

## CHAPTER-II: SALES TAX AND ENTRY TAX

### 2.1 Results of audit

Test check of assessments, refund cases and connected documents on sales tax and entry tax of commercial tax offices during the year 2005-06 revealed under assessment of tax, incorrect grant of exemption, non/short levy of tax etc. amounting to Rs.63.95 crore in 250 cases which may broadly be categorised as under: -

(Rupees in crore)			
Sl. No.	Categories	No. of cases	Amount
<b>Sales tax</b>			
1.	Short levy of tax due to incorrect computation of taxable turnover	45	14.82
2.	Underassessment of tax due to application of incorrect/concessional rate of tax	36	3.41
3.	Underassessment of tax due to irregular grant of exemption	13	8.20
4.	Non/short levy of surcharge/interest	9	0.30
5.	Other irregularities	93	31.73
<b>Total</b>		<b>196</b>	<b>58.46</b>
<b>Entry tax</b>			
1.	Under assessment due to incorrect computation of taxable turnover	13	0.69
2.	Under assessment of tax due to application of incorrect rate of tax	3	0.08
3.	Short levy due to irregular deduction	4	0.33
4.	Non/short levy of tax	14	2.09
5.	Non/short levy of penalty	18	2.03
6.	Other irregularities	2	0.27
<b>Total</b>		<b>54</b>	<b>5.49</b>
<b>Grand Total</b>		<b>250</b>	<b>63.95</b>

During the year 2005-06, the department accepted under assessment etc. of Rs.76.45 crore in 298 cases which were pointed out in audit in earlier years and Rs.4.71 crore in six cases pointed out in 2005-06. Out of these, the department recovered Rs.10.83 crore in 64 cases.

A few illustrative cases highlighting important audit observations involving Rs.24.90 crore are discussed in the following paragraphs.

## **2.2 Incorrect grant of exemption/deferment under sales tax incentive scheme**

**2.2.1** Under the Sales Tax Deferment Scheme 1992, new medium and large scale industrial units duly certified by the Director of Industries under Industrial Policy Resolution (IPR) 1992 shall be allowed to defer payment of sales tax collected and payable on sale of finished products for a period of five years from the date of commercial production.

During audit of Dhenkanal circle it was noticed in August 2005 that a large scale industrial unit engaged in manufacture of high carbon ferrochrome started commercial production from 1 October 1997 and was not eligible to defer payment of collected tax beyond 30 September 2002 under the provision of IPR 1992. The assessing officer (AO) while finalising the assessment for the years 2002-03 and 2003-04 in December 2004 and January 2005 allowed deferment of tax for Rs.2.43 crore collected up to March 2004. Out of this, an amount of Rs.0.66 crore related to collection made upto the eligibility period i.e. 30 September 2002. This resulted in irregular deferment of collected tax of Rs.1.77 crore.

The matter was reported to Government in December 2005. Government stated in April 2006 that the reassessments had been finalised in February 2006 and demand for entire amount had been raised. Report on recovery was awaited (November 2006).

**2.2.2** Under the Orissa Sales Tax Act (OST Act) , 1947, a new small scale industrial (SSI) unit under Industrial Policy, 1996 (IP-96) is exempt from levy of tax on purchase of raw materials provided that the dealer furnished a declaration in form I-D(96). The exemption availed is adjusted against the ceiling limit as certified by District Industries Centre (DIC). The Act also provides for levy of penalty equal to one and half times of the tax assessed for concealment of any turnover. Sale of coal is taxable at the rate of four *per cent*.

During audit of Cuttack-II circle it was noticed in June 2005 that a small scale industrial unit under IP-96, engaged in manufacture of low ash metallurgical coke, was eligible for tax exemption upto a ceiling limit of Rs.2.65 crore for a period of five years from 5 December 1999. The dealer unit purchased coal as raw material valued at Rs.10.44 crore, free of tax by furnishing statutory declarations in Form-I-D (96) during the period from 2000-01 to 2002-03 but did not disclose such purchases. The AO while completing assessments during January 2002 to February 2004 also failed to detect this concealment and allowed exemption accordingly. This resulted in short adjustment of Rs.41.78 lakh. Besides the dealer was also liable to pay a penalty of Rs.62.67 lakh.

