOs and ACTOs shall have and exercise all the powers and perform all the duties of *Tehsildar* under the MPLRC. The individual assessing officer is responsible for issue of Revenue Recovery Certificates (RRC) in respect of arrears of tax not deposited by the dealer and the CTOs/ACTOs institute proceedings for effecting recovery as arrears of land revenue under MPLRC. The monitoring over the progress of recovery of tax is carried out by CCT through periodical returns.

### 2.10.3 Scope of Audit

For the purpose of the performance audit we examined the records of 30 out of 38 circles in seven selected divisions<sup>2</sup> for the period 2006-07 to 2010-11 between January and August 2012. The divisions were selected on the basis of simple random sampling method. The circle wise arrear of revenue were considered as the basis for selection for test check of records.

### 2.10.4 Audit Objectives

The performance audit was conducted with a view to ascertain:

- whether the system to collect the arrears of tax was effective and efficient;
- whether the rules and procedures prescribed in the *Adhiniyam/MP VAT Act* and Rules made thereunder for recovery were scrupulously followed; and
- whether an adequate internal control and monitoring mechanism exists for prompt realisation of arrears of revenue.

### 2.10.5. Acknowledgement

The Indian Audit and Accounts Department acknowledges the co-operation of the Commercial Tax Department for providing necessary information and records to Audit. An entry conference was held in July 2012 with the CCT, Addl. CCT and other executives of the Department where we informed about the selection of divisions as well as scope, objectives and methodology of Audit. The draft performance report was forwarded to the Government and the Department in September 2012. The exit conference was held in September 2012. The Deputy Secretary of the Commercial Tax Department represented the Government. The Department was represented by the CCT and the Addl. CCT. The responses of the Government/Department have been incorporated, wherever received.

### 2.10.6 Position of arrears

**2.10.6.1** The following table presents the opening balance, addition, clearance and closing balance of arrears of revenue under the *Adhiniyam/VAT Act* during the period 2006-07 to 2010-11:

<sup>2</sup> Bhopal Division I and Division II, Gwalior Division I, Indore Division I, Division II and Division III and Jabalpur Division II.

(₹ in crore)

| Position of recovery of arrears |                 |          |           |                 |
|---------------------------------|-----------------|----------|-----------|-----------------|
| Year                            | Opening balance | Addition | Clearance | Closing balance |
| 2006-07                         | 759.30          | 702.79   | 877.84    | 584.25          |
| 2007-08                         | 584.25          | 739.77   | 752.48    | 571.54          |
| 2008-09                         | 571.54          | 1,086.23 | 1,111.73  | 546.04          |
| 2009-10                         | 546.04          | 1,206.32 | 1,165.41  | 586.95          |
| 2010-11                         | 586.95          | 1,214.02 | 1,271.17  | 529.80          |

(Source: Information furnished by the Department)

It may be seen from the above table that during the period 2006-07 to 2010-11, the arrears decreased from ₹ 584.25 crore in 2006-07 to ₹ 529.80 crore in 2010-11.

**2.10.6.2** According to information furnished by the Department, the arrears were under the following stages of recovery as at the end of March 2011:

(₹ in crore)

| Sl. No.      | Stages of recovery of revenue   | March 2011    |
|--------------|---|---------------|
| 1.           | Amount stayed by various Courts   | 49.76         |
| 2.           | Amount involved in installments   | 1.47          |
| 3.           | RRC within the State  | 17.19         |
| 4.           | RRC outside the State   | 83.32         |
| 5.           | Arrears available for recovery <sup>3</sup>   | 62.82         |
| 6.           | Amount involved in closed firm where the whereabouts of the defaulter/property is under investigation | 106.71        |
| 7.           | Amount involved in attachment of movable property   | 0.62          |
| 8.           | Amount involved in attachment of immovable property   | 90.60         |
| 9.           | Amount awaited for write off  | 11.51         |
| 10.          | Amount involved in sick units or BIFR   | 105.80        |
| <b>Total</b> |   | <b>529.80</b> |

It may be seen from the above table that the arrears wherein RRCs have been issued, whereabouts of the defaulter/property is under investigation, movable/immovable property were under attachment and arrears available for recovery amounts to ₹ 277.94 crore (52.46 per cent of total arrears). Thus, 52.46 per cent of the total arrears were pending at the Departmental level.

<sup>3</sup> The arrears were recoverable within the circle and were free from litigation/appeal.

**2.10.6.3** The age-wise details of arrears of revenue furnished by the Department as on 31 March 2011 are as shown in the following table:

(₹ in crore)

| Periodicity of arrears     | No. of cases    | Amount                    | Percentage of arrears |
|----------------------------|-----------------|---------------------------|-----------------------|
| Above 10 years old         | 86,942          | 175.06                    | 32.95                 |
| Between 5 and 10 years old | 83,939          | 113.40                    | 21.35                 |
| Between 2 and 5 years old  | 75,548          | 100.23                    | 18.87                 |
| Between 1 and 2 years old  | 58,712          | 62.07                     | 11.69                 |
| Less than 1 year old       | 1,13,124        | 80.40                     | 15.14                 |
| <b>Total</b>               | <b>4,18,265</b> | <b>531.16<sup>4</sup></b> |                       |

As seen from the above table, ₹ 288.46 crore (54.44 per cent of the total amount) in respect of 1,70,881 cases were pending for recovery for more than five years.

**The Department may take prompt action in respect of cases which are more than five years old to prevent any risk of these arrears becoming unrecoverable due to lapse of time.**

#### 2.10.6.4 Non-achievement of targets

The CCT fixed targets for recovery of arrears through special drives and issued instructions from time to time in this regard between October 2006 and October 2010. According to these instructions, the closing balance of arrears has to be less than the opening balance of that year. The specific target for such reduction in opening balance of arrear was fixed at 33 per cent for the year 2006-07, 35 per cent for the years 2007-08 and 2008-09 and 10 per cent for the year 2010-11 while no target regarding reduction in opening balance was fixed for the year 2009-10. Further, there were three common factors in the instructions applicable for the years 2007-08 to 2010-11 i.e. 20 per cent of the arrears outstanding at the commencement of the previous year, 80 per cent of the arrears generated during the previous year and 100 per cent of the arrears of the current year should be recovered. The achievement by the Department in this regard is given below:

(₹ in crore)

| Year    | Opening balance | Closing balance | Difference<br>(+) Increase<br>(-) Decrease | Target closing balance has to be less than opening balance by per cent | Achievement in per cent (4) to (2) |
|---------|-----------------|-----------------|--|--|------------------------------------|
| 1       | 2               | 3               | 4  | 5  | 6                                  |
| 2006-07 | 759.30          | 584.25          | (-) 175.05                                 | 33   | 23.05                              |
| 2007-08 | 584.25          | 571.45          | (-) 12.80                                  | 35   | 2.19                               |
| 2008-09 | 571.45          | 546.04          | (-) 25.41                                  | 35   | 4.45                               |
| 2009-10 | 546.04          | 586.95          | (+) 40.91                                  | --   | --                                 |
| 2010-11 | 586.95          | 529.80          | (-) 57.15                                  | 10   | 9.74                               |

(Source : Information furnished by the Department)

<sup>4</sup> The closing balance at the end of the year 2010-11 was at variance with that of total arrears. The reasons for variation were not made available by the Department despite our request (September 2012).

It is evident from the above table that the targets were not achieved by the Department for the years 2006-07 to 2008-09. The arrears in the year 2009-10 went up by 7.5 per cent over that of 2008-09.

The Department stated in December 2012 that in pursuance of the provisions of the MP VAT Act Departmental Officers and Inspectors, besides doing recovery of arrears work, carry out the duties of revenue collection, administrative work, assessment of tax, survey work and allied work entrusted to them from time to time. The Departmental employees also remain engaged in census, election duty and survey work of other Government schemes.

## SYSTEM AND COMPLIANCE DEFICIENCIES

### 2.10.7 Absence of a separate recovery machinery

The CTOs, the Additional CTOs and the ACTOs, as the case may be, are responsible for effecting recovery of arrears in respect of the *Adhiniyam*/MP VAT Act. The CTOs, Additional CTOs and ACTOs do the work of revenue collection, assessment of tax and allied work entrusted to them by the senior officers besides being responsible for effecting recovery. Absence of a separate Recovery Cell or recovery machinery in the Commercial Tax Department for dealing with the huge mounting arrears, led to abnormal delays in initiating action for recovery, as mentioned subsequently in paragraph no. 2.10.9.

**The Government may consider putting in place a dedicated recovery machinery for focusing on recovery of arrears.**

### 2.10.8 Non-maintenance/irregular maintenance of prescribed Registers

Every Assessing Authority (AA) is required to maintain a register of cases instituted and a register of disposal of assessment cases in proforma in Annexure II and III respectively prescribed under Part I of the Sales Tax Manual Volume II (Manual). The maintenance of these registers is essential to have a proper watch on cases instituted, disposal of assessment cases and recovery of revenue arrears etc. Further, the Manual also provides that a Table Diary containing information about cases instituted, assessment of the cases, demand, collection and outstanding dues during the month should be prepared on the basis of these registers by each AA and sent to the next higher authority before the 10<sup>th</sup> of the following month.

