

## CHAPTER 2

### SALES TAX

#### 2.1 Results of Audit

Test check of records in the office of the Commercial Tax department conducted from April 2001 to March 2002 revealed under assessments/non-levy of tax etc., amounting to Rs.231.92 crore in 1828 cases which broadly fall under the following categories.

Sl. No.	Categories	No. of cases	Amount (Rs. in crore)
1	Incorrect grant of exemption	374	22.44
2	Application of Incorrect rate of tax	843	32.35
3	Incorrect computation of taxable turnover	179	5.03
4	Non-levy of penalty	230	8.67
5	Non-levy of Interest	73	2.46
6	Incorrect waiver of arrears under Samadhan scheme	1	8.42
7	Other irregularities	127	3.46
8	Review on "Waiver of sales tax on Industrial Units"	1	149.09
	<b>TOTAL</b>	<b>1828</b>	<b>231.92</b>

During the course of the year 2001-2002, the department accepted under-assessments etc., amounting to Rs.2.06 crore in 338 cases of which 169 cases amounting to Rs.1.29 crore were pointed out during the year 2001-2002 and the rest in earlier years. Of these department recovered Rs.74.45 lakh.

A Review on "Waiver of sales tax on industrial units" and few illustrative cases involving a financial effect of Rs.161.38 crore are mentioned below:

## **2.2 Review on Waiver of sales tax on industrial units**

### **Highlights**

- ❖ **An amount of Rs.62.18 crore was irregularly waived even though the conditions for sanction of waiver were not satisfied**

*[Paragraph 2.2.4]*

- ❖ **Waiver of Rs.427.21 crore was irregularly sanctioned to an existing Mega industry, for expansion though it was not established in a most backward area.**

*[Paragraph 2.2.5]*

- ❖ **Incorrect computation of value of fixed assets had resulted in excess sanction of waiver of Rs.8.16 lakh.**

*[Paragraph 2.2.6]*

- ❖ **Waiver of Rs.29.14 lakh in respect of the expansion units allowed was incorrect as the dealer had not maintained the level of highest tax paid in the preceding three years prior to expansion.**

*[Paragraph 2.2.7]*

- ❖ **There was incorrect allowance of waiver of Rs.13.81 lakh during the period of collection of tax**

*[Paragraph 2.2.8]*

- ❖ **Excess waiver amounting to Rs.30.04 lakh was allowed over and above the sanctioned amount.**

*[Paragraph 2.2.9]*

- ❖ **There was non-realisation of waiver of Rs.19.42 crore for violation of conditions.**

*[Paragraph 2.2.10 (a) & (b)]*

### 2.2.1 Introduction:

With a view to correct regional imbalances in the industrialisation in the State, the Government introduced (May 1990) the scheme of grant of incentive of waiver of sales tax for a period of five years or deferral for nine years upto a ceiling of total investment made in fixed assets, for new industries to be set up in 30 most backward taluks out of 105 industrially backward taluks and three industrial complexes of State Industries Promotion Corporation of Tamil Nadu (SIPCOT) at Pudukottai, Manamadurai and Cuddalore. This concession was also made available for expansion/diversification activities of the existing industries in the above areas. The concept of most backward taluks was changed to "blocks" for identifying an area as industrially backward/most backward during March 1996.

Section 17 of the Tamil Nadu General Sales Tax Act, 1959, empowers the Government to remit by notification, the tax payable by any dealer. Accordingly, Commercial Taxes & Religious Endowments Department has to issue notification under the above mentioned section.

Further, the Government had allowed full waiver/deferral of sales tax to large industries with an investment in fixed assets of Rs.50 crore and above (July 1991) and Mega industries with investment in fixed assets of Rs.300 crore and above (February 1992) in the State with different periods of waiver as shown under:

Sl. No.	Year of Scheme	Type of Industry	Period of waiver/ deferral/ Notification No./date	Eligibility
1	2	3	4	5
1	May 1990	Small Scale and Medium Scale Industries.	5 years waiver or deferral for 9 years. Notification No.II(1)/CTRE/81/91 dt.27 April 1991.	Industries should be established in 30 Most backward Taluks and Industrial Complexes of SIPCOT at Pudukottai, Cuddalore, Manamadurai, and Tuticorin. Existing industries in the above areas were eligible for waiver only for expansion/diversification activities.

1	2	3	4	5
2	July 1991 and February 1992	Large Scale Industries	5 years waiver or deferral for 10 years  6 years waiver or deferral for 12 years Notification No.II(1)/CT RE/158/91 dt.2 October 1991.  7 years waiver or deferral for 14 years	Industries set up anywhere in Tamil Nadu with investment more than Rs.50 crore but below Rs.100 crore.  Industries set up anywhere in Tamil Nadu with investment in fixed assets more than Rs.100 crore but less than Rs.300 crore.  Industries set up anywhere in Tamil Nadu with investment in fixed assets more than Rs.300 crore
3	January 1996	Super Mega Industries by SIPCOT	9 years waiver or deferral for 14 years	Industries set up anywhere in Tamil Nadu. Investment should be more than Rs.1500 crore.