After this was pointed out in June 2005, the department reopened the case, adjusted an amount of Rs.41.78 lakh against the ceiling limit and raised a demand for Rs.62.67 lakh towards penalty in reassessment completed in March 2006.

The matter was reported to Government in December 2005. Government in June 2006 confirmed the fact of raising demand. Report on realisation was awaited (November 2006).

**2.2.3** Under IP-96, a small industrial unit is eligible for sales tax incentives both on purchase of raw material and sale of finished products to the extent of fixed capital investment during a period of five years from the date of commercial production as certified by the DIC. Iron and steel processors including cutting of sheets, bars, angles, coils, MS sheets, decoiling, straining corrugation, drop hammer units etc. are ineligible units for sales tax incentives under IP-96.

During the course of audit of Rourkela-I circle in September 2005 it was noticed that a registered SSI unit claimed adjustment of Rs.59.68 lakh towards its ceiling limit of tax exemption during the year 2003-04. The AO while finalising the assessment in August 2004 incorrectly allowed the adjustment though the unit being a processing unit of iron and steel was not eligible to receive such incentive. This resulted in irregular grant of incentive for Rs.59.68 lakh under IP 96.

The matter was reported to Government in February 2006. Government in June 2006 stated that the case has been reopened. Further reply had not been received (November 2006).

### **2.3 Evasion of tax due to undervalued sales to favoured buyer**

Under the OST Act, if the Commissioner is satisfied that any dealer has avoided payment of tax, by selling goods to its favoured buyers at prices, which are unreasonably low compared to the prevailing market price of such goods, he may at the time of assessment or reassessment, estimate the price of such goods on the basis of market price and reassess the dealer to the best of his judgement. Sale of water filter/water purifier along with their accessories and tea was taxable at the general rate of 12 *per cent*. Moulded luggage was taxable at the rate of eight *per cent* upto February 2002 and thereafter at 12 *per cent*. Besides, surcharge and additional tax are payable at prescribed rates. These goods were taxable at first point of sale.

During the course of audit of four circles between May and December 2005, it was noticed that in four cases the dealers sold goods valued at Rs.11.30 crore to other four dealers and paid tax thereon as first sellers. The purchasing dealers in turn sold those goods in the same locality at Rs.19.14 crore which was 30 to 107 *per cent* higher than the purchase price. Thus, the sale turnover disclosed by the first selling dealers was unreasonably low and undervalued. This resulted in evasion of tax of Rs.83.60 lakh as detailed below:

(Rupees in lakh)

Name of the circle	Year assessed/ month of assessment	Name of the goods	Sale turnover of 1 <sup>st</sup> dealer	Sale turnover of 2 <sup>nd</sup> dealer	Differential turnover	Total tax evaded including surcharge
Bhubaneswar-II	2003-04 October 04	Water filter/ purifier	363.31	746.14	383.01	50.53
Cuttack-I- (West)	2001-02 June 03	Moulded luggage	405.24	573.67	168.43	15.44
Cuttack-I (Central)	2002-03 October 04	-do-	122.24	159.11	36.86	4.87
	2003-04 February 05	-do-	146.76	191.84	45.08	5.95
Bhadrak	2001-02 March -03	Tea	59.68	84.33	24.65	3.25
	2002-03 March 04	-do-	32.62	59.59	26.97	3.56
<b>Total</b>			<b>1,129.85</b>	<b>1,814.68</b>	<b>685.00</b>	<b>83.60</b>

The matter was reported to Government between December 2005 and March 2006. Government in June 2006 stated that the cases had been opened for reassessment. Further reply had not been received (November 2006).

#### 2.4 Under assessment/short levy of tax due to application of incorrect rate

Under the OST Act, specific rates of tax are applicable to different classes of commodities as stipulated in the rate chart. Goods not specified in the rate chart are taxable at the general rate of 12 *per cent*.

