

CHAPTER II

SALES TAX

2.1 Results of Audit

Test check of records of departmental offices conducted during the period from April 2004 to March 2005 revealed under assessments, etc., amounting to Rs.167.49 crore in 1,585 cases, which broadly fall under the following categories.

(Rupees in crore)			
Sl.No.	Categories	No. of cases	Amount
1	Incorrect exemption from levy of tax	337	22.12
2	Application of incorrect rate of tax	422	19.92
3	Incorrect computation of taxable turnover	182	8.27
4	Non levy of penalty/interest	313	10.46
5	Others	329	77.44
6	Review on Cross verification of sales/purchases	1	27.13
7	Exemptions/concessions against declaration forms	1	2.15
	Total	1,585	167.49

During the course of the year 2004-05, the Department accepted under assessments, etc. amounting to Rs.2.53 crore in 831 cases, out of which, Rs.1.36 crore in respect of 680 cases were pointed out during the year and the rest in earlier years. Of these, the Department recovered Rs.1.23 crore, in 708 cases.

After issue of draft paragraphs the Department recovered Rs.44.87 lakh pertaining to two audit observations during the year 2004-05.

A review on cross verification of sales/purchases and a few illustrative cases involving Rs.44.67 crore are mentioned below:

2.2 Review on cross verification of sales/purchases

Highlights

- In 50 assessment circles, there was large scale omission to issue cross check references and recommendation of PAC for checking of minimum of 15 per cent of cases has not been adhered to.

[Paragraph 2.2.6]

- Exemption was allowed in respect of evasion prone commodities during the years 2000-01 to 2002-03 on a turnover of Rs.3,939.69 crore involving tax of Rs.182.32 crore, without ascertaining the earlier sufferance to tax.

[Paragraph 2.2.7]

- Non compliance of prescribed time limit of two months for disposal of cross check references, resulted in accumulation of 3,225 inward cross check references in 56 assessment circles.

[Paragraph 2.2.8]

- Cross verification revealed incorrect allowance of exemption of consignment sale of cardamom to other States involving tax and penalty of Rs.24.96 crore in two assessment circles.

[Paragraph 2.2.9]

Recommendations:

Government may ensure that the internal audit wing conducts requisite check of files/records concerned with disposal of cross check references as envisaged in the circular instructions of the Commissioner of Commercial Taxes.

Introduction

2.2.1 Tamil Nadu General Sales Tax Act, 1959 (TNGST Act) provides for levy of tax on goods only at the point and at the rates specified in the schedules to the Act. The sale or purchase of goods at all other points, other than the points specified for levy of tax, are exempt. Under Rule 19-B of the TNGST Rules, 1959, a dealer claiming exemption from payment of tax is required to file a return in Form A-9 every month showing details of purchases or sales in the preceding month for which exemption is claimed.

Standing Order 225-C (ii) issued in March 1945 by the Commercial Taxes Department requires the assessing officers to cross check transactions of a dealer with a view to detect suppression of turnover and consequent evasion of tax by communicating transaction picked out judiciously from the books of the dealer to the assessing officer of the area, in which the supplying or buying dealers carry on business. For this purpose, registers in prescribed forms are required to be maintained.

Organisational set up

2.2.2 The Commercial Taxes Department is headed by the Commissioner of Commercial Taxes (CCT), who functions with the assistance of five Joint Commissioners (JCs), 10 Deputy Commissioners (DCs) and 46 Assistant Commissioners (ACs). Assessment, levy and collection of sales tax is done in 323 assessment circles of which 234 are headed by Commercial Tax Officers (CTOs), 83 by Deputy Commercial Tax Officers (DCTOs), six by ACs assessing certain high turnover dealers in Fast Track assessment circles in Chennai and Coimbatore divisions. There is a separate inter state investigation cell (ISIC) headed by a DC to whom doubtful cases of interstate transactions requiring investigation are referred by the assessing officers.

Scope of Audit

2.2.3 A para on “cross check references (CCRs) in sales tax assessments” was included in the Report of the Comptroller and Auditor General of India for the year ended 31 March 1987. The report was discussed by the Public Accounts Committee (PAC) and the PAC recommended that:

- a minimum of 15 *per cent* of the total cases dealt with in each assessment circle be cross checked;
- references should be selected in such a way that all evasion prone commodities are covered and
- CCRs should be disposed of within a reasonable time limit to avoid litigations.

The review was conducted during the period from June 2004 to May 2005 and records pertaining to the years from 1999-2000 to 2003-04 were test checked in 108 out of 323 assessment circles on the basis of the turnover involved and the nature of commodities dealt with in the assessment circles. The findings of the review are given in the succeeding paragraphs.

The findings were reported to the Government/ Department in June 2005 with a request for attending the meeting of Audit Review Committee (ARC) so that the views of Government/Department could be taken into account before finalising the review. The ARC meeting was held on 19 August 2005. This review has been finalised taking into account the Department/Government’s views that emerged during the ARC meeting.

Audit Objectives

2.2.4 The review was conducted with a view to:

- detect suppression of sales/purchase turnover and consequent evasion of tax through cross verification of records;
- examine adherence to the recommendations of the PAC and the instructions of the CCT issued thereon;
- ascertain the effectiveness of the system of cross verification;

Internal control mechanism

2.2.5 In pursuance to the recommendations of the PAC, the CCT issued instructions in 1996 to the effect that:

- CCRs should be issued for cases of claim of exemption as second sales, especially in respect of evasion prone commodities;
- incoming CCRs should be disposed of within a period of two months;
- internal audit parties should verify the concerned registers maintained for this purpose to point out any inaction noticed therein;
- registers relating to CCRs should be reviewed by ACs/DCs during annual inspection to ensure their prompt disposal and
- if, subsequently, audit paras are written on these points, serious action will be taken not only against the assessing officers but also against internal audit officers for their failure to exercise proper supervision.

