

## CHAPTER II SALES TAX

### 2.1 Results of audit

Test check of the records relating to sales tax revealed underassessment of tax and other irregularities involving Rs. 428.13 crore in 417 cases which fall under the following categories:

(Rupees in crore)

Sl. No.	Categories	No. of cases	Amount
1.	<b>‘Concessions and exemptions under Sales Tax Acts’ (A Review)</b>	1	334.06
2.	Non/short levy of tax due to incorrect determination of gross turnover	84	30.61
3.	Non/short levy of tax/penalty	55	24.20
4.	Non/short levy of interest	63	1.71
5.	Non/short levy of surcharge/additional surcharge	12	0.48
6.	Other irregularities	202	37.07
<b>Total</b>		<b>417</b>	<b>428.13</b>

During the course of the year, the department accepted underassessment and other deficiencies of Rs. 44.29 crore in 134 cases, of which 133 cases involving Rs. 35.37 crore were pointed out in audit during the year 2007-08 and the rest in earlier years. An amount of Rs. 2.24 lakh was realised in three cases during the year 2007-08.

A few illustrative cases involving Rs. 78.45 crore and a review of **‘Concessions and exemptions under Sales Tax Acts’** with financial impact of Rs. 334.06 crore are mentioned in the following paragraphs.

## **2.2 “Concessions and Exemptions under the West Bengal Sales Tax Act and the Central Sales Tax Act”**

### **Highlights**

Failure of the Commissioner of Commercial Taxes to prescribe a mechanism for cross verification of declaration forms before their acceptance led to evasion of tax of Rs. 36.35 lakh including penalty.

**(Paragraph 2.2.8)**

The assessing authorities irregularly allowed concessions and exemptions of tax of Rs. 305.95 crore to the dealers who did not furnish the requisite statements.

**(Paragraph 2.2.12)**

Acceptance of claims without purchase evidence and incomplete purchase evidence of scheduled IV goods by the assessing authorities resulted in irregular allowance of exemption of tax of Rs. 24.49 crore.

**(Paragraph 2.2.13)**

Failure of the assessing authorities in applying correct rate of tax on disallowed claims of concessional rate of tax on inter-state sales due to non-production of declaration forms resulted in short levy of tax of Rs. 4.91 crore.

**(Paragraph 2.2.14)**

Irregular allowance of stock transfers by the assessing authorities resulted in irregular allowance of exemption/non-levy of tax of Rs. 3.59 crore.

**(Paragraph 2.2.15)**

Failure of the assessing authorities in reassessment of tax and imposition of penalty against the dealers who had evaded tax by producing fake declaration forms resulted in non-levy of tax and penalty of Rs. 48.11 lakh.

**(Paragraph 2.2.16)**

### **2.2.1 Introduction**

Assessment, levy and collection of sales tax are regulated under the West Bengal Sales Tax (WBST) Act, 1994, the Central Sales Tax (CST) Act, 1956 and the Rules framed thereunder. From April 2005, the West Bengal Value Added Tax (WBVAT) Act, 2003 has been introduced in place of WBST Act. However, taxation on several commodities such as furnace oil, kerosene oil, petrol, diesel, aviation turbine fuel, mineral turpentine oil, motor spirit, country liquor and foreign liquor still continues to be governed under the WBST Act. During the years 2005-06 and 2006-07, the collection of sales tax under the WBST Act was 33.53 *per cent* and 31.63 *per cent* respectively of the total sales tax revenue collected during these years.

Under the WBST Act, registered dealers are eligible for concessional rate of tax/exemption from tax in case of intra state sales subject to collection of declaration forms 9, 10, 11, 12, 13, 14 and 60 from their purchasing dealers and production thereof to the assessing authorities (AA). Export sales are also exempt from tax on production of the evidence of export.

Under the CST Act, sales to registered dealers and Government departments are taxable at the concessional rate of four *per cent* subject to production of prescribed declaration forms C/D obtained from the purchasing dealers. Besides, stock transfers outside the state are exempt from tax on production of form F.

A review of the concessions and exemptions allowed on inter and intra state sales, stock transfers and export sales under the WBST Act and CST Act revealed a number of system and compliance deficiencies which are discussed in the subsequent paragraphs.

### **2.2.2 Organisational set up**

The control and superintendence of the Directorate of Commercial Taxes (DCT) is vested with the Commissioner of Commercial Taxes (CCT), who is assisted by two special commissioners, 36 additional commissioners, 89 deputy commissioners (DCCTs), 325 assistant commissioners (ACCTs) and 655 commercial tax officers for administering the provisions of the Acts and the Rules made thereunder. The internal audit wing assists the management to enforce internal controls within the department.

### **2.2.3 Audit objectives**

The review was carried out to ascertain whether

- the concessions and exemptions were allowed by the AAs as per the provisions of the Acts and Rules;
- the declaration forms furnished by the dealers for availing the exemptions and concessions were genuine;
- adequate mechanism was in place for verification of the genuineness of claims of concessions and exemptions by dealers; and
- the internal control systems were effective and ensured prevention of leakage of revenue by checking false and irregular claims of concessions and exemptions.

### **2.2.4 Scope and methodology of Audit**

The assessments completed between 2002-03 and 2006-07 were reviewed between December 2007 and May 2008. Of the total 68 charge offices, 24<sup>1</sup> were selected by applying statistical sampling method in which 10,191 assessments were checked. Besides, cross verification of central declaration forms (C, D and F) furnished by the dealers was conducted to ascertain the genuineness of the claims of concessions and exemptions.

### **2.2.5 Acknowledgement**

Indian Audit and Accounts Department acknowledges the co-operation of the Finance Department in providing necessary information and records for audit. The audit findings were reported to the Government in July 2008 and

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<sup>1</sup> Alipur, Amratola, Asansol, Ballygunge, Bankura, Baruipur, Bhowanipore, Burtola, Colootola, Corporate Division, Cossipore, Durgapur, Esplanade, Jorabagan, Krishnanagar, Lalbazar, Medinipur, Park Street, Postabazar, Purulia, Salkia, Shibpur, Siliguri and Taltola.

discussed in audit review committee meeting held in October 2008 in which the Principal Secretary, Finance (Revenue) and the CCT represented the West Bengal Government. The response of the Government to the audit observations has been appropriately incorporated in this review.

## **Audit findings**

### **System deficiencies**

#### **2.2.6 Database of concessions and exemptions**

As per the WBST Act, concessions and exemptions on sales tax are allowed to the dealers under certain terms and conditions and revenue is foregone in the process. A database of revenue foregone in concessions and exemptions is essential so that the department is vigilant about the charge offices as well as the commodities where the dealers prefer claims of concessions and exemptions in large numbers. It was noticed during audit that the DCT did not maintain a database of the exemptions and concessions allowed by obtaining information from the subordinate offices. In absence of such database, the department could not quantify the amount of revenue forgone due to concessions and exemptions, nor was it possible for the department or the audit to carry out a systematic study of the concessions and exemptions.

After this was pointed out, the Government stated (October 2008) that they were in the process of developing a format for collection of the figures in remission/deferment cases. However, no reply was furnished regarding collection of figures of other concessions and exemptions.

The Government may consider creation of a reliable database of the concessions and exemptions allowed to dealers by establishing a management information system to supplement the process of estimation of revenue and to facilitate a systematic review and effective monitoring of the concessions and exemptions.

#### **2.2.7 Register of declaration forms**

**2.2.7.1** Under the WBST Act and the Rules framed thereunder, for obtaining the declaration forms for availing concessions or exemptions of tax, the dealer has to apply to the concerned AA along with a statement of the declaration forms received on the previous occasion in form 15A. After being satisfied with the particulars furnished in the application for declaration forms and *bonafide* use of the earlier forms, the AA issues declaration forms to the applicant dealer according to their requirement. To guard against the misuse/wrong use of the forms by the errant dealers, a register/database of the forms issued is to be maintained to have a control over the use of forms. Audit scrutiny revealed that no register has been prescribed for keeping record of the declaration forms issued to the dealers by the AAs.

After this was pointed out, the Government stated (October 2008) that they had already developed an electronic data base and that the number of central declaration forms issued to the dealers in West Bengal is available on the site

TINXSYS.com<sup>2</sup>. The reply was silent regarding non-maintenance of a database of forms issued for intra state sales/purchases.

**2.2.7.2** Scrutiny in audit revealed that declaration forms were being issued directly to the indenting dealers registered under Kolkata, Salt Lake and Howrah charge offices by the central form section of the Commissionerate on recommendation of the concerned AAs, while Rule 89 of the WBST Rules requires issue of such forms by the AA. The reasons for such deviation from the rules were not furnished to audit though sought for.

After this was pointed out, the Government stated (October 2008) that the supply of declaration forms to the charge offices would lead to the risk of either excess or under stock at the charge level and that sufficient space was an issue at least for present. The reply is not tenable as the Rules require the AAs to issue the forms to the dealers registered under their charges.

The Government may consider prescribing a register to be maintained by the AAs for keeping the details of declaration forms issued to the dealers and making it mandatory to issue the declaration forms through respective charge offices only in compliance with the Rules for better control and monitoring. Besides, they may also consider introducing a database similar to TINXSYS for uploading the details of inter-state declaration forms.

