CHAPTER-II
TAX ON SALES, TRADE ETC.

2.1 Tax administration

Sales Tax/Value Added Tax laws and rules framed thereunder are administered at the Government level by the Principal Secretary (*Vanijya Kar Evam Manoranjan Kar)* Uttar Pradesh. The Commissioner, Commercial Tax (CCT), Uttar Pradesh is the head of the Commercial Tax Department who is assisted by 100 Additional Commissioners, 157 Joint Commissioners (JCs), 494 Deputy Commissioners (DCs), 964 Assistant Commissioners (ACs) and 1,275 Commercial Tax Officers (CTOs). They are assisted by allied staff for administering the relevant Tax laws and rules.

2.2 Results of audit

In 2014-15, the Department realised revenue of ₹ 42,931.54 crore. Test check of the records of 539 units out of 1,645 units relating to Taxes on Sales, Trade, etc. during the year 2014-15 showed underassessment of tax and other irregularities involving ₹ 625.77 crore in 3,014 cases, which fall under the following categories as given in **Table 2.1**.

Table 2.1

Results of audit

			(₹ in crore)
Sl. No.	**Categories**	**Number of cases**	**Amount**
1.	**System of Assessment under VAT (A Performance Audit)**	**1**	**420.74**
2.	Under-assessment of tax	795	56.44
3.	Acceptance of defective statutory forms	191	7.14
4.	Evasion of tax due to suppression of sales/purchase	51	1.82
5.	Irregular/Incorrect/Excess allowance of ITC	297	24.87
6.	Other irregularities	1,679	114.76
Total		**3,014**	**625.77**

Source: Information available in the Audit office.

During the course of the year, the Department accepted underassessment and other deficiencies of ₹ 14.25 crore in 134 cases, of which ₹ 14.17 crore was realised in 127 cases. In remaining cases no reply has been furnished by the Department.

Performance Audit on **"System of Assessment under VAT"** involving ₹ 420.74 crore and a few other illustrative cases involving ₹ 31.19 crore are discussed in the succeeding paragraphs.

2.3 Performance Audit on "System of Assessment under VAT"

Highlights

Due to non-existence of mechanism for inter-departmental exchange of data/information and modalities for survey the Department failed to identify and register 79,363 unregistered dealers and to impose penalty of ₹ 289.82 crore.

(Paragraph 2.3.9.2)

Non-finalisation of assessment cases equally in each month by the Assessing Authorities resulted in pendency of cases between 6,042 to 1,84,052 in the later months of the year during 2010-11 to 2014-15. This led to extension of time limit thrice for one month to three months by the Government during 2010-11 to 2014-15 for finalisation of cases. This also affects upcoming year's assessments.

(Paragraph 2.3.12 & 2.3.13)

In four out of 20 zones, there was very low percentage of dealers, ranging from 0.27 to 0.44 *per cent* selected for tax audit during 2011-12 to 2014-15 against the norms of five *per cent* fixed by the CCT and no dealer was selected for tax audit in 2010-11. Also no tax audit was conducted at the office, business premises or warehouse of the dealers as prescribed in the Act.

(Paragraph 2.3.14)

There were irregularities in ITC claims like irregular/non-admissible ITC claims, excess claims, non-reversal of ITC and non-charging of interest thereon etc. of ₹ 6.98 crore in case of 34 dealers out of 3,102 dealers test checked from 23,786 dealers in respect of six JCs(CC) and 16 sectors.

(Paragraph 2.3.15)

There was non/short levy of tax of ₹ 6.48 crore due to application of incorrect rate of tax, misclassification of goods, turnover escaping assessment etc. in case of 74 dealers out of 7,669 dealers test checked from 47,076 dealers in respect of six JCs(CC) and 35 sectors.

(Paragraph 2.3.16)

There were cases of concealment of turnover, delayed deposit of admitted tax, import of goods without declaration forms and furnishing of false declarations but Assessing Authorities did not impose penalty of ₹ 114.82 crore in cases of 82 dealers out of 8,556 dealers test checked from 58,298 dealers in respect of six JCs(CC) and 35 sectors.

(Paragraph 2.3.17)

For allowing ITC claims and accepting the amount of sale against tax invoices, it is necessary that all the purchases and sales made by the dealer are verified. Hundred *per cent* verification of transactions was not possible in the current online VYAS system as only the dealers with turnover of ₹ 50 lakh and above were submitting e-returns on the system.

(Paragraph 2.3.20)

The audit planning of the internal audit wing for sectors' audit was not realistic as shortfall ranged from 9 to 96 *per cent* during 2010-11 to 2014-15. Position of outstanding paras increased from 8,506 to 11,228 and pendency of recovery thereof increased from ₹ 69.98 crore to ₹ 445.13 crore.

(Paragraph 2.3.22.2 & 2.3.22.3)

2.3.1 Introduction

Commercial Tax is the major source of revenue contributing about 58 *per cent* of the total tax revenue of the State. It comprises of Value Added Tax (VAT), Central Sales Tax (CST) and Tax on Entry of Goods into Local Area (ET). VAT is a multipoint taxation system where the goods are subject to tax at each point of sale in the production chain till it reaches to the consumer. Commercial Tax Department is responsible for assessment, levy and collection of tax and ensures compliance of various provisions of the Act, Rules and various notifications, circulars issued thereunder.

2.3.2 Organisational setup

The Principal Secretary (Commercial Tax and Entertainment Tax) Uttar Pradesh is the administrative head at Government level. The overall control and direction of the Commercial Tax Department is with the Commissioner Commercial Tax, Uttar Pradesh with headquarters at Lucknow. The Department has been organised in 20 zones each headed by an Additional Commissioner and the zones are further divided in 45 regions each headed by a Joint Commissioner. Further, these regions are divided into 436 sectors where Deputy Commissioner, Assistant Commissioner and Commercial Tax Officers are vested with the power of assessment.

2.3.3 Audit objectives

The Performance Audit was conducted with a view to ascertain whether:

- the provisions of the Act and Rules made thereunder are adequate and enforced properly to safeguard the revenue of the State;
- the human resources are being managed in an efficient and effective manner and
- the internal control in the Department is adequate and effective and cases of internal audit are duly pursued and complied with.

2.3.4 Audit criteria

The audit criteria for the performance audit have been derived from the following sources:

- UPVAT Act 2008 and Rules made thereunder.
- The Central Sales Tax Act, 1956 and Rules made thereunder.
- Notifications and circulars issued by the Government/Department from time to time.

2.3.5 Audit scope and methodology

The Performance Audit on "System of Assessment under VAT" was conducted between December 2014 and May 2015 pertaining to period 2008-09 to 2013-14 in respect of assessments finalised during 2010-11 to 2014-15. We test checked the records of the offices selected for Performance Audit by random sampling after categorising into high, medium and low risk

areas[1] according to their revenue collection. Four Additional Commissioner, Appeal; Four Joint Commissioner, Tax Audit; Eight Joint Commissioners[2] (Corporate Circle) and 93 sectors[3] were selected for Performance Audit covering all 20 zones of the Department. We test checked periodical returns, annual returns, registration certificates, concession/exemption declaration forms, audit report by specified authority, balance-sheet and cross verified the data/information collected from other Department.

An entry conference was held with the Government and the Department on 30 December 2014 in which Principal Secretary Commercial Tax and Entertainment Tax represented the Government and Additional Commissioner (*Vidhi*) Commercial Tax represented the Department. They were apprised of the scope and methodology of Performance Audit. An exit conference was held on 6 October 2015 with the Government and the Department in which audit findings were discussed with the Officer on Special Duty, Government of Uttar Pradesh and Additional Commissioner, Commercial Tax Department. The Response of the Government/Department has been incorporated in the relevant paragraphs.

2.3.6 Acknowledgement

Indian Audit and Accounts Department acknowledges the co-operation of the Commercial Tax Department in providing necessary information and records for audit.

2.3.7 Trend of receipts

Actual receipt from tax on sales, trade etc. during the last five years from 2010-11 to 2014-15 alongwith the total tax receipts during the same period are exhibited in the **Table 2.2.**

Table 2.2
Trend of receipts

(₹in crore)

Year	Budget estimate	Actual receipts	Variation excess(+) shortfall(-)	Percentage of variation	Total tax receipts of the State	Percentage of actual tax receipt vis-a-vis- total tax receipts
2010-11	26,978.34	24,836.52	(-)2,141.82	(-)7.94	41,355.00	60.06
2011-12	32,000.00	33,107.34	(+)1,107.34	3.46	52,613.43	62.93
2012-13	38,492.18	34,870.16	(-)3,622.02	(-)9.41	58,098.36	60.02
2013-14	43,936.00	39,645.45	(-)4,290.55	(-)9.77	66,582.08	59.54
2014-15	47,497.92	42,931.54	(-)4,566.38	(-)9.61	74,172.42	57.88

Source: Finance Account of the Government of Uttar Pradesh.

[1] Joint Commissioner (Corporate Circle) and the sectors having revenue of ₹ 100 crore and above were categorised in high risk, sectors having revenue of ₹ 25 crore and above but less than ₹ 100 crore were categorised in medium risk and sectors having revenue less than ₹ 25 crore were categorised in low risk.

[2] Joint Commissioner (Corporate Circle)- Agra, Allahabad, G. B. Nagar, Ghaziabad-I, Ghaziabad-II, Gorakhpur, Kanpur-II and Lucknow-I.

[3] Sectors-Agra Sec.1, Aligarh Sec. 8; Allahabad Sec. 1 & 10; Ambedkarnagar Sec. 2; Amroha Sec. 1; Azamgarh Sec. 1; Bahraich Sec. 2; Banda Sec. 2; Barabanki Sec. 2; Bareilly Sec. 6; Basti Sec. 1 & 2; Bhadohi Sec. 1 & 3; Bulandsahar Sec. 1; Chandauli Sec. 2; Deoband Sec. 1; Deoria Sec. 1; Faizabad Sec. 2 & 3; Fatehgarh Sec. 1 & 3; Fatehpur Sec. 3; Firozabad Sec. 3; G.B. Nagar Sec. 1; Ghaziabad Sec. 1, 2, 3, 4 & 19; Ghazipur Sec. 2 & 4; Gorakhpur Sec. 2, 5 & 6; Hamirpur Sec. 2; Hasanpur Sec. 1; Hathrash Sec. 1; Jaunpur Sec. 2 & 6; Jhansi Sec. 8; Kanpur Sec. 11, 17, 20, 24 & 27; Khatauli Sec. 2; Lakhimpurkheri Sec. 2 & 3; Lucknow Sec.3, 5, 9 & 19; Mau Sec. 2; Meerut Sec. 9 & 12; Mirzapur Sec. 1, 2 & 3; Moradabad Sec. 2 & 4; Muzaffarnagar Sec. 1, 3 & 7; Najibabad Sec. 1; Nanpara; Noida Sec. 2, 3, 7, 9 & 14; Pratapgarh Sec. 2; Raebareli Sec. 1; Rampur Sec. 1, 2 & 3; Saharanpur Sec. 3, 6 & 12; Sant kabir nagar Sec. 1; Shahjahanpur Sec. 2 & 4; Shrawasti; Siddharthnagar Sec. 1; Sonbhadra 1, 3 & 5; Unnao Sec. 2 and Varanasi Sec. 4, 11, 17 & 19.

The above table shows that there was a decreasing trend in percentage of actual tax receipt vis-a-vis total tax receipt during 2011-12 to 2014-15.

2.3.8 Arrears in revenue

The positions of opening balance, addition, clearance and closing balance of arrears of revenue during the period 2010-11 to 2014-15 are depicted in the **Table 2.3.**

Table 2.3
Position of arrears

(₹in crore)

Year	Opening balance	Addition	Amount stayed by courts or write off	Clearance	Closing balance
2010-11	16,453.30	6,009.29	4,446.21	1,350.97	16,665.41
2011-12	16,665.41	8,810.87	4,815.49	1,700.51	18,960.28
2012-13	18,960.28	11,474.50	5,633.74	1,950.51	22,850.53
2013-14	22,850.53	9,394.44	5,371.68	2,411.65	24,461.64
2014-15	24,461.64	9,540.36	4,929.17	2,725.70	26,347.13

Source: Data furnished by the Commissioner Commercial Tax.

It may be seen from the table that during the period 2010-11 to 2014-15, the arrears increased from ₹ 16,665.41 crore to ₹ 26,347.13 crore of this ₹ 11,462.56 crore were pending for recovery for more than five years.

Audit findings

The UPVAT Act came into force with effect from 1 January 2008. However, audit reviewed the system of assessment for the period 2010-11 to 2014-15 and noticed a number of deficiencies which have been mentioned in the succeeding paragraphs.

2.3.9 Registration of dealers

Section 17 of UPVAT Act 2008 prescribes that every dealer who is liable to pay tax under the Act shall get himself registered when his turnover exceeds prescribed limit of ₹ five lakh per annum.

2.3.9.1 Detail of registered and cancelled dealers

The detail of number of new dealers registered and dealers whose registration were cancelled during 2010-11 to 2014-15 are depicted in the **Table 2.4.**

Table 2.4
Registration of dealers

Year	Total number of dealers	No. of dealers got registered	No. of registration cancelled
2010-11	5,94,695	77,561	46,161
2011-12	6,42,645	77,924	55,164
2012-13	7,08,636	81,442	29,646
2013-14	6,98,877	81,501	27,206
2014-15	6,98,997	85,028	42,690

Source: Data furnished by the Commercial Tax Department.

