CHAPTER II

VALUE ADDED TAX AND ENTRY TAX ETC.

2.1 Tax Administration

Value Added Tax, Entry Tax, Central Sales Tax, Professional Tax, Entertainment Tax, Luxury Tax Acts and Rules framed thereunder are administered at the Government level by the Additional Chief Secretary, Finance Department, Government of Odisha. The Commissioner of Commercial Taxes (CCT) is the head of the Commercial Tax wing of Finance Department. He is assisted by Additional CCTs in 3 zones, Joint CCTs (JCCTs) in 12 ranges, Deputy CCTs (DCCTs) / Assistant CCTs (ACCTs) / Commercial Tax Officers (CTOs) in 45 circles and CTOs in 14 assessment units. They administer the relevant tax laws and rules under Odisha Value Added Tax (OVAT) Act, 2004, Odisha Entry Tax (OET) Act, 1999, Central Sales Tax (CST) Act, 1956 and Professional Tax Act, 2000. Besides, there were six enforcement ranges headed by Special Commissioners of Commercial Taxes (Enforcement) and 15 investigation units for checking tax evasion and interstate transactions.

2.2 Internal Audit

The Internal Audit Wing (IAW) of the Department has been defunct since 2002-03. The Department had not taken any steps to revive IAW despite this was being pointed out in Audit Reports (Revenue Sector) during the previous years. The Department stated (August 2017) that steps have been taken to revive the IAW.

2.3 Results of Audit

Test check of records of 49 units relating to Odisha Value Added Tax (OVAT), Central Sales Tax (CST), Odisha Entry Tax (OET), Odisha Entertainment Tax and Profession Tax assessments and other records was carried out in 2016-17. It showed underassessment of tax and other irregularities involving ₹ 199.86 crore in 327 cases which fall under the categories as given in **Table 2.1** below:

Table - 2.1

Category of Audit observations on revenue receipts

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
Sales Tax/OVAT(including CST)			
1	Under-assessment of tax	77	42.64
2	Acceptance of defective statutory forms	2	0.07
3	Evasion of tax due to suppression of sales/purchase	4	0.28
4	Irregular/incorrect/excess allowance of input tax credit	35	91.39
5	Other Irregularities	138	57.28
	Total	**256**	**191.66**
Entry Tax			
1	Under-assessment of tax	31	0.37
2	Evasion of tax due to suppression of sales/purchase	2	0.23

Sl. No.	Categories	No. of cases	Amount
3	Irregular/incorrect/excess allowance of input tax credit	6	3.71
4	Other Irregularities	31	3.89
	Total	**70**	**8.20**
Profession Tax			
1	Other Irregularities	1	0
	Total	**1**	**0**
	Grand Total	**327**	**199.86**

During 2016-17, the Department accepted underassessment and other deficiencies of ₹ 96.14 crore in 76 cases which were pointed out in earlier years. An amount of ₹ 34.08 crore pointed out in earlier years was also realised in 28 cases.

2.4 Audit observations

Audit test checked the assessment records relating to the Odisha Value Added Tax (OVAT), Central Sales Tax (CST) and Odisha Entry Tax (OET) Acts in commercial tax Range/Circle offices of the State. It observed several cases of non-observance of the provisions of the aforesaid Acts and Rules made thereunder. Audit observed many cases of non-levy and short levy of tax and penalty as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on test checks carried out by Audit. Audit points out similar omissions by Assessing Authorities (AAs) every year. However, many of the irregularities persisted and remained undetected till next audit was conducted. This indicated that the internal control system in the Department was weak and ineffective. The Government needs to improve the internal control system including strengthening of internal audit to avoid occurrence of such cases.

Odisha Value Added Tax

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

The OVAT Act, 2004 and the Odisha Value Added Tax Rules, 2005 made there under provide for:

- *completion of the audit assessments by the AAs on the basis of Audit Visit Reports (AVRs);*
- *levy of tax on the correctly assessed Taxable Turnover of outputs after giving due credit / adjustment of admissible Input Tax Credit;*
- *imposition of penalty at prescribed rates in addition to the tax assessed at the audit assessment stage by the AAs;*
- *demand and collection of tax / interest / penalty as per the prescribed procedures; and*
- *imposition of penalty for non-submission of Certified Annual Audited Accounts (CAAA) within the prescribed date.*

The AAs, while finalising the audit assessments of the dealers did not observe some of the aforesaid provisions as mentioned in the following paragraphs:

2.5.1 Short levy of tax and penalty due to allowance of excess input tax credit

Excess allowance of ITC resulted in short levy of tax and penalty of ₹ 41.34 lakh.

