

CHAPTER-II
TAXES ON SALES, TRADE ETC.

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2.1 Tax administration

The Commercial Taxes Department deals mainly with Value Added Tax, Central Sales Tax, Entry Tax, Luxury Tax, Entertainment Tax and Electricity Duty which are regulated by the following Acts and Rules made thereunder:

1. Rajasthan Value Added Tax (RVAT) Act, 2003;
2. Central Sales Tax (CST) Act, 1956;
3. Rajasthan Tax on Entry of Goods into Local Areas Act, 1999 ;
4. Rajasthan Tax on Luxuries (in Hotels and Lodging Houses) Act, 1990;
5. Rajasthan Entertainments and Advertisements Tax Act, 1957; and
6. Rajasthan Electricity (Duty) Act, 1962.

The assessment, levy and collection of value added tax in Rajasthan is governed by the RVAT Act, 2003 effective from 1.4.2006. Besides, CST Act, 1956 and the rules made thereunder are also in operation for inter-state sales.

The Commissioner of Commercial Taxes is responsible for administration at the Departmental level, while Secretary, Finance (Revenue) Department exercises administrative powers at the Government level. The Commissioner of Commercial Taxes is assisted by seven Additional Commissioners, 34 Deputy Commissioners, 48 Assistant Commissioners, 101 Commercial Taxes Officers and 523 Assistant Commercial Taxes Officers.

2.2 Trend of receipts

Actual receipts from the taxes on sales, trade *etc.* vis-a-vis budget estimates during the years 2007-08 to 2011-12 along with the total tax receipts of the State during the same period is exhibited in the following table:

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/shortfall (-)	Percentage of variation	Rate of growth	Total tax receipts of the State	Percentage of actual receipts to total tax receipts
2007-08	7,676.00	7,750.74	(+) 74.74	(+) 0.97	15.33	13,274.73	58.39
2008-09	8,500.00	8,904.50	(+) 404.50	(+) 4.76	14.89	14,943.75	59.59
2009-10	10,030.00	10,163.53	(+) 133.53	(+) 1.33	14.14	16,414.27	61.92
2010-11	11,730.00	12,629.59	(+) 899.59	(+) 4.67	24.26	20,758.12	60.84
2011-12	13,490.00	15,766.43	(+) 2276.43	(+) 16.87	24.84	25,377.05	62.13

The receipts of the taxes on sales, trade *etc.* remained between 58.39 and 62.13 *per cent* of the total tax receipts of the State. It was also noticed that there was constant increase in the revenue collection under this head. As would be seen from the above that the receipts of the taxes on sales, trade *etc.* is major

contributor of revenue receipts. Its contribution has increased from 58.39 per cent in 2007-08 to 62.13 per cent in 2011-12.

2.3 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2012 amounted to ₹ 2,927.35 crore, of which ₹ 997.68 crore were outstanding for more than five years. The following table depicts the year-wise position of arrears of revenue as on 31 March 2012:

(₹ in crore)

Year of arrear	Total arrears as on 01.04.2011	Recovery during the year 2011-12	Recoveries outstanding as on 31.03.2012
Upto 2006-07	1,039.68	41.82	997.68
2007-08	287.12	59.06	228.06
2008-09	729.02	290.40	438.62
2009-10	963.86	547.68	416.18
2010-11	2,070.26	1,223.63	846.63
Total	5,089.94	2,162.59	2,927.35

The above table indicates that ₹ 997.68 crore were pending collection for more than five years. The stages at which the arrears are pending were not furnished (November 2012) by the Department despite being requested (July 2012).

Since with the passage of time, the possibility of recovering the arrears becomes remote, **it is recommended that the Government may consider instructing the Department for monitoring the recovery of arrears at each stage and take effective steps for effecting the recoveries.**

2.4 Collection of VAT per assessee

The following statement shows collection of Sales Tax/Value Added Tax per assessee during the last five years:

Year	Number of assessees	Sales Tax/VAT Revenue (₹ in crore)	Revenue per Assessee (₹ in lakh)
2007-08	3,19,537	7,750.74	2.43
2008-09	3,44,852	8,904.50	2.58
2009-10	3,76,688	10,163.53	2.70
2010-11	4,09,323	12,629.59	3.09
2011-12	4,55,035	15,766.43	3.45

It is appreciable that revenue per assessee was increasing every year.

2.5 Cost of collection

The gross collection of the revenue receipts, expenditure incurred on collection and the percentage of such expenditure to gross collection during the period from 2007-08 to 2011-12 along with the relevant all India average percentage of expenditure on collection to gross collection for the period are as follows:

(₹ in crore)

Sl. No.	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage of the preceding year
1.	2007-08	7,750.74	53.76	0.70	0.82
2.	2008-09	8,904.50	70.21	0.80	0.83
3.	2009-10	10,163.53	85.90	0.85	0.88
4.	2010-11	12,629.59	86.97	0.69	0.96
5.	2011-12	15,766.43	84.89	0.54	0.75

It would be seen from the above that the percentage of expenditure to the revenue collection was lower than the all India average percentage of the preceding year.

2.6 Impact of Audit Reports

During the last five years upto 2010-11, through our audit reports, we had pointed out non/short levy, non/short realisation, underassessment/loss of revenue, incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation of tax *etc.* with revenue implication of ₹ 306.39 crore in 43 paragraphs. Of these, the Department/Government had accepted audit observations in 27 paragraphs involving ₹ 166.39 crore and had recovered ₹ 2.13 crore (September 2012). The details are shown in the following table:

(₹ in crore)

Year of Audit Report	Paragraphs included		Paragraphs accepted		Amount recovered	
	Number	Amount	Number	Amount	Number of paragraphs	Amount
2006-07	11	150.61	6	144.26	3	0.14
2007-08	5	17.88	2	0.32	2	0.32
2008-09	10	28.25	7	17.79	5	0.96
2009-10	8	4.47	5	2.23	5	0.58
2010-11	9	105.18	7	1.79	2	0.13
Total	43	306.39	27	166.39	17	2.13

The percentage of recovery is 1.28 *per cent* of the accepted amount. The low percentage of recovery indicates that the department had not recovered even the accepted amount.

The Government may issue instructions to the Department to speed up the recovery, at least in respect of the accepted cases.

2.7 Working of Internal Audit Wing

The Financial Advisor is the head of the Internal Audit Wing. In the Department, 13 internal audit parties are working, each headed by an Assistant Accounts Officer. Planning for internal audit of units is made on the basis of importance and revenue realisation. The position of last five year's internal audit was as under:

Year	Pending units	Units due for audit during the year	Total units due for audit	Units audited during the year	Units remained unaudited	Shortfall in per cent
2007-08	0	443	443	378	65	15
2008-09	65	396	461	357	104	23
2009-10	104	393	497	299	198	40
2010-11	198	384	582	489	93	16
2011-12	93	384	477	411	66	14

There was a shortfall in conducting internal audit ranging between 14 and 40 per cent during the years 2007-08 to 2011-12.

It was further noticed that 17,016 paragraphs of internal audit were outstanding at the end of the year 2011-12. Year-wise break up of outstanding paragraphs is as under:

Year	Up to 2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	Total
No. of paras	8,427	1,724	1,662	1,753	1,614	1,926	17,016

8,427 paragraphs of internal audit reports were outstanding upto the year 2006-07 indicating that the Department was not monitoring the settlement of the observations raised by its own Internal Audit Wing.

2.8 Results of Audit

During test-check of the records of 96 units of the Commercial Taxes Department conducted during the year 2011-12, we noticed non/under-assessment of tax, irregular grant of exemption, non-levy of interest and other irregularities amounting to ₹ 963.20 crore in 1,971 cases which broadly fall under the following categories:

(₹ in crore)

Sl. No.	Category	Number of cases	Amount
1.	Performance Audit on 'Assessment and Collection of Value Added Tax and Central Sales Tax'	1	389.09
2.	Non-assessment of taxable turnover	298	338.55
3.	Under-assessment due to irregular or incorrect allowances of deduction	93	2.72
4.	Short levy of tax due to application of incorrect rate of tax	49	2.82
5.	Irregular grant of exemption	146	16.39
6.	Non-levy of purchase tax	10	0.22
7.	Non-levy of penalty/interest	169	2.98
8.	Other irregularities	1,205	210.43
Total		1,971	963.20

During the year 2011-12, the Department accepted under-assessment and other deficiencies of ₹ 4.98 crore in 232 cases, of which 31 cases involving ₹ 10 lakh had been pointed out in audit during the year 2011-12 and the others in the earlier years. The Department recovered ₹ 2.63 crore in 15 cases during the year 2011-12, of which four cases involving ₹ 3 lakh related to the year 2011-12 and the others to the earlier years.

A Performance Audit on 'Assessment and Collection of Value Added Tax and Central Sales Tax' involving ₹ 389.09 crore and a few illustrative audit observations involving ₹ 7.11 crore are mentioned in the succeeding paragraphs.

