

CHAPTER II: COMMERCIAL TAX

2.1 Results of audit

Test check of the assessment cases and other records relating to Commercial Tax Department during the year 2007-08 revealed underassessment, non/short levy of tax and penalty, application of incorrect rate of tax etc., involving Rs. 55.99 crore in 1,002 cases which can be categorised as under:

| (Rupees in crore) | | | |
|-------------------|--|-----------------|--------------|
| Sl. No. | Category | Number of cases | Amount |
| 1. | Non/short levy of tax | 307 | 13.29 |
| 2. | Application of incorrect rate of tax | 172 | 10.49 |
| 3. | Incorrect grant of exemption/deduction/ set off | 129 | 6.18 |
| 4. | Incorrect determination of taxable turnover | 66 | 3.21 |
| 5. | Other irregularities | 328 | 22.82 |
| Total | | 1,002 | 55.99 |

During the year 2007-08, the department accepted underassessment of tax of Rs. 12.12 crore in 519 cases. All these cases pertained to 2007-08. The department recovered Rs. 47 lakh in 22 cases during the year.

A few illustrative cases involving Rs. 98.69 crore are mentioned in the following paragraphs.

2.2 Non-recovery of tax from closed units

As per the notification dated 19 February 1991 read with notification dated 16 October 1986 and notification dated 6 October 1994, a dealer holding eligibility certificate (EC) for exemption from payment of tax shall keep his industrial unit running during the period of eligibility and also for a period of five years from the date of expiry of the period of eligibility, failing which the EC shall be cancelled by the District Level Committee/State Level Committee (DLC/SLC) which is empowered to issue the EC. The amount of tax exemption availed by the dealer shall also be recovered.

Test check of the records of two regional offices at Gwalior and Indore and one circle office at Indore between July 2006 and February 2008 revealed that out of four dealers holding EC for exemption from payment of tax, two dealers failed to keep their units running during the period of eligibility while two dealers closed the units within five years after expiry of the eligibility period. The assessing authorities (AA), however, did not take any action to refer the matter to the DLC/SLC for cancellation of EC. This resulted in non-recovery of tax benefit of Rs. 75.34 crore which was availed by the dealers upto the period between 2002-03 and 2005-06.

After the cases were pointed out, the Commissioner, Commercial Tax (CCT), Madhya Pradesh stated (July 2008) that in two cases matter had been referred to the Industries Department for cancellation of ECs and recovery of tax benefit with retrospective effect. In other two cases¹, it was reported that action is yet to be finalised.

The matter was reported to the Government between August 2006 and April 2008; their reply has not been received (December 2008).

2.3 Non/short levy of tax

2.3.1 Under Madhya Pradesh *Vanijyik Kar* (MPVK) *Adhiniyam*, 1994, every dealer who in the course of his business purchases any goods which has not suffered tax, shall be liable to pay purchase tax at concessional rate of four *per cent* if after such purchase the goods are used or consumed in the manufacture of other goods for sale. It further stipulates that if the goods so purchased (other than goods specified in schedule III) are used or consumed in the manufacture of other goods which are disposed of otherwise than by way of sale, benefit of concessional rate of four *per cent* shall not be available.

Test check of the records of five regional offices² and three circle offices³ between May 2007 and February 2008 revealed that 15 dealers were assessed between January 2005 and January 2007 for the periods 2001-02 to 2004-05. Of these, in 10 cases, though raw materials/packing materials valued at Rs. 20.48 crore were purchased without paying tax thereon but these were not assessed to tax by the AA. Besides, in five cases, the purchase tax on schedule III goods valued at Rs. 15.95 crore was incorrectly levied at concessional rate. This resulted in non/short levy of tax of Rs. 3.25 crore and penalty of Rs. 43.36 lakh for escaped assessment and interest of Rs. 6.46 lakh.

¹ RAC, Gwalior-02

² Gwalior – 03, Indore, Sagar

³ Guna, Gwalior and Jabalpur

The cases are mentioned below:

(Rupees in crore)

| Sl. No. | Name of the unit No. of cases, Period/month of assessment | Purchase value Amount of tax not/short levied (including penalty/interest) | Nature of observation | Reply of the CCT (July 2008) | Comments of audit |
|---------|--|--|---|--|--|
| (1) | (2) | (3) | (4) | (5) | (6) |
| 1. | Regional Assistant Commissioner (RAC), Gwalior 02 2003-04 November 2006 and January 2007 | <u>13.72</u> 1.52 | Tax on HSD/ LDO ⁴ was levied at concessional rate of 6.9 percent instead of 28.75/13.8 per cent. | The department has accepted the audit objection and stated that action is in progress. | Final action has not been received. |
| | RAC, Sagar 01 2003-04 July 2006 | <u>0.43</u> 0.09 | -do- | The case was re- assessed and a demand of Rs.9.41 lakh had been raised and adjusted against the quantum of exemption. | --- |
| 2. | RAC, Gwalior 01 2002-03 January 2006 | <u>1.21</u> 0.25 | Tax on HSD was levied at concessional rate of 4.6 per cent instead of 28.75 per cent. | The department has accepted the audit objection and stated that action is in progress. | Final action has not been received. |
| | RAC, Gwalior 01 2003-04 December 2006 | <u>0.58</u> 0.20 | -do- | -do- | -do- |
| 3. | RAC, Gwalior 02 2003-04 January 2007 | <u>2.73</u> 0.63 | Purchase tax on HSD/raw material/ packing material purchased without paying tax was not levied. | The department stated that action is in progress. | Final action has not been received. |

