

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 2002-2003 revealed under assessment, non/short-levy of tax and penalty, application of incorrect rate of tax etc. involving Rs.87.30 crore in 1,474 cases, which can broadly be categorised as under:

(Rupees in Crore)

S. No.		Number of cases	Amount
1.	Madhya Pradesh <i>Bakaya Rashi Saral Samadhan Yojna</i>	1	2.70
2.	Non/short-levy of tax	255	7.89
3.	Application of incorrect rate of tax	279	13.63
4.	Incorrect determination of taxable turnover	128	3.06
5.	Incorrect grant of exemption/deduction	363	29.00
6.	Others	448	31.02
	TOTAL	1,474	87.30

A few illustrative cases highlighting important observations involving Rs.23.39 crore are discussed in the following paragraphs:

2.2 Madhya Pradesh Bakaya Rashi Saral Samadhan Yojna 2001

2.2.1 With a view to liquidate the arrears of taxes, interest and penalties (*Bakaya Rashi*) relating to assessment period up to 31 March 1997 and pending as on 1 April 2001, Government of Madhya Pradesh introduced in January 2002, Madhya Pradesh *Bakaya Rashi Saral Samadhan Yojna*¹ 2001 (*Yojna*) and Madhya Pradesh *Bakaya Rashi Saral Samadhan Yojna Niyam*² 2001 under Madhya Pradesh General Sales Tax Act, 1958, Central Sales Tax Act 1956, Madhya Pradesh *Vanijyik Kar Adhinyam*, 1994 and Madhya Pradesh *Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhinyam*, 1976. The cases of arrears of upto Rs.50,000 and exceeding Rs.50,000 were to be settled on payment of 25 per cent and 40 per cent thereof respectively. Any defaulter desirous of availing of the benefit under the scheme was required to submit the application in duplicate upto 31 January 2002 and to deposit sanctioned *Samadhan Rashi* within 15 days from the date of receipt of notice.

Targets and achievements of amount recovered/waived vis-a-vis arrears

2.2.2 Actual arrears of taxes, interest and penalties pertaining to the assessment period ending March 1997 outstanding as on 1 April 2001 under various Acts administered by Commercial Tax Department were not available with the Commissioner, Commercial Tax Department. However, as per the records of the Commissioner, Commercial Tax, total sales tax arrears of Rs.225.79 crore were pending for recovery as on 1 April 2001. The Department informed the Government a target of Rs.12.49 crore for recovery under *Yojna*. The basis of working out the targets was not available. The Commissioner assigned to the field offices the targets for collection of arrears as Rs.25crore against which Rs.23.70 crore were collected. The rationale behind fixation of targets could not be determined in audit.

Irregular grant of relief under Yojna

2.2.3 As per provisions of *yojna*, the cases of appeal/revision and court proceedings which were initiated by the defaulters could be settled on withdrawal of such cases by them.

Test-check of records of the Deputy Commissioner, Commercial Tax, Ujjain revealed that in the cases of three dealers, settlement of arrears of Rs.13.16 lakh up to 1996-97 was made after allowing relief of Rs.7.90 lakh on payment of tax of Rs.5.26 lakh by the dealers. It was, however, noticed that in these cases, the department had filed cases in the courts against dealers for manipulation of amount of challans. Since the court proceedings were initiated by the Department, the settlement made in such cases was irregular and resulted in loss of revenue of Rs.7.90 lakh.

This was pointed out in audit and the *Samadhan* Authority stated in November 2002 that there was no such restriction in *Yojna*. Their reply is not tenable as the court cases were instituted by the Department for manipulation in challans and not by the dealers and the relief should not have been allowed in such cases.

¹ Notification No. A 7-15/2002/5 V-98 dated 5.1.2002

² Notification No. A 7-15/2003/5 V-99 dated 5.1.2002

Settlement of cases not covered by Yojna

2.2.4 As per *Yojna*, the facility for settlement of amount of arrears was available to arrears related to assessment period ending up to 31 March 1997 and pending as on 1 April 2001.

