

CHAPTER II
SALES TAX/VALUE ADDED TAX

Executive Summary

Increase in tax collection	In 2012-13 the collection from sales tax/value added tax increased by 21 <i>per cent</i> over the previous year.
Internal audit	Internal audit was completed only in 14 <i>per cent</i> of the offices that were due for audit during 2012-13. The Department attributed the reason for lesser coverage of internal audit to shortage of man power in the Internal Audit Wing
Results of audit conducted in 2012-13	<p>In 2012-13, Audit test checked the records of 166 units and found underassessment of tax and other irregularities amounting to ₹ 338.81 crore in 1,345 cases.</p> <p>The Department accepted underassessments and other deficiencies amounting to ₹ 12.19 crore in 512 cases out of which ₹ 6.35 crore involved in 278 cases were pointed out during the year and the rest in earlier years. Out of the above, an amount of ₹ 4.98 crore has been collected.</p>
What is highlighted in this Chapter	<p>Audit findings on “Cross verification of import data obtained from the Customs Department” involving ₹ 145.58 crore is featured in this Chapter. The same revealed that existing practice followed by the Department for collection and dissemination of information regarding import of goods by dealers to ensure proper accounting of the same is deficient in identifying tax evaders, detecting suppression of sales turnover and consequent evasion of tax. This chapter also features a few illustrative cases selected from observations like application of incorrect rate of tax, short levy of additional sales tax, incorrect claim of input tax credit (ITC), non/short reversal of ITC, etc. noticed during test check of records in the assessment circles relating to assessment and collection of sales tax/value added tax, where the provisions of the Acts/Rules were not followed.</p> <p>Similar omissions have been pointed out by Audit earlier also. These omissions were apparent from the records made available to Audit but the assessing authorities were unable to detect these mistakes.</p>
Conclusion	The Department needs to improve the internal control system including strengthening internal audit to reduce recurrence of such omissions. It also needs to expedite collection of tax in accepted cases on priority.

CHAPTER II

SALES TAX/VALUE ADDED TAX

2.1 Tax administration

Assessment, levy and collection of sales tax, central sales tax and value added tax are governed by the erstwhile Tamil Nadu General Sales Tax Act, 1959 and the Rules made thereunder, the Central Sales Tax Act 1956 and the Rules made thereunder, the Tamil Nadu Value Added Tax Act, 2006 and the Tamil Nadu Value Added Tax Rules, 2007 respectively. Administration of the Department is vested with the Commissioner of Commercial Taxes. The State has been divided into 40 zones, comprising 323 assessment circles including four Large Taxpayers² units at Chennai and two Fast Track Assessment Circles (FTACs) at Coimbatore. Assessment, levy and collection of tax are done by the assessing authorities in charge of the assessment circles. Monitoring and control at the Government level is done by the Secretary, Commercial Taxes and Registration Department.

2.2 Trend of receipts

Actual receipts from sales tax/value added tax during the last five years from 2008-09 to 2012-13 along with the total tax receipts during the same period are exhibited in the following table:

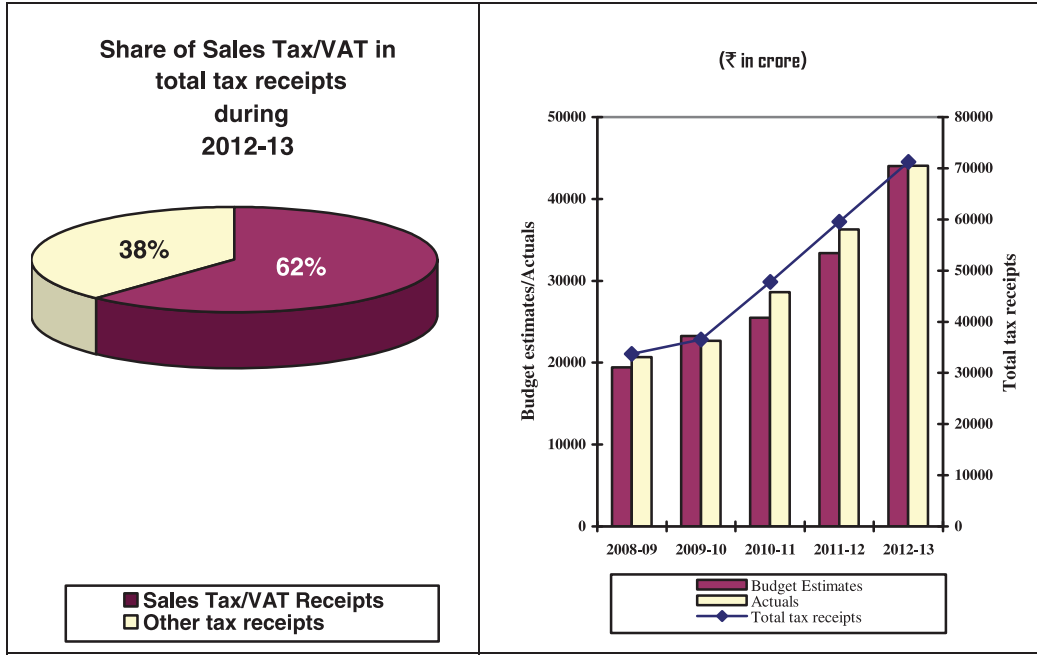
(₹ in crore)

Year	Budget estimates	Actuals	Variation excess (+)/ short fall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2008-09	19,417.74	20,674.70	(+) 1,256.96	(+) 6.47	33,684.37	61
2009-10	23,242.53	22,661.52	(-) 581.01	(-) 2.50	36,546.66	62
2010-11	25,504.65	28,614.23	(+) 3,109.58	(+) 12.19	47,782.17	60
2011-12	33,393.95	36,288.90	(+) 2,894.95	(+) 8.67	59,517.66	61
2012-13	44,007.69	44,041.13	(+) 33.44	(+) 0.07	71,254.27	62

Source: Finance Accounts of Government of Tamil Nadu

A bar diagram depicting budget estimates, actual receipts of Sales Tax/VAT and total tax receipts of the State and a pie chart depicting the position of Sales Tax/VAT receipts in the total tax receipts are given in the following page.

