CHAPTER-II

VALUE ADDED TAX, CENTRAL SALES TAX AND ENTRY TAX ETC.

2.1 Tax Administration

Value Added Tax, Entry Tax, Central Sales Tax, Profession Tax, Entertainment Tax, Luxury Tax laws and rules framed thereunder are administered at the Government level by the Additional Chief Secretary, Finance Department. The Commissioner of Commercial Taxes (CCT) is the head of the Commercial Tax wing of Finance Department who is assisted by Additional CCTs in three Zones, 12 Joint CCTs (JCCTs) in 12 Ranges/ 45 Deputy CCTs (DCCTs)/Assistant CCTs (ACCTs) in 45 Circles, 14 Commercial Tax Officer (CTOs) in 14 Assessment Units. They are assisted by CTOs, Assistant CTOs (ACTOs) and other allied staff for administering the relevant Tax laws and rules under Odisha Value Added Tax (OVAT) Act, 2004, Odisha Entry Tax (OET) Act, 1999, Central Sales Tax (CST) Act, 1956, Odisha State Tax on Profession, Trades, Callings and Employment commonly known as Profession Tax Act, 2000. Besides, there are six Enforcement Ranges headed by Special Commissioners of Commercial Taxes (Enforcement) and 15 Investigation Units for checking tax evasion and interstate verification.

2.2 Internal Audit

The Internal Audit Wing (IAW) of the Department is defunct since 2002-03. The Department has not taken any steps to revive IAW despite this being pointed out in Audit Reports (Revenue Receipts) for the years ended 31 March 2009 and 31 March 2012. The Department stated (August 2014) that steps would be taken to revive IAW.

2.3 Results of audit

In 2013-14, test check of records of 56 units relating to Odisha Value Added Tax (OVAT), Central Sales Tax (CST), Odisha Entry Tax (OET), Odisha Entertainment Tax and Profession Tax assessments and other records showed underassessment of tax and other irregularities involving ₹ 843.69 crore in 365 cases which fall under the following categories as given in **Table - 2.1**.

Table - 2.1

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
Sales Tax/VAT(including CST)			
1	Audit on **"Scrutiny of returns under VAT regime by the Commercial Tax Department"**	1	463.19
2	Under-assessment of tax	74	25.74
3	Acceptance of defective statutory forms	18	7.31
4	Evasion of tax due to suppression of sales/purchase	15	12.18
5	Irregular/incorrect/excess allowance of ITC	31	23.28
6	Other Irregularities	144	130.48
	Total	**283**	**662.18**

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
Entry Tax			
1	Under-assessment of tax	54	96.94
2	Evasion of tax due to suppression of sales/purchase	2	0.48
3	Irregular/incorrect/excess allowance of ITC	1	0.01
4	Other Irregularities	25	84.08
	Total	**82**	**181.51**
	Grand Total	**365**	**843.69**

During the course of the year, the Department accepted underassessment and other deficiencies of ₹ 34.69 crore in 137 cases which were pointed out in audit during 2013-14 and earlier years. An amount of ₹ 0.49 crore was realised in 36 cases during the year 2013-14. A few illustrative cases involving ₹ 501.46 crore are discussed in the following paragraphs from 2.4 to 2.9.1.

Audit also test checked records relating to expenditure accounts of the above units and found irregularities involving ₹ 1.41 crore in 39 cases which fall under the following categories as given in **Table - 2.2**:

Table - 2.2

(₹ in lakh)

Sl. No	Categories	Cases	Amount
1	Irregularity in management of cash	1	0.23
2	Irregular payment of House Rent	9	25.38
3	Excess payment of pay and allowance	7	0.12
4	Irregular double payment for application software	1	82.01
5	Other Irregularities	21	32.21
Total		**39**	**140.67**

During the course of the year, Department accepted irregularities and other deficiencies of ₹ 0.82 lakh in eight cases which were pointed out in Audit during 2013-14 and earlier years and realised the same.

2.4 Audit of "Scrutiny of returns under VAT regime by the Commercial Tax Department"

2.4.1 Introduction

After introduction of the Odisha Value Added Tax Act (OVAT Act), 2004 with effect from 1 April 2005, dealers are required to file returns for every tax period in the prescribed form within twenty-one days from the date of expiry of such tax period to the Circle/ Assessment Unit, as the case may be, where the place of business or the principal place of business is located. The Act provides that each such return shall be scrutinised by the Assessing Authorities to verify the correctness of calculation, application of correct rate of tax and interest, claim of input tax credit made therein and full payment of tax and interest payable by the dealer for such tax period. If the returns filed by the dealer are found to be in order, it shall be accepted as self-assessed. If any mistake is detected as a result of scrutiny, the assessing authority shall serve a notice in the prescribed form on the dealer to make payment of the extra amount of tax along with interest as per the provisions by such date as may be specified in that notice. Under the provisions of the Act, assessments of only dealers selected on certain parameters are made on the basis of recommendations of tax audit team during tax audit conducted in the business premises of the dealer.

Rule 7AA of the Central Sale Tax (Odisha) Rules, provides for scrutiny of each and every return furnished by a registered dealer by the assessing authority under these rules. Similarly, Section 7(10) of the Odisha Entry Tax Act, 1999 provides that each and every return in relation to any tax period furnished by a dealer shall be subject to scrutiny by the assessing authority.

The Commissioner of Commercial Taxes (CCT), Odisha, Cuttack had issued directions in October 2006 that the Commercial Tax Officers shall examine the returns thoroughly within one week after filing date of returns under the OVAT Act and report to the respective Assistant Commissioners at the end of every week. The Assistant Commissioners shall ensure proper and full scrutiny of returns and report to the head office at the end of the week.

Scrutiny of returns, being a vital issue affecting the revenue of the State was taken up through audit of 15[1] out of total 45 Circles covering the tax periods from 2010-11 to 2012-13, the extent of compliance to the provisions under the Acts and the Rules as well as the executive instructions issued from time to time regarding scrutiny of returns by the Sales Tax Authorities (STAs).

2.4.2 Provisions for scrutiny of returns under VAT regime

Under Section-33 (1) of the OVAT Act read with Rule 34 (1)(a) of the OVAT Rules, every dealer registered under the Act and assigned with Taxpayers' Identification Number (TIN) shall furnish return for each tax period in Form VAT-201 within twenty-one days from the date of expiry of such tax period to the Circle/Assessment Unit, as the case may be, where, the place of business

[1] Angul, Balasore, Barbil, Bhubaneswar-I, Bhubaneswar-II, Bhubaneswar-III, Bhubaneswar-IV, Cuttack-II, Ganjam-II, Jajpur, Kalahandi, Mayurbhanj, Phulbani, Rayagada and Rourkela-II.

or the principal place of business is located. Similar provisions are also made under Section-7 of the OET Act and Rule-7 of the CST (Odisha) Rules for filing of returns by the dealers in Form-E3 and Form-I respectively.

Section 38 of the OVAT Act, Section 7(10) of the OET Act and Rule 7AA of the CST (O) Rules provide that each and every return in relation to any tax period furnished by a registered dealer shall be subject to system-based or manual scrutiny by the Assessing Authorities (AAs) to verify the correctness of calculation, application of correct rate of tax and interest, claim of input tax credit (ITC) made therein and full payment of tax and interest payable by the dealer for such period. If as a result of such scrutiny, the dealer is found to have made payment of tax less than what is payable by him for the tax period as per the return furnished, the AA shall issue a notice in prescribed form[2] to the dealer directing him to pay the balance tax and interest thereon by such date as may be specified in that notice.

As per the provision of Section 39 of the OVAT Act and Section 9 (2) of the OET Act, if the returns filed by a registered dealer in respect of any tax period within the prescribed time are found to be in order, it shall be accepted as self-assessed subject to adjustment of any arithmetical error apparent on the face of the said return by issuing intimation for rectification to that dealer in the prescribed form[3] for necessary rectifications within period prescribed in such intimation.

Further, under Rule-7A of CST (Odisha) Rules, every registered dealer, while filing return for the month/ quarter shall furnish to the Assessing Authority, the declarations and/ or certificates received from the purchasing dealers/ transferees for the transactions made in the quarter preceding to the quarter for which the return is filed showing the particulars of transactions in the prescribed statements. Under Rule-7AA, each such statement and declaration forms and certificates shall be subject to scrutiny by the AA to ensure that the exemptions/ deductions/ concessions claimed in the return under the CST Act are duly supported by the declaration forms or certificates duly filled in and in order; the information furnished in the statements are in conformity with the declaration forms or certificates. Further, under Rule-12 of the Rules *ibid*, if the declaration forms with reference to return so filed are found to be in order, the return shall be accepted as self-assessed. In cases where any or more of the conditions as mentioned above is not fulfilled, the AA shall proceed to assess the tax due provisionally, giving due opportunity to the dealer. Scrutiny of returns with reference to related forms of declarations/ certificates shall be undertaken within one month from the due date for submission of forms.