Test-check of records of the Assistant Commissioner, Commercial Tax, Gwalior revealed that a dealer was allowed the facility of *Yojna* for settlement of arrears pertaining to the assessment period 1997-98 after payment of Rs.9.32 lakh out of the total arrears of Rs.23.31 lakh. This resulted in irregular settlement of arrears resulting in loss of Rs.13.99lakh.

This was pointed out in audit and the Deputy Commissioner, Commercial Tax, Gwalior stated that settlement was done correctly. The reply is not tenable as cases pertaining to assessment year 1997-98 were not covered under *Yojna* and hence the settlement was irregular.

2.2.5 The object of *Yojna* was to liquidate the arrears of taxes, interest and penalties relating to the assessment period ended March 1997 and pending as on³ 1 April 2001. The Scheme was not applicable to cases where the amount of tax became due for payment after 1 April 2001.

Test-check of records of the Additional Commissioner/Deputy Commissioner, Commercial Tax, Bhopal, Gwalior and Indore revealed that the benefit of *Yojna* was allowed to 19 dealers who were enjoying the facility of payment of tax in instalments under the deferment schemes and the payment of tax became due after April; 2001. The settlement of Rs.1.71 crore was made on payment of Rs.68.50 lakh by the dealers. This resulted in loss of Rs.1.03 crore.

This was pointed out in audit and the Commissioner, Commercial Tax accepted in September 2003 audit observations in 18 cases involving Rs.1.02 crore and stated that action for rectification was being taken. Further reply was awaited (June 2004).

2.2.6 The Commissioner of Commercial Tax vide⁴ circular dated 8 February 2002 clarified that the dealers who were enjoying the benefit of payment of tax in instalments were not eligible for the benefit of *Yojna*. The Government vide Deferment Rules, 1986 and 1994 had allowed the dealers enjoying the benefit of deferment scheme, to repay the tax in instalments. As such the benefit of *yojna* was not available to such dealers.

Test-check of records of the Deputy Commissioner, Katni and the Additional Commissioner, Indore revealed that 21 dealers who had enjoyed the benefit of deferment scheme were allowed the benefit under *yojna* and the cases were settled on payment of Rs.61.02 lakh out of total arrears of Rs.1.42crore. This resulted in loss of Rs.80.49 lakh.

This was pointed out in audit the Commissioner of Commercial Tax accepted September, 2003 the observations in 11 cases involving Rs.55.86 lakhs and stated that action for rectification was being taken. Further reply was awaited (June 2004).

³ Commissioner's letter No. CT/17/Reco/2001/549 dated 28.1.2002

⁴ CCT/17/Rules/192/2002/1018 dated 8.2.2002

Delay in payment of Samadhan Rashi

2.2.7 According to the provisions of Madhya Pradesh *Bakaya Rashi Saral Samadhan Yojna, Niyam*, 2001, after calculating the *Samadhan Rashi*, the *Samadhan* Authority shall inform the defaulter to deposit the same within 15 days from the date of service of the notice. The benefit of *yojna* shall be available only on fulfillment of the said condition.

Test-check of records of the Assistant Commissioner, Indore and Deputy Commissioner, Gwalior and Katni revealed that in 25 cases *Samadhan Rashi* of Rs.42.77 lakh after allowing relief of Rs.64.75 lakh as determined by the *Samadhan* Authority was deposited in to treasury by defaulters after a period of 15 days.

This was pointed out in audit the Department accepted the audit observations in eight cases involving Rs.15.88 lakh and stated that action for rectification was being taken. Further reply was awaited (June 2004).

The matter was reported to Government in June 2003; their reply was awaited (June 2004).

2.3 Incorrect determination of taxable turnover

2.3.1 Under Madhya Pradesh *Vaniyik Kar Adhiniyam*, 1994 (*Adhiniyam* 1994) every dealer required to file a return shall pay full amount of tax payable as per the return. The amount of tax due from a registered dealer shall be assessed separately for each year by the Assessing Authority and demand shall be raised accordingly. Interest on delayed payment is also leviable under provisions of the Act.

