

## CHAPTER II : COMMERCIAL TAX

### 2.1 Tax administration

The Chhattisgarh Commercial Tax Department is responsible for levy and collection of Value Added tax (VAT), Central Sales tax (CST), Entry tax (ET), Professional tax (PT) and Luxury tax (LT) in the State through assessment of cases of dealers. Commercial Tax Department contributes major part of the revenue for the State. The Department implements the under mentioned Acts and Rules made thereunder:

- Central Sales Tax, 1956;
- Chhattisgarh Value Added Tax Act 2005;
- Chhattisgarh Commercial Tax Act, 1994;
- Chhattisgarh Professional tax Act 1995;
- Chhattisgarh Luxury tax Act 1988; and
- Entry Tax Act 1976.

The Commercial Taxes Department (CTD) is under the administrative control of Finance Department and is headed by the Commissioner of Commercial Taxes (CCT). He is assisted by four Additional Commissioners (Addl. CCTs), 12 Deputy Commissioners (DCs), 26 Assistant Commissioners (ACs), 69 Commercial Tax Officers (CTOs), 118 Assistant Commercial Tax Officers (ACTOs) and 168 Commercial Tax Inspectors (CTIs).

### 2.2 Analysis of budget preparation

The Budget estimates, as per the Chhattisgarh Budgetary manual, are prepared after taking into account the revenue realised during the previous year and the expected revenue increase in the current year. The Department sends the budget proposal to the Finance Department for approval. The budget, after discussion, is approved by the Finance Department.

### 2.3 Trend of Revenue Receipts

Actual receipts from Commercial Taxes during the years 2005-06 to 2009-10 along with the total tax receipts during the period is exhibited in the following table:

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2005-06	1,745.81	2,089.20	(+) 343.39	(+) 19.67	4,051.91	51.56
2006-07	2,903.20	2,843.04	(-) 59.96	(-) 2.07	5,045.70	56.34
2007-08	3,200.00	3,023.70	(-) 176.30	(-) 5.51	5,618.10	53.82
2008-09	3,470.00	3,610.94	(+) 140.94	(+) 4.06	6,593.72	54.76
2009-10	3,447.12	3,712.16	(+) 265.04	(+) 7.69	7,123.25	52.11

(Source: Finance Accounts of the State)

The contribution of Commercial Tax receipts to the tax revenue of the state during the last five years ranged between 51.56 to 56.34 *per cent*. It may be seen from the above table that the actual receipts during the above period except in 2006-07 and 2007-08, exceeded the budget estimates and the same ranged between four *per cent* and 20 *per cent*. As regards 2006-07 and 2007-08, the shortfall in the receipts was two *per cent* and six *per cent* respectively. The reasons for shortfall in receipts though called for from the Department have not been received. The higher achievements of revenue receipts in 2008-09 and 2009-10 were mainly due to increase in the number of registered dealers, due to implementation of VAT since 1 April 2006.

## 2.4 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2010 amounted to ₹ 438.57 crore of which ₹ 131.45 crore were outstanding for more than five years. The following table depicts the position of arrears of revenue during the period 2005-06 to 2009-10:-

(₹ in crore)

Year	Opening balance of arrears	Demand raised during the year	Amount collected during the year	Closing balance of arrears
2005-06	131.45	136.85	121.18	147.12
2006-07	147.12	215.79	206.38	156.53
2007-08	156.53	424.99	398.19	183.33
2008-09	183.33	171.26	160.20	194.39
2009-10	194.39	927.38	683.20	438.57

(Source: Departmental figures).

The Department should take effective steps to recover the arrears by issuing revenue recovery certificates.

## 2.5 Assessee Profile

Year	Number of dealers registered	Large Tax Payers	Small Tax Payers	Number of dealers required to file returns	Number of returns received	Action taken by the department
2009-10	69,837	5,795	64,042	56,239	40,577	Advance Tax Notices issued to the dealers for collection of taxes due and action taken to recover the due amount.

## 2.6 Cost of VAT per assessee

(₹ in crore)

Year	Number of Assessee	VAT Revenue	Revenue/Assessee
2005-06	54,278	2,504.94	0.0462
2006-07	57,353	3,161.72	0.0551
2007-08	59,499	3,545.77	0.0596
2008-09	63,446	4,044.39	0.0637
2009-10	69,727	4469.77	0.0641

(Source: Departmental figures)

The above table indicates that after implementation of Chhattisgarh VAT Act (April 2006), the revenue per Assessee increased considerably and there was constant increase in collection of VAT from 2006-07 to 2009-10.

