

## CHAPTER II

### TAXES ON SALE, TRADE/VAT ETC

#### 2.1 Tax Administration

Commercial Taxes Department is the most important revenue-earning department of the State. The Principal Secretary to the Government of Meghalaya, Excise, Registration, Taxation and Stamps (ERTS) Department, is in overall charge of the Sales Tax Department at the Government level. The Commissioner of Taxes (COT) is the administrative head of the Department. He is assisted by two Deputy Commissioners of Taxes (DCT) and two Assistant Commissioners of Taxes (ACT). One of the ACT, functions as the appellate authority. At the district level, the Superintendents of Taxes (ST) have been entrusted with the work of registration, scrutiny of returns, collection of taxes, levy of interest and penalty, issue of road permits/declaration forms etc. The collection of tax, interest and penalty etc., in the State is governed by the provisions of the Central Sales Tax (CST) Act, 1956, the CST Rules, 1957, the Meghalaya Value Added Tax (MVAT) Act, 2003 and the MVAT Rules, 2005. Before the introduction of VAT on 1 May 2005, the Meghalaya Sales Tax (MST) Act and the Meghalaya Finance (Sales Tax) (MFST) Act were in place, which have, since been repealed with the introduction of VAT. However, assessments under the MST Act and MFST Act are still being made. The STs are the Assessing Officers (AO) under the repealed acts. However, with the introduction of VAT, an audit team with the DCT as its head has been constituted to assess the dealers while the STs have been vested with the power to scrutinise returns furnished by the dealers.

#### 2.2 Trend of receipts

Actual receipts from VAT during the last five years 2005-06 to 2009-10 alongwith the total tax receipts during the same period is exhibited in the following table and graph.

**Table 2.1**

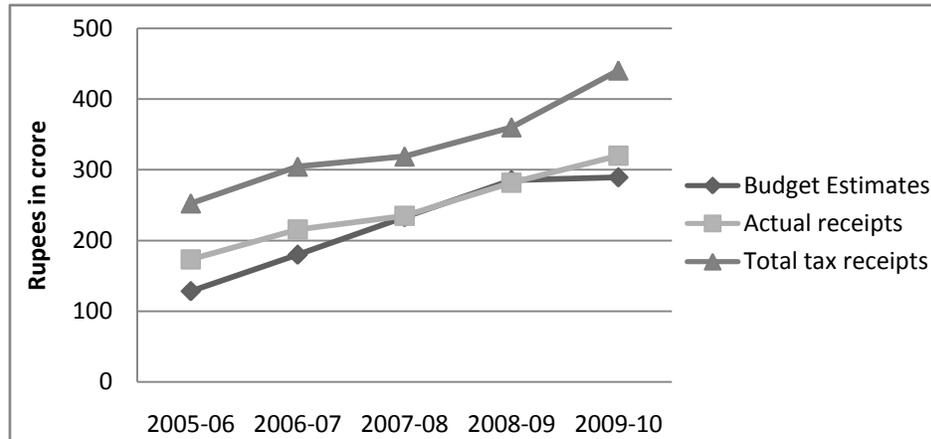
(Rupees in crore)

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	128.50	173.37	(+) 44.87	35	252.67	68.62
2006-07	180.00	215.82	(+) 35.82	20	304.74	70.82
2007-08	233.16	234.90	(+) 1.73	1	319.10	73.61
2008-09	285.42	281.83	(-) 3.59	1	369.44	76.29
2009-10	289.42	321.40	(+) 31.98	11	444.29	72.34

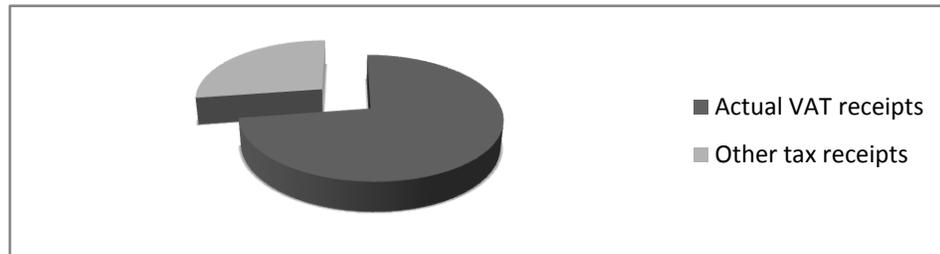
Thus, the percentage of variation which was as high as 35 per cent in 2005-06 came down to the negligible level of one per cent during the

years 2007-08 and 2008-09. However, due to marginal increase in the BE in 2009-10 over 2008-09 (the reasons of which could not be understood), there was a further increase in variation at 11 per cent.

A line graph showing the budget estimates of the State vis-à-vis the total receipts of the State and the actual tax receipts of the State may be seen below:



Also, a pie chart showing the position of VAT receipt vis-à-vis the other tax receipts during the year may be seen below:



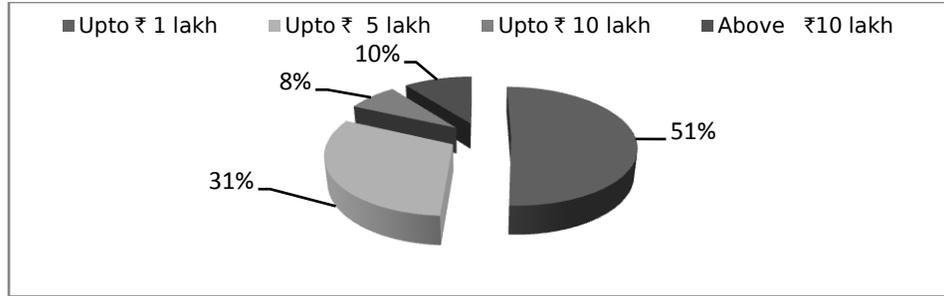
### 2.3 Assessee profile

As per information furnished by the department the number of the VAT/sales tax assesses that were registered during 2009-10 was 6,358. The breakup of these assesses based on their annual turnover is mentioned as under:

**Table 2.2**

NUMBER OF VAT/SALES TAX ASSESSEE IN 2009-10			
Upto ₹ 1 lakh	Upto ₹ 5 lakh	Upto ₹ 10 lakh	Above ₹ 10 lakh
3,175	1,933	482	656

A pie-chart showing the number of dealers registered in 2009-10 vis-à-vis the annual turnover may be seen below:



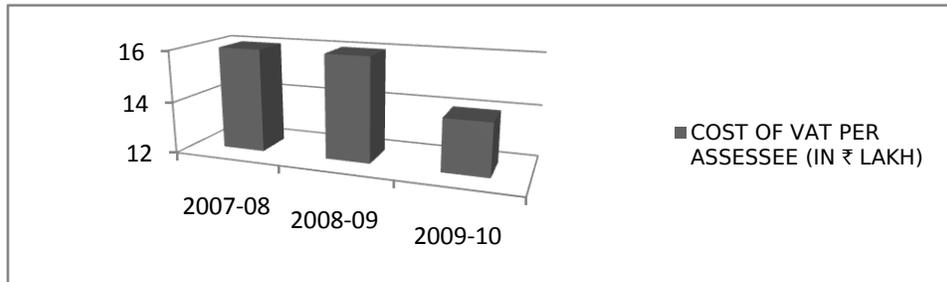
As would be seen from the above, a sizeable number of the dealers (51% of the total dealers) registered with the Taxation Department are small dealers i.e. having turnover upto ₹ 1 lakh. As per the MVAT Act, dealers having turnover above the threshold of ₹ 1 lakh are required to pay tax. The Department, therefore, needs to keep a close watch on the turnover of the dealers constantly in this segment to ensure that none of the dealers, liable to pay tax, escapes the tax net.

**2.4 VAT per assessee**

The VAT per assessee during the year and the preceding two years is shown below:

**Table 2.3**

Year	Total no of assessees	(Rupees in crore)	
		Total VAT collection	Cost of VAT per assessee
2007-08	13,730	216.89	0.016
2008-09	17,89	271.07	0.016
2009-10	20,060	298.44	0.015



It may be seen that compared to 2007-08 and 2008-09 the cost of VAT per assessee has come down during 2009-10 with the increase in the number of assessees under VAT. The department needs to look into this aspect.

**2.5 Arrears in assessment**

The information furnished by the Department relating to the position of arrears in assessment during the year 2009-10 is as under:

**Table 2.4**

(No. of assessments)

Category of cases under the Acts	Opening balance at the beginning of the year	Additions during the year	Total	Finalised during the year	Pending at the end of the year	Percentage of finalised cases to the total cases
CST/MST/VAT	2,90,044	43,731	3,33,775	7,973	3,25,802	2.39
MSL	10,847	469	11,316	247	11,069	2.31
<b>Total</b>	<b>3,00,891</b>	<b>44,200</b>	<b>3,45,091</b>	<b>8,220</b>	<b>3,36,871</b>	<b>2.38</b>

The finalisation of pending cases during 2009-10 was only 2.38 per cent of the total cases due for assessment which is very low.

The Department needs to take prompt measures to finalise the pending assessment cases at an early date, especially VAT assessments that may become time-barred if not finalised within a period of five years.

## 2.6 Cost of collection

The cost of collection (expenditure incurred on collection) of the Taxation Department during 2009-10 is shown below:

**Table 2.5**

(Rupees in crore)

Year	Actual revenue	Cost of collection	Percentage of expenditure on collection	All India average percentage during the preceding year
2007-08	234.89	4.09	1.74	0.82
2008-09	281.83	4.46	1.58	0.83
2009-10	321.40	6.80	2.12	0.88

The cost of collection of the Department has been steadily increasing. Besides, the cost of collection when compared to the all India average percentage during the preceding years is on the higher side.

## 2.7 Impact of audit report

### 2.7.1 Revenue Impact

During the last five years (including the current year's report), we have pointed out non/short levy, non/short realisation, underassessment/loss of revenue, incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation etc., with revenue implication of ₹ 1,878.87 crore in 115 paragraphs. Of these, the Department/Government had accepted audit observations in 22 paragraphs involving ₹ 962.49 crore, in respect of which, no recovery has been made. The details are shown in the following table:

**Table 2.6**

(Rupees in crore)

Year of Audit Report	Paragraphs included		Paragraphs accepted		Amount recovered	
	No	Amount	No	Amount	No	Amount
2005-06	20	34.27	5	3.81	Negligible	
2006-07	21	20.68	6	1.67		
2007-08	22	540.70	2	474.06		
2008-09	23	784.99	5	481.98		
2009-10	29	498.23	4	0.97		
<b>Total</b>	<b>115</b>	<b>1,878.87</b>	<b>22</b>	<b>962.49</b>		

The recovery in accepted cases *vis-à-vis* the accepted money value was almost negligible.

**We recommend that there is a need for the department to revamp the revenue recovery mechanism to ensure that the amount involved in the accepted cases is at least recovered immediately.**

### **2.7.2 Amendments in the Acts/Rules/notification/orders issued by the Government at the instance of audit**

Based on audit observations, the Government notified the following change:

- Input tax credit allowed to industries/manufacturing units availing tax remission has been done away with.

### **2.8 Results of audit**

Test check of the records of 55 units relating to VAT revealed under-assessment of tax and other irregularities involving ₹ 327.48 crore in 50 cases which fall under the following categories:

**Table 2.7**

(Rupees in crore)

Sl. No.	Category	Number of cases	Amount
1.	Exemptions, concessions and remissions under the Meghalaya Industrial Policy 1997 and the schemes framed thereunder (a review)	1	204.77
2.	Short realisation of tax	7	31.96
3.	Evasion of tax	3	24.53
4.	Non realisation of tax	6	2.17
5.	Other irregularities	33	64.05
<b>Total</b>		<b>50</b>	<b>327.48</b>

During the course of the year, the department accepted underassessment and other deficiencies of ₹ 31.02 crore in 14 cases. An amount of ₹ 26 lakh was realised in seven cases during the year 2009-10.

A review of “Exemption and Concessions under the Meghalaya Industrial Incentive Schemes” with financial impact of ₹ 204.77 crore and a few illustrative cases involving ₹ 272.82 crore are mentioned in the following paragraphs.

**2.9 “Exemptions, concessions and remissions under the Meghalaya Industrial Policy 1997 and the schemes framed thereunder”**

**Highlights**

➤ Non-fulfilment of export obligation by industrial units set up in Export Promotion Industrial Park led to exemptions of ₹ 76.93 crore being irregularly allowed.

**(Paragraph 2.9.7.2)**

➤ Lack of clarity in the schemes of 2001 and 2006 regarding period for which incentives are to be allowed led to revenue loss of ₹ 9.97 crore.

