

CHAPTER-II TRADE TAX

2.1 Results of audit

Test check of the assessments and other records of trade tax offices, conducted during 2007-08, revealed non/short levy of penalty/interest, irregular exemption of tax, misclassification of goods, incorrect, short /non-levy of tax, etc. of Rs. 1,191.14 crore in 1,210 cases, which fall under the following categories:

| (Rupees in crore) | | | |
|-------------------|--|-----------------|-----------------|
| Sl. No. | Categories | Number of cases | Amount |
| 1. | Non/short levy of penalty/interest | 472 | 1,171.14 |
| 2. | Incorrect /short levy of tax | 261 | 8.83 |
| 3. | Irregular grant of exemption from tax | 222 | 5.91 |
| 4. | Misclassification of goods | 32 | 1.45 |
| 5. | Irregularities relating to central sales tax | 40 | 0.56 |
| 6. | Mistake in computation | 36 | 0.30 |
| 7. | Turnover escaping tax | 9 | 0.15 |
| 8. | Other irregularities | 138 | 2.80 |
| Total | | 1,210 | 1,191.14 |

During the year 2007-08, the department accepted under assessments and other deficiencies of Rs. 51.45 lakh involved in 124 cases of which 11 cases involving Rs. 5.91 lakh had been pointed out during 2007-08 and the remaining in the earlier years. The department recovered Rs. 46.26 lakh in 114 cases during the year 2007-08, of which nine cases involving Rs. 3.96 lakh related to the year 2007-08 and the balance to the earlier years.

A few illustrative cases involving Rs. 838.92 crore, are mentioned in the succeeding paragraphs.

2.2 Non/short levy of tax

2.2.1 Under the Uttar Pradesh Trade Tax Act, 1948 (UPTT Act) tax is leviable as per the schedule of rates, notified by the Government from time to time. In case of goods, not classified elsewhere, tax is leviable at the rate of 10 *per cent* with effect from 1 December 1998. Further, under section 2(g) of the Foreign Trade (Development and Regulation) Act, 1992 (FT Act) license means a license to import or export and includes a customs clearance permit and any other permission issued under the Act. Duty entitlement pass book (DEPB) is an export incentive, introduced by the Government of India, Ministry of Commerce. By a circular issued on 13 August 2003, the department clarified that DEPB is covered under import license under section 2 (g) of FT Act and import license was exempted from levy of tax vide notification of 17 February 2000 whereas DEPB does not fall under the category of any license.

Test check of the records of two trade tax offices¹ between May 2005 and September 2005 revealed that two dealers sold DEPB, valued at Rs. 82.94 crore, during 2001-02 to 2002-03. The assessing authorities (AAs), while finalising between December 2003 and May 2005 the assessments, treated DEPB as import license and it was exempted from tax under the circular of August 2003 whereas DEPB is not a licence. Treatment of an export incentive as a license resulted in non-levy of tax of Rs. 8.29 crore.

After the cases were pointed out, the department stated in March 2007 that in case of Kanpur, tax of Rs. 1.81 lakh has been levied whereas in another case objection has not been accepted. However, reasons though called for, for not accepting the objection of similar nature has not been received (November 2008).

The matter was reported to the department and the Government between August 2005 and January 2006; their reply has not been received (November 2008).

2.2.2 As per the Government notification dated 15 January 2000, issued under the UPTT Act, tax on sale of photographic paper is leviable at the rate of eight *per cent*. Further, entry tax is not leviable on photographic paper.

Test check of the records of office of the Deputy Commissioner (Assessment) {DC (A)} Trade Tax (TT) Gulawati, in December 2006 revealed that a dealer sold photographic paper valued as Rs. 16.32 crore during the year 2003-04. The dealer was liable to pay a tax of Rs. 1.31 crore against which the dealer paid tax of Rs. 65.10 lakh as entry tax. This resulted in short levy of revenue of Rs. 65.90 lakh after taking the amount of entry tax paid by the dealer.

The matter was reported to the department and the Government (January 2007); their reply has not been received (November 2008).

2.2.3 It has judicially been held² that warranty claim³ is part of taxable turnover.

¹ DC (A) XIX, TT, Kanpur and AC TT Koshikalan, Mathura.

² Mohd. Ekram Khan & sons Vs Commissioner of TT civil appeal no. 9,618 of 2003,SC.

³ The amount received in lieu of replacement of defective parts under specified period.

