

CHAPTER II SALES TAX

2.1 Results of audit

Test check of records relating to sales tax, conducted in audit during the year 2002-03, revealed underassessments of tax and other irregularities involving Rs.44.25 crore in 635 cases, which broadly fall under the following categories:

(Rupees in crore)

Sl. No.	Categories	No. of cases	Amount
1	Non/short levy of interest/penalty	304	24.05
2	Irregular deduction/exemption	115	2.95
3	Non/short levy of surcharge and additional surcharge	33	0.33
4	Incorrect determination of gross turnover/ taxable turnover	50	4.01
5	Application of incorrect rate and mistake in computation	33	5.06
6	Other cases	100	7.85
Total		635	44.25

During the course of the year 2002-03, the concerned Department accepted underassessments etc. of Rs.25.80 crore involved in 433 cases of which 315 cases involving Rs.21.65 crore had been pointed out in audit during the year 2002-03 and the rest in earlier years. An amount of Rs.12.12 lakh was realised at the instance of audit.

A few illustrative cases involving Rs.32.66 crore highlighting important observations are given in the following paragraphs:

2.2 Incorrect determination of Gross Turnover

Under the Sales Tax Laws (STL) of West Bengal, a dealer is liable to pay tax at the prescribed rate(s) on the amount of turnover after deducting the permissible deductions.

Scrutiny of records of 18¹ charge offices* in six² districts revealed that gross turnover of 29 dealers in 35 cases was incorrectly determined between May 1997 and February 2002 at Rs.402.51 crore instead of Rs.423.23 crore for the assessment years between 1992-93 to 1999-2000 due to non-inclusion of sale

¹ Asansol, Ballygunge, Beliaghata, Bhowanipore, Bowbazar, Corporate Division - I, II and III, Esplanade, Ezra Street, Fairlie Place, Jalpaiguri, Lalbazar, Midnapore, Park Street, Raiganj, Serampore and Taltala.

* Charge Offices mean sales tax assessment units.

² Burdwan, Hooghly, Jalpaiguri, Kolkata, Uttar Dinajpur and West Midnapore.

value, inadmissible stock transfer and sale of license etc. in the gross turnover. This resulted in short determination of gross turnover of Rs.20.72 crore with consequent short levy of tax including turnover tax, additional sales tax, surcharge and additional surcharge of Rs.2.43 crore.

On this being pointed out, the Department admitted audit observation in 15 cases of which in 12 cases proposal for revision had been sent to concerned Authorities. In one case, fresh demand notice was issued for Rs.1.02 lakh. Final reply in respect of remaining two cases had not been received till November 2003.

The cases were reported to Government between November 1999 and October 2002; their reply has not been received (November 2003).

2.3 Underassessment of tax due to incorrect deduction

2.3.1 Under the State Act

Under the STL of West Bengal in determining the taxable turnover of a dealer, a deduction on account of tax collected by him is allowable from the aggregate of sale prices in accordance with the prescribed formula. The Commissioner, Commercial Taxes, West Bengal, in a circular of December 1998 instructed all the Assessing Officers to restrict the deduction to the amount of the sales tax collected by the dealers and included in their turnover.

Scrutiny of records of 17³ charge offices in five⁴ districts revealed that in assessing 35 cases of 31 dealers for the assessment years 1993-94 to 1999-2000, the Assessing Officers allowed deduction of Rs.11.54 crore against the actual collection of tax of Rs.4.13 crore. Excess deduction of Rs.7.41 crore resulted in short levy of tax of Rs.85.99 lakh including surcharge and additional surcharge.

On this being pointed out, the Department accepted audit observations in 15 cases of which in two cases demand of Rs.1.34 lakh has been raised, in 11 cases proposal for revision of the assessments had been sent to the concerned

³ Ballygunge, Bhowanipore, Bowbazar, Chinabazar, College Street, Corporate Division-I, II and III, Esplanade, Ezra Street, Jalpaiguri, Krishnanagar, Midnapore, Park Street, Princep Street, Raiganj and Strand Road.

⁴ Jalpaiguri, Kolkata, Nadia, Uttar Dinajpur and West Midnapore.

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Authorities and two cases were under appeal. Final reply in the remaining cases had not been received till November 2003.

