

CHAPTER II : COMMERCIAL TAX

2.1 Results of Audit

Test check of assessment cases and other records relating to Commercial Tax Department during the year 2004-05 revealed underassessment, non/short levy of tax and penalty, application of incorrect rate of tax etc., involving Rs.38.58 crore in 1,099 cases which can broadly be categorised as under:

(Rupees in crore)

Sl. No.	Category	Number of cases	Amount
1.	Non/short levy of tax	276	4.44
2.	Application of incorrect rate of tax	132	2.49
3.	Incorrect determination of taxable turnover	90	5.95
4.	Incorrect grant of exemption/deduction/set off	150	9.19
5.	Others	450	14.72
6.	Review : Pendency of Revenue Recovery Certificates in Commercial Tax Department	1	1.79
	Total	1,099	38.58

During the year 2004-05, the Department accepted underassessment of tax of Rs.1.05 crore involving 29 cases, of which 20 cases involving Rs.94.41 lakh had been pointed out in audit during 2004-05 and the rest in earlier years.

A few illustrative cases involving Rs.8.88 crore and a review on **Pendency of Revenue Recovery Certificates in Commercial Tax Department** involving Rs.1.79 crore highlighting important cases are mentioned in this chapter.

2.2 Review: Pendency of Revenue Recovery Certificates in Commercial Tax Department

Highlights

- Delay in institution of Revenue Recovery Certificates (RRCs) in 99 cases ranged between 15 days to 34 months.
(Paragraph 2.2.10)
- Properties of 71 defaulters attached by the Department were not disposed of resulting in non realisation of Government dues.
(Paragraph 2.2.13)
- One hundred and sixty revenue recovery certificates were sent to other states for realisation of Government dues. No follow up action was taken for realisation of the same.
(Paragraph 2.2.14)

2.2.1 Introduction

The Madhya Pradesh *Vanijyik Kar Adhiniyam*, 1994 (*Adhiniyam*) provides for levy/collection of commercial/purchase tax from dealers whose annual turnover of sales/purchases exceeds the limits prescribed under the Act. The registered dealer is required to submit periodical returns in the prescribed manner to the assessing authority alongwith proof of payment of tax after self assessment of tax. Thereafter, the case is assessed by the assessing authority within a period of two calendar years from the end of the period for which the assessment is to be made. A notice in Form 50 is issued to deposit the amount of additional demand of tax within a period of 30 days of the receipt of such notice failing which the assessing authority or any other officer having jurisdiction over such dealer or persons shall be empowered to recover such amount as arrears of land revenue by issuing Revenue Recovery Certificate (RRC) incorporating the name of dealer, residential address and the amount recoverable. The sum outstanding shall be recoverable as arrear of land revenue according to the provision of Madhya Pradesh Land Revenue Code, 1959 (MPLR Code) and Rules made thereunder for making payment within the specified time in the demand notice. In case of default, warrant of attachment is issued by Recovery Officer for attachment of property.

As specified in Section 32 (13) (b) of the *Adhiniyam* the Deputy Commissioner, Assistant Commissioner (AC), Commercial Tax Officer (CTO), Assistant Commercial Tax Officer (ACTO) are empowered to exercise all the powers and perform all the duties of Collector, Assistant Collector or Deputy Collector and Tahsildars respectively under the said code.

2.2.2 Recommendations

It is recommended that, Government may consider:

- developing a management information system to keep a watch on arrears/RRC.
- ensuring that RRCs are issued within the time limit fixed and arrears are realised timely.
- laying down time limits for serving notice of additional demand in Form-50 and for assessing officer to send the RRC to recovery officer.

2.2.3 Organisational set up

The Principal Secretary, Commercial Tax Department is the administrative head of the Department at apex level and assisted by Commissioner, Commercial Tax (CCT) with headquarters at Indore. There are four zones at Indore, Gwalior, Jabalpur and Bhopal. The zonal offices are headed by additional commissioners. Apart from this, there are 13 divisions, each headed by deputy commissioner and 75 circles headed by CTOs. The ACs, CTOs and ACTOs are the assessing authorities in the department.

2.2.4 Scope of audit

Test check of records of 44 out of 127 units for the year 1999-2000 to 2003-2004 was conducted during June 2004 and May 2005.

