

CHAPTER-II : SALES TAX

2.1 Results of Audit

Test check of records of Sales Tax offices, conducted during the year 2004-05 revealed turnover escaping assessment, non levy/short levy of tax due to incorrect grant of exemption, incorrect acceptance of declaration forms, non levy /short levy of interest, application of incorrect rate of tax etc. amounting to Rs.81.72 crore in 187 cases, which fall under the following categories:

(Rupees in crore)

Sl. No.	Category	Number of cases	Amount
1.	Non levy/short levy of tax	42	10.46
2.	Incorrect grant of exemption	23	6.98
3.	Turnover escaping assessment	28	3.61
4.	Application of incorrect rate of tax	15	2.17
5.	Non levy/short levy of interest	10	1.32
6.	Incorrect acceptance of declaration forms	9	0.86
7.	Under assessment of tax	4	0.12
8.	Other irregularities.	55	9.48
9.	Review on Working of the Recovery Offices of the Sales Tax Department	1	46.72
	Total	187	81.72

During 2004-05 the Department accepted short levy of interest, incorrect grant of exemption etc. amounting to Rs.2.38 crore in 43 cases pointed out during 2004-05 and in earlier years and recovered Rs.0.11 crore in 10 cases.

A few illustrative cases and a review on **Working of the Recovery Offices of the Sales Tax Department** involving Rs.64.64 crore are given in the following paragraphs:

2.2 Review on Working of the Recovery Offices of the Sales Tax Department

Highlights:

- Non filing/delay in filing certificate and non service of demand notice and copy of certificate resulted in non recovery of Rs.33.72 crore
(Paragraph 2.2.8)
- Dues amounting to Rs.5.39 crore remained unrealised due to non issue of inter State certificate
(Paragraph 2.2.9)
- Dues amounting to Rs.5.90 crore remained unrealised due to lack of coordination
(Paragraph 2.2.11)
- Rs.1.44 crore remained un recovered due to non execution of warrants of arrest
(Paragraph 2.2.13)
- Loss of revenue of Rs.0.17 crore due to application of incorrect provision of Act for reassessment.
(Paragraph 2.2.15)

Introduction

2.2.1 The Sales Tax Department is primarily responsible for levy and collection of taxes pertaining to 10 different taxation Acts³.

While preassessment collection is made on the basis of self assessment as per the monthly/quarterly and annual return furnished by the assessee, post assessment collection, if any, is made on the basis of demand notice served on the assessee by the Department and the amount is payable within the date specified in the notice. In case of default in making payment according to the notice of demand the whole amount outstanding shall become due

³ (1) The Assam General Sales Tax Act, 1993 (2) The Central Sales Tax Act, 1956 (3) The Assam Taxation (on Specified Lands) Act, 1990 (4) The Assam Tax on Luxuries (Hotels and Lodging Houses) Act, 1989 (5) The Assam Taxation (on Luxuries) Act, 1997 (6) The Assam Professions, Trades, Callings and Employments Taxation Act, 1947 (7) The Assam Amusement and Betting Tax Act, 1939 (8) The Assam Electricity Duty Act, 1964 (9) The Assam Agricultural Income Tax Act, 1939 and (10) The Assam Entry Tax Act, 2001.

immediately and recoverable as arrears of land revenue under the Assam Land and Revenue Regulation, 1886, (ALR Regulation) and the Bengal Public Demands Recovery Act, 1913, (BPDR Act) (as adopted by the Government of Assam). For this purpose, State Government has empowered officers of the Taxation Department to act as Recovery/Certificate Officers (RO/CO). The ROs and the departmental appellate authorities are required to submit report to the Commissioner of Taxes on collection of arrears, arrears pending collection due to stay orders issued by different courts, arrears under recovery proceedings and disposal of appeal cases through monthly/ quarterly/annual returns.

Organisational set up

2.2.2 The Finance (Taxation) Department is responsible for the sales tax administration in the State. The Commissioner of Taxes (CT) is the head of the Department. There are 37 unit offices (including two check posts and one unit for assessment under Agricultural Income Tax Act, 1939 and 16 recovery offices headed by Senior Superintendents/Superintendents of Taxes. The officers of the unit offices are responsible for assessments and realisation of taxes under various taxation Acts. The officers of the Recovery Offices who act as Tax ROs are responsible for execution of certificates of recovery of arrears of taxes. There are five Joint Commissioner of Taxes (JCT) dealing with the revision cases and 10 Zonal Deputy Commissioners of Taxes. Of these, five are holding additional charge of appellate offices [DCT(A)] to deal with the appeal cases.

Scope of audit

2.2.3 A review on the working of the ROs in Sales Tax Department for the period from 1999-2000 to 2003-2004 was conducted from October to December 2004 covering 13⁴ out of 37 assessing unit offices, six⁵ out of 16 ROs, four⁶ out of five appellate offices and the office of the Commissioner of Taxes.

Audit findings, as a result of review on working of the RO of the Sales Tax Department were reported to the Government/Department in May 2005. They were requested to attend the meeting of Audit Review Committee for Comprehensive Appraisal (ARCCA) so that viewpoint of Government/Department would be taken into account before finalising the review. The meeting of ARCCA was held on 20 June 2005 and attended by the Commissioner and Secretary to the Government of Assam, Finance, (Taxation) Department and the Commissioner of Taxes, Assam. The views

⁴ Guwahati Unit-A, Unit-B, Unit-C, Unit-D, Tinsukia, Dibrugarh, Jorhat, Tezpur, Nagaon, AIT (Guwahati), Digboi, Doom Dooma and Naharkatia

⁵ Guwahati, Tinsukia, Jorhat, Nagaon, Tezpur and Dibrugarh

⁶ DCT Guwahati, DCT Tinsukia, DCT Jorhat and DCT Nagaon.

expressed by the members have been taken into consideration during finalisation of the review.

Audit objectives

2.2.4 Review was conducted with a view to:

- examine effectiveness of the ROs in filing arrear certificates referred by the assessing officers (AOs) for recovery of dues;
- examine steps taken to realise dues by enforcing deterrent action as provided under the law;
- examine existence of coordination amongst different units of the Department;
- ascertain the effectiveness of the internal control system and also to analyse causes of delay in collection.

Position of Arrear

2.2.5 Taxation laws of the state provide that if any assessee defaults in making payment of dues to the Government according to the notice of demand, then the whole amount outstanding shall be recoverable as arrears of land revenue and for this purpose the AO is required to issue arrear certificate to the RO. On receipt of arrear certificate, if RO is satisfied that the demand is recoverable, he may sign a certificate to be filed in his office and serve upon the defaulter. However, there is no prescribed date within which the demand notices are to be served.

The position of total tax in arrears⁷ and arrears under recovery proceedings as made available by the C T is as under:

(Rupees in crore)

Year	Total revenue collection under Sales Tax Department	Total arrear under Sales Tax Department	Percentage of arrear to total revenue (3 to 2)	Arrears under recovery proceedings	Percentage of arrears under the recovery proceedings to the total tax in arrears Col. (5) to Col (3)
(1)	(2)	(3)	(4)	(5)	(6)
1999-2000	949.70	230.80	24	136.11	59
2000-2001	1,138.24	259.60	23	136.79	53
2001-2002	1,270.33	649.97	51	494.37	76
2002-2003	1,636.88	614.67	38	352.40	57
2003-2004	1,740.75	736.88	42	402.17	55

⁷ Includes sales tax, agricultural income tax, professional tax, tax on specified land, duties on electricity, other taxes and duties on commodities and services.