During audit of four circles between May 2005 and March 2006, it was noticed that in 12 cases the AOs applied incorrect rate of tax which resulted in under assessment/short levy of tax of Rs.95.58 lakh including surcharge. A few instances are as under:

(Rupees in lakh)

Sl. No	Name of the circle	Year assessed/ month of assessment	Commodities	Taxable turnover	Rate of tax Leviable Levied	Short levy of tax including surcharge
1.	Bhubaneswar-II	2001-02, 2002-03 and 2003-04 August 2002 and November 2004	Gypsum Board	114.53	$\frac{12}{4}$	10.08
		2001-02, 2002-03 and 2003-04 March 2005	Flooring materials, vacuum cleaner etc.	104.17	$\frac{12}{8}$	4.58
2.	Rourkela-I	2001-02/ August 2003	Timber	308.73	$\frac{12}{4}$	27.17
		2002-03/ October 2003	-do-	262.50	$\frac{12}{4}$	23.10
		2003-04/ September 2004	-do-	75.33	$\frac{12}{4}$	6.63

The cases were reported to Government in February and April 2006. Government in June and July 2006 stated that the cases had been opened for reassessment. Further reply had not been received (November 2006).

## 2.5 Short determination of tax in works contract

**2.5.1** Under the OST Act, the taxable turnover of works contract shall be deemed to be the gross value received or receivable by a dealer for carrying out such contract, less the amount of labour and service charges. The Act also provides that a contractee shall deduct and deposit in Government account an amount of tax at a specified rate from the bills of the contractors, which is to be adjusted against his assessed tax liability. Works contract is taxable at the rate of eight *per cent* under the Act.

During audit of Dhenkanal circle, it was noticed in August 2005, that a works contractor received Rs.17.81 crore in respect of work relating to its three subsidiaries<sup>1</sup> during 2001-02. The AO while completing the assessment in March 2004 adjusted TDS against the dues of the dealer contractor. However, he determined the taxable turnover at Rs.4.57 crore and did not include payment relating to the subcontractors which was irregular. This resulted in short determination of taxable turnover of Rs.17.81 crore and underassessment of tax of Rs.1.57 crore including surcharge.

The matter was reported to Government in December 2005. Government stated in June 2006 that the case had been reopened; further reply had not been received (November 2006).

**2.5.2** Under the OST Act, transfer of property in goods involved in works contract is exigible to tax. Further as held<sup>2</sup> by the Supreme Court, the value of goods at the time of incorporation in the works, constitutes the measure for levy of tax. Works contract is taxable at eight *per cent* under the Act.

During the audit of Koraput-I circle it was noticed in January 2006 that a registered works contractor disclosed consumption of materials valued at Rs.171.78 crore in his profit and loss account for the year 2003-04. The relatable profit thereon worked out to Rs.21.78 crore as per his books of accounts. Thus his taxable turnover in execution of works contract amounted to Rs.193.56 crore. The AO while finalising the assessments for the year 2003-04 in November 2004 levied tax on a turnover of Rs.147.59 crore. This resulted in short determination of turnover by Rs.45.97 crore and under assessment of tax for Rs.4.05 crore including surcharge.

The matter was reported to Government in March 2006. Government stated in June 2006 that the case had been reopened; further reply had not been received (November 2006).

1 M/s L&T Ltd, Kansbahal: gross amount Rs.529.22 lakh, TDS-Rs.21.17 lakh; L&T Ltd, Kolkata: gross amount Rs.1,088.54 lakh, TDS- Rs.43.66 lakh and L&T, Chennai: gross amount Rs.163.19 lakh, TDS- Rs.8.17 lakh.

2 M/s. Ganon Dunkerly & Co Vs. State of Rajsthan (88 STC-P/204)

## **2.6 Under assessment of tax due to short determination of taxable turnover**

Under Orissa Entry Tax (OET) Rules, 1999, a dealer of goods specified in Part-III of the schedule of the OET Act is entitled to adjust the amount of entry tax paid from his tax liability under the OST Act. As clarified by the Finance Department, entry tax paid should be added to the purchase price of scheduled goods for calculation of sale price. Under the OST Act motor vehicles, television sets and xerox machine and copier are taxable at the rate of 12 *per cent*.