Test-check of records of the Regional Office, Jabalpur revealed that taxable turnover of a dealer assessed in April 2001 for the period 1997-98, was determined at Rs.1.25 crore by the Assessing Authority. However, tax was levied on Rs.53.19 lakh only. This resulted in short-levy of tax of Rs.11.37 lakh including interest of Rs.4.76 lakh on escaped turnover of Rs.71.81 lakh.

This was pointed out in audit and the Assessing Authority stated in December 2002 that the unit had been closed down and taxable turnover was determined on the basis of returns filed by the dealer. The reply is not tenable as the taxable turnover of Rs.1.25crore was assessed by the Assessing Authority himself, on the basis of turnover of returns filed by the assessee and tax should have been levied accordingly.

2.3.2 Under *Adhiniyam* 1994, packing material shall be deemed to have been sold or purchased along with the goods sold and purchased and rate of tax leviable shall be the same as on the sale or purchase of the goods themselves. Moreover, tax is also leviable on the amount of receipt realised by way of transfer of right to use.

It was noticed at the Regional Office, Bhopal and two circle offices⁵, that the Assessing Authorities did not include the cost of packing material of the goods sold and the lease rent of Rs.1.06 crore in the taxable turnover of three dealers in four cases while finalising their assessments between March 1999 and February 2000. This resulted in short-levy of tax of Rs.5.18 lakh.

⁵ *Bhopal and Mandla*

This was pointed out in audit and the Assessing Authority, Mandla accepted the audit observation in one case. However, further action to recover the amount was not intimated. Final reply in other cases had not been received.

The matter was reported to the Government between February 2001 and March 2003; their reply had not been received (June 2004).

2.4 Non/short-levy of Value Added Tax

Under Section 9-B of *Adhiniyam, (Sanshodhan)* 1997, value added tax (VAT) is leviable on added value of resale of de-oiled cake, building material, electrical goods and medicines falling under Schedule-II of the Act. VAT is also leviable on the goods purchased from exempted units.

Test-check of records in four offices⁶ revealed that while assessing four dealers between October 2000 and November 2001, for the period 1997-98 to 1999-2000, the Assessing Authority did not levy VAT amounting to Rs.27.63 lakh on added value of resale of de-oiled cake, building material, electrical goods and medicines valued at Rs.5.79 crore. This resulted in non-levy of VAT of Rs.27.63 lakh.

This was pointed out in audit and the Assessing Authority Indore stated that VAT was not levied as goods purchased were from exempted unit. The Assessing Authority, Satna stated that discount given to purchasers in the bills had been deducted from the turnover as such VAT was not levied. The replies are not tenable as VAT is leviable on resale of the goods specified in the Act and no exemption is to be granted on the added value of exempted goods under the Act. Besides, in another case, no deduction as discount as depicted in profit and loss account of the dealer assessed by the Assessing Authority, Satna. The amount should have been disallowed and tax levied accordingly. No reply had been received from the other two offices.

The matter was reported to the Government between July 2001 and December 2002; their reply had not been received (June 2004).

2.5 Non/short-levy of surcharge

Under Section 10-A of *Adhiniyam, 1994*, surcharge is to be levied at prescribed rates.

Test-check of records of four Regional Offices⁷ revealed that in the case of four dealers assessed between August 2000 to March 2001 for the year 1997-98, surcharge amounting to Rs.21.74 lakh was either not levied or levied short.

⁶ Circle Offices- Bhopal (2) and Indore and Satna (Regional Office)

⁷ Bhopal, Chhindwara, Indore and Satna

This was pointed out in audit and the Assessing Authority, Satna, raised a demand of Rs.12.93 lakh in February 2002. The other Assessing Authorities accepted the audit observations. However, final action taken had not been intimated (March 2004).

The matter was reported to the Government between March 2002 and June 2002; their reply had not been received (June 2004).