2.2.5 Audit Objectives

The review was conducted with a view to ascertain:

- extent of compliance of procedure/codal provisions and executive instructions to ensure timely collection of arrears.
- lacunae in the Act/Rules responsible for blockage of revenue in arrears.
- efficiency and effectiveness of efforts made to recover arrear dues as arrears of land revenue.

2.2.6 Internal Audit Wing

Internal Audit is considered to be an effective mechanism for evaluating the various internal control systems and identifying their weakness. It is, therefore, the responsibility of the Department to ensure that a proper internal control structure is instituted, reviewed and updated from time to time to keep it effective. In the Commercial Tax Department, internal audit wing was established in 1982.

Information made available to audit with regard to the units test checked revealed that no internal audit was conducted during the period 1999-2000 to 2003-2004. The CCT and Government intimated in July 2005 that internal audit wing was not functioning due to non posting of staff.

2.2.7 *Lacuna in Act/Rules*

Under the provisions of the Madhya Pradesh *Vanijyik Kar Niyam*, 1995, the assessing authority is required to serve upon a dealer an authenticated copy of order of assessment and a notice in Form 50 for payment of any sum payable by him under the Act and Rules made thereunder. However, no time limit has been prescribed for service of notice in Form 50.

Test check of records of two ACs offices at Indore and Jabalpur and five circle offices¹ between September 2004 and April 2005 revealed that in 112 cases, involving a sum of Rs.4.04 crore, notice in Form 50 and order of assessment were served late after the passing of the assessment order. The delay ranged between one to 10 months.

Absence of provisions in the Rules regarding time limit for serving of notice upon the dealer resulted in delay in initiation of recovery proceedings.

Further, as per provisions of the *Adhiniyam*, if any amount of the tax or any other sum remains unpaid on the expiry of the period prescribed for the payment in the notice in Form 50, on the expiry of the period specified in the notice of demand the dealer liable to pay such sum shall be deemed in default. The sum outstanding shall be recoverable as arrears of land revenue according to the provisions of the MPLR, Code. However, no time limit was prescribed for sending of RRCs prepared by the assessing authority to the recovery officer (RO).

Test check of records of office of AC Bhopal and two offices of CTOs each at Indore and Jabalpur revealed that 58 RRCs involving Rs.8.08 crore were sent to the ROs after a delay of three weeks to four and half months after their preparation between January 2001 and March 2004 by the concerned assessing authorities.

Absence of time limit for sending the RRC to the RO resulted in delayed initiation of recovery proceedings.

2.2.8 *Position of arrears*

Information relating to amount of arrears pending collection in each division, recovery and addition of arrears made by a division during a year was being compiled in Commissioner office in the form of a statement called "Progress of Recoveries". Each statement comprised details of three preceding years. As per the statements, amount of arrears pending collection had increased from Rs.196.23 crore to Rs.646.47 crore during 2000-01 to 2003-04. The position of arrears pending collection during last five years was as under:-

¹ *Circle 2 Bhopal, Circle 1, 2, 3 and 4 Jabalpur*

(Rupees in crore)

Year	Opening Balance	Addition of amount	Total	Amount recovered	Balance	Percentage of recovery (Column 5 to 4)
1.	2.	3.	4.	5.	6.	7.
1999-2000	197.13	531.38	728.51	439.41	289.10	60.32
2000-2001	196.23 ²	523.16	719.39	492.53	225.79	68.46
2001-2002	225.79	1,007.07	1,232.86	362.99	869.87	29.44
2002-2003	869.87	684.96	1,554.83	901.56	653.27	57.98
2003-2004	653.27	473.69	1,126.96	480.49	646.47	42.63

An analysis of division wise figures of the statement revealed that in eight divisions figures of "addition of arrears" and "amount recovered" for the year 2001-02 did not tally with figures of 2001-02 shown in statement prepared for successive year 2002-03. Similarly, figures "addition of arrears" and "amount recovered" of year 2002-03 did not tally with the same figures of 2002-03 shown in successive year 2003-04 in respect of nine divisions.

Thus, it would be seen that position of arrears available with the Department was not reliable and needs verification/reconciliation with the respective divisions.

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

(Rupees in crore)

● Amount stayed by Court	=	56.74
● Amount involved in revision pending with additional commissioner and deputy commissioner	=	9.04
● Amount involved in sick mills pending in BIFR	=	103.12
● Amount involved in instalments	=	9.01
● Amount involved in RRC sent: outside State	=	50.41
inside State	=	112.26
● Amount involved in cases where the whereabouts of defaulters or their property is under investigation	=	120.76
● Amount involved in attachment of moveable and immovable properties	=	56.66
● Amount proposed for write off	=	9.05
● Total normal recovery	=	119.42

² Excluding the figures of Chhattisgarh State

Total

646.47

Agewise analysis of these arrears was not available either with the CCT or in the circles.

