

## Chapter - II: Sales Tax/Value Added Tax

### 2.1 Results of audit

Test check of records relating to sales tax/value added tax, conducted during the year 2005-06 revealed under assessment/short levy/loss of revenue and other irregularities involving Rs.320.01 crore in 1,303 cases, which broadly fall under the following categories:

**(Rupees in crore)**

Sl. No.	Categories	No. of cases	Amount
1.	Irregular grant of exemption of tax	340	107.80
2.	Incorrect application of rate of tax	23	8.06
3.	Short accountal of purchase/sale/stock	53	9.00
4.	Non recovery of arrears of sales tax	1	49.14
5.	Other cases	886	146.01
<b>Total</b>		<b>1,303</b>	<b>320.01</b>

During the year 2005-06, the department accepted under assessments etc. of Rs.17.73 crore involved in 118 cases and raised additional demand of Rs.11.25 crore pointed out in audit during the year 2005-06 and in earlier years. An amount of Rs.3 lakh was realised at the instance of audit.

A few illustrative cases involving Rs.69.80 crore are given in the following paragraphs.

## 2.2 Short accountal of purchase/sale/stock

Delhi Sales Tax Act (DST Act) 1975 provides that every dealer should maintain true and correct accounts of sales and purchases made by him. If a dealer conceals the particulars of his purchases or furnishes inaccurate particulars of turnover, he shall be liable to pay penalty, in addition to the amount of tax payable, a sum not exceeding two and a half times of the amount of tax due.

**2.2.1** Test check of records of 29 wards\* of the Department of Trade and Taxes conducted during April 2005 to March 2006 revealed that in 44 cases relating to assessment years 2002-03 to 2003-04, dealers purchased goods valued at Rs.310.07 crore on the strength of statutory forms or otherwise but disclosed only Rs.288.06 crore in their books of accounts thereby concealing purchases of Rs.22.01 crore. The assessing authority (AA) while finalising the assessments between February 2004 and March 2005 failed to detect the suppression of purchases and corresponding sales of Rs.23.89 crore which resulted in short levy of tax of Rs.1.52 crore along with interest of Rs.55.79 lakh. In addition, penalty of Rs.3.81 crore was also leviable.

After this was pointed out, the department in September 2006 admitted audit observations in 23 cases and raised an additional demand of Rs.1.03 crore in 20 cases and issued notices for reassessment in three cases. The replies of the department in 20 cases were not tenable as mentioned below:

Sl. No.	Brief of cases	Assessment year	Reply of the department	Reasons for being not tenable
1	The dealer purchased goods worth Rs.7.20 crore on forms or otherwise but depicted Rs.6.73 crore in trading account.	2003-04	The excise duty paid by the dealer was deducted from the purchases and net purchases were taken in trading account.	The assessment of the dealers was done on the basis of sales figures shown in the trading account i.e. inclusive of excise duty. Correspondingly, the figures of purchases also should have been taken after inclusion of excise duty.
2	The dealer purchased goods worth Rs.6.99 crore on forms or otherwise but showed Rs.6.35 crore in trading account.	2003-04	The difference was due to amount of excise duty, which is not included in the purchase shown in the trading account as per prevailing practice in manufacturing unit.	
3	The dealer purchased goods worth Rs.6.81 crore on forms or otherwise but depicted Rs.6.62 crore in trading account.	2003-04	The stock transferred from branch was already included in the opening stock, though the form was issued in this year on the basis of actual receipt.	Goods received on transfer basis against statutory forms during a financial year cannot be accounted for in the opening stock of that year.

\* Ward Nos.2,3,4,8,9,15,16,20,21,28,37,38,42,43,48,58,62,63,64,67,72,74,84,90,93,94,101,103,106

*Audit Report (Revenue Receipts) on Government of NCT of Delhi of 2007*

4	The dealer purchased goods worth Rs.2.82 crore on forms or otherwise but depicted Rs.2.53 crore in trading account.	2003-04	The dealer has now furnished revised list of tax paid purchases and the difference in purchases pertained to debit/credit notes received from the selling dealers.	The observation was based on documents, furnished by the dealer at the time of assessment. Modification/rectification of facts and figures by the dealer after the same is detected and pointed out in audit is not tenable.
5	The dealer received goods worth Rs.3.39 crore on 'F' forms but showed Rs.2.51 crore in trading account.	2003-04	Balance sheet submitted at the time of assessment was a combination of head office and branch office transactions. In trading account now submitted stock transfer has been shown correctly.	The reply is not tenable as the observation was raised on short accountal of purchase made through form F in the trading account which was ultimately determined as purchase while finalising the assessment.
6 & 7	The dealer received goods worth Rs.21.57 crore and Rs.21.39 crore on 'F' forms but showed Rs.19.22 crore and Rs.18.36 crore in trading /consignment account during 2002-03 and 2003-04 respectively.	2002-03 and 2003-04	Value of goods shown in 'F' forms is proforma invoice value and the sale value has been taken as purchase value.	The value mentioned in 'F' forms denotes the price of goods received on consignment basis and therefore should have been taken as minimum purchase price.
8	The dealer purchased goods worth Rs.26.16 crore on 'C' forms but showed Rs.24.59 crore in the purchase and sale statement.	2003-04	The goods in transit were not taken in purchases.	The dealer disclosed purchases through C forms at Rs.24.39 crore only whereas the department itself mentioned purchases of goods valued at Rs.26.16 crore through C forms during 2003-04 and issued declaration forms accordingly. The AA not only failed to notice the difference while finalising assessment but also did not mention anything about goods in transit.
9	The dealer dealt in iron and steel (structural material) and purchased machinery of value of Rs.12.64 lakh against statutory forms but had not shown this in the assets of the firm.	2003-04	Machinery purchased against statutory forms were exported.	There is no mention of export of machinery in the column showing description of goods exported.
10	The dealer purchased goods worth Rs.6.43 crore on forms and without forms but depicted total purchase during the year at Rs.6.01 crore in the trading account. Both these amounts included	2003-04	Tax free purchases shown by audit are not correct.	Audit has correctly taken the figures of tax free purchases at Rs.1.10 crore as per the list furnished by the dealer at the time of assessment. The difference was calculated on taxable purchases and corresponding sales only and not on tax free purchases and sales thereon.