2.6 Non-levy of interest on delayed payment of tax

Under Section 26 (4) of *Adhiniyam*, 1994, if a dealer fails without sufficient cause to deposit the amount of tax payable by him in time, he shall be liable to pay interest at the rate of 2 per cent per month from the date of tax due.

Test-check of the records at the Regional Office, Guna revealed that in the case of a dealer assessed in September 2000 for the period 1997-98, a sum of Rs.1.20 crore payable as tax was deposited by him late by 14 months and interest of Rs.33.52 lakh though leviable, was not levied by the Assessing Authority. This resulted in non-levy of interest of Rs.33.52 lakh.

This was pointed out in audit and the Assessing Authority stated in April 2002 that no interest was paid to the dealer for late refunds against advance/excess payments during the previous years therefore, interest was not levied on delayed payments made by the dealer during that year. The contention of the Assessing Authority is not tenable as interest is leviable on belated payment of tax and action contrary to the provisions of the Act can not form a precedent.

The matter was reported to the Government July 2002; their reply had not been received (June 2004).

2.7 Non-levy of purchase tax

Madhya Pradesh General Sales Tax Act, 1958, (MPGST Act) *Adhiniyam*, 1994 and Rules provide that if any raw material purchased without payment of tax is consumed or utilised in the manufacture of the finished goods, tax shall be leviable on the purchase of such goods. If the product manufactured or goods so purchased are transferred outside the State without payment of tax, purchase tax is leviable.

2.7.1 Test-check of records revealed that a dealer at the Regional Office Morena assessed in March 2001 for the period 1997-98 purchased raw material valued at Rs.6.34 crore without payment of tax and used it in the manufacture of other goods. The dealer was liable to pay purchase tax amounting to Rs.19.34 lakh, which was not levied by the Assessing Authority. This resulted in non-levy of purchase tax of Rs.19.34 lakh.

2.7.2 Two dealers at the Regional Office Indore and Khargone purchased cotton and cotton seed valued at Rs.2.08 crore without payment of tax. Cotton purchased by the dealer was transferred to another state on consignment basis. Cotton

seed oil and de-oiled cake manufactured from cotton seed purchased free of tax, were also transferred on consignment basis to another State without payment of tax. Consequently, the dealers were liable to pay purchase tax of Rs.12.32 lakh. However, the Assessing Authorities failed to levy the purchase tax while finalising the assessment in June 1998 and January 2001. This resulted in non-levy of purchase tax of Rs.12.32 lakh.

This was pointed out in audit and the Assessing Authority, Morena accepted the audit observation and stated that action would be taken after further verification of records. Final action taken had not been intimated. Final reply in the other cases had also not been received (June 2004).

The matter was reported to the Government between February 2001 and June 2002; their reply had not been received (June 2004).

2.8 Non-levy of tax on sales incorrectly treated tax free

2.8.1 Under *Adhiniyam*, 1994 and rules and notifications issued thereunder, commercial tax is leviable at the rates specified in the schedule. As per schedule-II, Poly Vinyl Chloride (PVC) pipes are taxable at the rate of 6 per cent for the years up to 1999 and thereafter at the rate of 8 per cent.

Test-check of records of circle offices at Indore revealed that in the case of nine dealers assessed between April 1999 and July 2000, tax on sale of PVC pipes worth Rs.1.94 crore was not levied treating them as tax free. This resulted in non-levy of tax amounting to Rs.14.37 lakh.

This was pointed out in audit and the Assessing Authority stated that PVC pipes were exempted from payment of tax under the Act. The reply of the Department is not tenable as PVC pipes are taxable under the Act and no exemption from payment of tax has been granted on sale of PVC pipes.

