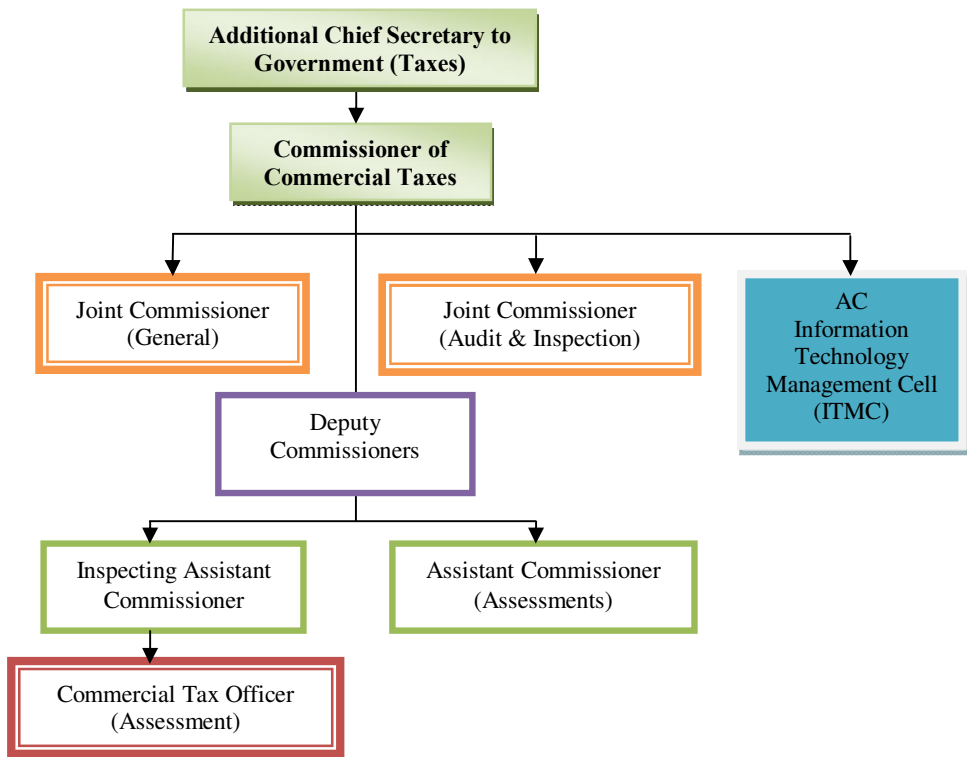


**CHAPTER-II**  
**TAXES/VAT ON SALES, TRADE ETC.**

**2.1 Tax administration**

Kerala General Sales Tax (KGST)/Kerala Value Added Tax (KVAT) laws and rules made thereunder are administered at the Government level by the Additional Chief Secretary, Taxes. The Commissioner of Commercial Taxes (CCT) is the head of the Commercial Taxes Department (CTD) who is assisted by Joint Commissioners (JCs), Deputy Commissioners (DCs), Assistant Commissioners (ACs) and Commercial Tax Officers. The assessment, levy and collection of tax are done by ACs and Commercial Tax Officers.

Organogram of the Department is given below:



KGST is leviable on sale of Ganja and opium, foreign liquor and certain petroleum products. KVAT is leviable on the intra-State sale of remaining commodities and Central Sales Tax (CST) on inter-State sales.

## 2.2 Internal audit

The Internal Audit Wing (IAW) in the CTD commenced functioning from 1 June 2009. The wing headed by one DC is assisted by two ACs and five Commercial Tax Officers. During 2015-16, the wing planned audit of 72 units but could audit only 56 units. Potential cases and collection fall cases are compulsorily checked by the wing. Out of an overall outstanding of 5,478 paras, only 306 paras (5.59 per cent) were cleared. This indicated the poor response of the CCT to the observations of the IAW and in enforcing clearance of the paras by addressing the shortcomings/deficiencies pointed out by the wing. The reason for low clearance of observations made by IAW, though called for (May 2016) was not furnished by the CCT (November 2016).

## 2.3 Results of audit

Test check of the records relating to KVAT/KGST and CST assessments and connected documents in 171 offices of the CTD conducted during 2015-16 showed underassessment of tax and other irregularities involving ₹ 3,899.70 crore in 2,240 cases which fall under the following categories as given in **Table - 2.1**.

**Table - 2.1**

(₹ in crore)

Sl. No.	Categories	Number of cases	Amount
1	Audit on Assessment, levy and collection of VAT on gold, diamond and platinum	1	2,924.81
2	Audit on Levy, collection and assessment of subcontracts in works contract	1	96.40
3	Short levy of tax in assessments of metal crushing units	1	85.94
4	Short payment of tax due to escape of turnover from assessment	1,163	336.84
5	Short payment of tax due to excess availing of input tax credit/special rebate	213	30.09
6	Short payment of tax due to grant of irregular exemption	206	61.49
7	Short payment of tax due to application of incorrect rate of tax	43	96.94
8	Others	612	267.19
	<b>Total</b>	<b>2,240</b>	<b>3,899.70</b>

During the course of the year, the Department accepted underassessment and other deficiencies involving ₹ 3,040.03 crore in 445 cases which were pointed out by Audit. An amount of ₹ 20.56 crore was realised in 551 cases during the year 2015-16 of which 48 cases involving ₹ 58.70 lakh were pointed out during 2015-16 and the rest in earlier years.

In two draft paragraphs involving ₹ 22.41 lakh, the Department recovered the entire amount. A few Audit observations involving ₹ 3,225.43 crore are mentioned in the following paragraphs.

## Value Added Tax

### 2.4 Assessment, levy and collection of VAT on gold, diamond and platinum

#### 2.4.1. Introduction

The commodities under precious metals *inter alia* include gold bullion, gold coins, gold ornaments, diamonds, diamond studded gold ornaments and platinum. The transactions in the State include purchase, manufacture, sale and mortgage.

Gold bullion and coin, platinum and diamond are taxable at one *per cent* under entry one and four of II Schedule of Kerala Value Added Tax (KVAT) Act, 2003. Ornaments made of gold, platinum and diamond were taxable at the rate of one *per cent* up to 30 June 2006, at the rate of four *per cent* up to 31 March 2012 and at the rate of five *per cent* thereafter. Apart from regular scheme of assessment, a compounding provision was introduced by Finance Act 2006 with effect from 01 July 2006. Thereafter, minor amendments to the compounding scheme were introduced from time to time. In compounding scheme, the dealer agrees to pay tax at the fixed percentage of tax paid during previous year/ years, instead of paying tax at scheduled rates on taxable turnover. A dealer opting for compounding is not entitled to get input tax credit and special rebate.

The tax collection from jewellery including bullion during the years from 2009-10 to 2014-15 is detailed in **Table -2.2**.

Table – 2.2

(₹ in crore)

Year	Compounded			Non compounded			Total		
	No. of dealers	Collection	Percentage of variation in collection compared to previous year	No. of dealers	Collection	Percentage of variation in collection compared to previous year	No. of dealers	Collection	Percentage of variation in collection compared to previous year
2009-10	2007	112.21	-	3039	50.84	-	5046	163.05	-
2010-11	2218	141.71	26.29	2909	83.69	64.61	5127	225.4	38.24
2011-12	2292	180.51	27.38	2928	121.69	45.41	5220	302.2	34.07
2012-13	2491	242.09	34.11	2875	151.45	24.46	5366	393.54	30.23
2013-14	2668	310.76	28.37	2703	160.77	6.15	5371	471.53	19.81
2014-15	2782	310.4	- 0.12	2610	146.36	-8.96	5392	456.76	- 3.13

### **2.4.2. Audit objectives and scope of Audit**

Audit was conducted to ascertain whether :

- *the provisions of KVAT Act/CST Act and the Rules made there-under governing taxation on gold, diamond and platinum are adequate and are being complied with.*
- *all transactions in gold in the State are subjected to VAT assessment.*

As per Kerala Value Added Tax Information System (KVATIS) there are 5,449 gold dealers in the State. The audit was conducted during the period May 2016 to July 2016 and Audit test checked the assessment records for the years 2013-14 and 2014-15 in respect of 527 gold dealers in 119 assessment circles. The sample was selected by stratified random sampling method using IDEA. Audit collected the details of import of gold from Director General of System and Management, Central Excise and Customs, New Delhi, Income Tax Department (ITD) and cross checked the data with KVATIS.

The records and registers pertaining to taxation of gold maintained in Finance Department, Taxes Department, Law Department and Commissionerate of Commercial Taxes were also test checked. An entry conference was conducted (02 May 2016) with Special Secretary (Taxes) wherein the scope and methodology adopted for audit were discussed. An exit conference was conducted on 6 September 2016 to discuss the findings of audit with Additional Chief Secretary (Taxes).

In its meeting dated 12 July 2012 of the Subject Committee VIII (Economic Affairs) of 13 Kerala Legislative Assembly, the Committee observed that there was wide spread evasion of tax from transaction of gold in the State. Physical verification of the sale, purchase and stock of the gold dealers is a tool to establish evasion of tax. While conducting inspection (2013-14 and 2014-15) on jewellery dealers, the enforcement wing of the department collected ₹ 10.24 crore being tax, security deposit and registration fee on a turnover escape of ₹ 97.50 crore in 186 cases. Audit had prepared an action plan to conduct a Joint Physical Inspection (JPI) of the premises of jewellers in the State and issued (September 2016) DO letters to the CCT and Additional Chief Secretary (Finance) for the conduct of JPI. JPI could not be conducted due to delayed response of the Department (November, 2016).

### **2.4.3. Audit findings**

The observations made by Audit are given in the following paragraphs.

### 2.4.3.1 Non levy of purchase tax

As per Section 8(f)(i) of the KVAT Act, 2003 as amended by Finance Act, 2014, any dealer in bullion or ornaments or wares or articles of gold, silver or platinum group metals including diamond may at his option, instead of paying tax on their sale in the State in respect of such goods in accordance with the provisions of Section 6, may pay tax at appropriate rates according to the turnover of the highest tax payable by him as conceded in the return or accounts, or tax paid by him under this Act, whichever is higher, for any year during any of the three consecutive years preceding that to which such option relates. As per Section 2 of Finance Act, 2014, the above provision had retrospective effect from 01 April 2013.

As per the provision contained in 8(f)(i) of the KVAT Act, 2003 the assessee is liable to pay purchase tax for the purchases effected from unregistered dealers from 2013-14 onwards.

A test check of dealers opting for compounded scheme for the period from 2013-14 and 2014-15 in 119 assessment circles in 15 tax districts revealed that the respective assessing authorities did not levy tax under Section 6(2) of KVAT Act, 2003 in respect of 184 dealers in 68 assessment circles in 15 tax districts. Non levy of purchase tax resulted in short levy of ₹ 2,475.55 crore including interest and penalty as detailed in **Table -2.3**.

**Table – 2.3**

(₹ in crore)

Tax District	No of assessment circles	No of dealers	Turnover escaped	Total tax, interest and penalty escaped
Thiruvananthapuram	7	14	975.69	155.92
Kollam	5	16	440.80	70.59
Pathanamthitta	3	6	181.50	29.19
Alappuzha	2	7	111.72	17.82
Kottayam	1	8	3,612.45	578.18
Idukki	4	7	302.35	48.41
Ernakulam	6	14	1,851.89	296.43
Thrissur	7	24	2,631.47	421.10
Palakkad	3	4	609.79	97.63
Malappuram	7	24	1,106.83	177.29
Kozhikode	4	8	1,710.09	273.41
Kannur	10	29	1,029.76	165.12
Kasaragod	3	12	641.25	102.52
Wayanad	3	5	173.23	27.73
Mattancherry	3	6	89.18	14.21
<b>Total</b>	<b>68</b>	<b>184</b>	<b>15,468.00</b>	<b>2,475.55</b>

The top defaulters among the 184 cases mentioned above are given in **Table – 2.4**.

**Table – 2.4**

(₹ in crore)

Sl. No.	Name of office	Year	Name of assessee/ TIN	Turnover under Section 6(2)	Total short collection of tax (5%) including interest (@ 26% for 2013-14 and @ 14% for 2014-15 and penalty (200%))
1	CTO, Special Circle, Thrissur	2013-14 2014-15	Kalyan Jewellers India Private Limited/ 32080204326	846.13	137.92
				786.93	123.55
2	CTO, Special Circle, Kottayam	2013-14 2014-15	Josco Fashion Jewellers/ 32050207484	755.60	123.16
				799.07	125.45
3	CTO, Special Circle II, Ernakulam	2013-14 2014-15	Bhima Jewels/ 32070373424	555.40	90.53
				586.61	92.08
4	CTO, Special Circle, Kottayam	2013-14 2014-15	Josco Jewellers Private Limited/ 32050212502	530.76	86.51
				440.31	69.13

Government accepted (September 2016) the findings of Audit. Further reply has not been received (November 2016).

Department may analyse amendments brought into in the Statute and levy tax as provided in the amended Statute.

#### **2.4.3.2 Irregular reduction of rate of tax with retrospective effect**

As per Section 8(f)(i) of KVAT Act as it stood upto 31.3.2014, if a dealer had paid compounded tax for the previous year and his total turnover is rupee one crore and above, the compounded tax payable is 125 *per cent* of the compounded tax paid/payable for the previous year. Section 8(f)(i) of the Act was amended by Finance Act, 2014 with retrospective effect from 01 April 2013. As per the amendment, if a dealer had paid compounded tax continuously for the last three years/five years and his total turnover is ₹ one crore and above, the compounded tax payable is 120 *per cent*/115 *per cent* of the compounded tax paid/payable.