**(Paragraph 2.9.7.3)**

➤ Inconsistencies between the Industrial Policy 1997 and the Meghalaya Industries (Tax Remission) Scheme, 2006 led to tax incentive of ₹ 5.31 crore being irregularly allowed.

**(Paragraph 2.9.7.4)**

➤ Eight industrial units irregularly availed incentives of ₹ 85.28 crore though they failed to employ local tribal people as per prescribed norms.

**(Paragraph 2.9.7.6)**

➤ 23 manufacturing units did not appoint any local tribal in the Board of Directors but were allowed by the Single Window Agency to avail tax incentives of ₹ 27.49 crore.

**(Paragraph 2.9.7.7)**

➤ Tax exemption benefit was irregularly extended to goods taxable under Purchase Tax Act leading to loss of revenue of ₹ 6.91 crore

**(Paragraph 2.9.8.2)**

➤ Two units claimed tax remission beyond the eligible period leading to loss of revenue of ₹ 1.06 crore.

**(Paragraph 2.9.8.5)**

➤ Exemption and concession of ₹ 8.57 crore was granted to 62 manufacturing units on the strength of invalid declarations.

**(Paragraph 2.9.8.11)**

### 2.9.1 Introduction

To take advantage of the liberalised economic scenario in the country and to keep pace with developments in the national industrial sector, the Government of Meghalaya introduced a new 'Industrial Policy 1997'<sup>1</sup> effective from 15 August 1997. Under the policy, new units set up on or after 15 August 1997 and existing units undertaking expansion, modernisation or diversification would be eligible for incentives under the 'Meghalaya Incentive Scheme 1997'. The State Government on 12 April 2001 notified the 'Meghalaya Industrial (Sales Tax Exemption) Schemes, 2001'<sup>2</sup> to partly or fully exempt any industrial unit, eligible for benefits under the Industrial Policy 1997, from the liability to pay any tax to the extent as provided in the 'Meghalaya Incentive Scheme 2001'. With the introduction of Value Added Tax (VAT) in Meghalaya in May 2005, the Scheme of 2001 was substituted by the 'Meghalaya Industries (Tax Remission) Scheme, 2006'<sup>3</sup>. This scheme was introduced to provide alternative benefits in lieu of benefits enjoyed by the eligible industrial units under the Scheme of 2001 by way of remission by retaining the tax collected as subsidy to eligible units without breaking the VAT chain.

The salient features of the 2001 and 2006 schemes relating to tax incentives were as below:

**Table 2.8**

Incentive scheme	Type of industries	Tax incentives	Eligibility criteria	Period of exemption
Meghalaya Industrial (Sales Tax Exemption) Schemes, 2001	<b>Small Scale Industries (SSI)</b>	Total Sales Tax exemption on sale of finished products within the State or in course of interstate trade which are taxable under the Meghalaya Sales Tax (MST) or Meghalaya Finance (Sales Tax) (MFST) and the Central Sales Tax (CST) Act limited to goods actually produced in the eligible unit not exceeding its installed capacity.	Only new Industries set up on or after 15 August 1997 and existing industries undertaking expansion, modernisation or diversification.	Nine years from the date of commercial production.
	<b>Large &amp; Medium Scale Industries (LMSI)</b>	-do-	-do-	Seven years from the date of commercial production.
Meghalaya Industries (Tax Remission)	<b>Both SSI &amp; LMSI</b>	99 <i>per cent</i> of tax payable by eligible unit shall be retained as subsidy by the unit and the balance one <i>per cent</i> of the tax	Eligible industrial units having commenced commercial production before commencement of	Seven years from the date of commercial production.

<sup>1</sup> Replacing the 'Industrial Policy 1988'.

<sup>2</sup> Deemed to have come into force from 12 August 1997.

<sup>3</sup> Applicable from 01 October 2006.

Scheme, 2006		payable shall be deposited into Government account. However, cement/clinker manufacturing units having installed capacity of more than 600 tonnes per day shall retain 96 <i>per cent</i> as subsidy and balance four <i>per cent</i> to be deposited into Government account. In respect of sales to registered dealers in course of interstate trade, tax shall be levied at the rate of one <i>per cent</i> .	the Meghalaya Value added Tax Act, 2003 or industrial units approved by the Single Window Agency on or before 30 April 2005.	
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### 2.9.2 Procedure for setting up an industrial unit

The Government of Meghalaya on 16 August 1997 set up a Single Window Agency (SWA) under the chairmanship of the Chief Minister<sup>4</sup> to provide time-bound decisions and clearances to investment proposals received from prospective entrepreneurs. After the SWA's approval, clearances from the Meghalaya State Pollution Control Board, the Forest, Urban and Revenue Departments and the concerned District Council are to be submitted by the entrepreneurs to the Industries Department. After ensuring that all required eligibility norms have been fulfilled, an Eligibility Certificate (EC) is issued by the Director of Industries for a SSI unit and by the Managing Director, Meghalaya Industrial Development Corporation Ltd. for a LMSI unit for the purpose of availing tax incentives.

### 2.9.3 Organisational set up

The Principal Secretary, Excise, Registration, Taxation and Stamps (ERTS) is the overall in-charge of Taxation Department at the Government level. The Commissioner of Taxes (COT) is the administrative head of the Taxation Department. He is assisted by two Deputy Commissioners of Taxes (DCT) and two Assistant Commissioners of Taxes (ACT). After the issue of the EC by the appropriate authorities, the Superintendents of Taxes (ST) at the district level are entrusted with the work of registration, issue of Certificate of Authorisation (COA) and Certificate of Entitlement (COE), scrutiny of returns, assessment of sales tax incentives under 2001 and 2006 schemes, collection of tax, interest and penalty, issue of road permits and declaration forms etc. The STs are assisted by the Inspectors of Taxes (IT) for survey, inspection and other

<sup>4</sup> With the Parliamentary Secretary in-charge Commerce and Industries Department as vice-chairman; Director of Commerce and Industries as member secretary; Commissioner and Secretary, Commerce and Industries Department, the Managing Director, Meghalaya Industrial Development Corporation (MIDC) Ltd. and Secretary General, Confederation of Industries in Meghalaya as members.

ancillary works in relation to registration, assessments and collection of taxes.

#### **2.9.4 Audit objectives**

We carried out the review to ascertain whether:

- incentives sanctioned by the implementing agencies were as per norms laid down in the Meghalaya Industrial Policy 1997 and the schemes of 2001 and 2006;
- quantum of incentives claimed by the eligible units were properly assessed;
- exemptions and concessions were allowed as per provisions of the MST, MFST, MVAT and the CST Acts and Rules;
- a system existed for sharing of information between sales tax authorities and other concerned agencies;
- the declaration forms and returns furnished by the industrial units for availing exemptions and concessions were genuine and correct; and
- internal control system was effective in preventing leakage of revenue and misuse of the provisions of the schemes.

#### **2.9.5 Scope of audit**

The review was limited to the incentive schemes of 2001 and 2006. Between April 2010 and June 2010, we test checked all the 340 assessments finalised during 2004-05 to 2009-10 under the MST, MFST, MVAT and the CST Acts in five<sup>5</sup> out of eight offices of STs. We also checked the records of the Industries Department to verify the quantum of benefits availed on finished products by the industrial units and fulfilment of the terms and conditions prescribed under the Meghalaya Industrial Policy, 1997.

#### **2.9.6 Acknowledgement**

The Indian Audit and Accounts Department acknowledges the co-operation of the Taxation Department in providing the necessary information and records for audit. We held an entry conference on 10 May 2010 in which the objectives, scope and methodology of audit were explained. The conference was attended by the Secretary to the Government of Meghalaya, ERTS Department, the COT and the DCT. The draft review report was sent to the Government/department on 20 August 2010 for their response. An exit conference was held on 17

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<sup>5</sup> Jowai, Khliehriat, Nongpoh, Shillong and Williamnagar –manufacturing units in the State which availed of tax incentives during the period covered by this review under the aforesaid schemes were all registered only with these five offices

October 2010 with the Commissioner and Secretary, ERTS, the COT, the DCT, the Director of Industries and the Managing Director, Meghalaya Industrial Development Corporation in which the results of audit and recommendations were discussed. The Government/departments have accepted most of the audit findings/recommendations and assured to take action. The cases in which they have furnished specific replies or have countered the contention of audit (October 2010) have been appropriately included in this report under the respective paragraphs.

### **Audit findings**

The system and compliance deficiencies noticed during the review are discussed in the ensuing paragraphs.

## **SYSTEM DEFICIENCIES**

### **2.9.7.1 Absence of database of incentives availed**

Under the schemes of 2001 and 2006, eligible industrial units were totally exempted from payment of MST, MFST, CST upto 30 September 2006 and thereafter, were permitted to retain 99 *per cent* of the tax payable under the MVAT Act, and pay a concessional rate of one *per cent* under the CST Act subject to certain terms and conditions specified in the schemes.

In order to be in a position to evaluate the impact of the Meghalaya Industrial Policy 1997 and whether its objectives were being achieved, monitor implementation of the schemes of 2001 and 2006 framed thereunder and assess the quantum of revenues foregone by the State as a result of the tax incentives given under the schemes, it was essential to have an up-to-date database of tax incentives given and tax incentives progressively availed by every eligible manufacturing unit, information on units closed prematurely and recoveries effected from those closed units, tax to be recovered from defaulting units, etc.

We noticed that neither the Taxation nor Industries Departments maintained any database in this regard in the absence of which we were not in a position to assess the effect of the Industrial Policy 1997 and the incentives given under it on the pace of industrialisation of the State, impact on local employment and other objectives set out in the policy. In the absence of a database, even the departments was in no position to keep tabs on the performance of the manufacturing units or even arrive at an approximation of revenues foregone by the State in the form of concessions/exemptions nor was it possible for them or Audit to carry out a systematic analysis on these issues.

After we pointed out the case, the Government while admitting the facts stated that the database of tax incentives availed by industrial units was being processed.

**We recommend that a centralised database may be created to achieve the objectives mentioned in the preceding paragraphs.**

**2.9.7.2 Non-fulfilment of export obligation by industrial units set up in Export Promotion Industrial Park**

The Government of India in 1996 circulated the guidelines for the establishment of Export Promotion Industrial Parks (EPIP) by the State Governments. As per the guidelines, a precondition for setting up a unit in the EPIP was for a legal undertaking to be submitted by the promoter(s) to export not less than 25 *per cent* of the unit's total production outside the country. Tax incentives were to be offered to EPIP units subject to the fulfilment of this obligation. As per the guidelines of the Government of India for establishment of EPIPs, 25 *per cent* of the units set up in the Park were to be monitored by the implementing agency on an annual basis for a period of five years from the date of commencement of commercial production by each unit. The unit should achieve the obligation within this period. State Level Committee (SLC) was to prescribe monitoring formats to be collected on half-yearly basis from the EPIP units for watching export performance.

The Government of Meghalaya in accordance with the above guidelines established an EPIP at Byrnihat in Ri-Bhoi district in 1996 and tax incentives under the Meghalaya Industries (Exemption of Sales Tax) Schemes, 2001 was offered to units to be set up in the EPIP. Twenty-eight industrial units, all registered with ST at Nongpoh, were established in the EPIP. The units sold goods valued at ₹ 1,923.23 crore between April 2004 and March 2010 against which goods valued at ₹ 88.56 lakh was exported by only one unit during the aforesaid period. Though none of the 28 units fulfilled the 25 *per cent* export obligation, the AO exempted them from payment of tax to the tune of ₹ 76.93 crore resulting in a revenue loss to that extent.

Thus, failure of the Industries Department (the implementing agency) to monitor the fulfilment of export obligations by the units on an annual basis, laxity on the part of the SLC to prescribe any monitoring formats for this purpose and compounded with the irregularity committed by the AO, resulted in tax exemptions totalling ₹ 76.93 crore being allowed to 28 manufacturing units who were otherwise not eligible for the same.

After we pointed out the case, the Government stated that the tax exemption granted to industrial units was correct as 25 *per cent* export obligation on the part of the industrial units set up in the EPIP area was not incorporated in the Industrial Policy of 1997. The reply is not tenable

as tax incentives availed by EPIP units were subject to fulfilment of their export obligations.