It was noticed during review that though the ACs/DCs made observations on the pendency of CCRs during their annual inspection, the registers maintained for the purpose of issue/disposal of CCRs were not scrutinised by the internal audit parties and hence they did not comment on the inaction of the assessing authorities in respect of their prompt disposal. As is evident from the succeeding paragraphs, though CCRs were not issued/disposed of in prescribed manner/time limit, no action was found to have been taken to ensure compliance with the instructions issued by CCT in November 1996.

Large scale omission to issue cross check references

2.2.6 It was noticed in 50¹ circles that 95,868 assessments involving total turnover of Rs.57,603 crore were finalised during the years 2001-02 to 2003-04. The assessments involved exemptions of turnover of Rs.28,728 crore on account of sales or purchases attributed to non taxable points. The exempted turnover works out to 50 *per cent* of the gross turnover. CCRs for ensuring sufferance of tax at earlier stages were, however, issued in respect of exempted turnover of Rs.389 crore, which works out to 1.35 *per cent* of the exempted turnover as detailed below:

(Rupees in crore)					
Year	No. of assessments finalised	Turnover involved	Exempted Turnover	Turnover for which CCRs. were issued	Percentage of CCRs to exempted turnover
2001-02	32,260	21,684.78	9,538.59	114.12	1.20
2002-03	32,848	18,733.33	9,087.62	101.38	1.12
2003-04	30,670	17,184.92	10,101.80	173.17	1.71
TOTAL	95,868	57,603.03	28,728.01	388.67	1.35

It was further noticed in 11² assessment circles that not even a single CCR was found to have been issued for atleast one year during the period from 2001-02 to 2003-04, though turnover of Rs.2,113.02 crore was exempted in these cases.

After this was pointed out, the Department stated that the reasons for omission were reduction in staff strength, heavy pressure of work and allowance of exemption on the strength of documentary evidence. In two circles, the circular instructions of the CCT issued in 2001 that CCRs should not be issued in a routine manner was cited as reason for non issue of CCRs. The reply is not tenable as the instructions issued by the CCT in 2001 are supplementary in nature and not supersession of recommendations of the PAC/instructions already issued in 1996.

Exemptions allowed in respect of tax evasion prone commodities

¹ Ambur, Annasalai-III, Avarampalayam, Avinashi Road (Coimbatore), Chithrakkara Street, Chithode, Chengleput, Devakkottai, Gudiyatham (East), Harbour-III, Jayamkondan, Karur (South), Kovilpatti-I & II, Kuzhithurai, Loan square I & II, Mettupalayam Road, Moore Market North, Nanjappa Road, Nethaji Road, N.H. Road, Oppanakkara Street, P.N.Palayam, Paramakudi, Peria Agraharam, Periamet, Park Town-II, Perambur-I, Papanasam, Ram Nagar, Sai Baba Colony, Salem Town (North), Senkottai, Sivakasi-I, II & III, Tiruppur (Rural, Bazaar, Central-I & II, North, South, Lakshmi Nagar), Tambaram I & II, Tamil Sangam Salai, Virudhu Nagar II & III and Vaniyambadi.

² Annasalai-I, Annasalai-III, Avarampalayam (Coimbatore), Avinashi Road (Coimbatore), Devakkottai, Nethaji Road (Madurai), Saibaba Colony (Coimbatore), Tiruppur Bazaar, Tiruppur North, Tirukoilur and Uthamapalayam.

2.2.7 Under the provisions of TNGST Act the assessing authority may, if he is satisfied that the escape from assessment is due to willful non disclosure of assessable turnover by the dealer, direct the dealer to pay in addition to tax, by way of penalty, a sum which shall be 50 *per cent* of the tax due on the turnover that was willfully not disclosed. According to the instructions of CCT issued in November 1996, the claim of exemption on second sales by dealers involving turnover of more than Rs.25,000 especially in evasion prone commodities should be cross verified. The Department identified 21³ commodities as evasion prone.

It was noticed in 10 assessment circles that exemption was allowed during the years 2000-01 to 2002-03 on a turnover of Rs.3,939.69 crore involving tax of Rs.182.32 crore without ascertaining the earlier sufferance of tax though these were evasion prone commodities as detailed below:

(Rupees in crore)				
Sl. No.	Name of the assessment circle	Commodity	Exempted turnover	Amount of tax involved
1	Periamet	Hides & Skins	485.44	16.10
2	Periya Agraharam, Erode	Hides & Skins	102.30	3.78
3	Ambur	Hides & Skins	97.61	3.17
4	Harbour III	Iron & Steel	1,713.65	68.55
5	Park Town-II	Iron & Steel	575.13	23.00
6	Ram Nagar, Coimbatore	Iron & Steel	301.08	12.04
7	Loansquare-I	Paper	114.33	9.62
8	Loansquare-II	Paper	492.11	41.21
9	Tamil Sangam Salai, Madurai	Paper	29.38	2.44
10	Choolai	Timber & Paper	28.66	2.41
Total			3,939.69	182.32

Cross verification of transaction of evasion prone commodities in audit revealed non levy of tax of Rs.2.17 crore in 43 cases as detailed below:

- In seven⁴ assessment circles, the assessing authorities, while finalising assessments of 28 dealers for the years 1999-2000 to 2002-03 between May 2001 and March 2004, allowed exemption on a turnover of Rs.7.55 crore either as second sales of dressed hides, timber, cotton yarn and iron scrap or as not being last purchase of raw hides. It was, however, noticed that the said purchases/sales were effected from/to dealers whose registration certificates were cancelled even prior to the period of transaction or the registration certificate numbers of the dealers from whom the purchases were made were

³ bricks & tiles, cattle feed & poultry feed, chillies, cotton yarn, dyes & chemicals, electrical goods, furniture, groundnut, hides & skins, hosiery goods, iron & steel, jaggery, jewellery, oil seeds, paper, plastic products (HDPE Granules), pulses & grams, raw rubber, stainless steel, timber & bamboos and vegetable oils.