As per provisions contained in Section 20 of the OVAT Act, 2004, input tax credit (ITC) shall be allowed to a dealer for purchases made within the State from a registered dealer holding a valid certificate of registration in respect of goods intended for purpose of sale or resale by him in the State. Also, as per Section 42(5) of the Act, if any tax is additionally assessed during audit assessment of a dealer, penalty at twice the amount of tax so assessed, shall be payable.

Audit scrutinised the assessment records of a dealer[1] engaged in construction and sale of flats, in Bhubaneswar-III Circle (November 2016). The dealer was assessed under the OVAT Act for the tax periods from 1 April 2011 to 31 March 2013. The dealer received a gross receipt of ₹ 10.80 crore from three construction projects of flats during the period under assessment. As agreed, flats were to be handed over to the land owners as land owner's share in lieu of the cost of land. The AA deducted ₹ 3.70 crore towards cost of land (worked out on an average of 34.31 *per cent)* from the gross payment received by the dealer. The AA allowed deduction of ITC of ₹ 40.16 lakh on material utilised in the construction of all the flats from the output tax. This deduction however, included the ITC earned on purchase of materials utilised for the flats handed over to land owners. Allowance of ITC of ₹ 13.78 lakh (34.31 *per cent* of ₹ 40.16 lakh) was not in order as the flats handed over to the land owners involving ₹ 3.70 crore was not a sale and also tax was not assessed on this amount. This resulted in short levy of tax of ₹ 13.78 lakh. Besides, penalty of ₹ 27.56 lakh was also leviable.

Government accepted the Audit observation (October 2017) stated that the AA had re-opened the case under Section 43 of the OVAT Act and raised demand of ₹ 40.96 lakh.

2.5.2 Short levy of tax and penalty due to excess deduction of labour and service charges

As per the provisions of Section 11(2)(c) of the OVAT Act, 2004, taxable turnover (TTO) of sales in relation to works contract shall mean that part of the gross turnover during any period which remains after deducting therefrom the charges towards labour, services and other like charges subject to such conditions and restrictions as may be prescribed. As per Rule 6(e) of the OVAT Rules, 2005, if the dealer fails to produce evidence in support of such expenses or such expenses are not ascertainable from the terms and conditions of the contract or the books of accounts maintained for the purpose, a lump sum amount on account of labour, service and like charges in lieu of such expenses shall be determined at the rate specified in the Appendix.

[1] M/s. Dattatreya Constructions (P) Ltd., TIN-21845500261.

In case of road works, labour and service charges deductible is at the rate of 50 *per cent* of the total value of work upto 18 July, 2012 and at the rate of 30 *per cent* thereafter.

The admissible deduction towards labour, service and like charges for building of substation and 11 KV line, 33 KV line and LT distribution lines was 15 and 17 *per cent* respectively, of the total value of work.

Further, as per Section 42(5) of the Act, if any tax is assessed additionally during audit assessment, penalty equal to twice the amount of tax so assessed shall be levied.

Audit noticed deduction from TTO at a higher rate on account of labour, services and other like charges in the following cases:

A) Inappropriate allowance of deductions on TTO resulted in short levy of tax and penalty of ₹ 36.22 lakh.

A) Audit scrutinised the assessment records of a dealer[2] (March 2017) engaged in execution of work contracts in Jharsuguda Circle. The dealer was assessed under the OVAT Act for the tax periods from 1 April 2009 to 31 March 2014. During the period under assessment, the dealer received ₹ 23.50 crore as gross value, from various road works executed. The AA allowed deduction of ₹ 12.22 crore towards labour and service charges. The deduction allowed was at a rate of 52 *per cent* for the entire period under assessment and the output tax of ₹ 55.91 lakh was calculated. The dealer had not maintained any accounts of labour and service charges as discussed in assessment order. Thus, deduction at the rate of 50 *per cent* of the gross receipts of ₹ 9.61 crore was admissible upto 31 March 2012, and at the rate of 30 *per cent,* thereafter, on remaining amount of ₹ 13.89 crore. The dealer was liable to pay tax of ₹ 67.98 lakh taking into account the proportionate purchase of materials under different tax groups. This resulted in short levy of tax of ₹ 12.07 lakh. Besides, penalty of ₹ 24.15 lakh at twice the amount of tax was leviable.