	tax free goods valued at Rs.1.10 crore.			
11	The dealer purchased goods worth Rs.2.63 crore against ST-1 and ST-35 but depicted Rs.2 crore in the trading account.	2003-04	The difference in purchases is due to the reason that the dealer purchased consumables on ST-1 and ST-35, which were not taken under the purchases head.	As per Section 14 of the DST Act, ST-1 and ST-35 forms are issued for making purchases of raw material and not for consumables.

In three cases involving revenue of Rs.21.53 lakh, the department stated in September 2006, that goods purchased during the year were in transit and therefore not taken in the trading account of that year. The replies are not tenable as no mention of goods in transit was found in the case records/balance sheet of the concerned dealers. Further, in six cases involving Rs.72.16 lakh, though the department claimed that the differences were due to turnover discount/credit notes and rebate allowed to the dealers, it failed to furnish the supporting documents either with the reply or at the time of verification of reply in September 2006. Reply in the remaining one case was awaited as of October 2006.

**2.2.2** DST Act provides that every dealer should maintain true and correct accounts of sales made by him. If a dealer conceals the particulars of his sale or furnishes inaccurate particulars, he shall be liable to pay by way of penalty in addition to the amount of tax payable a sum not exceeding two and a half times the amount of tax. Further, in case of interstate sales/stock transfers not supported by declaration forms, tax is leviable at the rate of eight *per cent* in case of declared goods and at the rate of 10 *per cent* or state rate of tax whichever is higher in case of goods other than declared goods in accordance with provisions of the CST Act.

Test check of records of seven wards\* of the Department of Trade and Taxes conducted during April 2005 to March 2006 revealed that in seven cases, the AAs, while finalising assessments for the assessment years 2002-03 and 2003-04 between March 2004 and March 2005 assessed sale of Rs.55.51 crore as disclosed by the dealers against actual sale of Rs.64.24 crore. There was, thus, underassessment of sale of Rs.8.73 crore resulting in short levy of tax of Rs.65.02 lakh. In addition, interest of Rs.24.96 lakh and penalty of Rs.1.63 crore were also leviable.

After this was pointed out, the department admitted audit observations in five cases in September 2006 and raised an additional demand of Rs.1.30 crore in three cases and issued notices for reassessment in two cases. The replies of the

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\* Ward Nos. 11,12,40,44,68,88,106

department in remaining two cases were not tenable as tabulated below:

Sl. No.	Brief of cases	Assessment year	Reply of the department	Reasons for being not tenable
1	The dealer was assessed for Rs.1.19 crore as against the actual sales/stock transfer of Rs.2.77 crore.	2002-03	The stock transfer was relating to non taxable goods and under CST Act, stock transfer is not necessary to be mentioned in the sales summary.	The dealer deals in stationery and paper which are taxable as per DST Act. Moreover, the AA also did not mention about any non taxable sales while completing assessment either under local or Central Act and levied tax on the entire turnover of Rs.1.58 crore. Thus, it is evident that the dealer dealt in taxable goods only and the stock transfer not supported by form F was to be taxed at 10 <i>per cent.</i>
2	The dealer was assessed for Rs.5.24 crore as against the sales of Rs.5.58 crore.	2003-04	Audit has taken the receipt of goods against 22 'F' forms instead of actual issue of 21 'F' forms.	Audit has pointed out short accountal of sales based on receipt of goods against 21 'F' forms correctly.

**2.2.3** Test check of records of three wards\* of the Department of Trade and Taxes conducted during April 2005 to March 2006 revealed that in two cases for the assessment year 2003-04 assessed between February and March 2005, the closing stock as per trading account was shown as Rs.2.17 crore instead of Rs.7.81 crore and carried over to next year as opening stock while in one case the opening stock as per trading account was shown as Rs.6.75 crore instead of Rs.7.55 crore from the previous year's trading account. This resulted in concealment of turnover and short levy of tax of Rs.14.98 lakh. In addition, interest of Rs.5.09 lakh and penalty of Rs.37.44 lakh was also leviable.

After this was pointed out, the department admitted audit observation in two cases in September 2006 and raised an additional demand of Rs.4.90 lakh in one case and issued notice for reassessment in the other case. In the remaining one case, the department replied that the amount of job work of Rs.76.22 lakh was not included in the gross turnover (GTO), no material was used in job work and there is no short accountal of stock. The reply of the department is not tenable as audit observation was raised on variation of closing stock and inclusion of job work in GTO will not affect the closing stock.

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\* Ward Nos. 46,96,101

### 2.3 Incorrect application of rate of tax

DST Act specifies the rates of sales tax payable by a dealer in respect of goods or classes of goods specified in various schedules appended to the Act. If the AA is satisfied that particulars in the return submitted by a dealer are true and correct, he may proceed to assess the dealer as per provisions of the Act. Furnishing incorrect particulars of turnover attracts penalty not exceeding two and a half times the tax avoided.

Test check of records of 14 wards\*\* of the Department of Trade and Taxes conducted between April 2005 and March 2006 revealed that in 18 cases relating to assessment years 2001-02 to 2003-04 assessed between March 2003 and March 2005, the AAs while accepting the returns of the dealers levied tax on sales valued at Rs.43.90 crore at lower rates than those prescribed resulting in short levy of tax amounting to Rs.1.92 crore along with interest of Rs.73.24 lakh. Maximum penalty of Rs.4.79 crore was also leviable.