## 2.7 Arrears in assessment

The number of pending cases at the beginning of the year 2009-10, becoming due during the year, disposed of during the year and pending at the end of the year 2009-10 as furnished by the Departments are mentioned in the following table:

Name of tax	Opening balance (2009-10)	Addition during the year	Total number of assessment cases due	Cases disposed during the year	Cases pending at the end of the year	Percentage of clearance (column 5 to 4)
1	2	3	4	5	6	7
Value Added tax	20,878	79,923	1,00,801	77,053	23,748	76.44
Professional tax	517	27,923	28,440	25,261	3,179	88.82
Entry tax	36,398	9,343	45,741	37,446	8,295	81.87
Luxury tax	4	143	147	108	39	73.47
Tax on works contract	19	293	312	209	103	66.99
<b>Total</b>	<b>57,816</b>	<b>1,17,625</b>	<b>1,75,441</b>	<b>1,40,077</b>	<b>35,364</b>	<b>79.84</b>

The above table indicates that at the end of the year, 23.56 per cent of VAT cases were pending for assessment. The Government may initiate timely actions for expeditious disposal of these pending cases. 204 and 89 cases were selected respectively for tax audit and completed during the year 2006-07 and 2007-08.

## 2.8 Cost of collection

The expenditure incurred on collection of receipt and the percentage of such expenditure to gross collection during the years 2007-08, 2008-09 and 2009-10 along with the relevant all India average percentage of expenditure to gross collection of preceding years is indicated in the following table:

(₹ in crore)

Head of revenue	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage of expenditure to gross collection of preceding year
Taxes/VAT on Sale, trade etc	2007-08	3023.70	14.24	0.47	0.82
	2008-09	3610.94	16.38	0.45	0.83
	2009-10	3712.16	25.71	0.69	0.88

It may be seen from the table that though the percentage of expenditure incurred was lower in comparison to the all India percentage, but the same was increased by 57 per cent in 2009-10 as compared to 2008-09.

## 2.9 Analysis of collection

The break-up of the total collection at the pre-assessment stage and after regular assessment of taxes on sales, trade etc. during the year 2009-10 and corresponding figures for the preceding five years as furnished by the Finance (Commercial Taxes) Department is mentioned below:

(₹ in crore)

Heads of revenue	Year	Amount collected at the pre-assessment stage	Amount collected after regular assessment	Penalty for delay in payment of taxes and duties	Amount refunded	Net collection as per department	Percentage of collection (column 3 to 7)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Taxes/ VAT on sales, trade etc.	2004-05	1,321.62	26.47	8.17	9.09	1,347.17	98.10
	2005-06	1,621.44	52.48	10.81	10.72	1,674.01	96.86
	2006-07	2,038.49	104.41	20.77	22.96	2,140.71	95.22
	2007-08	2,379.83	126.97	10.44	14.55	2,502.69	95.09
	2008-09	2,925.54	52.77	8.12	18.35	2,968.08	98.57
	2009-10	2,388.16	190.93	87.35	57.33	2,609.11	91.53

(Source: Departmental figures)

It may be seen from the table that net collection of taxes during the year 2009-10 decreased as compared to 2004-05.

## 2.10 Impact of audit

**2.10.1: Position of IRs :** During the last five years, audit through its Audit Reports had pointed out non/short levy, non/short realisation, underassessment/ loss of revenue, incorrect exemption, incorrect computation etc. with revenue implication of ₹ 1.17 crore in 846 cases. Of these, the Department/Government had accepted audit observations in 193 cases involving ₹ 0.70 crore. No recovery has been made by the Department in any of these cases. The details are shown in the following table:

(₹ in crore)

Year of Audit Report	No. of units audited	Amount objected		Amount accepted		Amount recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2004-05	10	185	0.14	68	0.04	-	-
2005-06	17	263	0.20	2	0.003	-	-
2006-07	10	176	0.18	97	0.11	-	-
2007-08	04	37	0.03	16	0.07	-	-
2008-09	20	185	0.62	10	0.48	-	-
<b>Total</b>		<b>846</b>	<b>1.17</b>	<b>193</b>	<b>0.70</b>	<b>-</b>	<b>-</b>

The above table indicates that during the last five years no recovery was effected by the Department. The Department had also not taken any initiative for clearance of the cases pointed out by audit.