⁴ HSD – High speed diesel
LDO – Light diesel oil

| (1) | (2) | (3) | (4) | (5) | (6) |
|-----|--|----------------------|--|---|---|
| 4. | <u>RAC, Gwalior</u> <u>03</u> 2002-03 and <u>2003-04</u> August 2005 November 2005 January 2006 November 2006 | <u>14.24</u> 0.84 | Purchase tax on HSD/raw material/ packing material purchased without paying tax was not levied. | In respect of case relating to 2002-03, demand of Rs. 2.09 lakh was raised and adjusted against quantum of exemption. | Reply in the remaining cases has not been received. |
| | <u>CTO, Guna</u> <u>02</u> <u>2003-04</u> December 2006 & January 2007 | <u>2.25</u> 0.10 | -do- | The department stated that action is in progress. | Final action has not been received. |
| | <u>CTO, Gwalior</u> <u>01</u> <u>2004-05</u> June 2006 | <u>0.30</u> 0.02 | -do- | -do- | -do- |
| | <u>CTO, Jabalpur</u> <u>01</u> <u>2001-02</u> January 2005 | <u>0.15</u> 0.01 | -do- | Bottles purchased from URD were used in packing of tax free liquor. | Liability of tax under section 10 is attracted even if finished goods are tax-free. |
| 5. | <u>RAC, Indore</u> <u>01</u> <u>2003-04</u> December 2006 | <u>0.81</u> 0.06 | Purchase tax on raw material used in the manufacture of other goods, which was stock transferred, was not levied | The department stated that action is in progress. | Final action has not been received. |

2.3.2 Under notification dated 15 January 1992 and 6 October 1994 issued under Madhya Pradesh General Sales Tax (MPGST) Act, 1958, the tax chargeable on goods manufactured by a dealer holding EC shall be adjusted against quantum of exemption specified in EC itself.

Test check of the records of five regional offices⁵ and two circle offices⁶ between April 2007 and February 2008 revealed that out of seven dealers holding EC and assessed between February 2004 and January 2007 for the periods 1999-2000 to 2003-04, tax chargeable on sale/stock transfer (within state) of manufactured goods valued at Rs. 31.43 crore in case of five dealers was not levied/calculated, while in two cases although tax of Rs. 1.45 crore was levied, the same was not adjusted against the quantum of exemption specified in their ECs. This resulted in incorrect grant of tax benefit of Rs. 3.80 crore.

⁵ Gwalior – 02, Indore – 02, Morena

⁶ Guna and Vidisha

After the cases were pointed out, the CCT intimated (July 2008) that in three cases demand of Rs. 1.58 crore had been raised and adjusted against the quantum of exemption of respective dealers. In the remaining four cases⁷, it was reported that action was in progress.

The matter was reported to the Government between April 2007 and April 2008; their reply has not been received (December 2008).

2.4 Incorrect grant of exemption

2.4.1 As per the exemption notification dated 6 October 1994 issued under the Madhya Pradesh General Sales Tax (MPGST) Act, 1958, a new industrial unit engaged in repacking of goods is not eligible for exemption. The notification also provides for exemption to the dealer who undertakes expansion in his existing industrial unit for the quantum of goods manufactured by him which is in excess of 100 *per cent* of the original capacity of the existing unit. Exemption notifications dated 19 February 1991, 6 October 1994 and 6 June 1995 provide for exemption in respect of manufactured goods and to the extent of maximum quantum of tax as specified in the EC issued thereunder.

Test check of the records of six regional offices and one circle office between July 2006 and February 2008 revealed that eight dealers assessed/reassessed between August 2005 and January 2007 for the periods 2000-01 to 2003-04 were allowed incorrect exemption having tax effect of Rs. 4.74 crore and interest of Rs. 1.40 crore, as mentioned below:

| Sl. No. | Name of the unit | Period Month of assessment | Observation in brief |
|---|------------------|---------------------------------|--|
| (1) | (2) | (3) | (4) |
| 1. | RAC, Indore | <u>2002-03</u> August 2005 | Three dealers engaged in bottling of liquefied petroleum gas (LPG) from bulk containers were allowed exemption from payment of tax on the basis of ECs issued to them. This was not correct because as per the exemption notification dealers engaged in repacking of goods are not eligible for exemption. This deprived the Government of revenue of Rs. 1.60 crore. |
| | RAC, Sagar | <u>2002-03</u> December 2005 | |
| | CTO- VI, Bhopal | <u>2002-03</u> January 2006 | |
| After the cases were pointed out, the CCT in two cases ⁸ replied (July 2008) that as per a letter dated 16 June 1998 issued by the Government (Commercial Tax Department), refilling of LPG is a process of manufacture, as such the exemption allowed was correct. The reply is not acceptable in view of the judicial decisions ⁹ wherein it has been held that refilling of LPG is not a manufacturing process but in fact, repacking of goods. In one case reply has not been received. | | | |
| 2. | RAC, Gwalior | <u>2003-04</u> October 2006 | As per the EC issued, the dealer was eligible for exemption from tax to the extent of Rs. 60.33 lakh which had been availed of by him upto 1997-98, but the AA while finalising the assessment for the period 2003-04 allowed him a further exemption of Rs. 1.56 crore. This resulted in non-realisation of tax to that extent and interest of Rs. 72.48 lakh. |
| After the case was pointed out, the CCT intimated (July 2008) that action was in progress. | | | |