² Large taxpayers – Dealers whose taxable turnover for a year exceeds ₹ 200 crore.



In 2012-13 the collection from sales tax/value added tax increased by 21 per cent over the previous year. The Department attributed the reasons for increase in revenue to increase in tax rate and revenue buoyancy in automobile sector, fast moving consumer goods sector, edible oil and non-VAT goods like tobacco products, Indian made foreign liquor and petroleum products.

2.3 Analysis of arrears of revenue

As per the information furnished by the Department, the arrears of revenue as on 31 March 2013 along with the figures for the preceding four years are given in the following table:

(₹ in crore)					
Year	Opening balance	Addition	Total	Amount collected* during the year	Closing balance
2008-09	8,221.59	2,429.37	10,650.96	779.61	9,871.35
2009-10	9,871.35	1,937.68	11,809.03	818.97	10,990.06
2010-11	10,990.06	211.61	11,201.67	1,069.33	10,132.34
2011-12	10,132.34	1,397.50	11,529.84	695.90	10,833.94
2012-13	10,833.94	1,977.13	12,811.07	694.03	12,117.04
*includes demands eliminated, waived and written off					

As per the details furnished by the Department, the arrears as on 31 March 2013 includes ₹ 5,537.26 crore outstanding for more than five years. Demands amounting to ₹ 3,089.23 crore were covered under the Revenue Recovery Act. Demands amounting to ₹ 1,885.88 crore were stayed by the Government/High Court and other judicial/appellate fora and an amount of ₹ 150.28 crore was held up due to rectification/review applications. A sum of ₹ 52.15 crore could not be recovered on account of assessee becoming insolvent while a sum of ₹ 656.67 crore was likely to be written off/waived.

An amount of ₹ 3,522.42 crore was covered under the deferral scheme. An amount of ₹ 882.25 crore was proposed to be eliminated. A sum of ₹ 383.08 crore was covered under civil suits and Board for Industrial and Financial Reconstruction and a sum of ₹ 1,495.08 crore was under various stages of recovery.

The above details indicate that the amount of uncollected revenue as on 31 March 2013 was more than one fourth of the sales tax/VAT revenue realised by the Department during the year 2012-13 and substantial amounts were covered under the Revenue Recovery Act.

The Government may consider fixing targets for collection of old arrears in a time bound manner and closely monitor the performance of the Departmental officers *vis-à-vis* the set targets.

2.4 Assessee profile

The number of registered dealers in 2012-13 was 6,36,816 comprising 6,34,333 VAT dealers and 2,483 non-VAT dealers. Of the above, the large tax payers were 116 and the rest were classified as small tax payers. The number of dealers required to file returns during the year were 3,12,115 VAT dealers and 2,483 non-VAT dealers. The number of returns due from the dealers for the year 2012-13 was 35,74,510 against which 27,53,770 returns were received. 8,08,002 and 12,738 returns were not received from VAT and non-VAT dealers respectively.

The Department stated (January 2014) that notices are issued under Section 25 of the TNVAT Act to non-filers of returns proposing best judgment assessment apart from levying compounding fees. The Department further stated that notices were issued for cancellation of registration certificates to non-filers of returns.

2.5 Collection of sales tax/VAT per assessee

Details of amount of sales tax/value added tax realised during the year, the number of assessees and the collection of sales tax/value added tax per assessee for the period from 2008-09 to 2012-13 are given in the following table:

Year	No. of assessees	Revenue (₹ in crore)	Revenue per assessee (₹ in lakh)
2008-09	2,45,052	20,674.70	8.44
2009-10	2,70,159	22,661.52	8.39
2010-11	3,11,517	28,614.23	9.19
2011-12	3,63,462	36,288.90	9.98
2012-13	4,05,721	44,041.13	10.85

2.6 Arrears in assessment

The number of cases pending for assessment at the beginning of the year 2012-13, due for assessment during the year, disposed during the year and pending at the end of the year 2012-13 along with the figures for the preceding four years as furnished by the Commercial Taxes Department are given in the following table:

Year	Opening balance	Cases which became due for assessment	Total	Cases disposed during the year	Cases pending at the end of the year	Percentage of disposal (Col.5 to 4)
1	2	3	4	5	6	7
2008-09						
Sales tax	2,01,148	---	2,01,148	55,381	1,45,767	28
VAT	1,22,651	1,85,270	3,07,921	95,047	2,12,874	31
2009-10						
Sales tax	1,45,767	---	1,45,767	84,600	61,167	58
VAT	2,12,874	2,21,166	4,34,040	1,14,638	3,19,402	26
2010-11						
Sales tax	61,167	---	61,167	36,122	25,045	59
VAT	3,19,402	2,37,073	5,56,475	1,63,957	3,92,518	29
2011-12						
Sales tax	25,045	---	25,045	22,682	5,151	91
VAT	3,92,518	3,41,487	7,34,005	4,72,411	2,61,594	64
2012-13						
Sales tax	5,151	---	5,151	3,349	1,802	65
VAT	2,61,594	2,77,774	5,39,368	4,83,474	55,894	90

The above position indicates that finalisation of assessments under VAT has considerably increased when compared to earlier years though finalisation of assessment relating to sales tax is still pending.

