

CHAPTER-II TRADE TAX DEPARTMENT

2.1 Results of audit

Test check of assessments and other records of trade tax offices conducted during 2005-06 revealed under assessment of tax, non/short levy of penalty/interest, irregular exemption of tax etc. amounting to Rs. 161.29 crore in 1,169 cases, which broadly fall under the following categories:

Sl. No.	Categories	(Rupees in crore)	
		No. of cases	Amount
1	Non/short levy of penalty/interest	603	9.77
2	Irregular exemption	178	19.75
3	Non levy of additional tax/entry tax	68	5.20
4	Incorrect rate of tax	88	2.54
5	Misclassification of goods	63	20.87
6	Turnover escaping tax	24	0.16
7	Irregularities relating to central sales tax	21	0.13
8	Computation mistake	2	0.03
9	Under assessment of tax	15	0.05
10	Review on " Deferment scheme to new industrial units under Trade Tax Act, 1948 "	1	89.04
11	Other irregularities	106	13.75
	Total	1,169	161.29

During the year 2005-06, the departments accepted underassessment etc. of Rs. 1.45 crore involved in 47 cases out of which a sum of Rs. 11.36 lakh involved in six cases had been recovered.

A few illustrative cases and one review on "**Deferment scheme to new industrial units under Trade Tax Act, 1948**" involving Rs. 101.85 crore, are mentioned in succeeding paragraphs:

2.2 Review on Deferment scheme to new industrial units under Trade Tax Act, 1948

Highlights

- Eight manufacturers who availed wholly or partly the facility of exemption under Section 4-A were granted irregular deferment (moratorium) amounting to Rs. 44.95 crore out of which Rs. 25.19 crore was availed.
[Para 2.2.6.1]
- In six cases deferment (moratorium) of Rs. 15.37 crore was irregularly availed by manufacturers who were ineligible for exemption under Section 4-A.
[Para 2.2.6.2, 2.2.6.4 and 2.2.6.5]
- Two manufacturers availed irregular deferment (moratorium) amounting to Rs. 32.59 crore though they could not achieve the base production.
[Para 2.2.6.3]
- Nine manufacturers availed CST deferment of Rs. 12.69 crore which was inadmissible.
[Para 2.2.6.6]

- Deferment (moratorium) amounting to Rs. 2.08 crore with interest of Rs. 1.52 crore was not recovered.

[Para 2.2.6.7, 2.2.7.1 and 2.2.7.2]

Recommendations

Government may consider that:

- deferment (moratorium) may be allowed to eligible units only;
- facility of deferment (moratorium) may not be allowed under CST Act;
- internal control needs to be strengthened to ensure that moratorium is allowed to only such units which fulfill the conditions for deferment (moratorium) and eligibility certificate.

Introduction

2.2.1 With a view to attract new industrial investment and to promote industrial growth in the State, the Commissioner Trade Tax, on an application of a manufacturer may grant moratorium (deferment) for payment of tax admitted by such manufacturer in lieu of exemption under UP Trade Tax Act, 1948 (UPTT Act) and Rules made thereunder on sale of goods manufactured by him as prescribed under rules. The deferment scheme to new industrial unit is available on the basis of eligibility certificate (EC) issued by the Industries Department. Commissioner Trade Tax may cancel or amend the EC under UPTT Act if he is of the opinion that EC has been issued incorrectly or misused. Under deferment scheme, an eligible unit would collect tax levied on the sale of manufactured goods and retain it for a specified period and thereafter the tax so retained by the unit be deposited in Government account in prescribed number of instalments. As per the scheme, Government implementing agency PICUP¹/UPFC² may sanction interest free loan equal to admitted tax in favour of manufacturer and pay the same through book transfer in the account of Trade Tax Department on completion of the formalities.

Organisational set up

2.2.2 The over all control of Trade Tax Department vests with the Commissioner of Trade Tax. Deferment schemes (moratorium) are implemented by the Commissioner, Trade Tax through Joint Commissioners (Executive) Trade Tax (JCTT) and Deputy Commissioners (Assessment), Trade Tax (DCTT).

Audit objectives

2.2.3 A review on deferment scheme (moratorium) to new industrial units under the UPTT Act was conducted during the period from July 2005 to March 2006 and records for the years from 2001-02 to 2005-06 were test checked to ascertain whether:

¹ Pradeshiya Industrial Investment Corporation of Uttar Pradesh

² Uttar Pradesh Financial Corporation

- conditions laid down in Act/Rules and deferment scheme for deferment (moratorium) of payment of tax have been followed by the Trade Tax Department.
- recovery of dues is being monitored regularly.