**2.9.7.3 Undue advantage to industrial units due to lack of clarity in the schemes of 2001 and 2006 regarding period for which incentives are to be allowed**

As per Meghalaya Industrial (Sales Tax Exemption) Schemes, 2001, existing industries which undertake expansion, modernisation or diversification will be eligible for tax incentives from the date of commercial production for seven and nine years in the case of SSI and LMSI units respectively. The scheme is silent as to whether the total production or the proportionate increase in production over the existing capacity was to be considered for the purpose of tax incentives. Lack of clarity on this point has resulted in industrial units exploiting this loophole and availing tax incentives for more than the stipulated period of seven or nine years as illustrated in the cases below.

➤ A LMSI cement manufacturing unit with a capacity of 270 tonnes per day (TPD) registered with the ST, Williamnagar started commercial production in 31 March 1998. Under the scheme of 2001, it was thus eligible for tax incentives upto 28 February 2005. The unit undertook an expansion programme and enhanced its capacity to 355 TPD from March 2006 (month of commercial production). Between April 2006 and September 2009, the unit sold cement valued at ₹ 108.97 crore. The AO exempted the entire amount from payment of tax, instead of ₹ 34.37 crore which would have been the case had the tax incentives been allowed only in respect of the additional capacity created. The unit by undertaking the expansion program not only became eligible for tax incentives on its enhanced capacity but in effect, also extended tax incentives on its original capacity of 270 TPD which was originally scheduled to expire in February 2005 to February 2013. In this case, the loss of revenue as a result of extending the tax incentives on the total enhanced production of the unit worked out to ₹ 9.33 crore.

➤ A SSI unit registered with ST, Nongpoh started commercial production in December 1997 and was thus eligible for tax incentives upto December 2006. It was seen that its average annual turnover during 1998-99 to 2003-04 was ₹ 62.86 lakh per year. The unit undertook an expansion programme and commenced commercial production at enhanced capacity from February 2005 and its average annual turnover for the period 2005-06 to 2008-09 consequently increased to ₹ 1.66 crore per year. Between April 2005 and March 2009, the unit sold goods valued at ₹ 8.29 crore and the entire amount was exempted from payment of tax. Had the AO allowed the tax incentives only on the increased turnover, only ₹ 3.14 crore would have been exempted from tax. Here also, the unit

by undertaking an expansion programme, in effect, extended the tax incentives enjoyed by it from December 2006 to February 2012<sup>6</sup> on its total enhanced turnover. The loss of revenue as a result of extending the tax incentives on the total turnover of the unit worked out to ₹ 64.44 lakh.

After we pointed out the case, the Government, while admitting the facts, stated that the modalities of a new industrial policy in harmony with the tax scheme were being worked out and the new policy should be in place by 2012.

#### **2.9.7.4 Inconsistencies between the Industrial Policy 1997 and the Meghalaya Industries (Tax Remission) Scheme, 2006**

The Industrial Policy 1997, though initially envisaged for a period of five years, has till date not undergone any revisions or amendments. The various stipulations of the Meghalaya (Sales Tax Exemption) Schemes, 2001 are in harmony with the provisions of the Industrial Policy 1997. However, we observed the following inconsistencies between the Meghalaya Industrial (Tax Remission) Scheme, 2006 (which replaced the scheme of 2001) and the Industrial Policy 1997.

➤ The Industrial Policy 1997 states that industries undertaking expansion, modernisation or diversification will be eligible for tax exemption for a further period of seven years and this provision was also incorporated in the scheme of 2001. However, even though the Industrial Policy 1997 has not undergone any changes, the Meghalaya Industrial (Tax Remission) Scheme, 2006 is silent on this aspect leading to confusion on the issue as illustrated in the following case.

An LMSI unit registered with ST, Nongpoh started commercial production from 1 January 2001 and was granted tax exemption upto 31 December 2007, *i.e.*, for a period of seven years. It undertook expansion from 1 February 2007 (after the Meghalaya Industrial (Tax Remission) Scheme, 2006 was introduced) and was granted tax exemption for a further period of seven years. Between January 2008 and March 2009, the unit sold goods valued at ₹ 93.84 crore and was allowed tax incentives of ₹ 4.18 crore. Since the scheme of 2006 is silent on the issue of further tax exemptions to units undertaking expansion, modernisation or diversification (notwithstanding the fact that the Industrial Policy 1997 has not undergone any changes to this effect), a view can be taken that the tax incentives of ₹ 4.18 crore allowed in this case was not in order.

➤ Under the Meghalaya Industrial (Tax Remission) Scheme, 2006, an industrial unit approved by the SWA on or before 30 April 2005 or having started commercial production before 1 May 2005 shall be deemed as an eligible unit for availing tax incentives. On the other hand, the

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<sup>6</sup> The unit after the expansion programme was converted from a SSI unit to a LMSI unit.

Industrial Policy of 1997 has not undergone any change/amendment to this effect. As far as the policy stands, all manufacturing units set up in the State in accordance with the stipulations and conditions spelt out in the policy, are eligible units irrespective of when they were/are set up. This ambiguity leads to a piquant situation as in the case below.

Two industrial units registered with ST, Nongpoh were approved by the SWA on 24 April 2006 and 15 July 2007 respectively and ECs and COEs were accordingly issued to them by the concerned authorities. Since the units were approved after 30 April 2005 and going by the scheme of 2006, the grant of ECs and COEs in these two cases was incorrect. Between January 2008 and March 2010 the two units sold goods valued at ₹ 93.45 crore and availed tax incentive of ₹ 1.13 crore – a benefit which can be taken to be irregular.

After we pointed out the case, the Government, while admitting the facts, agreed to harmonise the tax incentive scheme with the Industrial Policy.

**We recommend that the Government may take steps to harmonise and sync the SWA guidelines with the provisions of the Industrial Policy 1997 and the scheme of 2006.**

#### **2.9.7.5 Check post set up at an inappropriate location**

For transporting raw materials, machineries etc. from outside the State and for sale of manufactured goods in course of interstate trade etc, every manufacturer is required to file before the officer-in-charge of a Sales Tax check post, a declaration of the goods imported or exported. A copy of the declaration is to be sent to the concerned AO where the unit is registered for cross verifying the particulars furnished with reference to the accounts/records furnished by the manufacturer at the time of assessment. As such the proper location of the check post is vital from the revenue standpoint.

Out of 170 industrial units in the State as on March 2010, 95 units (all established after the announcement of the Industrial Policy 1997) are located between the Byrnihat checkpost and the border with Assam. The Byrnihat check post is itself about six kilometres away from the Assam border and thus not ideally located. The inconvenient location of the check post leaves open the possibility that some industrial units may not be submitting the prescribed declarations at the check post on every required occasion with the result that in such cases, the AO will have no alternative but to accept the returns furnished by the manufacturers during assessment.

After we pointed out the case, the Government, while admitting the facts, stated that a committee with the COT as convenor has been formed to identify a strategic location for setting up of an integrated check post.

**We recommend that the Taxation Department may relocate the check post to a more strategic location.**

**2.9.7.6 Absence of provision in the Industrial Policy of 1997 to verify genuine employment of local tribal people in the industrial units**

An important objective of the Industrial Policy of 1997 was to provide employment to the local people. To ensure this, the policy stipulated that a unit eligible for incentives under the policy must employ local tribal people to the extent of

- 60 *per cent* in non-managerial cadres at the inception stage;
- in the managerial cadre, 60 *per cent* employment of local tribal people in non-technical posts and 50 *per cent* in technical/supervisory/skilled categories.

A unit was to give an undertaking that if this condition was violated, State government subsidies/incentives availed of by it would be fully refunded. Further, to obtain approval from SWA a letter of commitment in respect of employment of local people is mandatory.

It follows that given the pre-eminence of this objective, it would be expected that a stringent reporting and monitoring system would have been prescribed by the Government to provide for submission and verification of the periodical returns/reports by the units on employment of local tribal people and spot inspections/crosschecks by and between implementing agencies. We found that this was not the case. The commitment to employ local tribal people was not being watched at any level.

We requested the Regional Provident Fund Commissioner and Khasi Hills Autonomous District Council to give us access to their records so as to check the compliance of this condition. From the records of nine units provided by these agencies, it was seen that these units employed a total of 1,357 employees out of which 340 (25 *per cent*) were local employees. Out of the nine units, only one unit employed 62 *per cent* local tribal employees. In the remaining eight units, employment of local people varied from 3 to 51 *per cent*. The eight defaulting units sold goods valued at ₹ 1,226.92 crore between April 2005 and September 2009 and availed ₹ 85.28 crore as tax incentives thereon. Thus, laxity on the part of the implementing agencies to verify the actual employment of local tribal people led to a revenue loss of ₹ 85.28 crore besides non-fulfilment of an important policy objective.

**2.9.7.7 Defect in SWA clearance**

One of the guidelines for obtaining SWA clearance is that the unit should have at least one local tribal promoter/director/partner. However, the

guidelines are silent regarding penal action to be taken when a local tribal promoter/director/partner is subsequently replaced by a non-tribal after the SWA clearance is accorded.

➤ 23 manufacturing units registered with ST, Nongpoh did not have any local tribal on their Board of Directors since inception as intimated by the Registrar of Companies, Shillong. The SWA however, overlooked this requirement and irregularly gave clearance for these units to be set up. Based on the clearance given by the SWA, the implementing agencies as well as the Taxation Department issued EC/COA/COE and granted tax incentives to these units under the Industrial Policy 1997. These 23 units sold goods valued at ₹ 562.36 crore between May 2002 and March 2010 and availed tax exemption/concession and remissions of ₹ 27.49 crore during the aforesaid period.

➤ In ST, Nongpoh a manufacturing unit registered under the Companies Act, 1956 appointed a local tribal as one of the directors of the company in August 2004. We noticed that the local tribal director had resigned and in his place a non-tribal director was appointed in September 2004.

➤ Another unit in Nongpoh appointed a local tribal in September 2003 as one of the directors of the company. From November 2009, he ceased to be a director and in his place no local tribal was appointed till date (October 2010).

No action could be initiated by the implementing agencies as the SWA guidelines, policy or schemes did not contemplate or provide for such a situation.

After we pointed out the case, the Government, while admitting the facts, stated that action will be taken against defaulting industrial units.

#### **2.9.7.8 Irregular exemption on sale of raw material in transit**

The Industrial Policy 1997 and the schemes of 2001 and 2006 framed thereunder, stipulate that eligible units can only avail of tax exemption on sale of finished products within the State or in the course of Inter-State trade or commerce. In the following two cases the units ordered import of raw materials for manufacture of finished goods but sold a portion of the raw material in transit.

➤ A unit manufacturing ferro-alloys and registered with the ST, Nongpoh, imported manganese ore valued at ₹ 5.36 crore between April 2007 and March 2009 as raw material for manufacture of finished goods. The manufacturer, however, sold a portion of the raw material valued at ₹ 3.03 crore to the dealers of West Bengal and Orissa in transit and balance ₹ 2.33 crore within the State. While the Assessing Officer (AO) assessed the unit to tax of ₹ 2.33 crore on local sale of raw materials, it

was exempted from tax on the sale of ₹ 3.03 crore of raw material made in transit outside the State.

➤ Another unit manufacturing paraffin and foot oil<sup>7</sup> and registered with ST, Nongpoh imported 25 consignments of wax valued at ₹ 85.46 lakh between April 2005 and March 2007 from two dealers in West Bengal. Out of 25 consignments, 13 consignments amounting to ₹ 41.92 lakh was sold in transit to dealers of other States. The AO in his assessment exempted the sale of ₹ 41.92 lakh from payment of tax which was irregular.

➤ Another unit manufacturing steel tubes and registered with ST, Nongpoh, imported zinc and nickel valued at ₹ 3.64 crore between April 2006 and March 2007 as raw material and sold the entire consignment during transit. The AO in his assessment exempted the tax on sale of the entire amount which was irregular.

Since the policy and schemes did not allow for availing tax exemption on sale of raw material, the exemption granted by the AO in the above two cases were irregular and resulted in a revenue loss of ₹ 28.34 lakh.

After we pointed out the case, the Government stated that the matter had been brought to the notice of the concerned AO to initiate necessary action.

## COMPLIANCE DEFICIENCIES

### 2.9.8.1 Non-initiation of action to cancel COA/COE despite breach of conditions

As per provisions of the schemes of 2001 and 2006, eligible industrial units shall submit to the AO annual returns showing the total sales tax exemption claimed on sale of finished goods within a period of 30 days after the end of a financial year in prescribed format besides the audited annual statement of accounts and balance sheet to be submitted within six months from the close of the financial year. Failure on the part of the eligible units to submit any of these documents within the specified time frame shall entail termination of the COA or COE as the case may be.