Dealers filed compounding option for 2013-14 under the rate existed for compounded tax on due date (30 April 2013) as stipulated by KVAT Rules, 2005. On presentation of the budget for 2014-15, the Department issued circular (March 2014) to file fresh compounding option to give advantage of retrospective effect proposed in Budget Speech. As the KVAT Rules prescribe the last date of filing option as 30 April of every year, the Circular issued to file fresh option on a subsequent date was irregular.

On a test check of assessment files in 119 assessment circles, it was revealed that in respect of 81 dealers in 31 assessment circles, in 15 tax districts the compounded tax for 2013-14 paid/agreed to be paid was adjusted which resulted in short collection of ₹ 61.48 crore as detailed in **Table – 2.5**.

**Table – 2.5**

(₹ in crore)

Tax District	No. of assessment circles	No. of dealers	Total amount escaped
Thiruvananthapuram	2	6	4.84
Kollam	2	6	1.22
Pathanamthitta	1	3	0.39
Alappuzha	1	1	0.05
Kottayam	2	5	16.62
Idukki	2	5	1.39
Ernakulam	2	5	7.67
Thrissur	3	14	13.91
Palakkad	2	2	1.63
Malappuram	4	14	3.50
Kozhikode	3	6	4.77
Kannur	2	7	3.61
Kasaragod	1	3	1.61
Wayanad	2	2	0.25
Mattancherry	2	2	0.02
<b>Total</b>	<b>31</b>	<b>81</b>	<b>61.48</b>

The top defaulters among the 81 cases whose turnover for 2012-13 was above one crore are detailed in **Table – 2.6**.

**Table – 2.6**

(₹ in crore)

Sl No.	Name of Office	Name of assessee/ TIN	Short collection	Interest @ 26%	Penalty @ 200 % of short collection	Total
1	CTO, Special Circle, Thrissur	Kalyan Jewellers India Private Limited 32080204326	3.24	0.84	6.47	10.55
2	CTO, Special Circle, Kottayam	Josco Fashion Jewellers 32050207484	2.05	0.53	4.10	6.68
3	CTO, Special Circle II, Ernakulam	Bhima Jewels 32070373424	1.48	0.38	2.96	4.82
4	CTO, Special Circle, Kottayam	Josco Jewellers Private Limited 32050212502	1.40	0.36	2.79	4.55



Government accepted (September 2016) the omission of non amendment of Rules during exit conference. Further report awaited.

Department may take care not to issue circulars in contravention to the provision contained in the Statute.

### 2.4.3.3 Non forfeiture of illegal collection

As per Clause (iii) below Explanation 6 of Section 8(f)(i) of the KVAT Act, 2003, as amended by Finance Act, 2014 a dealer who opts for payment of tax under this clause may collect tax at the rate as shown in the table below the clause. As per the table, the tax permitted to be collected on the sale of goods covered under this clause for the year under option is 1.03 to 1.5 *per cent* of the compounded tax paid during previous year.

As per the above provision dealers who are paying tax under the compounding scheme during the previous year/years alone are entitled to collect tax under this clause. On a perusal of column 1 and 2 of the table which represent compounded rate along with compounded status of the dealer and percentage of tax to be collected, it was clear that dealers who are compounding for the first time are not entitled to collect tax unless the first column contains a specific mention about tax paid under Section 6 during previous year.

Audit checked the records of the compounded dealers in 63 assessment circles in 15 tax districts and observed that 99 dealers collected compounded tax during 2013-14 and 2014-15 even though they were not entitled to do so. Illegal collection of tax needs to be forfeited as per Section 72 of KVAT Act. The tax effect due to illegal collection including interest and penalty worked out to ₹ 18.04 crore as detailed in **Table – 2.7**.

Table – 2.7

(₹ in crore)

Tax District	No. of assessment circles	No. of dealers	Total amount escaped
Thiruvananthapuram	3	4	1.27
Kollam	7	9	0.28
Pathanamthitta	1	1	2.82
Alappuzha	4	4	0.46
Kottayam	3	3	0.02
Idukki	2	2	3.10
Ernakulam	3	4	0.96
Thrissur	8	9	0.81
Palakkad	3	4	1.73
Malappuram	7	14	1.40
Kozhikode	5	13	0.31
Kannur	6	15	0.42
Kasaragod	3	5	1.02

Tax District	No. of assessment circles	No. of dealers	Total amount escaped
Wayanad	3	5	2.57
Mattancherry	5	7	0.87
<b>Total</b>	<b>63</b>	<b>99</b>	<b>18.04</b>

The top defaulters were as given in **Table – 2.8**.

**Table – 2.8**

Sl No.	Name of the Office	Period	Name of assessee/ TIN	Tax collected (₹ in crore)	Interest (₹ in lakh)	Penalty (₹)	Total (₹ in crore)
1	CTO, Special Circle, Thodupuzha	2013-14	Bhima Gold and Gems, Thodupuzha, Private Limited 32061419965	2.46	63.85	5,000	3.09
2	CTO, Pathanamthitta	2013-14	Bhima Gems (Adoor) Private Limited 32030259344	2.24	58.19	5,000	2.82
3	CTO, Vythiri at Kalpetta	2014-15	Riches Jewel Arcade 32140465165	1.71	23.88	5,000	1.95
4	CTO Special Circle, Thiruvananthapuram	2014-15	Bhima Jewellers & Diamonds 32010186328	1.04	14.53	5,000	1.18

Government accepted the audit findings during the exit conference (September 2016).

Department may analyse amendments brought into in the Statute and collect tax as provided in the amended Statute.

#### **2.4.3.4 Lack of co-ordination with other departments in collecting data useful for the completion of assessment**

The White paper published by the Empowered Committee on State Level Value Added Tax emphasised the need for cross verification of data between various implementing and taxation authorities so as to check the tax evasion.

Audit found that the Department was not collecting these details from any other Central/State Government agencies and compiling a data bank. Audit found suppression in import purchase reported at Customs and escape of turnover from assessment reported at ITD as detailed below.

- ***Suppression of import purchases than that reported to Customs Department.***

Audit collected the data of import of gold, diamond and platinum into the Country by the dealers from the Director General of Systems and Management, Central Excise and Customs, New Delhi and cross checked the import details furnished by the dealers and found that six dealers in four assessment circles had imported gold, diamond and platinum amounting to ₹ 4,191.16 crore against which ₹ 496.69 crore only was conceded. The suppression of import purchase worked out to ₹ 3,694.46 crore and the resultant short levy of tax, interest and penalty worked out to ₹ 126.70 crore as detailed in **Appendix IV**.

The most benefitted assessee was The Dhanlaxmi Bank Limited from whom short levy of tax was ₹ 118.40 crore including interest and penalty for the years 2011-12 to 2013-14.

- ***Short return of turnover than that reported to ITD***

Audit collected the details of scrutiny assessments completed for the year 2013-14 in Circle 1(1) Kozhikode of Income Tax Department (ITD) in respect of four assessees. From the IT assessment records it was observed that the respective assessees offered additional income to the ITD consequent to a survey conducted by the ITD. The sales turnover pertaining to the income so offered was not reckoned for assessment by the respective assessing authorities. The short payment of tax in this regard worked out to ₹ 28.93 crore including interest and penalty as detailed in **Appendix V**.

The most benefitted assessee was The Appollo Gold Pvt Limited, Malappuram from whom short levy of tax was ₹ 13.57 crore including interest and penalty during the years 2012-13 to 2014-15.

Government accepted (September 2016) the audit findings during exit conference and expressed their difficulty in getting information from other Central Government agencies.

Department may evolve a system to cross verify the details from other taxation departments to strengthen the assessment.

#### **2.4.3.5 Other issues**

- ***Irregular compounding***

As per Section 8(f)(i) of KVAT Act, any dealer in bullion or ornaments or wares or articles of gold, silver or platinum group metals including diamond may at his option, instead of paying tax on their sale in the State in respect of such goods in accordance with the provisions of Section 6, may pay tax at various tax slabs

according to their turnover during the previous year. As per KVAT Act, turnover includes turnover of sale and purchase from unregistered dealers.

On a test check of 327 gold dealers, who opted to pay tax under Section 8(f) (i) of the Act, Audit observed that while fixing the compounded rate of tax, the purchases effected from unregistered dealers were omitted to be included in the turnover. This omission resulted in a reduction of stage in the compounded tax slab in four cases. Short levy of compounded tax in this regard worked out to ₹ 32.96 lakh as shown in **Appendix VI**.

The most benefitted assessee was Narikalathil Prince Jewellery, Vatakara from whom total short levy of tax for 2012-13 to 2014-15 was ₹ 14.83 lakh including interest and penalty.

Government accepted (September 2016) the findings during exit conference.

- **Excess availing of special rebate**

As per Section 6(2) of the KVAT Act, every person who purchases taxable goods from a person other than registered dealer shall pay tax on the purchase turnover of goods at the rate specified under Section 6(1). As per fourth proviso below Section 12(1), the goods in respect of which tax under Section 6(2) has been paid are used in the manufacture of taxable goods then the special rebate under this section shall not exceed the output tax payable in respect of such goods or goods manufactured out of such goods. The rate of tax of old gold jewellery is five *per cent* and that of bullion is one *per cent*.

On a test check of 200 dealers in the State, it was observed that four dealers claimed excess special rebate in respect of old gold purchased from unregistered dealers and converted and sold it as bullion. Excess availing of special rebate resulted in short payment of tax of ₹ 132.89 crore as shown in **Appendix VII**.

The most benefitted dealer was Manappuram Jewellers, Thrissur from whom short levy of tax for the years 2013-14 and 2014-15 amounted to ₹ 103.66 crore including interest and penalty.

Government accepted during exit conference (September 2016) the audit findings.

- **Non-reversal of IPT/special rebate**

Section 11(7) and 12(4) of the KVAT Act stipulates that if goods in respect of which input tax credit/special rebate has been availed of are subsequently used fully or partly, for purposes in relation to which no input tax credit/special rebate is allowable under the section, the input tax credit/special rebate availed in respect of such goods shall be reversed. Section 11(1) of the Act stipulates that registered dealer liable to pay tax under Section 6(1) is eligible for input tax (IPT) credit. As per Section 12(2), dealers paying tax under Section 8 are not eligible for special rebate.

Audit test checked records of gold dealers and observed that in 24 offices, 35 dealers who opted to pay compounded tax for the years 2013-14 and 2014-15 did not pay reverse tax on the closing stock for the years 2012-13 and 2013-14 respectively. This resulted in short levy of tax, interest and penalty of ₹ 80.89 crore as detailed in **Appendix VIII**.

The most benefitted dealers are as detailed in **Table – 2.9**.

Table – 2.9

(₹ in lakh)

Sl. No.	Name of assessee/ TIN	Name of office	Reverse tax	Interest (2013-14 @ 26%) (2014-15 @ 14%)	Penalty @ 200%	Short levy of tax including interest and penalty
1	Riches Jewel Arcade Limited/ 32140465165/2014-15	CTO Vythiri at Kalpetta	603.14	84.44	1,206.29	1,893.87
2	Bhima Gold and Jewels, Thodupuzha 32061419965/2013-14	CTO, Special Circle, Thodupuzha	336.92	87.60	673.85	1,098.37
3	Bhima Gems (Adoor) Pvt Ltd 32030259344/13-14	CTO, Pathanamthitta	262.24	68.18	524.48	854.91

Government accepted during exit conference (September 2016) the audit findings.

#### 2.4.4 Conclusion

The Department omitted to levy purchase tax on dealers opted for compounding which had a potential tax recovery of ₹ 2,475.55 crore. The Department acted in contravention to the statute in issuing Circular to give retrospective effect in reduction of rate of tax in compounding scheme which lead to loss of revenue to Government. The Department failed to evolve a system to cross verify the details of cases from other taxation departments which had a potential tax recovery of ₹ 155.63 crore.

### 2.5. Levy, assessment and collection of VAT on sub-contracts under works contract assessment

#### 2.5.1 Introduction

Under the KVAT Act, 2003 a dealer engaged in the execution of works contract shall pay tax under Section 6(1) of the Act. He may, at his option, pay tax at compounded rate<sup>1</sup> on the whole contract amount as provided for under Section 8(a) of the Act on the whole amount of the contract.

<sup>1</sup> At three *per cent* up to 31 March 2014 and thereafter at seven *per cent* in case of works contractors with CST Registration.

As per Explanation I under Section 8(a) of the KVAT Act, 2003 where a portion of the work is sub-contracted to a registered dealer, the turnover of the principal contractor/awarder shall not include the amount paid to the sub-contractors, provided the contractor claiming such deduction in respect of such sub contracted amount furnishes certificate prescribed under the Act. The sub-contractors have to concede the contractual receipts received from the principal contractor/awarder in their annual returns.

### **2.5.2 Audit objective and scope**

Audit was conducted to ascertain whether there is evasion of tax by the principal contractors and/or the sub contractors in respect of sub contracted works and the reasons thereof.

The audit was conducted in the works contract (WC) offices in four<sup>2</sup> tax districts between May 2016 and August 2016 covering the period 2012-13 to 2014-15. The stratified sampling method was used to select the revenue districts and assessees. The records such as returns, certified accounts, statutory documents as prescribed in KVAT Rules, 2005 etc., filed by the contractors/ sub-contractors were verified. An entry conference was held with Special Secretary, Taxes in May 2016 in which Audit objective, scope and methodology were explained. An exit conference was held with the Additional Chief Secretary, Taxes on 06 September 2016.