As per the CCT's Circular dated 28 April 2008, every Circle has to monitor the scrutiny of returns through a register maintained in the prescribed form. Further, as per instructions of the CCT in Circular dated 20 May 2009, the Assistant Commercial Tax Officer (ACTO) of the Circle has to scrutinise the hardcopy of the return and validate the same as "Scrutinised" with his/ her signature with date. In case of non-filing of returns under the OVAT Act, the AAs are required to issue notices for provisional assessment.

[2] Form VAT-209 under the OVAT Act, Form E-24 under the OET Act and Form-II under the CST (O) Rules.
[3] Form VAT-305 under the OVAT Act, Form E-28 under the OET Act and Form-II under the CST (O) Rules.

AUDIT FINDINGS

Scrutiny of returns under OVAT Act

2.4.3 Irregular availment of Input Tax Credit

Under Section 20 (3) of the OVAT Act, input tax credit (ITC) shall be allowed to dealers on purchases made within the State from registered dealers holding a valid certificate of registration (RC), for goods intended for the purpose of sale or resale or manufacturing goods for sale. Column-57 of VAT return prescribed under Rule-34 of the OVAT Rules provides, among other things, for filling up of the details of selling dealers of the State from whom the goods are purchased.

2.4.3.1 Audit, during scrutiny of returns for the tax periods during 2010-11 to 2012-13, noticed that in 15 selected Circles, 26,511 dealers who had availed/ claimed ITC of ₹ 2,247.38 crore in the returns for 88,265 tax periods, did not fill up the returns showing details of selling dealers of the State from whom goods were purchased and value of such goods in column-57 of the VAT return. In absence of such details, genuineness of claims of dealers towards ITC was not verifiable with the sales details of the respective selling dealers. Audit noticed that AAs neither served any notice to dealers for furnishing such details nor reversed such ITC claimed without supporting details. This indicated that either the said returns were not scrutinised or the scrutiny was ineffective.

After Audit pointed out these cases, Government stated (December 2014) that the detailed information on purchase and sale of tax invoices were sought to be furnished to enable the Commercial Tax wings for system based cross checking of ITC claims but the system was not ready by that time. Government further stated that the information on purchase and sales to be filled in by the dealers in case of some big dealers runs into hundreds of pages and in absence of the system, it was humanly impossible to cross verify manually the sales and purchases tax invoice wise. The fact however remained that genuineness of the claim of ITC remained unverified in absence of details of tax invoices.

2.4.3.2 During verification of VAT returns in Value Added Tax Information System (VATIS) filed by the dealers for the tax periods during 2012-13, Audit noticed that 376 dealers of six Circles[4] availed ITC of ₹ 1.90 crore in respect of 1,326 tax periods exhibiting the details of dealers from whom the purchases were made. It was noticed that the TINs of selling dealers in respect of 1,120 tax periods were not assigned to any dealer and in respect of 206 tax periods, the RCs of selling dealers were cancelled prior to purchase of goods. However, AAs of Circles, could not detect such irregularities. Thus, genuineness of ITC of ₹ 1.90 crore availed by the dealers remained unverified.

After Audit pointed out these cases, Government stated (December 2014) that the dealers who had purchased from sellers whose RCs had been cancelled were not entitled to avail input tax credit and the field officers were required to examine those cases and take appropriate legal action. Government further

[4] Balasore, Bhubaneswar-I, Bhubaneswar-II, Jajpur, Mayurbhanj and Rourkela-II.

stated that the detailed compliances would be furnished after receipt of action taken reports from the Circles.

2.4.4 Less payment of tax

2.4.4.1 Less payment of tax due to application of lower rate of tax

As per Government of Odisha, Finance Department Notification dated 26 March 2011, the rate of tax in respect of goods under Part-III of Schedule-B to the OVAT Act was enhanced from 12.5 *per cent* to 13.5 *per cent*.

During verification of returns under the OVAT Act for the tax periods from April 2011 to March 2012 in VATIS, Audit noticed that in 14 Circles[5], 94 dealers paid tax, in respect of 111 tax periods, at the rate of 12.5 *per cent* on goods valued at ₹ 9.68 crore instead of 13.5 *per cent*. Thus, there was less payment of tax of ₹ 9.68 lakh at the differential rate of one *per cent*. However, AAs could not detect payment of tax at such lower rate.

After Audit pointed out the above cases, Government stated (December 2014) that detailed compliances would be furnished after receipt of action taken reports from the Circles.

2.4.4.2 Less payment of tax due to irregular availing of inadmissible ITC

ITC is not admissible on purchase of goods for mining since mining does not come under the definition of 'manufacturing'. The return under the OVAT Act (Form VAT-201) provides a column 21(v) for deducting non-creditable VAT paid on goods used in mining from the total ITC due.

In Angul Circle, Audit noticed that while filing returns under the OVAT Act for the tax periods during 2010-11 and 2011-12, a dealer engaged in mining, irregularly availed non-creditable ITC of ₹ 18.89 crore towards tax paid on purchase of goods such as spare parts of machinery, automobiles, explosives, lubricating oil which are used in mining and did not deduct the same from the total ITC. The AA did not disallow such inadmissible ITC indicating that the returns were either not scrutinised or scrutiny was ineffective. Thus, less payment of tax of ₹ 18.89 crore remained undetected.

After Audit pointed out the case, Government stated (December 2014) that detailed compliances would be furnished after receipt of action taken reports from the Circles.

2.4.4.3 Less payment of tax due to disclosure of less sales turnover

Under Section-26 of the OET Act, every registered manufacturer of scheduled goods shall, in respect of sale of its finished products, collect by way of tax, an amount equal to the tax payable on the value of such finished product under Section-3 of the Act. Chemicals such as Lye, Hydrogen Chloride (Hcl), Chlorine (Cl_2) and Sodium Hypo being unspecified goods and coming under Part-III of Schedule-B to the OVAT Act are taxable at the rate of 12.5 *per cent* upto 31 March 2011 and at the rate of 13.5 *per cent* thereafter.

[5] Balasore, Barbil, Bhubaneswar-I, Bhubaneswar-II, Bhubaneswar-III, Bhubaneswar-IV, Cuttack-II, Ganjam-II, Jajpur, Kalahandi, Mayurbhanj, Phulbani, Rayagada and Rourkela-II.

During verification of returns under the OET Act with that under the OVAT Act in Ganjam-II Circle, Audit noticed that a dealer sold chemicals such as Lye, Hcl, Chlorine and Sodium Hypo valued at ₹ 237.83 crore during 2010-11 to 2012-13 to manufacturers and dealers of Odisha and collected entry tax thereon as per the provisions of the Act. However, on cross check of VAT returns for the same period, Audit noticed that the dealer disclosed sales turnover inside Odisha amounting to ₹ 204.70 crore thereby exhibiting less sales turnover by ₹ 33.13 crore on which VAT of ₹ 4.43 crore was payable. The AA did not verify the sales figures of VAT returns with reference to the sales figures exhibited under the OET Act. Thus, due to non/ ineffective scrutiny of returns, less payment of tax of ₹ 4.43 crore by the dealer remained undetected.

After Audit pointed out the case, Government stated (December 2014) that detailed compliances would be furnished after receipt of action taken reports from the Circles.

2.4.5 Irregular reduction of sales turnover in the revised return

Under Section 33(4)(a) and (b) of the OVAT Act, if any dealer, having furnished returns, discovers any omission or error in any return so furnished, or where there is requirement for adjustment of the sale price or tax or both in relation to sale of any goods, makes such adjustment by way of issue of credit note or debit note, he may file a revised return within three months following the tax period to which the original return relates. Section 23(3) of the Act provides that in case of goods returned or rejected by the purchaser, a credit note shall be issued by the selling dealer to the purchasing dealer and a debit note shall be issued by the purchaser to the selling dealer containing the requisite particulars as may be prescribed.

In Angul Circle, Audit noticed that two dealers had filed original returns under OVAT Act for the tax period November 2011 disclosing sales turnover of ₹ 1,009.84 crore and output tax of ₹ 40.39 crore. But subsequently both the dealers filed (December 2011 and January 2012) revised returns for the same tax period disclosing sales turnover of ₹ 304.82 crore and output tax of ₹ 12.19 crore. Audit noticed that reduction of sales turnover by ₹ 705.02 crore and corresponding output tax by ₹ 28.20 crore was not supported by reasons for such reduction of sales turnover. The AAs had also not initiated any action to ascertain the reasons for reducing the turnover and output tax.

After Audit pointed out these cases, Government stated (December 2014) that detailed compliances would be furnished after receipt of action taken reports from the Circles.

2.4.6 Non-levy of interest and penalty for delayed payment of tax

Under Section 34(1) of the OVAT Act, where a dealer required to file return under the Act, fails without sufficient cause to pay the amount of tax due as per the return, such dealer shall be liable to pay interest in respect of the tax which he fails to pay according to the return at a rate of one *per cent* per month from the due date of filing return to the date of its payment or to the date of order of assessment, whichever is earlier. Further, under Section 34(2),

if the dealer fails to pay the amount of tax due and interest payable, the Commissioner may, after giving the dealer a reasonable opportunity of being heard, direct him to pay penalty at the rate of two *per cent* per month on the tax and interest so payable.