During audit of three circles<sup>3</sup> between July 2005 and March 2006, it was noticed that in 11 cases the AOs while finalising the assessments between March 2004 and March 2005 for the years 2000-01 to 2003-04 incorrectly determined sale value of scheduled goods as Rs.92.08 crore instead of Rs.96.10 crore. This resulted in short determination of taxable turnover of Rs.4.02 crore and under assessment of tax of Rs.53.13 lakh including surcharge.

The matter was reported to Government in January and April 2006. Government stated in June 2006 that in one case an extra demand of Rs.21.34 lakh was raised for the year 2000-01 and in other cases reassessment proceedings had been initiated; further reply had not been received (November 2006).

## **2.7 Under assessment of tax due to allowance of irregular transit sale**

Under the Central Sales Tax (CST) Act, 1956, where sale of any goods in the course of inter State trade are effected by transfer of documents of title to such goods, these sales are not subject to levy of tax. In support of such transit sales, declarations in certificates in form E-I or E-II and form C are required to be furnished by the dealers causing the movement and taking the delivery of the goods respectively. Electrical goods are taxable at the rate of 12 *per cent* under the OST Act.

During audit of Bhubaneswar-I circle it was noticed in August 2005 that the AO while finalising assessment in January and December 2004 for the years 2000-01 and 2001-02 of a registered dealer allowed sale turnover of Rs.38.56 crore exempt from levy of CST treating the same as transit sale. Scrutiny of assessment records revealed that the entire sale turnover did not qualify as transit sales. In 40 cases, goods valued at Rs.16.61 crore were claimed as sold while in transit, sales were effected either one to 10 months prior to or after the date of purchase. In 47 cases goods purchased for Rs.3.32 crore were sold at much higher or lower value yielding a sale price of Rs.17.17 crore while remaining sales were not supported by declarations in form "C" or "E". All

<sup>3</sup> Bhubaneswar-II, Koraput-I and Sambalpur-I.

these transactions indicated that subsequent sale had no link with the first sale. Therefore, allowance of exemption towards transit sale of goods valued at Rs.38.56 crore was irregular and resulted in under assessment of tax of Rs.5.26 crore including surcharge.

After this was pointed out in August and November 2005, AO accepted the audit observations and stated that case would be reopened.

The matter was reported to Government in January 2006. Government in June 2006 stated that the reassessment proceedings had been initiated; further reply had not been received (November 2006).

## **2.8 Irregular allowance of exemption from tax**

Under the provisions of the CST Act, sale of goods in course of import or high sea sales and effected through transfer of documents of title to the goods are not subject to levy of tax if the transfer of documents takes place before the goods cross the customs frontier of India. It is judicially settled<sup>4</sup> that there should be clear evidence as to when the transfer of documents between the importer and the actual user takes place to avail the benefit of sale in the course of import. Endorsement of bill of lading has been held as an accepted proof of such transfer<sup>5</sup>. Coal is taxable at the rate of four *per cent* under OST Act and eight *per cent* under CST Act without declaration in form-C.

During audit of Jagatsinghpur circle, it was noticed in February 2006 that a dealer imported coal and claimed deduction of Rs.32.14 crore on account of high sea sales during 2003-04. However, the sales claimed to be in course of import were not supported by any documentary evidence such as prior agreement and endorsement on bill of lading etc. The AO while finalising the assessment in November 2004 incorrectly exempted sales of Rs.13.99 crore and Rs.18.15 crore from levy of OST and CST respectively. This resulted in irregular exemption of tax of Rs.2.01 crore.

The matter was reported to Government in March 2006. Government in March 2006 stated that the case had been opened for reassessment; further reply had not been received (November 2006).

## **2.9 Exemption on irregular export sale**

Under the provisions of the CST Act, both sale and penultimate sale of goods in course of export are exempt from levy of sales tax. Bill of lading and declarations in form-H are accepted supporting documents in support of direct export sale and penultimate sale respectively. Besides this only sales against pre existing supply orders are exempted under CST Act. Inter state sale of iron

4 M/s Gopinath Nair Vs. State of Kerala (105 STC P/580).

5 M/s. MMTC Vs. Sales Tax Officer & others.

ore without supporting declarations in form C are taxed at 10 *per cent* under the Act.