Test check of the records of five trade tax offices, between October 2005 and July 2007 revealed that six dealers received warranty claims of Rs. 1.06 crore during 2001-02 to 2004-05 against replacement of defective parts of motor vehicles and computers. The AAs while finalising the assessments, between October 2003 and March 2007 failed to include the same in taxable turnover. This resulted in non-levy of tax of Rs. 7.80 lakh as mentioned below:

(Rupees in lakh)

| Sl. No. | Name of the office | Assessment year (Month & year of assessment) | Name of commodity (rate of tax in per cent) | Turnover not assessed | Tax leviable |
|--------------|-----------------------|--|---|-----------------------|--------------|
| 1. | DC (A) VI TT Lucknow | 2004-05 (March 2007) | Computer parts (4) | 61.35 | 2.45 |
| 2. | DC (A) ITT Saharanpur | 2001-02 (October 2003) | Motor vehicle parts (12) | 7.16 | 0.86 |
| | | 2002-03 (October 2004) | | 4.35 | 0.52 |
| 3. | DC (A) TT Bahraich | 2003-04 (December 2005) | Motor vehicle parts (12) | 5.92 | 0.71 |
| | | 2004-05 (November 2006) | | 5.45 | 0.65 |
| 4. | DC (A) TT Basti | 2002-03 (March 2005) | Motor vehicle parts (12) | 9.60 | 1.15 |
| 5. | DC (A) ITT Lucknow | 2003-04 (April 2005) | Motor vehicle parts (12) | 6.77 | 0.81 |
| | | 2002-03 (July 2004) | Motor vehicle parts (12) | 1.66 | 0.20 |
| | | 2003-04 (June 2005) | Motor vehicle parts (12) | 3.72 | 0.45 |
| Total | | | | 105.98 | 7.80 |

After the cases were pointed out, the department stated between October 2007 and February 2008 that tax of Rs. 4.70 lakh in respect of Sl.No. 2, 4,5 and in one case (2003-04) of Sl. No.3 have been levied. A report on recovery and reply in the remaining cases has not been received (November 2008).

The matter was reported to the department and the Government between December 2005 to September 2007; their reply has not been received (November 2008).

2.3 Short levy of tax due to misclassification of goods

Under the UPTT Act, tax on classified goods is leviable as prescribed in the schedule of rates, notified by the Government from time to time. The goods not classified in the prescribed schedule of rates, are taxable at the rate of 10 per cent, with effect from 1 December 1998.

Test check of the records of nine trade tax offices between September 2005 and February 2008 revealed that in cases of nine dealers, the AAs while finalising the assessments for the years 2000-01 to 2005-06 between March

2005 and March 2007 applied incorrect rate of tax on sale of goods valued as Rs. 13.32 crore due to misclassification of goods. This resulted in short levy of tax of Rs. 96.79 lakh as mentioned below:

(Rupees in lakh)

| Sl. No. | Name of the unit | Assessment year (Month and year of assessment) | Nature of irregularity | Turnover | Rate of tax leviable levied (per cent) | Tax short levied |
|--------------|-----------------------|--|--|-----------------|--|------------------|
| 1. | DC (A) I TT Aligarh | 2000-01 (March 2005) | Nycil powder was treated as medicine instead of cosmetics. | 19.54 | $\frac{15}{8}$ | 1.37 |
| | | 2002-03 (March 2005) | | 853.19 | $\frac{16}{8}$ | 68.26 |
| 2. | DC (A) I TT Gorakhpur | 2004-05 (December 2006) | Preserved food articles were treated as sweetmeat and <i>namkeen</i> . | 32.12 | $\frac{12}{5}$ | 2.25 |
| 3. | AC Sec. VIII TT Agra | 2003-04 (May 2006) | Petroleum based oil was treated as an unserviceable item. | 16.57 | $\frac{20}{5}$ | 2.49 |
| 4. | DC (A) VII TT Kanpur | 2004-05 (March 2005) | Canvas cloth was treated as <i>Tat-patti</i> . | 15.14 | $\frac{10}{5}$ | 0.76 |
| 5. | DC (A) II TT Bareilly | 2003-04 (November 2005) | Poly urethane foam cutting sheet was treated as waste product. | 69.72 | $\frac{10}{5}$ | 3.49 |
| | | 2004-05 (March 2007) | | 65.71 | | 3.28 |
| 6. | DC (A) XIII TT Kanpur | 2003-04 (July 2005) | Synthetic resin was treated as chemical instead of resin. | 178.51 | $\frac{10}{4}$ | 10.71 |
| 7. | DC (A) VIII TT Noida | 2004-05 (March 2007) | Preserved food sold in sealed packets was treated as cooked food. | 42.08 | $\frac{12}{8}$ | 1.68 |
| 8. | DC (A) TT Modinagar | 2005-06 (October 2006) | Oil cake was treated as organic manure. | 21.41 | $\frac{10 \& 4}{\text{Nil}}$ | 1.44 |
| 9. | AC Sec VII TT Lucknow | 2004-05 (January 2007) | Electrical goods were treated as electronic goods. | 17.69 | $\frac{10}{4}$ | 1.06 |
| Total | | | | 1,331.68 | | 96.79 |