Audit, during verification of returns under the OVAT Act with tax payment details in VATIS for the tax periods during 2010-11 to 2012-13, noticed that in four Circles[6], 65 dealers paid tax of ₹ 130.60 crore admitted in returns relating to 130 tax periods with delays ranging from one to 467 days. Despite delay in payment of taxes, the AAs did not issue any notice to the dealer imposing interest amounting to ₹ 35.23 lakh and did not initiate any action for levy of penalty as prescribed in the Act.

After Audit pointed out these cases, Government stated (December 2014) that detailed compliances would be furnished after receipt of action taken reports from the Circles.

Scrutiny of returns under CST Act

2.4.7 Ineffective scrutiny of returns leading to evasion/ loss of central sales tax due to non-submission of statutory declarations/ certificates

Under Rule-12(7) of the CST (Registration & Turnover) Rules, 1957 read with Rule-7A (1) of the CST (O) Rules, every registered dealer, while filing return under the CST Act for a month/ quarter shall furnish to the Assessing Authority (AA), the declarations in Form- 'C' and 'F' or certificates in 'E-I'/ 'E-II', as the case may be, obtained from the purchasing dealers/ transferees for the transactions made in the quarter preceding to the quarter for which the return is filed, showing the particulars of transactions in a statement prescribed. As per Rule-7AA(2) of the CST (O) Rules, each such declaration form and certificate shall be subject to scrutiny by the AA to ensure that the exemptions/ deductions/ concessions claimed in the returns filed are duly supported by the said declaration forms or certificates. Further, under Rule 12(1)(a) of the CST (O) Rules, scrutiny of returns with reference to the related declaration forms /certificates shall be undertaken within one month from the due date for submission of Forms. Under Rule 12(1)(b) and (c), in case the declaration forms and/or certificates are not furnished on/before the due date, the AA shall proceed to assess the tax dues provisionally on the basis of past returns or past records and issue notice demanding tax.

2.4.7.1 Non-submission of statutory forms

During verification of returns for the tax periods during 2010-11 to 2012-13 in respect of inter-State sales and branch transfers in VATIS, Audit noticed that in the 15 selected Circles, although 4,973 dealers claimed/ availed concession/ exemption of tax aggregating to ₹ 1,684.26 crore while filing the returns for 21,823 tax periods, statutory declaration forms/ certificates in support of the claim of concession/ exemption of tax required to be submitted by the end of the next quarter of the relevant tax periods were not submitted by them till the

[6] Bhubaneswar-IV, Jajpur, Kalahandi and Mayurbhanj.

date of audit. The AAs did not take any action for assessing the tax dues provisionally.

2.4.7.2 Non-submission of statutory forms for the time-barred period

Rule 12(4)(e) of CST(O) Rules provides that no order of assessment of the escaped turnover under Section 12(4) shall be made after expiry of five years from the end of the period in respect of which the tax is assessable.

During verification of returns under CST Act in VATIS in respect of inter-State sales and branch transfers for the tax periods from October 2006 to May 2009, Audit noticed that in 14 Circles[7], 954 dealers did not submit statutory declarations/ certificates in respect of 5,253 tax periods although these were required to be submitted by the end of next quarter of the relevant tax period i.e. between March 2007 and September 2009. Concerned AAs did not take any action for assessing the tax dues of dealers provisionally. Since assessment under the CST Act for the above period has become time-barred under the extant provisions, concession/ exemption of tax of ₹ 191.45 crore (calculated at a minimum rate of tax) availed by dealers without submitting declarations/ certificates was fraught with risk of possible loss of Government revenue.

After Audit pointed out these cases, Government stated (December 2014) that the modality as provided in Rule 7A of CST (O) Rules was not found to be convenient in the manner contemplated since there was no system of acknowledging receipts of declarations/certificates. In such cases, the dealer did not consider it safe to submit the declaration/certificate without a formal acknowledgement. Government further stated that after introduction of e-filing system the system provided in Rule 7(a) asking for submission of declaration forms/certificates of the preceding quarter at the time of return filing could not be implemented because of the electronic system.

2.4.8 Non-levy of interest and penalty for delayed payment of tax

Under Rule 8 (1) of the CST (O) Rules, if a registered dealer, without sufficient cause, fails to pay the amount of tax due as per the return, such dealer shall be liable to pay interest in respect of the tax, which he fails to pay according to the return, at the rate of one *per cent* per month from the date the return for the period was due to the date of its payment or to the date of order of assessment, whichever is earlier. Further under Rule 8A (1), if the dealer fails to pay the amount of tax due and the interest payable, the AA, after considering the explanation of the dealer to a show cause notice issued to him, may direct him to pay a penalty at the rate of two *per cent* per month on the tax and interest so payable.

During verification of returns under the CST Act with tax payment details in VATIS for the tax periods during 2010-11 to 2012-13, Audit noticed that in eight Circles[8], 67 dealers paid tax of ₹ 16.16 crore admitted in returns relating to 131 tax periods with delays ranging from one to 676 days. The AAs did not

[7] Angul, Balasore, Barbil, Bhubaneswar-I, Bhubaneswar-II, Bhubaneswar-III, Bhubaneswar-IV, Ganjam-II, Jajpur, Kalahandi, Mayurbhanj, Phulbani, Rayagada and Rourkela-II.

[8] Angul, Balasore, Barbil, Bhubaneswar-II, Cuttack-II, Ganjam-II, Kalahandi and Rayagada.

impose interest amounting to ₹ 17.06 lakh for such delays and also failed to initiate action as prescribed in the Act.

After Audit pointed out these cases, Government stated (December 2014) that action is being taken at Circle level to verify each case on the basis of actual date of payment of tax and action as deemed proper as per provision of law would be taken and detailed compliance would be furnished after receipt of action taken reports from the Circles.

Scrutiny of returns under OET Act

2.4.9 Ineffective scrutiny led to irregular deduction under OET Act

Under Rule 3(5) read with Rule 17(2) of OET Rules, no tax shall be levied in respect of such goods purchased by a dealer, for which the details are furnished in Form E-1 along with the return to prove that entry tax has already been paid under the Act for such goods. Under Section 7(11) of the OET Act, if any mistake is detected as a result of scrutiny of returns, the AA shall serve a notice to the dealer to make payment of the extra amount of tax.

During verification of returns, Audit noticed that in 15 Circles[9], although 7,091 dealers claimed deduction of ₹ 38,496.11 crore from purchase value of scheduled goods while filing returns for 26,651 tax periods under OET Act during 2010-11 to 2012-13, they did not submit E-1 forms in support of their claims. AAs could not detect such irregular claims of deduction and did not serve any notice to the dealers for payment of extra amount of tax. Thus, genuineness of claim of deduction of ₹ 38,496.11 crore from purchase turnover not supported with E-1 forms remained undetected and was fraught with risk of escapement of entry tax of ₹ 192.48 crore calculated at a minimum rate of 0.5 *per cent.*

After Audit pointed out these cases, Government stated (December 2014) that the purchase list submitted with VAT return can be taken into account for the purpose of allowing deduction towards ET paid goods and non-submission of E-1 forms on the above ground should not be taken as less payment of entry tax amounting to ₹ 192.48 crore as observed by the audit. Fact however remains that the dealers had also not submitted the purchase lists along with returns filed under the OVAT Act.

2.4.10 Non-levy of interest and penalty for delayed payment of tax

Under Section 7 (5) of the OET Act, where a dealer fails without sufficient cause, to pay the amount of tax due as per the return for any tax period, such dealer shall be liable to pay interest in respect of the tax, which he fails to pay according to the return, at the rate of two *per cent* per month (one *per cent* per month with effect from 1 July 2012) from the due date of filing of return to the date of its payment or the date of order of assessment whichever is earlier. Further, sub-Section-6 of the said Section provides that if any dealer, fails to pay the amount of tax due and interest payable, the Commissioner may, after giving the dealer a reasonable opportunity of being heard, direct him to pay

[9] Angul, Balasore, Barbil, Bhubaneswar-I, Bhubaneswar-II, Bhubaneswar-III, Bhubaneswar-IV, Cuttack-II, Ganjam-II, Jajpur, Kalahandi, Mayurbhanj, Phulbani, Rayagada and Rourkela-II.

penalty at the rate of two *per cent* per month on the tax and interest so payable.

During verification of returns under the OET Act with tax payment details in VATIS for the tax periods during 2010-11 to 2012-13, Audit noticed that in 12 Circles[10], 434 dealers paid tax of ₹ 34.80 crore admitted in the returns relating to 804 tax periods with delays ranging from one to 1,098 days. The AAs did not impose interest of ₹ 1.01 crore for such delays and failed to initiate any action as prescribed in the Act till the date of Audit.

