

CHAPTER 2

SALES TAX

2.1 Results of Audit

Test check of records in the office of the Commercial Tax department conducted from April 2000 to March 2001 revealed under assessments/non-levy of tax etc., amounting to Rs.9906.40 lakh in 2122 cases which broadly fall under the following categories.

Sl No	Categories	No. of cases	Amount (Rs. in lakh)
1	Incorrect grant of exemption	451	5504.88
2	Application of Incorrect rate of tax	770	2228.43
3	Incorrect computation of taxable turnover	154	266.43
4	Non-levy of penalty	410	1004.52
5	Non-levy of Surcharge, Additional Surcharge and Additional Sales Tax	59	151.01
6	Other irregularities	278	751.13
	TOTAL	2122	9906.40

During the course of the year 2000-2001, the department accepted under-assessments etc., amounting to Rs.214.53 lakh in 489 cases of which 307 cases amounting to Rs.71.77 lakh were pointed out during the year 2000-2001 and the rest in earlier years. Of these, department recovered Rs.85.31 lakh.

A few illustrative cases involving a financial effect of Rs.669.96 lakh are mentioned in the following paragraphs:

2.2. Incorrect grant of exemption from tax

The Tamil Nadu General Sales Tax Act, 1959 (TNGST) provide for exemption of sales tax to certain commodities listed in the third schedule to the Act.

Under the Central Sales Tax Act, 1956 (CST) last sale or purchase preceding the sale occasioning the export outside India is deemed to be a sale in the course of export and exempted from tax, subject to the condition that the goods exported should be same as that purchased as per agreement.

In 13 assessment circles, exemptions were incorrectly granted to 13 dealers on the turnover of Rs.775.31 lakh during the years from 1993-94 to 1998-99 resulting in non-levy of tax (including surcharge, additional surcharge and additional sales tax) amounting to Rs.80.41 lakh as detailed below:

(Rupees in lakh)

Sl. No	Name of the assessment circle/ No. of dealers	Year of transactions / (Month of assessments)	Taxable turnover	Nature of irregularity	Amount of Tax	Remarks
1	2	3	4	5	6	7
1	Adayar-I, Anna-salai-III, Saidapet, Sali-gramam and Sivakasi-IV (Five).	1994-95 (November 1999), 1996-97 (February 1998), 1997-98 (September 1999), February 2000, October 2000), 1998-99 (January 2001)	361.63	Sale of Prawn/shrimp seeds was incorrectly exempted treating them as sea food.	40.64	The department replied that as per the clarification issued (July 1994) by the Head of the Department Prawn/Shrimp seeds were exempt from tax. The reply is not tenable since the relevant entry covers sea foods only and not sea food seeds.

1	2	3	4	5	6	7
2	Gandhi-puram (Coim-batore) (One)	1997-98 (April 1999)	183.98	Sale of pick up/ delivery vans were incorrectly exempted from tax as second sales on the ground that the chassis and the bodies built on them had already suffered tax separately.	14.72	This was pointed out to the department (November 2000) and to Government (March 2001); their replies have not been received (September 2001).
3	Velandipalayam (Coim-batore), Thuckalay and Gandhi Market (Trichy). (Three)	1998-99 (October 1999)	101.62	Inter-State Sale of Wheat Bran made after 7 September 1998 was incorrectly exempted as generally exempted goods and sale of Braided cords was incorrectly omitted to be assessed treating them as goods falling under the Third Schedule.	11.17	The department contended (June 2000) that Wheat Bran was exempt from 5 March 1997 and as per Judicial Decision (80 STC 108) Wheat Bran was a cattle feed. The reply is not tenable since (i) the exemption granted on Wheat Bran became conditional after the amendment of the Entry with effect from 8 September 1998 and (ii) the judgment quoted by the department is prior to this amendment and hence not applicable to the instant case. Replies in respect of other cases have not been received (September 2001)
4	Velachery, Egmore-I and Gudalore. (Three)	1994-95 (December 1996) 1995-96 (May 1997)	74.87	Sale of Engineering goods were incorrectly exempted as export to Nepal without any documentary evidence. Sale of Herbal Shampoo was incorrectly exempted at the second sale point and. sale of coffee seeds was incorrectly exempted as export sales under Section 5(3) of the Central Sales Tax Act, 1956 even though the dates of purchases from the assessee and sale by the exporter preceded the date of purchase order of the foreign buyer.	9.57	The department revised the assessments in two cases (May 1999/ March 2000) and raised additional demands for Rs.6.80 lakh. The department in one case (Egmore-I) stated (June 2000) that action was being taken under Revenue Recovery Act. The Report on recovery (Velachery) and reply in respect of other case has not been received so far (June 2001).