After the cases were pointed out, the department stated between September 2007 and September 2008 that tax of Rs. 14.64 lakh in cases of Sl. No. 3, 6 and 8 have been levied. A report on recovery and reply in the remaining cases has not been received (November 2008).

The matter was reported to the Government between April 2006 to March 2008; their reply has not been received (November 2008).

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

Under the UPTT Act, tax on classified goods, is leviable as prescribed in the schedule of rates, notified by the Government from time to time. Goods not classified in any schedule of rates, are taxable at the rate of 10 *per cent* with effect from 1 December 1998.

Test check of the records of five trade tax offices, between September 2005 and July 2007 revealed that the AAs while finalising the assessments of five dealers between January 2004 and December 2006, levied tax at lower rate on the turnover of Rs. 2.13 crore. This resulted in short levy of tax of Rs. 7.69 lakh as mentioned below:

(Rupees in lakh)

| Sl. No. | Name of the units | Assessment year (Month and year of assessment) | Name of the commodity | Turnover | Rate of tax leviable levied (<i>per cent</i>) | Amount of tax short levied |
|--------------|-----------------------|--|-----------------------|---------------|---|----------------------------|
| 1. | DC (A) V TT Ghaziabad | 2001-02 (January 2004) | Poly urethane foam | 62.52 | $\frac{16}{10}$ | 3.75 |
| 2. | DC (A) V TT Varanasi | 2002-03 (February 2005) | Auto tyre and tubes | 47.10 | $\frac{12}{08}$ | 1.88 |
| 3. | AC Sec I TT Sitapur | 2002-03 (March 2005) | PVC footwear | 13.25 | $\frac{08}{04}$ | 0.53 |
| 4. | DC (A) VII TT Kanpur | 2003-04 (January 2006) | Perfume | 20.17 | $\frac{16}{15}$ | 0.20 |
| | | 2004-05 (December 2006) | | 48.30 | $\frac{16}{15}$ | 0.48 |
| 5. | DC (A) XII TT Kanpur | 2002-03 (October 2004) | Auto tyre and tubes | 16.57 | $\frac{12}{08}$ | 0.66 |
| | | 2003-04 (June 2005) | | 4.68 | $\frac{12}{08}$ | 0.19 |
| Total | | | | 212.59 | | 7.69 |

After the cases were pointed out between December 2005 and July 2007, the department stated in November 2007 that the tax of Rs. 6.16 lakh have been levied in case of Sl. No. 1 to 3. A report on recovery and reply in the remaining cases has not been received (November 2008).

The matter was reported to the Government between December 2005 and July 2007; their reply has not been received (November 2008).

2.5 Non-imposition of penalty

2.5.1 Under the UPTT Act, a registered dealer, intending to import taxable goods from outside the State, shall furnish a declaration in form XXXI to the AA where such goods are intended to be imported from outside the State by road, rail, river or air. The importer shall not obtain delivery thereof unless he furnishes to the AA, the declaration in duplicate, duly filled in and signed by him for endorsement by such authority. In the event of violation of these provisions, the AA may direct that such dealer or person shall pay, by way of

penalty, a sum not exceeding 40 *per cent* of the value of goods, imported or three times of the tax leviable on such goods, whichever is higher. Further, the Commissioner, Trade Tax directed in October 2005 that timely penal action may be taken against import of goods, not supported with the declaration form.

