

## CHAPTER II

### SALES TAX

#### 2.1 Results of audit

Test check of sales tax assessments and refund cases and connected documents of sales tax offices conducted during the year 2005-06 revealed underassessment of turnover, non levy of interest, grant of incorrect exemption, application of incorrect rate of tax etc., amounting to Rs 50.37 crore in 954 cases which may broadly be categorised as under:

Sl. No.	Category	Number of cases	Amount (In crore of rupees)
1.	Turnover escaping assessment	111	8.71
2.	Grant of incorrect exemption	85	4.37
3.	Application of incorrect rate of tax	153	1.54
4.	Incorrect grant of concessional rate of tax	29	0.54
5.	Non/short levy of interest	225	11.97
6.	Other lapses	351	23.24
	<b>Total</b>	<b>954</b>	<b>50.37</b>

During 2005-06, the department accepted underassessments, etc., of Rs 4.51 crore involved in 558 cases of which 81 cases involving Rs 1.04 crore were pointed out during 2005-06 and the rest in earlier years. The department recovered an amount of Rs 0.15 crore involved in 49 cases during the year.

After the issue of draft paragraphs the department recovered Rs 27.23 lakh in full in seven cases.

A few illustrative cases involving Rs 25.52 crore are given in the following paragraphs:

## **2.2 Underassessment of turnover**

**2.2.1** Under the KGST Act, any dealer who in the course of his business purchases from a registered dealer or from any other person any goods, in circumstances under which no tax is payable and disposes of such goods in any manner other than by way of sale in the State or despatches them to any place outside the State except as a direct result of sale, shall pay tax on the taxable turnover relating to such purchase for the year at the prescribed rates. If a dealer has submitted a false return, the assessing authority may impose penalty not exceeding twice the amount of tax evaded or sought to be evaded.

In sales tax office, special circle, Kollam, while finalising the assessment for 1992-93 in November 2002 of a dealer who purchased cashew and cashew kernel without paying tax by issuing form 18A declaration and transferred the same to head office at Chennai, tax leviable on purchase turnover of cashew kernel of Rs 4.89 crore was not levied. This resulted in non levy of tax and surcharge of Rs 37.64 lakh and penalty of Rs 68.44 lakh.

After this was pointed out in November 2002, Government intimated in June 2006 that the assessing authority issued notice to the assessee in April 2004 to revise the assessment. Further progress was awaited (December 2006).

**2.2.2.1** Under the KGST Act, taxable turnover means the turnover on which a dealer shall be liable to pay tax after making the prescribed deductions from the gross turnover. It has been judicially held<sup>♦</sup> that in order to claim exemption on account of stock transfer of goods outside the State, the dealer has to produce a delivery note in form 26 along with declaration in form F.

In two offices, turnover of Rs 1.29 crore involved in two cases was incorrectly excluded from levy of tax resulting in short levy of tax, additional sales tax and surcharge of Rs 10.78 lakh as shown below:

(in lakh of rupees)

Sl No	Name of office	Assessment year month and year of assessment	Name of commodity	Turnover excluded	Nature of irregularity	Tax short levied	Remarks
1.	<u>STO, Special Circle II, Kozhikode</u>	<u>2001-02</u> April 2004	Plywood and glass	61.10	The assessing authority exempted turnover as consignment sales covered by form 'F', but was not supported by form 26 or proof of crossing the check post.	7.81	After this was pointed out in June 2005, Government informed in June 2006 that the assessment was revised and Rs 4.50 lakh has been collected. Balance amount has been advised for revenue recovery.

<sup>♦</sup> Esab India Ltd. Vs State of Kerala- 12 KTR 34 (Ker)

(in lakh of rupees)

Sl No	Name of office	Assessment year month and year of assessment	Name of commodity	Turnover excluded	Nature of irregularity	Tax short levied	Remarks
2.	STO, Special Circle, Mattancherry	1998-99 March 2003	Coffee beans	67.44	The turnover escaped assessment due to erroneous computation of purchase value of coffee beans.	2.97	After this was pointed out in December 2003, the assessing officer stated that further report would be submitted after verifying the records and accounts. Further reply was awaited (December 2006).
	<b>Total</b>					<b>10.78</b>	

The above cases were reported to Government between January 2006 and March 2006; reply has been received in one case (December 2006).

**2.2.2.2** It has been judicially held<sup>^</sup> that warranty charges received for replacing defective parts is sale of goods and is liable to tax. Tax leviable on spares of motor vehicles was at the rate of eight *per cent* at the point of first sale in the State.