Scope of audit

2.2.4 Test check of records in 13¹ out of 36 ranges (on the basis of number of deferment cases) which ensures representation of entire State was conducted. Out of 157² cases of deferment in the entire state, 71 cases were examined. Besides this, the records relating to grant of EC issued by Industry Department, deferment orders issued by the Commissioner Trade Tax, and grant of interest free loan sanctioned by PICUP/UPFC to the units were also test checked.

Audit findings

2.2.5 Scrutiny of records of 13 ranges revealed irregular grant of deferment (moratorium) of Rs. 89.04 crore and improper pursuance of recovery of dues, which are discussed in the succeeding paragraphs:

2.2.6 Irregular grant of deferment (moratorium)

2.2.6.1 Under UPTT Act and Rules made thereunder, the Commissioner, on an application of a manufacturer, may in lieu of exemption, grant deferment (moratorium) for payment of tax admittedly payable by such manufacturer on the sale of his manufactured goods beyond the prescribed period. As per rules, manufacturers who have already availed the facility of exemption from or reduction in rate of tax whether wholly or partly, shall not be entitled to the grant of deferment (moratorium).

Test check of records of six trade tax offices³ revealed that in case of eight dealers, ECs for exemption of tax of Rs. 33.66 crore to be availed during the period from January 1995 to March 2010 were issued by the Industry Department. Against this, the dealers availed exemption of tax of Rs. 10.35 crore upto March 2003. These dealers were also granted deferment (moratorium) of tax of Rs. 44.95 crore for the period from January 1995 to March 2010 out of which Rs. 25.19 crore was availed. Since the dealers had already availed the facility of exemption in part, grant of deferment (moratorium) of tax of Rs. 44.95 crore was irregular.

After this was pointed out, department stated in August 2006 that matter will be examined.

2.2.6.2 Under the provisions of UPTT Act, and notifications issued thereunder, exemption/reduction in rate of tax or deferment (moratorium) is to be allowed to manufacturers only when the goods manufactured are of different nature from the goods manufactured earlier by them.

¹ Agra (2 ranges), Allahabad, Bareilly (2 ranges), Ghaziabad (2 ranges), Kanpur (3 ranges), Lucknow (2 ranges) and Noida.

² As list provided by PICUP/UPFC.

³ DC (A)-I TT Allahabad, DC (A)-IA TT Ghaziabad, DC (A)-XI TT Ghaziabad, DC (A) TT Gautam Budh Nagar, DC (A)-IV and DC (A) IX TT Noida.

Test check of records of DC (A)-IV and VIII TT Ghaziabad revealed that three¹ manufacturers were granted ECs to avail deferment of tax (moratorium) for Rs. 9.54 crore during the period between 26 May 1993 to 25 March 2006 for manufacture of rolling products (IPE beam and HE beams) and mill tandem (sugar cane mill machinery parts). It was however, observed that these units were already manufacturing rolling products and sugar cane machinery parts. As such, no new products were manufactured by them under diversification. The units availed the moratorium of tax of Rs. 6.59 crore upto February 2004 which was undue favour to the dealers.

After this was pointed out, department stated in August 2006 that matter will be examined.

2.2.6.3 The benefit of exemption/reduction in tax or moratorium shall be available on the turnover of a unit, in any financial year, to units which had undertaken expansion, if such units manufacture goods in excess of base production. It was clarified by Commissioner on 27 February 1993 and 6 February 2003 that in order to ascertain the base production, turnover of stock transfer/consignment of goods would not be considered for the purpose of total production as this is not sale under State Sales Tax/CST Act.

Audit of records of DC (A)-I, TT, Allahabad and DC (A)-XII, TT, Agra revealed that two² manufacturers were granted deferment (moratorium) amounting to Rs. 1,646.67 crore for the period from March 1998 to February 2011 in lieu of exemption under the scheme of expansion. In both the cases, though annual base production was not achieved after reducing the turnover of stock transfer, deferment (moratorium) was allowed. The dealers availed deferment (moratorium) of tax of Rs. 32.59 crore up to March 2006 which was irregular.

After this was pointed out, department stated in August 2006 that matter will be examined.

