



## **CHAPTER – II: Taxes on sales, trade etc.**

### **2.1 Tax administration**

The Finance (Taxation) Department is responsible for the administration of taxes on sales, trade etc., in the State. The Commissioner of Taxes is the Head of the Department and responsible for administration of all taxation measures and for general control and supervision over the zonal and unit offices and the staff engaged in collection of taxes and to guard against evasion of taxes. He is also the authority for disposing of revision petitions under all Taxation Acts and laws besides providing clarification under Assam Value Added Tax Act, 2003. He is assisted by one Additional Commissioner of Taxes, five Joint Commissioners of Taxes, 15 Deputy Commissioners of Taxes, 25 Assistant Commissioners of Taxes, 165 Superintendents of Taxes, 320 Inspectors of Taxes and other officials in discharging day to day functions both at the Headquarters and regional/unit levels. In addition, there is one Deputy Commissioner of Taxes (Statistics) assisted by one Superintendent of Taxes and two Inspectors of Taxes, two Information Technology Officers and one Finance and Accounts Officer. The Commissionerate of Taxes has one Head Office/Commissioner's Office, 10 Zonal Offices, five Appellate Offices, 34 unit Offices, 23 recovery Offices and 10 check posts.

The functioning of the Department is governed by the provisions of the Assam Value Added Tax Act, 2003 (w.e.f. 01.05.2005); the Central Sales Tax Act, 1956; the Assam Entry Tax Act, 2008 (w.e.f. 01.06.2008); the Assam Professions, Trades, Callings and Employments Taxation Act, 1947; the Assam Tax on Luxuries (Hotels and Lodgings Houses) Act, 1989; the Assam Amusement and Betting Taxation Act, 1939; the Assam Electricity Duty Act, 1964; the Assam Taxation (on Specified Land) Act, 1990; the Assam Agriculture Income Tax Act, 1939 and various administrative orders issued from time to time.

### **2.2 Budget preparation**

Assam Budget Manual lays down that the estimates of revenue receipts should include/project the actual demand including arrears due for past years and the probability of their realisation during the year. According to the Assam Financial Rules, the Finance Department is required to prepare the estimates

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of revenue after obtaining necessary information/data from the respective Department/ Government.

The budget estimates of the Finance (Taxation) Department were prepared taking into account the actual collection of the last seven months of the previous year and provisional collection of the first five months of the current financial year. Besides, growth over actual receipts of the previous year as well as expected realisation of tax due to adoption of certain measures for augmentation of revenue was also taken into consideration.

This indicated that though the provisions of Budget Manual were not considered by the Department in letter and spirit, the budgeting was being done methodically. However, in respect of estimation in realisation of arrear tax, it is observed that the Department excluded the past arrears.

### 2.3 Trend of receipts

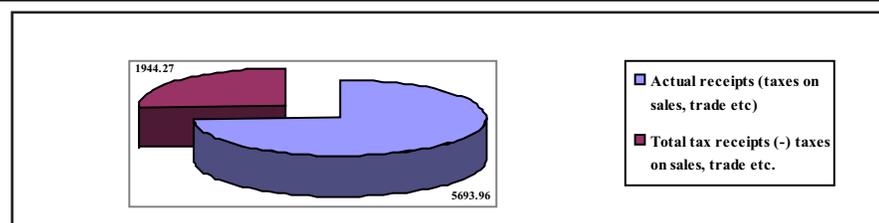
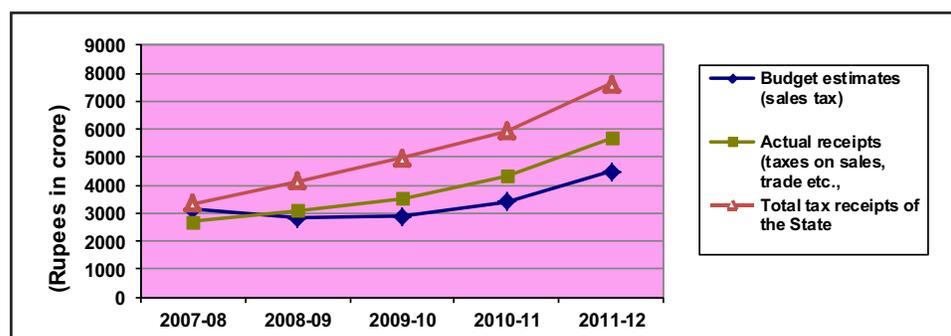
Details of budget estimates, actual receipts from taxes on sales, trade etc. during the period 2007-08 to 2011-12 along with total tax receipts during the same period are exhibited in the following Table 1 and graphs.

**Table 1**  
**Trend of receipts**

(₹ in crore)

Year	Budget estimates	Actual receipts (Taxes on sales, trade etc.)	Variation excess (+) shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual VAT receipts vis-à-vis total tax receipts
2007-08	3,129.51	2,691.43	(-) 438.08	(-) 14	3,359.50	80
2008-09	2,820.69	3,110.58	289.89	10	4,150.21	75
2009-10	2,900.00	3,535.26	635.26	22	4,986.72	71
2010-11	3,409.00	4,318.60	909.60	27	5,929.84	73
2011-12	4,491.00	5,693.96	1,202.96	27	7,638.23	75

Source: Finance Accounts and Departmental figures.



Position of taxes on sales, trade vis-a-vis total tax receipts during 2011-12

Thus, collection under sales tax/VAT contributed substantially to the tax revenues of the State during the last five years (ranging between 71 and 80 per cent). Overall collection of revenue under sales tax/VAT also showed an increasing trend.

## 2.4 Analysis of arrears of revenue

The position of arrears of revenue during the period 2007-08 to 2011-12 is depicted in Table 2.

**Table 2**  
Arrears of revenue

(₹ in crore)

Year	Opening balance of arrears	Amount added during the year	Amount collected during the year	Closing balance of arrears
2007-08	681.71	9.60	53.19	638.12
2008-09	638.12	51.88	22.77	667.23
2009-10	667.23	1,221.91	111.25	1,777.89
2010-11	1,777.89	803.48	110.55	2,470.82
2011-12	2,470.82	(-) 362.18	81.56	2,027.08

Source: Figures as furnished by the Department.

The Department stated (September 2012) that the arrears of revenue had increased drastically in 2008-09, 2009-10 and 2010-11 because assessments made under Assam Taxation (on Specified Land) Act, 1990 and Assam Entry Tax Act, 2008 could not be realised due to stay orders from Hon'ble Gauhati High Court and Supreme Court.

## 2.5 Assessee profile

The total number of assessees under the Assam Value Added Tax Act during 2011-12 was 1,49,007. It was observed that the Department/Commissionerate did not maintain records classifying dealers as large tax payers and small dealers separately. The Department/Commissionerate also did not ascertain the number of dealers who were required to file their returns and number of returns received during the year. On being requested for this information, the Department stated that it would have to be obtained from the field units. This is indicative of weak management information system as the Department should have obtained this information from time to time and prepare a State-wise database of dealers which might be required at any point of time for decision making or framing of appropriate and sound taxation policy.

## 2.6 Revenue per assessee

Position of total revenue collected *vis-à-vis* number of assessees and revenue per assessee for the years 2007-08 to 2011-12 are shown in Table 3.

**Table 3**  
**Revenue per assessee**

(₹ in crore)

Year	Number of assesseees	Revenue collected	Revenue per assessee
2007-08	1,18,279	2,691.43	0.02
2008-09	89,630	3,110.58	0.03
2009-10	1,06,925	3,535.26	0.03
2010-11	1,25,215	4,318.60	0.03
2011-12	1,49,007	5,693.96	0.04

Source: Figures as furnished by the department.

Revenue per assessee remained at the level of ₹ 3 lakh during 2008-09 to 2010-11 and in 2007-08 it went down to ₹ 2 lakh and increased to ₹ 4 lakh in 2011-12.

## 2.7 Arrears in assessment

Details of pending assessment cases at the beginning of the year, cases becoming due for assessment during the year, cases finalised during the year and number of cases pending as of March 2012 as furnished by the Department are mentioned in Table 4.

**Table 4**  
**Arrears in assessment**

(Number of cases)

Name of Acts	Opening balance as on 1 April 2011	Cases added for assessment during 2011-12	Total assessment due during the year 2011-12	Cases disposed during 2011-12	Balance as on 31 March 2012
Sales Tax (AGST/VAT/CST)	14,446	9,912	24,358	14,187	10,171
APTC&ET <sup>1</sup>	32,002	44,248	76,250	41,799	34,451
Entry Tax	2,011	2,273	4,284	2,054	2,230
Luxury (Hotel & Lodging), 1989	411	544	955	401	554
Electricity duty	1,541	541	2,082	388	1,694
Specified Land	833	684	1,517	544	973
Luxury Tax, 1997	2	23	25	5	20
Agricultural Income Tax	1,083	711	1,794	703	1,091
<b>Total</b>	<b>52,329</b>	<b>58,936</b>	<b>1,11,265</b>	<b>60,081</b>	<b>51,184</b>

Source: Figures as furnished by the department.

The Department could complete assessment of only 54 per cent of the total cases due for assessment during 2011-12 and there were 51,184 assessments yet to be completed by the Department. The Department did not have the information on age-wise break up of arrear assessments/assessments completed during the year to ensure that assessments do not

<sup>1</sup> Assam Professions, Trades, Callings and Employment Taxation.

get time barred leading to loss of revenue due to non-completion of assessments within the stipulated timeline.

*It is recommended that the Department may prepare an action plan for completion of pending assessments and also ensure that no assessment becomes time barred causing loss to the State exchequer.*

## 2.8 Cost of collection

The gross collection of taxes on sales, trade etc., expenditure incurred on collection and the percentage of such expenditure to gross collection during the years 2009-10 to 2011-12 along with the relevant all India average percentage of expenditure on collection relating to the preceding years are mentioned in Table 5.

**Table 5**  
Cost of collection

(₹ in crore)

Year	Gross collection	Expenditure on collection	Percentage of expenditure to gross collection	All India average percentage for the previous year
2009-10	3,535.26	42.69	1.20	0.88
2010-11	4,318.60	73.10	1.69	0.96
2011-12	5,693.96	43.99	0.77	0.75

Source: Finance Accounts and departmental figures.

Percentage of expenditure on gross collection in respect of the last two years was higher than the all India average cost of collection while during 2011-12, it came closer to the all India average which is encouraging.

## 2.9 Impact of audit

During 2006-07 to 2010-11, Audit has through inspection reports (IRs), 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 ₹ 671.80 crore through 1,185 audit observations. Of these, the department accepted audit observations in 241 cases involving revenue of ₹ 12.75 crore and had since recovered ₹ 3.09 crore (24.24 per cent) in 180 cases. The details are shown in Table 6.

**Table 6**  
**Impact of audit**

(₹ in crore)

Year of Inspection Report	No. of units audited	Amount objected		Amount accepted		Amount recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2006-07	115	173	61.28	14	1.79	5	0.17
2007-08	135	302	110.86	9	0.19	5	0.12
2008-09	77	235	63.82	10	0.77	7	0.26
2009-10	120	237	86.35	85	1.50	85	1.50
2010-11	98	238	349.49	123	8.50	78	1.04
<b>Total</b>	<b>545</b>	<b>1,185</b>	<b>671.80</b>	<b>241</b>	<b>12.75</b>	<b>180</b>	<b>3.09</b>

*It is recommended that the Department may take immediate action to install a mechanism to pursue, monitor and ensure prompt recovery of revenue involved in accepted cases.*

### 2.10 Results of audit

Test check of records of 78 units relating to taxes on sales, trade etc., during 2011-12 revealed irregular grant of exemption, non/short levy of tax/interest, turnover escaping assessment and other irregularities involving revenue of ₹ 199.09 crore in 201 cases, details of which are in Table 7.

**Table 7**  
**Results of Audit**

(₹ in crore)

Sl. No.	Category	Number of cases	Amount
1.	“Working of Recovery Offices in Sales Tax Department in Assam” – A performance audit	01 <sup>2</sup>	120.52
2.	Irregular grant of exemption	59	35.00
3.	Non/short levy of tax/interest	65	21.35
4.	Turnover escaping assessment	19	12.10
5.	Irregular adjustment of tax	31	6.22
6.	Other irregularities	26	3.90
	<b>Total</b>	<b>201</b>	<b>199.09</b>

During the course of the year, the Department accepted underassessment and other deficiencies with revenue implication of ₹ 9.98 crore in 32 cases, of which, an amount of ₹ 2.04 crore was realised in 13 cases during 2011-12.

A performance audit on “**Working of Recovery Offices in Sales Tax Department in Assam**” involving revenue implication of ₹ 120.52 crore and a few illustrative cases with money value of ₹ 8.73 crore are mentioned in the succeeding paragraphs.

<sup>2</sup> This consists of 681 cases.

## 2.11 Working of Recovery Offices in Sales Tax Department in Assam

### Highlights

During 2006-07 to 2010-11, the recovery of arrears was in the range of one to two *per cent* while there were 15,795 pending cases involving revenue of ₹ 1,564.31 crore as on 31 March 2011.

*(Paragraph 2.11.7)*

Non-availability of information on movable and immovable properties of the certificate debtors with the Assessing Officers handicapped the Recovery Officer to take result oriented action on arrear certificates. Consequently, arrear dues of ₹ 6.94 crore remained unrealised.

*(Paragraph 2.13)*

Due to non-initiation/execution of coercive measures/lack of follow up action on warrants of arrest issued, resulted in arrear dues involving ₹ 51.11 crore remained unrealised.

*(Paragraph 2.15)*

Non/delayed issue of inter-state arrear certificates led to the arrear dues of ₹ 2.26 crore remaining unrealised.

*(Paragraph 2.16)*

Due to lack of follow up action on appeal cases, delay in finalisation of appeal cases and delay in reassessment giving effect to the orders of the appellate authorities, the arrear dues of ₹ 8.74 crore remained unrealised.

*(Paragraph 2.17)*

Seven cases involving arrear dues of ₹ 4.84 crore have been disposed of by the concerned Courts. Due to lack of follow up action/non-compliance of the Courts verdict, the arrear dues of the same amount remained unrealised.

*(Paragraph 2.19)*

The rate of interest leviable for belated payment of arrear dues has not been reviewed for almost 100 years. Though the interest rate under Assam VAT Act was fixed as 18 *per cent* per annum, the cases under recovery proceedings still continue to be at 6.25 *per cent*.

*(Paragraph 2.22)*

Due to deficiencies in the internal control mechanism, absence of internal audit and absence of a system for periodic review of the register of certificates, the higher authorities in the Department remained unaware about the deficiencies detected during the performance audit.