### **2.5.3 Audit findings**

#### **2.5.3.1 Turnover escaped assessment**

Under Section 21 of the KVAT Act, 2003 where the return submitted by the assessee is in the prescribed manner, the assessment relating to the return period shall be deemed to have been completed on the receipt of such return. Under the Act, where a portion of the work is sub-contracted to a registered dealer, the turnover of the principal contractor/awarder shall not include the amount paid to the sub-contractors, provided the contractor claiming such deduction, in respect of sub contracted amount furnishes certificate in Form No 20-H. When a work is sub-contracted, the principal contractor/awarder has to file awarders statement online in Form No. 10-C. But the awarders statement is not linked with the work of sub-contractors. Hence, if the sub-contractor fails to Return full contract receipts from the awarders or partially disclose the receipts in their annual returns, the assessing authorities of the sub-contractors are unable to detect the turnover escaped assessment.

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<sup>2</sup> Thiruvananthapuram, Mattancherry, Ernakulam and Kannur.

In four assessment circles<sup>3</sup>, Audit cross checked the sub contract payments made by the 97 awarders/principal contractors and noticed that 71 sub-contractors in the following assessment circles, failed to return the contract receipts fully, which resulted in escape of turnover and consequent short levy of tax, interest and penalty of ₹ 26.37 crore as detailed in **Appendix IX**. The assessment circle wise position is as detailed in **Table – 2.10**.

**Table -2.10**

(₹ in lakh)

Sl. No.	Name of the Office	Number of cases	Short levy			
			Tax	Interest	Penalty	Total
1.	CTO (WC), Thiruvananthapuram	19	294.59	81.67	589.12	965.38
2.	CTO III Circle, Thiruvananthapuram	02	2.38	0.62	4.75	7.75
3.	CTO (WC), Kollam	01	19.11	4.97	38.22	62.30
4.	CTO (WC), Malappuram	01	1.70	0.38	3.39	5.47
5.	CTO (WC), Thrissur	01	0.63	0.16	1.25	2.04
6.	CTO (WC), Alappuzha	01	3.70	1.33	7.39	12.42
7.	CTO (WC), Ernakulam	29	249.36	68.25	498.70	816.31
8.	CTO (WC), Mattancherry	06	59.58	19.38	119.16	198.12
9.	CTO (WC), Palakkad	03	78.87	16.18	157.74	252.79
10.	CTO (WC), Kozhikode	01	1.95	0.51	3.89	6.35
11.	CTO (WC), Kottayam	02	17.86	4.65	35.72	58.23
12.	CTO (WC), Kannur	01	18.65	4.66	37.31	60.62
13.	CTO II Circle, Perumbavoor	01	25.02	6.51	50.05	81.58
14.	CTO (WC), Kasaragod	01	13.57	3.53	27.14	44.24
15.	CTO II Circle, Mattancherry	01	1.55	0.22	3.10	4.87
16.	CTO (WC), Idukki	01	17.87	4.65	35.75	58.27
	<b>Total</b>	<b>71</b>	<b>806.39</b>	<b>217.67</b>	<b>1,612.68</b>	<b>2,636.74</b>

The highest defaulting sub contractors were as detailed in **Table – 2.11**.

**Table – 2.11**

(₹ in lakh)

Sl. No	Name of the Office	Name of the assessee/ TIN	Year(s)	Turnover escaped assessment	Short levy of tax, interest and penalty
1	CTO (WC), Thiruvananthapuram	Albert Raj/ 32011385815	2010-11 to 2014-15	820.73	359.79
2	CTO (WC), Palakkad	M/s. Consolidated Construction Corporation/ 32091656804	2012-13 & 2014-15	2,105.37	201.76

<sup>3</sup> CTO (WC) Thiruvananthapuram, Mattancherry, Ernakulam and Kannur.

3	CTO (WC), Ernakulam	M/s. Fujitec India Pvt. Ltd./ 32072037737	2014-15	363.14	165.34
4	CTO (WC), Ernakulam	M/s P T Mathai Construction Co. Pvt. Ltd/ 32072025565	2012-13 to 2013-14	1,195.58	118.72

On this being pointed out (August 2016) in the exit conference the Addl. Chief Secretary (Taxes) instructed the Department to examine the instances on a case by case basis and assured that action would be taken in all cases after due verifications.

**2.5.3.2 Non-levy of tax on the cost of materials supplied by the awarders**

Rule 9(2)(A) of the KVAT Rules, 2005, stipulates that, where, in a works contract, the awarder supplies a portion of the goods involved in the execution of works contract and deducts the value of the material from the payment made to the contractor, the turnover of the goods so supplied shall form part of the total turnover of the awarder as well as the contractor. Out of ten cases checked, in three cases, the awarder had transferred the goods to the sub-contractors to incorporate into the work. But, neither the awarder (M/s Kerala State Construction Corporation Limited) nor the sub-contractors (M/s Greenworth Infrastructures Private Limited and Manuel Joseph) conceded the value of goods so supplied in their annual return. The Returns were being uploaded by the dealers themselves in KVATIS. Audit found that no proper mechanism existed to detect such a lapse. This resulted in short levy of tax, interest and penalty amounting to ₹ 96.53 lakh as detailed in **Table – 2.12**.

**Table -2.12**

(₹ in lakh)

Sl. No.	Name of the office/circle	Name of the assessee/TIN	Year	Turnover	Short levy			
					Tax	Interest	Penalty	Total
1	CTO(WC), Ernakulam	M/s Kerala State Construction Corporation Ltd./ 32072082322	2012-13	276.22	13.81	5.25	27.62	46.68
2	CTO(WC), Ernakulam	M/s Greenworth Infrastructures Pvt Ltd./ 32072097341	2012-13	276.22	13.81	5.25	27.62	46.68
3	CTO (WC), Kannur	Manuel Joseph/ 32592641212	2012-13	14.77	0.74	0.27	1.48	2.49
			2013-14	4.25	0.21	0.05	0.42	0.68
<b>Total</b>				<b>571.46</b>	<b>28.57</b>	<b>10.82</b>	<b>57.14</b>	<b>96.53</b>

The Additional Chief Secretary (Taxes) stated that the cases pointed out would be examined to see whether there was any short levy of tax on account of supply of materials by awarders to the sub contractors.



### 2.5.3.3 Incorrect compounding where transfer was in the form of goods

Under the KVAT Act, 2003 in the case of transfer of goods involved in the execution of works contract, where transfer is in the form of goods, the liability for tax shall be at the rate specified for such goods. Works contract involving fabrication, supply and installation of UPVC<sup>4</sup>/aluminium doors and windows would come under the category of transfer of materials in the form of goods, which would attract levy of tax at the schedule rate of such goods transferred. The position has been reiterated<sup>5</sup> by the Commissioner of Commercial Taxes stating that such cases would not be eligible for compounding.

Audit noticed that in CTO (WC), Ernakulam, three out of fifteen dealers had opted to pay tax at the compounded rates on their contract receipts for the fabrication/supply and installation of UPVC/aluminium doors and windows which resulted in incorrect compounding and application of incorrect rate of tax. This resulted in short levy of tax, interest and penalty amounting to ₹ 4.04 crore as detailed in **Table -2.13**.

**Table – 2.13**

(₹ in lakh)

Sl. No	Name of the assessee/ TIN	Year	Turnover	Short levy of Tax	Interest	Penalty	Total
1	George Projects Pvt. Ltd./ 32072027016	2012-13	46.12	4.84	1.89	9.69	16.42
		2013-14	158.34	18.21	4.92	36.42	59.55
		2014-15	277.74	30.31	4.55	60.61	95.47
2	M/s Sherin Hi-Fabs/ 32072033755	2012-13	90.53	9.51	3.71	19.01	32.23
3	M/s Sherin Hi-Fabs Contracts (I) Pvt. Ltd./ 32072063859	2012-13	563.65	59.18	23.08	118.37	200.63
<b>Total</b>				<b>122.05</b>	<b>38.15</b>	<b>244.10</b>	<b>404.30</b>

The Additional Chief Secretary (Taxes) assured that the circular issued by the Commissioner of Commercial Taxes would be re-examined.

### 2.5.3.4 Incorrect grant of exemption of sub contract turnover

Under Section 8(a) of the KVAT Act, 2003 read with Rule 11(4) of the KVAT Rules, 2005 made thereunder, an awarder/principal contractor claiming exemption on sub contract payments shall obtain certificate in Form No 20 H from sub contractor. The said certificate should contain particulars such as gross amount of

<sup>4</sup> Unplasticised Poly Vinyl Chloride.

<sup>5</sup> Order No. C3/23011/13/CT dt: 27 November 2013.

contract and a certificate from the assessing authority explicitly stating the liability discharged by the sub contractor during the year.

Audit cross checked the sub contract payments made by the awarders/principal contractors in four assessing circles<sup>6</sup> and noticed that in eight cases out of ten as listed in **Appendix X**, the claim of exemption was not supported by certificate in Form No 20 H/not in consonance with the amount of liability discharged, as recorded in the certificates by the assessing authority/ certificates not related to the relevant year. In two cases, the assessee claimed excess exemption towards sub contract payments which did not tally with the annual accounts. The Act does not envisage the extent of detailed scrutiny of returns filed by the assesseees. Further, there is no provision in the certificate in Form No. 20 H regarding the extent of liability discharged by the sub contractors during the year which has paved way for irregular exemption being claimed by the awarders. This resulted in short levy of tax, interest and penalty of ₹ 58.16 crore as detailed in **Table – 2.14**.

**Table – 2.14**

(₹ in lakh)

Name of the Office	Number of cases	Short levy			
		Tax	Interest	Penalty	Total
CTO (WC), Ernakulam	7	1,751.52	479.32	3,503.05	5,733.89
CTO (WC), Kannur	1	7.10	2.62	14.20	23.92
CTO (WC), Mattancherry	1	13.76	3.44	27.51	44.71
CTO (WC), Thiruvananthapuram	1	4.24	1.06	8.48	13.78
<b>Total</b>	<b>10</b>	<b>1,776.62</b>	<b>486.44</b>	<b>3,553.24</b>	<b>5,816.30</b>

The beneficiaries with highest tax liability are detailed in **Table – 2.15**.

**Table – 2.15**

(₹ in lakh)

Sl. No.	Name of the Office	Name of the assessee/TIN	Year(s)	Turnover incorrectly exempted	Short levy of tax, interest and penalty
1	CTO (WC), Ernakulam	M/s. Kerala State Construction Corporation Ltd./ 32072082322	2012-13 to 2013-14	34,413.64	4,541.35
2	CTO (WC), Ernakulam	M/s. Skyline Builders/ 32072047255	2012-13 to 2014-15	3,262.65	1,003.80
3	CTO (WC), Ernakulam	M/s. Asset Homes Pvt. Ltd./ 32072010445	2014-15	526.17	49.41
4	CTO (WC) Mattancherry	M/s. E.K.K. & Co./ 32151046307	2013-14	343.93	44.71

<sup>6</sup> CTO (WC), Ernakulam, Kannur, Mattancherry and Thiruvananthapuram.

Sl. No.	Name of the Office	Name of the assessee/TIN	Year(s)	Turnover incorrectly exempted	Short levy of tax, interest and penalty
5	CTO (WC), Ernakulam	M/s. Mabel Engineers Pvt. Ltd. (V)/32072014056	2014-15	92.70	42.20

On this being pointed out (August 2016) the Additional Chief Secretary (Taxes) stated that action would be initiated to examine the cases pointed out. He also stated that proposals for modifications in Form 20 H certificate would be made in current years Finance Bill. Further report awaited.

### 2.5.3.5 Non-deduction/short deduction of TDS by the awarder/ principal contractor

Under Section 10 of the KVAT Act, 2003 an awarder shall deduct TDS from the sub contract payments to the sub-contractor. The rate of such deduction/non deduction should be mentioned in the liability certificate in Form 1EE issued by the assessing authority of the sub contractor. If no such certificate is furnished by the sub contractor to the principal contractor/awarder, the TDS should be effected at the rate of 8 *per cent* of the sub contract payments in the case of registered contractor, and at 10 *per cent* in the case of unregistered contractors. The awarder also had to file return in Form No 10 C, mentioning the details of work sub contracted, to his assessing authority under Rule 32. Further, as per Rule 42(4), the awarder has to issue certificate in Form No 20 F to sub contractor detailing the work awarded, amount paid and TDS effected, if any, and the sub contractor in turn issues certificate in Form 20 G to awarder confirming the work accepted/executed and amount received from the awarder.

In three assessment circles<sup>7</sup>, Audit noticed that awarders had not effected TDS on sub contract payments at stipulated rate. The short levy of tax, interest and penalty in six cases would come to ₹ 6.36 crore as detailed in **Table – 2.16**.

**Table -2.16**

Name of the assessee/ TIN	Year	Assessing Circle	Short / Non- deduction of tax	Interest	Penalty	(₹ in lakh)
						Total
M/s Asset Homes Private Limited/ 32072010445	2012-13	CTO (WC), Ernakulam	0.89	0.34	1.78	3.01
M/s. HLL Life Care Limited/ 32072097341	2012-13	CTO (WC), Thiruvananthapuram	46.03	17.49	92.06	155.58

<sup>7</sup> CTO (WC), Ernakulam, Mattancherry and Thiruvananthapuram.