2.2.6.4 Under the UPTT Act and Rules, moratorium shall cease and total amount of the tax admittedly payable shall become payable on the date on which the unit becomes ineligible for exemption. The amount shall be paid in lumpsum within three months. In case of a unit having undertaken expansion, default in payment of any dues under the UPTT Act, renders it ineligible for exemption/reduction of tax and EC.

During audit of records of the office of the DC (A)-IV TT, Ghaziabad, it was noticed that two units³ were granted deferment of tax (moratorium) of Rs. 56.45 crore in lieu of exemption of tax under expansion scheme for the period from November 1995 to February 2004. Scrutiny of records, however, revealed that a sum of Rs. 1.64 crore was outstanding against these units as tax relating to the period from 1993-94 to 1995-96. Due to default in payment of tax, the units were not eligible for deferment amounting to Rs. 56.45 crore. Out of this, the units had availed deferment of tax (moratorium) of Rs. 6 crore upto February 2006.

¹ (i) M/s H.V.R. Alloys and Steel Ltd. Bulandshahar Road, Greater Noida, Gautam Budh Nagar. (ii) M/s Uttam Sukrotech Ltd., Ghaziabad. and (iii) M/s Uttam Industrial Engineering Pvt. Ltd., Ghaziabad.

² M/s IFFCO Ltd. Phoolpur Unit Allahabad and M/s Asian Paints Ltd., Agra

³ M/s Shri Ram Piston and Rings Ltd. Ghaziabad and M/s Uttam Industrial Engineering Pvt. Ltd. Ghaziabad

After this was pointed out, department replied in August 2006 that matter is under examination.

2.2.6.5 The UPTT Act provides that if a manufacturer, availing exemption from or reduction in tax, is succeeded by another manufacturer in any manner, such manufacturer may apply for grant of exemption/reduction in rate of tax within 60 days from the date of succession. In such case the successor is eligible for exemption/reduction of tax for unexpired portion of period of exemption granted to the former manufacturer.

During audit of records of the office of the DC (A) Trade Tax, Gautam Budh Nagar, it was noticed that a unit was granted EC to availment of benefit of deferment of tax of Rs. 25.26 crore for the period from 3 March 1999 to 2 March 2009. This unit was amalgamated into another unit on 29 September 2000. The former unit had availed deferment (moratorium) of Rs.1.23 crore upto the date of amalgamation. Scrutiny of records, however, revealed that successor unit did not apply for fresh EC but continued to avail deferment of tax (moratorium) on the basis of EC issued to the original unit. This resulted in irregular availment of deferment (moratorium) of Rs. 2.78 crore upto December 2003.

After this was pointed out, department stated in August 2006 that EC for unexpired portion of former firm has been amended under Section 4-A (2-B).

2.2.6.6 Under the UPTT Act, rule and notification, the Commissioner may, grant deferment (moratorium) for payment of State trade tax admittedly payable by the manufacturer on sale of goods within the State in lieu of exemption/reduction in tax. Under the CST Act, Government is competent to exempt from payment of tax or levy tax at lower rate, but no deferment (moratorium) is allowed under CST Act.

Test check of records of six¹ trade tax circles revealed that nine dealers were granted deferment (moratorium) of tax for the period from October 1994 to April 2009. The department issued orders for deferment of tax (moratorium) on the basis of ECs issued under Section 4-A of State Act and not under CST Act. The assessing authorities while finalising the assessments for the years from 1999-2000 to 2002-03, between March 2002 and February 2006, allowed deferment (moratorium) of Rs. 12.69 crore under CST Act which was irregular.

After this was pointed out, department stated in August 2006 that matter would be examined.

2.2.6.7 Under UPTT Act, Rule and notification, a manufacturer to whom deferment of payment of tax has been granted, shall create first or second charge on its property in favour of the State Government, atleast equal to the amount of tax in respect of which deferment (moratorium) has been granted. If he fails to do so, the facility of deferment (moratorium) shall be ceased immediately and entire deferred amount of tax availed shall be payable in lumpsum within three months from the date of violation of this condition. Besides, simple interest at the rate of two *per cent* per month will also be chargeable for deferred period and thereafter.

¹ DC (A)-V TT Ghaziabad, DC (A)-X TT Kanpur, DC (A)-II, IV & IV-A of Noida and DC (A) Gautam Budh Nagar Noida.