⁴ Ambattur, Dindigul-III, Gudiyatham (West), Peria Agraharam (Erode), Periamet, Ranipet and Vaniyambadi.

either not related to the said dealers or were not assigned to any of the dealers in the concerned assessment circles. The incorrect allowance of exemption without cross verification of earlier sufferance to tax resulted in non levy of tax of Rs.31.91 lakh.

After this was pointed out, the Department revised the assessment in one case and raised additional demand of tax of Rs.5.54 lakh including penalty; the collection particulars of which are awaited.

- In seven⁵ assessment circles, the assessing authorities, while finalising the assessments of 19 dealers for the years 1999-2000 to 2002-03 between April 2001 and May 2004, allowed exemption on a turnover of Rs.48.18 crore on the ground that the corresponding purchases of leather, iron and steel and timber were effected from 15 dealers of five⁶ assessment circles. Cross verification of the records of these 15 dealers, however, revealed that turnover of only Rs.17.42 crore had been accounted for by them. Thus, turnover of Rs.30.76 crore escaped assessment, involving tax of Rs.1.85 crore including penalty of Rs.0.62 crore .

Trend of disposal of cross check references

2.2.8 According to the instructions of CCT issued in November 1996, a time limit of two months was prescribed for disposal of CCRs.

The trend of issue and disposal of CCRs in respect of 56⁷ assessment circles during the period from 2001-02 to 2003-04 is given as under:

Year	2001-02		2002-03		2003-04		(Rupees in crore)
	Items	Amount	Items	Amount	Items	Amount	
Opening Balance	2,946	138.18	2,719	110.75	3,003	143.93	
Receipts	3,780	115.52	2,972	180.28	2,838	167.65	

⁵ Harbour I, Periamet, Rajapalayam, Shencottah, Tambaram-I & II and Vaniyambadi.

⁶ Ayanavaram, Harbour-III, Periamet, Shengottah and Vepery.

⁷ Attur (Rural), Arisipalayam, Avarampalayam, Avinashi Road (Coimbatore), Chithrakkara Street, Chengleput, Choolai, Devakkottai, Dr.Nanjappa Road, Esplanade-II, Gudiyatham (East & West), Jayamkondam, Karur (South), Kovilpatti-I & II, Kuzhithurai, Loan square I & II, Mettupalayam Road, Moore Market North, N.H. Road, Oppanakkara Street, P.N.Palayam, Paramakudi, Peddanaickenpet (North), Park Town-II, Park Road (Erode), Podanur, Ram Nagar, Sai Baba Colony, Sathy Road (Erode), Salem Town (North), Sattur, Senkottai, Sivakasi-I, II & III, Sriperumbudur, Tiruppur (Kongu Nagar, Rural, Bazaar, Central-I & II, North, South, Lakshmi Nagar) Tambaram I, Tamil Sangam Salai, Tenkasi, Tindivanam, Tirukoilur, Trichy Road, Virudhu Nagar I, II & III.

Total	6,726	253.70	5,691	291.03	5,841	311.58
Disposal	4,007	142.95	2,688	147.10	2,616	155.61
Closing Balance	2,719	110.75	3,003	143.93	3,225	155.97
Percent age of disposal of items	59.57		47.23		44.79	

It could be seen from the details furnished that there was a decreasing trend in disposal of CCRs during the years 2001-02 to 2003-04. Non disposal of CCRs within the stipulated period of two months resulted in accumulation of CCRs.

After this was pointed out, the Department stated that CCRs could not be disposed of due to non receipt of accounts from concerned dealers.

Cross verification of 45 pending CCRs with registers/records available in the assessment circles revealed that the exemption allowed was not in order, as in some cases, the registration certificates had been cancelled even prior to the date of transaction. In other cases, the registration certificate numbers, from whom the purchases were stated to have been made, were either not related to the said dealers or were not assigned to any of the dealers in the concerned assessment circle. This verification did not require check of accounts of the dealers, and, therefore, the reason of non receipt of accounts cited by the Department for non disposal of inward references is not tenable.

Cross verification of consignment sales to other States

2.2.9 Under the provisions of Central Sales Tax Act, 1956, (CST Act) where any dealer claims that he is not liable to pay tax under this Act in respect of any goods on the ground that the movement of such goods from one state to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the moment of those goods was so occasioned shall be on that dealer. For this purpose the dealer shall produce a declaration in Form 'F' duly filled and signed by principal officer of the other place of business or his agent or principal as the case may be. In case of disallowance of exemption, in addition, the assessing authority shall also levy penalty depending on the percentage of difference between tax assessed and paid as per returns.