Between April 2004 and March 2010, a total of 170 units in the State were sanctioned tax incentives under the schemes of 2001 and 2006. The units were required to submit 1,020 annual returns and 850 audited accounts during the aforesaid period against which 219 returns and 149 audited annual statements were submitted (position upto June 2010). It was seen that although the AOs formally reminded the defaulting units to submit

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<sup>7</sup> A light yellow oil obtained from the feet and shinbones of cattle, used chiefly to dress leather

their returns, audited accounts and financial statements from time to time and despite these notices not being heeded by the units, the AOs did not take steps to terminate the COAs/COEs, an action which was open to them under the schemes of 2001 and 2006.

After we pointed out the case, the Government stated that reply would be furnished after verification of the matter.

### **2.9.8.2 Tax exemption benefit irregularly extended to goods taxable under Purchase Tax Act**

The Meghalaya Industrial Policy, 1997 and the Meghalaya Industries (Sales Tax Exemption) Scheme, 2001 specifically stipulate that only intra or inter-state sale of finished goods which are taxable under the MST and MFST Acts are exempted from payment of tax. It therefore, follows that the benefit of exemption cannot be extended to goods taxable under the Purchase Tax (PT) Act.

In ST, Williamnagar and ST Circle-VIII, Shillong we noticed that one and nine industrial units respectively manufacturing processed lime and lime powder from limestone were taxable under the PT Act. These units were therefore, clearly not eligible for any incentives. However, ECs, COAs and COEs were issued to them by the concerned authorities thus rendering them eligible for the tax incentives. These units sold goods valued at ₹ 88.67 crore between June 2002 and September 2008<sup>8</sup> and were exempted from purchase tax to the tune of ₹ 6.91 crore which was irregular and resulted in revenue loss to that extent.

After we pointed out the case, the Government stated that the exemption from payment of tax was allowed only under the CST Act and not under the PT Act. The reply is not tenable as interstate sale of goods which are otherwise taxable under the PT Act are not exempted from payment of tax under the tax incentive schemes.

### **2.9.8.3 Delay in assessment**

The correctness of tax incentives availed by an eligible unit can be checked by authorities after the AO completes the tax assessment of that unit. It is therefore, imperative that assessments should be completed in a timely manner and not allowed to fall in arrears to protect tax revenues and to check manufacturing units from availing incentives in excess of what is admissible to them. As per provision of the MVAT Act and the rules made thereunder, tax assessments are to be completed within five years by the AOs irrespective of whether units file their returns or not.

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<sup>8</sup> Period for which assessments were completed by Assessing Officers during period covered by this review

Against 1,700 cases<sup>9</sup> upto the assessment year 2008-09 due for assessment by March 2010 in the State, 340 cases only had been assessed. Not a single assessment was made in respect of units registered with ST, Williamnagar and ST, Jowai. In STs Khliehriat and Shillong, against 672 cases due for assessment, only eight were assessed. Due to non-finalisation of timely assessment, incentives availed by these units in excess of what was admissible to them, if any, could not be ascertained. Though the status of pending assessment cases is watched by the COT, no effective steps were taken to reduce the arrears in assessment.

➤ Two manufacturing units registered with ST, Nongpoh closed down in March 2005 and September 2007. The units neither intimated the date of closure nor surrendered the eligibility certificates issued to them, which was a pre-condition for closure as laid down in the schemes of 2001 and 2006. It was seen that the AO assessed both the units belatedly between January and February 2009 and assessed tax of ₹ 14.17 lakh and interest of ₹ 12.01 lakh. Since the industries had already closed down, there was no possibility to recover the assessed tax and interest nor could penal action be initiated. Thus, due to delay in assessment, there was revenue loss of ₹ 26.19 lakh.

After we pointed out the case, the Government, while admitting the facts, stated that steps were being taken to complete the assessments.

#### **2.9.8.4 Irregular grant of exemption**

Under the incentive schemes of 2001 and 2006, eligible industries are entitled to tax benefits on sales of finished products limited to the goods actually produced in the units not exceeding the installed capacity (or not exceeding a specified level of turnover<sup>10</sup>).

➤ A cement plant registered with ST, Circle-III, Shillong was exempted from payment of tax for production of 2,200 MT of cement annually. During 2004-05 to 2007-08, the unit was to get exemption on sale of 8,800 MT of cement; instead, the plant produced 53,468 MT of cement valued at ₹ 11.86 crore and the entire turnover was exempted from payment of tax. Thus, the unit was allowed tax exemption on an extra 44,668 MT of cement leading to underassessment of tax of ₹ 1.24 crore.

➤ A unit registered with ST, Nongpoh was exempted from tax for production of 1,086 MT of corrugated iron (CI) sheets annually. During 2008-09, the unit produced and sold 3,620 MT of CI sheets and sale of entire quantity was exempted from payment of tax. Thus, 2,535 MT of CI sheets valued at ₹ 17 crore was irregularly exempted resulting in underassessment of tax of ₹ 67.98 lakh.

<sup>9</sup> In the sample of five of ST offices covered by the review

<sup>10</sup> As seen from approvals granted by SWA

➤ An oxygen-manufacturing unit registered with ST, Nongpoh was exempted from payment of tax on sale of finished goods valued at ₹ 92.40 lakh annually. During 2002-03, the unit manufactured and sold goods valued at ₹ 1.36 crore. The AO exempted the entire turnover from payment of tax. As a result, goods valued at ₹ 44 lakh was irregularly exempted leading to underassessment of tax of ₹ 3.51 lakh.

After we pointed out the case, the Government stated that reply would be furnished after verification of the matter.

#### **2.9.8.5 Inadmissible remission of tax**

Under the Meghalaya Industries (Tax Remission) Scheme, 2006, LMSI units are eligible to remission by way of retaining 99 *per cent* of the tax collected as subsidy for a period of seven years from the date of commencement of commercial production.

➤ A manufacturing unit registered with ST, Nongpoh started commercial production on 2 September 2002 and was allowed to avail of tax incentives for a period of seven years from 2 September 2002 to 1 September 2009. The unit, however, continued to claim remission upto 31 March 2010, which was not detected by the AO. Between October 2009 and March 2010 the unit sold goods valued at ₹ 1.06 crore and irregularly retained tax of ₹ 2.98 lakh in violation of the scheme provisions.

➤ A manufacturing unit registered with ST, Williamnagar started commercial production on 1 March 1998 and was allowed to avail tax incentives for a period of seven years from 1 March 1998 to 28 February 2005. The unit, however, continued to claim remission upto 28 February 2006 which was not detected by the AO. Between March 2005 and February 2006, the unit sold goods valued at ₹ 8.20 crore and irregularly retained tax of ₹ 1.03 crore in violation of scheme provisions.

After we pointed out the case, the Government stated that the matter would be re-examined by the concerned AOs.

#### **2.9.8.6 Undue benefit given to a manufacturing unit**

As per provision of the Meghalaya Industries (Sales Tax) Exemption Schemes, 2001, LMSI units (with minimum capital investment of ₹ 1 crore) were granted tax exemption for a period of seven years and SSI units (with capital investment below ₹ 1 crore) were to be granted tax exemption for a period of nine years from the date of commercial production.

➤ A manufacturing unit registered with ST, Nongpoh and having fixed capital investment of ₹ 1.94 crore started commercial production from 15 January 1998. The unit was wrongly classified as SSI unit by the Director of Industries and EC was issued to it for a period of nine years

upto 14 January 2007 instead of seven years *i.e.*, upto 14 January 2005. Between 15 January 2005 and 14 January 2007, the unit sold goods valued at ₹ 1.52 crore and the entire turnover was irregularly exempted by the AO while making assessment in October 2008.

#### **2.9.8.7 Irregular grant of remission under the CST Act**

Under the scheme of 2006, industrial units shall be eligible for retaining 99 *per cent* of the tax collected as subsidy in respect of intra state sale in respect of sale of finished products manufactured by those units within the State. In respect of inter-state sale to registered dealers, tax is leviable at a concessional rate of one *per cent* on the turnover.

➤ An industrial unit registered with ST, Khliehriat sold finished goods valued at ₹ 16.32 crore between April 2007 and June 2009 in course of inter-state trade. The AO while assessing the unit in January 2010, allowed remission by way of retaining 99 *per cent* of tax collected as subsidy instead of assessing one *per cent* on turnover. As a result tax of ₹ 40,000 were assessed instead of ₹ 16.32 lakh. This resulted in underassessment of tax of ₹ 15.92 lakh.

After we pointed out the case, the Government stated that the concerned AO had been asked to look into the case records of the dealer.

#### **2.9.8.8 Non-levy of tax on sales made before commercial production**

Under the schemes of 2001 and 2006, eligible industrial units are entitled to tax exemption on sale of finished goods produced from the date of commencement of commercial production.

➤ A manufacturing unit registered with ST, Nongpoh started commercial production from 1 April 2004. The unit however, sold finished goods valued at ₹ 31.29 lakh in February 2004 before commencement of commercial production and thereby was not entitled to get exemption from the payment of tax. The AO, however, exempted the turnover from payment of tax, leading to non-levy of tax of ₹ 3.91 lakh.

After we pointed out the case, the Government stated that necessary action would be taken after verification of dealer's accounts.

#### **2.9.8.9 Irregular issue of COE**

Under the Meghalaya Industries (Tax Remission) Scheme, 2006, a manufacturing unit is required to sequentially obtain the following clearances before being considered an eligible unit for tax exemptions:

- Eligibility Certificate (EC) from the Industries Department/MIDC;
- Certificate of Authorisation (COA) and Certificate of Entitlement (COE) from the Taxation Department.

➤ Six industrial units registered with the ST, Nongpoh applied for COEs to the AO, which were issued accordingly. None of the units obtained COAs before issue of COE. As such, issue of COE without COA was irregular. The units sold goods valued at ₹ 121.10 crore between October 2006 and 31 March 2010 and availed tax incentives amounting to ₹ 2 crore.

➤ A manufacturing unit registered with the ST, Nongpoh neither applied for COE nor was one issued to it. The unit sold finished goods valued at ₹ 3.14 crore between October 2006 and June 2007. The AO levied tax of ₹ 12,000 and allowed it tax exemptions to the tune of ₹ 12.44 lakh.

After we pointed out the case, the Department, while admitting the facts, stated that administrative orders would be issued to prevent such lapses in future.

#### **2.9.8.10 Inadmissible exemption**

As per schemes of 2001 and 2006, eligible industries shall be entitled to the benefit of tax incentive on sale of manufactured finished goods.

➤ A cement manufacturing unit registered with ST Khliehriat was exempted from payment of tax on sale of cement only. But the company, in addition to cement, sold clinker valued at ₹ 147.93 crore between April 2007 and March 2009 and tax exemption of ₹ 5.91 crore was irregularly allowed by the AO.

After we pointed out the case, the Government stated that the concerned AO had been asked to re-examine the case records of the dealer and submit report.

#### **2.9.8.11 Exemption and concession granted to eligible industrial units under the CST Act**

Under the Meghalaya Industries (Sales Tax Exemption) Scheme, 2001, eligible industrial units are exempted from payment of tax in respect of sales in course of inter-state trade which are supported by declaration in form 'C' or 'D'<sup>11</sup> as the case may be. Under the Meghalaya Industries (Tax Remission) Scheme, 2006, tax at concessional rate of one *per cent* is to be levied in respect of inter-state sales made by eligible units provided the sale is made to a registered dealer or to the Government duly by covered a declaration.

The CST Act provides that the 'C' form shall be furnished to the prescribed authority in the prescribed manner duly filled and signed by the

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<sup>11</sup> A 'C' form is issued by a registered purchaser to a registered seller in course of interstate trade. A 'D' form is issued by a purchasing government department to a registered seller in course of inter-state trade (since withdrawn from 1 April 2007).

registered dealer to whom goods were sold, containing the prescribed particulars in prescribed form obtained from the prescribed authority. The C-form marked “original” shall be submitted to avail exemption/concession by the unit. Each single declaration shall contain transaction of sale of one quarter.

If any unit fails to furnish valid declarations in form ‘C’ or ‘D’ tax is leviable at the following rate(s):

Table 2.9

Period	Type of goods	Rate of tax
Upto 31 March 2007	Declared goods	Twice the rate applicable to sale of goods within the State.
	Other goods	At 10 per cent or at the rate applicable to sale of goods within the State whichever is greater.
From 01 April 2007	In both the cases, the rate applicable to sale of goods within the State.	