During test check of the registers of cases instituted and register of disposal of assessment cases in the 30 selected circles, we noticed that the registers were not being maintained in the prescribed proforma in any of the circles. Further, in 18 circles, we noticed that the columns prescribed for Demand notice issue date, Demand notice serving date, RRC number and RRC issue date, RRC demand notice issue date and

RRC demand notice serving date etc. were left blank in respect of 716 cases. The details are given in the following table:

| Sl No        | Circles/Division           | No of Dealers | Columns not filled       |                            |                           |                              |                                |
|--------------|----------------------------|---------------|--------------------------|----------------------------|---------------------------|------------------------------|--------------------------------|
|              |                            |               | Demand notice issue date | Demand notice serving date | RRC No and RRC issue date | RRC demand notice issue date | RRC demand notice serving date |
| 1            | CTO XI Ind/Dn III Indore   | 29            | 14                       | 18                         | 11                        | 13                           | 24                             |
| 2            | CTO XII Ind/Dn III Indore  | 29            | 29                       | 29                         | 29                        | 29                           | 29                             |
| 3            | CTO XIV Ind/Dn I Indore    | 39            | 02                       | 39                         | 18                        | 39                           | 39                             |
| 4            | CTO III Ind/Dn II Indore   | 20            | 17                       | 20                         | 14                        | 20                           | 20                             |
| 5            | CTO VI Ind/Dn II Indore    | 17            | -                        | 17                         | -                         | 17                           | 17                             |
| 6            | CTO I Ind/Dn I Indore      | 31            | 02                       | 31                         | 10                        | 31                           | 31                             |
| 7            | CTO II Ind/Dn I Indore     | 51            | 51                       | 51                         | 16                        | 51                           | 51                             |
| 8            | CTO V Ind/Dn I Indore      | 47            | 47                       | 47                         | 02                        | 47                           | 47                             |
| 9            | CTO XIII Ind/Dn III Indore | 54            | -                        | -                          | -                         | 18                           | 21                             |
| 10           | CTO IX Ind/Dn III Indore   | 48            | 48                       | 48                         | 29                        | 48                           | 48                             |
| 11           | CTO VIII Ind/Dn III Indore | 36            | 36                       | 36                         | 36                        | 36                           | 36                             |
| 12           | CTO XV Ind/Dn I Indore     | 86            | -                        | 86                         | 19                        | 78                           | 78                             |
| 13           | CTO VII Ind/Dn III Indore  | 42            | -                        | 06                         | -                         | 12                           | 12                             |
| 14           | CTO IV Ind/Dn II Indore    | 41            | -                        | 07                         | 01                        | 06                           | 28                             |
| 15           | CTO I Gwl/Dn I Gwalior     | 10            | 01                       | 10                         | 09                        | 10                           | 10                             |
| 16           | CTO III Gwl/ Dn I Gwalior  | 64            | -                        | 15                         | 35                        | 35                           | 46                             |
| 17           | CTO IV Gwl/Dn I Gwalior    | 33            | 06                       | 27                         | 10                        | 10                           | 33                             |
| 18           | CTO II Gwl/Dn I Gwalior    | 39            | 10                       | 39                         | 05                        | 05                           | 39                             |
| <b>Total</b> |                            | <b>716</b>    | <b>263</b>               | <b>526</b>                 | <b>244</b>                | <b>505</b>                   | <b>609</b>                     |

(Source : Information compiled in audit from register of disposal of assessment cases of the circles)

Non maintenance/updation of the registers indicated absence of effective monitoring as well as delay in initiating recovery proceedings which affected the recovery of revenue arrears.

### 2.10.9 Delay in initiating recovery proceedings

According to the provisions of the MP VAT Act and the *Adhiniyam*, a dealer is required to deposit the tax assessed by the AA within 30 days from the date of service of notice of demand, failing which the amount is to be recovered as arrears of Land Revenue. Further, in accordance with the CCT's circular of November 1992, if the amount remains unpaid, RRCs are to be initiated within 30 days from the date of expiry of the period of notice. The demand notices of assessment/RRC should be prepared and dispatched by the reader of the Reader Section within three days to Process Servers Section for serving the notice. Further, such demand notices are required to be served on the address of the dealer within seven days of their receipt from Reader Section.

During test check of 457 cases produced to audit out of 716 cases discussed in the preceding paragraph, we noticed that the revenue recovery proceedings were delayed up to four years due to non-issue/delay in issue of notices of demand, delay in serving the notices of demand or delay in issue/institution of RRCs in 38 cases, involving arrears of ₹ 2.86 crore. A few illustrative cases are mentioned below:

| Sl. No. | Name of circle/ Division  | Period of assessment (Case no)/ Date of assessment | Dealer / Amount (₹ in lakh)        | Date of issue demand notice issued/ served         | Due date of RRC/ Date of RRC issued or instituted | Date of demand notice (RRC) issued/ served         | Remarks :-Delay in the process of<br>1- issue of demand notice of assessment<br>2- serving of demand notice of assessment<br>3- issue/ institution of RRC<br>4- issue of demand notice of RRC<br>5- serving of demand notice of RRC |
|---------|---------------------------|--|------------------------------------|--|---|--|---|
| (1)     | (2)                       | (3)  | (4)                                | (5)  | (6)   | (7)  | (8)   |
| 1.      | Circle XI/ Dn- II, Indore | 2000-01 (40/01)/ 19.01.07                          | M/s Adarsh Oxygen Pvt. Ltd/ 1.87   | 19.01.07/ 03.07.07                                 | 02.09.07/ 08.08.07                                | 15.02.12/ 16.02.12                                 | 2- by five months seven days.<br>4- by four years six months four days.   |
| 2.      | Circle IV / Dn- I Gwalior | 2007-08 (584/08)/ 26.07.10                         | M/s Sagar Enterprises/ 10.32       | 31.07.10/ 07.08.10 (date not available but due on) | 07.09.10/ 14.10.10/                               | 17.10.10 (date not available but due on)/ 30.07.11 | 1- by two days.<br>3- by one month seven days.<br>5- by nine months six days.   |
| 3.      | Circle IV / Dn- I Gwalior | 2003-04 (642/07 R)/ 29.12.09                       | M/s Omtech peripherals/ 5.41       | 01.01.10 (date not available but due on)/ 28.02.10 | 02.05.10/ 30.08.10                                | 30.07.11/ 14.09.11                                 | 2- by one month twenty days.<br>3- by three months twenty eight days.<br>4- by ten months twenty seven days.<br>5- by one month ten days.   |
| 4.      | Circle III/ Dn- I Gwalior | 2006-07 (288/07)/ 27.06.09                         | M/s Agrawal Trading Company/ 15.63 | 27.06.09/ 20.08.09                                 | 20.10.09/ 19.07.10                                | 02.04.11/ 25.04.11                                 | 2- by one month sixteen days.<br>3 -by eight months twenty nine days.<br>4- by eight months eleven days.<br>5- by sixteen days.   |



| (1) | (2)                       | (3)                         | (4)                              | (5)                | (6)                | (7)                | (8)   |
|-----|---------------------------|-----------------------------|----------------------------------|--------------------|--------------------|--------------------|---|
| 5.  | Circle III/ Dn- I Gwalior | 2006-07 (238/07)/ 27.06.09  | M/s Pooja Trading Company/ 39.14 | 27.06.09/ 04.09.09 | 04.11.09/ 19.07.10 | 02.04.11/ 26.04.11 | 2- by two months.<br>3- by eight months fifteen days.<br>4- by eight months eleven days.<br>5- by seventeen days. |
| 6.  | Circle III/ Dn- I Gwalior | 2002-03 (28/07 R)/ 03.12.09 | M/s Super Food/ 21.48            | 07.12.09/ 21.06.10 | 21.08.10/ 28.06.10 | 15.03.11/ 29.03.11 | 2- by six months seven days.<br>4- by seven months twenty days.<br>5- by seven days.                              |

After we pointed out the cases, the AA of Circle-IV of Gwalior Division I stated in June 2012 that the work of updating of information in the records could not be done as most of the employees remained engaged in census and other related work and that the records would be updated. The AAs of Circle I and II, Gwalior, further intimated in December 2012 that RRC in one case and demand notices after instituting the RRC in the remaining cases have been issued/ served between June and December 2012 at the instance of audit. The remaining AAs stated in June 2012 that action for recovery would be taken after updating the information in the records. Further report in the matter has not been received (March 2013).

### 2.10.10 Non-pursuance of Revenue Recovery Cases sent to other circles within the State

In case where the defaulters do not own any property in the jurisdiction of the Circle but have property in the jurisdiction of some other Circle, the concerned assessing authority is required to address the revenue authority of that Circle for collecting the arrears according to the provisions of the Revenue Recovery (RR) Act 1890. For this, the Revenue Recovery Certificates (RRC) are required to be forwarded to the Collectors of the districts of the State in which the defaulters possess properties.

During test check of the recovery files of 110 dealers of selected divisions we noticed in case of 13 dealers in three divisions that RRCs were forwarded by the Department to the revenue authorities of other circles within the State for recovery of dues of ₹ 5.48 crore as arrears of land revenue between January 1999 and March 2011.

However, the cases were not pursued further with the concerned authorities. Non-pursuance of Revenue Recovery cases by the AAs resulted in ₹ 5.48 crore remaining unrecovered in 13 cases as shown in the following table:

| Sl. No. | Details of dealer            | Period of Dues     | Amount due (₹ in lakh) | Circle/ Division from where RRC sent | Circle where RRC was sent | Date of requisition/ date of reminder | Present status of the case   |
|---------|------------------------------|--------------------|------------------------|--------------------------------------|---------------------------|---------------------------------------|--|
| (1)     | (2)                          | (3)                | (4)                    | (5)                                  | (6)                       | (7)                                   | (8)  |
| 1.      | M/s Satal Kattha & Chemicals | 1992-93, 1997-2002 | 11.11                  | CTO IX Ind/ Dn III Indore            | Rajgarh/ DCCT Ujjain      | 04.07.2006/ Nil                       | No action was taken to pursue the cases after issue of RRC to other circles. |
| 2.      | M/S Maya Spinners Ltd.       | 1997-99, 2000-03   | 194.59                 | CTO IX Ind/ Dn III Indore            | Khandwa Dn.               | 19.01.2006/ Nil                       |  |

| (1)          | (2)                                   | (3)      | (4)           | (5)                        | (6)                       | (7)                    | (8)   |  |
|--------------|---------------------------------------|----------|---------------|----------------------------|---------------------------|------------------------|---|--|
| 3.           | M/s Sterling Cockshade Bricks Ltd.    | 1993-95  | 4.55          | CTO IX Ind/ Dn III Indore  | Khargone/ DCCT Khandwa    | 22.09.2004/ Nil        | No action was taken to pursue the cases after issue of reminders. |  |
| 4.           | M/S Sterling Structure Ltd            | 1996-97  | 0.53          | CTO IX Ind/ Dn III Indore  | Dhar, circle I            | 24.09.2001/ Nil        |   |  |
| 5.           | M/S Mahaveer Agro Product Pvt Ltd.    | 1989-94. | 23.03         | CTO IX Ind/ Dn III Indore  | DCCT Ujjain/ Circle Dewas | 10.11.2006/ Nil        |   |  |
| 6.           | M/s JD Enterprises, Indore            | 2002-03  | 14.53         | CTO I Ind/ Dn I Indore     | DCCT Ujjain               | 28.10.2005/ Nil        |   |  |
| 7.           | M/s Dadhich Timber Suppliers, Indore. | 1995-99  | 93.83         | CTO I Ind/ Dn I Indore     | DCCT Ratlam               | 16.10.2001/ 27.08.2004 |   |  |
| 8.           | M/s Verma Tyre & Tube, Bhopal         | 1989-93  | 0.07          | CTO V Bpl/ Dn I, Bhopal.   | Betul                     | 16.02.2011/ 17.03.2011 |   |  |
| 9.           | M/s SK Tyre & Tube, Bhopal.           | 1988-93  | 73.79         | CTO V Bpl/ Dn I, Bhopal.   | Betul                     | 16.02.2011/ 17.03.2011 |   |  |
| 10.          | M/s SK Tyre & Tube, Bhopal.           | 1988-93  | 0.62          | CTO V Bpl/ Dn I, Bhopal.   | Betul                     | 23.03.2007/ 17.03.2011 |   |  |
| 11.          | M/s SK Tyre & Tube, Bhopal.           | 1988-93  | 0.03          | CTO V Bpl/ Dn I, Bhopal.   | Betul                     | 23.03.2007/ 17.03.2011 |   |  |
| 12.          | M/s SK Tyre & Tube, Bhopal.           | 1988-93  | 0.04          | CTO V Bpl/ Dn I, Bhopal.   | Betul                     | 23.03.2007/ 17.03.2011 |   |  |
| 13.          | M/s Urja Cables & Metals Pvt.Ltd.     | 1998-99  | 130.99        | Circle-I, Bpl/Dn-I, Bhopal | Mandideep & Vidisha       | March 2012             |   |  |
| <b>Total</b> |                                       |          | <b>547.71</b> |                            |                           |                        |   |  |

After we pointed this out, the Department stated in June and July 2012 that reminders would be issued for recovery. Further progress in the matter has not been received (March 2013).

