

CHAPTER – II

TRADE TAX DEPARTMENT

2.1 Results of audit

Test check of assessments and other records of Trade Tax Offices, conducted in audit during 2002-03 revealed under-assessment of tax, non-levy or short-levy of penalty/interest, irregular exemption of tax etc. amounting to Rs.1734.08 crore in 1514 cases, which broadly fall under the following categories:

(Rupees in crore)

Sl. No.	Categories	No. of cases	Amount
1	Non-levy or Short-levy of penalty/interest	512	13.02
2	Irregular exemption	192	2.11
3	Non-levy of additional tax	49	0.19
4	Incorrect rate of tax	124	0.68
5	Misclassification of Goods	68	6.36
6	Turnover escaping tax	85	1.21
7	Irregularities relating to Central Sales Tax	55	14.83
8	Under-assessment of tax	70	0.05
9	Other irregularities	359	1695.63
	Total	1514	1734.08

During the year 2002-03, the department accepted under-assessment etc. of Rs.3.60 crore involved in 125 cases of which Rs.27.59 lakh involving 56 cases had been pointed out in audit during 2002-03 and the rest in earlier years. Of this, a sum of Rs.5.48 lakh involved in 34 cases had been recovered upto March 2003.

A few illustrative cases involving Rs. 1,236.90 crore are mentioned in the succeeding paragraphs:

2.2 Incorrect grant of eligibility certificate to New Industrial Units

2.2.1 Under Section 4-A of the U.P. Trade Tax Act, 1948, (Act) read with Section 8(5) of the Central Sales Tax (CST) Act, 1956, the State Government notified scheme to grant exemption from or reduction in rate of tax to new industrial units

and the existing units undertaking expansion or modernisation and diversification on or after 1 April 1995. The monetary limit for exemption or reductions from tax available to the existing units undertaking expansion or diversification was only to the extent of additional fixed capital investment (FCI). It has also been judicially* held that exemption to such units is limited only to the extent of additional FCI.

In nine Trade Tax Circles,* it was noticed that 34 existing units undertaking expansion or diversification on or after 1 April 1995 were granted eligibility certificate allowing exemption or reduction in tax amounting to Rs.1441.39 crore, varying between 150 to 250 per cent of the additional FCI of Rs.936.68 crore instead of restricting it to 936.68 crore. The allowance of exemption or reduction from tax amounting to Rs.504.71 crore was, therefore, irregular.

The matter was reported to the Department and Government between February 2003 and October 2003; their replies have not been received (November 2003).

2.2.2 Under the provisions of clause (C) of Section 4-A (2) of the Act read with Government notifications issued on 27 July 1991 and 31 March 1995, the exemption or reduction in rate of tax is to be allowed to such units which have undertaken to diversify production to goods of a nature different from those manufactured by the units earlier. Further, to increase production of two wheeler automobiles in the State, the Government vide notification dated 19 July 1996 allowed exemption to such units intending to invest a fixed capital of Rs.50 crore or more with effect from 1 December 1994 for establishing a new unit or for expansion or diversification under a new foreign collaboration approved by the Government of India. The Commissioner, Trade Tax, U.P. also clarified vide circular dated 13 August 2001 that black and white T.V. and colour T.V. were goods of a similar nature.

In six Trade Tax Circles (Ghaziabad, Gorakhpur, Kanpur, Meerut, Moradabad and Varanasi) it was noticed that eight units were granted eligibility certificates for diversification of industries into such goods which were similar and identical to those goods which were already being manufactured by such units. Thus, grant of eligibility certificate under diversification in violation of existing provisions of the Act/notification resulted in grant of excess exemption of Rs.149.51 crore as detailed below:

(Rupees in crore)

S.N.	Name of Circle	Period of exemption	Name of goods manufacturing previously by the unit	Name of goods manufacturing under diversification	Amount of exemption allowed through grant of Eligibility Certificate
(1)	(2)	(3)	(4)	(5)	(6)
1	AC(A)1, Kanpur	10 June 1995 to 9 June 2003 28 March 1996 to	Ball point pen and refill	Retracting ball point pen and middle point pen, roller ball point pen and transparent pen	3.48

* M/s Kajaria Ceramics Ltd. Vrs Commissioner Trade Tax (2000 NTN (Vol. 16) -89, Allahabad High Court) (Decided on 13.01.1999).

* Agra, Allahabad, Ghaziabad, Gorakhpur, Kanpur, Meerut, Moradabad, Noida & Varanasi.

