

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 2005-06 revealed underassessment, non/short levy of tax and penalty, application of incorrect rate of tax etc., involving Rs.54.70 crore in 788 cases which can broadly be categorised as under:

(Rupees in crore)

Sl. No.	Category	Number of cases	Amount
1.	Non/short-levy of tax	168	2.64
2.	Application of incorrect rate of tax	114	5.15
3.	Incorrect determination of taxable turnover	59	2.51
4.	Incorrect grant of exemption/deduction/ set off	141	25.82
5.	Others irregularities	306	18.58
6.	Review: Commercial Tax Incentives to New Industries	1	40.14
	Total	789	94.84

During the year 2005-06, the department accepted underassessment of tax of Rs.33.67 crore in 43 cases. All these cases pertained to 2005-06. Rs.71 lakh had been recovered in seven cases during the year.

A few illustrative cases involving Rs.48.74 crore including a review on **Commercial Tax Incentive to New Industries** are discussed in the following paragraphs:

2.2 Review: Commercial Tax Incentives to New Industries

Highlights

- Short levy of tax of Rs.6.85 crore was due to incorrect issue of eligibility certificates
(Paragraph 2.2.6)
- In 12 cases industrial units holding eligibility certificates were closed during currency of their certificates or were closed within five years from the date of expiry of eligibility certificates.
(Paragraph 2.2.7)
- Grant of exemption/deferment of tax of Rs.9.92 crore to seven ineligible units resulted in short levy of tax to that extent
(Paragraph 2.2.9)
- Exemption of tax of Rs.50.83 lakh allowed on goods not specified in eligibility certificates of two units was incorrect and resulted in short realisation of Government revenue to that extent.
(Paragraph 2.2.11)
- Tax of Rs.64.51 lakh was adjusted less against exemption limit due to application of incorrect rate of tax.
(Paragraph 2.2.13)

2.2.1 Recommendations

Government may consider the following recommendations:

- Internal control mechanism should be developed to ensure that the eligibility certificates issued are consistent with the provisions of the scheme.
- Government may consider imposing penitentiary measures against dealers who do not submit returns prescribed by the department.
- A system may be developed to ensure that prompt action is taken against those beneficiaries that have closed units before stipulated period or have violated requisite condition for grant of exemption.

2.2.2 Introduction

With a view to encourage growth of industries in the state, Government of Madhya Pradesh (MP) has been offering incentives to new industries in the form of exemption/deferment of tax. Government notified two such schemes namely 1986 scheme and 1994 scheme. Besides there are some special schemes like 1991 scheme for industrial units with capital investment of Rs.100 crore or more, 1995 scheme for non resident Indians (NRI), 100 per cent export oriented units (EOU) and exporting units, etc.

The Department of Industries formulates the schemes and the Commercial Tax Department issues notification under the provisions of MP Commercial Tax Act, 1994 for their implementation. A unit has to apply to General Manager, District Trade and Industries Centre who issues eligibility certificate (EC) for grant of exemption/deferment of tax to the applicant of small scale industry. In the case of medium or large scale industry the Commissioner of Industries, MP issue such certificate

2.2.3 Organisational set up

The Commercial Tax Department is headed by Commissioner of Commercial Tax, MP with headquarters at Indore, who is assisted by seven additional commissioners, 23 deputy commissioners (DCs) 58 assistant commissioners (ACs), 91 commercial tax officers (CTOs) and 220 assistant commercial tax officers (ACTOs). The department is under the administrative control of Principal Secretary (Commercial Tax) at Government level.

2.2.4 Audit objectives

The review has been conducted with a view to ascertain whether:

- ECs issued were consistent with the provisions of the scheme, the provisions and conditions laid down in the scheme/EC were being complied with;
- tax was being levied/assessed and adjusted correctly against exemption limits prescribed in the ECs and
- adequate internal control existed to safe guard Government revenue.