For availing the benefit of waiver/deferral, the new unit was required to apply within one year from the date of Commercial Production. The existing industries in most backward areas were eligible for waiver if they undertake the expansion/diversification upto the limit of expansion. As per the conditions, the unit should insure the fixed assets at a value not less than the value certified by the General Manager/District Industries Centre (DIC)/SIPCOT (Tamil Nadu). The units should not dispose of the fixed assets during the period of waiver/deferral and the units were required to file audited certified Accounts.

The scheme was discontinued with effect from 23 January 2000, except for industries in pipeline.

During the period from May 1990 to March 2002, the department sanctioned the waiver of Rs.949.33 crore in 285 cases and a sum of Rs.108.89 crore was availed upto March 2002.

### **2.2.2 Organisational set-up**

The scheme of waiver was implemented by the Industries Department through the State Industries Promotion Corporation of Tamil Nadu (SIPCOT) in the case of medium and large scale industries, through Director of Industries and Commerce in respect of small scale industries and through Tamil Nadu Industrial Investment Corporation Limited (TIIC) if the industries are financed by them. The Eligibility Certificates are issued by these respective agencies.

On receipt of the eligibility certificates, the Territorial Assistant Commissioners of the Commercial Taxes Department are to scrutinise the same, conduct independent check after spot inspection, issue sanction orders for waiver and execute agreement in each case. The respective assessing officers duly taking into account the sanction order of waiver, assess the industrial units and monitor the availment of waiver.

### **2.2.3 Scope of Audit**

With a view to ascertaining the adequacy and efficiency of the procedure followed in the implementation of waiver scheme by the Industries Department as well as the Commercial Taxes Department, a review was conducted during the period from July 2001 to October 2001 and during April/May 2002 on the eligibility certificate issued by SIPCOT, TIIC and DIC and the sanction orders issued by the Territorial Assistant Commissioners. The records relating to the scheme were test checked in 19 out of 24 Assistant Commissioners offices (CT) of the most backward taluks/blocks. Besides the eligibility certificates issued by SIPCOT in respect of large scale industries set up anywhere in Tamil Nadu were also test checked. The cases which were pointed out in audit, earlier, have also been included and the results of findings are as under:-

### **2.2.4 Irregular sanction of waiver of sales tax**

According to Government Order (14 May 1990) waiver of sales tax was admissible for new industries to be set up in the most backward taluks and in the three industrial complexes of SIPCOT at Pudukottai, Cuddalore and Manamadurai. In respect of existing industries in the areas the waiver is admissible only for expansion/ diversification undertaken by them.

An industry enjoying deferment facility was not eligible for waiver for expansion/diversification carried out during the period of availing deferral facility.

The scheme of waiver of sales tax was also extended (July 1991) to industries set up anywhere in the State with initial investment in fixed assets between Rs.50 crore and above.

Test check of the Assessment circles revealed that during October 1990 to March 2002 in 9 cases the eligibility certificates (EC) for Rs.62.18 crore were irregularly issued by the DIC/SIPCOT and TIIC, on the basis of which sanction for waiver of tax were issued by the Assistant Commissioner (CT) as detailed below:

(Rupees in crore)

Sl. No.	Name of the assessment circle/ (No. of dealers)	E.C. No and date	Amount of waiver sanctioned	Remarks
1	2	3	4	5
1	T.Nagar (North)/ (one)	E.C.No.6/N/W/5 years dt.8.1.99	48.37	The industry was set up in SIPCOT complex at Hosur, which is not covered by Government Order dated 14 May 1990 for waiver scheme. Further the initial investment in fixed assets was less than Rs.50 crore.
2	Fast Track Assessment Circle-III, Chennai/ (one)	E.C.No44/E/W/5 years/dt.22.12.98 and revision Lr.No.ID/ST/V/ W/E/98 dt.8.3.02	9.40	Application for issue of revised Eligibility Certificate was made on 18.4.2001 i.e., after closure of scheme on January 2000.
3	Perambur-II/ (one)	EC.No.45/V/ W/E/2000 dt. 2.12.2000	2.32	The dealer was availing deferral of tax for the period of 9 years. from 1.8.92. During the period of continuance of deferral, waiver was sanctioned for expansion, which is not in order.
4	Sivagangai-I (one)	E.C.No.1/W/90 dt.5.10.90	0.40	Waiver granted to an industry set up before the commencement of the scheme. On this being pointed out (August 1996), the department replied (November 2001) that commercial production commenced in June 1990 only, viz., after the commencement of the scheme. The reply is not tenable since the industry had already started commercial production before 14.5.90 and paid the tax due thereon and therefore was not eligible for waiver.

