

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

### EXECUTIVE SUMMARY

<b>Increase/decrease in tax collection.</b>	In 2012-13, collection of taxes from Odisha Value Added Tax (OVAT) including Odisha Sales Tax (OST)/Central Sales Tax (CST), Odisha Entry Tax (OET) and Professional Tax (PT) increased by 18.15 <i>per cent</i> , 2.30 <i>per cent</i> and 7.16 <i>per cent</i> respectively in comparison to the actual collection of the previous year. Reasons for increase were attributed by the Department to increase in business activities of the industry sector and vigorous collection drive by the Commercial Tax (CT) wing of Finance Department (FD).
<b>Working of Internal Audit Wing</b>	Internal audit of various auditable entities of the CT wing of the FD has not been conducted since 2002-03 as the Internal Audit Wing (IAW) is not functional.
<b>Low recovery by the Department against the observations pointed out by audit in earlier years</b>	During the period 2007-08 to 2011-12, Audit pointed out non/short-levy and realisation, irregular allowance of exemption/set off of tax, non/short-levy of interest/penalty on tax with revenue implication of ₹ 1,061.99 crore in 24,497 cases. Of these, the Department/Government accepted audit observations in 131 cases involving ₹ 16.52 crore; but recovered only ₹ 0.91 crore in 25 cases. The recovery as compared to accepted audit observations was 5.5 <i>per cent</i> .
<b>Results of audit in 2012-13</b>	In 2012-13, records of 52 units relating to OVAT, CST, OET and PT were test checked and audit on <b>“Deduction of Tax at Source from works contractors”</b> was also conducted. Cases of non/short-levy of tax/interest/penalty involving ₹ 438.02 crore in 2,860 cases were noticed.  Department accepted underassessment and other deficiencies of ₹ 6.73 crore in 84 cases which were pointed out by audit during the year 2012-13 and in the earlier years. An amount of ₹ 0.39 crore was recovered in respect of ST, VAT and Entry Tax during the year 2012-13.
<b>Highlights</b>	This Chapter contains Audit of <b>“Deduction of Tax at Source from works contractors”</b> with money value of ₹ 263.52 crore and other observations with money value of ₹ 56.35 crore relating to assessment and collection of OVAT, CST and OET in the offices of

the CT wing of the FD due to non-compliance of the provisions of the Acts/Rules.

It is a matter of concern that similar omissions have been pointed out by audit earlier also. The Department is yet to take adequate corrective action despite switching over to an IT-enabled system in all the CTOs.

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**Conclusions**

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

It also needs to initiate action to recover Government dues pointed out by audit especially in those cases where audit contention has been accepted.

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### **2.1.1 Tax Administration**

Assessment and collection of different taxes like Sales Tax, Value Added Tax, Entry Tax, Entertainment Tax, Luxury Tax and Profession Tax in the State are regulated under the erstwhile Odisha Sales Tax (OST) Act, 1947 (in force up to March 2005), the Central Sales Tax (CST) Act, 1956, the Odisha Value Added Tax (OVAT) Act, 2004, the Odisha Entry Tax (OET) Act, 1999, the Odisha Entertainment Tax (ET) Act, 2006, the Odisha Luxury Tax (OLT) Act, 1995 and the Odisha State Tax on Professions, Trades, Callings and Employments commonly known as PT Act, 2000 respectively.

Commissioner of Commercial Taxes (CCT) under the administrative control of Additional Chief Secretary, Finance Department, administers the above Acts and Rules made thereunder. For smooth tax administration, the State is divided into 12 Territorial Ranges which are sub-divided into 45 Circles and 14 Assessment Units (AUs) along with six Enforcement Ranges headed by Special Commissioners of Commercial Taxes (Enforcement), 15 Investigation Units (IUs) and six Vigilance Divisions headed by Addl. Commissioners to check inter/intra state tax evasions.

Under the provision of self-assessment in OVAT/OET Acts and CST (Odisha) Rules, 1957, dealers file returns and pay tax voluntarily, which are scrutinised by respective ACCTs/CTOs. In some cases Tax Audits are undertaken by audit teams headed by Range level officers with prior notice to dealers and thereafter Audit Assessments are made based on the Audit Visit Reports and additional taxes are demanded. However, Profession Tax (PT) is collected by the Assistant CTOs known as Assistant Profession Tax Officers (APTOS) under guidance of CTOs known as Profession Tax Officers (PTOs).

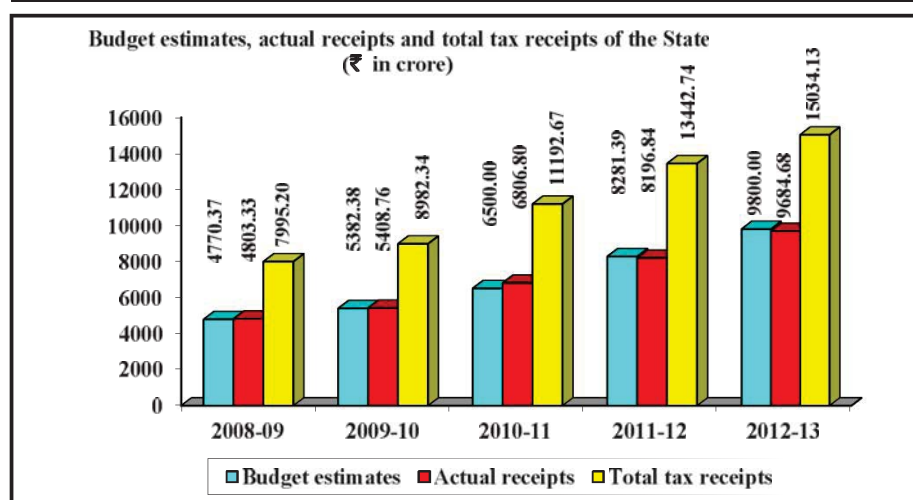
### 2.1.2 Trend of receipts

Actual Receipts from OST/OVAT/CST/OET/PT/ET and OLT during the last five years from 2008-09 to 2012-13 are as under:

#### A OVAT including OST/CST

(₹ in crore)

Year	Budget Estimates	Actual Receipts	Variation Excess (+)/ Shortfall (-)	Percentage of variation	Total Tax Revenue of the State	Percentage of Actual Receipts vis-à-vis total Tax Revenue of the State
2008-09	4,770.37	4,803.33	(+)32.96	(+)00.69	7,995.20	60.08
2009-10	5,382.38	5,408.76	(+)26.38	(+)00.49	8,982.34	60.22
2010-11	6,500.00	6,806.80	(+)306.80	(+)04.72	11,192.67	60.81
2011-12	8,281.39	8,196.84	(-)84.55	(-)01.02	13,442.74	60.98
2012-13	9,800.00	9,684.68	(-)115.32	(-)01.18	15,034.13	64.42



Source: CCT, Odisha

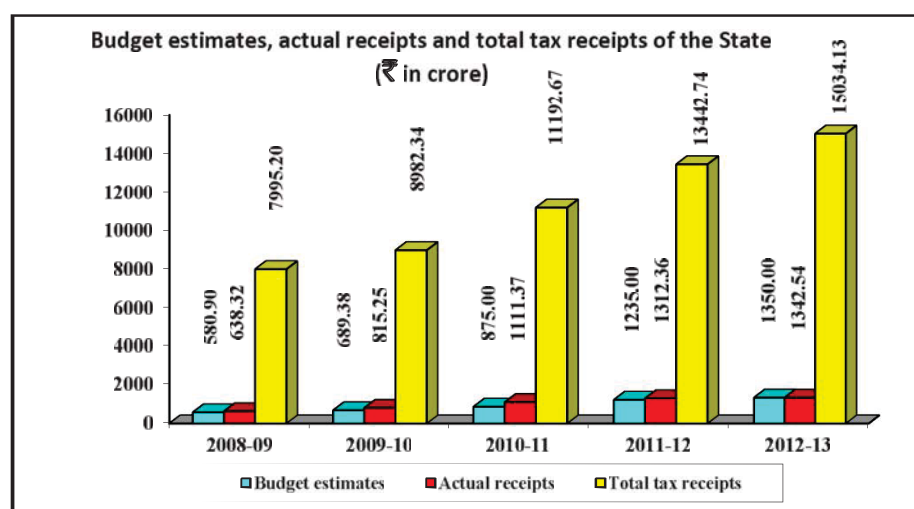
Trend of receipts showed that it increased from ₹ 4,803.33 crore in 2008-09 to ₹ 9,684.68 crore in 2012-13 (99.03 *per cent*) and its contribution to total Tax Revenue of the State varied between 60.08 *per cent* in 2008-09 and 64.42 *per cent* in 2012-13.

#### B Entry Tax

(₹ in crore)

Year	Budget Estimates	Actual Receipts	Variation Excess (+)/ Shortfall (-)	Percentage of variation	Total Revenue receipts of the State	Percentage of Actual Receipts vis-à-vis Total Tax Revenue of the State
2008-09	580.90	638.32	(+)57.42	(+)09.88	7,995.20	7.98
2009-10	689.38	815.25	(+)125.87	(+)18.26	8,982.34	9.08
2010-11	875.00	1,111.37	(+)236.37	(+)27.01	11,192.67	9.93
2011-12	1,235.00	1,312.36	(+)77.36	(+)06.26	13,442.74	9.76
2012-13	1,350.00	1,342.54	(-)7.46	(-)0.55	15,034.13	8.93

Source: CCT, Odisha

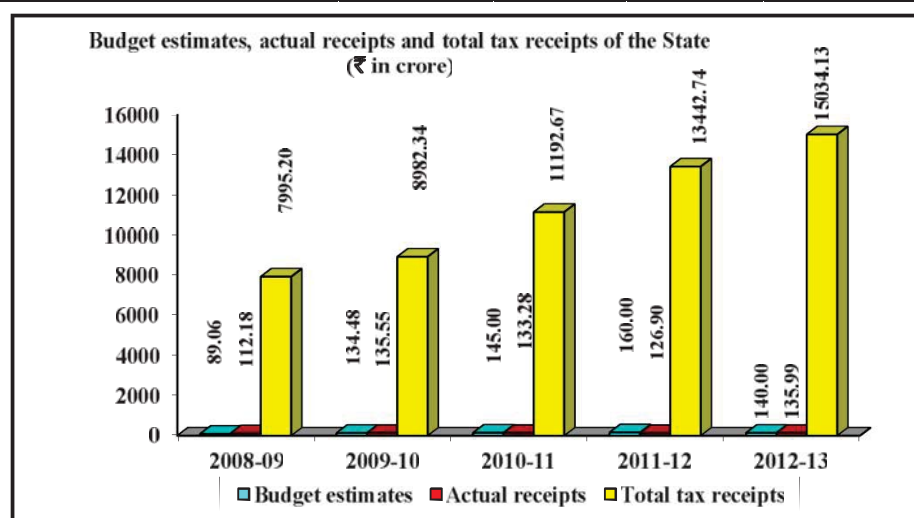


Trend of receipts showed that it increased from ₹ 638.32 crore in 2008-09 to ₹ 1,342.54 crore in 2012-13 (110.32 per cent) and its contribution to Total Tax revenue of the State varied between 7.98 per cent in 2008-09 and 9.93 per cent in 2010-11.