		27 March 2004			
<i>Remarks: Asstt. Commissioner (A)-1, Kanpur, vide letter dated 23 July 2002 has stated that needle point pen, roller ball point pen and ball point pen are the same nature goods</i>					
2	AC(A)5, Kanpur	6 May 1999 to 5 May 2007 22 September 1996 to 21 September 2004	Motorised two wheelers up to 350 CC Engine Capacity	Scooter 85 CC (two stroke) Scooter 125 CC (4 Stroke), Motorised two wheeler 125 CC Engine capacity	54.01 51.24
<i>Remarks: AC(A)-5, Kanpur, vide letter dated 27 March 1998 has stated that scooter manufactured in diversification are similar in nature to those manufactured earlier. Moreover, manufacture of scooter under diversification was under same foreign collaboration.</i>					
3	AC(A)10, Kanpur	23 September 1994 to 22 October 2004	Paint	Primer	10.27
4	AC(A)4, Meerut	17 March 2000 to 16 March 2008	Paper board of all varieties, uncoated craft paper & paper board in rolls or sheet	Duplex Board and Craft Board	4.12
5	AC(A)6, Meerut	29 September 1995 to 28 September 2003	Paper & paper Board	Paper and Paper Board of all varieties	6.16
<i>Remarks: Government of India had previously issued industrial licence dated 30 November 1989 to manufacture paper and paper board and after diversification the said licence dated 31 August 1994 has been issued for paper and paper board of all varieties</i>					
6	AC(A)-1, Gorakhpur	13 November 1996 12 November 2004	M.S. Ingot, Saria, M.S. iron Bar, M.S. Structurals	M.S. Bar, M.S. Structurals and M.S. rolls	4.09
7	AC(A)-2, Moradabad	24 March 1999 to 23 March 2009	Tissue and special paper writing, absorbing craft and variety printing paper	Paper and Paper board, Craft liner, Duplex Board	15.00
<i>Remarks: AC(A)-2, Moradabad had also clarified the fact that the products which were manufactured previously and under diversification were similar in nature.</i>					
8	AC(A)-3, Varanasi	28 August 1997 to 27 August 2005	Mill board	Grey Board, Craft Board, Duplex Board, uncoated craft paper and mill board	1.14
Total:					149.51

The matter was reported to the Department and Government between February 2003 and October 2003; their replies have not been received (November 2003).

2.2.3 Under notification dated 21 February 1997, Government introduced a scheme providing exemption from tax to new units intending to invest a fixed capital of Rs.50 crore or above for establishing new units or undertaking expansion, diversification, modernization or backward integration from 1 December 1994 with certain conditions as specified therein. The facility was, however, not admissible simultaneously to such units, which were already enjoying such benefit of exemption under any other notification issued under Section 4-A of the Act for these purposes.

In Trade Tax Circle, Ghaziabad, it was noticed that a unit engaged in manufacturing Iron and Steel was granted eligibility certificate on 23 December 1995 for exemption/reduction of tax of Rs.63.44 crore for undertaking expansion, modernisation and diversification in goods during the period from 19 January 1994 to 2 September 2002 under notification dated 27 July 1991. The unit was, however, again granted eligibility certificate on 22 August 2001 under notification dated 21 February 1997 for expansion allowing exemption of tax of Rs.394.14 crore for 15 years from 31 December 1998, out of which tax relief of Rs.33.68 crore had been availed of by the unit during the years 1998-99 to 2000-01. As the unit was already availing the benefit of exemption/reduction of tax on account of expansion undertaken under notification dated 27 July 1991 issued under Section 4-A of the Act, the issuance of eligibility certificate for further expansion under notification dated 21 February 1997, was irregular. This resulted in incorrect allowance of exemption of tax amounting to Rs.394.14 crore.

The matter was reported to the Department and Government between February 2003 and October 2003; their replies had not been received (November 2003).

2.3 Registration of dealers without obtaining adequate security

Section 8-C (3) of the Act provides for collection of sufficient security from each dealer not exceeding the amount equal to the tax payable on his estimated turnover for the assessment year before granting registration certificate. If in the opinion of Assessing Authority the security is inadequate, he may ask for additional security even after issue of registration certificate which may be forfeited as a whole or any part for realizing any amount of tax, penalty etc. and ask the dealer to recoup within a prescribed time. If the required additional security is not furnished by the dealer within the time allowed, the Assessing Authority may cancel the registration certificate.

Test check of registration and assessment records of 11 circles/sectors[^] revealed that in the cases of 56 dealers, tax and penalty etc. of Rs.87.20 crore for the period from 1997-98 to 2001-02 remained unrealized. The department had obtained total security of Rs.12.30 lakh only at the time of registration of dealers in 47 cases. Though the security deposited by these dealers was inadequate in comparison to their tax liability in subsequent years, Department failed to ask the dealers to pay additional security equal to tax payable or to forfeit the security paid and get it recouped in the interest of revenue. In the mean time, the dealers who were to pay tax of Rs. 87.20 crore had either closed down their business or had their registration certificates cancelled by the Department. As such, the Government was deprived of revenue amounting to Rs. 87.20 crore.