After Audit pointed out these cases, Government stated (December 2014) that action would be taken at Circle level to verify each case on the basis of actual date of payment of tax and action as deemed proper as per provision of law would be taken and detailed compliance would be furnished after receipt of action taken reports from the Circles.

2.4.11 Other points of interest

2.4.11.1 Non-payment of tax on goods brought through waybills by ineligible dealers remained undetected

Under Section-31 (7) and (8) of the OVAT Act, every dealer whose registration has been cancelled based on his application or otherwise, shall surrender the certificate of registration (RC) along with the unused way bills, account of utilisation of way bills and statutory forms for which no account has been rendered on the date of cancellation, within seven days from the date of receipt of the order of cancellation. Under Section 40(1) of the Act, where a registered dealer fails to furnish the return in respect of any tax period within the prescribed time, the AA, may proceed to assess the dealer provisionally for that period. Further, under Section 44(1) of the Act, if the AA, on the basis of any information, is satisfied that any dealer liable to pay tax under the Act, has failed to get himself registered, he shall proceed to assess, to the best of his judgment, the amount of tax due from the dealer in respect of such period and all subsequent periods.

Verification of returns for the tax periods during 2010-11 to 2012-13 revealed that-

- in nine Circles[11], 19 dealers whose RCs had been cancelled between June 2007 and January 2013, used waybills in 93 cases for purchase of goods valued at ₹ 4.76 crore between May 2009 and January 2013 i.e. after cancellation of RCs. The AAs, in these cases, failed to ensure surrender of unused waybills.
- in 14 Circles[12], 199 dealers used waybills in 795 cases for purchase of goods valued at ₹ 31.12 crore during these years but did not file returns. AAs could not detect such purchase of goods through waybills and did not assess the dealers under Section 40(1) and 44(1) respectively till the date of audit.

[10] Angul, Barbil, Bhubaneswar-I, Bhubaneswar-II, Bhubaneswar-III, Bhubaneswar-IV, Cuttack-II, Ganjam-II, Jajpur, Kalahandi, Mayurbhanj and Rayagada.

[11] Balasore, Barbil, Kalahandi, Bhubaneswar-I, Bhubaneswar-II, Bhubaneswar-III, Bhubaneswar-IV, Cuttack-II and Jajpur.

[12] Angul, Balasore, Bhubaneswar-I, Bhubaneswar-II, Bhubaneswar-III, Bhubaneswar-IV, Cuttack-II, Ganjam-II, Jajpur, Kalahandi, Mayurbhanj, Phulbani, Rayagada and Rourkela-II.

Thus, non-payment of VAT and ET of ₹ 4.15 crore on goods brought through waybills remained undetected.

After Audit pointed out these cases, Government stated (December 2014) that detailed compliances would be furnished after receipt of action taken reports from the Circles.

2.4.11.2 Scrutiny of returns without cross verification with the returns of purchasing dealer

In Bhubaneswar-IV Circle, Audit noticed from the returns that for the tax periods during 2012-13, a dealer availed exemption of VAT of ₹ 16.65 crore and ET of ₹ 2.47 crore on purchase of machinery valued at ₹ 123.35 crore sold in course of import (known as High Sea Sale) to another dealer under Section-5(2) of the CST Act. Audit however noticed from VATIS that the purchasing dealer had not filed any return for the tax periods during 2012-13 from which the genuineness of such sales in course of import could be ascertainable. Thus, scrutiny of returns without cross check with returns of purchasing dealer was fraught with the risk of the claim of exemption of tax by the instant dealer being fraudulent and consequential less payment of tax of ₹ 19.12 crore.

After Audit pointed out the case, Government stated (December 2014) that detailed compliances would be furnished after receipt of action taken reports from the Circles.

2.4.11.3 Less payment of Entry Tax

Under Rule 3(2) of the OET Rules, goods specified in Part II of the Schedule to the Act are exigible to tax at the rate of two *per cent* of the purchase value. Machinery, equipment and spare parts and components used in manufacture, mining, generation of electricity or for execution of works contract are exigible to tax at the rate of two *per cent* as per entry-9 of Part-II of Schedule to the OET Act.

In Cuttack-II Circle, Audit noticed that during 2012-13, a dealer disclosed purchase of goods valued at ₹ 17.21 crore from outside the State in its VAT return. However, on verification of ET returns in VATIS, Audit noticed that the dealer paid ET at the rate of two *per cent* on purchase of spare parts valued at ₹ 5.32 crore but did not pay ET on the remaining capital goods valued ₹ 11.89 crore purchased from outside the State on which ET of ₹ 23.79 lakh was payable. The AA could not detect the same. Thus, less payment of tax of ₹ 23.79 lakh under the OET Act by the dealer remained undetected.

After Audit pointed out the case, Government stated (December 2014) that detailed compliances would be furnished after receipt of action taken reports from the Circles.

2.4.11.4 Less payment of entry tax showing branch transfer

Under Rule 17(3) of OET Rules, the purchase value of scheduled goods brought into a local area but sent outside Odisha otherwise than by way of sale shall be deducted while determining the purchase value liable to tax under the rules.

During verification of returns under the OET Act in VATIS, Audit noticed that in Bhubaneswar-IV Circle, a dealer claimed deduction of ₹ 27.30 crore

towards value of scheduled goods brought into the local area but sent as such outside Odisha otherwise than by way of sale in the Annual ET return for the year 2012-13. But from the VAT return, Audit noticed that the dealer did not disclose any value of goods despatched to outside the State otherwise than by way of sale i.e. branch transfer or consignment (column-31). Further, no such disclosure was also made by the dealer in the return filed under CST Act. Thus, escapement of ET of ₹ 27.30 lakh (calculated at minimum of one *per cent)* remained undetected.

After Audit pointed out the case, Government stated (December 2014) that detailed compliances would be furnished after receipt of action taken reports from the Circles.

2.4.11.5 Disclosure of less purchase value of scheduled goods leading to escapement of entry tax

In Ganjam-II Circle, Audit noticed that during 2010-11 to 2012-13, a dealer had disclosed purchase of goods valued at ₹ 120.58 crore from outside the State in returns filed under the OET Act. But during verification of details of waybill utilisation statements of the dealer in VATIS, Audit noticed that the dealer had purchased scheduled goods worth ₹ 163.59 crore during the period. This implied that the dealer had suppressed purchase of goods valued ₹ 43.01 crore on which entry tax of ₹ 43.01 lakh at the rate of one *per cent* was payable. But this could not be detected by the AA.

After Audit pointed out the case, Government stated (December 2014) that detailed compliances would be furnished after receipt of action taken reports from the Circles.

2.4.11.6 Non filing of returns

Section 33 of OVAT Act, Section 7 of OET Act and Rule 7 of CST (Odisha) Rules provide for filing of returns by every registered dealer, unless exempted. Non filing of returns attracts levy of penalty and other action such as suspension and cancellation.

During analysis of VATIS database, Audit noticed the following cases of non submission of returns. Audit noticed that -

- in 15 Circles, 7,640 dealers did not file their monthly/ quarterly returns under OVAT/CST/OET Acts for the tax period between January 2010 and March 2013. The AAs did not initiate action as per the provisions of the Acts/Rules.
- in six[13] Circles, 724 registered dealers had not filed their monthly/quarterly returns during the period covered under audit and also prior to this period.
- in 10 Circles[14], 94 to 95 *per cent* dealers registered under OVAT/OET/CST Act did not file annual return during the period 2010-13 as detailed in the

[13] Balasore, Bhubaneswar-I, Bhubaneswar-II, Jajpur, Mayurbhanj, and Rourkela-II.

[14] Angul, Balasore, Bhubaneswar-I, Bhubaneswar-II, Bhubaneswar-III, Bhubaneswar-IV, Ganjam-II, Jajpur, Mayurbhanj and Rourkela-II.

table below:

Year	Total number of dealers	Number of dealers did not file annual return	Percentage
2010-11	48,632	46,400	95.41
2011-12	63,562	60,050	94.47
2012-13	70,060	66,084	94.32

Due to non-submission of annual returns, the details of transactions disclosed in Annual Audited Accounts of the dealers could not be cross verified.

Since these dealers did not file returns they remained outside the purview of scrutiny. Existence of such a large number of non filing dealers in case of monthly/quarterly tax periods could have adverse impact on the tax administration and encourage other misdemeanour.

After audit pointed out the cases of non filing of monthly/quarterly returns, Government stated (December 2014) that detailed compliances would be furnished after receipt of action taken reports from the Circles.

2.4.12 Internal Control Mechanism

Internal controls are intended to provide reasonable assurance of proper enforcement of laws, rules and departmental instructions. These also help in the prevention and detection of frauds and other irregularities. The internal controls also help in creation of reliable financial as well as management information systems for prompt and efficient services and for adequate safeguards against evasion of taxes and duties.

Audit noticed non-adherence to the provisions of the Acts and Rules as well as executive instructions by Circles. No reports or returns were required to be submitted by Circles in respect of scrutiny of returns. No guidelines were also prescribed for scrutiny of returns. Internal Audit, a vital part of an organisation, is not functioning in the Department.