The cases were reported to Government between November 1999 and September 2002, their reply has not been received (November 2003).

2.3.2 Under the Central Sales Tax Act, 1956

Under the Central Sales Tax (CST) Act, 1956 in determining the taxable turnover of a dealer, a deduction on account of tax collected by him is allowed from the aggregate of sale prices in accordance with the prescribed formula, provided that the tax collected has not otherwise been deducted. However, the deduction is restricted to the amount of tax collected and included in the gross turnover of the dealer.

Scrutiny of records of four⁵ charge offices in Kolkata revealed that while assessing between April 2000 and April 2002, five dealers in five cases for the assessment years 1992-93 to 1999-2000, the Assessing Authorities allowed deduction of Rs.2.87 crore against actual collection of tax of Rs.42.66 lakh. The excess allowance of deduction of Rs.2.45 crore resulted in short levy of tax of Rs.19.66 lakh as detailed below:

(Rupees in lakh)

Name of the charge	Period of assessment/ Date of assessment or re-assessment	No.of dealers/ cases	Tax collected by the dealer	Deduction allowed by the Department	Excess deduction allowed	Under-assessment of tax
Park Street	March 1999 May 2001	1/1	11.35	25.93	14.58	1.17
College Street	March 2000 April 2002	1/1	22.89	38.52	15.63	1.25
Princep Street	March 1993 April 2000	1/1	0.13	4.26	4.13	0.41
Esplanade	March 1999 June 2001	2/2	8.29	218.58	210.29	16.83
4 charges		5/5	42.66	287.29	244.63	19.66

On this being pointed out, the Department admitted audit observations in three cases out of which in one case involving Rs.1.17 lakh proposal for revision was sent to the higher Authority. Final reply in the remaining cases had not been received till November 2003.

The cases were reported to Government between March and August 2002; their reply has not been received (November 2003).

⁵ College Street, Esplanade, Park Street and Princep Street.

2.4 Incorrect exemption on account of stock transfer

Under the CST Act, 1956 and the Rules made thereunder a dealer claiming exemption from his turnover on account of transfer of goods outside the State otherwise than by way of 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 of goods along with evidence of despatch. Otherwise, such transfer of goods is liable to be taxed at the normal rate.

Scrutiny of records in four⁶ charge offices in Kolkata revealed that while assessing between August 1999 and June 2001, 19 cases of 19 dealers for the assessment years 1996-97 to 1998-99, the Assessing Authorities allowed dealers' claims of stock transfer of goods for Rs.373.35 crore to their branch offices outside the State on the basis of declarations in Form 'F'. Scrutiny of statement of declarations disclosed that an amount of Rs.5.15 crore out of the total allowed claim of Rs.373.35 crore was not admissible as the transactions were either found to have been made to non-existent dealers or were not supported either by 'F' form or any other documentary evidences. Incorrect allowance of exemption of Rs.5.15 crore resulted in underassessment of tax to the tune of Rs.27.49 lakh including surcharge and additional surcharge.

On this being pointed out, the Department accepted audit observations in 12 cases and sent proposals for revision to concerned Authorities. In one case, it was stated that transfer of stock from one branch to other branch of the same dealer within the State cannot be treated as sale. The reply is not tenable as transfer of stock within West Bengal was required to be included in the gross sale of the dealer and deduction from gross turnover was not admissible. Final reply in the remaining cases had not been received till November 2003.

The cases were reported to Government between February and October 2002; their reply has not been received (November 2003).

2.5 Incorrect allowance of concessional rate of tax

Under the STL of West Bengal, a dealer is eligible for concessional rate of tax for sales of goods to registered resellers and manufacturing dealers if such sales are supported by prescribed declaration forms from the purchasing dealers. Further, intra-state as well as inter-state sales of goods to government

⁶ Bhowanipore, Corporate Division-I, Corporate Division-II and Corporate Division-III.

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departments are also exigible to tax at the concessional rate subject to production of prescribed certificate from the purchasing government departments.