1	2	3	4	5
5	Gobicheti-palayam/ (one)	E.C.No.IFST/W/ 100023/XIV/ER D.2000-01 dt.22.5.00	0.20	The assessee applied for waiver on 8.5.2000 after closure of the scheme.
6	Tenkasi/ (one)	E.C.No.3/TNV/ IFST/W/93-94 dt.23.7.93	0.13	The industry was setup in 1988 and had purchased Articulated Crane in July 1993 which is not an expansion/diversification for the industry.
7	Shencottah/ (three)	E.C.No.IFST/N/ 004/V/N/TNLY/ 99-00 dt.30.8.99	0.25	The industries were not setup in most backward block and started commercial production after 18 September 1997.
		E.C.No.IFST/W/ 98-99 dt 15.9.98	0.42	
		E.C.No.1TNLY/ IFST/W/2000-01 dt.22.9.2000	0.69	
		<b>Total</b>	<b>62.18</b>	

### 2.2.5 Irregular availing of waiver

With a view to set right the regional imbalances in the industrialisation in the State, the Scheme of waiver of sales tax, which was originally introduced (May 1990) for industries in most backward areas, was subsequently extended (February 1992) to industries set up anywhere in Tamil Nadu with an investment of Rs.300 crore or more. However, waiver of sales tax for existing units for their expansion/diversification was not envisaged in Government Order (February 1992).

In Karur (North) Assessment Circle, it was noticed (October 2001) that based on Government Order (February 1992), sanction for waiver of Rs.427.21 crore was granted (March 1996) for expansion of its activity to M/s.Tamil Nadu News Print and Papers Limited (TNPL), an existing industry.

The sanction accorded for waiver of sales tax to TNPL is not in order as the Government Order did not provide for grant of waiver for existing units for their expansion activity. Moreover, TNPL was not established in most backward area, as stipulated.

This had resulted in irregular sanction of waiver of Rs.427.21 crore and consequent availing of waiver (31 March 2002) of Rs.66.68 crore.

**2.2.6 Excess sanction of waiver due to incorrect computation of value of fixed assets.**

According to Government Order (May 1990), the amount of waiver of sales tax admissible to new industries set up in most backward taluks is limited to the value of fixed assets created. In the case of existing industries, waiver is admissible only if they undertake expansion/ diversification, upto the value of fixed assets created for such expansion/diversification.

During the course of test check of 2 assessment circles the eligibility certificates were issued in excess of Rs.8.16 lakh of the fixed assets created by the three dealers as detailed below:

(Rupees in lakh)

Sl. No.	Name of the assessment circle	Name of the industry EC No. and date	Amount sanctioned	Assets created as per certificate of Chartered Accountants	Excess sanction
1	Trichengodu (Town )	Pavai Alloys EC.IFST/W/029/ N/NKL/95-99 dt.30.7.98	116.09	110.62	5.47
2	Arcot	Southern Fasteners (P) Ltd. EC. No.4/ 97-98/14947/D7/97 dt.15.10.97	10.26	8.36	1.90
3	Arcot	Ravi Plastics Industries EC.2/95-96/2763 B1/96 dt.29.2.96.	7.15	6.36	0.79
<b>Total</b>					<b>8.16</b>

**2.2.7 Allowance of waiver without protecting the tax due on base production volume**

According to the condition stipulated in the Eligibility Certificate, an industry undertaking expansion is eligible for waiver of sales tax only on the increased volume of production/sale. For the purpose of determining the increased volume of production, the base figure would be the highest of the volume of production/sale in the unit in any one of the year during the last 3 years. The industry would continue to pay tax on the volume of sale specified above and any liability in excess, alone would be eligible for waiver.



In 2 assessment circles, while finalising the assessment of two assessees for the period from 1994-95 to 1998-99, waiver was granted without protecting the tax due on the base production volume. This had resulted in grant of excess waiver of sales tax amounting to Rs.29.14 lakh as detailed below:

(Rupees in lakh)

Sl. No.	Name of the assessment circle/ (No. of dealers)	E.C.No. and date	Year of assessment	Amount of tax	Remarks
1	Sivagangai/ (one)	E.C.No.1/ IFST/T/W/ 007/KKD/ 96-97 dt 31.3.97	1997-98 to 1998-99	11.08	The entire tax during 1997-98 and 1998-99 was allowed waiver, without protecting the amount of Rs.7.08 lakh, being the tax due on base production volume.
2	Thuraiyur/ (one)	EC.No/ IFST/W/ 001/V/ KRR/94-95 dt.10.1.95 ECNo.IFST/ W/V/KRR/ 95-96 dt.16.2.96	1994-95 to 1998-99	18.06	While finalising the assessments for the years 1994-95 to 1998-99 waiver was allowed in excess, without protecting the tax based on base production volume.
<b>Total</b>				<b>29.14</b>	

### 2.2.8 Undue benefit to the dealers

As per the Eligibility Certificate an industry availing the benefit of waiver shall not collect tax during the period of waiver. Eligibility Certificate is issued from the date of commencement of commercial production. The Government clarified (May 1991) that, whenever an industry which applied for waiver had commenced commercial production, collected tax on sales and eligibility certificate was issued subsequently, the period of waiver may be rescheduled.