M/s TRDCL 32592641212	2012-13	CTO (WC), Thiruvananthapuram	11.85	4.50	23.70	40.05
M/s. IL&FS Township and Urban Assets 32592641212	2014-15	CTO (WC), Thiruvananthapuram	0.59	0.08	1.18	1.85
M/s Heera Construction Co. Ltd./ 32011329532	2013-14	CTO (WC), Thiruvananthapuram	59.57	15.49	119.14	194.20
EKK&Co/ 32151046307	2014-15	CTO (WC) Mattancherry	77.09	10.02	154.18	241.29
<b>Total</b>			<b>196.02</b>	<b>47.92</b>	<b>392.04</b>	<b>635.98</b>

M/s Heera Construction Company Ltd, an assessee borne on the rolls of the CTO (WC), Thiruvananthapuram had not effected TDS on sub contract payments to 108 unregistered dealers.

The assessing authorities could have detected the omission, had the assessing authorities scrutinised the statement of payments made to sub-contractors.

The Additional Chief Secretary (Taxes) stated that the cases pointed out would be examined to see whether there was non-deduction/short deduction of TDS.

### **2.5.3.6 Short remittance of tax**

Under Section 31 of the KVAT Act, 2003 a dealer is liable to pay tax on the taxable turnover.

In CTO (WC), Mattancherry, Audit noticed that two work contractors short remitted the tax due, interest and penalty amounting to ₹ 50.34 lakh as detailed in **Table – 2.17**.

**Table – 2.17**

(₹ in lakh)

Name of the assessee/TIN	Year	Assessment Circle	Tax due as per certified accounts	Tax paid as per remittance details	Short remittance			
					Tax	Interest	Penalty	Total
EKK&Co/ 32151046307	2014-15	CTO, (WC) Mattancherry	740.92	727.65	13.27	1.73	26.54	41.54
Nechupadam Constructions Pvt. Ltd./ 32151007405	2014-15	CTO, (WC) Mattancherry	24.45	21.64	2.81	0.37	5.62	8.80
<b>Total</b>					<b>16.08</b>	<b>2.10</b>	<b>32.16</b>	<b>50.34</b>

On this being pointed out (August 2016) the Additional Chief Secretary (Taxes) stated that action would be initiated to examine the cases pointed out.

#### 2.5.4 Conclusion

Audit observed that the assessing officers were not ensuring that the works contract receipts for which exemption was availed by the principal contractor being sub contracted work was assessed at the hands of sub contractors and that the statutory forms prescribed as per provisions of Act/Rules were neither insisted upon by the assessing officers nor used for the intended purpose.

The Department must ensure filing and subsequent scrutiny of valid statutory forms envisaged in the Act/Rules by the awarder and the sub-contractor.

#### 2.6 Short levy of tax in assessments of metal crushing units

A manufacturer of crushed metal can opt for compounding under Section 8(b) of the KVAT Act and compounded tax is to be determined based on the jaw-size of the metal crushing machine used for the manufacture of crushed metal, at rates prescribed by the Government from time to time. In the case of compounding, if option is accepted, tax due would be calculated by the assessing authority at the rates given **Appendix XI**, which should be remitted quarterly by the assessee.

The CTD issued<sup>8</sup> detailed instructions directing the assessing officers to gather information from local bodies, Kerala State Electricity Board Ltd. (KSEBL), Kerala State Pollution Control Board (KSPCB) and Mining and Geology Department and utilise the same judiciously for finalising the assessments. As per KVAT Rules 2005, the assessing officers shall grant permission for compounding, if he is satisfied that the information in the application containing the details of metal crushers installed by the assessee is in order.

Audit verified the assessment records of metal crushing units for the period from 2009-10 to 2013-14 in 48 assessment circles<sup>9</sup> spread over in 11 districts<sup>10</sup> to ascertain whether the assessing officers had gathered information from other Departments/Statutory bodies or any other information available in the records submitted by the assessee and utilised the same for granting permission for

<sup>8</sup> Circular No. 11/2007 dt: 28 February 2007.

<sup>9</sup> AIT&CTO:- Spl Circle Thiruvananthapuram, CTO-Nedumangad, Neyyattinkara & Attingal; Spl Circle Kollam, CTO-Kottarakkara, Kundara, Chathannur, Anchal; IAC Pathanamthitta, CTO-Pathanamthitta, Thiruvalla, Adoor; IAC Kattappana, I Circle Thodupuzha, II Circle Thodupuzha, Spl Circle Thodupuzha, CTO Adimaly, Nedumkandam; Spl Circle Perumbavoor, CTO I & II Circle Perumbavoor, CTO- Moovattupuzha, Kothamangalam, Spl Circle Kottayam, CTO Aluva, Angamaly; Spl Circle Thrissur, CTO Wadakkancherry, Chalakkudy, CTO Irinjalakkuda, I Circle Thrissur, III Circle Thrissur; Spl Circle Palakkad, CTO-Ottappalam, Pattambi, I Circle Palakkad; Spl Circle Malappuram, CTOs Manjeri, Perinthalmanna, AIT & CTO Manjeri at Kottakkal, CTO Koothuparamba, AIT&CTO Vythiri, CTO Karunagapally, AIT&CTO Ranni, CTO II Circle Kalamaserry, CTO Thirurangadi, CTO/AIT Thrissur.

<sup>10</sup> AIT & CTO:-Thiruvananthapuram, Kollam, Pathanamthitta, Idukki, Ernakulam, Thrissur, Palakkad, Malappuram, Kottayam, Kannur and Waynad.

compounding/finalising assessments as directed in departmental circular which revealed the following:

### **2.6.1 Under-reporting of number and/or jaw-size of metal crushing machines**

In 48 assessment circles, Audit test checked the assessment records of 512 assesseees of which 131 assesseees who opted to pay tax under the compounding scheme had under-reported the size and/or the number of crushing machines. The assessing authorities had not gathered the information from local bodies/KSEBL/KSPCB/Mining and Geology Department for ascertaining the correctness of details furnished by the assesseees before issuing the permission for compounding/ finalising the assessment. This resulted in short levy of the tax, interest and penalty of ₹ 68.78 crore as shown in **Appendix XII**. The Tax district wise position is detailed in **Table -2.18**.

**Table -2.18**

(₹ in crore)

<b>Tax District</b>	<b>Number of cases</b>	<b>Total short levy</b>
D C Malappuram	12	4.61
D C Pathanamthitta	12	6.18
D C Thrissur	18	9.76
D C Wayanad	1	0.26
D C Ernakulam	1	0.15
D C Kollam	15	8.94
D C Palakkad	7	4.52
D C Mattancherry	44	17.18
D C Idukki	11	9.75
D C Kannur	1	0.29
D C Thiruvananthapuram	7	6.14
D C Kottayam	2	1.00
	<b>131</b>	<b>68.78</b>

Audit conducted a joint physical inspection of 26 out of 131 cases mentioned above along with the Intelligence squads of CTD and found that these 26 assesseees filed incorrect returns relating to the period from 2009-10 to 2013-14.

The benefit enjoyed by the assesseees ranged from ₹ 4.57 lakh (M/s Ricko Rocks and Granites, M/s Stonage Metal Crusher) to ₹ 432.89 lakh (M/s Darshan Granites).

Failure of assessing authorities to verify the correctness of application for compounding filed by the assessee with secondary evidences available with other

Government Departments/Agencies, had paved way for the under reporting of size and/or number of metal crushing machines, resulting to evasion of tax.

On this being pointed out (June 2016) Government stated (October 2016 and December 2016) that assessment have been revised in 24 cases and additional demand of ₹ 6.62 crore had been created, out of which ₹ 45.65 lakh has been collected in six cases. Further reply has not been received.

### **2.6.2 Non-submission of returns**

In four assessment circles test checked, six assesseees<sup>11</sup> neither opted for compounding nor filed return in Form No. 10 disclosing the turnover. Even though such information was available in the records submitted by the assessee in offices like local body, KSEBL, KSPCB and Mining and Geology Department along with the records submitted for registration, the assessing authority had not taken any action to gather such information as directed in the Departmental Circular and to utilise them in assessment/permission for compounding. This resulted in short levy of tax, interest and penalty of ₹ 14.44 crore as given in **Appendix XIII**.

The benefits enjoyed by the assesseees ranged from ₹ 18.90 lakh (M/s Devamatha Rock Products) to ₹ 769.64 lakh (M/s Best Granites).

Non submission of turnover details in the form of annual accounts by the assesseees was the main reason for escape of turnover resulting in evasion of tax.

The assessing authorities were not verifying the correctness of turnover of the assessee in compounded cases as well as non compounded cases with reference to their annual accounts.

On this being pointed out (May 2016) the Additional Chief Secretary (Taxes) stated that action would be initiated to examine the cases pointed out.

### **2.6.3 Non-registration of metal crushing units under KVAT Act**

Under Section 15C of the KVAT Act, any person who intends to establish an industrial unit may get himself registered under this section. No metal crushing unit can establish without the permission issued by the local body/KSEBL/KSPCB/Mining and Geology Department. Audit cross-checked the data collected from the KSPCB with the KVATIS and noticed that in four assessment offices, metal crushing units of four assesseees were not registered under the KVAT Act. The assessing authority did not take any action under Rule 17A of the KVAT Rules to give compulsory registration to the assesseees. As the turnovers of the dealers were not ascertainable, actual loss of revenue could not be

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<sup>11</sup> Best Granites, Valakkavu Granites (P)Ltd, Thomson Granites, Pawan Quarry & Aggregates Pvt Ltd, Devamatha Rock Products, Parakkal Granites.

worked out. At the compounded rate, non levy of tax worked out to ₹ 2.13 crore including interest and penalty as detailed in **Table -2.19**.

**Table – 2.19**

(₹ in crore)

Sl. No.	Name of dealer	Name of office	Year	Total non levy of tax including interest and penalty
1	M.S. Industries	CTO, Kottarakkara	2011-12 to 2013-14	0.90
2	Kunnumpurathu Granites	CTO, II Circle, Thodupuzha	2012-13 & 2013-14	0.54
3	S.N. Granite & Metal Industries	CTO, Chathanoor	2009-10 to 2013-14	0.51
4	Libas Crushers, Attoor, Kilimanoor	CTO , Attingal	2009-10 to 2013-14	0.18
<b>Total</b>				<b>2.13</b>

Absence of proper street survey by the assessing authorities/intelligence wing resulted in non registration of metal crushing units and consequent evasion of tax.

There was no effective mechanism in the Department for the street survey and to gather information from other Government Departments/ Agencies, in order to bring the unregistered units under the tax net of CTD.

The above cases were referred to Government in May 2016. In the meeting with Audit, the Additional Secretary (Taxes) stated (May 2016) that departmental action would be initiated against the assessing officers who are not following the departmental instructions given and who are committing the same mistakes. Government in December 2016 stated that in one case assessment has been revised and additional demand of ₹ 57.54 lakh has been created. Further reply has not been received (December 2016).

#### **2.6.4 Short remittance of tax**

Under KVAT Act every dealer whose total turnover for a year is not less than ₹ 10 lakh shall be liable to pay tax on his sales at rates prescribed in the schedule to the Act. Further as per the KVAT Act any dealer producing granite metals with the aid of mechanised crushing machines may, at his option, pay compounded tax at the specified rates. Under Rule 24 of KVAT Rule, a dealer is required to submit quarterly/annual return in the case of compounded dealers. The dealer has to submit the monthly/quarterly and annual return, along with the details of payment of tax. Once the dealer has submitted the return the assessing authority shall accept the return within twenty four hours. Return acceptance through KVATIS by assessing authority is a fully computerised process. There was no provision in the software to ensure the consistency in data available under tax due and tax remitted. This resulted in acceptance of return by the System though the entire tax



due was not remitted by the assessee. Audit noticed from the returns accepted by assessing authority that in six cases<sup>12</sup> of six assessment circles, the assessees short remitted ₹ 59.19 lakh including interest as shown in **Appendix XIV**. The tax district wise position is detailed in **Table – 2.20**.

**Table -2.20**

(₹ in lakh)

Name of the Tax District	No. of dealers	Total short remittance of tax including interest
Deputy Commissioner, Thiruvananthapuram	1	9.03
Deputy Commissioner, Idukki	1	25.34
Deputy Commissioner, Thrissur	3	12.92
Deputy Commissioner, Kottayam	1	11.90
<b>Total</b>	<b>6</b>	<b>59.19</b>

The benefits enjoyed by the assessees ranged from ₹ 3.91 lakh (M/s Rajumon Granites) to ₹ 25.34 lakh (M/s Marthoma Granites).

This was referred to Government in May 2016. In the meeting with Audit (May 2016), the Additional Secretary (Taxes) stated that all the cases would be verified and amount short remitted would be collected. Further reply has not been received (November 2016).

## 2.7 Value Added Tax assessments on works contract

The levy, assessment and collection of tax on works contract is governed by KVAT Act, 2003 and the KVAT Rules, 2005 made thereunder. The inter-State purchases relating to works contract is governed by Central Sales Tax (CST) Act 1956. Section 2(iv) of the KVAT Act stipulates that works contract (WC) includes any agreement for carrying out for cash or for deferred payment or other valuable consideration the construction, fitting out, improvement, repair, manufacture, processing, fabrication, erection, installation, modification or commissioning of any movable or immovable property. Assessment of works contracts is done under Section 6 of the Act. The works contractor can opt for compounding scheme under Section 8 of the KVAT Act. In the case of works awarded, tax shall be deducted from the payments made to the contractor by the awardee. In the case of compounding, if the option is accepted, tax due will be calculated by the assessee and remitted monthly.