In reply, Government stated (October 2017) that the AA had ascertained the deductible amount towards labour service charges basing on the terms and conditions of the contracts and supporting books of accounts.

The reply of the Department is not tenable since the AA, in the original assessment, had categorically mentioned that the dealer had not maintained the books of accounts to determine the labour and service charges. Therefore, he had allowed the above charges as prescribed in the Appendix-I of the Act. Hence, the reply stating that the AA relied on the terms and conditions of the contracts during the assessment is not correct.

B) Inappropriate allowance of deductions on TTO resulted in short levy of tax and penalty of ₹ 31.98 lakh.

B) In Mayurbhanj Circle, Audit scrutinised (March 2017) the assessment records of a dealer[3] engaged in execution of work contracts. The dealer was assessed ex-parte under the OVAT Act for the tax periods from 1 April 2009 to 31 March 2014. During the said period, the dealer executed various road works and received ₹ 14.72 crore towards gross value of work done. The AA allowed deduction of ₹ 7.44 crore towards labour and service charges at the rate of 50.54 *per cent* for the entire period. Accordingly the AA calculated output tax as ₹ 41.51 lakh. As per the assessment order, the dealer did not maintain any accounts of labour and

[2] M/s. BMP and Sons Constructions Private Limited, TIN-21712007120.
[3] M/s. R S Construction Private Limited, TIN-21644000363.

service charges. However, deduction of ₹ 5.57 crore at the rate of 50 *per cent* of the gross receipt upto 18 July 2012 and at the rate of 30 *per cent* thereafter was admissible. Therefore, the dealer was liable to pay tax of ₹ 52.17 lakh taking into account the proportionate purchase of materials under different tax groups. This resulted in short levy of tax of ₹ 10.66 lakh. Besides, penalty of ₹ 21.32 lakh at twice the amount of tax was leviable.

Accepting the Audit observation Government stated (October 2017) that the AA completed the re-assessment raising tax and penalty of ₹ 1.09 crore.

C) Allowance of excess deduction towards labour and service charges resulted in short levy of tax and penalty ₹ 62.70 lakh.

C) Audit scrutinised (January 2017) the records of a dealer[4] engaged in execution of work contracts in Cuttack-I-West Circle. The dealer was assessed under the OVAT Act for the period from November 2010 to March 2014. The AA determined the gross turnover (GTO) of the dealer at ₹ 9.15 crore including VAT of ₹ 71.85 lakh. However, the dealer did not maintain any accounts of labour and service charges as discussed by the AA. Taking into account the highest allowable deduction, at the rate of 17 *per cent* of the GTO, a sum of ₹ 1.55 crore was admissible. The AA allowed deduction of ₹ 3.10 crore and determined the taxable turnover at ₹ 6.05 crore. Thus, there was excess deduction of ₹ 1.55 crore towards labour and service charges. This resulted in short levy of tax of ₹ 20.90 lakh, taking into account the ratio of goods used in the works contract as determined by AA. Besides, the dealer was also liable to pay a penalty of ₹ 41.80 lakh at twice the amount of tax so short levied.

In reply Government stated (October 2017) that the AA re-opened the case and determined the TTO at ₹ 7.59 crore and worked out balance tax payable at ₹ 0.70 lakh. However, the AA worked out the tax in lower tax group in re-assessment compared to the tax group adopted in the original assessment without assigning the reasons.

2.5.3 Short levy of tax and penalty due to under assessment of Taxable Turnover

Short determination of taxable turnover resulted in assessment of less tax and penalty of ₹ 4.56 crore.

The term 'turnover of sales' as defined under Section 2(60) of the OVAT Act, 2004 means the aggregate of the amounts of sale price received or receivable by a dealer in respect of sale or supply of goods effected or made during a given period. As per Section 42(5) of the Act, if any tax is additionally assessed during audit assessment, penalty at twice the tax so assessed shall be imposable.