[^] Banda, Bareilly, Ghaziabad, Jhansi, Kanpur, Meerut, Moradabad, Noida, Orai, Sonbhadra, Varanasi

A few cases by way of illustrations are as under:

(Rupees in crore)

S. N.	Name of the Offices	Name of the dealers	Amount due	Year of assessment		Remarks
				Month of assessment		
1	AC (A) Sardhana Mandal, Meerut	<i>M/s Royal Agency</i>	8.22	1997-98 to 1999-2000 May 2000 and January 2002		Business closed in March 1999
2	AC (A) Sonebhadra	<i>M/s The U.P. State Cement Corporation, Churk</i>	8.13	1997-98 to 1998-99 March 2000 and March 2001		Business closed in March 1997
3	AC (A) 4, Ghaziabad	<i>M/s Baron International Ltd.</i>	7.27	1997-98 to 2000-01 March 2001 and October 2001		Registration cancelled in January 2002
4	AC (A) 4, Ghaziabad	<i>M/s Biochem Electronics Pvt. Ltd.</i>	5.43	1998-99 to 2001-02 June 2000 and November 2001		Registration cancelled in December 2001
5	TTO, Sector-8, Meerut	<i>M/s Gold Star Sales Agency</i>	3.58	1997-98 to 1999-2000 March 2000		Business closed in August 1999
6	TTO, Sector-21, Kanpur	<i>M/s Idol Commerce Pvt. Ltd.</i>	2.30	1997-98 to 1998-99 March 1999 and August 2000		Business closed in March 1999
7	TTO, Sector-I, Jhansi	<i>M/s Ma Sharda Enterprises</i>	2.22	1997-98 to 1999-2000 Nov. 1998 and Oct. 2002		Business closed in October 1999
8	AC (A), G.B. Nagar	<i>M/s Sakura Samatsu</i>	2.17	1997-98 to 1998-99 December 1998 and May 2001		Business closed in March 1998
9	AC (A) 7, Noida	<i>M/s J.R. Consumer Electronic Pvt. Ltd.</i>	1.98	1997-98 to 1998-99 Feb. 1999 and March 2001		Business closed in April 2001

The matter was reported to the Department and Government between February and June 2003; their replies had not been received (November 2003).

2.4 Non-registration of dealers

The Act provides that if the dealer fails to get himself registered under the Act, the dealer is liable to pay a penalty of Rs.100 for each month or part thereof for the default during the first three months and Rs.500 per month for the months of the year. The Commissioner of Trade Tax vide Circular dated 8 April 1997 issued instructions that Assessing Authority should obtain necessary information regarding trade tax from the State Excise Department in respect of vendors and wholesale sellers of country liquor/IMFL for further action as deemed fit.

2.4.1 Cross verification of the records of nine District Excise Officers with the respective Trade Tax sectors revealed that during 2001-02, 565 dealers[♦] of Bhang,

[♦] Banda (14), Ghaziabad (109), Jhansi (46), Meerut (94), Moradabad (44), Kanpur Nagar (88) / Dehat (25), Orai (45) and Varanasi (100).

IMFL and beer who were given licences to run the vends were not registered in Trade Tax Department. As there was no co-ordination between the Trade Tax Department and the State Excise Department, the concerned Assessing Officers did not obtain information from Excise Department regarding new dealers, the Excise Department also did not furnish the same to Trade Tax Department. As these dealers carried on their business during 2001-02 without getting themselves registered, they were liable to pay penalty amounting to Rs.27.12 lakh.

2.4.2 Cross verification of records of District Mines Officer, Orai and Trade Tax Officer, Sector-I & II, Orai revealed that District Mines Officer had given 67 sand mines on lease for extraction of 27.17 lakh cu.m sand valued at Rs.19.02 crore during the period from 1999-2000 and 2001-02. As the Trade Tax Officers failed to obtain information regarding dealers from Mining Department, these dealers remained unregistered. Thus, the Department had to forego revenue of Rs.1.43 crore on account of trade tax, besides penalty of Rs.3.22 lakh.

The matter was reported to the Department and Government between February and June 2003; their replies have not been received (November 2003).

2.5 Incorrect grant of exemption to ineligible units

2.5.1 It has been judicially* held that a unit engaged in the manufacture of tax-free goods is not entitled to exemption of tax on bye-products/waste products.

In Trade Tax Circle, Deoria, it was noticed that a unit engaged in manufacture of sugar (tax-free) was granted eligibility certificate on 26 June 2000 and 2 November 2002 allowing exemption, of tax of Rs.44.71 crore on sale of molasses, bagasse and press-mud which were by-products of sugar. This resulted in incorrect grant of exemption of tax of Rs.44.71 crore.

2.5.2 As per Annexure –II of Government notification dated 27 July 1991 and clarification issued by Commissioner, Trade Tax on 22 July 1999, a unit refining oil after purchase of oil from market is not eligible for exemption of tax. Similarly, vide notification issued on 14 June 1996, units engaged in manufacturing coal, including coke in all forms and charcoal were also declared ineligible for such exemption.

In two Trade Tax Circles (Varanasi and Gorakhpur), it was noticed that two units manufacturing hard coke and refined edible oil were granted eligibility certificate on 28 April 1999 and 15 May 1997 allowing exemption in tax amounting to Rs.1.28 crore and Rs. 1.46 crore respectively. This resulted in incorrect grant of exemption of Rs.2.74 crore to ineligible units.