### 2.10.11 Non-pursuance of Revenue Recovery Cases sent to other States

In case where the defaulters do not own any property in the State but have property in some other State, then the concerned assessing authority is required to address the revenue authority of that State for collecting the arrears according to the provisions of the RR Act. For this, the RRCs are required to be forwarded to the Collectors of districts of the States in which the defaulters possess properties. Further, the CCT had nominated (July 2011) various CTOs as nodal officers to monitor the RRCs transmitted to other States.

During test check of the Recovery files of 191 dealers of selected divisions, we noticed in 31 cases of 29 dealers in three divisions<sup>5</sup>, that RRCs were forwarded by the Department to the revenue authorities of other States between November 1996 and January 2010 for recovery of dues as arrears of land revenue. However, the cases

were not followed up. Non-pursuance of RRCs by the AAs resulted in ₹ 28.44 crore remaining unrecovered as shown in **Annexure-I**.

<sup>5</sup> Bhopal Division I, Indore Division II and Indore Division III.

After the cases were pointed out, the respective AAs stated between June and July 2012 that reminders would be issued/necessary action would be taken. Further developments about these cases have not been received (March 2013).

**The Government may consider evolving a system for regularly coordinating with their counterparts in other states to whom RRCs have been issued.**

### 2.10.12 Inaction in lodging/pursuing claims with the Official Liquidator

The Official Liquidators (OLs) are officers appointed by the Central Government under Section 448 of the Companies Act. The primary function of the OL is to administer the assets of Companies under liquidation, sale of the assets and realisation of all debts of the Companies in liquidation for the purpose of distributing the same among various creditors and other shareholders of the Companies and to finally dissolve such Companies after the affairs are completely concluded. According to Section 530 (i) (a) of the Companies Act, 1956, there shall be paid in priority to all other debts, all revenues taxes, etc., due from the Company to the Central or a State Government or to a local authority at the relevant date and having become due and payable within the twelve months next before that date.

During test check of recovery files of Circle IX of Division III, Indore in June 2012, we noticed that there were arrears of ₹ 1.50 crore in three cases as detailed below:

| Sl. No.      | Dealer                                | Case No. of Board for Industrial and Financial Reconstruction | Period             | Arrear (₹ in lakh) |
|--------------|---------------------------------------|---|--------------------|--------------------|
| 1.           | M/s HMP Engg, Indore                  | 164/1998  | 1992-93 to 1996-97 | 62.25              |
| 2.           | M/s Dheeraj Poly Pack P. Ltd., Indore | 39/1996 & 2104/2004   | 1992-93 to 1998-99 | 44.38              |
| 3.           | M/s Modi Stone Ltd., Indore           | 32/1998   | 1995-96 to 1998-99 | 43.26              |
| <b>Total</b> |                                       |   |                    | <b>149.89</b>      |

All the cases mentioned above were registered under Board for Industrial and Financial Reconstruction (BIFR) and the MP High Court, Indore Bench had appointed Official Liquidator (OL) in these cases. The CCT instructed the divisional office in December 2008 to prefer the claim before the OL in the prescribed manner which had not been preferred till the date of audit (June 2012). The inaction on the part of the Department in these cases resulted in non-recovery of arrears of ₹ 1.50 crore.

### 2.10.13 Non-issue of *kurky*<sup>6</sup> warrants

The departmental instructions (November 1992) provide that if a dealer fails to deposit the dues in compliance of notice of demand issued after instituting the RRC, *Kurky* warrants are required to be issued for movable and immovable properties after seven days and 15 days respectively.

During test check of the recovery files of Circle-I and Circle II of Bhopal Division-I and Circle-I, Katni of Jabalpur Division-I in July and August 2012, we noticed that in six cases, no action was taken either after

institution of RRC or issue of demand notices between June 2007 and October 2011. Action to attach the properties and recover the dues by auctioning the properties was not taken. This resulted in non-recovery of arrears of ₹ 62.12 lakh as detailed below :

| Sl. No.      | Circle / Division                 | Name of dealer                 | Period/ Assessment Date                  | Arrears (₹ in lakh) | RRC notice of demand issued on | Reply of the AA   |
|--------------|-----------------------------------|--------------------------------|--|---------------------|--------------------------------|---|
| 1            | Circle-I/ Div-I, Bhopal           | M/s Amar Dal Mill              | 2005-06/Not available                    | 1.14                | 21.09.11                       | The <i>kurky</i> warrant were issued between October 2012 and December 2012 by the AA at the instance of Audit.   |
| 2            | Circle-I/ Div-I, Bhopal           | M/s Legend Marketing           | 2006-07/ 27.06.09                        | 2.14                | 09.08.11                       |   |
| 3            | Circle-I/ Div-I, Bhopal           | M/s K. K. M. Sales             | 2008-09/ 20.05.11                        | 3.37                | 27.08.11                       |   |
| 4            | Circle-I/ Div-I, Bhopal           | M/s Battery Power point        | 2008-09/ 05.05.11                        | 1.34                | 01.10.11                       |   |
| 5            | Circle-II/ Div-I, Bhopal          | M/s Dev Jyoti Syndicate        | 2003-05 & 2006-07/ Jan 2008 to June 2009 | 17.56               | June 2007 to January 2011      |   |
| 6            | Circle-I, Katni, Div-II, Jabalpur | M/s Bebar Construction Company | 2007-08/ December 2008                   | 36.57               | 04.03.11                       | The AA stated (December 2012) that the CTI has been asked to furnish the details of immovable properties of the dealer which has not been received. It was also stated that action to send the RRC to Jaipur (Rajsthan), on the basis of the permanent address of the dealer, is being taken. |
| <b>Total</b> |                                   |                                |  | <b>62.12</b>        |                                |   |

Further progress in the matter has not been received (March 2013).

<sup>6</sup> An order to attach the property.

### 2.10.14 Non-realisation of arrears of assessed tax due to delay in auctioning the attached property

MP VAT Act provides for recovery of dues remaining unpaid on the expiry of the period prescribed for the payment as an arrear of land revenue according to the provisions of the MPLRC by attachment and sale of movable or immovable property of the defaulter.

During the test check of recovery files of selected divisions, we noticed (June and July 2012) in seven circles<sup>7</sup> of four divisions<sup>8</sup> that delay in auctioning the attached property resulted in non-realisation of arrears of assessed tax of ₹ 7.11 crore in

12 cases. A few illustrative cases are mentioned below:

| Sl. No.   | Circle/Division/ Month of Audit               | Name of the dealer                       | Arrear (₹ in lakh) | Period of arrears/ Date of assessment                 | Audit observation  |
|---|---|--|--------------------|---|--|
| 1.  | Circle-IX of Indore, Division-III/ June 2012  | M/s Polylube                             | 256.95             | Between 1992-93 and 2000-01/Not available in the file | As the dealer did not pay the dues, the Department initiated action to recover the dues as arrears of land revenue under MPLRC in January 2004 by attachment of immovable property. We observed from the file that the AA ordered the Commercial Tax Inspector (CTI) in January 2005 to get the property valued. The property was got valued in November 2006 and according to the valuation report the value of the property was estimated at ₹ 4.56 lakh only. The property was put to auction on 14.12.2006, against which the highest bid was for ₹ 3.81 lakh, which was not accepted. No action was taken by the Department till December 2009, when the AA again ordered the CTI to get the property valued. Further information about the status of the case was not available in the file, and the arrears remained unrecovered. |
| After we pointed out the case (June 2012), the AA stated (December 2012) that the attached property is being valued by the Government valuer and the details of other properties of the dealer were not available with the Department as the registration file of the dealer was with Economic Offence Wing, Indore. However, the details of other properties are being traced out from Municipal Corporation/Registration Department. Further report has not been received (March 2013). |   |  |                    |   |  |
| 2.  | Circle XIII of Indore Division III/ July 2012 | M/s Natraj Cold Storage & Foods Pvt. Ltd | 168.71             | From 2006-07 to 2009-10/ Not available in the file    | The dealer was in arrears of tax of ₹ 60.90 lakh for the period 2006-07. As the dealer did not pay the dues, an Attachment Order of the business premises (cold storage and land) was issued in February 2010. No action was taken by the Department to auction the attached property till September 2010. The consolidated demand of ₹ 1.69 crore was prepared by the Department after adding the demand of the assessments for the period 2007-08 to 2009-10 in the aforesaid arrears. In August 2011, the Department obtained valuation report of the property from a recognised  |

<sup>7</sup> Circle- I Bhopal, Circle- V Bhopal, Circle-II and Circle III, Gwalior, Circle-IX Indore, Circle-XIII Indore and Circle-XV Indore.