During audit of records of the office of the DC (A)-II, TT, Lucknow, it was noticed that in case of a manufacturer, deferment of payment of tax amounting to Rs. 90.88 lakh was granted in lieu of exemption of tax for the period from 2 June 1999 to 1 June 2007 which was fully availed till 2002-03. The assessment was completed in March 2005. The manufacturer had not created first and second charge on his property in favour of State Government, hence the amount of deferred tax amounting to Rs. 90.88 lakh was payable in lumpsum within three months. In addition, the manufacturer was also liable to pay interest of Rs. 1.08 crore with effect from November 1999 to March 2006.

After this was pointed out, department assured in August 2006 speedy action in the matter.

Improper pursuance/non realisation of dues

2.2.7 Under the UPTT Act and notification, the Commissioner Trade Tax, on the application of a manufacturer, may grant deferment (moratorium) for payment of tax admitted by such manufacturer on sale of manufactured goods. During deferment period, the unit would collect tax and retain it for a specified period and thereafter the tax so retained by the unit be deposited in Government account in prescribed number of instalments. If he fails to do so, the facility of deferment (moratorium) shall immediately be ceased and entire deferred amount of tax shall be payable in lumpsum within three months from the date of violation of this condition. Besides this, simple interest at the rate of two *per cent* per month will also be chargeable for deferred period and thereafter. Under the scheme, the manufacturer availing moratorium may avail facility of interest free loans from PICUP and UPFC which are to be adjusted by book transfer in Government account. In that event, the manufacturer would repay the amount to PICUP/UPFC.

2.2.7.1 During audit of records of the office of the DC (A)-II TT, Ghaziabad, it was noticed that deferment of tax (moratorium) was granted to a manufacturer for the period from 10 March 1997 to 9 March 2005. The manufacturer collected tax of Rs.80.64 lakh on account of sale of manufactured goods during the period upto 2003-04 and retained it. UPFC sanctioned interest free loan of Rs. 40.25 lakh to the manufacturer upto December 1999 through book transfer in the account of Trade Tax Department. Thereafter, neither further loan of balance of Rs. 40.39 lakh was sanctioned in favour of the dealer by the UPFC nor was payment of deferment (moratorium) made by the dealer to the department. Besides this, an interest of Rs. 44.04 lakh was also recoverable for the period from January 2000 to March 2006.

After this was pointed out, department stated in August 2006 that steps are being taken for recovery of balance amount.

2.2.7.2 During audit of records of the DC (A)-VII TT, Ghaziabad, it was noticed that a manufacturer who was availing exemption of tax since 31 March 1999 submitted his application for deferment of tax to the Commissioner, in January 2002 which was not disposed of till the date of audit (July 2005). The manufacturer collected tax amounting to Rs. 76.59 lakh for the period from 1 April 1999 to 31 December 2001 and retained it. Neither the deferment (moratorium) was granted as applied by the manufacturer nor amount of tax due of Rs. 76.59 lakh for the aforesaid period was recovered.

After this was pointed out, department did not furnish any specific reply.

Internal control

2.2.8 Implementation of deferment scheme (moratorium) to new industrial units is controlled by the Commissioner with the assistance of JCTT and DCTT. They may ensure that the provisions of Act/Rules/circulars have been followed in implementation of deferment scheme.

Although control mechanism (application of provisions of Act/Rules/notifications and implementation of departmental circulars and the directions by Commissioner, JC and DC Trade Tax) exists in the department to some extent but it is not functioning effectively, thereby attributing to weak and inefficient internal control mechanism.

Acknowledgement

2.2.9 Audit findings as a result of review on “Deferment scheme to new industrial units under UPTT Act” were reported to the State Government in June 2006 with a specific request for attending the meeting of Audit Review Committee for State Receipts (ARC/SR) so that viewpoints of the Government/department may be taken into account before finalising the review. The meeting of ARC /SR was held on 8 August 2006 with Special Secretary (Finance/Kar Evam Nibandhan) and the representatives of Trade Tax Department. The views expressed by the members have been taken into consideration during finalisation of the review.

2.3 Irregular allowance of exemption

Under Section 7-D of UPTT Act, assessing authority may agree to accept a composition money either in lumpsum or at an agreed rate on his turnover in lieu of tax that may be payable by a dealer in respect of such goods or class of goods and for such period as may be agreed upon. As per Commissioner’s circular dated 4 April 2002, facility of the compounding scheme is not admissible to new industrial units holding EC for manufacturing vanaspati ghee availing exemption from or reduction in rate of tax.

