

EXECUTIVE SUMMARY

Substantial increase in tax collection

In 2011-12, the collection of taxes on sale of goods substantially increased by 25.04 *per cent* over the previous year which was due to revision of rate of tax, increase in sale of goods in course of inter-State trade, enforcement activities and arrear collection.

Internal audit not conducted

Internal audit of the Sales Tax Department has not been conducted for the past few years by the Examiner of Local Accounts who is responsible to conduct internal audit of Government departments. This resultantly had its impact in terms of weak internal controls in the Department leading to substantial leakage of revenue. It also led to the omissions on the part of the assessing officers remaining undetected till we conducted our audit.

Low recovery by the Department of observations pointed out by us earlier years

During the period 2007-08 to 2011-12, we had pointed out non/short levy non/short realisation of tax, penalty *etc.* with revenue implication of ₹ 2287.30 crore in 112 cases. Of these, the Department/ Government accepted audit observations in 12 cases involving ₹ 1133.33 crore but recovered only ₹ 167.42 crore in one case. The recovery position as compared to acceptance of objection was 14.77 *per cent*.

Result of audit conducted by us in 2011-12

In 2011-12, we test checked the record of 71 units relating to taxes on sale of goods and found non/short realisation/levy of tax, interest, penalty and other deficiencies of ₹ 538.86 crore in 101 cases.

The Department accepted non/short realisation/levy of tax ₹ 8.84 crore in 36 cases. An amount of ₹ 0.62 crore was recovered in six cases.

What we have highlighted in this

In this Chapter, we present illustrative

Chapter

cases of ₹ 245.58 crore selected from observations noticed during our test check of records relating to assessment and collection of tax in the office of the Superintendent of Taxes (ST) where we found that the provisions of the Acts/Rules were not observed.

It is a matter of great concern that similar omissions have been pointed out by us repeatedly in the Audit Reports of the past several years, but the Department has not taken corrective action. We are also concerned that though these omissions were apparent from the records which were made available to us, the STs were unable to detect these mistakes.

Our conclusion

The Department needs to improve the internal control system including strengthening of internal audit so that weakness in the system are addressed and omissions of the nature detected by us are avoided in future.

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

CHAPTER-II: TAXES ON SALE, TRADE *etc.*

2.1 Tax Administration

Commercial Taxes Department is the most important revenue-earning Department of the State. The Additional Chief Secretary to the Government of Meghalaya, Excise, Registration, Taxation and Stamps (ERTS) Department is in overall charge of the Sales Tax Department at the Government level. The Commissioner of Taxes (COT) is the administrative head of the Department. He is assisted by two Deputy Commissioners of Taxes (DCT) and two Assistant Commissioners of Taxes (ACT). One of the ACT, functions as the Appellate Authority. At the district level, the Superintendents of Taxes (ST) have been entrusted with the work of registration, scrutiny of returns, collection of taxes, levy of interest and penalty, issue of road permits/declaration forms *etc.*

The collection of tax, interest and penalty *etc.*, in the State is governed by the provisions of the Central Sales Tax (CST) Act, 1956, the CST Rules, 1957, the Meghalaya Value Added Tax (MVAT) Act, 2003, the MVAT Rules, 2005 and the Meghalaya (Sales of Petroleum and Petroleum Products Including Motor Spirit and Lubricants Taxation) (MSL) Act. Before the introduction of VAT on 1 May 2005, the Meghalaya Sales Tax (MST) Act and the Meghalaya Finance (Sales Tax) (MFST) Act were in place, which have, since been repealed with the introduction of VAT. However, assessments under the MST Act and MFST Act are still being made. The STs are the Assessing Officers (AO) under the repealed Acts. However, with the introduction of VAT, an audit team with the DCT as its head has been constituted to assess the dealers while the STs have been vested with the power to scrutinise returns furnished by the dealers.

2.2 Trend of receipts

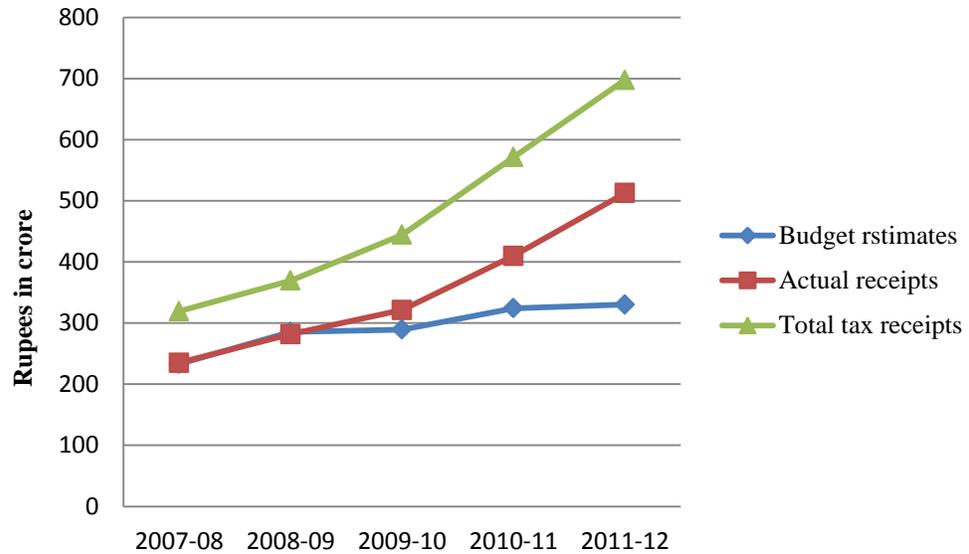
Actual receipts from VAT during the last five years 2007-08 to 2011-12 along with the total tax receipts during the same period is exhibited in the following table and graph.

(₹ in crore)

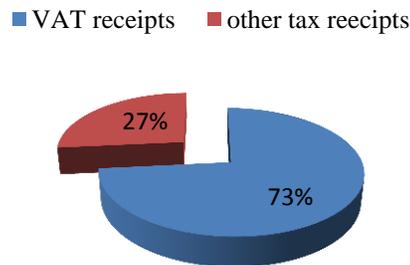
Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual VAT receipts vis-à-vis total tax receipts
2007-08	233.16	234.90	1.73	1	319.10	73.61
2008-09	285.42	281.83	(-) 3.59	1	369.44	76.29
2009-10	289.42	321.40	31.98	11	444.29	72.34
2010-11	324.16	409.88	85.72	26	571.45	71.73
2011-12	330.07	512.50	182.43	55	697.54	73.47

Thus, the percentage of variation which was negligible during the years 2007-08 and 2008-09 increased to 11 *per cent* in 2009-10 and further to 26 *per cent* in 2010-11. In 2011-12 the variation increased to 55 *per cent*.

A line graph showing the budget estimates of the State *vis-à-vis* the total receipts of the State and the actual tax receipts of the State may be seen below:



Also, a pie chart showing the position of VAT receipt *vis-à-vis* the other tax receipts during the year 2011-12 may be seen below:

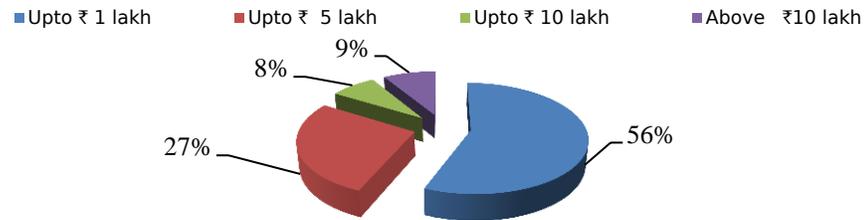


2.3 Assessee profile

As per information furnished by the Department, the number of the VAT assesses that were registered upto 2011-12 was 7923. The breakup of these assesses based on their annual turnover is mentioned in the following table:

Upto ₹ 1 lakh	Upto ₹ 5 lakh	Upto ₹ 10 lakh	Above ₹ 10 lakh
4454	2180	599	690

A pie-chart showing the number of dealers registered upto 2011-12 *vis-à-vis* the annual turnover may be seen below:



As would be seen from the above, a sizeable number of the dealers (56 per cent of the total dealers) registered with the Taxation Department are small dealers *i.e.* having turnover less than ₹ one lakh.

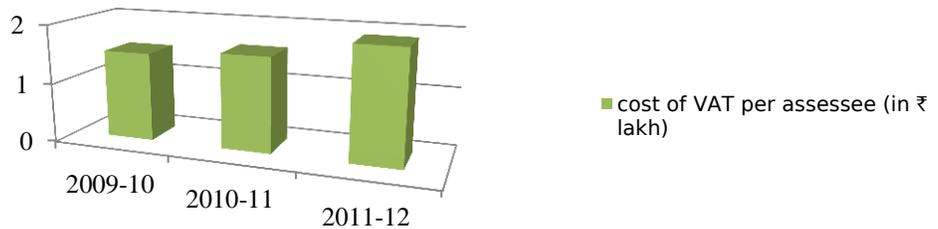
It is recommended that the Department may monitor constantly the turnover of the dealers in this segment to ensure that the dealers who cross the threshold limit are brought under the tax net immediately.

2.4 VAT per assessee

The VAT per assessee during the year and the preceding two years is shown in the following table:

(₹ in crore)

Year	Total no of assesseees	Total VAT collection	Cost of VAT per assessee
2009-10	20,060	298.44	0.015
2010-11	21,019	324.77	0.016
2011-12	22447	425.31	0.019



It may be seen that the cost of VAT per assessee has gone up during 2011-12. In addition, number of assesseees under VAT has also increased.

2.5 Position of arrears

As per information furnished by the Department, ₹ 10.31 crore was pending collection as on 31 March 2012. The breakup of the position of arrears during 2007-08 to 2011-12 is given in the following table:

(₹ in crore)

Year	Opening balance of arrears	Additions during the year	Collection by the end of the year	Balance arrears
2007-08	22.51	5.74	4.39	22.86
2008-09	22.86	24.73	5.76	41.88
2009-10	41.85	39.44	4.10	77.19
2010-11	77.19	7.06	74.78	9.47
2011-12	9.47	1.02	0.18	10.31

It would be seen from the above that the collections during 2010-11 (₹ 74.78 crore) were the highest during the period from 2007-08 to 2011-12. The arrears of revenue which increased to ₹ 77.19 crore in 2009-10 had come down to ₹ 10.31 crore in 2011-12. This indicates improvement in the efforts of the Department in the collection of the arrears of revenue.

2.6 Cost of collection

The cost of collection (expenditure incurred on collection) of the Taxation Department during 2011-12 is shown in the following table:

(₹ in crore)

Year	Actual revenue	Cost of collection	Percentage of expenditure on collection	All India average percentage during the preceding year
2009-10	321.40	6.80	2.12	0.88
2010-11	409.88	8.71	2.13	0.96
2011-12	512.50	10.33	2.02	0.75

The cost of collection of the Department has been steadily increasing. Besides, the cost of collection when compared to the all India average percentage during the preceding years is on the higher side. The Department should take steps to bring it down at least to the all India average percentage level of cost of collection.

It is recommended that the Department may investigate the reasons for increase in the cost of collection and chalk out a plan for its reduction so that it may be brought down.

2.7 Impact of Audit Reports

2.7.1 Revenue Impact

During the last five years (including the current year's report), we have pointed out non/short levy, non/short realisation, underassessment/loss of revenue, incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation *etc.*, with revenue implication of ₹ 2287.3 crore in 112 paragraphs. Of these, the Department/Government had accepted audit observations in 12 paragraphs involving ₹ 1133.33 crore and had since recovered ₹ 167.42 crore. The details are shown in the following table:

(₹ in crore)

Year of Audit Report	Paragraphs included		Paragraphs accepted		Amount recovered	
	No.	Amount	No.	Amount	No.	Amount
2007-08	22	540.70	2	474.06	-	-
2008-09	23	784.99	5	481.98	1	167.42
2009-10	29	498.23	4	0.97	-	-
2010-11	23	215.39	-	-	-	-
2011-12	15	247.99	1	176.32	-	-
Total	112	2287.3	12	1133.33	1	167.42

The above table reveals that except for the recovery of ₹ 167.42 crore received from Government of India on account of VAT compensation, the recovery in respect of paragraphs included in the Audit Reports (Revenue Receipts) has been nil. This is a matter of concern as with the passage of time the chances of recovery in these cases become remote.

We recommend that the Government may in the interest of revenue instruct the Department to revamp its revenue recovery mechanism and take concrete steps for recovery of the amounts at least in those cases which have been accepted by the Departments.

2.7.2 Amendments in the Acts/Rules/notification/orders issued by the Government at the instance of audit

Based on audit observations, the Government notified the following changes:

- **Database of risky dealers:** The Department has entrusted the DCT to frame the parameters for easy detection of dubious/risky dealers. The STs have already prepared a list of such dealers and the same will be completed and kept in electronic format.
- **Erection of Integrated checkgates:** Action has already been initiated to establish integrated checkgates and the process of site selection is in progress.
- **Maintenance of database of dealers having turnover above ₹ 40 lakh:** The COT had requested National Informatics Centre to develop a database of such dealers.
- **Form for claiming exemption for goods taxable under Schedule V of the MVAT Act:** The Department has prepared e-return formats for cross verification of goods taxable under Schedule V of the MVAT Act.
- **Cross verification with Income Tax/Central Excise Department:** The COT has issued instructions for mandatory cross verification of particulars with Income Tax/Central Excise Departments.
- **Record keeping:** - The COT has already issued instructions to the STs to furnish monthly returns showing submission of returns/ registration of dealers *etc.*, to him. Instructions have also been issued for supervisory inspections by the DCT/ACT.

2.7.3 Results of Audit

Test check of the records of 71 units relating to VAT revealed under-assessment of tax and other irregularities involving ₹ 538.86 crore in 101 cases which fall under the following categories:

(₹ in crore)			
Sl. No.	Category	Number of cases	Amount
1.	Assessment, levy and collection of tax under MVAT (a Performance Audit)	1	176.32
2.	Short realisation of tax	15	10.05

3.	Evasion of tax	17	8.43
4.	Non-realisation of tax	13	52.67
5.	Other irregularities	55	291.39
Total		101	538.86

During the course of the year, the Department accepted under assessments and other deficiencies of ₹ 8.84 crore in 36 cases. An amount of ₹ 0.62 crore was realised in six cases during the year 2011-12.

A Performance Audit on “Assessment, levy and collection of tax under MVAT Act” which points out certain system and compliance deficiencies and few illustrative cases having financial impact of ₹ 245.58 crore in terms of under assessment/short levy /non-levy of tax and other provisions of the Acts are included in the succeeding paragraphs.