The table shows increasing trend in number of registration of dealers.

2.3.9.2 Lack of mechanism for inter-departmental exchange of data/information for registration of dealers

Due to non-existence of mechanism for inter-departmental exchange of data/information for the purpose of cross verification the Department failed to identify and register 79,363 unregistered liquor dealers.

As per notification No. 2-879 dated 26 March 2008 sale or purchase of country liquor and spirit and spirituous liquors of all kinds excluding methyl alcohol by a dealer is exempt from tax subject to the condition that a certificate prescribed by the CCT is submitted by the concerned dealer with the return of the tax period before the assessing authority to the effect that consideration fee, excise duty, fees or purchase tax payable under the United Provinces Excise Act, 1910 or the United Provinces Sales of Motor Spirit, Diesel Oil and Alcohol Taxation Act, 1939, as the case may be, has been paid. It is compulsory for the liquor shop licensees to be registered to fulfil the above conditions. Under Section 54(1)(7) of the UPVAT Act where a dealer being liable for registration under this Act has failed to apply in the prescribed manner and within the specified time shall pay by way of penalty rupees one hundred per day during which business is carried.

However, no norms/targets for survey at sector level, i.e. areas to be covered, periodicity of surveys and number of dealers to be covered in survey has been prescribed either by the VAT Act or by the issue of notification/circulars by the Government/Department to identify unregistered dealers liable for registration.

We collected information for the year 2010-11 to 2014-15 from the office of the Commissioner State Excise Uttar Pradesh and cross checked with the records of Commercial Tax Department and found that 79,363 liquor shop licensees had not obtained and submitted certificate in form 'E' with the return as they were running their shops without getting registration and selling liquor valued at more than ₹ five lakh per year. Due to non-existence of mechanism for inter-departmental exchange of data/information for the purpose of cross verification the Department failed to identify and register such unregistered liquor shop licensees. As these liquor shop licensees were running their business without getting registration, they were liable to pay penalty of ₹ 289.82 crore which was not imposed as shown in the **Table 2.5.**

Table-2.5

Lack of co-ordination with State Excise Department

Year	No. of Country Liquor shop Licensees	No. of Foreign Liquor shop Licensees	Total Number of Unregistered Liquor shop Licensees	Amount of Penalty imposable on a dealer during the year @ ₹ 100 per day (amount in ₹)	Total amount of penalty not imposed (₹ in lakh)
2010-11	11,737	2,459	14,196	36,500	5,181.54
2011-12	11,960	2,963	14,923	36,600	5,461.82
2012-13	12,774	3,550	16,324	36,500	5,958.26
2013-14	13,354	3,504	16,858	36,500	6,153.17
2014-15	13,506	3,556	17,062	36,500	6,227.63
Total	**63,331**	**16,032**	**79,363**		**28,982.42**

Source: Information collected from Commissioner State Excise.

During exit conference the Government accepted our observation and stated that if conditions mentioned in the notification are not fulfilled, dealers are liable to pay tax and hence liable for registration.

The Government may consider for developing a mechanism for inter-departmental exchange of data/information and modalities for survey for the purpose of identification of unregistered dealers.

2.3.10 Filing of return

Non-filing of returns by 49,705 to 1,08,152 dealers during the year 2010-11 to 2014-15 is indicative of the lack of internal control mechanism and monitoring in the Department.

Rule 45 of UPVAT Rules provides that in case of a dealer whose aggregate of turnover, exceeds one crore rupees, every calendar month of the assessment year shall be a tax period and he shall be required to submit monthly return. In case of dealers having yearly turnover less than one crore rupees, every quarter of the assessment year shall be tax period and they shall be required to submit quarterly return. Every dealer, shall, alongwith tax return of each tax period, submit a list of purchases and sales made against tax invoices containing such particulars as are prescribed in the Rules. Dealers having yearly turnover of ₹ 50 lakh or more are compulsorily required to submit e-return and rest of dealers may submit it manually.

Section 28 of the UPVAT Act provides that if a registered dealer fails to furnish before the due date the annual return specified under Section 24(7) or the tax return specified under sub-section (1) of Section 24, the prescribed authority shall pass an assessment order for an assessment year.

Information collected from the office of the Commissioner, Commercial Tax revealed that 49,705 to 1,08,152 registered dealers had not filed their returns during the year 2010-11 to 2014-15 as detailed in the **Table 2.6.**

Table 2.6
Filing of return

Year	No. of registered dealers	No. of dealers who have filed their returns		No. of dealers not filed return
		Manually	E-return	
2010-11	5,94,695	4,47,778	97,112	49,705
2011-12	6,42,645	4,42,956	1,13,481	86,208
2012-13	7,08,636	5,23,682	1,32,029	52,925
2013-14	6,98,877	4,35,271	1,55,454	1,08,152
2014-15	6,98,997	4,29,836	1,74,291	94,807

Source: Information furnished by the Commercial Tax Department.

Non-filing of returns by such a large number of registered dealers is indicative of the lack of internal control mechanism and monitoring in the Department.

We reported the matter to the Department in October 2015. No reply has been received (November 2015).

System of assessment

The provisions for assessment under the UPVAT Act, 2008 are contained in Section 6 (Compounding), Section 27 (Self Assessment), Section 28 (Assessment of tax after examination of Records) and Section 29 (Assessment

of tax of turnover escaped from assessment) and rules made thereunder, and Section 9 of Central Sales Tax Act, 1956 (CST).

2.3.11 Scrutiny of returns

16 dealers out of 435 dealers test checked, were deemed assessed without proper scrutiny of returns as these returns were incomplete in respect of filling in all the information/figures/boxes as required in the format of returns and without enclosing the necessary evidences/forms required to be submitted along-with the returns.

All the returns filed by the dealers are compulsorily scrutinised by the AAs. The AA while scrutinising the returns filed by the dealers examines the correctness of the turnover of sales or purchases or both, the amount of input tax credit claimed, the amount of tax payable shown by the dealer in their returns. He also satisfies himself that the tax shown payable by the dealer in the return has been deposited, all the annexure required to be submitted with the return are attached, all the forms on whose basis exemption/concession of tax has been claimed are submitted with the return and all the relevant columns of the return are dully filled in.

Section 27 of the Uttar Pradesh Value Added Tax (UPVAT) Act, 2008 provides that every dealer, who has submitted annual return of turnover and tax, in the prescribed form and manner, shall be deemed to have been assessed to an amount of tax admittedly payable on the turnover of purchases or sale or both, as the case may be, disclosed in such return, and amount of input tax credit shown admissible in the return. It is evident from the above provisions that only pre-condition for being self-assessed is submission of true and complete return before the expiry of the due date or the extended date.

We examined deemed cases in JC (CC) Allahabad and nine sectors and observed that the cases of 16 dealers out of 435 dealers test checked from 932 dealers, were deemed assessed without proper scrutiny of returns. These returns were incomplete in respect of filling in all the information/figures/boxes as required in the format of returns and without enclosing the necessary evidences/forms required to be submitted along-with the returns. Even crucial information such as detail of bank account, opening stock and closing stock, name of the goods sold were not filled in the returns. This is contrary to the legislative intent prescribed under the provision of the Act *ibid*. Thus, the returns submitted in those cases were not self-contained and therefore not amenable for meaningful scrutiny as well as audit which ultimately lead to short levy/under assessment of tax. Details are mentioned in the **Appendix-II.**

We reported the matter to the Department in October 2015. No reply has been received (November 2015).

2.3.12 Cases not assessed as per pro-rata basis

There was heavy volume of cases pending for assessment in the later months of the year due to non-finalisation of cases equally in each month which resulted in extension of the time limit thrice during 2010-11 to 2014-15 for one month to three months by the Government for finalisation of cases.

Para 232 of Sales Tax Manual provides the number of cases to be assessed per month by the AAs. Further CCT vide his circular dated 31 May 2013 directed the AAs to analyse the cases to be finalised during the year and to assess the cases equally in each month.

We collected information from 93 sectors for the year 2010-11 to 2014-15 and found that the regular assessment cases finalised by the AAs were varying from zero to 635 during the month.

We observed that as per provisions of the existing manual and instruction issued by CCT, cases were not finalised equally in each month. The cases should be finalised only after thorough, intensive and in-depth checking of the books of accounts and other statements, filed by the dealer. Non-finalisation of cases equally in each month resulted in heavy volume of cases pending for assessment in the later months of the year. This led to extension of the time limit thrice during 2010-11 to 2014-15 for one month to three months by the Government for finalisation of cases. This also affects upcoming year's assessments.

During exit conference the Government/Department stated that dealer demands time extension for submission of concessional/exemption forms and as per provisions of the rules AAs are bound to grant time extension if sufficient reasons are found. This results in work load in the later months of the year.

We do not agree with the reply as the CCT has issued instruction considering all the aforesaid aspect.

2.3.13 Arrears in assessment

The details of cases pending at the beginning of the year, cases became due for assessment and disposed off during the year and numbers of cases pending for finalisation at the end of the year during 2010-11 to 2014-15 are mentioned in the **Table 2.7.**

Table 2.7
Arrear in assessment

Year	Opening balance	Cases which became due for assessment	Total	Cases disposed off during the year	Cases pending at the close of the year	Percentage of pendency
2010-11	12,386	5,44,458	5,56,844	5,50,802	6,042	1.09
2011-12	6,042	6,54,378	6,60,420	4,76,368	1,84,052	27.87
1012-13	1,84,052	4,58,225	6,42,277	4,95,505	1,46,772	22.85
2013-14	1,46,772	3,92,046	5,38,818	5,31,405	7,413	1.38
2014-15	7,413	3,14,328	3,21,741	2,55,480	66,261	20.59

Source: Information provided by the Commercial Tax Department.

It is evident from the table that the pendency in finalisation of assessments was ranging between 1.09 to 27.87 *per cent* during 2010-11 to 2014-15.

We reported the matter to the Department in October 2015. No reply has been received (November 2015).

The Government may take effective steps for finalisation of assessment cases within the prescribed time limit.

2.3.14 Tax audit by the Department

Out of 6,54,828 dealers only 2,075 dealers were selected for tax audit during 2011-12 to 2014-15 which were very low in percentage ranging from 0.27 to 0.44 *per cent* and in 2010-11 no dealer was selected.

Section 44(1) of UPVAT Act states that for the purpose of examining the correctness of tax return or returns filed by the dealer or class of dealers and to verify admissibility of various claims including claim of input tax credit made by a dealer or class of dealers, tax audit shall be made of such number of dealers as may be prescribed. Act further provides that where it is convenient, the officer may take up tax audit in the office, business premises or warehouse of the dealer.

In order to examine the application of provisions and orders regarding tax audit we collected information from four zones[4] of the Commercial Tax Department and found that very low percentage of dealers ranging from 0.27 to 0.44 *per cent* were selected for tax audit during 2011-12 to 2014-15 and in 2010-11 no dealer was selected for tax audit. No audit was conducted at the office, business premises or warehouse of the dealer during 2010-11 to 2014-15 as prescribed in the Act.

The details of dealers selected for tax audit of four zones are shown in **Table 2.8.**

Table 2.8
Tax audit conducted by the Department

Year	Number of registered dealers	Number of dealers selected for tax audit and completed during the year	Percentage of dealers selected	Number of audit conducted at the business premises of the dealers
2010-11	1,18,734	0	0.00	0
2011-12	1,28,045	343	0.27	0
2012-13	1,41,270	623	0.44	0
2013-14	1,33,567	527	0.39	0
2014-15	1,33,212	582	0.44	0

Source: Data furnished by the Commercial Tax Department.

No records for follow up action by the tax audit wing regarding compliance of observations of tax audit and recovery made thereof maintained in the office of JC tax audit because after tax audit the files were returned to concerned sectors for assessment.

During exit conference the Government/Department replied that shortfall in number of dealers selected for tax audit was due to norms for selection of dealers for tax audit fixed at five *per cent* for the year 2011-12 and 2012-13 by the CCT. We do not agree with the reply of Department because percentage of

[4] Agra, Allahabad, Bareilly and Varanasi-I.

dealers selected for tax audit is very low in comparison to the norms of five *per cent* fixed by the CCT and even one *per cent* could not be achieved.

For effective implementation of tax audit the Department may adhere to the sample size fixed so that more cases of revenue loss may be detected and rectified by the Department itself.

2.3.15 Irregularities in ITC claims

Our scrutiny of records of the Department revealed several cases of irregularities regarding ITC claims like irregular/non admissible ITC claims, excess claims, non-reversal of ITC and non-charging of interest thereon etc. of ₹ 6.98 crore in respect of six JCs(CC) and 16 sectors in cases of 34 dealers out of 3,102 dealers we test checked from 23,786 dealers for the period 2008-09 to 2012-13. A few cases are mentioned in the following paragraphs.

2.3.15.1 Excess allowance of ITC

The dealers had claimed input tax credit (ITC) of ₹ 2.01 crore instead of ₹ 1.54 crore on purchase of goods of ₹ 13.57 crore due to application of higher rate than the admissible rate and wrong calculation which resulted in excess allowance of ITC of ₹ 46.62 lakh.

Section 13 of UPVAT Act provides that any registered dealer purchases taxable goods within the State from another registered dealer after paying him the tax at the rates prescribed under Section 4 of the Act, he is eligible to claim credit of input tax in the manner prescribed.