Audit found that returns filed by the works contract assessees were error prone and there were cases of short payment of tax due to application of incorrect rate of tax, escape of turnover from assessment, incorrect compounding etc., which are narrated below.

<sup>12</sup> VSC Hollow Bricks, Marthoma granites, Southern Industries, Rajumon Granites, Prince Metal Products and Neerakkal Granites.

### **2.7.1 Short payment of tax due to application of incorrect rate of tax**

Under Section 8 (a)(ii) of KVAT Act, 2003 works contractors registered under the provisions of CST Act, 1956 or an importer, when opted for payment of compounded tax, are liable to pay tax at three *per cent* of the contract amount after deducting the purchase value of goods excluding freight and gross profit element consigned into the State on stock transfer or purchased from outside the State and for the purchase value of goods so deducted shall pay tax at the rates prescribed in the schedule to the KVAT Act applicable to such goods. Under Section 8 (a)(i) of KVAT Act, 2003 any works contractor not being a dealer registered under the provisions of the CST Act, 1956 and who is not an importer may at his option, pay tax at three *per cent* of the whole contract amount. Further, the compounded tax payable by any works contractor registered under the provisions of CST Act, 1956 or an importer shall be four *per cent* of the whole contract amount in respect of contract awarded by Government of Kerala. Under Section 10(2A)(ii) of the KVAT Act, 2003, awarders should deduct TDS from the amount paid as per works contract at the rate of (a) eight *per cent* in the case of contractors registered under the Act who have not produced liability certificate from the assessing authority and (b) ten *per cent* in the case of contractors not registered under the Act. Under Section 31 (6) of KVAT Act, where any dealer has failed to include any turnover of his business in any return filed or where any turnover of tax has escaped assessment, interest under sub-section (5) shall accrue on the tax due on such turnover or tax with effect from such date on which the tax would have fallen due for payment, had the dealer included the turnover or tax in the return relating to the period to which such turnover relates.

- **CTO, Special Circle I, Ernakulam**

Audit found that M/s Popular Motor World Private Limited, a dealer in motor vehicles and on the rolls of Special Circle I Ernakulam opted to pay tax at compounded rate on their contract receipt. The dealer did not maintain separate account for painting works and hence the value of goods transferred for the execution of painting works was not ascertainable. The dealer produced the details of purchase of paint subjected to tax made during the year 2013-14 and it comes to only about seven *per cent* of the total contract receipt. The provision under the statute and the criteria adopted by the Insurance Companies allowed only 25 *per cent* for labour and hence the cost of materials transferred for the execution of painting work of ₹ 18.84 crore should have been ₹ 14.13 crore against which the goods transferred subjected to tax was ₹ 1.30 crore only. Short levy of tax on goods worth ₹ 12.83 crore worked out to ₹ 1.82 crore, including interest.

The case was pointed out by Audit to the Department in January 2016. In the exit meeting, the CCT assured (August 2016) that the case would be examined. Further development would be awaited in audit.

- **CTO (WC), Kozhikode**

M/s Uralungal Labour Contract Society Limited, Vatakara, a works contractor and also an importer conceded and assessed tax towards works contract receipts of ₹ 80.03 crore during 2013-14. Audit found that the assessee who opted to pay compounded tax had works contract receipts from the works of Government of Kerala and local bodies amounting to ₹ 76.98 crore during 2013-14. However, this turnover was self assessed to tax by the assessee at three *per cent* against the correct rate of four *per cent* along with non-government works. Application of incorrect rate of tax resulted in short payment of tax and interest of ₹ 90.06 lakh.

This case was pointed out by Audit to the Department in October 2015 and referred to Government in May 2016. Government stated (July 2016) that in order to deny the benefit available under Section 8(a)(i), the revenue must be able to show the compliance of both the conditions and not one of them. The reply is not tenable because under Section 8(a) (i) of KVAT Act, 2003 compounded rate of three *per cent* is admissible only in cases where both the conditions are satisfied, ie. (i) assessee should not be a CST dealer and (ii) assessee should not be an importer. In this case, the assessee was an importer. Hence compounding under Section 8(a) (i) is not admissible to the assessee.

- **CTO, (WC&LT), Wayanad**

M/s Aravali Infrapower Limited, Kalpetta, a works contractor who opted to pay tax at compounded rate assessed tax on the entire works contract receipt of ₹ 5.50 crore and ₹ 5.27 crore from KSEB at the rate of four *per cent* during 2012-13 and 2013-14 as if it was a Government work. Audit found that though as per the provision of the KVAT Act, tax had to be assessed at the scheduled rate of 13.5 *per cent* on the inter-State purchase value of ₹ 4.40 crore and three *per cent* on the balance turnover of ₹ 1.10 crore during 2012-13 and 14.5 *per cent* on the inter-State purchase value of ₹ 3.24 crore, and three *per cent* on the balance turnover of ₹ 2.03 crore during 2013-14, it was not complied with. Application of incorrect rate of tax resulted in short payment of tax and interest of ₹ 88.73 lakh.

The case was pointed out by Audit to the Department in March 2015 and March 2016 and referred to Government in May 2016. Government stated (August 2016) that assessment for 2012-13 had been completed creating additional demand of ₹13.73 lakh. Further developments would be awaited in audit.

## **2.7.2 Short payment of tax due to escape of turnover from assessment**

**2.7.2.1 As per Section 6(1)(e) and (f) of KVAT Act 2003 the rate of tax of works contract in the case of transfer of goods involved in the execution of works contract, where transfer is not in the form of goods, but in some other form, shall be 12.5 *per cent*/13.5 *per cent* /14.5 *per cent* and when the transfer is in the form of goods, at the rates prescribed under the respective schedules. As per Rule 10(2) of KVAT Rules 2005, in relation to a works**

**contract in which transfer of property takes place not in the form of goods but in some other form, the taxable turnover in respect of the transfer of property involved in the execution of works contract shall be arrived at after deducting labour and other charges from the total amount received or receivable by the dealer for the execution of works contract.**

- **CTO (WC&LT), Thiruvananthapuram**

M/s Brahmos Aero Space, Thiruvananthapuram, an assessee company involved in the manufacture and supply of various components and articles of :Brahmos Missiles~, filed annual return in Form 10 under KVAT Act, declaring sale of metallic products attracting tax at 12.5 *per cent*/13.5 *per cent* /14.5 *per cent*. Though the assessee company received ₹ 15.47 crore, ₹ 14.57 crore, ₹ 14.42 crore, ₹ 15.44 crore and ₹ 26.34 crore as processing charges during the period from 2009-10 to 2013-14, they had not filed any return in Form 10B for the jobworks contracts undertaken. Audit found from the contract agreement between Liquid Propulsion Systems Centre, Indian Space Research Organisation, Thiruvananthapuram and the assessee, that the assessee contributed his own materials to the goods supplied by the customer and engaged in manufacture. As such a substantial portion of the jobwork was one which involved manufacture. However, the assessee had shown only a small portion of the :income by way of processing charges~ in the Service Tax returns. The remaining turnover was liable to be treated as works contract involving transfer in the form of goods. Escape of turnover from assessment resulted in short payment of tax, cess and interest of ₹ 15.70 crore.

The case was pointed out by Audit to the Department in February 2016 and referred to Government in May 2016. Government stated (July 2016) that notice had been issued to the assessee to produce the required documents to complete the assessment. Further reply on action taken had not been received (November 2016).

- **CTO (WC&LT), Thiruvananthapuram**

M/s KEPCO-KDN Co Ltd., Thiruvananthapuram an assessee engaged in the supply, installation, integration, testing and commissioning of system integration project covering software, hardware, field survey and networking for the Kerala State Electricity Board Limited conceded a non-compounded turnover of ₹ 5.77 crore and ₹ 56.65 crore in the annual returns respectively for the years 2012-13 and 2013-14. They claimed exemption for an amount of ₹ 6.29 crore for 2013-14 under Rule 10 of KVAT Act. They paid an output tax of ₹ 28.85 lakh for 2012-13 and ₹ 2.52 crore for 2013-14 at five *per cent* of the taxable turnover. Audit found from the certified Accounts, that the total contract receipts of the assessee were ₹ 15.55 crore for 2012-13 and ₹ 62.68 crore for 2013-14. Thus the assessee suppressed the turnover in the annual return. Moreover, since the assessee paid tax at rate of five *per cent*, it is clear that the transfer of goods involved in the contract were transfer in the form of goods, wherein no

deduction/exemption under Rule 10 was allowable. The under reporting of turnover and claim of incorrect exemption resulted in short payment of tax and interest of ₹ 1.40 crore.

The case was pointed out by Audit to the Department in February 2016 and referred to Government in May 2016. Government stated (September 2016) that assessment had been completed (July 2016) creating additional demand of ₹ 1.46 crore. Further action taken would be awaited in audit.

**2.7.2.2 As per Rule 10(2)(a) of the KVAT Rules, 2005, in relation to works contract in which transfer of property takes place not in the form of goods but in some other form, the taxable turnover in respect of the transfer of property involved in the execution of works contract, shall be arrived at after deducting labour and other charges specified thereunder from the total amount received for the execution of the works contract. However, if the taxable turnover so arrived at falls below the cost of goods transferred in the execution of works contract, an amount equal to the cost of goods transferred in the execution of works contract together with profit, if any, shall be the taxable turnover in respect of such works contract.**

- **CTO (WC&LT), Wayanad**

M/s Wayanad Infrastructure Private Limited, Meppadi a works contractor conceded the taxable turnover as nil in their annual return for 2011-12 to 2013-14. Audit found from the annual return and closing stock inventory of the assessee that they transferred goods of ₹ 5.68 crore, ₹ 16.73 crore and ₹ 5.32 crore to the works during the years 2011-12, 2012-13 and 2013-14 respectively. As such the taxable turnover should not be less than above cost of goods during the above period. Incorrect reckoning of taxable turnover resulted in escape of turnover and consequent short payment of tax, cess and interest of ₹ 5.02 crore.

The case was pointed out by Audit to the Department in March 2016 and referred to Government in May 2016. Government stated (August 2016) that based on the Audit observation, pre-assessment notice under Section 25(1) of the KVAT Act had been issued to the assessee. Further reply had not been received (November 2016).

### **2.7.3 Short payment of tax due to inadmissible compounding**

**Under Section 6(1)(e) of KVAT Act, 2003 in the case of transfer of goods involved in execution of works contract, where the transfer is in the form of goods, tax should be paid at the rates specified for such goods, as the case may be, by a works contractor. As per provision under Section 8(a)(ii), a works contractor cannot opt for compounding scheme, when the transfer of material is in the form of goods. Department clarified<sup>13</sup> that supply and**

<sup>13</sup> Order No.C3-23011/13/CT dated 27.11.2013.

**fixing of aluminium doors and windows involved transfer in the form of goods and is not eligible for compounding.**

- **CTO, Special Circle II Ernakulam**

M/s Indus Motor Company Private Ltd a dealer in automobiles who undertook the contract work of repairing, denting, painting and other similar works relating to automobiles, paid tax under Section 8(a) of the Act for a works contract turnover of ₹ 30.37 crore during 2013-14. Audit found from the P&L Account of the assessee that the total contract receipt accounted was ₹ 30.37 crore from body repairs and ₹ 53.01 crore from labour charges.

Verification of the service tax returns filed with the Central Board of Excise and Customs (CBEC) showed that the dealer had paid service tax only to the labour charges accounted separately. Hence the receipt accounted under the head `Workshop Receipts - Body Repairs\_ was excluding labour and so it was the value of goods incorporated into the works contract. Since the value of goods and cost of labour are distinctively accounted for, the contract is a divisible contract i.e. one for sale of goods and other for labour. As the receipt on which tax at compounded rate was paid is the value of goods transferred into the works contract, the dealer is not eligible to opt for compounding scheme as the goods transferred were in the form of goods. Short payment of tax due to this irregular compounding worked out to ₹ 3.29 crore including interest.

Though the dealer distinctly accounted the labour and material portion in the Profit and Loss Account, the assessing officer did not call for further documents to substantiate the claim.

The case was pointed out by Audit to the Department in January 2016 and referred to Government in August 2016. In the exit meeting (August 2016), Government stated that the case would be examined and instruction had been issued to focus on these types of evasion of tax. Further reply is awaited (November 2016).

#### **2.7.4 Short payment of tax due to incorrect exemption allowed**

- **Three CTOs<sup>14</sup>**

**As per Rule 10 (2)(a) of KVAT Rule 2005, in relation to a works contract in which transfer of property takes place is not in the form of goods but in some other form, the taxable turnover in respect of the transfer of property involved in the execution of works contract shall be arrived at after deducting certain expenses including labour charges. It is also provided that if turnover in relation to a work is not ascertainable from the books of accounts of the dealer, the total turnover in respect of such works contract**

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<sup>14</sup> Special Circle I Ernakulam, Special Circle II, Kozhikode and Special Circle Thrissur.

shall be computed after deducting labour and other charges as given in the Table below the said Rule.

Automobile dealers, in addition to the sale of vehicles, are also engaged in the service of vehicles. Exemption on account of labour is claimed in respect of service rendered. Audit found from the service tax returns filed with the CBEC that in two assessing offices deductions claimed on account of labour had not been fully subjected to service tax by three dealers and hence the balance turnover was to be treated as value of the material consumed. Short levy of tax on this account worked out to ₹ 1.28 crore as detailed in Table – 2.21.