*(Paragraph 2.24)*

### 2.11.1 Introduction

The Sales Tax Department of Government of Assam (Government) is responsible for levy and collection of taxes pertaining to different Taxation Acts<sup>3</sup> (the Acts). The provisions of the Assam General Sales Tax (AGST) Act, 1993 and Assam Value Added Tax (AVAT) Act, 2003 being the mother Acts, are applicable *mutatis mutandis* in respect of assessment, levy and collection of tax under the Acts.

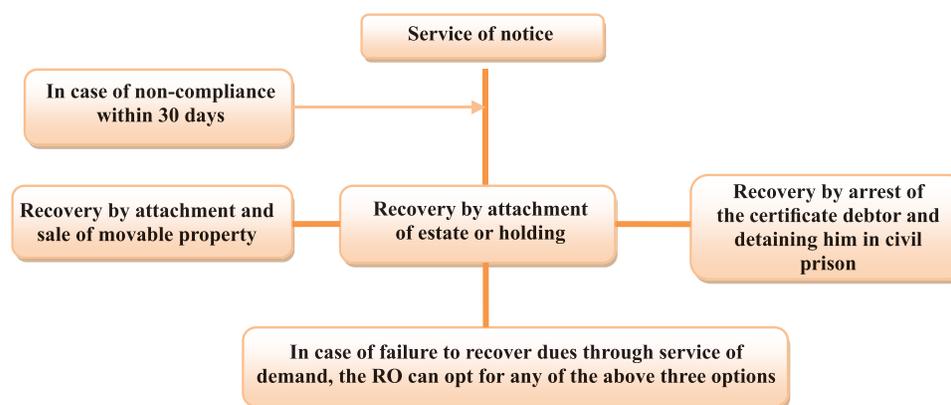
Taxes on sales, trade etc., are the major sources of tax revenue of the State and constituted 72.89 *per cent*<sup>4</sup> of the total tax revenue raised during 2010-11. The AGST Act, 1993 was in existence up to 30 April 2005 and with effect from 1 May 2005 the AVAT Act was introduced. Under both the Taxation Acts, every registered dealer liable to pay tax is required to file monthly/quarterly/annual return, as the case may be, along with proof of payment of tax due from him. Assessments are required to be completed within three years (AGST Act) and within five years (AVAT Act) from the year to which the assessment related.

Under the AGST/AVAT Act, tax assessed is required to be paid by the assessee in a manner and within the time specified in the notice of demand. Any dealer not satisfied with the demand raised could prefer an appeal with the Appellate Authority or in a Court of Law. In case of failure on the part of the assessee to pay the amount within the date mentioned in the demand notice, the Department is empowered to recover the amount as arrear of land revenue. For this purpose, the Assessing Officer (AO) is required to issue Arrear Certificate (AC) to the officers of the Taxation Department, who are appointed by the Government under the Assam Land and Revenue Regulation, 1886 (ALRR) and the Bengal Public Demands Recovery Act, 1913 (BPDR Act) (as adopted by the Government of Assam) to act as Recovery Officer (RO), who is also known as *Bakijai* Officer. The BPDR Act provides that after an AC is issued by the AO to the RO, the sum can be recovered as public demand (certificate process) as depicted in the following diagram:

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<sup>3</sup> (1) Assam General Sales Tax Act, 1993/Assam Value Added Tax Act, 2003; (2) The Central Sales Tax (CST) Act, 1956; (3) The Assam Taxation (on Specified Lands) Act, 1990 (ATSL); (4) The Assam Tax on Luxuries (Hotels and Lodging Houses) Act, 1989; (5) The Assam Professions, Trades, Callings and Employments Taxation Act, 1947; (6) The Assam Amusement and Betting Tax Act, 1939; (7) The Assam Electricity Duty Act, 1964; (8) The Assam Agricultural Income Tax Act, 1939 and (9) The Assam Entry Tax Act, 2008.

<sup>4</sup> Tax revenue = ₹ 5,929.84 crore; sales tax receipts = ₹ 4,318.60 crore



The ROs are to submit report to the Commissioner of Taxes (CT) on collection of arrears, arrears pending collection due to stay orders issued by different Courts and arrears under recovery proceeding through monthly/quarterly/annual returns.

### 2.11.2 Organisational set up

The Finance (Taxation) Department is responsible for administration of sales tax in the State. The CT is the Head of the Department and responsible for administration of all tax measures and general control and supervision over the zonal and unit offices. He is also the authority for disposing of revision petitions under the Acts. He is assisted by two Additional Commissioners, five Joint Commissioners, ten Zonal Deputy Commissioners and five appellate authorities. There are 34 unit offices and 23 recovery offices headed by the Assistant Commissioner of Taxes/ Superintendents of Taxes. While officers of the units are responsible for assessments and realisation of taxes under the Acts, the ROs are responsible for execution of arrear certificates for recovery of arrears of taxes.

### 2.11.3 Scope of audit

With a view to ascertaining the extent of arrears, adequacy and effectiveness of the system and procedure prevailing in the Department to recover the tax dues, a performance audit in respect of revenue locked up under various categories of certificate cases under the Acts *vis-à-vis* working of the Recovery Offices in Sales Tax Department was conducted between January and May 2012 with reference to the records available in the office of the CT and subordinate offices under his control. Eight<sup>5</sup> out of 23 recovery offices were selected by applying statistical sampling technique (simple random sampling without replacement). However, in order to have a proper representation of the State, Guwahati Recovery Office being the capital district was also selected on the basis of number of dealers involved in recovery proceedings, which was, otherwise, not selected through the sampling method applied.

<sup>5</sup> Dibrugarh, Diphu, Jorhat, Karimganj, Nagaon, North Lakhimpur, Tezpur and Tinsukia.

#### **2.11.4 Audit Objectives**

The performance audit was conducted with a view to ascertaining:

- the status of timely issue of arrear certificates by the AOs to the ROs in prescribed format for realisation of arrear dues;
- whether the rules and procedures prescribed in the Act & Rules for recovery were adequate and were being followed scrupulously;
- the extent of efficiency and effectiveness of the system of collecting arrears of tax as per the existing Act and Rules; and
- whether adequate internal control and monitoring mechanism existed for prompt realisation of arrear dues.

#### **2.11.5 Acknowledgement**

The Indian Audit and Accounts Department acknowledges the co-operation of the Taxation Department for providing necessary information and records for audit. An Entry Conference was held on 10 February 2012 wherein scope, objective and methodology of audit were explained to the Secretary, Finance (Taxation) Department and the CT, Assam. The CT explained the measures adopted by the Department for expediting recovery of arrears in respect of certificate cases. The draft performance audit report was forwarded to the Government/Department in August 2012 and was discussed in the exit conference held in October 2012. The Secretary, Finance (Taxation) Department represented the Government and the Department was represented by CT, Assam. The views of the Government/Department have been included in the relevant paragraphs.

#### **Audit findings**

#### **2.11.6 Trend of revenue and extent of arrears**

As per Section 25 and 44 of the AGST Act and the AVAT Act, any amount that remains unpaid after the due date of payment in pursuance of the notice issued by the AO under different provisions of the Acts shall be recoverable as arrear of land revenue. For the purpose of recovery of any amount as arrear of land revenue, the provisions of the ALRR and BPDR Act are applicable throughout the State and the tax authorities appointed by the Government for the purpose of recovery of tax, interest and penalty have been empowered to act as RO under the Act concerned. On receipt of an arrear certificate from AO, if RO is satisfied that the demand is recoverable, the latter may sign a certificate to be served upon the defaulter.

The position of total amount of tax in arrears and arrears under recovery proceedings as made available by the office of the CT is as in Table 8.

Table 8

(Position of total tax in arrears and arrears under recovery proceedings)

(₹ in crore)

Year	Total revenue collection under the Sales Tax Department	Total arrear under Sales Tax Department	Percentage of arrears to total revenue	Arrear under recovery proceeding	Percentage of arrears under the recovery proceedings to the total tax in arrears
2006-07	2,783.24	681.71	24.49	419.06	61
2007-08	2,691.43	638.12	23.71	427.08	67
2008-09	3,110.58	667.23	21.45	456.34	68
2009-10	3,535.26	1,777.89	50.43	491.31	28
2010-11	4,318.60	2,470.82	57.21	1,564.31	63

During the period 2006-07 to 2010-11, while receipts of the department increased from ₹ 2,783.24 crore to ₹ 4,318.60 crore (55.16 *per cent*), the arrears during the same period had increased manifold from ₹ 681.71 crore to ₹ 2,470.82 crore (262.44 *per cent*).

The Department attributed the reasons for abnormal increase in arrears during 2009-10 and 2010-11 to non-realisation of tax in respect of assessments made under the CST Act, 1956, Assam Entry Tax Act, 2008 and Assam Taxation on Specified Land Act, 1990 following stay order of Hon'ble Gauhati High Court against levy of tax on crude oil and natural gas bearing land. Though the position of arrears under recovery proceedings was reviewed by higher authorities monthly/annually, the overall arrears increased steadily from ₹ 419.06 crore in 2006-07 to ₹ 1,564.31 crore at the end of 2010-11 registering an increase of 273.29 *per cent*.

### 2.11.7 Trend of recovery

It was observed that no norm/target for disposal of certificate cases or target for recovery of arrears were fixed by the Government/Department. As per information furnished by the office of the CT, the collections made by the 23 recovery offices during the period 2006-07 to 2010-11 are shown in Table 9:

**Table 9**

**(Collections made by 23 recovery offices during the period 2006-07 to 2010-11)**

(₹ in crore)

Year	2006-07		2007-08		2008-09		2009-10		2010-11	
	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
Opening balance as on 1 April	17,603	495.85	16,216	419.06	16,340	427.08	15,976	456.34	13,562	491.31
Arrear certificates received during the year and filed by RO	814	45.81	1,124	67.83	689	50.64	445	77.40	4,002	1,152.14
Proceeding closed for other reasons <sup>6</sup>	1,752	117.97	736	53.78	707	10.83	723	22.63	1,350	57.84
<b>Total</b>	<b>16,665</b>	<b>423.69</b>	<b>16,604</b>	<b>433.11</b>	<b>16,322</b>	<b>466.89</b>	<b>15,698</b>	<b>511.11</b>	<b>16,214</b>	<b>1,585.61</b>
Recoveries made during the year	242	3.96	264	6.03	346	10.55	234	8.63	419	21.30
Balance at the end of the year <sup>7</sup>	16,216 <sup>8</sup>	419.06	16,340	427.07	15,976	456.33	13,562 <sup>9</sup>	491.31	15,795	1,564.31
Percentage of collections		0.93		1.39		2.26		1.69		1.34

The abrupt increase in collection of arrears during 2010-11 was mainly due to increase in receipts from Coke Industries and recovery as per the direction of the Gauhati High Court. Thus, during 2006-07 to 2010-11, the recovery of arrears was in the range of one to two *per cent* of the total recoverable arrears, while the arrear dues remaining unrealised at the end of March 2011 stood at 15,795 cases involving ₹ 1,564.31 crore.

<sup>6</sup> Assessment set aside by the appellate authorities, arrear certificates withdrawn by the AOs etc.

<sup>7</sup> Out of 15,795 certificate cases involving ₹1,564.31 crore, recovery of arrears in 504 certificate cases involving ₹1,144.03 crore stayed by DCT/JCT Appeal, Assam Board of Revenue (ABR), Civil/Other Courts, Hon'ble High Courts and Supreme Court.

<sup>8</sup> 207 certificate cases amounting to ₹ 67.46 lakh have been transferred to newly created offices of Hailakandi and Halflong which started functioning only during the year 2010-11.

<sup>9</sup> Due to reallocation of jurisdiction of two unit offices, 1,902 cases involving ₹ 1,117.22 lakh have been transferred from the RO, Tinsukia to RO, Dibrugarh during 2009-10 and such transferred cases have been reported by the concerned unit offices only in 2010-11.

After this was pointed out, the Department stated (October 2012) that the percentage of collection under recovery if compared with the arrear amount excluding the arrears stayed by the different courts would be about five *per cent* during 2010-11. It was, however, stated that efforts are being made to increase the collection above the targeted norm of 10 *per cent*.

The small amount of recoveries underlined the need for strengthening the system of management of arrears, as discussed in the succeeding paragraphs.

### 2.11.8 Age-wise pendency of recovery cases

Age-wise details of pendency of recovery certificates furnished by the Department are given in Table 10:

Table 10

(Time-wise details of pendency of recovery certificates)

Periodicity of arrears	No. of cases	Amount (₹ in crore)	Percentage of arrears to total dues remaining unrealised
Demand more than 1 year old	1,495	1,009.95	64.56
Demand more than 3 years old	1,346	103.52	6.62
Demand more than 5 years old	3,205	277.96	17.77
Demand more than 10 years old	9,749	172.88	11.05
<b>Total</b>	<b>15,795</b>	<b>1,564.31</b>	<b>100</b>

Thus, out of the total 15,795 cases involving ₹ 1,564.31 crore in the entire State, ₹ 450.84 crore in respect of 12,954 cases remained unrealised for more than five years. Since the Department did not lay down any norm/target for disposal of arrear certificates, recovery of such arrears with the passage of time may not materialise.

#### Recommendation 1:

*The Department may take prompt action by laying down norms/targets for clearance of arrear certificates and monitor the progress at all levels, periodically in respect of cases which are more than five years old to prevent any risk of these arrears not being recovered due to lapse of time.*

After this was pointed out, the Department stated (October 2012) that in view of the audit findings, instructions have already been issued to the officers concerned to make special efforts on the cases pending for long periods of time.