## C Profession Tax

(₹ in crore)

Year	Budget Estimates	Actual Receipts	Variation Excess (+)/ Shortfall (-)	Percentage of variation	Total Tax Revenue of the State	Percentage of Actual Receipts vis-à-vis Total Tax Revenue of the State
2008-09	89.06	112.18	(+)23.12	(+)25.96	7,995.20	1.40
2009-10	134.48	135.55	(+)01.07	(+)00.80	8,982.34	1.51
2010-11	145.00	133.28	(-)11.72	(-)08.08	11,192.67	1.19
2011-12	160.00	126.90	(-)33.10	(-)20.69	13,442.76	0.94
2012-13	140.00	135.99	(-)4.01	(-)12.86	15,034.13	0.90



Source: CCT, Odisha

Trend of receipts showed that it increased from ₹ 112.18 crore in 2008-09 to ₹ 135.99 crore in 2012-13 and its contribution to total Tax Revenue of the State varied between 0.90 per cent in 2012-13 and 1.51 per cent in 2009-10.

Further, the contribution of Actual Receipts to the total Tax Revenue of the State showed a declining trend from 2009-10 onwards.

**Audit recommends that the Department may take remedial measures to reverse the above trend by widening the tax net for Profession Tax.**

### 2.1.3 Assessee Profile under the OVAT Act

Information furnished by the CCT on various types of dealers registered under the OVAT Act during the last three years (2010-11 to 2012-13) is given below.

Year	No. of LTU <sup>1</sup> dealers	No. of TIN dealers other than LTU	No. of SRIN dealers	Total No. of dealers registered	No. of dealers required to file returns	No. of dealers who furnished returns in time	No. of dealers who have not furnished/ belatedly furnished returns	No. of cases where notices were not issued to the defaulted dealers
2010-11	670	1,01,268	24,594	1,26,532	1,26,532	1,00,706	25,826	12,026
2011-12	739	1,02,479	23,751	1,26,969	1,26,969	1,00,784	26,185	8,297
2012-13	713	1,05,213	13,009	1,18,935	1,18,935	79,629	39,306	11,554

Source: CCT, Odisha

Department stated that for ensuring cent *per cent* filing of returns by the dealers, the officers of the Department were taking statutory actions like suspension and cancellation of Registration Certificates (RCs) of non-existing dealers. During the year 2012-13 around 3,235 RCs were suspended and 15,040 RCs were cancelled for non-filing of return by the dealers.

The Government launched e-filing of return facility with effect from November 2010 and it was made mandatory for TIN dealers. Also, e-waybills were made fully system-generated (1 October 2012) based on the condition that the dealers have filed all tax returns under all Acts with payment of taxes due as per those returns. Steps were being taken to link issue of forms<sup>2</sup> with filing of returns under the CST Act for habitual non-filers. However, it was noticed that 11,554 returns were not filed during 2012-13 and notices were not issued to the defaulters as required under the Act.

### 2.1.4 Arrears in assessment

Details of assessment cases due under different Acts, cases disposed of during the year and pendency at the end of the year, 2012-13 were as under:

(Figures in numbers)

	OST	CST	OVAT	OET	PT	ET
(a) Opening Balance	6,429	1,090	2,343	3,619	52,897	160
(b) New cases due for assessment during the year 2012-13	0	0	4,253	0	21,739	43
(c) Total assessments due for 2012-13	6,429	1,090	6,596	3,619	74,636	203
(d) Cases disposed of during the year (by 31 <sup>st</sup> March 2013)	878	434	3,729	2,837	31,854	73
(e) Balance at the close of the year 2012-13	5,551	656	2,867	782	42,782	130
(f) Percentage of finalisation	13.65	39.81	56.53	78.39	42.67	35.96

Source: CCT, Odisha

The above position indicated that the number of assessment cases disposed of under the OST/CST/PT and ET Acts was low, being less than 50 *per cent* of

<sup>1</sup> LTU – Large Tax payers' Units, TIN – Tax payer's Identification Number, SRIN – Small Retailer's Identification Number.

<sup>2</sup> C, F, H, E1 and E2 Forms.

the cases due for assessment during the year 2012-13.

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

### 2.1.5 Analysis of arrears of revenue (Sales Tax Cases)

Position of arrears of revenue under the repealed OST Act for five years (2008-13) is given below:-

(₹ in crore)

Years	Opening balance of arrears	Additions during the year	Collection of Arrears by the end of the year	Closing Balance of Arrears
2008-09	1,034.05	38.66	11.33	1,061.38
2009-10	1,061.38	34.31	10.79	1,084.90
2010-11	1,084.90	01.37	05.16	1,081.11
2011-12	1,059.62*	8.95	7.39	1,061.18
2012-13	997.11*	214.93	9.23	959.12*

Source: CCT, Odisha

\*Amounts of ₹ 21.49 crore, ₹ 64.07 crore and ₹ 243.69 crore were reduced in appellate forum during 2010-11 to 2012-13.

The Department did not furnish analysis of arrears. However, arrears reduced from ₹ 1,061.18 crore to ₹ 959.12 crore during last five years.

### 2.1.6 Cost of collection

Gross collection of tax revenue receipts under the Commercial Tax Wing of Department, expenditure incurred on their collection and percentage of such expenditure to gross collection during 2010-11, 2011-12 and 2012-13 along with all India average percentage of expenditure in collection to gross collection for the year 2010-11 is mentioned below.

(₹ in crore)

Head of Revenue	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure to collection	All India average percentage
Commercial Tax Organisation	2010-11	8,106.29	80.49	0.99	0.96
	2011-12	8,196.85	65.39	0.79	0.75
	2012-13	11,163.27	74.35	0.67	0.83

Source: CCT, Odisha

It is evident that the percentage of expenditure on collection of revenue is showing a decreasing trend and was below all India average percentage during 2012-13 by 0.16 per cent.

### 2.1.7 Analysis of collection

Breakup of total collection at the pre-assessment stage and after regular assessment of OST/CST/OVAT, OET, OLT, ET and PT for the year 2012-13 and the corresponding figures for preceding two years as furnished by the Department is mentioned in the following table.

(₹ in crore)

Head of Revenue	Year	Amount collected at pre-assessment stage	Amount collected after regular assessment (additional demand)	Amount of arrear demand collected	Amount refunded	Net collection as per Department	Net collection as per Finance account	Percentage of columns 3 to 8
1	2	3	4	5	6	7	8	9
Sales Tax/ VAT	2010-11	6,762.33	45.17	18.09	18.79	6,806.80	6,806.80	99.35
	2011-12	8,059.89	107.01	73.25	43.31	8,196.84	8,196.85	98.33
	2012-13	9,639.33	104.65	59.07	18.37	9,684.68	9,684.68	99.53
Entry Tax	2010-11	1,080.26	06.83	3.45	1.50	1,089.04	1,111.37	97.20
	2011-12	1,257.32	45.52	9.52	Nil	1,312.36	1,312.36	95.80



Head of Revenue	Year	Amount collected at pre-assessment stage	Amount collected after regular assessment (additional demand)	Amount of arrear demand collected	Amount refunded	Net collection as per Department	Net collection as per Finance account	Percentage of columns 3 to 8
	2012-13	1,246.95	69.38	26.20	Nil	1,342.53	1,342.53	92.88
Entertainment Tax	2010-11	3.35	0.00	0.07	Nil	3.42	3.42	11.70
	2011-12	7.74	1.26	0.09	Nil	9.09	9.09	85.15
	2012-13	9.56	Nil	0.22	Nil	9.78	31.36	30.48
Profession Tax	2010-11	125.26	0.14	0.13	Nil	125.53	133.28	93.98
	2011-12	126.11	0.36	0.46	Nil	126.93	126.90	99.38
	2012-13	134.49	0.54	1.03	Nil	136.06	135.99	98.85

**Source: CCT, Odisha**

Percentages of collection of tax at pre-assessment stage during last three years ranged between 98.33 *per cent* and 99.53 *per cent* in VAT; between 92.88 *per cent* and 97.20 *per cent* in Entry Tax; between 11.70 *per cent* and 85.15 *per cent* in Entertainment Tax and between 93.98 *per cent* and 99.38 *per cent* in Profession Tax.

### 2.1.8 Analysis of arrears of revenue

As per the information furnished by the Department, arrears of revenue as on 31 March 2013 under different Acts was ₹ 5,901.49 crore, which included ₹ 2,242.53 crore outstanding for more than five years. Demands amounting to ₹ 2,241.74 crore were stayed by the Supreme Court/ High Court/Departmental Authorities. Demands of ₹ 3,041.09 crore was covered by show cause notices, demands of ₹ 10.25 crore was covered under penalty and demands of ₹ 607.28 crore was covered under Certificate/ Tax Recovery (TR) Proceedings and ₹ 1.13 crore was proposed to be written off.

Above position indicates that amount of uncollected revenue as on 31 March 2013 was 52.53 *per cent* of the revenue of ₹ 11,233.73 crore collected under all Acts administered by the CCT during 2012-13.

**Audit recommends that special efforts be made to collect arrears of revenue.**

### 2.1.9 Working of Internal Audit Wing

The Department stated (August 2013) that the Internal Audit Wing was not functioning and steps were being taken to revive the same.

**The Department may arrange for early functioning of the IAW with adequate staff.**

### 2.1.10 Impact of Audit

#### 2.1.10.1 Revenue impact

Year-wise details of units audited under ST/VAT, Entry Tax, PT Acts during the period 2007-08 to 2011-12 and impact of audit in terms of objections, their acceptance and recovery of amounts involved are given in the table below.

Years	No. of units audited	Amount Objected		Amount Accepted		Amount Recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2007-08	38	189	272.29	18	1.53	1	0.36

(₹ in crore)

Years	No. of units audited	Amount Objected		Amount Accepted		Amount Recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2008-09	44	340	310.61	20	2.49	2	0.08
2009-10	56	23,365	118.83	3	0.54	1	0.02
2010-11	60	275	94.07	10	0.42	1	0.01
2011-12	57	328	266.19	80	11.54	20	0.44
<b>Total</b>	<b>255</b>	<b>24,497</b>	<b>1061.99</b>	<b>131</b>	<b>16.52</b>	<b>25</b>	<b>0.91</b>

Source: Data maintained by the Principal Accountant General (E&RSA), Odisha

Recovery position as compared to accepted amount during last five years was low, being only 5.11 *per cent*.

Government may ensure prompt recovery of amounts involved at least in accepted cases.

#### **2.1.10.2 Result of Audit**

Test check of records of units relating to OST, OVAT, CST, OET and PT in commercial tax offices during 2012-13 besides audit on “**Deduction of Tax at Source from works contractors**” covering 24 Circles revealed non/short levy of tax, interest and penalty and incorrect allowance of ITC amounting to ₹ 438.02 crore in 2,860 cases.

During the year, Department accepted under assessment and other deficiencies of ₹ 6.73 crore in 84 cases which were pointed out by audit in 2012-13 and in earlier years and an amount of ₹ 0.39 crore was recovered in respect of ST, VAT and Entry Tax during the year.



## 2.2 Audit on “Deduction of Tax at Source from works contractors”

### 2.2.1 Introduction

The Odisha Value Added Tax (OVAT) Act, 2004 and Rules made thereunder provide for Deduction of Tax at Source (TDS) from the bills of the contractors by paying authorities called ‘Tax Deducting Authorities’ (TDAs). This issue, affecting tax liabilities of contractors and revenue of the State, was taken up by Audit to examine whether tax was correctly deducted at source, promptly remitted to Government account and system was in existence to monitor it.

The Commissioner of Commercial Taxes (CCT), Odisha, assisted by Sales Tax Authorities (STAs), administers the OVAT Act, 2004 and OVAT Rules, 2005 besides monitoring collection and remittance of TDS under overall control of the Finance Department.