2.9 Performance Audit on ‘Assessment and collection of Value Added Tax (VAT) and Central Sales Tax (CST)’

Highlights

- Test-check of the assessment records of 24 dealers revealed that the AAs had not verified the balance sheets, Audit Reports and other related documents attached with the VAT Returns filed by the dealers. This resulted in non/short levy of tax of ₹ 8.67 crore.
(Paragraph 2.9.8)
- Misclassification of sale of goods as works contract in four cases and incorrect levy of exemption fee in two cases resulted in short realisation of revenue of ₹ 1.13 crore.
(Paragraph 2.9.10)
- Scrutiny of ITC claims of five dealers revealed that the dealers were either not entitled to ITC or claimed ITC in excess of their entitlement. This resulted in excess grant of ITC of ₹ 1.30 crore and interest of ₹ 53.22 lakh was also leviable.
(Paragraph 2.9.11)
- Incorrect computation of deferment of VAT, non-raising of demand and incorrect grant of subsidy under various exemption /deferment schemes resulted in excess deferment of tax ₹ 13.37 crore.
(Paragraph 2.9.12.1 to 2.9.12.3)
- Acceptance of CST declaration forms after assessment in contravention of CST Rules resulted in irregular concession/exemption of tax of ₹ 46.74 crore in 16 cases.
(Paragraph 2.9.13.1)
- No mechanism was put in place by the Department to verify that the goods had been utilised for the purpose for which they were purchased by the dealer. Further, no provision was made for imposing penalty in case of misutilisation of declaration form or certificate. Besides, frequent relaxations in terms and conditions of the notifications were found that benefited the individual dealer.
(Paragraph 2.9.14)
- Delay was noticed in submission of VAT returns and in deposit of VAT in respect 25 dealers in seven circles, however penalty of ₹ 18.09 lakh was not levied.
(Paragraph 2.9.16)

2.9.1 Introduction

The assessment, levy and collection of Value Added Tax (VAT) and Central Sales Tax (CST) are governed by Rajasthan Value Added Tax Act, 2003 (RVAT Act) and Central Sales Tax Act, 1956 (CST Act) and the Rules framed thereunder. Every dealer who is an importer of goods or whose turnover exceeds rupees ten lakh or a manufacturer of goods whose annual turnover exceeds rupees two lakh is required to be registered under the RVAT Act by submitting an application to the competent authority. The certificate of registration so granted is non-transferable and remains in force unless cancelled. Tax is levied on the taxable turnover of sale of goods at the rates specified in the Acts.

A registered dealer is deemed to be assessed quarterly or annually on the basis of the returns filed by him in accordance with Section 23 of RVAT Act 2003. However, if any mistake is detected the dealer is given an opportunity to file a revised return under Section 24 of RVAT Act 2003 and deposit the tax accordingly. If the registered dealer does not file the return or does not rectify mistake in the return within the period allowed, the Assessing Authority (AA) shall finalise the assessment to the best of his judgment.

Section 27 of RVAT Act, 2003 provides that the Commissioner, Commercial Taxes (CCT) may arrange for audit of the business of such registered dealers who are selected on the basis of any criterion or on random selection basis specified by him or in respect of whom there are reasons to believe that detailed scrutiny of their business is required.

2.9.2 Organisational Setup

The Commissioner, Commercial Taxes (CCT) administers the VAT and CST receipts under the overall control of Secretary, Finance (Revenue) Department, Government of Rajasthan. The CCT is assisted by seven Additional Commissioners and 34 Deputy Commissioners (DC) and one Financial Advisor. The internal audit wing reports to the Financial Advisor (FA). The DC is the senior most administrative officer at zonal level¹. Each zone also has a separate DC as DC (Appeals) who is the first appellate authority.

2.9.3 Audit objectives

We conducted the Performance Audit to:

- ascertain whether the provisions of RVAT Act, 2003 and Rules made thereunder were adequate and enforced accurately to safeguard the revenue of the state;
- evaluate degree of compliance by the dealers with the provisions of the Act;
- quantify loss of revenue or underassessment or other irregularities in the assessment; and
- examine whether the internal control mechanism within the department was effective.

¹ The Commercial Tax Department has 13 administrative Zones.

2.9.4 Audit criteria

The audit criteria for Performance Audit were derived from the provisions of the following Acts, Rules and notifications issued thereunder:

State laws

- Rajasthan Value Added Tax Act, 2003;
- Rajasthan Value Added Tax Rules, 2006; and
- Central Sales Tax (Rajasthan) Rules, 1957.

Central laws

- Central Sales Tax Act, 1956; and
- Central Sales Tax (Registration and Turnover) Rules, 1957.

2.9.5 Scope, Methodology and Reason for selection of Performance Audit

Records of 17 circles² out of 109 circles along with office of the CCT and Deputy Secretary (Tax) to Government covering the period from 2008-09 to 2010-11 were selected for detailed audit scrutiny. Selection of circles was made on the basis of 'probability proportional to size with replacement method of sampling'. In addition to the above, a circle 'Special Rajasthan Jaipur,' was selected as more than 40 *per cent* of the total VAT and CST collection of the State was made by this circle.

An Entry Conference was held on 16 January 2012, in the office of CCT, Jaipur wherein objectives of the Performance Audit were explained. The Factual Statement/Draft Paragraph was forwarded to the Government and the Commissioner in June/October 2012. An Exit Conference was held on 25 October 2012 with Commissioner, Commercial Taxes and Deputy Secretary (Tax), Finance Department wherein the findings of the Performance Audit were discussed. The replies received during the Exit Conference and at other point of time have been appropriately commented in the relevant paragraphs.

Reasons for selection of the topic: The receipts under VAT/CST are the highest contributors of tax revenue in the State of Rajasthan. The receipts are constantly increasing each year and a number of discrepancies were being pointed out by audit through Inspection Reports. Besides, no Performance Audit on this subject was conducted since the implementation of VAT, as such it was felt appropriate to conduct a Performance Audit on this topic.

2.9.6 Acknowledgement

The Indian Audit and Accounts Department acknowledges the cooperation extended by the Commercial Taxes Department and their officers and staff in providing necessary information and records to audit.

² Circles: Special-III Jaipur, Special-I Bhiwadi, Special Ajmer, Special Rajasthan Jaipur, Special-I Jaipur, Special Alwar, C Jaipur, B Jodhpur, G Jaipur, J Jaipur, Suratgarh, Sikar, A Ajmer, WT Alwar, WT Jodhpur Anti-Evasion – I Rajasthan Jaipur and Anti-Evasion –II Rajasthan Jaipur.

Audit findings**2.9.7 Absence of a format for business audit assessment report**

Section 27 of RVAT Act, 2003 provides that the CCT may arrange for audit of the business of such registered dealers who are selected on the basis of any criterion specified or on random selection basis or reasons to believe that detailed scrutiny of their business is required and an audit report is required to be prepared under the Act.

It was noticed that CCT had not selected any case for business audit for the years 2006-07 and 2007-08. However, for the years 2008-09 and 2009-10 though business audit was conducted, no account statement like balance sheet trading

account were kept on record. No format for preparation of the Audit report was prescribed under the Act. In the absence of the accounts and the format, the correctness of the assessments made could not be ascertained in audit.

After this was reported, the Government/Department stated during Exit Conference that a committee has been constituted in the Department which has *inter alia* been entrusted with the work of prescribing a format for Audit Report and action will be taken as per recommendations of the committee.

It is recommended that the Government/Department may consider prescribing a format for the Audit Report to be prepared by the AA.

2.9.8 Non/short levy of tax of self assessment cases

It was noticed that the Department accepted all assessments under Sections 23 and 24 of the RVAT Act, 2003 for the year 2006-07 and 2007-08 but audit of the business of the dealers was not conducted for these years. A few observations noticed during scrutiny of 24 cases relating to the period 2006-07 to 2008-09 where business audit was not conducted are mentioned in the following paragraphs:

As per Schedule IV and V of RVAT Act, tax on the sale of plants and machinery and used motor vehicles was 4 *per cent* and on tent was 12.5 *per cent*.

2.9.8.1 During scrutiny of balance sheet attached with the returns filed by 19 dealers in five circles,³ it was noticed the dealers had sold plant and machinery, used motor

vehicles and tent during 2006-07 to 2008-09. However, the sale of these assets was not disclosed in the returns filed by the dealers. The AAs did not detect the omission though Audit Reports of Chartered Accountants indicating the sale of the fixed assets were attached with the Returns. The omission of the AAs resulted in non-levy of tax of ₹ 4.70 lakh and interest ₹ 1.56 lakh.

After this was reported, the Government stated (October 2012) that demand of ₹ 2.98 lakh had been raised in eight cases of three circles. Reply in the remaining cases has not been received (November 2012).

³ Circles: Special-III Jaipur, Special-I Jaipur, Special Rajasthan Jaipur, W.T. Jodhpur and Special-I Bhiwadi

Section 2(35)(iv) of RVAT Act, 2003 provides that a transfer of right to use goods for any purpose for cash, deferred payment or other valuable consideration shall be deemed to be a sale of goods by the person making the transfer.

for which they were collecting rental charges. During the years 2006-07 to 2008-09, the companies collected rental charges amounting to ₹ 46.41 crore. However, these companies did not pay VAT on rental charges. The AAs while accepting the Returns did not detect the mistakes. This resulted in non-recovery of tax of ₹ 5.80 crore and interest of ₹ 2.37 crore.

As per Schedule IV and V of RVAT Act, 'bearing' is taxable at four *per cent* and 'grease' is taxable at the rate of 12.5 *per cent*.

obtained from the dealer for the year 2008-09 revealed that the dealer in addition to 'bearing' had sold 'grease' and 'oil' valued ₹ 35.85 lakh⁵, but paid tax at four *per cent* instead of 12.5 *per cent* resulting in short deposit of tax of ₹ 3.05 lakh. Besides, interest of ₹ 0.92 lakh and penalty of ₹ 6.09 lakh were also leviable.

