

CHAPTER II

SALES TAX / VALUE ADDED TAX

2.1 Tax administration

Sales Tax and Value Added Tax (VAT) comprise the receipts under the West Bengal Sales Tax Act, 1994, the Central Sales Tax Act, 1956 and the Value Added Tax Act, 2003. The provisions of the Acts and Rules are administered by the Finance (Revenue) Department headed by the Principal Secretary to the Government of West Bengal. He is assisted by the Commissioner of Commercial Taxes, two Special Commissioners, 36 Additional Commissioners, 89 Senior Joint Commissioners, 325 Joint Commissioners and 655 Sales Tax Officers.

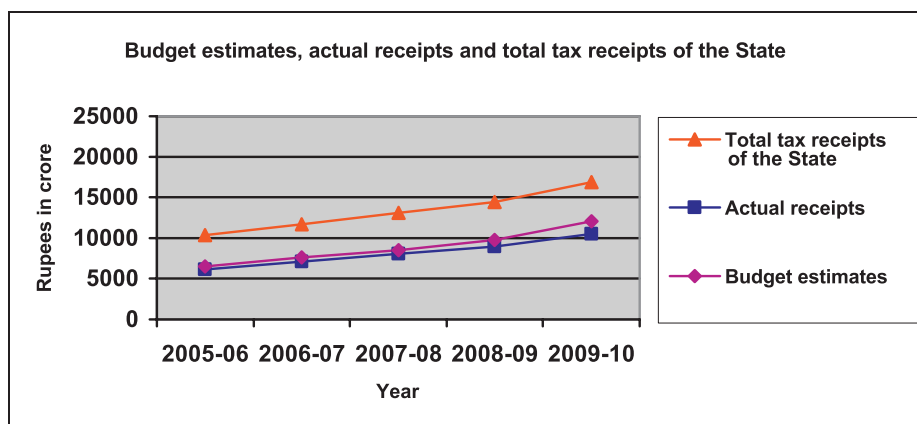
2.2 Trend of receipts

Actual receipts from VAT¹ during the years from 2005-06 to 2009-10 along with the total tax receipts during the same period is exhibited in the following table and graph.

(Rupees in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual VAT receipts vis-à-vis total tax receipts
2005-06	6,502.89	6,108.78	(-) 394.11	(-) 6.06	10,388.38	58.80
2006-07	7,622.48	7,079.03	(-) 543.45	(-) 7.13	11,694.77	60.53
2007-08	8,505.71	8,060.46	(-) 445.25	(-) 5.23	13,126.33	61.40
2008-09	9,794.18	8,955.09	(-) 839.09	(-) 8.56	14,419.15	62.10
2009-10	12,046.85	10,509.64	(-) 1,537.21	(-) 12.76	16,899.98	62.18

¹ Includes sales tax



Percentage of actual VAT receipts vis-à-vis total tax receipts indicates that VAT is the main source of revenue of the State Government. However, a study of the budget estimates vis-à-vis actual receipts shows that the actual collection has never achieved the desired target and the gap between the budget estimate and actual receipts has widened during the last two years.

2.3 Cost of VAT per assessee

The cost of VAT per assessee for the last four years is shown in the following table:

(Rupees in thousand)			
Year	Cost of collection	Number of dealers at the end of the year	Cost of VAT per assessee
2006-07	8,37,867	1,84,753	4.54
2007-08	9,24,178	2,12,603	4.35
2008-09	10,03,416	2,17,731	4.61
2009-10	15,00,100	2,89,299	5.18

The cost of VAT per assessee has steadily gone up during the last two years from ₹ 4.35 thousand per assessee to ₹ 5.18 thousand per assessee. The steady rise is due to sharp increase in the cost of collection.

2.4 Arrears in assessment

Sl. No.	Particulars	2005-06	2006-07	2007-08	2008-09	2009-10
1.	Opening balance	1,84,198	1,69,076	1,15,099	33,045	27,572
2.	Cases initiated during the year	1,30,038	80,077	39,271	62,085	1,02,518
3.	Cases disposed of during the year	1,45,160	1,34,054	1,21,325	67,558	41,004
4.	Cases pending at the end of the year	1,69,076	1,15,099	33,045	27,572	89,086

The arrears in assessment in 2009-10 has increased three times over the previous financial year though there was a steady decrease in the arrears from 2005-06 to 2008-09.

2.5 Working of internal audit wing

Internal audit wing of the Directorate of Commercial taxes started functioning from May 1991 as a permanent in-house mechanism for scrutinising and detecting irregularities in the assessments of Sales tax and VAT cases as well as checking of different records/registers to ascertain whether the internal control system as envisaged in the Act and Rules made thereunder is functioning properly. The wing is headed by the Commissioner of Commercial Taxes (CCT) who is assisted by an Additional Commissioner, five Sr. Joint Commissioners, four Joint Commissioners and five Assistant Sales Tax Officers. The wing does not have any internal audit manual. The wing planned and audited only three charge offices out of 67 charge offices during the year 2009-10. Thus, coverage of internal audit wing during 2009-10 was only 4.47 per cent of the total auditable charge offices.