Test check of the records of five trade tax offices between December 2005 and October 2007 revealed that six dealers imported goods from outside the State valued at Rs. 2,451.99 crore without declaration form XXXI. The AAs, while finalising between September 2004 and March 2007 the assessments for the years from 2002-03 to 2004-05 levied the tax but failed to impose the maximum penalty of Rs. 1,156.45 crore for unauthorised import of goods as mentioned below:

(Rupees in crore)

| Sl. No. | Name of the office | Assessment year (Month and year of assessment) | Value of the goods imported | Name of commodity | Maximum penalty leviable |
|--------------|------------------------------------|--|-----------------------------|--|--------------------------|
| 1. | DC (A) II TT Lucknow | 2002-03 (February 2007) | 767.83 | Superior kerosene oil, liquefied petroleum gas, furnace oil and naphtha | 347.19 |
| | | 2003-04 (June 2006) | 693.64 | | 345.52 |
| | | 2004-05 (March 2007) | 986.05 | | 461.95 |
| | | 2004-05 (March 2007) | 1.25 | Superior kerosene oil | 0.50 |
| 2. | AC Sec IX TT Varanasi | 2003-04 (March 2006) | 2.00 | Gold | 0.80 |
| 3. | DC (A) I TT Gautam Buddha Nagar | 2004-05 (November 2006) | 0.69 | Raw <i>agarbatti</i> , raw <i>agarbatti</i> material and packing material | 0.28 |
| 4. | DC (A) V TT Noida | 2004-05 (November 2006) | 0.30 | Spices, biscuits, Chowmein, pulses, rice, ice cream, sweets and consumables. | 0.12 |
| 5. | AC Sec XII TT Kanpur | 2002-03 (September 2004) | 0.23 | Raw material of <i>agarbattis</i> | 0.09 |
| Total | | | 2,451.99 | | 1,156.45 |

After the cases were pointed out, the department stated in January 2008 that penalty of Rs. 822.19 crore in three cases of Sl. No. 1 and in case of Sl. No. 5 have been imposed. Reply in the remaining cases has not been received (November 2008).

The matter was reported to the Government between July 2006 and February 2008; their reply has not been received (November 2008).

2.5.2 Under the provision of the UPTT Act, if the AA is satisfied that a dealer has concealed his turnover or has deliberately furnished incorrect particulars of his turnover, he may direct such dealer to pay by way of penalty, in addition to tax, a sum not less than 50 *per cent* but not exceeding 200 *per cent* of the amount of tax which would thereby have been avoided.

Test check of the records of 14 trade tax offices⁴, between December 2003 and February 2008 revealed that 17 dealers had concealed sales turnover of Rs. 170.62 crore between 1995-96 and 2004-05. The AAs while finalising between February 1999 and March 2006 the assessment for the years between 1995-96 and 2003-04 levied tax of Rs. 6.83 crore but did not impose minimum penalty of Rs. 3.41 crore. A few illustrative cases are mentioned below:

(Rupees in lakh)

| Sl. No. | Name of the unit | Assessment Year (Month and Year of assessment) | Concealed turnover | Name of the commodity | Tax levied on concealed turnover | Minimum penalty leviable |
|---------|----------------------|--|--------------------|-----------------------|----------------------------------|--------------------------|
| 1. | DC (A) VII TT NOIDA | 1997-98 (February 1999) ⁵ | 12,220.00 | Electronic goods | 241.07 | 120.54 |
| | | 2000-01 (February 2003) | 522.50 | | 5.13 | 2.56 |
| 2. | DC(A) VIII TT Agra | 2000-01 (March 2003) | 350.00 | Auto parts and shoes | 37.00 | 18.50 |
| | | 2001-02 (March 2003) | 2,500.00 | | 260.00 | 130.00 |
| 3. | AC Sec IX TT Meerut | 2003-04 (June 2005) | 450.00 | <i>Vanaspati Ghee</i> | 90.00 | 45.00 |
| 4. | AC TT Chandauli | 1995-96 (November 2004) | 258.76 | Coal | 11.95 | 5.97 |
| 5. | DC(A) I TT Moradabad | 2003-04 (November 2004) | 47.00 | Glue and tallow | 4.10 | 2.05 |
| | | 2003-04 (March 2006) | 14.57 | Cooked food | 1.12 | 0.56 |

After the cases were pointed out, the department stated between February 2006 and September 2008 that the penalty of Rs. 2.23 crore in 14 cases have been imposed. A report on recovery and reply in the remaining cases has not been received (November 2008).

The matter was reported to the Government between January 2004 and March 2008; their reply has not been received (November 2008).