We examined assessment orders and files in JC (CC) Agra and two sectors and observed that three out of 259 dealers test checked, had availed ITC of ₹ 2.01 crore on purchase of goods valued at ₹ 13.57 crore in their annual return during the year 2011-12. However, as per the provisions of the Act dealers were entitled for ITC of ₹ 1.54 crore only. The AAs while finalising the assessment between December 2013 and March 2015 did not detect this aspect that in case of JC (CC) Agra the dealer had availed ITC at the rate of 13.5 *per cent* rather than the rate of five *per cent* and in sector 1 Amroha and sector 5 Gorakhpur dealers had availed excess ITC due to wrong calculation. Thus, the dealers were wrongly allowed excess ITC of ₹ 46.62 lakh.

2.3.15.2 False/fraudulent claim of ITC

On cross verification, ITC of ₹ 94.67 lakh claimed by the dealers was found false. Though it was reversed by the AAs but no penal action was taken against the dealers.

Under Section 13 of UPVAT Act, 2008 read with Rule 24 of UPVAT Rules, 2008 tax paid on purchase of goods from registered dealers against tax invoice or deposited cash on purchase of goods from the unregistered dealers, ITC is allowed to the extent of the tax paid or payable by the dealer on such sale or purchase. Under the provisions of Section 54(1) (19) of the VAT Act, if the AA is satisfied that any dealer or any other person, as the case may be, falsely or fraudulently claims an amount as ITC, he may direct that such dealer or

person shall, in addition to the tax, if any, payable by him, pay by way of penalty, a sum equal to five times of amount of ITC.

We examined assessment orders and files in two JCs (CC) and two sectors and observed that in the cases of five out of 301 dealers test checked, the AAs cross verified the ITC claims of the dealers and found that the dealers had falsely/fraudulently claimed ITC amounting to ₹ 94.67 lakh during the year 2009-10 to 2011-12. Though the AAs while finalising the assessment of these dealers between May 2013 and January 2015 reversed the ITC claim of ₹ 94.67 lakh but did not impose the penalty of ₹ 4.73 crore.

The dealers had procured tax invoices without actual purchases of goods. It was a case of fraud. Penal provisions are made to discourage the malpractices of the dealers. AAs should have exercised the powers to impose penalty in such cases. No reason or justification for non-imposition of penalty of ₹ 4.73 crore was given by the AAs.

2.3.15.3 Procurement of false tax invoice

Under Section 54(1) (11) (iv) of UPVAT Act, where a dealer receives a tax invoice or sale invoice without actual purchase of goods the AA may direct that such dealer shall, in addition to tax, pay by way of penalty, a sum of 50 *per cent* of the value of goods.

- **Allowance of ITC on false tax invoices**

The AA irregularly allowed the ITC claim of ₹ three lakh on the basis of tax invoices of ₹ 37.83 lakh which were procured from bogus firms without actual purchases of goods.

We cross verified the ITC claims and examined assessment orders and files in sector 9 Meerut and observed that a dealer out of 141 dealers test checked, had purchased goods against tax invoices of ₹ 37.83 lakh during the year 2008-09 and claimed ITC of ₹ three lakh. Our cross verification of sale/purchase details with other sectors revealed that the dealer had procured tax invoices from bogus firms without actual purchase of goods. The AA while finalising the assessment of the dealer in January 2011 irregularly allowed the ITC claim of ₹ three lakh without any attempt to verify the genuineness of tax invoices. This resulted in irregular allowance of ITC of ₹ three lakh and consequently non-imposition of penalty of ₹ 18.92 lakh.

- **Non-imposition of penalty on procurement of false tax invoice**

Penalty of ₹ 31.16 lakh was not imposed by the AA for procurement of tax invoices of ₹ 62.33 lakh without actual purchases of goods.

We examined assessment orders and files in sector 2 Barabanki and observed that a dealer out of 96 dealers test checked had received tax invoices of ₹ 62.33 lakh during the year 2010-11 without actual purchase of goods. The AA while finalising the assessment of the dealer in March 2014 reversed the ITC of ₹ 3.12 lakh but neither imposed the penalty of ₹ 31.16 lakh nor recorded any reason for non-imposition of penalty.

2.3.15.4 Non/short reversal of ITC on exempted sale

The dealers had not reversed the ITC claim of ₹ 47.31 lakh in respect of purchase of those goods whose sale was exempt from tax. The same was not reversed by the AAs at the time of assessment.

Under section 13(7) read with Section 7 of the UPVAT Act, no credit of any amount of input tax shall be claimed by a dealer and no facility of ITC shall be allowed to the dealer in respect of purchase of such goods where sale of such goods by the dealer is exempt from payment of tax or such goods are to be used or consumed in manufacturing or packing of any goods and sale of such manufactured or packed goods by the dealer is exempt from payment of tax. If the ITC is claimed by the dealer, it will be reversible with interest at the rate of 15 *per cent* per annum.

We examined assessment orders and files in two JCs (CC) and four sectors and observed that eight out of 513 dealers test checked, had wrongly availed ITC of ₹ 47.31 lakh during the year 2008-09 to 2011-12 on purchase of those goods whose sale valuing ₹ 77.32 crore was exempt from payment of tax. The AAs while finalising the assessments between May 2012 and February 2015 neither reversed this inadmissible ITC nor raised demand of interest. This resulted in non-reversal of ITC and non-charging of interest of ₹ 71.54 lakh.

2.3.15.5 Non-reversal of ITC on stock transfer

The dealers had not reversed the ITC claim of ₹ 6.88 lakh claimed in respect of those goods which were transferred or consigned outside the State. The same was not reversed by the AAs at the time of assessment.

Under the provision of Section 13 of UPVAT Act (amended with effect 28 February 2009), if taxable goods purchased from within the State are transferred/consigned or after use in manufacture such manufactured goods are transferred or consigned outside the State, the partial amount of ITC is admissible, which will be in excess of four *per cent.* If the dealer claims the whole amount of ITC the benefit of ITC to the extent it is not admissible, shall stand reversed along with simple interest at the rate of 15 *per cent* per annum.

We examined assessment orders and files in JC(CC) G. B. Nagar and sector 2 Bahraich and observed that three out of 308 dealers test checked, had not reversed ITC of ₹ 6.88 lakh during the year 2008-09 and 2010-11 on stock transfer of goods of ₹ 7.31 crore purchased within the State against tax invoice on which ITC was claimed. The AAs while finalising the assessments between March 2012 and February 2014 neither reversed this inadmissible ITC of ₹ 6.88 lakh nor charged the interest. This resulted in non-reversal of ITC and non-charging of interest of ₹ 12.78 lakh.

2.3.15.6 Non-reversal of ITC on goods sold on lower price than purchase price

The AAs had not reversed the ITC of ₹ 5.67 lakh claimed by the dealers in respect of those goods which were sold at the price lower than purchase price by the dealers.

Under Section 13(1) (f) of UPVAT Act where goods purchased are resold or goods manufactured or processed by using or utilising such goods are sold, at the price which is lower than purchase price of such goods in case of resale or cost price in case of manufacture, the amount of input tax credit shall be claimed and be allowed to the extent of tax payable on the sale value of goods or manufactured goods. If the dealer claims full amount of ITC, the ITC in excess of tax payable on the sale value of goods will be reversible with interest at the rate of 15 *per cent* per annum.

We examined assessment orders and files in four sectors and observed that four out of 585 dealers test checked, had purchased goods worth ₹ 9.10 crore during 2010-11 to 2011-12 and claimed ITC of ₹ 62.63 lakh and sold it for ₹ 8.46 crore. The dealers availed ITC on the purchase price of the goods instead of to the extent of ₹ 56.96 lakh on sale value of goods. The AAs while finalising the assessment between November 2013 and March 2015 neither reversed this inadmissible ITC of ₹ 5.67 lakh nor created demand with simple interest. This resulted in non-reversal of ITC and non-charging of interest of ₹ 7.80 lakh.

2.3.15.7 Irregular adjustment of ITC and non-charging of interest

The AAs while finalising the assessment reversed the non-admissible ITC and adjusted it with the balance ITC of the dealers instead of raising demand of ₹ 24.07 lakh with interest.

Under section 14(2) of UPVAT Act 2008, if any dealer notices *suo moto* that he had claimed the ITC which is not according to the provisions of the Act and Rules, he shall reverse it at the time of submitting the next tax return after noticing such event. The dealer is liable to deposit the amount of reversed ITC alongwith simple interest at a rate of 15 *per cent* per annum in the Treasury.

We examined assessment orders and files in two JCs (CC) and three sectors and observed that eight out of 798 dealers test checked, had claimed ITC of ₹ 24.07 lakh during the year 2008-09 and 2011-12 which was not in accordance with the provisions of the Act. The AAs while finalising the assessments between September 2011 and January 2015 reversed this non-admissible ITC and adjusted it with the balance ITC of the dealer without charging interest payable on it, whereas as per provisions of the Act dealers were liable to deposit the amount of reversed ITC alongwith simple interest. This resulted in irregular adjustment of ITC of ₹ 24.07 lakh and non-charging of interest of ₹ 14.29 lakh.

2.3.15.8 Irregular allowance of ITC to the contractor under compounding scheme

The AA allowed ITC of ₹ 19.14 lakh to the dealer which was not admissible on purchase of those goods which were transferred in execution of works contract under compounding scheme.

As per provisions of Section 6(2) of UPVAT Act any dealer, who opts for payment of composition money, shall not be entitled to avail ITC under Section 13 of the UPVAT Act on purchase of taxable goods from any registered dealer.

We examined in January 2015 assessment orders and files in sector 19 Lucknow, and found that a dealer out of 101 dealers test checked was engaged in purchase and sale of ready-mix concrete, stone grit, sand etc. and in civil contract. He opted for compounding scheme for civil works contract for the year 2010-11. The dealer purchased goods valued at ₹ 5.96 crore and claimed ITC of ₹ 55.27 lakh. The purchased goods were both resold and used in execution of works contract. The dealer received payment of ₹ 2.96 crore during the year 2010-11 for execution of work in which material of ₹ 2.07 crore (70 *per cent* of payment received) was transferred. As the dealer had opted for compounding scheme he was not entitled to avail ITC on purchase of those goods which were transferred in execution of work contract. The AA while finalising the assessment allowed the total ITC claim of ₹ 55.27 lakh whereas, ITC in proportion of ₹ 19.14 lakh was required to be disallowed against the material of ₹ 2.07 crore used in execution of works contract. This resulted in irregular allowance of ITC of ₹ 19.14 lakh to the dealer.

During exit conference the Government/Department accepted our observations on sub paras from 2.3.15.1 to 2.3.15.8 and stated that action is under process (November 2015).

2.3.16 Non/short levy of tax

The Assessing Authorities (AAs) while finalising the assessments, did not apply the correct rate of tax given in the schedule of rates, in some cases lower rate of tax was applied due to misclassification of goods and in some cases no tax was levied which resulted in non/short levy of tax of ₹ 6.48 crore in respect of 6 JCs (CC) and 35 sectors in cases of 74 out of 7,669 dealers we test checked from 47,076 dealers for the period 2008-09 to 2013-14 as mentioned in the following paragraphs:

2.3.16.1 Turnover escaping assessment

The turnover of ₹ 12.54 crore was not disclosed by the dealers in their returns though available in their assessment files. The AAs while finalising the assessment escaped this turnover which resulted in short levy of tax of ₹ 61.10 lakh.

Under Section 28 of UPVAT Act, the AAs are required to finalise the assessment after examining the books, accounts and documents kept by the dealer in relation to his business and other relevant records.

We examined trading and profit/loss account, annual balance sheet, current and previous year's assessment orders etc. in two JCs (CC) and 10 sectors and observed that in the case of 13 out of 2077 dealers test checked, the turnover of ₹ 12.54 crore was not disclosed by the dealers in their returns submitted to AAs for the year 2008-09 to 2012-13. The details of turnover were available in the respective assessment files of the dealers. The AAs while finalising the assessments of these dealers between January 2012 and March 2015 did not properly examine the books, accounts and documents and other relevant records which resulted in escapement of turnover of ₹ 12.54 crore and consequential short-levy of tax of ₹ 61.10 lakh.

During exit conference the Government/Department accepted our observation and stated that the tax of ₹ 28,000 has been levied in one case and action is under process in remaining cases (November 2015).

2.3.16.2 Application of incorrect rate of tax and misclassification of goods

Under Section 4(1) of UPVAT Act, 2008, goods mentioned in Schedule I are tax free, goods mentioned in Schedule II are taxable at the rate of four *per cent,* goods mentioned in Schedule III are taxable at the rate of one *per cent* and those mentioned in Schedule IV (non-VAT goods) are taxable at the rates notified by the Government from time to time. Goods not mentioned in any of the above schedules are covered under Schedule V and are taxable at the rate of 12.5 *per cent*. In addition to the above, additional tax on certain goods are also leviable as notified by the Government from time to time.

- **Application of incorrect rate of tax**

The AAs applied the incorrect rate of tax as submitted by the dealers in their returns on sale of goods worth ₹ 77.39 crore instead of rates prescribed in the schedule which resulted in non/short levy of tax of ₹ 4.56 crore.

We examined assessment orders and files in four JCs (CC) and 28 sectors and observed that 46 out of 3984 dealers test checked, had admitted taxability at lower rates or claimed exemption from tax in their returns on sale of goods worth ₹ 77.39 crore for the period 2008-09 to 2013-14. The AAs while finalising the assessment of these dealers between March 2011 and March 2015 levied the tax at the rates submitted by the dealers in their returns instead of rates prescribed in the schedule. This resulted in non/short levy of tax amounting to ₹ 4.56 crore as shown in the **Appendix-III**.