2.7 Cost of collection

The gross collection in respect of sales tax/VAT, expenditure incurred on collection and percentage of such expenditure to gross collection during the years 2010-11, 2011-12 and 2012-13 along with the relevant all India average percentage of expenditure on collection to gross collection for the previous years are given in the following table:

(₹ in crore)

Head of revenue	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage for the previous years
Sales tax/ VAT	2010-11	28,614.23	230.38	0.81	0.96
	2011-12	36,288.90	215.61	0.59	0.75
	2012-13	44,041.13	214.95	0.49	0.83

Source: Finance Accounts of Government of Tamil Nadu

The percentage of expenditure on collection has shown a decreasing trend and is also less than the all India average percentage in all the three years.

2.8 Analysis of collection

The break-up of total collection at pre-assessment stage and after regular assessment of taxes for the years 2010-11, 2011-12 and 2012-13 as furnished by the Department are given in the following table:

(₹ in crore)

Year	Amount collected at pre-assessment stage	Amount collected after regular assessment (additional demand)	Penalties for delay in payment of taxes	Amount refunded	Net collection as per department	Net collection as per Finance Account	Percentage of col. 2 to 7
1	2	3	4	5	6	7	8
2010-11							
Sales tax/ VAT	4,442.83	89.03	86.88	625.58	30,491.00	28,614.23	108
	26,399.77	98.07					
2011-12							
Sales tax/ VAT	5,580.93	192.48	79.85	823.57	38,721.17	36,288.90	107
	33,374.80	316.68					
2012-13							
Sales tax/ VAT	2,869.77	103.88	622.11	1,250.25	46,634.00	44,041.13	101
	41,591.33	2,697.16					

The collection of revenue at pre-assessment stage to the net collection was 101 per cent during 2012-13 as against 107 per cent in 2011-12.

2.9 Impact of Audit Reports

2.9.1 Revenue impact

During the last five years, Audit pointed out non/short levy, non/short realisation, underassessment/loss of revenue, incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation, etc., with revenue implication of ₹ 707.27 crore in 60 paragraphs. Of these, the Department/Government accepted audit observations

involving ₹ 59.66 crore and since recovered ₹ 13.26 crore. The details are shown in the following table:

(₹ in crore)

Year of Audit Report	Paragraphs included		Accepted money value	Amount recovered
	Number	Money value		
2007-08	14	50.77	4.73	1.50
2008-09	12	72.52	3.12	1.07
2009-10	13	134.99	7.94	5.69
2010-11	13	21.45	6.78	0.42
2011-12	8	427.54	37.09	4.58
Total	60	707.27	59.66	13.26

The Government may institute a mechanism to monitor the position of recoveries in the cases pointed out in the Audit Reports and take necessary steps for early collection.

2.10 Amendments to the Acts/Rules/Notifications/Orders issued by the Government at the instance of audit

Audit pointed out (Para 2.2.10 of Audit Report 2008-09) that the delay in passing of self assessment orders in turn delayed the selection of cases for scrutiny. The Government amended the TNVAT Act with effect from 19 June 2012 to provide that the returns filed by the dealers along with prescribed documents and proof of payment of tax shall be deemed to have been assessed.

Audit pointed out, (Para 2.13.9.1(ii) of Audit Report 2011-12), the absence of provision for online filing of annual return in Form I-1. The Government introduced provision for filing of annual return in Form I-1 in electronic mode with effect from August 2012.

Audit recommended (Para 2.13.15 of Audit Report 2010-11) introduction of online issue of declaration forms. The Government introduced online issue of declaration forms with effect from October 2012.

2.11 Working of internal audit wing

The internal audit wing is organised in each CT district and consists of an Assistant Commissioner, Commercial Tax Officer and four supporting staff. The assessments finalised and the refunds made in the preceding quarter were to be taken up for audit in the succeeding quarter. The details of the number of offices due for internal audit and those completed, as furnished by the Department, are given in the following table:

Year	Number of offices due	Number of offices completed	Balance	Percentage of col.3 to 2
1	2	3	4	5
2008-09	452	155	297	34
2009-10	452	133	319	29
2010-11	443	83	360	19
2011-12	348	80	268	23
2012-13	348	49	299	14

The Department attributed the reason for non-coverage of internal audit to vacancy in staff strength and stated that audit in respect of assessments finalised by assessing officers who were due for retirement and in respect of cases which would become time barred were only being conducted.

The Government may consider strengthening internal audit so that audit may be conducted for all the units due for audit.

2.12 Results of audit

Test check of records in 166 units during the period from April 2012 to March 2013 revealed underassessment of tax and other irregularities amounting to ₹ 338.81 crore in 1,345 cases, which broadly fall under the following categories.

(₹ in crore)

Sl. No.	Category	No. of cases	Amount
1	“Cross verification of import data obtained from the Customs Department”	1	145.58
2	Incorrect exemption of tax	43	6.41
3	Incorrect rate of tax	146	37.66
4	Incorrect computation of taxable turnover	51	10.53
5	Non/short levy of tax	63	5.84
6	Non levy of penalty /interest	125	3.35
7	Incorrect claim of input tax credit	805	115.22
8	Others	111	14.22
	Total	1,345	338.81

During the course of the year 2012-13, the Department accepted underassessments and other deficiencies amounting to ₹ 12.19 crore in 512 cases, out of which, ₹ 6.35 crore involved in 278 cases were pointed out during the year and the rest in earlier years. Out of the above, an amount of ₹ 4.98 crore has been collected.