The functioning of the internal audit may be streamlined by drafting its manual and the audit coverage should be widened.

2.6 Cost of collection

The gross collection from Sales tax and VAT, the expenditure incurred on its collection and the percentage of such expenditure to gross collection for the years 2006-07 to 2009-10 are given in the following table:

(Rupees in crore)

Year	Gross collection	Gross expenditure	Percentage of expenditure to gross collection
2006-07	7,079.00	83.79	1.18
2007-08	8,060.46	92.42	1.15
2008-09	8,955.09	100.34	1.12
2009-10	10,509.64	150.01	1.42

The percentage of expenditure on collection of VAT has sharply increased in 2009-10 (1.42) and was well above the all India average (0.88). Thus, there is considerable scope for the Government to improve the efficiency of collection.

2.7 Analysis of collection

(Rupees in crore)

Year	Amount collected at preassessment stage	Amount collected after regular assessment	Penalties for delay in payment of taxes and duties	Amount refunded	Net collection	Percentage of column 2 to 6
1	2	3	4	5	6	7
2006-07	6,993.04	94.57	31.03	39.62	7,079.02	99
2007-08	8,223.06	99.87	33.17	32.12	8,323.98	99
2008-09	8,857.15	98.53	36.12	24.40	8,967.40 ²	99
2009-10	10,600.09	96.37	41.27	114.05	10,623.68	99.77

² Departmental figure is at variance with the Finance Accounts figure which is to be reconciled.

The above table shows that 99 per cent of VAT collection is at the pre-assessment stage. This indicates that most of the dealers pay tax voluntarily.

2.8 Revenue impact of audit reports

During the last five years (including the current year's report), audit through its audit reports had pointed out non/short levy, non/short realisation, underassessment/loss of revenue, incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, mistakes in computation etc., with revenue implication of ₹1,125.45 crore in 86 paragraphs. Of these, the department/Government had accepted audit observations in 67 paragraphs involving ₹ 272.69 crore against which no recovery has since been intimated. The details are shown in the following table:

(Rupees in crore)

Year of Audit Report	Paragraphs included		Paragraphs accepted		Amount recovered	
	Number	Amount	Number	Amount	Number	Amount
2005-06	15	493.54	10 ³	146.16	NA*	NA
2006-07	15	37.64	12 ⁴	13.79	NA	NA
2007-08	21	412.51	17 ⁵	9.48	NA	NA
2008-09	20	44.91	15 ⁶	10.39	NA	NA
2009-10	15	136.85	13 ⁷	92.87	NA	NA
Total	86	1,125.45	67	272.69		

* NA - Not available.

2.9 Results of audit

Test check of the records of 30 units relating to VAT receipts indicated underassessment of tax and other irregularities involving ₹ 273.35 crore in 433 cases which fall under the following categories:

(Rupees in crore)

Sl. No.	Categories	Number of cases	Amount
1.	Incorrect determination of gross turnover	48	49.36
2.	Irregular deduction/exemption	157	54.22
3.	Non/short levy of interest/penalty	69	14.24
4.	Irregular allowance of input tax credit	25	1.13
5.	Other cases	134	154.40
Total		433	273.35

During the course of the year, the department accepted underassessment and other deficiencies of ₹ 202.98 crore in 153 cases, of which 133 cases involving ₹ 76.47 crore were pointed out in audit during the year 2009-10 and the rest in

³ All paragraphs partly accepted.

⁴ 10 paragraphs partly accepted.

⁵ 16 paragraphs partly accepted.

⁶ 14 paragraphs partly accepted.

⁷ All paragraphs partly accepted.

earlier years. An amount of ₹ 0.10 crore was realised in 18 cases during the year 2009-10.

A few illustrative cases involving ₹ 136.85 crore are mentioned in the following paragraphs.

2.10 Audit observations

Scrutiny of the assessment records of sales tax/value added tax (VAT) indicated several cases of non-observance of the provisions of the Acts/Rules, non/short levy of tax/penalty/interest/acceptance of defective statutory forms/suppression of sales/irregular concession/incorrect application of rate of tax, etc. as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on test check carried out in audit. Such omissions on the part of the Assessing Authorities are pointed out in audit each year in sales tax, but not only do the irregularities persist; these remain undetected till an audit is conducted. Compliance deficiencies in respect of VAT have been pointed out for the first time. There is need for the Government to improve the internal control system including internal audit so that such errors can be corrected timely and avoided in future.

Non-compliance of provisions of the Acts/Rules

As per the provisions of the WBST Act, 1994, WBVAT Act, 2003 and the CST Act, 1956 while finalising the assessments of a dealer, the Assessing Authorities are required to follow the provisions of the Acts and Rules and conduct required verifications to ensure the correctness of the assessment.

