

CHAPTER-II: SALES TAX

2.1 Results of audit

Test check of the records of the offices of the Commercial Taxes Department conducted during the year 2007-08 revealed underassessment of tax amounting to Rs. 352.50 crore in 1,918 cases, which fall under the following categories:

(Rupees in crore)

Sl. No.	Category	Number of cases	Amount
1.	Short levy of tax due to application of incorrect rate of tax	473	193.31
2.	Irregular grant of exemption	131	36.84
3.	Underassessment due to irregular or incorrect allowances of deduction	348	36.66
4.	Non-assessment of taxable turnover	306	28.16
5.	Non-levy of penalty/interest	39	2.98
6.	Non-levy of purchase tax	23	0.36
7.	Other irregularities	598	54.19
Total		1,918	352.50

During the year 2007-08, the department accepted underassessment and other deficiencies of Rs. 6.69 crore involved in 549 cases, of which 86 cases involving Rs. 89.54 lakh had been pointed out in audit during 2007-08 and the rest in the earlier years. The department recovered Rs. 1.66 crore in 81 cases during the year 2007-08 of which five cases involving Rs. 21.30 lakh related to the year 2007-08 and the rest to the earlier years.

After issue of a draft paragraph, the department recovered Rs. 6.61 lakh pertaining to that observation pointed out during 2007-08.

A few illustrative cases involving Rs. 17.81 crore highlighting important audit findings are mentioned in the succeeding paragraphs.

2.2 Short levy of tax on interstate sales

2.2.1 In exercise of powers conferred under section 8(5) of the Central Sales Tax Act, 1956 (CST Act), the State Government by issue of notifications prescribed concessional rates of tax on interstate sale of various goods without furnishing of declaration in 'C' forms. The Central Government amended section 8(5) with effect from 11 May 2002 which stipulated that submission of 'C' form was mandatory for claiming concessional rate of tax on interstate sales. As such, interstate sales in the case of other than declared goods not supported by declaration forms attracted tax at 10 *per cent* or state rate whichever was higher and in the case of declared goods at twice the rate applicable in the State. In contravention of the above amendment, the Commissioner, Commercial Taxes (CCT) issued a circular in December 2005 dispensing with the requirement of furnishing such forms during the period 11 May 2002 to 26 September 2005. It was also stated that after this date all interstate sales should be supported with 'C' form for availing concessional rate of tax.

Scrutiny of the assessment records of 41 Commercial Taxes Offices (CTOs)¹ revealed that 642 assessments pertaining to the years from 2002-03 to 2006-07 were not supported by prescribed declarations. These interstate sales were, therefore, not entitled to concessional rate of tax. However, the assessing authorities (AA) while finalising the assessments between February 2005 and March 2007 levied concessional rate of tax. This resulted in short levy of tax of Rs. 206.71 crore apart from interest of Rs. 66.95 crore which was also chargeable thereon.

After the cases were pointed out, the AA stated between August 2007 and February 2008 that the State Government by issue of a circular on 13 December 2005 in respect of various goods and notification on 1 December 2006 in respect of cement restored the condition of submission of 'C' forms, but till then submission of 'C' form was not mandatory. The reply is not tenable, as after the amendment dated 11 May 2002 made by the Central Government, the notification/circular issued by the State Government under delegated powers for relaxing the condition of submission of 'C' form was impliedly repealed or rendered ineffective and thus interstate sale in the cases other than declared goods without 'C' form was liable to tax at 10 *per cent* or prescribed rates, whichever was higher and in the cases of declared goods at twice the rate applicable in State.