Scrutiny of records of 10⁷ charge offices in six⁸ districts revealed that while assessing between May 1997 and June 2002, 38 cases of 33 dealers, the Assessing Authorities incorrectly levied tax at concessional rate instead of at prescribed rate as the sales were either not supported by requisite declaration forms/statements/certificates or were made to non-government organisation. Besides, sales statement for concessional rate of tax included sales preceding the dates of purchase orders/the periods of assessment, which were erroneously subjected to tax at concessional rate. This resulted in short levy of tax of Rs.61.57 lakh as tabled below:

(Rupees in crore)

Period of assessment/date of assessment	No. of dealers/cases	Nature of observation	Excess allowance	Tax effect
Between March 1995 and March 2000 Between June 1997 and June 2002	16/17	Sales valued at Rs.6.39 crore were not supported by declaration forms/statements/certificates	6.39	0.29
Between March 1995 and March 1999 Between May 1997 and January 2001	13/17	Sales valued at Rs.8.73 crore were made to non-government organisation	8.73	0.30
Between December 1998 and March 1999 Between December 2000 and June 2001	4/4	Sales valued at Rs.0.54 crore related to the period preceding the dates of purchase orders/the periods of assessment	0.54	0.02
	33/38		15.66	0.61

On this being pointed out, the Department accepted audit observations in 15 cases and stated that proposal for review/revision had been/was being sent to the concerned Authorities. Final reply in the remaining cases had not been received till November 2003.

The cases were reported to Government between February 1999 and October 2002; their reply has not been received (November 2003).

⁷ Asansol, Ballygunge, Barrackpore, Burdwan, Corporate Division - I and II, Diamond Harbour, Midnapore, Strand Road and Siliguri.

⁸ Burdwan, Darjeeling, Kolkata, North 24 Parganas, South 24 Parganas and West Midnapore.

2.6 Non/short levy of penalty

Under the STL of West Bengal, if in the course of assessment proceedings, the Commissioner is satisfied that a dealer has concealed any turnover or furnished incorrect particulars thereof with an intent to reduce the amount of tax payable by him, he may impose by way of penalty a sum which shall not be less than one and a 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 Commissioner of Commercial Taxes, West Bengal, where the Assessing Officer does not initiate penal proceedings in a case, he should record the reasons for not doing so.

Scrutiny of records of 15⁹ charge offices in seven¹⁰ districts revealed that 39 dealers in 49 cases had either concealed sales/purchases or made claim of exemption on fake stock transfer aggregating Rs.51.57 crore. Though the Department levied tax on the concealed/fake transaction, penalty of Rs.4.91 crore was either not levied or levied short.

On this being pointed out, the Department accepted audit observations in 11 cases of which in nine cases proposal for imposition of penalty had been sent to concerned Authorities. In two cases, the dealer preferred appeal while in 30 cases the Department stated that imposition of penalty was not mandatory. The reply is not tenable as the reasons for non-imposition of penalty had not been recorded in the assessment order. Final reply in the remaining cases had not been received till November 2003.

The cases were reported to Government between June 1999 and July 2002; their reply has not been received (November 2003).

2.7 Application of incorrect rate of tax

Under the STL of West Bengal, tax is to be paid, as applicable along with surcharge and additional surcharge on the goods/commodities sold.

⁹ Alipore, Barasat, Behala, Ballygunge, Bhowanipore, Budge Budge, Corporate Division - I, Diamond Harbour, Durgapur, Ezra Street, Fairlie Place, Purulia, Serampur, Shibpur and Strand Road.

¹⁰ Burdwan, Hooghly, Howrah, Kolkata, Purulia, North 24 Parganas and South 24 Parganas.

Scrutiny of records of 10¹¹ charge offices in five¹² districts revealed that in 20 cases of 18 dealers in respect of assessments made between May 1998 and May 2002 for the assessment years 1995-96 to 1999-2000, there was short levy of tax of Rs.4.61 crore including surcharge and additional surcharge due to application of incorrect rate of tax.

On the cases being pointed out, the Department accepted audit observations in 13 cases of which in seven cases proposal for revision had been sent to the concerned Authorities; while in one case demand for Rs.0.93 lakh had been raised. Final action taken in the remaining cases had not been received till November 2003.

The cases were reported to Government between April 1999 and September 2002; their reply has not been received (November 2003).

2.8 Mistake in computation of tax

Under the STL of West Bengal, tax is to be paid, as applicable along with surcharge and additional surcharge on the goods/commodities sold.