## **2.2.8 Cross verification of declaration forms not being done**

The CCT by a circular issued in April 1970, instructed all the AAs to conduct cross verification of the declaration forms C, EI and EII with the issuing states of Assam, Bihar and Orissa in 10 *per cent* cases and to maintain a prescribed register for this purpose showing memo number and date, registration certificate number, name of state, date of issue of reminder, date of receipts of reports of the state authorities to whom referred and date on which action taken in dealer's file etc. Audit scrutiny revealed that no such instruction was issued for cross verification of declaration forms received from the states other than Bihar, Orissa and Assam. Also, no such register was maintained by any of the charge offices to show that the cross verification was conducted. It was also noticed that though the CCT issued circular in 1970 for cross verification of forms issued by the States of Assam, Bihar and Orissa, yet no periodic report/return was prescribed to be furnished by the circle/charge offices to the higher authorities which weakened the control mechanism and monitoring by the CCT.

Cross verification of the declaration forms C submitted by two tea dealers of Siliguri charge office with the record of forms maintained by the issuing authority revealed that the dealers availed concessional rate of tax at the rate

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<sup>2</sup> Tax Information Exchange System (TINXSYS) is a centralised exchange of all inter-state dealers spread across the various States and Union territories of India. TINXSYS is an exchange authored by the Empowered Committee of State Finance Ministers (EC) as a repository of inter-state transactions taking place among various States and Union Territories. This will help the Commercial Tax departments of various States and Union Territories to effectively monitor the inter-state trade.

of two *per cent* under the provisions of the CST Act on the basis of declaration forms C obtained from fake dealers as mentioned below:

(Rupees in lakh)					
Name of the dealer and RC No.	Assessment period Date of assessment	Short levy of tax	Minimum penalty u/s 76	Name of the purchasing dealer and state	Remarks
Rajendra and Company [CST No.1627 (SG)C]	<u>2002-03</u> June 2005	9.53	14.30	Prasidhi Tea Co., Ahmedabad, Gujarat	Deputy Commissioner of Sales Tax, Circle II, Ahmedabad stated that the purchasing dealer was bogus.
Shivshankar Enterprise [CST No.3347 (SG)C]	1999-2000 to <u>2001-02</u> Between June 2002 and June 2004	5.01	7.51	Agarwal Trading Company and Baba Trading Company, Rewari, Haryana	Deputy Excise and Taxation Commissioner (Sales Tax), Rewari, Haryana stated that the purchasing dealer was not registered in the district.
<b>Total</b>		<b>14.54</b>	<b>21.81</b>		

This resulted in evasion of tax of Rs. 14.54 lakh and non-imposition of minimum penalty of Rs. 21.81 lakh.

After this was pointed out, the Government while stating (October 2008) that both the cases had been sent for *suo motu* revision clarified that references were being made by the directorate to other States for confirmation of the forms issued to the dealers in those States and that with the introduction of TINXSYS, the verification had become web-based. The reply is not tenable as from TINXSYS website, it was seen that the position of master data of dealers fed into the website differed from State to State. While some States had uploaded data upto October 2008, in some cases the last date of data uploaded was as back as July 2006. Further verification of the site also revealed that as on 5 November 2008, both Gujarat and Haryana have not fed any data regarding issue and utilisation of the declarations forms by the dealers of those States. Thus, in the interest of revenue of the State, physical cross verification of declaration forms should continue parallel to the web-based checking until the electronic system becomes fully operational.

The Government may consider implementing a sound system of cross verification of declaration forms received from all states through a combination of physical and web-based verification and a review of such cross verifications by the higher authorities.

### **2.2.9 Absence of provisions for declaration forms in intra state sales made to the Government departments**

Under section 17(2)(f) of the WBST Act, a dealer is eligible for concessional rate of tax at the rate of four *per cent* on his intra state sales of goods to the Government or an undertaking established by Government or other specified bodies. However, unlike the inter-state sales to Government departments/bodies, no declaration form or certificate has been prescribed in the WBST Act for availing concessional rate of tax on intra state sale to the

Government or the specified authorities. As a result there was no scope for the AAs to ascertain the genuineness of the claims.

Test check of the records of Medinipur and Taltala charges revealed that in five cases for the assessment periods between March 2002 and March 2004, the dealers claimed concessional rate of tax on sales of Rs. 8.82 crore to the Government departments without mentioning the names of the purchasers. The AAs levied tax of Rs. 35.29 lakh at the concessional rate of four *per cent* though the dealers did not produce any documents in support of their claims of sales to Government departments.

After this was pointed out, the Government admitted the audit observation in one case involving tax of Rs. 16.36 lakh and stated (October 2008) that in the remaining four cases the sales were made to Government/*zila parishad* and the details had been subsequently furnished by the dealers. A report on recovery of tax has not been received (September 2008).

The Government may consider prescribing declaration form for availing concessions in case of intra state sales to Government or other specified bodies.

#### **2.2.10 Absence of time limit for reassessment of evasion cases detected by Bureau of Investigation**

The Bureau of Investigation (BOI) headed by the Additional Commissioner under the DCT carries out investigations or inquiry into the cases of alleged or so-called evasion of tax as well as malpractices connected therewith, sends a report to the CCT and assesses or reassesses tax, imposes penalty, determines interest or collects or enforces payment of tax, penalty or interest. Audit scrutiny revealed that no time limit has been prescribed under the Acts and Rules for the reassessment of tax by the BOI.

Scrutiny of the records of the Corporate Division revealed that the BOI conducted investigation in respect of two dealers on allegations of fictitious claims of stock transfer of jute goods. The Additional Commissioner of the BOI sent the investigation reports to the CCT with copies to the Additional Commissioner, the DCCT and the ACCT of the corporate division. Scrutiny of the investigation reports revealed that the BOI detected bogus claims of stock transfer of Rs. 5.13 crore by the dealers on production of fake declaration forms F. The BOI determined tax involvement of Rs. 12.62 lakh but did not reassess the tax and impose any penalty. The AAs or the Commissioner to whom the reports were sent also had not assessed the evaded tax and the penalty till May 2008. This resulted in non-assessment of tax of Rs. 12.62 lakh and non-imposition of minimum penalty of Rs. 18.93 lakh as mentioned below:

(Rupees in lakh)

Name of the dealer	Registration Certificate No.	Assessment period	Date of sending report to the CCT	Value of stock transferred	Tax involved	Penalty involved
Gouri Shankar Jute Mills Limited	AW/1141 and 1141(AW) C	1999-00 and 2001-02	23.03.2006	108.00	4.30	6.45

*Audit Report (Revenue Receipts) for the year ended 31 March 2008*

The Hooghly Mills Co. Ltd	AW/1096 and 1096(AW) C	1999-00	15.06.2006	405.00	8.32	12.48
<b>Total</b>				<b>513.00</b>	<b>12.62</b>	<b>18.93</b>

After this was pointed out, the Government admitted the audit observation but stated that the BOI was constituted for detection of tax evasion and not for assessment. The reply is not acceptable since under section 7 (6) of the WBST Act, the BOI may assess or reassess tax, impose penalty, determine interest or collect or enforce payment of tax, penalty or interest in respect of such a case. Besides, no action was also taken by the DCCT/ACCT on the basis of the reports of the BOI for assessing the dealers and realisation of dues.

The Government may consider prescribing a time limit for reassessment of the cases of evasion of tax detected by the BOI.

### **2.2.11 Internal audit**

Internal audit is generally defined as the control of all controls which enables an organisation to assure itself that the prescribed systems are functioning reasonably well. It also provides a reasonable assurance of proper enforcement of law, rules and departmental instructions.

The DCT has an internal audit wing working under the direct supervision of the CCT. Audit noticed that there were no prescribed norms or manualised instructions for the inspections of its various charges, ranges and check posts for conducting the internal audit. The department also failed to produce the details of the number of units audited during the period 2002-03 to 2006-07, despite being requested. The details regarding audit planning, compliance with internal audit observations etc. were also not available with the department. This indicates that the department needed to streamline its internal audit.

After this was pointed out, the Government stated (October 2008) that necessary steps for utilising the officials posted in internal audit wing were being taken.

The Government may take immediate steps to strengthen the internal audit wing at the earliest to ensure strict compliance with the provisions of the Act and the Rules by various wings of the department and to prevent leakage of revenue.

### **Compliance Deficiencies**

#### **2.2.12 Irregular grant of concession and exemption**

Under Rule 178 (1) of the WBST Rules read with notice in form 29, for claiming concessions and exemptions, it is mandatory for dealers to furnish a statement of sales in the prescribed format supported by declaration forms. The statement of sales should contain serial number of the declaration form, registration certificate number of the purchasing dealers and the amount of sales covered by the forms. Under the CST Act, the provisions also apply *mutatis mutandis* in respect of declaration forms C, F and H.