### 2.2.2 Scope and methodology

Audit was conducted between April and July 2013 in 42<sup>3</sup> out of 192 TDAs, covering periods from 2009-10 to 2011-12, selected on the basis of stratified random sampling method taking into consideration the financial materiality and risks involved. Besides, three undertakings<sup>4</sup> and four Central Government Organisations<sup>5</sup> were also covered. Audit collected information from TDAs executing works contracts and corroborated the findings with records of Sales Tax Authorities (STAs) of 24 Circles<sup>6</sup> under the CCT who issued eight and above No Deduction Certificates (NDCs).

### 2.2.3 Trend of revenue collection from works contractors

Tax collected from works contractors, as compared to total tax receipts of the State under OVAT Act for last three years ending March 2012, was as follows:

(₹in crore)

Year	Total tax receipts of the State under the OVAT Act	Amount of tax collected from works contractors	Percentage of Col. 3 to 2
1	2	3	4
2009-10	4,915.00	297.94	6.06
2010-11	6,221.28	366.88	5.90
2011-12	7,463.38	477.33	6.40
<b>Total</b>	<b>20,412.40</b>	<b>1,142.15</b>	

Source: CCT Odisha

<sup>3</sup> Roads and Buildings (R&B) Divisions (17): Angul, Bhubaneswar III & IV, Balasore, Bargarh, Cuttack, Ganjam I & II, Kendrapara, Keonjhar, Khurda, Koraput, Panikoli, Phulbani, Rairangpur, Sambalpur and Sundargarh. Rural Works (RW) Divisions(08): Bhubaneswar, Balasore, Cuttack I, Ganjam I, Koraput, Phulbani, Nuapada, Rayagada, Rural Water Supply and Sanitation (RWSS) Divisions (05): Bhubaneswar, Kendrapara, Nayagarh, Puri and Rayagada, Irrigation and Minor Irrigation Divisions(05): Bhanjanagar, Bhawanipatna, Gajapati, Kendrapara, Puri, Financial Advisor and Chief Accounts Officers (FA&CAOs) (02): Anandapur Barrage Project(ABP), Anandapur & Lower Indravati Irrigation Project(LIIP), Nuapada, Other Divisions (05): Drainage Division, Bhadrak: Telengiri Head Works Division, Ambaguda: Main Dam division, Burla, General Electrical Division (GED), Bhubaneswar and Project Management Unit, Odisha State Road Project, Bhubaneswar.

<sup>4</sup> Odisha State Police Housing Welfare Corporation (OSPHWC), Odisha Mining Corporation (OMC) and Odisha Construction Corporation (OCC) Ltd.

<sup>5</sup> Director, Biju Patnaik Airport, Bhubaneswar, Director, AIIMS, Bhubaneswar, Director, IIT, Bhubaneswar and Director, National Institute of Science and Research (NISER) at Bhubaneswar.

<sup>6</sup> Circles: Angul, Bhubaneswar I, II, III, IV, Balasore, Bhadrak, Bhanjanagar, Bargarh, Cuttack I Central, Cuttack II, Dhenkanal, Jharsuguda, Jagatsinghpur, Jajpur, Koraput, Kendrapara, Nuapada, Phulbani, Puri, Rayagada, Sambalpur I & II and Assessment Unit: Talcher under Angul Circle.

Though tax collected from works contractors in absolute terms shows an increasing trend, percentage of its contribution to total collection under OVAT decreased during 2010-11 in comparison to earlier year. However, annual collection of TDS exclusively through TDAs of the State was not available with the CCT. Audit examined whether the provisions of the Act, Rules and executive orders issued from time to time were observed by all concerned in the matter of TDS.

## **2.2.4 Audit Findings**

System and compliance deficiencies noticed in Audit are discussed in the succeeding sub paragraphs.

### **2.2.4.1 Deduction of tax from works contractors at prescribed rates**

Under Section 10 of the Act, a works contractor, whose GTO during a period of twelve consecutive months exceeds the taxable limit of ₹ 50,000 shall be liable to pay tax. Under Section 54 (1), (2) and (3) of the Act, any person responsible for making payment of any sum to any contractor for execution of works contract exceeding the limit of ₹ 50,000 in a year which involves transfer of property in goods, in pursuance of a contract between the contractor and the Central/State Government or undertakings under them or any Local Authority (LA), or any Authority or Corporation established by Law, or any Company under the Companies Act, 1956 or any Co-operative Society, or any other Association registered under the Societies Registration Act, 1860, shall, at the time of credit of such sum to the account of the contractor or payment thereof in cash / cheque or draft or any other mode, deduct, tax equal to four *per cent* of such sum, subject to the NDC issued by the STA under Section 54 (5)(b), if any, produced before him. If any TDA contravenes the above provisions, the STA shall, after giving him an opportunity of being heard, by an order in writing, impose on him a penalty, equal to twice the amount of tax required to be deducted as TDS, under Section 54 (6) of the Act.

#### **2.2.4.1(a) Non-deduction of TDS**

Scrutiny of records of TDAs revealed that during 2009-12 nineteen TDAs<sup>7</sup> paid ₹ 8.49 crore to 114 contractors and payments made to each contractor in a year exceeded ₹ 50,000. But the TDAs did not deduct tax of ₹ 33.94 lakh at source. Besides, penalty of ₹ 67.88 lakh was also leviable on the TDAs for not effecting deduction of tax from the contractors work bills.

After this was pointed out, TDA (R & B Division Phulbani) without furnishing recovery particulars, stated that the amount was recovered. Five

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<sup>7</sup> R&B Divisions(08): Bhubaneswar III, Ganjam I, Ganjam II, Keonjhar, Khurda, Kendrapara, Phulbani and Sambalpur, RWSS Divisions(04): Bhubaneswar Nayagarh, Puri and Rayagada, RW Divisions(02): Ganjam I and Rayagada; Other Divisions(05) Main Dam Division Burla; Minor Irrigation Division Gajapati, Irrigation Division Kendrapara, General Electrical Division No.1, BBSR and OMC, JK Road.

TDAs<sup>8</sup> assured recovery of the amount, six TDAs<sup>9</sup> stated they would furnish compliance after examining audit observations and three TDAs<sup>10</sup> did not furnish any reply. TDA (RWSS division Bhubaneswar) stated that TDS was not recovered as the executants were village committees. TDA, R&B Division Keonjhar stated that TDS was recovered from the bills where the value was more than ₹ 50,000 each and two TDAs (R&B Division Sambalpur and RW Division Rayagada) did not effect recovery treating the bills as supply contracts since they involved supply, fitting and fixing items.

However, village committee being an association of individuals is a person and a dealer as per the Act and liable for TDS when gross payment made in a financial year exceeds ₹ 50,000. Further, contracts involving supply, fitting and fixing works are works contracts and liable to TDS.

#### **2.2.4.1(b) Short-deduction of TDS from works contractors**

Scrutiny of records such as Cash Books and RA Bills revealed that from 407 RA Bills involving payment of ₹ 52.66 crore, 22 TDAs<sup>11</sup> deducted ₹ 1.22 crore towards TDS against recoverable amount of ₹ 2.11 crore. The short fall was due to application of lower rate and reasons thereof could not be furnished to audit. This led to short deduction of TDS of ₹ 88.18 lakh. Besides, penalty of ₹ 1.76 crore was also imposable against the TDAs under Section 54 (6) of the Act.

After Audit pointed this out, TDAs stated between May and June 2013 that matter would be examined and short deduction, if any, would be collected from contractors and deposited into Government account.

#### **2.2.5 Allowance of excess deductions of labour and services in NDCs**

Section 54 (5) of the Act read with Rule 60 of the Rules made thereunder, provides that where, the STA is satisfied on an application from the contractor received in Part I of Form VAT 606 that any works contract involves both transfer of property in goods and labour or services, or involves only labour or services and, accordingly, justifies TDS on a part of the sum or no TDS in respect of the works contract, he shall, after giving the contractor a reasonable opportunity of being heard, grant him appropriate NDC, prescribed in Part II of Form VAT 606. Where the STA, in consideration of the facts and circumstances of the case, is of the opinion that such NDC on a part of the sum as claimed is not justified, he may, after allowing the dealer a reasonable opportunity of being heard, refuse to issue such a certificate.

<sup>8</sup> Main Dam Division, Burla; R&B Division, Khurda, Ganjam II; RW Division Ganjam I; RWSS Division, Rayagada.

<sup>9</sup> R&B Divisions (03): Bhubaneswar III, Kendrapara, Ganjam I; RWSS Divisions (02): Puri, Nayagarh and Minor Irrigation Division, Gajapati.

<sup>10</sup> GED-I, Bhubaneswar, Irrigation Division, Kendrapara and OMC Ltd. JK Road.

<sup>11</sup> R&B Divisions (09): Cuttack, Panikoli, Kendrapara, Sambalpur, Bhubaneswar III, Khurda, Bargarh, Ganjam I and II; RW Divisions (04): Balasore, Cuttack, Phulbani, Ganjam I; RWSS Divisions (03): Kendrapara, Nayagarh and Rayagada; Others (06): Drainage Division Bhadrak; MI Divisions Bhawanipatna and Gajapati; Irrigation Division Kendrapara, Biju Patnaik Air Port Authority, Bhubaneswar and FA&CAO, LIIP, Nuapada.

#### **2.2.5.1 Short-deduction of TDS**

During test check of Cash Books, RA bills and NDCs of seven TDAs<sup>12</sup>, audit noticed that in 18 cases, NDCs were issued by STAs for agreement value of ₹ 79.12 crore. But the value of work executed against these agreements was ₹ 88.29 crore. TDAs recovered TDS at the rate specified in the NDCs instead of full rate (four percent) on the excess turnover of ₹ 9.17 crore. This led to short deduction of tax of ₹ 18.09 lakh (on the payments of ₹ 9.17 crore made to the contractors beyond the amounts specified in the NDCs). Besides, penalty of ₹ 36.18 lakh was also leviable against the TDAs in term of Section 54 (6) of the Act.

After Audit pointed out the discrepancies, the STAs concerned stated, between July and August 2013, that the compliances would be furnished after due verification.

#### **2.2.5.2 Issue of NDCs allowing excess percentage of deduction**

Audit noticed that 31 TDAs<sup>13</sup> on the basis of NDCs issued by the STAs allowed 32 to 80 *per cent* deduction on Running Account (RA) bills of ₹ 1,680.80 crore and effected TDS on the balance amount. On analysis of 12 works, Audit observed that the percentage of labour and services involved ranged upto 20 *per cent* of the estimated value for bridge works. For road and building works such percentage ranged upto 25 *per cent*. But the STAs issued NDCs for 548 agreements involving ₹ 2,675.86 crore by allowing 32 to 80 *per cent* deduction towards labour and services.

This led to short deduction of ₹ 17.36 crore towards TDS on 548 RA bills. On the balance value of work to be paid, there is scope for short deduction of ₹ 9.76 crore.

On the basis of information collected from 21 circles<sup>14</sup> relating to 1267 NDCs involving work of ₹ 5,367.84 crore, Audit observed that the STAs allowed NDCs for labour and services ranging between 38 to 80 *per cent* for road works, 32 to 75 *per cent* for bridge works and 37 to 95 *per cent* for building works. Hence there is possibility for short deduction of tax at source amounting to ₹ 51.05 crore.