### 2.11.9 Categories of recovery

Out of the 15,795 cases involving ₹ 1,564.31 crore pending recovery in the entire State as on 31 March 2011 as mentioned in the preceding paragraph, 12,402 cases involving ₹ 1,290.44 crore were pending in nine Recovery offices selected for this performance audit. The detailed break-up of number of cases and revenue involved locked up under various categories as of March 2011 are given in Table 11:

**Table 11**  
**(Position of number of cases and amount locked in certificate cases in nine test checked districts)**

(₹ in crore)

ACs pending within State		ACs Issued to other State		Cases pending with BIFR		Cases pending with Appellate Authority		Cases pending with ABR		Cases pending with Other Courts, High Court/ Supreme Court		Total	
Cases	Amt.	Cases	Amt.	Cases	Amt.	Cases	Amt.	Cases	Amt.	Cases	Amt.	cases	Amt.
11,871	374.33	79	10.40	41	30.13	280	28.24	23	70.21	108	777.13	12,402	1,290.44

An analysis of the 12,402 cases involving ₹ 1,290.44 crore in the nine test checked Recovery Offices indicated that a major portion *i.e.* ₹ 808.41 crore<sup>10</sup> or 63 *per cent* pertained to cases pending against State Government Departments and cases pending in Hon'ble Gauhati High Court. Hence, these were kept outside the ambit of audit scrutiny. Thus, actual recoverable amount in the nine test checked districts selected for the performance audit worked out as ₹ 482.03 crore in 12,318 cases. Further, scrutiny of recovery files<sup>11</sup> selected on the basis of involvement of arrear dues revealed that the number of the cases were pending recovery mainly due to (i) absence of provision for reviewing of 'register of certificates'; (ii) non-furnishing of requisite information by AOs to ROs; (iii) delay in issue of arrear certificates; (iv) non-execution of warrant of arrests and inadequate follow up action; (v) non-issue/pursuance of inter-State arrear certificates; (vi) inaction in pursuance of the cases with the Assam Board of Revenue (ABR), Official

<sup>10</sup> (i) 81 certificate cases involving ₹ 51.72 crore relates to State Government Departments, (ii) one certificate case in respect of M/s Hindustan Petroleum Corporation Ltd. involving ₹ 54.67 crore was stayed first by the ABR ( November 2007) and then by the Hon'ble Gauhati High Court (March 2008), which is still pending, and

(iii) two certificate cases in respect of M/s Oil India Ltd. Duliajan involving ₹ 702.02 crore was stayed by the Hon'ble Gauhati High Court in August 2010 against levy of tax on crude oil and natural gas bearing land under the Specified Land Act, 2005.

<sup>11</sup> In the nine selected Recovery Offices (Dibrugarh, Diphu, Guwahati, Jorhat, Karimganj, Nagaon, North Lakhimpur, Tezpur and Tinsukia).

Liquidators (OL) and Board of Industrial Financial Reconstruction (BIFR); (vii) delay in disposal/lack of follow up action in appeal cases; (viii) lack of monitoring and pursuance of cases pending in High/Supreme Court(s). Observations raised in audit relates to 681 cases involving arrears of ₹ 120.35 crore (24.97 per cent when compared to the total sample size) under various categories (as broadly shown in **Annexure – II**) are discussed in the following paragraphs:

### 2.12 Absence of provision for review of ‘register of certificates’

It was noticed that the Recovery Offices have been maintaining registers of certificate cases as prescribed under the BPDR Act<sup>12</sup>. However, neither the BPDR Act nor any executive instruction of the CT, Assam provides for carrying out periodic review of pending cases. Consequently, the cases remained unattended for a long time. There exists a system of periodic return to be furnished by ROs to the CT for pending cases. But, in the absence of a well laid down system of periodic review and reporting, such cases could not be brought to the notice of CT. This was the principal reason for piling up of arrear certificates year after year without any effective step being taken by the Department to recover the dues and arrest accumulation of the cases as discussed in subsequent paragraphs.

### 2.13 Non-furnishing of requisite information by assessing officers to ROs

As per Section 25 and 44 of the AGST and AVAT Acts, in respect of any amount that remains unpaid after the due date of payment in pursuance of the notice, the AO is required to send requisition for a certificate in the prescribed form to the RO, giving full particulars of the defaulter such as name and address of the certificate debtor, amount of public demand for which the certificate is to be signed, period for which such demand is due and particulars of assets etc. for realisation of arrear dues.

It was noticed that 900 arrear certificates involving ₹ 308.50 crore were issued by the AOs between 2006-07 and 2010-11 in Guwahati RO. Scrutiny revealed that in 133 out of 900 cases involving ₹ 6.94 crore, the AOs did not mention the requisite information such as whereabouts of the Certificate Debtor (CD), source of realisation of dues and particulars of movable/immovable properties etc. of the CD. In absence of these basic details, RO was handicapped in taking result oriented action on the basis of these arrear certificates devoid of essential data. Though references were made by RO to AOs

for furnishing particulars of the debtors, the requisite information was not made available by the AOs to enable the RO to

<sup>12</sup> Clause 79 of Schedule II attached to BPDR Act.

realise the dues. As a result, revenue of ₹ 6.94 crore remained unrealised for periods ranging from 1 to 6 years. Evidently, vital items of information which were missing in these cases were not available with the AOs as well which underlines the need for seeking declaration of assets, properties including details of bank accounts and names of partners alongwith their assets and bank accounts at the time of registration of dealers.

After this was pointed out, the Department stated (October 2012) that in the application format for registration of dealers under the AVAT Act, it is made mandatory to furnish particulars as suggested by Audit along with the present and permanent address of the applicants and other partners, Directors, *Karta*, etc. It was further stated that in respect of the insufficient particulars of the CDs in the cases pointed out by Audit, the AOs have been directed to provide complete particulars of the CDs to ROs so that proper action can be initiated to realise the arrear dues.

#### **2.14 Non-realisation of arrear dues due to delay in issue of arrear certificates**

As per Section 26 of AGST and 45 of the AVAT Acts, in respect of any amount that remains unpaid after the due date of payment in pursuance of the notice issued by the AO under different provisions of the Acts, shall be recoverable as an arrear of land revenue. Scrutiny revealed that there was no provision in the Acts/ Rules laying down a time frame for sending the arrear certificates by AOs to the ROs. However, CT Assam issued guidelines (July 1997) to the Assistant Commissioner of Taxes/ Superintendents of Taxes specifying that if the demand remained unrealised within a period of three months, AO should send the cases to the RO for realisation of the demand through certificate process.

It was noticed that tax dues of ₹ 91.99 lakh against six dealers<sup>13</sup> were in arrears for the assessment periods between 1993-94 and 2002-03 in the offices of Guwahati and Jorhat ROs under the AGST Act. Consequently, arrear certificate cases were instituted against CDs and referred to ROs between February 2004 and September 2008 (*i.e.* after delays ranging between 5 and 10 years) for recovery of the arrear dues. However, no notice was served as none of the CDs were available at their given addresses. Warrants of arrest were issued after a lapse of three to six years and consequently, the same remained un-executed, due to non-availability of the CDs.

Thus, due to considerable delays in conversion of arrear dues into certificate cases, arrear demand of ₹ 91.99 lakh was not realised. The possibility of recovery now appears remote.

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<sup>13</sup> M/s Debsons Pvt. Ltd., M/s Global Tele System, M/s Green field Tea Co., M/s Jahirul Islam, M/s S A Enterprise and M/s Sharma Tea Co.

After this was pointed out, the Department stated (October 2012) that one dealer (M/s Jahirul Islam) has started making payment. In respect of M/s Sharma Tea Co., it was stated that in absence of proper address and details of the property held by CD, no stringent action could be taken. In respect of the remaining four cases, no specific reply has been received (November 2012).

### **2.15 Non-execution of warrant of arrest and inadequate follow up action**

**2.15.1** As per Section 14 of BPDR Act, RO may order execution of a certificate by arresting the CD and detaining in civil prison. The CT, Assam in May 2007 instructed the ROs to take up the matter regarding non-execution of warrant of arrest by police with the Superintendents of Police and Deputy Commissioners of the District concerned.

In office of Guwahati RO, it was noticed that during 2006-07 to 2010-11 the RO sent<sup>14</sup> warrant of arrests in respect of 366 certificate cases involving ₹37.03 crore pertaining to periods between 1996-97 and 2009-10 to different police stations for arrest of the CDs and effecting recovery of dues specifying the dates within which such warrants were to be executed. Of this, an amount of ₹ 0.61 crore was only realised during 2006-07 and 2010-11 in 59 out of 366 certificate cases by executing warrants of arrest. In the remaining 307 cases, neither the warrants of arrest were executed nor any report on action taken, if any, was sent by the police authorities to the RO. The matter of non-execution of warrants of arrest by the police authorities was also not taken up by RO with the Superintendent of Police or the Deputy Commissioner of the district concerned (March 2012) though there were instructions of CT, Assam to this effect. Thus, due to absence of follow up action despite executive instruction of CT, arrear dues of ₹ 36.42 crore remained unrealised for periods ranging from 1 to 15 years.

**2.15.2** In other eight selected ROs, it was noticed that 107 certificates cases involving ₹ 15.86 crore were instituted (between February 2001 and April 2010) by ROs as the defaulters failed to pay the arrear dues for different periods between 2000-01 and 2010-11. Scrutiny of recovery files revealed that out of ₹15.86 crore, an amount of ₹ 3.24 crore only was realised through service and pursuance of demand (block diagram at para 2.11.1). No coercive measure was taken by the ROs in the remaining cases to take up the matter with the police authorities for issue of warrants for arrest as per the BPDR Act, except issue of reminders to defaulters intermittently. As a result, arrear dues amounting to ₹12.62 crore remained unrealised for periods ranging from 1 to 11 year(s) even after institution of certificate cases as given in Table 12:

<sup>14</sup> As the defaulters failed to pay the arrear dues inspite of reminders.

**Table-12**

**(Arrear dues realisable)**

**(₹ in crore)**

Name of the Recovery office	Total numbers of certificate cases	Certificate cases issued during the periods	Amount involved	Amount realised	Balance realisable amount
Tezpur	20	May 2006 to May 2010	2.04	0.39	1.65
The Department stated (October 2012) that in seven cases, warrant of arrest have been issued which could not be executed. In respect of four cases, the dealers are not traceable. In remaining cases, the dealers are making part payments.					
Nagaon	17	March 2005 to August 2009	2.05	0.07	1.98
The Department stated (October 2012) that warrants have been issued against the CDs which could not be executed due to non-availability of the CDs.					
North Lakhimpur	4	November 2005 to November 2008	0.98	0.01	0.97
The Department stated (October 2012) that in one case ₹ 50,000 has been recovered. Recovery of balance amount and replies in the remaining cases have not been received (November 2012).					
Karimganj	17	February 2001 to January 2005	1.66	0.06	1.60
The Department stated (October 2012) that in case of one CD involving ₹ 1.03 crore, the firm has reported to be insolvent and has no movable or immovable property. Hence, scope of recovery is remote.					
Jorhat	18	May 2001 to February 2009	4.25	1.88	2.37
Dibrugarh	13	June 2001 to October 2009	2.54	0.65	1.89
Tinsukia	18	April 2006 to December 2010	2.34	0.18	2.16
In respect of the remaining cases under Karimganj, Jorhat, Dibrugarh and Tinsukia ROs, the Department stated (October 2012) that action has been initiated for recovery of dues as per audit observations and these are in various stages. An amount of ₹ 86.94 lakh has been recovered from 15 dealers till date.					
<b>Total</b>	<b>107</b>		<b>15.86</b>	<b>3.24</b>	<b>12.62</b>

**2.15.3** It was noticed that in eight certificate cases in the offices of Guwahati, Nagaon and Tezpur ROs, arrear dues amounting to ₹ 2.07 crore were not realised due to the lack of follow up action as detailed in Table 13:

**Table 13**

**(Government revenue remaining unrealised due to lack of follow up action)**

Sl. No.	Name of the dealer	Year of transaction and provision of Acts	Date of passing assessment order	Date of institution of certificate case	Dues (₹ in lakh)	Remarks
1.	M/s Barduar Tea and Timber Co., Guwahati	1998 to 2005 (Under the A.T.S.L Act)	N.A	October 2008	41.47	The CD had denied (January 2009) his tax liability claiming that the certificate proceeding was not initiated properly, {prescribed Court fee as required under BPDR Act, was not attached and the assessment periods 1998 and 1999 were time barred since demand notice was issued (2007) after a lapse of eight years}. Thus, due to delay in institution of certificate case (October 2008) in respect of 1998 and 1999, led to the recovery becoming time barred and non-initiation of timely action to rectify the defects and issue fresh demands, the arrear dues remained unrealised. In the meantime, demands pertaining to the period upto 2003 has further become time barred.

2.	M/s Bogidhala Tea Co.	2003 to 2006 (Under the A.T.S.L Act)	N.A	August 2008	32.13	The CD had denied (September 2009) his tax liability claiming that the assessments were completed without any basis. Though three years have elapsed, the Department had not taken any further action on the matter.
3.	M/s Hotel Chilarai Regency, Guwahati	1996 to 2002 (Under the Assam Luxuries Taxation Act)	N.A	November 2003	41.12	The CD had denied his tax liability. Warrant of arrest was issued in October 2004 which could not be executed. The defaulter issued (September 2006) a cheque for ₹ 1 lakh which was dishonoured by bank. Though nine years have elapsed, the Department had not made any effort to recover the dues of ₹ 41.12 lakh, except issue of one reminder.
4.	M/s Hotel Indiraj, Guwahati	1997 to 2002 (Under the Assam Luxuries Taxation Act)	N.A	October 2003	15.80	A show cause notice was issued in August 2009 indicating as to why warrant of arrest should not be issued for non-payment of dues. Though no reply was furnished by the dealer, no further action was initiated to recover the arrear dues of ₹ 15.80 lakh.
5.	M/s Prag Electricals Ltd., Guwahati	1998-99 to 1999-2000 (Under the AGST Act)	N.A	February 2005	35.38 and 5.02	Demand for ₹5.02 lakh for 1999-2000 was stayed by the Joint CT (appellate authority) in 2005 as the dealer filed a revision petition against the order of assessment. No other records regarding disposal of appeal case were made available to audit. The reason for non-realisation of balance dues of ₹35.38 lakh for 1998-99 was not on record.
In respect of the above five cases, the Department stated (October 2012) that efforts are being made to realise the arrear dues.						
6.	M/s Dhullie Tea estate, Tezpur	2004 to 2005 <sup>15</sup> (Under the A.T.S.L Act)	N.A	February 2007	29.91 and 20.14	Arrear dues of ₹ 29.91 lakh was liquidated by AO in March 2009 under the Assam Taxation (Liquidation of Arrear Dues Rules), 2000. However, no action was initiated by the RO to recover the balance dues of ₹ 20.14 lakh.
The Department stated (October 2012) that ₹ 3 lakh has been recovered out of ₹ 20.14 lakh.						
7.	M/s Food corporation of India, Nagaon	2003-04 (Under the AGST Act)	N.A	March 2008	21.32	The CD informed RO that a revision petition would be filed before Joint CT, Assam against order passed by the AO. Neither the revision petition was filed as evident from the case records nor any action was initiated to recover the arrear dues of ₹ 21.32 lakh.
The Department stated (October 2012) that the case would be reviewed for further action.						

<sup>15</sup> Under ATSL Act, assessment year is based on ‘calendar year’, while the others are on ‘financial year’.

In the case of sl. nos. 5 and 6, though a portion of the dues (₹ 37.51 lakh) were under appeal/liquidated as detected by Audit through scrutiny of individual files, these were not mentioned in the registers maintained by the ROs. Consequently, the registers and the reports/returns prepared on the basis of the same did not depict the true and correct picture of arrears in the State.