Audit scrutinised (November 2016), the assessment records of a dealer[5] engaged in construction of residential flats in Bhubaneswar-II Circle. The dealer was assessed under the OVAT Act for the tax periods from 1 April 2009 to 31 March 2014. The AA deducted ₹ 20.45 crore towards cost of land and ₹ 12.46 crore towards labour and services charges from gross receipts of ₹ 61.98 crore. The AA determined the net receipts of ₹ 29.07 crore and assessed tax of ₹ 2.16 crore. However, the dealer had disclosed ₹ 88.58 crore as "revenue from operations" in the Profit and Loss Account

[4] M/s. MRS Infrastructure & Engineering Pvt. Ltd., TIN-21943200239.
[5] M/s. Metro Builders (Orissa) Pvt. Ltd., TIN-21931106645.

(P&L A/c) for the said years. The tax audit team of the Department had also recommended for inclusion of ₹ 26.60[6] crore in the gross receipts at the time of assessment. Thus, there was short recognition of receipts of ₹ 26.60 crore. This was confirmed in the Audit Visit Report. Further, income received or receivable is required to be taken into P&L A/c. However, the AA stated that ₹ 26.60 crore was advance received from intended customers before start of the projects. Audit noted that such income either received or receivable also forms part of the sale turnover under the OVAT Act and is therefore taxable. As such, the receipt of ₹ 26.60 crore escaped assessment. This led to under assessment of taxable turnover by ₹ 18.62 crore after deducting ₹ 7.98 crore (30 *per cent* of ₹ 26.60 crore). The tax payable on such under assessed turnover of ₹ 18.62 crore works out to ₹ 1.52 crore, taking into account the percentage of different tax group of materials purchased as adopted by AA. Besides, penalty of ₹ 3.04 crore at twice the tax short levied was also leviable.

Government accepted the Audit observation (September 2017) and stated that the AA had completed re-assessment raising extra demand of ₹ 2.78 crore towards tax and penalty.

2.5.4 Non-levy of penalty for non-submission of Certified Annual Audited Accounts

Non levy of penalty of ₹ 3.81 crore on dealers for non-submission of Certified Annual Audited Accounts.

As per Section 65(1) of the OVAT Act, 2004 read with the Notification[7] of Commissioner of Commercial Tax (CCT), Odisha in December 2012 and clarification issued in August 2013, if in respect of any particular year the gross turnover (GTO) of a dealer exceeds ₹ 60 lakh, then such dealer shall get his accounts audited by an Accountant within a period of six months from the date of expiry of that year and furnish a true copy of the audited accounts accompanied with the statement of closing stock duly certified by such Accountant by the end of the month following the expiry of the said period of six months to the AA concerned.

Section 65(2) of the Act as amended in OVAT (Amendment) Act, 2015 provides that if a dealer liable to get his accounts audited fails to furnish the true copy of Certified Annual Audited Accounts (CAAA) accompanied with a statement showing the closing stock in trade held at the end of the year in the prescribed manner, AA shall after giving such dealer a reasonable opportunity of being heard, impose on him a penalty of rupees one hundred per day of default subject to a maximum limit of rupees ten thousand. The CCT in an earlier circular[8] of September 2009 had also prescribed for maintenance of a register to monitor timely receipt of such accounts at the Circle level and to use it as a reference at the time of tax audit and assessment.

Audit scrutinised (April 2016 to March 2017) the records relating to receipt of annual audited accounts in 23 circles[9] . Audit noticed that 8,096 dealers

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6 ₹ 88.58 (Revenue from operations as P&L A/c) - ₹ 61.98 (Gross receipts taken in assessment).

7 Notification No III (III) 14//2012-21114/CT dated 12 December 2012.

8 Circular No. 18755 dated 22 September 2009.

9 Angul, Balangir, Barbil, Bargarh, Bhadrak, Bhanjanagar, Bhubaneswar-II, Bhubaneswar-III, Bhubaneswar-IV, Nayagarh, Cuttack I (East), Dhenkanal, Ganjam-II, Jharsuguda, Kantabanji, Keonjhar, Koraput, Mayurbhanj, Puri, Rayagada, Rourkela-I, Sambalpur-I and Sambalpur-II.

had GTO exceeding ₹ 60 lakh for the year 2014-15. Out of these 8,096 dealers, as many as 3,812 dealers (47 *per cent*) had not submitted the copies of CAAA for that year. The delay in non-submission of CAAA ranged from 152 to 485 days. Non-submission of CAAA warranted levy of penalty of ₹ 3.81 crore after giving reasonable opportunities of being heard to those dealers. The AAs did not initiate action against these dealers for non-submission of CAAA including levy of penalty.

