

## CHAPTER-II: Sales Tax

### 2.1 Results of audit

Test check of records of the offices of the Commercial Taxes Department, conducted in audit during the year 2003-2004 revealed under assessments etc., of tax amounting to Rs.64.88 crore in 2,106 cases which broadly fall under the following categories.

Sl. No.	Category	Number of cases	Amount (Rs. in crore)
1.	Non-assessment of taxable turnover	209	2.90
2.	Under-assessment due to irregular or incorrect allowances of deductions	102	10.45
3.	Short levy of tax due to application of incorrect rate of tax	401	6.97
4.	Irregular grant of exemption	272	27.92
5.	Non-levy of purchase tax	88	0.48
6.	Non-levy of penalty/interest	174	1.06
7.	Other irregularities	860	15.10
<b>Total</b>		<b>2,106</b>	<b>64.88</b>

During the year 2003-2004, the Department accepted under assessments etc. of Rs.9.37 crore involved in 759 cases, of which 354 cases involving Rs.2.20 crore had been pointed out in audit during 2003-2004 and the rest in earlier years. Further the Department recovered Rs.2.42 crore in 84 cases during the year 2003-2004 of which 21 cases involving Rs.1.15 crore related to the year 2003-2004 and the rest to the earlier years.

A few illustrative cases involving Rs.28.29 crore highlighting important audit observations are given in the following paragraphs:

### 2.2 Incorrect/excess grant of exemption under sales tax incentive schemes

Under the Rajasthan Sales Tax (RST) Act, 1954 and the Central Sales Tax (CST) Act, 1956, the Government notified various sales tax incentive schemes for industries from time to time. The exemption admissible to the industries is subject to the conditions prescribed in these schemes under which exemption

has been granted. A test check of 35 cases revealed incorrect/excess grant of exemption of Rs.17.90 crore as detailed below:

(Rupees in lakh)

Sl. No.	Name of circles/ No. of units	Assessment year/ month of assessment	Nature of observation	Amount including interest
<b>Sales Tax Incentive Scheme for Industries, 1987</b>				
1.	7 CTOs <sup>1</sup> (15)	1999-2000 and 2000-2001/ between June 2001 and March 2003	Fifteen industrial units stopped their production between 1998-99 and 2000-01 immediately after availing tax exemption of Rs.4.05 crore. Though these units were required to continue their production after full availment of benefit for the next five years, no action was taken to withdraw the exemption availed by them. This resulted in non-recovery of tax and interest.	904.72
<b>Sales Tax New Incentive Scheme for Industries, 1989</b>				
2.	CTO Special Alwar (1)	2000-2001/ January 2003	A SSI unit went for an expansion and was entitled to exemption of 100 per cent of its fixed capital investment (FCI). However, it was granted exemption of 125 per cent of FCI. This resulted in excess grant of exemption.	11.46
3.	CTO Bhiwadi (1)	2000-2001/ May 2002	A unit availed tax exemption of Rs.8.66 crore instead of Rs.8.41 crore admissible to it. This resulted in excess grant of exemption.	25.00
4.	CTO Special-V Jaipur (1)	2000-2001/ September 2002	A medium scale unit went for an expansion and was entitled to exemption of 100 per cent of its FCI. However, it was granted exemption of 125 per cent of its FCI. This resulted in excess grant of exemption.	30.07
5.	CTO Special Alwar (3)	2000-2001/ between April 2002 and January 2003	Three oil manufacturing and extracting units went for their expansion and were entitled to exemption of 60 per cent of their tax liability. However, these units were allowed exemption to the extent of 75 per cent of their tax liability. This resulted in excess grant of exemption.	19.13

<sup>1</sup> Bhiwadi (2), Churu (5), 'E' Jaipur (3), Jhalawar (1), Special-I Jodhpur (1), Special-II Jodhpur (2) and 'B' Sriganganagar (1).

Sl. No.	Name of circles/ No. of units	Assessment year/ month of assessment	Nature of observation	Amount including interest
6.	CTO Special Alwar (1)	2000-2001/ June 2002	An industrial unit which was granted benefit under the old scheme opted for the new scheme. However, the Assessing Authority incorrectly issued EC under the new scheme for Rs.38.43 lakh (125 per cent of Rs.30.94 lakh) instead of the remaining eligible amount of Rs.30.94 lakh of the old scheme. This resulted in excess grant of exemption of Rs.7.49 lakh.	7.49
7.	CTO 'B' Bikaner (1)	2000-2001/ January 2003	An industry engaged in decorticating <sup>2</sup> of oil seeds was not eligible for sales tax incentive under the scheme. However, an industrial unit was incorrectly allowed exemption of Rs.5.16 lakh. This resulted in loss of Rs.10.92 lakh including interest.	10.92
<b>Sales Tax Exemption Scheme for Industries, 1998</b>				
8.	5 CTOs <sup>3</sup> (12)	1999-2000 and 2000-2001/ between January 2002 and March 2003	The scheme provided that no industrial unit should be permitted to claim benefits under this scheme, if it was availing benefits under any other specific or general scheme of tax exemption or tax deferment. However, 12 industrial units which were already availing benefits under 1987/1989 schemes were further sanctioned exemption benefit of Rs.7.81 crore. This resulted in irregular grant of exemption.	780.94
<b>Total</b>	<b>35</b>			<b>1789.73</b>

The omissions were pointed out to the Department between July 2002 and March 2004 and to the Government between February 2003 and March 2004; their replies have not been received till September 2004 except in case of Sl. No.2 wherein the Department intimated in January 2004 that eligibility certificate of the unit had been revised and the amount of exemption had been restricted to the prescribed limit and in case of Sl. No.8 it was stated in September 2004 that the matter was referred to DIC Sriganaganagar for reconsideration.