In six assessment circles, though seven dealers had collected tax amounting to Rs.13.81 lakh during the period of waiver, neither the tax so collected had been remitted to Government nor the period of waiver re-scheduled which resulted in undue benefit to the dealers as the amount of Rs.13.81 lakh has been retained by them as detailed below:

(Rupees in lakh)

Sl. No.	Name of the assessment circle/ (No. of dealers)	E.C.No and date	Period of waiver	Period under which tax collected	Amount of tax collected
1	Shencottah/ (two)	E.C.No.1/TNV/IFST/ Waiver/91-92 dt.3.5.91	1990-91 to 1994-95	3.5.91 to 31.3.93	7.99
		E.C.No.7/TNV/IFST/ Waiver/94-95 dt.31.10.94	15.7.93 to 14.7.98	15.7.93 to 13.12.94	0.83
2	Tuticorin-III/ (one)	E.C.No.33/W/N/5 years dt.30.1.97.	1.2.96 to 31.1.01	1.2.96 to 30.6.96	2.05
3	Gobichetti-palayam/ (one)	E.C.No.IFST/W/1002 3/X/IV ERD(N)/ 97-98 dt.14.7.97.	14.7.97 to 13.7.02	1.4.99 to 31.3.00	0.86
4	Arcot/ (one)	E.C.No.IFST/W/AC1 /VN/Vellore/ 96-97 dt.22.4.96.	27.8.95 to 26.8.00	27.8.95 to 31.3.97	0.63
5	Sivgangai/ (one)	EC.NO.TIIC/Madras IFST/136/V/N/10/ 93-94 dt.28.1.94	1.1.94 to 31.12.98	1.1.94 to 28.2.94	0.94
6	Tuticorin-II/ (one)	E.C.No.01/IFST/ Waiver / 96-97/CNR dt.4.10.96	5.8.95 to 4.8.00	1.4.96 to 31.3.97	0.51
<b>Total</b>					<b>13.81</b>

### 2.2.9 Excess availing of waiver

As per Section 17A of Tamil Nadu General Sales Tax Act, 1959, the Territorial Assistant Commissioners (Commercial Taxes) are empowered to issue sanction for waiver specifying the amount subject to the ceiling fixed in the eligibility certificate issued by the implementing agencies.

In two assessment circles, during the period from 1992-93 to 1996-97, two dealers were allowed to avail waiver in excess of the amount sanctioned in the eligibility certificate. Such excess availing of waiver worked out to Rs.30.04 lakh as detailed below:

(Rupees in lakh)

Sl. No.	Name of the assessment circle	E.C.No. and date	Assessment year	Amount sanctioned/ Amount availed	Excess availment	Remarks
1	South Avani Moola Street Circle, Madurai	E.C.No. 34/V/ W/N dt. 10.2.97	1996-97	203.07/ 215.88	12.81	The assessee was allowed waiver of Rs.215.88 lakh upto the year 1999-2000 instead of restricting it to Rs.203.07 lakh. This resulted in excess availing of waiver of Rs.12.81 lakh.
2	Anna salai-III	E.C.No. IFST/ 086/V/ w/93-94 dt. 18.6.93	January 1993 to December 1997	14.32/ 31.55	17.23	The sales tax of Rs.31.55 lakh on turnover for the period January 1993 to December 1997 was exempted instead of limiting the same to Rs.14.32 lakh. This resulted in excess availing of waiver of Rs.17.23 lakh.
<b>Total</b>					<b>30.04</b>	

### 2.2.10 Non-realisation of waiver for violation of conditions

The conditions prescribed in the agreement stipulate that the industry availing waiver should not alienate or dispose of the asset during the period of waiver. In case of default, the waiver thus granted is to be withdrawn alongwith interest and penalty as prescribed under the Tamil Nadu General Sales Tax Act, 1959.

(a) In Fast Track Assessment Circle-III, Chennai, eligibility certificate for Rs.84.29 crore was issued (December 1998) for a period of 5 years from 1 October 1998 to 30 September 2003 for expansion undertaken by an assessee. The whole amount of waiver of sales tax was availed by the dealer upto March 2002.

It was, however, noticed that the assessee had sold the original unit in January 2001 upto which the dealer had availed waiver of Rs.65.54 crore. On the sale of original unit, the expansion ceases and the assessee was not eligible for waiver of sales tax subsequently. But the assessee was allowed waiver facility during period from February 2001 to March 2002. This resulted in excess availing of waiver of Rs.18.75 crore which is to be recovered along with interest and penalty under the Tamil Nadu General Sales Tax Act, 1959.

(b) The industry availing the waiver should ensure the value of fixed assets should not be less than the value certified by the implementing agencies. The audited balance sheet and profit and loss account duly certified by the Chartered Accountant, is also required to be submitted within six months from the closure of financial year.