2.8 PERFORMANCE AUDIT ON “ASSESSMENT, LEVY AND COLLECTION OF TAX UNDER THE MEGHALAYA VALUE ADDED TAX ACT”

2.8.1 Introduction

A Performance audit on “Assessment, Levy and Collection of Tax under the Meghalaya Value Added Tax Act” revealed the following irregularities:

- Due to lack of clarity on the term ‘manufacture’ four industrial units claimed exemption/remission of ₹ 2.82 crore.
(Para 2.8.7.3)
- There was loss of revenue of ₹ 9.53 crore on sale of coal between October 2010 and March 2012 due to non-inclusion of royalty in the sale price of coal.
(Para 2.8.7.4)
- Four cement manufacturers purchased 5.44 lakh MT of coal valued at ₹ 165.09 crore on which VAT amounting to ₹ 6.62 crore was neither paid by the sellers nor by the purchasers.
(Para 2.8.8.2(B))
- Survey registers were either not maintained by the ITs or were not monitored by the higher authorities. No inspection of the Circle offices was ever carried out by the COT.
(Para 2.8.8.6)
- Penalty amounting to ₹ 2.82 crore was not levied by the STs for non submission of prescribed reports and returns by the defaulting dealers.
(Para 2.8.9.1)
- The percentage of scrutiny of returns by the STs varied between zero and 17 per cent.
(Para 2.8.9.3)
- Twelve dealers irregularly claimed input tax credit of ₹ 1.69 crore which was accepted by the department.
(Para 2.8.9.5(A))
- Not a single audit assessment was conducted by the department.
(Para 2.8.9.6(B))
- Enforcement branch failed to carry out a single investigation or enquiry between 2007-08 and 2011-12.
(Para 2.8.10.4)
- Six Government departments collected VAT amounting to ₹ 2.42 crore but failed to deposit the same.
(Para 2.8.11.1)
- Four industrial units irregularly claimed remission of VAT of ₹ 4.75 crore on sale of manufactured goods not approved by the SWA.
(Para 2.8.11.4)

2.8.1 Introduction

The introduction of Value Added Tax (VAT) based on a white paper published (January 2005) by the Empowered Committee¹ of State Finance Ministers, was an endeavour to achieve economic unification of the country and to avoid unhealthy competition in the tax rate among different States. In the erstwhile Sales Tax structure, there were problems of double taxation of commodities, multiplicity of taxes, surcharge and additional tax on Sales Tax *etc.* that resulted in a cascading tax burden. The white paper *inter alia* put forth the following advantages of VAT:

- manufacturers and traders will be given input tax credit (ITC) for purchase of inputs, including that of capital goods, meant for use in manufacture or resale;
- ITC remaining unadjusted at the end of a year and also on export will be refunded to the dealers;
- dealers will submit self assessment returns declaring their tax liability. These returns will be considered as deemed assessed except where notice for audit of books of accounts of the dealer is issued within the prescribed period;
- audit of books of accounts of the dealer will be delinked from tax collection wing to remove any bias; and
- other taxes like turnover tax, surcharge, *etc.*, to be abolished and phasing out of Central Sales Tax (CST) and rationalisation of overall tax burden.

The Meghalaya Value Added Tax (MVAT) bill was passed by the State Assembly in March 2003 and was introduced in Meghalaya from 1 May 2005 after receiving the presidential assent in February 2005.

Salient features of MVAT Act, 2003

Under Section 5(1) of the MVAT Act, goods are classified into five schedules according to their social and economic impact as follows:

- first schedule consists of essential goods of social importance with 'Nil' tax rate;
- second schedule consists of goods of general importance used for industrial infrastructure, food and clothing, IT products, metals and chemicals having economic importance with four² *per cent* tax rate;
- third schedule covers bullion *specie* and other precious metal with tax rate of one *per cent*;
- fourth schedule consists of all other goods not covered by any of the schedules with tax rate of 12.5³ *per cent*; and

¹ Set up by the Government of India

²Enhanced from four *per cent* to five *per cent* in December 2011.

³Enhanced from 12.5 *per cent* to 13.5 *per cent* in March 2011.

- fifth schedule consists of non-VATable goods like liquor, lottery tickets, medicines, etc., in which tax is to be levied at the first point of sale at the prescribed rate⁴

Section 17 of the MVAT Act provides for a convenient, hassle free, simple but alternative method of taxation of retail dealers above threshold limit of ₹ one lakh but not exceeding ₹ five lakh. Such retailers can pay tax at a nominal rate of one *per cent* of the gross turnover. The Government of Meghalaya (GOM) has also notified (January 2009) a scheme for the small contractors, having annual turnover of not exceeding ₹ five lakh, who are permitted to pay four *per cent* tax on contractual value. Further, each tax payer registered under the MVAT Act is assigned a Unique Tax Payers Identification Number (TIN) which will have eleven digits consisting of state code (XX), office code (XX), number of the dealer (XX), Act identification code (XX) and check digit (XXX).

2.8.2 Organisational setup

In Meghalaya, the MVAT Act is administered by the Excise, Registration, Taxation and Stamps (ERTS) Department, GOM. The Additional Chief Secretary, who heads the ERTS Department, is assisted by a Commissioner and Secretary. At the Directorate level, the Commissioner of Taxes (COT) is the administrative head. He is assisted by two Deputy Commissioners of Taxes (DCT), two Assistant Commissioners of Taxes (ACT) and two Superintendents of Taxes (ST), Enforcement Branch (EB) at Shillong and Tura. At the field level, there are 15⁵ circles each headed by one ST who is responsible for registration of dealers, scrutiny of the returns submitted by them and collection of VAT. These STs are assisted by Inspectors of Taxes (IT) and ancillary staff.

2.8.3 Audit objectives

The performance audit (PA) was carried out with the following objectives:

- whether the provisions of the MVAT Act/Rules were adequate and were properly enforced to safeguard the revenue of the State;
- whether workload was distributed evenly among different circles to arrest arrears in assessments;
- whether survey was properly carried out to detect unregistered dealers;
- whether monitoring and internal control was in place and was adequate; and
- whether there was proper co-ordination and information sharing between the taxation department and other State/Central departments in order to prevent evasion of tax and maximise revenue collection.

⁴ As on 30 September 2012, prevailing rates varied from 4 *per cent* to 20 *per cent*.

⁵ (i) Circle-I, Shillong (ii) Circle-II, Shillong (iii) Circle-III, Shillong (iv) Circle-IV, Shillong (v) Circle-V, Shillong (vi) Circle-VI, Shillong (vii) Circle-VII, Shillong (viii) Circle-VIII, Shillong (ix) Nongpoh circle (x) Jowai circle (xi) Khliehriat circle (xii) Circle-I, Tura, (xiii) Circle-II, Tura, (xiv) Williamnagar, circle (xv) Nongstoin circle

2.8.4 Scope and Methodology of audit

The PA was carried out between February 2012 and August 2012 during which records pertaining to levy, assessment, collection and administration of MVAT for the period 2007-08 to 2011-12 were reviewed. Out of 15 circles in the State, six⁶ circles selected by the process of Simple Random Sampling Without Replacement⁷ (SRSWOR), were covered in audit. The dealers in the selected six circles were stratified on the basis of their turnover and their selection, also on the basis on SRSWOR, was made as follows:

- Dealers having turnover over ₹ 5 crore: 100 per cent of the population.
- Dealers having turnover between ₹ one crore and ₹ 5 crore: 50 per cent of the population.
- Dealers having turnover below ₹ one crore: On the basis of interval concept⁸.

The details of dealers selected are as follows:

Table 1

Name of the circle	Total dealers			Total dealers selected		
	Turnover of ₹ 5 crore and above	Turnover between ₹ one crore and ₹ 5 crore	Turnover below ₹ one crore	Turnover of ₹ 5 crore and above	Turnover between ₹ one crore and ₹ 5 crore	Turnover below ₹ one crore
Circle-II Shillong	55	91	914	55	46	305
Circle-VI Shillong	12	20	2199	12	10	303
Jowai circle	02	07	2693	02	04	337
Nongpoh circle	28	26	1546	28	13	258
Tura (Circles I & II)	04	11	1130	04	05	283
Total	101	155	8482	101	78	1486
		8738			1665	

In addition to the six circles, records of the COT, Meghalaya, the ST, EB, Shillong and the taxation checkposts⁹ at Byrnihat and Umkiang were also examined in audit.

2.8.5 Acknowledgement

Indian Audit and Accounts Department wishes to acknowledge the co-operation extended by the ERTS Department, in carrying out this PA. An Entry Conference¹⁰ was held on 23 January 2012 in which the scope and objectives of the PA were explained to the ERTS Department. The draft PA Report was forwarded to the ERTS Department on 9 January 2013 following

⁶ (i) Circle-II, Shillong (ii) Circle-VI, Shillong (iii) Jowai circle (iv) Nongpoh circle (v) Circle-I, Tura, (vi) Circle-II, Tura.

⁷ Under this method, using a random number table, the circles/dealers were selected.

⁸ Using Interactive Data Extraction & Analysis software dealers were selected at intervals from each circle as follows:

Circle-II, Shillong: (**Interval 3**); Circle-VI, Shillong: (**Interval 7**); Nongpoh circle: (**Interval 6**); Jowai circle: (**Interval 8**); Circles-I & II, Tura: (**Interval 4**)

⁹ Being the entry/exit checkposts of the major highway and trade route of the State

¹⁰ Attended by the COT and Commissioner & Secretary, ERTS Department, GOM.

which an Exit Conference¹¹ was held on 1 February 2013 in which the audit findings were discussed with the ERTS Department. The response of the ERTS Department during the Exit Conference and on other occasions has been suitably incorporated in the Report.

Audit findings

The PA brought out a number of system and compliance deficiencies. The audit findings are discussed in the succeeding paragraphs.

2.8.6 Trend of revenue and financial analysis

The following table presents the revenue collection under MVAT *vis-à-vis* the total tax revenue collection of the State for the years 2007-08 to 2011-12:

Table-2

(₹ in crore)

Year	Budget Estimate for MVAT	Actual collection of MVAT	Shortfall (-)/Excess (+) Percentage of Shortfall (-) /Excess (+)	Collection of tax on sales, trade, etc ¹²	Total tax	Percentage of MVAT to	
						Taxes on sales, trade, etc	Total tax
2007-08	87.04	86.93	(-) 0.11 (-) 0.13	234.90	319.10	37	27
2008-09	153.00	184.92	(+) 31.92 (+) 21	271.07	369.44	68	50
2009-10	179.10	184.36	(+) 5.26 (+) 3	298.44	444.29	62	42
2010-11	215.62	220.82	(+) 5.20 (+) 2	409.89	571.45	54	39
2011-12	253.01	290.67	(+) 37.66 (+) 15	512.50	697.54	57	42

(Source: Finance Accounts)

It may be seen from the above that:

- while the total tax revenue in the State has risen by 119 *per cent* from ₹ 319.10 crore (2007-08) to ₹ 697.54 crore (2011-12), the VAT revenue has seen a remarkable increase by almost 234 *per cent* from ₹ 86.93 crore in 2007-08 to ₹ 290.67 crore in 2011-12;
- during the period 2007-12, MVAT was the highest contributor to the total tax revenue of the State;
- the MVAT collection has always been higher than the budget estimates except for the year 2007-08.

2.8.7 Deficiencies in provisions of the MVAT Act/Rules

2.8.7.1 Rule 30 of the MVAT Rules states that any dealer liable to pay tax shall furnish a quarterly return in Form 5 and an annual return in Form 6.

¹¹ Attended by the COT and Commissioner & Secretary, ERTS Department, GOM.

¹² Tax on sale, trade, etc. has the following components:

(i) CST (ii) Trade tax/VAT (iii) MSL (iv) MST (v) MFST (vi) Surcharge and other receipts

Audit pointed out in May 2008¹³ that these forms were actually applicable only to dealers opting for composite tax¹⁴ scheme. Subsequently the Department amended¹⁵ the MVAT Act in December 2008 and Rules in March 2010 by prescribing quarterly returns in Form 3A for dealers paying composite tax and in Form 5 for all other dealers. However, as on date (March 2013) the GOM is yet to prescribe any form for submission of annual returns by dealers other than those paying composite tax in the absence of which, these dealers continue to submit annual returns in Form 6.

On this being pointed out, the Department stated (February 2013) that Form 6 was applicable to all registered dealers. The reply is not acceptable as Rule 11 (under which Form 6 is to be submitted) is applicable only to dealers opting for composite tax.

2.8.7.2 Section 2(xvii) of the MVAT Act defines the term ‘Government’ to mean the ‘State Government’ only and does not include Central Government and Union Territories. This narrow and incorrect definition has resulted in the following anomalous situations:

➤ Section 106 of the MVAT Act provides for deduction of tax at source on any sale or supply of taxable goods made to the ‘Government’ or to a company, corporation, board, authority, undertaking or any other body controlled wholly or substantially by the ‘Government’. Therefore, as per the definition of ‘Government’ under Section 2(xvii), Section 106 is not applicable to any sale or supply of taxable goods made to Central /Union Territory Governments or to any company, corporation, board, authority, undertaking or any other body controlled wholly or substantially by the Central/Union Territory Governments. This is potentially a flawed situation.

On this being pointed out, the Department stated (February 2013) that definition of ‘persons’ under Section 2(xxiv) included Central Government also. The reply is not acceptable as the ‘persons’ under Section 106 (2) refer to suppliers to the State Government or to a company, corporation *etc.* controlled by the State Government.

➤ Section 99 of the MVAT Act provides for production of records to an officer of ‘Government’ for audit of receipts and refunds of tax, penalty and interest. This, read with the definition of ‘Government’ in Section 2(xvii), means that only State Government officers are empowered to audit the receipts and refunds of tax which is contrary to Section 16 of the Comptroller and Auditor General’s (Duties, Powers and Conditions of Service) Act, 1971 which provides for audit of all receipts of each State by the Comptroller and Auditor General.

¹³ Subsequently featured as para 2.2.9.1 of the Comptroller and Auditor General of India’s Audit Report for the year ended 31 March 2009-Government of Meghalaya.

¹⁴ A dealer whose gross annual turnover does not exceed ₹5 lakh may pay composite tax at the rate of 1 per cent of his gross turnover without the benefit of ITC.

¹⁵ Action was taken based on audit findings.

On this being pointed out, the Department admitted (February 2013) that Section 99 did not specifically provide for audit of receipts and refunds under MVAT Act by the Comptroller and Auditor General of India.

2.8.7.3 As per Section 2(xix) of the MVAT Act, 'manufacture' means producing, making, extracting, altering, ornamenting, finishing, assembling or otherwise processing, treating or adapting any goods **but does not include any such process or mode of manufacture as may be prescribed.** The State Government was, however, yet to prescribe any process or mode of manufacture which would not be classified as 'manufacture' even after more than seven years since the introduction of the MVAT in May 2005.

Audit observed that due to this lack of clarity on the term 'manufacture', the correctness of the MVAT exemption/remission allowed under the Meghalaya Industries (Sales Tax Remission) Scheme, 2006¹⁶ to the following dealers amounting to ₹ 2.82 crore was not properly ascertainable as discussed in the succeeding paragraphs:

- It was judicially¹⁷ held that conversion of 'used' oil to 'refined' oil is not manufacture as no new product is manufactured. A dealer¹⁸ in Nongpoh circle was engaged in import of 'used' oil and its conversion into 'refined' oil. During April 2005 to March 2009, the dealer sold goods valued at ₹ 2.92 crore and the ST allowed MVAT exemption/remission of ₹ 36 lakh on the sale of 'refined' oil manufactured from 'used' oil.
- A dealer¹⁹ in Nongpoh circle engaged in manufacture of GI pipes, poles etc., disclosed sale of scrap amounting to ₹ 13.73 crore between 2007-08 and 2010-11 in addition to the finished products and claimed VAT exemption/remission of ₹ 54.37 lakh on sale of scrap which was accepted by the ST.
- A dealer²⁰ in Nongpoh circle purchased MS Ingot valued at ₹ 47.81 crore (from within the State) between April 2007 and March 2011. The dealer was also a manufacturer of MS Ingot and was eligible to avail 99 per cent remission on sale of goods manufactured. Since the dealer purchased and sold MS Ingot in the same form, the remission of ₹ 1.89 crore granted on sale of MS Ingot was irregular.
- Another dealer²¹ in Nongpoh circle engaged in manufacture of PP bags purchased PP bags valued at ₹ 57.14 lakh and retained ₹ 2.26 lakh on resale of the goods. Since the dealer purchased and sold PP bags in the same form, the remission of ₹ 2.26 lakh granted on sale of PP bags was irregular.