Scrutiny of the assessment records of 19 charge offices revealed that in 157 cases of 99 dealers the claims of concessions and exemptions of tax on sales of Rs. 8,893.13 crore were allowed by the AAs during the assessment periods between 1999-2000 and 2004-05, even though the dealers did not produce the statements of sales or produced incomplete statements. This was in contravention of the Rules and resulted in irregular grant of concessions and exemptions of tax of Rs. 305.95 crore as mentioned below:

(Rupees in Crore)

Sl. No.	Name of charge office	No. of dealers /cases	Sales amount involved	Tax impact	Nature of irregularity
1.	Asansol	11/23	7417.32	167.16	Statements of form C and D were not furnished in 10 cases. In 13 cases statements of form C and D did not contain name and RC number of the purchasing dealers.
2.	Amratala	2/2	5.22	0.50	Statements of form C and F did not contain RC number of the purchasing/ transferee dealers.
3.	Bhowanipore	22/23	19.68	1.41	
4.	Corporate Division	6/15	812.17	108.53	
5.	Esplanade	2/3	3.83	0.29	
6.	Purulia	1/3	440.83	17.39	Statement of form C did not contain name and RC number of the purchasing dealers.
7.	Park Street	8/10	61.04	4.51	Statements of form 12, 14, C and F did not contain RC number of the purchasing / transferee dealers.
8.	Ballygunge	4/9	41.74	1.88	Statements of form C and F did not contain name and RC number of the purchasing dealers.
9.	Durgapur	5/10	39.88	1.32	In 6 cases statement of form 10 <sup>3</sup> not produced. In 4 cases statement of form F did not contain RC number of the transferee dealers.
10.	Salkia	4/15	18.09	0.89	Date of issue of form C was either not available or it was issued on dates much earlier than the date of actual sales. Statement of form C did not contain RC number of the purchasing dealers.
11.	Shibpur	9/11	11.85	0.77	In 7 cases statement of form 12 was not furnished. In 2 cases statement of form 12 was furnished with incorrect prefix of form serial number/without RC number of purchasing dealers/with <i>ad seriatim</i> form no. of form 13 <sup>4</sup> issued from different charge offices. In 2 cases statement of form C did not contain RC number of purchasing dealers.

<sup>3</sup> Form 10 alongwith form 12 is produced by a dealer for claiming exemption of tax on his sales to dealers enjoying tax holiday or deferment/remission of tax.

<sup>4</sup> Form 13 is produced by a dealer for availing concessional rate of tax on his sales of footwear, furniture, hardware goods, hosiery goods etc. to reselling dealers.

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12.	Colootala	3/3	8.06	0.54	Statements of form C and F were not produced.
13.	Alipur	8/13	6.14	0.38	In 9 cases statements of form C and F did not contain RC number of purchasing dealers.  In 4 cases statement of form 12 <sup>5</sup> was not furnished.
14.	Baruipur	6/8	3.54	0.17	In 2 cases statement of form 12 was not furnished.  In 6 cases statements of form 14 <sup>6</sup> and C did not contain name and RC number of the purchasing dealers.
15.	Cossipore	1/1	0.34	0.01	Statement of form C did not contain RC number of purchasing dealers.
16.	Krishna Nagar	1/1	0.48	0.04	
17.	Jorabagan	3/3	0.89	0.03	
18.	Taltala	2/3	0.88	0.08	In 2 cases statement of form C did not contain RC number of purchasing/transferee dealers. In one case statement of form 14 was not furnished.
19.	Posta Bazar	1/1	1.15	0.05	Statements of form 10, 12 and C were not produced.
<b>Total</b>		<b>99/157</b>	<b>8,893.13</b>	<b>305.95</b>	

The Government admitted the audit observation in four cases involving tax of Rs. 87.54 lakh and stated (October 2008) that in the 59 cases involving tax of Rs. 4.58 crore, the statements had been subsequently collected from the dealers. In the remaining 94 cases involving tax of Rs. 300.49 crore the Government did not furnish any reply.

### **2.2.13 Irregular grant of exemption on sales of schedule IV goods**

Under the WBST Act, goods liable to be taxed only once on the first point of sale in West Bengal are called schedule IV goods. The resale of schedule IV goods, which are shown to the satisfaction of the CCT to have been purchased within West Bengal and have already suffered tax on the first point of sale, are exempt from levy of tax. As per the circular of the CCT of December 1999, the dealers preferring claims of such exemptions would have to furnish purchase documents as proof of their claims. The purchase documents will provide the names and addresses of the selling dealers so that the AAs can verify the payments of tax at the selling dealer's end.

Scrutiny of the assessment records revealed that in 15 charge offices, 66 dealers in 90 cases declared their sales of Rs. 338.54 crore as sales of schedule IV goods purchased within West Bengal and claimed exemption of tax

<sup>5</sup> Form 12 is produced by a selling dealer for availing concessional rate of tax on his sales of raw materials etc. to manufacturer dealers.

<sup>6</sup> Form 14 is produced by a selling dealer for availing exemption of tax on his sales immediately prior to export.

thereon. Though the dealers did not produce purchase evidence or produced incomplete purchase evidence, yet the AAs exempted tax of Rs. 24.49 crore on such sales without conducting any verification as required under the circular of December 1999. This resulted in irregular exemption of tax of Rs. 24.49 crore as mentioned below:

**(Rupees in Crore)**

Sl. No.	Charge office	No. of dealers /cases	Assessed between	Turnover involved	Tax exempted
1.	Ballygunge	7/15	6/02 and 3/07	42.62	10.41
2.	Shibpur	4/5	10/03 and 3/07	22.12	2.53
3.	Taltala	6/12	4/02 and 3/07	31.30	2.42
4.	Park Street	5/5	6/04 and 3/07	105.77	2.24
5.	Amratala	9/10	12/04 and 3/07	21.62	1.89
6.	Siliguri	4/5	5/03 and 3/07	41.79	1.57
7.	Posta Bazar	6/7	6/05 and 3/07	43.82	1.24
8.	Purulia	5/6	4/02 and 6/05	7.47	0.94
9.	Bhowanipore	3/3	5/04 and 9/06	5.85	0.58
10.	Jorabagan	8/11	6/03 and 3/07	6.21	0.24
11.	Salkia	1/1	6/04	4.23	0.17
12.	Colootala	3/3	6/04 and 5/06	2.43	0.08
13.	Cossipore	1/2	4/04 and 5/05	1.90	0.07
14.	Baruipur	2/3	6/05 and 3/07	0.96	0.07
15.	Alipur	2/2	4/02 and 6/06	0.45	0.04
<b>Total</b>		<b>66/90</b>		<b>338.54</b>	<b>24.49</b>

The Government admitted the audit observation in five cases involving tax of Rs. 31.20 lakh and stated (October 2008) that in 23 cases involving tax of Rs. 1.31 crore, the statements had been collected subsequently from the dealers. In the remaining 62 cases involving tax of Rs. 22.87 crore, the Government did not furnish any reply.

#### **2.2.14 Short levy of tax on disallowed claims of concessions and exemptions**

Under the provisions of sales tax laws, in case of disallowance of claims of concessions and exemptions on export sales/inter-state sales/stock transfers, such sales are required to be taxed at the rate of 10 *per cent* or tax leviable on such goods within the state whichever is higher.

**2.2.14.1** In Durgapur charge, in two cases of a dealer for the years 2003-04 and 2004-05, the AA disallowed (between June 2006 and March 2007) the claims of concessional rate of tax on inter-state sales of Rs. 198 crore due to non-production of declaration forms C. The AA, however, taxed such sales at the rate of eight *per cent* instead of 10 *per cent*, as required under the CST Act. This resulted in short levy of tax of Rs. 3.96 crore.

**2.2.14.2** In Ballygunge charge, a dealer claimed exemption of tax on stock transfer, sales prior to export and export sales totaling Rs. 44.06 crore during the period April 2002 to December 2002. The AA disallowed (December

2004) the claims due to non-production of declaration forms and dispatch evidences, but taxed the sales at the rate of eight *per cent* instead of 10 *per cent* as required under the CST Act. This resulted in short levy of tax of Rs. 88 lakh.

**2.2.14.3** In Durgapur circle, the appellate authority disallowed the claims of consignment sales of rice of Rs. 3.63 crore of a dealer, but the sales was taxed at the rate of two *per cent* instead of four *per cent* as required under the CST Act. This resulted in short levy of tax of Rs. 7.26 lakh.

### **2.2.15 Irregular grant of exemption on stock transfer**

Under the CST Act and the Rules made thereunder, a dealer's stock transfer outside the state is exempt from levy of tax on production of declaration in form 'F'. The form should be duly filled in and signed by the principal officer or his agent of the other state as a proof of such stock transfer. A single declaration form 'F' may cover transfer of goods effected during one calendar month. Otherwise, such transfer of goods is liable to be taxed at normal rate applicable to inter-state sale of such goods. The production of form 'F' was made mandatory from June 2002 for claiming exemptions on account of stock transfer. Further, under section 17(2A) of the WBST Act as amended from August 2001, a registered dealer purchasing tea from auction sales in West Bengal at the concessional rate of tax of one *per cent* cannot effect its stock transfer subsequently.