<sup>8</sup> Division I of Bhopal, Division I of Gwalior, Division I of Indore and Division III of Indore.

|   |   |   |       |  |  |
|---|---|---|-------|--|--|
|   |   |   |       |  | <p>valuer. According to the valuation report, the estimated realisable value was ₹ 11 crore. In February 2012, against the auction made with a reserve price of ₹ 12.10 crore, maximum bid of ₹ 7 crore was received. The bid was not accepted by the Department as it was below the reserve price. The CCT was not consulted before rejection of the bid by the AA. Despite attempts to auction the property in March 2012, the property could not be auctioned. No action was taken by the Department to auction the property after March 2012. There was nothing on record which could explain the reasons for fixing the reserve price above the value shown in the valuation report and reasons for not consulting the District Registrar before fixing such price. Non-auction of attached property resulted in non-realisation of Government dues of ₹ 1.69 crore.</p>  |
| <p>After the cases were pointed out, the AA stated in July 2012 that action for recovery was in progress. Further progress in the matter has not been received (March 2013).</p>  |   |   |       |  |  |
| 3.  | Circle III of Gwalior Division-I/June 2012  | M/s Tirupati Chemicals                    | 61.82 | 1996-97 to 1998-99/not available in the file             | <p>We noticed in June 2012 that the dealer had arrears of assessed tax of ₹ 26.14 lakh for the year 1997-98. An order for attachment of immovable properties (factory building, plant and machinery) to recover the dues was made in February 2002. The Department sent a requisition (October 2005) to the Collector Kolkata (WB) for recovery of dues of ₹ 61.82 lakh, for the period from 1996-97 to 1998-99 including the aforesaid dues, followed by a reminder in October 2009. Action to auction the property attached in February 2002 was, however, not taken by the Department till December 2011. Further scrutiny of the file indicated that an ACTO was directed (January 2012) to report the status of the property attached in February 2002 by the Department. According to the status report (February 2012) there were only remains of the factory building and there was no trace of plant and machinery. It was also mentioned in the status report that according to the persons residing in the vicinity of the factory, the factory building was broken after removing the plant and machinery. Since the dealer was having properties in this State, referring the matter outside the State was unwarranted which resulted in recovery not being effected. Thus, the Department failed to follow up the case due to which the dues of ₹ 61.82 lakh could not be recovered.</p> |
| <p>After we pointed out the case (June 2012), the AA stated in December 2012 that the land actually belonged to Industrial Infrastructure Development Corporation (Gwalior) M.P. Ltd. which has taken back the possession of the land from the dealer on 31.08.2012. The AA further added that after making correspondence with the dealer on his Kolkata address the lawyer of the dealer appeared on 17.12.2012 and that the recovery of the arrears will be made good very soon.</p> |   |   |       |  |  |
| 4.  | Circle-IX of Indore Division-III/ June 2012 | M/s Kowa Spinning Private limited, Indore | 85.79 | Between 1989-90 and 1999-2000/ Not available in the file | <p>We noticed that a show cause notice to cancel the registration certificate of the dealer was issued. According to the show cause notice, the unit was in arrears of ₹ 85.79 lakh for the period</p>   |

|   |  |                                   |       |  |   |
|---|--|-----------------------------------|-------|--|---|
|   |  |                                   |       |  | 1990-92 and 1995-2000. We, however, noticed that the arrears of ₹ 12.08 lakh only was mentioned in the <i>kurky</i> warrant issued in August 2005. Further, though the Department offered the property on auction on five occasions between November 2005 and March 2006, no bids were received. The recovery proceedings were not conducted from March 2006 to July 2010 with reference to an order of Indore bench of High Court which showed that the Department was not a party in that case. The Department tried to auction the attached property on four occasions between August 2010 and October 2011. Thus, the Department failed to take recovery action on the basis of an order which was not applicable to it. We also observed from the file that during the entire period, the Department did not undertake valuation of property to fix the reserve price. No further details regarding auction and recovery proceedings were available in the file. Thus, the Department failed to effectively follow up the case, which resulted in non-recovery of arrears of ₹ 85.79 lakh. |
| After we pointed out the case (June 2012), the AA stated (December 2012) that no bid was received in March, April, July, September and October 2012 and all out efforts to get the property auctioned are being made. The fact, however, remains that no action was taken between March 2006 and July 2010 and the dues had not been recovered till date. Further reply has not been received (March 2013). |  |                                   |       |  |   |
| 5.  | Circle- XV of Indore Division-I/ June 2012 | M/s Kaushalya Auto Spring P. Ltd. | 13.92 | 1995-96 to 1999-00 /between March 2001 and December 2002     | As the dealers did not pay the dues, the Department initiated action under MPLRC by attaching their properties in March 2003. In all the three cases the properties were got valued by a registered valuer in March 2007. Though the properties were put to auction on several occasions, they could not be sold till January 2012 as no bids were received during the auctions except in the case of auction of the attached property of M/s <i>Kaushalya</i> Auto Spring P. Ltd. held in February 2008. That bid was also not accepted as the bid was of ₹ 3.25 lakh against the reserve price of ₹ 14.45 lakh. In January 2012 and March 2012, the AA directed that a letter may be issued to the registered valuer for valuation of the properties. No further progress in the matter was on record in the files. Non-disposal of properties due to non-valuation resulted in non-realisation of arrears of ₹ 48.54 lakh.   |
| 6.  | Circle- XV of Indore Division-I/ June 2012 | M/s G.K. Tightener Pvt. Ltd.      | 14.85 | 1994-95 to 1996-97/ between September 1998 and December 2002 |   |
| 7.  | Circle- XV of Indore Division-I June 2012  | M/s Vachan Capes Pvt. Ltd.        | 19.77 | 1996-97 to 1998-99/ Not available in the file                |   |

Further developments in respect of these cases have not been received (March 2013).



### 2.10.15 Non-recovery of arrears due to lack of follow up action in respect of cases pending with BIFR

- During test check of the recovery file of M/s Burn Standard Co. Ltd. of Katni Circle-I of Jabalpur Division-II (August 2012), we noticed that the dealer was in arrears of assessed dues of ₹ 16.70 lakh for the period 1992-93 to 1996-2000. The case<sup>9</sup> was shown as pending with BIFR. Scrutiny of the file indicated that DCCT Jabalpur had written a letter (April 2004) to the CTO I Katni that the unit had eight acres of land near Jabalpur and negotiations with Western Railway (WR) about sale of the land were in progress. He directed to take up the matter with the WR and issue notice under section 38<sup>10</sup> of the *Adhiniyam*. The AA issued a letter to WR in December 2004 after lapse of eight months. No further details about the status of the land were available in the file. Further scrutiny of the recovery file indicated that the Government Advocate informed (November 2007) the Addl. CCT that the stand of the Department about Modified Debt Rehabilitation Scheme (MDRS)<sup>11</sup> was required to be submitted before BIFR. The BIFR listed the matter for further hearing on 27 February 2008. The outcome of this hearing is not on record in the file. The correspondence of the Government Advocate with the Department (April 2011 to May 2012) showed that the views of the Department on MDRS had not been communicated to him so that appropriate submission could be made to the BIFR for recovery of the aforesaid dues. Thus, inordinate delay on the part of the Department resulted in non-recovery of ₹ 16.70 lakh.

After we pointed this out, the AA stated that a copy of the Debt Rehabilitation Scheme (DRS) has not been obtained by the Department so far (December 2012). Further report has not been received (March 2013).

- During test check of the recovery file of M/s Super Sack Unit no II of M/s Midland Plastic Ltd. in Circle II of Gwalior Division II (June 2012), we noticed that the Company was in arrears of ₹ 3.12 crore. These dues were related to the period from 1997-98 to 2007-08. Further, a *kurky* warrant for attachment of property was issued by the AA on 13 March 2009 against dues of ₹ 60.64 lakh, which was less than the total dues by ₹ 2.51 crore. The reasons for issuing attachment notice for an amount that was less than the recoverable arrears were neither recorded in the file nor furnished by the AA. This notice was returned to the AA by the ACTO of Circle II Gwalior Division II for appropriate action, with the remarks that the unit is registered under BIFR (103/06). The details of the summary records of the proceedings of the hearing held on 29 May 2007 before the BIFR indicated that the unit was required to submit DRS within eight weeks with recommendations of all involved agencies. The State Bank of India (SBI) was appointed as the operating agency. Further developments regarding the position of the Government about DRS and its submission to

<sup>9</sup> BIFR case no. 508/1994.

<sup>10</sup> Section 38 is related with special mode of recovery.

<sup>11</sup> Scheme for revival of the sick unit to be submitted by the owner of the unit to the BIFR.



BIFR was not available in the file. It was also seen from a letter written by the Government Advocate (30 April 2011) that SBI was seeking details of actual dues and minimum amount that would be acceptable for satisfaction of these dues from the Company, so that assets charged to SBI can be sold off under the SARFESI Act<sup>12</sup>. There was no information in the file that any claim was preferred by the Department. The arrears of ₹ 3.12 crore are still outstanding against the unit.

After this was pointed out in audit, the AA stated that audit would be intimated after review of the case. Further progress in the matter has not been received (March 2013).

## **2.10.16 Conclusion and Recommendations**

### **2.10.16.1 Conclusion**

Tax/ VAT on sales, trade etc., is a major source of revenue for the State and the CCT has been given the powers of revenue authorities for recovery of arrears. It is imperative that the Department promptly and efficiently recover the revenues due for recovery. We observed that the Department did not adequately monitor the RRC cases. RRCs/notices of demand were either not issued or issued late by the AAs. We also saw that the RRCs issued to other States/ other Circles within states were not pursued, properties of dealers were not attached or attached properties were not auctioned off in time to realise the dues. Claims lodged with OL and BIFR were not pursued promptly and effectively. These aspects reflect weaknesses in the system which necessitates a strong machinery for collection of arrears.

### **2.10.16.2 Recommendations**

The Government may consider:

- taking prompt action in respect of cases which are more than five years old to prevent any risk of these arrears becoming irrecoverable due to passage of time;
- creating a mechanism for effective and regular pursuance of Tax/VAT on sales, trade etc. dues and putting in place a separate recovery machinery within the Department for focusing on recovery of arrears;
- fixing responsibility against officers involved for delayed issue of RRCs and non pursuance of RRCs sent to other circles within the State and other states; and
- reviewing and reconciling the position of dues so that arrears are reported correctly.

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<sup>12</sup> The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

## 2.11 Application of incorrect rate of tax

Two DC offices<sup>13</sup>, eight regional offices<sup>14</sup> and 21 circle offices<sup>15</sup>

The Madhya Pradesh *Vanijyik Kar Adhinyam (Adhinyam)* and the MP VAT Act read with the Central Sales Tax (CST) Act and notifications issued thereunder specify the rates of commercial tax and the VAT leviable on different commodities. Under the *Adhinyam* and the VAT Act, a dealer is liable to pay interest, if he fails to pay the taxes due in the prescribed manner and within the prescribed period.