We scrutinised the assessment records of eligible units in the five selected ST offices and found that 62 eligible units sold goods valued at ₹ 164.64 crore in course of inter-state trade. Although the units did not comply with the statutory requirements for availing tax exemptions/concessions, yet, the AOs granted them concessions/exemptions resulting in under assessment of tax of ₹ 8.57 crore as summarised below:

Table 2.10

(Rupees in crore )

Sl. No.	Period/Circle	Nature of observation	Amount	Tax effect
1.	April 2004 & March 2009 Nongpoh	32 units submitted incomplete ‘C’ forms which were accepted by the AO.	98.81	3.95
2.	April 2006 & March 2009 Nongpoh	Two units failed to furnish ‘C’ forms in support of interstate sales but the AO irregularly allowed concessional rate of tax during assessment.	14.56	0.61
3.	Jan 2006 & Dec 2007 Nongpoh	A unit sold IMFL in course of interstate trade to unregistered dealers but the AO applied incorrect rate of tax of 12.5 per cent during assessment instead of 20 per cent.	0.16	0.01
4.	April 2006 & March 2007 Circle III	A unit sold cement in course of interstate trade to two unregistered dealers in Arunachal Pradesh and produced ‘C’ forms in support of sales. Though the information regarding the purchasing dealers being unregistered was available with the AO, yet he accepted the invalid ‘C’ forms and irregularly exempted the unit from payment of tax.	2.50	0.05
5.	Oct 2005 & March 2007 Nongpoh	Three units furnished 12 ‘C’ forms in support of interstate sales. However, the purchasing dealers were not registered on the date of purchase and	1.48	0.14

		thus the 'C' forms were invalid. The information was available with the AO but he did not take it into account and irregularly accepted the invalid forms resulting in underassessment of tax.		
6.	April 2006 & June 2008 <b>Circle-III, Shillong &amp; Nongpoh</b>	Five units furnished eight 'C' forms in support of interstate sales. The 'C' forms were not in prescribed format as provided under the CST Act, but the AO accepted the invalid forms and assessed the units accordingly.	3.04	0.13
7.	Jan 2008 & March 2009 <b>Circle-III, Shillong &amp; Nongpoh</b>	Nine units made inter-state sales from their offices based at Guwahati and Kolkata. Though the interstate sales were made by these units from other States and thus were not eligible for exemption/concession in Meghalaya, yet, the units furnished 'C' and 'D' forms to the AOs in support of such sales and the AOs irregularly accepted the forms and assessed these units accordingly.	27.35	1.97
8.	April 2004 & March 2009 <b>Nongpoh</b>	Seven units made interstate sales and furnished 'DUPLICATE' copies of 'C' forms instead of 'ORIGINAL' and the AO accepted the forms. Since production of 'ORIGINAL' copies of 'C' forms is mandatory for availing tax incentives as pronounced by the apex court <sup>12</sup> , acceptance of 'DUPLICATE' copies of forms was irregular.	8.51	0.82
9.	April 2005 & March 2006 <b>Circle-III, Shillong &amp; Nongpoh</b>	Two units furnished two 'C' forms in support of interstate sales which covered transactions of more than one quarter and were thus invalid. The AO irregularly accepted the forms and exempted the units from payment of tax.	8.23	0.89
<b>TOTAL</b>			<b>164.64</b>	<b>8.57</b>

### 2.9.9 Conclusion

There were instances of lack of clarity in the industrial policy and schemes of 2001 and 2006 that affected the assessment and collection of revenue. The Meghalaya Industries (Tax Remission) Scheme, 2006 was not in sync with the industrial policy. Though the Industrial Policy 1997 was for a period of five years, no new policy was formulated even after expiry of this period nor had the Government notified the continuation of the policy.

<sup>12</sup> M/s India Agencies Vs Additional Commissioner of Commercial Taxes, Bangalore (139 STC 329 [2005] SC)

No central database of tax incentives sanctioned and availed was maintained either by the implementing agencies or by the Taxation Department for evaluation, monitoring and proper implementation of the policy and schemes. Co-ordination between Taxation Department and implementing agencies was non-existent. There was no mechanism to ascertain periodic submission of returns by the manufacturing units and timely completion of tax assessments by the AOs.

#### **2.9.10 Summary of recommendations**

We suggest implementation of the following recommendations for addressing the system and compliance issues brought out in this review:

- **creating a centralised database for the purposes of assessing the impact of the Industrial Policy 1997, the achievement of the objectives set out thereunder and the revenues foregone by the State under the schemes of 2001 and 2006;**
- **Government should take steps to harmonise and sync the SWA guidelines with the provisions of the Industrial Policy 1997 and the scheme of 2006;**
- **prescribing guidelines for effective coordination between implementing agencies and the Taxation Department;**
- **imposing penal action on defaulting industries set up in EPIP who fail to fulfil minimum export obligations; and**
- **relocating the Byrnihat check post to a more suitable location.**

## 2.10 Other audit observations

*Scrutiny of the assessment records of the Taxation Department indicated cases of non-observance of the provisions of the Acts / Rules, non/short levy of tax, turnover escaping assessment, concealment of turnover etc., which are mentioned in the succeeding paragraphs. Such omissions on the part of the AOs are pointed out in audit each year but not only do the irregularities persist, these remain undetected till an audit is conducted. There is a need for the Government to streamline the functioning of the Department so as to ensure that such omissions are detected, rectified and avoided in future.*

## MEGHALAYA VALUE ADDED TAX ACT

### 2.11 Non-realisation of tax on sale of liquor

We obtained information from the Commissioner of Excise, Meghalaya in April 2010 and found that three bottling plants sold 9,07,076 cases of liquor between April 2009 and January 2010 valued at ₹ 99.49 crore to the dealers within the State. The bottling plants were required to pay tax of ₹ 19.89 crore. However, we cross-verified the records of ST, Nongpoh and ST, Circle-VI, Shillong and found that the bottling plants neither paid any tax nor was any action initiated by the AOs to complete assessments and realise the tax. This resulted in non-realisation of tax of ₹ 19.89 crore. There was no system of cross-verification of transactions between the departments to check such evasions of tax.

Under Section 44 of the MVAT Act, goods specified in schedule-V are taxable at the first point of sale. As per the Item 1 of the schedule V of the Act, liquor is taxable at the rate of 20 per cent.

**We recommend that the Government may put in place a system of cross-verification of transactions between the departments to check evasion of tax.**

We reported the case to the Department/Government in May 2010 but their reply has not been received (October 2010).

## 2.12 Short realisation of penalty

**2.12.1** During test check of the offence case registers of STs, Byrnihat and Umkiang check posts in December 2009 we found that the officers-in-charge of the check posts detected 12,469 cases between April 2007 and

Under Section 75(1) of the MVAT Act, no person shall transport any consignment of goods through the check post except in accordance with conditions as prescribed in the Act. Further, under Section 80(b) of the Act, if a dealer transports any goods in contravention of section 75 *ibid*, the Commissioner may accept from such dealer, a sum not exceeding ₹ 5,000 or double the amount of tax, whichever is greater, by way of composition of offence.

March 2009 in which the transporters carried taxable goods without proper particulars. The officers-in-charge levied and collected composition money of ₹ 23 lakh instead of ₹ 6.23 crore calculated at the minimum rate of ₹ 5,000. While levying lesser amounts than those prescribed, the assessing officer (AO) did not mention the reasons for such deviation from the provisions of the Act. This

resulted in short realisation of composition money of ₹ 6 crore.

**2.12.2** We observed during test check of records of the STs, Byrnihat and Umkiang check posts that 76,509 MT of limestone and 55,396 MT of coal having tax effect of ₹ 98.07 lakh was carried beyond the permissible limit of 15 MT in each truck between April 2007 and March 2009. The excess

Further, under Section 76(5) of the MVAT Act, if the driver or the person in charge of vehicles fails to produce records of taxable goods being carried including challans, bills of sale, declaration forms etc., the officer-in-charge of the taxation checkpost shall impose penalty equal to five times the tax leviable on such goods or 20 *per cent* of the value of goods, whichever is greater.

load carried was without any *challan*, bill of sale, etc. and the truckers were liable to pay penalty of ₹ 4.90 crore against which the department collected ₹ 96.13 lakh. This led to short-realisation of penalty of ₹ 3.94 crore.

ments of taxable goods valued at ₹ 2.63 crore and having a tax effect of ₹ 21.90 lakh crossed the check post between April 2007 and March 2010. The goods carried were not supported by any *challan*, bill of sale, etc. and the transporters were liable to pay penalty of ₹ 1.10 crore against which the department collected ₹ 1.77 lakh. This led to short-realisation of penalty of ₹ 1.08 crore.

**2.12.3** We noticed during test check of records of the ST, Byrnihat check post, that 310 consign-

We reported the cases to the Department/Government between September 2008 and January 2010 but their reply has not been received (October 2010).

**2.13 Non-levy of penalty for belated submission of returns**

Under the MVAT Act, every registered dealer shall submit quarterly return within 21 days from the close of quarter. If the dealer fails to furnish the return by the prescribed date, the Commissioner may direct him to pay a penalty of ₹ 100 per day of default subject to a maximum of ₹ 10,000.

We collected information from seven<sup>13</sup> unit offices between May and July 2009 and found that 222 dealers furnished 2616 quarterly returns for return period ending between 30 June 2005 and 31 December 2008 belatedly with an average delay of 253 days as shown below:

**Table 2.12**

Sl No.	Period of delay	No. of returns	No of dealers
1.	< 30 days	186	14
2.	> 30 days & < 180 days	1428	145
3.	> 180 days & < 1 year	558	35
4.	> 1 year & < 5 years	444	28
<b>Total</b>		<b>2616</b>	<b>222</b>

For belated submission of the returns, penalty of ₹ 2.58 crore was leviable. However, the AOs did not initiate any action to levy penalty against the defaulters. This resulted in non-levy of penalty of ₹ 2.58 crore.

We reported the case to the Department/Government in December 2009 but their reply has not been received (October 2010).

**2.14 Loss of revenue due to non-registration of dealers**

While auditing Taxation Department, we took into account the information available such as vouchers audited by Central Audit Party of our office which gave us the idea of dealers making sales/supplies to

Under the MVAT Act, no dealer, liable to pay tax, shall carry on business, unless he has been registered and possesses a certificate of registration.

Government Departments. Other than this, we integrated the information made available to us by Civil and Commercial Audit Wings and cross-verified the same with the records of the

STs and noticed that in STs, Circle VI, Shillong, Jowai and Tura, 86

<sup>13</sup> STs, Circles I, II, III, IV & VI, Jowai, Nongpoh and Shillong.

unregistered dealers evaded tax of ₹ 52.31 lakh by selling taxable goods for which, penalty of ₹ 91.16 lakh was also leviable

The MVAT Act, and the rules or instructions made thereunder do not provide any system of co-ordination between the Taxation Department and other Government Departments/Companies/Corporations for registration of unregistered suppliers/dealers in order to avoid evasion of tax.

Absence of this provision and laxity on the part of the departmental authorities resulted in non-realisation of tax as mentioned in the following paragraphs:-

**2.14.1** A Government cement manufacturing company purchased 45,959

The MVAT Act, and the rules framed provide that if any dealer liable to pay tax has failed to get himself registered, the registering authority shall register such dealer and direct him to pay, by way of penalty, a sum equal to twice the tax collected in addition to the amount of tax for which he may be liable. Further, every Government department, company, corporation etc. shall deduct tax at source at prescribed rate while making payment to the dealer and deposit it into Government account.

MT of coal and 19,700 MT of clay valued at ₹ 8.90 crore and ₹ 51.47 lakh respectively between April 2007 and March 2009 from 80 unregistered dealers on which tax of ₹ 37.64 lakh was required to be deducted at source and deposited into Government account. The company neither deducted tax at source, nor did the dealers apply for registration and pay the due tax. Thus, failure of the company to deduct

tax at source as well as non-registration of the dealers by the department led to loss of revenue of ₹ 37.64 lakh. Besides, penalty of ₹ 75.28 lakh was also leviable.

**2.14.2** We cross-verified the records of ST, Circle-VI with those of ST, Circle-I, Shillong and noticed that two dealers sold stone aggregate valued at ₹ 29.62 lakh between March 2007 and September 2008 to a construction company. The dealers neither applied for registration nor paid the due tax. Thus, failure on the part of the department to register the dealers led to loss of revenue of ₹ 3.70 lakh. Besides, penalty of ₹ 7.40 lakh was also leviable.