**2.2.15.1** Test check of the records revealed that in three cases of three dealers in Corporate Division, Medinipur and Siliguri charges, the claims of stock transfers amounting to Rs. 26.51 crore for assessment periods between 2002-03 and 2003-04 were allowed by the AAs while finalising assessments between June 2005 and June 2006 though the dealers did not produce form 'F' or list of form 'F' in support of their claims. The AAs also did not record any reason for non-production of form 'F' or list of form 'F' in the assessment orders. Hence, such stock transfers were liable to be taxed at the rate of 10 *per cent*. The irregular allowance of exemption on stock transfers resulted in non-levy of tax of Rs. 2.65 crore.

**2.2.15.2** Test check of the records revealed that in 14 cases of 11 dealers in Corporate Division and Medinipur circle, the AAs allowed exemption of tax on stock transfers of Rs. 7.38 crore for assessment periods between March 2000 and December 2002 though each single declaration form 'F' produced in support of stock transfers contained transactions of more than one calendar month. This resulted in irregular exemption of tax of Rs. 69.87 lakh.

**2.2.15.3** Test check of the records revealed that in two cases of Siliguri charge, the dealers claimed exemption of tax of Rs. 23.99 lakh on stock transfer of tea of Rs. 2.40 crore outside West Bengal after purchasing it from Siliguri Tea Auction Committee paying tax at the concessional rate of one *per cent*. The AA allowed the claims of exemption in contravention of the provision of section 17(2A) of the WBST Act. This resulted in irregular exemption of tax of Rs. 23.99 lakh.

After this was pointed out, the Government admitted (October 2008) the audit observation but did not intimate further action taken.

### 2.2.16 Non-levy of tax and penalty on fake claims of concession and exemptions

Under Section 76 of the WBST Act, if a dealer has concealed any turnover or furnished incorrect particulars thereof with the intent to reduce the amount of tax payable, the AAs in addition to the tax, may impose penalty which shall not be less than one and half times and not more than thrice the amount of tax that would have been avoided by him. According to instructions (June 1991) of the CCT, where the AA did not initiate penal proceedings in a case, he should record the reasons for not doing so in the assessment order.

Scrutiny of the records revealed that the ACCT, Siliguri detected three cases of two dealers who had claimed remission/concession by producing fake declaration form 'C' and 'F', but did not reassess the tax and impose penalty for evasion of tax as mentioned below:

(Rupees in lakh)

Name of dealer and RC No.	Assessment period Date of assessment	Amount involved in transaction	Short levy of tax	Minimum penalty u/s 76	Remarks
M/s PCM Tea processing (P) Ltd. [CST No. 5227(SG)C]	<u>2002-03</u> June 2005	48.15	13.45	20.18	As per report of the sales tax authorities of Maharashtra, Punjab and Haryana, the declaration form 'C' and 'F' produced by the dealer are fake. Additional Commissioner, Commercial Taxes, Siliguri Zone passed <i>suo motu</i> revision order on September 2007. No reassessment of tax by ACCT, Siliguri charge was done nor was penalty imposed.
M/s Jainsons & Bros [CST No. 3502(SG)C]	2000-01 and <u>2001-02</u> June 2003 and June 2004	73.85	5.79	8.69	The ACST (Admn.) M-79, Jalgaon, Maharashtra declared purchasing dealer M/s Neha Enterprises as bogus dealer. ACCT, Siliguri charge sent the case to the ACCT, Siliguri Circle for <i>suo motu</i> revision of assessment orders. ACCT, Siliguri Circle did not revise the assessment till April, 2008.
<b>Total</b>		<b>122.00</b>	<b>19.24</b>	<b>28.87</b>	

This resulted in short levy of tax of Rs. 19.24 lakh and non-imposition of minimum penalty of Rs. 28.87 lakh.

Besides, the ACCT, Siliguri charge did not take action against M/s PCM Tea processing (P) Ltd. which was holding an eligibility certificate for remission of tax under section 41 of the WBST Act for furnishing incorrect particulars as per the provision of rule 135 of the WBST Rules, 1995.

After this was pointed out, the Government admitted (October 2008) the audit observation but did not intimate the action taken.

### **2.2.17 Conclusion**

There were several systemic deficiencies that affected the efficiency and effectiveness of the assessments and collection of revenue. These included absence of a reliable database of concessions and exemptions and the revenue foregone, absence of a system for ascertaining the genuineness and correctness of declaration forms submitted by the dealers for claiming concessions and exemptions of tax on account of intra state and inter-state sales/stock transfer/export sales through cross verification of transactions from the states concerned. There was absence of provision for declaration forms in intra state sales to Government organisations and absence of time limit for reassessment of evasion cases detected by the BOI. The functioning of the internal audit cell and the verification cell needed to be streamlined to increase their effectiveness. Non-compliance with the existing rules and instructions led to leakage of considerable amount of revenue.

### **2.2.18 Summary of recommendations**

The Government may consider implementation of the following recommendations for addressing the system and compliance issues:

- prescribing a system for maintaining a database of concessions and exemptions of sales tax and the revenue foregone on this account;
- prescribing a register for keeping the records of the declaration forms issued to the dealers by the AA and also a register of issue of forms by the Declaration Forms Section for maintenance of charge wise records;
- prescribing a system for ascertaining the genuineness and correctness of declaration forms submitted by the dealers in support of concessions and exemptions of tax through cross verification of transactions from the concerned states; and
- streamlining the functioning of the internal audit wing and the verification cell by prescribing specific targets/norms for carrying out audit/verification.

### **2.3 Non-levy of tax on goods transported on transit declarations**

Under the WBST Act, transportation of goods from one state to another through West Bengal is not liable for taxation. The transporter will make a transit declaration at the entry check post declaring that the goods in transport shall not be sold in West Bengal. He shall also declare the approximate date and the name of the exit check post of West Bengal. In case the transporter fails to report at the declared exit check post within the specified date, it shall be presumed that the goods so transported have been sold in West Bengal. Thereafter, he shall be deemed to be a dealer in West Bengal and will be liable for levy of tax and interest. The above provision continues to be in force *mutatis mutandis* under the WBVAT Act as well. Such transporters are also liable to pay penalty not exceeding 25 and 30 *per cent* of the value of the goods so transported under the WBST Act and the WBVAT Act respectively.

Test check of the records of the Chichira, Phansidewa and Duburdih check posts under Kharagpur, Siliguri and Asansol range offices, audited between November 2007 and May 2008 revealed that in 348 cases, the transporters carrying goods valuing Rs. 82.65 crore entered West Bengal between February 2004 and February 2007 furnishing transit declarations at the entry check post but did not report at the exit check posts till April 2008. The transporters, thus, were liable for assessment of tax and imposition of penalty. However, the AAs did not take any action to cross verify these cases with the exit check posts and assess the tax and impose penalty even after 14 to 41 months from the specified dates of exit, till April 2008. The inaction of the authorities led to non-realisation of tax of Rs. 29.64 crore including penalty.

The cases were reported to the department/Government in June 2008; their reply has not been received.

#### **2.4 Incorrect determination of gross turnover**

Under the WBST Act, turnover of sales in relation to any period means the aggregate of the sale price or part of sale price receivable by a dealer, or if a dealer so elects, actually received by the dealer during such period. A dealer is liable to pay tax at the prescribed rate on the amount of such turnover after allowing permissible deductions.

Scrutiny of records of 17<sup>7</sup> charge offices between October 2003 and November 2007 revealed that while assessing/reassessing 38 cases of 28 dealers between June 2002 and June 2006 for different assessment periods ending between March 2000 and March 2004, the AAs incorrectly determined the gross turnover (GT)/taxable balance (TB) at Rs. 6,345.48 crore instead of Rs. 6,676.79 crore leading to short levy of tax of Rs. 30.29 crore as mentioned below:

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<sup>7</sup> Alipore, Armenian Street, Ballygunge, Barasat, Baruipur, Bhowanipore, Corporate Division (CD 2011 – CD 2020), Corporate Division (CD 2031 – CD 2040), Corporate Division (DCA 1 – DCA 10), Durgapur, Lalbazar, Medinipur, Naren Dutta Sarani, New Market, Postabazar, Purulia and Siliguri.