We observed (between March 2009 and March 2012) in 50 cases of 50 dealers, assessed between January 2008 and March 2011 for the period 2003-04 to 2008-09, that tax on sales turnover of ₹ 26.77 crore was levied at incorrect rates. This resulted in short levy of tax of ₹ 3.67 crore including interest/penalty

of ₹ 1.42 crore. A few instances are mentioned below:

| Sl. No. | Name of the unit<br>No. of cases          | Assessment period<br>Month of assessment | Name of commodity                  | Turn-over<br>(₹ in crore) | Rate of tax applicable<br>(per cent) | Rate of tax applied<br>(per cent) | Amount of short levy of tax<br>(₹ in lakh) |
|---------|---|--|------------------------------------|---------------------------|--------------------------------------|-----------------------------------|--|
| 1.      | CTO, Circle V <sub>2</sub><br>Bhopal<br>1 | 2007-08<br>May 2010                      | Ujala Supremo<br>(Whitening agent) | 4.84                      | 12.5                                 | 4                                 | 164.42                                     |
| 2.      | CTO, Circle-III,<br>Gwalior<br>1          | 2007-08<br>June 2010                     | Insulation and Lamination          | 4.00                      | 12.5                                 | 4                                 | 34.00                                      |
| 3.      | CTO, Circle- I,<br>Jabalpur<br>1          | 2007-08<br>May 2010                      | Bleaching Powder and soda ash      | 1.83                      | 12.5                                 | 4                                 | 15.57                                      |
| 4.      | RAC, Dewas<br>1                           | 2007-08<br>April 2010                    | Old Plant, Machinery and Car       | 0.90                      | 12.5                                 | Nil                               | 11.00                                      |
| 5.      | CTO, Circle-II,<br>Ratlam<br>1            | 2006-07<br>May 2009                      | DTH                                | 0.92                      | 12.5                                 | 4                                 | 10.88                                      |

After we pointed out the cases, the AAs in case of eight dealers reassessed (between July 2011 to September 2012) the cases and raised additional demand of ₹ 2.17 crore. In case of one dealer, the RAC, Ratlam accepted (January 2011) the audit observation involving ₹ 1.07 lakh. In case of 33 dealers, the AAs agreed to take action after verification/examination (March 2009 to March 2012).

<sup>13</sup> Satna and Gwalior.

<sup>14</sup> Bhopal, Dewas, Gwalior, Jabalpur, Morena, Neemuch, Satna and Ratlam.

<sup>15</sup> Bhopal (3), Damoh, Dhar, Gwalior, Indore (4), Jabalpur (2), Katni, Khandwa, Mandsour, Neemuch, Ratlam, Sagar (2), Vidisha and Waidhan.

In the remaining cases of eight dealers, departmental replies and our comments thereon are mentioned in the following table:

| Sl. No. | Name of the unit/<br>No. of dealers       | Amount involved<br>(₹ in lakh) | Rate of tax applicable/<br>applied | Commo-<br>dity                               | Departmental<br>reply  | Our comments   |
|---------|---|--------------------------------|------------------------------------|--|--|--|
| (1)     | (2)                                       | (3)                            | (4)                                | (5)  | (6)  | (7)  |
| 1.      | CTO,<br>Circle-I<br><u>Bhopal</u><br>1    | 3.22                           | <u>12.5</u><br>4                   | Fabricated<br>Steel<br>item                  | MS tank was manufactured and supplied under works contract and tax was levied at the rate of four <i>per cent</i> on iron and steel used in the manufacturing of the same. | We do not agree with the reply in view of the fact recorded in documents and decision <sup>16</sup> given by the CCT, MP fabricated steel item is liable to tax at the rate of 12.5 <i>per cent</i> .                            |
| 2.      | CTO,<br>Circle-<br><u>Waidhan</u><br>2    | <u>11.67</u><br>10.00          | <u>12.5</u><br>4                   | Tread<br>Rubber                              | Tax was levied at the rate of 4 <i>per cent</i> which was correct and in accordance with the entry no. 55 (41) (compound rubber unvulcanised) of Schedule-II of the Act.   | We do not agree with the reply as the trading account, registration certificate and assessment order clearly show that the dealer dealt with the business of tread rubber which is taxable at the rate of 12.5 <i>per cent</i> . |
| 3.      | CTO,<br>Circle-I,<br><u>Mandsaur</u><br>1 | 4.24                           | <u>9.2</u><br>4.6                  | Chlori-<br>nated<br>paraffin<br>Wax<br>(CPW) | Chlorinated paraffin wax is classified under chemical and tax was levied accordingly.  | We do not agree with the reply as CPW is a chemical product and not a chemical as per decision <sup>17</sup> given by the CCT, MP.   |
| 4.      | CTO,<br>Circle-VI,<br><u>Bhopal</u><br>1  | 3.51                           | <u>12.5</u><br>4                   | Bleaching<br>powder                          | Bleaching power is chemical and accordingly tax was levied.  | We do not agree with the reply in light of the decision <sup>18</sup> of CCT, MP.  |
| 5.      | CTO,<br>Circle-LX,<br><u>Indore</u><br>1  | 0.56                           | <u>12.5</u><br>1.5                 | Old car                                      | The AA stated that tax was correctly levied.   | We do not agree with the reply in view of the provision of the Act.  |
| 6.      | CTO,<br>Circle-<br><u>Katni</u><br>1      | 0.71                           | <u>12.5</u><br>4                   | Dryers                                       | The tax was levied correctly as the dealer had sold Iron structure of dryers.  | We do not agree with the reply in view of the available documentary proof which clearly shows that the dealer had sold dryers or its parts which is taxable at the rate of 12.5 <i>per cent</i> .                                |

<sup>16</sup> (i) M/s Tung Bhadra Steel Products Pvt. Ltd. V/s CST MP (2005) 6 STJ 650 (MP Board) and (ii) M/s Simplex Engineering and Foundry Works, Rajnadaon (2008) 13 STJ 183 (CCT, CG).

<sup>17</sup> M/s BCM Organic Chemical, Indore (2005) 7 STJ 215.

<sup>18</sup> M/s Bhopal Bleach Pvt. Ltd., Raisen (2007) 10 STJ 680.

| (1) | (2)                                     | (3)   | (4)              | (5)                      | (6)   | (7)  |
|-----|---|-------|------------------|--------------------------|---|--|
| 7.  | CTO,<br>Circle-II<br><u>Ratlam</u><br>1 | 10.88 | <u>12.5</u><br>4 | DTH<br>(Dish<br>Antenna) | The AA stated that dealer sold antenna, multimedia top box and 'V' sets which is taxable at the rate of 4 per cent as per entry no. 51(ii), (xii) & 51,(12), (vi),(vii),(ix) of Schedule II of the Act. | We do not agree with the reply as there is no specific entry of dish antenna (set top box) in the schedule. Tax at the rate of 12.5 per cent was therefore leviable in terms of VAT Act. |

We reported the matter to the Department and the Government between January and September 2012; their replies have not been received (March 2013).

## 2.12 Incorrect determination of turnover

Three DC offices<sup>19</sup>, Tax audit wing office<sup>20</sup>, 16 regional offices<sup>21</sup> and 11 circle offices<sup>22</sup>

According to Section 2 of the Madhya Pradesh *Vanijyik Kar Adhinyam*, (*Adhinyam*) 1994 and the Madhya Pradesh VAT Act, 2002 turnover in relation to any period means the aggregate of sale prices received and receivable by a dealer in respect of any sale or supply or distribution of goods made during that period, excluding the amount of sales return within the prescribed period. For the purpose of determining taxable turnover (TTO), the *Adhinyam* and the Madhya Pradesh VAT Act provides for deduction from turnover the sale price of tax paid goods and the amount of tax, if included in the aggregate of sale prices. Further, Section 21(3) provides that the assessment or re-assessment under sub section (1) shall be made within a calendar year from the date of commencement of the proceedings.

We observed (between July 2010 and December 2011) that turnover in 44 cases of 43 dealers, assessed between December 2008 and March 2011 for the periods between 2005-06 and 2008-09, was determined less by ₹ 42.65 crore against the aggregate turnover of the dealers recorded in their audited books of accounts/sale list/relevant records. Thus, turnover aggregating ₹ 42.65 crore was not assessed to tax and

resulted in non-levy of tax of ₹ 2.82 crore including interest/penalty of ₹ 3.73 lakh.

<sup>19</sup> Bhopal, Indore and Satna.

<sup>20</sup> Indore.

<sup>21</sup> Bhopal, Gwalior, Guna, Indore (4), Itarsi, Jabalpur (2), Khandwa, Khargone, Satna (2), Sagar and Sendhwa.

<sup>22</sup> Bhopal, Burhanpur, Dhar, Harda, Indore (3), Jabalpur, Satna (2) and Waidhan.

After we pointed out the cases, the Assessing Authorities (AAs), in eight cases of eight dealers, reassessed the cases and raised additional demand (between December 2011 and June 2012) of ₹ 28.95 lakh, in another 29 cases of 29 dealers, the AAs stated (between July 2010 and December 2011) that action would be taken after verification/examination, while in the remaining seven cases of six dealers, the reply of the AAs are as follows:

| Sl. No. | Name of the unit   | Period<br>Month of assessment   | Our observation in brief   | Department reply/<br>our comments  |
|---------|--|---|--|--|
| 1.      | RAC, Sendhwa<br><br>RAC, Khargone<br><br><br><br>RAC-I,<br>Khandwa | <u>2007-08</u><br>November<br>2009<br><br><u>2006-07</u><br>June 2009<br><br>&<br><u>2007-08</u><br>December<br>2009<br><br><br><u>2007-08</u><br>July 2009 | Sale value of vehicles of ₹ 12.49 lakh as per Balance Sheet was not included in the turnover. This resulted in short realisation of tax of ₹ 1.76 lakh (including interest of ₹ 20,292)                | The AA Sendhwa replied (November 2010) that purchased vehicles were tax paid from M P registered dealer and hence tax was not levied. The AAs, Khargone and Khandwa raised demand (December 2011) of tax of ₹ 44,671 at the rate of 1.5 per cent with penalty. We do not agree with the replies/response of AAs as the vehicle is taxable at the rate of 12.5 per cent as per notification No. 70 dated 15 September 2006. |
| 2.      | RAC, Div- II<br>Indore   | <u>2007-08</u><br>June 2010   | Sale value of plant and machinery of ₹ 8.25 lakh as per Schedule 5 of the fixed assets was not included in the turnover. This resulted in short levy of tax of ₹ 1.03 lakh.                            | The AA replied (July 2011) that as per balance sheet the sold plant and machinery was from branch of other state. We do not agree with the reply as the branch sale and purchase account was found separately attached with the case.  |
| 3.      | RAC, Div- II<br>Indore   | <u>2006-07</u><br>April 2009  | Sale value of plant and machinery of ₹ 28.46 lakh as per Annexure-III of Audit Report was not included in the turnover. This resulted in short realisation of tax of ₹ 3.56 lakh.                      | The AA replied (July 2011) that case has already been reopened under Section 28(1). We do not agree with the reply because one year has passed after issue of notice to the dealer on 17.06.2010 and re-assessment under sub section (3) of the Section 21 cannot be made beyond a period of one calendar year from the date of issue of notice.   |
| 4..     | CTO,<br>Circle- II, Satna  | <u>2007-08</u><br>December<br>2009  | Sale value of Plant and Machinery of ₹ 4.16 lakh as per schedule 'D' of Assets was not included in the turnover. This resulted in short realisation of tax of ₹ 68,254 including interest of ₹ 16,224. | The AA replied (August 2011) sale value of Plant and Machinery have been included in the returns at which tax has already been levied. The reply is contrary to the facts as sale of plant and machinery has not been included in the taxable turnover.  |

We reported the matter to the Department and the Government between January and March 2012; their replies have not been received (March 2013).