The Department recovered ₹ 79.86 lakh in five cases in respect of which draft paragraphs were issued to the Government.

2.13 Cross verification of import data obtained from the Customs Department

2.13.1 Introduction

According to Standing Order 225 c (iii)(2) of the Tamil Nadu Commercial Taxes Manual (Volume III), the Administrative Assistant Commissioner of the Commercial Taxes Department (CTD) should get the entire details of imports from the Customs Department, refer to the records maintained by them and make use of the same in order to detect sales suppression and consequent tax evasion. The standing order states that this work should be attended to systematically and as per the arrangement with the Customs authorities, officers of the CTD can have access to the books and registers maintained in the Customs Department.

Audit was undertaken to ascertain whether there exists a system in the CT Department for constant interaction with the Customs Department and if so, whether the same is effective in identifying tax evaders, unearthing suppression of turnover and thereby preventing evasion of tax due to the State exchequer. Details of imports, relating to the period 2008-09 to 2011-12, obtained from the Customs Department were analysed with the database of the CTD to ascertain the Taxpayers Identification Number (TIN) of the importers under the Tamil Nadu Value Added Tax Act, 2006, (TNVAT Act) and their jurisdictional assessment circles. The details of imports were then compared with the details of returns filed by the dealers with the CTD. Audit was conducted between August 2012 and July 2013.

Audit findings are mentioned in the following paragraphs.

2.13.2 Collection and analysis of import details by the Enforcement Wing of the CT Department

System in existence and deficiencies noticed therein

The Enforcement Wing of the CTD is responsible for coordinating with other Departments like Customs, Central Excise etc. for obtaining information from them. Details of imports are collected from Harbour Wharf, Chennai and Air Cargo, Chennai by the Joint Commissioner Enforcement-I, Chennai and from Tuticorin Port Trust by the Joint Commissioner, Tirunelveli. The information obtained from the Customs Department is passed on to the Computer Centre for being uploaded in the intranet of the Department to facilitate cross verification by the assessing authorities (AAs).

The existing practice followed by the CTD for collection and dissemination of information regarding import of goods by dealers to ensure proper accounting of the same is deficient in identifying tax evaders, detecting suppression of sales turnover and consequent evasion of tax for the reasons mentioned below:

- There was no fixed periodicity in collection of details from the Customs Department. Details of imports were obtained from the Customs Department for intermittent periods only. For instance, details of imports were obtained from Air Cargo, Chennai for the period from

September 2008 to May 2009 and from November 2011 to November 2012. Similarly, details were obtained from Harbour Wharf, Chennai for the period from September 2008 to May 2009, June 2011 to August 2011 and October 2012.

- PAN, one of the common fields in the database maintained by Customs Department and CTD, plays a crucial role in identifying TIN and jurisdictional assessment circles of the importers. Audit noticed that details obtained by CTD from Customs Department do not contain PAN. Further, duty payment particulars, name and address of the foreign suppliers were also not available in the intranet to enable AAs to make use of them in the verification process.

The details obtained from Customs Department were uploaded in intranet in the same form in which they were obtained. No analysis was undertaken to ascertain the TIN of importers and their jurisdictional assessment circles. In the absence of the important information, the AAs of the assessment circles could not make use of the data uploaded in intranet in the verification process.

2.13.3 Non/short-reporting of sales turnover

2.13.3.1 Non-filing of returns by registered dealers who imported goods

Section 21 of the TNVAT Act read with Rule 7(1)(a) of the TNVAT Rules provides that every dealer registered under the Act shall file return, which shall, among other things, include details of purchases including imports in Annexure-I thereto.

Section 22(4) of the Act provides that if no return is submitted by the dealer for a year or if the return filed is incomplete or incorrect, the AA shall assess the dealer to the best of its judgment. In addition, penalty at 150 *per cent* of tax so assessed is leviable under section 22(5) of the Act.

Under the TNVAT Act, goods specified under Part B and Part C of the First Schedule were taxable at the rates of four *per cent* and 12.5 *per cent* upto 11 July 2011 and thereafter at the rates of five *per cent* and 14.5 *per cent* respectively.

Audit scrutiny of the details obtained from the Customs Department indicated that 66 dealers pertaining to 23 assessment circles³ imported goods valued at ₹ 904.67 crore during the period from 2008-09 to 2011-12. Cross verification with the CTD database revealed that these dealers did not file monthly returns with the jurisdictional AAs of the CTD. The tax and penalty leviable on the turnover which was not disclosed by the dealers works out

to ₹ 48.91 crore and ₹ 73.37 crore respectively.

³ Alwarpet, Amaindakara, Chepauk, Chintadripet, Harbour-I, Harbour-IV, Ice House, Luz, Mannady (East), Mannady (West), Nandanam, Park Town-I, Peddunaickenpet (North), Perambur-I, Sowcarpet-III, Tambaram-II, T.Nagar (North), Triplicane-I, Vadapalani-I, Vadapalani-II, Vallalar Nagar, Velacherry and Villivakkam

After Audit pointed this out (between January and July 2013), the AAs concerned issued notices to the dealers; which were returned unserved in 48 cases. The AAs of Vadapalani-I and Amaindakarai assessment circles passed (March 2013) best judgment assessment orders in respect of three dealers raising additional demand of ₹ 2.40 crore (inclusive of penalty of ₹ 1.44 crore). Further report regarding revision of assessments and raising of additional demand in respect of the remaining cases is awaited (December 2013).