⁷ CTO, Guna-01, RAC, Gwalior-02, RAC, Indore-01

⁸ RAC, Indore and RAC, Sagar

⁹ State of Gujarat Vs Kosan Gas Co. 1992-STC-237 (Gujarat High Court)
Modi Gas Service, Indore Vs State of MP & Others 2006-8-STJ-536 (MP High Court)

| (1) | (2) | (3) | (4) |
|--|---------------------|---------------------------------|---|
| 3. | RAC, Gwalior | <u>2002-03</u> January 2006 | Tyre fabric and un-machined castings were not specified in the ECs of the dealers, but the AA in one case allowed exemption from tax leviable on the purchase of raw material of Rs. 6.38 crore used in the manufacture of tyre fabric and in another case deferment of tax of Rs. 75.28 lakh was incorrectly allowed on the sale of un-machined castings of Rs. 19.57 crore. This resulted in non-realisation of tax of Rs. 1.28 crore and interest of Rs. 67.75 lakh. |
| | RAC, Indore | <u>2003-04</u> December 2006 | |
| After the cases were pointed out, the CCT in case of tyre fabric (RAC, Gwalior) while accepting the audit observation intimated (July 2008) that action was in progress and in another case of RAC, Indore it was stated that “un-machined castings” and “iron casted parts” as mentioned in the EC are one and the same thing. The reply is not acceptable because in the assessment order tax was levied at the rate of four <i>per cent</i> treating the goods as un-machined castings, whereas as per EC the dealer deals in “iron casted parts and components of motor vehicles” which is taxable at the rate of 13.8 <i>per cent</i> . Hence both the goods are different. | | | |
| 4. | <u>RAC, Gwalior</u> | <u>2002-03</u> January 2006 | Two dealers as per ECs issued to them by virtue of expansion in their existing units, were eligible for exemption from tax in respect of turnovers of Rs. 11.30 crore and Rs. 7.68 crore whereas the AAs allowed exemption on turnovers of Rs. 14.60 crore and Rs. 8.68 crore respectively. This resulted in grant of exemption on excess turnover of Rs. 4.31 crore having tax effect of Rs. 30.10 lakh. |
| | RAC, Indore | 2000-01 November 2006 | |
| After the cases were pointed out, the CCT intimated (July 2008) that action was in progress. | | | |

2.4.2 The notifications dated 13 April 2000 and 12 October 2000 issued under the MPVK *Adhinyam* exempt goods manufactured and sold by a small scale industry (SSI) to MP *Laghu Udyog Nigam* and specified village industries whose turnover does not exceed Rs. 10 lakh respectively.

Test check of the records of circle offices at Shahdol and Vidisha between April 2007 and August 2007 disclosed that out of two dealers assessed in January 2006 and December 2006 for the period 2002-03 and 2003-04, in a case in which the dealer was not an SSI and in case of a village industry whose turnover exceeded Rs. 10 lakh, exemption was incorrectly allowed from tax leviable on their taxable turnover aggregating Rs. 73 lakh. This resulted in non-realisation of tax of Rs. 4.28 lakh and penalty of Rs. 2.43 lakh.

After the cases were pointed out, the CCT intimated (July 2008) that the demand aggregating Rs. 4.28 lakh along with penalty of Rs. 2.43 lakh had been raised out of which Rs. 50,000 had been recovered.

The matter was reported to the Government between March 2007 and April 2008; their reply has not been received (December 2008).

2.5 Non-recovery of profession tax

As per the provisions of section 3 (2) of Profession Tax Act, 1995, every person who carries on a trade himself or by an agent or representative or who follows a profession or calling other than agriculture in Madhya Pradesh shall be liable to pay tax at the rate ranging from Rs. 1,000 to Rs. 2,500 per annum as specified against the class of such persons in the schedule of the Act. Section 8 (2) of the Act further provides that such person liable to pay tax shall obtain a certificate of registration from the profession tax AA in the prescribed manner.

Cross verification of the information collected from 30 commercial tax officers¹⁰ with the list of licencees of liquor, cinema houses, video parlours and cable operators provided by the State Excise Department and list of beauty parlours registered under service tax from Customs & Central Excise Department revealed that for the years 2002-03 to 2006-07, 666 liquor licencees, 220 cinema houses, 14 video parlours, 5,822 cable operators and 1,938 beauty parlours remained unregistered under the Act although they were liable to pay profession tax. This resulted in non-realisation of profession tax of Rs. 2.07 crore.

The matter was reported to the CCT and the Government in April and May 2008; their reply has not been received (December 2008).

2.6 Application of incorrect rate of tax

The MPVK *Adhinyam* read with the Central Sales Tax (CST) Act, 1956 and the notifications issued thereunder specify the rates of commercial tax leviable on different commodities.