1	2	3	4	5	6	7
5	Kuzhithurai (One)	1993-94 (February 1996)	53.21	Inter-State purchase of Cashew nut with shell, purchased from unregistered dealers and inter-state branch transfer were incorrectly exempted without any documentary evidence.	4.31	The department revised the assess- ment (January 1999) and stated that action was being taken to recover the arrears under the Revenue Recovery Act.
TOTAL			775.31		80.41	

The matter was reported (January/March/April 2001) to the Government and followed up with reminder (August 2001). However in spite of such efforts no reply was received (October 2001).

2.3 Application of Incorrect rate of tax

Under the provisions of the TNGST Act, tax is leviable on the sale or purchase as the case may be at the rates mentioned in the relevant schedules to the Act.

In nine assessment circles, tax was levied short, on turnover of Rs.1534.74 lakh involving nine dealers during the years from 1990-91 to 1998-99 due to application of incorrect rate of tax. The total short levy of tax in these cases worked out to Rs.61.72 lakh (inclusive of surcharge, additional surcharge and additional sales tax) as detailed below:

(Rupees in lakh)

Sl. No	Name of the Assessment Circle/No. of dealers	Year of transaction/ Month of assessments	Name of goods/ Transactions	Taxable Turn-over	Rate of Tax (in %)		Amount short levied	Remarks
					Applicable	Applied		
1	2	3	4	5	6	7	8	9
1	Tondiarpet, Nandanam and Avinashi Road (Coimbatore) (Three)	1994-95 (April 1996) 1997-98 (July 1999) 1998-99 (after 4.5.98) (August 1999)	Transformer Oil, Leasing of lorries and Ghee sold under a brand name.	433.89	16, 8 & 11	4 5 & 10	34.01	The department replied (August 2000) that (Tondiarpet), as per the clarification (March 2000) of the Head of the Department transformer oil is a component/ accessory of an electrical good viz., transformer and therefore eligible for the concessional rate. The reply was not acceptable because (i) transformer oil can neither be regarded as an electrical good nor as a component or accessory of an electrical good and (ii) reduction in rate of tax on sale of transformer oil to Tamil Nadu Electricity Board (TNEB) and Neyveli Lignite Corporation (NLC) granted from 1 April 2000 by notification proves that the concessional rate was not available earlier. In the case of Nandanam the department revised (May 1999) the assessment and raised additional demand for Rs.2.17 lakh which was also collected. Reply in respect of other case has not been received.
2	Royapettah-I and Valluvar-kottam (Chennai) (Two)	1996-97 (upto 16.7.96) (June 1998) 1997-98 (November 1998) and 1998-99 (June 1999)	Home Appliances, Musical Instruments, Auto cables, TV and Computer cables etc.	191.54	16 12 11 8 & 4	11 8 4 & 2	14.80	The Government while endorsing (February 2001) the view point of the department that the cables used exclusively for automobiles/TVs/Computers are taxable as parts and accessories of these items, contended that as per the judicial decision reported in 117 STC P.12 that the term 'cables mentioned in entry 18 of Part E are cables used in connection with generation, transmission, distribution or consumption of electricity only. The reply is not tenable in view of the specific judgement by the Madras High Court reported in 88 STC 430 that auto cables are electrical goods and sale to automobile dealers would not make them motor accessories. Reply in respect of other case has not been received (June 2001).

1	2	3	4	5	6	7	8	9
3	Tam-baram-I, Kovil-patti-I, Erode (Rural) and Tondiarpet (Chennai) (Four)	1990-91 to 1993-94 (November 1991, November 1992) 1995-96 (December 1999, February 2000) 1996-97 (after 16.7.96) (September 1999) and 1997-98 (October 1999)	Electrical goods, Ribbed Tar Steel (RTS) Grills, Red Gravel and Lubricating Oil	909.31	14.5 16.9 8 11 3 and 12	13.5 15.9 4 4 12 and 3	12.91	The department revised the assessments (May/June August 2000) in three cases (Tam-baram-I, Tondiarpet and Kovilpatti) and raised additional demand for Rs.11.91 lakh out of which Rs.9.75 lakh (Tam-baram-I and Tondiarpet) has been collected. The department in the other case contended (November 2000) that as per the clarification (March 1997) of Head of Department red gravel is taxable as blue metal under entry 7 B of First Schedule to the Act. The reply is not tenable since (i) red gravel has been brought under specified entry viz., Entry 63 of Part B with effect from 1 April 1999. (ii) Red gravel is not blue metal as evidenced from separate entries for them in the schedule.
TOTAL				1534.74			61.72	

The matter was reported (November/December 2000 and January 2001) to the Government and followed up with reminder (August 2001). However in spite of such efforts no reply was received (October 2001).