**2.14.3** We obtained information from Meghalaya Legislative Assembly

Food items are not covered by First, Second, Third and Fourth Schedule and are taxable at the rate of 12.5 per cent.

and found that a dealer supplied tea and snacks valued at ₹ 49.94 lakh to the Assembly Secretariat between May 2005 and May

2007. We cross-verified the same with the records of ST, Circle-VI and noticed that the dealer was not registered. The Government department, however, deducted tax at the rate of four *per cent* instead of 12.5 *per cent*. Thus, application of incorrect rate as well as non-registration of the dealer led to short realisation of tax of ₹ 4.24 lakh. Besides, the dealer was also liable to pay penalty of ₹ 8.48 lakh.

**2.14.4** We obtained information from the DC, West Garo Hills, Tura and cross-verified the same with the records of the ST, Tura in October 2009 and noticed that a dealer sold computers, etc. valued at ₹ 93.21 lakh between October 2003 and October 2005 to the DC who did not deduct the tax at source while making payment. The dealer neither applied for registration nor was any action initiated by the ST to register the dealer and recover the tax. This resulted in loss of revenue of ₹ 6.73 lakh.

**2.14.5** We obtained information from the Divisional Forest Officers, Khasi and Jaintia Hills Forest Divisions between July and October 2009, and found that the two divisions sold stones, sand and clay having royalty value of ₹ 2.93 crore between 2007 and July 2009 to the permit holders. We cross-verified the same with the records of ST, Circle-VI and ST, Jowai and found that the neither the DFOs were registered as dealers nor did the DFOs realise the VAT while collecting the royalty from the permit holders. This led to non-realisation of revenue of ₹ 32.23 lakh.

**The Government may consider introducing a system of co-ordination between the Taxation Department and other Government Departments/Companies/Corporations for cross verification of the transactions made by the dealers in order to check evasion of tax by unregistered suppliers/dealers.**

We forwarded the cases to the Department/Government between May and October 2009 but their reply has not been received (October 2010).

### **2.15 Suppression of purchase**

We noticed during test check of records of the STs, Tura and

Under the MVAT Act, if a dealer furnishes false return or false statement of declaration, the Commissioner may accept penalty by way of composition of offence, a sum not exceeding ₹ 5,000 or double the amount of tax, whichever is greater.

Williamnagar between January and February 2010 that two registered dealers did not disclose purchase of ₹ 2.64 crore in their returns. This resulted in evasion of tax of ₹ 26.08 lakh on which, penalty of ₹ 52.16 lakh was also

leviable as mentioned in the table below:

**Table 2.13**

(Rupees in lakh)

Sl. No.	Return period	Nature of observation	Suppression of purchase	Tax effect /penalty
1.	April 2006 to March 2007	A cement dealer <sup>14</sup> disclosed purchase of cement valued at ₹ 78.77 lakh. Cross-verification with Sales Tax Office, Guwahati revealed that the dealer actually imported cement valued at ₹ 1.52 crore during the same period by utilising four 'C' forms. Thus, there was suppression of purchase.	152	<u>12.16</u> 24.32
2.	April 2006 to March 2009	A dealer <sup>15</sup> purchased motor vehicles, motor parts, tyre tubes valued at ₹ 1.12 crore by utilising a 'C' form. The same was not disclosed by him in his quarterly returns. Thus, there was suppression of purchase.	112	<u>13.92</u> 27.84

We reported the case to the Department/Government between March and May 2010 but their reply has not been received (October 2010).

### 2.16 Irregular claim of input tax credit

We noticed during audit of ST, Williamnagar in February 2010 that a

Under the MVAT Act, a registered dealer who claims input tax credit shall maintain accounts, evidence and other records such as tax invoice in prescribed format, cash memo or bill. Further, each and every return furnished by a registered dealer shall be subject to scrutiny by the AO to verify the correctness of calculation, application of correct rate of tax, interest and input tax credit claimed thereunder. Unregistered dealers are not entitled to any input tax credit.

dealer purchased coal valued at ₹ 2.72 crore between February and September 2009 from registered dealers within the State and claimed input tax credit of ₹ 10.78 lakh through quarterly returns submitted to the AO for scrutiny. We further noticed that the dealer neither furnished any evidence in support of his claim for input tax credit nor did the AO scrutinise the returns. As such, the input tax credit

<sup>14</sup> Registered under ST, Tura

<sup>15</sup> Registered under ST, Williamnagar

claimed by the dealer was not admissible. Thus, failure of the AO to verify the correctness of returns led to non-detection of inadmissible claim of input tax credit of ₹ 10.78 lakh.

We reported the case (May 2010) to the AO who justified the claim of ITC and furnished a detailed statement of invoices from three dealers in support of his argument. However a scrutiny of these statements revealed that one of these dealers was not registered while the remaining two dealers had not disclosed any local sales during the aforesaid period for which ITC was claimed and as such the ITC claim was not admissible to the dealer.

We reported the case to the Government in May 2010 but their reply has not been received (October 2010).

### 2.17 Non-forfeiture of tax

Under the provisions of Section 61 of the MVAT Act, if any sum is collected by a dealer in contravention of the provisions of the Act, such sum shall be forfeited to the State Government. For contravention of the provisions of Section 61, the Commissioner may impose a penalty not exceeding twice the tax liability.

We noticed in ST, Circle III, Shillong in January 2010 that a dealer sold goods valued at ₹ 1.65 crore between August 2005 and October 2007. He collected tax at the rates higher than the prescribed one. This resulted in excess collection of tax of ₹ 8.96 lakh. The AO did not detect the omission at the

time of submission of returns. Thus, the amount could not be forfeited. Besides, penalty of ₹ 17.92 lakh was also leviable.

We reported the case to the Department/Government in March 2009 but their reply has not been received (October 2010).

### 2.18 Incorrect application of rate of tax

In Meghalaya, works contracts and furniture are taxable at the rate of 12.5 per cent.

a dealer executed works contract and supplied furniture valued at ₹ 3.27 crore to a Government department between November 2005 and October 2007 and charged tax at the rate of four per cent

instead of 12.5 per cent and the tax was accordingly deducted for ₹ 13.06 lakh instead of ₹ 40.82 lakh. Thus, application of incorrect rate of tax led to short deduction of tax of ₹ 27.76 lakh.

We reported the case to the Department/Government in May 2010 but their reply has not been received (October 2010).

### 2.19 Non-deduction of tax at source

We obtained information from the Civil Audit Wing and cross-checked the same with the records of the STs, Circle-VI, Shillong and Tura and noticed that two buying Departments did not deduct tax at source while purchasing goods worth ₹ 1.70 crore from two dealers. The dealers also did not disclose the turnover in their returns resulting in evasion of tax of ₹ 8.46 lakh. Besides, penalty of ₹ 12.69 lakh was also leviable as mentioned in the table below:

The Government of Meghalaya, Taxation Department instructed in January 1995 that the buying Government department should deduct tax at source at the rates prescribed in the Act while making payment to the supplier and deposit the tax into Government account. The MVAT Act also incorporated the aforesaid provision.

**Table 2.14**

(Rupees in lakh)

Sl. No.	Period	Nature of observation	Turnover concealed	Tax/penalty evaded
1.	October '03 to October '05	A dealer <sup>16</sup> sold computers etc. worth ₹ 53.02 lakh to the Deputy Commissioner, Tura. The DC did not deduct tax at source while making payment and the sales were not reflected in the dealer's returns resulting in evasion of tax.	53.02	<u>3.76</u> 5.64
2.	October 2008 to march 2009	A dealer <sup>17</sup> sold medical equipments worth ₹ 1.17 crore to North East Indira Gandhi Regional Institute of Health and Medical sciences. The institute did not deduct tax at source while making payment and the sales were not reflected in the dealer's returns resulting in evasion of tax.	1.17	<u>4.70</u> 7.05

We reported the case to the Department/Government in May 2010 but their reply has not been received (October 2010).

<sup>16</sup> Registered under ST, Circle-VI, Shillong

<sup>17</sup> Registered under ST, Tura

## 2.20 Loss of revenue under the MVAT Act

We test checked (December 2009) the TP registers of the ST, Byrnihat

Under Section 77 of the MVAT Act, when a vehicle carrying goods from another State, meant for delivery outside the State, passes through Meghalaya, the driver of the vehicle is required to obtain a transit pass (TP) at the entry check post and produce it to the exit check post and obtain his endorsement with seal and signature as a proof of such exit within 30 days from the date of entry, failing which, the goods are to be deemed as sold within the State.

check post and noticed that out of 332 TPs issued between April 2008 and March 2009, 81 TPs had not been received back. Thus, these vehicles carrying taxable goods had delivered the goods within the State. Out of 81 vehicles, four vehicles did not furnish detailed particulars and value of goods carried. The remaining 77 vehicles carried taxable goods valued at ₹ 2.32 crore and evaded tax of

₹ 12.64 lakh. The department had made no efforts to trace the vehicles though the State Government has established Enforcement Branches (EBs) which was entrusted with the functions of intelligence gathering and interception of the vehicles carrying goods on transit between entry and exit check posts. Thus failure of the department to trace the vehicles resulted in loss of revenue of ₹ 12.64 lakh.

We reported the case to the department/Government in March 2009 but their reply has not been received (October 2010).

## MEGHALAYA FINANCE (SALES TAX) ACT

### 2.21 Short-levy of tax due to suppression of purchase under the MFST Act

We obtained information from Sales Tax Office at Guwahati and from the

Under the provisions of Meghalaya Finance (Sales Tax) (MFST) Act, in case of willful concealment of turnover or deliberate furnishing of inaccurate particulars of turnover, the dealer shall be liable to pay penalty not exceeding one and half times the tax

taxation check post at Byrnihat and cross-verified the same with records of ST, Circle-IV, Shillong and ST, Tura. We noticed that four dealers did not disclose correct statement of purchases made by them in their returns. This resulted in

suppression of turnover amounting to ₹ 3.71 crore leading to short levy of tax of ₹ 43.37 lakh as detailed below:

Table 2.15

(Rupees in lakh)

Sl. No.	Assessment Period / Date of assessment	Nature of observation	Suppression of turnover	Short levy of tax / Penalty
1.	<u>Apr 03 to Mar 05</u> October 2007	A dealer <sup>18</sup> had not submitted returns for the period from April 2003 to September 2004 but had submitted the return for the period from October 2004 to March 2005 and was assessed for ₹ 40.78 lakh. We noticed from the way bills / road permits received from the check post at Byrnihat that the dealer had actually imported onions valued at ₹ 68.64 lakh. The AO did not take into account the check post records resulting in under assessment of turnover.	27.86	<u>2.23</u> 3.35
<b>Remarks:</b> After we reported the matter, the Government while accepting the audit observation (May 2010) issued a show-cause notice to the dealer for re-assessment. A report on further action taken has not been received.				
2.	<u>Apr 03 to Mar 04</u> Jul 07	We obtained information regarding the purchase of cement valued at ₹ 2.54 crore on 'C' forms by two dealers <sup>19</sup> from Sales Tax office, Unit-A, Guwahati and cross-verified the same with the records of the two purchasing dealers. It revealed that the dealers had not disclosed the purchase turnover in their returns.	254	<u>30.48</u> 45.72
3.	<u>Oct 05 to Sep 07</u> May 06 to Nov 07	A dealer <sup>20</sup> disclosed turnover of ₹ 15.02 lakh in his returns and was assessed accordingly. While arriving at the taxable turnover, the dealer showed purchases of ₹ 19.56 lakh. However, we noticed from the utilisation statements and information obtained from Sales Tax office at Guwahati that the dealer had purchased goods valued at ₹ 1.08 crore on 'C' forms during the same period. Thus, the dealer concealed taxable turnover of ₹ 88.80 lakh resulting in underassessment of turnover.	88.80	<u>10.66</u> 15.99
<b>Total</b>			<b>370.66</b>	<u><b>43.37</b></u> <b>65.06</b>

<sup>18</sup> Registered under ST, Circle-I, Shillong<sup>19</sup> Registered under ST, Tura<sup>20</sup> Registered in ST, Circle-IV, Shillong

## 2.22 Concealment of sales turnover under the MFST Act

We noticed from the records of the STs, Circle III and VI, Shillong in January 2009 and January 2010 that two dealers disclosed turnover of ₹ 3.94 crore in their return from April 2004 to March 2005 and they were assessed accordingly between October 2005 and November 2006. However, as per the statement furnished by the dealers and the sale invoices/vouchers issued by them, we found that the dealers sold goods valued at ₹ 9.27 crore during the aforesaid periods. The dealers concealed turnover of ₹ 5.33 crore having tax effect of ₹ 63.67 lakh. Besides, interest of ₹ 65.43 lakh and penalty of ₹ 95.51 lakh was also leviable.

We reported the cases to the Department/Government between April 2009 and May 2010 but their reply has not been received (October 2010).