## 2.13 Allowance of inadmissible Input Tax rebate

(A) DC office Gwalior, five regional offices<sup>23</sup> and nine circle offices<sup>24</sup>

According to Section 14 of the MP VAT Act, 2002, where a registered dealer purchased any goods specified in Schedule II of the Act other than those specified in Part III of the said Schedule, from another registered dealer after payment of input tax, he shall be allowed input tax rebate (ITR) of the amount of such input tax.

We observed during June 2010 to December 2011 that 15 dealers assessed between May 2009 and November 2010 for the period 2006-07 to 2008-09 were

granted inadmissible ITR of ₹ 87.18 lakh.

After we pointed out the cases, the AAs in case of 13 dealers stated that action would be taken after verification. In the remaining two cases, the Departments replies and our comments are as follows:

(₹ in lakh)

| Sl. No | Name of the unit<br>No. of dealers | Period of assessment<br>Month of assessment | Our observation   | Reply of the department and our comment  |
|--------|------------------------------------|---|---|--|
| 1.     | CTO, Circle-I, Damoh<br>1          | 2007-08<br>September<br>2009                | A dealer purchased electronic items valued at ₹ 38.45 lakh from other dealers after payment of input tax of ₹ 4.81 lakh thereon. However, the AA allowed ITR of ₹ 4.99 lakh. This resulted in incorrect grant of ITR of ₹ 18,000.       | The AA stated that ITR was granted as per rule. We do not agree with the reply in view of the fact available in the audited accounts.  |
| 2.     | DC, Div-II, Gwalior<br>1           | 2007-08<br>December<br>2009                 | A dealer purchased High speed diesel (HSD is a Schedule II part III goods on which ITR is not allowable) valued at ₹ 6.53 lakh on which AA allowed ITR of ₹ 1.70 lakh incorrectly. This resulted in excess grant of ITR of ₹ 1.70 lakh. | The AA stated that ITR was not allowed on HSD as mentioned in the assessment order. We do not agree with the reply in view of the quarterly return for the period July 2007 to September 2009 in which ITR was adjusted for ₹ 2.67 lakh including ITR of ₹ 1.70 lakh allowed on purchase of HSD. |

<sup>23</sup> Bhopal, Chhindwara, Indore, Jabalpur and Sagar.

<sup>24</sup> Bhopal (2), Damoh, Gwalior, Harda, Jabalpur, Mandsaur and Satna (2).

## (B) RAC office, Ratlam

According to provision of para 3 (3) of notification no. A-3-195.2005-1-V (31) dated 31.03.2006, if the goods manufactured are goods specified in Schedule II of the VAT *Adhiniyam*, the dealer shall compute his tax liability by deducting input tax rebate from tax collected on sales within the state and be eligible to retain the amount of the tax collected, which is in excess of the input tax rebate. The amount so retained shall be included in computation of cumulative quantum of tax benefit.

We observed in January 2011 that a dealer assessed in June 2009 for the period 2006-07 was incorrectly allowed carry forward of ITR of ₹ 53.89 lakh. This resulted in excess grant of ITR of ₹ 53.89 lakh. After we pointed out the case, the AA referring to the notification dated 31.03.2006 stated that ITR of exemption

period may be adjusted in the balance period of the assessment year. We do not agree with the reply of the AA in light of the said notification. As per the notification, the ITR of ₹ 53.89 lakh was to be adjusted first against the VAT computed for sale of exemption period and excess of ITR should be included in computation of cumulative quantum of tax benefit. The AA, however, adjusted the full amount of VAT against the cumulative quantum of tax benefit. As a result, ITR of ₹ 53.89 lakh was carried forward for adjustment in the next quarter, which was not in consonance with the said notification.

(C) DC office Indore, regional office Dewas and three circle offices<sup>25</sup>

In terms of Section 14 of the MP VAT Act, 2002, where a registered dealer purchases any goods specified in Schedule II of the Act, other than those specified in part III of the said Schedule, for use or consumption in the manufacture of other goods and the dealer has claimed and adjusted ITR (Input tax rebate) towards the tax payable by him, in the event of disposal of the goods otherwise than by way of sale within the State, he shall be liable to pay the amount of ITR at the rate of four *per cent* of the purchase price or net of input tax of such goods, whichever is lower. The Act further provides that where a registered dealer purchases any goods after payment of input tax for consumption or use in the manufacture or processing or packaging in connection with sale of goods declared tax free under Section 16 of the Act, he shall be allowed ITR of the amount of such input tax which is in excess of four *per cent* of the *purchase price* of such goods.

We observed during February 2011 to March 2012 that five dealers assessed between May 2009 and December 2010 for the period 2006-07 to 2008-09 were allowed inadmissible ITR of ₹ 36.04 lakh on account of non-payment of ITR claimed on goods transferred out of the State otherwise than by way of sale or excess allowance of ITR on sale of

25

Bhopal, Indore, Jabalpur.



tax free goods.

After we pointed out the cases, the AAs in four cases stated that action would be taken after verification. In the remaining two cases, our observations and replies of the Department are mentioned below:

| Sl. No | Name of the unit<br>No. of dealers | Period of assessment<br>Month of assessment | Our observation   | Reply of the department and our comment  |
|--------|------------------------------------|---|---|--|
| 1.     | DC, Div-III,<br>Indore<br>1        | 2007-08<br>March 2010                       | The dealer made stock transfer of ₹ 20.36 crore being 12.5 per cent of turnover of goods transferred/sold out of state. Sold tax paid purchase of goods of ₹ 27.62 crore was also included in the turnover. This means that stock transfer of goods valued at ₹ 3.45 crore being 12.5 per cent of tax paid purchase was made as sale out of state against which ITR of ₹ 13.81 lakh at the rate of 4 per cent was to be paid back by the dealer. However, the AA allowed adjustment of ITR of ₹ 4.54 lakh instead of ₹ 13.81 lakh. This resulted in excess grant of ITR of ₹ 9.27 lakh. | The AA stated that according to the sale list the sale out of state was of ₹ 1.18 crore on which ITR reversal of ₹ 4.54 lakh was made at the rate of four per cent. We do not agree with the reply in view of the fact available in the assessment order in which sale out of state of ₹ 20.36 crore was clearly mentioned. The sale out of state being 12.5 per cent of total sale, the proportionate value of purchase on which ITR was to be reversed works out to ₹ 3,45,21,096 (12.5 per cent of total tax paid purchase) instead of ₹ 1,18,12,920 determined by AA. This resulted in less reversal of ITR amounting to ₹ 9,26,500. |
| 2.     | DC, Div-III,<br>Indore<br>1        | 2008-09<br>December,<br>2010                | The dealer manufactured and sold tax free goods under section 16. During the period the dealer purchased plant & machinery after paying tax of ₹ 4.19 lakh (at the rate of 4 per cent and 12.5 per cent) and used the same in manufacturing of the tax free goods. The AA, while finalising the assessment, allowed ITR of ₹ 4.19 lakh instead of ₹ 2.02 lakh (excess of four per cent.). This resulted in excess grant of ITR of ₹ 2.17 lakh.  | The AA stated that since the dealer was not a manufacturer of the electrical energy, provision of ITR reversal under Section 14 (5) (b) of MP VAT Act was not applicable and as such the tax levied was correct. We do not agree with the reply in view of the provision of Section 14 (5) (b) of MP VAT Act in which it has been clearly mentioned that if plant and machinery is purchased and used in manufacturing of tax free goods, ITR shall be allowed in excess of 4 per cent.  |



## (D) RAC office, Sagar

According to Section 14 (3) of MP VAT Act, 2002, the input tax rebate by a registered dealer under sub section (1) shall be adjusted in such manner as may be prescribed towards the tax payable by him under this Act or under the Central Sales Tax Act, 1956 and the difference, if any, shall be carried over for adjustment towards tax payable in the subsequent year provided that the input tax rebate which remains unadjusted even after two years from the close of the relevant financial year shall be granted by way of refund.

We observed in February 2011 that a dealer assessed in June 2009 for the period 2006-07 was allowed ITR of ₹ 36.61 lakh on closing stock of soyabean of ₹ 9.15 crore. Further, the AA incorrectly granted refund of the same. This was, however, to be carried forward for

the next two financial years and the ITR which remained unadjusted even after two years from the close of the relevant financial year would thereafter only be granted by way of refund. After we pointed out the case, the AA agreed to take action after verification.

We reported the matter to the Department and the Government between January and September 2012; their replies have not been received (March 2013).

## 2.14 Non/short levy of entry tax

Four DC<sup>26</sup> offices, 14 Regional offices<sup>27</sup>, 18 Circle offices<sup>28</sup> and an Anti Evasion Bureau<sup>29</sup>

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

We observed (between January 2009 and March 2012) in 67 cases of 60 dealers, assessed/reassessed between July 2007 and March 2011 for the period 2003-04 to 2008-09 that ET on goods like iron and steel, plant and machinery, motor vehicle, high speed diesel (HSD),

coal, furnace oil, Hexane oil, *ghee*, UPS, home UPS, computer and computer parts, fluid oil (lubricant oil) etc., valued at ₹ 114.79 crore was either not levied or was levied at incorrect rate on their entry into local area. This resulted in non/short realisation of ET of ₹ 2.04 crore including interest and penalty of ₹ 79 lakh.