2.4.13 Conclusion

Deficiencies in scrutiny of returns by the Departmental Authorities led to failure in detection of escapement of tax of ₹ 463.19 crore on account of VAT, CST and ET. Provisions of the Odisha Value Added Tax Act, the Odisha Entry Tax Act and the Central Sales Tax Act and the executive instructions regarding scrutiny of returns were not followed scrupulously by the assessing authorities of the selected Circles. While non-submission of declaration forms and certificates by dealers in support of claim of concession/ exemption of tax could not be detected, use of waybills for procurement of goods by the dealers whose certificates of registration were cancelled or who did not file returns also went unnoticed. Purchase and sales turnovers disclosed by dealers under one Act were not cross verified with the turnover disclosed under other Acts which led to less payment of tax going undetected. Interest and penalty for delayed payment of admitted tax were not imposed as per the provisions of the Act. The internal control mechanism needed improvement.

2.5 Other Audit observations

Audit test checked the assessment records relating to the OVAT, CST and OET Acts in Commercial Tax Range/ Circle offices of the State and noticed several cases of non-observance of the provisions of the aforesaid Acts and Rules made thereunder which led to non/short levy of tax, interest and penalty as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out by Audit. Such omissions on the part of the Assessing Authorities (AAs) are pointed out by Audit every year, but not only do many of the irregularities persist; these remain undetected till audit is conducted.

Odisha Value Added Tax

2.6 Non-observance/compliance of the provisions of the Act and Rules read with Government notifications

The Odisha Value Added Tax (OVAT) Act, 2004 and the Rules made there under provide for:

- *completion of audit assessments by the Assessing Authorities (AAs) on the basis of Audit Visit Reports (AVRs) and levy of tax on the correctly assessed Taxable Turnover (TTO) of outputs after giving due credit/adjustment of admissible Input Tax Credit (ITC);*
- *imposition of penalty at prescribed rates in addition to the tax assessed at the audit assessment stage by the AAs;*
- *demand and collection of tax/interest/penalty as per the prescribed procedures; and*
- *levy of penalty for non submission of certified reports on annual audited accounts as well as statements of closing stock in trade within the prescribed date.*

The AAs, while finalising the audit assessments of the dealers for certain tax periods, did not observe some of the aforesaid provisions read with the Government notifications issued from time to time, as mentioned in the following paragraphs:

2.6.1 Non initiation of timely action led to non realisation of Government dues

Under Section 38 of the OVAT Act read with Rule-40 of the OVAT Rules, each and every return furnished by the dealers shall be scrutinised by the AA and in case of any discrepancy such as incorrect calculation, application of incorrect rate of tax and interest, excess claim of input tax credit, less payment of tax etc., the AA is required to issue notices to the dealers with a direction to pay the differential tax dues and interest thereon by such date as specified in the notice.

Under Section-41 of the OVAT Act read with Rule-41 of the OVAT Rules, the Commissioner may select certain number of registered dealers or class of dealers ordinarily before the close of the year, for tax audit on random basis or

on the basis of risk analysis or on the basis of any other objective criteria, at such intervals or in such audit cycle, as may be prescribed. The Commissioner, where considered necessary to safeguard the interest of revenue or where any enquiry is required to be conducted on any specific issue or issues relating to any dealer or class of dealers on being referred by an officer of the Range or Circles, may direct audit to be taken up.

Section 30 of the OVAT Act empowers the Registering Authority (RA) to suspend and/ or cancel the Certificate of Registration (RC) of the dealer in case of non-furnishing of returns and misrepresentation of facts about its business activities.

As per the provisions of Rule-22 of the Central Sales Tax (Odisha) Rules, 1957 and Rule-34 of the OET Rules, the above provisions are also *mutatis mutandis* applicable in respect of all procedural and other matters incidental to the carrying out of the purpose of the CST Act as well as the OET Act for which no provision is made in the said Acts/Rules.

During scrutiny of audit assessments under the OVAT Act, the CST Act and the OET Act finalised during 2012-13 in two Circles[15], Audit noticed (November and December 2013) that nine dealers did not file returns consecutively for the period ranging between one and 36 months and had not been paying the tax dues. However, the RAs failed to detect these cases and did not take timely action for issuing show cause notices for suspension/ cancellation of their RCs. Though subsequently RCs were suspended/ cancelled and notices issued for conducting tax audit after delay of 282 to 1,390 days, by the time this was done the dealers had already closed their business. As a result, notices demanding ₹ 18.37 crore assessed towards tax (₹ 7.63 crore), interest (₹ 1.24 crore) and penalty (₹ 9.50 crore) during the audit assessments finalised during 2012-13 could not be served to three dealers as the addresses of business declared by the dealers were wrong and in six cases, the notices were served by way of affixture. Thus, failure of the RAs to initiate timely action led to non realisation of ₹ 18.37 crore.

After Audit pointed out these cases, DCCT, Rourkela-I Circle, while admitting the audit observations, assured (December 2013) that such type of lapses would not occur in future. He further stated that tax recovery (TR) proceedings would be initiated against the above dealers immediately. The DCCT, Rourkela-II Circle stated (December 2013) that tax recovery proceedings in accordance with Schedule-E had been initiated by issuing Form-2 to the dealers by way of affixture. He further stated that the Tahasildar, Rajgangpur had also been requested to furnish the immovable property particulars of the dealers.

Audit reported the matter to the CCT, Odisha in April 2014 and the Government in May 2014. Their replies are awaited (November 2014).

[15] DCCT, Rourkela-I and Rourkela-II.

2.6.2 Short levy of tax on receipts from Annual Maintenance Contracts

Under Section 9 of the OVAT Act, value added tax shall be levied on sale or purchase by a dealer as per the provisions of the Act. The word 'Sale' as defined under Section-2(45) of the Act includes, among other things, transfer of property in goods involved in the execution of works contract. Taxable turnover (TTO) of dealer as defined under Section-2(56) of the Act *ibid* means the turnover on which a dealer is liable to pay tax as determined after making such deduction from his gross turnover (GTO) as may be prescribed. In case of works contract, Rule-6(e) of the OVAT Rules, 2005 provides that expenditure incurred towards labour and service charges shall be deducted from the gross receipts for determining the TTO. Where a contractor fails to produce evidence in support of expenses towards labour and service charges or such expenses are not ascertainable from the terms and conditions of the contract or the books of accounts maintained for the purpose, expenses on account of labour and service charges shall be determined at the rate specified in the Appendix to the Rules *ibid*. As per Sl. No. 8 of the said Appendix, in case of service and maintenance of instruments, equipment, appliances, plants and machinery, 90 *per cent* of the gross receipts shall be deducted towards labour and service charges. Section 42(5) of the Act provides for imposition of penalty equal to twice the amount of tax assessed in the audit assessment. Electrical appliances, being unspecified items under Part-III of Schedule-B of the OVAT Act, are taxable at the rate of 12.5 *per cent* upto 31 March 2011 and at the rate of 13.5 *per cent* thereafter.

Audit scrutiny (June 2013) of assessment records of Bhubaneswar-I Circle revealed that a dealer engaged in sale and maintenance of water purifiers, vacuum cleaners had disclosed his total turnover of Annual Maintenance Contract (AMC) as ₹ 13.55 crore at the rate of 68 *per cent* of the total AMC turnover of ₹ 20.27 crore for the period from April 2007 to January 2011 and ₹ 0.96 crore at the rate of 10 *per cent* of the total AMC turnover of ₹ 9.64 crore for the period from February 2011 to March 2012 and deposited tax amounting to ₹ 1.82 crore. The AA while finalising the assessment for the tax period from April 2007 to March 2012, assessed the taxable turnover of the dealer at ₹ 2.99 crore at the rate of 10 *per cent* of the entire turnover of ₹ 29.91 crore and levied tax of ₹ 0.38 crore. Since the dealer exhibited his TTO for the period April 2007 to January 2011 after deducting the labour/ service charges as admissible, reduction of the same by the AA to 10 *per cent* led to short determination of taxable turnover by ₹ 11.53 crore and consequential short levy of tax of ₹ 1.44 crore.

AA stated (August 2013) that as per the AMC, the dealer did servicing and maintenance only and as such Sl. No.8 of the Appendix to the OVAT Act is applicable for allowance of labour and service charges. The reply was not tenable as the dealer had disclosed taxable turnover at 68 *per cent* upto January 2011 and as per Rule-6(e) of the Act, deduction towards labour and services as provided in the Appendix is not applicable in this case. Further, the taxable turnover disclosed by the dealer in its returns cannot be reduced during assessment.

Audit reported the matter to the CCT, Odisha in February 2014 and Government in June 2014. Their replies are awaited (November 2014).