During audit of Rourkela-I circle it was noticed in December 2005 that a registered dealer engaged in manufacture and sale of iron ore effected sale of goods valued at Rs.34.06 crore in course of export during the year 2003-04. Scrutiny of the documents furnished in support of export sales revealed that neither the supply order nor the bill of lading contained any money value; the bill of ladings did not bear the seal of the port authorities and custom's clearance certificate; against a purchase order of 10 lakh metric tonnes (MT) the bill of ladings exhibited a quantity of 1.28 lakh MTs and 'H' forms for only Rs.2.68 lakh were available. The AO, while completing the assessment in February 2005 treated the sale value of Rs. 34.03 crore as sale in course of export though such sales were not established for want of documents and did not levy any tax. This resulted in grant of irregular exemption for Rs.3.40 crore.

The matter was reported to Government in February 2006. Government in June 2006 stated that the case had been reopened; further reply had not been received (November 2006).

## **2.10 Under assessment of central sales tax**

Under the CST Act, last sale or purchase of goods in course of export are exempt from levy of tax. For this purpose a dealer in support of his claim is required to furnish to the prescribed authority a certificate in form-H duly filled and signed by the exporter along with other supporting documents. Kendu leaf was taxable at 20 *per cent* with effect from 1 April 2001 under the OST Act which was also applicable under the CST Act if not covered with declarations in form-C.

During audit of Bolangir-I circle, it was noticed in October 2005 from the assessment of a registered dealer for the year 2003-04 that while finalising assessment (September 2004) the AO allowed exemption from tax towards export sale of kendu leaf valued at Rs.38.20 lakh on the strength of H forms and bill of ladings furnished by the dealer. Scrutiny revealed that transactions covered under form-H and bill of lading were actually related to the previous years of 2000-01 and 2002-03. Thus, the dealer could not furnish any H Form or other supporting document in respect of inter State sale turnover of Rs.38.20 lakh made during 2003-04. Hence exemption granted by the AO without relevant documentary evidence was irregular. This led to under assessment of tax of Rs.8.40 lakh including surcharge.

The matter was reported to Government in April 2006. Government stated in June 2006 that an extra demand of Rs.8.40 lakh was raised in the reassessment finalised in May 2006. Report on recovery had not been received (November 2006).



### 2.11 Non levy of purchase tax

Under the CST Act, last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall be deemed to be in the course of such export, if such last sale or purchase took place after and was for the purpose of complying with the agreement or order for or in relation to such export. Prawn is subject to purchase tax at the rate of eight *per cent* under the OST Act.

During audit of Bhubaneswar II circle in March 2006, it was noticed that a registered dealer exporting prawn had a closing stock of 3.43 lakh kg processed prawn for the year 2000-01. Out of this the dealer exported 3.36 lakh kg of prawn against the orders of 2001-02. As such no exemption was admissible since the exported prawn was not purchased for the purpose of complying with orders relating to export. The AO while finalising the assessment for the year 2001-02 in March 2005 exempted the corresponding purchase price of raw prawn valued at Rs.10.50 crore<sup>6</sup> from levy of purchase tax. This resulted in non levy of purchase tax for Rs.96.64 lakh.

The matter was reported to Government in March 2006. Government in June 2006 stated that the case had been opened for reassessment; further reply had not been received (November 2006).

### 2.12 Under assessment of CST due to application of incorrect rate

Under the delegated provision of the CST Act, inter state sale of goods manufactured by small scale industries (SSI) are taxed at concessional rate of one *per cent* against declaration in form-C. Status of a unit is decided by Government of India from time to time depending on investment in fixed capital. As per Government of India notification of December 1999, a unit having investment up to Rs.1 crore in fixed capital comes under the purview of SSI unit with effect from December 1999. Goods manufactured by medium scale industries (MSI) are taxable at four *per cent* in case of inter State sales.