During exit conference the Government/Department accepted our observation and stated that the tax of ₹ 9.50 lakh has been levied in three cases. In the case of DC sector 4 Varanasi stated that adhesive is covered under entry number 171 of schedule-II hence tax has been levied correctly. We do not agree with the reply as entry covers the self adhesive plates, sheets, film foil, tape, strip of plastic whether or not in rolls, it does not covers the adhesive. For remaining cases replied that action is under way (November 2015).

- **Misclassification of goods**

The AAs accepted the classification of goods as declared by the dealers and levied tax at lower rates on sale of goods of ₹ 10.77 crore resulting in short levy of tax of ₹ 92.07 lakh.

We examined assessment orders and files in two JCs (CC) and five sectors and found that 13 out of 1,086 dealers test checked, had misclassified the goods and accepted taxability at lower rates on sale of goods worth ₹ 10.77 crore. The AAs while finalising the assessment for the year 2009-10 to 2012-13 between February 2013 and March 2015 accepted the classification of goods as declared by the dealers and applied incorrect rate of tax instead of classifying goods correctly and levying tax at the rates mentioned in the schedule. This resulted in short levy of tax of ₹ 92.07 lakh as detailed in the **Appendix-IV.**

During exit conference the Government/Department accepted our observation and levied tax of ₹ 10.56 lakh in one case and in case of DC sec. 1 Raebareli replied that tractor attachments and parts are covered under entry number 125 of schedule-II. We do not agree with the reply as entry covers tractors, tractor trolley, harvesters and attachments and parts thereof; tractor tyres and tubes only. Tractor accessories are not covered under the said entry. In remaining cases replied that action is under process (November 2015).

2.3.16.3 Short levy of composition money

The AAs accepted composition money at the rate of two *per cent* instead of six *per cent* on payment of ₹ 10.72 crore which resulted in short levy of composition money of ₹ 38.09 lakh.

Under the provision of Section 6 of UPVAT Act, any dealer may opt to pay composition money in lieu of tax payable by him. As per compounding scheme introduced by the Government vide Notification No.1278 dated 9 June 2009 for civil and electrical contractors, any contractor transfers imported goods upto five *per cent* of the value of work executed during the financial year the composition money was to be computed at the rate of two *per cent* and if contractor transfers more than five *per cent* imported goods the composition money was to be computed at the rate of six *per cent*.

We examined assessment orders, consumption chart of imported goods and files in two sectors and observed that two civil contractors out of 294 dealers test checked, used imported material valued at ₹ 1.14 crore in execution of works contract during the year 2009-10, which was more than five *per cent* of the contractual value of ₹ 10.72 crore. Since the imported goods used in execution of work contract were more than five *per cent* of the contractual value in financial year hence the composition money of ₹ 64.34 lakh at the rate of six *per cent* was leviable. However, the AAs while finalising the assessment between February 2013 and April 2013, levied composition money of ₹ 26.25 lakh at the rate of two *per cent*. This resulted in short levy of composition money of ₹ 38.09 lakh.

During exit conference the Government/ Department accepted our observation and stated that in both the cases action is under process (November 2015).

2.3.17 Non-imposition of penalty

Penal provisions are made to discourage the malafied practices of the dealers. The AAs while finalising the assessments, did not notice the offences committed by the dealers i.e. concealment of turnover, delayed deposit of admitted tax, furnishing of false declaration forms etc. Though there are clear cut provisions for imposition of penalties in the Act, the AAs concerned did not initiate action in this regard, resulting in non-imposition of penalty of ₹ 114.82 crore in respect of six JCs (CC) and 35 sectors in cases of 82 out of 8,556 dealers we test checked from 58,298 dealers for the period 2008-09 to 2013-14 as mentioned in the following paragraphs:

2.3.17.1 Concealment of turnover

There was concealment of turnover of ₹ 25.77 crore on which penalty of ₹ 2.48 crore was not imposed by the AAs at the time of assessment.

Under Section 54(1) (2) of UPVAT Act, where a dealer has concealed particulars of his turnover or has deliberately furnished inaccurate particulars of such turnover; or submits a false tax return under this Act or evades payments of tax which he is liable to pay under this Act, the AA may direct such dealer to pay by way of penalty, a sum three times of amount of tax concealed or avoided, in addition to the tax, if any, payable by him,.

We examined assessment orders, files, accepted tax deposited by dealers and order of Commercial Tax Appellate Authorities in four JCs (CC) and 14 sectors and observed that 24 out of 2,296 dealers test checked, had concealed purchases and sales turnover of ₹ 25.77 crore during the year 2008-09 to 2013-14. The AAs while finalising the assessment between January 2012 and March 2015 levied tax of ₹ 82.67 lakh on this concealed turnover. Though in seven cases the Appellate Authorities had confirmed that the dealers had concealed the turnover and in remaining cases the dealers had themselves accepted the same and deposited the tax due on the concealed turnover, the AAs concerned neither imposed the penalty of ₹ 2.48 crore nor recorded any reason for non-imposition of penalty as shown in the **Appendix-V**.

During exit conference the Government/Department stated that penalty of ₹ 4.77 lakh has been imposed in three cases and action is under process in remaining cases (November 2015).

2.3.17.2 Furnishing of wrong declaration form

For furnishing fake declaration form penalty of ₹ 3.22 crore was not imposed by the AAs while finalising assessment.

Under Section 54(1)(11)(i) of the UPVAT Act (read alongwith Section 9 of CST Act), if the Assessing Authority is satisfied that any dealer or other person, as the case may be, issues or furnishes a false or wrong certificate or form of declaration by reason of which a tax on sale or purchase, ceases to be leviable, he may direct that such dealer or person shall, pay by way of penalty, a sum equal to 50 *per cent* of value of goods.

We examined in March 2015 assessment order and files in sector 2 Mirzapur and observed that a dealer out of 91 dealers test checked, had claimed exemption of tax on consignment sale of goods of ₹ 6.44 crore against declaration in form 'F'. On verification by the AA these forms were found fake. The AA while finalising the assessment in July 2014 disallowed the exemption and levied tax of ₹ 24.40 lakh but neither imposed the penalty of ₹ 3.22 crore nor recorded any reason for non-imposition of penalty.

2.3.17.3 Delayed deposit of Works Contract Tax

The AAs had not imposed penalty of ₹ 3.72 crore on dealers for not depositing the tax of ₹ 1.86 crore within the prescribed time, deducted at source while making payment to contractors.

Under Section 34(8) read with 34(1) of UPVAT Act if any person fails to make the deduction or after making deduction fails to deposit the amount so deducted into the Government treasury before the expiry of 20th day of the month following the month in which the deduction was made the AAs may direct that such person shall pay by way of penalty a sum not exceeding twice the amount so deducted.

We examined assessment orders and files in eight sectors and observed that 10 out of 1,459 dealers test checked, had deducted works contract tax (WCT) of ₹ 1.86 crore at source while making payment to the contractors during the year 2008-09 to 2011-12 but did not deposit the same in the Government treasury within the prescribed time. The delay ranged between five days to two years 20 days. The AAs while finalising the assessment between November 2011 and March 2015 neither imposed the penalty of ₹ 3.72 crore nor recorded any reason for non-imposition of penalty.

During exit conference the Government/Department stated that penalty of ₹ 19.84 lakh has been imposed in one case and in remaining cases action is under process (November 2015).

2.3.17.4 Delayed deposit of admitted tax

Penalty of ₹ 1.11 crore was not imposed at the time of assessment by the AAs for failure to deposit the admitted tax of ₹ 5.56 crore within the prescribed time, without reasonable cause.

Under Section 54 (1) (1) of UPVAT Act, if the AA is satisfied that any dealer or other person has, without reasonable cause, failed to deposit the tax due for any tax period within the prescribed or extended time, he may direct the dealer to pay by way of penalty in addition to tax, if any payable by him, a sum equal to 20 *per cent* of the tax due. CCT vide circular dated 23 April 2002 and 1 May 2013 has directed that in cases where penalty is not imposed the AAs should record speaking orders for non-imposition of penalty.

We examined assessment orders and files in JC(CC)-I Ghaziabad and 24 sectors and observed that 40 out of 3,689 dealers test checked, had not deposited their admitted tax of ₹ 5.56 crore for the period 2008-09 to 2012-13 in time. The delay ranged between five days to two years 11 months 17 days. The AAs while finalising the assessments between December 2011 and March

2015 did not impose the penalty of ₹ 1.11 crore nor recorded any reason for non-imposition of penalty as directed by CCT. Details are shown in the **Appendix-VI.**

2.3.17.5 Import of goods without declaration form

Penalty of ₹ 103.60 crore was not imposed by the AA for importing goods worth ₹ 259.60 crore without using import declaration form.

Rule 56 of UPVAT Rules provides issue and submission of declaration form (Form XXXVIII) for importing goods into the State from any place outside the State. Under Section 54(1)(14) of UPVAT Act where the dealer or any person, as the case may be imports or attempts to import or abets the import of any goods, in contravention of the provisions under Section 50 or Section 51 with a view to evading payment of tax on sale of such goods or goods manufactured, processed or packed by using such goods or transports, attempts to transport any taxable goods in contravention of any provisions of this Act, the AA may direct that such person shall pay by way of penalty a sum of 40 *per cent* of the value of goods.

We examined in March 2015 assessment orders and files in the office of JC (CC) Gorakhpur and observed that a dealer out of 83 dealers test checked, had imported wheat worth ₹ 259.60 crore during 2010-11 without issuing declaration in form XXXVIII. The AA while finalising the assessment in March 2014 neither imposed the penalty of ₹ 103.60 crore for importing goods without using import declaration form nor recorded any reason for the same, whereas in assessment orders of 2008-09 and 2009-10 the AA had himself instructed the ledger keepers to issue penalty notices.

Similar cases were pointed out earlier by us in AR 2007-08. The Department had accepted our observation and imposed penalty of ₹ 822.19 crore but such irregularities still persists.

2.3.17.6 Excess collection of tax

The dealers had collected tax of ₹ 22.99 lakh in excess of their tax liability. However, the AAs did not levy penalty of ₹ 68.97 lakh for excess collection of tax.

Under the provisions of Section 54(1) (16) of the UPVAT Act, if the AA is satisfied that any dealer had realised any amount as tax in contravention of the provisions of the Act, he may direct that such dealer shall, in addition to the tax realised by him, pay by way of penalty, a sum equal to three times of amount of the tax so realised.

We examined assessment orders and files in three JCs (CC) and two sectors and observed that in the cases of six out of 442 dealers test checked, the dealers had charged/realised an excess amount of ₹ 22.99 lakh as tax in contravention of the provisions of the Act. The AAs while finalising the assessment between March 2013 and December 2014 forfeited the excess tax realised, but neither imposed the penalty amounting to ₹ 68.97 lakh nor recorded any reason for non-imposition of penalty.

During exit conference the Government/Department stated that though penalty is not mandatory, however, action is in process in respect of para 2.3.17.2 and para 2.3.17.4 to para 2.3.17.6 (November 2015).

The Government may ensure proper scrutiny of returns by the Assessing Authorities at the time of assessments to prevent leakage of revenue.

2.3.18 Non-charging of interest

Under Section 33(2) of UPVAT Act every dealer liable to pay tax is required to deposit the amount of tax into the Government treasury before the expiry of due date failing which simple interest at the rate of one and quarter *per cent* per month shall become due and be payable on unpaid amount with effect from the day immediately following the last date prescribed till the date of payment.

2.3.18.1 Non-charging of interest on encashment of Bank Guarantee

The AA encashed bank guarantee of ₹ 2.55 crore and adjusted it against the tax dues without charging interest of ₹ 86.06 lakh.

We examined assessment orders and files in sector 1 Allahabad and observed that in case of a dealer out of 31 dealers test checked, the bank guarantee of ₹ 2.55 crore was encased and deposited into the Government treasury by the AA after the final order of Hon'ble High Court Allahabad. Though the admitted tax of ₹ 2.55 crore was deposited after a delay of two year three months from the due date, the AA while finalising the assessment in May 2012 did not charge interest on the delayed credit to the Government account. Belated deposit of admitted tax into the Government treasury attracted interest of ₹ 86.06 lakh which was not charged by the AA. This resulted into non-charging of interest of ₹ 86.06 lakh.

During exit conference the Government/Department accepted our observation and stated that action is in process (November 2015).

2.3.18.2 Non-charging of interest on delayed deposit of admitted tax

The dealers deposited admitted tax of ₹ 6.21 crore with delay without interest. The AAs while scrutinising the returns did not consider this aspect and failed to charge interest of ₹ 53.52 lakh.

We examined assessment orders and files in five JCs(CC) and four sectors and observed that 16 out of 1,210 dealers test checked, had deposited admitted tax of ₹ 6.21 crore for the year 2008-09 to 2013-14 with delay ranging from 11 days to six years four months. The belated payment of admitted tax attracted interest of ₹ 53.52 lakh. The AAs while finalising the assessment between September 2011 and March 2015 did not consider this aspect which resulted in non-charging of interest of ₹ 53.52 lakh as shown in the **Appendix-VII**.

During exit conference the Government/Department accepted our observation and stated that in two cases interest of ₹ 23,000 have been recovered and action is in process in remaining cases (November 2015).