Test check of the records of seven regional offices¹¹ and nine circle offices¹² between July 2006 and February 2008 revealed that in case of 18 dealers assessed between November 2003 and January 2008 for the period 1999-2000 to 2004-05, tax on the sales turnover of Rs. 26.39 crore was levied at incorrect rates. This resulted in short levy of tax of Rs. 1.50 crore and interest of Rs. 76,000.

After the cases were pointed out, the CCT intimated (July 2008) that in six cases demand of Rs. 40.95 lakh had been raised, out of which, Rs. 1.90 lakh has been recovered and that in eight cases action was in progress. In the remaining four cases, position of departmental replies and audit comments is mentioned below:

| Sl. No. | Name of the unit | Commodity | CCT's reply (July 2008) | Audit comment |
|---------|------------------|-----------|--|---|
| (1) | (2) | (3) | (4) | (5) |
| 1. | RAC, Jabalpur | Towers | Board of Revenue (14 CTJ 98) has held that high voltage transmission towers are steel structurals. | Said decision of Board of Revenue is not applicable in the instant case because the commodity "towers" was included in schedule II ¹³ of the Act from 1 January 2000 whereas the decision was issued prior to that date. |

¹⁰ CTO, Bhopal (6), CTO, Indore (15), CTO, Jabalpur (4), CTO, Ratlam (2) and CTO, Ujjain (3)

¹¹ Gwalior-03, Indore-02, Jabalpur and Satna

¹² Gwalior-02, Indore-02, Jabalpur-03, Mandla and Shahdol

¹³ Schedule II of the Act specifies rates of tax on different commodities

| (1) | (2) | (3) | (4) | (5) |
|-----|-------------------|--------------------------|--|---|
| 2. | RAC, Gwalior | Chlorinated paraffin wax | The commodity is chemical. | As per the CCT, MP orders issued in case of M/s BCM Organic Chemicals, Indore, the said commodity is a chemical compound and exigible to tax as unspecified item. |
| 3. | CTO, Shahdol | Chlorinated paraffin wax | The unit is closed; case has been referred to the Industries Department for cancellation of EC. | The reply does not explain action taken to recover the amount of tax. |
| 4. | CTO III, Jabalpur | Craft Paper | As per a notification dated 1.10.1978, craft paper is taxable at the rate of four <i>per cent</i> as packing material. | The said notification has not been in force since introduction of the MP Commercial Tax (MPCT) Act, 1994. Craft paper has been included in "All kinds of paper" under the MPCT Act. |

The matter was reported to the Government between August 2006 and April 2008; their reply has not been received (December 2008).

2.7 Non-levy of tax on sales incorrectly treated as tax free

The MPVK *Adhiniyam* and notifications issued thereunder prescribe rates of commercial tax leviable on different commodities except those specified under schedule I of the Act and those, which are exempted from tax through notifications.

2.7.1 Test check of the records of seven regional offices¹⁴ and two circle offices¹⁵ between April 2007 and February 2008 revealed that in case of 13 dealers assessed between December 2005 and January 2007 for the periods 2002-03 and 2003-04, tax on high density poly ethylene/poly propylene (HDPE/PP) fabric valued at Rs. 22.08 crore was not levied treating the same as tax free goods. This resulted in non-levy of tax of Rs. 1.15 crore and penalty of Rs. 28.63 lakh for escaped assessment.

After the cases were pointed out, the CCT, in one case (CTO Gwalior) stated (July 2008) that a demand of Rs. 5.45 lakh had been raised, whereas in 10 cases¹⁶ it was stated that the goods were exempted as cloth under notification dated 24 August 2000. The reply is not acceptable as the notification dated 24 August 2000 exempts all varieties of cloth and is not applicable to HDPE fabric, which is a plastic good. There was also inconsistency in the contention of the department. In two cases¹⁷, final reply has not been received (December 2008).

¹⁴ Gwalior (3), Indore (4)

¹⁵ Gwalior and Indore

¹⁶ RAC, Gwalior – 2 cases, RAC, Indore (4) – 7 cases, CTO, Indore – 1 case.

¹⁷ RAC, Gwalior-02

2.7.2 Test check of the records of a circle office at Dhar in November 2007 revealed that in case of a dealer assessed in December 2006 for the period 2003-04, tax on plastic *niwar*¹⁸ valued at Rs. 36.58 lakh was not levied treating it as tax free goods. This resulted in non-levy of tax of Rs. 3.37 lakh.

After the case was pointed out, the CCT replied (July 2008) that the dealer manufactured and sold elastic tape which was tax free in view of CCT's order dated 23 April 1999 issued in the case of M/s Kohinoor Plastic (P) Ltd., Indore. However, the fact remains that the said order relates to the period prior to 15 March 2000 when the revised schedule I came into existence which did not include elastic tape as tax free goods. Thus the said order has lost its relevance.

2.7.3 Test check of the records of a circle office at Gwalior in April 2007 revealed that in case of a dealer assessed in June 2005 for the period 2002-03, tax on footwears valued at Rs. 22.18 lakh was not levied treating them as tax free goods. This resulted in non-levy of tax of Rs. 1.67 lakh.