The West Bengal Sales Tax (WBST)/West Bengal Value Added Tax (WBVAT)/Central Sales Tax (CST) Acts and Rules made thereunder provide for:

- (i) determination of turnover after allowing permissible deductions;
- (ii) levy of tax/interest/penalty at the prescribed rate;
- (iii) allowing exemption of turnover subject to fulfillment of the prescribed conditions; and
- (iv) allowing of input tax credit as admissible.

We noticed that the Assessing Authorities (AAs) while finalising the assessments did not observe some of the provisions which resulted in non/short levy/non-realisation of tax/interest/penalty of ₹ 136.85 crore as mentioned in the following paragraphs.

2.11 Incorrect determination of gross turnover

The turnover of sales in relation to any period means the aggregate of the sale prices or parts of sale prices receivable by a dealer, in respect of sales of goods made during such period. A dealer is liable to pay tax at the prescribed rate on the amount of such turnover after allowing permissible deductions or admissible input tax credit. In addition, the dealer is liable to pay surcharge and additional surcharge on the amount of tax payable from April and August 2002 respectively under the WBST Act, 1994.

2.11.1 We found in three⁸ charge offices between February 2008 and November 2009 that in assessing/reassessing 13 cases of 13 dealers under the WBST Act between June 2005 and May 2008 for different assessment periods between 2001-02 and 2004-05, the AAs determined gross turnover

(GT)/taxable balance (TB)/taxable turnover (TT) at ₹ 618.24 crore instead of ₹ 831.82 crore due to short assessment of TB/TT, short disclosure of opening stock, irregular allowance of exemption/credit notes and non-inclusion of sale of empty bottles/job work/other income in GT. Short determination of GT/TB/TT of ₹ 213.58 crore resulted in short levy of tax of ₹ 44.28 crore including surcharge and additional surcharge.

After we reported the cases between July 2009 and January 2010, the department accepted the audit observations (between January and December 2009) in six cases involving ₹ 43.10 crore but did not furnish any report on realisation. The department did not furnish any reply in the remaining seven cases involving ₹ 1.18 crore.

We forwarded the cases to the Government between November 2009 and February 2010 followed by reminders issued upto June 2010; they did not furnish any reply (October 2010).

2.11.2 We found in four⁹ charge offices between July and September 2009 that in assessing nine cases of nine dealers under the WBVAT Act between September and November 2008 for the assessment period 2005-06, the AAs determined turnover of sales/taxable balance (TB) at ₹ 43.14 crore instead of ₹ 77.03 crore due to short assessment of turnover/TB, irregular allowance of exemptions and non-consideration of returns at the time of assessment. Short determination of turnover of sales/TB of ₹ 33.89 crore resulted in short levy of tax of ₹ 1.35 crore.

After we reported the cases between September and November 2009, the department accepted the audit observations between December 2009 and February 2010 in seven cases involving ₹ 1.16 crore but did not furnish any report on realisation. The department did not furnish any specific reply in remaining two cases involving ₹ 18.85 lakh.

⁸ Corporate Division (CD 2001 - CD 2010), Corporate Division (CD 2011 - CD 2020) and Salkia.

⁹ Bhowanipore, Park Street, Salkia and Tamluk.

We forwarded the cases to the Government between September and November 2009 followed by reminders issued upto July 2010; they did not furnish any reply (October 2010).

2.12 Irregularities in declaration forms

Section 8 and Section 6A of the CST Act, 1956 prescribe that a dealer seeking exemption for transfer of goods and concessional rate of tax has to furnish declaration forms 'F' and 'C' respectively. Transfer of goods effected during a calendar month is to be covered in a single declaration form 'F'. Otherwise, such transfer of goods is liable to be treated as inter-state sale and taxed accordingly. Production of form 'F' has been made mandatory from June 2002.

2.12.1 We found in five¹⁰ charge offices between March 2008 and November 2009 that while assessing/reassessing 14 cases of 14 dealers between June 2005 and November 2008 for different assessment periods between 2001-02 and 2005-06, the AAs allowed exemption on account of transfer of goods to the branches/agents outside the State for ₹ 409.45 crore. Of these, transfer of goods of ₹ 5.32 crore in five cases was not supported by form 'F'; in one case transfer of ₹ 1.41 crore was allowed to a dealer declared

as fake by the Sales Tax department of the State. In another case, inter-unit transfer of raw materials was allowed for ₹ 83.64 lakh though no such transfer was evident from the final accounts. In the remaining seven cases, transfer of goods worth ₹ 70.34 crore was supported by form 'F' covering transactions of more than one calendar month. Thus, incorrect exemption on transfer of goods worth ₹ 77.90 crore resulted in underassessment of tax of ₹ 15.82 crore.

The department admitted the audit observations in 10 cases between April 2009 and January 2010 involving ₹ 15.44 crore. However, report on recovery has not been received. In the remaining four cases involving ₹ 0.38 crore, the department did not furnish any reply/specific reply.