During audit of records of DC (A)-XVII, TT, Kanpur, it was noticed (December 2005) that in 2002-03 a dealer, holding EC under new industrial unit, sold vanaspati ghee valued at Rs. 200.52 crore and facility of compounding scheme was irregularly allowed by the assessing authority, whereas facility for manufacturing of vanaspati ghee under compounding scheme was not admissible under Act. Consequently tax of Rs. 10.03 crore was leviable but was not levied and the dealer had deposited Rs. 3.28 crore. This resulted in short levy of tax of Rs. 6.75 crore.

The case was reported to department and Government (March 2006), their replies have not been received (July 2006).

2.4 Non levy of tax due to turnover escaping assessment

Under UPTT Act, turnover means the aggregate amount for which goods are supplied or distributed by way of sale, or sold by a dealer, whether for cash or deferred payment or other valuable consideration under the Act. It is the duty of the assessing authority to ascertain the total turnover of the dealer from the records maintained by him irrespective of the fact that it is taxable or not.

During audit of three trade tax offices, it was noticed between November 2003 to July 2005, that while finalising the assessment of six dealers for the year 2000-01 to 2002-03, between July 2002 and September 2004, taxable turnover amounting to Rs. 85.92 lakh escaped assessment. This resulted in non levy of tax amounting to Rs. 6.19 lakh as shown below:

(Rupees in lakh)								
Sl. No	Name of office	No. of dealer	Year Month of assessment	Name of commodity	Escaped turnover	Rate of tax leviable (per cent)	Tax not levied	Remarks
1.	DC(A)-VIII, TT, Agra	4	2002-03 June-04 to Nov-04	Automobile parts	27.23	12	3.26	Warranty claim not included in turnover.
2.	AC, Sec.-V, TT, Agra	1	2000-01 July-2002	Empty bottle, old furniture and office equipment	21.84	5	1.09	Imported empty bottles were wrongly treated as tax paid item in turnover.
3.	AC, Sec.-VIII, TT, Ghaziabad	1	2002-03 July-04	Empty bottles	36.85	5	1.84	Sale of empty bottles was not included in turnover.
Total		6			85.92		6.19	

After this was pointed out between November 2003 to July 2005, the assessing officer Agra stated in November 2004 that demand of Rs. 1.09 lakh has been raised in one case. Reply in other cases was awaited (July 2006).

The cases were reported to department and Government between May 2004 and September 2004. Their replies are awaited (July 2006).

2.5 Non-levy of interest

Under UPTT Act, every dealer, liable to pay tax, is required to deposit the amount of tax into Government treasury before the expiry of month following the month in which the tax was due. The tax admittedly payable by the dealer, if not paid by the due date, attracts interest at the rate of two *per cent* per month on the unpaid amount, till the date of deposit.

Audit of assessment records of four trade tax offices, conducted between September 2004 to October 2005 revealed that in case of four dealers, assessed between September 2002 to March 2005 for the assessment years 1987-88 to 2002-03, admitted tax of Rs. 2.52 crore was deposited late. Delay ranged from 305 days to 5,780 days. Interest of Rs. 2.54 crore was chargeable but not charged by the department as detailed below:

(Rupees in lakh)						
Sl. No	Name of office	No. of dealers	Year Month of assessment	Amount of admitted tax	Period of delay for which interest was not charged	Amount of Interest
1.	DC(A)-XVII, TT, Kanpur	1	1999-2000 Sep.-02	11.34	1644 days to 1879 days	9.13
2.	DC(A)-XII, TT, Lucknow	1	2001-02 Dec.-03	5.86	1178 days	4.57
3.	DC(A)-II, TT, Bareilly	1	1987-88 to 2002-03 Dec.-04	225.79	305 days to 5780 days	235.03
4.	DC(A), TT, Gautam Budh Nagar	1	2002-03 March-05	8.54	970 days	5.46
Total		4		251.53		254.19

In case of DC (A)-II TT, Bareilly though the recovery certificates were issued to recover the amount of interest but the same was not charged from the date when it became due. The above amount has been worked out for the period which was not included in the recovery certificates.

After this was pointed out between September 2005 and October 2005, the assessing officer stated in June 2006 that demand of Rs. 4.57 lakh has been raised in January 2006 in the case of Kanpur. The reply in other cases was awaited (July 2006).

The cases were reported to department and Government between November 2004 and December 2005; replies are awaited (July 2006).