**2.10.2 : Position of Audit Reports :** In the Audit Report 2004-05 to 2008-09, cases of under assessment, non/short levy tax were indicated involving ₹ 60.35 crore. The Department accepted observations of ₹ 48.33 crore of which ₹ 0.08crore had been recovered till March 2010 as shown in the following table:

(₹ in crore)

Sl. No.	Year of the audit report	Total money value	Amount accepted	Recovery made up to March 2010
1.	2004-05	2.94	0.28	-
2.	2005-06	5.10	-	-
3.	2006-07	2.11	0.24	0.08
4.	2007-08	0.74	0.32	-
5.	2008-09	49.46	47.49	-
<b>Total</b>		<b>60.35</b>	<b>48.33</b>	<b>0.08</b>

The above table indicates that during the year 2006-07, only ₹ 0.08 crore was recovered by the Department. The Department had not taken any initiative to recover the amount as pointed out in Audit Reports.

## 2.11 Internal audit

Internal Audit Wing (IAW) is organised by the Commissioner, Commercial Tax Department. Internal Audit is conducted in accordance with the plans. While conducting internal audit, no major comments of the IAW has been received but corrective actions were taken by the Department. The Government may instruct to IAW to issue the inspection reports and obtain the compliance in time.

## 2.12 Results of audit

Test check of the records of 32 units relating to Commercial Tax Department revealed underassessment, non/short levy of tax/interest/penalty, application of incorrect rate of tax etc. amounting ₹ 35.93 crore in 295 cases which fall under the following categories:

(₹ in crore)			
Sl. No.	Category	No. of cases	Amount
1.	Incorrect deduction/exemption on strength doubtful forms	77	10.80
2.	Incorrect grant of exemption/deduction	65	8.90
3.	Non-tax levy of tax and penalty	58	6.78
4.	Incorrect determination of taxable turnover	21	3.35
5.	Application of incorrect rate of tax	34	1.36
6.	Other irregularities	40	4.74
<b>Total</b>		<b>295</b>	<b>35.93</b>

During the year, the Department accepted underassessment of ₹ 0.30 crore in 10 cases.

After issue of draft paragraph, the Department had recovered ₹ 0.98 lakh in full in one case.

A few illustrative cases involving ₹ 3.36 crore are mentioned in the following paragraphs.

## 2.13 Audit observations

*We scrutinised assessment records of sales tax/value added tax (VAT) in Commercial Taxes Department and found several cases of non-observance of provisions of the Acts/Rules, non/short levy of tax/penalty/interest, incorrect application of rate of tax, incorrect deduction from taxable turnover, incorrect exemption and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are only illustrative and are based on a test check carried out by us. Such omissions on the part of assessing authorities (AA) are pointed out in audit each year, but not only do the irregularities persist but these also remain undetected till an audit is conducted. There is need for the Government to improve the internal control system including strengthening of the internal audit to ensure that such omissions are detected and rectified.*

## 2.14 Non-observance of the provisions of the Acts/Rules

*The Chhattisgarh Commercial Tax Act 1994 provides for:*

- (i) *levy of tax/interest/penalty at the prescribed rate; and*
- (ii) *allowing exemption of turnover subject to fulfilment of the prescribed conditions.*

*We noticed that the AAs while finalising the assessment did not observe some of the provisions which resulted in non/short realisation of revenue as mentioned in succeeding paragraphs.*

## 2.15 Incorrect application of rate of tax

According to notification No. A-5-14-97-ST-V (78) dated 29.9.1997 as amended w.e.f. 1.7.2004 issued by Chhattisgarh Government under Entry Tax Act, if a dealer acquires or obtains Iron ore otherwise than by way of purchase and utilises it under Section 4A of Entry Tax Act 1976, then entry tax is leviable at the rate of three *per cent*.

**2.15.1** We found in the test check of the records of the Assistant Commissioner (AC) Commercial Tax, Korba (November 2009) that a dealer<sup>1</sup> who was a manufacturer of sponge iron, billets, rolled products, assessed in June 2007 and June 2008 for the periods April 2005 to March 2006 and April 2006 to March 2007 respectively, had received iron ore worth ₹ 43.60 crore and ₹ 46.74 crore through stock transfer for the period 2005-06 and 2006-07

respectively. The Assessing officer levied entry tax at the rate of one *per cent* though as per the above notification entry tax at three *per cent* was leviable. This resulted in short levy of tax of ₹ 1.81 crore.