¹⁶ The Meghalaya Industries (Sales Tax Exemption) Scheme 2001 (with effect from 12 April 2001) provides for exemption from payment of sales tax to eligible manufacturing units. This was substituted by the Meghalaya Industries (Sales Tax Remission) Scheme, 2006 (with effect from 1 October 2006) which provides for 99 per cent retention of sales tax by eligible manufacturing units.

¹⁷ Universal Viscose Oil Products v. Commissioner of Trade Tax, Uttar Pradesh (2009) [2010] 30 VST 452 (Allahabad High Court)

¹⁸ M/s Ambika Oils (North East) Pvt. Ltd., Ri-bhoi district.

¹⁹ M/s Nezone Industries Ltd., Ri-bhoi district.

²⁰ M/s Shillong Ispat & Rolling Mills, Ri-bhoi district

²¹ M/s Umadutt Industries Ltd., Ri-bhoi district

On this being pointed out, the Department stated (February 2013) that it would consult the Industries Department on the matter of prescribing those processes or modes of manufacture which would not be classified as 'manufacture'.

Recommendation: The State Government may amend the MVAT Rules to prescribe those processes or modes of manufacture which will not be classified as 'manufacture'.

2.8.7.4 'Sale price' as defined in Section 2 (xxxiii) of the MVAT Act does not include 'royalty' levied on the goods under the Mines and Minerals (Development & Regulation) Act, 1957.

The Ministry of Coal, Government of India, revised (August 2007) the royalty rate per MT on coal to ₹ 130 *plus 5 per cent* of the pithead price of coal. Accordingly the Mining & Geology Department, GOM revised (August 2009) the royalty rate of coal from ₹ 165 per MT to ₹ 290²² per MT. The revised rate was calculated by determining the pithead price of coal as ₹ 3200 per MT. The ERTS Department, GOM however, revised the sale price of coal to ₹ 3044 per MT (August 2010).

The sale price of coal fixed by the ERTS Department did not include the royalty value of ₹ 290 per MT. For non-inclusion of royalty value in the sale price, additional revenue of ₹ 1.60²³ per MT of coal could not accrue to the Department. Between October 2010 and March 2012, 82.19 lakh MT²⁴ of coal was sold on which ₹ 9.53 crore could have been realised leading to loss of revenue to that extent.

On this being pointed out, the Department accepted (February 2013) the fact that royalty was a part of sale price. However, it failed to comment on the loss suffered by the Government due to the incorrect fixation of sale price of coal by the COT without taking royalty into account.

Recommendation: The State Government should include 'royalty and other duties' payable under various Acts in the definition of 'sale price'.

2.8.7.5 Section 45 of the MVAT Act provides for assessment of a dealer on best judgement basis by the ST. If a dealer is aggrieved by the assessment then he can prefer appeal to the ACT²⁵ under Section 65 of the MVAT Act. Section 55 of the Act *ibid* also provides for assessment on best judgement basis by an audit team headed by a DCT. No provisions, however, exist in the MVAT Act for preferring of appeal to the Appellate Authority in case of such assessments.

On this being pointed out, the Department while accepting (February 2013) the facts, stated that matter was being examined in consultation with the Law Department.

²² ₹ 130 + (5 per cent of ₹ 3200) = ₹ 130 + ₹ 160 = ₹ 290

²³ 4 per cent of ₹ 290 = ₹ 1.60

²⁴ Information furnished by the Mining & Geology Department

²⁵ ACT performs the function of 'Appellate Authority' under Section 27 of the MVAT Act.

Recommendation: The State Government should appoint an Appellate Authority for preferring appeals in case of assessments under Section 55.

2.8.7.6 The Meghalaya Land Revenue Regulation (MLRR) Act provides for appointment of a tax recovery officer (TRO) **under the Deputy Commissioner of a district** for recovery of Government dues as arrears of land revenue. However Section 107 of the MVAT Act in contravention of the MMLR Act stipulates that the State Government may appoint a TRO²⁶ **under the COT** to exercise power under MLRR Act for recovery of outstanding tax, interest, penalty or other sums payable as arrears of land revenue.

During the period of PA it was seen that 16 cases involving ₹ 4.10 crore as dues were forwarded to the TRO for initiating recovery proceedings. The TRO stated (September 2012) that in the absence of any comprehensive guidelines as to how arrears of land revenue were to be realised, both MMLR Act and the Bengal Public Demand Recovery (BPDR) Act, 1913 were being followed and that demand notices for recovery of VAT have been issued to the debtors under the provisions of BPDR Act. No recovery has been made in any of the 16 cases by the TRO (March 2013). Since under MVAT Act the State Government cannot empower the TRO under the COT for recovery of arrear land revenue (under the MLRR Act), the recovery proceedings, if any, initiated by the TRO were illegal as was issue of notices under the BPDR Act which has not been accorded any recognition in the MVAT Act.

On this being pointed out, the Department stated (February 2013) that the Government through a notification dated February 1981 had appointed the TRO under the Deputy Commissioner of a district. The reply is not acceptable as MVAT Act erroneously stipulates that the TRO may be appointed under the COT and no fresh notification has been issued in this regard after the introduction of VAT in the State.

Recommendation: The State Government may amend the MVAT Act to either empower the TRO under the COT to recover tax dues as arrears of land revenue under the BPDR Act or appoint a TRO under DC.

2.8.7.7 Under Section 5(1) of the MVAT Act, goods are classified into five schedules. However, Section 112(1) provides that the State Government may also amend 'Sixth Schedule' retrospectively although the MVAT Act does not contain any 'Sixth Schedule'.

2.8.7.8 Chapters VI and VII of the MVAT Act deal with matters relating to 'Return and Payment of tax, Assessment *etc.*' and 'Appeal, Revision and Review' respectively. Sections 4 and 12 of the Limitation Act, 1963 deal with the 'Period of filing of Appeal *etc.*' in a Court of Law. However, Section 110 of the MVAT Act wrongly provides that Section 4 and 12 of the Limitation Act, 1963 shall apply in computing the period of limitation in respect of Chapter VI instead of Chapter VII.

²⁶ ST, EB functions as the tax recovery officer.

On this being pointed out, the Department while accepting (February 2013) the facts, stated that matter was being examined.

2.8.7.9 Rule 69 of the MVAT Rules stipulates the conditions necessary for excluding contractors and sub-contractors from the liability to pay tax under Section 106(1) of the MVAT Act. However, this Section deals with the responsibility of payment of tax of every person (other than individual, Hindu Undivided Family, a firm or a company not under the control of the Government) and **no provisions exist in the MVAT Act for prescribing the conditions necessary for excluding contractors and sub-contractors from the liability to pay tax.** Hence, the reference to section 106(1) of the MVAT Act under Rule 69 of the MVAT Rules is erroneous.

On this being pointed out, the Department while accepting (February 2013) the facts, stated that amendment to Rule 69 was being proposed.

Recommendation: The State Government may amend the MVAT Act to include the provisions for prescribing the conditions for excluding contractors/sub-contractors from the liability to pay tax.

2.8.7.10 Schedule IIB of the MVAT Act lists the items under industrial inputs and packing materials to be taxed at 5 *per cent*. The table *inter alia* contains two columns 'Heading No.' and 'Sub Heading No.' and under these columns, various figures are given such as '15.01', '15.06' ,....., '48.23', '70.07', '83.09' (under 'Heading No.') and '2204.10', '2707.10', '2707.20' ,....., '5503.20', '5505.10', '6305.10' (under 'Sub Heading No.'). The column headings and figures have not been explained in the Act and Rules. As such, their inclusion in the Schedule IIB is confusing.

It was, however, observed that the column 'Heading No.' is actually the heading no. of the Central Excise Tariff Act, 1985 and the column 'Sub Heading No.' is actually the sub-heading no. of the Central Excise Tariff Act, 1985 but for lack of this clarification in the MVAT Act the columns in the Schedule IIB appear to be confusing.

On this being pointed out, the Department stated (February 2013) that the matter was being examined.

2.8.7.11 As per Schedule II (Item 3) of the MVAT Act, all intangible goods (copyright, patent *etc.*) are taxable at five *per cent* but the definition of 'goods' in Section 2(xvi) does not include 'intangible goods'.

On this being pointed out, the Department stated (February 2013) that the definition of 'goods' would be amended to include both tangible and intangible goods.

We recommend that the ERTS Department take action to amend the MVAT Act and Rules suitably to avoid any ambiguity on the terms mentioned above for effective levy and collection of MVAT.

2.8.8 Registration of dealers/transporters²⁷

Registration enables a dealer to charge tax on sales from customers claim set-off in the form of Input Tax Credit (ITC) on local purchases from registered dealers which can be adjusted against subsequent sales. A dealer when his gross annual turnover exceeds ₹ one lakh, other than in case of a manufacturer/importer where the taxable turnover is nil, shall get himself registered under Section 31 of the MVAT Act and obtain a Certificate of Registration (RC). However, a dealer whose gross annual turnover exceeds ₹ 50,000 may also apply voluntarily for registration under Section 32.

A dealer who makes taxable sales without registration will be assessed to tax on sale at the rate prescribed without allowing ITC. Dealing in taxable goods without registration is a punishable offence under Section 90 of the MVAT Act for which the dealer is liable to pay a fine not exceeding ₹ 10000 and/or punishable with six months imprisonment.

2.8.8.1 Multiple registrations

Section 31(2) of the MVAT Act requires that a dealer shall be registered by the concerned ST having territorial jurisdiction over his principal place of business. This implies that every dealer shall be registered with one circle. While this practice was being followed in case of circles outside Shillong, we observed that in case of circles at Shillong, a dealer engaged in business of limestone and coal had to obtain multiple registrations as follows:

Sl. no.	ACT	Nature of business	Circle with which to be registered
1.	Meghalaya Value Added Tax (MVAT)	Limestone	With the concerned circle having territorial jurisdiction over the principal place of business.
2.	Central Sales Tax (CST)	Limestone	Circle-VIII, Shillong
3.	Both CST and MVAT Acts	Coal	Circle-V, Shillong

This procedure is inconsistent with the provisions of the MVAT Act as it requires a dealer to approach different circles to submit returns and/or apply for road permits and other forms.

On this being pointed out (January 2013), the Department stated (February 2013) that the areas of jurisdiction of the STs had been reallocated (through a notification dated September 2012) and multiple registrations would not take place anymore. However, the notification is yet to be implemented (March 2013).

2.8.8.2 Unregistered dealers

Under Rule 13 of the MVAT Rules, every dealer has to maintain an account of sale of goods within the State in Form 7, which *inter alia* contains the name of the purchasing dealer and his Tax Identification Number. This statement

²⁷ Transporters are not dealers but they are engaged in transportation of taxable goods. Transporters are registered under the ST, EB.

enables the assessing officer to cross-check whether the purchasing registered dealer paid VAT on resale of goods.

➤ Out of 18 manufacturers in Nongpoh circle, 14²⁸ did not furnish any accounts of sale in Form 7 although they made local sales amounting to ₹ 436.50 crore between April 2006 and March 2011. The ST completed the scrutiny of the returns between October 2009 and February 2012. Since the sale accounts were not available, as such, payment of VAT to the extent of ₹ 17.46 crore on resale of the goods by the purchasers could not be verified.

In respect of four²⁹ manufacturers in Nongpoh circle who submitted accounts of sale in Form 7, Audit reviewed the accounts for the period from May 2005 to June 2011. In addition, the audited accounts furnished by four cement manufacturers in two³⁰ circles were also examined. The irregularities noticed in these cases are given in the succeeding paragraphs:

A Four³¹ industries in Nongpoh circle sold goods valued at ₹ 19.02 crore to 376 persons between May 2005 and March 2011. However, cross-check with the data of registered dealers under MVAT Act made available to us by the COT revealed that none of the above persons were registered. Thus, due to non-registration, either compulsorily or voluntarily, VAT amounting to ₹ 0.76 crore on re-sale of such goods could not be realised by the Department. Besides, these dealers were also liable to pay maximum penalty of ₹ 1.52 crore under Section 96 of the MVAT Act for engaging in business as dealers without getting themselves registered.

On this being pointed out, the Department stated (February 2013) that a perusal of the sales statements submitted by the four units was made for some periods and it was seen that many of the purchasers were registered while others with addresses in Ri-bhoi district could not be traced. The reply is not acceptable as the list of unregistered dealers pointed out by audit already excluded the registered dealers after comparing it with the database of registered dealers of the State.

B Four cement manufacturers³² in three circles purchased 5.44 lakh MT of coal between March 2006 to June 2011 valued at ₹ 165.59 crore on which VAT amounting to ₹ 6.62 crore was neither paid by the sellers nor by the purchasers. As a result, there was loss of revenue to that extent.

²⁸ (1) M/s Ambika Oil (North East) Pvt Ltd., (2) M/s FW Ferro Tech Pvt Ltd., (3) M/s Shriram Ispat & Rolling Mills Pvt Ltd., (4) M/s Subham Industries, (5) M/s Meghalaya Mineral Products, (6) M/s Trishul HiTech Industries, (7) M/s Balaji Candle Industries, (8) M/s Seven Sisters Pvt Ltd., (9) M/s Umadutt Industries Pvt. Ltd., (10) M/s Bimla Ispat & Alloys Pvt. Ltd., (11) M/s Oxford Packaging Pvt. Ltd., (12) M/s Brahmaputra Wire Products, (13) M/s Trishul Hightech Industries, (14) M/s K.K. Beverages Pvt. Ltd.

²⁹ M/s Shillong Ispat & Rolling Mills Pvt. Ltd., M/s Shree Sai Rolling Mills (I) Ltd., M/s Pawan Casting (Meghalaya) Pvt. Ltd., M/s Umadutt Industries Pvt. Ltd.

³⁰ Industries are located only in Nongpoh and Jowai circles (out of the selected six circles)

³¹ M/s Shillong Ispat & Rolling Mills Pvt. Ltd., M/s Shree Sai Rolling Mills (I) Ltd., M/s Pawan Casting (Meghalaya) Pvt. Ltd., M/s Umadutt Industries Pvt. Ltd.

³² M/s Meghalaya Cements and M/s Adhunik Cement in Jowai circle, M/s H.M. Cements in Nongpoh circle and Mawmluh Cherra Cements Limited in Circle-VI, Nongpoh.

On this being pointed out, the Department stated that in case of M/s H.M. Cements, all local sale of coal had to be routed through the Byrnihat checkgate which was not possible without realisation of VAT. The reply is not acceptable as no registered coal dealer in the State showed local sale of coal in his returns during the aforesaid period. In case of other three manufacturers, the Department stated (February 2013) that notices had been served for realisation of the VAT. Further development was awaited (March 2013).

2.8.8.3 Cancellation of Certificate of Registration (RC)

Under Section 31(8) of the MVAT Act, the STs can cancel the RC if a dealer:

- has discontinued business [Section 31(8) (a)];
- has ceased the liability to pay tax [Section 31(8)b)];
- has failed to furnish return or pay admitted tax and interest [Section 31(8) (g)]; and
- voluntarily registered under Section 32 fails to exceed the taxable turnover of ₹ 50,000 for three successive years [Section 32(5)].

Out of the 1,665 dealers covered in the PA, 278 dealers³³ either did not submit returns or had submitted 'nil' returns as given in the following table:

Table 3

Sl. No.	Name of Circle	No. of dealers		
		Did not submit returns	Submitted 'nil' returns	Total
1	Shillong (II)	16	--	16
2	Shillong (VI)	19	61	80
3	Jowai	34	30	64
4	Nongpoh	12	28	40
5	Tura (I & II)	36	42	78
Total		117	161	278

Though the RCs of these 278 dealers were liable to be cancelled, the STs did not take any action for their cancellation.

2.8.8.4 Amendment of Certificate of Registration (RC)

Under Rule 18(7) of the MVAT Rules, the ST shall issue an RC specifying the class or classes of goods which shall be dealt in or manufactured by a registered dealer. Section 31(6) of the MVAT Act provides that the ST may, from time to time, amend the RC on the basis of an application made by a dealer.