* Kishan Sahakari Chini Mill Ltd. Nainital V/s State of U.P. (STI-1989 Page-294- Alld. H.C.)

The matter was reported to the Department and Government between February 2003 and October 2003; their replies had not been received (November 2003).

2.6 Exemption from tax due to irregular notification

Section 8(5) of the CST Act empowers the State Government to issue notifications for grant of exemption or reduction in rate of tax during the course of inter-state sale of goods covered under Section 8(1) or (2) of the Act. Inter-state sale of Atta, Maida, Suji manufactured from wheat, on which tax has been paid under the State Act, is taxable at the rate of 2.5 per cent under Section 8(2-A) of the Act and as such State Government is not empowered to issue notification under Section 8(5) on its sale.

In seven Trade Tax Circles[#] it was noticed that Assessing Authority while finalizing the assessment for the year 1994-95 to 2000-01 between September 1997 to October 2002 allowed incorrect exemption of tax on inter-state sale of atta, maida and suji valued at Rs. 400.79 crore on which rate of tax applicable ranged between 2 to 2.5 per cent during these years. The exemption from tax was allowed by the Assessing Authorities in view of the notification dated 31 March 1993 issued by the State Government under Section 8 (5) of Act, which was beyond delegated powers of government. This resulted in irregular exemption from tax amounting to Rs.10.02 crore.

The matter was reported to the Department and Government between February and June 2003; their replies had not been received (November 2003).

2.7 Irregular allowance of exemption

2.7.1 The Government vide notification issued on 31 March 1995 allowed concession of 25 per cent in trade tax to such units which are registered under Factory Act, 1948 and provide employment to persons belonging to Scheduled Castes (SC)/ Tribes (ST) or Other Backward Classes (OBC) and minorities. This concession is subject to production of certificate issued by District Magistrate that persons employed belong to such communities and also from Asstt. Labour Commissioner to the effect that such units have provided employment to persons belonging to SC/ST or OBC in the required proportion.

In Trade Tax Circles at Kanpur and Agra, it was noticed that two units were allowed concession in tax of Rs.62.39 lakh during the years 1997-98 to 1999-2000 by Assessing Authorities on the plea that units had provided employment to persons belonging to above communities, but the required certificates were neither obtained nor called for from the units while finalising the assessment. This resulted in irregular exemption amounting to Rs.62.39 lakh.

[#] Agra, Deoria, Gorakhpur, Kanpur, Meerut, Moradabad & Varanasi

2.7.2 The Act and CST Act provide for exemption from or reduction in rate of tax to new industrial units on the sale of manufactured goods within the State and during the course of inter- state trade or commerce subject to production of declaration forms as prescribed in the Act. It has been clarified by the Commissioner Trade Tax on 15 February 2001 that exemption limit of units availing exemption is to be reduced at the normal rate of tax.

In three Trade Tax Circles (Kanpur, Meerut and Noida), it was noticed that the Assessing Officers, while finalising the assessment cases of seven new units for the years 1998-99 and 1999-2000 between January 2001 to July 2002, allowed exemption from tax on sales turnover of Rs.49.77 crore at the concessional rate and adjusted the same against exemption limit instead of at normal rate of tax. Incorrect computation/adjustment of amount of exemption from tax resulted in excess benefit to dealers amounting to Rs.4.23 crore.

2.7.3 It was noticed that a dealer of Ghaziabad availing exemption or reduction of tax was having balance of Rs.1.04 crore as on 31 March 2000. While finalizing the assessment for the year 2000-01, the Assessing Authority worked out tax amounting to Rs.1.68 crore and adjusted the same against the balance limit of Rs.1.04 crore. The Assessing Authority instead of demanding tax of Rs.0.64 crore had shown the balance amount of Rs.0.64 crore as monetary limit available to dealer. This resulted in excess exemption and thus, non-recovery of Rs.0.64 crore.

2.7.4 Under Section 6-A of the CST Act, stock transfer of goods by any dealer to any other place of his business (branch) or to his agent or principal covered by declaration in Form 'F' is exempt from payment of tax. Otherwise, it would be deemed to be an inter-state sale. It has judicially been held[♦] that if the stock has directly been transferred from factory to the purchaser and billing made by Office Headquarters', it would be an inter- state sale.

During audit of Assistant Commissioner (Assessment) Trade Tax, Sardhana, it was noticed that in 1998-99, a dealer had transferred stock of Indian Made Foreign Liquor valued at Rs.1.12 crore to another dealer outside the state and the Assessing Authority allowed exemption from payment of tax treating it as stock transfer. As the consignment was not sent by the dealer to his own branch office, the exemption allowed was irregular. This resulted in non-levy of tax of Rs.36.28 lakh.

The matter was reported to the Department/Government in February 2002 and October 2003; their replies had not been received (November 2003).