After the case was pointed out, the CCT intimated (July 2008) that a demand of Rs. 2.10 lakh had been raised and adjusted against quantum of exemption.

2.7.4 Test check of the records of a circle office at Indore in October 2007 revealed that in case of a dealer assessed in January 2006 for the period 2003-04, tax on non biodegradable composite recycle board (NDCRB) valued at Rs. 16.06 lakh was not levied treating it as tax free goods. This resulted in non-levy of tax of Rs. 1.48 lakh.

After the case was pointed out, the CCT intimated (July 2008) that a demand of Rs. 1.48 lakh had been raised.

2.7.5 Test check of the records of a circle office at Jabalpur in December 2007 revealed that in case of a dealer assessed in January 2006 and December 2006 for the periods 2002-03 and 2003-04, tax on poultry feed valued at Rs. 51.90 lakh was not levied treating it as tax free goods. This resulted in non-levy of tax of Rs. 1.19 lakh.

After the case was pointed out, the CCT intimated (July 2008) that a demand of Rs. 1.19 lakh had been raised. A report on recovery in the aforesaid cases has not been received (December 2008).

The matter was reported to the Government between June 2007 and April 2008; their reply has not been received (December 2008).

2.8 Non/short levy of penalty

Under the 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 or purchases or the total tax shown as payable according to the returns and paid by him for any period is less than 80 *per cent* of the total tax assessed, the Commissioner may impose on him penalty of a sum which shall not be less than three times of the amount of tax evaded.

¹⁸ Tape used for weaving cots.

Test check of the records of two regional offices at Gwalior and one circle office at Indore between September 2007 and February 2008 revealed that in case of five dealers, though tax evasion of Rs. 47.73 lakh on account of concealment of turnover was determined, yet the AAs failed to impose a minimum penalty of Rs. 1.42 crore as mentioned below:

| Sl. No. | Name of the unit | Period Month of assessment | Nature of observation |
|---------|------------------|--|---|
| 1. | RAC, Gwalior | 1999-2000 January 2007 | Although tax of Rs. 19.95 lakh was levied on account of concealed turnover of high speed diesel oil but penalty of Rs. 59.86 lakh under Section 69 was not imposed. |
| 2. | RAC, Gwalior | 2003-04 December 2006 | Although evasion of entry tax of Rs. 14.47 lakh was determined but minimum penalty of Rs. 43.42 lakh was not imposed. |
| 3. | RAC, Gwalior | 2003-04 December 2006 | Amount of tax paid (Rs. 5.13 lakh) by the dealer was less than 50 per cent of the tax assessed of Rs. 10.70 lakh, but a minimum penalty of Rs. 16.71 lakh (i.e. three times of tax evasion of Rs. 5.57 lakh) was not imposed. |
| 4. | RAC, Gwalior | 2003-04 January 2008 (Month of Revision Order) | Although there was tax evasion of Rs. 7.17 lakh in terms of Section 69(3) of the Act, penalty equal to three times of tax evaded, i.e. Rs. 21.52 lakh, was not levied. |
| 5. | CTO VII, Indore | 1995-96 December 2006 | As against the minimum penalty of Rs. 1.72 lakh, the AA imposed Rs. 1.15 lakh only. This resulted in short levy of penalty of Rs. 57,000. |

After the cases were pointed out, the CCT intimated (July 2008) that action was in progress.

The matter was reported to the Government between December 2007 and March 2008; their reply has not been received (December 2008).

2.9 Non/short levy of entry tax

Under the *Madhya Pradesh Sthaniya Kshetra Me Maal Ke Pravesh Par kar Adhiniyam, 1976* and rules and notifications issued thereunder, entry tax (ET) is leviable at the specified rates on the goods entering into a local area for consumption, use or sale therein.

Test check of the records of nine regional offices¹⁹ and two circle offices²⁰ between May 2007 and February 2008 revealed that in case of 16 dealers assessed between December 2005 and March 2007 for the period 2002-03 to 2005-06, ET on goods like cement, timber, furnace oil, motor vehicles, iron and steel, bearings etc. valued at Rs. 31.92 crore was not/short levied on their entry into local area. This resulted in non/short levy of ET of Rs. 34.39 lakh and interest/penalty of Rs. 2.89 lakh.

¹⁹ Gwalior (3), Indore (2), Jabalpur (2), and Satna (2)

²⁰ Dhar and Indore

After the cases were pointed out, the CCT intimated (July 2008) that in nine cases demand of Rs. 17.22 lakh including penalty of Rs. 99,000 had been raised. In two cases²¹ it was reported that action was in progress.

In remaining five cases the replies were as under:

In one case, the CCT replied (July 2008) that furnace oil was purchased from a local registered dealer, hence was not liable to tax. The reply is not acceptable because although the said good was purchased from a local registered dealer, it was not of local origin and as such was liable to tax under schedule III of the Act.

In one case, the CCT replied (July 2008) that it was the purchase of broiler breeder layer which was tax-free. Reply is factually incorrect as the said good is not covered under schedule I of the Act.

In one case of short levy of ET on iron and steel, the CCT replied that the iron and steel was used in the manufacture of steel structurals, hence tax levied was correct. The reply is not acceptable because the manufactured goods were towers which are different from steel structurals. Hence, iron and steel used in their manufacture was liable to ET at the rate of 1.5 *per cent* instead of one *per cent*.