2.3.18.3 Short charging of interest due to erroneous Recovery Certificate

There was short charging of interest of ₹ 17.12 lakh due to erroneous issuance of recovery certificates by the AAs.

We examined assessment orders and files in three sectors and observed that in the case of five out of 538 dealers test checked, the AAs while finalising the assessment for the year 2009-10 and 2010-11 between May 2013 and January 2015 levied tax on admitted sales. However, the dealers did not deposit the tax in time, failing which AAs issued RCs for the recovery of accepted tax amounting to ₹ 30.68 lakh and demanded interest from the date of receipt of demand notice upto the date of deposit of tax at the rate of one *per cent* per mensum. Interest on admitted tax was required to be demanded from the due date upto the date of deposit of tax, at the rate of one and quarter *per cent* per mensum. This omission in issue of RCs resulted in short charging of interest of ₹ 17.12 lakh.

During exit conference the Government/Department accepted our observation and stated that action is under process in all the cases (November 2015).

2.3.19 Irregular authorisation to purchase cement/steel in Central Registration Certificate (CRC)

The AA irregularly authorised the dealer engaged in production of electricity to purchase iron, steel and cement under CRC for construction of factory building which resulted in undue benefit to the dealer to the extent of ₹ 93.73 lakh.

Under Section 7(3) of CST Act, any person intended to purchase goods on concessional rate of tax from other states shall apply for registration certificate under this Act. The registering authority shall register the applicant and grant him a registration certificate in the prescribed form which shall specify the class or classes of goods for being intended for resale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or in the telecommunications network or in mining or in the generation or distribution of electricity or any other form of power.

Further, Commissioner, Commercial Tax (CCT) issued (1992) direction to all the AAs vide circular No. 17 dated 4 December 1992 that the facility of Form 'C' for purchase of cement and other building materials is not available to the manufacturers/dealers for construction of buildings.

We examined assessment order and files in JC (CC) G.B. Nagar and found that a dealer out of 58 dealers test checked was granted CRC for purchase of raw material which also includes purchase of all kind of building material. The dealer purchased cement and steel of ₹ 7.17 crore during 2009-10 and 2010-11 at concessional rate and used in construction of the factory. Since the dealer was engaged in production of electricity; iron, steel and cement was not the raw material used in its manufacture. The facility of Form 'C' to a manufacturer is only for purchase of those goods, which are used by him in the manufacture or processing of goods intended for sale. The authorisation to purchase iron, steel and cement given by the AA under the CRC was in

contravention of the provisions of the Act as well as order of the CCT dated 4 December 1992. The AA did not follow the instruction of CCT while passing the assessment order for the year 2009-10 and 2010-11 which resulted in undue benefit to the dealer to the extent of ₹ 93.73 lakh.

Similar nature of cases were reported in AR 2011-12 (Para 2.15.1) and AR 2012-13 (Para 2.23) by us, though assurance was given by the Department for deletion of cement from CRC yet the irregularities persist.

During exit conference the Government/Department accepted our observation and stated that action is in process. Further reply has not been received (November 2015).

2.3.20 Deficiencies in computerisation system

Computerisation of the Department was not adequate as verification of transactions of dealers of the State with other states dealers was not possible, ITC module was not realistic and there was slow speed of Intra-net which affected the work of AAs adversely.

The study of the modules of the system such as Receipt, Registry, Return, Challan, Assessment, administration and Help-desk etc. showed that:

- there was no online facility available for the respective Assessing Authority to verify the details of the transactions of a dealer with respect to transactions with the registered dealers of other state.
- for allowing ITC claims and accepting the amount of sale against tax invoices, it is necessary that all the purchases and sales made by the dealer are verified. Hundred *per cent* verification of transactions was not possible in the current online VYAS system as only the dealers with turnover of ₹ 50 lakh and above were submitting e-returns on the system.
- there was mismatch between sales figure and purchases figure due to lack of data uniformity during uploading of data by the dealers.
- though there was facility for online issue of notices and assessment orders, it had no legal acceptance. Hence, these were required to be sent manually also, which resulted in duplication of work.
- slow speed of Intra-net while uploading and downloading adversely affected the work of assessment.

The AAs agreed with the audit contention. It is evident from the above analysis that weaknesses of the computerised system attributes to leakage of revenue as well as adversely affect the performance of the AAs.

During exit conference the Government/Department stated that facility to verify the details of the transactions of a dealer with respect to transactions with the registered dealers of other state is not available due to non-uploading of all the transactions of the dealers by the Department of the State as well as by the other states.

The Government accepted our observation that due to non-availability of prescribed format for filling of data there was mismatch between sales figure and purchases.

2.3.21 Human Resource Management

2.3.21.1 Shortage of manpower

Heavy shortage in the cadres of DC, AC and CTO ranging 10.93 to 68.78 *per cent* during 2010-11 to 2014-15 affected the working of the Department and revenue collection.

Availability of man power is a key factor for smooth and efficient working of a Department. It was noticed that although there was an increase in the number of assesses from 5,94,695 to 6,98,997 during the coverage period, there was severe shortage of manpower. The manpower position of the Department is depicted in the **Table 2.9.**

Table 2.9
Shortage of manpower

Designation	Sanctioned strength	Men in position					Percentage of short fall (min-max)
		2010-11	2011-12	2012-13	2013-14	2014-15	
Additional Commissioner	98	93	56	86	83	97	1.02 – 42.86
Joint Commissioner	157	155	138	151	114	147	1.27 – 27.39
Deputy Commissioner	494	419	368	375	289	440	10.93 – 41.50
Assistant Commissioner	964	382	599	631	501	628	34.54 – 60.37
Commercial Tax Officer	1,275	507	398	647	423	486	49.25 – 68.78
Non gazetted employees	12,271	9,785	8,664	7,859	8,738	7,079	20.26 - 42.31

Source: Data furnished by the Commissioner Commercial Tax.

From the table it could be seen that there was heavy shortage in the cadres of Deputy Commissioner, Assistant Commissioner and Commercial Tax Officer ranging between 10.93 to 68.78 *per cent* during 2010-11 to 2014-15 which affected the working of the Department and revenue generation as illustrated in para 2.3.15 and 2.3.16.

During exit conference the Government/Department accepted our observation and stated that action for filling up the vacant posts is in process.

The Government may consider for deployment of manpower in accordance with sanctioned strength.

2.3.21.2 Training

Training of one day was provided to 799 persons and two days to 304 persons during 2010-11 to 2013-14. Only one and two day training in a year may not be sufficient to train/upgrade the skill of the staff.

Training is an important tool of capacity building in a Department. The skill and the capability of the staff can be upgraded through imparting periodical trainings. Details of men in position and staff trained during 2010-11 to 2014-15 are given in **Table 2.10.**

Table 2.10
Training position of the staff

Designation	Year									
	2010-11		2011-12		2012-13		2013-14		2014-15	
	Men In Position	No. of officials trained	Men In Position	No. of officials trained	Men In Position	No. of officials trained	Men In Position	No. of officials trained	Men In Position	No. of officials trained
Deputy Commissioner	419	06	368	00	375	15	289	00	440	00
Assistant Commissioner	382	15	599	101	631	140	501	98	628	102
Commercial Tax Officer	507	21	398	00	647	58	423	191	486	59
Group C Employee	9,785	17	8,664	00	7,859	00	8,738	66	7,079	00

Source: Information furnished by the Commissioner Commercial Tax.

We observed that only one day training was given to 799 persons and two days training to 304 persons during 2010-11 to 2014-15. Only one and two day training in a year may not be sufficient to upgrade the skill of the staff.

During exit conference the Government/Department stated that regular training programmes are being organised to train new appointees and existing officers and officials. We do not agree with the reply of the Government because in support of their reply no details of number of programmes organised and number of persons trained was furnished to the audit.

The Government may consider for organising refresher course/training on VAT administration and computerisation periodically for departmental officers and officials.

2.3.22 Internal Control Mechanism

Internal controls are intended to provide reasonable assurance of proper enforcement of laws, rules and departmental instructions. The internal controls also help in creation of reliable financial as well as management information systems for prompt and efficient services and for adequate safeguards against evasion of taxes and duties. It is, therefore, the responsibility of the Department to ensure that a proper internal control structure is instituted, reviewed and updated from time to time to keep it effective.

2.3.22.1 Shortage of manpower in internal audit wing

Entire posts of Audit Officers were lying vacant and there was heavy shortfall in the strength of Sr. Auditors/Auditors ranging from 56 to 74 *per cent.* No efforts were made by the Department to fill the post.

The internal audit wing functions under the administrative control of the CCT. In internal audit wing no Audit Officer was posted, only 28 Senior Auditors/Auditors were posted against the sanctioned post of 13 Audit Officers and 91 Senior Auditors/Auditors as detailed in **Table 2.11.**

Table 2.11
Shortage of manpower in internal audit wing

Year	Sanctioned strength		Men in position		Post vacant		Percentage of short fall	
	Audit Officer	Sr. Auditor/ Auditor	Audit Officer	Sr. Auditor/ Auditor	Audit Officer	Sr. Auditor/ Auditor	Audit Officer	Sr. Auditor/ Auditor
2010-11	13	91	0	40	13	51	100	56
2011-12	13	91	0	34	13	57	100	63
2012-13	13	91	0	24	13	67	100	74
2013-14	13	91	0	31	13	60	100	66
2014-15	13	91	0	28	13	63	100	69

Source: Data furnished by the Commissioner Commercial Tax.

The above table shows that the entire posts of Audit Officers were lying vacant and there was a heavy shortfall in the strength of Sr. Auditors/Auditors ranging from 56 to 74 *per cent.* No efforts had been made by the Department to fill the post lying vacant in the internal audit wing.

During exit conference the Government/Department accepted our observation and stated that efforts are being made to fill up the vacant posts by promotion and by direct appointment.

2.3.22.2 Position of internal audit of sectors

Internal audit of sectors conducted by internal audit wing of the Department during 2010-11 to 2014-15 are shown in **Table 2.12.**

Table 2.12
Position of internal audit of sectors

Year	Total number of sectors	Sectors planned for audit	Number of sectors audited	Percentage of shortfall
2010-11	436	436	386	11
2011-12	436	436	198	55
2012-13	436	436	65	86
2013-14	437	437	18	96
2014-15	437	23	21	09

Source: Data furnished by the Commissioner Commercial Tax.

This shows that the audit planning of the internal audit wing for sectors' audit is not realistic as shortfall ranged from 9 to 96 *per cent* during the year 2010-11 to 2014-15. Further, no audit was conducted in 36 sectors during the year 2010-11 to 2014-15.

During exit conference the Government/Department stated that due to shortage of 80 *per cent* manpower it is not being possible to audit more number of sectors.

The Government may consider for strengthening the internal audit wing for effective operation of VAT administration by filling the vacant posts.

2.3.22.3 Position of outstanding paras and recovery thereof

Due to non-settlement of paras pointed out by internal audit the number of cases and amount involved were getting accumulated over years. Percentage of recovery was very low ranging between 0.03 to 2.58 *per cent* during 2010-11 to 2014-15.

The detail of objections raised by internal audit wing, their compliance and recovery position are given in **Table 2.13.**

Table 2.13
Position of outstanding paras and recovery thereof

(₹in lakh)

Year	Opening balance		Addition during the year		Cases finalised during the year and recovery thereof		Percentage of cases finalised and recovery		Closing balance	
	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	Cases	Amount	No. of cases	Amount
2010-11	6,626	5,697.55	2,226	1,486.28	346	185.65	3.91	2.58	8,506	6,998.18
2011-12	8,506	6,998.18	1,546	1,373.28	344	171.39	3.42	2.05	9,708	8,200.07
2012-13	9,708	8,200.07	1,241	35,017.21	130	15.11	1.19	0.03	10,819	43,202.17
2013-14	10,819	43,202.17	552	897.44	278	182.57	2.44	0.41	11,093	43,917.04
2014-15	11,093	43,917.04	529	749.65	394	153.78	3.39	0.34	11,228	44,512.91

Source: Data furnished by the Commissioner Commercial Tax.

The above table shows that the number of cases and amount involved in such cases were getting accumulated over years.

Percentage of recovery was very low ranging between 0.03 to 2.58 *per cent* during 2010-11 to 2014-15.

During exit conference the Government/Department agreed with our observation and stated that instruction to expedite the settlement of cases and recovery thereof has been issued to the concerned field officers.

2.3.23 Conclusion

During Performance Audit we observed the following:

- Due to non-existence of mechanism for inter-departmental exchange of data/information and modalities for survey the Department failed to identify and register 79,363 unregistered dealers and to impose penalty of ₹ 289.82 crore.

  Recommendation: The Government may consider for developing a mechanism for inter-departmental exchange of data/information and modalities for survey for the purpose of identification of unregistered dealers.

- Non-finalisation of assessment cases equally in each month by the Assessing Authorities resulted in pendency of cases between 6,042 to 1,84,052 in the later months of the year during 2010-11 to 2014-15. This led to extension of time limit thrice for one month to three months by the Government during 2010-11 to 2014-15 for finalisation of cases. This also affects upcoming year's assessments.

  Recommendation: The Government may take effective steps for finalisation of assessment cases within the prescribed time limit.

- There was very low percentage of dealers, ranging from 0.27 to 0.44 *per cent* selected for tax audit during 2011-12 to 2014-15 against the norms of five *per cent* and no dealer was selected for tax audit in 2010-11.

  Recommendation: For effective implementation of tax audit the Department may adhere to the sample size fixed so that more cases of revenue loss may be detected and rectified by the Department itself.