Age wise analysis of total tax in arrear furnished by the CT is given below:

(Rupees in crore)

1 to 3 yrs.	3 to 5 yrs	More than 5 yrs
234.12	323.92	178.84

The various stages at which the arrears are pending are as under:

(Rupees in crore)

Proceedings stayed by courts	Under Assessing Authority	Under recovery proceedings	Awaiting write off
230.03	120.82	386.03 ⁸	NIL

The total arrears in recovery proceedings out of total tax in arrears at the close of each year ranged between 53 per cent to 76 per cent. There was a sharp increase in arrears under recovery proceedings. The abnormal increase was due to issue of arrear certificate against Indian Oil Corporation Ltd. of Rs. 343.62 crore. Though the position of arrears under recovery proceedings is reviewed by higher authorities through monthly/quarterly/annual returns, the overall arrears increased steadily from Rs. 136.11 crore in 1999-2000 to Rs.402.17 crore at the end of 2003-2004 registering an increase of 295 per cent.

Trend of Recovery

2.2.6 No norms for disposal of certificate cases or targets for recovery of arrears were fixed by the Government/Department.

As per information furnished by the CT, the collections made by the 16 ROs⁹ during the period from 1999-2000 to 2003-2004 are shown below:

(Rupees in crore)

Year	1999-2000		2000-2001		2001-2002		2002-2003		2003-2004	
	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
Opening balance as on 1 April	14,908	121.28	15,765	136.10	16,402	136.78	17,482	494.36	18,119	352.39
Addition during the year	1,685	20.33	1,351	11.26	1,756	363.50	1,399	16.96	2,113	74.30
Total	16,593	141.61	17,116	147.36	18,158	500.28	18,881	511.32	20,232	426.69
Proceedings closed for other reasons ¹⁰	181	0.92	223	7.85	115	2.56	409	14.62	1,430	21.42
Recoveries made during the year (includes recoveries of earlier years)	647 ¹¹ + 3,581 ¹²	4.59	491 ¹¹ + 3498 ¹²	2.73	561 ¹¹ + 3747 ¹²	3.36	353 ¹¹ + 3526 ¹²	144.31 ¹³	404 ¹¹ + 3696 ¹²	3.10
Balance at the end of the year	15,765	136.10	16,402	136.78	17,482	494.36	18,119	352.39	18,398	402.17
Percentage of collections		3.24		1.85		0.67		28.22		0.73

⁸ Reasons for discrepancy of Rs.16.14 crore of arrears under recovery proceedings shown in Col. (5) of the table and stage wise analysis though called for from the department were not made available to audit.

⁹ Barpeta, Dhubri, Dibrugarh, Goalpara, Guwahati, Jorhat, Karimganj, Kokrajhar, Mangaldoi, Nagaon, Nalbari, North Lakhimpur, Sibsagar, Silchar, Tezpur and Tinsukia.

¹⁰ Assessments set aside by the Appellate Authorities, arrear certificates withdrawn by the assessing authorities etc.

¹¹ Fully recovered

¹² Partially recovered

¹³ Includes Rs.141.18 crore recovered from Indian Oil Corporation Limited (IOC Ltd.)

It would be seen that there was a decreasing trend of recovery and the percentage of collection varied from 3.24 *per cent* in 1999-2000 to 0.73 *per cent* in 2003-2004 except in 2002-03 when the recovery made was 28.22 *per cent* (Rs.144.31 crore), which included Rs.141.18 crore from Indian Oil Corporation Ltd.

Age wise pendency of recovery against recovery certificates furnished by the CT is given below:

(Rupees in crore)

Up to 5 years		5- 10 years		Above 10 years		Total	
No. of Cases	Amount	No. of Cases	Amount	No. of Cases	Amount	No. of Cases	Amount
7,825	100.63	4,942	113.44	5,631	188.10	18,398	402.17

Audit findings

Correctness of Arrears

2.2.7 Internal audit in Sales Tax Department was introduced in June 1988 and the audit parties were required to cover audit of all offices annually. As per guidelines issued by Commissioner of Taxes, Assam in September 2003, the zonal DCTs are required to inspect ROs under their jurisdictions once in every two months and submit the inspection report.

The decision of the appellate authority on a petition filed by a defaulter is communicated to the concerned assessing unit where the appellant is registered. The AO is required to convey the decision of the appellate authority to the concerned RO which issues the arrear certificate for realisation of dues.

According to the information furnished by CT, total arrears pending collection with the ROs as on 31 March 2004 stood at Rs. 402.17 crore. Of this, Rs.230.03 crore was shown as pending due to stay orders issued by different courts.

- Cross verification by audit of records of ROs Guwahati & Nagaon vis a vis records of appellate offices Guwahati & Nagaon revealed that assessments in respect of 44 cases involving Rs.2.22 crore were set aside by the concerned appellate authorities between May 1994 and March 2004. Neither the unit offices conveyed the decision of the cases to the ROs nor the ROs pursued the matter with the concerned assessing authorities. The zonal DCTs also failed to detect the irregularities during inspection, leading to reflection of incorrect position of arrears to that extent.

- Cross verification by audit of records of the RO, Guwahati, vis à vis assessment records of the Superintendent of Taxes, Guwahati Unit C, revealed that proceedings of a certificate case involving Rs.25.76 lakh including penalty of Rs.15.64 lakh filed in 1993-94 against a defaulter was stayed in March 1994 by the Gauhati High Court till finalisation of a writ petition filed by the defaulter. The petition was disposed of on 16 January 2003 without interfering in the tax assessed and the question of penalty was remanded to the assessing authority with a direction for a fresh decision. The CT communicated the verdict of the High Court to the assessing authority on 4 March 2003. But the assessing authority did not communicate this decision to the RO till the date of audit. Thus due to non communication of the verdict of the court to the RO, revenue amounting to Rs.10.12 lakh (tax amount) remained unrealised besides incorrect depiction of arrears to the extent of Rs.15.64 lakh.

- Every RO is required to maintain a Bakijai (Recovery) Index Register for recording details of arrear certificates received from the different assessing units, amount involved, name of Act under which amount is due, year, Bakijai case number, date of filing, action taken for realisation, recoveries made from time to time, date of issue of stay order by different courts and developments at all stages as regards disposal etc. to keep watch of the true position of arrears and progress of each case filed.

Scrutiny of records maintained in the six¹⁴ ROs revealed that the above details in respect of most of the cases were not posted in the index registers to reflect the current position of the arrears. As such, progress of recovery, pendency position of realisation proceedings and position regarding disposal of the cases etc. could not be ascertained. In absence of such entries, the purpose for which the registers was to be maintained was frustrated.

The above deficiency suggests that the Department did not have the correct figures of the total arrears pending collection under recovery proceedings. As a result, whether the arrear position shown was understated or overstated could not be ascertained in audit.