Table – 2.21

(₹ in crore)								
Sl No	Name of the Office	Name of the Assessee/TIN	Year	Amount claimed as exemption on account of labour	Turnover on which Service tax paid	Balance turnover	Tax due	Total amount due
1	CTO, Special Circle II, Kozhikode	M/s Apco Vehicles (India) Pvt. Ltd. 32110880207	2014-15	4.34	3.03	1.30	0.19	0.21
2			2013-14	4.06	3.04	1.02	0.15	0.18
3	CTO, Special Circle, Thrissur	BDR Cars 32080230358	2013-14	12.79	11.53	1.26	0.08	0.10
4			2014-15	14.17	13.12	1.05	0.07	0.08
5		Archana Motors Pvt. Ltd. 32081457778	2014-15	7.53	3.18	4.35	0.63	0.71
<b>Total</b>								<b>1.28</b>

Audit also found that two dealers had deducted from their contract receipts huge amounts without submitting proper proof for their claim. Since the dealers had not maintained any separate accounts for labour and other charges incurred for the works executed and had not submitted the proof of payment of service tax for the labour portion exempted, the maximum allowable deduction on account of labour is as provided in Rule 10. Short levy of tax on these account, including interest worked out to ₹ 0.81 crore as shown in Table – 2.22.

Table – 2.22

(₹ in crore)								
Sl. No.	Name of the Office	Name of the Assessee/TIN and Year	Total works contract receipt	Amount claimed as exemption on account of labour	Percentage of deduction allowable	Exemption allowable	Excess claim	Total amount due
1	CTO, Special Circle I, Ernakulam	Voltas Ltd. 32070266965/ 2013-14	6.07	4.77	10	0.61	4.16	0.75
2		Godrej & Boyce 32070248212/ 2014-15	2.81	1.20	30	0.84	0.36	0.06
<b>Total</b>								<b>0.81</b>

As the dealers are dealing with works contract which involves both material and labour supply, the taxability of one is governed by State Act and the other by Central Act, it is important to ensure that the entire portion of which no service tax was suffered were subjected to VAT. There is also clear statutory provision to curtail the practice of claiming exorbitant deduction on account of labour from works contract receipt. However the assessing officers did not ensure this.

Even though these issues were reported in CAG's Audit Report (2015) and was communicated to the Government through discussions and letters, the issue still persists.

These cases were pointed out by Audit to the Department between January 2016 and April 2016 and referred to Government in August 2016. In the exit meeting (August 2016) Government assured that the cases would be examined and instructions would issued in this regard. Further development would be awaited in audit.

- **CTO (WC&LT), Kollam**

**Rule 10(2)(b) of KVAT Rules, 2005 stipulates that where the actual turnover, in respect of the works contract in which the transfer of goods takes place not in the form of goods but in some other form, is not ascertainable from the books of accounts, the total turnover in respect of such works contract shall be computed after deducting labour and other charges as given in the table below the Rule from the total amount of contract. Labour and other charges deductible in works contract in respect of "all other contracts" other than those specifically mentioned in the table is 25 per cent of contract receipts.**

Sri. Jose Thomas, Pathanapuram, a works contractor who was paying non compounded tax, conceded a contract receipt of ₹ 10.46 crore, ₹ 11.22 crore and ₹ 9.03 crore during the years 2011-12, 2012-13 and 2013-14 respectively. Out of this a turnover of ₹ 4.40 crore was claimed as non taxable turnover during 2012-13. The assessee claimed exemption for the entire turnover for the years 2011-12 and 2013-14 and ₹ 6.32 crore for the year 2012-13 under Rule 10. Audit found from the annual return of the assessee that the nature of the work returned was doubling of railway track, gauge conversion, construction of bridge etc., which involved use of materials. The assessee had not furnished the certified accounts to the assessing authority. As such claim of exemption should have been limited as per table below Rule 10, which is 25 per cent of the contract receipts in respect of 'all other contracts' other than those specifically mentioned in the table. The short payment of tax due to the allowance of incorrect exemption amounted to ₹3.29 crore.

This case was pointed out to the Department between April 2015 and February 2016 and referred to Government in May 2016. Government stated (November 2016) that the assessment for the years 2011-12 and 2012-13 had been revised (May 2015) creating additional demand of ₹ 2.82 crore. The dealer filed (August



2016) stay petitions before DC (Appeals) Kollam which were pending for disposal. The assessment for 2013-14 had been completed (September 2016) creating additional demand of ₹ 1.02 crore. Further action taken would be awaited in audit.

## **2.8 Short payment of tax due to escape of turnover from assessment**

**2.8.1 As per Section 20(1) of the Act every registered dealer shall submit to the assessing authority periodical returns containing the transactions effected during that return period and Rule 22(3) of KVAT Rules stipulated that such returns shall accompany statements regarding the purchase invoices received and sale invoices issued. As per Section 25(1) of KVAT Act, 2003 where for any reason the whole or any part of turnover of business of a dealer has escaped assessment to tax in any year the assessing authority may, at any time within five years from the last date of the year to which the return relates, proceed to determine, to the best of its judgement, the turnover which has escaped assessment to tax and assess the tax payable on such turnover. As per Entry 68(4) others, of schedule III of KVAT Act, transfer of good will is taxable at five per cent.**

- **Ten CTOs<sup>15</sup>**

Audit cross verified the statement of purchase invoices submitted by 14 dealers in 10 assessing offices doing business with major dealers with the statement of sales invoices submitted by those dealers and found that they failed to account for the purchases made during 2013-14 and 2014-15. This resulted in non accounting of purchase turnover and corresponding sales turnover and consequent short levy of payment and interest of ₹ 8.92 crore. (**Appendix XV**).

Though the Department has issued guidelines<sup>16</sup> to cross verify the details of sales and purchases, the assessing officers did not comply with the guidelines. The Deputy Commissioners also did not monitor the compliance of the instructions.

The cases were pointed out by Audit to the Department between January 2016 and April 2016 and referred to Government in August 2016. In the exit meeting (August 2016) Government stated that instructions had already been issued to focus the area of evasion of tax during scrutiny of assessment files.

- **CTO, Special Circle I, Kozhikode**

M/s Malabar Regional Co-operative Milk Producers Union Ltd., Kozhikode Dairy, Kozhikode a dealer in milk, ghee, milk products etc., conceded local stock transfer out for ₹ 52.83 crore, ₹ 48.04 crore and ₹ 54.15 crore respectively during

<sup>15</sup> Special Circle - Kannur, Malappuram, Perumbavoor, Thrissur, Thiruvananthapuram, Special Circle I - Ernakulam, Kozhikode, Special Circle II - Ernakulam, CTO - Thaliparamba, CTO I Circle, Thrissur.

<sup>16</sup> Circular 27/2014.

2011-12 to 2013-14 and claimed exemption on the above turnover. Audit found from the details furnished by the assessee that during the period the dealer had effected stock transfer out of taxable goods for ₹ 9.57 crore, ₹ 7.66 crore and ₹ 10.38 crore to four units. Since the units have separate TIN they are separate dealers and hence the transfer out cannot be treated as local stock-transfer out, but local sale. Misclassification of sales as stock transfer resulted in escape of turnover from assessment and consequent short payment of tax and interest of ₹ 3.13 crore.

This case was pointed out by Audit to the Department between August 2015 and May 2016 and referred to Government in May 2016. Government stated (July 2016) that assessment for the year 2013-14 had been completed (December 2015) creating additional demand of ₹ 127.79 lakh. Hon'ble High Court of Kerala quashed (April 2016) the assessment order directing the assessing authority to analyse the nature of transactions and pass fresh order. Fresh assessment is still pending for disposal. CCT has directed the assessing authority to expedite steps to reassess the case. Further reply has not been received (November 2016).

- **CTO, Special Circle, Mattancherry**

M/s Dabur India, Kochi a dealer in consumables and healthcare products conceded in their annual returns and assessed tax on a sales turnover of ₹ 47.53 crore and ₹ 63.10 crore during 2011-12 and 2013-14. Audit found that the sales turnover of the assessee during the years as per the certified accounts were ₹ 54.30 crore and ₹ 64.55 crore respectively. Since cent *per cent* scrutiny of return is not prescribed and assessment is not completed by the assessing authority, escape of turnover from assessment remained undetected. This resulted in short payment of tax and interest of ₹ 92.69 lakh.

The case was pointed out by Audit to the Department in May 2015 and referred to Government in May 2016. Government stated (September 2016) that the assessment had been revised by creating an additional demand of ₹ 19.01 lakh towards tax and ₹ 3.42 lakh towards interest and the amount had been advised for revenue recovery proceedings. The assessee filed appeal before DC (Appeal) Ernakulam which is pending for disposal. The DC (Appeal) had been instructed to dispose the appeal immediately.

- **CTO, Special Circle, Palakkad**

The assets and liabilities of the ingot division of M/s MPS Steel Casting Private Limited, Palakkad a dealer in iron and steel was taken over (May 2013) by M/s MPS Steel Private Limited, Palakkad, as a whole, for which consideration was paid. Audit found from the fixed assets schedule of MPS Steel Casting Private Limited that during 2013-14, they sold plant and machinery and electrical equipments amounting to ₹ 6.82 crore and ₹ 59.47 lakh respectively. Scrutiny of depreciation schedule of MPS Steels Private Limited revealed that it has acquired the goodwill also for a price of ₹ 6.96 crore alongwith the above plant and

machinery and electrical equipments. However, M/s MPS Steel Casting Private Limited did not disclose the sales turnover of plant and machinery and electrical equipments and goodwill in the annual return for assessment of tax. This resulted in short payment of tax and interest of ₹ 86.23 lakh.

The case was pointed out by Audit to the Department in January 2016 and referred to Government in May 2016. Government stated (August 2016) that assessment had been completed (June 2016) creating additional demand of ₹ 91.64 lakh and demand notice had been issued to the dealer. Further action taken would be awaited in audit.

- **CTO, Special Circle III, Ernakulam**

M/s KP Cars Private Limited, Ernakulam a dealer in automobile spare parts and motor cars conceded ₹ 159.31 crore as sales turnover in the annual return for 2013-14. Audit found from the P&L account of the assessee that local sales turnover of the assessee during the above period was ₹ 162.79 crore. Thus a sales turnover of ₹ 3.48 crore had escaped from assessment. The assessing authority while completing the assessment (February 2015) under Section 25(1) of KVAT Act, 2003 did not detect the defect. This resulted in short payment of tax and interest of ₹ 58.56 lakh.

The case was pointed out to the Department in September 2015 and referred to Government in May 2016. Government stated (November 2016) that assessment under Section 25(1) had been completed (August 2016) creating demand of ₹ 65.12 lakh.

**2.8.2 As per proviso below Section 11(3) of KVAT Act, 2003 input tax credit shall not be available in respect of the tax paid on the turnover subsequently allowed as discount. The amount covered under credit notes issued by the supplier that do not affect the input tax credit already availed of shall not be reckoned for the purpose of assessment under this Act. As per Explanation III(ii) below Section 2 (Iii) of the Act, the amount received from companies/manufacturers through credit notes by way of discount/ incentives is only recoupment of additional sale price of the goods sold and hence will form part of the turnover of the dealer who receives such amount.**

- **Four CTOs<sup>17</sup>**

Audit found that in four CTOs, five assesseees dealing in white goods did not concede in their annual return for assessment of tax receipts under the trade discount though they had accounted it in their Trading, Profit & Loss Account, for the years 2012-13, 2013-14 and 2014-15. Since these represents the amount received from the various supplying companies through credit notes and thus reduce the purchase value of the goods sold and hence were taken into account for

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<sup>17</sup> Special Circle I, Ernakulam, Special Circle, Perumbavoor, Thrissur and Thiruvananthapuram.

arriving the gross profit, this receipt will form part of the turnover of the dealer. Failure to assess the turnover resulted in non levy of tax of ₹ 22.72 crore including interest as shown in **Table – 2.23**.

**Table -2.23**

(₹ in crore)

Sl. No.	Name of the Office	Name of the Assessee/TIN	Year	Trade discount to be assessed	Tax due on discount received at 13.5/14.5 per cent	Total tax including interest due
1	CTO, Special Circle Thrissur	Nandilath G-Mart 32080713895	2012-13	12.22	1.65	2.24
			2013-14	14.76	2.14	2.65
			2014-15	19.72	2.86	3.20
		Nandilath Agencies 32080272052	2012-13	1.23	0.16	0.24
			2013-14	2.19	0.32	0.39
			2014-15	1.77	0.26	0.28
2	CTO, Special Circle I, Ernakulam	Bismi Appliances 32071397242	2012-13	1.64	0.22	0.31
			2013-14	6.67	0.97	1.20
			2014-15	20.41	2.96	3.31
3	CTO, Special Circle, Perumbavoor	Pittappillil Agencies 32151364222	2012-13	6.59	0.93	0.92
			2013-14	6.63	0.87	1.14
4	CTO, Special Circle, Thiruvananthapuram	QRS Retail Ltd. 32010155605	2012-13	14.65	1.68	2.30
			2013-14	15.85	1.88	2.32
			2014-15	16.73	1.95	2.22
<b>Total</b>						<b>22.72</b>

The assessing officers did not comply with the statutory provision regarding the taxability of trade discount received through credit notes. The taxability of trade discount can be ascertained only through scrutinising the debit/credit notes in each case individually. However, there is no system in the Department to scrutinise the cases in which discount is received through credit notes.