2.13.3.2 Non-reporting/short reporting of import purchases

According to Section 27(1) of the Act, where whole or any part of the turnover of a dealer has escaped assessment to tax, the AA may determine to the best of its judgment the turnover which has escaped assessment and assess the tax payable on such turnover. Section 27(3)(c) provides for levy of penalty at 150 per cent of the tax due on the assessable turnover that was willfully not disclosed, if the tax due on such turnover is more than 50 per cent of the tax paid as per the return.

Under the TNVAT Act, goods specified under Part B and Part C of the First Schedule were taxable at the rates of four per cent and 12.5 per cent upto 11 July 2011 and thereafter at the rates of five per cent and 14.5 per cent respectively.

- Audit noticed that 16 dealers of 12 assessment circles⁴ imported goods valued at ₹ 89.49 crore during the period from 2008-09 to 2011-12. The dealers did not disclose any turnover of purchase and sales in the returns filed ('Nil' returns) by them with the CTD. The tax and penalty leviable on the turnover which was not disclosed by the dealers works out to ₹ 6.42 crore and ₹ 9.63 crore

respectively.

After Audit pointed this out (January and July 2013), the AAs concerned issued notices to the dealers, which were returned unserved in 13 cases owing to the absence of dealers at the registered place of business. The AA, Moore Market (North) assessment circle, subsequently passed best judgment assessment order in one case and raised (February 2013) additional demand of ₹ 0.43 crore including penalty of ₹ 0.26 crore.

- Audit noticed that seven dealers of five assessment circles⁵ imported goods valued at ₹ 50.35 crore during the period from 2008-09 to 2011-12. The import purchases disclosed by the dealers in the monthly returns filed by them with the CTD was ₹ 8.38 crore only resulting in suppression of purchase turnover of goods of ₹ 41.97 crore. The tax and penalty leviable on the

⁴ Alwarpet, Amaindakarai, Chepauk, Chintadripet, Mooremarket (North), Perambur-I, Royapettah-II, Royapuram, Triplicane-I, Vallalar Nagar, Velacherry and Villivakkam

⁵ Alwarpet, Chintadripet, Harbour-I, Royapettah-I and Royapuram

turnover suppressed by the dealers works out to ₹ 2.90 crore and ₹ 4.35 crore respectively.

After Audit pointed this out in January 2013, the AAs concerned issued notices to the dealers, which were returned unserved owing to the absence of dealers at the registered place of business. Further report is awaited from the Department (December 2013).

2.13.4 Importers whose registration status with CT Department could not be ascertained

According to the provisions of Section 38(3) of the TNVAT Act, every dealer who in the course of his business obtains or brings goods from outside the State shall get himself registered under this Act, irrespective of the quantum of his turnover in such goods.

Audit matched the data obtained from the Customs Department with the database of dealers of CTD on the basis of PAN of importers to ascertain their TIN under the TNVAT Act. While doing so, Audit could not identify the TIN of 143 dealers under the TNVAT Act. Audit pointed this out to the

Department in March 2013 along with details of the importers, viz., name, address, PAN, etc. The Department identified the registration details in 14 cases on the basis of the information furnished by audit. However, in respect of the remaining 129 cases, the Department could not identify the TIN of the importers; with the result their status under the TNVAT Act could not be ascertained. Since goods valued at ₹ 860.65 crore were imported by these dealers during the period from 2008-09 to 2010-11, the possibility of the sales turnover escaping assessment from levy of tax of ₹ 39.64 crore cannot be ruled out.

Audit pointed this out to the Department (March 2013); reply is awaited (December 2013).

2.13.5 Conclusion

The existing procedure followed by the CTD for collection and dissemination of details of import has not achieved its objectives, viz., ensuring proper accounting of all imports by the dealers, identification of tax evaders, detecting suppression of sales turnover and consequent evasion of tax. The details have not been obtained from the customs department for continuous periods and there is no periodicity in collection of data. No analysis of the data obtained from Customs Department was undertaken and due to absence of important details in the data uploaded in intranet, the AAs of assessment circles could not make use of the same in verification process.

2.14 Other audit observations

Audit scrutinised the records in the offices of the Commercial Taxes Department and noticed several cases of non-observance of provisions of the Acts/Rules, resulting in application of incorrect rate of tax, short levy of additional sales tax, irregularities in claim of input tax credit, non/short reversal of input tax credit and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and based on test checks carried out in audit. Although such omissions are pointed out every year, the irregularities persist. There is a need for the Government to consider directing the Department to improve the internal control systems including strengthening internal audit so that such omissions can be avoided, detected and corrected.

2.15 Non-compliance of the provisions of the Acts/Rules

The Tamil Nadu Value Added Tax (TNVAT) Act, 2006, the Tamil Nadu General Sales Tax (TNGST) Act, 1959, the Central Sales Tax (CST) Act, 1956, the Tamil Nadu Additional Sales Tax (TNAST) Act, 1970, and Rules made thereunder provide for:

- (i) Levy of tax at the rates prescribed in the schedules to the Acts;*
- (ii) Regulating the claim of input tax credit by the dealers in accordance with the provisions governing such claim;*
- (iii) Payment of additional sales tax, where the taxable turnover of the dealer exceeds the prescribed minimum; and*
- (iv) Levy of interest for belated payment of tax by the dealers.*

Audit noticed non-compliance of the provisions of the Acts/Rules in some cases involving non/short realisation of ₹ 3.37 crore. These cases are mentioned in paragraphs 2.15.1 to 2.16.2.