In sales tax office, special circle, Tirur, while finalising the assessment for 2000-01 and 2001-02 between October 2004 and March 2005 of an assessee engaged in the business of vehicles and spares, warranty charges of Rs 75.23 lakh received from the manufacturers for replacing defective parts of vehicles were not included in the taxable turnover. This resulted in non levy of tax of Rs 6.53 lakh including additional sales tax.

After this was pointed out in August 2005, Government informed in June 2006 that the assessments were revised between October and December 2005 and the amounts were advised for revenue recovery. Further progress was awaited (December 2006).

**2.2.3** It was judicially held<sup>^</sup> that DEPB<sup>\*</sup> be treated as goods within the meaning of Sales Tax Act and the premium of price received on sale thereof is liable to tax.

In sales tax office, special circle, Palakkad, while finalising the assessment for 1997-98 in March 2002 of a manufacturer and seller in push button telephone, sale proceeds of DEPB license amounting to Rs 59.28 lakh were not assessed to tax. This resulted in non levy of tax of Rs 6.52 lakh.

After this was pointed out in August 2004, the assessing authority stated in January 2005 that action has been initiated to levy tax. Further progress was awaited (December 2006).

<sup>^</sup> M/s Mohammed Ekram Khan and Sons Vs Commissioner of Trade Tax - 12 KTR 572 (SC)

<sup>^</sup> Philco Exports Vs Sales Tax Officer & Ors -10 KTR 245

<sup>\*</sup> Duty entitlement pass book

The case was reported to Government in February 2006; further report has not been received (December 2006).

**2.2.4** It was judicially held<sup>♦</sup> that an assessee was liable to pay tax when purchase of goods was made from registered dealers who were not liable to tax as their turnovers were below the assessable limit.

In sales tax office, first circle, Thalassery, while finalising the assessment for 2001-02 and 2002-03 between February 2004 and July 2004 of a dealer, sales turnover of Rs 6.14 lakh of soda was exempted from tax treating it as second sales. But the assessee purchased soda from registered dealers who were not liable to tax as the turnover was below the assessable limit. This resulted in short levy of tax and interest of Rs 2.18 lakh.

After this was pointed out in May 2005, Government informed in June 2006 that the assessments were revised and advised for revenue recovery.

### **2.3 Incorrect grant of exemption**

**2.3.1** By a notification issued in August 2001 under the KGST Act, exemption granted on tax payable by dealers who were engaged in printing and supply on contract basis was withdrawn with effect from 16 August 2001. Tax leviable on printing and supply of materials is eight *per cent*.

In sales tax office, special circle III, Ernakulam, while finalising the assessment of a dealer engaged in printing and supply on contract basis for the year 2001-02 in September 2004, turnover of Rs 1.92 crore for the period from 16 August 2001 to 31 March 2002 was exempted from levy of tax. This resulted in non levy of tax of Rs 17.63 lakh.

After this was pointed out in September 2005, Government informed in June 2006 that notice was issued in November 2005 to reassess the turnover and action has been initiated to make good the loss sustained to Government. Further progress was awaited (December 2006).

**2.3.2** As per the KGST Act, tax on motor vehicles is leviable at the rate of eight *per cent* up to March 1997 and at the rate of 10 *per cent* thereafter.

In sales tax office, second circle, Tripunithura, while finalising the assessments for the years from 1995-96 to 1997-98 in June 1999 of a financing company dealing with motor vehicles, turnover of Rs 1.33 crore relating to the sale of vehicles was incorrectly exempted from tax. This resulted in short levy of tax of Rs 12.12 lakh including surcharge.

---

<sup>♦</sup> M.S.Raja Mohammed Vs State of Kerala - 102 STC 143

After this was pointed out, the department informed in June 2006 that case has been reassessed and the amount advised for revenue recovery in February 2005. Collection particulars have not been received (December 2006).

**2.3.3** Under the KGST Act, new SSI\* units are exempted from payment of tax due on goods produced and sold by them for a period of seven years from the date of commencement of commercial production. Exemption from sales tax was admissible only for goods manufactured and sold by the unit. Under the KGST Act, tax at the rate of one *per cent* is charged on first sale of paddy by registered dealers. It has been judicially held\* that a dealer was liable to pay purchase tax on the purchase of paddy procured in circumstances in which no tax had been paid. It was also held\* that SSI units are not entitled to get SSI exemption on purchase tax.