¹ Special Ajmer (1), Ajmer (4), Alwar (11), 'A' Alwar (6), Baran (30), Banswara (5), 'B' Bharatpur (44), 'B' Bhilwara (6), Special Bhilwara (17), Anti Evasion Bhilwara (3), Beawar (8), Bhiwadi (8), Special Bikaner (28), Bundi (11), Dausa (41), Dholpur (4), Hanumangarh (33), Special-I Jaipur (8), Special-II Jaipur (7), Special-III Jaipur (18), Special-IV Jaipur (15), Special-V Jaipur (14), 'C' Jaipur (14), 'E' Jaipur (15), 'G' Jaipur (22), Special Rajasthan (1), Jhalawar (33), Jhunjhunu (5), Special-II Jodhpur (16), 'C' Jodhpur (13), 'B' Kota (64), Anti Evasion-II Kota (3), Special Kota (15), Nimbahera (12), Special Pali (8), Raisinghnagar (14), 'A' Sriganganagar (38), Special Sriganganagar (8), Suratgarh (28), Tonk (8), Special Udaipur (3).

2.2.2 Scrutiny of demand and collection registers of 18 CTOs² revealed that interstate sales, in 146 cases finalised between 2004-05 and 2006-07, were not supported by 'C' forms. The AA levied tax at the prescribed rates and raised demand accordingly. However, in pursuance of the circular issued in December 2005, the demands were reduced by Rs. 14.23 crore. The reduction of demand was irregular and resulted in loss of revenue of Rs. 17.65 crore including interest (demand of Rs. 14.23 crore plus interest of Rs. 3.42 crore).

After this was pointed out, the Government stated (October 2008) that by issue of two Government orders, both dated 13 May 2008, it had written off the demand pertaining to the period 11 May 2002 to 25 September 2005 over and above the rate prescribed under sub section 8(5) of CST Act and for the period 26 September 2005 to 31 March 2007 over and above the state rate in respect of the interstate sale of various goods not supported by 'C' forms. It is amply clear that the above orders were issued just to regularise the cases decided in pursuance of an impugned circular issued by the CCT whereby requirement of 'C' forms was irregularly dispensed with. Further, the above orders were also in contravention of the provision of section 55 of the RST Act which prescribed that only such demands under RST Act and CST Act could be written off, which were outstanding for more than 10 years and found irrecoverable.

2.3 Non-withdrawal of benefit on breach of condition

Under the 'Sales Tax Exemption Scheme for Industries 1998', industrial units were exempted from payment of tax on sale of goods manufactured by them subject to the maximum quantum and period of benefit prescribed in the scheme. The scheme further provided that the beneficiary industrial units shall, after having availed of the benefit of the scheme, continue their production for the next five years failing which the units were liable to be taxed on the sale of finished goods as if there was no exemption. Moreover, interest at the prescribed rates was also leviable under the Rajasthan Sales Tax (RST) Act, 1994 on the benefit so availed.

In three CTOs³, it was noticed between July 2007 and March 2008, that four industrial units were granted eligibility certificates between January 1999 and November 2001. These units availed the benefit of tax exemption of Rs. 7.73 crore during 1999-2000 to 2004-05 and were required to continue their production for a further period of five years after the expiry of the period during which exemption from paying tax under the scheme was availed. These units stopped production within five years from the date of availing exemption between 2002-03 and 2005-06 but no action was taken by the AA to withdraw the

² 'A' Alwar (11), 'B' Alwar (16), Special Alwar (5), Baran (2), Special Bikaner (4), 'B' Bharatpur (3), Bhiwadi (2), Dausa (14), Dholpur (2), Special-II Jaipur (2) Special-III Jaipur (4), Jhalawar (29), 'C' Jodhpur (9), 'B' Kota (2), Nimbahera (18), Special Udaipur (8), Suratgarh (3) and Tonk (12).

³ Bhiwadi (2), Kishangarh (1) and Special Udaipur (1).

exemption availed by these units. This resulted in non-recovery of tax of Rs. 16.83 crore including interest of Rs. 9.10 crore.

After this was pointed out, the Government stated (August 2008) that in one case the matter had been referred to the State Level Screening Committee for decision and in another case production was going to be started. The reply is not tenable as the production had neither started nor exemption benefits were withdrawn even after lapse of six years. Replies in remaining cases have not been received (October 2008).