Non filing/delay in filing certificate and non serving of demand notice and copy of certificate

2.2.8 Under the provisions of the BPDR Act, if the RO on receipt of requisition for certificate from the AO is satisfied that the demand is recoverable and that recovery by suit is not barred by law, he may sign a certificate in prescribed form, stating that the demand is due and shall cause the certificate to be filed in his office. However, there is no provision in the Act stipulating the period within which the certificate is to be filed.

¹⁴ Dibrugarh, Guwahati, Nagaon, Jorhat, Tezpur and Tinsukia.

- In RO, Tinsukia, two requisitions for certificates involving Rs.68.23 lakh pertaining to the period from 1994-95 to 2000-01 received from the AOs between September 2002 and October 2003 were not filed by the RO till the date of audit. Consequently Government revenue of Rs.68.23 lakh remained unrealised for a period ranging from 13 months to 26 months.
- In ROs Guwahati, Nagaon and Tinsukia, 58 requisitions for certificates pertaining to the period from 1993-94 to 2001-02 involving Rs.33.04 crore were received from the assessing authorities between November 1998 and April 2004. Of these, 34 cases involving Rs.32.38 crore were filed late ranging from three months to 24 months and in 24 cases involving Rs.0.66 crore though filed late ranging from 10 to 40 months, the demand notices were not served on the defaulters till the date of audit. As a result, dues amounting to Rs.33.04 crore remained unrealised.

Non issue of Revenue Recovery Certificates

2.2.9 Under the Revenue Recovery Act, 1890, in a case where a defaulter has shifted his business/residence out of the State, the revenue recovery certificate (RRC) for effecting recovery of Government dues is required to be sent to the District Collector of the concerned State for arranging recovery. The CT also reiterated this vide circular issued on 22 April 1950.

Test check of records of RO, Guwahati, revealed that recovery proceedings in 16 cases amounting to Rs.5.39 crore instituted between February 2000 and April 2004 remained outstanding. Despite availability of information in the arrear certificates furnished by the AOs or information obtained by the RO from other sources as to the place of businesses/addresses of the defaulters in other States, no action was taken by the RO to issue RRCs to the Collectors of the concerned States. Thus, non adherence to provisions and failure of internal control to watch the position of issuance of RRCs where called for resulted in non realisation of revenue amounting to Rs.5.39 crore for a period ranging from eight months to 58 months.

Non settlement of certificate cases due to inadequate action

2.2.10 Under the provisions of the ALR Regulation, read with the BPDR Act, any sum recoverable as arrears of land revenue can be recovered after expiry of 30 days from the date of service of notice of demand by executing any one or more of the following coercive methods i.e. by serving writ of demand, attachment and sale of movable/immovable property. or by arrest and detention in civil prison.

Test check of records of six¹⁵ ROs, revealed that 632 certificate cases involving Rs.183.82 crore, filed between April 1999 and March 2004, remained unrealised. Of these, in 258 cases involving Rs.9.44 crore only demand notices were issued in 119 cases involving Rs.8.65 crore only two or more reminders were issued for payment of dues, in four cases involving Rs.0.34 crore attachment orders were issued but not executed and in 22 cases involving Rs.0.50 crore only show cause notices for arrest were issued. In remaining cases no follow up action was taken by ROs to realise the amount of Rs.164.89 crore till the date of audit.

Though the defaulters failed to pay the Government dues, no coercive measures like attachment and sale of movable and immovable properties, arrest and detention, etc., were taken by the ROs to realise the dues. As a result, Government revenue amounting to Rs.183.82 crore remained unrealised even after a lapse of nine months to 57 months.

Lack of co-ordination

2.2.11 When any dues are recoverable as arrears of land revenue under the provisions of the Acts, the AO is required to send requisition for recovery certificate in the prescribed form to the RO giving full particulars of the defaulter such as complete address, business location, present whereabouts and particulars of assets etc. for realisation of arrear dues.

- Test check of records of five¹⁶ ROs revealed that 104 arrear certificates involving Rs.3.07 crore were issued by the AOs between July 1999 and September 2003 without furnishing complete information such as, whereabouts of the Certificate Debtors (CD), source of realisation of dues and particulars of moveable/immovable properties etc. of the CD. Though references were made by the ROs to the AOs for furnishing particulars of the debtors, no information was furnished by them. Consequently, the certificates were returned to the AOs by the ROs between January 2000 and May 2004.

- In another 45 arrear certificates involving Rs.2.24 crore relating to ROs Dibrugarh, Guwahati and Tinsukia, issued by the AOs between June 1999 and February 2004, the ROs made references to the AOs to supply the whereabouts of the defaulters and assets etc. The requisite information was not made available by the AOs to enable the ROs to realise the dues. As a result, revenue remained unrealised for a period ranging from 10 months to 66 months.

- In ROs Dibrugarh and Guwahati, recovery proceedings of 19 certificate cases involving Rs.59 lakh instituted between 1992-93 and

¹⁵ Dibrugarh, Guwahati, Jorhat, Nagaon, Tezpur and Tinsukia.

¹⁶ Dibrugarh, Guwahati, Jorhat, Nagaon and Tinsukia.

2003-2004 were kept pending on the ground of stay orders issued by the departmental appellate authorities. However, cross verification by audit of records of the CDs with the records of the appellate authorities, Guwahati and Tinsukia revealed that the appeal petitions were either not admitted or dismissed between July 2000 and October 2003. Though the cases were dismissed/not admitted, neither the AOs communicated the decisions of the appellate authorities nor was any action taken by the ROs to ascertain the position of the cases from either the AOs or from the appellate authorities. As a result, revenue amounting to Rs.59 lakh remained unrealised for a period ranging from 11 months to 53 months.

Locking up of revenue due to delay in disposal of appeal cases

2.2.12 As per particulars furnished by the CT, total arrears under recovery proceedings pending collection due to stay orders issued by different courts during the period from 1999-2000 to 2003-2004 are tabulated below:

(Rupees in crore)			
Year	Total arrear under recovery proceedings	Recovery proceedings stayed by courts	Percentage of stay cases Col (3) to Col (2)
(1)	(2)	(3)	(4)
1999-2000	136.11	22.64	17
2000-2001	136.97	22.30	16
2001-2002	494.37	74.47	15
2002-2003	352.40	80.07	23
2003-2004	402.17	83.51	21

From the above it would be seen that percentage of pendency due to stay orders issued by different courts varied between 15 to 23 *per cent* of the total arrear under recovery proceedings during the years from 1999-2000 to 2003-2004.

- The taxation laws of the State do not prescribe any time limit for admitting/disposing appeal cases by appellate authorities. However, CT issued instructions in January 1997 to the appellate/revisonal authorities to make sincere efforts to dispose of the appeal/revision petitions within three months from the date of filing. Every DCT (Appeal) is required to submit fortnightly statement to CT showing the disposal and pendency of appeal cases.

Test check of records of six ROS¹⁷ revealed that recovery proceedings of 86 arrear certificates involving Rs.14.27 crore filed between April 1999 and March 2004 could not be initiated due to stay orders issued by the DCT(Appeal) on various dates falling between October 1999 and August 2004 and the cases are yet to be disposed off inspite of CT's instructions issued in January 1997.