Under sub-section (7) of Section 4 of the RVAT Act, 2003 any registered dealer, who imports into, or manufactures in, the State such goods as may be notified by the State Government, may, at his option, pay, in lieu of the tax payable by him on sale price of such goods under this Act, a tax at full rate on the maximum retail price (MRP) of such goods in the manner as may be prescribed.

On 31 March 2006, the State Government notified drugs and medicines, to be the goods for which option can be exercised.

assessment (November 2010) of the dealer did not levy tax on medicines amounting to ₹ 7.74 crore supplied by the dealer under

2.9.8.2 Scrutiny of balance sheet attached with the VAT Returns of three electricity distribution companies⁴ revealed that these companies were providing electric meters and service lines to consumers for supplying electric energy

2.9.8.3 A dealer (M/s Bearing and Bearing, Jaipur) of Special-I Circle, Jaipur was registered for bearing, grease and oil. Scrutiny of the VAT Return and the trading account

2.9.8.4 During test-check of records of Circle Special Rajasthan, Jaipur, it was noticed (February 2012) that a dealer (M/s Ranbaxy Laboratories Ltd.) dealing in medicines had exercised the option to pay tax on MRP. The dealer supplied medicines valued at ₹ 7.74 crore under free scheme (samples, bonus goods and replacements) during the year 2008-09 but did not pay tax though they were liable to pay tax on all goods supplied to the purchasers. However, the AA while finalising the

⁴ Jaipur Vidyut Vitran Nigam Limited, Ajmer Vidyut Vitran Nigam Limited and Jodhpur Vidyut Vitran Nigam Limited (Companies)

⁵ Minimum sale value of grease comes to ₹ 43.36 lakh (opening stock ₹ 9.25 lakh + purchase ₹ 44.29 lakh - closing stock ₹ 10.18 lakh). Evaded value of grease comes to ₹ 35.85 lakh (minimum sale value ₹ 43.36 lakh - sale shown in trading account ₹ 9.54 lakh + 6 per cent profit ₹ 2.30 lakh as calculated by audit).

free scheme/ replacement. This resulted in non-levy of tax of ₹ 30.96 lakh and interest of ₹ 9.29 lakh.

After this was reported, the Government stated (October 2012) that tax had already been paid on goods supplied under free scheme. The reply is not correct as Audit Report of the Chartered Accountant attached with the returns indicated in the 'Note' that the dealer had not paid VAT on samples, bonus goods and replacements.

It is recommended that the Department may issue instructions to the AAs for obtaining and scrutinising the annual accounts/Audit reports of the chartered accountants at the time of accepting Returns under Section 23 and 24 of the RVAT Act.

2.9.9 Lack of Co-ordination within the Department

As per Section 75 of RVAT Act, 2003, an AA has the power to survey the place of business of a dealer.

A survey of a dealer (M/s Tata Sky Limited) of Special Circle IV, Jaipur, was conducted on 11.2.2009 by the Anti Evasion-I Rajasthan Circle Jaipur. The

survey team found that the company received ₹ 1,000 per consumer for *hand stand, cable, conductor etc.*, called as activation hardware during the course of sale of Set Top Box for direct to home broadcasting services but did not pay the tax on activation hardware.

The Anti Evasion-I Rajasthan Circle Jaipur finalised (January 2010) the assessment for the period from April 2008 to January 2009 and levied tax along with penalty for activation hardware supplied with 96,242 Set Top Boxes. However, as per the records of the dealer available in Special Circle IV, Jaipur, he had sold 1,15,098 Set Top Boxes during the year 2008-09. But tax on activation hardware supplied with the remaining 18,856 Set Top Boxes was not levied. This resulted in short levy of tax of ₹ 16.50 lakh on sale of activation hardware valued at ₹ 1.32 crore supplied with 18,856 Set Top Boxes, besides, interest of ₹ 4.95 lakh and penalty of ₹ 33 lakh.

2.9.10 Misclassification of sale as works contract and short levy of exemption fee

Air conditioner and electronic meter are taxable at the rate of 12.5 *per cent* as per Schedule V to RVAT Act, 2003 and as per notification dated 11 August 2006, exemption fee is leviable on the turnover of works contract at the rates prescribed under the Act.

2.9.10.1 During the test-check of assessment records of three circles,⁶ it was noticed that the AAs, while finalising (between March 2010 and February 2011) the assessments of four dealers for the years 2007-08 and 2008-09 treated

the turnover of ₹ 6.41 crore relating to the supply and installation of air-conditioning plants and BER Electronics Meters as works contract and levied

⁶ Circles: Special-I Jaipur, Special Rajasthan Jaipur & W.T. Jodhpur

exemption fee of ₹ 17.73 lakh. The dealers were registered for sale of 'Air conditioners' and 'Electronic meters' and such supply and installation of the said goods constitutes sale and the contract for the labour component was incidental for converting the main component into the end product. This resulted in short levy of tax of ₹ 62.35 lakh and interest of ₹ 18.95 lakh.

The State Government vide notification dated 11 August 2006 exempted the registered dealer engaged in the execution of works contract from payment of tax leviable on the transfer of property in the goods involved in the execution of works contract subject to the condition that AA shall issue the Exemption Certificate and such dealer pay exemption fee at the rate specified as under:

Sl. no.	Description of works contract relating to	Rate of exemption fee (% of the total value of contract)
1	Building, roads, bridges, dams, sewerage system.	1.50 per cent
2	Installation of plants and machinery including PSPO, water treatment plant, laying of pipe line with material.	2.25 per cent
3	Any other kind of works contract.	3.00 per cent

2.9.10.2 During test-check of records of Works Tax Circle, Alwar, it was noticed that a dealer (M/s Gannon Dunkerly and Co. Ltd., Alwar) had executed works contract during 2007-08. The AA, while finalising the assessment of the dealer, assessed the exemption fee on turnover of ₹ 56.03 crore instead of ₹ 61.08 crore as shown in the returns. This resulted in short levy of exemption fee of ₹ 11.35 lakh and interest of ₹ 4.77 lakh.

After this was pointed out, the AA stated (September 2012) that a demand of ₹ 16.87 lakh had been raised.

2.9.10.3 During test-check of records of Works Tax Circle, Alwar, it was noticed that a dealer (M/s Gannon Dunkerly and Co. Ltd., Alwar) had executed works contract relating to construction of power plant and cement plant during 2008-09. The AA, while finalising the assessment of the dealer, assessed the exemption fee at the rate of 1.5 per cent instead of 2.25 per cent. This resulted in short levy of exemption fee of ₹ 11.68 lakh and interest of ₹ 3.50 lakh.

After this was pointed out, the AA stated (September 2012) that a demand of ₹ 12.70 lakh had been raised.

2.9.11 Input Tax Credit (ITC)

2.9.11.1 Excess allowance of input tax credit

During test-check of records of three circles, it was noticed that five dealers were either not entitled to ITC or claim ITC in excess of their entitlement, however, while finalising the assessments the omission was not detected by the AAs. This resulted in excess grant of ITC of ₹ 1.30 crore and interest of ₹ 53.22 lakh as detailed below:

As per Section 18 (1) of RVAT Act, 2003 input tax credit shall be allowed to registered dealers, in respect of purchases of any taxable goods made within the State from a registered dealer for the purposes as stated in this sub section. However, if the goods purchased, are used partly for the purposes as specified in the sub section and partly as otherwise, ITC will be allowed on proportionate basis and was not admissible on capital goods that were not sold.

Further, as per Section 2(33) of RVAT Act, 2003 that part of input tax for which credit has been availed in contravention of provisions of Section 18 will be reversed.

(i) A dealer (M/s Hindustan Petroleum Corporation Ltd., Jaipur) of Anti Evasion-II, Rajasthan Circle, Jaipur had claimed ITC on purchase of cylinders during 2006-07 to 2008-09 which were used for storing and transporting Liquefied Petroleum Gas (LPG). The benefit of the ITC was not admissible as the cylinders were not sold to the distributors along with the LPG and were returned back by the distributors after

consuming the LPG gas by consumers and as per annual accounts of the oil company, cylinders were being shown as fixed assets and depreciation was being charged thereon. As the ownership of the cylinders remained with the dealer (oil company), therefore ITC was not admissible on these fixed assets as per Section 18(1). The ITC amounting to ₹ 1.10 crore for the three years needs to be reversed along with interest of ₹ 45.93 lakh.

(ii) A dealer (M/s Vishal Retail Store Ltd., Jaipur) claimed ITC of ₹ 1.07 crore on purchase of goods valued at ₹ 15.12 crore during 2008-09. The AA, Anti Evasion-II, Rajasthan Circle, Jaipur reversed ITC of ₹ 3.39 lakh on purchase return of goods valued at ₹ 39.18 lakh and allowed ITC of ₹ 1.03 crore on purchase of goods valued at ₹ 14.73 crore.

However, on scrutiny of VAT Audit Re port we found that the dealer had purchased goods valued at only ₹ 13.37 crore from registered dealers of the State. Therefore, the ITC of ₹ 5.43 lakh on goods valued at ₹ 1.36 crore⁷ was not admissible and should have been reversed. The omission of the AA resulted in excess grant of ITC of ₹ 5.43 lakh. Besides, interest of ₹ 1.63 lakh was also leviable.