**Recommendation 2:**

*It is recommended that the Department may issue instructions to the ROs for instituting a system for reviewing the registers at periodic intervals for identification of long pending cases and initiation of prompt follow up action.*

**2.16 Non-issue/pursuance of inter-State arrear certificates**

Under section 12 of the BPDR Act, in a case where a defaulter has shifted his business/residence out of the State, an AC is required to be sent to the District Collector of the concerned State for arranging recovery of Government dues.

Scrutiny revealed that in three cases there were either delays in issuing inter-State ACs or these were not issued resulting in non-recovery of arrear dues of ₹ 2.26 crore as discussed in the following table.

Sl. No.	Name of the dealer	Assessment periods/provision of Acts	Date of assessment order	Arrear dues (₹ in crore)
1.	M/s Baron Electronics PVT. Limited, Guwahati.	1998-99 AGST and CST Act.	April 2000 and February 2004	0.88

The certificate cases were instituted in May 2002 and April 2004 as the defaulter failed to pay the dues. Demand notice was issued but was not served as the dealer closed down business at Guwahati. It was noticed that an inter-State certificate was issued only in January 2012 after a lapse of more than eight to ten years from the date of institution of certificate case. The amount has remained unrealised till date.

2.	M/s BPL limited, Guwahati	2003-04 and 2004-05 AGST Act.	May 2005 and then revised in March 2008	0.77
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The certificate case instituted in April 2009 (as the dealer did not pay the dues) was not realised as the dealer had closed down business in the State. It was noticed that an inter-State certificate was issued to the concerned office in Kolkata for effecting recovery in December 2011 after a lapse of two years from the date of institution of certificate case. This belated action of the AO to assess/reassess the dealer and delay in issue of inter-State certificate did not help in ensuring recovery of arrears.

3.	M/s Tirupati International, Guwahati	1997-98 to 1999-2000 AGST Act.	July 2004	0.61
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As the dealer failed to pay taxes, certificate case was instituted in December 2004 and demand notice was issued accordingly. However, the demand notice, so issued, was not served as the defaulter was not traceable at his given address and had left for Hyderabad which was evident from a letter issued by the RO to CT, Assam. However, no inter-State certificate, as required under the provision of the BPDR Act, was issued to the District Collector of the concerned State to recover the dues, though the address of the defaulter was available in the records. Thus, due to non-initiation of action by the RO to send the AC to the concerned State for recovery of dues of ₹ 0.61 crore, the possibility of recovery now appears to be remote as more than seven years have elapsed from the institution of certificate case.

After this was pointed out, the Department stated (October 2012) that reminders have been issued to the concerned States for expediting action on the cases.

### Recommendation 3:

*Government may consider evolving a practical yet timebound monitoring system for issuing inter-State ACs without delay and regularly co-ordinating with their counterparts in other States to whom the certificate cases have been issued.*

#### 2.17 Non- realisation of arrear dues due to lack of follow up action on appeal cases, delay in finalisation of appeal cases and delay in reassessment

**2.17.1** As per Section 33 and 79 of the AGST and AVAT Acts, any dealer/person who is aggrieved by an order passed by AO may appeal to the appellate authority against such order within sixty days from the date of receipt of the assessment order. The AOs are required to make fresh assessment on the basis of the order passed by the appellate authority.

Scrutiny revealed that though, in the following cases, appeal petitions were dismissed by the appellate authorities, the ROs concerned remained unaware of the disposal of the appeal cases as these were not monitored or followed up by them. Consequently, arrear dues of ₹ 1.94 crore remained unrealised as discussed in the following table:

SI No.	Name of the dealer	Assessment periods/ provision of Acts	Date of assessment order	Arrear dues (₹ in crore)
1.	M/s Castrol India Limited, Tezpur	2002-03 AGST Act	N.A	1.78

A certificate case was instituted in November 2008 as the defaulter failed to pay the arrear dues. However, the certificate proceeding was stayed (December 2008) as the dealer filed an appeal before the appellate authority against the assessment order. The appellate authority, however, rejected the appeal in March 2010 as the dealer failed to furnish necessary documents in support of discount sales. It was noticed that no further action was initiated by RO to realise the arrear dues of ₹ 1.78 crore though the appeal was disposed in March 2010 and thus the arrear dues remained unrealised.

2.	M/s Sanjay Trading Company, Tezpur.	2006-07 AVAT Act.	N.A	0.12
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A certificate case was instituted in November 2008 as the defaulter failed to pay the arrear dues. However, the certificate proceeding was stayed (October 2010) as the dealer filed an appeal before the appellate authority against the assessment order. Thereafter the RO did not take any initiative to ascertain the position of the appeal case. However, verification of the records of the Assistant Commissioner of Taxes, Tezpur, revealed that the appeal petition was dismissed in January 2010 and the appellate authority had upheld the assessment order. As such, due to lack of coordination between two unit offices, the Department was not able to recover the arrear dues of ₹ 0.12 crore till date.

After this was pointed out, the Department stated (October 2012) that the CD has approached the ABR which has stayed the case. Further development has not been reported (November 2012).

3.	M/s National Building Construction Corporation Limited, North Lakhimpur.	1998-99 to 2001-02 AGST Act	N.A	0.04
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AC was issued by the Superintendent of Taxes, North Lakhimpur in December 2005 which was returned by the RO in September 2010 as the defaulter had closed down his business. However, cross check by Audit with the records of the Superintendent of Taxes, North Lakhimpur revealed that the dealer had filed an appeal before the appellate authority against the assessment order and the defaulter paid ₹ 4.11 lakh as per orders of the appellate authority. The appeal was finally disposed of in July 2008 with a direction to the dealer to pay the balance amount of ₹ 4.38 lakh. However, no further action was initiated by AO to realise the arrear dues. Thus, due to lack of coordination between two offices, arrear dues of ₹ 4.38 lakh remained unrealised even after finalisation of appeal in July 2008.

After this was pointed out, the Department stated (October 2012) that fresh arrear certificate has been issued against the CD. Further development has not been reported (November 2012).

**2.17.2** It was observed that prior to introduction of AVAT Act, taxation laws of the State did not prescribe any time limit for admitting/disposing appeal cases by appellate authorities. However, CT issued instructions in January 1997 to the appellate/revisonal authorities to make sincere efforts to dispose of the appeal/revision petitions within three months from the date of filing.

Scrutiny revealed that despite the instructions of CT, Assam to ensure clearance of the appeal petitions, arrears of ₹ 1.14 crore in respect of 23 cases were pending before the Departmental appellate authorities for more than three months as discussed in the following paragraph:

**2.17.2.1** In the offices of Diphu and Nagaon ROs, it was noticed that realisation of arrear tax in respect of 23 certificate cases pertaining to 11 dealers<sup>16</sup> under RO, Diphu and four dealers<sup>17</sup> under RO, Nagaon (instituted

<sup>16</sup> Shri Adesh Pada Gupta, Shri Bura Englang, Shri Bura Sing Tara, M/s Cement Corporation of India, M/s Hills Youth Enterprise, M/s Highland Products Pvt. Ltd., M/s Karbi Valley Plantation Pvt. Ltd., Shri Kareng Rongpi, M/s Lahorijan and Nirmal Kumar Tea Estate, Shri Netram Renghag and Shri Sarim Teren.

<sup>17</sup> M/s Assam Co-operative Jute Mills Ltd., M/s Chapanala Tea Estate, M/s Haulti Tea Estate and M/s Laxmi Enterprises.

between April 1992 and January 2007) were pending due to non-finalisation of appeal cases (the dates of passing of assessment orders were not available in the recovery files neither could be furnished by the RO, Diphu, though called for). Though 3 to 21 years had passed, neither the cases (as mentioned in footnote 16 & 17) were disposed of nor any action was taken by the ROs to pursue the concerned AOs to get the stay orders of the appellate authorities vacated, reasons for which was neither on record nor furnished, though called for. Thus, arrear dues of ₹ 1.14 crore remained unrealised for a period ranging from 3 to 21 years.

**Recommendation 4:**

*The CT, Assam may consider requesting the appellate authorities to expedite disposal of the cases pending with emphasis on the cases against which ACs have been issued.*

**2.17.3** During test check of the recovery files of a dealer in Guwahati RO, it was noticed that M/s Kailash Chandra Pareek was liable to pay arrears of assessed tax of ₹ 5.66 crore for the periods 1999-2000 to 2002-03. It was also noticed that tax, interest and penalty together amounting to ₹ 4.82 crore were levied (November 2003) on suppressed turnover of ₹ 13.85 crore. The dealer, being aggrieved, filed an appeal on 17 January 2004. The appellate authority set aside (14 July 2004) the assessment order and directed (27 August 2004) the concerned AO to make fresh assessment after giving opportunity to the appellant for production of documents. The AO finalised assessment on 28 November 2005 (after 15 months) and levied tax including interest and penalty of ₹ 5.66 crore, which was also not paid by the dealer. A certificate case was, thus instituted in March 2006 (after four months) and warrant of arrest was issued in February 2007 (after 11 months) which was not executed by the Officer-in-charge of the police station as the defaulter had closed down business and could not be traced at his given address. On the basis of information obtained by the RO that the dealer had relocated to Rajasthan, a reference was made (August 2007) to the CT, Rajasthan to make an enquiry regarding business activity of the dealer at Jaipur. However, while sending the reference, proper address/place of business of the dealer was not mentioned, due to which no action could be taken by the Taxation Department of Rajasthan as reported by the Deputy Commissioner, Jaipur in October 2007. Thus, inordinate delay at various stages, especially at the stage of re-assessment on appeal cases conducted in November 2005 allowed ample opportunity to the dealer to wind up the business and become untraceable. It is apparent from the above that there is every possibility that Government has lost revenue of ₹ 5.66 crore.

After this was pointed out, the Department stated (October 2012) that the matter has been taken up by the RO with the AO for ascertaining the whereabouts of the dealers. Further development has not been reported (November 2012).

**2.18 Non-realisation of arrear dues due to inaction in pursuing the cases with Assam Board of Revenue, Official Liquidators and BIFR**

**2.18.1** As per Section 33 and 80 of the AGST and AVAT Acts, any person who is aggrieved by an order passed by the appellate authority may appeal to the Appellate Tribunal against such order within sixty days from the date of receipt of such order. As per provision of the AVAT Rules, the Assam Board of Revenue (ABR) shall act as Tribunal.

**2.18.1.1** It was noticed that the dealer M/s Patel Brothers, was liable to pay arrears of assessed tax<sup>18</sup> of ₹ 2.01 crore for the assessment periods 1998-99 to 2001-02 and certificate case was issued in March 2005 in Guwahati RO to recover the arrear dues. However, the dealer filed an appeal before the appellate authority against the assessment orders which was dismissed by the appellate authority in July 2005. Being aggrieved, the dealer filed an appeal before ABR in January 2006. Verification of the records of the CT, Assam revealed that the appeal petitions were dismissed by ABR in August 2008 while observing that there was loss of revenue due to submission of fake declaration form 'C' by the appellant. Though more than three years have passed from the date of disposal of appeal petition by ABR, no further action has been taken by the RO to follow up and recover arrear dues of ₹ 2.01 crore. Lack of concerted efforts and absence of coordination between field and CT's office resulted in depriving the State exchequer of the recovery of dues.

After this was pointed out, the Department stated (October 2012) that notice has been issued to the CD for clearance of dues. Further development has not been reported (November 2012).

**2.18.1.2** It was noticed that four dealers<sup>19</sup> were liable to pay arrears of assessed tax of ₹ 4.21 crore for assessment periods falling between 1996-97 and 2001-02 in Guwahati RO and ACs were issued to RO between July and August 2005 to recover the arrear dues. It was observed that the assessments for all the above periods were completed between January and February 2005 after delays ranging from three to five years from the year of transactions. The dealers filed appeals before the appellate authority against the assessment orders which were rejected (as the dealers failed to furnish required documents against the assessments made by the AOs) by the appellate authority between July 2005 and April 2006. The dealers, however, filed second appeals to ABR between January 2006 and June 2007. Though six years have elapsed from the date of admission of appeals, no follow up action was taken by the RO to ascertain the present position of the cases. Audit has independently attempted to verify the cases from the office of the CT, Assam, but the latter also did not have any further information on the matter. Thus, due to lack of follow up action and ineffective pursuance of the cases with the ABR, arrear dues of

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<sup>18</sup> Date of passing of assessment order was not available in the recovery files.

<sup>19</sup> M/s Bhawani Traders, M/s Ganesh Enterprise, M/s New Goyal Trading Co and M/s Lotus India.

₹ 4.21 crore remained unrealised and the State exchequer was deprived of the corresponding amount of revenues/dues.

After this was pointed out, the Department stated (October 2012) that the matter has been taken up with the ABR for status of the cases pending with them. Further developments have not been reported (November 2012).

**2.18.1.3** The primary function of the official liquidator (OL) is to administer the assets of companies under liquidation, sale of assets and realisation of all debts of companies under liquidation for the purpose of distributing the same among the various creditors and other shareholders and finally dissolve such companies after the affairs are fully concluded. When a company is wound up by an order of a Hon'ble High Court, the OL attached to the said Hon'ble High Court takes possession of the assets, books of accounts etc., and liquidates the company as per orders of the Hon'ble High Court.

It was observed that there were delays in lodging claims with the OLs and also there was lack of a system of periodical liaison between the ROs and OLs due to which arrears of ₹ 3.95 crore in respect of three cases remained unrealised, as discussed in the following paragraph:

SI No.	Name of the dealer	Assessment periods/ provision of Acts	Date of assessment order	Arrear dues (₹ in crore)
1.	M/s Kamini Tea Estate, Dibrugarh	1991-92 to 2001-02 AGST, CST, Agricultural Income Tax and Assam Taxation on Specified Land Acts	N.A	1.96

As the dealer failed to pay taxes, certificate cases were instituted during 2003-04 and 2004-05. It was noticed that the Company had gone into liquidation and OL was appointed as per the order issued by the Hon'ble Calcutta High Court in January 2002. However, the Department became aware of it only in June 2011. It was observed that certificate cases were instituted after the Company had gone into Liquidation. Inordinate delay in institution of certificate cases and lack of follow up action in these cases resulted in arrear dues of ₹ 1.96 crore remaining unrealised.