Value added tax

2.15.1 Application of incorrect rate of tax

Section 3(4) of the Tamil Nadu Value Added Tax Act, 2006, (TNVAT Act) provides that every dealer, who effects second and subsequent sale of goods purchased within the State and whose turnover relating to taxable goods for a year is less than ₹ 50 lakh, may pay tax at 0.5 *per cent* on the said turnover.

Audit, while scrutinising monthly returns filed by the dealers in Tenkasi assessment circle, noticed (February 2013) that two dealers paid tax at concessional rate of 0.5 *per cent* under Section 3(4) of the TNVAT Act, during the years 2008-09 and 2009-10.

Verification of intranet of the Department revealed that the dealers purchased goods from

other States during the years 2008-09 and 2009-10. As the dealers did not fulfill the condition prescribed in Section 3(4) of the Act, they were not eligible for paying tax at concessional rate. The short-payment of tax, adopting the minimum rate of four *per cent* on the taxable turnover works out to ₹ 4.15 lakh.

Audit communicated the omission to the Department in February 2013 and to the Government in May 2013. Reply is awaited (December 2013).

2.15.2 Irregularities in the claim of Input Tax Credit

According to Section 19(11) of the TNVAT Act, 2006, in case any dealer fails to claim ITC in respect of any transaction of taxable purchase in any month, he shall make the claim before the end of the financial year or before ninety days from the date of purchase, whichever is later.

Section 27(4) of the Act provides for levy of penalty for wrong availment of ITC, which shall, in the first instance, be at 50 *per cent* of such wrong availment.

2.15.2.1 During test check of records in four assessment circles⁶, Audit noticed (January and February 2013) from the self assessed returns of six dealers that their claim of ITC for the years 2009-10 and 2010-11, *inter-alia*, included claim of ₹ 37.45 lakh preferred beyond the prescribed time period. As the claim of ITC was not preferred within the prescribed time, the same had to be disallowed and the

amount recovered from the assessee. Penalty of ₹ 18.73 lakh is also leviable. The AAs, however, failed to invoke the provisions of Section 19 (11) of the Act and disallow the time barred claim of ITC of the dealers.

⁶ Anna Salai-I, Chengalpet, Nungambakkam and Royapettah-II

After Audit pointed this out (January and February 2013), the AA, Nungambakkam assessment circle, reversed ITC of ₹ 6.78 lakh in one case. Reply in respect of remaining cases is awaited (December 2013).

Audit reported the matter to the Government during April and May 2013. Reply of the Government is awaited (December 2013).

According to Section 19 (2) of the TNVAT Act, 2006, ITC shall be allowed for the goods purchased within the State from a registered dealer for the purpose of resale or using as inputs in manufacturing or processing of goods in the State or using as capital goods in the manufacture of taxable goods.

The term capital goods is defined in Section 2(11) of the Act.

Section 27(4) of the Act provides for levy of penalty for wrong availment of ITC, which shall, in the first instance, be at 50 *per cent* of such wrong availment.

2.15.2.2 During test check of records in three assessment circles⁷, Audit noticed (between January and March 2013) from the self assessed returns that seven assesseees claimed ITC of ₹ 17.67 lakh on the local purchase of personal protective equipments, fire fighting equipments, cranes, excavators, weighing machines and food items during the years from 2008-09 to 2010-11. As the above goods were neither used as inputs nor defined as capital goods, the assesseees

are not eligible for ITC on these purchases. Hence, ITC of ₹ 17.67 lakh already claimed by them has to be disallowed and the amount recovered from the assesseees. Besides, penalty is also leviable at 50 *per cent* of the wrong claim, which works out to ₹ 8.83 lakh. The AAs, however, failed to disallow the ineligible claim of ITC by the assesseees during scrutiny of returns.

After Audit pointed this out (between January and March 2013), the AA, Thiruvanmiyur assessment circle replied (January 2013) that the assessee, being a works contractor, the purchase of excavator was essential considering the nature of business and therefore the claim of ITC was in order. The AA, Annasai-III assessment circle contended that cranes may be considered as capital goods since they are necessary for moving the goods. The reply is not tenable as the term 'capital goods' as defined in the Act does not include excavator and crane. These goods are also not inputs and the provisions of the Act governing claim of ITC do not facilitate such claim by the assesseees. Reply in respect of other cases is awaited (December 2013).

Audit reported the matter to the Government between March 2013 and June 2013. Reply is awaited (December 2013).

⁷ Annasai-III, Chengalpet and Thiruvanmiyur

According to Section 7(1)(b) of the TNVAT Act, every dealer other than star hotels shall pay tax on sale of ready to eat unbranded foods at the rate of two *per cent* of the taxable turnover. The dealers who pay tax under Section 7(1)(b) are not eligible for ITC.

Section 27(4) of the Act provides for levy of penalty for wrong availment of ITC, which shall, in the first instance, be at 50 *per cent* of such wrong availment.

2.15.2.3 During test check of records in Ramnagar and Anna Salai III assessment circles, Audit noticed (February and March 2013) from the assessment orders and self assessed returns that three hoteliers paid tax at the rate of two *per cent* under section 7(1)(b) of the Act, but availed ITC of ₹ 4.18 lakh, during the years 2009-10 and

2010-11. As the assesseees were paying tax under section 7(1)(b) of the Act, they were not eligible for claim of ITC. The AAs, however, failed to notice the incorrect claim of ITC by the dealers, either while finalising the assessment of the dealers or during scrutiny of returns filed by them. The ITC of ₹ 4.18 lakh wrongly claimed by the assesseees has to be reversed and the amount recovered along with penalty of ₹ 2.09 lakh.