After we pointed out the case, the Department accepted the objection and stated that the case would be reopened and action will be taken.

<sup>1</sup> M/s Prakash Industries Champa.

We brought the matter to the notice of the Government (May 2010); their reply has not been received (November 2010).

According to entry no. 41 of Schedule II of part III of the Chhattisgarh Commercial Tax Act, 1994, hair oil is taxable at the rate of 17.25 *per cent* (including surcharge). As per the judgement of Hon'ble Supreme Court in the case of Annapurna Carbon Industries Vs State of Andhra Pradesh (1976) 37 STC 378, it is its general or predominant use that determines the category in which an article will fall.

**2.15.2** We found in the test check of the records of the Assistant Commissioner, Raipur (June 2009) that a dealer engaged in sale of coconut oil, mustard oil and spices etc. assessed in July 2008, sold coconut oil of ₹ 1.57 crore during 2005-06. The tax was levied at the rate of two *per cent* by the Assessing Officer treating it as edible oil while it was taxable at the rate of 17.25 *per cent* being used as hair oil. This resulted in short levy of tax of ₹ 23.97 lakh

After we pointed out the case, the Department accepted the objection and stated that action would be taken.

We brought the matter to the notice of the Government (February 2010); their reply has not been received (November 2010).

## **2.16 Non-levy of tax due to incorrect exemption**

According to the notification dated 13.04.2000 issued by the Chhattisgarh Government under Commercial Tax Act, when a registered dealer sells scrap of Iron and steel, Pig iron, cast iron and/or steel semis and defectives, rejects cuttings etc. to another such dealer against A-3 declaration for use by him in manufacture of steel semis, wire rods, ingots etc, he will be exempted from Sales tax. 'Sponge iron' was not included in above notification.

**2.16.1** We found in the test check of the records of the Assistant Commissioner, Commercial Tax, Raipur (June 2009) that three dealers engaged in manufacture and sale of sponge iron for the period 2004-05 and 2005-06 assessed in January 2008 and January 2009 were allowed exemption of ₹ 21.78 crore on sponge iron on A-3 declaration. As the sponge iron was not included in the above notification, the above sale was taxable at the rate of four *per cent*. This has resulted in non-levy of tax of ₹ 87.14 lakh.

After the case was pointed out, the Department replied (October 2010) that the case has been reopened under section 28(1) and is under process.

We brought the matter to the notice of the Government (February 2010); their reply has not been received (November 2010).



As per section 13(16) of the Chhattisgarh Commercial Tax Act, 1994 Goods manufactured by a unit eligible for exemption from payment of tax are not covered in the definition of tax paid goods. Therefore, such goods even if used as raw material or incidental goods are not eligible for set off. Further as per the judgement of the Supreme Court, “Crude oil purchased by a dealer and converted to refined oil, does not retain its character after processing and is therefore liable to be taxed”.

**2.16.2** We found in the test check of records of Assistant Commissioner, Commercial Tax (ACCT), Raipur (November 2008) that a dealer<sup>2</sup> engaged in refining of crude soya oil and sale of refined oil was assessed in January 2008 for the period 2004-05. The dealer sold refined soya oil for ₹ 8.31 crore during the period of assessment and was allowed tax exemption of ₹ 16.63 lakh on sale of refined oil. As crude oil does not retain its character after refining, it is irregular to exempt it from taxation as per the judgement above. This irregular exemption allowed to the dealer resulted in non-levy of tax of ₹ 16.63 lakh.

After we pointed out the case, the Department accepted the objection and stated that necessary action would be taken.

We brought the matter to the notice of the Government (February 2010); their reply has not been received (November 2010).

According to Section 9 of the Chhattisgarh Commercial Tax Act, 1994 read with Schedule-II, commercial tax on *safed musli* (as kirana goods) is leviable at 4.6 per cent (including surcharge of 15 per cent).

**2.16.3** We found in the test check of the records of the Commercial Tax Officer (CTO) Circle-III, Raipur (April 2009) that a dealer was assessed in January 2007 for the period April 2003 to March 2004. As per assessment order the dealer was in business of sale and purchase of PVC pipe and allowed exemption of sale of tax free ‘*Abhrak*’ amounting to ₹ 1.63 crore.