After this was pointed out, STAs of six circles<sup>15</sup> assured to examine the cases, 10 circles<sup>16</sup> and one assessment unit (Talcher) stated that NDCs were issued

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<sup>12</sup> Drainage Division, Bhadrak; Irrigation Division, Bhanjanagar; RW Division, Balasore; R&B Division, Bargarh, Kendrapara, Koraput; and RW Division, Nuapada.

<sup>13</sup> R&B Divisions(15): Angul, Bhubaneswar –III & IV, Balasore, Bargarh, Cuttack, Kendrapara, Keonjhar, Khurda, Koraput, Panikoli, Phulbani, Rairangpur, Sambalpur and Sundargarh; RW Divisions (08): Bhubaneswar, Balasore, Cuttack-I, Ganjam – I, Koraput, Phulbani, Nuapada, Rayagada; RWSS Divisions (01): Kendrapara. Irrigation Divisions (02): Bhanjanagar, Kendrapara; FA &CAOs (02): Anandapur and Nuapada; other Divisions (03) namely:- Drainage Division, Bhadrak: Main Dam division, Burla and Project Management, Odisha State Road Project Unit, Bhubaneswar.

<sup>14</sup> Cuttack II, BBSR-I, II, III and IV, Puri, Angul, Bhadrak, Dhenkanal, Sambalpur I, Cuttack-I Central, Kendrapara, Phulbani, Bhanjanagar, Rayagada, Koraput, Nuapada, Bargarh, Balasore, Jajpur and Jharsuguda.

<sup>15</sup> Bargarh, Bhanjanagar, Koraput, Nuapada, Phulbani and Sambalpur I.

<sup>16</sup> Balasore, Bhadrak, Bhubaneswar III, Cuttack II, Cuttack I Central, Jajpur, Kendrapara, Puri, Rayagada and Sambalpur.

based on percentage prescribed in the Appendix to OVAT Rules, five circles<sup>17</sup> issued NDCs considering the nature of work and one STA (Jagatsinghpur) did not furnish any reply. Further, nine circles<sup>18</sup> replied that they would take care of the matter at the time of final assessment. However, NDCs were issued without considering proportion of labour and services in 1,815 (548 + 1267) cases. As only 0.51 *per cent* of the work contracts were assessed during 2009-12 by STAs, scope for final assessment and recovery is remote.

### 2.2.5.3 Short-deduction of TDS due to allowance of excess deduction over deduction allowed in NDCs

During scrutiny of records such as Cash Books, RA Bills and NDCs issued by the STAs, Audit noticed that 11 TDAs<sup>19</sup> deducted TDS at the rate of four *per cent* from 97 RA bills on certain percentage of Gross Turnover (GTO), which was less than the percentage of GTO mentioned in the NDCs. Against TDS of ₹ 5.67 crore due for deduction as per NDCs, the TDAs effected TDS of ₹ 5.19 crore only which led to short deduction of ₹ 48.22 lakh. Besides, penalty of ₹ 96.44 lakh being twice the tax short deducted was also imposable by the STAs on the TDAs concerned under Section 54 (6) of the Act.

After Audit pointed this out, TDAs stated (between May and July 2013) that short deductions pointed out by Audit would be examined and if any found, would be collected from contractors and deposited into Government account.

### 2.2.6 Delay in deposit of TDS by the TDAs

As per Section 54 (3) of the Act, the TDA shall deposit the TDS into Government account or transmit the same to the STAs for eventual remittance into Government account within one week from the date of deduction. If any TDA contravenes the above provisions, the STA shall, after giving him an opportunity of being heard, by an order in writing, impose on him a penalty, equal to twice the amount of tax required to be deducted and deposited into Government Treasury under Section 54 (6) of the Act.

During scrutiny of Cash Books, RA bills, monthly accounts statements, Bank Cheque/ Draft issue register and Treasury Challans (TCs) of 45 TDAs<sup>20</sup>, Audit noticed that during 2009-12 the TDAs deducted ₹ 169.88 crore from the

<sup>17</sup> Angul, Bhubaneswar I, Bhubaneswar IV, Dhenkanal and Jharsuguda.

<sup>18</sup> Angul, Balasore, Bhubaneswar III, Cuttack-I Central, Jajpur, Jharsuguda, Rayagada, Sambalpur I and II.

<sup>19</sup> R&B Divisions (07): Angul, Balasore, Keonjhar, Khurda, Panikoli, Rairangpur, Sambalpur; RW Divisions (02): Balasore and Nuapada: Others (02): FA&CAOs, ABP, Anandpur and Drainage Division, Bhadrak.

<sup>20</sup> R&B Divisions(18): Keonjhar, Cuttack, Panikoli, Balasore, Rairangpur, Angul, Sambalpur, Phulbani, Bhubaneswar III, Khurda, Sundargarh, Bargarh, Koraput, Kendrapara, Ganjam I, Bhubaneswar IV, Ganjam II, PMU Bhubaneswar; RW Divisions(08): Balasore, Bhubaneswar, Phulbani, Ganjam I, Nuapada, Koraput, Cuttack, Rayagada; RWSS Divisions(05): Bhubaneswar, Puri, Kendrapara, Nayagarh, Rayagada; FA&CAOs (02): ABP, Anandpur and LIIP, Nuapada; Others(12): Drainage Division Bhadrak, Main Dam Division Burla, MI Division Bhawanipatna; Irrigation division Kendrapara; General Electrical Division No.1, Bhubaneswar; Irrigation Division Bhanjanagar; MI Division Gajapati; Telengiri HW Division, Ambaguda, OPHWC Division, Bhubaneswar: AIIMS, Bhubaneswar: NISER, Bhubaneswar; and Biju Patnaik Airport, Bhubaneswar.



works contractors bills and remitted ₹ 165.04 crore<sup>21</sup> to Government Account as of 7 April 2012 leaving a balance of ₹ 4.84 crore. Further, Audit noticed that out of ₹ 165.04 crore deposited by TDAs, ₹ 89.84 crore was deposited belatedly with delays ranging between one and 351 days after seventh day of the succeeding month in which the deduction was made. In two cases under one TDA<sup>22</sup>, delays ranged up to 1084 and 1089 days. Therefore, penalty of ₹ 179.69 crore i.e. twice the tax deposited belatedly was required to be imposed on TDAs under Section 54(6) of the Act after affording opportunities to be heard. Audit noticed that no record was prescribed by the Department for TDAs to watch date-wise deduction of TDS from works contractors, its timely remittance into Treasury and issue of TDS certificates. Further, no evidence showing the submission of monthly consolidated statements of TDS from contractors to STAs during 2009-12, as required under Rule 59 of OVAT Rules, could be furnished to Audit.

After Audit pointed this out, 14 TDAs<sup>23</sup> noted the audit observations for future guidance; nine TDAs<sup>24</sup> stated, between April and June 2013, that the detailed figure of non-deposit would be verified and compliance be furnished later on, five TDAs<sup>25</sup> did not furnish any reply and 17 TDAs<sup>26</sup> stated that due to want of Letter of Credit and inadequate staff, tax was not remitted into Treasury. However, this is in violation of provisions of Section 54 (3) of the OVAT Act.

Observations on delayed deposit of TDS by TDAs were corroborated with STAs of 24 Circles to assess whether any penalty was imposed on defaulting TDAs. The STAs stated that the TDAs were not furnishing TDS statements to assess delayed deposit and levy of penalty as required under the Act. However, they assured that after necessary examination, action as deemed proper under the Act, would be initiated.

### **2.2.7 Delayed deposit of TDS into Government account by STAs**

As per note below Rule 6 (i) of Odisha Treasury Code (OTC) Vol I, money received towards Government revenue should be credited into the Government Account within three days in cases where Bank or Treasury exists in the same locality or within seven days in other cases.

During scrutiny of Bank Drafts/ Cheques, Receipt Registers with

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<sup>21</sup> This includes excess deposit of ₹ 16.08 lakh made by three TDAs viz. EEs, Bhanjanagar Irrigation Division (₹ 5 lakh), R&B Division, Sundargarh (₹10.88 lakh) and Main Dam Division, Burla (₹0.20 lakh).

<sup>22</sup> RW Phulbani.

<sup>23</sup> R&B Divisions (04): Koraput, Ganjam I, Bhubaneswar IV and Panikoli; RW Divisions (02): Cuttack and Phulbani; Others (08): Drainage Division Bhadrak, F&CAO Nuapada; MI Division Nuapada; RWSS Division Kendrapara; GED I Bhubaneswar; Irrigation Division Kendrapara; Telengiri HW Division, Ambaguda and PMU Bhubaneswar.

<sup>24</sup> R&B Divisions (04): Cuttack, Bhubaneswar III, Kendrapara and Phulbani; RW Divisions (02): Nuapada and Ganjam I; Others (03): RWSS Divisions Puri; Irrigation Division Bhanjanagar and FA&CAO, ABP, Anandapur.

<sup>25</sup> R&B Division, Sundargarh, RW Division, Bhubaneswar, Director, Bijupatnaik Air Port Authority, Director, All India Institute of Medical Science and Director, National Institute of Science Education and Research at Bhubaneswar.

<sup>26</sup> R&B Divisions (08): Angul, Balasore, Sambalpur, Khurda, Bargarh, Rairangpur, Ganjam II and Keonjhar; RWSS Divisions (03): Nayagarh, Rayagada and Bhubaneswar; RW Divisions (03): Balasore, Rayagada and Koraput; Others (03): MI Division Gajapati; Main DAM Division Burla and OPH&WC Bhubaneswar.

reference to Progressive Collection Registers (PCRs) in Circles, Audit noticed that in contravention of the above provision of OTC, STAs in nine Circles deposited TDS of ₹ 11.88 crore with delays ranging between two and 68 days after receiving the same from the TDAs in shape of Bank drafts/ Cheques. The Circle-wise details are given below:

(₹ in crore)				
Sl. No	Name of the Circle	Number of cases	Amount deposited belatedly	Range of delay
1	Bhubaneswar II	8	0.69	3-13 days
2	Bhubaneswar III	18	1.49	4 to 68 days
3	Bhubaneswar IV	52	5.80	2-60 days
4	Bhadrak	4	0.10	4-10 days
5	Kendrapara	29	2.36	2 to 16 days
6	Nuapada	32	0.53	3-55 days
7	Phulbani	1	0.07	5 days
8	Sambalpur I	9	0.60	2 to 9 days
9	Sambalpur II	3	0.24	2 to 5 days
	<b>Total</b>	<b>156</b>	<b>11.88</b>	<b>2 to 68 days</b>

Source: PCRs of above STAs

After Audit pointed out the above cases, STAs of all Circles except Bhubaneswar II circle stated that observations of audit were noted for their future guidance. The STA, Bhubaneswar II circle stated that the Drafts/Cheques were deposited into Government account on the next working day of receipt of the same from the TDAs but could not show records to substantiate this. Moreover, the delay in credit was attributed to the Bank concerned. However, amounts were not credited into Government account within due dates and it was in violation of provisions of the OTC.

## 2.2.8 Internal Control Mechanism (ICM)

Internal Control Mechanism (ICM) is an inbuilt mechanism by which an Organisation can evaluate its own activities and performance to take corrective measures. Mention was made in Audit Reports for the year ended 31 March 2009 and 2012 regarding non-functioning of internal Audit system in the Department since 2002-03 and deficiencies noticed on ICM are discussed in succeeding paragraphs:

### 2.2.8.1 Irregularities in issue of NDCs

Section 54 of the Act read with Rule 58 and 59 of the Rules made thereunder, the Circular of the CCT dated 21 November 2005 tasked the TDAs/STAs with deduction of TDS and circular dated 28 July 2011 entrusted the Additional CCT/JCCTs of the State with the examination of NDCs issued by STAs.