(iii) A dealer (M/s Om Metals Auto Pvt. Ltd., Jaipur) of Special Circle, Rajasthan, Jaipur claimed ITC on goods valued at ₹ 1.24 crore during

⁷ (₹ 14.73 crore - ₹ 13.37 crore)

2008-09. On scrutiny of VAT Audit Report, it was found that the dealer had purchased goods valued at ₹ 50.52 lakh only from the registered dealer in the State. However, the AA, while finalising the assessment, did not reverse the tax of ₹ 9.23 lakh on goods valued at ₹ 73.48 lakh. Besides, interest of ₹ 2.77 lakh was also leviable.

(iv) A dealer (M/s Garima Gum Industries, Jaipur) of Circle C, Jaipur had used 'ganwar' of ₹ 9.39 crore in the manufacturing process and claimed ITC of ₹ 30.02 lakh on purchase of 'ganwar' valued at ₹ 7.51 crore during 2006-07. On scrutiny of trading account and VAT Audit Report of the dealer, it was noticed that the dealer had sold taxable goods valued at ₹ 6.76 crore, out of total sale of goods valued at ₹ 10.30 crore. Thus, the dealer had consumed goods of ₹ 6.16 crore only. Thus, ITC of ₹ 24.66 lakh on proportionate basis was admissible instead of ₹ 30.02 lakh. Therefore ITC of ₹ 5.36 lakh was irregularly allowed by the AA. Besides, interest of ₹ 2.89 lakh was also leviable.

After this was pointed out, the Government intimated (October 2012) that a demand of ₹ 8.01 lakh (tax ₹ 5.52 lakh and interest ₹ 2.49 lakh) has been raised. A report on recovery has not been received (November 2012).

(v) **Grant of ITC without verification**

As per Section 18(2) of RVAT Act, 2003, the claims of ITC shall be allowed on the tax deposited on the basis of original VAT invoice within three months from the issuance of such invoice. The CCT vide circular dated 1 September 2009 also instructed the AAs to verify ITC while allowing such credit.

During test-check of assessment records of selected circles, it was noticed that AAs while finalising the assessment of dealers had allowed ITC claims without prior verification of tax deposited as per the VAT invoice.

After this was pointed out, the Department stated during Exit Conference that a clearing house has been created for verification of ITC claims. Online filing of returns has been made mandatory for all dealers w.e.f. 01 April 2012 which will result in online verification of ITC.

It is recommended that the Department may direct the AAs to allow ITC only after prior verification of tax paid and actual use of goods purchased.

2.9.12 Schemes regarding subsidy and deferment/exemption of tax

With a view to attract entrepreneurs for new industrial investment and for growth of industries in the State, the State Government notified various Sales Tax Exemption and Deferment Schemes in 1987, 1989 and 1998 under RST/CST Act and Rajasthan Investment Promotion Scheme, 2003 (RIPS). Further, by issue of notification dated 31 March 2006 under Section 20(3) of RVAT Act, 2003 the industrial units availing the benefit of exemption from tax under these schemes were allowed to defer the payment of tax payable by them. A few irregularities regarding excess grant of subsidy and deferment of tax were noticed as mentioned below:

As per para 7(i)(b) read with proviso of para 7 and 7(ii) of the RIPS, the subsidy shall be allowed of interest paid at the rate of five *per cent* on loan raised for modernization/expansion subject to a maximum of 75 *per cent* of the additional amount of RST/VAT and CST payable or deposited by the unit over and above the highest tax payable or deposited whichever is higher, in any of the three preceding years (base year). Further, breach of any condition shall make the subsidy amount liable to be recovered as tax along with interest at the rate of 18 *per cent* per annum from the date from which subsidy was provided.

2.9.12.1 During test-check of records of Circle Special Rajasthan, Jaipur, it was noticed that a dealer (M/s DCM Shriram Consolidated Ltd., Jaipur) was sanctioned subsidy during 2008-09 to 2010-11 on account of modernisation/ expansion of the unit. The AA incorrectly considered the base year⁸ as 2003-04 in which tax amount was ₹ 6.03 crore. It was noticed that while determining the base year, amount of exemption allowed during that year was not included. As per the assessment records the base

year of the dealer was 2001-02⁹ after including exemption amount for which tax of ₹ 7.35 crore was payable. Thus the dealer was entitled to subsidy of ₹ 8.19 crore instead of ₹ 10.69 crore. This resulted in excess grant of subsidy of ₹ 2.50 crore and interest of ₹ 67.48 lakh.

The Government replied (October 2012) that a demand of ₹ 1.89 crore for the period January 2008 to March 2009 had been raised and notice for remaining period had been issued.

As per provision of Sales Tax Incentive Scheme for Industries, 1987 read with notification dated 31 March 2006, benefit of sales tax exemption and deferment was limited to ₹ 4 crore in respect of an industrial unit.

2.9.12.2 During test-check of records of Circle C, Jaipur it was noticed that a manufacturing unit (M/s Rishabh Computronix Ltd., Jaipur) was allowed exemption and deferment benefit of ₹ 9.81 crore from 2005-06 to 2008-09.

Audit scrutiny of assessment orders revealed that the dealer had opted for deferment benefit under notification dated 31 March 2006 and therefore was eligible for maximum tax exemption/deferment of ₹ 4 crore. The AA had incorrectly allowed deferment benefit upto ₹ 9.81 crore *i.e.* an excess deferment of tax of ₹ 5.81 crore¹⁰ and interest of ₹ 1.88 crore.

⁸ For the preceding three years tax payable including the exemption amount was ₹ 7.35 crore, ₹ 6.59 crore and ₹ 7.18 crore for the year 2001-02, 2002-03 and 2003-04 respectively. According to this, tax amount of ₹ 7.35 crore for the year 2001-02 was maximum and should have been taken as base year instead of tax amount of ₹ 6.03 crore.

⁹ For the preceding three years tax payable including the exemption amount was ₹ 7.35 crore, ₹ 6.59 crore and ₹ 7.18 crore for the year 2001-02, 2002-03 and 2003-04 respectively. According to this, tax amount of ₹ 7.35 crore for the year 2001-02 was maximum and should have been taken as base year instead of tax amount of ₹ 6.03 crore.

¹⁰ 2007-08 ₹ 1.17 crore and 2008-09 ₹ 4.64 crore and interest of ₹ 1.88 crore.

After this was pointed out the Government replied (October 2012) that a demand of ₹ 8.62 crore (tax ₹ 5.81 crore and interest ₹ 2.81 crore) has been raised. A report on recovery has not been received (November 2012).

The State Government vide notification dated 31 March 2006 allowed to defer the payment of tax payable by the industrial units availing the benefit of exemption from tax under either the Sales Tax New Incentive Scheme for Industries (Incentive Scheme), 1989 or the RST/CST Exemption Scheme for Industries 1998. Further, as per Section 17 of RVAT Act, 2003, the term 'tax payable by a dealer' is the amount of output tax less the amount of ITC.

2.9.12.3 During test-check of records of eight Circles¹¹, it was noticed that the AAs while finalizing assessment of 11 dealers allowed deferment of tax of ₹ 3.06 crore without deducting ITC of ₹ 1.84 crore from output tax.

This resulted in excess grant of deferment of tax of ₹ 1.84 crore and interest of ₹ 66.38 lakh.

The Government replied (October 2012) that demands of ₹ 1.19 crore had been raised in case of Circle-J, Jaipur and Circle Special-1, Bhiwadi.

2.9.12.4 A dealer (M/s Hindustan Coca Cola Breweries Pvt. Ltd. Jaipur) of Special Rajasthan Circle, Jaipur was availing exemption from payment of tax under Sales Tax/Central Sales Tax Exemption Scheme for Industries, 1998 (Exemption Scheme). The survey of business place of the dealer was conducted on 22.07.2006. During survey, it was found that the dealer had collected tax at the rate of 12.5 per cent but deposited at the rate of 6.25 per cent in the Government account. On the basis of survey, the AA assessed tax of ₹ 2.24 crore, interest of ₹ 4.91 lakh and penalty of ₹ 2.24 crore for the period 1 April 2006 to 15 July 2006.

The dealer filed an appeal in the High Court against the assessment order. The Court vide its order dated 02.04.2009 declared the penalty as illegal and quashed and set aside the assessment orders passed on 09.10.2006 and directed the State Government to declare the method of implementation of Exemption Scheme within six months from the date of receipt of certified copy of the judgment. The High Court further ordered that the Department shall be free to initiate the assessment proceeding against the dealer only after the method has been declared by the State of Rajasthan and the assessment order shall be in accordance with the law and in accordance with the method so declared by the State.

In compliance of the order of the court, AA vide order dated 30.06.2009 removed the total demand for the period 1 April 2006 to 15 July 2006 from Demand and Collection Register (DCR). The State Government issued clarification on 21.08.2009 for adopting the method of implementation of Exemption Scheme. However, we found (March 2012) that the AA did not

¹¹ Circles: J Jaipur, Special-I Bhiwadi. C Jaipur, B Jodhpur. Sikar. C Jodhpur. Special-II Bhiwadi and Special-V Jaipur.

re-assess the tax. This resulted in non-raising of demand of tax of ₹ 2.24 crore and interest off ₹ 13.25 lakh.

After this was pointed out, the Government stated (October 2012) a revised assessment order had been passed. However, amount of demand raised and recovery position was not intimated.