2.	M/s Bharat Berg Limited, Guwahati	1996-97 to 1998-99 AGST Act.	N.A	1.61
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It was noticed that the dealer had stopped commercial activity from 1999 and had gone into liquidation, as per the order passed by the Hon'ble Bombay High Court on 21 December 1999. The OL, Hon'ble Bombay High Court was appointed as Provisional Liquidator (PL) of the Company as reported by the Ex-Chairman and Directors of the liquidated company. PL has auctioned the movable and immovable property of the company and realised the dues which were presently lying in his custody. Although, OL was appointed in December 1999, the Department became aware of it only in April 2003 and claim of ₹ 2.41 crore (₹ 1.61 crore and additional interest of ₹ 0.80 crore) was lodged only in July 2005. Even though six years had elapsed no follow up was taken by the RO except issue of reminders in May 2007 and February 2009. This indicated that the Department had not pursued the matter with the OL vigorously for registering the claims, thus depriving the Government of the dues.

3.	M/s Nagaon Co-operative Sugar Mill Ltd.	2000-01 AGST Act	July 2006	0.38
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As the dealer failed to pay taxes, certificate case was instituted and warrant of arrest was issued in September 2008. It was noticed that in August 2011, OL informed that as per books of accounts and audited balance sheet of the dealer (now under liquidation) there is no liability of sales tax which did not indicate the true picture. The assessment was completed after the dealer had closed down business. Thus, inordinate delay in passing the assessment order despite non-payment of admitted tax by the dealer resulted in non-realisation of arrear dues of ₹ 0.38 crore.

After this was pointed out, the Department stated (October 2012) that in respect of M/s Bharat Berg Ltd., reminder was issued to the Liquidator of the Bombay High Court for realisation of arrears, but there has been no response. In respect of M/s Nagaon Co-operative Sugar Mill Ltd., it was stated that the firm was closed a few years back and the matter is lying with the Government of Assam; there seems no prospect of recovery of the arrear dues.

**2.18.2** As per the Sick Industrial Companies (Special Provision) Act, 1985, where a reference for declaration as sick unit is filed and proceedings thereon are pending before BIFR, no suit for recovery or enforcement of any dues against the Company shall lie or be proceeded further, except with the consent of the Board.

It was noticed that M/s Umrangsu Cement Ltd., Guwahati, engaged in manufacturing of cement, was liable to pay arrears of assessed tax of ₹ 1.03 crore for the periods 2003-04 and 2004-05 in Guwahati RO under the AGST Act. As the dealer failed to pay the demanded tax, the AO issued arrear certificate in August 2008. On receipt of demand notice, the CD had submitted (September 2008) a copy of the order of BIFR. It was noticed from the order that the dealer's case was decided by BIFR in October 2003 leaving the discretion with the Government of Assam to consider exempting the dealer from payment of taxes. It was further noticed that though more than nine years have passed, no document indicating action taken either by the RO or the CT to pursue with the State Government for decision in this regard could be found on record. Similarly, a dealer M/s Necem Cement Ltd., was liable to pay arrears of assessed tax<sup>20</sup> of ₹ 24.87 crore for the periods from 1993-94 to 1996-97 and 2000-01 to 2007-08 in Guwahati RO. It was also noticed that the case was pending with BIFR since September 1997. Thereafter, nothing was on record to indicate that BIFR had issued any order to recover dues of ₹ 24.87 crore (March 2011). As nine to 19 years have passed in above cases, the recovery of the said amounts was quite unlikely which also indicates that there was lack of follow up action in these cases.

After this was pointed out, in respect of M/s Umrangsu Cement Ltd., the Department while admitting that the matter has not been addressed till date, stated (October 2012) that the matter is lying with the Government of Assam. In respect of the other dealer, it was stated that the case was still pending with the BIFR.

#### **Recommendation 5:**

*Government may consider devising a system for regular and periodical liaison of the specified senior Departmental officers with the ABR, Ols and BIFR to obtain related information and ensure expeditious disposal of cases involving arrear dues.*

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<sup>20</sup> Date of passing of assessment order was not available in the recovery files.

### 2.19 Non-realisation of arrear dues due to lack of follow up action in respect of cases settled by Courts

As per Section 35 and 80 of the AGST and AVAT Acts, any person who is aggrieved by an order passed by the AO/ appellate authority /revisional authority, may appeal in the Court of law.

It was observed that there were instances of lack of follow up action/ non-compliance of Court verdict etc., in cases pending with various Courts having jurisdiction over the State of Assam. Analysis of nine cases involving seven dealers having transaction between September 1988 to 1998 revealed that due to lack of

follow up action/non-compliance of Court verdict etc., the Government was deprived of revenues/dues of ₹ 4.84 crore. The details are given in **Annexure – III.**

After this was pointed out, the Department stated (October 2012) that action has been initiated against all the dealers, except two (M/s Dugar Tea Co. Ltd. and M/s Dugar Tea Industries Pvt. Ltd., Guwahati which are pending in the Supreme Court) for realisation of the arrears pointed out by Audit.

#### Other points of interest

### 2.20 Non-realisation of arrears of sales tax due to belated assessment and lack of follow up action

During test check of the recovery files of a dealer, M/s A.R.N.V Chemicals (P) Ltd., Ulubari in the office of Guwahati RO, it was noticed that sales tax dues aggregating ₹ 3.01 crore were pending for recovery as per the assessment orders passed for the periods 1999-2000 and 2000-01 under the AGST Act. The assessments for the above periods were completed in May 2005, after a delay of four years as the dealer failed to furnish annual returns of turnover. It was also noticed that in June 2006, a certificate case was instituted against the CD and a warrant of arrest was issued in February 2007 which was not executed by the Officer-in-charge of the police station as the defaulter had closed down business and could not be traced at his given address. No further action was taken by the RO to trace the dealer except issuing (May 2007) reminder to the sales tax unit office to furnish the source of realisation of dues. Though four years have elapsed, the Department has not made any further effort like seeking further information about the dealer from the concerned AO to recover the arrear dues. It is pertinent to mention here that in the present situation, the Department has the risk of not recovering the dues of ₹ 3.01 crore due to the delay in assessments and also absence of timely follow up action against the dealer.

After this was pointed out, the Department stated (October 2012) that the RO has requested the AO to furnish details of the whereabouts of the CD. Further development has not been reported (November 2012).

**2.21 Incorrect reflection of arrears in respect of cases settled by appellate authority**

As per the existing system, the decision of the appellate authority on a petition filed by a defaulter is to be communicated to the concerned assessing unit where the appellant is registered. The AO is required to convey the decision of the appellate authority to the concerned RO which issues the arrear certificate for realisation of dues.

During test check of the recovery files of three dealers<sup>21</sup> in Guwahati and Karimganj RO, it was noticed that three certificate cases were shown as pending against the defaulters for arrear dues of ₹ 1.61 crore in the certificate case registers. However, verification of the records of the appellate authority, Guwahati and Karimganj, revealed that appeal petitions were set aside by the

concerned appellate authorities on various dates in October 2001, July 2004 and March 2009. As per the system in place, the unit offices were required to convey the decision of the cases to the ROs, which was not done. Neither did the ROs pursue the matter with the concerned AOs to obtain information about the cases. Consequently, the ROs remained unaware about the dismissal of the cases by the appellate authorities and continued reporting of arrear dues of ₹ 1.61 crore as recoverable. As a result, the amount is still shown as recoverable.

After this was pointed out, the Department stated (October 2012) that it is a fact that sometimes there is a communication gap and the RO is not informed about the outcome of the order passed by the appellate authority. However, as per audit findings, the CT, Assam has issued order to the appellate authorities to mark a copy of the orders to the RO.

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<sup>21</sup> M/s Hatikura Tea Estate, M/s Hotel Rituraj and M/s National Board Ltd.

**2.22 Non-levy of interest on the dues realised under certificate cases**

Section 16 of the BPDR Act provides for recovery of interest at the rate of 6.25 *per cent* per annum on the demands from the CDs, chargeable from the date of filing of the case up to the date of realisation of dues.

The certificate officers of seven test checked recovery offices did not levy interest of ₹ 3.99 crore on the dues realised against certificate cases during 2005-06 to 2010-11 as shown in Table 14:

**Table-14****Non-levy of interest on the dues realised under certificate cases**

Sl. No.	Districts	No. of cases	Amount of interest not charged (₹ in crore)
(1)	(2)	(3)	(4)
1.	Guwahati	14	2.07
2.	Tezpur	16	0.75
3.	Nagaon	3	0.17
4.	North Lakhimpur	3	0.17
5.	Jorhat	7	0.39
6.	Dibrugarh	8	0.35
7.	Tinsukia	6	0.09
<b>Total</b>		<b>57</b>	<b>3.99</b>

It was noticed that proceedings in respect of 15 certificate cases have been closed after recovery of entire dues without charging interest of ₹ 29.02 lakh.

After this was pointed out, the Department while accepting the audit observations stated (October 2012) that efforts are being made to levy and recover the interest alongwith the principal dues.

It was further observed that the rate of interest of 6.25 *per cent* was fixed in 1913, at the time of enactment of the BPDR Act. The rate of interest has not been revised since then keeping in view the current rate of interest in other taxation laws prevailing in the State, as well as levied by banks, financial institutions etc. Interestingly, the rate of interest for unpaid taxes as per the AVAT Act is 18 *per cent*. Therefore, higher rate of interest in respect of cases sent for recovery would act as deterrent/disincentive for the defaulters.

**Recommendation 6:**

*Government may review the rate of interest leviable on collection of arrear dues and enhance it to be at par with those applicable to Government borrowings/public lending rates prevailing in various banks/financial institutions to act as a deterrent/disincentive to habitual and wilful defaulters.*

**2.23 Non-realisation of arrear dues of ₹ 2.64 crore due to non-adherence to norms fixed by the CT**

The taxation laws of the State do not prescribe any monthly instalment of recovery of arrear dues in certificate cases. However, CT, Assam issued instructions in May 2007 to the effect that if RO fixes payment of dues in instalments, then each monthly instalment should not be fixed at less than 10 per cent of the total dues.

During test check of recovery files in Guwahati RO, it was noticed that though the CDs were making monthly payments which were less than 10 per cent of the total dues as shown in the following table, no action was taken by the RO against the CDs to fix the instalment in consonance with the rate of instalment laid down by the CT, Assam.

**Table-15**

(₹ in crore)

Name of the Recovery office	Name of the certificate debtor	Date of issue Certificate case	Arrear dues	Arrear dues paid	No of instalment paid	Balance dues till date (April 2012)
Guwahati	M/s Tea Brokers (Guwahati) Pvt. Ltd	May 2006	0.14	0.02 (as of June 2008)	18	0.12
	M/s Ganesh Met Coke Industries	June 2010	1.75	1.28 (as of November 2011)	9	0.47
	M/s Balaji Coke Industries	December 2009	4.53	2.48 (as of December 2011)	13	2.05
	<b>Total</b>		<b>6.42</b>	<b>3.78</b>		<b>2.64</b>

Further, in the above cases arrear dues of ₹ 2.64 crore remained unrealised till date.

**2.24 Internal Control Mechanism**

Internal controls are intended to provide reasonable assurance of proper enforcement of laws, rules, executive instructions etc. Such control is exercised through internal audit and periodical effective inspection by supervisory officers.

Deficiencies in system of (i) periodical review of the registers; (ii) monitoring the issue of inter-State certificates and regular co-ordination with the counterparts in other States and regular liaison between the ROs and the AOs/ appellate authorities/ABR/OLs etc., leading to non-recovery of arrears have been pointed out in some of the preceding paragraphs. During the course of this performance audit, the following further deficiencies in the internal control mechanism were noticed.

### 2.24.1 Internal audit

It was observed that an Internal Audit Wing (IAW) was created by the Government in May 1998 with staff strength of eight internal auditors in the office of the CT, Assam. However, it was noticed that no norm was fixed as regards the number of recovery offices to be audited in an year. It was further noticed that only one Senior Auditor was posted in the wing. No internal audit was done by the Wing during 2005-06 to 2010-11 in any of the ROs covered in this performance audit. Resultantly, the department could not detect deficiencies noticed by Audit during this performance audit and consequently could not identify the same and put in place preventive/remedial measures.

#### Recommendation 7:

*The IAW may be strengthened by posting sufficient suitable personnel and specific targets fixed for carrying out such audit.*

### 2.24.2 Ineffective monitoring at senior level

Inspection of the unit offices by supervisory officers is one of the most important tools of internal control mechanism. This mechanism allows the inspecting officers to check whether the systems and procedures designed by Department /Government are followed in letter and spirit by the inspected unit. The mechanism also allows the field level personnel to discuss the problem areas with higher authorities and obtain their guidance.

The Department issued several instructions to ROs for expediting collection of arrear dues under the Acts stipulating, *inter alia*, that (i) each monthly instalment should not be fixed at less than 10 *per cent* of the total dues, (ii) effective measures be taken such as prompt issue of arrest warrants and attachment of movable and immovable properties, (iii) if in any case recovery has been stayed by the appellate/revisional authority, the RO should ascertain the position of disposal of appeal/revision and take further necessary action promptly, and (iv) the Zonal Deputy Commissioners will inspect

ROs within his jurisdiction once in every quarter.

It was noticed that inspection of ROs was not done in every quarter by the higher authorities. In a number of cases as discussed in this Report there were specific instances of non-compliance of the instructions listed at (i) to (iii) in the preceding paragraph. Due to non-monitoring of the functioning of the offices of the ROs by higher authorities coupled with non-conduct of regular inspections by the Deputy Commissioners, the higher authorities in the Department remained unaware of the deficiencies detected and pointed out by Audit.

**Recommendation 8:**

*The Department may prescribe specific periodicity and devise check list for inspection of ROs by the supervisory offices.*

**2.25 Computerisation**

The working of the offices of the ROs relating to certificate cases has not been computerised. The Government may consider early and effective computerisation of the entire gamut of activities relating to certificate cases so as to increase the pace of disposal of these cases, which in turn, would act as a deterrent to habitual and wilful defaulters. This would also help in ensuring effective monitoring of the progress of certificate proceedings, disposal of the certificate cases and realisation of dues.