2.8.2 In case of seven dealers of Indore, Bhopal, Gwalior, Vidisha and Jabalpur assessed between August 1998 and February 2002 for the period April 1994 to March 1999, deduction as tax free sale valued at Rs.9.87 crore and involving tax effect of Rs.89.48 lakh was incorrectly granted as detailed below:

Name of Unit	Period of assessment/ Date of order	Commodity	Rate of Tax (in per cent)	Amount of deduction (Rupees in lakh)	Amount of tax involved (Rupees in lakh)
Regional Assistant Commissioner (RAC) Indore	1997-98 October 2002	Plant and Machinery	4	23.53	0.94
Remark- Sale of plant and machinery purchased from registered dealers was incorrectly treated as tax free though it is taxable at 4 per cent under the Act.					
Circle Officer (CTO)-I Jabalpur	1996-97 August and November 1999	Singhara	4/10 State/Central	68.96	5.99
Remark- Sale of Singhara was treated as tax free though taxable as Kirana goods under the Act.					
RAC Indore	1997-98 February 2001	Kerosene wick stove	8/10 State/Central	700	63.00
Remarks- Kerosene wick stove was treated as tax free, though it is taxable under the Act.					
CTO-I Bhopal	1998-99 February 2002	Glass Fibre cloth Tape	8/10 State/Central	132.78	12.78
Remarks- Sale of Glass Fibre cloth tape though taxable was incorrectly exempted.					
CTO-I, Gwalior	1994-95 1997-98 August 1998 September 2000	Kali Mehandi	15 + Surcharge	18.22	2.74
Remarks- Kali Mehandi is hair dye and is taxable but was incorrectly exempted.					
CTO Vidisha	1997-98 July 2001	Water of Battery	8	43.78	4.03
Remarks- Water of Battery is taxable but was incorrectly exempted.					

The matter was reported to the Government between December 2001 and April 2003; their reply had not been received (June 2004).

2.9 Non/short-levy of Entry Tax/Nikaya Kar

Under Madhya Pradesh *Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam*, 1976, *Nikaya Kar Adhiniyam*, 1997 and notifications issued thereunder, entry tax is leviable on goods entering into a local area for sale, use or consumption as raw material or as incidental goods or as packing material at the specified rates.

Test-check of records of six Regional Offices⁸ and two Circle Offices⁹ revealed that in 19 cases of 17 dealers assessed/reassessed between December 1997 and February 2002 for the period April 1994 to March 2000, entry tax/*Nikaya Kar* was either not levied or levied at incorrect rate on entry of goods valued at Rs.25.74 crore. This resulted in short/non-levy of entry tax/*Nikaya Kar* of Rs.31.71 lakh.

This was pointed out in audit and the Assessing Authority accepted the audit observations in 12 cases of 12 dealers. However, action taken to recover the amount had not been intimated. Final reply in the remaining cases had not been received (June 2004).

⁸ Bhopal (3), Indore (2) and Guna

⁹ Ratlam and Shahdol

The cases were reported to the Government between February 2001 and March 2003; their reply had not been received (June 2004).

2.10 Application of incorrect rate of tax

Madhya Pradesh General Sales Tax Act, 1958 and Adhinyam, 1994 have specified the rates of commercial tax leviable on different commodities.

Test-check of records in nine Regional Offices¹⁰ and eleven Circle Offices¹¹ revealed that in 29 cases of 20 dealers assessed/re-assessed between February 1996 and March 2002, tax on sales turnover of Rs.23.36 crore on tiles/mosaic tiles, adhesive tapes, printer, rubber products etc., was levied at incorrect rates. This resulted in non/short-levy of tax amounting to Rs.82.01 lakh.

This was pointed out in audit and the Assessing Authorities accepted the audit observation in 13 cases of 13 dealers. However, action taken to recover the amount had not been intimated. Final reply in the remaining cases had not been received (June 2004).

The matter was reported to the Government between June 2000 to March 2003; their reply had not been received (June 2004).

2.11 Non-recovery of tax from closed unit

Under the Madhya Pradesh General Sales Tax Act, 1958 and notification issued thereunder, industrial units availing deferment of tax under M.P. Deferment of Tax Rules, 1983, read with Tax Exemption Scheme, 1986, shall keep the unit operational during the period of deferment and also for a further period of five years from the date of expiry of the deferment period, failing which, the eligibility certificate shall be cancelled with consequent recovery of the amount of deferment availed of by the unit.