2.7.5 Under the provisions of the CST Act, inter-state sale or purchase of goods effected by a transfer of documents of title to the goods during their movement from

[♦] Commissioner of Commercial taxes V/s Goodwill Point Industries, Alwar (Rajasthan) (STRP-No. 39/94 (R.T.T. No. 231/96) STI-June-1999 Part-12 Page-17, Rajasthan High Court decided on dated 3.12.1998

one State to another, is exempted from payment of tax. It has judicially been held[¶] that for obtaining above exemption Form 'C' is mandatory with Form 'E1'.

During the audit of Assistant Commissioner (Assessment)-8, Trade Tax, Kanpur, it was noticed that a dealer had purchased polyester staple fiber valued at Rs.96.37 crore during the year 1998-99 from Barabanki and treated it as inter-state sale by transfer of documents of title to the goods during their movement from Barabanki to Kanpur covered by declaration in Form E 1 only instead of E 1 and C. As the movement of goods was only within the state, exemption from payment of tax was irregular. This resulted in short levy of tax of Rs.2.41 crore.

On this being pointed out in audit, the Department raised demand of tax of Rs.2.41 crore in November 2002. Further reply was awaited (November 2003).

The matter was reported to the Government in October 2001 and October 2003; their reply was awaited (November 2003).

2.7.6 Section 12 - A of the Act read with Rule framed thereunder provides that burden of proving the existence of circumstances bringing a case within exemptions from tax, shall lie upon the dealer[¶]. In case of failure to discharge burden of proof properly, the Assessing Officer shall presume the absence of such circumstances and levy tax accordingly.

- In Trade Tax Circle, Ghaziabad, it was noticed that a dealer had declared sales turn-over of IMFL valued at Rs.8.61 crore during the year 1999-2000 in his books of account and claimed exemption from tax on Rs.1.75 crore as discount allowed to customers which was not supported by any document. The Assessing Authority while finalizing assessment had also allowed the same which was irregular. This resulted in short levy of tax of Rs.56.78 lakh.
- In Trade Tax Circle, Noida, it was noticed that a dealer engaged in manufacturing of printed colour cartons declared his sales valued at Rs.15.29 crore during the year 1999-2000 and claimed exemption from tax on sale of magazines valued at Rs.2.54 crore. As the dealer was neither manufacturer of magazines nor was there any evidence of purchases of raw materials and expenses made on printing charges etc. , the exemption allowed was irregular. This resulted in short levy of Rs.24.02 lakh.

The matter was reported to the Department and Government between February 2003 and October 2003; their replies had not been received (November 2003).

[¶] M/s Swastic Sales Corporation Agra V/s Commissioner of Sales Tax Uttar Pradesh, Lucknow (STI-1996 Allahabad High Court-281 STR-201 & 202 of 1993 decided on dated 16 January 1996).

[¶] Bharat Industrial Corporation V/s CST (STI 2000 Alld. H.C. 175)

2.8 Non/short – levy of Central Sales Tax

Under the CST Act, tax on inter-state sale of goods not covered by declaration forms 'C' or 'D' is leviable at the rate of 10 per cent or at the rate applicable on sale or purchase of such goods inside the state, whichever is higher. In case of sale of goods which are taxable at a rate lower than 4 per cent, the tax shall be nil or calculated at the lower rate as the case may.

In Seven Trade Tax Circles, it was noticed that in 13 cases the inter state sales valued at Rs.433.18 crore not covered with Form C during the years 1995-96 to 2000-01, were assessed to tax at incorrect rate of tax. This resulted in short-levy of tax amounting to Rs.14.68 crore as detailed below:

(Rupees in crore)

Sl. No	Name of circle	Assessment year / month of Assessment	Name of commodity	Taxable turnover	Percentage of rate of tax leviable	Percentage of rate of tax levied	Tax short levied
1	2	3	4	5	6	7	8
1.	A. C. (A) 4 T.T. Noida	<u>1998-99</u> (March 2001),	Fruity mango	20.00	15	10	1.00
		<u>1999-2000</u> (Feb. 2002) <u>1997-98</u> and (Dec. 2000) <u>1999-2000</u> (Feb. 2001)	T.V. Parts	2.67	2.5	2	0.01
		<u>1998-99</u> (Feb. 2001)	Photo copier machine	47.27 7.79	10 10	2 Nil	3.78 0.78
		<u>1997-98</u> (May 1999) <u>1998-99</u> (March 2001) <u>1999-2000</u> (March 2002)	Foodstuff (Potato chips in sealed container)	19.77	10	4	1.19
		1995-96 to <u>1999-2000</u> (March 1999, Jan., March 2001 & Feb 2002)	Mono filament yarn	56.67 1.71	10 10	2.5 4	4.25 0.10
		<u>1999-2000</u> (Feb 2002)	T.V. parts	6.97	2.5	2	0.03
2.	A. C. (A) 1 T.T. Ghaziabad	1997-98 to <u>1999-2000</u> (Dec. 2000, Feb. & Dec 2001)	Electronic parts and picture tubes	238.45	2.5	2	1.19
3.	A. C. (A) 9 T.T. Noida	<u>1998-99</u> (March 2001) <u>1999-2000</u> (Jan. 2002) <u>1998-99</u> (Feb 2001)	Electronic component Leather garments	2.39 3.75 3.00	2.5 10 10	2 4 5	0.01 0.23 0.15