**2.26 Conclusion**

Sales Tax is a major source of revenue for the State and the CT, Assam has entrusted all the powers of revenue authorities for recovery of the sales tax arrears to the AOs of the Taxation Department. It is, thus, imperative that the Department should promptly and efficiently recover the demand created. During the performance audit it was noticed that there was large accumulation of arrears in certificate cases and absence of a system for (i) periodical review of the registers; (ii) monitoring the issue of inter-State certificates and regular co-ordination with the counterparts in other States and regular liaison between the ROs and the AOs/appellate authorities/ABR/OLs etc., adversely affected the Department's efforts in collection of the demand created. The Department did not adequately monitor certificate cases, thereby defeating the very purpose for which the Legislature had given powers to the Department for recovery of the sales tax demand. Arrear dues remained unrealised due to non-furnishing of requisite information by AOs to ROs. Despite existence of enforceable provisions in the BPDR Act, the ROs failed to take effective and meaningful action to recover arrears of certificate dues. There were instances of inordinate delays in the process of finalisation of appeal cases despite instruction of the CT for quick disposal, which also added to the pendency of the appeal cases. The certificate cases issued to other States were not pursued. Claims lodged with ABR, OL and BIFR were not pursued promptly and effectively when compared with the efforts of Banks and the Income Tax Department. The interest rate for delayed payment of arrear dues under the BPDR Act was fixed about 100 years back, which needed revision. There was absence of internal controls and the activity of this department was not subjected to internal audit during 2006-07 to 2010-11. There is urgent need of automation for speeding up the disposal of public demand cases and for reduction of the pendency of claims. As a result of the above deficiencies, arrear dues involving ₹ 120.52 crore remained unrealised.

### 2.27 Summary of recommendations

The Government may consider implementing the recommendations under respective paragraphs in the performance audit report with special emphasis on the following:

- *taking prompt action by laying down norms/targets for clearance of arrear certificates and monitor the progress at all levels, particularly in respect of cases which are more than five years old;*
- *evolving a practical yet timebound monitoring system for issuing inter-State arrear certificates without delay and regularly co-ordinating with their counterparts in other States;*
- *requesting the appellate authorities to expedite disposal of the cases pending with them with special emphasis on cases against which arrear certificates have been issued;*
- *devising a system for regular and periodic liaison with the ABR, OLs and BIFR to obtain information about disposal of cases for early settlement of arrear dues;*
- *reviewing the rate of interest leviable on collection of arrear dues and enhance it to be at par with those applicable to Government borrowings/public lending rates prevailing in various banks/financial institutions to act as a deterrent/disincentive to habitual and wilful defaulters; and*
- *streamlining and strengthening the internal control mechanism including the internal audit system and supervision by the senior officers to effectively guide the recovery offices against leakage of Government revenue.*

## **2.28 Other audit observations**

*Scrutiny of records relating to sales/value added tax (VAT) in the Taxation Department revealed several cases of non-observation of provisions of Acts/Rules/departmental orders and other cases as mentioned in the succeeding paragraphs. These cases are illustrative and are based on a test check carried out by Audit. Some of the omissions on the part of assessing officers (AO) are pointed out in audit each year, but not only do the irregularities persist; these remain undetected till next audit is conducted. It is a matter of concern as these observations are also sent to the higher authorities including the Government each time these are detected. Government and the Department need to strengthen measures to effectively monitor the cases, arrest recurrence of the irregularities and improve the internal control system including internal audit so that such mistakes and omissions are detected, corrected and avoided.*

## **VALUE ADDED TAX**

### **2.29 Application of incorrect rate of tax resulted in short levy of tax of ₹ 1.44 crore on which interest of ₹ 2.32 crore was additionally leviable**

[Assistant Commissioner of Taxes (ACT), Unit B: Guwahati; June – September 2011]

Under the provisions of the Assam General Sales Tax (AGST) Act, 1993 and the Assam Value Added Tax (AVAT) Act 2003, in cases where specific information is available and the AO has reason to believe that tax has been underassessed, he may assess/re-assess the dealer on best judgment basis under Section 40 of the AVAT Act as a special case within a period of eight years after allowing the dealer an opportunity of being heard.

During scrutiny of the records of three dealers M/s Purbanchal Cables and Conductors Private Limited, M/s P R Associates and M/s Trusses & Towers (P) Ltd {dealing in ACSR<sup>22</sup> conductors, confectionaries and pre-stressed concrete (PSC) poles respectively}, it was observed that there was short levy of tax of ₹ 1.44 crore, on which interest of ₹ 2.32 crore was additionally leviable, due to application of lower rate of tax as mentioned in the following table:

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<sup>22</sup> Alluminium Conductor Steel Re-inforced.

(₹ in crore)

Name of dealer	Assessment year Date of assessment/ scrutiny	Turnover brought under assessment Nature of goods	Taxability
Purbanchal Cable and Conductors Private Ltd	2000-01 to 2004-05 April 2005 and June 2009	14.08 ACSR Conductors	ACSR conductor was taxable at the rate of 12 per cent with effect from 1 January 2000 as per entry No. 60 A under Schedule II of AGST Act. In addition to tax, additional tax at 10 per cent was also leviable.
It was observed that though ACSR conductor was taxable at 12 per cent with additional tax of 10 per cent under the AGST Act from 1 January 2000, the AO while assessing the dealer levied tax at 4.4 per cent resulting in short levy of tax of ₹ 1.24 crore. Interest of ₹ 2.20 crore (calculated upto August 2011) was additionally leviable.			
P R Associates	2006-07 February 2010	1.62 Pran Lichi drink	As per AVAT Act, fruit juices are taxable at four per cent. The Commissioner of Taxes, Assam in March 2007 clarified that drinks which contain apart from fruit juices, other ingredients is taxable at 12.5 per cent as unspecified goods.
It was observed that the dealer classified “Pran Lichi Drink” as fruit juice and paid tax at four per cent. Audit has obtained the monogram of “Pran Lichi Drink” and found that it is specifically mentioned that the drink is not a fruit product and it contains only water, sugar and added flavour. However, the AO failed to verify the veracity of the claim of the dealer classifying the above goods as ‘fruit juice’ which resulted in short levy of tax of ₹ 13.79 lakh. Interest of ₹ 10.75 lakh (calculated upto August 2011) was additionally leviable on the unpaid tax.			
M/s Trusses & Towers (P) Ltd.	2009-10 June 2010	71.66 PSC poles	The item ‘PSC poles’ is taxable at 12.5 per cent and enhanced to 13.5 per cent from 31 October 2009 while the item ‘pre-cast concrete (PCC) poles’ was taxable at 12.5 per cent till 30 October 2009 which was reduced to five per cent from 31 October 2009.
It was observed that the dealer paid tax at five per cent on turnover of ₹ 71.66 lakh (for the period from 31 October 2009 to 31 March 2010) instead of 13.5 per cent which was accepted by the AO while scrutinising the dealer. Further scrutiny revealed that as per the application for registration made by the dealer and the audited accounts certified by the Chartered Accountant, the dealer dealt in PSC poles. While submitting the annual return, however, the dealer ‘changed’ the commodity to ‘PCC poles’ from ‘PSC poles’ by overwriting. This escaped the notice of the AO and resulted in short levy of tax of ₹ 6.09 lakh on which interest of ₹ 1.46 lakh (calculated upto August 2011) was additionally leviable.			

After this was pointed out, the Department in respect of the dealer at sl. no.1 stated (August 2012) that assessment had been revised and demand notice issued. Further development has not been reported (November 2012). In respect of the dealer at sl. no. 2, the Department furnished (August 2012) a certificate from the Public Analyst of Assam Government which stated that 'Pran Lichi' drinks is fruit drinks. The reply is not acceptable as the monogram of product itself indicates that the drink is a non-fruit product. As regards the dealer at sl. no.3, the Department stated that the PSC pole and PCC pole are one and same technically. The reply is not acceptable as the Government vide notification dated 31 October 2009 reduced the rate of PCC pole at five *per cent* and not that of the PSC pole.

The case was reported to the Government in October 2011 and followed up in April 2012; their reply has not been received (November 2012).

**2.30 Non-conduct of scrutiny/selection of a case for assessment led to non-detection of evasion of tax**

[ACT, Tezpur; August-September 2011]

Under Section 29 of the AVAT Act, 2003 and Rules made thereunder, a registered dealer whose turnover of taxable goods in any assessment year exceeds ₹ 10 lakh shall submit to the prescribed authority in addition to monthly return, an annual return within two months after the closure of the year to which the return relate. Section 33 of the Act *ibid* provides that all returns shall be subjected to scrutiny to verify the correctness of calculation, input tax credit claimed therein and application and payment of correct rate of tax and interest payable by the dealer.

Further, as per Section 39 of the AVAT Act, no assessment shall be made after the expiry of five years from the end of the year to which the assessment relates. However, in cases where specific information is available, assessment can be made on best judgment basis under Section 40 of AVAT Act as a special case within a period of eight years after allowing the dealer an opportunity of being heard.

From the annual accounts and the audited accounts of M/s Castrol India Limited (dealing in lubricants, brake oil, coolants, greese etc., taxable at 12.5 *per cent*) for 2006-07, it was observed that the dealer had disclosed opening and closing stock of goods as ₹ 1.84 crore and ₹ 3.31 crore respectively and stock receipt during the year as ₹ 83.67 crore. Also, the dealer disclosed inter-State sale and stock transfer during the year as ₹ 14.35 crore and ₹ 16.53 crore. Besides, the dealer has claimed loss of ₹ 3.79 crore. Considering the above, the intra-State sales of the dealer should not have been less than ₹ 47.53

crore<sup>23</sup>. However, it was noticed that the dealer disclosed intra-State sales of ₹ 41.74 crore and paid tax accordingly. Thus, the dealer concealed turnover of atleast<sup>24</sup> ₹ 5.79 crore and evaded tax of ₹ 72.38 lakh. For non-payment of tax due within the prescribed time, the dealer was also liable to interest of ₹ 60.83 lakh. Since the case was neither scrutinised nor selected for assessment, evasion of tax by the dealer by suppressing the sales turnover remained undetected by the AO. Scope of recovery is remote as the case has become barred by limitation of time unless the Department resorts to taking up the assessment as a special case under Section 40 of AVAT Act.

After this was pointed out, the Department stated (June 2012) that assessment has been revised and demand notice for ₹ 2.26 crore (including interest) was raised. Report on realisation has not been received (November 2012).

The case was reported to the Government in October 2011 and followed up in April 2012; their reply has not been received (November 2012).

### 2.31 Excess allowance of input tax credit

[ACT, Unit-B; Guwahati; June-September 2011]

The AVAT Act, 2003 provides that Sale price of goods is to be arrived at after reducing the amount allowed by the seller to the purchaser on account of cash discount, commission or trade discount. Section 13 of the AVAT Act further provides that a dealer has to adjust his output tax after allowing deduction due to offer of discount from the previous agreed consideration.

The AVAT Act, 2003 also provides that every return furnished by the dealer shall be scrutinised by the prescribed authority to verify the correctness of calculation, application of correct rate of tax, input tax credit claimed therein and full payment of tax and interest payable by the dealer.

It was observed that the AO while completing the scrutiny of annual return of M/s Mercantile Marketing (India) Private Limited for 2007-2008 and 2008-2009 in July 2009 and March 2011 allowed input tax credit of ₹ 10.79 crore and ₹ 10.15 crore respectively as per claim of the dealer.

Scrutiny revealed that the dealer received trade discount of ₹ 6.68 crore and ₹ 4.32 crore during 2007-2008 and 2008-2009 respectively which were not considered at the time of scrutiny of return which resulted in excess allowance of input tax credit of ₹ 26.72 lakh and ₹ 15.86 lakh during 2007-2008 and

<sup>23</sup> Opening stock (₹ 1.84 crore) + stock receipt (₹ 83.67 crore) – inter-State sales (₹ 14.35 crore) – stock transfers (₹ 16.53 crore) – closing stock (₹ 3.31 crore) – loss (₹ 3.79 crore) = ₹ 47.53 crore.

<sup>24</sup> Accepting that the dealer did not have any profit during the year as we have taken into account the loss claimed by the dealer.

2008-2009 respectively. This resulted in short determination of net output tax of ₹ 42.58 lakh.

After this was pointed out, the ACT stated (September 2011) that the AO had been legislatively restricted only to verify the correctness of tax calculation on the shown turnover of sales and purchase in return. The reply of AO is not acceptable as Section 33 specifically states that the prescribed authority shall verify the correctness of calculation, application of correct rate of tax, interest and input tax credit claimed therein. Further, the reply of the ACT is not in conformity with the Circular issued by the CT, Assam dated 12 November 2007 wherein it is stated that the prescribed authorities shall deduct the amount of discounts, incentives received from the selling dealer while calculating the input tax credit.

The case was reported to the Government in October 2011 and followed up in April 2012; their reply has not been received (November 2012).

### **2.32 Application of lower rate of tax**

[ACT, Nagaon; January - February 2010]

As per entry 1 under schedule V attached to the AVAT Act, 2003, 'jute and jute products (except raw jute)' are taxable at 12.5 *per cent* from 1 May 2005 to 31 March 2008.

During scrutiny of the records relating to a dealer M/s Assam Co-operative Jute Mills Ltd. (dealing in manufacture and sale of jute products) in the above office, it was observed that the dealer while submitting

the returns classified 'jute and jute products' as taxable at four *per cent*. The AO also, while assessing the dealer in May 2008 for 2005-06 and 2006-07, classified the turnover of ₹ 93.46 lakh and ₹ 1.54 crore respectively as taxable at four *per cent* though 'jute and jute products' were taxable at 12.5 *per cent* till March 2008 under AVAT Act. This resulted in short realisation of tax of ₹ 21.03 lakh. Besides, interest of ₹ 19.09 lakh (calculated upto December 2011) was additionally leviable for non-payment of full tax.

After this was pointed out, the Department stated (August 2012) that the dealer dealt in 'sutli'<sup>25</sup> which has been inserted in the schedule to the AVAT Act taxable at four *per cent* with effect from 8 August 2005. Hence, determination of tax at four *per cent* for turnover relating to 8 August 2005 onwards was correct. However, for the turnover for 1 May 2005 to 8 August 2005 when the item was taxable at 12.5 *per cent*, the dealer was re-assessed and demand notice for ₹ 4.46 lakh had been raised. Report on realisation has not been received (November 2012). The contention of the Department that the dealer dealt only in 'sutli' taxable at four *per cent* while as per registration certificate the dealer dealt in 'Jute Product' taxable at 12.5 *per cent* which includes number of other products made of Jute including the item 'sutli'. **Thus, insertion of the word 'sutli' in the lower rate of tax allowed scope for evasion of tax to the dealers dealing in 'Jute Products'.**

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<sup>25</sup> A kind of rope made of jute.

The case was reported to the Department/Government in March 2010 and followed up in January 2012; replies have not been received (November 2012).

### 2.33 Non-completion of best judgment assessment

[Superintendent of Taxes, Morigaon; July-August 2011]

Under Section 37 of the AVAT Act, 2003, if a dealer has not furnished annual return, has knowingly furnished incomplete or incorrect annual return, the prescribed authority shall after issue of a notice to the dealer in the prescribed form and in the prescribed manner so as to give him a reasonable opportunity of being heard, assess him to the best of his judgment.