2.2.5 Scope of audit

Records of 11¹ out of 13 divisions covering 21 ACs and 32 CTOs for the period 2000-01 to 2004-05 were test checked between June 2005 and March 2006. Results of the review are given in the succeeding paragraphs.

¹ Bhopal (2), Chhindwara, Gwalior, Indore (2), Khandwa, Ratlam, Sagar, Satna and Ujjain

2.2.6 Short levy due to incorrect issue of eligibility certificates (ECs)

Madhya Pradesh Vanijyik Kar Adhiniyam 1994 (MPVK Adhiniyam 1994) provides exemption from payment of tax to those industrial units that are holding ECs, issued under different incentive schemes notified by Government. The exemption are, however, subject to terms and conditions prescribed in respective schemes and notifications issued by Government from time to time.

Test check of records revealed that in seven cases, exemption from payment tax was granted to six units by assessing authorities (AAs) though the units did not fulfill requisite conditions. The grant of exemption was incorrect and resulted in short realisation of Government revenue of Rs.6.85 crore as detailed below:

Sl. No.	Name of Office	Nature of observations
1.	2.	3.
1.	AC Bhopal	As per notification dated June 1995, benefit of exemption was not admissible for sales out of expanded capacity ² of a 100 per cent EOU. However, one such EOU assessed in January 2005 for the year 2001-02 exemption was granted from payment of tax on sales out of expanded capacity which was incorrect and resulted in short realisation of Government revenue to the extent of Rs.4.51 crore.
Remarks: Government stated in September 2006 that the cases would be re examined. However, further progress made has not been received (January 2007).		
2.	AC Indore AC Sagar	As per 1994 scheme, benefit of exemption was admissible to manufacturing units only. Process of refilling of LPG is not a manufacturing process ³ . In three cases of two dealers, AAs allowed exemption between February 2004 and January 2005 for the years 2000-01 and 2001-02 treating refilling of LPG as manufacturing process. The grant of exemption was incorrect and resulted in short realisation of Government revenue of Rs.1.54 crore.
Remarks: Government stated in September 2006 that the cases would be re examined. However, further action taken has not been received (January 2007).		

² Sales out of expanded capacity means sales made over and above the existing production

³ State of Gujrat Vs Kosam Gas Company (87 STC-236) (Gujrat)

1.	2.	3.
3.	AC Chhindwara	As per 1994 scheme, cotton ginning and pressing units were ineligible for exemption with effect from 21 May 1998. It was noticed that three units dealing with ginning and pressing of cotton were allowed exemption between October 2004 and December 2004 for the year 2001-02. The grant of exemption to these units was incorrect and resulted in short realisation of tax of Rs.80 lakh.
Remarks: Government accepted audit observation in September 2006 and stated that reassessment of the case was in progress.		

In all the above cases ECs were issued by the Industrial Department. However, at no occasion were the above discrepancies brought to their notice by the Commercial Tax Department. It is recommended that grant of exemption may be monitored in such a manner that ineligible units are not allowed benefit of exemption.

2.2.7 Non-recovery of tax on closure of units before stipulated period

Under 1986, 1994 and 1995 schemes for new industries, a manufacturer shall keep the industrial unit running during the period of eligibility and also for a further period of five years from the date of expiry of the period of eligibility. In case of failure to do so EC shall be liable to be cancelled with retrospective effect.

During test check of records of seven ACs⁴ and three circle offices⁵, it was noticed that in 12 cases the industrial units holding eligibility certificates failed to continue production either during the period of eligibility or for a further period of five years. The units were closed either during currency of ECs or where closed within five years from the date of expiry of ECs. The amount of exemption and deferment availed of by these units which had become recoverable worked out to Rs.12.40 crore.

After this was pointed out, Government stated in September 2006 that instructions have been issued from time to time for taking early action regarding cancellation of EC. Further instructions would be issued for immediate action to cancel the EC and thereafter to complete assessments for earlier periods on priority by levying tax.