We forwarded the cases to the Government between July 2009 and January 2010 followed by reminders issued upto June 2010; they did not furnish any reply (October 2010).

2.12.2 We found in Corporate Division (2011-2020) in May 2009 that while assessing the case of a dealer in October 2007 for 2003-04, the AA allowed claim of tax at concessional rate on sale of declared goods of ₹ 16.52 crore though the dealer did not furnish declaration in forms 'C' in support of the claim. This resulted in short levy of tax of ₹ 63.54 lakh.

We forwarded the case to the Government in January 2010 followed by reminders issued upto June 2010; they did not furnish any reply (October 2010).

¹⁰ Alipore, Bhowanipore, Corporate Division (CD 2001 – CD 2010), Corporate Division (CD 2011 – CD 2020) and Lalbazar.

2.13 Non/short levy of purchase tax

Section 13 (1) of the WBST Act, 1994, prescribes that a manufacturer dealer is liable to pay purchase tax at the rate of four *per cent* on all purchases of goods 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 returns indicating therein the taxable specified purchase price (TSPP) and tax payable.

We found in Corporate Division (2001-2010) between February and November 2008 that in assessing / reassessing three cases of two dealers between June 2005 and February 2007 for assessment periods between 2002-03 and 2003-04, the AAs incorrectly assessed purchase tax on purchase of ₹ 57.03 lakh instead of ₹ 44.13 crore. Of these

in two cases TSPP of ₹ 42.96 crore was assessed short while in one case though the TSPP of ₹ 60.45 lakh was assessed correctly, tax was not levied. This resulted in underassessment of taxable purchase worth ₹ 43.56 crore and consequent non/short levy of purchase tax of ₹ 1.78 crore.

After we reported the cases in July 2009, the department accepted (December 2009) the audit observations in two cases involving ₹ 1.72 crore and stated that proposal for revision has been sent. Report on realisation of tax has not been received. The department did not furnish any reply in the remaining case involving ₹ 6.04 lakh.

We forwarded the cases to the Government in November 2009 followed by reminders issued upto June 2010; they did not furnish any reply (October 2010).

2.14 Underassessment of tax due to mistake(s) in computation

Under the WBST Act, 1994 and WBVAT Act, 2003 tax or output tax is to be computed at the rate applicable from time to time along with surcharge, additional surcharge, interest and penalty, if any, on the goods/commodities sold.

2.14.1 We found in three¹¹ charge offices (between January 2008 and January 2009) that in assessing four cases of four dealers under the WBST Act between June 2005 and June 2006 for different assessment periods between 2002-03 and 2003-

04, the AAs assessed tax including surcharge and additional surcharge at ₹ 4.74 crore instead of ₹ 6.31 crore due to arithmetical mistake in computing taxable balance and tax payable. This resulted in short levy of tax including surcharge and additional surcharge of ₹ 1.57 crore as detailed below:

¹¹ Bhowanipore, Corporate Division (CD 2001 – CD 2010) and Princep Street.

(Rupees in lakh)

Sl. No.	Name of the charge	Assessment year/date of assessment	No. of cases/dealers	Tax computable	Tax computed	Tax effect
1.	Bhowanipore	2003-04/ 30.06.06	1/1	263.95	262.73	1.22
2.	Corporate Division	2002-03/ 15.06.05	2/2	362.85	208.24	154.61
3.	Princep Street	2003-04/ 29.06.06	1/1	4.09	2.94	1.15
Total			4/4	630.89	473.91	156.98

After we reported the cases in October 2008 and July 2009, the department accepted the audit observations in two cases involving ₹ 9.86 lakh but report on realisation has not been received. The department did not furnish any reply in the remaining two cases involving ₹ 1.47 crore.

We forwarded the cases to the Government between November and December 2009 followed by reminders issued upto June 2010; they did not furnish any reply (October 2010).

2.14.2 We found in Park Street charge (August 2009) that in assessing two cases of two dealers under the WBVAT Act in November 2008 for the assessment period 2005-06, the AAs assessed output tax of ₹ 3.31 crore instead of ₹ 3.77 crore due to arithmetical mistake in computation. This resulted in short levy of output tax of ₹ 46.23 lakh.

After we reported the cases in October 2009, the department accepted the audit observations in both the cases, but did not furnish any report on realisation of tax (October 2010).

We forwarded the cases to the Government in December 2009 followed by reminders issued upto June 2010; they did not furnish any reply (October 2010).

2.15 Non/short levy of interest

2.15.1 We found in three¹² charge offices between April 2008 and September 2009 that in assessing/

Sections 31 and 32 of the WBST Act, 1994 and Section 33 of the WBVAT Act, 2003 prescribe that a dealer becomes liable to pay interest at the rate of 12 *per cent* per annum if he either failed to furnish returns or failed to pay tax by the prescribed date or failed to adjust any amount of ITC by way of reverse credit.

reassessing/ initiating certificate proceedings in eight cases of seven dealers under the WBST Act between June 2005 and April 2008 for different assessment periods between 2002-03 and 2004-05, the AAs levied interest of ₹ 11.40 lakh instead of ₹ 56.64 lakh leviable on tax dues of

₹ 1.93 crore resulting in non/short levy of interest of ₹ 45.24 lakh.