During scrutiny of records of 24 circles, Audit noticed that STAs neither examined the returns of the contractors nor obtained TDS information from TDAs to ensure correctness of tax collected and its prompt deposit in to Government exchequer. The NDCs issued by STAs were not examined or received by any

higher authority to ensure correctness of the amount for which NDCs were issued.

There was no co-ordination between the STAs and TDAs for correct deduction of tax and assessment of the works contractors which led to



escapement of tax in the event of incorrect recovery of TDS as mentioned in following paragraphs.

#### **2.2.8.2 Information on TDs**

As per CCT's circular of November, 2005, the STA's are required to personally contact the TDAs under their jurisdiction and obtain information as regards allotment received, name and address of contractors, total amount of contracts and payment made to contractors from time to time.

In 23 out of 24 circles covered in the Audit, the Circles had not obtained information as directed in the aforementioned circular, in the absence of which they were not in a position to detect evasion of tax.

Further, to an audit query on existence of system for follow up actions to check the evasion of tax by the works contractors, the CCT stated that tax audit was being done to check evasion of tax, in respect of works contractors selected on the basis of the criteria as per the provisions of the Act. As already mentioned in para 2.2.5.2, tax audit was taken up by Department for registered works contractors of 18 Circles and only 0.51 *per cent* works contractors were covered during the period. As the coverage was low, the scope for assessment of all works contractors was remote. However, the existing provision for tax audit for "certain number" of assesseees without any specified number or percentage of the total assesseees registered under the Act appears to be inadequate.

This was brought to the notice of the Government and CCT in September 2013 and reply from Government is awaited (April 2014).

#### **2.2.9 Conclusion**

Audit noticed several deficiencies in implementation of mechanism of TDS for collection of tax from works contractors under the OVAT Act/Rules. There was non/short deduction of TDS and non-imposition of penalty by STAs for non/short collection of TDS by TDAs. There were delays in deposit of TDS into Government account by TDAs and STAs. There was absence of coordination between the TDAs and STAs. Internal Control Mechanism in the Department was weak and ineffective.

### 2.3 Other Audit observations

Audit test checked assessment records relating to the OVAT, CST and OET Acts in commercial tax Range/Circle offices of the State and noticed several cases of non-observance of provisions of the aforesaid Acts and Rules made thereunder which led to non/short levy of tax, interest and penalty as mentioned in succeeding paragraphs in this chapter. These cases are illustrative and based on a test check carried out by Audit. Audit pointed out similar omissions on the part of Assessing Authorities (AAs) every year, but not only do many of the irregularities persist; these remain undetected till an audit is conducted. The Government needs to improve the internal control system including strengthening of internal audit to avoid recurrence of such omissions.

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

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

- *completion of audit assessments by Assessing Authorities (AAs) on the basis of Audit Visit Reports (AVRs) and levy of tax on correctly assessed Taxable Turnover (TTO) of outputs after giving due credit/adjustment of admissible Input Tax Credit (ITC);*
- *levy of interest on short payment of tax and penal interest for delayed payment of tax detected during regular scrutiny of monthly returns by the AAs;*
- *imposition of penalty at prescribed rates in addition to the tax assessed at the audit assessment stage by the AAs;*
- *demand and collection of tax/interest/penalty as per prescribed procedures; and*
- *levy of penalty for non-submission of certified reports on annual audited accounts within the prescribed date.*

*The AAs, while finalising audit assessments of the dealers for certain tax periods, did not observe some of the aforesaid provisions read with Government notifications issued from time to time, as mentioned in following paragraphs:*

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

Under Section 14(1) of the OVAT Act, 2004, every registered dealer shall be liable to pay tax on his taxable turnover. Further, as per Section 43 of the above Act where, for any tax period, the Assessing Authority (AA), on the basis of any information in his possession, is of the opinion that the whole or any part of the turnover of the dealer in respect of such tax period has escaped assessment or been under assessed or been assessed at a lower rate, the AA may, after giving the dealer a reasonable opportunity of being heard, proceed to assess the dealer to the best of his judgment for arriving at the amount of tax due from the dealer. If the AA is satisfied that the escapement or under assessment of tax is without any reasonable cause, he may direct to pay, by way of penalty, a sum equal to twice the amount of tax additionally assessed under this Section. “Electric fans”, being unspecified item under Part III of Schedule B, are exigible to tax at the rate of 12.5 *per cent*.

During test check of assessment records of Cuttack I (West) Circle, Audit noticed (September 2012) that a registered dealer engaged in purchase and sale of electric fans was assessed (January 2012) on the basis of a Tax Evasion Report (TER). The AA, while finalising the assessment under Section 43 of the OVAT Act for the tax periods from April 2008 to March 2009, determined suppression of purchase of ₹ 28.19 lakh and levied tax at the rate of four *per cent* thereon instead of applicable rate of 12.5 *per cent*. This led to short levy of tax of ₹ 2.40 lakh. Besides, penalty of ₹ 4.79 lakh was also leviable.

On this being pointed out, Government stated (May 2013) that corrigendum order- cum- demand notice requiring the dealer to pay the extra demand ₹ 10.57 lakh was issued in September 2012, which included the differential tax liability of ₹ 7.19 lakh.

### 2.4.2 Short levy of tax due to incorrect application of Norm

Under Section 61 (1) of the OVAT Act, 2004 read with Rule 67(4) of the OVAT Rules, 2005, a registered dealer engaged in the manufacturing or processing of goods shall maintain true and up-to-date accounts of capital goods and inputs purchased, inputs used in manufacturing or processing of goods for sale, goods manufactured including manufacturing accounts, goods sold and stock accounts of inputs, consumables, packing materials, fuel and finished goods etc. Section 42(5) of the Act prescribes a penalty equal to twice the amount of tax assessed in audit assessment. Further, the CCT, Odisha, vide his letter dated 31 October 2009 circulated the Standard Input Output Norm (SION) for production of sponge iron. Sponge iron is exigible to tax at the rate of four *per cent* vide entry No. 68 of Part II of Schedule B of the Act.

During test check of assessment records of a registered dealer, in Cuttack-II Range for tax periods from 1 April 2009 to 31 May 2010, Audit noticed (September 2012) that based on the observation made in the Departmental Enforcement Wing's TER (September 2011), audit assessment of the dealer was completed on 28 June 2011. As per the SION, 1.6 MT of iron ore is required for production of 1 MT of sponge iron. During the above period, production of sponge iron should have been 1.26 lakh MT against utilisation of 2.02

lakh MT of 62-64 grade sized iron ore as input. However, while completing assessment, the AA adopted a higher ratio of 1.7 MT of sized iron ore and arrived at production of sponge iron at 1.19 lakh MT. Thus, due to non-adherence to the SION prescribed by CCT (O), there was underassessment of production of sponge iron to the extent of 7434 MT valued at ₹ 9.78 crore at the prevailing rate (between April 2009 to May 2010) of ₹ 13,161 per MT (as adopted by the AA). Tax at rate of four *per cent* on the said under assessed turnover is arrived at ₹ 39.13 lakh. Besides, penalty of ₹ 78.27 lakh was also leviable.

After Audit pointed out the case, Government stated (June 2013) that notice for further reassessment has been issued to the dealer (February 2013). Final reply is yet to be received (April 2014).

### **2.4.3 Escapement of tax on 'Cotton Yarn'**

Under Section 11 of the OVAT Act, 2004, every registered dealer shall be liable to pay tax on his TTO of sales at the rates specified in the Schedule to the Act. Further, Section 38 of the said Act provides for scrutiny of all the self-assessed returns filed by the dealers to ascertain the correctness of calculation, rate of tax paid, claim of ITC and payment of tax and in case the dealer is found to have paid less tax than what is payable, the AA is required to issue notice to the dealer directing him to pay the balance tax and interest thereon. Section 42(5) of the Act also provides for levy of penalty equal to twice the amount of tax assessed in Audit Assessment. 'Cotton Yarn' is exigible to tax at the rate of four *per cent* under Sl. 38 of Part -II of Schedule B of the Act.

(a) During scrutiny of audit assessment records of three dealers of two Circles<sup>27</sup> for tax periods from April 2005 to June 2010, Audit noticed (between August 2012 and March 2013) that the dealers engaged in processing of cotton yarn effected sale of 'Cotton Yarn' worth ₹ 11.97 crore inside the State during the above periods. However, tax of ₹ 47.90 lakh thereon was not paid, treating 'Cotton Yarn' as tax exempted goods. The contention of the dealer was accepted by the AA. Thus, there was escapement of tax of

₹ 47.90 lakh. Besides, penalty of ₹ 95.80 lakh was also leviable.

(b) During scrutiny of the self-assessed periodical returns in respect of six dealers in three Circles<sup>28</sup> for tax periods from April 2005 to May 2012, Audit noticed (August 2012 to March 2013) that though the dealers disclosed sales turnover of 'Cotton Yarn' valued at ₹ 15.68 crore in six cases in their periodical returns and did not pay any tax thereon treating the transactions as sales exempted from tax, the AAs accepted the returns without noticing this and further no notices were issued directing the dealers to pay tax of ₹ 62.74 lakh and interest of ₹ 24.72 lakh thereon. Thus, there was escapement of tax and interest of ₹ 87.46 lakh.

After Audit pointed out the above cases, the Government Stated (March 2014) that in respect three dealers of Bargarh circle reassessment was completed and extra demand of Tax (₹ 40.74 lakh) and Penalty (₹ 81.48 lakh) amounting to ₹ 1.22 crore was raised in January 2014.

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<sup>27</sup> Bargarh and Ganjam-I.

<sup>28</sup> Bargarh, Ganjam-I and Ganjam-II.

#### 2.4.4 Non levy of Tax on Duty Entitlement Pass Book

Under Section 12 of the OVAT Act, 2004, every dealer, who purchases or receives taxable goods from a registered dealer or any other person under the circumstances in which no tax is paid, is liable to pay tax on the purchase price or the prevailing market price of such goods, if after such purchase or receipt, the goods are not sold within or outside the State or in the course of export out of the territory of India, but are otherwise disposed of without payment of tax. Penalty equal to twice the amount of tax assessed in audit assessment is also imposable under Section 42(5) of the Act. All intangible goods like Duty Entitlement Pass Book (DEPB) are taxable at the rate of four *per cent* under the Act.

During test check of audit assessment records of a dealer in Bhubaneswar-III Circle, for the tax periods from April 2005 to March 2009, Audit noticed (June 2012) that the dealer received DEPB from the Director General of Foreign Trade (DGFT), Cuttack without payment of tax and subsequently transferred the same valued at ₹ 10.88 crore to its consignment agents outside the State on the strength of declarations in form “F” and no tax was paid on such goods. In such

circumstances, the receipt of DEPB was subject to tax at the rate of four *per cent*. However, the AA, while finalising the assessments (December 2010 and September 2011) of the dealer, did not levy such tax of ₹ 43.54 lakh. Besides, the dealer is liable for imposition of penalty of ₹ 87.08 lakh.

After audit pointed out the case, the Government stated (in March 2014) that re-assessment has been completed on 28 February 2013 raising extra demand of ₹1.13 crore.