2.4 Arithmetical inaccuracy

Under the TNGST Act, an assessing authority may at any time within five years from the date of any order passed by it, rectify, any error apparent on the face of the record. This provision applies to Central Sales Tax Act, 1956 also.

In three assessment circles, the tax due in respect of 4 dealers for the years 1994-95, 1997-98 and 1998-99 was incorrectly worked out as Rs.56.54 lakh instead of the correct amount of Rs.231.16 lakh resulting in short demand of Rs.174.62 lakh and consequent short levy of penalty of Rs.260.74 lakh as detailed below:

(Rupees in lakh)

Sl. No.	Name of the assessment circle	Tax due	Tax levied	Penalty leviable	Penalty levied	Short levy		Total
						Tax	Penalty	
1	Bodinai-kanur	135.92	13.59	201.30	17.81	122.33	183.49	305.82*
2	Bodinai-kanur	88.80	38.80	133.05	58.05	50.00	75.00	125.00**
3	Mylapore	5.01	4.01	6.26	4.01	1.00	2.25	3.25
4	Peddunaikanpet (South)	1.43	0.14	—	—	1.29	—	1.29
	Total	231.16	56.54	340.61	79.87	174.62	260.74	435.36
* M/s Saranya Traders, CST 137717/94-95								
** M/s Surya Agencies, CST 137756/94-95								

On this being pointed out (October 2000 and January/February 2001) the department in one case (Peddunaikanpet-South) revised (January 2001) the assessment and raised an additional demand for Rs.1.29 lakh. The demand is uncollectable as the whereabouts of the dealer is not known. Reply in respect of other cases has not been received (October 2001).

The matter was reported (March 2001) to the Government and followed up with reminder (August 2001). However in spite of such efforts no reply was received (October 2001).

2.5 Incorrect computation of taxable turnover

Under the TNGST Act, the taxable turnover of a dealer is determined on the basis of sales turnover shown in the returns after allowing permissible deductions. The sales tax is leviable at the rates prescribed on the taxable turnover so determined. In addition, surcharge, additional surcharge, additional sales tax and penalty, if any, are also leviable as per the provisions of the Acts.

In five assessment circles, the taxable turnovers amounting to Rs.507.46 lakh in respect of six dealers during the years 1995-96, 1997-98 and 1998-99 were incorrectly omitted from levy of tax. This had resulted in short-levy of tax amounting to Rs.30.10 lakh (inclusive of penalty) as detailed below:

(Rupees in lakh)

Sl No	Name of the assessment circle	Year of transaction (No. of dealers)	Nature of irregularity	Amount of Tax	Remarks
1	2	3	4	5	6
1	Sivakasi-IV	1995-96 (Two)	Sale of HDPE sacks for Rs.276.82 lakh was erroneously omitted to be assessed to tax.	13.66	The department revised (November 2000) the assessment and raised additional demand for Rs.13.66 lakh, the collection particulars of which have not been received (October 2001).
2	Kovilpatti-I and Nagercoil (Rural)	1995-96 1997-98 (Two)	While finalising the assessment based on check post records, the sale of handmade matches of Rs.60.74 lakh made at the branch office and turnover of Food and Drinks amounting to Rs.36.73 lakh of a Hotel (which remained a Star Hotel till 13 September 1997) were omitted to be assessed to tax.	9.36	The department revised (March 2000/2001) the assessments and raised additional demand of which Rs.1.08 lakh was collected in one case (Nagercoil-Rural). Report on collection in respect of the other case has not been received so far (October 2001).
3	Kilpauk (Chennai) and Mylapore (Chennai)	1997-98 1998-99 (Two)	The escalation charges of Rs.108.10 lakh received towards supply of concrete sleepers to Railways and receipts towards the sale of DEP B license amounting to Rs.25.07 lakh were omitted to be reckoned for levy of tax.	7.08	This was pointed out to the department (October/November 2000); their reply has not been received (October 2001).
TOTAL				30.10	

The matter was reported (January and June 2001) to the Government and followed up with reminder (August 2001). However in spite of such efforts no reply was received (October 2001).

2.6 Affording of excess credit

As per Section 4(1) of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990, the tax payable under TNGST Act on sale of motor vehicles by any dealer shall be reduced to the extent of Entry tax paid by them on such motor vehicles.

In five¹ assessment circles, the entry tax/sales tax paid by five dealers for the years 1994-95 to 1996-97 and 1998-99 was incorrectly taken as Rs.139.15 lakh against the actual payment of Rs.123.17 lakh.