¹² Corporate Division (CD 2001 – CD 2010), Park Street and Tamluk.

After we reported the cases between July and October 2009 the department admitted between February and December 2010, the audit observations in seven cases involving ₹ 26.43 lakh and did not furnish any reply in the remaining case involving ₹ 18.81 lakh.

We forwarded the cases to the Government in December 2009 followed by reminders issued upto June 2010; they did not furnish any reply (October 2010).

2.15.2 We found in three¹³ charge offices between July and September 2009 that in assessing four cases of four dealers under the WBVAT Act between September and November 2008 for the assessment period 2005-06, the AAs levied interest of ₹ 8.53 lakh instead of ₹ 32.79 lakh for non/delayed payment of tax of ₹ 94.25 lakh. This resulted in non/short levy of interest of ₹ 24.26 lakh.

After we reported the cases between September and October 2009 the department admitted the audit observations in all the cases between December 2009 and February 2010 but did not furnish any report on realisation (October 2010).

We forwarded the cases to the Government in December 2009 followed by reminders issued upto July 2010; they did not furnish any reply (October 2010).

2.16 Application of incorrect rate of tax

Section 17 of the WBST Act, 1994 and Section 16 (2) of the WBVAT Act, 2003 prescribe that the rate of tax on goods/commodities sold depends on classification of goods in the schedules.

2.16.1 We found in four¹⁴ charge offices between September 2008 and July 2009 that in assessing four cases of four dealers under the WBST Act between June 2005 and June 2007 for the assessment periods between 2002-03 and 2004-05, the AAs levied tax of ₹ 99.77 lakh instead of ₹ 1.28 crore on turnover of ₹ 11.49 crore due to application of incorrect rate of tax. This resulted in short levy of tax of ₹ 28.54 lakh.

After we reported the cases between February 2009 and January 2010, the department admitted (February 2010) the audit observation in one case involving ₹ 3.81 lakh but did not furnish any report on realisation. The department did not furnish any specific reply in the remaining three cases involving ₹ 24.73 lakh.

We forwarded the cases to the Government between November 2009 and February 2010 followed by reminders issued upto June 2010; they did not furnish any reply (October 2010).

¹³ Lalbazar, Park Street and Tamluk.

¹⁴ Chandni Chawk, Corporate Division (CD 2001 - CD 2010), Corporate Division (CD 2011 - CD 2020) and Salkia.

2.16.2 We found in three¹⁵ charge offices between July and November 2009 that in assessing four cases of four dealers under the WBVAT Act between September 2008 and February 2009 for the assessment period 2005-06, the AAs in two cases levied tax on sales of ₹ 35 lakh at the rate of 4 *per cent* instead of 12.5 *per cent* whereas in the other two cases, the AAs levied tax at the rate of 10 *per cent* instead of the applicable rate of VAT of 12.5 *per cent* on inter-state sale of ₹ 82 lakh not supported by declaration forms. Thus, application of incorrect rate of tax resulted in short levy of tax of ₹ 5.02 lakh.

After we reported the cases between September and December 2009, the department admitted between December 2009 and February 2010 the audit observations in three cases involving ₹ 4.06 lakh but did not furnish any report on realisation. The department stated in the remaining case involving ₹ 0.96 lakh, that the matter has been referred to the appellate authority. However, report on further development has not been received (October 2010).

We forwarded the cases to the Government between September and December 2009 followed by reminders issued upto July 2010; they did not furnish any reply (October 2010).

2.17 Non/short determination of taxable contractual transfer price

Section 15 (1) of the WBST Act, 1994 prescribes that 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 taxable contractual transfer price (CTP).

2.17.1 We found in two¹⁶ charge offices in August 2008 and June 2009 that while assessing two cases of two dealers under the WBST Act between June 2005 and June 2006 for the assessment

periods 2002-03 and 2003-04, the AAs determined taxable CTP at ₹ 20.27 lakh instead of ₹ 3.22 crore due to non-inclusion of taxable CTP of Metro Railway work valued of ₹ 2.88 crore in respect of one dealer and short inclusion of cost of materials of ₹ 14.26 lakh in respect of another dealer. This resulted in non/short determination of taxable CTP by ₹ 3.02 crore with consequential tax effect of ₹ 26.78 lakh.

We forwarded the cases to the department/Government in October 2008 and January 2010 followed by reminders issued upto June 2010; they did not furnish any reply (October 2010).

¹⁵ Barasat, Park Street and Tamluk.

¹⁶ Bhowanipore and Corporate Division (CD 2011 - CD 2020).