- Irregular allowance of excess claims of ITC, suppression of purchase/ sales turnover, application of incorrect rate of tax, misclassification of goods, concealment of turnover, delayed deposit of admitted tax, import of goods without declaration forms, furnishing of false declarations etc. led to leakage of revenue and non-imposition of penalty of ₹ 128.28 crore.

  Recommendation: The Government may ensure proper scrutiny of returns by the Assessing Authorities at the time of assessments to prevent leakage of revenue.

- The internal control mechanism was deficient in terms of inadequate internal audit of sectors due to acute shortage of staff.

  Recommendation: The Government may consider for strengthening the internal audit wing for effective operation of VAT administration by filling the vacant posts.

2.4 Audit observations

Our scrutiny of the 87,400 out of 2,04,213 assessment orders related with 539 Commercial Tax Offices showed several cases of non-observance of the provisions of the Acts/Rules, non/short levy of tax/penalty/interest, irregular exemption, incorrect application of rate of tax, etc. as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on our test check. Such omissions on the part of Assessing Authorities (AAs) have been pointed out by us each year, but not only do the irregularities persist; they remain undetected by the Department till an audit is conducted.

2.5 Non/Short levy of tax

The Assessing Authorities while finalising the assessments, did not apply correct rate of tax given in the schedule of rates, in some cases lower rate of tax was applied due to misclassification of goods, short levy of composition money and in some cases no tax was levied which resulted in non/short levy of tax of ₹ 7.23 crore alongwith penalty of ₹ 2.39 crore in respect of 82 CTOs in the cases of 108 out of 11,425 dealers for the period 2007-08 (VAT) to 2012-13 as mentioned in the following paragraphs:

2.5.1 Non/Short levy of tax under UPVAT

Under Section 4(1) of Uttar Pradesh Value Added Tax (UPVAT) Act, 2008, goods mentioned in schedule I are tax free, goods mentioned in schedule II are taxable at the rate of four *per cent*, goods mentioned in schedule III are taxable at the rate of one *per cent* and those mentioned under schedule IV are taxable at the rate notified by the Government from time to time. Goods not mentioned in any of the above schedules are covered under schedule V and are taxable at the rate of 12.5 *per cent* with effect from 1 January 2008. In addition to the above under Section 3-A of UPVAT Act 2008 additional tax is also leviable as notified by the Government from time to time.

2.5.1.1 Non/Short levy of tax due to application of incorrect rate of tax

Assessing Authorities accepted the tax on sale of goods worth ₹ 40.01 crore as submitted by the dealers in their returns instead of rates mentioned in the schedule. This resulted in non/short levy of tax amounting to ₹ 2.93 crore

We test checked (between April 2013 and March 2015) assessment orders and files in 68 Commercial Tax Offices (CTOs) and observed that in the case of 86 out of 9,855 dealers, the AAs while finalising the assessments for the year 2007-08 (1.1.2008 to 31.3.2008) to 2011-12 between March 2011 and March 2014 accepted the tax on sale of goods worth ₹ 40.01 crore as submitted by the dealers in their returns instead of rates mentioned in the schedule. This resulted in non/short levy of tax amounting to ₹ 2.93 crore as shown in **Appendix-VIII.**

We reported the matter to the Department and Government (between June 2013 and July 2015). The Department accepted our observation and levied tax amounting to ₹ 77.71 lakh in 10 cases, out of which ₹ 1.02 lakh has been

recovered. In one case the Department replied that the commodity is casting of metal which is covered under Schedule II of VAT Act. We do not agree with the reply of the Department as the commodity is machinery part made of casting which is covered under Schedule V of VAT Act and in an another case Department replied that the commodity is pollution equipment which controls sound pollution and is covered under Schedule II of VAT Act. We do not agree with the reply of the Department because manufactured canopy is a DG set accessory and it is not covered under sound pollution equipment which is neither independently used for controlling pollution nor used in pollution control equipment plant. It is specifically used in DG set and it is not classified. For the remaining cases the Department stated that action is under way (November 2015).

2.5.1.2 Non/Short levy of tax due to misclassification of goods

Assessing Authorities accepted the classification declared by the dealers and applied incorrect rate of tax on sale of goods of ₹ 66.79 crore instead of classifying goods correctly and levying tax at the rates mentioned in the schedule. This resulted in short levy of tax of ₹ 3.31 crore

We test checked (between July 2014 and February 2015) assessment orders and files in nine CTOs and observed that in the case of 11 out of 883 dealers, the AAs while finalising the assessment for the year 2008-09 to 2010-11 between May 2012 and March 2014, accepted the classification declared by the dealers and applied incorrect rate of tax on sale of goods of ₹ 66.79 crore instead of classifying goods correctly and levying tax at the rates mentioned in the schedule. This resulted in short levy of tax of ₹ 3.31 crore as detailed in the **Appendix-IX.**

We reported the matter to the Department and the Government (July 2015). In reply the Department stated that action is under way (November 2015).

2.5.1.3 Short levy of tax due to calculation mistake

Assessing Authorities committed mistake in calculation of tax on taxable turnover of ₹ 34.20 crore which resulted in short levy of tax amounting to ₹ 17.24 lakh.

Under Section 28 of UPVAT Act, 2008 and Section 9(4) of UP Tax on Entry of Goods into Local Areas Act, 2007 it is the duty of the AAs while scrutinising the returns/records filed by the dealer and passing the assessment orders to see that all the taxes are correctly levied and all the calculations are made accurately.

We test checked (between May 2013 and September 2014) assessment orders and files in five CTOs and observed that in the case of five out of 749 dealers, the AAs while finalising the assessments between April 2012 and March 2014 for the period 2008-09 to 2012-13, committed mistake in calculation of tax on taxable turnover of ₹ 34.20 crore which resulted in short levy of tax amounting to ₹ 17.24 lakh. The details are mentioned in **Table 2.14.**

Table 2.14

Short levy of tax due to calculation mistake

(₹ in lakh)

Sl. No.	Name of the units	No of dealers	Assessment year (month and year of assessment)	Taxable turnover	Rate of tax leviable/ levied *(per cent)*	Tax leviable	Tax levied	Tax short levied
1	DC Sec 7 Ghaziabad	1	2009-10 (March 2013)	3,208.76	1	32.09	27.09	5.00
2	DC Sec 9 Kanpur	1	2012-13 (March 2014)	78.70	2	1.57	0.57	1.00
3	DC Sec 18 Lucknow	1	2008-09 (May 2012)	90.53	12.5	11.32	1.32	10.00
4	DC Sec 6 Noida	1	2010-11 (March 2014)	5.35	13.5	0.72	0.07	0.65
5	DC Sec 2 Varanasi	1	2008-09 (April 2012)	36.66	12.5	4.58	3.99	0.59
Total		**5**		**3,420.00**		**50.28**	**33.04**	**17.24**

Source: Information available on the basis of assessment files.

We reported the matter to the Department and the Government (between July 2013 and October 2014). The Department accepted our observation and levied tax amounting to ₹ 1.65 lakh in three cases. For the remaining cases the Department stated that action is under way (November 2015).

2.5.1.4 Short levy of composition money under UPVAT

Assessing Authority accepted composition money at lower rate of two percent instead of six percent applicable to a civil contractor on payment of ₹ 4.73 crore for execution of works contract which resulted in short levy of composition money of ₹ 13.05 lakh.

As per provisions of compounding scheme introduced on 9 June 2009 for civil works contractors under Section 6 of UPVAT Act, 2008, if any contractor uses goods imported from outside the State upto five *per cent* of the amount of contract executed during the financial year, the rate of composition money will be two *per cent* and if any contractor uses goods imported from outside the State over and above five *per cent*, the rate of composition money will be six *per cent* of the payment received against the work executed by contractor during the financial year.

We test checked assessment order, consumption detail of ex UP goods and files in the office of DC Sec 2, Sultanpur and observed that a civil contractor used imported material valued at ₹ 97.75 lakh in execution of works contracts, which was more than five *per cent* of the contractual value of ₹ 4.73 crore, executed during the year 2008-09 and 2009-10. Since the imported goods used in execution of work contract were more than five *per cent* of the contractual value in each financial year hence the composition money of ₹ 28.37 lakh was leviable at the rate of six *per cent* as per provisions of compounding scheme. However, the AAs while finalising the assessment in March 2014, levied composition money of ₹ 15.32 lakh (at the rate of two *per cent* on ₹ 4.73 crore and six *per cent* on ₹ 97.75 lakh). This resulted in short levy of composition money of ₹ 13.05 lakh.

We reported the matter to the Department and the Government (April 2015). In reply the Department stated that action is under way (November 2015).

2.5.1.5 Short levy of composition money under UPTT

The Assessing Authorities while finalising the assessments accepted the composition money at lower rate than the rate applicable. This resulted in short levy of composition money of ₹ 10.51 lakh.

Under the provision of Section 7 D of UPTT Act, any dealer may opt to pay composition money in lieu of tax payable by him. For civil contractors composition money will be computed at the rate of two *per cent* from 15 February 2005 by notification *No. KANI-2-362/Gyarah -2005* dated 11 February 2005. For electrical contractors from 1 February 2005 vide Notification no. *KANI-2-271/X* dated 2 February 2005 the composition money will be computed at the rate of two *per cent.* If any electrical contractor uses Form 'C' or import declaration Form XXXI composition money will be computed at the rate of four *per cent*.

We test checked (December 2013) assessment orders and files in two CTOs and observed that two contractors out of 232 dealers, during the period 2008-09 received ₹ 27.02 crore for execution of work contract. Out of this on ₹ 4.12 crore the contractors had not paid composition money at correct rate of two *per cent* for civil contracts and on ₹ 3.19 crore at the rate of four *per cent* for electrical contracts as these contracts were pertaining to the UPTT period as well as after the date of notification. The AAs while finalising the assessments between April 2012 and May 2012 accepted the composition money at lower rate than the rate applicable. This resulted in short levy of composition money of ₹ 10.51 lakh. The details are mentioned in **Table 2.15.**

Table 2.15
Short levy of composition money under UPTT

(₹ in lakh)

Sl. No.	Name of the units	No of dealers	Assessment year (month and year of assessment)	Gross amount of work executed during year	Amount on which composition money short levied	Leviable composition money (in *per cent*)	Levied composition money (in *per cent*)	Short levied composition money (in *per cent*)	Short levied composition money
1	DC Sec 14 Ghaziabad	1	2008-09 (April 2012)	2,164.00	411.87	2	1	1	4.12
2	DC Sec 25 Kanpur	1	2008-09 (May 2012)	538.40	319.37	4	2	2	6.39
Total		**2**		**2,702.40**	**731.24**				**10.51**

Source: Information available on the basis of audit findings.

We reported the matter to the Department and the Government (between January 2014 and August 2014). In reply the Department stated that action is under way (November 2015).

2.5.2 Irregular authorisation to purchase diesel at concessional rate

Assessing Authorities while finalising the assessment allowed concession of ₹ 58.41 lakh on the purchase of diesel amounting to ₹ 4.78 crore against form 'D' which was inadmissible which resulted in short-levy of tax of ₹ 58.41 lakh and non-imposition of penalty at the rate of 50 *per cent* of value of goods, amounting to ₹ 2.39 crore.

As per entry no. 4(b) of the Schedule IV issued under the provisions of Section 4(1) (c) of UPVAT Act 2008, tax on diesel is leviable at the rate of

17.23 *per cent* from 29 January 2009 and as per entry no. 4(a) of the Schedule IV Manufacturers of any taxable goods other than non VAT goods are entitled to purchase diesel at the concessional rate of tax five *per cent* from 30 September 2008, against Form D, vide Government Notification no-2758 dated 29.09.2008 .

It has judicially been held (STI 2000 S.C. 53, Uttar Pradesh Vs. M/s Lal Kuwan Stone crusher Pvt. Ltd) that alteration of stone grit or dust from big stones is not the process of manufacturing.

Further under the provision of Section 54 (1) (11) (i) of UPVAT Act, if the AA is satisfied that any dealer issues or furnishes a false or wrong certificate or form of declaration prescribed under the Act, by reason of which a tax on sale or purchase, ceases to be leviable, he may direct that such dealer shall, pay by way of penalty, a sum equal to 50 *per cent* of values of goods.

We test checked (between September 2013 and December 2013) assessment orders and files in three CTOs and observed that three out of 348 dealers claimed concession of ₹ 58.41 lakh on the purchase of diesel amounting to ₹ 4.78 crore against form 'D' which was inadmissible as the work of alteration of small grit or dust from big boulders has not judicially been treated as manufacturing. The AAs while finalising the assessment between September 2011 and December 2012 allowed concession, which resulted in short levy of tax of ₹ 58.41 lakh and non-imposition of penalty at the rate of 50 *per cent* of value of goods, amounting to ₹ 2.39 crore. Details are mentioned in **Table 2.16.**

Table 2.16
Irregular authorisation to purchase diesel and non imposition of penalty

(₹ in lakh)

Sl. No.	Name of the unit	Number of dealer	Assessment year (month & year of assessment)	Name of commodity	Taxable Turnover	Rate of Tax leviable/ Levied (*per cent*)	Amount of undue benefit allowed	Penalty imposable
1	JC (CC) Jhansi	1	2009-10 (May 2012)	Diesel	87.39	17.23/5	10.69	43.70
			2010-11 (June 2012)	Diesel	112.03	17.23/5	13.7	56.01
2	DC Sec 4 Jhansi	1	2009-10 (October 2012)	Diesel	34.53	17.23/5	4.22	17.27
			2010-11 (December 2012)	Diesel	51.80	17.23/5	6.34	25.90
3	DC Sec 6 Jhansi	1	2009-10 (September 2011)	Diesel	93.73	17.23/5	11.46	46.86
			2010-11 (July 2012)	Diesel	98.19	17.23/5	12.00	49.09
	Total	**3**			**477.67**		**58.41**	**238.83**

Source: Information available on the basis of assessment files.