If any registered dealer while purchasing goods falsely represents that goods are covered by his RC, he shall be liable to pay maximum penalty of ₹ 10,000 and/or punishable with six months imprisonment. In lieu of prosecution, the COT may compound his offence and penalise him to twice the assessed tax (in addition to the assessed tax) under Section 96 of the MVAT Act.

In Circle-II, Shillong out of 30 dealers scrutinised it was seen that five

³³ Details in Annexure-I.

dealers³⁴ though not registered for resale of some goods as per RC, carried on business in those goods without amendment of the RC and purchased these goods valued at ₹ 85.74 lakh and having a tax effect of ₹ 3.43 lakh on the strength of road permits³⁵ issued to them by the ST. For this default, penalty of ₹ 6.86 lakh was leviable but it was not levied which indicates lack of proper scrutiny of returns by the circle.

On this being pointed out, the Department stated (February 2013) that appropriate action would be taken by the concerned STs. Further report was awaited (March 2013).

2.8.8.5 Security

Under Section 33 of the MVAT Act, the ST may demand security deposit as a precondition for grant of registration, primarily for safeguarding Government interest for

- ensuring proper realisation of tax, interest, penalty or other dues; and
- proper custody and use of declaration forms.

Under Rule 25 of the MVAT Rules, the amount of security shall be fixed by the ST after taking into account the taxable turnover of the dealer, the nature of goods dealt by him and such other factors as may in the opinion of the ST appear necessary in making a proper determination.

In Meghalaya, although both VAT and State excise are administered by the ERTS Department, it has prescribed the amount of security only for licensees³⁶ under State excise. Non-prescription of specific security money for MVAT, thus, leaves scope for arbitrary collection of security amount by the ST.

We noticed that in case of 256 registered dealers with an annual turnover of more than ₹ one crore in the six circles selected for this PA had made security deposits which varied between ₹ 500 and ₹ 5,000 which was abysmally low and did not serve basic purpose of safeguarding Government interest as illustrated by the following case:

- In Nongpoh circle it was seen that a manufacturing unit³⁷ closed down operations in September 2007 and its whereabouts remained unknown. The ST completed assessments on best judgement basis (February 2009) for the tax periods between September 2005 and March 2007 and the dealer was assessed to VAT of ₹ 6.58 lakh and interest of ₹ 3.10 lakh. The dues could have been adjusted against security but for non-realisation of adequate security, Government's revenue interests could not be protected. The ST

³⁴ (1) M/s Zopar Exports Limited (2) M/s Sew Construction (3) M/s Sumo Digital (4) M/s Krishna Trading (5) M/s AK Enterprise

³⁵ A road permit, which is a detailed statement of goods imported into the State, is issued in form 37 by the ST with which the dealer is registered and it is to be produced at the entry checkpoint of the State to which the goods are being imported.

³⁶ For bottling plant/distillery: ₹ 5.00 lakh, bonded warehouse: ₹ 3.00 lakh, retail licence: ₹1 .00 lakh.

³⁷ M/s Gita Ferro Alloys.

stated (October 2011) that since the unit had closed down, the case would be forwarded to the tax recovery officer.

On this being pointed out, the Department while accepting the audit observation stated (February 2013) that the STs would be instructed to realise appropriate security depending on the size and volume of business of dealers.

2.8.8.6 Survey

Section 83(1) the MVAT Act empowers the COT to take up a survey of unregistered dealers from time to time. Further, the COT in November 2008 issued instructions for effective survey of dealers. The instructions *inter alia* stated:

- Each IT should maintain a survey register in the prescribed form.
- The entries in the register should be checked and verified by the concerned ST and are also to be further verified by the ACT and DCT during inspection of circle offices.
- The IT while making the survey was to simultaneously ensure that in cases liable for payment of taxes, proceedings for registration should immediately be initiated.
- The ST should submit a monthly report of surveys undertaken to the COT.

Audit noticed that in respect of the selected six circles the above instructions were not adhered to as follows:

- In three³⁸ out of six circles, the survey registers were not maintained at all.
- In two³⁹ circles, although the survey registers were maintained the entries therein had not even once been checked or verified by the ST.
- In none of six circles were any monthly reports of surveys conducted submitted to the COT by the STs.

Despite non-compliance with the instructions, the COT neither made any effort to ascertain the status of surveys conducted by each ST nor did it take any action against the errant STs. This resulted in purchase/resale of taxable goods in the State by unregistered dealers as pointed out in para 2.8.8.2, leading to loss of revenue, a part or whole of which could have been realised had the instructions of the COT been complied with. The laxity on the part of the STs to follow the COT's instructions was also not detected or pointed out by the ACTs or DCTs as these officials had not even once carried out an inspection of the six selected circles during 2007-08 to 2011-12.

On this being pointed out, the Department intimated (February 2013) that it has taken note of audit observation.

³⁸ STs, Circle-II, Circle-VI, Jowai.

³⁹ ST, Circle-I & II, Tura

2.8.8.7 Registration of transporters

A As per Section 80 of the MVAT Act, every transporter engaged in the business of transporting taxable goods in the State should obtain an RC from the ST, EB, Shillong on payment of prescribed fees. The ERTS Department has however, not prescribed any fee for registration of transporters.

- It was seen that 35 transporters were registered under ST, EB, Shillong between 2007-08 and 2011-12 but in the absence of any prescribed registration fee, the ST, EB arbitrarily levied ₹ 500 per transporter.

B Under Section 91 of the MVAT Act if a transporter fails to get himself registered then he shall be punishable with a simple imprisonment which may extend to six months or with fine not exceeding ₹ 10,000 or with both.

- Against 6,015 commercial trucks registered by 5,205 transporters with the Regional Transport Offices in Meghalaya as on 31 March 2011, there were only 85 transporters (1.6 *per cent*) registered by the STs under the MVAT Act as on 31 March 2012. Non registration of 5,120 transporters under the MVAT Act indicates that the ERTS Department failed to detect and register large number (98.37 *per cent*) of transporters engaged in movement of taxable goods. Besides, penalty of ₹ 5.12 crore was also leviable on these unregistered transporters.

C Under Rule 29(12) of the MVAT Rules, every registered transporter should keep a correct and complete account of his daily transactions. He shall submit a monthly statement of goods delivered into the State and goods transported outside the State in prescribed forms to the ST within 15 days of the following month. Section 91 of the MVAT Act stipulates that if a transporter fails to maintain statements of goods brought into the State or transported outside the State, he shall be punishable with a simple imprisonment which may extend to six months or with fine not exceeding ₹ 10,000 or with both.

- It was noticed that none of the 35 registered transporters had submitted monthly statements of goods brought into the State or transported outside the State for any months during the last five years ending 31 March 2012. For non-submission of monthly statements penalty of ₹ 1.49 crore was leviable but was not levied by the ST, EB, Shillong.

On this being pointed out, the Department stated (February 2013) that the matter was being examined.

2.8.9 Submission of returns, their scrutiny and assessments

2.8.9.1 Submission of returns

As per MVAT Act and Rules made thereunder, every registered dealer shall submit the following returns:

- a quarterly return in Form 5 [Rule 30];
- an annual return in Form 6 [Rule 30]; and

- an audit report from a Chartered Accountant if the gross annual turnover of dealer exceeds ₹40 lakh [Section 86].

For non-submission of quarterly/annual return, penalty at ₹ 100 per day of default subject to a maximum of ₹ 10,000 is leviable under Section 36(4) of the MVAT Act. For non-submission of audited report, penalty at 0.1 per cent of the turnover is leviable under Section 86(3) of the MVAT Act.

It was seen that in none of the selected six circles were any registers maintained to monitor filing of quarterly/annual returns and audited reports by the dealers. As such, the STs did not have a database of defaulting dealers.

- 117 dealers⁴⁰ did not furnish 1,211 quarterly returns for the period between 2007-08 and 2011-12 for which penalty amounting to ₹ 1.21 crore was leviable but was not levied by the STs.
- 149 dealers⁴¹ did not furnish 579 annual returns for the period between 2007-08 and 2011-12 for which penalty amounting to ₹ 57.90 lakh was leviable but was not levied by the STs.
- 48 dealers⁴² having combined turnover of ₹ 1031.22 crore did not furnish 148 audited reports for the period between 2007-08 and 2011-12 despite their individual annual turnovers exceeding ₹ 40 lakh in each of these periods and for which penalty of ₹ 1.03 crore was leviable but was not levied by the STs.

On this being pointed out, the Department stated (February 2013) that in the light of audit observation, appropriate action was being taken by the concerned STs.

2.8.9.2 Submission of revised returns

Rule 30(5) of the MVAT Rules stipulates that in case of discovery of any omission or any other error in the quarterly/annual returns filed, the dealer may furnish revised returns within 60 days from the date of submission of such returns. If a dealer required to furnish revised return, fails to furnish the same within 60 days then penalty at the rate of ₹ 100 per day of default subject to a maximum of ₹ 10,000 is leviable under Section 36 of the MVAT Act.

It was seen that in none of the selected six circles were any registers maintained to monitor filing of revised returns by the dealers. As such, although the dealers submitted revised returns, but submission of such returns within sixty days could not be ascertained and as such, penalty could not be levied for delay in submission of revised returns.

On this being pointed out, the Department while admitting the fact, stated (February 2013) that instructions would be issued to the STs for maintenance of registers.

⁴⁰ Details in **Annexure-II**

⁴¹ Details in **Annexure-III**

⁴² Details in **Annexure-IV**

2.8.9.3 Scrutiny of returns

Under Section 39(1) of the MVAT Act, each and every tax return submitted by dealers shall be scrutinised by the ST to verify correctness of calculation, application of correct rate of tax and interest, correctness of ITC claimed and full payment of admitted tax along with interest. Scrutiny of returns is important as it provides definite and meaningful inputs for effective selection of cases for ‘audit assessment’⁴³.

The position of returns scrutinised by the STs of the six selected circles for the period 2007-08 to 2011-12 in respect of the 1,665 dealers selected for PA was as under:

Table 4

Circle	No. of dealers	No. of dealers who submitted returns	Number of dealers whose returns were scrutinised	Percentage of dealers scrutinised
Circle-II, Shillong	406	390	26	7
Circle-VI, Shillong	325	306	13	4
Jowai circle	343	309	0	0
Nongpoh circle	299	287	50	17
Circles I & II, Tura	292	256	17	7
Total	1665	1548	106	7

From the above it can be seen that the percentage of scrutiny of the returns varied between zero and 17 *per cent* which was abysmally low. However, the compliance on part of the dealers was very good with an average of 93 *per cent* of dealers submitting returns out of those registered.

The year-wise position of scrutiny made by each of the selected circle is given in the following table:

Table 5

Circle	2007-08	2008-09	2009-10	2010-11	2011-12
Circle-II, Shillong	--	22	51	12	6
Circle-VI, Shillong	--	10	27	81	83
Jowai circle	--	--	--	--	--
Nongpoh circle	02	76	554	67	101
Circles-I & II, Tura	--	--	05	35	175
Total	02	108	637	195	365

From the above it may be seen that:

- The number of scrutiny made by five circles was only two in 2007-08. Reasons for the same were not on record. However, from 2008-09 onwards, the position of scrutiny has shown an upward trend except for Circle-II, Shillong where it has shown a decline.
- Jowai circle performed miserably with no scrutiny being made in any of the years covered in PA. Reasons for the same were not on record.

⁴³ Under Section 55 of the MVAT Act, a certain percentage of returns are required to be scrutinised in detail by an audit team of the COT which is headed by a DCT. Detailed scrutiny of this kind is called audit assessment.

- The percentage of scrutiny made *vis-à-vis* the actual number of dealers who submitted returns was very low.

In a situation where hundred *per cent* scrutiny of returns is required to be made by the STs, the actual percentage of scrutiny made was only seven *per cent* which was an adverse indicator of the efficiency of the tax authorities. Against this backdrop the fact that VAT revenue has seen a persistent rise in the State over the period 2007-12 indicates that dealers in the State pay tax voluntarily and the increase in VAT revenue could not, thus, be attributed to the efficiency of tax collection efforts of the Department.

On this being pointed out, the Department while accepting the audit observation stated (February 2013) that instructions had been issued to the STs to speed up the process of scrutiny of returns.

2.8.9.4 Norms not fixed for deployment of staff

To ensure proper monitoring and scrutiny of returns filed by dealers, it is essential that the ERTS Department prescribe norms with regard to work output and deployment of staff in circle offices to ensure that staff assigned to each ST circle office is in sync with the workload of that office. It was observed that the ERTS Department had not prescribed any such norms. ITs are critical functionaries in a circle office as they assist the STs in surveys, scrutiny of returns, *etc.* The number of dealers registered under each of the selected six circles *vis-à-vis* the number of ITs posted in these establishments as on 31 March 2012 was as shown in the following table:

Table 6

Circle	Number of registered dealers having turnover			Number of ITs posted
	Above ₹5 crore	₹one crore to ₹5 crore	Below ₹one crore	
Circle-II, Shillong	55	91	914	3
Circle-VI, Shillong	12	20	2199	2
Jowai circle	2	7	2693	4
Nongpoh circle	28	26	1546	3
Circles-I & II, Tura	4	11	1130	9
Total	101	155	8482	21

From the above it can be seen that:

- Circle-II, Shillong having 146 dealers with annual turnover over ₹ one crore and above had only 3 ITs whereas Jowai and Circles I and II, Tura having only 9 and 15 dealers respectively with annual turnover over ₹ one crore had 4 and 9 ITs respectively.
- The ratio of registered dealers *vis-à-vis* one IT ranged from 127 (Circles I and II, Tura) to 1116 (Circle VI, Shillong) indicating the wide disparity in workload of the ITs. The position in this respect in the six selected circles as on 31 March 2012 is shown in the following table:

Table 7

Circle	Total number of registered dealers	Number of ITs posted	Number of registered dealers per IT
Circle-II, Shillong	1060	3	353
Circle-VI, Shillong	2231	2	1116

Jowai circle	2702	4	676
Nongpoh circle	1600	3	533
Circles-I & II, Tura	1145	9	127

➤ It was further seen that ST, Jowai circle despite having four ITs failed to scrutinise a single return for the period 2007-08 to 2011-12 whereas ST, Nongpoh circle with three ITs was able to scrutinise the returns of 800 dealers relating to the same period.

The situation pointed out was attributable to the Department's failure to prescribe norms with regard to deployment of staff and work output.

On this being pointed out, the Department while accepting the audit observation stated (February 2013) that the ratio of registered dealers *vis-à-vis* the number of ITs posted would be examined.

2.8.9.5 Mistakes in scrutiny

Out of 1,665 registered dealers falling in the sample selected by Audit for this PA in the six selected ST circles⁴⁴, the returns of 106 dealers were scrutinised by the STs. Examination of the assessment records of these 106 dealers revealed the following:

A Irregular allowance of Input Tax Credit (ITC)

ITC is a set-off allowed under Section 11(4) of the MVAT Act to any registered dealer on purchases made in the VAT chain which is adjusted against the tax liability of the dealer in subsequent sales. The ITC is, however, not allowed on purchases of goods specified in Schedule-V of the MVAT Act which are taxed only at the first point of sale. Section 11(4) of the MVAT Act requires a dealer to support his claim with a tax invoice showing the VAT amount separately in order to avail ITC.