Department accepted the Audit observation and stated in the meeting that non-submission of CAAA is not a fraud. If the dealer does not submit his return by October of the next year, a fine/penalty is to be levied at the rate of ₹ 100 per day. Final reply was yet to be received.

Entry Tax

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

The Odisha Entry Tax (OET) Act, 1999 and Rules made there under read with Government notifications issued from time to time provide for levy of tax on the entry of scheduled goods into a local area[10] for consumption, use or sale therein at the prescribed rates and imposition of penalty at prescribed rates for the tax additionally levied in audit assessment.

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

2.6.1 Short levy of Entry Tax due to application of lower rate of tax on Bitumen

Levy of ET at a lower rate on Bitumen resulted in short levy of tax and penalty of ₹ 10.08 lakh.

As per Section 3(1) of the OET Act, 1999, scheduled goods that have entered into a local area for consumption, use or sale therein are taxable at the rates prescribed in the Schedule appended to the Act. Further, as per the provisions of Section 9C (5) of the Act, if any additional tax is assessed during audit assessment, penalty at twice the amount of tax so assessed shall be imposed on the dealer. Bitumen, a scheduled good is placed under Part-II of the Schedule and accordingly taxable at the rate of two *per cent*.

Audit scrutinised (March 2017) the records of a dealer[11] under the OET Act for the tax periods from 1 April 2009 to 31 March 2014 in Rourkela-I Circle. Audit noticed that AA determined the gross turnover at ₹ 8.22 crore after deducting ₹ 3.00 crore towards cost of goods purchased inside the State. The AA calculated the taxable turnover (TTO) at ₹ 5.22 crore, wherein the purchase value of bitumen was ₹ 3.36 crore and machinery ₹ 1.86 crore. The AA levied tax of ₹ 7.07 lakh, at the rate of two *per cent* on machinery and one *per cent* on Bitumen instead of two *per cent* for both the goods. As the tax leviable works out to ₹ 10.43 lakh, there was short levy of tax of ₹ 3.36 lakh. Besides, penalty of ₹ 6.72 lakh was also leviable.

Government accepted the Audit observation and stated (September 2017) that the AA had re-assessed the dealer raising demand of ₹ 3.48 lakh including penalty as the dealer had already paid tax amounting to ₹ 7.68 lakh before issue of notice for re-assessment.

[10] Local area means the area within the limits of any municipality, Grama Panchayat, other local authority by whatever name called, constituted or continued in any law for the time being in force and includes the area within an industrial township constituted under Section 4 of the Odisha Municipal Act, 1950.

[11] M/s. BMP & Sons Constructions Private Limited, TIN-21712007120.

2.6.2 Short levy of Entry Tax due to application of lower rate of tax

Application of lower rate of ET on Outboard motors and Engines resulted in short levy of tax and penalty of ET of ₹ 17.37 lakh.

As per Section 3(1) of the OET Act, 1999, read with Rule 3 of the OET Rules, 1999, tax shall be levied on scheduled goods on their entry into a local area for consumption, use or sale therein at such rates as mentioned in the Schedule to the Act. Further, as per Section 9C(5) of the Act *ibid*, if any tax is additionally assessed during audit assessment of a dealer, an amount equal to twice the amount of tax so assessed shall be imposed by way of penalty.

As per entry-9 of Part-II of the Schedule to the OET Act, "Machinery and equipment including earthmovers, excavators, bulldozers and road rollers and spare parts and components used in manufacture, mining, generation of electricity or for execution of works contract or for any other purpose" are taxable at the rate of two *per cent*. Outboard motors and marine engines are classified under "Machinery, mechanical appliances and parts thereof" under chapter 84 of Central Excise Tariff Act and therefore taxable at the rate of two *per cent*.