After this was pointed out, the department in September 2006 admitted audit observations in eight cases and raised an additional demand of Rs.1.82 crore in seven cases and issued notice for reassessment in one case. In one case it was stated that the RC of the firm has been cancelled with effect from 30 September 2003. However, action taken for recovery of dues was not intimated. The replies of the department in the remaining nine cases were not tenable as tabulated below:

Sl. No.	Assessment year	Nature of objection	Reply of the department	Reasons for being not tenable
1	2003-04	The dealer sold electronic goods taxable at eight <i>per cent</i> while the AA assessed these goods as electronic components and levied tax at four <i>per cent</i> .	In requisition form, the dealer inadvertently mentioned the code of electronic goods instead of electronic components. The item electronic goods was included in the registration certificate (RC) and it was presumed that electronic goods covered electronic components also. The registration certificate has been amended accordingly.	The dealer was authorised to purchase electronic goods as per RC and requisition sheet of forms. The dealer requested to amend RC only on 17 July 2006 whereas the observation relates to the assessment year 2003-04.
2	2003-04		Addition of items namely, components and parts of computer peripherals and its accessories have been allowed on 18 March 2003.	Addition of these items had not been mentioned in the RC.
3	2003-04		The dealer deals in electronic parts and components which are taxable at four <i>per cent</i> .	As per record, the dealer made requisition of F forms for receipt of electronic goods taxable at eight <i>per cent</i> . Further, the RC of the dealer also covers electronic goods only.

\*\* Ward Nos. 16,17,30,41,42,44,51,62,63,64,67,93,105,106

4 & 5	2002-03 and 2003-04	The dealer sold glasses/glassware taxable at 12 <i>per cent</i> while assessed at eight <i>per cent</i> .	Glass is traded in the form of glass sheets, glassware and other articles made of glass, which is an unspecified item and is not covered under entry 11 of Schedule I and is taxable at eight <i>per cent</i> .	As per entry 11 (a) of schedule-I all goods made of glass/ glassware, but not glass bangles and optical lenses are taxable at 12 <i>per cent</i>
6	2003-04	The dealer sold motor parts taxable at eight <i>per cent</i> while the AA assessed motor parts as tractor parts taxable at four <i>per cent</i> .	The dealer received tractor parts valued at Rs.2.58 crore from his Indore office on form 'F' and sold these for Rs.2.45 crore during the year which are taxable at four <i>per cent</i> .	As per requisition account, the dealer made requisition of 'F' forms for receipt of motor parts only and not for tractor parts.
7 & 8	2001-02 and 2002-03	The dealer sold tiles falling under classification code No 8020 taxable at 12 <i>per cent</i> , while the AA assessed and levied tax at eight <i>per cent</i> .	The dealer deals in vinyl tiles which does not come under Schedule-I and is an unspecified item taxable at eight <i>per cent</i> .	As per records, 'F' forms were issued to the dealer for stock transfer of marble granite tiles having code no. 8020 taxable at the rate of 12 <i>per cent</i> and in the utilisation account of these forms the dealer mentioned the same code No. 8020.
9	2003-04	The dealer sold electrical goods of high value falling under classification code No 3070 taxable at 12 <i>per cent</i> , while the AA assessed the same as electrical goods at eight <i>per cent</i> .	The dealer is dealing in frequency drive control, which is being used by industry for controlling the temperature of machinery and this item is not included in schedule I.	As per items in issue sheet, F forms have been issued by the department for stock transfer of electrical goods of high value falling under code No 3070 taxable at 12 <i>per cent</i> .

## 2.4 Irregular grant of exemption of tax on branch transfer/consignment sales

**2.4.1** Central Sales Tax Act (CST Act) read with Rules made thereunder, provide that a single declaration in form 'F' may cover transfer of goods effected during a period of one calendar month by a dealer to any other place of his business or to his agent or principal outside the State as the case may be. The declaration in form 'F' should contain full particulars of the goods, mode of transport and date on which delivery was taken by the transferee. Further, production of 'F' forms in support of branch transfer/consignment sale was made mandatory with effect from May 2002. Otherwise, the transactions are to be treated as interstate sales and taxed accordingly.

**2.4.1.1** Test check of records of 17 wards\* of the Department of Trade and Taxes conducted during April 2005 to March 2006 revealed that the AAs while finalising the assessment of 25 cases for the assessment years 2002-03 to 2003-04 assessed between March 2004 and March 2005, allowed exemption of taxable turnover of Rs.53.10 crore supported by declarations in form 'F'. Of this, turnover of Rs.43.86 crore relating to the period beyond one month was not covered by valid declaration forms and was thus, liable to be treated as interstate sales not supported by declaration forms and taxed accordingly. This resulted in under assessment of tax of Rs.4.46 crore along with interest of Rs.1.54 crore.

After this was pointed out, the department admitted audit observations in 22 cases in September 2006 and raised an additional demand of Rs.2.05 crore in 15 cases, while notices for reassessment were issued in seven cases. Replies of the department in three cases were not tenable as tabulated below:

Sl. No.	Assessment year	Reply of the department	Reasons for being not tenable
1	2003-04	'F' forms have been issued by the consignee on the basis of date of receipt of goods.	The forms are required to be accepted on the basis of date of invoice.
2	2003-04	'F' forms have been issued by the branches on the basis of date of receipt of goods and the dealer submitted the 'F' forms after getting the forms rectified from the branches.	Rectified/fresh forms cannot be accepted without reassessment under section 24 of the Act.
3	2003-04	Dealer has furnished all the 'F' forms.	