Further, as per Section 39 of the AVAT Act, no assessment shall be made after the expiry of five years from the end of the year to which the assessment relates. However, in cases where specific information is available, assessment can be made on best judgment basis under Section 40 of AVAT Act as a special case within a period of eight years after allowing the dealer an opportunity of being heard.

It was observed that a dealer M/s Lohit Marketing Limited has submitted quarterly return for 2006-07 showing his tax liability as 'nil'. The dealer did not submit 'annual return' for 2006-07 which was required under the AVAT Act. It was further noticed that the Additional Commissioner of Taxes, Assam has intimated (November and December 2006) the AO that the dealer has purchased cement from outside the State valued at ₹ 1.07 crore during 2006-07. Despite the facts like (i) specific information from the Commissionerate regarding inter-State purchase, (ii) disclosure of 'nil' turnover by the dealer in quarterly returns for the same period and (iii) non-submission of annual return by the dealer, no action was taken by the AO to take up

best judgment assessment under Section 37 of AVAT Act. This resulted in evasion of tax of ₹ 25.42 lakh including interest which the AO failed to detect. Scope of recovery is remote as the case has become barred by limitation of time unless the Department resorts to taking up the assessment as a special case under Section 40 of AVAT Act.

After this was pointed out, the Department stated (February 2012) that the assessments had been revised and demand notice for ₹ 25.91 lakh was raised. Report on realisation has not been received (November 2012).

The case was reported to the Government in August 2011 and followed up in January 2012; their replies have not been received (November 2012).

### **2.34 Irregular adjustment of TDS**

[ACT, Jorhat; January – February 2011]

Under Rule 28 (1) of the AVAT Rules, 2005, if a dealer intends to adjust the tax deposited at source (TDS) from his tax liability, he shall furnish one copy of the TDS certificate and one *challan* copy for adjustment of such deposit against his dues to the prescribed authority.

Further, as per Section 33 of AVAT Act, 2003, every return shall be subject to scrutiny by AO to verify, *inter-alia*, full payment of tax and interest payable by the dealer during the period of return.

It was observed that the AO while scrutinising (January 2010) the annual return of M/s Canoro Resources Limited for 2007-08 and 2008-09, allowed adjustment of TDS amounting to ₹ 5.42 crore though the claim was not supported by TDS certificates/copies of receipted *challans* as required under the Rules. Since the TDS claimed by the dealer was against tax payable, absence of the same should have been examined and detected by the AO during scrutiny of returns. Failure to do so resulted in

irregular adjustment of TDS of ₹ 5.42 crore.

In reply, the AO stated (March 2012) that after the matter was pointed out by Audit, notice was issued to the dealer who have submitted TDS certificates involving ₹ 5.22 crore. It was also stated that action was being taken to obtain either TDS certificates of the balance amount or recover tax. The reply of the AO highlights the deficiency in scrutiny of return process during which the AO failed to notice non-attachment of TDS certificates and *challans* by the dealer in support of his TDS claims which was subsequently called for after Audit pointed out the matter. From the reply furnished, it was found that the dealer had submitted only TDS certificates while copies of *challans* as mandatorily required were not submitted which the AO failed to notice while endorsing the reply to Audit. Further, TDS certificates/*challans* or recovery particulars in respect of the balance amount of ₹ 19.77 lakh has not yet been furnished by the AO (November 2012).

The case was reported to the Department and the Government in March 2011 and followed up in February 2012; their replies have not been received (November 2012).

**2.35 Irregular issue of entitlement/authorisation certificate to an industrial unit resulted in undue exemption/remission of tax of ₹ 18.52 lakh, of which, ₹ 6.80 lakh had already been availed by the unit**

[ACT, Silchar; March 2010]

Assam Industrial Sales Tax Concession Scheme (AISTCS), 1997 provides that a new industrial unit is considered eligible for sales tax exemption on purchase of raw materials from within the State of Assam and also sale of finished products manufactured in the State of Assam for a period of seven years subject to a maximum limit of 150 *per cent* of the capital investment. Consequent upon implementation of AVAT Act, 2003 (with effect from 1 May 2005), the existing scheme was replaced by remission scheme and the industrial units are entitled to remission of ninety nine *per cent* of the tax payable by them during return periods until the amount of such remission exceeds the unavailed quantum of monetary ceiling. To avail such exemption, the intending industrial unit shall have to obtain a certificate of authorisation from the concerned sales tax office on the basis of eligibility certificate issued by the Industries Department.

As held by the Supreme Court {in the case of Commissioner of Sales Tax, UP *V/s* Lal Kunwa Stone Crusher (P) Ltd}, crushing stone boulders into smaller stones does not amount to manufacture as the identity of the used raw material and the processed finished products remains same in both the cases.

During scrutiny of the records relating to an industrial unit M/s Popular Stone Crusher Industries (an unit crushing boulders into stone chips), it was observed that eligibility and authorisation certificate was granted to the dealer by the Industries Department and the Taxation Department respectively for exemption/remission of tax under the AISTCS for a period of seven years from 10 June 2003 to 9 June 2010 or attaining the maximum tax limit of exemption/remission of ₹ 18.52 lakh (being 150 *per cent* of capital investment of ₹ 12.34 lakh), whichever is attained earlier. It was also observed that the AO while assessing the dealer for the years 2003-04 to 2007-08 allowed exemption/ remission of tax of ₹ 6.80 lakh, out of the maximum entitlement of ₹ 18.52 lakh.

Since crushing of boulders into stone chips does not amount to ‘manufacture<sup>26</sup>’ as upheld by the apex court

in a similar case pertaining to Commercial Tax Department, the Taxation Department, Government of Assam should have detected the erroneous issue of eligibility certificate by the Industries Department while processing the case

<sup>26</sup> Manufacture involves series of processes. Process in manufacture or in relation to manufacture implies not only the production but the various stages through which the raw materials is subject to change by different operations.

for grant of authorisation certificate. Instead the Taxation Department processed and issued the authorisation certificate irregularly which resulted in irregular grant of tax exemption/remission to the dealer amounting to ₹ 18.52 lakh, of which ₹ 6.80 lakh had already been availed, thereby extending undue benefit to the dealer.

After this was pointed out, the Department stated (August 2012) that issue of eligibility certificate by the Industries Department is not irregular as AISTCS applies to industrial units situated in Assam which are eligible for sales tax exemption on finished products manufactured in such units in Assam. The reply of the Department highlights the provisions of AISTCS but this provision is not applicable to the instant case as the most vital aspect *i.e.* 'manufacture' in this case does not cover the activity 'crushing of boulders into stone chips'.

The case was reported to the Government in April 2010 and followed up in January 2012; their replies have not been received (November 2012).

### 2.36 Evasion of tax

[ACT, Tezpur, August – September 2011]

Under the CST Act, 1956 as it stood during 2006-07, inter-State sale of goods, other than declared goods, to the registered dealers if supported by valid declaration in form 'C' are taxable at the concessional rate of four *per cent*. Otherwise, tax is leviable at the rate of 10 *per cent*, or rate of tax applicable to sale of such goods within the State, whichever is higher. During 2006-07, lubricants was taxable at 12.5 *per cent* in Assam.

The Commissioner of Taxes (CT), Nagaland, in his letter of February 2002 intimated the CT, Assam regarding cancellation of a series of declaration forms 'C' with effect from 11 June 2001. The information was duly circulated to all the unit offices by the CT, Assam in December 2002 to be taken note of at the time of finalising assessments.

As per Section 39 of the AVAT Act, 2003, no assessment shall be made after the expiry of five years from the end of the year to which the assessment relates. However, in cases where specific information is available, assessment can be made on best judgment basis as a special case within a period of eight years after allowing the dealer an opportunity of being heard.

It was observed from the annual return of M/s Castrol India Limited for 2006-07 that the dealer disclosed inter-State sales of ₹ 14.35 crore during the year which were supported by declaration forms 'C'. The case was neither taken up for scrutiny nor was it selected for audit assessment while the timelimit for taking up audit assessment has already expired in March 2012. During scrutiny of the declaration forms submitted by the dealer in support of his claim of concessional rate of tax, it was noticed that one of the forms bearing No. NL 026547 covering transaction of ₹ 98.87 lakh issued by CT, Nagaland was among those which were declared as cancelled way back in 2002. Since the case record was not scrutinised/taken up for

assessment, the irregular claim of concessional rate of tax remained undetected by the Department. This resulted in non-realisation of tax and interest of ₹ 15.46 lakh<sup>27</sup>. Scope of recovery is remote as the case has become time barred. The Department may resort to assessing the dealer on best judgment basis.

After this was pointed out, the AO stated (June 2012) that a notice has been served on the dealer, who had replaced the invalid declaration form.

The case was reported to the Department and the Government in October 2011 and followed up in January 2012; replies have not been received (November 2012).

<sup>27</sup> Turnover covered by invalid declaration form ₹ 98,86,720  
 Tax payable at 8.5 *per cent* (12.5 *per cent* – 4 *per cent* paid) = ₹ 8,40,371  
 Interest at 1.5 *per cent*/month from April 2007 to December 2011 = ₹ 7,05,011  
 Total tax and interest = ₹ 15.46 lakh.

**2.37 Non-detection of variation between the figures of audited accounts and those furnished through returns led to evasion of tax**

[ACT, Nagaon; January - February 2010]

Under Section 33 (I) of the AVAT Act, 2003, every return in relation to any period furnished by a registered dealer shall be subject to scrutiny by the prescribed authority to verify the correctness of full payment of tax and interest payable by the dealer during such period.

Further, as per Section 39 of the AVAT Act, no assessment shall be made after expiry of five years from the end of the year to which the assessment relates. However, in cases where specific information is available, assessment can be made on best judgment basis under Section 40 of AVAT Act as a special case within a period of eight years after allowing the dealer an opportunity of being heard.

During scrutiny of the records of M/s Pioma Industries {dealing in Rasna products (fruit flavoured) taxable at 12.5 *per cent* in Assam}, it was observed that the dealer disclosed aggregate taxable turnover as ₹ 30.73 lakh (₹ 19.82 lakh intra-State sales + ₹ 10.82 lakh inter-State sales + ₹ 0.09 lakh stock transfers) during 2006-07 and paid tax accordingly. The case was not scrutinised which was otherwise mandatory as per the AVAT Act. Scrutiny of the returns and the audited accounts submitted alongwith the returns revealed that the dealer had (i) opening stock of ₹ 60.24 lakh; (ii) received goods from outside the State by way of stock transfer worth ₹ 39.93 lakh and

(iii) closing stock of ₹ 7.34 lakh. Considering these and the fact that the dealer dealt only in taxable goods, the minimum<sup>28</sup> taxable turnover during the year worked out to ₹ 92.83 lakh (opening stock + stock received minus closing stock), against which the dealer had disclosed taxable turnover of ₹ 30.73 lakh. Thus, the dealer concealed taxable turnover of ₹ 62.10 lakh and evaded tax of atleast ₹ 7.76 lakh on which interest of ₹ 6.52 lakh (calculated upto December 2011) was additionally leviable. Besides, for deliberate concealment of turnover, penalty not exceeding double the tax evaded was also leviable. Had the AO scrutinised the case there was possibility of detection of concealment of turnover and evasion of tax.

Scope of recovery is remote as the case has become barred by limitation of time unless the Department resorts to taking up the assessment as a special case under Section 40 of AVAT Act.

After this was pointed out, the Department stated (August 2012) that assessment was revised and demand notice for ₹ 30.33 lakh ( tax ₹ 7.76 lakh, interest ₹ 7.04 lakh and penalty of ₹ 15.52 lakh) had been raised. Report on realisation has not been received (November 2012).

The case was reported to the Government in March 2010 and followed up in February 2012; their replies have not been received (November 2012).

<sup>28</sup> Calculation restricted to purchase value of goods without profit element.

### 2.38 Irregular grant of exemption

[ACT, Tezpur; August – September 2011]

Under the CST Act, 1956, when any dealer claims exemption of tax in respect of any goods by reason of transfer of such goods to any other place of his business out of the State, he may furnish to the AO a valid declaration in Form 'F' duly filled in and signed by the transferee alongwith evidence of dispatch of such goods failing which tax at the prescribed rate is to be charged. The CST Rules provide that one form 'F' should cover the transaction of one calendar month and furnishing forms 'F' is mandatory with effect from May 2002.

Further, as per Section 39 of the AVAT Act, no assessment shall be made after the expiry of five years from the end of the year to which the assessment relates. However, in cases where specific information is available, assessment can be made on best judgment basis under Section 40 of AVAT Act as a special case within a period of eight years after allowing the dealer an opportunity of being heard.

It was observed that the AO while completing the assessment (December 2010) of M/s Durrung Tea Estate, dealing in black tea, for 2005-06 allowed exemption of tax on stock transfer of ₹ 3.23 crore supported by declarations in form 'F'. Scrutiny of the declaration forms 'F' revealed that six 'F' forms covering stock transfer valued at ₹ 77.56 lakh contained transactions more than one calendar month. But, the AO failed to reject the transactions of ₹ 53.44 lakh pertaining to months beyond one calendar month covered by these six declaration forms. This resulted in non-levy of tax and interest of ₹ 10.71 lakh.

***It is recommended that he AO may proceed to open the assessment under Section 40 of the AVAT Act.***

After this was pointed out, the Department stated (February 2012) that the AO has initiated action to re-assess the dealer. Further development has not been reported (November 2012).

The case was reported to the Government in October 2011 and followed up in February 2012; their replies have not been received (November 2012).

**2.39 Exemption on 'job work' was granted though the item was not eligible for exemption under the Assam Industrial Sales Tax Concession Scheme – non-levy of tax and interest of ₹ 7.41 lakh**

[ACT, Tezpur; August – September 2011]

The AISTCS, 1997 provides that a new industrial unit shall be exempted from payment of tax for a period of seven years on sale of finished goods manufactured by them, from the date of commencement of production and subject to a maximum limit of 150 *per cent* of the capital investment whichever is attained earlier. The item 'job work' (carrying out works as per orders) is not included under the AISTCS.

Further, as per Section 39 of the AVAT Act, no assessment shall be made after the expiry of five years from the end of the year to which the assessment relates. However, in cases where specific information is available, assessment can be made on best judgment basis under Section 40 of AVAT Act as a special case within a period of eight years after allowing the dealer an opportunity of being heard.