⁴ DC (A) VI TT Agra, AC Sect. IV TT Aligarh, TTO Gr.II Bharthana, AC TT Chandauli, DC (A) TT Deoria, AC TT Gautam budh nagar, AC TT Mau, AC Sect. IX TT Meerut, DC (A) TT Mirzapur, DC (A) I TT Moradabad, AC Sect. I TT Muzaffarnagar, DC (A) VII TT Noida, DC (A) TT Shahjahanpur, AC Sect. I TT Sitapur.

⁵ The case was under litigation and was decided in September 2005.

2.5.3 Under the provisions of the UPTT Act, if the AA is satisfied that any dealer or other person, without reasonable cause, has failed to deposit the tax within the prescribed period, he may direct the dealer to pay by way of penalty, in addition to tax, if any, payable by him, a sum which shall not be less than 10 *per cent* but not exceeding 25 *per cent* of the tax due, if the tax due is upto Rs. 10,000 and 50 *per cent* if it is above Rs. 10,000.

Test check of the records of seven trade tax offices⁶ between November 2005 and March 2008 revealed that eight dealers, assessed between February 2005 and March 2007 for the years 1995-96 to 2003-04, did not deposit their admitted tax of Rs. 1.81 crore within the prescribed period. The delay ranged between one and 302 days and in four cases the delay was more than one month. Belated payment of admitted tax attracted minimum penalty of Rs. 18.08 lakh which was not imposed by the AAs.

After the cases were pointed out, the department stated between July 2007 and May 2008 that penalty of Rs. 22.15 lakh⁷ in seven cases have been imposed. A report on recovery and reply in the remaining cases has not been received (November 2008).

The matter was reported to the Government between December 2006 and March 2008; their reply has not been received (November 2008).

2.5.4 Under the UPTT Act, a person responsible for making payment to a contractor, for discharge of any liability on account of valuable consideration payable for the transfer of property in goods in pursuance of works contract, shall deduct an amount equal to four *per cent* of such sum, payable under the Act, on account of such works contract. In case of failure to deduct the amount or deposit the amount so deducted into the Government treasury before the expiry of the month, following the month in which the deduction was made, the AA may direct that such person shall pay by way of penalty a sum not exceeding twice the amount so deducted.

During test check of the records of nine trade tax offices, it was noticed between January 2007 and January 2008 that 11 dealers⁸, while making the payment to the contractors, deducted the tax of Rs. 49.79 lakh at source, during the years 2002-03 to 2004-05 but did not deposit the same in the Government treasury within the time prescribed. The delay ranged between one and 419 days and in four cases the delay was more than two months. The AAs while finalising (between December 2005 and March 2007) the

⁶ DC(A)V TT Agra, DC(A) II TT Allahabad, DC(A) VI TT Ghaziabad, DC(A) II TT Lucknow, DC(A) VI TT NOIDA, DC(A) I TT Saharanpur and DC(A) TT Sultanpur.

⁷ The AAs have levied more than minimum penalty in some cases.

⁸ Executive Engineer (EE) Rural Engineering Services Mirzapur Division, Rural Engineering Services Sonbhadra Division, Nagar Palika Saharanpur, Bridge Construction Division PWD Kanpur, PWD Orai Distt. Jalaun, Construction Division UP Jal Nigam Bijnaur, Rural Engineering Services Varanasi, National Highway Division-I PWD Varanasi, UP Samaj Kalyan Nigam Ltd. Banda and IRCON International Bareilly.

assessments failed to impose the maximum penalty of Rs. 99.58 lakh as mentioned below:

(Rupees in lakh)