**2.4.1.2** Similarly, test check of records of ward no. 91 of the Department of Trade and Taxes conducted during April 2005 to March 2006 revealed that in one case for the assessment year 2003-04, the AA while finalising the assessment in February 2005, allowed exemption of tax on branch transfer of Rs.5.76 crore against four 'F' forms submitted by the dealer. It was, however, noticed in audit that the transactions mentioned in the forms pertained to the year 2002-03. This resulted in underassessment of tax of Rs.57.57 lakh and interest of Rs.19.57 lakh. Penalty of Rs.1.44 crore was also leviable for furnishing invalid forms.

After this was pointed out, the department admitted the audit observation in September 2006 and issued notice for reassessment. Further reply is awaited (October 2006).

**2.4.2** CST Act stipulates that every dealer has to declare his places of business in other States at the time of seeking registration. Act also provides that any dealer who claims that he is not liable to pay tax under this Act in respect of any goods on the ground that the movement of such goods from one

\* Ward Nos. 3,7,14,37,38,40,41,42,51,59,60,62,69,72,78,94,104



State to another was a transfer to his branch or to his agent or principal, as the case may be, and not by reason of sale shall bear the burden of proof that the movement of those goods was so occasioned.

Test check of records of nine wards\* of the Department of Trade and Taxes conducted during April 2005 to March 2006 revealed that in nine cases for the assessment year 2003-04, the AAs while finalising the assessments during February 2005 and March 2005, allowed exemption on goods valued at Rs.13.56 crore on account of branch transfer on the basis of 'F' forms to places other than those specified in the registration certificate of the dealers or of consignment sales to other dealers without consignment agreements with them. This resulted in under assessment of tax of Rs.1.33 crore. In addition, interest of Rs.45.19 lakh and penalty of Rs.2.39 crore was also leviable.

After this was pointed out, the department admitted audit observation in two cases in September 2006 and raised an additional demand of Rs.75.83 lakh while reply in two cases was awaited as of October 2006. Replies of the department in remaining five cases were not tenable as tabulated below:

Sl. No.	Transfer or sale	Reply of the department	Reasons for being not tenable
1	Consignment sale	The application for addition of branch was pending in the ward and now the branch has been added.	The objection pertains to consignment sale without consignment agreement with the consignee and not to branch transfer.
2	Consignment sale	Consignment sales have been allowed against 'F' forms after making necessary enquiry that movement of goods was not sales.	As per assessment order and order sheet there is no mention that consignment sales have been allowed after verifying from the relevant documents, as mentioned in rule 4D of CST (Delhi) Rules, that these are consignment sales.
3	Branch transfer	Stock transfers have been correctly allowed as the branches at Madras and Varanasi are duly entered in the RC of the dealer.	On verification of the reply it has been found that the branches of the dealer at Madras and Varanasi are not entered in the RC.
4	Branch transfer	The dealer had applied for addition of branch at Faridabad in April 2004. Inadvertently the amendment was not carried out	The objection pertains to the year 2003-04 while the dealer applied for addition of branch in April 2004.
5	Consignment sale	The exemption has been allowed on consignment sale and not for branch transfer.	The department neither furnished a copy of the consignment agreement with the reply nor made available the same at the time of verification of reply in September 2006.

**2.4.3** Under the third proviso to section 4(2)(a) of the DST Act, goods purchased against statutory forms ST-1 and ST-35 and transferred to the branch offices or on consignment outside Delhi for resale shall be subject to tax on purchase price of such goods.

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\* Ward Nos. 04,31,32,60,62,69,77,97,99

Test check of records of ward no. 70 of the Department of Trade and Taxes conducted during April 2005 to March 2006 revealed that in two cases the dealers purchased goods valued at Rs.1.53 crore against declaration in forms ST-1 and ST-35 during 2003-04 and transferred the same against form 'F' to their branches/consignment agents outside Delhi. While framing assessment orders in March 2005, the branch transfer/consignment sale of the above goods was allowed by the AA, but tax on purchase value of these goods was not levied. This resulted in underassessment of tax of Rs.12.21 lakh. In addition, interest of Rs.4.15 lakh and penalty of Rs.30.53 lakh was also leviable.

After this was pointed out, the department admitted the audit observations in August 2006 and raised an additional demand of Rs.1.77 lakh in one case and issued notice for reassessment in the remaining case. Further reply is awaited (October 2006).

## **2.5 Non levy of tax on sale of tradeable licenses**

Under the DST Act, replenishment licenses (REP), duty entitlement pass book licenses (DEPB), special import licenses (SIL) quotas and other tradeable licenses which are granted by the Director General of Foreign Trade (DGFT) in recognition of export of certain goods transferred by way of sale are taxable at the rate of four *per cent*.

Test check of records of four wards\* of the Department of Trade and Taxes conducted during April 2005 to March 2006 revealed that in five cases for the assessment years 2001-02 to 2003-04 the dealers sold DEPB licenses for Rs.3.96 crore which were neither disclosed by the dealer nor noticed by the AAs while finalising assessments between January 2003 and March 2005. This resulted in non levy of tax amounting to Rs.15.82 lakh and interest of Rs.6.64 lakh. Besides, maximum penalty of Rs.39.57 lakh was also leviable for deliberate concealment of turnover.

After this was pointed out, the department admitted audit observation in four cases in September 2006 and raised an additional demand of Rs.15.96 lakh while in the other case, the department replied that notice for reassessment has been issued to the dealer. Further reply is awaited (October 2006).

## **2.6 Irregular grant of exemption on tax paid sales**

DST Act provides that goods notified to be taxable at the first point of sale, shall be exempt from tax on all subsequent points of their sale. The selling dealer is allowed to claim deduction from his turnover in respect of any sale of

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\* Ward Nos. 17,40,52,97

first point goods provided he shows to the satisfaction of the AA that the tax due on their sale had been paid at the first point.