2.9.12.5 Non-maintenance of Records relating to deferment cases

It was noticed that dealer-wise position of deferred amount of tax and total tax deferred was not available with the Department. During scrutiny of records of 11 test checked circles,¹² it was found that tax amounting to ₹ 318.37 crore was deferred in 43 cases up to 2010-11. It was further noticed that the demand of the deferred tax of ₹ 318.37 crore was not recorded in DCRs by the AAs. Audit could not ascertain the fact whether demands were monitored for recovery.

The Government replied (October 2012) that the circles were maintaining specific register to monitor the receipt of deferred tax. However, it was observed that the registers so maintained by the circles for monitoring the deferred tax were neither updated nor verified by the AAs. Besides, maintenance of DCR is prescribed as per instructions issued by CCT, its non maintenance resulted in non-monitoring of timely payment of deferred tax.

The Government accepted the issue during Exit Conference and stated that detailed guidelines would be issued for recording the details of deferred tax with maintenance of DCR.

It is recommended that the Department may record the details of the deferred tax in the DCRs so that it's correct position and timely payment is ascertained.

2.9.13 Levy and collection of CST

2.9.13.1 Acceptance of declaration forms after assessment

As per Rule 12(7) of the CST (Registration & Turnover) Rules, 1957, the declaration in form 'C' or form 'F' or the certificate in form 'E-I/E-II' shall be furnished to the prescribed authority within three months after the end of the period to which the declaration or the certificate relates to claim exemption/concession from tax.

During the test-check of assessment records of 16 dealers in the seven circles,¹³ it was noticed that demand of ₹ 46.74 crore including interest ₹ 8.54 crore was raised by the AA on interstate sales that were not supported by the prescribed declarations during the period 2010-11. However, on

¹² Circles: Special-III Jaipur, Special-I Bhiwadi, Special Ajmer, Special Rajasthan Jaipur, Sikar, Special-I Jaipur, C Jaipur, B Jodhpur, Special Alwar, G Jaipur, J Jaipur.

¹³ Circles: Special-III, Jaipur, Special-I, Jaipur, Special Alwar, Special Rajasthan Jaipur, E-Jaipur, Tonk and Works Tax-I Jaipur.

submission of declaration forms by these dealers, the AAs reduced the demand. Reducing of the demand by the authority that had finalised the assessments was not correct.

This resulted in irregular concession/exemption of tax of ₹ 38.20 crore and interest of ₹ 8.54 crore to dealers.

The Government replied (October 2012) that as per Rule 12(7) of the CST (Registration & Turnover) Rules, 1957, the AA can provide further time after his satisfaction. The reply is not correct as the AAs had finalised the assessments and accepting the Forms after finalisation of the assessments was not correct.

The Department may instruct the AAs not to accept declaration forms after the assessments are finalised by them.

2.9.13.2 Irregular exemption of tax on transfer of goods

As per Section 6(A)(1) of the CST Act, 1956, that if the movement of the goods from one State to another is not supported with 'F' form it shall be deemed to have been occasioned as a result of sale and the dealer shall be liable to pay tax under this Act.

During the test-check of records of Anti Evasion-II, Rajasthan Circle, Jaipur, it was noticed that a dealer (M/s Reliance Industries Ltd., Jaipur) had shown ₹ 6.94 crore as branch transfer during

the year 2008-09 in chartered accountant's VAT Audit Report. The dealer furnished declaration forms 'F' for availing exemption in tax for goods valued at ₹ 6.10 crore only. Thus, the remaining branch transfer of ₹ 84.28 lakh was not supported by declaration form 'F' and was exigible to tax. This escaped the notice of the AA and resulted in irregular exemption of tax of ₹ 10.54 lakh. Besides, interest of ₹ 3.16 lakh was also leviable.

2.9.13.3 Irregular grant of exemption on invalid forms

As per Rule 12(1) read with Rule 21(9)(b) of the CST (Registration and Turnover) Rules, 1957, a single declaration form 'C' and 'E-I/II' may cover all transaction of sale, which take place in a quarter of a financial year between the same two dealers.

During test-check of records of Circle Works Tax, Jodhpur it was noticed that a dealer (M/s G.K.C. Project Ltd., Jodhpur) had sold goods valued at ₹ 9.94 crore during 2008-09 under

Section 6(2) of CST Act. Scrutiny of declaration forms revealed that the dealer had produced one E-I form of ₹ 8.37 crore containing the transaction of two quarters (quarter ending December 2008 and March 2009).

The AA, while finalising (February 2012) the assessment of the dealer, accepted the transactions of the two quarters instead of only one quarter. This resulted in irregular exemption of tax of ₹ 5.38 lakh¹⁴ including interest of ₹ 1.24 lakh.

¹⁴ The declaration form was admissible for only one quarter. The quarter that had comparatively lesser transaction was disallowed i.e. ₹ 1.04 crore.

2.9.13.4 Short levy of tax on Inter-State sales due to application of incorrect rate of tax

As per Section 8 of the CST Act, 1956, every registered dealer who sells goods in the course of inter-state trade to another registered dealer shall pay tax at the concessional rate of three *per cent* w.e.f. 1 April 2007 to 31 May 2008 and two *per cent* thereafter, provided the selling dealer furnishes declarations in form 'C' in support of sales; otherwise tax is leviable at the rate applicable to the sale or purchase of such goods inside the State.

As per schedule V appended to RVAT Act, 2003, electrical goods are chargeable to VAT at 12.5 *per cent*.

During test-check of records of Special Circle, Alwar it was noticed that a dealer (M/s Dhruv Electricals, Alwar) had sold electrical goods valued at ₹ 73.77 lakh in course of inter-state trade without submitting 'C' form in support of the aforesaid sales. However, the AA, while finalising (October 2010) the assessment, charged the

tax at the rate of four *per cent* instead of 12.5 *per cent*. This resulted in underassessment of tax of ₹ 6.27 lakh and interest of ₹ 2.38 lakh.

After this was pointed out (December 2011), the AA intimated (December 2011) that demand of ₹ 8.65 lakh had been raised. However, status of recovery is awaited (November 2012).

2.9.14 Lack of provisions in rules and notifications

2.9.14.1 Deficiency in provision for exemption in tax

Rule 21 of RVAT Rules, 2006 provides that a dealer can claim partial or full exemption from payment of tax on sale of goods:

- (a) to another dealer in the State on production of declaration form/certificate required to be furnished under relevant notification/rules along with his return;
- (b) in the course of export out of the territory of India on production of a declaration in form VAT-15 duly filled and signed by the exporter along with his return.

It was noticed that the State Government had exempted fully/partly the following purchasing dealers from payment of tax on sale of goods on production of declaration form through notifications issued from time to time under Section 8(3) of RVAT Act, 2003 as

mentioned in the following table::

Sl. No.	Class of dealers	Date of notification	Condition of exemption
1.	Purchase of Capital Goods by Manufacturing Dealer	27.08.2008	Being used as 'capital goods, their parts and accessories' under the RVAT Act, 2003.
2.	BSF Canteen	25.05.2009	Purchased for exclusive sale to the members of the Force.
3.	Equipments of Central Effluent Treatment Plant and Chemicals	08.07.2009	To be used exclusively for the purpose of Central Effluent Treatment plant.
4.	Purchase of Timber by manufacturer of Handicrafts	30.07.2009	To be used as raw material for manufacture of handicrafts in the State.

It was noticed that no mechanism was put in place by the Department to verify that the goods had been utilised for the purpose for which they were purchased by the dealer. Further, no provision was made for imposing penalty in case of misutilisation of declaration form or certificate.

The Government/Department stated during Exit Conference that the provisions are being included in the format of VAT Audit Report.

2.9.14.2 Frequent relaxation of exemption notifications for benefit of individual dealers

The State Government is empowered to issue notifications under different Sections of RVAT Act, 2003 and CST Act, 1956 in 'public interest'. It was noticed that certain notifications were issued allowing certain additional benefits to the individual dealers in 'public interest'. However, relevant records were not made available to audit. In absence of records it was not possible to ascertain the basic requirement, ground and methodology/system adopted for exemption, reasons for granting additional exemptions and consequent benefit to the State Government and the people of the State at large. A few cases are mentioned in the following paragraphs.

Scrutiny of a notification available on the Departmental website revealed that by issue of notification under sub-section (5) of Section 8 of the CST Act, 1956, the State Government exempted (6 May 2006) M/s Arafat Petrochemicals Pvt. Ltd. (Company) from the tax leviable under the said Act in excess of 0.50 per cent on the sales made in course of inter-state trade or commerce of POY, PKT Chips, PSFs, Acrylic Fibre, Nylon Yarn, Methanol, Tyre Cord Yarn and Fabric manufactured by all the five units of the textiles complex situated at Kota within the State subject to certain condition. However, the State Government amended this notification twice, and relaxed

the conditions mentioned in the original notification as shown in table below:

Conditions	Original notification dated 6 May 2006	Notification dated 7 December 2006	Notification dated 20 August 2009
Investment	Make total investment of ₹ 80 crore by 31 March 2007	Make total investment of ₹ 80 crore by 31 March 2009	Make Total investment of ₹ 50 crore by 31 March 2009
Direct Employment	Direct employment to 2000 persons by 31 March 2007	500 persons by 31 March 2009	500 persons by 31 March 2013
Use of Assets	Use all the assets lying unused for the last seven years	last seven years, by 31 March 2009	last seven years, by 31 March 2013

As seen from the table, the Department kept on relaxing the conditions for availment of exemption of tax. The reason for providing these relaxations could not be ascertained as the records in this regard were not made available. It was also not possible to quantify the tax exemption granted to the dealer through these notifications. However, the dealer failed to meet the conditions set in the notifications each time.