- During June 2005 to March 2011, five⁴⁵ dealers registered with two circles, claimed ITC of ₹ 74.58 lakh on local purchases of goods without any supporting tax invoice but it was allowed by the STs resulting in undue benefit of ₹ 74.58 lakh.
- During March 2010 to March 2011, a dealer⁴⁶ registered with Circle-II, Shillong claimed ITC of ₹ 2.37 lakh on purchases of goods worth ₹ 22.17 lakh which were not covered by his RC but it was granted by the ST resulting in undue benefit of ₹ 2.37 lakh.
- During December 2005 to September 2006, two dealers⁴⁷ registered with Circle-II, Shillong claimed ITC of ₹ 84.45 lakh on purchase of cement worth ₹ 6.77 crore from two cement manufacturing companies⁴⁸

⁴⁴ refer Table 1 in para 2.8.4

⁴⁵ (1) M/s HP Construction, (2) M/s Ashok Industries, (3) M/s A.K. Enterprise, under Circle-II, Shillong (4) M/s Mahinder Electricals, (5) M/s Suchi Enterprise, Circle-VI, Shillong.

⁴⁶ M/s Sanitary Mall

⁴⁷ M/s Sew Construction and M/S Engineering Project India Pvt. Ltd.

⁴⁸ M/s Cement Manufacturing Co. Ltd. and M/S RKB Cements Pvt. Ltd.

which were exempted from the payment of tax under Meghalaya Industries (Sales Tax Exemption) Scheme, 2001. Thus, the ITC irregularly claimed by the dealer on purchase of tax exempted goods escaped the notice of the ST.

➤ During May 2005 to March 2006 a dealer⁴⁹ registered with Circle-II, Shillong purchased goods valued at ₹ 18.56 lakh from registered dealers within the State. The dealer, however, instead of claiming ITC claimed total exemption from payment of tax which was accepted by the ST resulting in short levy of VAT of ₹ 2.32 lakh.

➤ During March 2006 to September 2006, a dealer⁵⁰ registered in Circle-VI, Shillong claimed ITC on purchases of goods valued at ₹ 35.70 lakh from another dealer⁵¹ registered with the same circle and submitted tax invoices to support his claim. The second dealer, however, did not disclose the total turnover⁵² in his returns and thus evaded VAT of ₹ 1.12 lakh as the ST failed to verify the returns of the selling dealer with the tax invoices of the purchasing dealer. Besides, the second dealer was also liable to pay penalty of ₹ 2.24 lakh and interest of ₹ 1.97 lakh.

➤ During June 2005 to March 2011, three⁵³ dealers registered with two circles, purchased Schedule-V goods worth ₹ 2.76 crore and claimed ITC of ₹ 6.26 lakh which escaped the notice of the ST.

On this being pointed out, the Department stated (February 2013) that appropriate action would be taken by the STs. Further report was awaited (April 2013).

B *Non-payment of interest*

Under Section 40 of the MVAT Act, in case of non-payment of full tax within the due date by any dealer, simple interest at the rate of two *per cent* is payable by him on the amount due.

In Circles-II and VI, Shillong 19 dealers⁵⁴ paid their VAT dues belatedly after delays ranging between one month and 20 months for which interest amounting to ₹ 12.23 lakh was leviable but it escaped notice of the ST.

On this being pointed out, the Department stated (February 2013) that action would be taken by the STs. Further report was awaited (March 2013).

⁴⁹M/s Larsen & Toubro Ltd., ECC Division

⁵⁰Shri Remington Pyngrope

⁵¹M/s Naga Enterprise

⁵²Disclosed ₹8.95 lakh only.

⁵³M/sRajabala Drug Distributors, M/s Modern Drug Distributor in Circle-I, Tura, M/s Elite Drug Distributors in Circle-II, Shillong

⁵⁴**ST, Circle-II, Shillong:** (1)M/s Broadway Restaurant (2) M/s Delhi MistaanBhandaar (3) M/sPharma Stockist (4) M/s Traders Agencies (5) M/S R.G. Enterprise (6) M/S R.K. Pharmaceuticals (7) M/s In-Fashion (8) M/S Uncle's Shop (9) M/s The Right Shop (10) M/s Kamal Company (11) Kenlott Gaming Solutions Pvt. Ltd. (12) M/s Food, Fats & Fertilisers Ltd. (13) M/sMenon Piston Ltd. (14) M/s Larsen & Toubro Ltd. (15) M/s Engineering Project India Ltd. (16) M/s Jenson & Nicolson (17) M/s Reckitt Benckiser India Ltd.

ST, Circle-VI, Shillong: (18) M/s Custodian gas Agency (19) CSD Canteen, Upper Shillong.

C *Irregular grant of excess deduction*

Under Section 5(c) of the MVAT Act a dealer executing works contracts shall be liable to pay MVAT on the balance turnover after deduction of charges incurred towards labour, services *etc.* If such charges are not ascertainable from the terms of the contract then a deduction of 25 *per cent* is allowed on the total turnover.

- In Circle-II, Shillong, a dealer⁵⁵ executed a works contract valued at ₹ 2.04 crore between April 2008 and June 2009 and claimed deduction of ₹ 21.25 lakh towards labour charges in his returns. On the balance amount of ₹ 1.83 crore, he again claimed 25 *per cent* deduction towards labour charges. The ST while completing the scrutiny of returns in April 2011 accepted the claim. As the contractor had claimed exemption of ₹ 21.25 lakh towards labour charges, a further claim of exemption of 25 *per cent* on this account was irregular and resulted in under assessment of VAT of ₹ 5.72 lakh.

Under Rule 12(1) of the MVAT Rules, freight charges for delivery of finished goods only shall be deducted from the gross turnover.

- In Circle-II, Shillong, two⁵⁶ contractors claimed deduction on freight charges for transportation of cement *etc.* for execution of works contracts valued at ₹ 2.01 crore between July 2005 and March 2010 which was duly accepted by the ST at the time of scrutiny of the returns in April 2011. Since the expenditure incurred was not for transportation of finished goods, the exemption granted was irregular and led to under assessment of VAT of ₹ 25.13 lakh.

Under Rule 69 of the MVAT Rules, if work is allocated by a contractor to sub-contractor, the contractor shall be exempted from payment of tax if (i) he obtains a certificate from the sub-contractor to the effect that tax has been deposited against the work allotted and furnishes the same to the ST; (ii) the certificate is countersigned by the ST; and (iii) the certificate contain details of the work executed, total turnover, deduction made and amount of tax actually paid.

- In Circle-II, Shillong a dealer⁵⁷ in his return for the period May 2005 to March 2006 claimed deduction of ₹ 2.40 crore from his gross turnover on account of work allotted to a sub-contractor but he did not submit any certificate as per Rule 69. The ST, however, exempted the turnover resulting in under assessment of VAT of ₹ 30.05 lakh.

On this being pointed out the Department stated (February 2013) that the cases would be further examined.

⁵⁵ M/s HP Construction.

⁵⁶ M/s Sew Construction and M/s PES Engineering Pvt. Ltd.

⁵⁷ M/s Larsen & Toubro Ltd.

D *Non-interlinking of different returns*⁵⁸

➤ In Circle-VI, Shillong it was noticed that a dealer⁵⁹ submitted quarterly returns for the period 2009-10 showing total sale turnover as ₹ 2.73 crore which was accepted by the ST while making scrutiny in October 2010. However, in the audited account submitted by the dealer in July 2010 for the same period, the sales turnover was shown as ₹ 4.14 crore. Thus, failure on the part of the ST to interlink the returns led to concealment of turnover of ₹ 1.41 crore and evasion of VAT of ₹ 5.64 lakh on which penalty of ₹ 11.28 lakh was also leviable.

On this being pointed out, the Department stated (February 2013) that assessment had been completed under Section 45(1) of the MVAT Act and demand notice had been issued to the dealer for payment of tax. Report on recovery was awaited (March 2013).

➤ In Circle-II, Shillong it was noticed that two dealers⁶⁰ showed ₹ 2.94 crore as sales turnover in their quarterly returns submitted for the years 2005-06 to 2007-08 whereas in the annual returns submitted for the same periods, they showed sales turnover as ₹ 3.07 crore. This resulted in a difference in turnover of ₹ 12.37 lakh having tax effect of ₹ 0.51 lakh.

On this being pointed out, the Department while accepting the audit observation stated (February 2013) that notices had been issued to the dealers. Further report was awaited (March 2013).

2.8.9.6 *Non-realisation of revenue due to non-completion of assessments*

A *Best judgement assessment:* Under Section 45 of the MVAT Act, if a dealer fails to furnish returns or if the ST is not satisfied with the correctness of the returns furnished, then the ST may assess the dealer to the best of his judgement.

➤ In the selected six circles it was seen that out of the 1,665 dealers in the sample selected by Audit, 117 dealers (listed in **Annexure-V**) did not furnish any return for the period from 2007-08 to 2011-12 but the STs did not initiate any action to assess the dealers on best judgement basis.

➤ In Jowai circle, three⁶¹ dealers executed works contracts valued at ₹ 2.41 crore between May 2005 and March 2010 but did not submit any tax returns. Out of the three, one contractor (M/s Khlurstep Pakma) paid tax of ₹ 1.29 lakh only out of ₹ 21.02 lakh payable by him. Even though all the three contractors failed to pay VAT, the ST did not take any action to assess the dealers under Section 45 and realise the VAT assessed. This resulted in non-levy of VAT of ₹ 21.30 lakh.

➤ In Circle-II, Tura, two⁶² dealers executed works contracts valued at ₹ 13.90 crore between October 2006 and March 2009 but disclosed only

⁵⁸ Quarterly, Annual and Audited Accounts.

⁵⁹ M/s P.K. Electronics.

⁶⁰ In-Fashion and Selection Centre

⁶¹ M/s Tan Pamthied, M/s Khlurstep Pakma and M/s Jimi Massar

⁶² M/s PK and Co. and M/s Dewan B. Marak

₹ 1.50 crore as turnover during the aforesaid period. As a result, turnover of ₹ 12.40 crore was concealed by the two contractors and VAT of ₹ 1.16 crore was evaded. The ST also did not initiate any action to assess the dealers on best judgement basis and recover the tax evaded.

On this being pointed out, the Department stated (February 2013) that appropriate action would be taken by the concerned STs. Further report on recovery was awaited (March 2013).

B Audit assessment: Under Rule 35(2) of the MVAT Rules, the COT shall select 10-20 *per cent* dealers for audit assessment by 31 January every year. The selection shall be made on random basis district-wise. Section 57 of the MVAT Act stipulates that no assessment in respect of any tax period shall be made after expiry of five years from the end of that tax period. The aims and objectives of ‘audit assessment’ are to:

- protect the expected yield from the tax;
- identify the amount of tax and bring errors to accounts; and
- seek value for money in deployment of ‘audit’ resources.

The COT in July 2009 constituted an Audit team comprising of a DCT, an ACT and the ST, EB. The audit team was further reconstituted in April 2010 to include two DCTs, two ACTs and one ST, EB. It was however noticed that despite the constitution of audit team, the COT did not select any dealers for audit assessments since the introduction of VAT in Meghalaya. As a result not a single audit assessment was completed till date. Taking minimum of 10 *per cent* of dealers for audit assessments, the position of arrears in respect of the six selected circles is shown in the following table:

Table 8

Year	No. of dealers	No. of returns ⁶³	Assessment due		No. of assessments made	Position of arrears	
			Dealers	Returns		Dealers	Returns
2007-08	3419	17,095	342	1,710	NIL	342	1,710
2008-09	5003	25,015	500	2,500	NIL	500	2,500
2009-10	6185	30,925	618	3,090	NIL	618	3,090
2010-11	7249	36,245	724	3,620	NIL	724	3,620
2011-12	9060	45,300	906	4,530	NIL	906	4,530
Total						3,090	15,450

As per Section 57, the case records of 3,419 dealers involving 17,095 returns for the period from 2005-06 to 2006-07 became time-barred by 2011-12 and no audit assessment can be carried out. Thus, due to failure on the part of the COT to select dealers for audit assessment, no audit assessments were carried out by the audit team and the aims and objectives of audit assessments could not be achieved; besides, it left scope for evasion of VAT by unscrupulous dealers.

One case, in which VAT could have been realised but was not, because audit assessment was not carried out, is narrated in the following paragraph:

⁶³ four quarterly returns and one annual return per year

The Shillong Bench of the Gauhati High Court in an interim order in March 2007 directed Government departments/organisations to deduct VAT at the flat rate of five *per cent* on total value of works contracts in respect of thirteen contractors' associations without allowing any deduction towards labour charges. Subsequently, the Division Bench of the Gauhati High Court in September 2009 directed the departments/organisations to deduct VAT at 12.5 *per cent* on value of works contract (after allowing admissible deduction towards labour *etc.*) and also recover the balance VAT in those cases where it was deducted at five *per cent*.

➤ 14⁶⁴ dealers executed work contracts valued at ₹ 50.31 crore between April 2007 and March 2011 and paid VAT of ₹ 1.75 crore at 5 *per cent* following the interim order of the High Court. However, even after the final verdict of the High Court directing the Government departments/organisations to recover VAT at 12.5 *per cent*, the balance amount of VAT of ₹ 3.03 crore was yet to be payable by these dealers. No action was taken by the COT to undertake audit assessments of these dealers and recover the balance amount. This resulted in non-realisation of VAT of ₹ 3.03 crore.

On this being pointed out, the Department stated (February 2013) that audit assessment was an ongoing process and four dealers had so far been assessed. This clearly indicates deviation from requirement under the Rule 35(2) to select 10-20 *per cent* dealers for audit assessment by 31 January every year.

We recommend that a system should be kept in place for timely and effective completion of scrutiny and assessments.

2.8.10 Working of checkposts and Enforcement Branch

2.8.10.1 Non-invoking of provisions of MVAT Act

Section 76 of the MVAT Act empowers the GOM to erect checkposts to prevent or check evasion of tax. There are nine⁶⁵ notified checkposts in the State. Under Section 76(5) of the MVAT Act, where in the case of movement of goods without proper documents, the officer-in-charge of checkpost shall impose a penalty equal to five times the amount of tax leviable on such goods or twenty *per cent* of the value of goods, whichever is higher. As per Section 90(xviii) of the MVAT Act, whoever furnishes incorrect or fictitious names or addresses of consignors or consignees or incorrect particulars of goods in the documents accompanying the goods while importing or exporting goods into or outside the State, shall be punishable with fine of ₹ 10,000 and/or imprisonment for six months.

⁶⁴ (1) M/s Singla Associates (2) M/s Marbaniang (3) M/s Sawkmie (4) M/s JS Khardewsaw (5) M/s M Kharpran (6) M/s BD Marbaniang (7) M/s JD Kharchandy (8) M/s M Kharkrang (9) M/s DG Marbaniang (10) M/s Caroline Pala (11) M/s T Kurbah (12) M/s RLM Contractors & Suppliers (13) M/s B Myllemngap (14) M/s Highland Construction

⁶⁵ **Ri-Bhoi District:** (1) Byrmihat, (2) Umsiang. **Jaintia Hills District:** (3) Garampani (4) Umkiang. **East Garo Hills District:** (5) Dainadubi (6) Mendipathar. **West Garo Hills District:** (7) Bajengdoba (8) Tikrikilla. **West Khasi Hills District:** (9) Athiabari.

Examination of records of the two selected checkposts at Byrnihat and Umkiang revealed the following irregularities:

➤ In Byrnihat checkpost during the period⁶⁶ 2010-11 to 2011-12 penalty of ₹ 0.95 lakh was levied in 35 cases for carrying goods valued at ₹ 148.47 lakh without valid documents as against a minimum of ₹ 24.16 lakh being the tax payable at the rate of 20 *per cent* of the value of goods. Thus in these cases, there was short levy of penalty of ₹ 23.21 lakh and consequent loss of revenue to that extent.