<sup>2</sup> Decorticating: to peel off skin of oil seeds.

<sup>3</sup> Anti Evasion-I, Jaipur (1), 'C' Jodhpur (1), Suratgarh (1), 'B' Udaipur (4) and Special Udaipur (5).

### 2.3 Short levy of tax due to application of incorrect rate of tax

Under the CST Act, on inter-State sale of goods other than declared goods, tax is leviable at a concessional rate of four *per cent* if such sales are supported by prescribed declarations otherwise, tax is leviable at the rate of 10 *per cent* or at the rate of tax applicable to sale or purchase of such goods in the appropriate state under state sales tax law, whichever is higher. Further under the RST Act by issue of notifications the State Government prescribed different rates of tax for different commodities. The commodities for which no specific tax rate had been prescribed, were to be taxed at the general residuary rate of tax as prescribed in these notifications. A surcharge at the rate prescribed from time to time was also leviable.

Scrutiny of the assessment records in two circles revealed that in five cases due to application of incorrect rate of tax, there was a short levy of tax, surcharge and interest aggregating Rs.2.16 crore as detailed below:

(Rupees in lakh)

Sl. No.	Name of the Circle/ No. of units	Assessment year/ Month of assessment	Commodity	Turn-over	Short levy of tax, surcharge and interest	Remarks
1.	CTO Bhiwadi (1)	1999-2000 and 2000-01/ February 2002 and February 2003	Toner	1,656.23	113.80	The goods were liable to tax at the general rate of 10 <i>per cent</i> , but were incorrectly taxed at the rate of four <i>per cent</i> .
After this was pointed out by audit in September 2003, the Department/Government stated in August 2004 that toner was a chemical and was liable to tax at four <i>per cent</i> . The reply was not tenable because Rajasthan Tax Board had held <sup>4</sup> that toner falls under the category of general goods and thus was liable to tax at 10 <i>per cent</i> . Department was appraised accordingly. Further action taken has not been received (October 2004).						
2.	CTO Bhiwadi (1)	1999-2000 (with effect from 15 January 2000 to 31 March 2000) 2000-2001/ March/May 2003	Spark plug	2,384.33	91.42	The goods, were liable to tax at the rate of 12 <i>per cent</i> , but were incorrectly levied at the rate of six <i>per cent</i> on the sale within the state and 10 <i>per cent</i> on inter state/export sales not supported by requisite declaration.
After this was pointed out by audit in September/October 2003, the Department/Government intimated in August 2004 that a demand of Rs.89.16 lakh had been raised. Further action taken has not been received (October 2004).						
3.	CTO Special Bikaner (3)	1999-2000/ March 2002	Cement	79.15	10.78	The inter state sale of goods not supported by requisite declaration was liable to tax at the rate of 16 <i>per cent</i> but was incorrectly taxed at the rate of four <i>per cent</i> .
After this was pointed out by audit in January 2003, the Department intimated in October 2003/July 2004 that a demand of Rs.13.12 lakh (including interest) had been raised. An amount of Rs.8.08 lakh had been recovered by way of adjustment against the exemption limit provided under incentive scheme to the dealers. Recovery of the balance amount has been stayed by the High Court till further order.						
The matter was reported to Government in February 2003; their reply has not been received (October 2004).						
<b>Total</b>	<b>5</b>				<b>216.00</b>	

<sup>4</sup> M/s. Modi Xerox Ltd. Vs CTO (STDB) (1994) 16 RTJS 201.

## 2.4 Under assessment due to computation error

Under the RST Act, the Assessing Authority should ensure correctness of the tax chargeable on the taxable turnover of different commodities.