#### **2.4.5 Non levy of penalty for non submission of Certified Report on Annual Audited Accounts**

Under Section 65 of the OVAT Act, 2004 read with Rule 73 of the OVAT Rules, 2005 a dealer having Gross Turnover (GTO) exceeding ₹ 40 lakh during a financial year shall furnish a true copy of the Annual Audited Accounts for that year duly certified by a Chartered/Cost Accountant by 31 October of the next financial year to the concerned AA for his record in the register prescribed by the CCT Odisha in September 2009 to monitor the timely submission of such accounts at the Circle level and also to act as a reference at the time of tax audit and assessment. The Act further provides that in case the dealer fails to furnish or furnishes the same belatedly, the AA shall, after giving the dealer a reasonable opportunity of being heard, impose on him a penalty of rupees one hundred for each day of default in submission.

During test check of records maintained by 21 Circles<sup>29</sup>, from October 2011 onwards, Audit noticed between April 2012 and January 2013 that 5,542 dealers whose GTO exceeded ₹ 40 lakh during the previous financial year i.e. 2010-11 did not submit the copies of Certified Annual Audited Accounts (CAAA) within the prescribed time. Audit further noticed that in some circles the prescribed registers were also not maintained to monitor timely receipt of copies of CAAA. This warranted levy of penalty under the Act. Delay in submission of

copies of Reports ranged from 182 to 427 days, for which penalty of ₹ 15.96 crore was to be imposed (**Annexure-I**).

After audit pointed out the cases, Government stated (June/July 2013) that show cause notices to all the 394 dealers relating to Bhubaneswar-II Circle were issued out of which penalty orders for ₹ 74.71 lakh were passed against 131 non-responding dealers. Show cause notices in respect of 188 dealers of Cuttack-II Circle and 77 dealers of Cuttack-I Central Circle had been issued, out of which demand notices against 38 dealers of Cuttack-I Central Circle have been issued in pursuance to such show cause notices. Proceedings had been initiated against the 221 defaulting dealers of Barbil Circle and show cause notices had been issued against 74 dealers of Bargarh Circle. Replies of remaining 16 circles are yet to be received (February 2014). Final reply from Government is also awaited (April 2014)

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<sup>29</sup> Angul, Balasore, Barbil, Bargarh, Bhadrak, Bhubaneswar-I, Bhubaneswar-II, Bhubaneswar-III, Cuttack-I Central, Cuttack-I West, Cuttack-II, Ganjam-I, Jagatsinghpur, Jatani, Jharsuguda, Kalahandi, Mayurbhanj, Nayagarh, Puri, Rourkela-I and Sambalpur-I.



#### 2.4.6 Non realisation of demanded tax and penalty with interest

Under Section 50 (4 to 7) of the OVAT Act, 2004 net tax due, interest and penalty demanded on assessments made under Sections 39, 40, 42 to 45 thereunder shall be paid by the dealer within 30 days from the service of the demand notices; failing which, the AA, after giving the dealer a reasonable opportunity of being heard, shall levy a penalty at the rate of two per cent per month on such amount from the due date of payment. Besides, when a dealer is in default in making the payment of any amount as stated above, he is liable to pay interest at the rate of two *per cent* per month with effect from due date of payment till the amount is paid. All amounts that remain unpaid after the due date of payment in pursuance of the notice issued under Section 50 (4) and (5) shall be recoverable as arrears of public demand in accordance with the provisions contained in Schedule E appended to the Act.

During scrutiny of Demand Collection Registers (DCRs) in Jagatsinghpur Circle, Audit noticed (July 2012) that while finalizing audit assessment of two unregistered dealers for tax periods from 17 May 2006 to 26 July 2007 on the basis of Fraud Case Reports (FCRs) the AA assessed tax and penalty of ₹ 2.54 crore and issued demand notices thereon on 29 October 2008 with the instruction to pay the same within one month.

However, neither did the dealers pay the same, nor did the AA initiate any action for recovery of the Government dues till the date of Audit except issuing Show Cause Notices (SCNs) on 25 August 2009 to the dealers. Due to lack of prompt action on the part of the Department on FCRs dues of ₹ 2.54 crore could not be collected. In the event of TR proceedings under schedule E of OVAT Act interest is also leviable.

After audit pointed out the cases, Government stated (March 2014) that TR proceedings have been initiated against one dealer and final TR orders are awaited.

In respect of the other dealer the Govt. stated that the assessment order and demand notices could not be served upon the dealer due to non-availability of the dealer in the address indicated in the report.

#### **2.4.7 Non levy of interest and penalty for delayed payment of tax**

Under Section-33(5) of the OVAT Act, 2004 if any dealer, after filling the return discovers that a higher amount of tax was due than the tax admitted by him, he may voluntarily disclose the same by filing a revised return. However, no such disclosure shall be accepted after receipt of the notice for the tax audit. Further Section 34 (1) and (2) of the Act provides that where a dealer, who is required to file a return under the Act, fails without sufficient cause to pay the amount of tax due as per the return, he shall be liable to pay interest at the rate of one *per cent* per month in respect of the tax, which he fails to pay according to the return, from the due date of the return to the date of its payment or to the date of order of assessment, whichever is earlier. If the dealer fails to pay the above amount of tax and interest, the Commissioner may, after giving the dealer a reasonable opportunity of being heard, direct him to pay, in addition to tax and interest, a penalty at the rate of two *per cent* per month thereon from the date it had become due to the date of its payment or the order of assessment, whichever is earlier. Section 38 of the said Act provides that every return filled by the dealer shall be scrutinised to verify the correctness of calculation, application of correct rate of tax and interest etc. by the AA.

(a) During test check of audit assessment records in two Ranges<sup>30</sup> and three Circles<sup>31</sup>, between May and September 2012, pertaining to tax periods from April 2005 to August 2011, Audit noticed that seven dealers paid tax dues of ₹ 6.04 crore covering 152 tax periods either after the due dates of payments or after issue of notice for tax audit with delays ranging from two to 1559 days. Though the AAs completed assessments between April 2011 and March 2012, but did not levy interest amounting to ₹ 7.97 lakh at the rate of one *per cent* on the tax dues of ₹ 6.04 crore and penalty of ₹ 17.53 lakh at the rate of two *per cent* on ₹ 6.12 crore respectively.

(b) On verification of tax payment details generated from computerised VATIS<sup>32</sup> and corroborated at random with the self-assessed VAT returns, Treasury Schedules, Progressive Collection Registers in eight Circles<sup>33</sup> for 2011-12, Audit noticed (August 2012 and February 2013) that 697 dealers paid tax dues of ₹ 30.46 crore covering

1472 tax periods with delays ranging between two and 443 days. However, while scrutinising the returns, the AAs neither levied interest of ₹ 25.65 lakh nor initiated action to levy penalty of ₹ 52.58 lakh as per the provisions of the Act.

Thus, total amount of non-levy of interest and penalty in the above cases (a) and (b) worked out to ₹ 1.04 crore in respect of 704 dealers of two Ranges and seven Circles covering 1,624 tax periods (**Annexure-II**).

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<sup>30</sup> Bolangir and Sambalpur.

<sup>31</sup> Balasore, Bhadrak and Sambalpur-II.

<sup>32</sup> Value Added Tax Information System.

<sup>33</sup> Angul, Bhubaneswar-II, Cuttack-II, Cuttack-I Central, Rourkela-I, Rourkela-II, Koraput and Nayagarh.

After Audit pointed out these cases, Government stated (August 2013) that show cause notices had been issued to 668 dealers of Rourkela-I Circle; Koraput Circle raised demand of ₹ 12.01 lakh against one dealer and the rest 17 dealers had been issued with demand notices; Bhubaneswar-II Circle issued demand notices in respect of 14 cases, 15 dealers had deposited tax with interest on their own and in 39 cases the dealers had paid tax within the stipulated time. Replies in respect of other Ranges and Circles are awaited (April 2014).

#### **2.4.8 Inadmissible ITC on spare parts of machinery**

Under Section 20(3) (b) of the OVAT Act, 2004 and Rules made thereunder read with amended provision of Government Notification of 28 May 2008, ITC shall be allowed on purchase of components and spare parts of capital goods like plant and machinery, as defined under Section 2(8) of the above Act, purchased on or after 1 June 2008 and used directly in the process of manufacture. Purchase of such goods prior to 1 June 2008 was, therefore, not entitled to ITC. Section 42(5) of the Act, further provides for imposition of penalty equal to twice the amount of tax assessed in the audit assessment.

During test check of the audit assessment records of Jajpur Range, Audit noticed (September 2012) that while finalising (August 2011) the audit assessments of a dealer, engaged in mining of iron and manganese ore and sale thereof, for the tax periods from 01 April 2005 to 31 March 2006, as per the directions of the first Appellate Authority, the AA allowed ITC of ₹ 46.78 lakh on the purchase of components and spare parts of plant and machinery made prior

to 1 June 2008, which was inadmissible. Besides, the dealer was liable to pay penalty of ₹ 93.56 lakh under Section 42 (5) of the Act.

After Audit pointed out the above case, Government stated (May 2013) that the dealer was entitled to avail ITC on spare parts on the basis of un-amended definition of 'capital goods', since 'Component parts and spare parts' were included in plant and machinery. However, substitution of the words 'and shall include the components and spare parts thereof' was made on 28 May 2008 with the sole intention to include spare parts and machinery in the definition of capital goods under Section 2(8) of the OVAT Act, 2004 prospectively and hence it was effective from 1 June 2008 only and not retrospectively.

#### 2.4.9 Short collection of tax

Under Section 38 of OVAT Act, 2004 and Rules made thereunder read with the instructions dated 28 April 2008 of the CCT, Odisha, each and every return shall be subject to scrutiny by the AA to verify the correctness of calculation, claim of ITC made there in. If any mistake is detected as a result of scrutiny, the AA shall serve a notice to the dealer to make payment of extra amount of tax along with interest at the rate of one *per cent*. The Government notified (26 March 2011) the enhanced tax rate of unspecified goods under Part-III of Schedule appended to the Act to 13.5 *per cent* from 12.5 *per cent* with effect from 1 April 2011.

(a) During test check of the data generated from the computerised VAT Information System (VATIS), between November 2012 and March 2013, in four Circles<sup>34</sup>, Audit noticed that 95 dealers in 105 cases declared/paid tax of ₹ 80.19 lakh at lower rate on sale turnover of un-specified goods valued at ₹ 7.49 crore instead of tax liability of ₹ 1.01 crore at the rate of 13.5 *per cent* relating to the year 2011-12 payable by them which resulted in short collection of tax of ₹ 20.95 lakh.

After audit pointed out the above cases, Government stated (August 2013) that notices were issued to 54 dealers by the ACCT, Rourkela-I Circle for realisation of dues and notices were issued to 10 dealers by the ACCT, Koraput Circle, out of which three dealers paid their dues of ₹ 3,661, two dealers had more input tax than output tax and five dealers failed to respond to the notices. Final reply is yet to be received (February 2014).

(b) During test check of the data generated from the computerised VATIS in two Circles<sup>35</sup>, Audit noticed (December 2012) that 37 dealers in 38 tax periods, during April to December 2011, declared/paid tax of ₹ 20.12 lakh on sale of goods valued at ₹ 12.13 crore instead of correct tax liability of ₹ 48.51 lakh at the rate of four *per cent*. This led to short payment of tax of ₹ 28.39 lakh.

After Audit pointed out the cases, AAs stated (December 2012) that action would be taken for realisation of dues and final result would be intimated to audit.

Audit brought the matter to the notice of CCT, Odisha in January 2013 and Government in June 2013. The replies are yet to be received (April 2014).

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<sup>34</sup> Rourkela-I, Balangir, Rayagada and Koraput.

<sup>35</sup> Balangir and Rourkela I.