*Audit Report (Revenue Receipts) for the year ended 31 March 2008*

Sl. No.	No. of cases	Short determination of GT/TB Tax effect (Rs. in lakh)	Reasons for the short determination of GT/TB	Reply of the department/Government
1.	3	<u>18,190.42</u> 2,262.46	Non-inclusion of sale of taxable Schedule – IV goods in the GT.	The cases were sent for <i>suo motu</i> revision.
2.	6	<u>8,753.28</u> 404.68	Erroneous calculation of TB	Five cases involving Rs. 400.75 lakh were admitted. In the remaining case involving Rs. 3.93 lakh no reply was furnished.
3.	16	<u>5,427.68</u> 317.07	Irregular exemption of sales from GT not eligible for exemption	In 15 cases involving Rs. 236.21 lakh, the department admitted the audit observation while in the remaining case involving Rs. 80.86 lakh the department did not furnish reply.
4.	3	<u>239.70</u> 25.80	Non-inclusion of difference between sales figures of returns and trading accounts/ledgers	In all the three cases the department admitted audit observation. Further development has not been received.
5.	2	<u>56.58</u> 6.77	The opening stock figure was Rs. 56.58 lakh less than closing stock of previous year decreasing the sales.	In one case involving Rs. 37,000 the department admitted audit observation and in the remaining case involving Rs. 6.40 lakh did not furnish reply.
6.	1	<u>357.58</u> 4.11	Non-inclusion of sale value of DEPB <sup>8</sup>	The department admitted the audit observation. Further development has not been received.
7.	1	<u>35.41</u> 2.01	Non-inclusion of “processing charge” received	The department admitted the audit observation.
8.	1	<u>26.61</u> 2.66	Non-inclusion of “income from street branches”	The department did not furnish any reply.
9.	1	<u>12.83</u> 1.63	Short disclosure of sale value	The department admitted the audit observation. Further development has not been received.
10	3	<u>18.31</u> 1.62	Excess allowance of claim of credit note	Two cases involving Rs. 89,000 were admitted. In the remaining case involving Rs. 73,000, the department stated that rectification of accounts had been carried out subsequently by the dealer. However, the position of reassessment has not been reported.
11	1	<u>12.20</u> 0.55	Non-inclusion of sale value of scraps	The department admitted the audit observation.
	<b>38</b>	<b><u>33,130.60</u></b> <b>3,029.36</b>		

The cases were reported to the Government between November 2003 and November 2007, followed by reminders issued upto January 2008; their reply has not been received (September 2008).

<sup>8</sup> Duty entitlement pass book.



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## **2.5 Non-levy of penalty on evaded tax**

Under the WBST Act, if a dealer has concealed any turnover or furnished incorrect particulars thereof with the intent to reduce the amount of tax payable by him, the AAs in addition to tax, may impose penalty which shall not be less than one and half times and not more than thrice the amount of tax that would have been avoided by him. According to the instructions (June 1991) of the CCT, West Bengal, where the AA did not initiate penal proceedings in a case, he should record the reasons for not doing so in the assessment order.

Scrutiny of the records of seven<sup>9</sup> charge offices between March 2005 and August 2007 revealed that while assessing 27 cases of 25 dealers for assessment periods ending between March 2001 and March 2004, the AAs levied tax of Rs. 5.02 crore on concealed sales/purchases and sales to fake dealers of Rs. 85.42 crore but did not levy minimum penalty of Rs. 7.53 crore nor recorded reasons in the assessment orders for not doing so.

After the cases were pointed out, the department admitted the audit observations in 10 cases involving Rs. 2.30 crore. In nine cases involving Rs. 26.61 lakh, it was stated that the consignee dealers were valid/not fake. The reply is not tenable as verification of the records available with the department indicates that those dealers had already been declared non-existent by the Sales Tax Department of the concerned States. In the remaining eight cases involving Rs. 4.97 crore, the department did not furnish reply.

The cases were reported to the Government between May 2006 and November 2007, followed by reminders issued upto February 2008; their reply has not been received (September 2008).

## **2.6 Undue benefit to the dealers due to irregular adjustment of excess tax**

Under the provisions of the WBST Act, if a dealer collects any amount in excess of the amount of tax payable by him, he should deposit such excess amount into the Government account within 30 days from the date of collection under intimation to the CCT for arranging refund to the purchaser and under no circumstances, the same could be allowed to be adjusted against the assessed dues of the dealer at the time of assessment. In case of failure to deposit the excess tax collected, the dealer has to pay penalty not less than the amount of tax so collected and not exceeding twice the amount of tax.

Scrutiny of the records of four<sup>10</sup> charge offices between May 2005 and March 2007 revealed that during the assessment periods ending between March 2000 and March 2002, 14 dealers in 18 cases collected tax of Rs. 26.74 crore against payable tax of Rs. 25.38 crore resulting in excess collection of tax of Rs. 1.36 crore. The AAs while assessing those cases between April 2002 and

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<sup>9</sup> Ballygunge, Corporate Division (CD 101 – CD 110), Corporate Division (CD 2011 – CD 2020), Corporate Division (CD 2031 – CD 2040), Kadamtala, Park Street and Purulia.

<sup>10</sup> Corporate Division (CD 101 – CD 110), Corporate Division (CD 2011 – CD 2020), Corporate Division (CD 2031 - CD 2040) and Corporate Division (DCA 1 – DCA 10).

April 2005, allowed the dealers to adjust the excess collected tax against their assessed dues in contravention of the provision of the Act. This resulted in irregular adjustment of excess tax of Rs. 1.36 crore and non-imposition of minimum penalty of Rs. 1.36 crore.

After the cases were pointed out, the replies of the department were as mentioned below:

- In two cases involving Rs. 11.75 lakh, the department accepted the audit observation;
- In one case involving Rs. 3.96 lakh, it was stated that excess payment of Rs. 2.85 lakh arose due to payment of Rs. 12 lakh on *ad hoc* basis and the amount was refunded after taking sanction from the appropriate authority. The reply was not tenable as collection of tax as per original return was more than actual payment made by the dealer;

In 15 cases involving Rs. 1.20 crore, the department did not furnish any reply.

The cases were reported to the Government between May 2006 and November 2007, followed by reminders issued upto February 2008; their reply has not been received (September 2008).

## **2.7 Non/short levy of interest**

Under the WBST Act, a dealer who

- furnishes return in respect of any period by the prescribed date or thereafter but fails to make full payment of tax payable in respect of such period by the prescribed date; or
- fails to furnish a return in respect of any period before assessment and on such assessment it is found that full amount of tax payable for such period has not been paid by him by such prescribed date; or
- fails to make payment of any tax demanded after assessment by the date specified in the demand notice,

is liable to pay simple interest for each calendar month of default. In case of non-payment, interest is to be included in the demand upto the month preceding the month of initiation of certificate proceedings. This provision is also applicable in case of assessments completed under the CST Act.

Scrutiny of records of 19<sup>11</sup> charge offices between June 2005 and August 2007 revealed that while assessing/initiating certificate proceedings between May 2003 and June 2007 in 64 cases of 57 dealers for assessment periods ending between March 1995 and March 2005, the AAs levied interest of Rs. 12.33 lakh instead of Rs. 1.90 crore realisable for non/delayed payment of tax of Rs. 6.37 crore resulting in non-levy of interest of Rs. 1.78 crore.

After the cases were pointed out, the replies of the department were as mentioned below:

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<sup>11</sup> Alipore, Barasat, Budge Budge, Chinabazar, College Street, Corporate Division (CD 2011 – CD 2020), Corporate Division (CD 2031 – CD 2040), Corporate Division (DCA 1 – DCA 10), Diamond Harbour, Durgapur, Kadamtala, Lalbazar, Netaji Subhash Road, Park Street, Postabazar, Rajakatra, Raiganj, Siliguri and Taltala.

- In 40 cases involving Rs. 1.40 crore, the department admitted the audit observation;
- In one case involving Rs. 3.10 lakh, it was stated (September 2006) that the dealer was eligible for remission. However, records showed that the dealer's claim for remission of tax had been disallowed in June 2005;
- In one case involving Rs. 2.30 lakh, it was stated that the actual short payment was Rs. 1.40 lakh. The reply is not tenable as total admitted tax was Rs. 4.79 crore against which the dealer paid Rs. 4.71 crore resulting in short payment of Rs. 7.81 lakh and consequent short levy of interest of Rs. 2.30 lakh;
- In one case involving Rs. 1.16 lakh, it was stated that the dealer was assessed ex parte and interest is not leviable on the tax so assessed. The reply is not tenable since the dealer furnished part return for the assessment year and interest was leviable on the due assessed tax.
- In the remaining 21 cases involving Rs. 30.87 lakh, the department did not furnish any reply.

All the cases were reported to the Government between July 2005 and November 2007, followed by reminders issued upto February 2008; their reply has not been received (September 2008).

## **2.8 Non/short levy of surcharge and additional surcharge**

Under the WBST Act, a dealer has to pay surcharge of 10 *per cent* on the amount of sales tax payable by him with effect from May 1995 and additional surcharge of five *per cent* on the amount of tax payable with effect from May 1997. The surcharge and additional surcharge were abolished from April 2000 but re-introduced from April and August 2002 respectively.

**2.8.1** Scrutiny of the records of five<sup>12</sup> charge offices between August 2006 and May 2007 revealed that while assessing/reassessing seven cases of seven dealers between May 2005 and March 2007 for different assessment periods ending between March 2000 and March 2005, the AAs did not levy surcharge and additional surcharge. This resulted in non-levy of surcharge and additional surcharge of Rs. 19.32 lakh.

After the cases were pointed out, the department between March and August 2007 accepted the audit observation in four cases involving Rs. 15.88 lakh and in the remaining three cases involving Rs. 3.44 lakh did not furnish reply. Further developments have not been reported (September 2008).