Scrutiny of records of six¹³ charge offices in three¹⁴ districts revealed short realisation of tax including surcharge and additional surcharge of Rs.25.44 lakh due to arithmetical mistake in computation in 12 cases of 12 dealers for the assessment years 1994-95 to 1998-99 assessed between February 1998 and June 2001.

On this being pointed out, the Department accepted audit observation in six cases of which in two cases revised demand notices had been raised for Rs.3.11 lakh. In five cases proposal for revision had been sent to the concerned Authorities. Final reply in the remaining cases had not been received till November 2003.

The cases were reported to Government between May 2001 and October 2002; their reply has not been received (November 2003).

¹¹ Alipore, Asansol, Ballygunge, Colootola, Corporate Division-III, Park Street, Salkia, Suri, Strand Road and Taltala.

¹² Birbhum, Burdwan, Howrah, Kolkata and South 24 parganas.

¹³ Ballygunge, Bhowanipore, Corporate Division-II, Howrah, Park Street and Siliguri.

¹⁴ Darjeeling, Howrah and Kolkata.

2.9 Short realisation due to incorrect credit

Under the STL of West Bengal, a dealer is liable to pay tax on the basis of self-assessment at the time of furnishing return of his sales. The amount of tax so paid is adjusted against the tax assessed at the time of final assessment.

Audit of assessment records of seven¹⁵ charge offices in five¹⁶ districts revealed that in assessing between June 1996 and December 1999, 10 cases of nine dealers for the assessment years 1993-94 to 1998-99, the Assessing Officers allowed credit of Rs.2.07 crore instead of Rs.1.86 crore as per tax payment challans. This resulted in allowance of excess credit of Rs.21.49 lakh with consequent short levy of tax to that extent.

On this being pointed out, the Department admitted audit observations in two cases of which in one case proposal for revision had been sent to the concerned Authority. Final reply had not been received till November 2003.

The cases were reported to Government between June 1999 and May 2001; their reply has not been received (November 2003).

2.10 Non/short levy of surcharge/additional surcharge

Under the STL of West Bengal, every dealer liable to pay sales tax is also liable to pay surcharge at the rate of 10 per cent on the total amount of sales tax payable by him with effect from 1 May 1995. Moreover, a dealer, liable to pay surcharge, is also liable to pay an additional surcharge at the rate of five per cent on the total amount of tax payable by him with effect from 1 May 1997. These stand abolished with effect from April 2000.

Scrutiny of records of 15¹⁷ charge offices in six¹⁸ districts revealed that in assessing between May 1998 and June 2002, 31 cases of 27 dealers for the assessment years 1995- 96 to 1999-2000, though a tax of Rs.34.16 crore was levied, surcharge and additional surcharge were either not levied or levied short. This resulted in non/short levy of surcharge/additional surcharge of Rs.28.82 lakh.

¹⁵ Asansol, Barrackpur, Burdwan, Kadamtola, Serampur, Shibpur and Siliguri.

¹⁶ Burdwan, Darjeeling, Hooghly, Howrah and North 24 Parganas.

¹⁷ Asansol, Ballygunge, Beliaghata, Budge Budge, Chandni Chowk, Corporate Division-I, II and III, Esplanade, Jalpaiguri, Lyons Range, Midnapore, Park Street, Radhabazar and Siliguri.

¹⁸ Burdwan, Darjeeling, Jalpaiguri, Kolkata, South 24 Parganas and West Midnapore.

On this being pointed out, the Department stated that in 12 cases proposal for revision/*suo motu* revision/re-opening had been sent to concerned Authorities. In four cases revised demand had been raised. Final reply in the remaining cases had not been received till November 2003.

The cases were reported to Government between March 2001 and October 2002; their reply has not been received (November 2003).

2.11 Non/short raising of demand

Under the provision of rule 181 of the West Bengal Sales Tax Rules, 1995, the Assessing Authority shall serve a notice of demand in the prescribed form to the dealer after final assessment showing the amount of demand for tax, interest, penalty etc. specifying the date of payment therein. Although there is no time limit for raising of demand, notice of demand is required to be issued as soon as the assessment is completed.