<sup>26</sup> Chhindwara, Indore (2) and Satna.

<sup>27</sup> Bhopal, Chhindwara, Indore (3), Itarsi, Jabalpur, Katni, Khandwa, Ratlam, Sagar and Satna (3).

<sup>28</sup> Bhopal (3), Burhanpur, Gwalior, Harda, Indore (5), Itarsi, Jabalpur, Katni, Sagar, Satna, Sehore and Ujjain.

<sup>29</sup> Indore.

After we pointed out the cases, the AAs, in case of eight dealers, raised additional demand of ₹ 44.04 lakh of which ₹ 7.90 lakh has been recovered and in one case it was stated that proceedings under section 21 would be taken. In another 44 cases of 38 dealers the AAs stated that action would be taken after verification. In the remaining 15 cases of 14 dealers, the departmental replies and our comments are as under:

| Sl. No. | Name of the unit/No. of dealers   | Assessment period/ month of assessment   | Name of Commodity/ Cost of goods (₹ in lakh ) | Rate of tax applicable/ applied | Departmental reply   | Our comments  |
|---------|---|--|---|---------------------------------|--|---|
| (1)     | (2)   | (3)  | (4)   | (5)                             | (6)  | (7)   |
| 1.      | RAC-I, Chhindwara<br>1<br><br>RAC-Div.III, Indore<br>2<br><br>CTO, Circle-XIII, Indore<br>1 | <u>2006-07</u><br>June 2009<br><br><u>2004-05 &amp; 2007-08</u><br>November 2007 & May 2010<br><br><u>2008-09</u><br>December 2010 | <u>Furnace Oil</u><br>189.22                  | <u>1</u><br>Nil                 | The AA Chhindwara stated that the goods was not purchased from out of state. Hence, ET was not attracted.<br><br>The other AAs stated that the goods were tax paid.  | We do not agree with the reply because furnace oil is not specified in Schedule-I/II of the ET Act. Being goods of Schedule-III, it was taxable at the time of use or consumption. Hence, furnace oil cannot be treated as tax paid goods and was taxable at the rate of one <i>per cent</i> as per Schedule-III of the ET Act. |
| 2.      | Anti Evasion Bureau, Indore-B<br>1  | <u>26.07.07 to 28.07.07</u><br>July 2007   | <u>Bidi</u><br>1.40                           | <u>10</u><br>2.5                | The AA stated that tax and penalty was calculated and assessed as per the Act.   | We do not agree with the reply because entry tax on <i>bidi</i> is leviable at the rate of 10 <i>per cent</i> when brought into local area from outside the state.  |
| 3.      | DC, Div.-III, Indore<br>1   | <u>2007-08</u><br>March 2010   | <u>HDPE/PP Bags</u><br>201.27                 | <u>5</u><br>1                   | The AA stated that ET was levied at the rate of 5 <i>per cent</i> on HDPE/PP woven sacks and bags and the tax was levied at the rate of one <i>per cent</i> on those packing material, which are not HDPE/PP bags. | We do not agree with the reply as HDPE/PP bags were purchased as per purchase list available on record.   |
| 4.      | DC, Div.-III, Indore<br>1   | <u>2008-09</u><br>October 2010   | <u>HDPE/PP Bags</u><br>38.05                  | <u>5</u><br>1                   | The AA stated that imported HDPE bags which were used by the dealer were small and without woven bags.   | We do not agree with the reply because HDPE/PP woven sacks and bags are leviable to tax at the rate of 5 <i>per cent</i> as per notification no. 14 dated 1 April 2007 of ET Act and no condition on the size of bag was prescribed.  |
| 5.      | DC, Div.-III, Indore<br>1   | <u>2007-08</u><br>July 2010  | <u>MS/SS wire</u><br>291.13                   | <u>2</u><br>1                   | The AA stated that copper wire was used as a raw material by the dealer on which ET is liable at the rate of 1 <i>per cent</i> .   | We do not agree with the reply because as per classification of taxable turnover and purchase list MS/SS wire was purchased by the dealer.  |

| (1) | (2)                                       | (3)  | (4)                                     | (5)             | (6)  | (7)  |
|-----|---|--|---|-----------------|--|--|
| 6.  | CTO,<br>Circle-I,<br><u>Bhopal</u><br>1   | <u>2007-08</u><br>March 2010                                     | <u>Timber</u><br>26.44                  | <u>1</u><br>Nil | The AA stated that the timber is tax free as per notification no.29 dated 22 September 2007 of the ET Act.   | We do not agree with the reply because the said notification is not applicable in the case of purchase from unregistered dealer (URD) and this notification also stated that if the assessee has deposited any tax, the same is not refundable.                                  |
| 7.  | DCCT,<br>Div.-III,<br><u>Indore</u><br>1  | <u>2008-09</u><br>November 2010                                  | <u>Plant &amp; Machinery</u><br>1898.82 | <u>1</u><br>Nil | The AA stated that all purchase lists are attached with the case and objection taken was hypothetical.   | We do not agree with the reply because imported value of plant, machinery and vehicle was ₹ 52.96 crore but tax was levied on ₹ 33.97 crore only.  |
| 8.  | RAC-I,<br><u>Chhindwara</u><br>1          | <u>2008-09</u><br>November 2010                                  | <u>Copper wire</u><br>87.02             | <u>1</u><br>Nil | The AA stated that the dealer did not purchase and sell machinery and their parts. Copper wire is Schedule-III goods and not liable to tax.  | We do not agree with the reply as per decisions given in the case of M/s Hindustan Wire Products (2002) 35 VKN 305 (CST. MP), copper winding wire is taxable as machinery parts in entry No. II/54 of ET Act.  |
| 9.  | RAC-I,<br><u>Jabalpur</u><br>1            | <u>2007-08</u><br>July 2010 & January 2011<br>(Under Section 21) | <u>Bitumen</u><br>242.52                | <u>1</u><br>Nil | The AA stated that tax paid deduction was allowed after due examination.   | We do not agree with the reply because the available documents clearly show purchase of bitumen/emulsion which is classified in Schedule-III and taxable at the rate of one per cent when used in the works contract.  |
| 10. | CTO,<br>Circle-XV,<br><u>Indore</u><br>1  | <u>2007-08</u><br>July 2010                                      | <u>Iron &amp; Steel</u><br>69.76        | <u>2</u><br>1   | The AA stated that iron and steel was not purchased. Only machinery parts were purchased and ET was levied accordingly.  | The reply is not in consonance with the facts as recorded in the purchase list, which clearly shows the purchase of iron and steel.  |
| 11. | CTO,<br>Circle-IX,<br><u>Indore</u><br>1  | <u>2007-08</u><br>June 2010                                      | <u>Hexane oil</u><br>92.66              | <u>1</u><br>Nil | The AA stated that the dealer purchased fuel which was tax paid.   | We do not agree with the reply because hexane oil is classified in Schedule-III goods, which is taxable at the time of use for manufacture of other goods.   |
| 12. | CTO,<br>Circle-XII,<br><u>Indore</u><br>1 | <u>2007-08</u><br>July 2010                                      | Computer and computer parts<br>252.00   | <u>1</u><br>Nil | The AA stated that tax was levied at the correct rate as computer/computer parts are notified under Section 3(2) by the notification no. 38 and 39 dated 9 June 2003. Hence tax cannot be levied under section 3(1) of the ET Act. | The reply of the AA does not interpret the fact correctly. Section 3(2)(a)(i) of the ET Act provides that entry tax is levied under this Section on the goods on which entry tax is not leviable under the provisions of Section 3(1) of the Act. From 1 April 2007 entry tax is |

|  |  |  |  |  |  |  |
|--|--|--|--|--|--|--|
|  |  |  |  |  |  | leviable on computer and its parts under the provision of Section 3(1) of ET Act after expiry of notification no.23 dated 29.3.2000. |
|--|--|--|--|--|--|--|

We reported the matter to the Department and the Government between January and September 2012, their replies have not been received (March 2013).

## 2.15 Short imposition of penalty

One regional office<sup>30</sup>

As per Section 20 (6) of the MP VAT Act, 2002, if any dealer, being liable to pay tax in respect of any period, has failed to apply for registration, the Commissioner, Commercial Tax shall, within one calendar year from the date of completion of the proceedings under sub section (1) of Section 6, proceed in such manner as may be prescribed, to assess such dealer to tax to the best of his judgment in respect of the whole of such period and shall impose upon him by way of penalty a sum of two times of the amount of tax so assessed.

We observed in February 2011 in a case of one dealer, assessed in December 2009 for the period 2007-08, that penalty of ₹ 4.75 lakh was short levied by the AA. The AA imposed penalty of ₹ 4.75 lakh on the unregistered dealer which was equal to the amount of assessed tax instead of ₹ 9.50 lakh i.e. a sum of

two times of the amount of tax so assessed as per Section 20 (6) of the MP VAT Act, 2002. After this was pointed out, the AA agreed to take action after verification.

We reported the cases to the Department and the Government in March 2012; their replies have not been received (March 2013).

<sup>30</sup>

Neemuch.

## 2.16 Non/short levy of tax under the CST Act

Three regional offices<sup>31</sup>, seven circle offices<sup>32</sup>

Under Section 8 of the CST Act, every dealer, who in the course of inter-state trade or commerce, sells goods to a registered dealer shall be liable to pay tax at the concessional rate of four *per cent* (three *per cent* w.e.f. 1 April 2007 and two *per cent* w.e.f. 1 June 2008) of such turnover provided such sales are supported by declarations in form 'C'. Further, as per the CST Act, every selling dealer who fails to furnish the declaration, duly filled and signed by the purchasing registered dealer in form 'C' obtained by the latter from the prescribed authority, shall be liable to pay tax in respect of inter-state sale of declared goods at twice the specified rate and in respect of other goods at the rate of 10 *per cent* or at the specified rate, whichever is higher, instead of concessional rate of tax.

**2.16.1** We observed (between December 2009 and March 2012) in 13 cases of 12 dealers, assessed between October 2007 and March 2011 for the periods 2005-06 and 2008-09, that tax on inter-state sale of ₹ 3.86 crore in respect of which declarations in form 'C' were not furnished, was either not levied or was levied at incorrect rates. This resulted in non/short levy of tax

of ₹ 31.78 lakh.

After we pointed out the cases, in one case demand was raised for ₹ 4.05 lakh (October 2010). In 11 cases of 10 dealers, the AAs stated that action would be taken after verification/examination, while in the remaining one case of one dealer the AA stated (May 2011) that bleaching powder is chemicals and is liable to be taxed at the rate of four *per cent*. We do not agree with the reply because bleaching powder is taxable at the rate of 12.5 *per cent* under residuary entry of the VAT Act, in view of the CCT's decision<sup>33</sup>.