The assessee had shown the sales of tax free *safed musli* and seeds amounting to ₹ 1.57 crore and ₹ 0.06 crore respectively as against the business of sale and purchase of PVC pipes declared by him in his return. As *safed musli* is included in the list of kirana goods, the tax of ₹ 7.22 lakh on ₹ 1.57 crore at the rate of 4.6 per cent was leviable. Thus, failure of the Assessing officer to verify the business at the time of assessment led to non-levy of tax of ₹ 7.22 lakh on sales of ₹ 1.57 crore.

After we pointed out the case (April 2009), the Department accepted the objection and stated that demand notice has been issued to the dealer.

<sup>2</sup> M/s M.P. Oil & fats Ltd.

We brought the matter to the notice of the Government (February 2010); their reply has not been received (November 2010).

### 2.17 Incorrect deduction from taxable turnover

According to the Chhattisgarh Commercial Tax Rules, 1995, every registered dealer is required to furnish a copy of goods account, purchase list, computation sheet and documents relating to deductions shown in return along with the last return for the year.

We found in the test check of the records of the Assistant Commissioner, Circle-I, Durg (October 2008) that a dealer engaged in clearing and forwarding of medicines for the period April 2003 to March 2004 and assessed in January 2006 availed deduction on purchase returns of ₹ 82.21 lakh and deduction of life saving drugs of ₹ 42.08 lakh for which no

supporting documents were attached with the case. Thus, the deduction granted to the dealer was incorrect in view of the rules *ibid* and tax at the rate of 9.2 *per cent* (including surcharge on medicine) should have been levied. Non-levy of tax has resulted in non-realisation of revenue of ₹ 11.43 lakh.

After the case was pointed out (October 2008), the Department replied (October 2010) that the case has been reopened and is under process.

We brought the matter to the notice of the Government (February 2010); their reply has not been received (November 2010).

### 2.18 Non-levy of entry tax and penalty

According to Section 3 of the Chhattisgarh Entry Tax Act 1976, entry tax is leviable on goods entering into local area for sale, use or consumption as raw material or incidental goods for packing material at the rate specified in schedule. Being a Schedule II item, entry tax on machineries and parts thereof is leviable at the rate of one *per cent*. Further as per Section 13 of Chhattisgarh Entry Tax Act, Vanijyik Kar Adhiniyam and the rules made and orders and notifications issued thereunder shall *mutatis mutandis* apply to a dealer or person in respect of the entry tax leviable and payable under this act. As per Section 69 of Chhattisgarh Commercial Tax (CGCT) Act, in addition to the tax payable, penalty which shall not be less than three times but shall not exceed five times is payable for the amount of tax evaded.

We found in the test check of the records of the Assistant Commissioner, Commercial Tax, Bilaspur Circle I (April 2009) that a dealer engaged in the beneficiation of coal and sale thereof was assessed in April 2005 for the period 2001-02 and had purchased machinery and spare parts valuing ₹ 1.14 crore from other state for use but did not show it in purchase list as

revealed from Form 59 A. The purchased goods attract entry tax of ₹ 1.14 lakh and penalty of ₹ 3.42 lakh but no demand was raised by the Department for its recovery. This resulted in non-realisation of revenue of ₹ 4.56 lakh.

After we pointed out the case, the Department accepted the objection and intimated that the case has been reopened under section 28(1).

We brought the matter to the notice of the Government (November 2009); their reply has not been received (November 2010).

## 2.19 Short levy of tax due to application of concessional rates on invalid declarations

According to Chhattisgarh Commercial Tax Act, 1994 and rules made thereunder, sale of goods enlisted in Schedule-II of the Act by a registered dealer to another registered dealer for use by him in the manufacture or processing of goods for sale is taxable at concessional rate of four *per cent* subject to the production of declaration as specified. Otherwise, it is taxable at full rate as mentioned in Schedule-II of the Act.

We found in the test check of the records of the Assistant Commissioner-I, Bilaspur (April 2009) that the dealer<sup>3</sup> engaged in sale of explosives for the period 2002-03 and assessed in February 2006, availed concessional rate of tax on the sale of ₹ 93.46 lakh on the basis of declarations on Form 33. In the declarations the invoice dates were prior to the dates of purchase order ranging from one to seven months on the sale value of ₹ 47.50 lakh. The tax was levied at concessional rate of 4.6 *per cent* which resulted in short levy of tax of ₹ 4.37 lakh.

After we pointed out the case, the Department accepted (October 2010) the objection and stated that the case has been reopened and is under process.

We brought the matter to the notice of the Government (February 2010); their reply has not been received (November 2010).

<sup>3</sup> M/s Tamilnadu Industrial Explosives Ltd.