In case of soft drink, the CCT replied (July 2008) that soft drink was tax paid. The reply is factually incorrect because it was evident from the invoices issued by the manufacturing unit that ET was not charged therein.

In one case, the CCT replied (July 2008) that as per a judicial decision in the case of M/s Jai Prakash Associates, factory situated on railway's land is not covered under "local area". The reply is not relevant because subject of the said decision was "reopening of assessment" and not to decide whether railway siding is a local area. Further, MP Board of Revenue in its judgement²² of 2002 held that railway sidings and rail lines are covered in local area.

The matter was reported to the Government between June 2007 and April 2008; their reply has not been received (December 2008).

2.10 Incorrect deduction of tax paid sales

The MPVK *Adhiniyam* and rules and notifications issued thereunder provide deduction of tax paid goods on which tax has been paid within the State to determine the taxable turnover. Under the *Adhiniyam*, packing material shall be liable to tax at the same rate as applicable to the goods packed therein.

2.10.1 Test check of the records of two regional offices and two circle offices at Indore between March 2007 and December 2007 revealed that five dealers assessed between January 2004 and January 2007 for the periods 2000-01 to 2003-04 sold tax paid packing material valued at Rs. 2.61 crore with taxable goods packed therein. The AA, however, allowed deduction of such tax paid packing material which was not admissible. This resulted in short levy of tax of Rs. 18.68 lakh.

²¹ RAC, Gwalior-02

²² Larsen and Tubro Ltd. v. CCT (2002) 35 VKN 50 (MP-Board)

After the cases were pointed out, the CCT in four cases stated (July 2008) that the deduction allowed was correct in view of MP High Court decision in the case of M/s Raymond Cement Works (1997-30-VKN-219) and MPCT Appellate Board decision in the case of M/s Pure Pharma Ltd., Indore. The reply is not acceptable as the Supreme Court in the case of M/s Premier Breweries Ltd. Vs State of Kerala (1999-23-TLD-241) has ruled that "in calculating turnover of the goods, packing material will have to be taken into account. The packing material will be taxed at the same rate and at the same point as the goods contained therein. This is a rule of computation of the turnover of the goods". In one case²³ the CCT intimated that action is yet to be finalised.

2.10.2 Test check of the records of a circle office at Burhanpur in March 2007 revealed that intra state sale of cement of Rs. 26.22 lakh by a dealer assessed in December 2003 for the period 2000-2001 was incorrectly treated as tax paid and tax was not levied. As the cement was purchased from Chhattisgarh State after 1 November 2000 i.e. date on which the state of Chhattisgarh was carved out of MP, hence the sale was liable to tax. This resulted in non-levy of tax of Rs. 3.62 lakh and interest of Rs. 2.30 lakh.

After the case was pointed out, the CCT intimated (July 2008) that a demand of Rs. 5.10 lakh had been raised.

The matter was reported to the Government between April 2007 and March 2008; their reply has not been received (December 2008).

2.11 Mistake in calculation of tax

Test check of the records of one regional office and one circle office at Indore between June 2007 and August 2007 revealed that in case of two dealers assessed between September 2006 and December 2006 for the period 2003-04, there was mistake in calculation of tax which resulted in short levy of tax of Rs. 19.35 lakh and a penalty of Rs. 8.89 lakh as mentioned below:

(Rupees in crore)

| Sl. No. | Name of the unit | Name of commodity | TTO | Rate of tax levied (Per cent) | Amount of tax leviable | Incorrect amount of tax levied | Amount of short levy |
|---------|------------------|--------------------------|------|-------------------------------|------------------------|--------------------------------|----------------------|
| 1. | RAC, Indore | Lecithin, deoiled cake | 4.44 | 4.60 | 0.20 | 0.19 | 0.01 |
| | | Soya Oil | 9.41 | 4.00 | 0.38 | 0.34 | 0.04 |
| | | Soya flour, flax, sludge | 8.84 | 9.2 | 0.81 | 0.76 | 0.05 |
| 2. | CTO, Indore | Rubber articles | 1.68 | 13.8 | 0.25 | 0.16 | 0.09 |
| | | Raw material purchase | 0.50 | 4.6 | | | |

The cases were reported to the CCT, MP and the Government between August 2007 and December 2007; their reply has not been received (December 2008).

²³ RAC, Gwalior-01

2.12 Non-levy of surcharge

Under the MPVK *Adhiniyam*, any registered dealer who carries on wholly or partly the business of supplying goods in the course of execution of works contract entered into by him may be permitted to pay, in lieu of tax payable by him under the Act, a lump sum at such rate as may be prescribed. Under the *Adhiniyam* and notifications issued thereunder, surcharge is leviable on the amount of tax at the rate of 15 *per cent*. The surcharge is in addition to the amount of tax payable under the Act.

Test check of the records of four regional offices²⁴ and three circle offices²⁵ between August 2007 and February 2008 revealed that 11 works contract dealers in 16 cases assessed for the period 2002-03 to 2005-06 between July 2005 and March 2007, paid Rs. 1.80 crore in lieu of tax at the prescribed lump sum rate. However, they did not pay surcharge at the rate of 15 *per cent* on the amount of tax so paid. This resulted in non-realisation of surcharge of Rs. 26.94 lakh.