**2.3.3.1** In sales tax office, third circle, Palakkad and sales tax office, Aluva, while finalising the assessment of three dealers of paddy for the years 2000-01 and 2001-02 between November 2002 and April 2003 the assessing authorities levied purchase tax of Rs 6.71 lakh and incorrectly adjusted it against SSI exemption. This resulted in non recovery of purchase tax of Rs 6.71 lakh.

After these cases were pointed out between September 2003 and December 2004, Government informed in September 2006 that the assessing authorities revised the assessments and issued demand notices. Further progress was awaited (December 2006).

**2.3.3.2** In sales tax offices, Alathur and second circle Changanassery, while finalising the assessments of two manufacturing units for the years 1995-96 and 1999-2000, between March 2004 and March 2005, the assessing authorities exempted purchase turnover of rubber wood and coconut shell for Rs 3.27 crore incorrectly. This resulted in non levy of tax of Rs 27.95 lakh and interest of Rs 5.37 lakh.

After these cases were pointed out between August 2004 and March 2005, the department stated in January 2005 that assessing authority had issued notice in the case of Alathur. Government informed in July 2006 that the assessment was revised in the case of Changanassery. Further progress was awaited (December 2006).

**2.3.3.3** In agricultural income tax and sales tax office, Sulthan Bathery, a SSI unit was allowed exemption from sales tax for the period from 5 June 1997 to 4 June 2004 in August 2001. While finalising the assessment for 1999-2000 in March 2004, the assessing authority erroneously granted sales tax exemption of Rs 16.07 lakh as against the available balance of Rs 3.35 lakh for the period from 1 April 1999 to 30 October 1999. This resulted in short levy of tax of Rs 12.72 lakh.

---

\* Small scale industrial

\* Raja Provision Stores Vs Appellate Tribunal (Sales Tax), Thiruvananthapuram- 105 STC 325 (SC)

\* State of Kerala Vs M/s Vattukalam Chemicals Industries -10 KTR 69 (SC)

After this was pointed out, the assessing authority stated in February 2006 that the unit had got additional exemption covering the entire period. The reply is not tenable as the revised proceedings dated 24 March 2006 of General Manager, District Industries Centre, Wayanad, revealed that the additional sanction of SSI exemption was with effect from 31 October 1999 and did not cover the period from 1 April 1999 to 30 October 1999. Further reply was awaited (December 2006).

The case was reported to Government in March 2006; further report has not been received (December 2006).

**2.3.4** Under the KGST Act, in respect of manufactured goods other than tea which are sold under a trade mark or brand name, the sale by the brand name holder or the trade mark holder within the State shall be the first sale for the purpose of this Act. Industrial units which manufacture goods on behalf of another brand name holder were not eligible for exemption. It was also judicially held<sup>▼</sup> by the apex court that in the case of an SSI unit excise duty exemption was not applicable if goods are manufactured with brand name or trade name of another which was not a small scale industry.

In sales tax office, special circle, Kottayam, it was noticed that a dealer (a medium and large scale industrial unit) was granted exemption from sales tax of Rs 40.23 crore as per order dated 6 July 1996 for seven years during the period from 14 October 1995 to 13 October 2002. As per the eligibility certificate, the dealer was to manufacture Portland Pozzolana cement.

It was however observed in May 2004 that the dealer entered into an agreement with a dealer of Mumbai in June 1999 to use logo/trade mark of that dealer for three years with effect from 1 June 1999 and undertook not to manufacture and sell cement under any other logo/brand name. While finalising the assessments of the dealer for the years from 1999-2000 to 2001-02 between February and April 2003, the assessing officer assessed tax of Rs 15.19 crore on turnover of Rs 98.56 crore and adjusted the same against exemption limit instead of demanding the tax. Since the dealer was selling manufactured goods by the brand name of other company, the assessee was not entitled to the exemption, and the exemption of Rs 15.19 crore allowed was irregular.

After this was pointed out in May 2004, Government informed in September 2006 that the unit entered into an agreement with M/s Associated Cement Companies Limited and obtained logo from 1 June 1999. So the unit became the brand name holder and a unit having sales tax exemption simultaneously. The assessee had not violated any of the conditions in the notifications granting exemption. The reply was not tenable in view of the agreement made by the company and also in view of the judicial decision that even a use of part of a brand name or trade name, so long as it

---

<sup>▼</sup> Commissioner of Central Excise, Raipur Vs Hira Cement - 145 STC 264 (SC)

indicates a connection in the course of trade would be sufficient to disentitle the person from getting exemption.

#### 2.4 Application of incorrect rate of tax

Under the KGST Act, rate of tax depends on the nature of sale, point of sale and also on the kind of commodity. Under the Kerala Surcharge on Taxes Act (KST Act), 1957, surcharge at the rate prescribed is also leviable on sale and purchase tax.