It is recommended that Department may

- **Consider putting in place a mechanism to ensure that the goods are being utilised for the purpose for which exemption/ concession was allowed. A provision may be made for imposing penalty in case of misutilisation of declaration form or certificate.**
- **Basic requirement set forth in the notifications granting exemptions may be made transparent and may not be altered frequently by issue of fresh notifications.**

2.9.15 Internal Control

2.9.15.1 Deletion of demand from DCR

It was noticed that there was no control mechanism to watch whether all entries of outstanding demands had been carried forward by the AAs in the DCR of the current year. A case in this regard is illustrated below:

During test-check of DCR of Circle Anti Evasion-I, Rajasthan, Jaipur, it was noticed that a demand of ₹ 7.73 lakh was outstanding against a dealer (M/s Carrier Builder Jaipur) which was entered at Red Entry number 36 in the DCR for the year 2006-07. However, the demand of ₹ 7.73 lakh was not carried forward in the DCR for the year 2007-08. The AA had also not verified the DCR of 2006-07 to ensure that all entries had been correctly entered in the DCR of 2007-08.

After this was pointed out (October 2011), the AA intimated (November 2011) that demand of ₹ 7.73 lakh had been created at serial number 83 of DCR for the year 2011-12.

The Government replied (October 2012) that the remaining entries of DCR as at the end of the year were carried forward in red ink and certified in the DCR

of next year by the AA. Internal audit wing of the Department also checked the DCR. However, the above illustration indicates that such checks were not exercised by them.

The Government may consider evolving an effective system to ensure that all entries of outstanding demand had been carried forward in the DCR of the current year.

2.9.15.2 . Compliance of instructions issued by the Department

(i) Issue of notices without despatch number

During test-check of records of selected circles, it was noticed that despatch register for issue of demand notices/show cause etc were not being maintained in any of the circles test checked. The notices were despatched without mentioning despatch numbers. In absence of despatch number in the notices, the possibility that the dealers were issued notices/demand orders on back dates could not be ruled out.

The Government replied (October 2012) that demand notice is issued after making its entry in the DCR and date-wise entries are made in the DCR. However, the fact is that DCR are not meant for allotting the despatch numbers, for this purpose separate despatch registers may be maintained.

(ii) Adjustment of deposits without verification from Revenue Collection Register (RCR)

As per circular dated 31 May 2008, the CCT directed the AAs to provide the adjustment of deposit only after its proper verification from the Revenue Collection Register (RCR).

During test-check of records of selected circles, it was noticed that adjustment of deposits was provided by the AAs on the basis of part IV of the challan without verification of deposits from the RCR. In absence of verification from RCR, the authenticity of deposits by the dealers could not be ensured.

The Government replied (October 2012) that directions are being issued for adjustment of deposits after verification from RCR.

(iii) Cross verification of records with other departments

As per the Departmental instructions issued on 27 April 2009, AAs were to cross verify and collect information from other revenue department such as Income Tax, Central Excise, Service Tax *etc.* Further, the AAs were also directed to collect information from Banks, Electricity Companies *etc.* These were issued to verify the accuracy of details of transactions provided by the dealers in their returns.

Audit scrutiny of selected circles revealed that no such cross verification was done. In absence of cross verification, the information filed by the dealer could not be cross verified with information filed in returns with other departments such as Income Tax, Central Excise *etc.*

The Government replied (October 2012) that cross verification is done with other Departments by the anti-evasion branch. However, there was nothing on record to indicate that cross verification of the information filed by the dealers in his returns was done with the concerned departments.

The Government may consider putting in place a system for conducting cross verification of transactions of the dealers with the concerned departments in a phased manner at regular periodical intervals.

2.9.16 Short/non-imposition of penalty

As per Section 58 of RVAT Act, 2003, any dealer who is required to pay tax every month has without reasonable cause, failed to furnish prescribed returns within time allowed, a sum equal to ₹ 100 per day for first fifteen days of such default and thereafter a sum equal to ₹ 500 per day for the period during which the default in furnishing such returns was continuous, but not exceeding in the aggregate 30 per cent of the tax assessed will be recovered from the dealer by way of penalty with effect from 08 July 2009. Prior to this the rate of penalty was ₹ ten per day.

2.9.16.1 During test-check of records of six circles¹⁵ it was noticed (between August 2011 and March 2012) that 24 dealers had submitted their "fourth quarterly returns" for the year 2008-09 after delay of seven to 489 days. While finalising (between May 2010 and February 2011) the assessment of the dealers, AAs had imposed penalty at the pre revised rates *i.e.* rate

of ₹ 10 per day instead of ₹ 100 per day for first fifteen days and ₹ 500 thereafter. This resulted in short imposition of penalty of ₹ 9.49 lakh.

Section 63 of RVAT Act, 2003 provides that where an awarder of a works contract, after having deducted the amount in lieu of tax from the bill does not deposit the same in the prescribed manner and time, he shall be liable to pay tax deducted by him and a penalty at the rate of two per cent per month on the amount so deducted.

2.9.16.2 During test-check of records of Circle Works Tax, Jodhpur, it was noticed (March 2012) that an awarder (M/s Nagarjun Construction Co. Ltd, Jodhpur) had deducted ₹ 33.72 lakh during 2007-08 and ₹ 49.39

lakh during 2008-09 in lieu of tax from the bills of the contractor. During scrutiny of assessment order it was found that the awarder had deposited the tax after delays ranging from one to eight months in 2007-08 and two to eight months in 2008-09. The awarder was liable to pay penalty of ₹ 2.95 lakh for the year 2007-08 and ₹ 5.65 lakh for the year 2008-09 respectively.

However, the AA, while finalising (between March 2010 and February 2011) the assessment of the dealer (awarder), did not impose penalty resulting in non-levy of penalty of ₹ 8.60 lakh.

The Government replied (October 2012) that demands of ₹ 2.12 lakh had been raised in three cases of Circle Special, Ajmer and Special Rajasthan, Jaipur. Reply in the remaining cases is awaited (November 2012).

¹⁵ Circles: Special-III Jaipur, Special-I Jaipur, Special Ajmer, J Jaipur, Special Rajasthan Jaipur and Special-I Bhiwadi.

2.9.17 Non-levy of tax on cess

As per Section 2(36) of RVAT Act, 2003, sale price means "any statutory levy or any sum charged for anything done by a dealer in respect of the goods or services rendered at the time of or before the delivery thereof shall be included in sale price of such good".

Further, rule 22(5) of RVAT Rules, 2006 provides that the amount of cess levied by the State Government for specific purpose shall be deducted for determination of taxable turnover.

During scrutiny of assessment records of Petroleum Companies in Circle Special Rajasthan, Jaipur and records of CCT, it was noticed that Petroleum Companies deposited VAT on diesel and petrol on depot price during 2007-08 to 2010-11. The Petroleum Companies also charged cess of ₹ 500 per kilolitre both for diesel and petrol

which was not included in sale price for calculating VAT. This was accepted by the Department and accordingly assessment orders were passed.

However, deduction of cess from taxable turnover was in contravention to the provisions of RVAT Act, 2003. As cess was the part of sale price for levy of tax, exclusion of this for calculation of sale price resulted in loss of tax of ₹ 183.13 crore as detailed below:

(i) Diesel

(₹ in crore)

Year	Sale of diesel in Kiloliter	Cess payable @ ₹ 500 per Kiloliter	VAT rate in percentage	VAT payable on cess
2007-08	35,78,820	178.94	20	35.79
2008-09	37,15,977	185.80	18	33.44
2009-10	39,35,088	196.75	18	35.42
2010-11	38,95,153	194.76	18	35.06
Total				139.71

(ii) Petrol

(₹ in crore)

Year	Sale of Petrol in Kiloliter	Cess payable @ ₹ 500 per Kiloliter	VAT rate in percentage	VAT payable on cess
2007-08	6,63,292	33.16	28	9.28
2008-09	7,40,386	37.02	28	10.37
2009-10	8,42,066	42.10	28	11.79
2010-11	8,55,741	42.79	28	11.98
Total				43.42

The Government replied (October 2012) that the Department was not including cess as part of the sale price because as per rule 22(5) of RVAT Rules, 2006 the amount of cess levied by the State Government for specific purpose is deducted for determination of taxable turnover and rules are framed

by the Government for implementation of the Act. Statutory levy as mentioned in Section 2(36) of the Act is of general nature whereas the cess is levied for specific purpose. Therefore, there is no contradiction in the provision of Section 2(36) of RVAT Act, 2003 with the provision of rule 22(5) of RVAT Rules, 2006. Audit does not agree with the Department's stand as the Act clearly states that any statutory levy or any sum charged for anything done by a dealer in respect of the goods or services rendered at the time of or before the delivery thereof shall be included in sale price. Thus, the provision made in the rule for deduction of amount of cess from taxable turnover is in contravention of the provisions of the Act.

The Government may consider reconciling the provision in the RVAT Act and RVAT Rules.

2.9.18 Conclusion

Cases of underassessment, irregular allowance of ITC and excess grant of deferment of tax, interest and subsidy, non-observance of Departmental instructions and provisions of the Act indicate that the Department needs to strengthen its internal controls so that the chances for leakage of the revenue are minimised. Greater transparency is required in grant of exemption and relaxing/altering the conditions once set forth in the exemption orders.