Test check of records of six wards\*\* of the Department of Trade and Taxes conducted during April 2005 to March 2006 revealed that in seven cases while finalising the assessments during February 2003 to March 2005 the AAs allowed exemption on sale of tax paid goods of Rs.51.28 crore against the admissible sale of Rs.19.89 crore resulting in excess exemption of turnover of Rs.31.39 crore. This resulted in short levy of tax of Rs.1.30 crore. In addition, interest of Rs.44.23 lakh and penalty of Rs.3.25 crore was also leviable.

After this was pointed out, the department admitted audit observations in five cases in September 2006 and raised an additional demand of Rs.1.75 crore. Replies of the department in two cases were not tenable as tabulated below:

Sl. No.	Assessment year	Reply of the department	Reasons for being not tenable
1	2003-04	The dealer had also made purchases of tax free goods and the tax paid sales included these tax free purchases.	As per assessment order, no sales have been assessed as tax free sales.
2	2003-04	The dealer inadvertently submitted incorrect list of tax paid purchases at the time of assessment and now correct list of tax paid purchases has been furnished and according to that correct exemption of tax paid sales has been allowed.	The objection was raised on documents available in the case records at the time of assessment. Until and unless reassessment is made, submission of revised documents after audit objection is not acceptable.

## **2.7 Irregular grant of exemption on statutory forms**

**2.7.1** Under the DST Rules, a dealer may deduct from his turnover the amount of sale on the ground that he is entitled to make such deduction under the DST Act on production of statutory forms in ST-1, ST-35 or ST-49. Deductions against ST-1, ST-35 and ST-49 are, however, admissible for sale of last point goods, first point goods and export respectively. Further, the Act and Rules provide that no single declaration in ST-1 and ST-35 shall cover more than one transaction of sale except in cases where the total amount of sale made in a year covered by one declaration is equal to or less than Rs.50 lakh (limit raised from Rs.30 lakh with effect from 24 April 2002).

**2.7.1.1** Test check of records of three wards\* of the Department of Trade and Taxes conducted during April 2005 to March 2006 revealed that five dealers assessed between March 2003 and March 2005 were incorrectly granted

\*\* Ward Nos. 4,40,45,64,79,98

\*Ward Nos. 41,61,77

\* Ward Nos. 61,101

exemption of Rs.21.06 crore from their gross turnover for the assessment years 2001-02 to 2003-04 either against form ST-1 though taxable at first point or against ST 35 though taxable at last point. This resulted in short levy of tax of Rs.91.11 lakh and interest of Rs.39.71 lakh.

After this was pointed out, the department furnished their replies in August 2006. The replies of the department were, however, not tenable as tabulated below:

Sl. No.	Assessment year	Item sold	Reply of the department	Reasons for being not tenable
1	2003-04	Plastic raw material	Plastic raw material as sold by the dealer has not been mentioned in any list of the department and as such it is a general item.	Plastic raw material has been mentioned in the list of 1 <sup>st</sup> point goods and cannot be sold against ST-1 form.
2	2002-03	Medical equipment	Medical equipments are last point item hence credit of ST-1 has been correctly allowed.	Medical equipment has been mentioned in the list of 1 <sup>st</sup> point goods and cannot be sold against ST-1 form.
3	2002-03	Perfumery compound	Perfumery compound (code 2065) being raw material is taxable at last point. Hence goods sold against ST-1 is correct.	Code 2065 pertains to perfumery and essences (which includes perfumery compound) and is included in the list of 1 <sup>st</sup> point goods and cannot be sold against ST-1 form.
4	2001-02	Polycarbonate	Polycarbonate has not been mentioned in any list of the department and as such sale against ST-1 is correct.	Plastic, celluloid, bakelite goods and goods made of similar other substances and chemicals are included in the list of 1 <sup>st</sup> point goods and cannot be sold against ST-1 form.
5	2003-04	Starch	Starch is 1 <sup>st</sup> point item vide entry no. 34 under classified code 2020 and is included in <i>kirana</i> goods.	Starch and <i>kirana</i> items are having a separate code i.e. 2020 and 2070 respectively. The <i>kirana</i> item is 1 <sup>st</sup> point item which does not include starch. Starch being an unspecified item cannot be sold against ST-35.

**2.7.1.2** Test check of records of two wards\* of the Department of Trade and Taxes conducted during April 2005 to March 2006 revealed that in two cases, for the assessment years 2001-02 and 2003-04 assessed between March 2003 and March 2005, the dealers were allowed exemption amounting to Rs.6.65 crore on statutory forms. It was, however, noticed that the dealers had submitted statutory forms for only Rs.6.28 crore resulting in excess exemption of Rs.37.11 lakh. This resulted in short levy of tax of Rs.2.21 lakh. In addition, interest of Rs.1.03 lakh and penalty of Rs.5.53 lakh was also leviable.

After this was pointed out, the department admitted audit observation in one case in August 2006 and raised an additional demand of Rs.0.77 lakh. In the

remaining case, the department replied that the sale to embassies was wrongly typed as Rs.23.15 lakh instead of Rs.4.85 lakh which in fact was total exempted sale against form ST-1 plus embassies sale. The reply of the department is not tenable because sales of Rs.15.45 lakh against ST-1 and Rs.23.15 lakh to embassy had been separately shown in the assessment order.

**2.7.1.3** Test check of records of 70 wards\*\* of the Department of Trade and Taxes conducted during April 2005 to March 2006 revealed that in 250 cases for the assessment years 2000-01 to 2003-04 assessed between September 2002 and March 2005, the dealers were allowed exemption amounting to Rs.3,027.74 crore on statutory forms beyond the prescribed limit having more than one transaction. The exemption allowed on invalid statutory forms involved tax amounting to Rs.60.50 crore.