Section 18 of the WBVAT Act, 2003 prescribes that in case of civil works where the taxable contractual transfer price for application of proper rate of tax is not ascertainable from the books of accounts maintained by the dealer or where a dealer does not maintain books of accounts worthy of credence, 25 per cent of the value of contract may be deducted for labour, service and other like charges and tax at the rate of 4 and 12.5 per cent is to be charged on 20 per cent and 55 per cent of the value of the contract respectively.

2.17.2 We found in Tamluk charge in July 2009 that while assessing two cases of two dealers under the WBVAT Act in July 2008 for the assessment period 2005-06, the AAs determined taxable CTP at ₹ 2.65 crore¹⁷ instead of ₹ 6.40 crore ignoring the procedure prescribed in the rules for determination of taxable CTP in respect of civil works. This resulted in short determination of CTP by ₹ 3.75 crore with consequential tax effect of ₹ 38.62 lakh.

After we reported the cases in September 2009, the department admitted the audit observations in December 2009 in both the cases and stated that proposals for *suo-motu* revision were being sent to the higher authority.

We forwarded the cases to the Government in December 2009 followed by reminders issued upto June 2010; they did not furnish any reply (October 2010).

2.18 Irregular allowance of exemption to the eligibility certificate holders not fulfilling the conditions thereof

The eligibility certificate (EC) is granted by the Special Cell headed by the Special Commissioner under the Directorate of Commercial Taxes for extending benefits to the dealers having small scale industrial units. Under the provisions of Rule 98 (2 and 3) of the WBST Rules, 1995, the EC holder shall maintain and keep true and up-to-date accounts, sale bill or cash memo, separate set of serially numbered bills/cash memos, stock register for the purchase and issue of materials and also the records of production of goods in his unit and issue of such goods by sale of goods or otherwise. Rule 101 provides for invalidation of the EC in case of contravention of the conditions.

We found in 17¹⁸ charge offices between December 2008 and March 2010 that in assessing 98 cases of 37 dealers between April 2002 and June 2007 for different assessment periods ending between March 2001 and March 2005, the AAs allowed exemption of sales of ₹ 286.17 crore though the dealers had contravened the conditions of the EC.

¹⁷ The dealers had not maintained books properly and the AAs had arbitrarily determined their taxable turnover.

¹⁸ Asansol, Bally, Bankura, Belgachia, Beliaghata, Berhampur, Budge Budge, Burdwan, Durgapur, Jorabagan, Manohar katra, Medinipur, Park street, Postabazar, Princep street, Shibpur and Serampur.

Of these, in 67 cases involving ₹ 9.73 crore the dealers did not maintain true and up-to-date books of accounts, in 21 cases involving ₹ 21.70 crore the dealers did not maintain proper sale bills or cash memos and in 10 cases involving ₹ 2.40 crore the dealers did not maintain proper stock registers. These resulted in short levy of tax and interest of ₹ 33.83 crore.

After we reported the cases, the department admitted the audit observations in 36 cases involving ₹ 5.14 crore stating that proposals for *suo motu* revision/reopening of the cases had been sent to the higher authorities. The department did not furnish any reply in the 38 cases involving ₹ 7.92 crore while in the remaining 24 cases involving ₹ 20.77 crore, the department did not accept the audit observations. The contention of the department is not tenable as mentioned below:

- In three cases involving ₹ 78 lakh the assessing authorities stated that they could not reject the claim unless the EC is cancelled by the granting authority. The replies furnished are not correct as Rule 101 provides for invalidation of the EC in case of contravention of the prescribed conditions. But in these cases no effort was made by the assessing authorities to process the cases for invalidation.
- In 19 cases involving ₹ 62 lakh the AAs stated that the purchases were made from unregistered hawkers/cultivators who were not in the habit of issuing bills. The replies furnished are not correct as the Act provides that the EC holder shall maintain and keep true and up-to-date accounts, sale bills or cash memos, separate set of serially numbered bills/cash memos and stock registers for the purchase and issue of materials for claiming exemption from payment of tax.
- In two cases involving ₹ 19.37 crore, the AAs stated that the dealers had maintained the books of the accounts and as such they were allowed deduction. The replies are not correct as the assessment records of the dealers indicated that the dealers had not maintained true/correct books of accounts and had thus contravened the conditions of the EC. As such, the exemption allowed was incorrect. Instead, action was required to be taken for declaring the EC invalid.

We forwarded the cases to the Government between April 2009 and March 2010 followed by reminders issued upto July 2010; their reply has not been received (October 2010).

The Government may consider establishing a mechanism for co-ordination between the AAs and the EC granting and renewing authority to prohibit allowance of tax benefit to the EC holders who violate the conditions of the EC.