Audit scrutinised (December 2016) the assessment records of a dealer[12] engaged in trading of Outboard Motors and Marine Engines in Puri Circle. The dealer effected interstate purchase of scheduled goods worth ₹ 5.79 crore between 1 April 2012 and 31 March 2014. The AA levied entry tax of ₹ 5.79 lakh at the rate of one *per cent* instead of levying tax of ₹ 11.58 lakh at the applicable rate of two *per cent.* Thus, application of lower rate of tax resulted in short levy of tax of ₹ 5.79 lakh at the differential rate of one *per cent*. Besides, penalty of ₹ 11.58 lakh at twice the amount of tax so short levied was also leviable.

In reply, Government stated that the AA had re-opened the case and completed the re-assessment raising tax and penalty amounting to ₹ 17.37 lakh.

2.6.3 Short levy of Entry Tax due to application of lower rate of tax on Ferro Alloys

Application of lower rate of tax on medium Carbon Ferro Manganese resulted in short levy of ET, penalty and interest of ₹ 10.41 lakh.

As per Section 26 of the OET Act, every manufacturer of scheduled goods who is registered under the OVAT Act shall, in respect of sale of its finished products, collect by way of tax an amount equal to the tax payable on the value of such finished products under Section 3 of the Act by the buying dealer and shall pay the tax so collected into Government treasury. Further, as per the provisions of Section 9C(5) of the Act, if any additional tax is assessed during audit assessment, penalty at twice the amount of tax so assessed shall be imposed on the dealer.

As per Section 7(10) of the Act, each and every return filed by a dealer in relation to any tax period shall be subject to scrutiny to verify the claim of deduction, correctness of calculation of tax, etc. and if any mistake is found, then the AA shall serve a notice to the dealer directing him to pay

[12] M/s. Shareen Traders, TIN-2130280095.

tax along with interest. Medium Carbon Ferro Manganese being a Ferro alloy is taxable at the rate of two *per cent* under Part-II of the Schedule to the Act.

Audit scrutinised the assessment records of a dealer[13] engaged in manufacturing and sale of Medium Carbon Ferro Manganese in Mayurbhanj Circle. The AA assessed the dealer under the OET Act, for the tax periods from 1 April 2012 to 31 March 2014. The dealer sold medium carbon Ferro manganese valued at ₹ 2.28 crore on which tax of ₹ 4.56 lakh was payable at the rate of two *per cent*. However, the dealer paid tax of ₹ 2.28 lakh thereon at the rate of one *per cent* and AA accepted the same. This resulted in short levy of tax of ₹ 2.28 lakh. Besides, penalty of ₹ 4.56 lakh was also leviable.

Further, Audit scrutinised e-returns filed by the instant dealer under the OET Act for the subsequent tax periods from 1 April 2014 to 31 March 2016. Audit noticed that the dealer was required to pay ₹ 6.02 lakh on the sale turnover of Ferro Manganese of ₹ 3.01 crore. However the dealer paid tax of ₹ 3.01 lakh at the rate of one *per cent.* This resulted in short payment of tax of ₹ 3.01 lakh. Besides, interest of ₹ 0.56 lakh was leviable as per the provisions of Section 7(6) of the Act.

Thus, application of lower rate of tax during the assessment and short payment of tax resulted in short levy/realisation of tax, penalty and interest of ₹ 10.41 lakh.

In reply, Government stated (October 2017) that the AA completed the re-assessment raising demand of ₹ 6.83 lakh for the tax period from 01 April 2012 to 31 March 2014 and of ₹ 3.44 lakh for the tax period from 01 April 2014 to 31 March 2016.

2.6.4 Non levy of Entry Tax on scheduled goods

Non-assessment of minor mineral for ET resulted in non-levy of tax and penalty of ₹ 2.59 crore.

Under Section 3(1) of the OET Act 1999, entry of scheduled goods into a local area for consumption, use or sale therein is taxable at prescribed rates of the Schedule appended to the Act. Under Section 3 of Mines and Minerals (Development & Regulation) Act, 1957, minor minerals include ordinary clay, sand, morrum and chips, etc. Minor minerals are liable to tax at the rate of one *per cent* under Part-I of the Schedule to OET Act. Again, as envisaged under Section 26 of the OET Act, every manufacturer of scheduled goods who is registered under the OVAT Act, shall collect by way of tax an amount equal to the tax payable on the value of such finished products. Further, under Section 9C(5) of the Act, without prejudice to any penalty or interest that may have been levied under any provision of the Act, an amount equal to twice the amount of tax assessed in audit assessment shall be imposed by way of penalty.