2.2.8 Non levy/adjustment of tax against the quantum of exemption

Under exemption schemes of 1994 and 1995 assessing authority (AA) shall levy Purchase tax on the raw material purchased on declaration and adjust the same against the ceiling limit of exemption specified in the EC.

⁴ AC Chhindwara, AC Gwalior, AC Indore (2), AC Khargone, AC Mandasaur and AC Ujjain

⁵ CTO Dhar, Indore and Ujjain

2.2.8.1 Test check of records of seven ACs⁶ and three circle offices⁷ revealed that in 14 cases assessed between May 2002 to January 2005 for the period 1998-99 to 2001-02, purchase tax on raw materials valued at Rs. 31.75 crore purchased by dealers on declarations was omitted to be levied by AA. Similarly tax on sales of finished goods valued at Rs. 82.15 crore were also not levied by AAs. This resulted in short levy of tax of Rs. 7.76 crore. Consequently the amount could not be adjusted against exemption limit of dealers.

After this was pointed out, Government informed in September 2006 that in 6 cases tax amounting to Rs.69.43 lakh had been levied and adjusted against the ceiling limit of exemption and in remaining eight cases action for re-assessment was in progress.

2.2.8.2 Section 2 (w) (v) of MPVK *Adhiniyam*, prescribed a formula⁸ to arrive at the amount of taxable turnover. It also provided that no deduction on the basis of the formula shall be made if the amount by way of tax collected by registered dealer had been otherwise deducted from the aggregate of sale prices or not included in sale price.

Test-check of records of three AAs revealed that in four units, deduction of tax Rs.9.60 lakh was allowed in accordance with above prescribed formula. Since the dealer were holding exemption certificates and had not collected any tax, the deduction allowed was incorrect. This resulted in short levy of tax of Rs.9.60 lakh as detailed below:

Sl. No.	Name of Assessing officer	Period	Month of assessment	No. of cases	Amount (Rs. in lakh)
1.	Circle I Dhar	2001-02	July 2004 and December 2004	2	6.70
2.	AC Guna	2000-01	January 2004	1	1.75
3.	AC Mandsaur	1999-00	June 2004	1	1.15
Total				4	9.60

After this was pointed out, the Department stated in September 2006 that in one case action had been taken for re assessment and tax amounting to Rs.1.74 lakh had been levied and adjusted against ceiling limit and action for re-assessment was in progress in remaining three cases.

2.2.9 Incorrect grant of exemption/deferment of tax

2.2.9.1 Under 1995 scheme agriculture, horticulture or silk based exporting industrial units were eligible for exemption if their export sales were at least 50 per cent of their production in a year. In case of other exporting

⁶ A.C. Gwalior, A.C. Chhindwara, A.C. Satna, A.C. Indore (3), A.C. Mandsaur

⁷ C.T.O. Indore (2), C.T.O. Bhopal

⁸
$$\frac{\text{Rate of tax} \times \text{Aggregate of sale prices}}{100 + \text{Rate of Tax}}$$

units minimum export sale for availment of exemption was prescribed as 75 per cent of the production in a year.

- Test check of records of AC Dewas, Bhopal and Indore revealed that three agriculture based industrial units assessed between December 2004 and January 2005 for the period 2001-02 did not export a minimum of 50 per cent of their sale. Their export sales were of Rs.36.03 crore, Rs.8.17 crore and Rs.19.99 crore as against their total turnover of Rs.163.97 crore, Rs.71.65 crore and Rs.50.69 crore respectively. Thus, although the condition of minimum export sale was not fulfilled, the AAs granted exemption of tax of Rs.1.94 crore which was not admissible. This resulted in short levy of tax to that extent.

After this was pointed out, Government stated in September 2006 that in one case action for re assessment was in progress and the remaining cases were under examination.