Cross verification of genuineness of the claim of exemption against declaration forms on the sale of cardamom by 18 dealers in Bodinayakanur and Uthamapalayam assessment circles with the records of purchasing dealers at Delhi, Gujarat, Uttar Pradesh and Andhra Pradesh revealed that exemption allowed on a turnover of Rs.100.06 crore during the years from 1999-2000 to 2003-04 on the basis of declarations in Form F was not in order as the consignees were either found to be unregistered dealers in other states or the declaration forms were found not to have been issued by the concerned sales

tax authorities of other states to those dealers. Some transactions of consignment sales of cardamom were found to be not genuine by ISIC based on references made to it by Uthamapalayam assessment circle; however no such reference was made by Bodinayakanur assessment circle, though both the circles fall under the jurisdiction of the same territorial AC. The assessing authority had, thus, failed to detect the use of these invalid forms and refer the cases to ISIC for investigation. This resulted in non levy of tax of Rs.24.96 crore, including penalty of Rs.14.98 crore.

After this was pointed out, the Department accepted in April 2005, the audit observation in respect of consignment sales as having been effected to dealers in Delhi who had closed their business prior to the period of transaction. In other cases, it was stated that filing of Form ‘F’ was not mandatory and exemption was allowed after verification of other documentary evidence such as copy of agreements, way bill, sales pattials⁸, etc. and reopening of assessment is not possible except on limited grounds such as fraud, collusion, misrepresentation or suppression of material facts or giving false particulars.

The reply is not tenable as declarations in form ‘F’ utilised to avail exemption in these cases were either invalid or bogus as certified by the sales tax authorities at the other end.

Conclusion

2.2.10 Despite the recommendations/suggestions of the PAC, cross verification of transactions has not been given due importance as is evident from large scale omission to issue cross check references and delay in disposal of cross check references, etc. Proper monitoring of the system of issue/disposal of cross check references has not been done.

The matter was reported to the Government in May/June 2005. Reply of the Government is awaited (September 2005).

2.3. Concessions/Exemptions against declaration forms

The TNGST Act provides for concessional rate of tax of three *per cent* on sale of any goods to another dealer, for use by the latter in the manufacture of any goods for sale inside the State, subject to the filing of declaration obtained from the purchaser and conditions prescribed therein. The Act also provides for concessional rate of tax on sale of goods specified in the eighth schedule to the Act, for installation in factory premises and use in manufacture of goods.

⁸

These refer to the details containing quantity and value of goods sold by a dealer in another State out of the stock received against Form ‘F’.

Under the CST Act, registered dealers are eligible for certain exemptions and concession of tax, on inter-State sales, on the strength of prescribed declarations such as Forms ‘C’, ‘H’ etc.

Incorrect grant of concessional rate of tax

2.3.1 The concessional rate of tax under TNGST Act is not admissible for sale to unregistered dealers, sale of declared goods⁹, manufacture of goods falling under Part A/Third Schedule to the Act and sale of goods not mentioned in the eighth schedule to the Act.

- In six¹⁰ assessment circles, while finalising assessments of six dealers for the years 1999-2000 to 2002-03 between October 2000 and March 2004, concessional rate of tax was erroneously allowed on sale turnover of Rs.1.33 crore made to unregistered dealer in one case, ineligible units/goods in four cases and declared goods in one case. This resulted in short levy of tax of Rs.6.42 lakh.

After this was pointed out, the Department revised the assessment in the case of Kongunagar assessment circle and recovered additional demand of Rs.2.74 lakh. The reply of the Department in the case of Podanur assessment circle

that the commodity sold is machinery spares is not tenable in view of classification of the item as iron castings under Central Excise Tariff Entry. Reply in respect of the other cases is awaited (September 2005).

- In Tirumangalam assessment circle, the assessing authority while finalising assessment of a dealer for the years 1998-1999 to 2002-03 between July 2001 and December 2003, allowed concessional rate of tax on a turnover of Rs.5.29 crore as representing sale of paper board effected against declarations in Form XVII. Cross verification in audit, however, revealed that the declarations filed in respect of the turnover of Rs.3.68 crore were invalid as the purchasers were either non existent or the declarations were found not to have been issued from the concerned assessment circles. In four cases, the official seal affixed on declarations in form XVII did not relate to any of the assessment circles in the State. The allowance of concessional rate of tax on the strength of these invalid declarations resulted in short levy of tax of Rs.19.80 lakh.

Non levy of differential rate of tax

2.3.2 According to the provisions of the TNGST Act, where the goods purchased at concessional rate are not used for the purpose specified in declaration/or disposed of in any other manner within a period of five years,

⁹ Goods declared under Section 14 of the CST Act as goods of special importance in inter state trade or commerce.

¹⁰ Dindigul-I, Kongunagar, Koyambedu, Podanur, Sivakasi-I and Srirangam.

the purchaser shall pay tax on the turnover relating to sale of such goods at prescribed rate after adjustment of concessional tax already paid. It has been judicially held¹¹ that the processes of conversion of raw edible oil into refined oil, boulders into jellies and ordinary water into packaged drinking water does not involve manufacture.

In seven¹² assessment circles, the assessing authority while finalising the assessments of eight dealers for the years 1999-2000 to 2002-03 between April 2001 and April 2004, omitted to levy differential rate of tax of Rs.53.74 lakh for failure to use the goods¹³ purchased at concessional rate in manufacture, or for disposal of the goods within five years of purchase.

After this was pointed out in audit, the Department revised the assessment in respect of Korattur in May 2004 and levied tax and penalty of Rs.0.97 lakh. The appeal filed against the revision of assessment is pending before the Appellate Assistant Commissioner. Reply in respect of the other cases is awaited (September 2005).