In eight offices, it was observed that while finalising assessment between July 2003 and March 2005 the assessing officers levied tax, additional sales tax and surcharge of Rs 55.17 lakh short in 13 cases due to application of incorrect rate. A few examples by way of illustration are given below:

(In lakh of rupees)

Sl. No.	Name of Office/ No. of cases	Commodity	Assessment year/ Month of assessment	Rate applicable	Turn-over	Tax short levied and surcharge and additional sales tax	Remarks
				Rate applied (in per cent)			
1.	<u>STO, Special Circle III, Ernakulam</u> 4	Polythene films	<u>2003-04</u> December 2004	$\frac{8}{4}$	176	8.07	After these were pointed out in August 2005, Government informed in July 2006 that polythene films containing logo of the purchaser and details of content printed on it and sold to milk processing units for packing milk were assessable at four per cent as packing materials. The reply is not tenable, as the goods manufactured as polythene films and covers were unsuitable for being used as packing materials without undergoing some manufacturing process.
			<u>2003-04</u> December 2004	$\frac{8}{4}$	140	6.22	
			<u>2003-04</u> December 2004	$\frac{12}{4}$	25.18	2.24	
			<u>2002-03</u> March 2005	$\frac{8}{4}$	101	4.66	
2.	<u>STO, Special Circle, Mattancherry</u> 2	Domex (liquid used for cleaning floor)	<u>2001-02</u> March 2004	$\frac{12}{8}$	118	5.22	After this was pointed out in November 2004, Government informed in June 2006 that the assessment was revised in May 2006. Further reply was awaited (December 2006).

*Audit Report (Revenue Receipts) for the year ended 31 March 2006*

(In lakh of rupees)

Sl. No.	Name of Office/ No. of cases	Commodity	Assessment year/ Month of assessment	Rate applicable	Turn-over	Tax short levied and surcharge and additional sales tax	Remarks
				Rate applied (in per cent)			
		Works contract	1999-2000 March 2005	7/8.4 2	54.54	3.12	After this was pointed out in December 2004, the department stated in October 2005 that the rate was correct as works like construction of ponds, wells etc., were also included in Section 7(7) of Finance Act, 2004. The reply is not tenable as the case pertains to the period 1999-2000. Hence, the amendment effected by Finance Act, 2004 would not be applicable in this case.
3.	STO, Second Circle Thiruvananthapuram 1	Coconut oil and coconut oil cake	2000-01 and 2001-02 January 2004	4 2/3	460	10.40	After this was pointed out in November 2004, Government informed in May 2006 that the assessments were revised in February 2005. The amount has been advised for revenue recovery in June 2005. Further progress was awaited (December 2006).
4.	STO, Second Circle Mattancherry 1	Liquefied petroleum gas (LPG)	2002-03 July 2004	16 12	96.91	3.88	After this was pointed out in October 2005, Government informed in October 2006 that the assessment was reopened and the turnover was assessed at 16 per cent. Further progress was awaited (December 2006)
5.	STO, Aluva 1	Biscuits sold under brand name	2002-03 January 2004	12 8	83.62	3.85	After this was pointed out in December 2004, Government informed in June 2006 that the assessment had been revised levying tax at the rate of 12 per cent. The assessee remitted Rs 2.00 lakh in May 2005. Balance amount with interest of Rs 3.93 lakh was advised for revenue recovery. Further reply was awaited (December 2006).

The above cases were reported to Government between February 2005 and April 2006. Their reply has been received in 12 cases (December 2006).



## 2.5 Non/short levy of interest

**2.5.1.1** Under KGST Act, if tax or any other amount assessed or due under the Act is not paid by any dealer within the time prescribed therefor in the Act or any Rules made thereunder or within the time specified in the notice of demand, the dealer shall pay by way of interest a sum equal to one *per cent* of such amount for each month for the first three months of delay and two *per cent* for each month upto 31 March 2005 and at the rate of one *per cent* per month thereafter.