2.6.3 Short levy of tax and penalty due to application of lower rate of tax

Under Part III of Schedule-B of the OVAT Act, unspecified goods are exigible to tax at the rate of 12.5 *per cent* up to 31 March 2011 and at the rate of 13.5 *per cent* thereafter. Under Section 42(5) of the Act, penalty equal to twice the amount of tax assessed in audit assessment shall be imposed against the dealer. Mild Steel (MS) grills, gates, shutters, windows etc. are exigible to tax as unspecified goods under Part-III of Schedule-B of the OVAT Act at the rate of 12.5 *per cent* upto 31 March 2011 and 13.5 *per cent* thereafter.

During scrutiny of audit assessment records in Ganjam-I Circle, Audit noticed (February 2014) that a registered dealer engaged in fabrication and sale of MS grills, gates, shutters and windows, etc. was assessed on 27 December 2012 for the tax period from 01 April 2010 to 30 September 2012. However, Audit noticed that the AA determined the total taxable turnover at ₹ 29.74 lakh and levied tax at the rate of four *per cent* instead of the correct rate of 12.5 *per cent* on ₹ 10.97 lakh relating to the period upto 31 March 2011 and 13.5 *per cent* on ₹ 18.77 lakh for the period thereafter. This resulted in short levy of tax of ₹ 2.64 lakh. Besides, penalty of ₹ 5.28 lakh was also leviable.

After Audit reported this matter, Government stated (May 2014) that the case had been re-opened for re-assessment. The final reply is awaited (November 2014).

2.6.4 Non-levy of penalty on audit assessments

Under Section 42 (1) read with Section 42 (5) of the OVAT Act, where the tax audit results in detection of suppression of purchases or sales or both, erroneous claims of deduction including claim of ITC, evasion of tax or contravention of any provision of the Act affecting the tax liability of the dealer, the AA is required to make audit assessment of the dealer, wherein penalty equal to twice the amount of tax additionally assessed shall be imposed against the dealer.

During scrutiny of assessment records in five Circles[16], Audit noticed (between July 2013 and March 2014) that while finalising the audit assessment of five dealers for the tax periods between April 2007 and December 2012, the AAs assessed (between January 2012 and December 2012), additional tax liability of ₹ 3.27 lakh for contraventions of various provisions of the Act. However, they did not levy penalty while finalising the audit assessments. This resulted in non-levy of penalty of ₹ 6.54 lakh at twice the amount of tax additionally assessed.

After Audit pointed out these cases, Government stated (December 2014) that reassessment of the dealer under Rourkela-I Circle was completed in August 2014 raising extra demand of ₹ 0.99 lakh and tax of ₹ 0.11 lakh demanded against a dealer under Gajapati Circle has been deposited in November 2014.

[16] Gajapati, Mayurbhanj, Rourkela-I, Rourkela-II and Sambalpur Circle.

In respect of the dealer of Sambalpur Circle, Government stated that the carried forward ITC of the dealer was more than the tax levied on sale suppression and the resultant tax would be zero. The reply is, however, not tenable as penalty under Section 42(5) of the Act is leviable on additional tax so levied on suppression of sales. Reply of Government in respect of other two Circles is awaited (November 2014).

2.6.5 Non initiation of action despite failure to submit statements of closing stock in trade

As per the provisions of Section 65(1-a) of OVAT Act made effective from 1 June 2008, a dealer who is liable to pay tax but not liable to get his accounts audited under Section 65(1), shall furnish a statement of closing stock in trade held at the end of the year in the prescribed manner to the Commissioner within a period of three months from the date of expiry of that year. The Act further provides that in case the dealer fails to furnish the statement of closing stocks in trade in the prescribed manner within the stipulated period, the Commissioner shall, after giving the dealer a reasonable opportunity of being heard, impose on him a penalty of rupees one hundred per each day of default.

In 12 Circles[17], Audit noticed (between December 2013 and March 2014) that despite the provisions of the Act, the Circles did not maintain any records to monitor the receipt of the statements of closing stock in trade from the dealers who are not liable to get their accounts audited under Section 65(1). From the information collected from the Value Added Tax Information System (VATIS). Audit noticed that 6,111 out of 6,150 dealers did not furnish the statements of closing stock in trade for the year 2011-12 by 30 June 2012 to the concerned AAs till the respective dates of audit. The period of delay from the due date of submission till the dates of audit, ranged between 549 and 630 days. However, AAs had not initiated any action against the dealers for non-submission of statements of closing stock in trade as per the provisions of the Act/Rules.

After Audit pointed out these cases, AAs of all the Circles agreed (between December 2013 and March 2014) to take appropriate action for levy of penalty and furnish compliances accordingly.

Audit reported the matter to the CCT, Odisha in May 2014 and the Government in July 2014. Their replies are awaited (November 2014).

2.6.6 Non initiation of action despite failure to submit certified report on annual audited accounts

Under Section 65 of the OVAT Act, 2004 read with Rule 73 of the OVAT Rules, 2005 a dealer having Gross Turnover (GTO) exceeding ₹ 40 lakh during a financial year shall furnish a true copy of the Annual Audited Accounts for that year duly certified by a Chartered/ Cost Accountant by 31 October of the next financial year to the concerned AA for his record in the register prescribed by the CCT, Odisha in September 2009 to monitor timely submission of such accounts at the Circle level and also to act as a reference at

[17] Angul, Bargarh, Bhanjanagar, Bolangir, Dhenkanal, Ganjam-I, Ganjam-II, Kalahandi, Nuapara, Rayagada, Sambalpur-I and Sambalpur-II.

the time of tax audit and assessment. The Act further provides that in case the dealer fails to furnish or furnishes the same belatedly, the AA shall, after giving the dealer a reasonable opportunity of being heard, impose on him a penalty of rupees one hundred for each day of default in submission.

During test check of data extracted from VATIS and records maintained by 37 Circles[18], from October 2012 onwards, Audit noticed (between June 2013 and March 2014) that 7,262 dealers whose GTO exceeded ₹ 40 lakh during the previous financial year i.e. 2011-12, did not submit the copies of Certified Annual Audited Accounts (CAAA) within the prescribed time. Delay in submission of CAAA ranged from 239 to 507 days. However, AAs had not initiated any action against the dealers for non-submission of certified reports on audited accounts as per the provisions of the Act/ Rules.

After Audit pointed out the above cases, AAs of all the circles agreed (between June 2013 and March 2014) to take appropriate action for levy of penalty and furnish the compliances later.

Audit reported the matter to the CCT, Odisha in May 2014 and the Government in July 2014. Their replies are awaited (November 2014).

[18] Barbil, Bargarh, Bhadrak, Bhanjanagar, Bhubaneswar-I, Bhubaneswar-II, Bhubaneswar-III, Bhubaneswar-IV, Bolangir, Boudh, Cuttack-I-Central, Cuttack-I-City, Cuttack-I-East, Cuttack-II, Cuttack-West, Deogarh, Dhenkanal, Ganjam-I, Ganjam-II, Jagatsinghpur, Jajpur, Jatni, Jharsuguda, Kalahandi, Kendrapara, Keonjhar, Malkangiri, Mayurbhanj, Nabarangpur, Nuapara, Phulbani, Puri, Rayagada, Rourkela-I, Rourkela-II, Sambalpur-I and Subarnapur.

Central Sales Tax

2.7 Non-observance/ compliance of the provisions of the Central Sales Tax Act/ Rules read with Government notifications/ executive orders

The Central Sales Tax (CST) Act, 1956 and Rules made thereunder read with Government notifications and executive orders issued from time to time provide for:

(i) completion of audit assessment based on Audit Visit Report (AVR) and levy of tax at the assessment stage at the prescribed normal/ concessional rates, subject to certain conditions on the Net Taxable Turnover (NTO) of goods correctly determined at such stage and adjustment of admissible Input Tax Credit (ITC); and

(ii) levy of penalty at the prescribed rates, for contravention of provisions of the Act and Rules, on the tax liability determined by the AA in audit assessment including penalty for misutilisation of declaration in prescribed forms.

Audit noticed that while finalising the assessments, the AAs did not observe some of the above provisions read with Government notifications/ orders as mentioned in the following paragraphs:

2.7.1 Short-levy of tax under Central Sales Tax Act due to incorrect application of tax rate

Under Section 8(2) of the CST Act, inter-State transactions of goods other than declared goods not supported by statutory declarations were exigible to tax, upto 31 March 2007, at the rate of 10 *per cent* or at the rate of tax applicable to sale or purchase of such goods inside the State whichever was higher. However, with effect from 1 April 2007, the same became taxable at the rate applicable to sale or purchase of such goods inside the State under the State Act. 'Cashew kernel and cashew nut' were exigible to tax at the rate of 12.5 *per cent* upto 29 February 2008 under Part-III of Schedule-B of OVAT Act and thereafter these became taxable at the rate of four *per cent* being specified against entry-25A of Part-II of the said Schedule. Further, under Rule 12 (3) (g) of CST (O) Rules, penalty equal to twice the amount of tax assessed during the audit assessment is leviable.