2.6 Non levy of entry tax

Under UP Tax on Entry of Goods Act, 2001 (which came into effect from 1 November 1999), entry tax on purchase of machinery and their spares valued at Rs. 10 lakh and above is leviable at the rate of two *per cent* with effect from 1 November 1999 and paper at the rate of four *per cent* of value of goods with effect from 1 November 2001.

During audit of records of three trade tax offices, it was noticed between June 2004 and June 2005, that in three cases during the period 2000-01 to 2002-03, the assessing officers while finalising the assessments in March 2004, February 2005 and December 2005 failed to levy entry tax amounting to Rs. 8.84 lakh on the purchase of machinery and their spares and paper valued at Rs. 4.29 crore as detailed below:

(Rupees in lakh)							
Sl. No.	Name of the Unit	No. of dealers	Assessment year Month of assessment	Name of commodity	Value of commodity	Rate of entry tax (in <i>per cent</i>)	Non levy of entry tax
1.	TTO, Sect-V, Varanasi	1	2001-02 Dec.-2005	Machinery and their spares	340.96	2	6.82
2.	A.C. Sect.-II, TT, Khurja	1	2000-01 March-2004	Machinery	74.91	2	1.50
3.	D.C. (A)-I, TT, Kanpur	1	2002-03 Feb.-2005	Paper	13.09	4	0.52
Total		3			428.96		8.84

The cases were reported to department and Government between August 2004 and August 2005; their replies have not been received (July 2006).

2.7 Incorrect levy/realisation of tax

2.7.1 Short levy of tax due to application of incorrect rate of tax

Under UPTT Act, tax is leviable as per schedule of rates notified by Government from time to time. The goods which are not classified in the prescribed schedule of rates are taxable at the rate of 10 *per cent*.

During audit of records of 16 trade tax offices¹, it was noticed between May 2003 to July 2005 that while finalising the assessments of 18 dealers for the period from 1991-92 to 2002-03 assessed between March 2001 and February 2005 the assessing officers levied tax at incorrect rates on the goods valued at Rs. 12.06 crore. This resulted in short levy of tax of Rs. 55.48 lakh.

After this was pointed out between May 2003 to July 2005, the seven² assessing officers stated between March 2004 to July 2005 that assessments had been revised in case of seven dealers and demand of Rs. 9.41 lakh raised. Reply in other cases was awaited (July 2006).

The cases were reported to department and Government between January 2004 and December 2005; replies are awaited (July 2006).

2.7.2 Short realisation of security/penalty due to misclassification of goods

As per instructions of the Commissioner Trade Tax of 31 January 2001 read with circular dated 16 October 2003, if goods transported by a registered dealer are found without proper documents, security at the rate of twice the tax in case of goods transported within the State and three times of the tax in respect of goods transported outside the State or 40 *per cent* of value of the goods whichever is less is to be realised from the dealers.

During test check of records of three mobile squad units³ and three Sahayata Kendras⁴, it was noticed that in 14 cases security/penalty of Rs. 3.85 lakh was realised short from the registered dealers during the period 2003-04 and 2004-05 due to application of incorrect rate of tax.

The cases were reported to department and Government in June 2006, replies are awaited (July 2006).

2.8 Non levy of penalty

2.8.1 Under the CST Act, if a registered dealer purchases any goods from outside the State at concessional rate of tax on the strength of declaration in form 'C' by falsely representing that such goods are covered by his registration certificate under CST Act or if the goods purchased from outside the State at concessional rate of tax, are used for a purpose other than that for which registration certificate is granted, the dealer is liable to be prosecuted. However, in lieu of prosecution, if the assessing authority deems it fit, he may impose a penalty upto one and a half times of the tax payable on sale of such goods.

¹ (1) DC(A)-X, TT, Ghaziabad, (2) AC, Sec.XII, TT, Lucknow, (3) DC (A), TT, Chandausi, (4) DC (A)-I, TT, Muzaffar Nagar, (5) DC (A)-VIII, TT, Lucknow (6) DC (A)-IX, TT, Lucknow, (7) DC (A), TT, Faizabad, (8) AC, Sec.I, TT, Sultanpur, (9) DC (A)-VIII, TT, Agra, (10) DC(A)-XVIII, TT, Kanpur, (11) DC (A)-VIII, TT, Ghaziabad, (12) DC(A)-XI, TT, Agra, (13) AC, Sec.III, TT, Ghaziabad, (14) AC Sec.XI, TT, Lucknow, (15) DC(A)-I, TT, Gorakhpur and (16) DC (A)-III, TT, Varanasi.