Scrutiny of records of 11¹⁹ charge offices in six²⁰ districts revealed that in assessing between March 1998 and June 2002, 22 cases of 21 dealers for the assessment year 1996-97 to 1999-2000, the Assessing Officer did not raise demand of Rs.1.80 crore in 12 cases while in 10 cases demand was raised short by Rs.3.61 crore. This resulted in non/short raising of demand of Rs.5.41 crore.

Non/short raising of demand of Rs.5.41 crore resulted in potential loss of interest of Rs.1.01 crore calculated at the average borrowing rate of 10 per cent during the period.

On this being pointed out, the Department stated that in nine cases proposal for revision had been sent to the concerned Authorities. In 5 cases fresh demand notices had been/were being issued. Final reply in the remaining cases had not been received till November 2003.

The cases were reported to Government between April 1999 and April 2003; their reply has not been received (November 2003).

¹⁹ Asansol, Beliaghata, Bhowanipore, Corporate Division-I, II and III, Durgapore, Esplanade, Ezra Street, Midnapore and Shibpur.

²⁰ Bankura, Burdwan, Howrah, Kolkata, Malda and West Midnapore.

2.12 Non/short levy of purchase tax

Under the STL of West Bengal, a manufacturing dealer is liable to pay purchase tax at the rate of four per cent on all his purchases of goods from unregistered dealers, intended for direct use in manufacture of goods for sale in West Bengal.

Scrutiny of records of six²¹ charge offices in Kolkata revealed that nine dealers purchased goods valued at Rs.6.80 crore from unregistered dealers for direct use in the manufacture of goods for sale in the State. However, the Assessing Authorities levied tax on purchases valued at Rs.34.01 lakh only. This resulted in short levy of purchase turnover by Rs.6.46 crore with consequent non/short levy of purchase tax of Rs.25.85 lakh.

On this being pointed out, the Department admitted audit observations in six cases of which in two cases proposal for *suo motu* revision had been/was being sent to concerned Authorities. In two cases, records of the dealers were called for for further action. Final reply in the remaining cases had not been received till November 2003.

The cases were reported to Government upto October 2002; their reply has not been received (November 2003).

2.13 Incorrect determination of contractual transfer price

Under the STL of West Bengal, any transfer of property in goods for valuable consideration involved in the execution of works contract shall be deemed to be a sale of those goods by the person making such transfer and tax at the rate of four per cent is leviable on such Contractual Transfer Price (CTP)²².

Scrutiny of records of eight²³ charge offices in six²⁴ districts revealed that while assessing between June 1997 and March 2002, 16 cases of 14 contractor dealers for the assessment years 1993-94 to 1999-2000, the Assessing Authorities determined CTP of 12 dealers in 14 cases at Rs.7.72 crore instead of Rs.14.56 crore due to less inclusion of taxable material like mild steel etc.

²¹ Bhowanipore, Bowbazar, Corporate Division- III, Park Street, Saltlake and Strand Road.

²² Contractual Transfer Price means the aggregate of the valuable consideration for the transfer of property in goods used in execution of a works contract.

²³ Asansol, Barrackpore, Behala, Beliaghata, Krishnanagar, Park Street, Saltlake and Siliguri.

²⁴ Burdwan, Darjeeling, Kolkata, Nadia, North 24 Parganas and South 24 Parganas.

involved in execution of works contract and in the remaining two cases of two dealers determined CTP at Rs.1.79 crore instead of Rs.2.69 crore due to mistake in computation. This resulted in short determination of CTP by Rs.7.74 crore with consequent short levy of tax of Rs.32.11 lakh inclusive of surcharge and additional surcharge.

On this being pointed out, the Department admitted the audit observations in six cases of which in five cases proposal for *suo motu* revision had been/was being sent to the concerned Authorities. Final reply in the remaining cases had not been received till November 2003.

The cases were reported to Government between April 1999 and August 2002; their reply has not been received (November 2003).

2.14 Non/short levy of interest

Under the STL of West Bengal, a dealer (i) who furnishes return in respect of any period without making full payment of tax payable in respect of such period by prescribed date or (ii) fails to furnish return in respect of any period by the prescribed date or (iii) fails to make payment of any tax demanded after assessment by the date specified in the demand notice, is liable to pay simple interest at the prescribed rate for each calendar month of default.