In nine offices\*, the assessing authorities while finalising the assessments for the period from 1996-97 to 2001-02 between June 2001 and January 2006 either failed to levy or levied short interest of Rs 5.18 crore in 16 cases. A few cases by way of illustration are as under:

(In lakh of rupees)

Sl. No.	Name of office No. of cases	Assessment year/Month and year of assessment	Nature of irregularity	Non/short levy of interest	Remarks
1.	STO, Special Circle, Palakkad 5	2000-01 & 2001-02 January 2006	The assessee paid Rs 0.07 lakh out of the admitted turnover tax of Rs 2.27 crore. But while finalising the assessment the assessing authority failed to levy interest for the unpaid balance tax for the period upto January 2006.	211.38	After these cases were pointed out in March 2006, the assessing authority stated that it was specifically ordered in the assessment order to pay balance amount with interest. The reply is not tenable as demand of interest without specifying amount of accrued interest would apply only to future interest and assessing authority should have specified the amount of interest up to the date of issue of demand.
		2000-01 October 2005	While finalising the assessment, the assessing authority demanded admitted turnover tax of Rs 1.48 crore in January 2006, but failed to levy interest for the period upto issue of demand in January 2006.	149.63	
		1999-2000 September 2005	The assessee paid only Rs 84.84 lakh out of the admitted tax of Rs 1.47 crore. While finalising the assessment, interest for the unpaid balance amount of Rs 62.16 lakh was not levied for the period upto the issue of demand in January 2006.	78.23	
		2001-02 October 2005	Though the assessee admitted tax of Rs 31.32 lakh in the revised return filed in September 2005, no tax was paid till the date of issue of demand notice. The assessing authority failed to compute interest for the period upto the issue of demand in October 2005.	30.69	

\* STO Special Circles: Alappuzha, Ernakulam II, Ernakulam III, Kasargod, Mattancherry, Palakkad, Thiruvananthapuram and Thrissur and STO Chalakkudy

*Audit Report (Revenue Receipts) for the year ended 31 March 2006*

(In lakh of rupees)

Sl. No.	Name of office No. of cases	Assessment year/Month and year of assessment	Nature of irregularity	Non/short levy of interest	Remarks
2.	<u>STO, Special Circle, Thiruvananthapuram</u> 2	1998-99 February 2003	While advising the amount under RRC <sup>♦</sup> in May 2003, interest for March and April 1999 was not reckoned and interest for the period from 12 April to 11 July 2003 was advised at the rate of one <i>per cent</i> instead of two <i>per cent</i> .	23.28	After this was pointed out in August 2003, Government informed in October 2006 that the mistake in computation of interest had been rectified in one case. Further report has not been received on the other case.( December 2006)
3.	<u>STO, Special Circle III, Ernakulam</u> 2	1998-99 & 1999-2000 September 2001 and December 2001	The Sales Tax Appellate Tribunal decided in favour of revenue restoring the original assessment. While issuing RRC in February 2005 the assessing officer failed to levy interest on the balance tax of Rs 15.02 lakh for the period from December 2001 to January 2005.	10.93	After this was pointed out in March 2006, the assessing authority stated that interest was not leviable when the demand was set aside. The reply is not tenable in view of the provisions in KGST Act that interest is leviable on the amount finally settled and period during which the collection of amount was stayed by any authority shall not be excluded in computing the interest.
4.	<u>STO, Special Circle II, Ernakulam</u> 1	2001-02 November 2003	While finalising the assessment of a dealer in jewellery of gold, interest was not levied on unpaid additional sales tax of Rs 18.13 lakh.	7.07	After this was pointed out in December 2004, the department stated that the matter would be examined. Further report has not been received (December 2006).

The above cases were reported to Government in June 2006; their reply has not been received in 15 cases (December 2006).

**2.5.1.2** Under KGST Act, where any dealer has failed to include any turnover in the return filed by him or any turnover has escaped assessment, the dealer shall pay interest at the rate of one *per cent* per month for the first three months and at the rate of two *per cent* for subsequent months up to 31 March 2005 and at the rate of one *per cent* thereafter.

Test check of records of nine offices<sup>♥</sup> revealed that assessing authorities while finalising the assessments for the period from 2000-01 to 2003-04 between November 2002 and October 2005 failed to levy interest of Rs 1.41 crore on sales tax assessed for turnover suppressed in 12 cases. A few cases by way of illustration are as under:

<sup>♦</sup> Revenue recovery certificate

<sup>♥</sup> STO Special Circles: Alappuzha, Ernakulam II, Kozhikode I, Mattancherry (HP) and Palakkad STOs: Hosdurg, Ernakulam IV, Kozhikode I and AIT& STO, Ranni

(In lakh of rupees)