➤ In Meghalaya, coal and limestone are exported out of the State on the strength of 'P'⁶⁷ forms issued by the ERTS Department on payment of advance tax. Consequent upon a Supreme Court (SC) order⁶⁸ (November 2005) limiting the maximum permissible load to 9 MT per truck, the ERTS Department notified the advance tax payable per 'P' form as ₹ 1100/₹ 350 for coal/limestone. For trucks carrying coal/limestone in excess of 9 MT, advance tax in the form of additional security⁶⁹ was to be levied and collected at the checkposts on payment of ₹ 120/₹ 35 per MT of excess load carried.

It was observed that while the checkposts at Byrnihat and Umkiang levied and collected the additional security on excess load of coal/limestone carried by trucks, penalty under Section 76(5) of the MVAT Act for carrying goods without proper documents was not imposed at the two checkposts. During 2010-11 to 2011-12⁷⁰, 2.26 lakh MT and 1.24 lakh MT of coal and limestone respectively were carried by 1,94,302 trucks through Byrnihat and Umkiang checkposts in excess of the permissible limit without any valid documents. Although the checkposts authorities collected additional security of ₹ 3.28 crore (coal ₹ 2.77 crore and limestone ₹ 0.51 crore), penalty of ₹ 16.35 crore (five times the tax amount of ₹ 3.28 crore) under Section 76(5) of the MVAT Act was not realised.

On this being pointed out, the Department stated (February 2013) that in both the above cases, composition fee was levied. The reply is not acceptable as Section 76 clearly stipulates penalty at five times the rate of tax or 20 *per cent* of the value of goods is to be levied for transport of goods without valid documents.

➤ During the period⁷¹ from 2010-11 to 2011-12, fine/penalty in 11,429 cases were levied at ₹ 100 in each case for furnishing incorrect particulars of goods in transit and an amount of ₹ 11.43 lakh was collected as composition fee although no provision exists in the MVAT Act/Rules to impose ₹ 100 as

⁶⁶ The period from April 2007 to March 2010 already featured in the Audit Report for the year ended 31 March 2010.

⁶⁷ One 'P' form authorises a dealer to transport 9 MT of coal/limestone per truck. The 'P' form is to be produced at the exit checkpost.

⁶⁸ In November 2005, Hon'ble Supreme Court held that the maximum permissible load that trucks could carry is nine MT. [ParamjitBhasin and others v. Union of India and others WP (Civil) 136 of 2003].

⁶⁹ Vide COT's notifications dated September 2003 for coal and May 2007 for limestone.

⁷⁰ The period from April 2007 to March 2010 already featured in the Audit Reports for the year ended 31 March 2010 and 31 March 2011.

⁷¹ The period from April 2007 to March 2010 already featured in the Audit Reports for the year ended 31 March 2010 and 31 March 2011.

penalty for any offence. The penalty leviable in these cases was ₹ 11.43 crore had Section 90 been invoked but for non-invoking the provisions of the MVAT Act, the same was not levied.

2.8.10.2 *Non-interlinking of records between Taxation checkpoints and Mining checkpoints*

To check overloading of trucks and non-payment of royalty on minerals carried in excess of the legally permissible load of 9 MT per truck, the Mining & Geology Department (MGD) has weighbridges installed on the major transit routes. Any vehicle carrying minerals has to get itself weighed at the weighbridge and obtain a weighment slip which is to be produced at the MGD checkpoint and additional royalty and penalty if any, is to be paid on the excess load carried. The ERTS Department does not have its own weighbridges and thus the weighment slips issued by the MGD weighbridges are accepted by the ERTS checkpoints.

Cross checking of records of the ERTS checkpoints and the MGD checkpoints at Byrnihat and Umkiang revealed that during the period⁷² from 2010-11 to 2011-12, 2.39 lakh MT and 2.08 lakh MT of excess coal and limestone respectively was shown as passing through the MGD checkpoints whereas during the same period 2.26 lakh MT and 1.24 lakh MT of excess coal and limestone was shown as passing through the ERTS checkpoints. Thus 0.13 lakh MT of coal and 0.84 lakh MT of limestone was allowed to pass through the ERTS checkpoints without realising additional security of ₹ 44.46 lakh leading to loss of revenue. Besides, penalty of ₹ 2.22 crore (five times the tax of ₹ 44.46 lakh) under section 76(5) was also leviable.

On this being pointed out, the Department stated (February 2013) that DCT had been instructed to enquire into the matter. Further report was awaited (March 2013).

2.8.10.3 *Non-delegation of powers*

Section 30(3) of the MVAT Act stipulates that the ST, EB can carry out investigation into cases of suspected evasion of tax of his own motion or upon the COT's orders. However, the ST, EB has not been empowered with the necessary authority, as shown in the following table, to discharge the duties prescribed under Section 30(3) of the Act *ibid*:

Section of the VAT Act	Provisions of the Section empowering the COT to	Delegated to ST, EB
84	Inspect, search and seize dealer's accounts	No
76	Inspect and detain vehicles carrying taxable goods while in movement within the State.	No

Thus, due to the failure of the COT to delegate the above provisions of the MVAT Act, the ST, EB was constrained in his capacity to discharge his

⁷² The period from April 2009 to March 2010 already featured in the Audit Reports for the year ended 31 March 2011.

mandate effectively. It may be mentioned that in the neighbouring State of Assam, the above provisions of the VAT Act of that State have been delegated to the EB.

Further, during 2007-08 to 2011-12 the ST, EB booked 749 offence cases and collected ₹ 30.03 lakh as penalty under Section 96⁷³ of the MVAT Act. Since Section 96 was not delegated to the ST, EB such collection of penalty was irregular and against the spirit of the taxation laws.

On this being pointed out, the Department stated (February 2013) that Section 84 had been delegated to the ST, EB as per the Table below Rule 7 of the MVAT Rules. The reply is not acceptable as only Section 80 (Registration of Transporters) has been delegated to the ST, EB as per the Table below Rule 7. The Department failed to comment on non-delegation of powers to the ST, EB under section 76 of the MVAT Act.

2.8.10.4 Lack of control on the functioning of EB

Section 30(3) of the MVAT Act states that ST, EB on information or of its own or upon COT's orders carry out investigation or hold inquiry into any case of suspected evasion of tax and send a report of such inquiry to the COT.

Examination of records of the COT and the ST, EB revealed that during 2007-08 to 2011-12, not a single investigation or inquiry was carried out by the ST, EB. Despite this situation, no action was taken by the COT to improve or monitor the performance of the ST, EB. During the same period, 29 cases of evasion of tax involving ₹ 19.71 crore were pointed out by Audit through 18 Inspection Reports issued to the ERTS Department. Against this backdrop, the functioning of the ST, EB left much to be desired particularly in the context of its mandate to monitor the activities of dealers and safeguard the revenue interest of the State.

On this being pointed out, the Department stated (February 2013) that the ST, EB had been directed to submit action taken report in this regard. Further report was awaited (March 2013).

We recommend that the checkpoints and EB may be strengthened in order to prevent leakage of Government revenue.

2.8.11 Other points of interest

2.8.11.1 Non/Short deposit of VAT deducted at source

Section 106 of the MVAT Act provides for deduction of VAT at source by Government departments while making payment to suppliers/contractors and deposit of the VAT so deducted, into government account. Rule 39(3)(a) of the MVAT Rules stipulates that the person responsible for deduction of VAT shall deposit the amount by *challan* within ten days and forward the same to

⁷³ Under the MVAT Act, for any offence related to evasion of tax or failure to abide by the provisions of the MVAT Act, penalty is leviable at ₹10,000 and/or six months in imprisonment [Section 90]. In lieu of prosecution, however, the offence can be compounded at double the amount of tax [Section 96].

the concerned ST along with a brief account statement showing the value of the goods supplied/work executed and amount of VAT deducted.

- Five⁷⁴ Public Works Divisions issued certificates of deduction of tax at source between May 2005 and March 2010 for ₹ 1.62 crore but did not deposit the VAT till date.
- The Secretary, Meghalaya State Sports Council, Shillong deducted VAT amounting to ₹ 1.06 crore between April 2006 and 31 March 2009 but deposited only ₹ 0.26 crore. The balance ₹ 0.80 crore was yet to be deposited (March 2013).

2.8.11.2 Short deduction of VAT at source

- Two⁷⁵ dealers executed works contracts valued at ₹ 5.34 crore between May 2005 and March 2008 but the Director General, Assam Rifles, Shillong deducted VAT at 8 *per cent* instead of 12.5 *per cent* resulting in short deduction of VAT of ₹ 24.51 lakh.
- 38⁷⁶ dealers executed electrical works (supply, fitting and installation) valued at ₹ 1.88 crore between April 2008 and March 2010 but the Executive Engineer, Electrical Division, PWD, Shillong at the time of making payment deducted 30 *per cent* for labour charges instead of 10 *per cent*⁷⁷. As a result VAT of ₹ 17.79 lakh was deducted instead of ₹ 21.11 lakh resulting in short deduction of VAT of ₹ 3.32 lakh.
- A dealer⁷⁸ executed works contract valued at ₹ 1.11 crore between October 2006 and March 2007 but the Project Director, District Rural Development Agency, Shillong deducted VAT of ₹ 3.23 lakh instead of ₹ 10.40 lakh leading to short deduction of ₹ 7.17 lakh.
- Two⁷⁹ contractors executed work contracts valued at ₹ 54.16 lakh for the period 2009-10 but the Director, Sericulture & Weaving, Shillong deducted VAT of ₹ 0.86 lakh instead of ₹ 5.08 lakh resulting in short deduction of VAT of ₹ 4.22 lakh.
- 35⁸⁰ contractors executed works contract valued at ₹ 3.98 crore between April 2008 and March 2011 but the EE, PWD (Roads), Mawkyrwat Division deducted VAT of ₹ 27.65 lakh instead of ₹ 37.34 lakh leading to short deduction of VAT of ₹ 9.69 lakh.

In all the above cases the Department stated (February 2013) that the matter would be taken up with the concerned departments. Further report was awaited (March 2013).

⁷⁴ (1) EE, PWD (Roads), NEC Divisions, Jowai (2) EE, PWD (Roads) Sohra Division (3) EE, PWD (Roads) Nongpoh Division (4) EE, PWD (Roads) Jowai Central Division (5) EE, PWD (Roads) NH Division, Shillong

⁷⁵ M/s Dikkanchi D. Shira and M/s Engineering Projects India Ltd.

⁷⁶ Details in **Annexure VI**

⁷⁷ Deduction towards labour charges for supply and installation of electrical goods is 10 *per cent* as provided in Schedule IVA of the MVAT Act.

⁷⁸ M/s C. Pala

⁷⁹ M/s Neil Armstrong Sangma and M/s Demington Marbaniang

⁸⁰ Details in **Annexure VII**

2.8.11.3 Non-deduction of VAT at source

- 135⁸¹ dealers supplied goods/executed work contract valued at ₹ 9.74 crore between May 2005 and November 2011 but VAT of ₹ 80.36 lakh was not deducted by seven Central/State Government agencies⁸².
- 53⁸³ contractors executed works contract valued at ₹ 1.82 crore between April 2007 and March 2010 but the EE, PWD (Roads), Baghmara Division did not deduct VAT of ₹ 17.02 lakh.

In all the above cases the Department stated (February 2013) that the matter would be taken up with the concerned departments. Further report was awaited (March 2013).

We recommend that the Central/State Government agencies should be given strict instructions to make proper deductions from contractors'/suppliers' bills and promptly deposit the same into Government account.

2.8.11.4 Irregular grant of remission of VAT

A Investment proposals submitted to the Single Window Agency⁸⁴ (SWA) shall include among other things, the goods to be manufactured. A dealer cannot claim exemption from payment of tax on sale of manufactured goods which are not approved by the SWA.

- Four dealers claimed irregular remission of VAT of ₹ 4.75 crore on sale of manufactured goods not approved by the SWA as under:

Table 9

(₹ in crore)

Name of the ST office	Name of the unit	Items approved by SWA	Items manufactured over and above SWA approval	(Turnover of sale of goods listed in preceding column)/ (Tax effect)	Irregular VAT remission claimed (at 99 per cent of VAT collected)
ST, Nongpoh	M/S Nezone Industries Ltd.	GI pipes	MS Black Pipes, Tubular Poles	<u>4.04</u> 0.16	0.15
	M/S Umadatt Industries Ltd.	HDPE bags	PP fabrics and PP wastage	<u>6.28</u> 0.79	0.78
	M/S H.M. Cements	Cement	Clinker	<u>17.26</u> 2.16	2.14
	M/S Commercial Iron & Steel Co. Ltd.	MS Ingots	MS Rods and Ferro-Silicon	<u>42.31</u> 1.69	1.68

⁸¹ Details in **Annexure VIII**

⁸² (1) District Rural Development Agency, Shillong (2) Directorate of Information & Public Relations, Shillong (3) EE, West Garo Hills, Irrigation Division, Tura (4) Superintendent of Police (Fire & Emergency) Shillong (5) Director, North East Police Academy, Umiam (6) EE, PWD (Engg), Meghalaya (7) Director of Housing, Shillong.

⁸³ Details in **Annexure-IX**

⁸⁴ A High Powered Committee chaired by the Chief Minister for speedy approval of industrial proposals in the State.

On this being pointed out, the Department stated (February 2013) that in all the above cases the industries had been approved by the Director of Industries to manufacture the items. The reply is not acceptable as the SWA did not approve the same and thus the remission claimed was irregular.

B Under the Meghalaya Industrial (Sales Tax Remission) Scheme 2006, eligible industries are entitled to benefits on sales of finished goods manufactured by the unit not exceeding the installed capacity.

- A dealer⁸⁵ was allowed to manufacture candlesticks valuing ₹ 14 crore annually. But the unit manufactured candlesticks valuing ₹ 15.07 crore during 2010-11 and the same was accordingly accepted by the ST. Such irregular grant of remission on excess amount of ₹ 1.07 crore led to short payment of VAT of ₹ 4.22 lakh.

On this being pointed out (January 2013) the Department stated (February 2013) that the Meghalaya Industrial (Sales Tax Remission) Scheme 2006 did not put ceiling on the monetary value of the finished goods but on the installed capacity. The reply is not acceptable as in the instant case the dealer was allowed to claim remission on manufactured goods on the basis of the monetary limit and no installed capacity was prescribed for the dealer for claiming remission.

C As per the remission scheme, an industrial unit approved by the SWA on or before 30 April 2005 shall only be treated as an eligible unit.

- An industrial unit⁸⁶ registered with ST, Nongpoh was approved by SWA on 20 October 2006 and was accordingly issued Eligibility Certificate. Between April 2008 and March 2010 the unit manufactured goods valued at ₹ 5.17 crore and VAT of ₹ 20.45 lakh was collected. The ST completed the scrutiny in August 2011 and allowed the unit to retain 99 *per cent* of VAT amounting to ₹ 20.25 lakh. Since the unit was approved by SWA after 30 April 2005, the grant of remission was irregular.

We recommend that the industries which have irregularly claimed tax exemption/remission under the Industrial Policy and the tax incentive schemes should be directed to deposit the same into the Government account.

2.8.12 Conclusion

- The MVAT Act though taken from a uniform format adopted throughout the country had significant deficiencies and misrepresentations.
- The system in place for registration, survey, scrutiny and assessment of returns was either non-existent or weak.

⁸⁵ M/s Balaji Candle Industry.

⁸⁶ M/s Seven Sister Plastics Pvt. Ltd.

- There was no proper mechanism at the higher management level to monitor the performance and activities of circle offices.
- Powers vested with the COT under the MVAT Act had not been delegated to subordinate authorities to enable the latter to carry out their responsibilities more effectively.
- The checkpoints and EB did not serve the purpose for which they were constituted and consequently there was leakage of revenue.
- Central/State Government agencies were not promptly depositing VAT deducted by them from contractors'/suppliers' bills into government account as prescribed under the MVAT Rules leading to non/short deposit of Government revenue.
- Industries were irregularly granted tax exemption / remission under the Industrial Policy of 1997 and the Incentive Schemes of 2001 and 2006.