2.4 Loss of revenue due to delay in finalisation of collection contract

Under section 78 (1) of the RST Act, the Commissioner may, with a view to prevent or check avoidance or evasion of tax, direct the setting up of a check-post at such place and for such period as may be specified. Further, section 79 (1) of the Act provides that where the Commissioner is of the view that without establishing a departmental check-post, it is in the interest of the State to collect a fixed sum of tax on contract basis, he may, through a contract, permit a contractor to collect such tax at such point or for such area on such terms and conditions as may be specified by him on fixed contract amount for a period not exceeding two years at a time.

Scrutiny of the records of CTO, Baran for the year 2005-07, revealed (February 2008) that a contract for tax collection check-post was awarded for a period of two years from 4 February 2002 to 3 February 2004, which was extended for a period of three month upto 3 May 2004. Thereafter, notice inviting tenders for the check post was issued on 5 February 2005 by the department and the contract was finalised on 15 December 2005 for Rs. 35.03 lakh. For the intervening period between 4 May 2004 and 15 December 2005 no collection of tax was made by the department. The delay in finalisation of contract resulted in loss of revenue amounting to Rs. 56.53 lakh⁴.

The matter was pointed out to the department and reported to Government in March 2008; their replies have not been received (October 2008).

2.5 Short levy of tax due to application of incorrect rate of tax

Through notifications issued under the RST Act, the State Government prescribed different rates of tax for different commodities. Gwar gum and elastic tape were to be taxed at the general residuary rate of tax of 10 *per cent* upto 11 July 2004 and 12 *per cent* thereafter as prescribed in these notifications. Surcharge at the rate of 15 *per cent* was also leviable upto 11 July 2004.

2.5.1 Scrutiny of the records of the CTO, Special Circle V, Jaipur for the year 2006-07 in December 2007 revealed that a manufacturer sold gwar gum valued as

⁴ The value of the contract as per notice inviting tender issued by the department on 5 February 2005 for Rs. 35.03 lakh. The amount of Rs. 56.53 lakh worked out as Rs. 35.03 lakh/12 = Rs. 2.92 lakh per month x 19 months 11 days.

Rs. 2 crore during the years 2003-04 and 2004-05. The AA incorrectly levied tax at the rate of two *per cent* instead of 10 *per cent*, while finalising the assessments for the years 2003-04 and 2004-05 between July 2005 and June 2006. This resulted in short levy of tax of Rs. 18.99 lakh. Besides, interest was also leviable.

After the case was pointed out, the Government intimated (September 2008) that after re-assessment a demand of Rs. 20.46 lakh (tax: Rs. 18.99 lakh and interest: Rs. 1.47 lakh) had been raised, of which Rs. 15.93 lakh were recovered by adjustment.

2.5.2 Scrutiny (May 2004) of the records of the CTO, Sirohi revealed that three industrial units sold elastic tape valued at Rs. 1.95 crore during the year 2001-02. The AA while finalising (January and February 2004) the assessments misclassified the goods as textile fabrics impregnated, rubberised coated, covered or laminated and levied tax at two *per cent* instead of 10 *per cent*. This resulted in short levy of tax of Rs. 14.20 lakh.

The matter was pointed out to the department in January 2005 and reported to the Government in June 2006; their replies have not been received (October 2008).

2.6 Non-levy of entry tax

The State Government by issue of a notification dated 12 July 2004 specified a rate of tax of four *per cent* on entry of all kinds of paper and paper products into local area for consumption or use or sale. By issue of notifications dated 12 July 2004 and 20 October 2004, the State Government exempted tax on these items in excess of one *per cent* for the period from 13 August 2002 to 12 July 2004 and in excess of three *per cent* with effect from 20 October 2004.

Scrutiny of the records of CTO, Circle 'C' Jaipur for the year 2006-07 in September 2007 revealed that a dealer purchased paper from outside the state valued at Rs. 1.50 crore and Rs. 1.33 crore during 2003-04 and 2004-05 respectively and used it in the manufacture of corrugated boxes without payment of entry tax at the prescribed rates. The AA while finalising the assessments for the relevant years between December 2005 and September 2006 failed to levy entry tax. This resulted in non-levy of entry tax and interest of Rs. 7.13 lakh.

The matter was pointed out to the department in September 2007 and reported to Government in May 2008; their replies have not been received (October 2008).