¹⁷ Dibrugarh, Guwahati, Jorhat, Nagaon, Tezpur and Tinsukia.

Similarly test check of case records and register of appeal cases maintained in RO Guwahati revealed that recovery proceeding in 20 certificate cases involving Rs.42.05 crore instituted between 1999-2000 and 2003-04 were kept in abeyance due to stay orders issued by the revisional authorities on different dates falling between April 2000 and April 2003 but the cases were yet to be disposed off.

Thus, due to non adherence to executive instructions, revenue amounting to Rs.56.32 crore remained unrealised for a period ranging from four months to 68 months.

Non recovery of arrear dues due to non execution of warrant of arrest and lack of follow up action

2.2.13 Under the BPDR Act, in a case where a certificate debtor is in default in making payment of Government dues he may be arrested and detained in civil prison in execution of the certificate by an order by the RO issued to the police station specifying the amount due from the debtor and the date within which the warrant is to be executed. The police authority is required to return the warrant, if not executed, indicating the reasons for non-execution.

In 56 certificate cases involving Rs.1.44 crore in respect of ROs, Guwahati, Nagaon and Tezpur, instituted between July 1999 and January 2004 the ROs sent warrant to different police stations between March 2000 and November 2004 to arrest the CDs specifying the dates within which warrants were to be executed. However, no report on action taken, if any, was sent by the police authorities to the ROs. The matter was also not pursued with the concerned authorities till the date of audit. Thus, due to lack of follow up action, revenue of Rs.1.44 crore remained unrealised for a period ranging from 11 months to 78 months.

Other topics of interest

2.2.14 Under the BPDR. Act, when a certificate has been filed by the RO he shall serve upon the CD a notice in the prescribed form and a copy of the certificate. The CD may, within 30 days from the date of service of the notice present to the RO a petition in the prescribed form denying his liability. The RO shall hear the petition, take evidence, if necessary, and determine the liability of the debtor and may set aside or modify the certificate accordingly.

In RO Guwahati, 10 certificate cases involving Rs.4.42 crore in respect of two defaulters were filed between October 1998 and March 2004 and demand notices were served on them. The CDs filed petitions between 26 July 2000 and 5 April 2004 to the RO denying their liability. The certificate proceedings were kept in abeyance due to stay orders issued by Gauhati High Court on the writ petitions filed by the CDs against the assessment orders passed by the AOs. However, the writ petitions were dismissed by the High Court in a

common order passed on 9 September 2003. The RO after a lapse of 11 months from the date of judgement issued show cause notices to the CDs on 12 August 2004 as to why an order for issuing of warrant of arrest should not be passed. Being aggrieved, the CDs filed writ petitions in the Gauhati High Court on the ground that without disposing of a denial petition first by passing a final order, the RO was not empowered to take recourse to action. The High Court disposed of the case on 24 August 2004 without entertaining the writ petition by way of granting interim prayer and directed the RO not to take any coercive action till passing of the final order on the denial petitions.

Thus, without finalisation of denial petitions the RO took recourse to issuance of show cause notices for arrest. Hence, Rs.4.42 crore remain unrealised for 15 months from September 2003 i.e. the date of judgment till the date of audit.

2.2.15 Section 19-A of the Assam Sales Tax Act, 1947 (repealed from 1 July 1993), provides that if the AO is satisfied that any turnover has escaped assessment during any return period, he may at any time within eight years from the end of the relevant period proceed to reassess the dealer. Section 74 (2) of the AGST Act, 1993 (effective from July 1993) empowered the AO to reopen any case of a dealer for reassessment of turnover, which escaped assessment under the repealed Act.

In RO Guwahati certificate case involving Rs.16.71 lakh against a defaulter for the period from 1 April 1990 to 30 June 1993 (reassessed under Section 19A on 28 June 1996) was filed in October 1999 on the basis of an arrear certificate issued by the AO, Guwahati, Unit-A. The defaulter filed a revision petition against the reassessment orders passed by the AO in June 1996. The revisional authority quashed the reassessments in September 1996 on the ground that the reopening of the assessments by invoking section 19-A of the AST Act which was not in existence at the time of initiation of proceedings for reassessment was legally defective. However, the AO again reopened the case and reassessed by applying the same section of the repealed Act. Being aggrieved, the CD filed petition in the Gauhati High Court. The Hon'ble High Court set aside the second reassessment orders in April 2000 with the observation that once the reassessment was quashed by the higher authority and had attained finality, the lower authority had no jurisdiction to reopen the case further. Thus, finalisation of reassessment by applying provision of repealed Act instead of invoking empowered provision under the AGST Act resulted in loss of revenue of Rs.16.71 lakh.

Internal Control

2.2.16 Internal controls are intended to provide reasonable assurance of proper enforcement of laws, rules and departmental instructions. Internal control also helps in creation of reliable financial management information system for prompt and efficient services for adequate safeguards against evasion of Government revenue. As per guidelines of September 2003 issued by the CT, Assam, the Additional Commissioner of Taxes, JCT and the zonal

DCTs are required to inspect ROs under their respective jurisdictions either once in every four months or once in every two months respectively; and submit detailed reports regularly in details to the CT within one month of such inspection.

Test check of the records of the ROs covered in the review revealed that the Department did not exercise proper control over working of ROs. Neither was any inspection carried out (except RO Guwahati) nor any internal audit conducted on the ROs during the period covered by audit.

Thus, in the absence of any control mechanism the efficacy of the functioning of the ROs so far as realisation of arrears is concerned was never put to scrutiny.

Conclusion

2.2.17 Despite existence of enforceable provisions in the BPDR Act, and ALRR and Rules made thereunder to recover dues of Government, the Department failed to take effective and meaningful action to recover arrears of Government revenue. Improper maintenance of basic records, failure to invoke penal and coercive provisions in tax recovery proceedings where called for, lack of co-ordination, failure to adhere to time frame for disposal of appeal cases were the main reasons which hampered the Department's effort in effective and efficient collection of arrears of Government revenue.

Recommendation

2.2.18 Government may consider taking following steps to enhance the effectiveness of machinery for recovery of arrears:

- A time schedule for action at each level, starting from filing of certificates by the RO, may be framed for strict compliance so as to avoid delay of action in any stage;
- Position of arrears certificates till their final settlement may be strictly monitored through reports/returns/inspection etc. for speedy realisation as well as for depicting correct arrear position stage wise.
- Co-ordination among different units may be closely maintained to avoid any communication gap leading to non realisation/loss of Government revenue.
- Instructions may be issued to the AOs to convey the decision of different courts on the appeal petitions to the ROs without delay.
- Periodical evaluation/review of the functioning of different units associated with realisation of arrears may be done through effective internal control so as to locate the problem areas and recommend remedial action.

The matter was reported to the Department/Government in May 2005, their replies were awaited (December 2005).

2.3 Evasion of tax

Under the Central Sales Tax Act, 1956 (CST Act), read with Rules made thereunder, inter state sales of goods, other than declared goods to registered dealers are taxable at the concessional rate of four *per cent*, if such sales are supported by prescribed declaration form furnished by the purchasing dealers. Otherwise, tax is leviable at the rate of 10 *per cent* or the rate of tax applicable under the State Act, whichever is higher. In addition, interest at the prescribed rate is also leviable.