- Test check of records of AC Chhindwara revealed that one exporting unit holding EC for manufacture of cotton yarn got added in his registration certificate raw materials like artificial fibre, man made fibre, polyester fibre etc. with effect from 8 January 2001. Accordingly, it was eligible for the benefit of exemption only if its export sales were 75 per cent or more, but the AA while finalising the assessment in January 2005 for the period 2001-02 allowed exemption on the basis of only 55 per cent export sale. This resulted in short levy of tax of Rs. 29.83 lakh.

After this was pointed out, Government stated in September 2006 that case would be re examined.

2.2.9.2 Under deferment scheme of 1986, deferment of tax payable on the purchase of raw material used in manufacture of goods was not admissible.

- Test-check of records of AC Gwalior revealed that a unit holding EC for deferment of tax purchased raw material valued at Rs.171.57 crore on which purchase tax of Rs.7.54 crore was payable. The AA while finalising the assessment for the period 1999-2000 to 2001-02 between April 2003 and January 2005 allowed deferment of the same which was not admissible.

After this was pointed out, Government stated in September 2006 that the case would be re examined.

- Test-check of records of CTO Bhopal revealed that a dealer purchased goods and sold them as such, without undergoing any manufacturing process. Although deferment was not admissible, the AA while finalising the assessments for the period 2000-01 and 2001-02 in September 2003 and 2004 allowed deferment of tax of Rs. 4.38 lakh incorrectly.

After this was pointed out, Government stated in September 2006 that action for reassessment was in progress.

2.2.9.3 Under 1994 scheme, if a dealer establishes a new industrial unit but closes down production in an existing industrial unit within the state engaged in production of the same product, the EC shall be liable to be cancelled from the date of closure.

Test-check of records of circle office Ujjain revealed that a dealer registered with the Commercial Tax Department since December 1996 for manufacture of corrugated boxes established a new industrial unit in February 1998 for manufacture of same product for which Industry Department issued EC on 29 April 1999. The dealer however, closed down his former unit on 1 April 1999. As per condition of the notification the dealer was not entitled for the benefit in respect of new unit with effect from 1 April 1999. But the AA while finalising the assessment for the period 2000-01 and 2001-02 between September 2003 and September 2004 allowed the exemption which was not admissible. This resulted in non levy of tax Rs. 9.87 lakh.

After this was pointed out, Government in September 2006 stated that the case would be examined.

2.2.10 Grant of exemption/deferment in excess of the quantity specified in EC.

Under 1994 scheme, an industrial unit is not eligible for exemption in excess of capacity specified in the EC.

Test-check of records of AC Chhindwara revealed that the AA while finalising the assessment of two exempted units in October 2004 for the period 2001-02 allowed exemption for 13,540.25 quintals and 13,298.85 quintals of ginned cotton against the specified quantity of 10,000 quintals in each case in the ECs. This resulted in excess grant of exemption having a tax effect of Rs. 11.51 lakh.

After this was pointed out, Government stated in September 2006 that the action for reassessment was in progress.

2.2.11 Exemption allowed on goods not specified in the EC

The EC issued by the competent authority, inter alia specifies name of principal products and its by products manufactured by a unit.

Test-check of records of AC Dewas and Gwalior revealed that in four cases of two industrial units assessed between November 2003 to February 2005 for the period 2000-01 to 2002-03 exemption was allowed in respect of component assembly and chlorinated paraffin wax (CPW) which were not specified in the ECs. This resulted in incorrect grant of exemption of Rs.50.83 lakh.

After this was pointed out, Government in respect of AC Dewas, stated in September 2006 that the action to reassess the case under section 28 (1) of MPVK *Adhiniyam* had been initiated. While in other case it was stated that the dealer manufactured and sold chlorinated paraffin liquid specified in EC and not wax. Reply was not tenable because as per sale documents the dealer had sold CPW and not chlorinated paraffin liquid.

2.2.12 *Incorrect determination of taxable turnover*

Under 1994 scheme, a dealer undertaking expansion in his existing industrial unit shall be eligible for exemption in respect of goods manufactured by him, in excess of 100 *per cent* of the original installed capacity of existing industrial unit.