These mistakes resulted in affording of excess credit aggregating Rs.15.98 lakh besides non-levy of penalty of Rs.2.34 lakh in one case (Krishnagiri) for short payment of tax.

On this being pointed out (between September 1998 and January 2001), the department revised (between November 1999 and February 2001) the assessment in four cases except Namakkal Town and raised an additional demand for Rs.15.58 lakh (including penalty) of which Rs.9.82 lakh has been collected in three cases (between January 2000 and January 2001) The collection particulars in respect of one case (Krishnagiri) and reply in respect of Namakkal-Town have not been received (October 2001).

The matter was reported (December 2000) to the Government and followed up with reminder (August 2001). However in spite of such efforts no reply was received (October 2001).

2.7. Non-levy of tax

As per Entry 5(a) of Part C of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, Cashewnut with shell is taxable at the rate of five per cent at the point of first purchase in the State.

1 Aruppukottai, Chokkikulam, Krishnagiri, Namakkal (Town) and Nungambakkam (Chennai).

In Kuzhithurai Assessment Circle, purchases of Cashewnuts with shell from unregistered dealers amounting to Rs.86.37 lakh made by a dealer during 1993-94 was omitted to be assessed to tax. This had resulted in non-levy of tax of Rs.6.11 lakh (including surcharge and additional sales tax).

On this being pointed (December 1996) the department revised (March 1999) the assessment and raised additional demand for Rs.6.11 lakh. Report on recovery has not been received (October 2001).

The matter was reported (May 2001) to the Government and followed up with reminder (August 2001). However in spite of such efforts no reply was received (October 2001).

2.8 Non levy of penalty

Under the provisions of the Tamil Nadu General Sales Tax Act, 1959, if the return filed by a dealer is found to be incorrect or incomplete, the assessing authority shall assess the dealer on best judgment basis. In addition, it may also levy penalty depending on the percentage of difference between the tax assessed and the tax paid as per the returns.

In Vadapalani and Triplicane-I assessment circles, Chennai, for short payment of tax (including surcharge and additional surcharge) by two dealers during the years 1995-96 and 1996-97, penalty though leviable was not levied. This had resulted in non-levy of penalty amounting to Rs.27.69 lakh.

On this being pointed out (July 1999/March 2001) the department levied (November 1999/July 2001) the penalty of Rs.27.69 lakh. The department (Vadapalani-I) further stated (January 2001) that action was being taken under Revenue Recovery Act to recover the arrears. The Government to whom the case (Triplicane-I) was reported (April 2001) accepted the audit point and stated (August 2001) that as the dealer was a sick unit, there was no immediate possibility of collection of the demand.

2.9 Non-levy of penalty for misuse of 'c' forms

Under the Central Sales Tax Act, 1956, a registered dealer buying goods from other states is entitled to a concessional rate of tax at four per cent, provided he furnishes to the seller, a declaration in form 'C'. If the goods indicated in the declaration are not covered by the certificate of registration, the assessee renders himself liable to penalty not exceeding one and a half times the tax due.

In Avinashi Road Assessment Circle, Coimbatore, a manufacturer and dealer in cotton yarn had purchased 'Blow room line', a textile machinery for Rs.34.88 lakh during the year 1997-98 from other States by issue of 'C' forms, eventhough the commodity purchased was not covered by certificate of registration. For misuse of forms 'C', penalty upto a maximum of Rs.5.23 lakh was leviable but was not levied.

This was pointed out to the department (September 2000/ June 2001) and to Government. The matter was followed up with reminder (August 2001). However in spite of such efforts no reply was received from the Government (October 2001).

2.10 Non-levy of interest for belated payment of tax

According to sub-Section (3) of Section 24 of the Tamil Nadu General Sales Tax Act, 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.

In three² assessment circles in respect of three dealers the tax dues amounting to Rs.15.04 lakh for the years 1990-91, 1991-92, and 1997-98 were paid belatedly (between May 1998 and February 2000), the delay ranging from 14 days to 2490 days, for which interest amounting to Rs.5.02 lakh though leviable was not levied.

2 Annadhanapatti (Salem), Ayyanavaram (Chennai), Mettupalayam.

On this being pointed out (between March and August 2000) the department levied (between March 2000 and March 2001) the interest of Rs.5.02 lakh of which Rs.3.76 lakh were collected in two cases (between March and August 2000). Collection particulars in respect of the remaining case (Ayyanavaram) have not been received so far (October 2001).

The matter was reported (June 2001) to the Government and followed up with reminder (August 2001). However in spite of such efforts no reply was received (October 2001).