		<u>1999-2000</u> (Jan 2002)					
4.	A. C. (A) 2 T.T., Ghaziabad	1997-98 to <u>1999-2000</u> (Dec. 1999, Jan & Dec. 2001)	Boroline cosmetics	0.77	15	10	0.04
5.	A.C. (A) 2, Noida	<u>1999-2000</u> (March 2002)	Electronic component	2.58	2.5	2	0.01
6.	T.T.O. Sector 4, Noida	<u>1999-2000</u> (Jan. 2002) and <u>2000-01</u> (Feb. 2003)	Exercise books	18.68	10	Nil	1.87
7.	AC (A)- 5 T T, Noida	<u>1999-2000</u> (Feb 2002)	Footwear	0.71	10	4	0.04
			TOTAL	433.18			14.68

The matter was reported to the Department and Government between February 2003 and October 2003; their replies had not been received (November 2003).

2.9 Short levy of tax due to misclassification of goods

Under the Act, tax on goods at different rates is leviable in accordance with the schedule of rates notified by the Government from time to time. Further, goods not classified otherwise, are taxable at the rate of 10 per cent from 1 August 1990.

During the course of scrutiny of records of ten Trade Tax Circles^φ, it was noticed that in order to avoid tax, dealers did not declare the correct rate of tax in their returns and deposited the tax at the incorrect rate. The Assessing Officers while finalising the assessments failed to detect the same. This resulted in short levy of tax of Rs.6.24 crore.

A few examples by way of illustration are as under:

On this being pointed out in audit, Department stated between January 1999 to March 2002 that demand for Rs. 4.73 lakh had been raised in four cases. Further reply was awaited (November 2003).

^φ Allahabad, Agra, Bareilly, Ghaziabad, Gorakhpur, Kanpur, Lucknow, Meerut, Noida and Varanasi.

(Rupees in crore)

Sl. No	Name of office	Assessment year Month of assessment	Nature of misclassification	Taxable turnover	Percentage rate of tax leviable	Percentage of Rate of tax levied	Tax Short levied
1	2	3	4	5	6	7	8
1	AC(A)-18, TT, Kanpur	1997-98 to 1999-2000 (March/July 2000 & July 2001)	Cosmetic Goods treated as medicine	25.32	15	7.5/8	1.88
2	AC(A) 8, TT, Ghaziabad	1997-98 to 1999-2000 (February and July 2000 and March 2002)	Lal Dant Manjan treated as medicine	52.72	10	7.5/8	1.31
3	AC(A) 2, TT, Ghaziabad	1996-97 to 1999-2000 (September 1998 to December 2001)	Boroline (cosmetics) treated as medicines	13.01	15	10/7.5/8	0.97
4	AC(A) Noida	4, 1995-96 to 1999-2000 (February 1998 to February 2002)	Mono filament yarn treated as yarn of all types	7.34	10	2.5/4	0.55
5.	AC(A) Noida	4, 1997-1998 (May 1999) 1998-1999 (March 2001) 1999-2000 (March 2002)	Sealed foodstuff (potato chips) treated as sweatmeat and namkeen	17.91	7.5	5	0.45
6.	AC(A) 9, TT, Noida	1998-1999 (February 2001) 1999-2000 (January 2002)	Leather garments treated as readymade garments	5.25	10	5	0.26

The matter was reported to the Department and Government between February 2003 and October 2003; their replies had not been received (November 2003).

2.10 Evasion of tax

2.10.1 The Act provides that every dealer shall keep and maintain a true and correct account showing the value of goods bought and sold by him. In case of concealment of turnover by way of furnishing inaccurate particulars with a deliberate intention to evade tax, the Assessing Authority may impose by way of penalty, in addition to tax, a sum not less than 50 per cent but not exceeding 200 per cent of the tax which would, thereby, have been avoided. Commissioner Trade Tax, UP issued circular

on 23 January 1986, reiterated on 12 November 1990, for preventing such evasion of tax.

Test check of records of Trade Tax Circle, Kanpur revealed that a selling dealer issued certificates in favour of purchasing dealer of the same station that he had sold goods valued at Rs.28.42 crore to him during the years 1998-99 and 1999-2000. Cross verification with assessment records of selling dealer, however, revealed that he had declared sales turnover of Rs.26.13 crore only within the state during these years. Thus, sales turnover of Rs.2.29 crore was concealed by the selling dealer. This resulted in short levy of tax of Rs.22.94 lakh. Besides, the dealer was also liable to pay penalty of Rs.45.88 lakh.

2.10.2 It has been judicially[#] held that the amount of excise duty is a part of sales turnover. Further, Commissioner, Trade Tax, had issued circular dated 11 June 1992 directing all the Deputy Commissioners to obtain relevant details from the Income Tax Department in the cases of big tax-payers, to prevent tax evasion.