#### 2.4.10 Non levy of penalty on audit assessment

Under Section 42(1) and (5) of the OVAT Act, 2004, where the tax audit results in detection of any discrepancy such as suppression of purchases or sales or both, erroneous claims of deduction including claim of ITC, evasion of tax or contravention of any provision of the Act affecting the tax liability of the dealer, the AA is required to make audit assessment of the dealer, wherein penalty equal to twice the amount of tax additionally assessed shall be imposed against the dealer.

During test check of audit assessment records of one Range<sup>36</sup> and five Circles<sup>37</sup>, Audit noticed, between June 2012 and January 2013, that while finalising the audit assessments of seven dealers for different tax periods ranging from April 2005 to October 2010, the AAs assessed (between February 2010 and October 2011) additional tax liability of ₹ 76.53 lakh for various contraventions of the provision

of the Act. However, they did not impose penalty of ₹ 1.53 crore i.e. twice the amount of tax additionally assessed.

After Audit pointed out the above cases in May 2013; Government stated (July 2013) that notice in Form VAT-307 has been issued to one dealer of Keonjhar Circle and the case is under examination. Final reply is yet to be received (April 2014).

<sup>36</sup> Jajpur Range.

<sup>37</sup> Bargarh, Bhubaneswar-IV, Ganjam-I, Keonjhar and Puri Circle.

#### **2.4.11 Non-levy of penalty for non-amendment of Registration Certificate**

As per Section 32(1) and (7) of the OVAT Act, 2004 read with Rule 29 of the OVAT Rules, 2005 “if any dealer registered under the Act sells or disposes of his business or any part thereof or the place of business or discontinues his business; or effects, or comes to know of any other change in the ownership of the business or changes the name, style, constitution or nature of business, or changes his place of business or warehouse, or opens a new place of business or makes any addition or deletion in the class or classes of goods dealt in or manufactured” he or any person duly authorised by him, shall, within the prescribed time of 14 days inform the Registering Authority (RA) such changes accordingly. Where a dealer fails to inform the above changes to the RA within the time prescribed, he shall be liable to a penalty of ₹ 100 for each day of default.

During scrutiny of registration records together with the assessment records in four <sup>38</sup> units, Audit noticed, between June and November 2012, that four dealers were conducting their business without amending their Certificates of Registration (RCs) or intimating the changes to the RA of the Circle regarding the changed nature of their business, goods dealt with, operation of extra godowns, running of stone crusher etc. As such the dealers were liable to pay penalty of ₹ 5.16 lakh at the rate of ₹ 100 for each day of default calculated up to the respective dates of Audit. However, while finalising the assessments, the AAs failed to notice this and did not impose penalty.

After Audit pointed out the cases, Government stated (July 2013) that the case of one dealer of Cuttack-I East Circle was reopened and ₹ 0.83 lakh was demanded. However, replies in respect of three other dealers are yet to be received (April 2014).

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<sup>38</sup>

Ganjam Range and Bhubaneswar-IV, Bhadrak, Cuttack-I East Circle.

#### 2.4.12 Short levy of tax due to application of lower rate of tax

Under Para III of Schedule B of the OVAT Act, 2004, unspecified goods are taxable at the rate of 12.5 *per cent*. Under Section 42(5) of the Act, penalty equal to twice the amount of tax assessed in audit assessment shall be imposed against the dealer for contravention of the provision of the OVAT Act affecting his tax liability.

During test check of audit assessment records of Cuttack II Range, Audit noticed (October 2012) that a registered dealer carrying on business in mosquito repellants, coils and mats etc. effected sale of above goods worth ₹ 58.05 crore, during tax periods from January 2009

to August 2010, and paid tax at the rate of four *per cent*, treating it as insecticide, instead of 12.5 *per cent*. This led to short levy of tax of ₹ 4.93 crore. Besides penalty of ₹ 9.87 crore was also leviable. The AA, while finalising the audit assessment (April 2011) for the above periods, did not detect these lapses despite earlier Audit observations mentioned in Audit Report (Revenue Receipts) for the years ended March 2010 and March 2011.

After Audit pointed out the case, the AA stated (October 2012) that as per the Entry Sl. No. 30 of Part II of Schedule B of the rate chart under the OVAT Act, insecticides are taxable at the rate of four *per cent*. But it was, however, noticed that the same AA has levied tax at the rate of 12.5 *per cent*/ 13.5 *per cent* on sales turnover of mosquito repellent effected by the instant dealer for the subsequent tax periods from September 2010 to June 2012 based on the judgment of the Hon'ble High Court of Andhra Pradesh in the case of M/s Reckitt Benckiser (India) Ltd v/s State of Andhra Pradesh reported under the citation 56-VST-1 (2012) wherein Hon'ble High Court had held that mosquito repellents like coil, mat, vaporiser and liquid vaporiser are liable to tax at the rate of 12.5 *per cent*.

Further, under the OVAT Act, 2004 mosquito repellants in any form are specifically excluded from Part-II of Schedule B by a Notification issued on 1 July 2005.

After Audit pointed out the case, Government stated (January 2014) that the case had been reopened and the reassessment proceeding was going on. Final reply is awaited (April 2014).



## Central Sales Tax

### 2.5 Non-observance/compliance of the provisions of the Central Sales Tax Act/ Rules read with Government notifications/ executive orders

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

- (i) *completion of audit assessment based on Audit Visit Report (AVR) and levy of tax at the assessment stage at the prescribed normal/concessional rates, subject to certain conditions on the Net Taxable Turnover (NTO) of goods correctly determined at such stage and adjustment of admissible Input Tax Credit (ITC);*
- (ii) *levy of penalty at the prescribed rates, for contravention of provisions of the Act and Rules, on the tax liability determined by the AA in audit assessment including penalty for misutilisation of declaration in prescribed forms.*

*Audit noticed that while finalising assessments, the AAs did not observe some of the above provisions read with Government notifications/orders as mentioned in the following paragraphs:*

#### 2.5.1 Excess adjustment of Input Tax Credit against Central Sales Tax payable

Under Section 20 of the OVAT Act, 2004 and Rules made there under, a registered dealer shall be eligible to claim ITC to the extent of the tax paid or payable on his purchases of taxable goods inside the State subject to fulfilment of certain conditions and restrictions as prescribed under the Act. As per the proviso (d) under the above Section (effective from 1 June 2008), the ITC on purchase of goods, when sold in course of inter-State trade or commerce, shall be allowed only to the extent of the CST payable under the CST Act, 1956. Section 38 of the OVAT Act 2004, read with Rule 39 of OVAT Rule, 2005 provide for scrutiny of each and every self-assessed return to verify the correctness of the ITC claimed by the dealer and issue of notices to the dealers and in case of any discrepancies to collect extra amount of tax along with interest. Further, Rule-12(3) (g) of the CST (Odisha) Rules, 1957 provides for imposition of penalty equal to twice the amount of tax additionally assessed during audit assessment.

against the tax payable on intra-State sale. Although ITC of ₹ 41.30 lakh only was admissible for adjustment against the CST payable on interstate sale of

During scrutiny of the audit assessment records of a dealer, for the tax periods from 11 December 2006 to 30 September 2010, Audit noticed (August 2012) that during the period from 1 April to 30 September 2010, the dealer purchased coal worth ₹ 18.79 crore within the State by paying tax of ₹ 75.16 lakh. The dealer availed ITC of ₹ 8.24 lakh under the OVAT Act

goods valued at ₹ 20.65 crore, the dealer adjusted the remaining amount of ₹ 66.92 lakh.

This led to excess adjustment of ITC of ₹ 25.62 lakh. Besides, the dealer was liable to pay a penalty of ₹ 51.24 lakh.

This was neither detected by the Tax Audit Team during its visit to the premises of the dealer nor by AA, while making scrutiny of the periodical returns and finalising audit assessment.

After Audit pointed out the above case, Government stated (July 2013) that the dealer made payment of ₹ 5.12 lakh against demanded amount of ₹ 76.85 lakh and preferred first appeal the result of which is awaited (April 2014).

### 2.5.2 Short- levy of tax due to application of lower rate of tax

Under Section 8(2) of the CST Act, 1956, the rate of tax on inter State sale of other than declared goods was 10 *per cent* or the rate applicable on sale of such goods under the appropriate State Act, whichever was higher up to 31 March 2007. From 01 April 2007, it was the same rate as applicable to the sale or purchases of such goods inside the State. As the system of tax audit and audit assessment in the pattern of OVAT Act, 2004 was extended to CST transactions with effect from 06 July 2006, penalty equal to twice the amount the tax assessed under the audit assessment shall be imposed under Rule 12(3) (g) of CST (O) Rules from the date. 'Cashew kernels' was taxable at the rate of 12.5 *per cent* under the CST Act, 1956 without declaration in form 'C' up to 29 February 2008 and at the rate of four *per cent* with effect from 1 March 2008 (being an item under four *per cent* tax group under the OVAT Act) onwards.

During test check of audit assessment records in Ganjam-II Circle, Audit noticed (August 2012) that a registered dealer engaged in manufacturing and sale of Cashew kernels was assessed *ex parte* for the tax periods from 1 April 2005 to 31 January 2010. The dealer effected inter-State sale and stock transfer of above goods worth ₹ 4.97 crore during the above period. However, the declarations in form 'C' and 'F' were not furnished before the Tax Audit Team as well as the AA. As such, the above transactions were to be taxed at the rate of 12.5

*per cent* up to 29 February 2008 and at the rate of four *per cent* thereafter. Audit calculated that tax of ₹ 38.81 lakh and penalty of ₹ 37.39 lakh was leviable against the above transaction. However, while finalising the audit assessment on 24 June 2011, the AA assessed an additional tax of ₹ 8.08 lakh and penalty of ₹ 16.17 lakh taking into account the payment of ₹ 12.75 lakh in self-assessment. This led to short levy of tax ₹ 17.98 lakh. Besides penalty of ₹ 21.22 lakh was also leviable against the dealer. Thus, the total tax and penalty of ₹ 39.20 lakh was leviable on the dealer.

After Audit pointed out the case, Government stated (December 2013) that the dealer was assessed on 24 June 2011. Hence reassessment would be done later. Final reply is awaited (April 2014).

### 2.5.3 Non levy of penalty for misutilisation of declarations in Form 'C'

Under Section 10 (d) of the CST Act, 1956, if any person after purchasing any goods for the purposes like resale, use in manufacture and processing of goods for sale or in the telecommunication network or in the mining or in the generation or distribution of electricity or any other form of power as specified in Section 8(3) (b) of the Act, fails without reasonable excuse, to make use of such goods for the very purpose, he is liable for prosecution. Under section 2(g)(ii) of CST Act 1956, sale is defined as "a transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract". However, under Section 10A of the CST Act, the AA may, after giving him a reasonable opportunity of being heard, impose upon him by way of penalty a sum not exceeding one and a half times of the tax which would have been levied in respect of the sale of such goods, in lieu of prosecution. Automobiles tyres and tubes are taxable at the rate of 12.5 per cent during 6 May 2008 to 31 January 2010.

During test check of assessment records of Bhubaneswar-IV Circle, Audit noticed (June 2012) that a dealer was engaged in execution of labour oriented works contract not involving transfer of properties in goods during the tax periods from 6 May 2008 to 31 January 2010. The dealer purchased automobile tyres and tubes worth ₹ 63.21 lakh at concessional rate from outside the State through declarations in form 'C' for resale in course of use in execution of the works contract. However, there was no resale through transfer of such goods in course of execution of labour oriented works. Thus, there was

contravention of Section 10(d)

of the CST Act and the dealer was liable to be imposed with a penalty of ₹ 11.85 lakh<sup>39</sup> as per the provision of Section 10A *ibid*. While finalising the assessment of the dealer, the AA did not impose the same.