Incorrect grant of exemption on sale to exporters

2.3.3 Under Section 5(3) of the CST Act, the last sale or purchase occasioning the export of goods out of the territory of India is also deemed to be in the course of 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. The exemption is subject to the filing of declaration in Form ‘H’ duly filled in and signed by the exporter along with the evidence of export of such goods.

In three¹⁴ assessment circles, the assessing authority while finalising the assessment of five dealers for the assessment year 2000-01 between September 2001 and March 2003, allowed exemption on a turnover of Rs.1.47 crore, even in the absence of declaration in Form ‘H’ and other documents evidencing export of the goods. This resulted in non levy of tax of Rs.14.95 lakh.

¹¹ Tungabhadra Industries Ltd. Vs. CTO – 11 STC P.827 (SC)
Teejan Beverages Ltd. State of Kerala – 131 STC P.539.
State of Maharashtra Vs. Mahalaxmi Stores – 129 STC P.79 (SC)

¹² Chingleput, Dindigul Rural, Korattur, Kilpauk, Perur, R.S.Puram (West) and Sripurumbudur.

¹³ Air compressor moulds, cartons, chemicals, consumables, machinery, packing material, etc.

¹⁴ Ambattur, Hosur (North) and Tiruppur (Rural).

After this was pointed out, the assessing authority stated in one case that as per clarification of the Commissioner, foreign buyer's order need not be insisted. The clarification of the CCT is not in consonance with the provisions of the CST Act, which provides for exemption only in cases of sale to exporters being made for the purpose of complying with the pre-existing order of the foreign buyer. Reply of the Department in respect of the other cases is awaited (September 2005).

The matter was reported to the Government in May 2005; their reply is awaited (September 2005).

Incorrect grant of exemption on transit sales

2.3.4 Section 6(2) of the CST Act provides that sale effected by transfer of documents of title to goods during the course of inter state movement of goods from one state to another shall be exempt from levy of tax. The claim of exemption should be supported by EI/EII certificates obtained from the selling dealer and declaration in Form 'C' furnished by the purchaser. The subsequent sale of such goods in the state is liable to tax as first sales inside the State.

Cross verification of transactions pertaining to the period 2001-02 and 2002-03 finalised between April 2003 and March 2004 revealed incorrect grant of exemption/short/non accounting of purchases, etc. involving tax of Rs.1.30 crore including penalty of Rs.40.03 lakh as detailed below:

- The goods, viz., paper board purchased on transit sales by utilising 61 declarations in Form 'C' were not accounted for by three dealers of Tambaram-I and Vallalarnagar assessment circles. This resulted in

suppression of deemed sales turnover¹⁵ of Rs.7.91 crore involving tax of Rs.94.97 lakh including penalty of Rs.31.66 lakh.

- In Vallalar Nagar assessment circle, a dealer effected transit purchases of paper amounting to Rs.2.13 crore but accounted for Rs.22.98 lakh only. This resulted in suppression of deemed sales turnover of Rs.2.09 crore involving tax of Rs.25.10 lakh, including penalty of Rs.8.37 lakh.
- In respect of exemption allowed on a turnover of Rs.94.77 lakh, pertaining to seven dealers in three¹⁶ circles, declaration in Form ‘C’ furnished in support of the transaction, were found to be invalid. The exemption allowed on the turnover was therefore not in order and the transaction is to be assessed to tax as inter state sales, involving tax of Rs.9.48 lakh.

Cross verification of inter state sales against ‘C’ forms

2.3.5 According to the provisions of the CST Act, interstate sale of goods covered by declarations in Form ‘C’ is assessable to tax at the concessional rate of four *per cent*.

In Annasalai-I and Jayamkondan assessment circles, while finalising assessments of two dealers for the year 2000-01 in September 2002, exemption/concessional rate of tax was allowed on a turnover of Rs.89.53 lakh as covered by declarations in Form ‘C’.

Cross verification in audit of declarations in Form ‘C’ furnished by dealers in Pondicherry revealed that three dealers were non existent and one dealer had utilised Form ‘C’ issued to another dealer. Incorrect grant of exemption/concessional rate on the strength of these forms resulted in non/short levy of tax of Rs.9.92 lakh.

After this was pointed out, the assessing authority of Annasalai-I assessment circle agreed to revise the assessment. Reply in respect of the other case is awaited (September 2005).

The matter was reported to Government in May 2005; their reply is awaited (September 2005).

2.4 Incorrect grant of exemption from levy of tax

¹⁵ Deemed sales turnover is calculated by the addition of normal gross profit to the purchase turnover.

¹⁶ Harbour-I, Kothawalchavadi and Loansquare II.

The TNGST Act provides for exemption of sales tax on certain commodities listed in the Third Schedule to the Act, like fresh milk and sale of blood and blood plasma by hospitals. The CCT clarified¹⁷ in May 2001 that sale of hot milk in parlours is taxable at the rates mentioned in Ninth Schedule.

Cylinder holding charges are liable to tax as judicially held¹⁸ by Tamil Nadu Taxation Special Tribunal (TNTST). Further as per Government notification of April 1998, sale of raw materials, packing materials and consumables to 100 *per cent* export oriented unit (EOU) are exempted.

Test check of records of four¹⁹ assessment circles revealed that the assessing authorities, while finalising the assessments of four dealers for the years 1999-2000 to 2002-2003 between July 2002 and March 2004, erroneously allowed exemption on the turnover of Rs.2.71 crore relating to sale of hot milk in parlours, cylinder holding charges, sale of gloves and disposable caps to 100 *per cent* EOU and sale of blood and blood plasma by a dealer in medicine and surgical goods. This resulted in non levy of tax of Rs.7.72 lakh.