2.2.12.1 Test check of record of AC Chhindwara revealed that during 2001-02 a unit was entitled to exemption for sales valued at Rs. 33.05 crore of expanded capacity whereas the AA while finalising the assessment in January 2005 allowed exemption on sales valued at Rs.48.68 crore. This resulted in incorrect grant of exemption on sales valued at Rs.15.63 crore having a tax effect of Rs.1.56 crore.

After this was pointed out, Government stated in September 2006 that action for re-assessment was in progress.

2.2.12.2 In another case a unit holding EC for expanded capacity sold goods valued at Rs. 91.47 crore during 2001-02, out of which sales valued at Rs. 46.09 crore pertained to expanded capacity. However, the AA (AC Dewas) while finalising the assessment in January 2005 allowed exemption on sales valued at Rs.58.25 crore. This resulted in incorrect grant of exemption on sales valued at Rs. 12.16 crore having a tax effect of Rs. 27.98 lakh.

After this was pointed out, Government stated in September 2006 that the case would be re-examined.

2.2.13 *Incorrect adjustment due to application of incorrect rate of tax*

MPVK *Adhiniyam* and notifications issued thereunder specify the rates of commercial tax leviable on sale of different commodities.

Test check of records of four ACs revealed that in respect of four units holding EC, tax of Rs.64.51 lakh on sales of goods valued at Rs.22.63 crore was not levied/levied at incorrect rates, as shown below :-

(Rupees in lakh)

Sl. No.	Name of assessing officer	Period	Month of assessment	No. of cases	Short levy of tax	Nature of irregularity
1.	2.	3.	4.	5.	6.	7.
1.	AC Indore	2001-02	December 2004	1	20.16	Tax on sale of HDPE ⁹ fabrics of Rs.2.19 crore was determined at 4.6 <i>per cent</i> instead of 13.8 <i>per cent</i> .

⁹ *High density Poly ethylene*

1.	2.	3.	4.	5.	6.	7.
2.	AC Gwalior	2001-02	January 2005	1	11.02	No tax on sale of HDPE fabrics of Rs.83.05 lakh was levied treating the same as tax free goods.
3.	AC Guna AC Bhopal	2001-02	December 2004 and January 2005	2	33.33	During 6 September 2001 to 31 March 2002 edible oil was taxable at 4 per cent, but tax on sale of oil of Rs.19.61 crore was determined 2.3 per cent.

Thus tax of Rs. 64.51 lakh was adjusted less against exemption limit of the units.

After this was pointed out, Government stated in September 2006 that in two cases pertaining to HDPE fabrics matter would be re-examined and in remaining two cases action for reassessment was in progress.

2.2.14 Internal control mechanism

The internal control mechanism is intended to provide adequate safeguards against errors and irregularities in operational as well as financial matters and is an integral part of an organisation's operation.

The Commercial Tax Department intimated in October 2006 that there had been no internal audit wing for last five years.

2.2.15 Non Submission of prescribed returns

Under 1994 incentive scheme, every dealer during the period of his exemption/deferment of tax is required to furnish for every quarter to the appropriate sales tax officer and General Manager, District Industries Centre, a statement in Form IV¹⁰ within 30 days of the expiry of the quarter to which such statement relates.

It was noticed that in 25 cases assessed for the period 2000-01 to 2001-02 between November 2003 to January 2005 by eight AAs exemption/deferment of Rs.16.68 crore was allowed though the units had not submitted the prescribed returns as detailed follows:

¹⁰ *Statement of purchases of goods and their consumption/use in manufacture/packing and production of goods and sale of such goods.*

(Rupees in crore)