Sl. No.	Name of office No. of cases	Assessment year/Month and year of assessment	Nature of irregularity	Non/short levy of interest	Remarks
1.	<u>STO, Special Circle, Palakkad</u> 1	<u>2000-01</u> October 2005	The assessee failed to include the excise duty element of Rs.6.39 crore in the conceded turnover. Though the assessing authority levied tax of Rs 64.04 lakh in October 2005, he omitted to levy interest on the tax for the period upto October 2005.	31.32	After this was pointed out in March 2006, the assessing authority replied that it was specifically ordered in the assessment order itself that the interest due on the amount shall also be paid. The reply is not tenable as the amount of interest due was not specified in the assessment order and without specifying the accrued interest, the order applies only to interest which would accrue in future.
2.	<u>STO, Special Circle II, Ernakulam</u> 2	<u>2000-01</u> March 2005	The assessee failed to include turnover of Rs 3.45 crore in the return. Though the assessing authority added this amount with the taxable turnover, he failed to levy interest on the tax due thereon for the period upto January 2006.	27.87	After this was pointed out in January 2006, the assessing authority stated that the case would be examined. Further report has not been received (December 2006).
		<u>2001-02</u> January 2005	The assessee failed to concede a turnover of Rs 31.68 lakh which was assessed by the assessing authority. But interest due on the tax for the period from May 2002 to February 2005 was not levied.	2.84	After this was pointed out in January 2006 the assessing authority stated that the case would be examined. Further report has not been received (December 2006).
3.	<u>STO, Special Circle I, Kozhikode</u> 1	<u>2000-01</u> February 2003	The assessee suppressed a turnover of Rs 6.73 crore which the assessing officer had assessed to tax based on information from check post. However, interest due on the tax on the suppressed turnover for the period upto April 2003 was not levied.	24.23	After this was pointed out in April 2005, the assessing authority stated that interest was not leviable as the dealer had not produced the accounts. The reply is not tenable since the dealer failed to include the turnover in the return filed by him. So the interest was leviable.
4.	<u>STO, Special Circle (HP), Mattancherry</u> 2	<u>2000-01</u> January 2005	Suppression of turnover of Rs 3.83 crore detected by intelligence squad in June 2001/March 2004 was added and tax levied on the escaped turnover. The assessing authority failed to levy interest on tax due on the escaped turnover.	29.81	After this was pointed out in August 2005, Government informed in July 2006 that interest was to be recovered from the date of demand notice. The reply is not tenable in view of the provisions of the Act that interest is due on the tax from the date from which the tax had fallen due on escaped/suppressed turnover.
5.	<u>STO, Hosdurg</u> 1	<u>2002-03</u> March 2005	A dealer in furniture and timber effected purchase of timber by issuing form 18 at concessional rate. But this was not disclosed		After this was pointed out in October 2005, the assessing authority stated that interest fell due only after creating

**Audit Report (Revenue Receipts) for the year ended 31 March 2006**

**(In lakh of rupees)**

<b>Sl. No.</b>	<b>Name of office No. of cases</b>	<b>Assessment year/Month and year of assessment</b>	<b>Nature of irregularity</b>	<b>Non/short levy of interest</b>	<b>Remarks</b>
			in the accounts. While finalising the assessments, the assessing authority levied tax on escaped turnover, but failed to levy interest on tax due.	9.85	additional demand. The reply is not tenable as the dealer is liable to pay the differential tax and interest from the date of purchase of goods.
6.	<u>STO, First Circle, Kozhikode</u> 1	<u>2000-01</u> March 2005	Purchase turnover of Rs 2.16 crore of copra was not shown in the accounts and return. While finalising assessment, the assessing authority failed to levy interest on tax due on the escaped turnover.	7.88	After this was pointed out in June 2005, Government informed in June 2006 that the assessee had not admitted the turnover which escaped assessment. The reply was not tenable as suppression of turnover was detected by vigilance and anti corruption bureau and was assessed to tax. So the interest was leviable.

The above cases were reported to Government in June 2006. Further report has not been received in eight cases (December 2006).

**2.5.1.3** Under the CST Act, amended with effect from 1 April 2000, if the tax payable by any dealer is not paid in time, the dealer shall pay interest for the delayed payment of such tax at the rates applicable as per the general sales tax law of the State.