We reported the matter to the Department and the Government between November 2013 and February 2014. The Department accepted our observation and levied tax amounting to ₹ 23.46 lakh in one case whereas penalty was not imposed. For the remaining cases the Department stated that action is under way (November 2015).

2.6 Non-imposition of Penalty

Penal provisions are made to discourage the malafied practices of the dealers. The AAs while finalising the assessments, did not notice the offences

committed by the dealers i.e. transactions out of accounts books, delayed deposit of tax, transactions against the provisions of the UPVAT Act and Rules made thereunder etc. Though there are clear cut provisions for imposition of penalties in the Act, the AAs concerned did not initiate action in this regard resulting in non-imposition of penalty amounting to ₹ 2.13 crore in respect of 33 CTOs in the cases of 45 out of 4,451 dealers for the period 2008-09 to 2011-12 as mentioned in the following paragraphs:

2.6.1 Concealment of turnover

The Assessing Authorities did not impose penalty of ₹ 17.73 lakh on concealed turnover of ₹ 94 lakh.

Under Section 54(1) (2) of UPVAT Act, where a dealer has concealed particulars of his turnover or has deliberately furnished inaccurate particulars of such turnover; or submits a false tax return under this Act or evades payments of tax which he is liable to pay under this Act, the AA may direct that such dealer shall, in addition to the tax, if any, payable by him, pay by way of penalty, a sum three times of amount of tax concealed or avoided.

We test checked (between October 2014 and February 2015) final assessment order of dealers, accepted tax deposited by dealers and order of Commercial Tax Appellate Authorities in six CTOs and observed that seven out of 1,126 dealers, concealed purchases and sales turnover of ₹ 94 lakh during the year 2008-09 to 2011-12. As the dealers concealed their turnover they were liable to pay penalty a sum equal to three times of the tax concealed. The AAs while finalising the assessments between March 2012 and February 2014 levied tax of ₹ 5.91 lakh on this concealed turnover. Though in two[5] cases the Appellate Authorities had confirmed (between June 2012 and January 2014) that the dealers had concealed the turnover/evaded payment of liable tax or the dealers had themselves accepted the same and deposited the tax due on the concealed turnover, the AAs concerned neither imposed the penalty of ₹ 17.73 lakh nor recorded any reason for non imposition of penalty.

We reported the matter to the Department and the Government (between November 2014 and April 2015). In reply the Department accepted our observation and imposed penalty of ₹ 3.26 lakh in one case and in another case Department replied that concealed sale has been found regular by the first appeal but the Department has not reported current status. For the remaining cases the Department stated that action is under way (November 2015).

2.6.2 Delayed deposit of tax

Assessing Authorities while finalising the assessments did not impose penalty of ₹ 1.26 crore on delayed deposit of admitted tax of ₹ 6.34 crore.

Under Section 54 (1) (1) of UPVAT Act, if the AA is satisfied that any dealer or other person has, without reasonable cause, failed to furnish the return of his turnover or fails to deposit the tax under the provision of the Acts, he may

[5] DC Sec 19 Agra, DC Sec 10 Bareilly.

direct the dealer to pay by way of penalty in addition to tax, if any payable by him, a sum equal to 20 *per cent* of the tax due.

We test checked (between August 2013 and December 2014) assessment orders and files in 27 CTOs and observed that 35 out of 3,404 dealers, had not deposited their admitted tax of ₹ 6.34 crore for the period 2008-09 to 2011-12 in time. The delay ranged between four days to 1,303 days. As the tax was deposited late for which they were liable to pay the penalty a sum equal to 20 *per cent* of the tax due in addition to the tax levied, whereas the AAs while finalising the assessments between December 2010 and March 2014 neither imposed penalty of ₹ 1.26 crore nor recorded any reason for non-imposition of penalty as shown in **Appendix-X**.

We reported the matter to the Department and the Government (between October 2013 and February 2015). The Department accepted our observation and imposed the penalty of ₹ 72.55 lakh in 16 cases. For the remaining cases the Department stated that action is under way (November 2015).

2.6.3 False purchase

Assessing Authorities while finalising the assessment reversed the ITC for receipt of tax invoices of ₹ 1.37 crore without making actual purchase of goods but did not impose the penalty of ₹ 68.70 lakh.

Under Section 54(1) 11(iv) of the UPVAT Act, if the Assessing Authority is satisfied that any dealer or other person, as the case may be, receives a tax invoice or sale-invoice without actual purchase of goods, he may direct that such dealer or person shall, pay by way of penalty, a sum equal to fifty *per cent* of value of goods.

We test checked (between September 2014 and February 2015) assessment orders and files in three CTOs and observed that three out of 333 dealers, during the year 2008-09 and 2010-11 received tax invoice amounting to ₹ 1.37 crore and claimed ITC without making actual purchases. As the dealers claimed ITC without making actual purchases for which they were liable to pay penalty a sum equal to fifty *per cent* of value of goods whereas the AAs while finalising the assessment between October 2013 and March 2014 reversed the ITC but did not impose the penalty of ₹ 68.70 lakh as shown in the **Table 2.17.**

Table 2.17

Non- imposition of penalty on false purchase

(₹ in lakh)

Sl. No.	Name of the unit	Number of dealer	Assessment year (month & year of assessment)	Amount covered by Receiving of Sale/Tax invoice without actual purchase	Penalty leviable
1	DC Sec 6 Ghaziabad	1	2010-11 (March 2014)	109.68	54.84
2	DC Sec 8 Meerut	1	2008-09 (October 2013)	15.27	7.63
3	DC Sec 1 Saharanpur	1	2010-11 (March 2014)	12.47	6.23
Total		**3**		**137.42**	**68.70**

Source: Information available on the basis of assessment files.

We reported the matter to the Department and the Government (between October 2014 and March 2015). In reply the Department stated that action is under way (November 2015).

2.7 Non/Short levy of entry tax

The AAs while finalising the assessments, did not apply correct rate of entry tax given in the schedule of rates, in some cases no entry tax was levied, in some other cases short realisation of entry tax through manufacturer and irregular rebate on entry tax on purchase resulted in non/short levy of entry tax of ₹ 2.76 crore alongwith penalty of ₹ 2.35 crore in respect of 25 CTOs in the cases of 34 out of 3,050 dealers for the period 2008-09 to 2011-12 as mentioned in the following paragraphs:

2.7.1 Short-levy of entry tax on goods acquired by stock transfer

The AAs while finalising the assessment levied entry tax on goods of ₹ 1,751.34 crore acquired by stock transfer from outside the state instead of levying on sale value of goods of ₹ 1,906.94 crore in such cases. This resulted in short levy of entry tax of ₹ 1.56 crore.

Under Section 4 of the U P Tax on Entry of Goods Act, 2007 entry tax on value of goods is leviable as per schedule of rates notified by the Government from time to time. Entry tax is leviable on Iron and steel as defined in Section 14 of the Central Sales Tax Act (excluding some items) at the rate of one *per cent* of 'value of goods'. Further, under Section 2(h) (iv) of the said Act, if goods have been acquired or obtained otherwise than by way of purchase, the 'value of goods' shall mean the value or the price at which the goods of like kind or like quality is sold at wholesale price in the open market in the local area in goods are being brought or received for consumption use or sale.

We test checked (November 2014) assessment orders and files in JC(CC) I Kanpur and observed that 2 out of 98 dealers, received iron and steel of ₹ 1,751.34 crore during 2010-11 otherwise than by way of purchase (by stock transfer) from out of state on which entry tax was levied on the value declared by the dealers. The AAs while finalising the assessment between February and March 2014 did not examine the issue that the goods were acquired otherwise than by way of purchase on which entry tax was leviable on sale value of goods of ₹ 1,906.94 crore. This resulted in short levy of entry tax amounting to ₹ 1.56 crore.

We reported the matter to the Department and the Government in January 2015. In reply the Department stated that action is under way (November 2015).

2.7.2 Non/Short levy of entry tax

The Assessing Authorities while finalising the assessment levied entry tax amounting to ₹ 25.12 lakh instead of ₹ 1.16 crore on purchase of goods worth ₹ 81.64 crore from outside the local area. This resulted in non/short levy of entry tax of ₹ 90.66 lakh

Under Section 4 of the UP Tax on Entry of Goods Act, 2007 entry tax on value of goods is leviable as per schedule of rates notified by the Government

from time to time. As per notification No. 422 dated 31 March 2011 entry tax on iron and steel was leviable at the rate of five *per cent* w.e.f. 1 April 2011 and a rebate to the extent of the amount of tax payable by a dealer on sale or purchase under UPVAT Act was allowed.

We test checked (between December 2013 and May 2015) assessment orders and files in 13 CTOs and observed that 18 out of 1591 dealers, purchased goods valued at ₹ 81.64 crore from outside the local area during the period 2008-09 to 2011-12 on which entry tax of ₹ 1.16 crore was leviable. The AAs while finalising the assessment between November 2011 and March 2015 levied entry tax amounting to ₹ 25.12 lakh in the cases of five dealers only. This resulted in non/short levy of entry tax of ₹ 90.66 lakh as shown in **Appendix-XI**.

We reported the matter to the Department and the Government (between February 2014 and July 2015). In reply the Department accepted our observation and levied entry tax of ₹ 0.35 lakh in one case. For the remaining cases Department stated that action is under way (November 2015).

2.7.3 Non/Short realisation of entry tax through manufacturers

The manufacturers had not included VAT component in turnover while realising entry tax and in some cases no entry tax was realised from dealers at the time of delivery of goods. This resulted in non/short realisation of entry tax of ₹ 8.55 lakh.

Under Section 12 of the U.P. Tax on Entry of Goods into Local Areas Act, 2007, any person who intends to bring into local area from any manufacturer within the state, such goods specified in the schedule as may be notified by the state Government, shall at the time of taking delivery of the goods from the manufacturer, pay to the manufacturer the tax payable on entry and the manufacturer shall receive the tax so paid. Further the manufacturer shall not deliver such goods to the purchaser unless the amount of such tax has been paid by the purchaser. Section 12(2) prescribes for deposit of such realised tax in prescribed manner. Under Section 12(3) of the Act where any manufacturer fails to deposit, the tax under this Section he shall be liable to pay the tax alongwith the interest and penalty as provided in Section 12(5) of the Act.

We test checked (between June 2013 and September 2014) assessment orders and files in four CTOs and observed that six out of 569 dealers, sold and delivered goods of ₹ 86.97 crore (including VAT) to the purchasers outside the local area during the period 2008-09 to 2010-11, on which entry tax was realisable. In three cases manufacturers did not include VAT component of ₹ 3.93 crore in value of goods of ₹ 77.62 crore while calculating entry tax and in remaining three cases no entry tax was realised on turnover of ₹ 41.98 lakh. The AAs while finalising the assessments between April 2012 and May 2013 did not consider this aspect which resulted in non/short realisation of entry tax of ₹ 8.55 lakh**.**

We reported the matter to the Department and the Government (between August 2013 and September 2014). In reply the Department accepted our observation and levied entry tax of ₹ 1.42 lakh in two cases. For the remaining cases Department stated that action is under way (November 2015).

2.7.4 Non/Short realisation of entry tax and non-imposition of penalty on manufacturers

The manufacturer realised entry tax from the purchasers without including VAT component in turnover at the time of delivery of goods in one case and no entry tax was realised in rest three cases. This resulted in short realisation of entry tax of ₹ 15.39 lakh, and non imposition of penalty of ₹ 30.78 lakh.

We test checked (between February 2014 and April 2015) assessment orders and files in three CTOs and observed that four manufacturers out of 335 dealers sold and delivered the goods of ₹ 52.34 crore to the purchasers outside the local area during the period 2008-09 to 2011-12 and realised entry tax of ₹ 93.62 lakh in one case on turnover of ₹ 46.81 crore (without including VAT) instead of the correct turnover including VAT ₹ 49.05 crore, whereas no entry tax was realised on the turnover of ₹ 3.29 crore. Further, if the manufacturer fails to realise and deposit the tax, the AA may direct that such person shall pay by way of penalty a sum not exceeding twice the amount so realisable. The AA while finalising the assessment between September 2010 and June 2014 did not consider this aspect which resulted in non/short realisation of entry tax of ₹ 15.39 lakh, and non-imposition of penalty of ₹ 30.78 lakh as detailed in the **Table 2.18.**

Table 2.18

Non/Short realisation of entry tax and non-imposition of penalty on manufacturers

(₹ In Lakh)

Sl. No.	Name of the unit	No. of dealer	Assessment year (month and year of assessment)	Name of goods	Taxable turnover	Rate of entry tax (*per cent*)	Amount of entry tax realisable	Amount of entry tax realised	Amount of entry tax not realised	Penalty leviable
1.	JC(CC) Gorakhpur	1	2008-09 (September 2010)	*Gutkha*	53.66	5	2.68	0	2.68	5.36
			2009-10 (April 2013)		90.38		4.52	0	4.52	9.04
		1	2009-10 (April 2013)	Paper	109.93	2	2.20	0	2.20	4.40
2	DC Sec. 7 Meerut	1	2009-10 (April 2012)	Paper	1,968.36	2	39.37	37.68	1.69	3.38
			2010-11 (March 2013)		2,936.99	2	58.74	55.94	2.80	5.60
3.	DC Sec. 2 Noida	1	2010-11 (December 2013)	Water proof paper	38.33	2	0.77	0	0.77	1.54
			2011-12 (June 2014)		36.74		0.73	0	0.73	1.46
Total		**4**			**5,234.39**		**109.01**	**93.62**	**15.39**	**30.78**

Source: Information available on assessment order and files of the dealers.