After this was pointed out in audit, the Department revised the assessments in cases of Esplanade II, Thallakulam and Podanur in December 2004 and June 2005 and raised an additional demand of Rs.2.84 lakh. It was further stated that the appeal filed against the revision of assessment was pending in respect of Thallakulam case, and an amount of Rs.1.54 lakh was collected in respect of other case. Final reply of the Department in respect of other cases is awaited (September 2005).

The matter was reported to Government between September 2004 and April 2005. The Government accepted the audit observation pertaining to Esplanade II, Podanur and Thallakulam assessment circles. Reply of the Government in respect of other cases is awaited (September 2005).

2.5 Application of incorrect rate of tax

Under the provisions of the TNGST Act, tax is leviable on sale of goods at the rates and at the points specified in the Schedules to the Act.

According to the provisions of CST Act, tax is leviable on inter state sale of goods, not covered by declarations in Form 'C', at 10 *per cent* or at the rate applicable to sale of such goods within the state, whichever is higher.

¹⁷ Acts Cell No.D.Dis.3965/2001 dated 22.5.2001.

¹⁸ Indian Oxygen Ltd. Vs. State of Tamil Nadu – 122 STC P.288 (TNTST).

¹⁹ Esplanade-II, Podanur, Nagercoil (Tower Junction) and Thallakulam.

In six²⁰ assessment circles, while finalising the assessments between May 2002 and March 2004, tax was levied short due to application of incorrect rate of tax on a turnover of Rs.44.65 crore during the years 1994-95 to 2002-03 pertaining to eight dealers. The short levy of tax works out to Rs.5.24 crore. A few cases are illustrated below:

Sl. No.	Assess- ment circle (No. of dealers)	Year of transaction (Month/ year of assessment)	Commodity	Tax able turn over	Rate of Tax (per cent)		Amount short levied
					Appli- cable	App- lied	
1	2	3	4	5	6	7	8
1	Nanda- nam Thudiyal- ur (2)	2002-03 (July 2003, February 2004).	Sweets and savouries sold under a brand name	2,951.80	16	2	431.41
Remarks: After this was pointed out in audit in September 2004 and January 2005, the Department replied that the goods are not covered by any registered trade mark and hence are not branded and quoted a clarification of the Commissioner issued in May 2004 that the commodity is taxable at compounded rate of two <i>per cent</i> applicable to sale of unbranded sweets. The Department further contended that "Sri Krishna Sweets" is the name of the business of the dealer and is not a brand name, since it is not inscribed on the products. The reply is not tenable as the entry in the First Schedule to the TNGST Act, does not require registration of brand name for levy of tax at 16 <i>per cent</i> on sale of sweets. The sweets have been sold in packages with the name of "Sri Krishna Sweets" inscribed within a distinct oval emblem. Further the sweets and savouries manufactured and sold by the dealer are identified by the public with the name "Sri Krishna Sweets" and the sale is exigible to tax as branded sweets and savouries. Further reply is awaited (September 2005).							
2	Pollachi (West) (1)	2001-02 (April 2003) 2002-03 (March 2004)	Sale of food and drinks effected in restaurant attached to Star Hotel	34.40 33.40	8 10	Rs.36,000/- Compounded amount	5.37
Remarks: After this was pointed out in September 2004, the Department contended that the hotel which was accredited with star status and the restaurant are two different entities and that supply of food and drinks was not restricted to the occupants of the hotel. The Department further referred to a judicial decision ²¹ of the Kerala High Court, according to which, where the lodge and the restaurant are separate entities and the facilities required are not provided by the lodge, tax is leviable only on the restaurant. The reply is not tenable in view of the specific provisions of the TNGST Act, whereby sale of food and drinks effected by a restaurant attached to a star hotel is assessable to tax at the rates mentioned in entry 29 of Part C of the First Schedule to the Act.							

After this was pointed out in audit, the Department revised assessments in respect of four cases and raised an additional demand of Rs.54.09 lakh.

²⁰ Nandanam, Palacode, Pollachi (West), Ramanathapuram, Suramangalam and Thudiyalur.

²¹ State of Kerala Vs. Hotel Amrutha – 120 STC P.28 (Kerala).

Report on recovery and reply in respect of Palacode assessment circle for assessment years 1995-96 and 1996-97 is awaited (September 2005).

The matter was reported to Government between December 2004 and March 2005. Government accepted the audit observations in respect of cases pertaining to Ramanathapuram (imported machinery), Suramangalam (deemed sale of paint), Nandanam (fibre pillows and petrol additive) and Pollachi West (sale of food and drinks). Reply in respect of other cases has not been received (September 2005).

2.6 Non levy of surcharge

Under the provisions of TNGST Act, surcharge at the rate of five per cent on the amount of tax shall be levied with effect from 1 July 2002.

In Palani-II and Tondiarpet assessment circles, during finalisation/revision of the assessments of four dealers for the year 2002-03 in April 2003 and March 2004, surcharge on the tax amount of Rs.1.90 crore was omitted to be levied. This resulted in non levy of surcharge of Rs.9.48 lakh.

After this was pointed out in audit in July and December 2004, the Department revised the assessment in one case and collected the additional demand of Rs.1.61 lakh in July 2004. Reply in respect of other cases is awaited (September 2005).

The matter was reported to the Government in December 2004. Government accepted the audit observation in respect of Tondiarpet. Reply in respect of the other case is awaited (September 2005).