After this was pointed out, the department stated in August 2006 that the forms are issued to the purchasing dealers on the basis of their bonafide requirement and there is no revenue loss. They added that the Commissioner of Sales Tax clarified in December 1985 that such transactions may be allowed on the strength of a single ST-1 form without any monetary limit.

The reply of the department is not tenable as the audit observation related to inclusion of multiple transactions exceeding the prescribed limit in each form, which was not valid as per provisions of the DST Rules. Further, to accommodate transaction of more money value, Government has been raising the limit from time to time from Rs.0.30 lakh in July 1989 to the present limit of Rs.50 lakh in each form. While examining similar paragraphs which had appeared in the Audit Report for the year ended March 2004, the Public Accounts Committee (PAC) in its 2<sup>nd</sup> Report on the Sales Tax Department recommended that the departmental instructions issued on any subject should merely clarify the provisions of Act or Rules and not exceed what has been provided therein.

**2.7.2** Under the proviso of Rule 11 of the DST Rules and various notifications issued from time to time, “listed goods” purchased by a dealer against statutory form ST-35 cannot be further sold to another dealer against the same statutory form.

Test check of records of eight wards\* of the Department of Trade and Taxes conducted during April 2005 to March 2006 for the assessment years 2001-02 to 2003-04 revealed that 14 dealers made purchases of listed goods against

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\*\* *Ward Nos. 1,2,3,4,5,6,7,9,11,15,16,21,24,25,27,28,29,30,31,32,33,34,37,38,41, 42,45,46, 47,48,49,51,53,55,56,60,61,62,63,64,65,66,67,68,69,70,71,72,73,74,76,77,82,84,88,89,90,91,92, 93, 94, 95,96,98,101,102,103,104,105,106*

\* *Ward Nos.15,41,69,71,74,77,82,84*

statutory form ST-35 and subsequently resold the same goods valued at Rs.19.83 crore against the same statutory form which was irregular. The AAs while finalising the assessments between March 2003 and March 2005 allowed the same resulting in non levy of tax of Rs.86.96 lakh. In addition, interest of Rs.35.85 lakh and penalty of Rs.2.17 crore was also leviable.

After this was pointed out, the department in September 2006 admitted audit observation in three cases and raised an additional demand of Rs.1.46 crore. The replies of the department in the remaining 11 cases were not tenable as tabulated below:

Sl. No.	Assessment year	Item purchased	Item sold	Reply of the department	Reasons for being not tenable
1	2002-03	Steel rods	Steel/M.S. wire	The dealers were allowed to purchase iron/copper/aluminum rods against ST-35 for manufacture of iron/copper/aluminum wires. The sale of resultant wire against ST-35 was correct.	As per decision of hon'ble Supreme Court in the case of M/s. Telangana Steel Industries vs. State of Andhra Pradesh (1994) 93 STC 187(SC), the process of drawing of wire out of wire rods/rods is not a manufacturing activity and wires are considered to be an integral part of rods and are not distinct from rods.
2 & 3	2001-02 & 2002-03	Copper rods	Copper wire		
4	2003-04	Copper rods	Copper wire		
5	2003-04	Copper rods	Copper wire		
6	2003-04	Copper rods	Copper wire		
7	2003-04	Copper rods	Copper wire		
8	2003-04	Iron rods	Iron wire		
9	2003-04	Copper rods	Copper wire		
10	2003-04	Electrical goods	Electrical goods		
11	2003-04	Copper wire/rods	Copper/ Copper wire	The dealer imported copper profile, sanitary goods and aluminum wire for Rs.1.12 crore and total purchases comes to Rs.2.79 crore. The relevant documents have been kept in record.	The dealer made purchases of copper rods worth Rs.1.66 crore against ST-35. During the year, the dealer sold copper wire of Rs.2.49 crore against ST-35. These facts indicate that the dealer purchased copper rods against ST-35 and sold the same against ST-35.

**2.7.3** Under the provisions of DST Rules and various notifications issued from time to time, “listed goods” can be sold against ST-35/1 only by an importer or manufacturer of first point goods to his sole selling agent/distributor/stockist.

Test check of records of ward no. 42 of the Department of Trade and Taxes conducted during April 2005 to March 2006 revealed that dealer 'A' who was neither a manufacturer nor importer of goods sold first point goods (adhesive) against statutory form ST-35/1 for Rs.28.96 lakh to dealer 'B' during 2003-04. While framing assessment order in March 2005, the AA allowed exemption of tax on this sale, which was irregular. This resulted in underassessment of tax of Rs.3.48 lakh. In addition, interest of Rs.1.18 lakh and penalty of Rs.8.70 lakh was also leviable.

After this was pointed out, the department replied in September 2006 that the dealer 'A' is a consignee agent of their principal at Noida and their principal had an agreement with dealer 'B' as stockist in Delhi and supplies were effected through dealer 'A'. The reply of the department is not tenable as under the rules, first point goods can be sold against ST-35/1 only by an importer or manufacturer to its agent/distributor/stockist whereas no agreement was made between dealers 'A' and 'B' and dealer 'B' was the stockist of the Noida based company. Moreover, dealer 'A' is neither an importer nor manufacturer of first point goods.

## **2.8 Irregular grant of exemption on unauthorised purchase**

DST Act stipulates that a registered dealer can purchase goods from another registered dealer without paying sales tax on furnishing statutory forms provided that purchase of such goods for such specified purposes has been allowed to him and specified in his RC.