2.2.9 Short achievement of targets

CCT issued instructions in November 2000, 2001 and 2004 to all ROs to ensure that the closing balance of arrears was less than 10 *per cent* of the opening balance of arrears for the year 2000-01, 2001-02, 2003-04 while for the year 2002-03 it was fixed at 25 *per cent*. The CTO of each circle was responsible for effecting recovery through a team of officers constituted for the purpose. The Dy. CCT was required to keep a constant watch over the progress of the recovery of arrears made by each circle of this division. He was also required to submit a fortnightly report to the CCT.

The position of targets and achievements as worked out from information furnished by the Department was as under:

(Rupees in crore)

Year	Period of drive	Target fixed for drive	Opening balance of arrears	Closing balances as per targets fixed	Actual closing balance of arrears	Shortage in target amount (Percent -age)
1.	2.	3.	4.	5.	6.	7.
2000-2001	1 December 2000 to 31 March 2001	Closing balance should be less at least by 10 <i>per cent</i> of opening balance	196.23	176.61	225.79	49.18 (21.78)
2001-2002	1 December 2001 to 31 March 2002	--do--	225.79	203.21	869.87	666.66 (76.64)
2002-2003	1 January 2003 to 31 March 2003	Closing balance should be less at least by 25 <i>per cent</i> of opening balance	869.87	652.40	653.27	0.87 (0.13)
2003-2004	15 January 2004 to 31 March 2004	Closing balance should be less at least by 10 <i>per cent</i> of opening balance	653.27	587.94	646.47	58.53 (9.05)

It would be seen from the above that the targets were not achieved during 2000-01 and 2001-02. During these years arrears increased by 22 per cent and 77 per cent.

The Government in July 2005 stated that due to increase in responsibilities and continuous shortage in number of working posts of departmental officers and scarcity of resources in the Department the targets could not be achieved.

2.2.10 Delay in issue/registration of RRCs

According to the provisions of the *Adhiniyam*, a dealer is required to deposit the tax assessed by the assessing authority within 30 days from the date of service of notice of demand failing which the amount is to be recovered as arrears of land revenue. Further in accordance with CCT's circular of November 1992, if the amount remains unpaid, RRCs are to be initiated within 30 days from the date of expiry of period of payment.

- Test check of records of six offices of CTOs³ and two offices of the ACs,⁴ revealed between June 2004 and April 2005 that RRCs in 99 cases were issued after a delay of 15 days to 34 months. A few instances are given below:

Sl. No.	Name of CTO/AC	Case No. & amount involved (Rs. in lakh)	Date of assessments/ issue of demand notice	Due date of institution of certificate proceedings	Date of certificate proceedings	Delay	
						Months	Days
01	CTO Circle 02 Bhopal	277/2000 2.07	5.6.03	4.8.03	19.8.03	--	15
02.	CTO Circle 15 Indore	48/96 3.20	1.1.03	28.2.03	27.9.03	6	27
03.	-do-	46/96 0.96	-do-	-do-	-do-	6	27
04.	CTO Circle I Jabalpur	3/2000 1.18	17.1.01	16.3.01	29.1.04	34	--
05.	A.C. Jabalpur	22/2001 0.31	16.2.03	15.4.03	16.3.04	11	--

According to the instructions issued by CCT (November 1992), the RO is required to register the case within seven days in a register prescribed by the CCT after receipt of RRCs from the assessing authorities.

³ Circle 2 Bhopal, Circle 13 and 15 Indore, Circle 1, 3 and 4 Jabalpur

⁴ A.C. Indore and Jabalpur

RRCs in 104 cases valued at Rs.5.24 crore issued between December 1999 and September 2003 were not entered in the relevant registers.

After this was pointed out, the ROs entered the cases in the relevant registers and stated that RRCs were issued and registered late due to non availability of RRC books, shortage of staff and its deployment on different duties like election, pulse polio and census etc. The Government confirmed the reply in July 2005.

2.2.11 *Non issue/delay in issue of demand notices after issue of RRC*

As per provisions of the *Adhiniyam* and Rules, made thereunder and instructions issued by the CCT in October 1978 and November 1992, the RO is required to issue a demand notice within seven days after the receipt of RRC.