During audit of two circles<sup>7</sup> in June and October 2005, it was noticed that two registered dealers engaged in manufacture of sponge iron and iron and steel with investments of more than Rs.2 crore in fixed capital, sold their finished products valued Rs.12.47 crore during the years 2001-02 and 2003-04 in course of inter State transaction. The AOs while finalising the assessments in January and March 2005 levied CST at the concessional rate of one *per cent* instead of four *per cent* which was incorrect since the units were MSIs. This resulted in under assessment of tax of Rs.37.40 lakh.

6 Quantity of unprocessed prawn is (quantity of processed prawn i.e. 3.36 lakh kg multiply 100) divided by (100 minus 36.23 *per cent* i.e. the processing loss declared by the dealer) = 5.27 lakh kg. Value of Prawn calculated at the purchase price of Rs.199.29 per kg multiply quantity of unprocessed prawn as adopted in assessment.

7 Cuttack-II and Keonjhar.

The matter was reported to Government in January and March 2006. Government in June 2006 stated that the cases had been reopened; further reply had not been received (November 2006).

### **2.13 Irregular allowance of exempted sales**

In exercise of the power conferred by the CST Act, Government of Orissa exempted inter State sale of iron and steel from levy of tax with effect from April 1991. Further, for this purpose the selling dealer was not required to submit the statutory declarations in form C. With effect from 1 April 2002 by an amendment in CST Act submission of form 'C' was made mandatory. Inter State sale of iron and steel not supported with declarations are taxable at eight *per cent*.

During audit of Rourkela-I circle it was noticed in September 2005 that a registered dealer effected inter state sale of iron and steel valued at Rs.5.20 crore in the year 2002-03. Out of this, sales for Rs.4.84 crore were not supported with declarations in form C. The AO, while completing the assessment for the year in June 2004 did not levy any tax on the sales. This irregular allowance of exempted sales resulted in underassessment of CST for Rs.38.69 lakh.

The matter was reported to Government in March 2006. Government in June 2006 stated that an extra demand of Rs.38.69 lakh was raised against the dealer in March 2006. Report on recovery had not been received (November 2006).

### **2.14 Grant of concession against invalid declarations**

Under the CST Act, inter state sale of goods to registered dealers, other than declared goods, not covered by declaration in form-C is taxable at the rate of 10 *per cent* or at the rate applicable to the sale or purchase of such goods inside the appropriate state, whichever is higher. Sale of ferro alloys and HDPE<sup>8</sup> woven sacks not covered by declarations are taxable at the rate of 12 *per cent* upto 31 March 2001 and 28 February 2002 respectively and thereafter at the rate of 10 *per cent* under the Act.

During the audit of Balasore and Bhadrak circles in June 2005 and January 2006, it was noticed from CST assessments of two registered dealers for the year 2000-01 and 2001-02 that AOs while finalising assessments between March 2004 and March 2005 accepted three declarations in form-'C' covering sale turnover of Rs.1.69 crore in respect of sales effected prior to the valid date of their registration certificate under the CST Act and assessed to tax at concessional rates. The grant of concessional rate of tax was irregular and resulted in short levy of tax for Rs.18.20 lakh including surcharge.

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8 High Density polyethylene.

After this was pointed out in June 2005 and January 2006, the AOs reopened the cases in June 2005 and January 2006 for reassessment.

The matter was reported to Government in April 2006. Government in June 2006 confirmed the fact of reopening of the cases; further reply had not been received (November 2006).

## Entry Tax

### 2.15 Irregular set off of entry tax

Under the Orissa Entry Tax Act, 1999 (OET Act) and Rules made thereunder, entry tax paid by the manufacturer on purchase of raw materials which directly go into the composition of finished products shall be allowed as set off against the entry tax payable on the sale of finished products. Furnace oil and coal are taxable at the rate of one *per cent* under the Act.

During audit of Ganjam-III circle it was noticed in June 2005 that while completing assessment for the years 1999-2000 to 2003-04, between March 2004 and March 2005, of a registered dealer engaged in manufacture and sale of minerals, AO allowed set off of Rs.22.58 lakh towards entry tax paid on purchase of furnace oil and coal, which are consumables and did not go into composition of finished products as raw material. This resulted in grant of irregular set off of entry tax for Rs.22.58 lakh.