Scrutiny of the assessment records in four circles revealed that in four cases there was a short levy of tax aggregating Rs.1.20 crore due to computation error as detailed below:

(Rupees in lakh)

Sl. No.	Name of the Circle/ No. of units	Assessment year/ Month of assessment	Tax leviable	Tax levied	Tax short levied	Nature of observation
1.	2.	3.	4.	5.	6.	7.
1.	CTO Special Kota (1)	2000-01/ November 2002	1,887.47	1,786.47	101.00	On the sale of cement the amount of tax was incorrectly computed as Rs.1,786.47 lakh instead of Rs.1,887.47 lakh .
2.	CTO 'C' Jaipur (1)	2000-01/ January 2003	6.92	0.69	6.23	The amount of tax at the rate of 18.4 <i>per cent</i> was incorrectly computed as Rs.0.69 lakh instead of Rs.6.92 on the taxable turnover of Rs.37.62 lakh.
3.	CTO Special Bikaner (1)	2000-01/ January 2003	9.29	3.48	5.81	The amount of tax at the rate of 18.4 <i>per cent</i> was incorrectly computed as Rs.3.48 lakh instead of Rs.9.29 lakh on the sale of cement on the taxable turnover of Rs.50.50 lakh.
4.	CTO 'A' Bharatpur	2001-02/ November 2002	11.45	4.64	6.81	On the sale of edible oil/oil cake, the amount of tax was incorrectly computed as Rs.4.64 lakh instead of Rs.11.45 lakh.
<b>Total</b>	<b>4</b>				<b>119.85</b>	

After this was pointed out in audit the Department intimated between June 2003 and July 2004 that necessary demand had been raised in all the cases and would be adjusted against the exemption limit provided to the dealers.

The Government confirmed in July 2004 the reply of Department in two cases. Reply in the other two cases was not received (October 2004).

## 2.5 Incorrect levy of concessional rate of tax on taxable turnover relating to time barred declaration forms

The RST Rules provided that a dealer could claim payment of tax at a concessional rate on the sales made to a registered dealer of goods for use as raw material or as processing articles. In support of his claim he should submit declaration forms in ST 17 form obtained from the purchasing dealer to his

Assessing Authority. Further the ST 17 forms shall remain valid for two years upto 25 March 1999 and thereafter for three years from the date of their issue by the issuing authority.

In Jaipur, it was noticed that during 1999-2000 and 2000-2001 three dealers sold petroleum products as raw material and as processing material at concessional rate of tax of three *per cent* and four *per cent* respectively on the strength of declarations in ST 17 form. Scrutiny of ST 17 forms revealed that 17 forms for Rs.12.04 crore for the sale as raw material and 32 forms for Rs.10.74 crore for the sale as processing material had expired their validity period and were invalid. Thus the sales were liable to tax at the prescribed rate of 16 *per cent*. However, the Assessing Authority while finalising the assessments of the dealers between September 2002 and March 2003 failed to reject these invalid declaration forms and to levy differential tax. The omission resulted in non-levy of tax of Rs.6.28 crore including interest.

The omission was pointed out to the Department in January 2004 and to Government in March 2004; their replies have not been received till September 2004.

## **2.6 Irregular waiver of interest and penalty**

Under the RST Act the Commissioner may on an application made in this behalf by a dealer and after having got conducted such enquiry as he deems necessary and after recording his reasons for doing so, reduce or waive the amount of interest and penalty or both if he is satisfied that the dealer is under financial hardship and is not in a position to make full payment of the demand or its payment would cause genuine hardship to the dealer.

In Jaipur, it was noticed (December 2003) that in one case (M/s Hindustan Petroleum Corporation Limited) the Commissioner Commercial Taxes waived in April 2002 an amount of Rs.60.64 lakh on account of interest and penalty. However, there was nothing on record to prove that the dealer was in a financial hardship and was not in a position to make payment of the demand or that the payment would cause genuine hardship to the dealer. Thus, due to non-fulfillment of the obligatory conditions envisaged in the Act, the amount waived was not justified.

The omission was pointed out to the Department in January 2004 and to Government in March 2004; their replies have not been received till September 2004.

**2.7 Non-levy of turnover tax**

Under the RST Act the Government notified (30 March 2000) that every registered dealer whose total turnover is not less than Rs.50 lakh in a year shall be liable to pay turnover tax at the rate of 0.25 *per cent*.

In Jhalawar, it was noticed (November 2003) that in case of three dealers, annual turnover exceeded Rs.50 lakh. However the assessing authority, while finalising the assessments in June 2002 of these dealers for the year 2000-01 failed to levy turnover tax on the total turnover of Rs.16.81 crore. This resulted in non-levy of turnover tax aggregating to Rs.7.95 lakh (including interest).

After this was pointed out to the Department/Government in December 2003/March 2004; the Department/ Government intimated in July 2004 that a demand of Rs.8.56 lakh has been raised. Report on recovery has not been received till September 2004.

**2.8 Non-levy of interest**

Under the RST Act in the case of works contract an amount in lieu of tax may be deducted by the awarder at the prescribed rates from every bill of the contractor and such sum shall be deposited in the government account within the prescribed period. Further if any dealer has not paid the tax within prescribed period, he is liable to pay interest at the prescribed rates from the date by which he was required to pay the tax until the date of payment.

In Jaipur, it was noticed (December 2003) that a dealer, deducted Rs.79.66 lakh on account of tax at source from the works contractors, but deposited it late in government account and the delay ranged between one day to 18 months. The Assessing Authority while finalising the assessment in September 2002 did not levy interest for delayed deposit of tax resulting in non-levy of interest of Rs.6.37 lakh.

The omission was pointed out to the Department in January 2004 and to Government in March 2004; their replies have not been received till September 2004.