2.8.13 Summary of recommendations

- **The ERTS Department may take action to amend the MVAT Act and Rules suitably to avoid any ambiguity for effective levy and collection of MVAT.**
- **A system should be kept in place for timely and effective completion of scrutiny and assessments.**
- **Checkposts and EB may be strengthened so as to prevent leakage of Government revenue.**
- **The Central/State Government agencies should be given instructions to make proper deductions from contractors'/suppliers' bills and promptly deposit the same into Government account.**
- **Industries which have irregularly claimed tax exemption / remission under the Industrial Policy and the tax incentive schemes should be directed to deposit the same into Government account.**

2.9 Evasion of Tax

Failure of the Directorate of Technical Education to deduct tax at source enabled a dealer to conceal turnover of ₹ 90.03 lakh and evade tax of ₹ 11.25 lakh and for which, interest of ₹ 14.63 lakh and penalty of ₹ 22.50 lakh was leviable.

*Section 106 of the Meghalaya Value Added Tax (MVAT) Act, 2003 requires government departments/organisations to deduct tax at source while making payments to contractors/suppliers failing which the person authorising the payment shall be punishable with imprisonment of up to six months or with a fine not exceeding ₹ 10,000. Under section 90 of the MVAT Act, these penal provisions also apply to a dealer who evades in any way the liability to pay tax. In lieu of prosecution however, penalty at twice the tax payable is leviable under section 96. Further under section 40 of the Act *ibid*, simple interest at the rate of two per cent per month on the tax payable is also leviable.*

Test check in March 2010 of the records for the period August 2007 to September 2009 of the Directorate of Technical Education (DTE), Government of Meghalaya (GOM) revealed that a dealer⁸⁷ supplied laboratory equipment to 99 schools between October 2005 and September 2006 for which the DTE paid the dealer ₹ 90.03 lakh between December 2005 and December 2006 without deducting MVAT of ₹ 11.25 lakh⁸⁸. A cross-verification in March 2011 of the dealer's quarterly tax

assessment returns filed with the ST, Circle III, Shillong revealed that the dealer had disclosed a 'nil' turnover for the quarters October-December 2005, April-June 2006 and July-September 2006. A turnover of ₹ 3.47 lakh only was disclosed for the quarter January-March 2006 on which ₹ 0.43 lakh was shown as MVAT deducted at source (by organisations other than the DTE). As such, the inexplicable omission of the DTE to deduct tax at source enabled the dealer to conceal his sales of ₹ 90.03 lakh to the DTE and evade tax of ₹ 11.25 lakh. For the wilful evasion, the dealer was liable to pay interest of ₹ 14.63 lakh (calculated upto April 2012) and penalty of ₹ 22.50 lakh.

The case was reported to the Department in June 2011; reply was awaited (March 2013).

⁸⁷ M/s Sunshine Suppliers, Jaiaw Langsning, Shillong.

⁸⁸ Rate of tax applicable is 12.5 per cent.

2.10 Irregular grant of exemption

A bonded warehouse was irregularly granted tax exemption on liquor sales of ₹ 73.63 crore resulting in non-levy of tax of ₹ 14.72 crore.

Under Section 44 of the MVAT Act, liquor is taxable at the rate of 20 per cent at the first point of sale within Meghalaya.

During test check of records of the ST, Circle VI, Shillong in March 2011 it was noticed that a bonded warehouse⁸⁹ disclosed liquor sales of ₹ 73.63 crore from September 2005 to November 2010 on which it claimed exemption from payment of tax which was accepted by the ST. Since the MVAT Act specifically stipulates that liquor is taxable at 20 per cent at the first point of sale, the grant of the exemption by the ST was irregular and led to non-levy of tax amounting to ₹ 14.72 crore.

The case was reported to the Department in May 2011; reply was awaited (March 2013).

2.11 Excess/irregular retention of tax

A cement manufacturer collected excess tax of ₹ 17.17 crore which it was liable to forfeit besides paying a penalty of ₹ 34.34 crore. For not submitting audited accounts, it was further liable to pay a penalty of ₹ 0.74 crore. Two other cement manufacturers irregularly claimed subsidy of ₹ 4.45 crore which they were liable to forfeit besides paying penalty of ₹ 8.90 crore.

Furthermore, section 3(b) of the Meghalaya Industries (Tax Remission)

The MVAT Act stipulates that

- *if a dealer collects tax in excess of the tax payable by him, he is liable to pay, in addition to the tax, a penalty equal to twice the sum so collected by way of tax [section 61(i)(b)];*
- *'clinker' is taxable at the rate of four per cent (Schedule-II of the MVAT Act); and,*
- *where the gross turnover of a dealer exceeds ₹ 40 lakh in any year, a copy of the audited accounts of that year should be furnished to the Department within six months of the end of that year failing which, in addition to the tax payable, a penalty equal to 0.1 per cent of the turnover of the dealer, shall be levied (Section 86).*

Scheme, 2006 (Scheme) permits cement and clinker manufacturing units with an installed capacity of more than 600 MT per day to retain 96 per cent⁹⁰ of tax collected as subsidy while the balance four per cent is to be deposited into Government account. To be eligible for the subsidy, the industrial unit has to be first approved by the State's Single Window

⁸⁹ M/s Mohan Meakins Ltd, Ferndale Compound, Keating Road, Shillong.

⁹⁰ 99 per cent in case of cement manufacturing units with capacity of less than 600 MT per day

Agency⁹¹ (SWA) following which it is to obtain an Eligibility Certificate (EC) from the Industries Department, GOM and a Certificate of Entitlement (COE) from the Excise, Registration, Taxation & Stamps (ERTS) Department, GOM.

2.11.1 A test check of the records of the ST, Khliehriat, Jaintia Hills in May 2011 revealed that an industrial unit⁹² permitted to manufacture cement and clinker was allowed to retain 96 *per cent* of tax collected as subsidy. The monthly tax returns submitted by the unit to the ST however, indicated that it collected tax on 'clinker' at 12.50 and 13.50⁹³ *per cent* instead of 4 *per cent*. Between April 2009 and March 2011, the unit sold ₹ 209.38 crore of 'clinker' and collected tax of ₹ 26.27 crore (instead of ₹ 8.38 crore) out of which it retained ₹ 25.22 crore⁹⁴ as subsidy and remitted ₹ 1.05 crore⁹⁵ to Government. For the collection of excess tax of ₹ 17.89 crore⁹⁶ out of which it retained ₹ 17.17 crore as subsidy, the unit was liable to pay a penalty of ₹ 34.34 crore⁹⁷ besides forfeiting the subsidy of ₹ 17.17 crore availed.

Further, although the turnover of the unit exceeded ₹ 40 lakh in 2008-09, 2009-10 and 2010-11, it failed to furnish audited copies of its accounts for these years within the period as stipulated under the MVAT Act on account of which a penalty equal to 0.1 *per cent* amounting to ₹ 0.74 crore⁹⁸ was leviable.

On this being pointed out in May 2011, the ST referred the matter to the Commissioner of Taxes (COT) for a clarification. The COT in January 2012 clarified that cement 'clinker' was taxable at the rate of four *per cent*. Further action by the ST to recover the tax and penalty from the unit was awaited (March 2013).

2.11.2 An industrial unit⁹⁹ was granted approval by the SWA in August 2003 to manufacture 900 MT of cement per day and the EC was accordingly issued by the Industries Department in April 2006. However, the COE issued by the ERTS Department in May 2006 allowed the unit to avail the benefit of subsidy on the production of cement as well as 'clinker' (an intermediate product in the manufacture of cement). A test check of the records of the ST, Jowai in May 2011 revealed that the unit started commercial production from April 2006 and during 2006-07, sold 18915.81 MT of 'clinker' valuing ₹ 6.78 crore and on which it collected tax of ₹ 0.85 crore (at 12.50 *per cent*) of which it retained ₹ 0.82 crore as subsidy (96 *per cent*) and remitted the remaining amount of ₹ 0.03 crore to Government.

⁹¹ The SWA is chaired by the Chief Minister and was set up to facilitate speedy approval for setting up industrial units in the State.

⁹² M/s Cement Manufacturing Company Limited, Lumshnong, Jaintia Hills.

⁹³ 13.50 % *w.e.f* March 2011

⁹⁴ 96 *per cent* of ₹ 26.27 crore = ₹ 25.22 crore

⁹⁵ 4 *per cent* of ₹ 26.27 crore = ₹ 1.05 crore

⁹⁶ ₹ 26.27 crore *minus* ₹ 8.38 crore = ₹ 17.89 crore

⁹⁷ Penalty at double the amount of tax retained as subsidy by the unit

⁹⁸ Total turnover (2008-09, 2009-10, 2010-11) = ₹ 740.04 crore

Penalty leviable at 0.1 *per cent* = ₹ 0.74 crore

⁹⁹ M/s Meghalaya Cement Limited, Lumshnong, Jaintia Hills

Since the unit was granted permission by the SWA to manufacture cement only, the inclusion of 'clinker' in the COE issued by the ERTS was irregular and therefore, the unit was not eligible for subsidy on sale of 'clinker'. Hence the unit was liable to forfeit the tax of ₹ 0.82 crore which it retained as subsidy and in addition, pay a penalty of ₹ 1.64 crore¹⁰⁰.

2.11.3 Another cement manufacturing unit¹⁰¹ registered with ST, Nongpoh was granted approval by the SWA in June 1997 to manufacture of 350 MT of cement per day and the EC was accordingly issued by the Industries Department in November 2003. However, in this case also, the COE issued by the ERTS Department in May 2006 allowed the unit to avail the benefit of subsidy on the production of cement as well as 'clinker'. Scrutiny of assessment records of the dealer in September 2011 revealed that between April 2005 and March 2011, the dealer sold 1.23 lakh MT of 'clinker' valuing ₹ 29.36 crore and collected tax of ₹ 3.67 crore (at 12.50 per cent) of which it retained ₹ 3.63 crore as subsidy (99 per cent) and remitted the remaining amount of ₹ 0.04 crore to government.

Since the unit was granted permission by the SWA to manufacture cement only, the inclusion of 'clinker' in the COE issued by the ERTS was irregular and therefore, the unit was not eligible for subsidy on sale of 'clinker'. Hence the unit was liable to forfeit the tax of ₹ 3.63 crore which it retained as subsidy and in addition, pay a penalty of ₹ 7.26 crore¹⁰².

After the case was pointed out (September 2011) the ST, Nongpoh stated (May 2012) that notice was being issued to the unit. Further progress in the matter was awaited (March 2013).

2.12 Under-assessment of tax due to undervaluation of sale price of petroleum products

Two dealers concealed a turnover of ₹0.43 crore thereby evading tax of ₹5.87 lakh and for which a penalty of ₹8.80 lakh was also leviable.

Section 16 of the Meghalaya (Sales of Petroleum etc.) Taxation Act prescribes that if any dealer conceals his turnover or deliberately furnishes inaccurate sales particulars, the COT may direct that such a dealer shall pay in addition to the tax payable by him, a penalty not exceeding one and-a-half times that amount. In addition, Section 3A of the Act provides for levy of a surcharge of 2 per cent on the tax payable. In Meghalaya, motor spirit (MS) and high speed diesel (HSD) is taxable at 20 per cent and 12.5 per cent with effect from 31 January 2000 and 21 September 2004 respectively.

It was noticed during a test check of assessment records of the ST, Khliehriat in May 2011 that two Hindustan Petroleum Corporation (HPC) dealers¹⁰³ sold 53,555 litres of MS and 8,70,895 litres of HSD in February

¹⁰⁰ Penalty at double the amount of tax retained as subsidy by the unit

¹⁰¹ M/s HM Cements Ltd., Byrnihat, Ri-bhoi.

¹⁰² Penalty at double the amount of tax retained as subsidy by the unit

¹⁰³ M/s Mawrie Filling Station, Sutnga, Jaintia Hills and M/s Shembha Filling Station, Lumshnong, Jaintia Hills (both registered with ST, Khliehriat from November 2010).

2011 and March 2011 for ₹ 0.26 crore and ₹ 2.88 crore respectively. The turnover disclosed by both dealers was accepted and duly assessed by the ST in April 2011. A cross-verification with records of another HPC dealer¹⁰⁴ also registered with ST, Khliehriat, however, revealed that this dealer sold MS and HSD at ₹ 57.68 and ₹ 37.38 per litre respectively during January 2011 to March 2011. Going by these rates, the turnover on the sale of MS and HSD of the two dealers should have been ₹ 0.31 crore and ₹ 3.26 crore respectively. In consequence, the dealers concealed a turnover of ₹ 0.43 crore and evaded tax of ₹ 5.75 lakh on which surcharge of ₹ 0.12 lakh was leviable besides penalty of ₹ 8.80 lakh.

The case was reported to the Department in May 2011; reply was awaited (March 2013).

2.13 Irregular grant of exemption

A cement plant was allowed to avail of subsidy beyond its installed capacity resulting in underassessment of tax of ₹ 29.50 crore.

Under the Meghalaya Industries (Sales Tax Remission) Scheme, 2006, cement manufacturing units with installed capacity of more than 600 MT per day are entitled to retain 96 per cent of tax collected on sales, as subsidy. This benefit however, was to be restricted to their installed capacity. In Meghalaya, cement is taxable at the rate of 12.50 per cent.

A cement plant¹⁰⁵ registered with ST, Jowai with an installed capacity of 2.97 lakh MT of cement started commercial production from April 2006. A scrutiny of the assessment records revealed that during 2007-08 to 2009-10, the plant claimed and was allowed the benefit of

subsidy on sales of 14.31 MT of cement valued at ₹ 625.08 crore produced during this period. This was irregular as the plant was only entitled to subsidy on sale of 8.91 lakh MT¹⁰⁶ of cement valued at ₹ 389.12 crore. The unit was thus allowed the benefit of subsidy on an extra 5.40 lakh MT of cement sales at ₹ 235.96 crore on which it collected tax of ₹ 29.50 crore¹⁰⁷ out of which it irregularly retained ₹ 28.32 crore¹⁰⁸ as subsidy and thereby short changing the public exchequer to this extent.

The case was reported to the Department in June 2011; reply was awaited (March 2013)

¹⁰⁴ M/s Hatisingmari Service Station, 7th Mile, Jowai.

¹⁰⁵ M/s Meghalaya Cement Limited.

¹⁰⁶ 2.97 lakh MT per annum X 3 years = 8.91 lakh MT

¹⁰⁷ 12.50 per cent of ₹ 235.96 crore

¹⁰⁸ 96 per cent of ₹ 29.50 crore

2.14 Misuse of 'C' forms

Two cement companies misused 'C' forms for which they were liable to pay a penalty of ₹ 36.67 lakh.

Under the Central Sales Tax (CST) Act, 1956 a registered dealer by giving a declaration in form 'C', can purchase goods from a registered dealer of another State at a concessional rate of tax of two per cent. However, if the dealer after purchasing the goods fails to make use of the goods for the purpose he has declared in form 'C', he is liable to pay penalty not exceeding one and-a-half times the amount of tax calculated at the local rate of tax leviable on such goods.

2.14.1 Scrutiny of records of the ST, Jowai in May 2011 revealed that a cement company¹⁰⁹ purchased a motor car, plywood, furniture, etc. valued at ₹ 1.35 crore between April 2010 and March 2011 at concessional rate of tax against 'C'

forms for the declared use in the manufacture of cement. Since the goods so purchased cannot be used for the stated purpose, the purchase of these items against 'C' forms was not in order and for which the company was liable to pay a penalty not exceeding ₹ 21.31 lakh.