In four offices, it was noticed between March 2005 and March 2006 that while finalising the assessments under CST Act between December 2001 and March 2005 for the years from 1996-97 to 2000-01, the assessing authorities failed to levy interest of Rs 22.21 lakh as shown under:

**(In lakh of rupees)**

<b>Sl. No.</b>	<b>Name of office No. of cases</b>	<b>Assessment year/Month and year of assessment</b>	<b>Nature of irregularity</b>	<b>Non/short levy of interest</b>	<b>Remarks</b>
1.	<u>STO, Special Circle, Alappuzha</u> 1	<u>2000-01</u> March 2005	The assessee did not file return under CST Act. However, in the return filed under GST Act, interstate sale of Rs 1.57 crore was shown. The assessing authority assessed tax of Rs 12.57 lakh but failed to levy interest on tax due for the period upto August 2005.	12.07	After this was pointed out in February 2006, the assessing authority replied that interest was not leviable since the assessment was ex parte. The contention is not tenable as the assessee failed to file return and assessment was made on details available in records; hence interest was leviable.
2.	<u>STO, Special Circle, Thrissur</u> 2	<u>1997-98 &amp; 1998-99</u> March 2003	The assessee collected CST of Rs 11.32 lakh but did not remit any amount. While finalising the assessments, the assessing officer did not levy interest.	7.81	After this was pointed out in March 2006, the assessing authority replied that case would be examined. Further report has not been received (December 2006).

(In lakh of rupees)

Sl. No.	Name of office No. of cases	Assessment year/Month and year of assessment	Nature of irregularity	Non/short levy of interest	Remarks
3.	<u>STO, Second Circle, Mattancherry</u> 1	<u>1997-98</u> December 2001	As the tax of Rs 1.95 lakh assessed was not paid, it was recommended for RR action. While issuing RRC in August 2002, the assessing authority failed to mention the interest to be recovered. The amount of interest upto December 2005 works out to Rs 1.60 lakh.	1.60	After this was pointed out in December 2005, the assessing authority replied that steps would be taken to realise the amount. Further report has not been received (December 2006).
4.	<u>STO, Special Circle, Mattancherry</u> 1	<u>1996-97</u> December 2002	Assessee failed to remit full amount of admitted tax of Rs 1.87 lakh. Assessing authority omitted to levy interest on unremitted portion of admitted tax for the period April 2000 to December 2002.	0.73	The matter was pointed out in March 2005. No reply has been received (December 2006).
	<b>Total</b>			<b><u>22.21</u></b>	

The above cases were reported to Government in June 2006. Further report has not been received (December 2006).

### 2.5.2 Non levy of interest on surcharge payable

Under the KST Act, the tax payable under KGST Act shall be increased by a surcharge at the prescribed rates in case of a dealer whose turnover exceeds Rs 10 lakh in a year. As per KST Act, all provisions of KGST Act shall apply in relation to the tax payable. KST Act has been dispensed with effect from 1 January 2000, except for foreign liquor.

In special circle, Mattancherry, it was noticed in March 2005 that assessing authority finalised assessment under KST Act for the year 1996-97 in February 2001 and demand of Rs 17.95 lakh on account of surcharge was raised but the amount has not been paid by the assessee so far. Interest of Rs 33.56 lakh for the period from May 1997 to March 2005 on the amount of unpaid tax has also become due but was not demanded.

After this was pointed out in March 2005, the assessing authority stated that the case would be examined. No reply has been received so far (December 2006).

### 2.6 Non levy of penalty

Under the KGST Act, the assessing authority shall finalise the assessment of certain specified category of dealers without detailed scrutiny. On reopening such assessment, if the tax paid by the dealer is less than the amount of tax he is liable to pay, the assessing authority shall impose penalty at thrice the amount of such difference.

In sales tax office, second circle, Mattancherry, while revising an assessment for 1998-99 completed without detailed scrutiny in January 2005 of a dealer engaged in export of marine products, penalty at three times of the tax on the escaped turnover of Rs 15.67 lakh was not levied. This resulted in non levy of penalty of Rs 4.70 lakh.

After this was pointed out in October 2005, Government informed in June 2006 that notice has been issued in May 2006 to impose penalty. Further reply is awaited (December 2006).

### **2.7 Short levy due to incorrect assessment**

Under the KGST Act, every contractor may at his option, opt for payment of tax at compounded rates instead of paying tax as per the scheduled rates. As per Board of Revenue Circular<sup>^</sup> for assessments for the period after 1 April 1991 onwards, compounding facility would be granted to those contractors who opt for the same before completion of assessment.

In sales tax office, special circle, Mattancherry, while finalising the assessment for 1998-99 in August 2002 of a contractor who did not file his option for compounding, the assessment was completed under compounding, instead of levying tax as per scheduled rates. This resulted in short levy of tax of Rs 2.64 lakh on taxable turnover of Rs 1.92 crore.

After this was pointed out in November 2003, Government informed in December 2006 that the assessment was revised and the short levy made good.

### **2.8 Short levy of tax due to incorrect compounding**

Under the KGST Act, a dealer in gold or silver ornaments may at his option pay tax at the compounded rate of 200 *per cent* of the tax payable by him as conceded in the return or accounts or the tax paid for the immediate preceding year whichever is higher.