- Test check of records of seven circle offices⁵ revealed that in 35 cases registered between December 2000 and March 2004, demand notices involving Rs.96.78 lakh were not issued by the RO even after a lapse of five to 42 months resulting in non realisation of Government revenue to that extent.

- Further test check of records of four circle offices⁶ revealed in March 2005 that in 18 cases registered between January 2002 and February 2004, demand notices involving Rs.1.03 crore were issued late by one month to 22 months by RO. A few instances are given below:

S. No.	Name of CTO	Case No.	RRC No. & date	Amount (Rs. in lakh)	Date of issue of Demand Notice	Delay
1.	CTO Bhopal Circle-6	57/97	$\frac{36644 \times 4}{7.2.04}$	20.43	2.8.2004	5 months
2.	-do-	4/96	$\frac{36644 \times 7}{7.2.04}$	13.33	2.8.2004	5 months
3.	-do-	95/98	$\frac{8232 \times 54}{7.1.02}$	14.23	20.11.2003	22 months
4.	-do-	17/99	$\frac{8234 \times 34}{1.11.02}$	15.33	21.01.2003	2 months
5.	-do-	53/00	$\frac{7824 \times 33}{30.11.02}$	7.81	10.01.2003	1 month

After this was pointed out, the Department stated that demand notices were not issued/issued late due to rush of work and shortage of staff and its deployment for different duties like election, pulse polio and census etc. from time to time. The Government confirmed the reply in July 2005.

2.2.12 *Non issue/delay in issue of warrants of attachment*

⁵ Circle 2 Bhopal, Circle 11 and 15 Indore, Circle 1,2,3 and 4 Jabalpur

⁶ Circle 6 Bhopal, Circle 1,3 and 4 Jabalpur

As per instructions issued by CCT in October 1978 and November 1992 if a dealer after issue of RRC fails to deposit the tax within seven to 15 days from the date of issue of demand notice, action is required to be taken for issue of warrant for attachment of property.

- Test check of records of seven circle offices⁷ revealed that though the demand notice involving recovery of Rs.2.06 crore was served upon the defaulters in 71 cases during the period from year 1999 to March 2004, necessary warrants for attachment had not been issued by the RO. Consequently, Government dues amounting to Rs.2.06 crore remained unrecovered even after a lapse of five to 77 months.

- Test check of records of four units⁸ between August 2004 and March 2005 revealed that warrants of attachment in 30 cases involving recovery of Rs.1.25 crore, prepared between August 1999 and February 2004, were issued after a lapse of five to 59 months. Consequently, the properties could not be attached. This indicates that no serious efforts were being made to get the defaulters traced resulting in accumulation of arrears.

After this was pointed out, the Department stated that warrants of attachment could not be issued/could not be served due to non availability of defaulters, as well as due to shortage of staff and its deployment from time to time on different duties like election, pulse polio and census. The Government confirmed the reply in July 2005.

2.2.13 Non disposal of attached property

As per instructions of CCT of November 1980, action to auction attached property should be taken within three days of the service of warrant of attachment of property.

In 14 circle offices⁹, test check of records between August 2004 and April 2005 revealed that the properties of 71 defaulters who failed to pay Government dues were attached between August 1999 and March 2004. However these were not disposed of even after a lapse of five months to 65 months. Consequently, Government dues remained unrealised.

After this was pointed out in audit, the Department stated that the properties could not be auctioned due to non attendance of bidders at the venue. The reply of the Department was not tenable as there was no evidence on records to show that wide publicity through local/regional/national paper was given to attract sufficient number of bidder for public auction.

2.2.14 Failure to follow up the RRCs issued to other State

In case of defaulting dealers who have shifted their business/residences out of the State, the requisition for RRCs for effecting recovery of outstanding Government dues

⁷ Circle 2 Bhopal, Circle 7 and 11 Indore, Circle 1, 2, 3 and 4 Jabalpur

⁸ Circle 2 Bhopal, Circle 7 and 11 Indore and Circle 1 Jabalpur

⁹ Circle 1,2,4,5 and 6 Bhopal, Circle 4,6,7,10 and 11 Indore, Circle 2 Jabalpur, Circle 1 Satna, Circle Sendhwa and Circle Vidisha

has to be sent to the district collectors of the concerned States through Dy. Commissioner to which the recovery relates.