Test check of records of the Superintendent of Taxes, Guwahati Unit-A, revealed between July and September 2004 that while finalising the assessments in March 2004 for the year 1999-2000 of a dealer (IOC Ltd.) the assessing officer (AO) levied tax at the rate of four *per cent* on the turnover of Rs.36.77 crore supported by three declarations in Form 'C'. Cross verification by audit of Forms 'C' with the statement of sales furnished by selling dealer available in assessment records revealed that the dealer had actually purchased goods valued at Rs.24.59 crore. Thus, selling dealer inflated the amount of Form 'C' by Rs.12.18 crore. Failure of the AO to detect the irregularity resulted in evasion of tax of Rs.1.94 crore including interest.

The matter was reported to the Department and the Government in December 2004; their replies have not been received (December 2005).

2.4 Escapement of turnover

Under the Assam General Sales Tax Act, 1993 (AGST), read with CST Act, if any part of the turnover of a dealer in respect of any period has escaped assessment to tax, the AO may within eight years from the end of the relevant year make a reassessment of the dealer. If a dealer fails to pay the full amount of tax payable by him by the due date, he is liable to pay interest at the rate prescribed on the amount of tax due.

Test check of the assessment records of the Superintendent of Taxes, Morigaon revealed in March 2004 that while finalising assessment for the year 1997-98, the turnover of a dealer (M/s Hindustan Paper Corporation Ltd.) was determined in November 2003 at Rs.190.96 crore under the CST Act, while the dealer in his annual return disclosed turnover of Rs.208.73 crore. This resulted in escapement of turnover of Rs.17.77 crore and short levy of tax of Rs.4.26 crore including interest.

The matter was reported to the Department and the Government in May 2004; their replies have not been received (December 2005).

2.5 Loss of revenue due to non finalisation of assessments

Under the AGST Act, every registered dealer is required to submit annual return of turnover, pay the admitted tax within the prescribed date and produce books of accounts. Otherwise, the AO shall complete the assessment on best judgment basis and determine the tax payable by the dealer. The Act further

provides that no assessment shall be made after the expiry of three years from the end of the year in respect of which the assessment is made.

Test check of assessment records of the two Superintendents of Taxes revealed between February and June 2004 that assessments of three dealers were not completed within the limitation period of three years on best judgement basis and the assessments became barred by limitation. Failure of the AO to complete assessments within the period of limitation led to loss of Rs.3.10 crore including interest as shown below :

Name of unit office	Period of assessments	Nature of irregularities	Amount of Tax including interest (Rupees in lakh)
Guwahati Unit-D	1999-2000 2000-01	The dealer engaged in manufacture and sale of detergent neither filed return nor pay tax. The AO did not finalise the assessment within the period of limitation. As per records of Central Excise Department the dealer had cleared goods valued at Rs.14.75 crore involving tax effect of Rs.2.53 crore including interest.	252.77
Guwahati Unit-D	2000-01	The dealer engaged in manufacture and sale of coextruded multilayer polythene film filed monthly returns showing total turnover of Rs.2.10 crore and paid tax of Rs.2.25 lakh for the year 2000-01 but he did not file annual return. The AO did not finalise assessment within the period of limitation.	28.58
Silchar	1997-98 1998-99	The dealer engaged in the business of cement and hardware goods etc. furnished quarterly returns under CST Act disclosing total turnover of Rs.6.89 lakh and paid tax of Rs.0.26 lakh. He did not file annual return and the AO did not finalise assessment on best judgement basis during the prescribed period. Cross verification of records with a dealer of Meghalaya revealed that the dealer received cement valued at Rs.1.01 crore by utilising 12 'F' form during 1997-98 and 1998-99.	28.60
Total			309.95
			Say Rs.3.10 crore

The matter was reported to the Department and the Government in June-September 2004; their replies have not been received (December 2005).

2.6 Non levy of interest

Under the AGST Act, read with CST Act, if a dealer fails to pay the full amount of tax payable by him by the due date, he is liable to pay simple interest at the prescribed rate.

Test check of assessment records of seven¹⁸ Superintendent of Taxes revealed between June 2003 and September 2004 that in 42 assessments involving 26 dealers finalised between March 2000 and March 2004 for the period between 1995-96 and 2002-2003, tax of Rs.5.13 crore was levied but the AOs failed to levy or short levied interest amounting to Rs.1.55 crore.

After this was pointed out, the Department stated between November 2003 and September 2004 that interest of Rs.1.28 crore had been levied in 15 cases. However, report on realisation and reply in other cases has not been received (October 2005).

The cases were reported to the Government between October 2003 and December 2004; their replies have not received (December 2005).

2.7 Concealment of turnover

Under the AGST Act, read with CST Act, if a dealer has concealed or failed to disclose fully and truly the particulars of his turnover, the AO may within eight years from the date of the relevant year make a reassessment of the dealer. When a dealer conceals the particulars of his turnover, he shall pay by way of penalty, in addition to tax, additional tax and interest, a sum not exceeding one and half times the amount of tax sought to be evaded.

Test check of the assessment records of Superintendents of Taxes, Jorhat, Naharkatia and Tezpur revealed between September 2003 and August 2004 that taxable turnover in respect of three dealers engaged in manufacture and sale of aerated water and tea was determined between January 2002 and October 2003 at Rs.30.11 crore for the years 1999-2000 and 2000-2001. Cross verification by audit of assessment records of the dealers vis-à-vis value of excisable goods cleared as per records of the Central Excise Department revealed that taxable turnover of Rs.4.77 crore was suppressed by the dealers. This resulted in short levy of tax of Rs.83.50 lakh including additional tax and interest. In addition, penalty of Rs.70.50 lakh was also leviable.

After this was pointed out, the Department stated in April 2004 that in one case the dealer was reassessed and levied tax of Rs.45.58 lakh including interest. Report on realisation of tax, and levy of penalty has not been received. Reply in other cases has also not been received (December 2005).

The cases were reported to the Government between December 2003 and November 2004; their replies have not been received (December 2005).

¹⁸ Guwahati Unit-A, Unit-B, Unit-C, Jorhat, Hailakandi, Nahakatia and Tezpur.

2.8 Non deposit of tax deducted at source

Under the AGST Act and the Rules made thereunder, the amount of tax payable by a supplier/works contractor shall be deducted at source by the drawing and disbursing officer who shall deposit the same into Government account within 10 days from the expiry of each calendar month. The Act provides that in case of failure of a person to deposit the tax deducted at source, the AO may recover the same as arrears of land revenue. The Act was amended with effect from June 1999 which provides that a person after making deduction at source fails to deposit the same within the stipulated time shall on conviction be punishable in a case where the amount of tax is below Rs.1 lakh, with imprisonment not exceeding six month, and for any other case, with imprisonment for a term upto one year.

Test check of assessment records of the Superintendent of Taxes, Guwahati Unit-C, revealed between May and June 2004 that an amount of Rs.1.23 crore was deducted at source from the bills of a supplier by Assam Agro Industries Development Corporation Ltd., Guwahati during the years from 1993-94 to 2001-02, but was not deposited into Government account till date. No action was initiated to recover tax deducted at source as arrears of revenue/to initiate proceedings against the person at fault.