2.9.19 Recommendations

The Government may consider the following recommendations:

- **may issue instructions to the AAs for obtaining and scrutinising the annual accounts/Audit reports of the chartered accountants at the time of accepting Returns under Section 23 and 24 of the RVAT Act;**
- **may direct the AAs to allow ITC only after prior verification of tax paid and actual use of goods purchased;**
- **may record the details of the deferred tax in the DCRs so that it's correct position and timely payment is ascertained;**
- **may instruct the AAs not to accept declaration forms after the assessments are finalised by them; and**
- **may consider evolving an effective system to ensure that all entries of outstanding demand had been carried forward in the DCR of the current year.**

2.10 Audit observations

Audit observed during test-check of the assessment records of VAT in Commercial Taxes Department several cases of non-observance of provisions of Acts/Rules, non/short levy of tax/interest, incorrect computation of tax, incorrect grant of composition amount in lieu of tax liability under RVAT Act. Some of these omissions were pointed out in earlier years also, but not only do the irregularities persist these also remain undetected till an audit is conducted. There is need for the Government to improve the internal control system including strengthening of internal audit so that recurrence of such cases can be avoided.

2.11 Non-observance/compliance of provisions of Acts/Rules and Notifications

The RVAT Act, Rules and Notifications provide for;

- (a) levy of tax at prescribed rates on the taxable turnover;
- (b) allowing benefit of the Composition Schemes for saraffa/gems and stones dealers, brick kiln owners, tent and petroleum dealers subject to compliance of certain conditions specified therein;
- (c) levy of entry tax; and
- (d) levy of entertainment tax.

Test-check of records revealed that the said provisions were not correctly observed by the assessing authorities leading to non/short levy/realisation of tax/interest as stated in paragraphs 2.11.1 and 2.11.5.

2.11.1 Short/non-levy of tax on taxable turnover

Under Section 4 of the Rajasthan Value Added Tax Act, 2003, the tax payable by a dealer under this Act shall be levied on the taxable turnover of sale of goods as specified in Schedule III to VI at the rates mentioned against each of such goods in the said Schedules. Interest is leviable on delayed payment of tax under Section 55 of the Act *ibid*.

During test-check of the assessment records of five offices¹⁶ (between July 2011 and February 2012), it was observed that while finalising the assessment of six dealers, the AAs under-assessed the taxable turnover resulting in short/non-levy of tax of ₹ 1.16 crore and interest of ₹ 38.05 lakh as mentioned below:

- (i) During test-check of assessment records of a dealer (M/s Schindler Pvt. Ltd., Jaipur) it was observed that while finalising the assessment (March 2011) for the period 2008-09, the Assessing Authority assessed the tax on the amount of commissioning and installation charges by adopting incorrect figures viz. the amount as ₹ 17.50 lakh instead of the correct amount of

¹⁶ Circles: Special-II Jaipur, Special-VII Jaipur, Special Rajasthan, Jaipur, G Jaipur and J Jaipur.

₹ 175.50 lakh. This resulted in short levy of tax of ₹ 19.75 lakh and interest of ₹ 5.92 lakh.

The omission was pointed out to the Department (February 2012) and reported to the Government (April 2012). The Government intimated (July 2012) that a demand of ₹ 27.65 lakh including interest of ₹ 7.90 lakh has been raised in May 2012. A report on reply on recovery has not been received (November 2012).

(ii) It was observed that while finalising the assessment (February 2010) of a dealer (M/s Shree Balaji Steel Scrap Trading Co., Jaipur) for the period 2007-08, the Assessing Authority assessed tax on turnover of ₹ 424.84 lakh and incorrectly exempted tax on turnover of ₹ 367.16 lakh as tax free goods, though the dealer had not claimed any exemption on the turnover. As per quarterly returns, tax statement and VAT Audit Report submitted by the dealer, total taxable turnover of the dealer was ₹ 792.00 lakh. Thus, the omission resulted in non-assessment of taxable turnover of ₹ 367.16 lakh involving tax of ₹ 14.69 lakh and interest of ₹ 6.17 lakh (calculated up to March 2011).

The omission was pointed out to the Department (September 2011) and reported to Government (September 2011). The Government intimated (July 2012) that a demand of ₹ 22.91 lakh including interest of ₹ 8.22 lakh has been raised in May 2012. A report on reply on recovery has not been received (November 2012).

(iii) It was noticed that two dealers sold 'de-oiled rice bran' during 2006-07 to 2008-09. 'De-oiled rice bran' is taxable at the rate of 4 per cent as per entry number 64 of Schedule IV appended to the Act. However, the AAs while finalizing the assessment of dealers had not levied tax treating it as tax free sale. Therefore, incorrect treatment of sale of 'de-oiled rice bran' as tax free commodity resulted in non-levy of tax of ₹ 67.97 lakh and interest of ₹ 23.55 lakh as detailed below:

(₹ in lakh)					
Sl. No.	Name of circle and dealer	Period and date of order	Value of the goods on which tax was not levied	Tax leviable @ 4 per cent	Interest leviable
1	Circle-G, Jaipur (M/s N.A. Trading Company, Jaipur)	2006-07/ 06.03.2009	328.79	13.15	7.10
		2008-09/ 11.08.2010	578.81	23.15	6.95
2	Circle-J, Jaipur (M/s Vishnu Kumar & Co, Jaipur)	2008-09/ 04.01.2011	791.71	31.67	9.50
Total				67.97	23.55

The omission was pointed out to the Department (December 2011) and reported to Government (June 2012). The Government replied (October 2012) in case of Circle J, Jaipur that a demand of ₹ 46.24 lakh including interest of ₹ 14.57 lakh had been raised. A report on reply on recovery has not been received (November 2012).

(iv) During test-check of records of Circle G, Jaipur it was noticed that a dealer (M/s Gupta Alloys, Jaipur) had sold goods of ₹ 149.46 lakh received on consignment basis during 2008-09 and collected output tax of ₹ 5.98 lakh. However, the AA, while finalising the assessment of the dealer did not include these sales in the total taxable turnover which resulted in non-assessment of tax of ₹ 5.98 lakh.

The omission was pointed out to the Department (December 2011) and reported to Government (June 2012), their replies are awaited (November 2012).

As per explanation II of Section 2(36) of RVAT Act, 2003, cash or trade discount at the time of sale shall be excluded from the sale price but any ex-post-facto grant of discount shall not be excluded.

(v) During test-check of records of Circle Special Rajasthan, Jaipur it was noticed that the AA while finalising the assessment of a dealer (M/s Marico Ltd., Jaipur) for the year 2008-09,

assessed tax on turnover excluding the discount of ₹ 1.47 crore granted after issuance of VAT invoice. Irregular allowance of discount after sale resulted in underassessment of tax of ₹ 8.03 lakh and interest of ₹ 2.41 lakh.

The omission was pointed out to the Department (December 2011) and reported to Government (June 2012). The Government replied (October 2012) that a demand of ₹ 10.44 lakh had been raised. A report on recovery has not been received (November 2012).

2.11.2 Short levy of tax due to application of incorrect rate of tax

Under Section 4 of the RVAT Act, 2003, the tax payable by a dealer under this Act shall be levied on the taxable turnover of sale of goods specified in Schedule III, IV and VI at the rate mentioned against each of such goods in the said Schedules. Goods not covered in any Schedule under the Act, are liable to be taxed at the rate of 12.5 per cent under Schedule V appended to the Act. Further, interest under Section 55 of RVAT Act is also leviable for default in making payment of tax.

Test-check of the assessment records of a dealer M/s Deep Sons Engineering, Jaipur for the year 2008-09 in the Assistant Commissioner, Circle B, Jaipur (2010-11) revealed that AA levied (September 2010) tax at 4 per cent by treating Electronic Milk Tester as capital goods. However, the dealer had sold the components of electronic milk tester valued at ₹ 58.52 lakh. This was not part of capital goods but was

part/component of manufactured items. These components were also not specified in the Schedule I to IV and VI and liable to be taxed at 12.5 per cent under Schedule V. Thus, due to application of incorrect rate of tax, there was short levy of tax of ₹ 4.97 lakh and interest of ₹ 1.49 lakh.

The omission was pointed out to the Department (February 2012) and reported to the Government (March 2012). The Government intimated (June 2012) that the dealer had sold components of electronic milk tester and these fall under the category of capital goods. Reply is not as per Section 2(7) of RVAT Act,

2003 as components of electronic milk tester are not covered under capital goods. These were sold as raw materials for manufacture of electronic milk testers.

2.11.3 Incorrect grant of benefit of composition Schemes

(i) *Saraffa/Gems and Stones dealers*

As per clause 5.4 of the Composition Schemes for *Saraffa/Gems and Stones dealers*, if a dealer fails to deposit the composition amount in the specified period he shall be allowed to avail the benefit of the scheme, if he deposits the whole amount which has become due along with interest thereon together with a late fee before March 31 of the relevant financial year. Further, as per clause 7.6/7.7 of the schemes if the dealer violates any of the conditions of the scheme the dealer shall be liable for action under the provisions of the RVAT Act and rules made thereunder.