Sl. No.	Name of Unit	Period of assessment	Month of assessment	No. of cases	Amount
1.	AC Gwalior	2001-02	November 2004 and January 2005	4	7.21
2.	AC Indore	2001-02	July 2004 to November 2004	2	4.88
3.	AC Indore	2001-02	September 2004	1	0.87
4.	AC Chhindwara	2001-02	January 2005	5	0.95
5.	AC Dewas	2001-02	June 2004 to December 2004	7	0.42
6.	A.C. Indore	2001-02	January 2003	1	1.75
7.	AC Indore	2001-02	December 2004	2	0.46
8.	Circle Office Indore	2000-01 2001-02	November 2003 to September 2004	3	0.14
				25	16.68

Finalisation of assessments without prescribed returns is fraught with risk of underassessments and short levy of tax, thus defeating the very purpose for which the return was prescribed. Government may consider imposing penitentiary measures on the dealers who do not submit the requisite return.

After this was pointed out, the department while accepting the objection stated in September 2006 that it was a procedural lapse and there was no loss of revenue. However, Government stated that it would consider whether some penalty could be prescribed for the assesseees who did not submit returns.

2.2.16 Conclusion

It would be seen from the above that there was lack of internal control mechanism to ensure that the ECs issued were consistent with the provisions of the scheme and that the provisions/conditions laid down in the scheme/EC are complied with. There was no system to evaluate the performance of the beneficiary units during the period of eligibility and also for a further period of five years.

2.2.17 Acknowledgement

The audit findings as a result of test check of records were reported to Government/department in June 2006 with a specific request to attend the meeting of the audit review committee (ARC) to discuss the findings of the review. The ARC was held in September 2006. The department was represented by CCT while Principal Secretary Commercial Tax Department represented Government. Their view point has been duly incorporated in the review.

2.3 Application of Incorrect rate of Tax

MPVK *Adhiniyam* and notifications issued thereunder specify the rates of commercial tax leviable on sale of different commodities.

Test check of records in four regional offices¹¹ and one circle office at Rewa revealed between February 2005 to November 2005 that in seven cases assessed between December 2003 and January 2005 for the period April 2000 to March 2003, tax on sales turnover of Rs.5.59 crore was levied at incorrect rates. This resulted in short levy of tax amounting to Rs.31.20 lakh.

After this was pointed out, the department accepted audit observation in four cases and raised demand for Rs. 5.10 lakh. The department did not accept audit observation in one case and stated that thermit portion was mixture of iron and steel. The reply was not correct as thermit portion consists of ferric oxide (Fe₂O₃) steel cuttings, ferro alloy and aluminum granules and is not mixture of only iron and steel. It should therefore be taxed at the rate of 9.2 *per cent* instead of four *per cent*. Further it was stated that two cases were under examination. Report on further action taken has not been received (January 2007).

2.4 Non levy of tax on sales incorrectly treated as tax free

Under MPVK *Adhiniyam* read with CST Act, 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 of two regional offices at Indore and two circle offices of Indore revealed that in five cases assessed between December 2003 and December 2004 for the period 2000-2001 and 2001-2002 incorrect deduction of HDPE¹²/PP¹³ fabrics valued at Rs.3.76 crore treated as tax free item was allowed, whereas it was taxable @ 12% under entry No. 42 of Part-III of Schedule-II of the *Adhiniyam*. This resulted in non levy of tax of Rs.51.88 lakh.

After this was pointed out between June 2005 and December 2005 the AAs stated that the unit was exempted from payment of tax on the commodity under notification dated 24 August 2000. Reply was not tenable as the said notification exempted all types of cloth and did not spell about HDPE/PP fabrics.

¹¹ Regional Offices - Gwalior , Indore , Morena and Satna

¹² HDPE-High Density poly ethylene

¹³ PP-poly propylene

2.5 Irregular grant of exemption from payment of tax on provisional ECs

2.5.1 As per M.P. commercial tax exemption scheme 1995, facility of exemption can be availed of by non conventional power generating units generating electricity from non conventional sources who hold a provisional EC issued by the state level committee. The provisional certificate is valid for six months or up to the date of issue of a permanent EC, whichever is earlier. For non payment of tax, interest is also leviable under the Act.