**2.8.2** Scrutiny of the records of five<sup>13</sup> charge offices between July 2006 and May 2007 revealed that while assessing six cases of six dealers between June 2002 and May 2006 for different assessment periods ending between March 2000 and March 2004, the AAs levied surcharge and additional surcharge of

<sup>12</sup> Alipore, Kadamtala, Lalbazar, Medinipur and Park Street.

<sup>13</sup> Budge Budge, Corporate Division (DCA 1 – DCA 10), Lalbazar, Medinipur and Park Street.

Rs. 30.84 lakh instead of Rs. 67.60 lakh. This resulted in short levy of surcharge and additional surcharge of Rs. 36.76 lakh.

After the cases were pointed out, the department between September 2006 and May 2007 admitted audit observations in four cases involving Rs. 32.50 lakh and in the remaining two cases involving Rs. 4.26 lakh did not furnish reply. Further developments have not been received (September 2008).

The cases were reported to the Government between December 2006 and August 2007, followed by reminders issued upto December 2007; their reply has not been received (September 2008).

## **2.9 Short realisation of tax due to excess credit**

Under the WBST Act, a dealer is liable to pay admitted tax on the basis of self assessment at the time of furnishing the returns of his turnover. The amount of tax so paid is adjusted against the tax assessed at the time of final assessment.

Scrutiny of the records of three<sup>14</sup> charge offices between April 2004 and August 2006 revealed that while assessing four cases of three dealers between June 2003 and August 2005 for assessment periods ending between March 2001 and March 2004, the AAs assessed tax including penalty and interest of Rs. 30.05 crore but adjusted an amount of Rs. 28.97 crore instead of Rs. 28.50 crore deposited as admitted tax by the dealers. This resulted in short realisation of tax of Rs. 47.31 lakh.

After the cases were pointed out, the department admitted the audit observations in all the four cases. A report on further development has not been received (September 2008).

The cases were reported to the Government between July 2004 and June 2007, followed by reminders issued upto December 2007; their reply has not been received (September 2008).

## **2.10 Non/short levy of purchase tax**

Under the WBST Act, a dealer engaged in manufacture of goods is liable to pay purchase tax at the rate of four *per cent* on all purchases from unregistered dealers intended for direct use in manufacture of goods for sale in West Bengal. A registered dealer, who is not a manufacturer, is also liable to pay purchase tax on all purchases from unregistered dealers on sale of such goods within the State. The dealers making such purchases shall furnish annexure 'P' with the return indicating therein the taxable specified purchase price (TSPP) and the tax payable.

Scrutiny of records of eight<sup>15</sup> charge offices between February 2006 and May 2007 revealed that in assessing/reassessing 16 cases of 14 dealers between April 2004 and October 2006 for assessment periods ending between March 2000 and March 2004, the AAs incorrectly assessed taxable purchase price as Rs. 35.63 crore instead of Rs. 42.56 crore due to short assessment of TSPP

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<sup>14</sup> Barasat, Corporate Division (DCA 1 – DCA 10) and Park Street.

<sup>15</sup> Alipore, Asansol, Barasat, Barrackpore, Corporate Division (CD 2011 – CD 2020), Corporate Division (CD 2031 – CD 2040), Park Street and Postabazar.

vis-à-vis those admitted by the dealers; the TSPP was considered 'nil' though documents of registered purchase was not produced and import was not supported by way bill. This resulted in underassessment of taxable purchase price of Rs. 6.93 crore and consequent non-levy of purchase tax of Rs. 42.88 lakh.

After the cases were pointed out, the replies of the department were as mentioned below:

- In six cases involving Rs. 12.22 lakh, the department accepted the observation;
- In one case involving Rs. 24.73 lakh, it was stated that the dealer had additional business places at Vishakhapattanam and Kandla in addition to his main business place at Kolkata and the total purchase enters the customs bonded warehouse at Kolkata from where it was transferred to the customs bonded warehouse located at other places of business and as such were not recorded in the statement of way bill. The reply was not tenable since the entire purchase made in Kolkata from outside the State of West Bengal should enter into the State and must be supported by way bill;

In the remaining nine cases involving Rs. 5.93 lakh, the department did not furnish any reply.

The cases were reported to the Government between April 2006 and November 2007, followed by reminders issued upto January 2008; their reply has not been received (September 2008).

### **2.11 Mistake in computation of tax**

Under the WBST Act, tax, surcharge and additional surcharge are to be levied at the rate applicable from time to time along with interest and penalty, if any, on the goods/commodities sold.

Scrutiny of the records of six<sup>16</sup> charge offices between March 2006 and March 2007 revealed that while assessing/reassessing eight cases of eight dealers between June 2004 and June 2006 for assessment periods ending between March 1999 and March 2004, the AAs assessed tax including surcharge and additional surcharge at Rs. 69.59 lakh instead of Rs. 1.10 crore due to mistake in computation. This resulted in short levy of tax including surcharge and additional surcharge of Rs. 40.69<sup>17</sup> lakh.

After the cases were pointed out, the department accepted the audit observations in five cases involving Rs. 28.30 lakh. A report on further development in these cases and replies in the remaining three cases involving Rs. 12.39 lakh have not been received (September 2008).

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<sup>16</sup> Baruipur, Corporate Division (CD 2011 – CD 2020), Corporate Division (CD 2031 – CD 2040), Park Street, Radhabazar and Siliguri.

<sup>17</sup> The difference of tax computable and tax computed comes to Rs. 40.41 lakh. The difference of Rs. 28,000 is due to conversion of computable tax of Rs. 110.28 lakh into Rs. 1.10 crore.

The cases were reported to the Government between December 2006 and November 2007, followed by reminders issued upto January 2008; their reply has not been received (September 2008).

### **2.12 Allowance of concessions/exemptions without evidence**

Under section 46A of the WBST Act and the court decision mentioned thereunder, assessment cases of all the dealers for the periods ending March 1998 and March 1999, having turnover below Rs. 3 crore, would be deemed to have been completed on 31 December 1999 subject to the condition that the dealers shall submit to the AAs by 31 March 2001 all the declaration forms and certificates necessary for claiming concessions/exemptions. In case of failure to do so, they were liable to pay the balance tax in respect of sales not supported by declaration forms or the cases were liable to be reopened within four years i.e. before December 2003.

Scrutiny of records of Siliguri charge revealed that in nine cases of four dealers for the periods 1997-98 and 1998-99, the AAs allowed (December 1999) concessions/exemptions of Rs. 34.20 lakh on sales of Rs. 10.90 crore though the dealers did not produce the declaration forms and certificates in support of the claim. This irregular allowance of concessions/exemptions led to loss of revenue of Rs. 34.20 lakh as the cases became barred by limitation of time in December 2003.

The cases were reported to the department and the Government in June 2008; their reply has not been received (September 2008).

### **2.13 Underassessment of tax due to irregular allowance of tax holiday**

Under the WBST Act and Rules made thereunder, a registered dealer who possesses a valid certificate of eligibility (EC) in the prescribed form and manufactures goods in his newly set up industrial unit<sup>18</sup> in West Bengal enjoys tax holiday (exemption) for a prescribed period on sale of the goods mentioned in the EC.

Scrutiny of the records of Netaji Subhash Road charge in May 2007 revealed that while assessing one case of a dealer in June 2006 for assessment period ending in March 2004, the AA allowed claim of Rs. 2.03 crore as tax holiday though the unit ceased to be covered under the purview of newly set up industrial unit. This resulted in irregular allowance of tax holiday and underassessment of tax of Rs. 23.34 lakh.

The case was reported to the department and the Government in July 2007, followed by reminders issued upto December 2007; their reply has not been received (September 2008).

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<sup>18</sup> An industrial unit in which the amount of investment on plant and machinery including the value of those obtained on hire, lease, rent or loan but excluding the value of land, building and the cost of generator and moulds does not exceed Rs. 35 lakh.

## **2.14 Incorrect exemption of tax due to misclassification of goods**

Under the sales tax laws, sales of goods of special importance in inter-state trade and commerce are exempt from tax under section 17 (3) (a) (iv) of the WBST Act. Under section 21(1)(a) of the Act, the value of the declared goods used in works contract by a dealer is to be deducted from his gross turnover and is exempt from taxation.

**2.14.1** Test check of records of Ballygunge charge in January 2008 revealed that in two cases of a dealer, the AA while finalising the assessments in June 2005 and June 2006 for the years 2002-03 and 2003-04, allowed deductions under section 17 (3) (a) (iv) of the WBST Act amounting to Rs. 3.97 crore being sale of declared goods. Scrutiny, however, revealed that the sales were of mobile phone sets/accessories which do not fall under the category of declared goods and attract tax at the rate of four *per cent*. Thus, misclassification of goods resulted in incorrect exemption of tax of Rs. 15.86 lakh.

**2.14.2** Scrutiny of the appeal case records in Durgapur Circle in January 2008 revealed that the AA while completing the assessment of a dealer in February 2004 for the year 1999-2000 included bitumen component amounting to Rs. 2.67 crore in the contractual transfer price and taxed it. However, on appeal the appellate authority excluded the value of bitumen from the transfer price and exempted it from taxation, though bitumen does not fall under the category of declared goods. This resulted in incorrect exemption of tax of Rs. 10.68 lakh due to misclassification of goods.