It was noticed (January 2012) from the test-check of assessment records of the year 2009-11 of six dealers¹⁷ in Commercial Taxes Office Circle-H, Jaipur that the dealers opted for composition amount. The turnover of the dealers was ₹ 31.82 crore under RVAT Act, 2003 during 2007-09 with tax liability of ₹ 31.82 lakh.

But the dealers either did not deposit or deposited it late. The total amount paid by the dealers was ₹ 5.08 lakh. The Assessing Authority did not point out the mistake at the time of accepting the returns resulting in short realisation of tax of ₹ 26.74 lakh besides interest of ₹ 9.27 lakh (calculated upto March 2011) was also leviable.

The omissions were pointed out to the Department (January and February 2012) and reported to the Government (January and March 2012). In case of M/s KJ Gems, Jaipur, the Government intimated (September 2012) that a demand of ₹ 14.61 lakh had been raised (June and July 2012). A report on recovery and replies in respect of the remaining dealers has not been received. (November 2012).

(ii) *Brick kiln owners*

As per paragraph 5.1 of the Composition Scheme for Brick Kilns (Scheme) the dealers can opt for composition of tax and pay composition amount as per the rates prescribed in the notification. The dealers were required to opt for the scheme within sixty days from the publication of the notification or within 30 days from the date of issuance of registration certificate whichever is later. Further, schedule date of quarterly payments is mentioned in the paragraph 4.1 of the scheme. As per paragraph 7.6 of the Scheme if the dealer violates any of the conditions of the Scheme the dealer shall be liable for action under the provisions of the RVAT Act and rules made thereunder.

¹⁷ 1. M/s Khandaka Jain Jewellers. 2. M/s Hardik Impex. 3. M/s Raj Ratan Jewellers, 4. M/s Daruka Gems, 5. M/s G.K. Chudiwala, 6. M/s K.J.Gems.

During test-check of the assessment records of two Commercial Taxes Offices¹⁸ for the period 2009-11, it was noticed (February 2012) that two brick kiln owners were allowed to avail benefits of the scheme though they did not fulfill the conditions of the Scheme. This resulted in non-levy of tax of ₹ 7.17 lakh and interest of ₹ 2.26 lakh (calculated upto March 2011) as detailed below:

(₹ in lakh)			
Name of Circle/ dealer	Assessment Year (Month of assessment)	Nature of audit observations	Short realisation of tax and interest
'B'-Alwar (M/s Shyam Bricks)	2007-08 (March 2010)	The dealer did not opt for scheme within the scheduled time upto 07 January 2007 <i>i.e.</i> 30 days from the date of his registration. He opted for the scheme on 19 April 2007 and deposited ₹1.44 lakh as composition amount for the year 2007-08 and ₹1.58 lakh for the year 2008-09. The turnover of the dealer for the year 2007-08 and 2008-09 was ₹ 1.43 crore involving tax liability of ₹ 5.72 lakh.	2.70
	2008-09 (November 2010)		0.92
'B'-Udaipur (M/s Designer Industries)	2008-09 (February 2011)	The dealer did not pay the tax at all till February 2012 but while finalising assessment (February 2011) composition of tax was incorrectly allowed. The turnover of the dealer for the year 2008-09 was ₹ 1.12 crore involving tax liability of ₹ 4.47 lakh.	4.47 1.34
Total			9.43

The cases were pointed out to the Department (March 2012) and reported to the Government (March 2012). In the case of M/s Designer Industries, the Government stated (July 2012) that a demand of ₹ 5.29 lakh has been raised. A Report on recovery has not been received (November 2012).

(iii) Petroleum dealers

As per paragraph 4.01 of the Composition Scheme for Registered dealers having retail outlets of petroleum companies, the dealers can opt for composition of tax and pay composition amount as per the rates prescribed in the notification. The dealers are required to pay the composition amount on the 7th day of the month immediately succeeding the month of the relevant quarter. Further, as per clause 8.8 of the Scheme if the dealer violates any of the conditions of the Scheme the dealer shall be liable for action under the provisions of the RVAT Act and rules made thereunder.

liability of ₹ 6 lakh. But while finalising the assessments the AA incorrectly allowed the composition of tax. This resulted in short realisation of ₹ 5.49 lakh besides interest of ₹ 1.65 lakh (calculated upto March 2011) was also payable.

During test-check of the assessment records of Commercial Taxes Office Tonk, it was noticed (February 2012) that twelve petroleum dealers did not pay the composition amount of ₹ 0.51 lakh within the prescribed time during 2008-09. Therefore they were not entitled to the benefit of composition scheme. The turnover of the dealers was ₹ 47.97 lakh involving tax

¹⁸ Circle: 'B' Alwar and 'B' Udaipur.

The omission was pointed out to the Department (November 2011) and reported to the Government (December 2011). The Government intimated (July 2012) that a demand of tax of ₹ 5.49 lakh and interest of ₹ 1.97 lakh was raised in May 2012. A Report on recovery has not been received (November 2012).

(iv) Registered Tent Dealers

As per the Composition Scheme for Registered Tent Dealers, dealers can opt for composition of tax and pay the composition amount as per the rates prescribed in the notification. As per clause 5.01 the dealers were required to opt for the scheme within thirty days from the date of publication of the notification/issuance of registration certificate/ commencement of the year, whichever is later. According to paragraph 4.01 the dealers were required to pay the composition amount on the 7th day of the month immediately succeeding the month of the relevant quarter. As per clause 8.7 of the Scheme if the dealer violates any of the conditions of the Scheme the dealer shall be liable for action under the provisions of the RVAT Act and rules made thereunder.

During test-check of the assessment records of Works Tax Circle, Jodhpur, it was noticed that three tent dealers were allowed to avail benefits of the scheme though they did not fulfill the conditions of the Scheme. This resulted in non-levy of tax of ₹ 37.85 lakh and interest of ₹ 14.70

lakh (calculated upto March 2011) as detailed in the following table;

(₹ in lakh)

Assessment year (Month of assessment)	Nature of audit observations	Short realisation of tax and Interest (Upto March 2011)
2008-09 (September 2010)	The dealer opted the Scheme after nine months of due date and deposited ₹ 0.04 lakh as composition amount for the year 2008-09. The turnover of the dealer for the year 2008-09 was ₹ 17.60 lakh involving a tax liability of ₹ 2.20 lakh.	2.16 0.65
2007-08 (March 2010)	The dealer had deposited the composition amount of ₹ 0.09 lakh on 05.03.2010 for the year 2007-08 two years after the specified period. For the year 2008-09 the dealer had applied after nine months of the due date and deposited composition amount of ₹ 0.09 lakh. The turnover of the dealer for the year 2007-08 and 2008-09 was ₹ 65.43 lakh involving a tax liability of ₹ 8.18 lakh.	8.00
2008-09 (September 2010)		2.84
2006-07/2007-08/ 2008-09 (February 2009, 2010 and August 2010)	The dealer had paid ₹ 0.48 lakh instead of the due composition amount of ₹ 0.59 lakh till assessment date. The turnover of the dealer for the years 2006-07, 2007-08 and 2008-09 was ₹ 225.46 lakh involving a tax liability of ₹ 28.17 lakh.	27.69 11.21

This omission was pointed out to the Department (February 2012) and reported to the Government (March and April 2012), their replies are awaited (November 2012).

Entry Tax

2.11.4 Non-levy/short levy of Entry Tax

As per notification dated 8 March 2006 issued under Section 3 (1) of the Rajasthan Tax on Entry of Goods into Local Areas Act, 1999, entry tax at the specified rate is leviable on goods purchased from outside the State for consumption or use in business.

During test-check of records of seven circles,¹⁹ it was noticed that eleven dealers purchased goods from outside the State without paying entry tax, for self consumption or use in business on which entry tax was leviable. But, AAs, while finalising the assessment of

dealers, did not link these purchases with the purchases shown in the documents enclosed with VAT returns to levy entry tax. This resulted in non-levy/short levy of entry tax of ₹ 46.86 lakh and interest of ₹ 14.66 lakh.

After this being pointed out the Department raised demands involving ₹ 21.65 lakh in six cases and recovered ₹ 1.09 lakh in one case. A report on recovery and reply in the remaining cases has not been received (November 2012).

Entertainment Tax

2.11.5 Underassessment of Entertainment Tax

As per Section 4AAA of the Rajasthan Entertainment and Advertisements Tax Act, 1957 (REAT Act) proprietor of a direct to home (DTH) broadcasting services shall be liable to pay Entertainment Tax at the rate of 10 per cent of the subscription charges per subscriber w.e.f. 25 February 2008. Further, Section 9A of the REAT Act, provides that if the amount of tax is not paid within the prescribed time, the proprietor shall be liable to pay interest on such amount.

During test-check of records of Anti Evasion-I Circle, Rajasthan, Jaipur, it was noticed that a survey of business place of M/s Tata Sky Limited, Jaipur was conducted in February 2009 by a survey team of the Circle. However, as per the survey report and assessment order entertainment tax of

₹ 4.51 crore was payable but the AA Circle-I, Jaipur passed assessment order for ₹ 1.59 crore only. The reasons for raising less demand were not found on record. This omission resulted in short levy of tax of ₹ 3.99 crore including interest of ₹ 1.07 crore.

This was pointed out to the Department (November 2011) and reported to the Government (June 2012), their replies have not been received (November 2012).

¹⁹ Circles: Special Alwar, J Jaipur, W.T. Jodhpur, C Jaipur, Special-I Bhiwadi, Special-II Jaipur and B- Udaipur