² DC (A) TT Faizabad, DC (A)-VIII TT Ghaziabad, DC (A)-X TT Ghaziabad, DC (A)-XVIII TT Kanpur, DC (A)-VIII TT Lucknow, DC (A)-IX TT Lucknow and DC (A)-I TT Muzaffarnagar.

³ MS-II Lucknow, MS-III Kanpur and MS-I Ghaziabad.

⁴ SK Mohan Nagar, SK Vijay Nagar and SK Kotban

Test check of assessment records of 20 trade tax offices revealed between May 2003 and September 2005 that 21 dealers, assessed between May 2002 and June 2005, for the years 1991-92 to 2002-03, purchased goods of Rs. 6.80 crore against declaration in forms 'C' which were not covered by their certificates of registration. The dealers were, therefore, liable to pay a penalty of Rs. 1.13 crore as shown in Appendix-A.

After this was pointed out, the assessing officers intimated between March 2004 and September 2005 that penalty of Rs. 43.46 lakh in 12 cases has been imposed. Reply in other cases was awaited (July 2006).

The cases were reported to department and Government between November 2003 to December 2005; replies are awaited (July 2006).

2.8.2 Under CST Act, every dealer liable to pay tax under the Act shall get himself registered for purchase of any goods from outside the State and to carry on business relating to inter state sales. If the dealer purchases/sells goods, without obtaining registration, he shall be prosecuted with simple imprisonment which may extend upto six months or punished with fine, or both. In case the default continues, a fine of Rs. 50 per day is imposable.

During the audit of records of DC (A) IV TT Ghaziabad and DC(A) IX TT Noida, it was noticed in June 2004 that two dealers sold their goods outside the state in 2001-02 and 2002-03 without getting themselves registered. Further, it was seen that one dealer had been selling goods since 1 April 1979 and another dealer since 1 April 1996. Though their cases were being assessed every year but the assessing authorities failed to notice the fact of non registration of dealers. The dealers were liable to pay penalty of Rs. 6.22 lakh which was not imposed by the department.

After this was pointed out, department imposed penalty of Rs. 4.73 lakh in case of Ghaziabad.

The cases were reported to department and Government between July 2004 and August 2004; replies are awaited (July 2006).

2.8.3 Under the UPTT Act, a person responsible for making payment to a contractor, for discharge of any liability, on account of valuable consideration payable for the transfer of property in goods, in pursuance of work contract, shall deduct an amount equal to four *per cent* of such sum payable under the Act on account of such works contract. In case of failure to deduct the amount or deposit the amount so deducted into Government treasury before the expiry of month following the month in which the deduction was made, the assessing authority may direct that such person shall pay by way of penalty a sum not exceeding twice the amount so deducted.

During the audit of records of six trade tax offices, it was noticed between June 2004 and October 2005 that eight dealers deducted tax of Rs. 30.01 lakh from contractors during the period from 2000-01 to 2002-03 but did not deposit the same in Government treasury within time prescribed. Delay ranged from two to 665 days. The assessing authorities while finalising the assessments between August 2003 and March 2005 failed to levy penalty of Rs. 60.02 lakh, as per details given below:

Audit Report (Revenue Receipts) for the year ended 31 March 2006

(Rupees in lakh)

Sl. No.	Name of office	No. of dealers	Year Month of assessment	Amount of tax	Period of delay	Amount of penalty
				Date of deposit		
1.	AC, Sec. II, TT, Gonda	1	2001-02 March-04	3.76	2 days to 202 days	7.52
				24.6.02		
2.	AC, Sec. I, TT, Deoria	1	2001-02 Aug.-03	4.50	30 days to 90 days	9.00
				-		
3.	AC, Sec. XII, TT, Lucknow	1	2002-03 Feb.-05	7.64	2 days to 206 days	15.28
				31.3.03		
4.	AC, Sec. II, TT, Khurja	3	2002-03 March-05	6.94	27 days to 57 days	13.88
				29.5.03		
			2002-03 Feb.-05	0.26	4 days to 34 days	0.52
				12.5.03		
			2001-02 March-05	0.29	425 days to 665 days	0.58
				31.3.03		
5.	DC (A)-IV, TT, Ghaziabad	1	2000-01 & 2001-02 Feb. 03 & March-04	5.48	49 days to 173 days	10.96
				23.10.02		
6.	DC (A)-II, TT, Aligarh	1	2002-03 Dec.-04	1.14	23 days	2.28
				23.10.02		
Total		8		30.01		60.02

After this was pointed out, department imposed penalty of Rs. 8.89 lakh in case of Ghaziabad and Gonda between July 2004 and December 2005. Replies in other cases are awaited (July 2006).