During scrutiny of assessment records under the CST Act in Koraput Circle, Audit noticed (February 2014) that six dealers effected inter-State sale/ export of 'Cashew kernel and cashew nuts' valued at ₹ 2.52 crore during the tax periods from 1 July 2006 to 29 February 2008. Since the dealers had not submitted the declarations in Form 'C' or 'H' in support of the said inter-State sale/ export, the AA while finalising the assessment, treated such sales as intra-State sales and levied tax at the rate of four *per cent* and 10 *per cent* instead of 12.5 *per cent* on such sales turnover. This resulted in short levy of tax of ₹ 13.11 lakh at the differential rate of 8.5 *per cent* or 2.5 *per cent*. Besides, penalty of ₹ 26.23 lakh was also leviable on the above dealers.

After Audit pointed this out, Government stated (May 2014) that corrigendum orders had been issued in February 2014 to the dealers raising extra demand of ₹ 39.34 lakh towards tax (₹ 13.11 lakh) and penalty (₹ 26.23 lakh).

2.7.2 Non-levy of mandatory penalty on audit assessments under Central Sales Tax Act

Under Rule 10(3) read with Rule 12(3) (a), (e) and (f) of the CST (O) Rules, 1957 as amended on 6 July 2006, where the tax audit results in detection of suppression of purchases or sales or both, erroneous claims of deduction, evasion of tax or contravention of any provision of the Act affecting the tax liability of the dealer, the Assessing Authority (AA) is required to make audit assessment of the dealer and impose penalty equal to twice the amount of tax assessed in such assessment as per Rule 12(3)(g) of the said Rules.

During scrutiny of assessment records in one Range[19] and five Circles[20], Audit noticed, (between July 2013 and March 2014) that AAs, while finalising audit assessments of 39 registered dealers in 44 cases for different tax periods between 1 April 2005 and 30 June 2012, assessed tax of ₹ 5.88 crore due to availment of concessional rate of tax without supporting declarations in form 'C' and non production of books of accounts during the assessment stage. However, the AAs did not impose penalty of ₹ 11.76 crore as per the above provisions.

After Audit pointed out these cases, AAs of the Circles stated (between July 2013 and March 2014) that the cases would be examined and compliance would be furnished later. The AA of Sundargarh Range stated (November 2013) that after due investigation, the cases would be re-opened under the provision of the Act and Rules for realisation of penalty.

Audit reported the matter to the CCT, Odisha in May 2014 and the Government in July 2014. Their replies are awaited (November 2014).

2.7.3 Short-levy of tax due to irregular allowance of concessional rate of tax

Under Section 3 of the CST Act, 1956, as amended from time to time, a sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase occasions the movement of goods from one State to another or is effected by a transfer of documents of title to the goods during their movement from one State to another. Section 8(4) of the CST Act read with Rule 12(1) of the CST (Registration and Turnover) (R&T) Rules, 1957 provides that the dealer selling the goods at concessional rate of tax would furnish to the prescribed authority at the prescribed manner a declaration in Form 'C' duly filled in and signed by the registered dealer to whom the goods are sold. As per the provision of Section 8(2) of the CST Act, 1956, inter-State sale of non-declared goods not supported by declarations in Form 'C' was exigible to tax at the rate of 10 *per cent* up to 31 March 2007 and with effect from 1 April 2007 the same became taxable at the rate of tax applicable to sale or purchase of such goods inside the State.

[19] Sundargarh Range.
[20] Bargarh, Gajapati, Ganjam-II, Rourkela-I and Rourkela-II.

'Corrugated boxes and laminated wrappers' coming under entry No. 83- 'Packing materials of any kind' of Part-II of Schedule-B of the OVAT Act are taxable at the rate of four *per cent*. Further, as per the provisions of Rule 12 (3) (g) of CST (O) Rules, an amount equal to twice the amount of tax assessed, shall be imposed on the dealer by way of penalty.

During scrutiny of assessment records in Rayagada Circle for the period from 7 July 2006 to 31 March 2011, Audit noticed (March 2014) that a registered dealer engaged in manufacturing of corrugated boxes and laminated wrappers, effected inter-State sales of goods valued ₹ 5.75 crore and being an Small Scale Industries (SSI) unit claimed concessional rate of tax of two *per cent* against declarations in Form 'C'. On verification of the declaration forms, Audit noticed that the dealer had claimed concessional rate of tax on sales turnover of ₹ 3.50 crore effected between 7 July 2006 and 31 March 2009 against eight declarations in Form 'C' which were issued by a purchasing dealer who is a registered dealer of Odisha. However, while finalising the assessment, the AA irregularly accepted the declaration forms and allowed concessional rate of tax on the above sales turnover of ₹ 3.50 crore at the rate of two *per cent* instead of four *per cent.* This resulted in short-levy of tax of ₹ 16.63 lakh[21]. Besides, penalty of ₹ 33.25 lakh was also leviable.

After Audit pointed this out, the AA replied (March 2014) that the case would be examined and results would be intimated to Audit.

Audit reported the matter to CCT, Odisha in April 2014 and the Government in June 2014. Their replies are awaited (November 2014).

2.7.4 Non levy of penalty under Central Sales Tax Act for misuse of declaration forms

Under Section 8 of the CST Act, a registered dealer is eligible to purchase goods from outside the State at concessional rate of tax against declaration in form 'C' provided that such goods are specified in his RC and the goods so purchased are intended for re-sale or for use by him in the manufacture or processing of goods for sale or in the telecommunications network or in mining or in the generation or distribution of electricity or any other form of power. Section 10 of the Act provides that if any person being a registered dealer falsely represents when purchasing any goods which is not covered by his RC, he is liable to prosecution. However, under Section 10A of CST Act, in lieu of prosecution, the AA may, after giving the dealer a reasonable opportunity of being heard, impose upon him by way of penalty, a sum not exceeding one and a half times of the tax which would have been levied on such goods in absence of declaration in Form 'C'. 'TMT bar' and 'Coal Tar pitch (liquid)' are exigible to tax at the rate of four *per cent* under the OVAT Act.

During scrutiny of assessment records of a dealer for the tax periods from 6 July 2006 to 31 March 2010 in Kalahandi Circle, Audit noticed (March 2014) that the dealer engaged in manufacturing of Alumina started commercial production from August 2007. During cross check of utilisation

[21] Tax of ₹ 12,82,094.01 at the differential rate of 8 *per cent* (10–2) on ₹ 1,60,26,175.20 for the year 2006-07+tax of ₹ 3,80,417.65 at the differential tax rate of 2 *per cent* (4–2) on ₹ 1,90,20,882.80 for the year 2007-08 and 2008-09 = ₹ 16,62,512.

accounts of declarations in form 'C', Audit noticed that the dealer purchased 'TMT Bars' and 'Coal Tar pitch (liquid)' valued at ₹ 32.33 crore[22] from outside the State at concessional rate of tax against declarations in Form 'C' during April 2008 to December 2008 i.e. much after the commencement of commercial production. 'TMT Bars' and 'Coal Tar pitch (liquid)' are required for foundation work for erection of plant and machinery during the initial stage and the same purchased after commencement of commercial production cannot be said to be used 'in manufacture' under Rule 13 of CST (R&T) Rules. Moreover, 'TMT Bars' and 'Coal Tar pitch (liquid)' were, not included in the RC of the dealer during the above period and the dealer had applied for inclusion of the said goods in the RC as late as in April 2009 and September 2012 respectively. Thus, the dealer was not eligible to purchase those goods at concessional rate of tax against declarations in Form 'C' and for such misuse of the declaration forms, was liable to prosecution under Section 10 or to pay a penalty of ₹ 1.94 crore under Section 10A of the Act at one and half times of the tax of ₹ 1.29 crore which would have been payable at four *per cent* of ₹ 32.33 crore. However, the AA neither took any action for prosecution of the dealer nor did impose such penalty.

After Audit pointed this out, the AA stated (March 2014) that the case would be transmitted to the JCCT, Bolangir Range for further action.

Audit reported the matter to the CCT, Odisha in May 2014 and the Government in July 2014. Their replies are awaited (November 2014).

2.7.5 Short levy of tax due to irregular allowance of concessional rate of tax against duplicate declarations in Form 'C'

Under Section 8 of the CST Act, 1956 inter-State sale of goods made to registered dealers and supported by valid declarations in Form 'C' is taxable at the concessional rate of two *per cent* from 1 June 2008 onwards or at such lower rate as applicable to the sale or purchase of such goods within the State. Under Rule 6(a)(ii) of CST (Odisha) Rules, 1957, the selling dealer shall furnish the portion marked 'Original' of the declaration in Form 'C' to the AA. Inter-State sales of all goods not supported by declarations in Form 'C' are taxable at the same rate as applicable to sale or purchase of such goods inside the State with effect from 1 April 2007. Rule 12 (3) (g) of the CST (Odisha) Rules, 1957 provides for imposition of a penalty equal to twice the amount of tax assessed in audit assessment.