Audit scrutinised (September 2016 to January 2017) the assessment records of eight dealers in five Circles[14]. These dealers purchased stone products, sand, morrum, chips etc. valued at ₹ 70.06 crore from unregistered dealers

[13] M/s. Jagadamba Iron and Steel Pvt. Ltd.
[14] Balasore, CTC-I-Central, Jajpur, Kantabhanji and Sambalpur-I.

of Odisha. The dealers utilised the materials in various works contracts. However, they did not pay Entry Tax of ₹ 70.06 lakh.

Further, two dealers engaged in production and sale of stone chips, have not paid the Entry Tax of ₹ 16.23 lakh on their sale turnover of ₹ 16.23 crore.

The AAs did not assess the dealers under the OET Act nor was the assessment completed treating these minor minerals as non-scheduled goods. This resulted in non-levy of entry tax of ₹ 86.29 lakh (₹ 70.06 lakh + ₹ 16.23 lakh). Besides, penalty of ₹ 1.73 crore was also leviable.

Department accepted the Audit observation and stated in the meeting that assessment proceedings have already been completed in three cases and the rest of cases were in the process of re-assessment. On completion of re-assessment final reply would be furnished.

2.6.5 Loss of Entry Tax due to irregular allowance of concessional rate of tax in re-assessment

Loss of revenue due to allowance of lower rate of ET.

As per the provisions of Section 3 of the OET Act, 1999 read with Rule 3(4) of the OET Rules, 1999, scheduled goods brought by a manufacturer on first entry into a local area for use as raw materials shall be subject to entry tax at a concessional rate of 50 *per cent* of rate specified in the schedule. The concessional rate of tax is applicable, if the tax payable is collected by the dealer or manufacturer of such goods and shown separately in the cash memo or credit memo or bill issued to such manufacturer and a declaration in Form E-15 from the buying manufacturer is furnished.

Mohua flower is taxable at the rate of one *per cent* as per entry-41 of Part-I of the Schedule to OET Act. Further, as per Section 10(2) of the Act, if during reassessment of a dealer, the AA is satisfied that the under assessment of tax is without any reasonable cause, he may direct the dealer to pay, in addition to the tax assessed during the reassessment, a sum equal to twice the amount of tax additionally assessed.

Also, as per Section 10 (1) OET Act, 1999 the re-assessment can be done within a period of seven years from the end of the year to which the tax period relates.

Audit scrutinised (July 2016) assessment records of dealer[15] engaged in manufacture and sale of country liquor and outstill liquor in Balangir Range. The Assessing Authority assessed the dealer under the OET Act for the tax periods from 1 March 2007 to 31 July 2010. The AA levied tax of ₹ 10.79 lakh at the rate of one *per cent* on the TTO of ₹ 10.79 crore. AA reassessed (January 2016) the case based on audit observation (November 2011) regarding suppression of the taxable turnover. The TTO of the dealer was determined at ₹ 16.44 crore taking into account the rate of *mohua* flower fixed by the Regulated Market Committee. The AA levied tax at the concessional rate of 0.5 *per cent* despite the fact that tax at the rate of one *per cent* was levied during the original assessment. Further, the dealer had purchased *mohua* flower from unregistered dealers. He had also not

[15] M/s.LaxminarayanManmohanlal Ltd., TIN-21491802086.

furnished the declaration in Form E-15. Therefore, he was not entitled to claim concessional rate of tax at 0.5 *per cent*. At present there is also no scope for reassessment of the case in view of limitations of seven years. Thus, allowance of concessional rate of tax by the AA during the reassessment resulted in loss of revenue towards tax of ₹ 8.22 lakh. Penalty of ₹ 16.44 lakh was also leviable.

In reply, Government stated (October 2017) that the AA allowed concessional rate of tax at 0.5 *per cent* in reassessment (2016). The AA did not find it legally correct to disallow concessional rate of tax as the same were used as raw materials for production of out still liquor. The reply is not tenable as the AA had not allowed concessional rate of tax in the original assessment (2011). The *mohua* flower was not purchased from registered dealers. Tax was not collected by the dealer and required declaration in form E 15 was not furnished. It was also not brought from outside the State. Therefore, concessional rate of tax provided under Rule 3(4) (a) or (b) or (c) was not applicable.