2.19 Irregular allowance of exemption to eligibility certificate holders not furnishing gross value of fixed assets

Section 39 (4) of the WBST Act, 1994 provides that a registered dealer having eligibility certificate shall not be entitled to enjoy the benefit of exemption from the day immediately following the day on which the aggregate of the benefit of exemption from payment of tax enjoyed by the dealer exceeds two hundred *per cent* of the gross value of fixed assets (GVFA). Rule 101A (2) made under the Act *ibid* prescribes that the dealer shall inform the assessing authority in writing on or before 30.06.2003 of the GVFA as it stood on 01.04.2003 and furnish copies of documents, duly certified by the dealer, in support of such GVFA.

We found in nine¹⁹ charge offices between December 2008 and March 2010 that in assessing 24 cases of 13 dealers between July 2005 and October 2008 for different assessment periods between March 2004 and March 2005, the AAs in 21 cases of 12 dealers allowed exemption of sale of ₹ 177.35 crore though the dealers did not furnish the GVFA within the prescribed date whereas in three cases of two dealers, though the AAs disallowed the exemption and levied tax, interest was not levied. These resulted in short levy of tax and interest of ₹ 23.97 crore.

After we reported the cases, the department admitted the audit observations in six cases involving ₹ 4.63 crore. However, further action taken for recovery and reply in the remaining 18 cases involving ₹ 19.34 crore has not been received (October 2010).

We forwarded the cases to the Government between April 2009 and March 2010 followed by reminders issued upto July 2010; their reply has not been received (October 2010).

2.20 Incorrect allowance of remission of tax

Section 41 of the WBST Act, 1994 and the rules made thereunder prescribe that a registered dealer holding an eligibility certificate (EC) may avail the benefit of remission of tax on sale of goods manufactured by him subject to fulfillment of the prescribed conditions. However, the dealer shall not be eligible for such remission of tax beyond the last date of validity of the EC.

We found in two charge offices²⁰ between August 2008 and September 2009 that in assessing/ reassessing two cases of two dealers between June 2005 and December 2008 for the assessment periods 2002-03 and 2003-04, the AAs incorrectly allowed remission of tax of ₹ 6.91 crore instead of

₹ 6.69 crore. Of these in one case the AA disallowed set-off of ₹ 8.08 lakh but subsequently included it in the amount of remission allowed to the dealer

¹⁹ Asansol, Baruipur, Chandni Chowk, Ezra Street, Jorabagan, Lyons Range, Salt Lake, Shibpur and Siliguri.

²⁰ Corporate Divisions (CD 2001 - CD 2010) and (CD 2011 - CD 2020).

without any such provision under the Act. In other case the set off of tax of ₹ 13.95 lakh was allowed for the period 01.04.2003 to 13.08.2003 though the EC was valid only upto 08.01.2003. This resulted in incorrect allowance of remission of tax of ₹ 22.03 lakh.

After we reported the cases in July 2009 and January 2010, the department in December 2009 accepted the audit observation in one case involving ₹ 13.95 lakh. However, they did not furnish any report on realisation. The department did not furnish any reply in the remaining case involving ₹ 8.08 lakh.

We forwarded the cases to the Government between November 2009 and February 2010 followed by reminders issued upto June 2010; they did not furnish any reply (October 2010).

2.21 Short realisation of tax due to excess credit

Section 30 (4) of the WBST Act, 1994 prescribes that a dealer is liable to pay sales tax on the basis of self assessment at the time of furnishing returns of his turnover. The amount of tax so paid is adjusted against the tax finally assessed.

We found in Corporate Division (2001-2010) in June 2008 that while assessing the case of a dealer in June 2005 for the assessment period 2002-03, the AA adjusted ₹ 10.49 crore as tax paid by the dealer through 16 challans. Out of these, one challan²¹ of ₹ 20 lakh was not

produced to audit. We verified the records of Information Systems Division²² and found that no entry was made there regarding this challan. This resulted in allowance of excess credit and consequent short realisation of tax of ₹ 20 lakh.

We forwarded the case to the department/Government in December 2009 followed by reminders issued upto June 2010; they did not furnish any reply (October 2010).

2.22 Short raising of demand

Rule 9 of the CST Rules, 1958, prescribes that the AA shall serve a notice of demand in the prescribed form to the dealer after final assessment showing the actual amount of tax, interest and penalty payable by the dealer specifying the date of payment therein.

We found in Park Street charge in August 2009 that while assessing the case of a dealer in November 2008 for 2005-06, the AA assessed tax and penalty at ₹ 19.96 lakh of which the dealer paid ₹ 6.14 lakh before assessment. However, the AA allowed credit of ₹ 6.14 lakh twice and

raised demand of ₹ 7.68 lakh instead of ₹ 13.82 lakh. This resulted in short raising of demand of ₹ 6.14 lakh.

²¹ Challan no. 97335/4 dated 04.04.2002 (40/HV-19).

²² Information Systems Division of the Directorate of Commercial Taxes is the centralised authority which compiles data and generates reports which *inter alia* contains reports on payment of tax, penalty and interest.