Test check of records of 15 units¹⁰ revealed that in 160 cases RRC for the period 1965-66 to 2002-03 were issued to various States between April 1999 and March 2004. No follow up action to effect the recovery was taken even after a lapse of one to six years. The Department stated that they did not get any information from the concerned States.

A mechanism for prompt transfer of RRC cases to concerned authorities in places outside the State to which they have shifted their business or residence and their follow up is required to be developed for collection of Government dues.

2.2.15 Non raising of demand for process expenses

Under the provisions of Madhya Pradesh *Lokdhan (Shodhya Rashiyon Ki Vasuli) Adhiniyam*, 1987, the process expense at the rate of three *per cent* of the principal amount, due from the defaulter, shall be included in addition to other charges in the demand notice to be issued to the defaulter.

Test check of records of 11 circle offices¹¹ revealed that the process expenses amounting to Rs.82.32 lakh on principal amount of Rs.27.44 crore recoverable from 200 defaulters were not included in the relevant demand notices issued to the defaulters during the period between May 1999 and March 2004.

After this was pointed out, the Department and Government stated in July 2005 that recovery proceedings were initiated under the MPLR Code and no process expenses as such were levied/included in the demand notice.

The reply of the Department/Government was not tenable in view of the provisions of section 3 of the Adhiniyam, which clearly provides for inclusion of process expenses at the rate of three *per cent* of the principal amount.

2.2.16 Conclusion

It would be seen from the above that there was lack of internal control mechanism for monitoring RRCs cases under MPLR Code and Rules made thereunder. The abnormal delay in initiation of RRCs, non disposal of attached properties and non follow up of action against RRCs sent to concerned authorities of other states for revenue realisation resulted in non recovery of huge amount of Government revenue.

2.2.17 Acknowledgement

The findings of review were forwarded to State Government in July 2005 with request to attend the Audit Review Committee meeting. However, neither Government nor Department came forward to attend the meeting.

¹⁰ Circle 1,2,3,4 and 5 Bhopal, Dy. CCT Division 1,2 and 3 Indore, Circle Itarsi, Hoshangabad, Rewa, Satna 1, Sehore, Sendhwa and Vidisha

¹¹ Circle 2 and 6 Bhopal, Circle 7, 10, 11, 13 and 15 Indore, Circle 1, 2, 3 and 4 Jabalpur

2.3 Application of incorrect rate of tax

Madhya Pradesh *Vanijyik Kar Adhiniyam*, 1994 (*Adhiniyam*) and notifications issued thereunder specify the rates of commercial tax leviable on sale of different commodities.

Test check of records in 13 regional offices¹² and 11 circle offices¹³ revealed between June 2003 to December 2004 that in 25 cases assessed between July 2001 and January 2005 for the period from April 1996 to March 2002, tax on sales turnover of Rs.24.50 crore was levied at incorrect rates. This resulted in under assessment of tax amounting to Rs.1.43 crore. A few illustrative cases are shown as under:

(Rupees in lakh)

Sl. No.	Name of Unit	No. of cases/ Assessment year	Date of assessment	Taxable turn-over	Rate of tax		Tax paid short	Nature of observat-ion
					levied	leviable		
1.	2.	3.	4.	5.	6.	7.	8.	9.
1.	RAC Ujjain	<u>3</u> 1999-2000 2000-2001 2001-2002	November 2002 December 2002 January 2005	1,149	4.6/ 9.20	13.8	102.72	Pigment (dye) was treated as chemical
<p>Remarks:- The Department stated that the case was decided on the basis of a clarification issued by CCT, wherein pigment was treated as chemical. The clarification was contrary to the provisions of the Act, as pigment (dye) is covered by a specific entry in the Act and is taxable at 13.8 <i>per cent</i>. Tax of Rs.102.72 lakh has been calculated at the rate of 4.6 and 9.2 <i>per cent</i>.</p>								
2.	RAC Indore	<u>1</u> 1999-2000	April 2003	46.75	6.9	9.2	1.07	Mosquito repellent machines treated as electrical goods
<p>Remarks:- The Department stated that mosquito repellent machine was an electric goods and not a machine. The reply was not tenable as Kerala High Court in its decision dated 28.8.2000 held that mosquito repellent is not an electrical goods.</p>								

¹² Regional Offices : Gwalior (2), Indore (6), Jabalpur, Satna and Ujjain (3)