The cases were reported to Government between August 2004 and December 2005. Reply has not been received (July 2006).

2.8.4 Under the UPTT Act, if the assessing authority is satisfied, that a dealer has concealed his turnover or has deliberately furnished incorrect particulars of his turnover, he may direct such dealer to pay by way of penalty, in addition to tax, a sum not less than 50 per cent, but not exceeding 200 per cent of the amount of tax which would thereby have been avoided.

Test check of records of 26 trade tax offices revealed between May 2003 and August 2005 that out of 30 dealers, the assessing officers while assessing 25 cases and reassessing five cases between March 1999 and August 2005, found that the dealers had concealed turnover of Rs. 24.82 crore during the period from 1995-96 to 2004-05 but failed to levy minimum penalty of Rs. 72.60 lakh on the tax assessed of Rs. 1.45 crore as shown in Appendix-B.

After this was pointed out, between January 2004 and December 2005, the assessing officers intimated that penalty of Rs. 52.26 lakh in 19 cases has been imposed. Replies in other cases are awaited (July 2006).

The cases were reported to department and Government between January 2004 and December 2005; replies are awaited (July 2006).

2.8.5 Under UPTT Act, if the assessing authority is satisfied that any dealer or other person has without reasonable cause failed to furnish the return of his turnover or furnish it within the time allowed in the manner prescribed, or deposit the tax due under this Act, before furnishing the return or alongwith the return as required under the provision of this Act, he may direct the dealer

to pay by way of penalty in addition to tax, if any, payable by him, a sum which shall not be less than 10 *per cent* but not exceeding 25 *per cent* of the tax due, if the tax due is upto Rs. 10,000 and 50 *per cent* if it is above Rs. 10,000.

Test check of records of four trade tax offices¹ revealed between January 2003 and January 2005 that four dealers who were assessed between June 2002 and October 2003 for the period 1999-2000 to 2001-02 had not deposited their admitted tax of Rs. 84 lakh in time. Delay ranged from three to 159 days. Belated payment of admitted tax attracted penalty amounting to Rs. 13.76 lakh which was not imposed by the assessing officers.

After this was pointed out, between February 2003 and December 2004, department imposed penalty of Rs. 4.48 lakh in three cases between July 2004 and November 2005; reply in other cases is awaited (July 2006).

The cases were reported to department and Government between April 2004 and March 2006; replies are awaited (July 2006).

2.8.6 Under UPTT Act, read with Government notification dated 21 May 1994, a manufacturer is allowed to purchase raw materials and packing materials etc. without payment of tax, required for use in the manufacture of such goods, which he is authorised to manufacture, for sale within the State or in the course of inter State sale or export out of India. In case, the raw materials or goods are disposed of for a purpose other than that for which the recognition certificate² was granted, the dealer shall be liable to pay by way of penalty, a sum which shall not be less than the amount of relief in tax so secured by him, but not more than three times of such relief.

Test check of records of three³ trade tax offices revealed between November 2002 to June 2005 that during the period from 1994-95 to 2002-03, three dealers holding recognition certificate for the manufacture of goods, purchased raw materials without payment of tax/at concessional rate of tax and got relief in tax to the tune of Rs. 12.22 lakh. Since the raw materials were disposed of otherwise/sold in the same form and condition and not used in the manufacture of such goods for which the recognition certificates were granted, the dealers were liable to pay minimum penalty of Rs. 12.22 lakh which was not imposed.

After this was pointed out, in one case assessing officer imposed the maximum penalty of Rs. 9.69 lakh in October 2004; reply in other cases is awaited (July 2006).

The cases were reported to department and Government between March 2003 and August 2005; replies are awaited (July 2006).

¹ DC (A)-II TT Allahabad, DC (A)-I TT Ghaziabad, DC (A)-II TT Ghaziabad and AC TT Gulawati.

² Recognition Certificate - A certificate issued by the department to manufacturer stating the names of goods to be manufactured and its raw material.

³ TTO Sec. XVII Kanpur, DC(A)-IV TT Kanpur and DC(A)-I TT Kanpur.