After Audit pointed out the matter to the Department (February and March 2013) and to the Government (April 2013), the Government replied (December 2013) that additional demand was raised for ₹ 6.27 lakh, out of which a sum of ₹ 3.67 lakh was collected. Reply on collection of balance amount is awaited (December 2013).

As per Section 19 (1) of the TNVAT Act, there shall be ITC of the amount of tax paid or payable under the Act, by the registered dealer to the seller on his purchases of taxable goods specified in the First Schedule.

Provided that the registered dealer, who claims ITC, shall establish that the tax due on such purchases has been paid by him in the manner prescribed.

Section 27(4) of the Act provides for levy of penalty for wrong availment of ITC, which shall, in the first instance, be at 50 *per cent* of such wrong availment.

2.15.2.4 Audit noticed (January 2013) in Choolai assessment circle that a dealer availed ITC of ₹ 16.18 lakh as tax paid on goods purchased from five selling dealers during the month of March 2011. However, cross verification with the monthly returns filed by the selling dealers revealed that they had not effected any sales to the assessee during the corresponding period.

This led to incorrect availment of ITC of ₹ 16.18

lakh, which requires reversal and collection of the amount. Besides, penalty of ₹ 8.09 lakh is also leviable.

After Audit pointed this out (January 2013), the AA, citing Madras High court judgment⁸ contended that ITC of the buying dealer could not be reversed. The Department also stated that cross check references would be sent to the offices where selling dealers are assessed to ascertain whether the selling dealers had filed return or not. The reply is not tenable since the judgment referred to relate to availment of ITC in respect of purchases made from the selling dealers whose registrations were cancelled retrospectively. In the present case, it is not so.

Audit reported the matter to the Government in May 2013. Reply is awaited (December 2013).

2.15.3 Non/short reversal of Input Tax Credit

Section 19(2)(v) of the TNVAT Act provides for ITC on purchase of goods for the purpose of sale covered under section 8(1) of the CST Act.

As per Section 8(1) of the CST Act, inter-State sale of goods to a registered dealer is taxable at two *per cent* or at the local rate whichever is lower. Sale of goods to developer of SEZ in other States and units located in these SEZs are covered under Section 8(6) of the Act and are exempt.

2.15.3.1 During test check of records in three assessment circles, Audit noticed (December 2012, January and March 2013) from the assessment records that three dealers had claimed ITC of ₹ 3.31 crore during the period from 2006-07 to 2009-10. The total sales turnover of ₹ 161.95 crore under the CST Act, *inter alia*, included sale of goods to the SEZ units located in Andhra Pradesh, Gujarat and Karnataka for ₹ 13.38 crore.

Since sales to SEZ units in other States are covered under Section 8(6) of the CST Act and exempt from levy of tax, the same is not eligible for ITC. The ITC relating to corresponding purchase of goods has to be reversed. The AAs, however, failed to reverse the ITC while finalising the assessments of the dealers (March and December 2010 and May 2011). The amount of ITC reversible works out to ₹ 20.08 lakh as detailed below:

(₹ in lakh)

Name of the assessment circle	Year of transaction	ITC claimed	Total turnover under TNVAT Act and CST Act	Turnover relating to sale of goods to SEZ units in other States	Amount of ITC reversible
FTAC-II Coimbatore	2006-07	46.82	3,672.47	507.82	6.47
	2007-08	223.81	15,520.60	523.18	7.54
Royapettah-I	2008-09	20.87	762.73	67.63	1.85
	2009-10	12.30	418.41	15.41	0.45
Thiruvaniyur	2007-08	27.37	1,623.35	223.47	3.77

⁸ WP No. 12305 of 2012 and 12306 of 2012 dated 22.11.2012

After Audit pointed this out (December 2012, January 2013 and March 2013), the AA, Royapettah-I assessment circle, replied (January 2013) that as the dealer had filed Form I, he was eligible for ITC. The reply is not tenable since Form I is meant for claiming exemption under Section 8(6) of the CST Act and does not confer upon the dealer the right to claim ITC. In respect of other circles, reply is awaited (December 2013).

Audit reported the matter to the Government during March and May 2013. Reply of the Government is awaited (December 2013).

According to Section 19(5)(c) of the TNVAT Act, no ITC shall be allowed on the purchase of goods sold as such or used in the manufacture of other goods and sold in the course of inter-State trade or commerce without declaration in Form 'C'.

2.15.3.2 Audit noticed (between September 2012 and February 2013) in 12 assessment circles⁹ that 19 dealers had claimed ITC of ₹ 34.09 crore on purchase of goods made during the period from 2006-07 to 2010-11. Audit further observed that they had made inter-State

sale of goods worth ₹ 42.84 crore which were not covered by declarations in Form 'C'. Such sale warrants reversal of ITC. However, the assessee failed to reverse ITC corresponding to such sales in the monthly returns. The AAs also failed to enforce such reversal during scrutiny of returns filed by the assessee. The amount of ITC reversible works out to ₹ 1.23 crore.

After Audit pointed this out, the Department reversed ITC amounting to ₹ 3.74 lakh in two cases pertaining to Namakkal (Town) and T.Nagar (North) assessment circles. The AA, Chengalpet assessment circle replied that the sales were local sales but the dealer had incorrectly reported it under the CST Act. The reply of the AA is not tenable as the goods have moved to other States and the sales were not covered by declarations in Form 'C'. Hence ITC of ₹ 17.27 lakh is reversible. Reply of the Department in respect of other cases is awaited (December 2013).