The case was pointed out by Audit to the Department between January 2016 and April 2016 and referred to Government in August 2016. In the exit meeting Government stated (August 2016) that cases would be examined individually and also that uploading of details of credit notes and debit notes in KVATIS would be examined.

**2.8.3 As per Section 20(1) of KVAT Act, 2003 every registered dealer shall submit to the assessing authority periodical returns containing the transactions effected during the return period and under Rule 22(3) of KVAT Rules, 2005 every such returns shall be accompanied by a statement regarding the sale invoices issued, under Section 40A of the Act and purchase invoices received, during the period. Section 42 provides that every dealer whose total turnover in a year exceeds rupees sixty lakh shall submit copy of the audited statement of accounts in Form 13A. Section 25 of the Act stipulates that if whole or any part of the turnover has escaped assessment to**

tax, the assessing authority shall proceed to determine, to the best of its judgement, the turnover which has escaped assessment to tax.

- **CTO, Special Circle I, Ernakulam**

Verification of the statement of sale invoices submitted by two dealers with that of the returns and accounts furnished by them showed that they had short accounted the total sales than the value of goods sold as per invoices raised for the years 2012-13, 2013-14 and 2014-15. The cross verification of sales invoices issued by four dealers in two assessing offices with that of the corresponding purchase invoices submitted by their purchasers showed that they short reported their sales than the accounted purchases from them by their purchasers. Audit also verified the accounted sales with the sales turnover returned and found that one dealer did not report the accounted sale fully and one dealer did not take into account the stock transferred locally in full. Non levy of tax on these escaped turnovers had resulted in short payment of tax and interest of ₹ 3.88 crore as shown in **Table – 2.24**.

**Table – 2.24**

(₹ in crore)

Sl. No.	Name of the Office	Name TIN of the dealer	Year	Nature of escapement	Sales turnover short reported	Short payment of tax including interest
1	CTO, Special Circle I, Ernakulam	M/s Voltas Ltd. 32070266965	2013-14	Sales reported lower than own sales invoices	0.67	0.12
		L.G. Electronics 32070227095	2013-14	Sales reported lower than own sales invoices	1.36	0.24
		L.G. Electronics 32070227095	2014-15	Sales reported lower than own sales invoices	3.00	0.49
		L.G. Electronics 32070227095	2014-15	Sales reported lower than other's purchase invoices	0.89	0.14
		Asian Paints Ltd 32070289814	2013-14	Accounted sales short reported	8.08	1.45
2	CTO, Special Circle II, Ernakulam	Samsung India 32070370702	2014-15	Sales reported lower than other's purchase invoices	0.44	0.07
		Sony India (P) Ltd. 32070372985	2014-15	Sales reported lower than other's purchase invoices	0.43	0.07
		Whirlpool India 32070387172	2014-15	Sales reported lower than other's purchase invoices	0.07	0.01
3	CTO, Special Circle, Thrissur	Nandilath G-Mart 32080713895	2012-13	Short accounting of stock used for local shifting	2.91	0.53
		Nandilath G-Mart 32080713895	2014-15	Short accounting of stock used for local shifting	4.70	0.76
<b>Total</b>						<b>3.88</b>

Though the Department issued instruction<sup>18</sup> to meticulously examine the above aspect, the assessing authority did not comply with the instruction.

The cases were pointed out by Audit to the Department between January 2016 and April 2016 and referred to Government in August 2016. In the exit meeting (August 2016) Government stated that general instructions had already been issued to streamline the system. The reply is not acceptable since the Department is not ensuring the compliance of the instructions issued and not taking Departmental action against the delinquent officers.

**2.8.4 As per Section 46(3) of KVAT Act, 2003 no person shall transport within the State any consignment of goods unless he is in possession of either a tax invoice or delivery note in Form No. 15. Section 46(3) (d) and (e) of the Act stipulates that a dealer shall issue a declaration in Form No.8F when his vessels enter the State limits, and an importer shall furnish a declaration in Form No.8FA when he imported into the State any goods through coastal cargo or through air or through the Railways.**

• **Three CTOs<sup>19</sup>**

Audit cross verified the details of goods imported into the State through various Check posts, coastal cargo, air and Railways as declared vide 8F and 8FA declarations and also using delivery notes with the accounted import of the major business dealers. It was found that four dealers in three assessing offices short accounted their import than they actually imported into the State during 2013-14 and 2014-15. Short accounting of import resulted in short payment of tax of ₹ 1.14 crore including interest as detailed in **Table – 2.25**.

**Table -2.25**

(₹ in lakh)

Sl. No.	Name of the Office	Name/ TIN of the dealer	Year	Turnover of import short accounted	Corresponding Sales Turnover	Short payment of tax including interest
1	CTO, Special Circle I, Ernakulam	Bismi Appliances/ 32071397242	2013-14	162.00	186.00	33.50
			2014-15	118.00	135.00	21.97
		Pai International Electronics Limited/ 32070253072	2014-15	170.00	196.00	31.80
2	CTO, Special Circle I, Kozhikode	Kannankandy Sales Corporation/ 32110250332	2014-15	63.00	72.00	11.73

<sup>18</sup> Circular 20/2015.

<sup>19</sup> Special Circle I, Ernakulam, Special Circle I, Kozhikode and Special Circle, Perumbavoor.

Sl. No.	Name of the Office	Name/ TIN of the dealer	Year	Turnover of import short accounted	Corresponding Sales Turnover	Short payment of tax including interest
3	CTO, Special Circle, Perumbavoor	Pittappillil Agencies/ 32151364222	2013-14	71.00	82.00	14.80
<b>Total</b>						<b>113.80</b>

Though the details were available with the assessment records submitted the assessing officers did not utilise these details for creating additional demand.

The cases were pointed out by Audit to the Department between January 2016 and April 2016 and referred to Government in August 2016. In the exit meeting (August 2016) Government stated that the cases would be examined individually. Further reply has not been received (November 2016).

**2.8.5 Government issued a notification<sup>20</sup> in January 2006 including a list of goods which are taxable at 12.5 per cent. The rate was enhanced to 13.5 per cent w.e.f 01 April 2012 and 14.5 per cent w.e.f 01 April 2013. Margarine is an item taxable at the rate of 14.5 per cent vide entry 64(8) of above notification.**

- **CTO, Special Circle I, Ernakulam**

M/s 3F Industries Limited, Kochi, a dealer in edible oil, margarine etc., while filing annual return for 2013-14 misclassified the sales turnover of margarine as that of edible oil and self assessed to tax at one per cent. The assessing authority while completing the assessment, estimated the turnover of margarine as ₹ 32.84 crore. Audit analysed the details available in the Check post module of K VATIS and the opening and closing stock details of the assessee and found that the cost of margarine sold during 2013-14 worked out to ₹ 37.44 crore. Though all the data is available in the Department the assessing authority failed in detecting the escape of turnover of ₹ 4.60 crore from assessment. This resulted in short levy of tax and interest of ₹ 69.55 lakh.

The case was pointed out by Audit to the Department in May 2015 and referred to Government in September 2015. Government stated (January 2016) that assessment under Section 25(A) had been completed (September 2015) creating an additional demand of ₹ 84.99 lakh.

<sup>20</sup> SRO 82/2006

**2.8.6. Under Entry 67 of list of 12.5 per cent taxable goods notified<sup>21</sup> under KVAT Act 2003, sale of bodies built on chassis of motor vehicles attracts tax at 12.5 per cent upto 2011-12 and at 13.5 per cent during 2012-13 and at 14.5 per cent during 2013-14.**

- **CTO, III Circle, Thrissur**

M/s PSN Motors, Thrissur an assessee doing the business of body building on the chassis of motor vehicles, received income towards labour charges of ₹ 1.02 crore, ₹ 1.02 crore, ₹ 1.08 crore and ₹ 89.66 lakh respectively during the years 2010-11 to 2013-14. The Hon'ble Supreme Court of India held<sup>22</sup> that construction of motor bodies on chassis supplied, is a contract for sale of goods and not a contract for work and labour. Further the Court also held that labour charges received would also form part of the sales turnover and assessable to tax. Audit found that the assessee had not included the above income in the annual return for assessment of tax. This resulted in short payment of tax, cess and interest of ₹63.68 lakh.

This case was pointed out by Audit to the Department between April 2012 and March 2016 and referred to Government in May 2016. Government stated (November 2016) that assessment had been completed (June 2016) creating additional demand of ₹ 74.93 lakh and revenue recovery certificate had been issued to realise the amount. Further reply has not been received (November 2016).

## **2.9 Short payment of tax due to availing of excess input tax credit**

**Section 11(m) of KVAT Act, 2003, read with Rule 58(10)(i) of KVAT Rules, 2005, stipulates that no input tax credit shall be allowed for the purchases of goods where tax invoice in Form No.8 is not available with the dealer or there is evidence that the same has not been issued by the selling dealer.**

- **CTO, II Circle, Ernakulam**

M/s Sreeragh General Finance Limited, Kochi a dealer in motor vehicles and computer products availed input tax credit of ₹ 1.55 crore during 2013-14 on the purchases of goods for ₹ 10.70 crore. Audit found from the purchase details uploaded by the assessee in KVATIS that the suppliers had not issued any invoices in favour of the assessee but were issued to end customers. Availing of input tax credit without proper invoice was not in order. The incorrect availing of input tax credit had resulted in the short payment of tax and interest of ₹ 1.80 crore.

The case was pointed out by Audit to the Department in September 2015 and referred to Government in May 2016. Government stated (November 2016) that

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<sup>21</sup> SRO 82/2006.

<sup>22</sup> MC Kenzies Ltd. Vs The State of Maharashtra 16 STC 518 (SC).



assessment had been completed (July 2016) creating additional demand of ₹ 1.99 crore. Revenue Recovery Certificate had been issued for realising the demand.

## **2.10 Short payment of tax due to application of incorrect rate of tax**

**2.10.1. Bakery products including biscuits sold under brand name, registered under the Trade Marks Act, 1999 are liable to be taxed at 13.5 per cent and 14.5 per cent during 2012-13 and 2013-14 respectively, under SI No. 11 of list of goods notified<sup>23</sup> under KVAT Act, 2003.**

- **CTO, Kundara**

M/s :Dev Snacks~, Kundara a manufacturer of bakery products self assessed tax on the sales turnover of bakery products of ₹ 3.43 crore during 2012-13 at five per cent and ₹ 16.11 lakh at 2.5 per cent being sales to Canteen Stores Department (CSD). During 2013-14 they assessed tax on the sales turnover of ₹ 6.05 crore at five per cent and ₹ 36.12 lakh at 2.5 per cent being sales to CSD. Audit found that the assessee was a registered trade mark holder with brand name :Dev Snacks~, for the period upto 8 December 2013. As such the turnover had to be assessed at 13.5 per cent/14.5 per cent upto that date. Application of incorrect rate of tax resulted in short payment of tax and interest of ₹ 83.27 lakh.

When the case was pointed out by Audit to the Department in December 2015, and referred to Government in May 2016, Government stated (November 2016) that assessment for 2012-13 and 2013-14 had been completed (between August and September 2016) demanding tax and interest of ₹ 68.98 lakh.

**2.10.2. As per Section 25(1) of KVAT Act, 2003 where for any reason the whole or any part of turnover of business of a dealer has escaped assessment to tax in any year or has been assessed at a rate lower than the rate at which it is assessable, or where any input tax credit or special rebate has been wrongly availed of the assessing authority may, at any time within five years from the last date of the year to which the return relates, proceed to determine, to the best of its judgement, the turnover which has escaped assessment to tax or has been assessed at a rate lower than the rate at which it is assessable or input tax credit or special rebate that has been wrongly availed of and assess the tax payable on such turnover or disallow the input tax credit or special rebate wrongly availed of. Bakery shortening was not included in any of the schedules of KVAT Act, 2003. Hence Bakery shortenings are liable to be taxed at 14.5 per cent vide entry 103 of SRO 82/2006.**

<sup>23</sup> SRO No. 82/2006 dt: 21.1.2006.

- **CTO, Special Circle II, Ernakulam**

M/s KOG-KTV Food Products (India) Pvt. Ltd, Ernakulam, a dealer in edible oil and bakery shortening, conceded in their annual return for 2009-10 to 2013-14 turnover of edible oil for ₹ 11.80 crore, ₹ 23.76 crore, ₹ 79.15 crore, ₹ 141.90 crore and ₹ 161.35 crore respectively which were assessed to tax at four *per cent* for the period upto 2011-12 and at one *per cent* thereafter. Audit found from the sales details furnished by the assessee that their turnover for the above period included turnover of bakery shortening for ₹ 4.91 crore, ₹ 7.60 crore, ₹ 9.13 crore, ₹ 10.54 crore, ₹ 10.44 crore taxable at 12.5 *per cent* upto 2011-12, 13.5 *per cent* for 2012-13 and 14.5 *per cent* for 2013-14. Application of incorrect rate of tax on bakery shortening resulted in short payment of tax, cess and interest of ₹ 6.19 crore.

This case was pointed out by Audit to the Department in January 2016 and referred to Government in May 2016. Government stated (November 2016) that assessment for the years 2009-10 to 2013-14 had been revised (June 2016) creating total additional demand of ₹ 5.85 crore and the amount had been advised for revenue recovery.