## 2.23 Short levy of interest under the MFST Act

We noticed during scrutiny of the assessment records of the ST, Circle VI,

Under Section 22A of the MFST Act, if any registered dealer fails to pay the full amount of tax, he is liable to pay interest at prescribed rates, varying between 6 and 24 *per cent* per annum for the period of default on the amount by which the tax paid falls short.

Shillong in February 2009, that a dealer was assessed to tax of ₹ 13.21 crore for the period from October 2002 to April 2005. The dealer paid the due tax belatedly between January 2004 and August 2007. For belated payment of tax, interest of ₹ 1.05 crore was

leviable, against which only ₹ 65.41 lakh was levied. This resulted in short-levy of interest of ₹ 39.59 lakh.

We reported the case to the Department/Government in March 2009 but their reply has not been received (October 2010).

## 2.24 Non-forfeiture of surcharge/tax under the MFST Act

**2.24.1** We noticed during scrutiny of assessment records of a dealer

Under the provisions of MFST Act, if any sum is collected by a dealer in contravention of the provisions of the Act, such sum shall be forfeited to the State Government and the Commissioner may impose a penalty not exceeding twice the tax liability.

registered under ST, Circle VI Shillong that he collected tax of ₹ 89.87 lakh and surcharge of ₹ 8.99 lakh in February 2009 on declared goods<sup>21</sup> for the period from 2001-02 to 2004-05. Although the surcharge collected was required to be forfeited to the Govern-

<sup>21</sup> Corrugated Galvanised Iron Sheets

ment, the AO, while finalising assessments for the aforesaid period in April 2007 incorrectly adjusted the amount against the tax liability of the dealer. This resulted in non-realisation of revenue of ₹ 8.99 lakh due to non-forfeiture of surcharge so collected. Besides penalty though leviable was not levied.

**2.24.2** We noticed during scrutiny of the assessment records of the ST, Circle VI, Shillong in February 2009 that a dealer sold goods valued at ₹ 3.65 crore between April 2003 and March 2004. He collected tax at rates higher than the prescribed one. This resulted in excess collection of tax of ₹ 5.95 lakh. The AO instead of forfeiting the excess tax of ₹ 5.95 lakh so collected, adjusted the amount against due tax. Such irregular assessment resulted in non-forfeiture of excess tax. Besides, penalty of ₹ 11.90 lakh was also leviable.

We reported both the cases to the Department/Government in March 2009 but their reply has not been received (October 2010).

### **2.25 Irregular grant of exemption on sale of tax paid goods**

We noticed during scrutiny of the records of the ST, Circle-III, Shillong in

Under the MFST Act, if the COT is satisfied that any dealer has evaded, in any way, the liability to pay tax, he may direct that such dealer shall pay by way of penalty in addition to tax payable by him, a sum not exceeding one and half times that amount.

January 2009, that a registered dealer claimed exemption from payment of tax on sale of computer and accessories valued at ₹ 1.11 crore between April 2004 and March 2005 as the goods were purchased from two dealers registered in Circle-

IV, Shillong and the AO assessed the dealer accordingly in April 2007. We cross-verified the records of two selling dealers and found that they disclosed total sale of ₹ 7.94 lakh only during the aforesaid period. Though the records of both dealers were available in the office, the AO had made no effort to cross-verify the same and detect suppression/incorrect exemption on turnover of ₹ 1.03 crore resulting in evasion of tax of ₹ 8.88 lakh. Besides, interest of ₹ 6.99 lakh and penalty of ₹ 13.32 lakh was also leviable.

We reported the case to the department/Government in March 2009 but their reply has not been received (October 2010).

## 2.26 Short realisation of surcharge

We noticed during scrutiny of records of the STs, Circle III and Circle VI,

The Government of Meghalaya, Taxation Department in their notification dated 25 August 2004 enhanced the rate of surcharge from 10 per cent to 20 per cent on the tax on sale of all the goods except declared goods.

Shillong in February 2009 that two dealers dealing in medical equipments, furniture, carpets, electrical goods etc., collected tax of ₹ 61.25 lakh between October 2004 and April 2005. The dealers were liable to pay surcharge at the rate of 20 per cent of tax instead of 10 per

cent paid by them. The AO, while finalising the assessments between October 2005 and January 2007 failed to detect the omission, resulting in short realisation of surcharge of ₹ 6.13 lakh.

We reported the case to the department/Government in March 2009 but their reply has not been received (October 2010).

## MEGHALAYA (SALES OF PETROLEUM, LUBRICANTS INCLUDING MOTOR SPIRITS) ACT

### 2.27 Suppression of purchase under the Meghalaya (Sales of Petroleum, Lubricants etc.) Act

**2.27.1** We noticed during test check of the records of the ST, Tura in

Under Section 16 of the Meghalaya (Sales of Petroleum, Lubricants etc.) (MSL) Act, if the Commissioner is satisfied that any dealer has concealed the particulars of his sale or deliberately furnished inaccurate particulars of such turnover or has evaded in anyway the liability to pay tax, he may direct that such dealer shall pay, by way of penalty, in addition to the tax payable by him, a sum not exceeding one and a half times of the tax sought to be evaded.

January 2009 that a dealer disclosed interstate purchase of petroleum products of ₹ 46.88 lakh between October 2005 and March 2006. We cross-verified the particulars of purchase with the records of the Bharat Petroleum Limited, Bongaigaon and found that the dealer actually purchased petroleum product worth ₹ 2.73 crore during the aforesaid period. The dealer, thus, concealed purchase of petroleum products of ₹ 2.26 crore, thereby concealing

turnover of sales of at least ₹ 2.26 crore and evaded tax of ₹ 28.25 lakh. Besides, interest of ₹ 28.25 lakh and penalty of ₹ 92.38 lakh was also leviable.

**2.27.2** We obtained copies of 'C' forms from Bharat Petroleum Limited and cross-verified the same with the records of a dealer registered in ST, Jowai in July 2007 and noticed that the dealer disclosed interstate purchase of petroleum products valued at ₹ 25.85 lakh between October 2005 and March 2006 whereas he actually purchased goods valued at ₹ 2.32 crore during the aforesaid periods. The dealer, thus, concealed purchase of petroleum products worth ₹ 2.07 crore, thereby concealing turnover of sales of at least ₹ 2.07 crore and evading tax of ₹ 25.88 lakh. Besides, interest of ₹ 19.02 lakh and penalty of ₹ 38.82 lakh was also leviable.

We reported both the cases to the Department/Government between November 2009 and March 2010 but their reply has not been received (October 2010).

### **2.28 Loss of revenue due to discontinuation of business by dealers**

We obtained information from Reliance Industries Ltd. regarding sales of petroleum products and cross-

Under the MSL Act, if a dealer fails to make a return or having made the return, fails to produce books of accounts in support of the return, the Commissioner shall, by an order in writing, assess the dealer to the best of his judgement and determine the tax payable by him on the basis of such assessment. However no time limit has been fixed for completion of assessment.

verified the same with the records of four dealers in ST, Tura in March 2010 and noticed that the dealers imported petroleum products valued at ₹ 4.47 crore between June 2006 and March 2008. But the dealers disclosed purchase of ₹ 1.44 crore in their returns for the aforesaid period. The dealers, thus, concealed purchase of ₹ 3.03 crore on

which they were liable to pay tax of ₹ 37.88 lakh. As per the records, the dealers discontinued their business and as such, there is no possibility of recovery of tax. The Department also made no efforts to cross-verify the particulars of transaction and complete assessments accordingly. Thus, absence of the provision for time-bound completion of assessments resulted in loss of revenue of ₹ 37.91 lakh.

After we pointed out the cases, the AO, while accepting the audit observation stated in March 2010 that the dealers were not traceable.

We also reported the cases to the Government in March 2010 but their reply has not been received (October 2010)..

**The department may consider putting in place a system of cross-verification of transactions between the selling and purchasing dealers and also fix a time limit for completion of assessments.**

### 2.29 Incorrect computation of tax

We noticed during test check of the records of the ST, Tura in January 2010 that the AO made computational mistakes in determining the tax of five dealers dealing in petroleum products. We found from the assessment records that the dealers were liable to pay tax of ₹ 1.32 crore for the period from August 2008 and October 2009 but the AO levied tax of ₹ 1.11 crore. Such irregular assessment resulted in under assessment of tax of ₹ 21 lakh.

After we pointed out the case, the AO, while admitting the facts, stated in March 2010 that steps had already been initiated to rectify the assessments. We have not received any report on rectification of assessment and realisation of tax.

We also reported the case to the Government in March 2009 but their reply has not been received (October 2010).

## CENTRAL SALES TAX

### 2.30 Concealment of turnover under the CST Act

We noticed while auditing the records of four<sup>22</sup> Sales Tax offices in March 2010 that 68 dealers sold 62,90,407 MT of coal between October 2007 and March 2009 in the course of interstate trade. The dealers disclosed turnover of ₹ 423 crore in their returns for the aforesaid period, duly supported by forms 'C' instead of ₹ 2,012.93 crore at the rate of ₹ 3,200 per MT being pithead price fixed by the Government. The AO, while completing the assessments between January 2008 and March 2010 ignored the rate fixed by the State Government. This

The Government of India, Ministry of coal revised the rate of royalty per MT of coal from ₹ 165 to ₹ 130 plus five *per cent* of pithead price of coal with effect from 1 August 2007. Accordingly, the royalty per MT of coal was fixed at ₹ 290 by the State Government by considering pithead price of per MT of coal at ₹ 3,200. Under the MVAT Act, if any dealer conceals the particulars of his turnover, he shall be liable to pay penalty not exceeding ₹ 5,000 or double the amount of tax, whichever is greater.

resulted in concealment of turnover of ₹ 1,589.93 crore and evasion of tax of ₹ 63.60 crore. Besides, penalty of ₹ 127.20 crore was also leviable for concealment of turnover. The tax effect would be even more, if actual sale price could be ascertained.

<sup>22</sup> STs, Jowai, Shillong, Tura and Williamnagar.

We reported the case to the Department/Government in May 2010 but their reply has not been received (October 2010).

### **2.31 Evasion of tax by misutilisation of 'C' forms**

**2.31.1** We noticed while test checking the records of the ST, Circle-V, Shillong in March 2009, that 22 dealers sold coal in course of interstate trade valued at ₹ 90.32 crore to dealers of Punjab and Haryana and claimed concessional rate of tax by furnishing declarations in form 'C'. The AO accepted the declaration forms and assessed the dealers accordingly on different dates between

A declaration in form 'C' is issued by a purchasing dealer to a selling dealer in the course of interstate trade on the strength of which concessional rate of tax can be availed. For furnishing false declaration(s), a dealer may be imposed a penalty not exceeding ₹ 1000 or double the amount of tax, whichever is greater. For belated payments interest at the prescribed rates is leviable.

May 2004 and February 2007. We obtained information relating to these forms from the Commissioner of Tax and Excise, Punjab and Haryana and found that these dealers were neither registered nor were any declaration forms issued to them. Thus, the declaration forms submitted by the dealers of Meghalaya and accepted by the AO were fake and tax should have been levied at the rate of eight *per cent* instead of four *per cent*. This resulted in evasion of tax of ₹ 3.61 crore. In addition, penalty of ₹ 7.22 crore and interest of ₹ 5.26 crore was also leviable for deliberate submission of fake 'C' forms and evasion of payment of tax.

**2.31.2** While scrutiny of the records of the ST, Circle V, Shillong in January 2009, we noticed that a dealer sold coal valued at ₹ 6.04 crore in course of interstate trade to a dealer of Haryana between October and December 2005 duly supported by a declaration in form 'C'. The dealer claimed assessment at concessional rate of four *per cent* and the AO assessed the dealer accordingly in June 2007. On further scrutiny, we noticed that the 'C' form was not in prescribed form as it did not contain the portion "purchased from you as per bill/cash memo/challan No. \_\_\_\_ dated \_\_\_\_ as stated below supplied under your challan No \_\_\_\_ dt \_\_\_\_ are for". Though the above portion was missing in the declaration form submitted by the dealer the AO accepted the invalid form, resulting in under assessment of tax of ₹ 24.16 lakh.

**2.31.3** We noticed during test check of the records of the ST, Tura in January 2010 that a dealer obtained 18 declarations in form 'C' for purchase of goods at concessional rate from outside the State on different dates between January and September 2005. The dealer did not furnish utilisation statement of 'C' forms before issue of fresh forms. The ownership of the business was transferred on 15 July 2005 and the dealer

surrendered three unused 'C' forms for cancellation. We, however obtained information from the Sales Tax Office at Tezpur, Assam and found that the dealer imported cement valued at ₹ 43.79 lakh between June and December 2005 from an Assam based dealer by utilising two declaration forms pertained to the period prior to the date of transfer of business. The AO did not check proper utilisation of forms submitted by the dealer and thus the purchase escaped his notice. This resulted in evasion of tax of ₹ 5.47 lakh. Besides, penalty of ₹ 10.94 lakh and interest of ₹ 5.15 lakh was also leviable.