Test check of records of Trade Tax Circle, Kanpur, revealed that a dealer of pan masala was assessed for the year 1997-98 in July 2002 after determining the sales turnover of Rs.138.19 crore. As per cross verification with the records of the Income Tax Department, it was noticed that the dealer had made sales of Rs.2.06 crore during the year 1997-98 from outside the books of accounts and had also not paid excise duty thereon. Thus, after adding excise duty, the sales turnover amounting to Rs.2.88 crore was concealed by the dealer, thereby, avoiding a tax liability of Rs.28.85 lakh. Besides, the dealer was also liable to pay penalty of Rs.57.70 lakh.

The matter was reported to the Department and Government between March 1999 and October 2003; their replies had not been received (November 2003).

2.10.3 Under Government notifications dated 31 January 1985 and 27 February 1997, institutions certified by the All India Khadi and Village Industries Commission or the U.P. Khadi and Village Industries Board are exempted from levy of tax on the sale of products and on purchase of goods connected with manufacture of products of village industries as specified in the list. As per commissioners circular (October 1986), such an institution is also entitled to purchase raw materials tax free on the strength of certificate issued by it and countersigned by the concerned Zila Gramodyog Adhikari.

In Trade Tax Circle, Kanpur, it was noticed that three dealers, being institutions certified by the Khadi and Village Industries Board U.P., got themselves registered with the Trade Tax Department as manufacturers of agricultural implements, steel almirah, etc. and purchased iron and steel as raw materials valued at Rs.23.62 crore without payment of tax on the prescribed declaration forms XXXI during the year 1993-94, 1994-95, 1996-97 to 1999-2000. Instead of utilising the material for

[#] State of Kerala Vrs. Madras Rubber Factory (1998-27 STR-68 S.C.)

manufacture of goods for which the dealers were granted exemption from tax, the dealers had sold the raw material as such and disappeared. The assessments of these dealers were finalised by the department in March, September and November 2002. This resulted in loss of revenue of Rs.94.48 lakh.

The matter was reported to the Department and Government between February 2003 and October 2003; their replies had not been received (November 2003).

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

Under the Act, tax on goods at prescribed rates is leviable as laid down in the schedule of rates based on their classification. Besides, additional tax is also leviable at the rate of 25 per cent of the tax with effect from 1 August 1990.

During the course of audit of seven Trade Tax Offices, it was noticed that in the case of seven dealers tax of Rs.24.01 lakh was short levied due to application of incorrect rate of tax as detailed below:

(Rupees in Lakh)

S. N.	Name of Office	Assessment Year Month of assessment	Name of commodity	Taxable turnover	Rate of tax leviable (In per cent)	Rate of tax levied (In per cent)	Tax short levied
1	2	3	4	5	6	7	8
1	AC(A)-3, Varanasi	1994-95, 1995-96 (March 1998)	Medicines	84.93	10	7.5	2.12
2	TTO, Modinagar	1996-97, 1997-98 (December 1999)	Rubber scrap (Rubber cutting)	10.59	10	5	0.53
3	TTO Sector-6, Kanpur	1998-99 (November 2000)	Hessian cloth	11.49	10	5	0.57
4	TTO Sector-1, Kanpur	1996-97 to 1998-99 (July 2000)	Float glass	22.82	15	10	1.14
5	AC(A), Mainpuri	1995-96, 1996-97 (June 1998)	Gram, Moong, Arhar and Matar	11.24 86.73	4 5	3.5 4.375	0.06 0.54
6	DC(A)-12, Ghaziabad	1999-2000 (December 2001)	Imitation Jewellery	96.80	5	2.5	2.42
7	AC(A) 19, Kanpur	1995-96 to 1999-2000 (February 2002)	Cement	664.94	12.5	10	16.63
Total							24.01

On this being pointed out in audit, the Department stated that demand of tax of Rs.2.72 lakh had been raised in two cases between November 2000 to March 2002. Replies in other cases were awaited (November 2003).

The matter was reported to the Government between March 1999 and October 2003; their reply had not been received (November 2003).

2.12 Irregular grant of Recognition Certificate

The Government notifications dated 29 August 1987 and 21 May 1994 issued under Section 4-B of the Act, provides for special relief in tax to manufacturer on purchase of raw materials and packing materials etc. for use in the manufacture of specified goods. It has been Judicially[^] held that masala in full form and masala in powder form are not different goods as no new commercial commodity emerges.

In Trade Tax Circle, Kanpur, it was seen in the case of a dealer that the department had granted recognition certificate on 14 September 1995 for purchase of raw materials at concessional rate of tax for manufacture of masala in powder form. Since the dealer was not engaged in any manufacturing process, he was not entitled to concessional rate of tax on purchase of raw materials valued at Rs.4.31 crore during the years 1996-97 to 1999-2000. This resulted in irregular grant of recognition certificate with consequent loss of revenue of Rs.13.46 lakh.