After the cases were pointed out, the CCT stated (July 2008) that the amount paid in lump sum under Section 19 is different from tax, hence surcharge is not payable under Section 10-A. The reply does not correctly interpret the Act. The amount paid by the dealer under section 19 cannot be said to be different from tax. Further, section 10-A does not provide any exemption in respect of tax payable under section 19. In addition, some of the CTOs are charging surcharge on the lump sum rates specified under section 19, hence, the departmental stand is not consistent.

The matter was reported to the Government between September 2007 and April 2008; their reply has not been received (December 2008).

2.13 Incorrect determination of taxable turnover

Under the MPVK *Adhiniyam*, taxable turnover in relation to any period means that part of a dealer's turnover, which remains after allowing prescribed deductions therefrom.

Test check of the records of two regional offices and one circle office between July 2007 and August 2007 revealed that incorrect determination of taxable turnover in respect of three dealers resulted in short levy of tax

²⁴ Gwalior, Jabalpur, Mandsaur and Sendhwa
²⁵ Mandsaur, Morena and Vidisha

of Rs. 21.65 lakh and penalty of Rs. 1.02 lakh as mentioned below:

(Rupees in lakh)

| Sl. No. | Name of the unit | Period Month of assessment | Part of turnover that escaped from assessment | Commodity Rate of tax (Per cent) | Amount of short levy | Observation of audit |
|---------|------------------|---------------------------------------|---|--|--------------------------------|--|
| 1. | RAC, Indore | 2000-01 (Remand) August 2006 | 170.54 | Medicines 9.2 | 15.69 | As against the eligible deduction of Rs. 3.41 crore on account of stock transfer, a deduction of Rs. 5.11 crore was incorrectly allowed. |
| 2. | RAC, Satna | 2003-04 December 2006 | 42.22 7.67 | Conveyor belt material 9.2 Retreading material 13.8 | 4.94 | In respect of a dealer engaged in the work of repairing of conveyor belts, value of conveyor belt material and retreading material used in the repairing of belts was not included in taxable turnover treating them as consumable stores. |
| 3. | CTO V, Indore | 2003-04 January 2007 | 26.52 | Iron and steel 4 | 1.02 + 1.02 (penalty) | As per trading account of the dealer, although the sale was taxable, the AA did not levy tax treating the same as tax paid. |

After the cases were pointed out, the CCT intimated (July 2008) that in one case demand of Rs. 2.04 lakh had been raised. In one case, it was reported that action was in progress.

In the remaining case, the CCT stated that during the process of repairing of conveyor belt and tyres the goods namely conveyor belt material and retreading material lose their identity. Audit is, however, of the opinion that properties of the conveyor belt material and retreading material stood

transferred in the finished goods, as has been held in two judicial decisions²⁶ that in the process of sizing of yarn, sizing materials like starch and chemicals are not only used but their properties also stand transferred, hence exigible to tax.

The matter was reported to the Government between September 2007 and February 2008; their reply has not been received (December 2008).

2.14 Short levy of tax due to grant of incorrect deduction

Section 2 (w) (v) of MPVK *Adhiniyam* and Section 8-A of the CST Act prescribe a formula to arrive at the amount of taxable turnover. It also provides that no deduction on the basis of the formula shall be allowed if the amount of tax is not included in the aggregate of the sale prices.

Test check of the records of five regional offices²⁷ and four circle offices²⁸ between March 2004 and February 2008 revealed that in case of 14 dealers assessed between April 2002 and January 2007 for the periods 1999-2000 to 2004-05, deduction aggregating Rs. 2.84 crore was allowed incorrectly as the commercial tax was not included in the sale prices. This resulted in short levy of tax of Rs. 20.10 lakh.

After the cases were pointed out, the CCT intimated (July 2008) that in case of nine dealers demand of Rs. 6.15 lakh had been raised and adjusted against quantum of exemption. In four cases²⁹ it was reported that action was in progress.

In one case it was replied that tax and surcharge charged separately by the seller companies was included in the turnover, hence, deduction allowed was correct. The reply is factually incorrect because from the audited balance sheet of the dealer it is evident that tax was not included in the sale price.

The matter was reported to the Government between May 2004 and April 2008; their reply has not been received (December 2008).

2.15 Non/short levy of value added tax

Under section 9B of the MPVK *Adhiniyam*, value added tax (VAT) is leviable at the prescribed rates on the added value of resale of goods specified in Part II to VI of schedule II of the *Adhiniyam*.

Test check of the records of four regional offices³⁰ and two circle offices³¹ between October 2004 and February 2008 revealed that in case of six dealers assessed between May 2002 and January 2007 for the periods 1999-2000 to 2003-04, there was non/short levy of VAT due to non/under determination of added value of Rs. 71.76 lakh and grant of incorrect deduction of discount and sales returns of Rs. 1.07 crore. This resulted in non-realisation of VAT of Rs. 14.61 lakh.