We reported the matter to the Department and the Government (between April 2014 and July 2015). In reply the Department stated that action is under way (November 2015).

2.7.5 Non-imposition of penalty on delayed deposit of realised entry tax

The Assessing Authorities did not impose the penalty of ₹ 2.04 crore on manufactures for delayed deposit of realised entry tax of ₹ 1.02 crore.

We test checked assessment orders and files in two CTOs and observed that two manufacturers out of 262 dealers, had realised entry tax amounting to ₹ 1.02 crore from purchasers of out of local area but did not deposit the same into the Government treasury within the prescribed time. The delay ranged between five days to four years. The AAs while finalising the assessment between March 2014 and July 2014 did not consider the aspect that manufacturers had deposit the realised tax late and failed to impose the penalty of ₹ 2.04 crore as detailed in the **Table 2.19.**

Table 2.19

Non-imposition of penalty on delayed deposit of realised entry tax

(₹ in lakh)

Sl. No.	Name of the Unit	Number of dealers	Assessment year (month and year of assessment)	Name of goods	Entry tax deposited late	Period of delay in days	Penalty leviable
1.	JC (CC) I Lucknow	1	2008-09 (July 2014)	*Gutkha*	26.06	1460	52.12
			2011-12 (June 2014)		68.35	365	136.70
2.	DC Sec.1 Rampur	1	2009-10 (March 2014)	Paper	5.83	05 to 11	11.66
			2010-11 (March 2014)		1.57	07 to 40	3.14
Total		**2**			**101.81**		**203.62**

Source: Information available on assessment order and files of the dealers.

We reported the matter to the Department and the Government (July 2015). In reply the Department stated that action is under way (November 2015).

2.7.6 Irregular rebate of entry tax on purchase

Assessing Authorities allowed benefit of inadmissible rebate amounting to ₹ 5.44 lakh on purchase of goods from outside the local area valued at ₹ 3.65 crore.

As per Section 6 read with Government notification dated 4 March 2008 and 31 March 2011 rebate in entry tax upto the full amount of tax leviable under the Act is admissible to a dealer on sale or purchase under VAT.

We test checked (between August 2013 and September 2013) assessment orders and files in two CTOs and observed that two out of 210 dealers, paid entry tax amounting to ₹ 6.03 lakh during 2008-09 on purchase of goods of ₹ 3.65 crore from outside the local area and claimed rebate of ₹ 5.44 lakh. The AAs while finalising the assessment in June 2012 failed to notice that rebate was not admissible because in one case purchases pertained to the period prior to notification dated 31 March 2011 and in other case nature of commodity was changed and thus it was not within the purview of the notification dated 4 March 2008. Thus AAs irregularly allowed benefit of rebate amounting to ₹ 5.44 lakh as detailed in the **Table 2.20.**

Table 2.20

Irregular rebate of entry tax on purchase

(₹ in lakh)

Sl. No.	Name of the units	No. of dealers	Assessment year (month and year of assessment)	Name of goods	Taxable turnover	Levied entry tax	Irregular rebate
1	JC (C C) Jhansi	1	2008-09 (June 2012)	Iron and steel	306.00	3.06	3.06
2	DC Sec 10 Kanpur	1	2008-09 (June 2012)	Blank cheque book and Drafts	59.39	2.97	2.38
Total		**2**			**365.39**	**6.03**	**5.44**

Source: Information available on the basis of audit findings.

We reported the matter to the Department and the Government (between September 2013 and August 2014). In reply the Department stated that action is under way (November 2015).

CENTRAL SALES TAX

2.8 Misuse of declaration forms

The dealers purchased goods valued at ₹ 3.29 crore at concessional rate of tax against declaration in form 'C' which were not covered by their certificates of registration. This fact was not scrutinised at the time of assessment. This resulted in non-imposition of penalty of ₹ 41.24 lakh.

Under Section 8 of the Central Sales Tax (CST) Act, 1956 a registered dealer may purchase any goods from outside the State at concessional rate of tax against declaration in form 'C'. If such goods are not covered by Registration Certificate (RC) under the CST Act or the goods purchased from outside the state at concessional rate of tax are used for the purpose other than that for which the registration certificate is granted, the dealer is liable to be prosecuted under Section 10 of CST. However, if the Assessing Authority deems it fit, he in lieu of prosecution may impose a penalty up to one and a half times of the tax payable on the sale of such goods under Section 10A of CST.

We test checked (between November 2013 and April 2015) assessment orders and files in eight CTOs and observed that nine out of 872 dealers, purchased goods valued at ₹ 3.29 crore during the year 2006-07 to 2011-12 at concessional rate of tax against declaration in form 'C'. These goods were not covered by their certificates of registration for which they were liable to pay penalty one and half times of the tax payable on the sale of such goods, in lieu of prosecution. The AAs while finalising the assessments between June 2012 and February 2015 did not scrutinise the Registration Certificate and utilisation details of form 'C' and consequently penalty of ₹ 41.24 lakh was not imposed as shown in **Appendix-XII**.

We reported the matter to the Department and the Government (between January 2014 and April 2015). In reply the Department accepted our observation and imposed penalty of ₹ 1.17 lakh in two cases. For the remaining cases the Department stated that action is under way (November 2015).

2.9 Non/Short charging of interest

The dealers had deposited the admitted tax of ₹ 54.34 crore with delay, on which interest was chargeable, but it was not charged at the time of assessment. This resulted in non-charging of interest of ₹ 5.31 crore.

Under Section 8(1) of UPTT Act and Section 33(2) of the UPVAT Act 2008 read along with Section 13 of Uttar Pradesh Tax on Entry of Goods into Local Areas Act, 2007 every dealer liable to pay tax is required to deposit the amount of tax into the Government treasury before the expiry of due date failing which simple interest at the rate of two *per cent* per *men sum* upto 11 August 2004 thereafter 14 *per cent* per annum upto 31 December 2007 and at the rate of one and quarter *per cent* per month from 1 January 2008 shall become due and be payable on unpaid amount with effect from the day immediately following the last date prescribed till the date of payment.

We test checked (between October 2012 and March 2015) assessment orders and files in 20 CTOs and observed that 30 out of 2,598 dealers, had deposited the admitted tax of ₹ 54.34 crore during the year 1999-2000 to 2011-12 with delay ranging from two days to 3,225 days without interest. The belated payment of admitted tax attracted interest of ₹ 5.32 crore upto the date of deposit of tax, whereas the dealers deposited ₹ 1.48 lakh only. The AAs while finalising the assessment between March 2012 and March 2014 did not consider this aspect which resulted in non-charging of interest of ₹ 5.31 crore as shown in **Appendix-XIII**.

We reported the matter to the Department and the Government (between June 2013 and April 2015). The Department accepted our observation and charged interest of ₹ 3.50 crore in 10 cases out of which ₹ 8.34 lakh has been recovered. For the remaining cases the Department stated that action is under way (November 2015).

2.10 Irregularities relating to Input Tax Credit (ITC)

Our scrutiny of records of the Department revealed several cases of irregularities regarding ITC claims like irregular/non admissible ITC claims, excess claims, non-imposition of penalty, non-reversal of ITC and non-charging of interest thereon etc. of ₹ 3.59 crore in respect of 26 CTOs in cases of 32 out of 3,603 dealers for the period 2008-09 to 2011-12. A few cases are mentioned in the following paragraphs.

2.10.1 Non/Short reversal of inadmissible Input Tax Credit and non-charging of interest

The dealers had wrongly claimed ITC of ₹ 62.05 lakh which was not reversed with interest at the time of assessment. This resulted in non/short reversal of ITC and non-charging of interest of ₹ 87.28 lakh (RITC ₹ 62.05 lakh and interest ₹ 25.23 lakh).

Under Section 13 of UPVAT Act, 2008 ITC to the extent of tax paid or payable by a registered dealer on purchase of taxable goods from within the State is allowed at the rates prescribed under Schedule I to V of the Act. As

per Section 13(1)(a) (as amended with effect from 28.2.2009) if taxable goods purchased from within the state are transferred/consigned or after used in manufacture such manufactured goods are transferred or consigned outside the state, the partial amount of input tax is admissible, which is in excess of four *per cent*. As per Section 13(1)(f) where goods are resold at the price which is lower than purchase price, the amount of ITC shall be allowed to the extent of tax payable on the sale value of goods. Further under Section 14(2) of the Act if any dealer has wrongly claimed ITC in respect of any goods, benefit of ITC to the extent it is not admissible, shall stand reversed along with simple interest at the rate of 15 *per cent* per annum.

We test checked (between November 2013 and March 2015) assessment orders and files in 17 CTOs and observed that 21 out of 2,412 dealers, had wrongly claimed ITC of ₹ 62.05 lakh during the year 2008-09 to 2011-12 which was not admissible to them. The AAs while finalising the assessment between November 2011 and March 2014 were required to reverse this inadmissible ITC and direct the dealers to pay such amount of reverse input tax credit along with simple interest, which was not reversed. This resulted in non/short reversal of ITC and non-charging of interest of ₹ 87.28 lakh (RITC ₹ 62.05 lakh and interest ₹ 25.23 lakh)**.**

We reported the matter to the Department and the Government (between February 2014 and April 2015). The Department accepted our observation and reversed ITC amounting ₹ 0.84 lakh in one case whereas interest was not charged and in another case reversed ITC amounting ₹ 0.77 lakh with interest. For the remaining cases the Department stated that action is under way (November 2015).

2.10.2 Non-imposition of penalty on false claim of ITC

False ITC claim of ₹ 54.43 lakh was reversed by the Assessing Authorities but penalty of ₹ 2.72 crore was not imposed.

Under Section 13 of UPVAT Act, 2008 read with Rule 24 of UPVAT Rules, 2008 tax paid on purchase of goods from registered dealers against tax invoice or deposited cash on purchase of goods from the unregistered dealers, Input Tax Credit is allowed to the extent of the tax paid or payable by the dealer on such sale or purchase. Under Section 14 of the Act, if any dealer has wrongly claimed ITC in respect of any goods, benefit of ITC to the extent it is not admissible, shall stand reversed, the said Act read with Rules 21, 22, 23 and 25 of UPVAT Rules provide the reversal of the ITC in cases where ITC has been claimed in contravention of the provisions of the Act. Under the provisions of Section 54(1) (19) of the VAT Act, if the AA is satisfied that any dealer or any other person, as the case may be, falsely or fraudulently claims an amount as ITC, he may direct that such dealer or person shall, in addition to the tax, if any, payable by him, pay by way of penalty, a sum equal to five times of amount of ITC.

We test checked (between December 2013 and August 2014) assessment orders and files in 10 CTOs and observed that in the case of 11 out of 1,191 dealers, the AAs while finalising the assessment between November 2011 and March 2014, cross verified the ITC claim of the dealers and found that the

dealers had falsely/fraudulently claimed ITC amounting to ₹ 54.43 lakh during the year 2008-09 to 2011-12. The dealers had claimed ITC falsely/fraudulently; as such they were liable to pay penalty a sum equal to five times of amount of ITC. Though the AAs reversed the ITC but did not impose the penalty amounting to ₹ 2.72 crore.

We reported the matter to the Department and the Government (between February 2014 and September 2014). The Department accepted our observation and imposed penalty of ₹ 35.52 lakh in three cases. For the remaining cases the Department stated that action is under way (November 2015).

2.11 Non-imposition of penalty on delayed deposit of works contract tax

The AAs had not imposed penalty of ₹ 5.03 crore on dealers for not depositing the tax of ₹ 2.51 crore within prescribed time, deducted at source while making payment to the contractors

Under Section 34(8) of UPVAT Act, a person responsible for making payment to a contractor, for discharge of any liability on account of valuable consideration payable for the transfer of property in goods in pursuance of works contract, shall deduct an amount equal to four *per cent* of such sum, payable under the Act, on account of such works contract. In case of failure to deduct the amount or deposit the amount so deducted into the Government treasury before the expiry of 20th day of the month following the month in which the deduction was made, the AAs may direct that such person shall pay by way of penalty a sum not exceeding twice the amount so deducted.

We test checked (between November 2013 and February 2015) assessment orders and files in 11 CTOs and observed that 15 out of 1,570 dealers, deducted the tax of ₹ 2.51 crore at source while making the payment to contractors during the year 2008-09 to 2010-11 but 14 dealers did not deposit the same into Government treasury within the time prescribed and in one case tax was not deposited into Government treasury. The delay ranged from five days to seven months 12 days. The AAs while finalising the assessment between June 2012 and March 2014, neither imposed the penalty of ₹ 5.03 crore nor recorded any reason for non-imposition of penalty**.**

We reported the matter to the Department and the Government (between February 2014 and March 2015). The Department accepted our observation and imposed penalty of ₹ 56.41 lakh in four cases. For the remaining cases the Department stated that action is under way (November 2015).