| Sl. No. | Name of office | Assessment Year (Month and year of assessment) | Amount of tax | Maximum penalty leviable |
|--------------|------------------------|---|---------------|--------------------------|
| 1. | AC Sec II TT Mirzapur | 2003-04 (March 2006) | 0.39 | 0.78 |
| | | 2004-05 (March 2007) | 1.64 | 3.28 |
| 2. | AC Sec I TT Sonbhadra | 2004-05 (March 2007) | 1.86 | 3.72 |
| 3. | AC Sec I TT Saharanpur | 2004-05 (February 2007) | 4.03 | 8.06 |
| 4. | AC Sec II TT Banda | 2003-04 (September 2006) | 3.58 | 7.16 |
| 5. | AC Sec XII TT Kanpur | 2004-05 (November 2006) | 3.10 | 6.20 |
| 6. | AC Sec I TT Orai | 2003-04 (February 2006) | 2.40 | 4.80 |
| 7. | AC TT Bijnaur | 2003-04 (December 2005) | 1.75 | 3.50 |
| 8. | AC Sec IX TT Varanasi | 2003-04 (March 2006) | 8.23 | 16.46 |
| | | 2004-05 (March 2006) | 10.01 | 20.02 |
| | | 2002-03 (October 2006) | 3.05 | 6.10 |
| | | 2003-04 (March 2006) | 4.11 | 8.22 |
| | | 2002-03 (March 2006) | 0.78 | 1.56 |
| | | 2003-04 (March 2006) | 3.33 | 6.66 |
| 9. | DC (A) III Bareilly | 2003-04 (January 2005) | 0.97 | 1.94 |
| | | 2004-05 (March 2007) | 0.56 | 1.12 |
| Total | | | 49.79 | 99.58 |

After the cases were pointed out, between March 2007 and February 2008 the department stated in September 2008 that penalty of Rs. 8.86 lakh in two cases has been imposed. A report on recovery and reply in the remaining cases has not been received (November 2008).

The matter was reported to the Government between March 2007 and February 2008; their reply has not been received (November 2008).

2.5.5 Under the provisions of the Central Sales Tax Act, 1956 (CST Act), if a registered dealer purchases any goods from outside the State at concessional rate of tax, on the strength of declaration in form C by falsely representing that such goods are covered by his registration certificate (RC) under the CST Act or if the goods purchased from outside the State at concessional rate of tax, are used for the purpose other than that for which the RC was granted, the dealer is liable to be prosecuted. However, in lieu of prosecution, if the AA deems it fit, he may impose a penalty upto one and half times of the tax, payable on the sale of such goods.

Test check of the records of 13 trade tax offices between June 2006 and February 2008 revealed that during the years 2003-04 to 2004-05, 13

dealers purchased goods valued as Rs. 5.29 crore, at concessional rate of tax, against declaration in form C. As the items purchased by the dealers were not covered by their RCs or disposed of for the purpose not mentioned in the RCs, the dealers were liable to pay penalty upto Rs. 89.49 lakh as mentioned below:

(Rupees in lakh)

| Sl. No. | Name of the unit | Assessment year (Month and year of assessment) | Name of the commodity/ Rate of tax (per cent) | Amount of purchase | Penalty leviable |
|--------------|-------------------------------|--|--|--------------------|------------------|
| 1. | AC Sec IX TT Kanpur | 2004-05 (March 2006) | Chemical (10) | 154.54 | 23.18 |
| 2. | DC (A) VIII TT Lucknow | 2003-04 (March 2006) | Plastic sheet (10) | 6.47 | 0.97 |
| 3. | AC Sec II TT Jhansi | 2004-05 (May 2006) | Motor chassis (12) | 17.24 | 3.10 |
| 4. | DC (A) I TT Rampur | 2003-04 (February 2006) | Tiles, furniture, signboard, equipments, plant and machinery (16 and 10) | 6.00 | 0.96 |
| 5. | AC Sec I TT Kanpur | 2004-05 (August 2005) | Adhesive (12) | 48.65 | 8.76 |
| 6. | DC(A) IV TT Noida | 2003-04 (March 2006) | Plastic granules and Nitrogen gas (10 and 12) | 65.43 | 9.97 |
| 7. | DC (A) XX TT Kanpur | 2004-05 (January 2007) | Power oil (20) | 53.24 | 15.97 |
| 8. | DC (A) III TT Bareilly | 2004-05 (March 2007) | Nickel screen, plastic liner, polythene and stationery (10) | 18.15 | 2.72 |
| 9. | DC (A) I TT Gautam Budh Nagar | 2004-05 (March 2006) | Mineral, tin container and plastic container (10) | 28.93 | 4.34 |
| 10. | DC (A) TT Etah | 2004-05 (March 2007) | Generator set (10) | 18.30 | 2.75 |
| 11. | AC Sec XIX TT Kanpur | 2004-05 (September 2007) | Plant and machinery, generator (10) | 51.44 | 7.72 |
| 12. | AC Sec VII TT Lucknow | 2004-05 (March 2007) | Mini colour lab machine (10) | 59.28 | 8.89 |
| 13. | DC (A) X TT Agra | 2003-04 (October 2005) | Machine and Coromix moulding (10) | 1.09 | 0.16 |
| Total | | | | 528.76 | 89.49 |

After the cases were pointed out, the department stated between April 2007 and January 2008 that the penalty of Rs. 47.01 lakh in seven cases had been imposed. A report on recovery and reply in the remaining cases has not been received (November 2008).