Test check of records of five wards\* of the Department of Trade and Taxes conducted during April 2005 to March 2006 revealed that in five cases, the dealers purchased goods valued at Rs.1.02 crore during the period 2003-04 which were not covered by their RC. The AAs while finalising the assessment between December 2004 and March 2005, however, failed to notice that these transactions were not covered under the RC. This resulted in non levy of tax amounting to Rs.9.67 lakh along with interest of Rs.3.29 lakh and penalty of Rs.24.18 lakh.

After this was pointed out, the department in September 2006 admitted audit observations in two cases and raised an additional demand of Rs.25.02 lakh.

The replies of the department in remaining three cases were not tenable as

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\* Ward Nos. 1,16,35,71,91

tabulated below:

Sl. No.	Assessment year	Item not covered in RC	Reply of the department	Reasons for being not tenable
1	2003-04	Adhesive	Adhesive and gum are the same thing.	The item gum is taxable at eight <i>per cent</i> under stationery items while adhesive is taxable at 12 <i>per cent</i> under 1 <sup>st</sup> schedule of the DST Act.
2	2003-04	Ice cream container	The authorisation of 1 <sup>st</sup> point goods on form ST-37 has been discontinued from 30 September 1999.	Authorisation of 1st point goods on form ST-37 was discontinued in respect of new registrants only while the dealer is registered with the department prior to issue of these orders and was required to have entered 1st point goods on form ST-37.
3	2003-04	Hair oil and shoe polish	Hair oil is covered under cosmetics and shoe polish is mentioned in the RC and as such purchases were correctly allowed.	As per the RC (local) neither cosmetics nor shoe polish are authorised to the dealer.

## 2.9 Irregular grant of exemption on exports

**2.9.1** Under the DST Act read with CST Act and rules made thereunder, sale of goods made by one registered dealer to another registered dealer for export are to be allowed as deduction from the turnover of the selling dealer on furnishing the complete list of such sales duly supported by statutory forms H/ST-49<sup>§</sup> filled in and signed by the exporter along with evidence of export of such goods like bill of lading/bill of export/shipping bills, etc. countersigned by customs authorities establishing the export of such goods out of the country. Submission of defective/incomplete documents attracts tax and interest thereon.

Test check of records of eight wards<sup>\*\*</sup> of the Department of Trade and Taxes conducted during April 2005 to March 2006 revealed that in 15 cases, the AAs, while finalising the assessments for the year 2003-04 between April 2004 and March 2005, allowed tax exemption on taxable turnover of Rs.12.44 crore in 14 cases without verifying that the same goods were exported and on taxable turnover of Rs.20.36 lakh in one case without obtaining documents of proof of export. This resulted in irregular grant of exemption and non levy of tax of Rs.1.17 crore. In addition, interest of Rs.39.91 lakh was also leviable.

<sup>§</sup> Form 'H' for inter State sales  
Form 49 for local sales

<sup>\*\*</sup> Ward Nos. 12,28,38,42,59,62,95,105



After this was pointed out, the department admitted audit observation in one case in September 2006 and raised an additional demand of Rs.10.96 lakh while reply is awaited in one case. The replies of the department in remaining 13 cases were not tenable as tabulated below:

Sl. No.	Item sold	Item exported	Reply of the department	Reasons for being not tenable
1 & 2	Packing material	Handicrafts etc.	The dealer was assessed in summary assessment with gross turnover (GTO) of Rs.24.60 lakh and all sales are export and no statutory form was issued to the dealer.	Audit has pointed out that the goods sold against ST-49 and form 'H' were not exported in the same form resulting in irregular exemption of tax. Reply is not relevant to the objection.
3	Plastic caps	Cosmetics	According to purchase order/export agreement between the foreign buyers, specially designed air tight bottle caps were the subject matter of the agreement for packing the contents to be exported.	The department neither furnished photocopies of the purchase order/export agreement between the foreign buyers with the reply nor made them available at the time of verification of reply in October 2006.
4	PP caps	Whisky	The dealer exported whisky and this cannot be exported without caps and as such caps were deemed to be exported.	As per decision in the case of M/s. Packwell Industries (P) Ltd. vs. State of Tamil Nadu (1982) 51 STC 239 (Mad), the purchase of packing materials could not be covered u/s 5(3) of the Act unless supply of such goods is the subject matter of the contract of export. In the case of M/s. Kusum Laminating & Packaging Ind. vs. State of Tamil Nadu (1996) 101 STC 476 (Mad), the court had reiterated the decision. As the goods sold against ST-49/form 'H' were not the subject matter of the contract of export, the exemption of tax was not correct.
5	PP bags	Utensils	The dealer used polythene in the packing of goods exported.	
6 & 7	Jute bags	Rice	The jute bags/boxes were used for packing of goods exported and it appears that sale of packing material to exporter is exempted for tax purpose and sale is in the course of export.	
8	Jute bags	Soyabean meal		
9	Jute bags	Rice		
10 & 11	Boxes	Shoe		
12 & 13	Packing material	Handicraft/ garments	All the statutory forms (ST-49 & form 'H') are supported with the corresponding documents i.e. bill of lading etc.	Audit has pointed out that the goods sold against ST-49 and form 'H' were not exported in the same form resulting in irregular exemption of tax. Reply is not relevant to the objection as the item handicrafts were exported whereas packing materials were sold against form H/49.

**2.9.2** Section 5(3) of the CST Act read with rules made thereunder stipulates that purchases made against statutory form 'H' must be exported in the same condition in which these were purchased without any processing.