After we reported the case to the department/Government in December 2009, the department stated in January 2010 that the case was under appeal and the Appellate Authority had been informed of the audit observation. They did not report on further development (October 2010).

2.23 Non-levy of penalty on evaded tax

Section 76 (1) of the WBST Act, 1994, prescribes that 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 AA in addition to tax, 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 instructions (June 1991) of the CCT, West Bengal, the AA is required to record the reasons for not initiating penalty proceedings, if he decides to do so, in the assessment order itself.

We found in two²³ charge offices between December 2007 and November 2009 that while assessing nine cases of nine dealers between June 2004 and December 2007 for different assessment periods between 2001-02 and 2004-05, the AAs detected concealment of turnover of sales of

₹ 83.35 crore by the dealers with the intent to evade payment of tax of ₹ 7.01 crore, but neither levied minimum penalty of ₹ 10.51 crore nor recorded any reasons in the assessment order for not doing so.

After we reported the cases in July 2009 and January 2010, the department in November 2009 accepted the audit observation in one case involving ₹ 12.07 lakh and in the remaining eight cases involving ₹ 10.39 crore, did not furnish any reply.

We forwarded the cases to the Government in November 2009 and February 2010 followed by reminders issued upto June 2010; they did not furnish any reply (October 2010).

2.24 Irregular allowance of compounded rate of tax

Section 16(F) of the WB VAT Act, 2003 and the rules made thereunder prescribe that any registered dealer who intends to opt for payment of tax at compounded rate²⁴ shall exercise his option by making an application to the appropriate authority in Form-16 within the prescribed date. In absence of application in Form-16 the dealer is liable to pay tax at normal rate.

We found in three²⁵ charge offices between August and October 2009 that while assessing four cases of four dealers between June and September 2008

²³ Corporate Division (CD 2001 - CD 2010) and Corporate Division (CD 2011 - CD 2020).

²⁴ 0.25 per cent in case of registered dealers, four per cent in case of registered clubs and two per cent in case of registered dealers making sales by way of transfer of right to use goods.

²⁵ Alipore, Asansol and Tamluk.

for 2005-06, the AAs levied tax at compounded rate on the turnover of ₹ 2.24 crore though the dealers were not eligible for payment of tax at compounded rate due to non/delayed submission of option in Form-16. This resulted in short levy of tax of ₹ 17.06 lakh.

After we reported the cases between September and December 2009, the department accepted the audit observations between December 2009 and January 2010 in three cases involving ₹ 15.26 lakh but did not furnish any report on realisation. The department did not furnish any specific reply in the remaining case involving ₹ 1.80 lakh.

We forwarded the cases to the Government between November and December 2009 followed by reminders issued upto June 2010; they did not furnish any reply (October 2010).

2.25 Irregular allowance of input tax credit

Section 22 of the WBVAT Act, 2003, and Rules made thereunder prescribe that a registered dealer can avail the benefit of Input Tax Credit (ITC) to the extent of the amount of tax paid or payable by him in respect of purchase of goods from registered dealers of West Bengal. ITC is also allowable on the stock of goods as on 1 April 2005 purchased from registered dealers within the State. However, no ITC is allowable for purchase of goods for manufacturing tax exempted goods.

We found in three²⁶ charge offices between July and August 2009 that in assessing five cases of five dealers between July and November 2008 for the assessment period ending

March 2006, the AAs allowed ITC of ₹ 45.92 lakh instead of ₹ 15.51 lakh. This resulted in irregular allowance of ITC of ₹ 30.41 lakh as detailed below:

(Rupees in lakh)

Sl. no.	Assessment year/date of assessment	ITC allowable	ITC allowed	Tax effect	Nature of irregularity
1.	2005-06/ 26.11.08 (u/s 46)	9.23	10.22	0.99	The dealer made purchases from nine dealers. The principal place of business and VAT number of the purchasing dealers did not match. As such, ITC claimed should have been disallowed.
2.	2005-06/ 28.11.08	2.00	2.95	0.95	Allowance of ITC on purchase of goods for manufacturing tax exempted goods.
3.	2005-06/ 04.11.08	0.00	14.64	14.64	Allowance of ITC despite non-production of tax invoice/stock register and production of incomplete purchase statement.
4.	2005-06/ 25.07.08	4.28	5.24	0.96	Allowance of excess claim of ITC than claimed in returns.
5.	2005-06/ 04.11.08	0.00	12.87	12.87	Allowance of ITC on transitional stock of goods without verifying the statement.
	Total	15.51	45.92	30.41	

After we reported the cases between September and November 2009 the department accepted the audit observations between September and December

²⁶ Asansol, Park Street and Tamluk.

2009 in four cases involving ₹29.42 lakh but did not furnish any report on realisation. The department did not furnish any specific reply in the remaining case involving ₹0.99 lakh.

We forwarded the cases to the Government in December 2009 followed by reminders issued upto July 2010; they did not furnish any reply (October 2010).