²⁶ Neelam Textile Industries Vs Additional STO (2000) 33 VKN 107 (MP) and SP Tools and Processors Vs CST MP (2001) 27 TLD 223 (BOR)

²⁷ Gwalior (2), Indore, Khandwa and Ujjain

²⁸ Indore (2), Jabalpur and Khargone

²⁹ RAC, Gwalior-03, RAC, Indore-01

³⁰ Gwalior (2), Indore (2)

³¹ Chhindwara, Mandsaur

After the cases were pointed out, the CCT intimated (July 2008) that in three cases, demand of Rs. 5.53 lakh had been raised out of which Rs. 57,918 adjusted against quantum of exemption while in two cases³² it was stated that action is yet to be finalised. In one case the CCT stated that determination of opening balance of Rs. 40.31 lakh as against actual amount of Rs. 56.31 lakh caused proposed additional liability of VAT. The reply is factually incorrect because in the audited balance sheet itself the opening balance was recorded as Rs. 40.31 lakh.

The matter was reported to the Government between December 2004 and April 2008; their reply has not been received (December 2008).

2.16 Short levy of tax on intra state sale treated incorrectly as inter state sale

As per the CST Act, sale of goods shall be deemed to take place in the course of interstate trade, if the sale occasions the movement of goods from one state to another or is effected by a transfer of documents of title to the goods during their movement from one state to another. It further stipulates that if the movement of goods commences and terminates in the same state it shall not be deemed to be a movement from one state to another.

Test check of the records of a regional office at Indore in August 2007 revealed that two dealers assessed for the period 2003-04 in October 2006 and January 2007 sold cement pipes valued at Rs. 1.99 crore to the local registered dealers. The AA, however, while finalising the assessment treated the local sale as interstate sale incorrectly and allowed levy of tax at concessional rate of four *per cent* on the basis of 'C' forms issued by the said local purchasing dealers. This resulted in short levy of tax of Rs. 18.72 lakh at the differential rate of 9.8 *per cent*.

After the case was pointed out, the CCT stated (July 2008) in respect of one dealer viz. M/s Kalani Industries that copies of bills and *bilties* submitted by the dealer proved the transaction as inter-State sale. The reply is not acceptable because the said bills belonged to M/s Kalani Asbestos instead of M/s Kalani Industries. Secondly, as per copies of *bilties* furnished by the CCT, consignee is self. As such the reply appears misleading. Reply in respect of another dealer has not been received (December 2008).

The matter was reported to the Government in October 2007; their reply has not been received (December 2008).

2.17 Non/short levy of tax under Central Sales Tax Act

The CST Act and the rules made thereunder lays down that every selling dealer who fails to furnish form 'C' received from and duly signed by the purchasing dealers shall be liable to pay tax in respect of the interstate sales of goods at the rate of 10 *per cent* or at the specified rate whichever is higher, instead of the concessional rate.

³² RAC, Gwalior-02

Test check of the records of three regional offices³³ and four circle offices³⁴ between September 2006 and January 2008 revealed that in case of 11 dealers, tax on interstate sales of goods of Rs. 16.37 crore in respect of which form 'C' were not furnished, was levied at concessional/incorrect rate. This resulted in short levy of tax of Rs. 1.15 crore as mentioned below:

(Rupees in crore)

| Sl. No. | Name of the unit No. of cases | Period Month of assessment | Commodity Turnover | Rate of tax applied (Per cent) | Rate of tax applicable (Per cent) | Short levy of tax |
|---------|----------------------------------|---|--|-----------------------------------|--------------------------------------|-------------------|
| 1. | RAC, Indore 03 | 2002-03 August 2005 to November 2005 | PVC Sheets & doors 7.08 | 4 | 13.8 | 0.72 |
| | | | Aluminium section & profiles 0.22 | 4 | 10 | |
| | | | Drugs & Medicines 0.17 | 4 | 10 | |
| 2. | RAC, Indore 01 | 2003-04 January 2007 | Medicines 3.49 | 6 | 10 | 0.14 |
| 3. | RAC, Gwalior 02 | 2002-03 & 2003-04 November 2005 January 2007 | PVC Sheets 2.53 | 10 | 13.8 | 0.10 |
| | | | Jelly belly & milk bar 0.42 | 4 | 13.8 | 0.05 |
| 4. | CTO-IV, Jabalpur 01 | 2002-03 January 2006 | Readymade garments 0.83 | 4 | 10 | 0.05 |
| 5. | CTO-III, Gwalior 01 | 2002-03 December 2005 | Carbon brush & block 0.72 | 4 | 10 | 0.04 |
| 6. | CTO, Guna 01 | 2003-04 December 2006 | Dhaniya, daal 0.45 | 4 | 10 | 0.03 |
| 7. | CTO-VIII, Indore 02 | 2002-03 January 2006 | Leaf spring 0.46 | 4 | 10 | 0.03 |

After the cases were pointed out, the CCT intimated (July 2008) that in three cases demand of Rs. 19.38 lakh had been raised out of which Rs. 14.43 lakh adjusted against quantum of exemption and in remaining cases³⁵ the action was in progress.

The matter was reported to the Government between November 2006 and March 2008; their reply has not been received (December 2008).

³³ Gwalior, Indore (2),

³⁴ Guna, Gwalior, Indore and Jabalpur.

³⁵ RAC, Indore-04, CTO Guna-01, CTO III, Gwalior-01, CTO VIII, Indore-02