After Audit pointed out the case, Government stated (December 2013) that penalty amounting to ₹ 11.85 lakh was imposed on the dealer by the AA on 1 August 2013. However, the amount is yet to be realised (April 2014).

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<sup>39</sup> One and a half times of the tax of ₹ 7.90 lakh (12.5% on ₹ 63.21 lakh).

#### 2.5.4 Non-levy of penalty on audit assessment

Under Rule 10(3) read with Rule 12(3) (a), (e) and (f) of the CST (O) Rules, 1957 as amended on 6 July 2006, where the tax audit results in detection of suppression of purchases or sales or both, erroneous claims of deduction, evasion of tax or contravention of any provision of the Act affecting the tax liability of the dealer, the AA is required to make audit assessment of the dealer and impose penalty equal to twice the amount of tax so assessed in such assessment as per Rule 12(3) (g) of the CST (O) Rules, 1957.

During test check of the audit assessment records of one Range<sup>40</sup> and three Circles<sup>41</sup>, Audit noticed, between July and December 2012, that in seven cases pertaining to seven registered dealers the concerned AAs, while assessing the dealers for different tax periods from 1 July 2006 to 31 March 2011, assessed tax of ₹ 2.20 crore due to availment of concessional rate of tax without supporting declarations

and production of books of accounts during the assessment stage. Though tax levied for the above irregularities warranted imposition of penalty, the AAs did not impose penalty of ₹ 4.40 crore.

After audit pointed out the above cases, Government stated that in respect of Ganjam-I Circle the dealer filed 1st appeal and produced required statutory forms and demand was reduced to ₹ 0.75 lakh as against the earlier demand of ₹ 1.13 lakh along with a penalty of ₹ 1.49 lakh. In respect of Rourkela-I Circle the 1<sup>st</sup> appeal of the dealer was set aside by the JCCT, Sundargarh Range with direction for reassessment and the case had been reopened accordingly. In respect of Sundargarh Range and Rourkela-II Circle Government, however, stated that defaulters were liable for penal action under Rule 8A. However, levy of penalty was mandatory under Rules.

<sup>40</sup> Sundargarh Range.

<sup>41</sup> Ganjam-I, Rourkela-I and Rourkela-II Circle.

### **2.5.5 Short levy of Tax due to irregular allowance of concessional rate of tax against duplicate declarations in Form 'C'**

Under Section 8 of the CST Act, 1956 read with the Rules made there-under, inter-State sale of goods made to registered dealers and supported by valid declarations in form 'C' is exigible to tax at the concessional rate of two *per cent* from 1 June 2008 onwards or at such lower rate as applicable to the intra State sale or purchase of such goods. Inter-State sales of all goods, not supported by valid declarations in form 'C', are taxable at the same rate as applicable to sale or purchase of such goods inside the State with effect from 1 April 2007. Rule 12 (3) (g) of the CST (Odisha) Rules, 1957 provides for imposition of a penalty equal to twice the amount of tax assessed in the audit assessment of any dealer.

During test check of audit assessment records in two Ranges<sup>42</sup>, Audit noticed, between October and December 2012, that the concerned AAs, while finalising audit assessments, allowed concessional rate of tax to three dealers on inter-State sale of goods valued at ₹ 2.17 crore, although the dealers furnished duplicate/counterfoil copies of declarations in form 'C'. This led to short levy of tax of ₹ 5.04 lakh. Besides penalty of ₹ 10.09 lakh is also leviable.

After audit pointed out the above cases, Government stated (August 2013) that the two cases related to Cuttack-II Range have been reopened and were under examination. The final reply in respect of such cases as well as compliance to the objection related to Bolangir Range are yet to be received (April 2014).

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<sup>42</sup> Cuttack-II Range and Bolangir Range.

## Entry Tax

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

*The Odisha Entry Tax (OET) Act, 1999 and Rules made thereunder read with Government notifications issued from time to time provide for:*

- *levy of tax on the entry of scheduled goods into a local area for consumption, use or sale therein at the prescribed normal/concessional rates and levy of penalty at prescribed rates for the tax levied in audit assessment;*
- *allowance of proportionate set off towards tax paid on purchase of scheduled goods by the manufacturers and utilised as raw materials on the Entry Tax (ET) payable on the sale value of taxable finished goods;.*

*Audit noticed that while finalising the assessments, the AAs did not observe the above provisions in some cases as mentioned in the following paragraphs:*

#### 2.6.1 Non levy of Entry Tax on scheduled goods

Under Section 3(1) of the OET Act 1999, entry of the scheduled goods into a local area for consumption, use or sale therein is taxable at prescribed rates of the Schedule appended to the Act. As per the Odisha Minor Minerals Concession Rules, 2004, ordinary clay, sand, morrum and chips etc. being minor minerals are scheduled goods and liable for entry tax at the rate of one *per cent*, as per entry 59 of Part-I of the Schedule. 'Pepper and other spices' are also scheduled goods and exigible to tax at the rate of one *per cent* under the Act as per entry 21 of Part I of the Schedule. Further, under Section 9C(5) of the Act, without prejudice to any penalty or interest that may have been levied under any provision of the Act, an amount equal to twice the amount of tax assessed in audit assessment shall be imposed by way of penalty.

On scrutiny of Entry Tax assessment records in Cuttack-II and Ganjam Range between July and October 2012 Audit noticed that the AAs while completing the assessment of two registered dealers under the OET Act did not levy tax on the purchase turnover of ₹ 84.45 crore, for the tax periods from April 2005 to March 2010, assessed between November 2011 and January 2012, treating the said turnover of sand, morrum, chips, turmeric and dry chillies as non-scheduled goods. This led to non-levy of tax of ₹ 0.84 crore. Besides penalty of ₹ 1.69 crore was also leviable.

After this was pointed out Government stated (July 2013) that the case has been reopened in respect of Cuttack-II Range where as in respect of Ganjam Range the re-assessment order has been passed on 2 April 2013 raising extra demand of tax and penalty of ₹ 49.21 lakh.

Further reply on realisation of the amount is awaited (April 2014).



### **2.6.2 Non-levy of Entry Tax on imported scheduled goods**

Under Section 3(1) of the OET Act, 1999 read with Rule 3 (4) (a) of OET Rules, 1999, there shall be levied and collected a tax at concessional rate of 50 percentum of the normal tax prescribed under Part I and Part II of the Schedule appended to the Act on entry of the scheduled goods into a local area for use as a raw material for manufacture of goods for sale. 'Ferro alloys' including 'Ferro silicon' are scheduled goods and are liable to tax at the rate of two *per cent* as per entry 38 under Part II of the Schedule to the OET Act and at the rate of one *per cent* only, when these are used as raw materials for manufacturing. Further, under Section 9C (5) of the Act, the dealer is liable to pay penalty equal to twice the amount of tax assessed in audit assessment.

During scrutiny of audit assessment records in Bolangir Range, Audit noticed (November 2012) that a registered dealer imported scheduled goods such as Ferro vanadium, Ferro molybdenum worth ₹ 107.25 crore for manufacture of high speed steel during the tax period from 1 April 2005 to 31 March 2008 and paid no tax thereon. The AA, while finalising the audit assessment in December 2011 of the dealer for the above period, did not levy tax of ₹ 1.07 crore on such imported goods, treating

the same as non-scheduled goods despite recommendations made by the Tax Audit Team in Audit Visit Report (31 March 2011) to levy tax thereon at appropriate rate. Besides, a penalty of ₹ 2.14 crore is also leviable.

After Audit pointed out the case, AA stated (December 2012) that the proceeding under Section 10 of the OET Act would be initiated against the dealer and result would be intimated to audit. Further reply is yet to be received (January 2014).

Audit referred the matter to CCT, Odisha in January 2013 and Government in June 2013. The replies are yet to be received (April 2014).



### 2.6.3 Short levy of Entry Tax on scheduled goods

Under Section 26 of the OET Act 1999 read with Section 3, entry tax shall be levied at the prescribed rates on the scheduled goods. 'Materials for transmission towers' are scheduled goods and exigible to tax at the rate of two *per cent* as per entry-2 under Part II of the Schedule to the OET Act. Further, under Section 9C (5) of the Act, without prejudice to any penalty or interest that may have been levied under any provision of the Act, an amount equal to twice the amount of tax assessed under Section 9C shall be imposed by way of penalty.

(a) On scrutiny of audit assessment records in Bhubaneswar II Circle, Audit noticed (August 2012) that the AA while completing assessment on 30 March 2012 of a registered dealer under the OET Act incorrectly levied tax at the rate of one *per cent* on purchase value of scheduled goods worth ₹ 19.83 crore instead of the correct rate of two *per cent*.

This led to short levy of entry tax of ₹ 0.20 crore. Besides penalty of ₹ 0.40 crore is also leviable.

(b) Similarly on scrutiny of assessment records in Balasore Range (April 2012), Audit noticed that the AA while finalising the assessment of a registered dealer under the OET Act, on 27 February 2012, incorrectly levied tax at the rate of one *per cent* on the sale value of finished goods worth ₹ 31.60 crore instead of correct rate of two *per cent*. This resulted in short levy of entry tax of ₹ 0.32 crore. Besides, penalty of ₹ 0.63 crore was also leviable.

After Audit pointed out the above cases, Government stated (May 2013) that the reassessment proceeding of the dealer pertaining to Bhubaneswar-II Circle had been completed in April 2013 raising extra demand of ₹ 0.59 crore inclusive of penalty whereas, in case of the dealer pertaining to Balasore Range the AA had completed assessment in November 2012 raising extra demand of ₹ 0.32 crore. No reason was attributed for non-levy of penalty of ₹ 0.63 crore. However, the dealer of Balasore Range had preferred appeal against the demand by depositing a sum of ₹ 6.32 lakh. Further reply is awaited (April 2014).

#### **2.6.4 Non levy of penalty on audit assessment**

Under Section 3 (1) of OET Act, 1999, tax at prescribed rates is levied and collected on entry of the scheduled goods into a local area for consumption, use or sale therein. Further Section 9C (5) of the OET Act, specifies that, without prejudice to any penalty or interest that may have been levied under any provision of the Act, an amount equal to twice the amount of tax assessed under Section 9C(3) or (4) shall be imposed by way of penalty in respect of any assessment made thereunder.

During test check of audit assessment records in three Circles<sup>43</sup> and one Range<sup>44</sup> for different tax periods from 1 April 2006 to 30 April 2010, Audit noticed between May 2012 and January 2013 that though tax of ₹ 27.71 lakh was assessed in four cases against four dealers, the respective AAs of three Circles, while finalising the assessments in three cases, did

not impose penalty of ₹ 12.33 lakh; whereas the AA of the concerned Range levied penalty of ₹ 0.15 lakh only against the leviable penalty of ₹ 43.08 lakh. Thus, there was non/short levy of penalty of ₹ 55.26 lakh.

After Audit pointed out the above cases, AAs stated (between May 2012 and July 2013) that the cases would be re-examined and compliances would be intimated after verification. Further compliances are awaited (June 2013).

Audit reported the matter to CCT, Odisha in May 2013 and Government in June 2013. The replies are yet to be received (April 2014).

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<sup>43</sup> Bargarh, Bhubaneswar III and Keonjhar.

<sup>44</sup> Jajpur.