The matter was reported to the Department and Government between December 1997 and October 2003; their replies had not been received (November 2003).

2.13 Misuse of Declaration Forms

Section 3-B of the Act, provides that if a person issues a false or wrong declaration, by reason of which tax on sale or purchase ceases to be leviable, the dealer shall be liable to pay a sum equal to the amount of relief in tax secured by him on purchase of such material.

During audit of five Trade Tax Offices^{*}, it was noticed that five dealers had purchased goods valued at Rs.1.04 crore at concessional rate/without payment of tax by issuing prescribed declaration forms. As the dealers were not authorized to purchase these goods as per their recognition certificates, they were liable to pay an amount of Rs.6.01 lakh equal to relief in tax secured by them against these purchases.

[^] Commissioner, Sales Tax UP V/s Alka Grih Udyog (STI 1994 U.P. Tri. 1991)

^{*} AC (A) 11, Lucknow, TTo, Sector 2, Lucknow, AC (A), Mainpuri, AC (A) 12, Lucknow, AC (A) 7, Ghaziabad

On this being pointed out in audit, the Department raised demand for Rs.3.99 lakh in three cases between March 1999 and February 2000. Replies in other cases were awaited (November 2003).

The matter was reported to the Government between December 1997 and October 2003; their reply had not been received (November 2003).

2.14 Non-imposition of penalty

2.14.1 Under Section 4-B of the Act, read with government notification dated 21 May 1994, special relief has been allowed to manufacturers on purchase of raw materials required for use in the manufacture of goods on fulfilment of certain conditions. In case of use of such raw materials for purpose other than the specified in recognition certificate or its disposal otherwise, the dealer shall be liable to pay by way of penalty, a sum which shall not be less than the amount of relief in tax so secured by the dealer, but shall not exceed three times of such relief.

During audit of six trade tax offices[#], it was noticed that six dealers purchased raw material valued at Rs.2.14 crore at concessional rate of tax, and used it in the manufacture of the goods which they were not authorised to manufacture as per their recognition certificates. The dealers were thus, liable to pay maximum penalty amounting to Rs.56.88 lakh.

On this being pointed out in audit, the Department imposed penalty of Rs.27.14 lakh in three cases. Replies in other cases were awaited (November 2003).

The matter was reported to the Government between September 2000 and October 2003; their reply had not been received (November 2003).

2.14.2 Under Section 15 A(1)(c) of the Act, if the Assessing Authority 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.

During audit of eight Trade Tax Offices[♦], it was noticed that nine dealers had concealed their sales turnover of Rs.53.83 crore during 1997-98 to 1999-2000 on which the Department levied tax of Rs.3.76 crore, but failed to impose the penalty of Rs.7.52 crore.

[#] TTO, Sector-2 Shamali, TTO, Sector-5 Agra, TTO, Sector-2 Chandausi, TTO, Sector-3 Varanasi, AC(A) 19 Kanpur, TTO, Sector-8 Kanpur

[♦] AC(A) Sambhal, TTO Sambhal, TTO Sector-2 Basti, TTO Sector-1 Bareilly, TTO Sector-2 Badaun, AC(A) 4 Noida, AC(A) 11 Agra and AC(A) 1 Kanpur.

On this being pointed out in audit, the Department imposed penalty amounting to Rs.71.62 lakh in four cases between December 2001 to August 2002. Replies in other cases were awaited (November 2003).

The matter was reported to the Government between September 2000 and October 2003; their reply had not been received (November 2003).

2.14.3 Under Section 10A of the 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, the dealer is liable to pay penalty up to one and a half times of tax payable on sale of such goods.

During audit of 18 Trade Tax Offices^ϕ, it was noticed that 18 dealers assessed between March 1998 and January 2002 for the years 1994-95 to 1999-2000 had purchased goods valued at Rs.5.73 crore, against declaration in Form C, which were not covered by their certificates of registration. So the dealers were liable to pay penalty of Rs.1.12 crore, which was not imposed by the Department.

On this being pointed out in audit, the Department stated that penalty of Rs.27.72 lakh had been imposed in eight cases. Replies in other cases were awaited (November 2003).

The matter was reported to the Government between February 2000 and October 2003; their reply had not been received (November 2003).

The foregoing paras were accepted by the Department and Government during discussion and it was stated that action was being taken for compliance (December 2003). Further progress is awaited (January 2004).

^ϕ AC(A) 1, Sonbhadra, AC(A) Gonda, AC(A), Mawana, AC(A) Hasanpur, TTO, Sector-2 Allahabad, TTO, Sector-2 Noida, AC(A) 2 Rampur, AC(A)-12 Lucknow, TTO, Sector-3 Kanpur, TTO, Sector-3 Varanasi, AC(A) Badaun, AC(A)-4 Noida, TTO, Sector-1, Saharanpur, TTO, Sector-2 Dhampur, AC(A) Fatehgarh, AC(A) Mirzapur, AC(A) 1, Gorakhpur, AC(A) 2 Jhansi