In two assessment circles, though two dealers had disposed of the assets, they were allowed to avail the concession of waiver amounting to Rs.67.02 lakh as detailed below:

(Rupees in lakh)

Sl. No.	Name of the assessment circle/No. of dealers	Period of waiver	Amount excess availed	Remarks
1	Arcot/ (one)	1993-94 to 1997-98	41.52	As per the certificate of Chartered Accountant attached with annual accounts for the year 1994-95 the value of fixed assets was Rs.12.59 lakh. However the dealer was allowed to avail the full amount of waiver upto 1997-98 instead of recovering the amount alongwith interest and penalty.
2	Palacode/ (one)	13.6.94 to 12.6.99	25.50	The assessee violated the conditions viz., (i) non-filing of correct and complete returns to prove its actual turnover, (ii) non-insurance of fixed assets (iii) non-production of accounts for final check and (iv) non-responding to the notice issued by the department from the year 1994-95, but the waiver was allowed.
<b>Total</b>			<b>67.02</b>	

### 2.2.11 Management Information System

Evolving a management information system is essential to enable Head of the department to have an effective overall control on implementation of a scheme. The number of beneficiaries availing waiver scheme as furnished by the Head of department and as collected by audit shows a vast discrepancy as detailed below:

Sl. No.	Particulars	Information supplied by the Department	Cases produced to audit	Difference
1	Total Number of beneficiaries (cases)	254	285	31
2	Amount involved (Rupees in crore)	665.52	949.33	283.81

### 2.2.12 Non-fulfilment of conditions

The terms and conditions of the agreements entered with the dealers availing the waiver of sales tax stipulated that

- (i) the industry availing the waiver should insure the fixed assets at a value not less than the value certified by the implementing agencies. The policy/renewed policy should be produced for inspection of the monitoring agency;
- (ii) the industry availing sales tax waiver benefit should furnish the audited balance sheet and profit and loss account certified by chartered accountant, within six months of the close of the financial year.

During the check of records of four<sup>1</sup> assessment circles, it was noticed that, seventeen industries availing the concession of waiver had not submitted certified accounts.

In three<sup>2</sup> assessment circles, five industries availing the concession of waiver had not fully insured the fixed assets.

However, no action was taken by the department to obtain the certified accounts and to get the assets fully insured.

<sup>1</sup> Arcot, Gobichettipalayam, Sivagangai, and Vandavasi

<sup>2</sup> Palacode, Shencottah and Tuticorin,.

### **2.2.13 Conclusion**

The Scheme was originally introduced with a view to set right the regional imbalances in the industrialisation in the State by grant of incentives to most backward areas, but within a year became an incentive to accelerate industrial development in the entire State.

A study of cases during the review revealed that the implementation of the Scheme was not proper, mainly due to lack of coordination between the implementing and monitoring agencies. This had led to irregular/incorrect sanction of waiver.

### **2.3. Incorrect grant of exemption from levy of tax**

(i) As per entry 53 of Part B of First Schedule to the Tamil Nadu General Sales Tax Act, 1959, (TNGST), on sale of computer stationery of all kinds, tax was leviable at first sale at the rate of four per cent with effect from 17 July 1996.

In fourteen<sup>3</sup> assessment circles, exemption was erroneously granted on first sale of computer stationery amounting to Rs.31.95 crore made by 17 dealers during the period from 17 July 1996 to 2000-2001, treating the same as second sales of tax suffered paper, which was incorrect. This had resulted in non-levy of tax amounting to Rs.1.28 crore.

On this being pointed out to the department (between October 2000 and February 2002) and to Government (between December 2000 and May 2002), the Government contended (July 2001 and September 2001) that exemption allowed was in order, in view of the clarification of the Head of the department (June 1999) that computer stationery manufactured out of tax suffered paper was not liable to tax again. The Government further stated that, as per a judicial decision<sup>4</sup> of the Andhra Pradesh High Court, computer stationery would fall under the category of paper.

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<sup>3</sup> Ashok Nagar, Avinashi Road, Loansquare-II, Mettupalayam Road, Salem (Rural), Sivakasi-IV, Sriperumbudur, Tambaram-I, T.Nagar (South), Vadapalani-II, Valluvarkottam, Villivakkam, Washermanpet-I and Woraiyur.

<sup>4</sup> Andhra Pradesh Computer Stationery Manufacturers Association and others Versus State of A.P. and another-115 STC 173 (High Court of Andhra Pradesh, Hyderabad).

The reply is not tenable as the relevant entry under TNGST Act, inserted with effect from 17 July 1996 did not provide for exemption on sale of computer stationery manufactured out of tax suffered paper. Further, the inclusion of computer stationery as a sub-entry (vii) under entry 30 of Part C relating to paper with effect from 18 August 2001, with a proviso for exemption where paper had suffered tax earlier, vindicates the audit point that such exemption was not available earlier. Further, the judgment quoted is not applicable to the Tamil Nadu General Sales Tax Act, as there is specific entry for computer stationery.