The matter was reported to the Department and the Government in August 2004; their replies have not been received (December 2005).

2.9 Incorrect acceptance of declaration Forms

2.9.1 Under the AGST Act, and Rules framed thereunder, a registered dealer may sell/purchase goods to/from another registered dealer free of tax or at concessional rate of tax, if such sales/purchases are supported by valid declaration in Form 'A.' Otherwise, tax is leviable at the rate of tax applicable under the Act. The Commissioner of Taxes, Assam vide circular dated 2 February 2000, declared all the old declaration Form 'A' not used before 21 February 2000 as obsolete and invalid.

- Test check of assessment records of four¹⁹ Superintendents of Taxes revealed between October 2003 and September 2004 that while finalising assessments between January 2001 and September 2003 of 11 dealers for the years between 1998-99 and 2000-2001 the AOs either exempted from levy of tax or levied tax at concessional rate on turnover of Rs.12.41 crore supported by 174 declarations in Form 'A' which were invalid as these were issued by the dealers after 21 February 2000. Allowing exemption from levy of tax/allowance of concessional rate of tax supported by

¹⁹ Guwahati Unit-A, Unit-B, Unit-D and Tezpur

invalid declaration forms resulted in short levy of tax of Rs.98.06 lakh including interest.

The cases were reported to the Department and the Government between June and December 2004; their replies have not been received (December 2005).

- Further, if a person or dealer conceals any part of his gross turnover or taxable turnover or furnishes incorrect particulars of such turnover, he shall in addition to any tax or interest payable by him, pay by way of penalty a sum not exceeding one and one-half times the amount of tax sought to be evaded.

Test check of assessment records of the Superintendent of Taxes, Guwahati Unit-D, revealed in May and June 2004 that a dealer disclosed during 2000-2001 purchases of goods from another registered dealer of the State for Rs.5.07 crore by furnishing declaration form 'A'. Cross verification by audit of the purchases with the records of the selling dealer revealed that the dealer had purchased goods valued at Rs.5.46 crore. Thus, the dealer concealed purchases for Rs.39.31 lakh. Failure of the AO to detect the irregularity resulted in short levy of tax of Rs.5.64 lakh including interest and penalty.

The matter was reported to the Department and the Government in September 2004; their replies have not been received (December 2005).

2.9.2 Under the provisions of the CST Act and Rules made thereunder, tax is leviable at the concessional rate of four *per cent* on inter State sales to Government departments/registered dealers provided such sales are supported by duly filled in Form 'D' or declaration in form 'C' from the purchasing departments/registered dealers respectively. Otherwise, tax is payable at the rate of 10 *per cent* or at the rate of tax applicable under the State Act, whichever is higher. In case of declared goods, tax is leviable twice the local rate. In addition, interest at the prescribed rate is also leviable.

Test check of assessment records of the Superintendents of Taxes, Guwahati Unit-A, Unit-C and Morigaon revealed between February and September 2004 that while finalising between October 2003 and March 2004 the assessment of six dealers for the years between 1997-98 and 2001-02, the AOs allowed concessional rate of tax on sale of goods of Rs.5.45 crore where the transactions were recorded in certificate 'D'/declaration in form 'C' after the dates certified by the purchasing departments/dealers. As such, the certificates/forms were liable to be rejected and tax was leviable at the rate of eight to 10 *per cent*. Failure of the AOs to detect the irregularity resulted in short levy of tax of Rs.51.31 lakh including interest.

The cases were reported to the Department and the Government between July 2003 and December 2004; their replies have not been received (December 2005).

2.9.3 The Commissioner of Taxes, Nagaland, Dimapur vide letter dated 20 February 2002 intimated the Commissioner of Taxes, Assam, Guwahati that a number of series of Form 'C' and Form 'F' had been declared obsolete and invalid with effect from 11 June 2001. The Commissioner of Taxes, Nagaland further clarified that the said declaration forms would neither be used nor issued after 11 June 2001.

Test check of assessment records of four²⁰ Superintendent of Taxes revealed between October 2003 and September 2004 that the AOs while finalising the assessments of 19 dealers for the years between 1999-2000 and 2002-2003 accepted 37 invalid declarations in Form 'C' and 'F' involving a turnover of Rs.4.15 crore. These were issued by dealers after 11 June 2001 and AOs allowed concessional rate of tax. Acceptance of invalid declaration forms and allowance of concessional rate thereagainst resulted in short levy of tax of Rs.45.23 lakh including interest.

The cases were reported to the Department and the Government in June - December 2004; their replies have not been received (December 2005).

2.10 Incorrect/excess grant of exemption

2.10.1 Under the Assam Industries (Sales Tax Concession) Scheme, 1995 (Scheme of 1995), certain eligible industrial units are exempted from payment of tax on the sale of their finished products from the date of commencement of commercial production. Eligibility certificates are issued to the units by the Industry Department on the recommendation of the District Level Committee of which the Deputy Commissioner of Taxes of the area is a member. As per definition under the AGST Act, manufacture means producing, making, extracting, altering etc. but does not include a works contract.

Test check of records of Superintendent of Taxes Guwahati Unit-D, and Silchar revealed between February and September 2004 that in the case of two dealers while finalising between March 1999 and December 2003 the assessments for the years between 1995-96 and 2002-03 sales tax exemption on turnover of Rs.1.96 crore was granted though there was no manufacturing activity. This resulted in short levy of tax of Rs.21.47 lakh as detailed below:

²⁰ Guwahati Unit-A, Unit-B, Unit-C and Unit-D

Sl. No.	Name of the Unit office	Assessment Year (Date of Assessment)	Nature of irregularities	Tax incorrectly exempted (Rupees in lakh)
(1)	(2)	(3)	(4)	(5)
1	Guwahati Unit-D	Between 1997-98 and 2002-03 (Between December 2000 and December 2003)	The AO allowed exemption from payment of tax on the turnover of Rs.1.42 crore for seven years. The authorisation certificate was issued on 17 December 1998 for seven years for manufacture of Auto Coated Vehicles and repairing of vehicles. The dealer executed works contract such as painting and repairing of vehicles and claimed deduction of labour charges to determine the taxable turnover. The work of painting and repairing of vehicles does not fall under the definition "manufacture", therefore, exemption from payment of tax allowed to the dealer as eligible industrial unit was incorrect.	12.50
2	Silchar	Between 1995-96 and 2000-2001 (Between March 1999 and March 2002)	The dealer engaged in selling only hides and skin was issued Eligibility and Authorisation Certificates by the Industries and Sales Tax departments respectively for seven years on 30 June 1995 for manufacture of shoes, chappals and leather garments. Tax exemption on turnover of Rs.54.39 lakh was allowed on sale of raw materials (hides and skin) even though there was no manufacturing activity involved and not covered by Eligibility Certificate.	8.97
Total				21.47

After this was pointed out the Department stated in February 2005 that proceeding for reassessment in case of dealer of Silchar was being initiated. Further replies are awaited (December 2005).

The matter was reported to the Government in June-December 2004; their replies have not been received (December 2005).

2.10.2 Under the Scheme of 1995, industrial units are exempted from payment of tax on the sale of finished products manufactured by them out of raw materials.