Scrutiny of records of 27²⁵ charge offices in 10²⁶ districts revealed that while making assessment/certificate proceedings between April 1997 and February 2002 in 200 cases of 123 dealers for the periods between December 1982 and January 2000, the Assessing Officers did not levy interest for non-payment/delayed payment of assessed/advance tax of Rs.34.25 crore. This resulted in non/short levy of interest of Rs.11.01 crore.

On this being pointed out, the Department accepted the audit observations in 127 cases of which 51 cases involving Rs.6.76 crore were reported to the Tax Recovery Officers for realisation of the amount, in 63 cases fresh demand notices were either issued or were being issued, in 13 cases involving Rs.37.26

²⁵ Alipore, Asansol, Amratala, Bhowanipore, Bowbazar, Colootola, Coochbehar, Corporate Division-II, Durgapur, Esplanade, Ezra Street, Jalpaiguri, Jorabagan, Lyons Range, Midnapore, Naren Dutta Sarani, Netaji Subash Road, New Market, Postabazar, Purulia, Radhabazar, Rajakatra, Salkia, Serampur, Shibpur, Siliguri, and Taltala.

²⁶ Burdwan, Cooch Behar, Darjeeling, Hooghly, Howrah, Jalpaiguri, Kolkata, Purulia, South 24 Parganas and West Midnapore.

lakh *suo motu* revision proposal had been sent to concerned Authorities. Final reply in the remaining cases had not been received till November 2003.

The cases were reported to Government between July 1999 and October 2002; their reply has not been received (November 2003).

2.15 Internal Audit System in the Commercial Taxes Directorate

Internal Audit system in the Commercial Taxes Directorate started functioning from May 1991 as a permanent in-house mechanism for scrutinizing and detecting irregularities in the assessment of sales tax cases including checking of different registers. This Wing is also responsible for taking follow-up action on audit observations of the inspection reports made by the office of the Accountant General (LBA), West Bengal.

2.15.1 Organisational set up

The Commissioner of Commercial Taxes, West Bengal who is the head of Internal Audit Wing, was assisted by the following personnel between 2000-01 and 2002-03 for promoting enforcement of compliance with laws, rules and departmental instructions.

Year	Men-in-position indicating number of post					
	Additional Commissioner	Deputy Commissioner	Assistant Commissioner	Commercial Tax Officer	Assistant Commercial Tax Officer	Audit Officer
2000-01	-	1	6	6	-	1
2001-02	1	3	7	-	2	-
2002-03	1	4	4	-	3	-

2.15.2 Coverage and periodicity of audit

In West Bengal, there are 68 charge offices excluding checkpoints. Before undertaking audit in a year, the Internal Audit Wing should prepare an audit plan on the basis of norms regarding periodicity and coverage of audit as prescribed in the Internal Audit Manual. The Department, however, did not produce any such plan to Audit, as such the periodicity and coverage of internal audit could not be ascertained.

On this being pointed out, the Department stated in September 2003 that Internal Audit Department conducted audit on the basis of complications/potentiality of files and endeavour would be made to audit a particular charge in every three years.

2.15.3 Pendency of Internal Audit objections and follow-up action

The number of objections issued during the years from 1999-2000 to 2002-03 and pendency of internal audit objections as stated by the Department are furnished below:-

Year	Opening balance of Internal Audit para	Addition during the year	Disposal during the year	Balance at the end of the year
1999-2000	1,692	446	72	2,066
2000-01	2,066	396	17	2,445
2001-02	2,445	183	29	2,599
2002-03	2,599	148	16	2,731

The Department, however, failed to furnish the number of internal audit inspection reports issued during the above years, their pendencies and year-wise analysis of pendencies though called for in audit. Moreover, these internal audit inspection reports had not quantified the money value of any objection.

As to the reasons for pendency of paras, the Department stated in September 2003 that the cases pending before the Appellate Authority/Board/Certificate Officer took considerable time for disposal.

2.15.4 Evaluation

Internal Audit System prevailing in the Commercial Taxes Directorate did not have proper audit planning and coverage. Special emphasis has to be given on updating the Internal Audit Manual.