The matter was reported to Government in January 2006. Government stated in April 2006 that demand for the entire amount was raised against the dealer and the dealer had deposited Rs.4 lakh. The balance amount was covered under stay order (November 2006).

### 2.16 Irregular adjustment of entry tax

Under the OET Act, when an importer or manufacturer of goods specified in Part-III of the schedule<sup>9</sup> becomes liable to pay tax under the OST Act by virtue of sale of such goods then his liability under the OST Act shall be reduced to the extent of entry tax paid. Such set off shall not be allowed unless the entry tax paid and tax payable under the OST are shown separately in the sale memo bill or invoice.

During audit of Bhubaneswar-I Circle it was noticed that a registered dealer dealing in Part III scheduled goods on wholesale basis, was assessed to entry tax in January 2005 for the year 2001-02 amounting to Rs.291.34 lakh, of which, the dealer paid Rs.264.68 lakh. Thus dealer was liable to pay the

<sup>9</sup> Part III scheduled goods like television, fridge, air conditioners, vacuum cleaners, washing machines and computer etc.

balance amount of entry tax of Rs.26.66 lakh. However, the AO adjusted this amount towards unclaimed set off of previous years which was irregular since reduction from tax liability was not based on the amount exhibited separately in the sale memo or invoice. This resulted in less demand of entry tax for Rs.26.66 lakh.

The matter was reported to the Government in January 2006. Government in June 2006 stated that suo moto proceedings had been initiated under the provisions of the Act; further reply had not been received (November 2006).

### **2.17 Non levy of entry tax on sale of finished products**

Under Section 26 of the OET Act, every manufacturer of scheduled goods shall collect entry tax on sale of its finished products effected by it to a buying dealer inside the state. However the manufacturer is entitled to avail set off of entry tax paid on the raw material used in the manufacture. Iron and steel as scheduled goods are taxable at the rate of one *per cent* under the OET Act.

During audit of Dhenkanal circle in March 2006, it was noticed that a registered dealer engaged in manufacture of MS rod and angles (iron & steel products) sold its finished products valued Rs.32.51 crore for the year 2001-02 inside the state. The AO while finalising the assessment in March 2005, levied entry tax of Rs.4.02 lakh on the purchase of raw materials worth Rs.8.04 crore but did not levy entry tax on sale of its finished products valued at Rs.32.51 crore. This resulted in under assessment of entry tax of Rs.28.49 lakh taking into consideration set off of entry tax paid on purchase of raw materials.

The matter was reported to Government in April 2006. Government stated in June 2006 that the AO had not reopened the case based on a decision of departmental appellate authority that no entry tax was leviable at the sale point since the dealer had paid entry tax on purchase. The reply was not tenable since the views of the appellate authority are not in accordance with the statutory provisions of the OET Act (November 2006).

### **2.18 Under assessment of entry tax due to purchase suppression**

Under the OET Act, where for any reason scheduled goods<sup>10</sup> purchased by a registered dealer escaped assessment to tax, the assessing authority may assess the dealer to the best of his judgement within a period of three years from the expiry of that year and direct the dealer to pay in addition to the tax assessed, a penalty not exceeding one and a half times of the tax. Scheduled goods used as raw material by a manufacturer on its first entry into a local area are exigible to entry tax at 50 *per cent* of the rate of tax of such scheduled goods.

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<sup>10</sup> Scheduled goods: Goods listed in the schedule of the OET Act, 1999.

During audit of Mayurbhanj circle in June 2005, it was noticed that the AO while finalising (December 2004) the assessment for the year 2002-03 of a registered manufacturer determined purchase taxable turnover of Rs.14.11 crore. Cross verification with the records of Central Excise Department revealed that the dealer had purchased goods of Rs.18.47 crore as raw material for the year 2002-03. Thus there was a short disclosure of purchases for Rs.4.36 crore which resulted in under assessment of entry tax of Rs.4.13 lakh. Besides, he is liable to pay penalty of Rs.6.20 lakh for suppression of purchased scheduled goods.

This was pointed out to the department in June 2005; specific reply has not been received (November 2006).

The matter was reported to Government in March 2006; reply had not been received (November 2006).