We reported the cases to the Department/Government between March 2009 and May 2010 but their reply has not been received (October 2010).

### 2.32 Suppression of sales turnover under the CST Act

We noticed during the test check of audit of records of ST, Circle-V, Shillong that fifteen dealers did not disclose inter-state turnover of ₹ 28.09 crore in their returns during various periods between 2006-07 and 2008-09. The same could not be detected by the AO while finalising the assessments on various dates between May 2006 and November 2007 though the information was available to him in the form of monthly returns<sup>23</sup> submitted by check post authorities. This resulted in short levy of tax of ₹ 2.24 crore. Besides, penalty of ₹ 4.48 crore was also leviable for suppression of turnover as mentioned below:-

The provisions of levy of interest and penalty Meghalaya Value Added Tax (MVAT) Act, 2003, apply *mutatis mutandis* in case of assessment and reassessment under the Central Sales Tax (CST) Act, 1956.

**Table 2.16**

(Rupees in crore)

Sl. No.	Assessment Period / Date of assessment	Nature of observation	Suppression of turnover	Short levy of tax / penalty
1.	July to Sept '06 January 2007	The dealer had not submitted any return for the period. The assessment was finalised on best judgement basis as per books of accounts furnished by the dealer. The AO while finalising the assessment did not take into account the despatch of coal valued at ₹ 3.28 crore through the Umkiang and Byrnihat check post.	3.28	<u>0.32</u> 0.64
<b>Remarks:</b> The AO stated (November 2009) that coal had actually been despatched during				

<sup>23</sup> The monthly returns are prepared by the check post authorities and indicate the quantity/kind of goods dispatched through the check post and are sent to the concerned AOs for their information.

the period from July to September 2006 but it was in pursuance of a sale agreement executed in the previous quarter. As such, the sale does not pertain to the period in question. The reply of the Department is not correct as the trucks had transported coal during the period from July to September 2006 and thus it was a sale for that period. The fact was communicated to the AO in January 2010.				
2.	<u>Apr 06 to Mar 07</u> <u>Sept 06 to Nov 07</u>	Seven dealers did not disclose despatch of 56,595 MT of coal valued at ₹ 7.92 crore in their turnover. The quantity was transported through Umkiang check post but the AO did not take the same into account while finalising assessments.	7.92	<u>0.64</u> <u>1.28</u>
<b>Remarks:</b> The ST stated (November 2009) that the question of coal being transported through the check post was immaterial since the dealers were assessed at the local rate of tax of 4 per cent. The reply is not correct as neither the quantity transported was disclosed in the returns nor was it assessed by the AO. The fact was communicated to the AO in January 2010.				
3.	<u>Oct 05 to Sep 07</u> <u>May 06 to Nov 07</u>	Seven dealers did not disclose sale of coal valued at ₹ 17.04 crore in their turnover. The quantity was transported through Umkiang and Byrnihat check posts and information was sent to the concerned ST through the monthly returns but the AO did not take the same into account while finalising assessments.	17.04	<u>1.28</u> <u>2.56</u>
<b>Remarks:</b> The AO stated (November 2009) that the sales turnover was determined as per books of accounts of the concerned dealers and as such, it was correct. The reply is not correct as the AO had not cross-verified the despatch of coal with the monthly returns received from the check posts which were available in the files. Thus, failure of the AO to do so resulted in under assessment of tax. The fact was communicated to the AO in January 2010.				
<b>Total</b>			<b>28.09</b>	<u><b>2.24</b></u> <u><b>4.48</b></u>

We reported the cases to the Government in May 2010 but their reply has not been received (October 2010).

### 2.33 Irregular grant of exemption in respect of goods returned

We noticed during scrutiny of the assessment records of the ST, Circle I, Shillong in February 2009, that a dealer claimed deduction of ₹ 3.32 crore being the value of goods refunded by him for the period from October 2004 to March 2005. Though the claim was not supported by

As per Section 6A of the CST Act, form 'F' is required to be furnished in respect of all stock transfers, otherwise than by way of sale including goods returned for claiming exemption from payment of tax.

declaration in form 'F', the AO incorrectly allowed exemption from tax on the aforesaid turnover in February 2007. This resulted in under assessment of tax of ₹ 36.19 lakh.

After we reported the case (March 2009), the Government accepted the audit observation (May 2010) and issued a show-cause notice to the dealer under Section 8(2) of the MF (ST) Act. The dealer has however, sought time for the reply.

### **2.34 Non-levy of penalty under the CST Act**

We noticed during scrutiny of the records of the ST, Circle VI, Shillong in

Under Further, under Section 10 (b) of the CST Act, if any person being a registered dealer, falsely represents when purchasing any class of goods that goods of such class are covered by his certificate of registration, he is liable to pay penalty not exceeding one and half times the amount of tax which would have been levied in *lieu* of prosecution.

February 2009, that a dealer imported air conditioners and generator sets valued at ₹ 47.64 lakh between September 2004 and July 2007 against declaration in form 'C' but the goods imported were not included in his certificate of registration under the CST Act. The dealer, thus, falsely represented while purcha-

sing those goods that goods of such class are covered by his certificate of registration and as such, he is liable to pay tax of ₹ 4.32 lakh. Besides, maximum penalty of ₹ 5.69 lakh is also leviable for misuse of declaration form.

After we pointed out the matter, the AO stated in June 2009 that air conditioners are electrical goods and included in the registration certificate of the dealer and the import of generators was permitted as a special case. The reply is not correct as air conditioners are electronic goods as held by the apex court<sup>24</sup>, and special permission granted for import of goods not covered by registration certificate was irregular.

We reported the case to the Department/Government in March 2009 but their reply has not been received (October 2010).

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<sup>24</sup> An item is considered as an electronic item if its functions are controlled by a microprocessor [BPL Limited Vs State of Andhra Pradesh 121 STC 450 (SC)]

### 2.35 Under assessment of tax due to incorrect deduction

We noticed during a test check of records of the ST, Ri-Bhoi District, Nongpoh in August 2009, that the AO while finalising the assessment of three dealers between December 2008 and March 2009 allowed deduction of ₹ 2.63 crore from the sales turnover though the sales were exclusive of the tax element. Such inadmissible deduction resulted in under assessment of tax of ₹ 21.90 lakh.

Section 8A of the CST Act provides that in determining the turnover of a dealer, deduction shall be made from the aggregate of sale price in accordance with the prescribed formula. However, no deduction on the basis of the formula shall be made if the sales are not inclusive of the tax element.

that the AO while finalising the assessment of three dealers between December 2008 and March 2009 allowed deduction of ₹ 2.63 crore from the sales turnover though the sales were exclusive of the tax element. Such inadmissible deduction resulted in

When we reported the matter (March 2009), the AO stated (April 2010) that the aggregate of sale prices received by the dealers was treated as inclusive of tax element and deduction was given accordingly. The reply is not correct as the dealers were exempted from payment of tax under the Meghalaya Industrial (Sales Tax) Exemption Scheme and had not also shown any tax collection in their returns. As such, they were not eligible for any deduction.

We reported the case to the Department/Government in March 2009 but their reply has not been received (October 2010).

### 2.36 Non-registration of dealers under the CST Act

**2.36.1** We noticed during test check of assessment records of the ST, Nongpoh in August 2009 that a dealer was not registered under Section 7(1) of the CST Act. The dealer however made interstate sales valued at ₹ 1.43 crore between September 2006 and March 2008. The AO assessed the dealer in December 2008 and levied tax of ₹ 12.28 lakh but did not levy penalty of ₹ 18.42 lakh.

A dealer intending to make inter-state sales has to register himself under Section 7(1) of the CST Act otherwise he shall be liable to a penalty of one and half times the tax.

Nongpoh in August 2009 that a dealer was not registered under Section 7(1) of the CST Act. The dealer however made interstate sales valued at ₹ 1.43 crore between September

**2.36.2** We cross-verified the records of the Director of Mineral Resources, Meghalaya, Shillong with records of four<sup>25</sup> unit offices in November 2009 and noticed that 141 dealers obtained coal transport challans from the DMR for export of 9,58,880 MT of coal to Bangladesh but the dealers were not registered under the CST Act. The dealers neither obtained 'P' forms for

Under Section 5(1) of the CST Act, for claiming exemption in respect of sale of goods in the course of export under this Act, a dealer, is required to furnish evidence of export of goods in support of his claim Further, the COT vide notification dated 26 September 003, directed that each truck load of 15 MT of coal would be allowed to be transported.

transportation of coal or payment of advance tax nor furnished any certificate from land customs authority re-garding actual export of coal to Bangladesh for exemption of tax under CST Act. The AO also did not initiate any action to register the dealers and realise advance tax at the prescribed rate from them. This resulted in loss of revenue of ₹ 11.51 crore.

We reported the case to the Department/Government between March 2009 and May 2010 but their reply has not been received (October 2010).

### **2.37 Under assessment of tax on sale not supported by 'C' forms**

We noticed during audit of the records of the ST, Tura in November 2008 and January 2009, that 15 coal dealers sold coal valued at ₹ 47.80 crore in course of interstate trade between June 2007 and March 2009 not supported by 'C' forms but the AO assessed the dealers at concessional rate of three or two *per cent* instead of the local rate of four *per cent*. This resulted

Under the CST Act, on interstate sale of goods covered by declaration in form 'C', tax is leviable at three *per cent* upto 31 May 2008 and two *per cent* thereafter. The Act further provides that tax is leviable at the local rate of four *per cent* on coal if the interstate sale is not covered by each declaration in form 'C'.

in under assessment of tax of ₹ 66.69 lakh.

We reported the case to the Department/Government between January 2009 and March 2010 but their reply has not been received (October 2010).

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<sup>25</sup> STs, Circle-V, Shillong, Jowai, Tura, and Williamnagar.

### **2.38 Incorrect application of rate under the CST Act**

We noticed during the audit of records of the ST, Tura in January 2010 that two dealers sold coal valued at ₹ 3.81 crore between April and May 2008 in course of interstate trade and furnished declaration in form 'C' in support of sale. The AO, while assessing the dealers in July 2008 calculated tax at the concessional rate of two *per cent* instead of three *per cent*. Thus, due to incorrect application of rate, tax of ₹ 3.81 lakh was under assessed.

We reported the case to the Department/Government in March 2010 but their reply has not been received (October 2010).

### **2.39 Non-realisation of additional security on coal**

The COT, Meghalaya notified in September 2003 that all coal traders carrying coal in excess of 15 MT per truck in course of interstate trade shall pay at the check post, additional security for the excess load so carried at the rate of ₹ 120 per MT. This additional security was in addition to the advance tax of ₹ 1,800 per truck carrying 15 MT of coal. As per Rule 58 of the Meghalaya Financial Rules, all check posts are required to issue receipts in form TR 4 while collecting money on behalf of the Government. The receipt shall be duly signed by an authorised officer and the amount collected shall be entered in the Cash Book.

**2.39.1** We noticed during test checking the records of the officer-in-charge, Dainadubi check post in February 2010 that 1,55,845 commercial trucks carried 2,92,847 MT of coal in excess of permissible limit and paid ₹ 3.51 crore as advance tax in the form of additional security at the check post during the period between April 2007 and March 2009. However, on cross-verification of records of the DMR check post located at the same station, we noticed that 1,58,128 commercial trucks actually carried 3,26,094 MT of coal in excess of the permissible limit and paid royalty of ₹ 5.38 crore at the DMR check post. Thus, at least 33,247 MT of excess load of coal escaped notice of the taxation check post authorities leading to non-realisation of additional security of ₹ 39.90 lakh.

**2.39.2** We further noticed during scrutiny of the records of the ST, Dainadubi check post in February 2010, that 79,123 commercial trucks carried 2,06,076 MT of coal in excess of permissible limit between April 2008 and March 2009. But the officer-in-charge of the check post issued 77,300 numbers of receipts while collecting additional security on excess load beyond 15 MT. Thus, 1,823 vehicles carrying excess load of 4,748 MT were allowed to cross the check posts without payment of additional security. This resulted in non-realisation of security of ₹ 5.70 lakh.

We reported the case to the Department/Government in May 2010 but their reply has not been received (October 2010).