The cases were reported to the Government between July 2006 and March 2008; their reply has not been received (November 2008).

2.6 Non-charging of interest

Under the provisions of the UPTT Act, every dealer liable to pay tax, is required to deposit the amount of tax into the Government treasury before the expiry of the month, following the month in which the tax was due. The tax admittedly payable by the dealer, if not paid by the due date, attracts interest at the rate of two *per cent* per month upto 11 August 2004 and thereafter at the rate of 14 *per cent* per annum on the unpaid amount, till the date of deposit.

Test check of the records of five trade tax offices between May 2004 and October 2007 revealed that in case of five dealers, assessed between December 2003 and March 2007, admitted tax of Rs. 43.10 lakh was deposited late. The delay ranged from six to 1,196 days and in three cases, the delay was more than 30 months. Belated payment of admitted tax attracted interest of Rs. 17.33 lakh, which was not levied by the AAs as mentioned below:

(Rupees in lakh)

| Sl. No. | Name of the Office | Assessment year (Month and year of assessment) | Admitted tax | Interest leviable |
|--------------|----------------------------|--|-----------------|----------------------|
| 1. | DC (A) I TT Orai | 2005-06 (March 2007) | 23.16 | 5.51 |
| 2. | DC (A) TT Ambedkarnagar | 2003-04 (March 2006) | 7.36 | 3.75 |
| 3. | DC (A) IV TT Saharanpur | 2002-03 (March 2005) | 5.19 | 3.53 |
| 4. | AC Sec IX TT Ghaziabad | 2001-02 (March 2004) | 5.33 | 3.35 |
| 5. | DC (A) TT Mirzapur | 2001-02 (December 2003) | 2.06 | 1.19 |
| Total | | | 43.10 | 17.33 |

After the cases were pointed out, the department stated in August 2007 and September 2008 that interest of Rs. 6.70 lakh has been levied in two cases of Sl. No. 1 and 5. The department has recovered Rs. 2.58 lakh out of Rs. 5.51 lakh in case of Sl. No. 1. A report on recovery of the balance amount and reply in the remaining cases has not been received (November 2008).

The matter was reported to the department and the Government between July 2004 and December 2007; their reply has not been received (November 2008).

2.7 Irregular exemption

2.7.1 Section 8(5) of the CST Act, amended from 13 May 2002 (read with the Commissioner's circular dated 27 May 2002) provides that benefit of exemption from or reduction in rate of tax on inter state sales of goods is admissible only on submission of declarations in form C and D. Further, such benefit on ISS is admissible to new units covered by notification issued under Section 4A of the UPTT Act.

Test check of the records of five trade tax offices between October 2005 and July 2007 revealed that during the years 2002-03, 2003-04 and 2004-05, five dealers, holding eligibility certificates (ECs) made inter state sales of self

manufactured goods valued at Rs. 5.25 crore without declaration in form C. The AAs assessed the tax and allowed exemption under Section 4A of Rs. 35.03 lakh. This resulted in irregular exemption of Rs. 35.03 lakh as mentioned below:

(Rupees in lakh)

| Sl. No. | Name of unit | Assessment year (Month and year of assessment) | Name of the commodity | Amount of ISS without form C | Tax levied | Exemption allowed |
|--------------|---------------------------------|--|---|------------------------------|--------------|-------------------|
| 1. | DC (A) IV TT Ghaziabad | 2004-05 (March 2007) | Soft drinks, mineral water and beverages. | 249.00 | 32.40 | 16.20 |
| 2. | DC (A) TT Gulawati Bulandshahar | 2002-03 (February 2005) | Whey powder and casin | 162.65 | 16.26 | 12.20 |
| 3. | DC (A) VII TT Kanpur | 2003-04 (October 2006) | Multilayer polyfilm | 66.80 | 6.68 | 4.91 |
| 4. | DC (A) IV TT Noida | 2002-03 (February 2005) | Aeroseal valve and pump spares | 43.11 | 4.31 | 1.08 |
| 5. | DC (A) I TT Sitapur | 2002-03 (March 2005) | Molasses | 3.21 | 0.64 | 0.64 |
| Total | | | | 524.77 | 60.29 | 35.03 |

After the cases were pointed out, the department stated in June 2007 that tax of Rs. 12.84 lakh has been levied in two cases of Sl. No.2 and 5. A report on recovery and reply in the remaining cases has not been received (November 2008).