The cases were reported to the department and the Government in June 2008; their reply has not been received (September 2008).

## **2.15 Non/short raising of demand**

Under the provisions of the WBST Act, the AA shall serve a notice of demand in the prescribed form to the dealer after final assessment showing, *inter alia*, the amount of tax, interest, penalty etc. and the date of payment of such dues.

Scrutiny of the records of five<sup>19</sup> charge offices between June 2006 and May 2007 revealed that while assessing/reassessing five cases of five dealers between June 2002 and June 2006 for assessment periods ending between March 2000 and March 2004, though the AAs assessed tax including interest and penalty of Rs. 1.24 crore, but in four cases demand was raised short by Rs. 23.20 lakh and in the remaining case did not raise demand for tax of Rs. 1.37 lakh. This resulted in non-realisation of Rs. 24.57 lakh.

After the cases were pointed out, the department admitted the audit observations in four cases involving Rs. 14.96 lakh. In one case involving Rs. 9.61 lakh, the department did not furnish any reply. A report on further development has not been received (September 2008).

The cases were reported to the Government between March and November 2007, followed by reminders issued upto January 2008; their reply has not been received (September 2008).

<sup>19</sup> Baruipur, Corporate Division (DCA 1 – DCA 10), Corporate Division (CD 2011 – CD 2020), Netaji Subhash Road and Park Street.

## **2.16 Incorrect determination of contractual transfer price**

Under the WBST Act, any transfer of property in goods involved in the execution of works contract shall be deemed to be a sale by the person making such transfer attracting levy of tax at the prescribed rates on such contractual transfer price (CTP).

Scrutiny of records of two<sup>20</sup> charge offices between November 2005 and September 2006 revealed that while assessing four cases of four dealers between December 2004 and June 2005 for assessment periods ending between March 2001 and March 2003, the AAs determined CTP as Rs. 5.58 crore instead of Rs. 7.14 crore due to non-inclusion of the value of taxable materials involved in the execution of works contract. This resulted in non/short determination of CTP by Rs. 1.56 crore with consequential tax effect of Rs. 12.95 lakh including surcharge and additional surcharge.

After the cases were pointed out, the department admitted the audit observations in three cases involving Rs. 10.59 lakh and stated that proposals for revision of the assessment orders had been sent to the appropriate authority. In the remaining case involving Rs. 2.36 lakh, the department did not furnish reply.

The cases were reported to the Government between July and December 2006, followed by reminders issued upto January 2008; their reply has not been received (September 2008).

## **2.17 Application of incorrect rate of tax**

Under the WBST Act, the rate of tax depends on the nature of sales and also on the nature of goods/commodities sold. Under the CST Act, inter-state sales supported by declaration forms are taxable at the rate of four *per cent*. Otherwise, tax is leviable at the rate of ten *per cent* or the rate of tax applicable in the concerned State, whichever is higher, and in case of declared goods, double the rate of tax.

Scrutiny of the records of 12<sup>21</sup> charge offices between December 2004 and August 2007 revealed that while assessing 23 cases of 18 dealers between June 2003 and June 2006 for assessment periods ending between March 2001 and March 2005, the AAs short levied tax of Rs. 90.27 lakh inclusive of surcharge and additional surcharge due to application of incorrect rate of tax as mentioned below:

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<sup>20</sup> Corporate Division (201 – 210) and Park Street.

<sup>21</sup> Alipore, Asansol, Baruipur, Belgachia, Budge Budge, Corporate Division (CD 2011 – CD 2020), Corporate Division (CD 2031 – CD 2040), Malda, Park Street, Purulia, Radhabazar and Siliguri.



(Rupees in lakh)

Sl. No.	Item Commodity code No.	No. of dealers/cases	Periods of assessment/ Dates of assessment	Rate leviable/ Rate levied (per cent)	Short levy of tax (including surcharge and additional surcharge)	Nature of Irregularity
<b>Intra state Sales</b>						
1.	Stone Chips 9999999	1/1	March 2003/ May 2005	10/4	0.57	Sale of stone chips was taxed at the rate leviable for coal instead of higher general rate applicable.
2.	Toothpaste, tooth powder, mouthwash etc. 1911200	2/3	March 2003/ June 2005	17/10-15	33.74	Sale of toothpaste, tooth powder, mouthwash etc. (whether medicated or not) was taxed at the rate leviable for cream, paste, body powder etc. under drugs and medicines.
3.	RCC <sup>22</sup> pipe, septic tank, manhole cover etc. 2211200	1/4	Between March 2002 and March 2005/ Between June 2004 and August 2005	12/10	1.11	Sale of RCC pipe was taxed at general rate instead of higher rate applicable.
4.	Rubber solution 1717000	1/1	March 2001/ June 2003	12/10	0.76	Sale of rubber solution was taxed at general rate instead of higher rate applicable.
5.	Aluminum wire 2310100	1/2	March 2001 and March 2002/ June 2003 and June 2005	5/4	1.08	Sale of aluminium wire was taxed at the rate applicable to aluminium caps used for sealing bottles.
6.	Paper Board 1611203	1/1	March 2001/ June 2003	8/7	1.47	Sale of paper board was taxed at lower rate instead of higher rate applicable.
7.	Sanitary ware fittings other than PVC <sup>23</sup> goods 1717300	1/1	March 2002/ June 2004	15/12	0.42	Sale of sanitary ware fittings other than PVC goods was taxed at flat rate of 12 per cent instead of at higher rate of 15 per cent applicable during first four months of the year.
8.	Motor parts etc. 2010301	1/1	March 2003/ June 2005	8/4	26.80	Tax on sale of motor parts etc. was erroneously calculated at lower rate.

<sup>22</sup> Reinforced cement concrete.

<sup>23</sup> Poly vinyl chloride.

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9.	<u>Machinery</u> 2611900	1/1	March 2003/ June 2005	8/4	2.66	Sale of machinery was taxed at lower rate instead of higher rate applicable.
10.	<u>Rubber cloth</u> 1717100	1/1	March 2003/ June 2005	10/4	0.74	Sale of rubber cloth was taxed at lower rate instead of higher rate applicable.
11.	<u>Copper wire</u> 2010600	1/1	March 2003/ June 2005	8/5	5.14	Sale of copper wire was taxed at the rate leviable for non-ferrous item instead of the applicable rate.
<b>Inter-state Sales</b>						
12.	<u>Air conditioner</u> 1710100	1/1	March 2004/ June 2006	12/10	0.74	Sale of air conditioner, refrigerator, colour TV, washing machine and microwave oven was taxed at lower general rate instead of higher rates applicable.
13.	<u>Refrigerator</u> 1716900			15/10		
14.	<u>Colour TV</u> 1717900			15/10		
15.	<u>Washing Machine</u> 1718900			15/10		
16.	<u>Microwave Oven</u> 2010100			12/10		
17.	<u>Motor launches and Motor boats</u> 2811600	1/1	March 2004/ June 2006	12/10	0.96	Sale of motor launches and motor boats was taxed at lower general rate instead of the higher rate applicable.
18.	<u>Umbrella, spare parts, components thereof</u> 1718000	1/1	March 2003/ March 2004	10/3	4.07	Sale of umbrella and spare parts and components thereof not supported by declaration forms were taxed at lower rate instead of the higher rate applicable.
19.	<u>Jute goods</u> 1714900	1/1	September 2002/ December 2004	10/8	9.08	Sale of jute goods not supported by declaration forms were taxed at lower rate treating it as declared goods instead of the higher rate applicable.
20.	<u>Cement</u> 2210500	1/1	March 2004/ June 2006	15/10	0.44	Sale of cement was taxed at lower rate instead of the higher rate applicable.
21.	<u>Tea</u> 1211000	1/1	March 2003/ June 2005	10/8	0.49	Sale of tea not supported by declaration forms was taxed at lower rate instead of the general rate applicable.
	<b>Total</b>	<b>18/23</b>			<b>90.27</b>	

After the cases were pointed out, the department accepted the audit observations in 15 cases involving Rs. 85.04 lakh. Further developments in these cases and replies in the remaining eight cases involving Rs. 5.23 lakh have not been received (September 2008).

The cases were reported to the Government between January 2005 and November 2007, followed by reminders issued upto January 2008; their reply has not been received (September 2008).

### **2.18 Underassessment of tax due to incorrect deduction**

Under the WBST Act and the Rules made thereunder, in determining the taxable turnover of a dealer, a deduction on account of tax collected by him is allowable from the aggregate of sales turnover in accordance with the prescribed formula<sup>24</sup>. The Commissioner, Commercial Taxes (CCT), West Bengal reiterating the provisions in a circular in December 1998, instructed all the AAs to restrict the deduction to the amount of sales tax deposited and included in the turnover by the dealers. This provision is also applicable to the assessments made under the CST Act.