Test check of records at Regional Office, Gwalior revealed in August 2005 that provisional certificate was issued on 11 July 1997 to an industrial unit for availing exemption of tax under the scheme. This was not followed by permanent EC. The provisional EC 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 assessment for the period 2000-2001 in December 2003 allowed exemption of tax of Rs.70.65 lakh which was incorrect and was required to be recovered alongwith interest amounting to Rs.74.90 lakh for the period from April 2001 to August 2005. This resulted in non realisation of Government revenue of Rs.1.46 crore.

After this was pointed out, the AA stated that action will be taken for reassessment.

The matter was reported to the department and Government October 2005. The department confirmed in July 2006 that action would be initiated for reassessment under Act.

2.5.2 Test check of records of regional office Indore revealed in March 2005 that the AA while finalising assessment for the period 2000-01 in January 2004 allowed incorrect exemption of tax amounting to Rs.1.97 crore on the basis of provisional EC dated 1 October 1997 which was valid for six months only. Though State level committee on 14.12.2004, cancelled the Provisional EC, the AA did not take any action to recover the amount of exemption incorrectly allowed to the assesseees.

After this was pointed out in March 2005 the department stated in July 2006 that the action has been initiated for reassessment of the case under the Act and for raising additional demand. Final action is awaited (January 2007).

2.6 Non imposing of penalty

Under MPVK *Adhinyam*, if the Commissioner or the appellate or revisional authority is satisfied that a dealer has concealed his turnover or has furnished false particulars of his sales, he may impose by way of penalty a sum which shall not be less than three times but shall not exceed five times of the amount of tax evaded.

Test check at regional office Indore revealed in June 2005 that in case of two dealers assessed in December 2004 and January 2005 for the year 2000-01 and 2001-02 though the AA determined the concealment of turnover of

Rs.7.30 crore and levied tax of Rs.79.45 lakh, he did not impose minimum penalty amounting to Rs.2.38 crore.

After this was pointed out the department stated in July 2006 that in one case penalty of Rs. 1.58 crore was levied in December 2005 while in other case, it was stated that action for imposing of penalty would be taken.

2.7 Incorrect deduction of tax paid sales

2.7.1 MPVK *Adhiniyam*, Rules and notifications thereunder provide deduction of tax paid goods on which tax has been paid within the state to determine the taxable turnover.

Test check of records at regional office Satna and one circle office at Indore revealed that four dealers were incorrectly assessed to tax for the years 2000-01 and 2001-02 between September 2003 and January 2005. This resulted in non-levy of tax Rs.6.15 lakh as detailed below:

Sl. No.	Name of Units	Assessment Year/ date of Assessment	Nature of observation
1.	CTO Circle XI Indore	2001-02 January 2004 December 2004 January 2005	Sale of wires valued at Rs. 75.34 lakh manufactured from wire roads were incorrectly exempted from payments of tax treating them as tax paid goods. This resulted in short levy of tax of Rs. 3.01 lakh.
The department accepted audit objection and stated that action would be taken for re assessment.			
2.	RAC-III Satna	2000-01 September 2003	The dealer imported goods valued at Rs.22.75 lakh from Chhattisgarh ¹⁴ on/after 1 November 2000 and sold them in the State on which tax of Rs.3.14 lakh was leviable. However, AA allowed deduction of tax paid goods incorrectly resulting in short realisation of Government revenue to that extent.
In reply the department stated that the goods were purchased from Indore depot, registered in M.P. the reply was not tenable as purchase list clearly indicated that goods were purchased from Raipur (Chhattisgarh) and department had not furnished any evidence/proof in support of the reply.			

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

Test check of records of regional office Indore and one circle office of Indore revealed that in five cases of four dealers which were assessed for the period 1999-2000 to 2001-02 between December 2002 and December 2004, sale of packing material of taxable medicines valued Rs.2.27 crore was treated as tax

¹⁴ State Chhattisgarh came into existence from 1 November 2000.

paid goods and deduction was incorrectly allowed from taxable turnover. This resulted in non-levy of tax Rs.10.36 lakh.