¹³ Circle Offices : Bhopal, Dhar, Gwalior (2), Indore (6) and Sagar

1.	2.	3.	4.	5.	6.	7.	8.	9.
3.	CTO Sagar	<u>2</u> 1996-97	July 2001	37.65	4	6	0.75	Craft paper is treated as packing material
<p>Remarks:- The Department stated that the craft paper if used as packing material should be at four <i>per cent</i> and tax was levied accordingly. The reply of the Department was not tenable as craft paper in this case was sold by a wholesale dealer to retail dealers. There was nothing on record to say that it was purchased for packing purposes. Consequently, it should have been taxed at six <i>per cent</i> instead of four <i>per cent</i>.</p>								
4.	RAC Gwalior	<u>1</u> 1999-2000	April 2003	128	4	9.2	6.66	Thermit portion was treated as iron steel
<p>Remarks:- The Department stated that thermit portion was mixture of iron steel. The contention was not correct as thermit portion consists of ferric oxide (Fe₂O₃) steel cuttings, ferro alloy and aluminium granules; as such, it is not a mixture of only iron steel and should therefore be taxed at the rate of 9.2 <i>per cent</i> treating it as an unspecified goods.</p>								
5.	RAC Ujjain	<u>1</u> 2000-2001	December 2003	9.49	2.3	9.2	0.65	Ghee was taxed as hydrogenated oil.
<p>Remarks:- The Department stated that dealer sold hydrogenated vegetable oil. Reply is not tenable because as per purchase list ghee was purchased and sold.</p>								
6.	CTO Bhopal	<u>1</u> 1999-2000	April 2003	65.60	6/8	8/12	1.76	Transformers were treated as electronics instead of electrical goods
<p>Remarks:- The Department stated that transformers were classified as electronic goods as per notification dated 14.5.1997. The reply of the Department was not tenable as there was no such entry in the notification. The rate of tax on transformers is 8/12 <i>per cent</i> as per schedule II of the Act.</p>								

After this was pointed out, RAC Indore accepted the audit observation in one case and raised a demand of Rs.10.60 lakh. No reply was received in 15 cases while in nine cases the Department did not accept the audit contention.

In remaining cases final reply has not been received (December 2005).

2.4 Non/short levy of purchase tax

Adhiniyam, Rules and notifications issued thereunder, provide levy of tax on purchase value of any raw material or incidental goods purchased without payment of tax and which are consumed or used in the manufacture of finished goods. If goods so purchased or the finished goods manufactured from such goods are transferred outside the state, purchase tax is leviable. The rate of tax on aluminium ingots was enhanced from two *per cent* to four *per cent* with effect from 01.01.2000. Surcharge at the rate of 15 *per cent* of tax was also leviable.

2.4.1 Test check of records of regional office, Indore revealed in June 2004 that a dealer holding an eligibility certificate assessed in March 2003 for the period 1999-2000 purchased aluminium ingots valued at Rs.5.29 crore. The assessing authority levied a tax of Rs.12.16 lakh at the pre-revised rates instead of Rs.24.32 lakh, resulting in short levy of tax.

2.4.2 During audit of regional offices, Gwalior and Indore, it was noticed that PVC compound and other raw material and incidental goods, valued at Rs.7.54 crore were utilised in the manufacture of finished goods by three dealers availing exemption from payment of tax under Sales Tax Incentive Scheme, 1994 assessed for the period 1998-1999 and 2000-2001 in June 2002 and February 2004. Purchase tax at the rate of 4.6 *per cent* was leviable. This resulted in non levy of purchase tax amounting to Rs.34.68 lakh. In one case, regional authority Indore raised demand of Rs.6.84 lakh and in two cases the regional assessing officer Gwalior stated that tax will be calculated/levied.

2.4.3 In five cases of four dealers at Regional Office Gwalior and three circle offices¹⁴ assessed between May 2002 and December 2003 for the period from 1998-1999 to 2000-2001, it was noticed between March and October 2004 that raw material valued at Rs.3.23 crore was purchased and used/consumed in the manufacture of other goods for sale, although the goods were purchased without payment of tax and no purchase tax was levied by assessing authorities. This resulted in non levy of purchase tax of Rs.10.37 lakh.

After this was pointed out, assessing authority Indore raised demand in two cases while reply in the remaining cases has not been received.

The matter was reported to the Department and the Government (between April 2004 and February 2005); their reply has not been received (December 2005).