Audit reported the matter to the Government between January and May 2013. Government accepted the audit observation in two cases pertaining to Namakkal (Town) and T.Nagar (North) assessment circles. Reply in respect of remaining cases is awaited (December 2013).

⁹ Adyar-II, Ambattur, Chengalpet, Guindy, Kongunagar, Koyambedu, Lakshminagar, Namakkal (Town), Podanur, Royapettah-I, T.Nagar (North) and Thiruvottiyur.

As per Section 19 (4) of the TNVAT Act, ITC shall be allowed on tax paid or payable in the State on the purchase of goods, in excess of three *per cent* of tax relating to such purchases, if goods are transferred to a place outside the State otherwise than by way of sale; or they are used in manufacture of other goods and transferred to a place outside the State, otherwise than by way of sale. Provided, that if a dealer has already availed ITC, it should be reversed.

2.15.3.3 Audit noticed (between July 2012 and February 2013) in five assessment circles¹⁰ that five dealers claimed ITC of ₹ 3.39 crore on their purchases, during the period from 2007-08 to 2010-11. As they transferred the goods to other States otherwise than by way of sale, proportionate ITC applicable to such stock transfer was required to be reversed. However, proportionate ITC was not reversed in four cases and in one case there was short reversal.

The non/short reversal of ITC works out to ₹ 23.67 lakh.

After Audit pointed this out (between July 2012 and February 2013), the Department reversed (February and March 2013) ITC of ₹ 6.55 lakh in two cases relating to Saidapet and Udumalpet (North) assessment circles and collected ₹ 3.22 lakh. Reply in respect of other cases is awaited (December 2013).

Audit reported the matter to the Government between December 2012 and June 2013. Government accepted the audit observation in two cases pertaining to Saidapet and Udumalpet (North) assessment circles (September and November 2013). Reply in respect of other cases is awaited (December 2013).

¹⁰ Chintadripet, Mannadi (East), Saidapet, Trichy Road and Udumalpet (North)

2.15.4 Non levy of interest

According to Section 24(3) of the TNGST Act, on any belated payment of tax, the dealer shall pay interest at one and half *per cent* per month for the first three months of default and at two *per cent* for the subsequent period of default.

The TNVAT Act provides that where a dealer submits the prescribed return after expiry of the prescribed period or makes default in payment of tax, the dealer shall pay interest at one and a quarter *per cent* of the tax payable for every month or part thereof.

Audit noticed (between June 2012 and March 2013) in six assessment circles¹¹ that tax of ₹ 39.17 crore pertaining to the years 2002-03, 2003-04, 2005-06 to 2011-12 was paid belatedly by nine dealers. The delay ranged from two days to 46 months and eight days. Though the belated payment of tax attracts levy of interest of ₹ 30.04 lakh, the AAs failed to collect the same.

After Audit pointed this out, the Department collected interest of ₹ 23.05 lakh in eight cases. Reply in respect of the remaining case is awaited (December 2013).

Audit reported the matter to the Government between April and June 2013. Government accepted the audit observation in three cases. Reply in respect of other cases is awaited (December 2013).

Sales Tax

2.16.1 Application of incorrect rate of tax

According to Section 8(1) of the CST Act, inter-State sale of goods covered by valid declarations in Form 'C' was assessable to tax at the rate of three *per cent* from 1 April 2007 to 31 May 2008 and at two *per cent* thereafter.

By a Notification dated 5 August 1996 issued under Section 8(5) of the CST Act, 1956, the rate of tax on inter-State sale of hosiery goods covered by declarations in Form 'C' was reduced to one *per cent* provided the dealer had not effected any branch or consignment transfer during the year.

During test check of records in Lakshmi Nagar assessment circle, Audit noticed (February 2013), that the AA, while finalising the assessment of a dealer for the years 2007-08 and 2008-09 during January 2012 and June 2012 respectively, levied tax at the reduced rate of one *per cent* on the inter-State sales turnover of hosiery goods (covered by declarations in Form 'C') amounting to ₹ 9.10 crore. Since the dealer had also effected stock transfer of hosiery goods to other States during the said years, the dealer was not

¹¹ Adayar-II, Anna Salai-I, Nungambakkam, Ponneri, T.Nagar (East) and Trichy Road

eligible for the reduced rate of tax. The application of incorrect rate of tax resulted in short levy of tax of ₹ 12.23 lakh.

Audit communicated the matter to the Department in February 2013 and to the Government in April 2013. Their reply is awaited (December 2013).

2.16.2 Short levy of Additional Sales Tax

As per Section 2(1)(aa) of the TNAST Act, the tax payable under the TNGST Act, in the case of a dealer whose taxable turnover for a year exceeds ₹ 10 crore but does not exceed ₹ 25 crore, shall be increased by an additional tax at the rate of one *per cent* of the taxable turnover.

Audit noticed (December 2012) in Perur assessment circle that while finalising the assessment (February 2011) of a dealer for the year 2003-04, the AA levied Additional Sales Tax (AST) at the rate of one *per cent* on the turnover of ₹ 0.74 crore after incorrectly deducting the turnover of ₹ 10 crore from the taxable turnover of ₹ 10.74 crore. This resulted in short levy of AST of ₹ 10 lakh.

After Audit pointed this out in December 2012, the AA contended that taxable turnover in excess of ₹ 10 crore alone has to be considered for levy of AST. The reply of the AA is not tenable as the Act does not provide for any deduction from the taxable turnover. Hence, AST was leviable on the taxable turnover of ₹ 10.74 crore.

Audit reported the matter to the Government in March 2013. Reply of the Government is awaited (December 2013).