During scrutiny of the records of a dealer M/s Purbanchal Packages (dealing in manufacture of corrugated cartons and boxes) availing exemption under the AISTCS for a period of seven years from 9 October 1999 or attaining the maximum tax limit of ₹ 23.75 lakh (being 50 *per cent* of capital investment) whichever is attained earlier, it was observed that the dealer had availed tax exemption of ₹ 17.56 lakh upto April 2005 leaving a balance of ₹ 6.19 lakh (₹ 23.75 lakh minus ₹ 17.56 lakh). During 2005-06 and 2006-07 (upto October 2006), the dealer claimed tax exemption of ₹ 6.42 lakh which was allowed by the AO while scrutinising the returns. Further scrutiny of the tax exemption claimed and allowed revealed that out of ₹ 6.42 lakh, ₹ 3.91 lakh pertained to 'job work'

which was not eligible for grant of exemption under AISTCS. The AO had not deducted this amount of ₹ 3.91 lakh during scrutiny of the returns. Consequently, there was non-levy of tax and interest of ₹ 7.41 lakh.

Scope of recovery is remote as the case has become barred by limitation of time unless the Department resorts to taking up the assessment as a special case under Section 40 of AVAT Act.

After this was pointed out, the Department stated (August 2012) that the assessment has been revised and demand notice for ₹ 9.83 lakh (including interest) was raised. Report on realisation has not been received (November 2012).

The case was reported to the Government in October 2011 and followed up in January 2012; their replies have not been received (November 2012).

**2.40 Determination of taxable goods as non-taxable despite instruction of the CT resulted in non-levy and realisation of tax of ₹ 5.22 lakh, including interest**

[ACT, Tezpur; August – September 2011]

Under the taxation laws applicable in Assam, a registered dealer shall be liable to pay tax on his taxable turnover at the rate specified in the relevant schedules to the Act. As per entry 34 of schedule 2 attached to the AVAT Act, 2003, 'rice bran' is taxable at four *per cent* in Assam. The CT, Assam vide circular dated 30 January 2008 clarified that 'de-oiled rice bran' is taxable at the rate of four *per cent*.

Further, as per Section 39 of the AVAT Act, no assessment shall be made after the expiry of five years from the end of the year to which the assessment relates. However, in cases where specific information is available, assessment can be made on best judgment basis under Section 40 of AVAT Act as a special case within a period of eight years after allowing the dealer an opportunity of being heard.

During scrutiny of the records of two dealers M/s Sonitpur Solvex Ltd. and M/s Nezone Foods Pvt. Ltd. (dealing in rice bran, de-oiled rice bran, *atta, suji* etc.), it was observed that the dealers disclosed sales of 'de-oiled rice bran' as exempted turnover during 2005-06 to 2007-08 for ₹ 74.44 lakh. Of these, the claim of M/s Sonitpur Solvex Ltd. for 2007-08 amounting to ₹ 64.74 lakh was accepted and the dealer assessed accordingly in June 2010. While the turnover of M/s Nezone Foods Pvt. Ltd. (₹ 9.70 lakh) for 2005-06 and 2006-07 was deemed to be assessed as neither scrutiny was conducted

nor the case was taken up for assessment, though the normal period of five years has elapsed. This resulted in non-levy of tax and interest of ₹ 5.22 lakh.

Scope of recovery is remote as the AO has allowed the exemption while completing the assessment in the first case; the second case has become barred by limitation of time and the assessing officer would have to resort to taking up the assessments as special cases under Section 40 of AVAT Act.

After this was pointed out, the Department stated (August 2012) that the assessments have been revised and demand notice for ₹ 4.72 lakh was raised. Report on realisation has not been received (November 2012).

The case was reported to the Government in October 2011 and followed up in January 2012; their replies have not been received (November 2012).

**2.41 Non-detection of concealment of turnover by the AO resulted in short realisation of tax of ₹ 6 lakh including interest**

[ACT, Unit B: Guwahati; June – September 2011]

The AVAT Act, 2003 read with the CST Act, 1956 provides that if any dealer conceals or fails to fully disclose the particulars of his turnover, the AO may, within eight years from the date of relevant years, make an assessment/re-assessment of the dealer.

During scrutiny of the records of M/s Power Make (dealing in transformers) it was observed that there was suppression of taxable turnover by the dealer which the AO failed to detect as mentioned in the following table.

Name of dealer	Assessment year Date of assessment/ scrutiny	Purchase/turnover suppressed	Tax evaded
			Interest leviable
(₹ in crore)			
M/s Power Make	2006-07	0.84	0.03 <sup>29</sup>
	March 2011		0.03

The dealer disclosed turnover of ₹ 95.58 lakh as inter-State sale and submitted six declaration forms 'C' which were accepted by the AO while assessing the dealer (March 2011). But, from the utilisation statements of declaration forms submitted by M/s North Eastern Electric Power Corporation Ltd to the Taxation Department in Arunachal Pradesh received by Audit from the counterparts in that State revealed that during 2006-07, the dealer had sold electrical goods valued at ₹ 83.85 lakh against which declaration form 'C' No. GG 313618 was issued by the Arunachal Pradesh based dealer. However, these transactions were not disclosed by the dealer. This resulted in evasion of tax which remained undetected. Scope of recovery is remote as the dealer has already closed down its business and requested (May 2009) the AO to cancel the registration certificate under AVAT and CST Acts.

Thus, there was suppression of turnover of ₹ 84 lakh and consequent evasion of tax of ₹ 3 lakh. Besides, interest of ₹ 3 lakh was additionally leviable for non-payment of tax by the due date. Scope of recovery is remote as the case has become barred by limitation of time unless the Department resorts to taking up the assessment as a special case under Section 40 of AVAT Act.

After this was pointed out, the Department stated (August 2012) that the purchasing dealer of Arunachal Pradesh may commit some omission while furnishing the statement. The reply, furnished without any supporting grounds, is not acceptable as the purchasing dealer in Arunachal Pradesh was a Government of India enterprise and that too the reply of the GOI enterprise

<sup>29</sup> Calculated at four per cent, since the sales were covered by valid declaration forms.

was authenticated by the concerned Superintendent of Taxes of that district of Arunachal Pradesh.

The case was reported to the Department/Government in October 2011 and followed up in April 2012; replies have not been received (November 2012).

## OTHER TAXES

### 2.42 Irregular application of rate resulted in short levy of entry tax of ₹ 1.10 crore

[ACT, Guwahati Unit – ‘B’; June- September 2011]

Under the Assam Entry Tax (AET) Act, 2008, items ‘cement’ and ‘HTS Wire, inserts used in Railway tracks’ were taxable at the rate of 12 and 12.5 *per cent* (with effect from November 2006) respectively.

During scrutiny of the records of a dealer M/s Daya Engineering Works Private Limited (manufacturer of railway PSC sleepers), it was observed that while assessing (4 March 2011) the dealer’s taxable turnover for the years 2006-07 and 2007-08, the AO levied tax at ‘eight’ and ‘zero’ *per cent* on the items ‘cement’ and ‘HTS wires/ inserts’, instead of 12 and 12.5 *per cent*.

This resulted in short levy of entry tax of ₹ 1.10 crore as mentioned below:

Year	Item Value (₹ in lakh)	Rate of tax levied leviable	Tax levied	Tax short levied
			Tax leviable	
			(₹ in lakh)	
2006-07	<u>Cement</u> 256.94	<u>8</u> 12	<u>20.55</u> 30.83	10.28
	<u>Cement</u> 296.29	<u>8</u> 12	<u>23.70</u> 35.55	11.85
2007-08	<u>HTS Wire</u> 435.64	<u>0</u> 12.5	<u>Nil</u> 54.45	54.45
	<u>Inserts</u> 266.65	<u>0</u> 12.5	<u>Nil</u> 33.33	33.33
<b>Total</b>				<b>109.91</b>

After this was pointed out, the ACT while accepting the audit observation stated (March 2012) that the assessments for the above years were revised levying tax of ₹ 1.10 crore; of which the dealer had paid ₹ 10.27 lakh in respect of 2006-07. The ACT further stated that since the dealer had failed to pay the dues pertaining to 2007-08, arrear certificate was issued imposing interest of ₹ 6.55 lakh over and above the tax of ₹ 99.64 lakh. Against this,

the dealer had deposited ₹ 18.25 lakh. Report on further recovery has not been received (November 2012).

The case was reported to the Department and the Government in October 2011 and followed up in March 2012; their replies have not been received (November 2012).

**2.43 Failure of the AO to take cognisance of the purchase turnover of a dealer prior to registration/assessment resulted in non-levy of entry tax of ₹ 20.03 lakh**

[ACT, Guwahati Unit 'B'; June - September 2011]

As per the AET Act, 2001 and 2008 read with the AVAT Act, 2003, upon receipt of an application for registration under the AET Act, the prescribed authority may conduct such inquiry/call for such evidence and information as he deems fit and after the inquiry/considering the evidence and information, if he is satisfied that the application for registration is in order, he shall register the applicant and issue a certificate of registration.

During scrutiny of the records of M/s Reliance Communication Ltd. (dealing in plant and machinery, electrical goods, DG sets, wireless transmission equipments etc), it was noticed that though the dealer in his application for registration under the AET Act had mentioned about commencement of business from 28 September 2007, the AO while registering the dealer under the AET Act, fixed tax liability from 1 June 2008.

Audit scrutiny revealed that the dealer imported telecom goods, laptops, V Sat etc., valued at ₹ 1.77 crore by using road permits<sup>30</sup> between November 2007 and March 2008 *i.e.* prior to the registration under AET Act but did not pay any entry tax on the aforesaid items. The AO also failed to take cognisance of the aforesaid turnover while registering the dealer and erroneously fixed the date of tax liability as 1 June 2008 instead of date of commencement of business as disclosed by the dealer while seeking registration. It was further noticed that though the dealer had disclosed (July 2009) purchase of above materials worth ₹ 1.77 crore by using road permits which were available in the records, the AO initiated assessment (June 2011) with effect from 1 June 2008 only. Non-detection of concealment of purchase turnover, thus, resulted in non-levy of entry tax of ₹ 20.03 lakh.

After this was pointed out, the ACT stated (April 2012) that after allowing reasonable opportunity of being heard the dealer was assessed to tax of ₹ 20.03 lakh; of which, the dealer had paid ₹ 10.31 lakh. Report on recovery of balance amount has not been received (November 2012).

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<sup>30</sup> Since the dealer was registered under AVAT Act since April 2007, road permits for importing goods were issued to him.

The case was reported to the Department and the Government in October 2011 and followed up in January 2012; their replies have not been received (November 2012).

**2.44 Registration of a dealer under AET Act without taking into account the goods imported prior to the date of registration resulted in non-realisation of entry tax of ₹ 10.61 lakh**

[ACT, Tinsukia; August – September 2011]

As per the AET Act, 2008 read with AVAT Act, 2003, upon receipt of an application for registration under the AET Act, the prescribed authority may conduct such inquiry/call for such evidence and information as he deems fit and after the inquiry/considering the evidence and information, if he is satisfied that the application for registration is in order, he shall register the applicant and issue a certificate of registration.

Under the AET Act, excavators and pump sets of any types are taxable at four *per cent* on the entry of such goods into a local area for consumption, use or sale therein.

During scrutiny of the records of M/s Tribeni Construction (P) Ltd. (civil works contractor) in the above office, it was noticed that the dealer was registered under the AVAT Act, 2003 with effect from 1 May 2005. Accordingly, road permits were issued by the office of ACT for importing goods from outside the State for use in works contracts. Audit scrutiny revealed that during 2005-06 and 2006-07, the dealer imported excavators and pump sets valued at ₹ 2.65 crore on

which entry tax of ₹ 10.61 lakh was leviable. But the dealer did not pay any entry tax on the above imported goods. The AO also failed to notice import of the aforesaid goods while registering the dealer in May 2010 though the aforesaid information was available in the case records of the dealer and the AO was required to make sufficient enquiry to his satisfaction before registering the dealer. Failure of the AO to do this resulted in non-detection of import of goods leading to non-realisation of entry tax of ₹ 10.61 lakh.

The case was reported to the Department and the Government in October 2011 and followed up in January 2012; replies have not been received (November 2012).

**2.45 Concealment of purchase turnover while filing returns under AET Act and failure of the AO to detect the same resulted in non-levy of entry tax of ₹ 7.91 lakh**

[ACT, Nagaon; November – December 2011]

The AET Act 2001 and 2008 provides that a registered dealer liable to pay tax shall submit to the AO his monthly statement of such purchase alongwith a copy of the *challan* or crossed demand draft for the full amount of tax payable on the purchase value of the goods disclosed in the statement before the expiry of the next succeeding month of purchase.

Clinker, DG sets and motors are taxable at eight *per cent* under AET Act.

During scrutiny of the case records of M/s RJ Cement Industries (manufacturer of cement) it was observed that the dealer submitted 'nil' returns for 2006-07 and 2007-08. The AO accepted the returns and took up assessment for 2008-09 without assessing the dealer for 2006-07 and 2007-08. Audit scrutiny revealed that the dealer imported goods (clinker, DG Set, motor etc.) taxable under the AET Act valued at ₹ 98.83 lakh during

2006-07 and 2007-08 by using road permits issued by the office of the ACT. Though the information on import of taxable goods was available in the case records, the AO failed to co-relate the returns of earlier years (showing 'Nil' turnover) with the utilised road permits which resulted in non-detection of the concealment of purchase turnover leading to non-levy of entry tax of ₹ 7.91 lakh (eight *per cent* on ₹ 98.83 lakh).

The case was reported to the Department and the Government in December 2011 and followed up in February 2012; replies have not been received (November 2012).

**2.46 Irregular set off of loss of previous year from the assessable tax of current year resulted in short levy of agricultural income tax of ₹ 4.11 lakh**

[Agricultural Income Tax Officer, Assam; March 2011]

Under the provisions of the Assam Agricultural Income Tax (AAIT) Act, 1939 as amended from time to time, the loss sustained by any assessee in agricultural income for any year is allowed to be carried forward for setting-off against the profit or gains of the following year. However, to get the above benefit, the assessee should file his return of loss by 31 December of the relevant assessment year.

During scrutiny of the records under AAIT Act of a dealer M/s Hanuman Plantation Ltd. in the above office, it was observed that the dealer filed the return for the assessment year 1997-98 in January 1998 showing a loss of ₹ 2.22 lakh. It was noticed that though the claim of loss was submitted after the prescribed period (December 1997 in the instant case), the AO while

completing the assessment in March 2009 admitted the claim to be carried forward and allowed set-off against the taxable income of the subsequent year (1998-99). This irregular allowance of set-off resulted in short levy of tax and interest of ₹ 4.11 lakh.

After this was pointed out, the AO while admitting the mistake stated (December 2011) that the assessment has been rectified raising a demand of ₹ 5.67 lakh. The AO further stated in July 2012 that the dealer while paying ₹ 1.42 lakh had preferred an appeal. Further development has not been reported (November 2012).

The case was reported to the Department/Government in April 2011 and followed up in February 2012; their replies have been received (November 2012).