The matter was reported to the department and the Government between December 2005 and February 2008; their reply has not been received (November 2008).

2.7.2 By a notification issued in January 2001, tax on sale of timber, imported from outside India, is leviable at the rate of 20 *per cent* with effect from 1 February 2001. Further, sale of bullock cart is exempted from tax.

Test check of the records of office of AC Sector XI, TT, Lucknow revealed in February 2005 that a dealer imported timber from outside India valued as Rs. 30.76 lakh during the year 2001-02 for use in manufacture of bullock carts. However, scrutiny of the assessment records of the dealer revealed that he did not manufacture the bullock cart and instead sold the timber in the same form and condition, which was taxable at the rate of 20 *per cent* under the aforesaid notification. The AA while finalising the assessment in March 2003 did not detect it and granted exemption from payment of tax. This resulted in irregular availment of exemption of tax of Rs. 6.15 lakh.

After the case was pointed out, the department stated in October 2006 that tax of Rs. 9 lakh has been levied on sale of imported timber valued as Rs. 45 lakh⁹. A report on recovery has not been received (November 2008).

The matter was reported to the Government in December 2005; their reply has not been received (November 2008).

⁹ The AA enhanced the turnover and levied the tax accordingly.

2.8 Non/short levy of entry tax

Under the UP Tax on Entry of Goods Act, 2001, entry tax on value of goods is leviable as per schedule of rates notified by the Government from time to time.

Test check of the records of nine trade tax offices between June 2005 and February 2008, revealed that in seven cases, the AAs while finalising between February 2005 and March 2007 the assessments for the years 2002-03 to 2004-05 did not levy entry tax of Rs. 9.61 lakh on the purchase of cement, coal, machinery, wax, paper and diesel and in two cases, on the purchase of diesel, it was short levied by Rs. 29.80 lakh. This resulted in non/short levy of entry tax of Rs. 39.41 lakh as mentioned below:

(Rupees in lakh)

| Sl. No | Name of the unit | Assessment year (Month and year of assessment) | Name of the commodity | Value of the commodity | Rate of entry tax (per cent) | Amount of tax short/non levied |
|--------------|-----------------------------|---|-----------------------|------------------------|---------------------------------|--------------------------------|
| | | | | | leviable levied | |
| 1. | AC Sec VII TT Lucknow | 2004-05 (March 2007) | Machinery | 59.28 | $\frac{2}{--}$ | 1.19 |
| 2. | DC (A) TT Faizabad | 2004-05 (March 2007) | Coal | 109.78 | $\frac{2}{--}$ | 2.20 |
| 3. | DC (A) TT Gautam Budh Nagar | 2004-05 (October 2006) | Wax and Paper | 16.06 | $\frac{4}{--}$ | 0.64 |
| 4. | DC (A) XII TT Lucknow | 2004-05 (May 2006) | Diesel | 22.46 | $\frac{5}{--}$ | 1.12 |
| 5. | DC (A) Karvi Chitrakoot | 2003-04 (March 2006) | Cement | 120.92 | $\frac{2}{--}$ | 2.42 |
| 6. | DC (A) TT Balrampur | 2003-04 (March 2006) | | 60.49 | $\frac{2}{--}$ | 1.21 |
| 7. | DC (A) TT Mirzapur | 2002-03 (February 2005) | Machinery | 41.48 | $\frac{2}{--}$ | 0.83 |
| 8. | DC (A) TT Sultanpur | 2004-05 (March 2007) | Diesel | 773.22 | $\frac{5}{2}$ | 23.20 |
| 9. | AC Sec I TT Hathras | 2004-05 (March 2007) | | 219.95 | $\frac{5}{2}$ | 6.60 |
| Total | | | | 1,423.64 | | 39.41 |

After the cases were pointed out, the department stated between September 2007 and February 2008 that entry tax of Rs. 34.26 lakh have been levied in five cases. A report on recovery and reply in the remaining cases has not been received (November 2008).

The matter was reported to the Government between August 2005 and March 2008; their reply has not been received (November 2008).