2.5 Non recovery of commercial tax from closed units

Under *Adhiniyam* and notifications issued thereunder, new industrial units availing exemption from payment of tax under Tax Exemption Scheme 1994; shall keep the unit in operation during the period of exemption and also for a further period of five years from the date of expiry of the exemption, failing which the eligibility certificate

¹⁴ Bhopal, Gwalior and Indore

shall be cancelled with consequent recovery of amount of tax exemption availed by the unit.

Test check of records at two regional offices, Indore and Ujjain, revealed that two industrial units were allowed exemption from payment of tax under exemption scheme for the period from 1.2.1997 to 31.1.2006 and 4.1.1995 to 3.1.2000 respectively. Of these, one unit closed its business during the period of exemption while the other unit closed its business within six months of the expiry of exemption period. Therefore, the amount of tax exemption availed was recoverable. No action was, however, taken by the Department to recover the same. This deprived the Government of revenue of Rs.2.96 crore.

The matter was reported to the Department and the Government (between December 2004 and March 2005); their reply had not been received. (December 2005)

2.6 Non levy of tax on sales incorrectly treated tax free

Under the *Adhiniyam* read with Central Sales Tax Act, 1956 and Rules and notifications issued thereunder, commercial tax is not leviable on sale of goods specified in the schedule-I and those exempted by Government by issue of notification.

Test check of records at regional offices Indore and Gwalior and circle offices Bhopal and Indore in six cases assessed between September 2000 and February 2004 for the period 1997-98 to 2000-01, revealed that incorrect deduction of fibre glass cloth, HDPE/PP** fabrics and diesel engine valued at Rs.11.41 crore treated as tax free items was allowed. This resulted in non levy of tax of Rs.1.54 crore at specified rates.

After this was pointed out between March 2003 and March 2005 the assessing authorities in four cases stated that HDPE fabrics are exempt under schedule-I and notification dated 24.08.2000. Reply was not tenable as PVC fabrics is taxable under entry No. 42 of schedule-II and notification does not exempt goods manufactured in mills, while in case of Indore demand of Rs.2 lakh was raised, which was reduced to Rs.0.17 lakh by appellate authority.

Final reply in other cases is awaited (December 2005).

2.7 Irregular grant of exemption and deferment from payment of tax

As per MP Deferment of Payment of Tax Rules, 1994 and Tax Exemption Scheme, 1995, facility of exemption and deferment can be availed of by non conventional power generating units generating electricity from non conventional sources who hold a provisional eligibility certificate issued by the state level committee. The provisional

* HDPE – High Density Poly Ethelene also known as PVC fabric

** PP – Poly Propylene

certificate is valid for six months or up to the date of issue of permanent eligibility certificate, whichever is earlier.

Test check of records at regional office, Gwalior, revealed in September 2004 that provisional eligibility certificates were issued on 11 July 1997 to an industrial unit for availing exemption and deferment of tax under the scheme. This was not followed by permanent eligibility certificate. The provisional eligibility certificate though liable to be cancelled on 10 January 1998 i.e. after a lapse of six months, was not cancelled. However, the assessing authority while finalising the assessments for the year 1997-98 in December¹⁵ 2003 allowed exemption of tax of Rs.1.17 crore and deferment of Rs.0.50 crore on manufacture and sale of transformers and conductors valued at Rs.24.78 crore, which was incorrect. This resulted in non realisation of Government revenue of Rs.1.67 crore.

After this was pointed out, the assessing authority forwarded the case to higher authority for final action (May 2005).

The matter was reported to the Department and the Government (December 2004); their reply had not been received.

2.8 Incorrect determination of taxable turnover

Under *Adhiniyam* and Rules made thereunder, taxable turnover is determined after allowing admissible deductions. Every dealer is required to maintain a correct account of his transactions, failing which penalty and interest is leviable under the provisions of Act.

Test check of records at four regional offices¹⁶ and three circle offices¹⁷ revealed between June 2003 and October 2004 that in seven cases assessed between May 2002 and February 2004 for the period April 1998 to March 2001, taxable turnover was determined less by Rs.5.27 crore which resulted in short levy of tax of Rs.34.98 lakh besides penalty and interest of Rs.7.47 lakh.