This was pointed out to the Government/department (April 2002) and followed up with reminder (September 2002). However, in spite of such efforts no reply has been received (September 2002).

(ii) As per entry 1 of Part E of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, sale of milk foods including milk powder and foods including preparations of milk and condensed milk sold under a brand name are taxable at 12 per cent at the point of first sale in the State. Further the turnover relating to the business of transfer of the right to use any goods is taxable at the rates prescribed under Act. The goods not specified elsewhere in any of the Schedules to the Act are taxable at eleven percent at the point of first sale in the State.

In three assessment circles, exemption was erroneously granted to three dealers on a turnover of Rs.3.19 crore during the years 1993-94, 1995-96, 1997-98 and 1998-99, resulting in non-levy of tax of Rs.49.25 lakh as detailed below:

(Rupees in lakh)

Sl No	Name of assessment circle/ (No. of dealers)	Year of transaction/ Month/ Year of assessment	Taxable turnover	Nature of irregularity	Non levy of tax	Remarks
1	2	3	4	5	6	7
1.	Salem (Rural) (one)	1993-94 (February 1999)	273.90	Sale of branded tetra pack milk erroneously exempted, treating it as milk (exempted goods)	43.96	On this being pointed out (November 1999), the department contended (November 2001) that the clarification of the Head of the Department (May 2001) that Tetra pack milk is taxable, takes prospective effect only. The reply is not tenable in view of the decision of the Madras High Court (35 STC 170). The tax was leviable from the inception of the statutory provision.

1	2	3	4	5	6	7
2.	Anna salai-II (one)	1995-96 March 2000) 1997-98 (June 2000)	40.97	Income received on lease of motor vehicles was erroneously exempted.	4.80	On this being pointed out (October 2000 and December 2001), the department contended (January 2001) that the exemption allowed was in order as the dealer had paid Entry Tax. The reply is not tenable as set-off is allowable only on sale of vehicles and not for lease.
3	RS.Puram West (One)	1998-99 (January 2000)	4.51	Sale of braided cords was exempted from tax.	0.49	On this being pointed out (November 2000), the department revised (May 2001) and raised additional demand of Rs.0.49 lakh, the collection particulars of which is awaited (September 2002).
		<b>Total</b>	<b>319.38</b>		<b>49.25</b>	

The cases were reported to Government (June 2002) and followed up with reminder (September 2002). However, no reply has been received (September 2002).

(iii) According to Central Sales Tax Act, 1956, if the sale of any goods is exempt generally under the local Act, the inter-State sale of such goods is also exempt. The sale of packing materials to exporters is exempt, if such sale is in relation to the goods exported.

It has been judicially held<sup>5</sup> that where the certificate of registration of the purchasing dealer does not include the goods purchased from outside the State, their sale is not eligible for exemption as transit sale.

In four assessment circles, exemption was erroneously granted to seven dealers on a turnover of Rs.3.37 crore during the years 1990-91, 1991-92, 1995-96 and 1997-98 to 1999-2000, resulting in non levy of tax of Rs.43.07 lakh, as detailed below:

<sup>5</sup> 113 STC 70 State of Tamil Nadu Vs. Trade International



(Rupees in lakh)

Sl. No.	Name of assessment circle/ (No. of dealers)	Year of transaction/ Month/ Year of assessment	Taxable turnover	Nature of irregularity	Amount of tax	Remarks
1	Salem (Rural) (One)	1990-91 (January 2000) 1991-92 (August 1999) 1995-96 (August 1999)	214.66	Inter-state sale of branded Tetra pack milk was erroneously exempted, treating it as milk (exempted goods)	29.73	On this being pointed out (November 1999 and February 2001), the department contended (November 2001) that the clarification of the Head of the Department (May 2001) that tetra pack milk is taxable, takes prospective effect only. The reply is not tenable in view of the decision of the Madras High Court reported in 35 STC 170. The tax is leviable from the inception of the statutory provision.
2	Aruppukkottai, (One)  Pollachi (West) (One)	1998-99 (after 7.9.98) (April 2000)  1999-2000 (March 2001)	81.85	Inter-State sale of wheat bran erroneously exempted treating the exemption under the local Act as general.	9.00	On this being pointed out (October and November 2001), the department replied (February 2002) that on the analogy of the decision reported in 106 STC 34 <sup>6</sup> the exemption is general and not conditional. The reply is not tenable as exemption to sale of wheat bran is available to use it as cattle feed. So the same is not general.
3	Tuticorin-II (Three)	1997-98 (June/August 1999) 1998-99 (February/ March 2000)	26.48	Sale of wooden pallets to exporters was erroneously allowed exemption.	2.91	This was pointed out to the department (September 2000). Their reply has not been received.
4	Palani-I (one)	1998-99 (January 2000)	14.31	Exemption was granted as transit sale in respect of commodity not covered by Registration Certificate.	1.43	On this being pointed out (March 2001), the department revised the assessment (January 2002) and raised additional demand of Rs.1.43 lakh; the collection particulars of which is awaited (September 2002).
<b>Total</b>			<b>337.30</b>		<b>43.07</b>	

<sup>6</sup> 106 STC 34 Sri Venkateswara Hybrid seeds Co. Vs.State of Andhra Pradesh.