2.7 Non/Short levy of additional sales tax

According to the provisions of the Tamil Nadu Additional Sales Tax Act, 1970, (TNAST Act) every dealer, whose taxable turnover for a year exceeded Rs.25 crore was liable to pay additional sales tax at the prescribed rate on such turnover, with effect from 1 April 1998. By a notification issued in November 2001, the taxable turnover limit for levy of additional sales tax was reduced to Rs.10 crore. Rule 5(2) of the Tamil Nadu Additional Sales Tax Rules, 1970 prescribed that the additional sales tax payable by the dealer shall be assessed by the assessing authority as soon as possible after the assessment under the TNGST Act is finalised, indicating that the levy is on the annual taxable turnover. The Madras High Court has also observed²², that additional sales tax is a levy on the annual turnover of the assessee and accordingly, dealers, whose taxable turnover exceeded Rs.10 crore during the year 2001-02, were liable to pay additional sales tax.

²²

Phillips India Ltd. Vs. AC(CT) & Others – 137 STC P.134 (Madras)

In 55²³ assessment circles, while finalising, the assessments of 86 dealers between September 2002 and March 2004, though the taxable turnover for the year 2001-02 was determined in excess of Rs.10 crore, additional sales tax was levied only on the taxable turnover from 1 November 2001. This resulted in non/short levy of additional sales tax of Rs.6.71 crore.

After this was pointed out in audit between October 2004 and April 2005, the Government replied in May 2005, that the notification prescribing the turnover limit of Rs.10 crore for levy of additional sales tax came into effect from 1 November 2001 only, and that the assessment made was in accordance with the clarification issued in February 2002 by the CCT, that where the taxable turnover of a dealer exceeds Rs.10 crore during the assessment year 2001-02, additional sales tax shall be attracted on the taxable turnover from 1 November 2001. It was also mentioned therein that the assessment was also in accordance with the judicial decision²⁴ and liability towards additional sales tax can be fastened on the taxable turnover accrued on or after 1 November 2001.

The reply is not tenable as additional sales tax, being a levy of aggregate of sales turnover, the amount, thereof, should be the same for all assessees having the same and identical taxable turnover during a year. The judicial decision quoted by the Government was rendered with reference to the provisions of TNAST Act, as prevailing during the year 1996-97, where there were two charging sections for levy of additional sales tax and is, therefore, not applicable to the present case. The applicability of the taxable turnover limit of Rs.10 crore for levy of additional sales tax from 1 November 2001, would result in discrimination between dealers on the basis of their taxable turnover upto and after 31 October 2001, which would not be in order, more so, when the assessment is made under the same charging section.

²³ Adyar-I, Aruppukottai, Avarampalayam, Avinashi, Avinashi Road (Coimbatore), Chingleput, Cuddalore Taluk, Dharapuram, Dindigul (Rural), Dr.Nanjappa Road (Coimbatore), Egmore-I, Egmore-II, Esplanade-II, Gobichettipalayam, Guindy, Ice House, Kancheepuram, Kangeyam, Kongunagar, Koyambedu, Kovilpatti-I, Luz, Madurai (Rural) (South), Mandaveli, Mettur Road, Mettupalayam, Mettupalayam Road (Coimbatore), Nagercoil (Rural), Nilakkottai, Omalur, Palani-II, Perambur-II, Periamet, Perundurai, Porur, P.N.Palayam (Coimbatore), Pudukottai, Rajapalayam-I, R.G. Street Circle (Coimbatore), Salem Bazaar, Saligramam, Sathyamangalam, Tambaram-I, Theni-I, Thudiyalur (Coimbatore), Tindivanam, Tirumangalam, Tirunelveli (Town), Tiruparamkundram, Tiruvanmiyur, Trichy Road (Coimbatore), Vadapalani-II, Valluvarkottam, Virudhunagar-I and II.

²⁴ Apex Laboratories (P) Ltd. & others Vs. State of Tamil Nadu – TNSTAT (MB), Chennai.

2.8 Erroneous waiver of tax under Samadhan Scheme and consequent non levy of interest

The Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002, otherwise known as Samadhan Scheme, was introduced for expeditious settlement of disputes relating to arrears of tax, penalty or interest pertaining to sales tax. Under the provisions of the scheme, an applicant may make an application for settlement of arrear of tax, penalty or interest in dispute in respect of any period for which an assessment has been made under the relevant Act-

- against which an appeal or revision was filed on or before 28 February 2002 before any appellate or revisional authority and pending before such authority.
- an applicant shall not be eligible to make an application for settlement of arrear of tax, penalty or interest in dispute in respect of any period for which the appeal or revision has been finally heard by the appellate or revisional authority.
- the rate applicable in determining the amount payable under samadhan scheme ranged between 15 and 50 *per cent* of tax, penalty, interest etc. in dispute depending upon the nature of dispute.

In Sankarankoil assessment circle, an assessee (a private sugar mill) was assessed to tax on purchase of sugarcane and on various subsidies/incentives given to cane growers in respect of assessment years 1989-90, 1990-91 and 1993-94 between February 1993 and February 1998. The dispute regarding payment of tax on purchase of sugarcane was resolved by the Madras High Court²⁵ in November 2001. The tax levied on subsidies/incentives was in dispute and pending before Sales Tax Appellate Tribunal, Madurai. Hence, only this was eligible for waiver under the Samadhan Scheme.