Test-check of records at the Regional Office, Gwalior revealed that an industrial unit was allowed deferment of tax under Deferment Rules, 1983, for the period from 25 March 1993 to 24 March 2000. The dealer availed benefit of deferment of tax for Rs.15.98 crore during the period from 1993-94 to 1998-99. The unit was, however, closed on 3 September 2001, before the stipulated period and the registration certificate was cancelled with effect from the same date. The amount of deferment of tax of Rs.15.98 crore though recoverable together with interest was not recovered resulting in short realisation of Government revenue to that extent.

This was pointed out in audit and the Assessing Authority stated that eligibility certificate was not cancelled during the assessment period by the Industries Department, as such recoveries could not be made. Reply is not tenable as no action

¹⁰ Bhopal (2), Chhindwara, Indore (4), Jabalpur and Morena

¹¹ Bhopal (2), Gwalior, Indore (6), Jabalpur and Rewa

was taken by the Assessing Authority to get the eligibility certificate cancelled and to get the deferred amount of tax together with interest recovered.

The matter was reported to the Government between December 2002 and April 2003; their reply had not been received. (June 2004)

2.12 Irregular grant of exemption from payment of tax to new industries

Under 1981 Exemption Scheme, exemption to the industrial unit can be granted only if the unit commences commercial production within 1 April 1992.

Test-check of a case of a dealer of Bhopal assessed for the period 1998-99 in March 2002 revealed that an industrial unit engaged in manufacturing of paper and paper board commenced production from 20 March 1995 and was irregularly granted exemption for the period 20 March 1995 to 19 March 2002 under the 1981 scheme, which was applicable to the units which had gone into production before 1 April 1992. Thus, exemption granted to the unit was irregular and resulted in loss of revenue of Rs.18.95 lakh for the period 1997-98 and 1998-99 on sale value of Rs.3.99 crore.

This was pointed out in audit and the Assessing Authority stated that exemption was granted on the basis of eligibility certificate issued by the Industries Department. The reply is not tenable as no action was initiated by the Assessing Authority to take up the matter with the Industries Department and get the eligibility certificate cancelled.

The cases were reported to the Government between March 2001 and March 2003; their reply had not been received. (June 2004)

2.13 Irregular grant of deferment from payment of tax

Under Madhya Pradesh Deferment of Payment of Tax Rules, 1994, facility of deferment of payment of tax is available to industrial units which hold permanent eligibility certificates issued by the Industries Department.

Test-check of records at the Regional Office, Gwalior revealed that a dealer assessed for the period 1997-98 and 1998-99 in November 2000 and March 2002, was incorrectly allowed deferment of payment of tax of Rs.97.62 lakh on the basis of provisional eligibility certificate issued in March 1998, which was valid for twelve months only. As permanent eligibility certificate had not been issued at all, the unit was not entitled to deferment.

This was pointed out in audit and the Assessing Officer raised a demand of Rs.1.21 crore alongwith interest in June 2003.

The matter was reported to the Government in August 2002; their reply had not been received. (June 2004)

2.14 Incorrect exemption for export sales

Under *Adhiniyam*, 1994, read with Central Sales Tax Act, 1956 and Rules made thereunder, a registered dealer may claim deduction from his turnover in respect of sales of any goods, deemed to have been made in the course of export out of India. Sale of such goods should be made in the same form by the exporting agency.

Test-check of records in the Circle Office, Indore revealed that two dealers assessed for the period 1997-98 in January 2001, sold 'raw skin' valued at Rs.66.26 lakh to a dealer at Chennai which in turn manufactured 'glazed chrome lining leather' out of it and then exported it. Since the goods were not sold in the same form, exemption allowed for export sales of Rs.66.26 lakh was not correct and resulted in non-levy of tax of Rs.5.30 lakh.

This was pointed out in audit and the Assessing Officer accepted the audit observation. However, action taken to recover the amount had not been intimated. (June 2004)

The matter was reported to the Government in April 2002; their reply had not been received. (June 2004)