After this was pointed out, the Department accepted audit observations in three cases and raised a demand of Rs.4.31 lakh in these cases. No reply was received in two cases. In one case, the Department did not accept audit observation stating that the total purchases made were Rs.25.71 lakh and not Rs.36.43 lakh. The reply of the Department was not tenable as cross verification of the records with the entry tax assessment order revealed that the dealer purchased goods valued Rs.36.43 lakh from outside the State. As such the dealer suppressed sale of Rs.10.72 lakh. In another case the regional officer, Indore, stated that assessee submitted combined balance sheet for manufacturing and trading units and sale of tyre and tubes for Rs.2.70 crore was disallowed. The reply of the Department is not tenable as the sale disallowed was

¹⁵ Original assessment was made in October 2000

¹⁶ Indore (3) and Satna

¹⁷ Bhopal and Indore (2)

related to excess production of manufacturing unit of the same dealer while audit observation relates to trading unit of the same dealer.

The matter was reported to the Government between December 2003 and April 2005; their reply has not been received.

2.9 Non/short levy of entry tax

Under Madhya Pradesh *Sthaniya Kshetra Me Mal ke Pravesh Par Kar Adhiniyam*, 1976 and notifications issued thereunder, entry tax is leviable on goods entering into local area for sale, use or consumption as raw material or as incidental goods or as packing material, at the rates specified in the schedule.

Test check of records of regional office Gwalior and three circle offices Indore revealed that in six cases of five dealers, assessed between May 2001 and January 2004 for the period April 1998 to March 2001, entry tax on goods valued at Rs.9.30 crore, was either not levied or was levied at lower rates. This resulted in non/short levy of entry tax of Rs.7.42 lakh.

After this was pointed out between March 2003 and December 2004, the assessing authority at Gwalior and Indore raised demand of Rs.8 lakh including penalty of Rs.1.87 lakh in five cases. Final action in one case is awaited.

The matter was reported to the Department and to the Government between July 2003 and December 2004; their reply has not been received.

2.10 Incorrect deduction of tax paid sales

Adhiniyam, Rules and notification issued thereunder, provide deduction of tax paid goods on which tax has been paid within the State, whereas tax paid packing material sold alongwith the taxable goods shall attract tax at the same rate as applicable to such goods.

Test check of records of two regional offices¹⁸ and two circle offices¹⁹ revealed that in five cases of four dealers assessed for the year 1994-1995 to 2000-2001 between July 2000 and September 2003, sale of bitumen, cement and *bardana* i.e. packing material of oil cake valued at Rs.1.52 crore was treated as tax paid goods and deduction of tax was incorrectly allowed. The incorrect deduction resulted in short levy of tax of Rs.11.68 lakh.

After this was pointed out in audit between January 2002 and November 2004, the assessing authority at Bhopal, Gwalior and Guna raised demand of Rs.10.22 lakh, against three dealers whereas the assessing authority at Khandwa stated in November 2004 that tax paid sale of *bardana* was assessed correctly in view of

¹⁸ Bhopal and Khandwa

¹⁹ Guna and Gwalior

decision of Hon'ble High Court of Madhya Pradesh²⁰. Reply of the Department is not tenable in view of specific provisions of the Act as well as in view of the decision of Hon'ble Supreme Court of India²¹ which held that packing material sold with the goods is taxable as goods itself.

The matter was reported to the Department and the Government (between March 2002 and January 2005); their reply had not been received. (December 2005)

2.11 Non recovery of profession tax

Under the Madhya Pradesh *Vrittikar Adhiniyam*, 1995 every person who is in employment either wholly or in part in Madhya Pradesh, shall be liable to pay profession tax as per schedule. In the case of employees of the State and Central Government, drawing and disbursing officer shall deduct the amount of tax payable from paybills of the employees in 12 monthly instalments and deposit it in Government account.

Test check of records at Barwaha office of Commandant, Central Industrial Security Force (CISF) for the period from September 2000 to August 2004 revealed in September 2004 that profession tax of Rs.8.96 lakh for the period from September 2000 to October 2001 was neither deducted by the employer nor deposited by the employees in Government account. This deprived Government of the revenue of Rs.8.96 lakh.

After this was pointed out in September 2004, the officer incharge stated that action to recover the amount has been taken up with higher authorities of CISF.

The matter was reported to the Department and the Government in October 2004; Further progress made in recovery of the amount has not been received (December 2005).

²⁰ *M/s Raymond Cement V/s State of MP (HC) (1997) 30 VKN 219 MP*

²¹ *M/s Premier Breweries V/s State of Kerala (Supreme Court) (1999) 32 VKN 317*