The Government to whom the cases were reported (between January 2000 and March 2002) accepted (April 2002) the audit observation in one case (Palani-I) and contended (February 2001) in one case (Tuticorin-II) that wooden pallets, being packing materials, are eligible for exemption. The reply is not tenable since according to the decision of the Madras High Court reported in 101 STC 326, wooden pallets are not eligible for exemption. Reply in respect of the other three cases is awaited (September 2002).

#### **2.4 Incorrect waiver of arrears under Samadhan Scheme**

The Tamil Nadu Sales Tax, Entertainment Tax and Luxury Tax (Settlement of Disputes) Act, 1999 known as “Samadhan Scheme” was introduced with the object of providing expeditious collection of amount locked in arrear of tax, penalty or interest in dispute under the relevant Act, by way of settlement of such disputes on a one time basis. By this Scheme, Government offered to forego half the amount of tax arrears and seventy five per cent of penalty and interest arrears, if the assessee agree to pay the balance. The scheme was applicable only to such cases where the arrears of tax, penalty or interest was in dispute in any appeal or revision pending before the appellate authority or revisional authority on the 28<sup>th</sup> day of February 1999. The scheme was not applicable to cases pending before the High Court or Supreme Court.

In one case, an assessee (M/s. Coromandal Fertilisers Ltd.) of Deputy Commissioner of Sales Tax (North) Division, Chennai, who had filed a Writ in the High Court against the assessments for the years 1988-89 and 1989-90 involving total tax arrears and penalty of Rs.5.08 crore was considered by the Designated Authority. The Certificate of Settlement was issued incorrectly after collecting an amount of Rs.2.68 crore and waiving an amount of Rs.8.42 crore which included tax, penalty and interest leviable on the amount waived as well as collected tax as per rates prescribed.

On this being pointed out (July 2002) the department contended (July 2002) that pendency of writ before the High Court was not a bar for the dealer to opt for the scheme. The reply was not tenable as, there was specific clause in Section 4(1) of the Act that appeals/revisions pending before High Court or Supreme Court were not to be settled under this scheme.

## **2.5 Short levy of tax**

Under the provisions of the Tamil Nadu General Sales Tax Act, 1959, tax is leviable on the sale or purchase as the case may be at the rates mentioned in the relevant Schedules to the Act.

Test check of records of nine<sup>7</sup> assessment circles revealed that the assessing officers while finalising (between August 1997 and March 2001) the assessments for the years from 1996-97 to 1998-99, levied the tax at incorrect rates. Due to application of incorrect rate, tax of Rs.11.48 lakh was short levied.

On this being pointed out (between February 1999 and January 2002) the department revised the assessment (between June 2000 and April 2002) in five cases and raised an additional demand of Rs.5.95 lakh out of which Rs.5.64 lakh has been collected.

The matter was reported to Government (between April 2000 and June 2002). Government accepted the audit observations (February 2001, April 2002 and May 2002) in three cases. The final reply in the other cases is awaited. (September 2002).

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<sup>7</sup> Adyar-I (Chennai), Egmore-I (Chennai), Egmore-II (Chennai), Fast Track Assessment Circle-III (Chennai), Leigh Bazaar (Salem), Nandanam (Chennai), Ram Nagar (Coimbatore), Rajapalayam-I and Tambaram-I (Chennai).

## **2.6 Incorrect computation of taxable turnover**

Under the Central Sales Tax Act, 1956, on inter-State sale of goods not covered by declarations in form 'C', tax is leviable at 10 per cent or at the rate applicable to the sale of such goods inside the appropriate State, whichever is higher.

In Bodinayakanur assessment circle, in respect of four assessees for the assessment year 1995-96, inter-state taxable turnover of Rs.1.78 crore escaped assessment. This resulted in non levy of tax to the tune of Rs.44.82 lakh inclusive of penalty.

On this being pointed out (October 2001), the department revised the assessment (December 2001) and raised additional demand of Rs.44.82 lakh, the collection particulars of which is awaited (September 2002).

Government to whom the matter was reported (May 2002) accepted the audit observation (June 2002).

## **2.7 Non-levy of purchase tax**

According to the Tamil Nadu General Sales Tax Act, 1959, every dealer who purchases from an unregistered dealer any goods and sends the same on consignment basis to other State, is liable to pay purchase tax. Jaggery is taxable at eleven percent if any dealer's total turnover exceeds Rs.100 crore.

In Theni-II and Palani-II assessment circles, on purchase of jaggery from unregistered dealers amounting to Rs.69.18 lakh made by two dealers during the year 1999-2000 and sent on consignment to other State, no purchase tax was levied. This had resulted in non-levy of tax amounting to Rs.7.61 lakh.