Test check of records of ward no. 40 of the Department of Trade and Taxes conducted during April 2005 to March 2006 revealed that in one case, for the assessment year 2002-03 assessed in March 2004, the AA allowed exemption of tax on purchases of Rs.92.42 lakh made against 'H' forms. The dealer, however, instead of exporting these goods, sold/transferred the same in the

course of interstate sale/branch transfer which escaped notice of the AA. This resulted in short levy of tax of Rs.11.09 lakh. In addition, interest of Rs.5.77 lakh and penalty of Rs.29.75 lakh was also leviable.

After this was pointed out, the department admitted the audit observations in September 2006 and raised an additional demand of Rs.15.03 lakh.

### **2.10 Incorrect allowance of concessional rate of tax without 'C' form**

Section 8(4) of the CST Act read with rules made thereunder stipulates that sale of goods by one registered dealer to another registered dealer may be allowed at the concessional rate of tax of four *per cent* if the dealer furnishes a declaration in form 'C' covering all the transactions of sales. Otherwise, tax is leviable at eight *per cent* in case of declared goods and at 10 *per cent* or at the rate applicable in the state whichever is higher in case of goods other than declared goods.

Test check of records of two wards\* of the Department of Trade and Taxes conducted during April 2005 to March 2006 revealed that in two cases for the assessment year 2003-04, the AAs while finalising the assessments during February 2005 and March 2005, allowed concessional rate of tax on inter State sales of Rs.2.98 crore without being supported by statutory form 'C'. This resulted in underassessment of tax of Rs.22.30 lakh. In addition, interest of Rs.7.58 lakh was also leviable.

After this was pointed out, the department admitted the audit observations in September 2006 and raised an additional demand of Rs.26.83 lakh.

### **2.11 Irregular grant of exemption of tax on local consignment sale**

Provisions of DST Act, does not envisage any deduction on account of local consignment sales while working out the taxable turnover of a dealer. Further, furnishing incorrect particulars of turnover by a dealer attracts penalty not exceeding two and a half times the tax avoided in addition to the tax payable along with interest.

Test check of records of ward no. 41 of the Department of Trade and Taxes conducted during April 2005 to March 2006 revealed that a dealer claimed exemption on account of local consignment sales of Rs.38.36 lakh during 2003-04. While framing assessment order in March 2005, the AA allowed exemption on this sale which was irregular. This resulted in under assessment

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\* Ward Nos. 38,63

of tax of Rs.3.07 lakh. In addition, interest of Rs.1.60 lakh and penalty of Rs.7.67 lakh was also leviable.

After this was pointed out, the department admitted the audit observations in August 2006 and levied tax on consignment sales of Rs.37.25 lakh and recovered tax of Rs.3 lakh. Reasons for non levy of tax on balance amount of Rs.1.11 lakh had not been received (October 2006).

## **2.12 Non recovery of arrears of sales tax**

Collection of sales tax is governed by the provisions of the DST Act read with the rules framed thereunder. The Act requires that after the assessment is made, a notice for tax due should be issued to the assessee within seven days of completion of the assessment. The assessee is required to pay the tax dues within a period of 30 days failing which certificate proceedings are to be initiated under the provisions of the Delhi Land Reforms Act 1954 (DLR Act) for recovery of the tax dues as arrears of land revenue.

The trend of accumulation of arrears has been highlighted in the Audit Reports of the Comptroller & Auditor General of India for the years ending March 2001 and March 2004. The PAC while examining the Audit Report for the year ended March 2004 in its report presented to the Legislative Assembly on 22 September 2005, noted with regret that the department had not paid due attention to recovery of arrears which could have substantially augmented the revenues of Government. The committee desired that *ex parte* assessments of non functioning dealers should be avoided. Records of dealers should be maintained upto date and proceedings for cancellation of a dealer's registration certificate and recovery of dues, if any, should be initiated the moment he closes down his business.

Test check of records of 34 wards\* of the Department of Trade and Taxes revealed that there were 1,460 *ex parte* assessment cases pertaining to years 2003-04 and 2004-05 involving revenue of Rs.100.26 crore as on 31 March 2006. Detailed scrutiny of 788 cases pertaining to the assessment year 2003-04 revealed that in 404 cases involving revenue of Rs.49.14 crore no follow up action had been taken as of June 2006 after issue of demand notices in March/April 2005. Of these 404 cases, 208 dealers involving demands of Rs.17.95 crore were presently registered with the department and continuing their business while 140 dealers involving revenue of Rs.14.03 crore apparently closed their business as they were either not registered under the DVAT Act or their registration certificates were cancelled. Scrutiny also

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\*Ward Nos.1,2,8,9,10,13,14,15,17,21,23,28,29,41,45,48,51,59,61,63,85,86,88,90,91,92,93,94, 95,96,98,101,102,104

revealed that tax amounting to Rs.15.77 crore pertaining to the periods earlier to 2003-04 was also outstanding from these 140 dealers. The status of the remaining 56 dealers involving revenue of Rs.1.39 crore could not be furnished by the department as of October 2006. Reasons for inaction to recover dues of Rs.17.95 crore against 208 dealers who were continuing their business were not on departmental records. Such undue delay in recovery of arrears despite clear enabling provisions not only resulted in non recovery of demand of Rs.49.14 crore but loss of revenue of Rs.29.80 crore <sup>\*\*</sup> as well.

After this was pointed out in July 2006, the department stated in September 2006 that detailed instructions for recovery of outstanding dues on topmost priority had been issued in July 2006 to all the zonal/ward officers and recovery certificates/writ of demands for recovery of arrears of Rs.32.13 crore in 355 cases were accordingly issued in July and August 2006. The status of recovery of the remaining 49 cases involving demands of Rs.17.01 crore was, not furnished by the department. Scope of recovery of Rs.29.80 crore from 140 dealers is, however, remote as the dealers have closed down their business. Further reply is awaited (October 2006).

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<sup>\*\*</sup> (Rs.14.03 crore + Rs.15.77 crore)