In sales tax office, Perinthalmanna, while finalising the assessment of a dealer in jewellery, who opted to pay tax at the compounded rate for 2002-03 in April 2004, the assessing authority compounded tax at the rate of 200 *per cent* on Rs 6.19 lakh instead of Rs 7.17 lakh which was paid by the assessee during 2001-02. Incorrect compounding resulted in short levy of tax of Rs 2.26 lakh including additional sales tax.

After this was pointed out in September 2005, the assessing authority stated that the case would be examined; further reply was awaited (December 2006).

---

<sup>^</sup> No.2/97/TX

The case was reported to Government in January 2006; further report has not been received (December 2006).

## 2.9 Short realisation of tax/interest due to non liquidation of interest

Under the KGST Act, if the tax due is not paid within the time prescribed, the dealer shall pay interest. Further, where any tax or any other amount due or demanded is paid by any dealer, the payment so made shall be appropriated first towards interest accrued on such tax or other amount under sub section (3) of Section 23 on such date of payment and the balance available shall be appropriated towards principal outstanding.

In 11 offices\*, the assessing authorities while finalising the assessments for the period February 2001 to December 2005 failed to appropriate the remittances first against interest. Instead they adjusted the remittances against the tax. This resulted in short realisation of tax/interest of Rs 38.95 lakh in 20 cases. A few cases by way of illustration are as under:

(In lakh of rupees)					
Sl. No.	Name of office No. of cases	Assessment year/Month and year of assessment	Nature of irregularity	Non/short levy of tax/ interest	Remarks
1.	<u>STO, First Circle, Kottayam</u> 2	<u>1999-2000 &amp; 2000-01</u> November 2003	The assessee remitted Rs 11.03 lakh after the due date for payment of tax of Rs 11.92 lakh. The assessing authority treated these remittances as tax remittance instead of liquidating interest resulting in short realisation of tax/interest.	8.80	After this was pointed out in January 2006, the assessing authority replied that this would be examined. Further report has not been received (December 2006).
2.	<u>STO, Aluva</u> 1	<u>1998-99</u> December 2005	The assessing authority failed to levy interest on the unremitted portion of tax due amounting to Rs 3.80 lakh and omitted to appropriate the subsequent remittance of Rs 1 lakh towards interest. This resulted in short demand of tax/interest.	5.62	After this was pointed out in February 2006, the assessing authority replied that the case would be examined. Further report has not been received (December 2006).
3.	<u>STO, Special Circle, Kasargod</u> 1	<u>1997-98</u> December 2003	The assessee remitted Rs 3.30 lakh during the period December 2003 to September 2004. The assessing authority treated these as tax payments without liquidating interest resulting in short demand of tax and interest.	3.96	The case was pointed out in December 2005; no reply was received (December 2006).

\* STO Special Circles: Kannur, Kasargod, Kollam, Kottayam, Mattancherry (HP) and Mattancherry STOs : I Circle Alappuzha, Aluva, Chalakkudy, I Circle Kottayam and II Circle Mattancherry,

**Audit Report (Revenue Receipts) for the year ended 31 March 2006**

<b>(In lakh of rupees)</b>					
<b>Sl. No.</b>	<b>Name of office No. of cases</b>	<b>Assessment year/Month and year of assessment</b>	<b>Nature of irregularity</b>	<b>Non/short levy of tax/ interest</b>	<b>Remarks</b>
4.	<u>STO, First Circle,</u> <u>Alappuzha</u> 4	<u>1999-2000</u> July 2004 <u>2000-01</u> April 2002 <u>2000-01</u> August 2004 <u>2001-02</u> April 2005	In four cases, remittances of Rs 7.78 lakh against the tax due of Rs 25.47 lakh made after the due date for payment of tax were not properly appropriated between tax and interest resulting in short demand of tax and interest.	6.16	After this was pointed out in February 2006, the assessing authority replied that the case would be examined. Further report has not been received (December 2006).
5.	<u>STO, Second Circle,</u> <u>Mattancherry</u> 1	<u>1998-99</u> June 2004	Excess remittance for 1997-98 amounting to Rs 1.95 lakh made in September 2002 was adjusted fully towards tax for 1998-99 instead of appropriating first towards interest.	2.56	After this was pointed out in October 2005, Government informed in October 2006 that the defect had been rectified by issuing revised proceedings and demand notice. Further report has not been received (December 2006).

The above cases were reported to Government in June 2006; their reply has not been received in 19 cases (December 2006).