Scrutiny of the records of 10<sup>25</sup> charge offices between February 2005 and September 2007 revealed that while assessing/reassessing 31 cases of 26 dealers between May 2003 and March 2007 for assessment periods ending between March 1999 and March 2005, the AAs allowed deduction of Rs. 456.37 crore against actual collection of tax by the dealers of Rs. 450.40 crore as shown in the returns. The excess allowance of deduction of Rs. 5.97 crore by the AAs resulted in short levy of tax of Rs. 57.53 lakh including surcharge and additional surcharge.

After the cases were pointed out, the department accepted the audit observations in 22 cases involving Rs. 38.54 lakh. Further developments in these cases and replies in the remaining nine cases involving Rs. 18.99 lakh have not been received (September 2008).

The cases were reported to the Government between March 2006 and November 2007, followed by reminders issued upto February 2008; their reply has not been received (September 2008).

### **2.19 Incorrect allowance of concessional rate of tax**

Under the WBST Act and the Rules made thereunder, a dealer is eligible for concessional rate of tax for sales of goods to registered resellers or manufacturing dealers/Government departments, if such sales are supported by prescribed declaration forms or certificate furnished by such purchasing dealers/Government departments. Further, as per the CST Act, inter-state sales of goods are also exigible to tax at the concessional rate subject to production of prescribed form C and D by the selling dealers.

<sup>24</sup> 
$$\frac{\text{Rate of tax} \times \text{the balance of gross turnover of sales after making deduction therefrom under clause (a)}}{100 + \text{rate of tax}}$$

<sup>25</sup> Barasat, Baruipur, Corporate Division (CD 201 - CD 210), Corporate Division (CD 301 - CD 310), Corporate Division (CD 2031- CD 2040), Corporate Division (DCA 1 - DCA 10), Durgapur, Kadamtala, Park Street and Purulia.

Scrutiny of records of eight<sup>26</sup> charge offices between November 2005 and May 2007 revealed that while assessing/reassessing 12 cases of 12 dealers between November 2002 and June 2006 for assessment periods ending between March 2000 and March 2004, the AAs levied tax at concessional rates ranging between one and four *per cent* instead of rates ranging between four and 17 *per cent* on the turnover of Rs. 9.50 crore. Levy of tax at concessional rate in these cases was incorrect as the sales were either not supported by the requisite declaration forms or not made to registered dealers/Government organisations. In three cases, statements supporting the claim for concessional rate of tax included sales prior to the period of assessment/date of purchase order. Allowance of incorrect concessional rate resulted in short levy of tax of Rs. 54.72 lakh.

After the cases were pointed out, the department accepted the audit observations in five cases involving Rs. 12.44 lakh. Further developments in these cases and replies in the remaining seven cases involving Rs. 42.28 lakh have not been received (September 2008).

All the cases were reported to the Government between January 2006 and November 2007, followed by reminders issued upto January 2008; their reply has not been received (September 2008).

## **2.20 Revenue foregone due to assessment becoming barred by limitation of time**

Under the WBST Act, reassessment in pursuance of an order of the appellate authority shall be made by the AA within two years from the date of the appellate order, otherwise the case becomes barred by limitation of time.

Scrutiny of the records of two<sup>27</sup> charge offices between October 2005 and February 2007 revealed that six appeal petitions of four dealers under the WBST and the CST Acts for assessment periods ending between March 2000 and March 2002 were disposed of by the appellate authority between June 2003 and November 2004. But reassessments as directed by the appellate authorities were not completed as a result of which the cases became barred by limitation of time. This resulted in foregoing of revenue of Rs. 54.02 lakh.

After the cases were pointed out, the department in February 2008 admitted the audit observation in one case involving Rs. 12.07 lakh and stated that proposal for *suo motu* revision had been sent to the appropriate authority. In the remaining five cases involving Rs. 41.95 lakh, the department did not furnish reply.

The cases were reported to the Government between December 2005 and November 2007, followed by reminders upto January 2008; their reply has not been received (September 2008).

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<sup>26</sup> Baruipur, College Street, Corporate Division (CD 2011 – CD 2020), Corporate Division (CD 2031 – CD 2040), Corporate Division (DCA 1 – DCA 10), Kadamtala, Serampore and Siliguri.

<sup>27</sup> Corporate Division (CD 2011 – CD 2020) and New Market.

### 2.21 Incorrect exemption on account of export sales

Under the CST Act, sales of goods made in the course of export out of India are exempt from tax if such sales are supported by proper evidence of export. Sales not supported by necessary evidence are to be taxed at the prescribed rates treating these as sales in the course of inter-state trade.

Scrutiny of the records in three<sup>28</sup> charge offices and Kolkata (South) circle between June 2006 and May 2008 revealed that in assessing/reassessing six cases of six dealers between June 2003 and June 2006 for assessment periods ending between March 2000 and March 2004, the AAs allowed exemption on account of export sales of Rs. 178.98 crore instead of Rs. 165.10 crore. Allowance of incorrect exemption of export sales of Rs. 13.88 crore resulted in underassessment of tax of Rs. 1.11 crore as mentioned below:

(Rupees in crore)				
Sl. No.	No. of dealers/cases	Amount of incorrect exemption	Underassessment of tax	Nature of irregularity
1.	2/2	0.76	0.05	Dates of bill of lading were prior to the dates of bill of invoice
2.	1/1	11.65	0.93	Exemption was allowed without any evidence in support of claim.
3.	1/1	0.99	0.10	Export in excess of claim preferred was allowed.
4.	1/1	0.43	0.03	Claim pertaining to pre-assessment period was allowed.
5.	1/1	0.05	0.004	Claim not supported by customs clearance certificate
<b>Total</b>	<b>6/6</b>	<b>13.88</b>	<b>1.11</b>	

After the cases were pointed out, the department accepted the audit observations in four cases involving Rs. 7.53 lakh. Further developments in these cases and replies in the remaining two cases involving Rs. 1.03 crore have not been received (September 2008).

The cases were reported to the Government between June and November 2007, followed by reminders issued upto January 2008; their reply has not been received (September 2008).

### 2.22 Incorrect exemption on account of stock transfer

Under the CST Act and the Rules made thereunder, a dealer claiming exemption from sales tax on goods transferred outside the state otherwise than by sale is liable to furnish declarations in form 'F' duly filled in and signed by the principal officer or his agent of the other place of business as a proof of transfer along with the evidence of despatch. A single declaration is required to cover transfer of goods during a calendar month. Failure to comply with this procedure renders the transfer of goods liable to tax at the normal rate.

Scrutiny of records of nine<sup>29</sup> charge offices between March 2006 and May 2007 revealed that while assessing/reassessing 28 cases of 28 dealers between

<sup>28</sup> Corporate Division (CD 2011 – 2020), Corporate Division (DCA 1 – DCA 10), and Park Street.

<sup>29</sup> Baruipur, Corporate Division (CD 2011 – CD 2020), Corporate Division (CD 2031 – CD 2040), Corporate Division (DCA 1 – DCA 10), Lalbazar, Malda, Medinipur, Park Street and Siliguri.

December 2002 and September 2006 for assessment periods ending between March 1999 and March 2004, the AAs allowed exemption on account of transfer of goods to the branches/agents outside the State for Rs. 241.64 crore.

Audit scrutiny revealed that in 19 cases involving transfer of goods of Rs. 4.90 crore, single 'F' form covered transactions beyond one calendar month. In four cases involving transfer of goods of Rs. 3.07 crore, the transaction on which exemptions were allowed by the AAs were not related to the periods of assessment. In three cases involving transfer of goods of Rs. 2.65 crore, the exemptions allowed were not supported by 'F' forms. In one case, transfer of goods of Rs. 39.80 lakh was made to a non-existent dealer and in the remaining case, tax was not levied on the disallowed portion of transfer of goods of Rs. 2.45 crore. Thus, incorrect allowance of exemption on transfer of goods valued at Rs. 13.46 crore resulted in underassessment of tax of Rs. 1.09 crore.

After the cases were pointed out, the replies of the department were as mentioned below:

- In 12 cases involving Rs. 41.84 lakh, the department admitted the audit observations;
- In one case involving Rs. 1.15 lakh, it was stated that there was no financial involvement during the period underassessment since transactions pertained to another period of assessment. The reply is not tenable since excess allowance of exemption reduced the taxable balance for the period of assessment and thus the tax for the period was underassessed;
- In two cases involving Rs. 15.95 lakh, it was stated that production of 'F' form was not mandatory;
- In one case involving Rs. 1.73 lakh, it was stated that the dealer raised proforma invoices in two different months but the transfer of goods was effected during one calendar month on the basis of which the dealer received 'F' forms.

The replies in both the cases are not tenable as a single 'F' form can cover transactions of one calendar month only and production of form 'F' has been made mandatory from the year 2002. Moreover, in the latter case the department failed to furnish the copies of evidence in support of their reply;

- In one case involving Rs. 3.98 lakh stated that the consignee dealers were not fake. The reply is not tenable as cross verification of earlier assessment records indicates that those dealers had already been declared non-existent by the sales tax department of the concerned States;

In the remaining 11 cases involving Rs. 44.56 lakh, the department did not furnish any reply.

The cases were reported to the Government between December 2006 and November 2007, followed by reminders issued upto January 2008; their reply has not been received (September 2008).