On this being pointed out (June 2001, January 2002) in audit, the department contended that as per clarification (October 1998) of the Head of the Department, tax would be levied only if the total turnover of a dealer exceeded Rs.100 crore.

The reply is not tenable as the exemption upto Rs.100 crore is available only for sale of goods, but not to goods sent outside the State on consignment basis. So the purchase tax was leviable.

The matter was reported to Government (April 2002) and followed up with reminder (September 2002). Reply is awaited. (September 2002).

## **2.8 Non/short levy of additional sales tax**

Under the Tamil Nadu Additional Sales Tax Act, 1970, additional sales tax is leviable at the rates prescribed from time to time depending upon the taxable turnover.

In three<sup>8</sup> assessment circles, on the taxable turnover of Rs.77.17 crore of four dealers for the years 1994-95, 1995-96 and 1999-2000, the assessing officers while finalising the assessments, either did not levy or levied short the additional sales tax. This resulted in non/short realisation of additional sales tax of Rs.67.24 lakh.

On this being pointed out (between February 2001 and December 2001), the department revised the assessment (between March and December 2001) in three cases and raised additional demand of Rs.47.17 lakh, out of which, in one case (Annasalai-I) an amount of Rs.45.15 lakh was collected (between April 2001 and January 2002). Final reply in other cases is awaited.

The matter was reported to Government (between March 2001 and April 2002). Government accepted (July 2001 and February 2002) the audit observation in 2 cases. Reply in respect of the other case though followed up with reminder, has not been received (September 2002).

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<sup>8</sup> Annasalai-I, Bodinayakanur and Mettupalayam Road (Coimbatore).

## **2.9 Affording of excess credit**

According to Commercial Taxes Manual, assessment registers are to be maintained for each year in the assessment circles to show the tax paid by the assesseees. The credit entries are to be attested by the Superintendent of the circle. The assessing authority should also test check as many credit entries as possible.

In five<sup>9</sup> assessment circles, while finalising (between August 1997 and March 2001) the assessments of five dealers, for the years 1994-95 to 1996-97 and 1998-99, the amount of tax paid by the dealers were either taken in excess or accounted for twice which resulted in affording of excess credit to the dealers' account to the tune of Rs.15.53 lakh.

On this being pointed out (between March 1999 and June 2001) the department withdrew (August 2000 and June 2001) the excess credit afforded by revising the assessments and raised an additional demand of Rs.9.30 lakh in respect of four dealers (except in the case of Thanjavur-II), out of which an amount of Rs.7.86 lakh has been collected. Report on recovery of balance amount has not been received.

In the case of Thanjavur-II, Government to whom the matter was reported (May 1999) accepted the audit observation (October 2000). Further report is awaited (September 2002).

The other cases were reported to Government (May and June 2002) and followed up with reminder (September 2002). However, reply has not been received (September 2002).

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<sup>9</sup> Cuddalore (Town), Fast Track Assessment Circle-I (Coimbatore), Hosur (North) Mayiladuthurai and Thanjavur-II.

## **2.10 Non-levy of penalty**

(A) Under the provisions of the Tamil Nadu General Sales Tax Act, 1959, the assessing authority may levy penalty at prescribed rate, if the tax paid as per return falls short of tax assessed on final assessment, where the assessment is made to the best of judgment by the assessing authority.

During the course of audit of Nandanam Assessment Circle, it was noticed (November 1998) that the assessing officer raised (May 1997) a demand of Rs.6.18 lakh for the year 1995-96 against a dealer which had not been paid by him. As the tax had not been paid, the penalty of Rs.10.77 lakh, though leviable, was not levied.

On this being pointed out (February 1999) in audit, the department levied (December 2000) penalty of Rs.10.77 lakh and stated (November 2001) that action is being taken under the Revenue Recovery Act to collect the arrears. Further reply in the matter is awaited (September 2002).

The matter was brought to notice of Government (June 2002) and followed up with reminder (September 2002). Their reply has not been received (September 2002).

(B) 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 of the tax due.

In Vellore (South) and Rajapalayam-I assessment circles, two dealers had purchased goods such as skimmed milk powder, tor steel, and transformers for Rs.57.02 lakh during the years 1995-96, 1996-97 and 1998-99 from other States on the basis of declaration in form 'C', though the commodities purchased were not covered by their certificates of registration at the time of purchase. While finalising (June 1998 and August 2000) the assessments of these dealers, the assessing officers failed to levy the penalty of Rs.8.97 lakh for misuse of C form.

On this being pointed out (July 2001 and November 2001), the department levied (February 2002 and May 2002) penalty in both the cases and raised additional demand for Rs.8.97 lakh. The position of recovery has not been received (September 2002).

The matter was brought to notice of Government (December 2001). Government accepted (July 2002) the audit observation in one case (Rajapalayam-I). Reply of the Government, in the other case, Vellore (South), though followed up with reminder (September 2002), has not been received (September 2002).