Test check of assessment records of the Superintendent of Taxes, Guwahati Unit-B, revealed between October and December 2003 that an industrial unit engaged in manufacture and sale of M.S. ingot was issued eligibility and authorisation certificates by the Industries Department and Sales Tax Department respectively granting exemption of sales tax for a period of seven years from 20 July 1993 to 19 July 2000. The Assessing Officer while

finalising in December 2002 the assessment for the year 1999-2000 allowed exemption on the sale of raw materials of Rs.84.42 lakh procured from outside the State under the scheme. This resulted in non levy of tax of Rs.6.22 lakh including interest of Rs.2.84 lakh (upto October 2003).

After this was pointed out in audit in December 2003, the Department stated in December 2003 that the dealer had been reassessed and demand of Rs.5.97 lakh including interest was raised. However, report on realisation was awaited.

The case was referred to the Government in June 2004; their replies have not been received (December 2005).

2.10.3 Under the Scheme of 1997, certain new industrial units shall not be required to pay tax for a period of seven years on the purchase of raw materials and on the sale of finished products manufactured by them subject to maximum of 150 *per cent* of capital investment. To avail of such exemption, the intending industrial unit shall have to obtain a certificate of authorisation from the concerned Sales Tax unit office on the basis of eligibility certificate issued by the Industries Department.

Test check of assessment records of the Superintendent of Taxes, Guwahati Unit-C and Unit-D, revealed in May and June 2004 that the Taxation Department issued authorisation certificate based on eligibility certificate issued by the Industries Department for granting exemption from payment of tax for seven years with effect from January/May 2001 subject to maximum of Rs.73.65 lakh (150 *per cent* of fixed capital investment of Rs.49.10 lakh). The AO while finalising between June and December 2003 the assessment of two firms for the years between 2000-2001 and 2002-2003 allowed exemption from payment of tax of Rs.83.61 lakh instead of Rs.73.65 lakh. This resulted in excess grant of exemption from tax of Rs.9.96 lakh.

The matter was reported to the Department and the Government in August/September 2004; their replies have not been received (December 2005).

2.10.4 Under the provision of AGST Act, a dealer is not liable to pay tax on initial or subsequent sales of goods covered under Schedule II attached to the Act, if such goods are purchased from local Industrial Units enjoying exemption under the Assam Industries (Sales Tax concession) Scheme. However, there is no provision in the Act to grant exemption from levy of tax on last point sale of goods covered under Schedules III and IV. The item cement is listed under Schedule IV and taxable at the rate of four *per cent* at the point of last sale in the State.

Test check of assessment records of the Superintendent of Taxes, Hojai revealed in December 2004 that a registered dealer purchased cement from an exempted industrial unit and sold for Rs.30.64 lakh during the years 2001-02 and 2002-03. The AO while finalising assessments between June 2003 and May 2004 exempted the turnover from levy of last point tax on the ground that the goods were purchased from exempted unit. This incorrect exemption

resulted in non levy of tax of Rs.2.03 lakh including additional tax and interest.

The matter was reported to the Department and the Government in March 2005; their replies are awaited (December 2005).

2.11 Short levy of tax

Under the CST (Registration and Turnover) Rules, 1957, a dealer may claim exemption from payment of tax on sale of goods in case of export provided that the sales are supported by certificate in Form 'H' alongwith the evidence of export of such goods. As per the AGST Act, tea is taxable at the rate of eight *per cent* at the first point sale to unregistered dealer in the State. A broker selling tea in Guwahati tea auction centre shall be liable to pay tax at the rate of two *per cent*.

Test check of assessment records of the Superintendent of Taxes, Guwahati Unit-A, revealed between July and September 2004 that the AO while finalising between March 2002 and March 2004 the assessment of three tea dealers for the periods between 1998-99 and 2000-2001 allowed exemption on export sales of Rs.37.49 crore against the claims of the dealers for Rs.40.11 crore. The sales for Rs.2.62 crore were not supported by required evidence of export and treated as local sales. The AO levied tax at the rate of two *per cent* instead of the correct rate of eight *per cent*. This resulted in short levy of tax of Rs.38.24 lakh including interest.

The matter was reported to the Department and the Government in December 2004; their replies have not been received (December 2005).

2.12 Short demand of tax due to incorrect adjustment

Under the AGST Act, every dealer is required to submit a copy of treasury challans as a token of full payment of tax paid on his turnover alongwith the monthly statement of turnover.

Test check of assessment records of the Superintendent of Taxes, Guwahati, Unit-A, revealed between July and September 2004 that a dealer deposited Rs.6.01 crore against his tax liability of Rs.6.37 crore for the month of October 1999 and the AO while finalising in December 2003 and March 2004 the assessment for the year 1999-2000 adjusted Rs.6.37 crore. This resulted in short demand of tax of Rs.35.94 lakh.

After this was pointed out the Department stated in September 2004 that the rectified demand notice had been served. Report on realisation is awaited (December 2005).

The matter was reported to the Government in December 2004; no reply has been received (December 2005).

2.13 Short levy of tax due to incorrect allowance of deduction

Under the AGST Act, deduction from gross turnover is allowable provided the AO is satisfied that such turnover has been subjected to tax at the point of first sale in the State.

Test check of assessment records of the Superintendent of Taxes, Guwahati Unit-C, revealed in May and June 2004 that while finalising the assessment in respect of a dealer for the years 2001-02 and 2002-03 in February 2004, the AO allowed deduction of Rs.1.81 crore showing it as local purchase. The dealer furnished a list of purchases of tax paid goods for the years 2001-02 and 2002-03 which revealed that the goods were purchased from a dealer of Ahmedabad (Gujarat). Since, the purchases were made from outside the state, deduction was not allowable from the gross turnover. This resulted in short levy of tax of Rs.33.99 lakh including interest.

The matter was reported to the Department and the Government in August 2004; their replies have not been received (December 2005).

2.14 Irregular grant of exemption

2.14.1 Under the CST Act, when any dealer claims exemption of tax in respect of any goods by reason of transfer of such goods to any other place of his business out of the State, he may furnish to the AO, a declaration in Form 'F' duly filled in and signed by the transferee, along with the evidence of despatch of such goods.

Test check of assessment records of the Superintendent of Taxes, Dhubri, revealed in January and February 2004 that a dealer despatched tea valued at Rs.1.65 crore during the assessment year 2000-01 and claimed exemption from payment of tax on the ground that the tea was sold at Kolkata and Siliguri by auction. Since sale of tea at Kolkata and Siliguri auction was not supported by Form 'F' nor any other evidence of despatch of goods to the branch offices of the dealer, the exemption allowed during August 2002 by the AO was incorrect. This resulted in non levy of tax of Rs.27.04 lakh including interest (upto December 2003).

The matter was reported to the Department and the Government in May 2004; their replies have not been received (December 2005).

2.14.2 Under the CST Act, any subsequent sale of goods during their movement from one State to another effected by transfer of documents of title to such goods to the Government or to a registered dealer shall be exempted from levy of tax provided such sale is supported by a certificate in Form E-I or E-II duly filled and signed by selling dealer alongwith Form 'C' or 'D'.