It was, however, noticed in audit that the tax payable on purchase of sugarcane was also considered as disputed arrears and certificate of settlement was issued in May 2003 to the assessee, in respect of assessment years 1989-90,

²⁵ Dharani Sugars & Chemicals Ltd. Vs. CTO Sankarankoil & Others - 128 STC P.555 (Madras) upholding the decision rendered in 115 STC P.370 (TNTST)

1990-91 and 1993-94 without restricting the waiver to the tax on subsidies/incentives which was in dispute. This resulted in erroneous waiver of tax of Rs.83.80 lakh besides interest.

After this was pointed out in March 2004 and January 2005, the Department replied that second appeal filed by the dealers was pending before the Sales Tax Appellate Tribunal, Madurai and, as such the waiver was in order. The Department further contended that pendency of appeal before appellate authority was the only criterion for settlement of tax under the Samadhan Scheme, and as a result of settlement of arrears under the Scheme, further interest was not leviable.

The reply is not tenable as the dispute regarding deferral of purchase tax was already confirmed by the Madras High Court in favour of revenue. Further, the period of deferral, being four years from 1989-90, the assessee was not at all eligible for deferral in respect of assessment year 1993-94. The Samadhan Scheme only provided for settlement of arrears in dispute, and not for arrears of tax in respect of which the dispute was already decided by a legal forum. The case in question was therefore, not eligible for settlement under the Scheme.

The matter was reported to the Government in April 2005. Government accepted the audit observation subject to the outcome of writ petition filed by the dealer.

2.9 Non levy of interest for belated payment of tax

According to the provisions of TNGST Act, tax payable shall become due without any notice of demand to the dealer on the date of receipt of return or on the last due date as prescribed, whichever is later. On any amount remaining unpaid after the date specified for its payment, the dealer or person shall pay, in addition to the amount due, interest at two per cent per month of such amount for the entire period of default. The provisions relating to interest on belated payment of tax under TNGST Act shall apply in respect of interest leviable under the CST Act.

In Nagercoil (Rural) and Srivilliputhur assessment circles, three dealers, whose assessments for the years 1992-93 and 2002-03 were finalised between June 2002 and December 2003 paid the tax belatedly, with delay ranging from 29 days to 48 months and 12 days, for which interest amounting to Rs.5.29 lakh, though leviable, was not levied.

After this was pointed out between March and November 2004, the Department levied interest of Rs.5.29 lakh between September and December 2004; of which an amount of Rs.1.98 lakh in two cases has been collected. In another case, the dealer is stated to have filed writ petition against the levy of

interest. Reply of the Department in respect of the other case is awaited (September 2005).

- Vide an order issued in September 1988 by the Industries Department, sugar mills were allowed deferral of tax on purchase of sugarcane from reserved areas, for a period of four years from the commencement of commercial production. The deferral was subject to a ceiling of Rs.4.40 crore for the four year period, with annual ceiling of Rs.1.25 crore. The deferred amount was to be repaid after the period of deferral, without interest. The deferral was also subject to the condition that any delay in payment would attract interest under the normal provisions of the TNGST Act.

In Sankarankoil assessment circle, an assessee, (a private sugar mill) was assessed in November 1992 to tax of Rs.1.96 crore on purchase of sugarcane for the year 1991-92 and the entire amount of Rs1.96 crore was mentioned in the assessment order as being covered by deferral. This is not in order; as the amount of deferral is subject to the annual ceiling of Rs.1.25 crore. The appeal filed by the assessee seeking concession of waiver was set aside in June 1999 by the TNTST, which was also confirmed by the Madras High Court in November 2001. Accordingly, the amount of Rs.1.25 crore had to be repaid after the expiry of the period of deferral and the balance amount of Rs.0.71 crore along with the monthly returns.

It was, however, noticed in audit that the amounts were paid belatedly by the dealer, the delay ranging from 40 months and 10 days to 72 months and 21 days, for which interest amounting to Rs.2.03 crore was leviable, but was not levied.

After this was pointed out, the Department replied in July 2004, that the assessment was settled under the Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002 (Samadhan Scheme) in May 2003, and hence, no further interest was leviable.

The reply is not tenable as tax of Rs.48.74 lakh including penalty of Rs.32.13 lakh on subsidies alone was under dispute and covered under the appeal. There was no dispute regarding the payment of tax on purchase of sugarcane on the date of filing of application for settlement of arrears under the Samadhan Scheme. The belated payment of purchase tax therefore, attracts levy of interest.

The matter was reported to the Government between September 2004 and April 2005. The Government accepted the audit observation in respect of Nagercoil (Rural) assessment circle. Reply of the Government in respect of the other cases is awaited (September 2005).

2.10 Delay in revision of assessment

According to the provisions of the TNAST Act, additional sales tax at the rate of *1.5 per cent* of the taxable turnover was leviable, where the taxable turnover of a dealer for the year 2000-2001 exceeded Rs.25 crore but did not exceed Rs.50 crore. As per the proviso to the said Section, in respect of declared goods, the levy is subject to the condition that the aggregate of sales tax and additional tax shall not exceed four per cent of the sale of such goods.

In Egmore I assessment circle, though the assessing authority issued notice in January 2002 proposing levy of additional sales tax of Rs.16.24 lakh, worked out at the rate of *1.5 per cent* on a turnover of Rs.10.83 crore, which was omitted at the time of finalisation of assessment, no follow up action was taken thereon for more than two years. This is indicative of lack of system to ensure that all cases of issue of prerevision notices are duly acted upon, without any omission.

After this was pointed out in audit in July 2004, the Department revised the assessment in December 2004 and raised an additional amount of Rs.16.24 lakh; the collection particulars of which are awaited (September 2005).

The matter was reported to the Government in October 2004. The Government accepted the audit observation.