### **2.11 Short payment of tax due to suppression of turnover from assessment**

**As per Section 25(1) of KVAT Act, 2003 where for any reason the whole or any part of turnover of business of a dealer has escaped assessment of tax in any year the assessing authority may, at any time within five years from the last date of the year to which the return relates, proceed to determine, to the best of its judgement, the turnover which has escaped assessment to tax and assess the tax payable on such turnover.**

- **CTO, Special Circle I, Ernakulam**

M/s Kerala State Co-operative Consumer Federation Ltd., Kochi, assessed tax on the sales turnover of VAT goods and IMFL for ₹ 582.40 crore, ₹1,026.96 crore and ₹ 1,099.74 crore respectively during 2009-10 to 2011-12. Audit found from the P&L account of the assessee that during the period their sales turnover was ₹ 889.80 crore, ₹ 1,057.34 crore and ₹ 1,194.54 crore respectively. This resulted in suppression of sales turnover of ₹ 307.40 crore, ₹ 30.38 crore and ₹ 94.80 crore for the years 2009-10, 2010-11 and 2011-12 respectively. Consequent short payment of turnover tax on IMFL amounts to ₹ 12.46 crore and short payment of tax, cess and interest on VAT goods amounts to ₹ 9.58 crore.

Such defects in self assessments are left unnoticed by the assessing authority since cent *per cent* scrutiny of returns are not prescribed/done by the assessing authority.

This case was pointed out by Audit to the Department in October 2013 and referred to Government in May 2016. Government stated (November 2016) that

assessment for 2010-11 and 2011-12 had been revised considering other defects also and created additional demand of ₹ 9.75 crore and ₹ 10.73 crore respectively. The assessee remitted ₹1.95 crore for 2010-11 and ₹ 3.16 crore for 2011-12.

- **CTO, Special Circle I, Kozhikode**

M/s KVN Impex (P) Limited, Kozhikode a dealer in chemicals, packing materials etc., conceded purchase turnover of ₹ 322.41 crore and sales turnover of ₹ 163.35 crore in their annual return for 2013-14. Audit found from the analysis of stock, purchase, sales and stock transfer that the assessee suppressed the sales turnover to the tune of ₹ 27.06 crore. This resulted in short payment of tax and interest of ₹1.56 crore.

This case was pointed out by Audit to the Department in August 2015 and referred to Government in May 2016. Government stated (November 2016) that assessment had been completed (January 2016) creating additional demand of ₹ 1.48 crore and the assessee paid ₹ 44.44 lakh.

## **2.12 Short payment of tax due to excess credit availed on sales return**

- **CTO, IV Circle, Ernakulam**

**Under Rule 10(1)(b) of the KVAT Rules 2005, all amounts allowed to purchasers in respect of goods returned by them to the dealer shall be deducted from the turnover only if goods are returned within a period of 90 days from the date of delivery of goods by the seller provided that the accounts show the date on which the goods were returned, the date on which the amount for which the refund was made or credit was allowed and the deduction is claimed during the year in which sale was effected. Under Section 41 of KVAT Act read with Rule 59, in such situation dealer effecting sale shall issue to the purchaser a credit note in Form 9 and a credit note claim shall be supported by debit note and vice versa. Under Rule 22(3) filing of statement regarding purchase return and/or sales returns along with monthly return is mandatory.**

M/s Toshiba India Private Limited, Ravipuram a dealer in electronic goods availed ₹ 44.54 lakh, ₹ 8.93 lakh and ₹ 39.81 lakh as tax credit of sales return of ₹3.60 crore, ₹ 1.66 crore and ₹ 6.06 crore effected during the years 2011-12 to 2013-14 respectively. Audit found that the assessee had not produced any document to prove the claim. Availing of tax credit without mandatory documents resulted in short payment of tax, cess and interest of ₹ 1.12 crore.

This case was pointed out by Audit to the Department in July 2013 and March 2016 and referred to Government in May 2016. Government stated (November 2016) that assessment had been completed (between June 2014 and July 2016) creating additional demand of ₹ 4.50 crore. The assessee remitted ₹ 90.09 lakh and ₹ 14.74 lakh for the years 2011-12 and 2012-13 as per the stay condition. For

the year 2013-14 revenue recovery certificate had been issued for realising the amount.

### **2.13 Short assessment of tax due to irregular reversal of OPT**

**As per Explanation III(ii) below Section 2 (lii) of the KVAT Act, 2003 the dealer is entitled to deduct from his turnover the discount shown separately in the tax invoice. Further, proviso to Rule 59 stipulates that every credit note issued should have a corresponding debit note issued by the purchaser.**

- **CTO Special Circle I, Ernakulam**

Audit found that during 2014-15 M/s LG Electronics had reversed his output tax of ₹ 44.92 lakh by issuing credit notes for the discount allowed to six dealers. However, the ITC availed by the six dealers were not reversed and hence had not issued the corresponding debit notes. The reversal of OPT on discount allowed resulted in short levy of tax and interest of ₹ 50 lakh.

Though it was clear from the credit notes submitted that the discounts were allowed subsequently, the assessing officers did not disallow the exemption as provided in the Act. Audit observed that the Department did not carry out a thorough review of all the assesseees who could have resorted to this kind of evasion of tax.

The case was pointed out by Audit to the Department between January 2016 and April 2016 and referred to Government in August 2016. In the exit meeting Government assured (August 2016) to examine the case and stated that instructions had been issued to the assessing officer to furnish action taken report. Further reply has not been received (November 2016).

### **2.14. Demo vehicles not subjected to tax**

**As per Section 6 of KVAT Act, 2003 every registered dealer is liable to pay tax on the sales of the goods and under Section 30(1) he may collect tax from the person to whom he sells the goods. As per Rule 12(1) of CST (R&T) Rules 1957, goods purchased inter-State using C Form are to be used only for resale or for use in manufacture. Under Section 2(e) of the Kerala Motor Vehicles Taxation Act, 1976 ‘purchase value means the value of the vehicles as shown in the purchase invoice and includes Value Added Tax, cess, Excise/ Customs duty chargeable on the vehicle, provided the discount or rebate given by the dealer to the registered owner shall not be deducted from the bill amount’.**

- Two CTOs<sup>24</sup>

As part of the business activity, all motor vehicle dealers, especially dealers in passenger cars are using demo vehicles, which are registered under the Regional Transport Offices (RTO) of the State. It was observed that three dealers registered their demo vehicles with the RTO submitting the inter-State purchase invoice for which only CST at reduced rate has been paid during 2013-14 and 2014-15. Goods on which only CST at reduced rate was paid can only be used for resale. However, these vehicles were plying in the State though no VAT has been paid. Hence the transfer of goods from stock to capital should be treated as sale within the State. Short levy of tax and interest in this regard worked out to ₹ 1.74 crore as detailed in **Table – 2.26**.

Table – 2.26

(₹ in crore)

Sl. No.	Name of the office	Name of the assessee/TIN	Year	Total value of Demo cars	Tax due	Total tax due including interest
1.	CTO, Special Circle III, Ernakulam	M/s Kerala Cars Private Limited, Kochi 32070465595	2014-15	0.50	0.07	0.09
2.		M/s Platino Classic Motors	2014-15	1.01	0.15	0.17
3.		India (P) Ltd 32070454749	2013-14	0.39	0.06	0.07
4.	CTO, Special Circle, Thiruvananthapuram	T.V. Sundaram Iyengar & Sons Ltd.	2013-14	2.62	0.38	0.47
5.		32010188782	2014-15	5.78	0.84	0.94
<b>Total</b>						<b>1.74</b>

Since the owner of the vehicle registered with MVD is the end customer in a VAT chain, it is important to ensure that tax was imposed on it. However the assessing officers did not comply with the provisions of the Act.

In the exit meeting (August 2016) Government stated that the dealers are circumventing the Rules and the issue would be taken up seriously.

<sup>24</sup> Special Circle III Ernakulam and Special Circle, Thiruvananthapuram

## **Sales Tax**

### **2.15 Short payment of tax due to escape of turnover from assessment**

Section 7 of KGST Act, 1963, as amended from July 2006, stipulates that any bar attached hotel not being a star hotel, heritage hotel or club may, at its option pay tax on the turnover of foreign liquor calculated at one hundred and forty *per cent* of the purchase value of such liquor or at one hundred and fifteen *per cent* of the highest turnover tax payable by it as conceded in the return or accounts or the turnover tax paid for any of the previous consecutive three years, whichever is higher.

- **CTO, Special Circle, Mattancherry**

The turnover tax assessment of M/s Swagath Tourist Home, Angamaly a bar attached two star hotel situated in municipal area, for the year 2009-10 was fixed at ₹ 38.81 lakh as 115 *per cent* of the turnover tax of ₹ 33.75 lakh fixed for 2008-09. The turnover tax for 2010-11, 2011-12 and 2012-13 were fixed at ₹ 44.63 lakh, ₹ 49.90 lakh and ₹ 55.99 lakh respectively based on the turnover tax for 2009-10. Audit found from the trading and profit and loss account of the assessee that the turnover tax payable for 2008-09 was ₹ 35.85 lakh being 10 *per cent* of turnover of IMFL<sup>25</sup> amounting to ₹ 3.58 crore. The non adoption of highest turnover tax payable resulted in short fixation of turnover tax for 2009-10 to 2012-13 and consequent short levy of tax, cess and interest of ₹ 16.04 lakh.

This case was pointed out by Audit to the Department in November 2014 and referred to Government in May 2016. Government stated (July 2016) that assessment of the dealer had been completed (March 2016) creating total additional demand of ₹ 15.73 lakh and the tax dues had been advised for revenue recovery proceedings. Further report has not been received (November 2016).

- **CTO, Special Circle, Mattancherry**

M/s Manjooran Bar and Restaurant, Aluva had opted to pay compounded tax for 2011-12 and 2012-13. While finalizing the turnover tax assessments for 2011-12 (January 2014) and 2012-13 (June 2014), the assessing authority fixed the turnover based on 140 *per cent* of the cost of IMFL sold amounting to ₹ 4.46 crore and ₹ 5.65 crore respectively, instead of 140 *per cent* of the purchase value of liquor amounting to ₹ 4.73 crore and ₹ 5.78 crore respectively. This resulted in the short levy of turnover tax, cess and interest of ₹ 4.98 lakh.

This case was pointed out by Audit to the Department in December 2014 and referred to Government in May 2016. Government stated (July 2016) that assessment had been completed (June 2016) creating additional demand of ₹ 4.40 lakh.

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<sup>25</sup> Indian Made Foreign Liquor.

In the meeting (July 2016) Government accepted the points raised by Audit and assured to initiate Departmental action against delinquent officers and also stated that instructions had been given to assessing officers to identify similar cases and initiate action to avoid recurrence of such cases. Further reply was awaited (November 2016).

## **Luxury Tax**

### **2.16 Non-levy of luxury tax from house boats**

#### **CTO (WC&LT), Alappuzha**

**Under Section 4 C of Kerala Tax on Luxuries (KTL) Act, 1976, every proprietor of a house boat rented for accommodation for residence or leisurely cruising shall get his house boat registered and renewed annually by paying prescribed fee to the authority. Any application for registration or renewal shall be made to such authority, in such manner within such period, along with registration fees of ₹ 1,000 or a renewal fee of ₹ 500 as the case may be, per boat *per annum*. Further under Section 4(2)(b) of the Act, luxury tax shall be levied and collected from house boats for charges of accommodation for residence and other amenities and services provided, excluding food and liquor, at the rate of 15 *per cent*. As per Section 5A(1) of the Act, proprietor of a house boat may apply to the assessing authority for permission to compound the tax at prescribed rates.**

In CTO (WC&LT), Alappuzha proprietors of some house boats had failed to get the boats registered under the Act, and also not submitted any return/Accounts. Audit cross verified the registration details in Commercial Taxes Department with the database available with Kerala State Pollution Control Board and found that 289 house boats operating in Alappuzha district had not taken registration under the Act. Short levy of registration/renewal fee and luxury tax at compounded rate and interest from these house boats worked out to ₹ 4.13 crore for the period from 2009-10 to 2013-14.

The case was pointed out by Audit to the Department in January 2016 and referred to Government in May 2016. Government stated (November 2016) that out of the 289 house boats, 103 house boats had been registered and action had been proposed to assess the house boats which had not registered under KTL Act, 1976. Notices had been issued to 49 house boats.

The reply was silent about imposing luxury tax for these house boats.

## **2.17 Short levy of luxury tax due to escape of turnover from assessment**

**CTO, (WC&LT), Kollam**

**As per Section 4(1) (i) of KTL Act, 1976 luxury tax shall be levied and collected in respect of any luxury provided in a hotel. As per Section 2(ee) of the Act luxury means a commodity or service that ministers comfort or pleasure. As such audio visual charges, laundry charges etc., are exigible to luxury tax.**

M/s. Quilon Hotels and Resorts Pvt. Ltd., Beach Road, Kollam had received income from audio visual charges, laundry charges, health club etc., during 2009-10 to 2011-12 in addition to room rent. However, the assessee had not included the above income in their annual return. While finalising the assessment for respective years, the assessing authority also failed to include these receipts in taxable turnover. This resulted in short levy of luxury tax with interest of ₹ 3.93 lakh.

The case was pointed out to the Department in April 2015 and referred to Government in May 2016. Government stated (June 2016) that assessment had been revised (October 2015) creating total additional demand of ₹ 5.90 lakh and the entire amount had been advised for revenue recovery. Further reply has not been received (November 2016).