Two Circle Offices<sup>34</sup>

Under Section 6 A of the CST Act, exemption shall be allowed to a dealer who transfers the goods to another dealer, subject to the production of the prescribed form in the prescribed manner to the prescribed authority.

**2.16.2** We observed (between January 2009 and September 2011) in two cases of two dealers assessed between January 2008 and June 2008 for the periods from 2005-06 to 2006-07 that tax on inter-State sale of ₹ 44.86 lakh in respect of stock transfer goods/goods

moved from one state to another, was not levied although the declaration

<sup>31</sup> Indore, Khandwa and Mandasaur.

<sup>32</sup> Bhopal(2),Harda, Indore, Neemuch, Satna and Vidisha.

<sup>33</sup> M/s Bhopal Bleaching Pvt. Ltd., Raisen (2007) 10 STJ 680 (CCT, MP).

<sup>34</sup> Bhopal and Burhanpur.

forms F/E-I were not in the prescribed manner. This resulted in non levy of tax of ₹ 4.18 lakh as shown in the following table:

| Sl. No.  | Name of the unit<br>No. of dealers                | Period<br>Month of assessment | Commodity<br>Turnover<br>(₹) | Rate of tax applicable<br>(per cent) | Rate of tax applied<br>(per cent) | Amount of non/short levy of tax<br>(₹) |
|--|---|-------------------------------|------------------------------|--------------------------------------|-----------------------------------|--|
| 1.   | CTO, Circle-V<br>Bhopal<br>M/s Ramtek Industries  | 2005-06<br>January<br>2008    | Chemicals<br>29.65 lakh      | 10                                   | -                                 | 2.96 lakh                              |
| The AA allowed incorrect deduction of stock transfer on the basis of 'F' form which contained transactions relating to more than one month. After this was pointed out, the AA raised demand for ₹ 2.96 lakh in October 2010.  |   |                               |                              |                                      |                                   |  |
| 2.   | CTO, Circle-<br>Burhanpur<br>M/s Madhuban Traders | 2006-07<br>June 2008          | Cotton Bales<br>15.21 lakh   | 8                                    | -                                 | 1.22 lakh                              |
| Under Section 6(2) of the CST Act, the dealer furnished 'E-I' form no. MH-06-0020004 dated 21 May 2008 for ₹ 15.21 lakh which was valid for the period October 2007 to December 2007 in the financial year 2007-08 instead of 2006-07. Thus allowing of deduction was not in order. The AA stated that action would be taken after verification. |   |                               |                              |                                      |                                   |  |

We reported these cases to the Department and the Government between January and September 2012; their replies have not been received (March 2013).

## 2.17 Short levy of tax due to incorrect deduction

Two regional offices<sup>35</sup> and eleven circle offices<sup>36</sup>

According to Section 2(x) (iii) of MP VAT Act, 2002 and Section 2(w) (v) of MP *Vanijyik Kar Adhinyam*, 1994 taxable turnover is determined after deducting the amount of tax included in the aggregate of sale price. It also provides that no deduction shall be allowed if the amount of tax is not included in the aggregate of sale price.

We observed (between February 2009 and September 2011) in 13 cases of 13 dealers, assessed/ re-assessed between January 2008 and July 2010 for the period from 2004-05 to 2008-09, that the AAs, while determining the turnover, allowed deduction of tax of ₹ 21.63 lakh incorrectly

although the tax was not included in the sale price. This irregular grant of deduction resulted in short levy of tax of ₹ 21.63 lakh including interest of ₹ 0.86 lakh.

<sup>35</sup> Morena and Shajapur.

<sup>36</sup> Bhopal (2), Damoh, Gwalior, Harda, Indore (2), Jabalpur (2), Khandwa and Neemuch.

After we pointed out the cases, the AAs, in two cases, raised additional demand of ₹ 6.58 lakh out of which ₹ 28,276 was adjusted towards available quantum of exemption of tax. In another nine cases, the AAs stated that action would be taken after verification while in the remaining two cases, the replies of the Department and our comments are as under:

| Sl. No. | Name of the unit/<br>No. of dealers | Value of TTO<br>(₹) | Rate of tax<br>(%) | Tax leviable<br>(₹) | Tax Levied<br>(₹) | Amount of short levy<br>(₹) | Department reply   | Our comments  |
|---------|-------------------------------------|---------------------|--------------------|---------------------|-------------------|-----------------------------|--|---|
| 1.      | RAC<br>Morena<br>1                  | 5.47 crore          | 4                  | 21.89 lakh          | 21.05 lakh        | 84,196                      | The AA stated that tax was charged by the assessee separately in the sale invoice and deduction under Section 2(x)(iii) was allowed as per rule. | We do not agree with the reply as no mention has been made regarding payment of tax separately in the accounts available on record. |
| 2.      | CTO-<br>Circle,<br>Damoh<br>1       | 33.65 lakh          | 12.5               | 4.21 lakh           | 3.74 lakh         | 46,742                      | The AA stated that the assessment was done as per the Act.   | We do not agree with the reply as no mention has been made regarding payment of tax separately in the accounts available on record. |

We reported the matter to the Department and the Government between February 2011 and March 2012; their replies have not been received (March 2013).

## 2.18 Non-levy of tax on sales incorrectly treated as tax free

One regional office<sup>37</sup> and two circle offices<sup>38</sup>

The MP VAT Act, read with the Central Sales Tax (CST) Act and notifications issued thereunder, prescribe rates of tax leviable on different commodities except those which are specified under Schedule I of the MP VAT Act or are exempted through notifications.

We observed (between April 2011 and September 2011) in three cases of three dealers, assessed between March 2010 and July 2010 for the period 2007-08, that tax on sale of commodities like woollen felt components, sealed water container and SIMMS Memory valued at ₹ 4.10 crore was not

levied by the AAs incorrectly treating the same as tax free goods. This resulted in non-levy of tax of ₹ 19.96 lakh, details of which are as follows:

<sup>37</sup> Satna.

<sup>38</sup> Jabalpur and Neemuch.



(₹ in lakh)

| Sl. No | Commodity               | Turnover | Rate of tax applicable (%) | Amount of tax not levied |
|--------|-------------------------|----------|----------------------------|--------------------------|
| 1.     | Woollen Felt components | 32.35    | 12.5                       | 4.04                     |
| 2.     | Sealed water container  | 9.21     | 12.5                       | 1.15                     |
| 3.     | SIMMS Memory            | 369.36   | 4                          | 14.77                    |

After we pointed out the cases, the AA in one case (Sl. No. 2) raised demand of ₹ 1.15 lakh while in the other two cases it was stated between April 2011 and September 2011 that action would be taken after examination. Further report has not been received (March 2013).

We reported the matter to the Department and the Government between January and March 2012; their replies have not been received (March 2013).

### 2.19 Mistake in computation of tax

During test check of records of one DC office<sup>39</sup> and two circle offices<sup>40</sup> between September 2011 and October 2011, we observed that in cases of three dealers, assessed between November 2008 and June 2010 for the period 2005-06 to 2007-08, the AAs erroneously levied/adjusted tax of ₹ 2.15 lakh instead of ₹ 21.93 lakh. This resulted in short levy of tax of ₹ 19.78 lakh as shown below:

| Sl. No.   | Name of the unit<br>No. of dealers | Period<br>Month of assessment | Amount of tax leviable<br>(₹) | Amount of tax levied<br>(₹) | Amount of short levy of tax<br>(₹) |
|---|------------------------------------|-------------------------------|-------------------------------|-----------------------------|------------------------------------|
| 1.  | CTO, Circle-I,<br>Bhopal<br>1      | 2007-08<br>June 2010          | 4.16 lakh                     | 40,584                      | 3.75 lakh                          |
| Tax on sale of sanitary items was incorrectly calculated at ₹ 40,584 instead of ₹ 4.16 lakh. This resulted in short realisation of tax of ₹ 3.75 lakh. On being pointed out, the AA stated that the audit observation was accepted and action would also be taken as per the Act. |                                    |                               |                               |                             |                                    |
| 2.  | DC, Div.-II, Indore<br>1           | 2007-08<br>May 2010           | 13.06 lakh                    | 1.32 lakh                   | 11.74 lakh                         |
| The AA, while finalising the assessment, raised additional demand for ₹ 1.32 lakh instead of ₹ 13.06 lakh. This resulted in short realisation of tax of ₹ 11.74 lakh. After this was pointed out, the AA stated that action would be taken after verification.                    |                                    |                               |                               |                             |                                    |
| 3.  | CTO, Khandwa<br>1                  | 2005-06<br>November<br>2008   | 4.72 lakh                     | 42,891                      | 4.29 lakh                          |
| The AA incorrectly computed amount of tax as ₹ 42,891 instead of ₹ 4.72 lakh resulting in short realisation of tax of ₹ 4.29 lakh. After this was pointed out, the AA stated that action would be taken after verification. Further report has not been received (March 2013)     |                                    |                               |                               |                             |                                    |

We reported the matter to the Department and the Government between February and March 2012; their replies have not been received (March 2013).

<sup>39</sup> Indore.

<sup>40</sup> Bhopal and Khandwa.



## 2.20 Non-realisation of profession tax

According to the provisions of Section 3(2) of the Profession Tax Act, 1995, every person who carries on a trade either himself or by an agent or representative or who follows a profession or calling other than agriculture in Madhya Pradesh shall be liable to pay profession tax at the rates specified against the class of such persons in column (3) of the Schedule of the Act. Section 8(2) of the said Act further provides that such person liable to pay tax shall obtain a certificate of registration from the profession tax assessing authority in the prescribed manner.

On cross verification of information obtained from six circle offices<sup>41</sup> with the list furnished in respect of liquor licensees, cinema houses, video parlours and cable operators by the State Excise Department we found that 334 persons remained unregistered with the Commercial Tax Department under the Profession Tax Act, for the years 2009-10 and 2010-11, although

they were liable to pay profession tax. This resulted in non-realisation of profession tax of ₹ 7.62 lakh at rates ranging from ₹ 1,000 to ₹ 2,500 per annum.

After this was pointed out, CTO, Khargone stated that action would be taken as per rules after issuing notices, while replies of other CTOs have not been received (March 2013).

The matter was reported to the Department and the Government between February and April 2012; their replies have not been received (March 2013).

<sup>41</sup> Guna, Harda, Khargone, Neemuch, Rewa and Vidisha.