Test check of assessment records of the Superintendent of Taxes, Guwahati Unit-C revealed in May and June 2004 that while finalising in December 2003 assessments of a dealer for the years 1996-97 and 1997-98, the AO allowed exemption from payment of tax on the turnover of Rs.71.75 lakh on the

ground that the sales were effected while goods were in transit. Scrutiny of Forms E-1 and 'D' revealed that Forms 'D' were issued by the subsequent purchasing department prior to despatch of consignment by the original selling dealer. Besides, transactions in Forms 'D' were recorded subsequent to the dates of issue of the forms by the purchasing department. Hence the dealer was not entitled to exemption. Thus, allowance of incorrect exemption resulted in non levy of tax of Rs.18.79 lakh including interest.

The case was reported to the Department and the Government in August 2004; their replies have not been received (December 2005).

2.15 Application of lower rate of tax

2.15.1 Under the CST Act and Rules made thereunder, inter state sales not covered by declaration forms are taxable at the rate of 10 *per cent* or at the rate of tax applicable under the State Act whichever is higher. Cement, T.V and tape recorders are taxable at the rate of 12 *per cent* in the State.

Test check of assessment records of Superintendent of Taxes Guwahati Unit-A, Unit-B and Tezpur revealed between October 2003 and September 2004 that the AOs while finalising between October 2003 and March 2004 assessments of four dealers for the years 1999-2000 and 2000-01 determined taxable turnover of Rs.2.07 crore as inter state sales not covered by declaration forms and levied tax at incorrect rates. This resulted in short levy of tax of Rs.7.62 lakh including interest of Rs.3.54 lakh.

The cases were reported to the Department and Government in June – December 2004; their replies have not been received (December 2005).

2.15.2 Under the AGST Act, tax shall be charged on the taxable turnover during such year at the rate or rates specified in the Schedules of the Act.

Test check of the records of Superintendent of Taxes, Guwahati, Unit-A, Unit-B and Silchar revealed between October 2003 and September 2004 that the tax on turnover of Rs.56.92 lakh of five dealers relating to the period between 1999-2000 and 2002-2003 was incorrectly levied at lower rates between January 2001 and February 2004. This resulted in short levy of tax amounting to Rs.2.95 lakh including interest.

The cases were reported to the Department and Government in June – December 2004; their replies have not been received (December 2005).

2.16 Incorrect allowance of deduction

Under the AGST read with CST Act, while determining taxable turnover, tax included in the gross turnover is to be deducted according to the formula prescribed.

Test check of assessment records of Superintendent of Taxes, Guwahati Unit-A and Unit-B revealed between October 2003 and September 2004 that while determining the taxable turnover of two dealers for the years 1997-98 to

1999-2000, the AO allowed deduction aggregating Rs.78.69 lakh instead of Rs.38.34 lakh towards element of tax from their inter State sales turnover of Rs.9.58 crore not covered by declaration forms. This resulted in short levy of tax of Rs.7.09 lakh including interest of Rs.3.56 lakh.

The cases were reported to the Department and the Government between June and December 2004; their replies have not been received (December 2005).

2.17 Non/short levy of tax

Under the AGST Act, and Rules made thereunder, sale price of containers or packing materials used in sale of exempted goods as mentioned in Schedule I, where no accounts of such sales of containers or packing materials are maintained or where such sales are shown at a price lower than the market price, shall be determined at one *per cent* of the sale value of exempted goods sold. Since containers or packing materials are not mentioned in any of the scheduled attached to the Act, the item is to be taxable at the rate of eight *per cent* i.e. other goods.

Test check of assessment records of the Superintendent of Taxes, Guwahati Unit-C and Silchar revealed between February and June 2004 that while finalising between August 2001 and August 2003 assessments for the periods between 1999-2000 and 2001-2002 of eight dealers engaged in the business of rice, sugar, pulse, wheat, potato, India Made Foreign Liquor (IMFL) and watches etc., the AOs determined the turnover of containers/packing materials at Rs.5.89 lakh instead of Rs.50.29 lakh against sales of exempted goods of Rs.50.29 crore. Thus, incorrect determination of turnover of Rs.44.40 lakh of container/packing materials resulted in non/short levy of tax of Rs.6.50 lakh including interest.

The matter was reported to the Department and the Government in June 2004 and August 2004; their replies have not been received (December 2005)

2.18 Excess allowance of credit of tax

Under the AGST Act, and Rules made thereunder, every registered dealer is required to submit a copy of treasury challans as a token of full payment of tax paid on his taxable turnover alongwith the monthly statement/annual return of turnover.

Test check of assessment records of the Superintendent of Taxes, Guwahati Unit-B, revealed between October and December 2003 that two dealers deposited tax of Rs.64 lakh for the assessment year 1999-2000 and 2000-2001. But the AOs allowed in December 2002 and March 2003 credit of Rs.66.48 lakh. This resulted in excess allowance of credit of Rs.2.48 lakh and consequent short raising of demand of Rs.4.19 lakh including interest.

The cases were reported to the Department and the Government in June 2004; their replies have not been received (December 2005).

2.19 Non levy of tax due to misclassification of goods.

As per the AGST Act, oil cake is taxable at the rate of four *per cent* with effect from 1 February 2000.

Test check of assessment records of the Superintendent of Taxes, Dhekiajuli, revealed in February 2004 that sales turnover of Rs.46.25 lakh in respect of sale of oil cake by a dealer for the assessment periods of 2000-2001 and 2001-2002 was exempted in April 2002 and May 2003 from payment of tax though tax at the rate of four *per cent* was leviable. This resulted in non levy of tax of Rs.3.09 lakh including interest of Rs.1.04 lakh (calculated upto January 2004).

The matter was reported to the Department and the Government in May 2004; their replies have not been received (December 2005).

2.20 Non levy of additional tax

Under AGST Act, additional tax at the rate of 10 *per cent* on the tax payable by the dealer is to be levied with effect from 5 June 1998.

Test check of assessment records of the sales tax unit offices, Naharkatia and Jorhat, revealed between September 2003 and August 2004 that the AOs while finalising the assessments between May 2001 and March 2002 in 15 cases for the periods between 1998-99 and 2000-01 did not levy additional tax of Rs.2.32 lakh including interest.

After this was pointed out the Department stated in April 2004 that additional tax including interest amounting to Rs.1.82 lakh in 14 cases had been levied. However, report on realisation and reply in other cases has not been received.

The matter was reported to the Government between December 2003 and November 2004; their replies have not been received (December 2005).

2.21 Incorrect determination of turnover

Under the AGST Act, "Taxable turnover" in respect of works contract is determined by reducing the gross turnover by the turnover relating to declared goods and thereafter deducting the labour and other charges incurred by the dealer or at the option of the dealer subject to rates in the Act.

Test check of the assessment records of the Superintendent of Taxes, Guwahati Unit-D revealed in May and June 2004 that AO while finalising in June 2002 assessment of a dealer engaged in works contract allowed deduction of Rs.1.07 crore towards labour and other charges instead of Rs.91.85 lakh arrived at after deduction of value of declared goods from the gross turnover for the year 2000-01. Thus, excess deduction of labour charge of Rs.15.58 lakh resulted in short levy of tax of Rs.2.41 lakh including interest.

The case was reported to the Department and the Government in September 2004; their replies have not been received (December 2005).