After this was pointed out the department has stated in July 2006 that deduction of tax paid goods sold with taxable goods was allowed correctly in view of decision of Hon'ble High Court¹⁵. The reply of the department was not tenable in view of specific provisions of the Act as well as in view of the decision of Hon'ble Supreme Court of India¹⁶ which held that packing material sold with the goods, is taxable as goods itself.

2.7.3 Test check of records at regional office Morena revealed that in case of two dealers assessed for the years 2001-02 and 2002-03 in January 2005, sale of vegetable oil and *Khali* (de oiled cake) valued Rs.3.42 crore was treated as tax paid goods and deduction was allowed. However cross verification of the records of selling dealer from which they had purchased goods revealed that the selling dealer had not sold the above goods at all. Thus deduction allowed was incorrect. This resulted in non levy of tax Rs. 13.47 lakh and penalty of Rs. 40.41 lakh.

After this was pointed out, the department has stated in July 2006 that action has initiated against selling dealer under section 28 (1) The reply of department was silent about action taken in respect of purchasing dealers who had claimed and were allowed deduction. Final reply was awaited (January 2007).

2.8 Non levy of value added tax

Under section 9-B of MP *Vaniyik Kar (Sanshodhan) Adhiniyam*, 1997 value added tax (VAT) is leviable at prescribed rates on added value of resale of goods specified in Schedule-II, part II to VI of the Act.

Test check of records of four regional offices¹⁷ and one circle office Indore revealed that in eight cases assessed for the period 1997-98 to 2002-03 between April 2003 to December 2004, VAT amounting to Rs.19.56 lakh was not levied on added value of Rs.2.14 crore on resale of goods.

After this was pointed out, the department accepted audit objection in five cases out of which demand of Rs. 10.35 lakh was raised in two cases. It was further stated that action for revision under section 62 (3) had been initiated in remaining three cases.

¹⁵ *M/s Raymond Cement Vs State of Madhya Pradesh (High Court) 1997 30 VKN 219 M.P.*

¹⁶ *M/s Premier Breweries Vs State of Kerla (1999) 32 VKN 317*

¹⁷ *Regional Offices:- Gwalior (1), Indore (3)*

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 specified rates.

Test check of records of eight regional offices¹⁸ revealed between January 2005 and December 2005 that in eight cases assessed for the period 1999-2000 to 2002-03 between April 2003 to January 2005 entry tax was not levied/short levied on entry of soft drinks, rubber chemical, tractors, tractor parts and accessories, diesel oil, vehicles and vegetable oil valued at Rs.33.70 crore. This resulted in non levy/short levy of entry tax of Rs.1.06 crore.

After this was pointed out the department in July 2006 accepted audit objection in three cases and out of which demand for Rs. 2.50 lakh has been raised in one case of RAC Gwalior. In remaining five cases final reply was awaited.

2.10 Short levy of tax due to allowing incorrect deduction

Section 2 (w) (v) of MPVK *Adhiniyam*, prescribed a formula to arrive at the amount of taxable turnover. It also provided that no deduction on the basis of the formula shall be made if the amount by way of tax collected by registered dealer had been otherwise deducted from the aggregate of sale prices or not included in sale price.

Test check of records of two regional offices at Indore and Chhindwara in case of five dealers for the period April 1997 to March 2002 assessed between May 2001 and January 2005 revealed between January and October 2005 that deduction of Rs.1.44 crore was incorrectly allowed, as dealers had not included commercial tax in sale price/lease rent. This resulted in short levy of tax of Rs.13.78 lakh.

After this was pointed out, the department accepted audit objections in July 2006 and raised demand for the entire amount.

¹⁸ Regional Offices:- Chhindwara(1), Gwalior(1), Indore(3), Morena(1) and Satna(2)