2.14.2 Another cement company¹¹⁰ registered with ST, Khliehriat purchased building materials, motor vehicles, etc. for ₹ 1.77 crore at concessional tax rate against 'C' forms between January 2009 and March 2010 for the declared use in the manufacture of cement. Since building materials, motor vehicles, etc. cannot be regarded as raw materials in the manufacture of cement, the purchase of these items against 'C' forms was not in order and for which the company was liable to pay a penalty not exceeding ₹ 15.36 lakh.

The cases were reported to the Department in June 2011; reply was awaited (March 2013).

¹⁰⁹ M/s Adhunik Cement, Lumshnong, Jaintia Hills.

¹¹⁰ M/s JUD Cement, Khliehriat, Jaintia Hills.

2.15 Irregular submission of 'C' forms

Irregular submission of 'C' forms by a dealer and their acceptance by the ST resulted in under assessment of tax by ₹ 37.02 lakh. Further, the dealer was liable to pay interest of ₹ 26.86 lakh on this account.

Pursuant to amendment of section 8 of the CST Act, 1956 with effect from 01 April 2007, sales by a dealer registered in one State to a government department of another State attracts tax at the rates applicable in the first State. Further, the Act precludes government departments from using 'C' forms to purchase of goods at concessional rate of tax. Inter-State sale of goods covered by 'C' form is taxable at 3 per cent upto 31 May 2008 and 2 per cent thereafter. For non-payment of tax, simple interest at 2 per cent per month on the tax payable is leviable under Section 40 of the MVAT Act.

In September 2011 it was noticed that a dealer¹¹¹ registered with the ST, Nongpoh sold goods valuing ₹ 3.77 crore to two departments of the Government of Arunachal Pradesh during April 2007 and March 2009. The said departments issued 'C' forms to the dealer for the goods purchased who in turn utilised them to claim concessional

rate of tax. Since 'C' forms cannot be used by a Government Department the ST should not have taken cognisance of them. The ST, however, accepted the validity of the forms and between April 2010 and June 2011 assessed the dealer at concessional rate of tax of two *per cent* for ₹ 10.15 lakh instead of at 12.50 *per cent* for ₹ 47.17 lakh. The irregular acceptance of the 'C' forms by the ST resulted in an under assessment of tax of ₹ 37.02 lakh. Besides, the dealer was also liable to pay interest of ₹ 26.86 lakh (calculated up to month of assessment - May 2011).

In January 2012 the ST stated that a showcause notice for rectification of the assessments had been issued to the dealer. Information on recovery of the tax and interest however, was still awaited (March 2013).

¹¹¹ M/s North East Expo Chemicals, Ri-bhoi

2.16 Turnover escaping assessment

Underassessment of turnover resulting in evasion of tax of ₹ 2.04 crore on which penalty of ₹ 4.08 crore was leviable.

2.16.1 Scrutiny of the assessment records of the ST, Williamnagar in March 2012 revealed that five dealers¹¹² utilised 12,847 'P' forms in course of

In Meghalaya, coal dealers can transport a maximum of upto 9 MT of coal per truck in the course of interstate trade against a single 'P' form which he obtains from the ST under whom he is registered on paying an advance tax of ₹1100 per form. A register of 'P' forms issued is maintained by the ST wherein details of their issue and utilisation are recorded and this information is correlated by the ST at the time of assessing the dealer. The COT in September 2010 fixed the minimum sale price of coal at ₹ 3044 per MT. Further, tax on interstate coal sales is leviable at two per cent if such sale is supported by 'C' forms, else at four per cent. Under section 96 of the MVAT Act, if any dealer conceals his turnover or evades the liability to pay tax he shall pay, in addition to the tax, penalty equal to double the amount of tax evaded.

interstate trade of coal between 01 October 2010 and March 2011 and disclosed a turnover of ₹ 31.15 crore for this period. Calculated at the maximum permissible load of 9 MT per 'P' form, this meant that they had sold 1.16 lakh MT of coal during the aforesaid period and computed at the minimum rate of ₹ 3044 per MT of coal as fixed by the COT, their turnover should have been ₹ 35.20 crore. The ST while completing their assessments between March-September 2011 failed to detect this discrepancy and

consequently, a turnover of ₹ 4.04 crore escaped assessment. This resulted in under-assessment of tax of ₹ 16.17 lakh calculated at the rate of four per cent. Besides, penalty of ₹ 32.34 lakh was also leviable.

2.16.2 Cross-verification of the records of the Divisional Mining Officer, Williamnagar with those of the ST, Williamnagar in March 2012 showed that 10 dealers¹¹³ had paid to the former royalty on 2.68 lakh MT of coal sold in course of inter-State trade between October 2010 and March 2011. However, in their returns filed with the ST they disclosed that they had utilised 12,648 'P' forms to transport 1.14 lakh MT of coal in course of inter-State sales during the same period and the ST assessed the dealers accordingly in July-August 2011. The dealers had thus under-reported to the ST, sales of coal to the extent of 1.54 lakh MT valued at ₹ 46.98 crore¹¹⁴ and thereby evaded tax

¹¹² (1) M/s Norallin M. Sangma (2) M/s Hillview Coal Agency (3) M/s Meghalaya Coal Dealers (4) M/s S.L. Coal Dealers (5) M/s Nangal Coal Agency.

¹¹³ (1) M/s S.R. Marak Coal Exporter (2) M/s B. Marak Coal Syndicate (3) M/s S.R. Marak Coal Agency (4) M/s Hill View Coal Agency (5) M/s Francis S. Marak (6) M/s S. Sangma Coal Syndicate (7) M/s BCMS Traders (P) Ltd. (8) M/s Santi Coal Traders (9) M/s B.K. Sangma (10) M/s Nangwin Sangma.

¹¹⁴ ₹ 154323 MT @ ₹ 3044/- per MT = ₹ 469759212

of ₹ 1.88 crore calculated at the rate of four *per cent*. Besides, penalty of ₹ 3.76 crore was also leviable.

The cases were reported to the Department in April 2012; reply was awaited (March 2013).

2.17 Irregular grant of Input Tax Credit

Irregular grant of ITC led to short payment of tax of ₹ 13.01 lakh on which penalty of ₹ 26.02 lakh and interest of ₹ 10.55 lakh was leviable.

Scrutiny of the assessment records of the ST, Circle I, Shillong in November 2011 revealed that a dealer¹¹⁵ purchased tobacco products valued at ₹ 1.04

*Under Section 11 (b) of the MVAT Act, Input Tax Credit (ITC) is not allowed on goods listed in Schedule V of the Act. 'Tobacco products' is listed in the said Schedule and hence not eligible for ITC. Under section 90(xii) of the MVAT Act, if any dealer falsely avails ITC he shall be punishable with imprisonment of up to six months or with a fine not exceeding ₹ 10,000. In lieu of prosecution, however, penalty at twice the tax payable is leviable under Section 96. Further under Section 40 of the Act *ibid*, simple interest at the rate of two per cent *per month* on the tax payable is also leviable.*

crore between April 2007 and March 2009 and claimed ITC of ₹ 13.01 lakh. The ST completed scrutiny of the tax returns for the aforesaid period of the said dealer in September 2011 and allowed the claim for ITC of ₹ 13.01 lakh. The action of the ST was irregular in view of the aforementioned provisions of the MVAT Act and

resulted in short payment of tax of ₹ 13.01 lakh on which penalty of ₹ 26.02 lakh and interest of ₹ 10.55 lakh (calculated up to month of scrutiny-September 2011) was also leviable.

The matter was reported to the Department in December 2011; reply was awaited (March 2013).

¹¹⁵ M/s Nawal Store, Mawkhar, Shillong

2.18 Loss of Revenue

Revenue loss of ₹ 34.15 lakh as the assessment became time-barred.

The MVAT Act and the Rules made thereunder stipulates that

- *every registered dealer must submit to the ST with whom he is registered, a quarterly tax return within 21 days of the end of the quarter [Section 35];*
- *if a dealer fails to pay the full amount of tax within 21 days from the close of the quarter, simple interest at the rate of two per cent from the first day of the month following the said date shall be payable on the amount of default [Section 40];*
- *the COT is to assess on best judgement basis the tax liability of any dealer who fails to submit his return for any period by the prescribed date [Section 55(5)];*
- *if the COT is satisfied that the dealer has wilfully not furnished his tax returns, the COT shall penalise the dealer by twice the amount of additional tax assessed [Section 55(6)]; and,*
- *no assessments shall be made after the expiry of five years from the end of the tax period to which the assessment relates [Section 57(1)].*

Test check of the assessment records of the ST, Circle IV, Shillong in February 2011 revealed that a dealer¹¹⁶ had never submitted any tax returns since April 2005 but deposited ₹ one lakh as tax for the period April 2005 to September 2005. Despite the non-submission of returns, no action was initiated to complete the assessments on best judgement basis and the case records were left unattended after November 2005.

It was also observed that the ST issued the dealer 25 road permits between May and September 2005.

A check of the 'Road Permit Register'¹¹⁷ maintained by the Circle revealed that the dealer purchased cosmetics, toilet articles¹¹⁸, etc. valuing ₹ 68.73 lakh between May 2005 and November 2005 by utilising 21 road permits and was thus liable to pay additional tax of ₹ 7.59 lakh¹¹⁹ for the period April 2005 to September 2005. In addition, the dealer was also liable to pay interest of ₹ 11.39 lakh (calculated upto April 2012) for non-payment of tax within the period due and a penalty of ₹ 15.18 lakh for wilfully avoiding payment of tax.

However, since the dealer made the purchases and sales more than five years ago i.e. in 2005-06, the case cannot be reopened as it has become time barred. Thus, the failure of the COT to initiate timely best judgement assessment led to a revenue loss of ₹ 34.15 lakh¹²⁰.

¹¹⁶ M/s Fadina Marketing & Co., 29 Cantonment, Shillong.

¹¹⁷ A record maintained in the Circle office indicating the dealers to whom road permits have been issued to import goods (along with details, value, etc) into the State.

¹¹⁸ Taxable at 12.50 per cent

¹¹⁹ (₹ 68.73 lakh X 12.50 per cent) = ₹ 8.59 lakh minus ₹ one lakh already paid = ₹ 7.59 lakh

¹²⁰ ₹ 34.15 lakh = (₹ 7.59 lakh + ₹ 11.38 lakh + ₹ 15.18 lakh)

After this was pointed out, the DCT in April 2012 stated that an Inspector had been entrusted to ascertain the whereabouts of the dealer. Further report in the matter was awaited (March 2013).

2.19 Non-levy of interest

Interest of ₹ 45.91 lakh for non-payment of tax was not levied and collected from dealers.

Scrutiny of records of the ST, Circle V, Shillong in January 2012 revealed that four coal dealers¹²¹ were assessed by the ST in October 2010 for different

Section 40 of the MVAT Act prescribes that if a dealer fails to pay the full amount of tax within 21 days from the close of the quarter, simple interest at the rate of two per cent from the first day of the month following the said date shall be payable on the amount of default. This provision of the MVAT Act is also applicable for calculation of interest under the Central Sales Tax (CST) Act. Tax on coal is payable under the CST Act.

quarterly periods falling between April 2006 and March 2008 for a tax liability of ₹ 77.20 lakh out of which however, they had only paid ₹ 25.85 lakh by the due dates. It was observed that the ST did not levy and recover interest amounting to ₹ 45.91 lakh¹²² from them on the balance amount of ₹ 51.35

lakh of tax payable.

The case was reported to the Department in April 2011; reply was awaited (March 2013).

2.20 Irregular exemption allowed on scrap

Two dealers sold waste by-products on which they were irregularly allowed tax remission of ₹ 29.82 lakh.

2.20.1 Scrutiny of the assessment records of the ST, Nongpoh in September 2011 revealed that a dealer¹²³

Under the Meghalaya Industries (Sales Tax Remission) Scheme 2006, eligible industrial units are entitled to retain 99 per cent of tax collected as subsidy in respect of 'finished goods' manufactured in such units.

manufacturing MS Ingots, TMT Bars, Runners and Risers sold scrap (end cuttings, miss rolls etc.) valuing ₹ 6.96 crore between October 2006 and March

2010 to other dealers within the State on which he collected tax of ₹ 27.85 lakh and retained 99 per cent of this amount (₹ 27.69 lakh) as subsidy which was accepted by the ST.

¹²¹ (1) M/s Universal Coal Suppliers (2) M/s Monak Sohpdang (3) M/s Sel Dkhar (4) M/s Narlong Coal Traders.

¹²² Interest calculated up to the months in which the four dealers were assessed for different periods

¹²³ M/s Pawan Casting (Meghalaya) Pvt. Ltd., Ri-bhoi.

2.20.2 Another dealer¹²⁴ registered with ST, Circle III, Shillong and manufacturing 'Ferro-Silicon' sold 'Ferro-silicon slag' valued at ₹ 71.16 lakh between October 2006 and December 2007 to dealers in other States and collected tax of ₹ 2.15 lakh of which he retained 99 per cent (₹ 2.13 lakh) as subsidy which was accepted by the ST.

'Scrap' and 'slag' are waste by-products arising out of the manufacturing process and cannot be termed as 'finished goods' and hence, the subsidy availed by the above two units was irregular and resulted in a revenue loss of ₹ 29.82 lakh.

After the cases were pointed out, the DCT stated in May 2012 that the scraps obtained from the manufacturing process were integral part of the process and the remission allowed was regular. The reply is not tenable as 'scrap' and 'slag' are not 'finished products'.

2.21 Non-realisation of revenue

Tax revenue ₹ 40.10 crore could not be realised due to the apathy of the Department to recover the amount as arrears of land revenue.

Test check of records of the ST, Nongpoh in September 2011 revealed that a dealer¹²⁵ dealing in cinematographic films, film rolls etc. claimed total tax

Section 45 of the MVAT Act enjoins upon the COT to assess the amount of tax due on best judgement basis in the event that a registered dealer does not furnish his returns or if the COT is satisfied that the returns furnished are not correct. Further, Section 107 of the Act ibid provides for the recovery of any unpaid tax, interest, penalty, etc. as arrears of land revenue and for which purpose, the COT was empowered to appoint a Bakijai Officer.

exemption on goods valued at ₹ 151.99 crore sold locally during April 2002 to March 2007. The ST however, in July 2007 directed the dealer to furnish revised returns before 20 August 2007 since the goods were sold in course of inter-State trade and not locally as claimed. The dealer failed to submit the revised returns. The ST on his part did not initiate any

action to complete the assessment of the dealer on best judgement basis. After this was pointed out by Audit in July 2008, the ST assessed the dealer in January 2009 on best judgement basis and levied tax of ₹ 18.33 crore and interest of ₹ 21.77 crore and a demand notice for payment of dues was issued. Although the dealer did not pay the dues, the ST did not refer the case to the Bakijai Officer (BO) for recovery of the dues as arrears of land revenue. It was observed that the dealer did not file any returns after 31 March 2007 indicating closure of business.

A verification by Audit of records of the Taxation check posts of Assam at Boxirhat and Srirampur however, revealed that the dealer had imported into

¹²⁴ M/s RNB Carbides and Ferro Alloys Pvt. Ltd., Umiam, Ri-bhoi.

¹²⁵ M/s Foto Industries, Khanapara, Ri-bhoi

Meghalaya three consignments of taxable goods valuing ₹ 5.49 crore during 2010-11 which not only escaped the notice of the Department but also proved that the dealer was still in business thereby revealing the utter ineffectiveness of the Department in monitoring the activities of the dealers in the State.

After the case was pointed out (October 2011), the ST stated in May 2012 that the case was being referred to the BO to recover the dues as arrears of land revenue. Further progress in the matter was awaited (March 2013).