During scrutiny of assessment records in Bolangir Range, Audit noticed (February 2014) that the AA, while finalising the assessment (30 November 2011) of a dealer for the tax periods from 6 July 2006 to 31 July 2010, allowed concessional rate of tax on inter-State sale of goods valued at ₹ 2,786.22 crore against declarations in Form 'C'. Audit further noticed that out of total sale turnover of ₹ 2,786.22 crore, the dealer had furnished declarations in Form 'C' marked 'Duplicate' for ₹ 25.93 crore in contravention of the provisions of rules. The said declarations should have been rejected and the sale turnover

[22] TMT bars worth ₹ 24.33 crore purchased during April 2008 to August 2008 and Coal Tar pitch (liquid) worth ₹ 8.00 crore purchased during July 2008 to December 2008.

taxed at the rate of four *per cent* instead of two *per cent*. But the AA accepted the said declarations and allowed concession of tax. Thus, there was short levy of tax of ₹ 51.86 lakh at the differential rate of two *per cent.* Besides, penalty of ₹ 1.04 crore was also leviable.

After Audit pointed this out, AA stated (February 2014) that the case would be re-examined.

Audit reported the matter to the CCT, Odisha in March 2014 and the Government in July 2014. Their replies are awaited (November 2014).

2.7.6 Concession of tax on fake forms 'C'

As per Section 8(4) of the CST Act read with Rule 12(1) of CST (R&T) Rules, 1957 and Rule 6(a)(ii)of CST (Odisha) Rule, 1957, a dealer who claims concessional rate of tax on inter State sale of goods is required to obtain valid declarations in Form 'C' marked 'Original' from the purchasing dealer covering the sales turnover relating to a quarter and furnish the same to the AA within the next quarter. Further, tax on such transactions is leviable at the concessional rate of three *per cent* from 1 April 2007 to 31 May 2008 and two *per cent* from 1 June 2008 onwards or at lower rate as applicable to the sale or purchase of these goods within the State. Under Section 8(2) of the Act effective from 1 April 2007, inter-State sale of goods not supported by declarations in Form 'C' are taxable at the rate applicable to sale or purchase of such goods within the State. Rule 12(3)(g) of the Central Sales Tax (Odisha) Rules provides for imposition of penalty equal to twice the amount of tax assessed during audit assessment. Sale turnover of iron and steel within the State is exigible to tax at the rate of four *per cent*.

During scrutiny of audit assessment records in Rourkela-I Circle, Audit noticed (November 2013) that a registered dealer engaged in manufacturing of sponge iron, was allowed concessional rate of tax on inter-State sales turnover of ₹ 79.80 crore against declarations in Form 'C' for the tax periods from 1 April 2007 to 31 March 2012. However, on scrutiny of the declarations in Form 'C' furnished by the dealer and accepted by the AA, Audit noticed that 21 'C' Forms for a sales turnover of ₹ 9.91 crore appeared to be not genuine due to various reasons[23]. AA accepted these forms without cross-verifying their genuineness. Audit forwarded the details of these forms to the Commercial Tax authorities of concerned States for verifying the genuineness. Verification reports received (August and October 2014) from them in respect of nine Forms covering sales turnover of goods valued at ₹ 4.72 crore involving differential tax of ₹ 8.47 lakh confirmed that the forms were not genuine. Thus, acceptance of declaration forms without ascertaining their genuineness resulted in short levy of tax of ₹ 8.47 lakh. Besides, penalty of ₹ 16.94 lakh was also leviable.

Audit reported the matter to the CCT, Odisha in May 2014 and the Government in August 2014. Their replies are awaited (November 2014).

[23] Date of issue by Commercial Tax Department not mentioned; the word 'generation' has been printed as 'grneration'; the word 'statements' has been printed as 'staements'; the word 'Cash memo' has been printed as 'Cash meno'.

Entry Tax

2.8 Non-observance/compliance of the provisions of Odisha Entry Tax Act/ Rules read with Government notifications

The Odisha Entry Tax (OET) Act, 1999 and Rules made there under read with Government notifications issued from time to time provide for:

- *levy of tax on the entry of scheduled goods into a local area for consumption, use or sale therein at the prescribed normal/ concessional rates and levy of penalty at prescribed rates for the tax levied in audit assessment; and*
- *allowance of proportionate set off towards tax paid on purchase of scheduled goods by the manufacturers and utilised as raw materials on the Entry Tax (ET) payable on the sale value of taxable finished goods.*

Audit noticed that while finalising the assessments, the AAs did not observe the above provisions in some cases as mentioned in the following paragraphs:

2.8.1 Non levy of Entry Tax on scheduled goods

Under Section 3(1) of the OET Act, scheduled goods entered into a local area for consumption, use or sale therein are taxable at prescribed rates of the Schedule appended to the Act. As per Section 3(a) of Mines and Minerals (Development and Regulation) Act "minerals" include all minerals except mineral oils. As per Odisha Minor Minerals Concession (OMMC) Rules, 2004, Ordinary Clay, Sand, Morrum and Chips etc. are minor minerals. Minerals are exigible to tax at the rate of one *per cent* as per entry No. 59 of Part-I of the Schedule of OET Act. As per entry No. 21 of Part-I of Schedule, 'Pepper and other spices' are taxable at the rate of one *per cent*. Turmeric and dry chilly, being spices under the list of Spices Board, are therefore taxable at the rate of one *per cent*. Further, Section 9C (5) of the Act provides for imposition of penalty equal to twice the amount of tax assessed in audit assessment.

2.8.1.1 During scrutiny of assessment records in two Circles[24], Audit noticed (between May and September 2013) that two registered dealers purchased (April 2008 to March 2011) stone products, sand, morrum, chips etc. valued at ₹ 12.88 crore from unregistered dealers of Odisha for utilisation in various works contracts. Audit noticed that though the concerned AAs finalised the assessments on 31 December 2012 and 28 December 2013 under the OVAT Act, they failed to assess such purchases under the OET Act treating the said goods as non-scheduled goods. This resulted in non-levy of entry tax of ₹ 12.88 lakh at the rate of one *per cent*. Besides penalty of ₹ 25.76 lakh was also leviable.

After Audit pointed this out, AAs stated that the cases would be re-examined and compliance would be intimated to audit.

Audit reported the matter to the CCT, Odisha in July 2014 and the Government in August 2014. Their replies are awaited (November 2014).

[24] Balasore and Puri.

2.8.1.2 During scrutiny of assessment records, Audit noticed (between November 2013 and February 2014) that two dealers in Ganjam-I Circle purchased dry chilli valued at ₹ 2.43 crore during the tax periods from 1 April 2007 to 30 June 2012 from unregistered dealers but did not pay entry tax thereon. Similarly, in Rourkela-I Circle, one dealer purchased turmeric valued at ₹ 1.17 crore during the tax periods from 1 April 2005 to 31 March 2010 from outside the State but it did not pay ET thereon treating the same as non-scheduled goods. The concerned AAs, while finalising the assessments of these three dealers under the OET Act during July and August 2012, also did not levy entry tax on such purchase turnover of ₹ 3.60 crore treating the said goods as non-scheduled goods. This led to non-levy of entry tax of ₹ 3.60 lakh. Besides, penalty of ₹ 7.20 lakh was also leviable.

After Audit pointed out (December 2013 and February 2014) these cases, the AA, Rourkela-I stated (December 2013) that the case would be examined and the result thereof would be intimated later. The AA, Ganjam-I Circle stated (February 2014) that action would be taken after verification of facts and figures.

Audit reported the matter to the CCT, Odisha in March and May 2014 and the Government in August 2014. Their replies are awaited (November 2014).

2.8.2 Less payment of Entry Tax due to application of lower rate of tax

According to the provisions of Section 3(i) of the OET Act, 1999, there shall be levied and collected a tax on entry of scheduled goods into a local area for consumption, use or sale therein at prescribed rate. Further, under Section 7(10) of the Act read with Rule 10(6) of the OET Rules, each and every return filed by a dealer in relation to any tax period shall be subject to scrutiny to verify, among other things, the correctness of calculation, application of correct rate of tax etc. and if any mistake is detected as a result of such scrutiny, the AA shall serve a notice in form E-24 to the dealer directing him to pay the extra tax due along with interest. The Act provides for levy of interest at the rate of two *per cent* per month upto 30 June 2012 and at the rate of one *per cent* thereafter for default in payment of tax due as per return. Spare parts and components of machinery and equipment are taxable at the rate of two *per cent* as per entry 9 of Part-II of Schedule to OET Act.

During test check of returns furnished by a registered dealer of Cuttack-I City Circle, Audit noticed (November 2013) that the dealer purchased scheduled goods such as belts, V-belts, couplings, pulleys, bearings and machinery valued at ₹ 5.83 crore during the tax periods from 2009-10 to 2012-13 but paid ET at the rate of one *per cent* instead of the applicable rate of two *per cent* under Part-II of OET Act. The AAs also failed to detect this while scrutinising the returns this resulted in short levy of ET of ₹ 5.83 lakh. Besides, interest amounting to ₹ 2.90 lakh was also leviable.

After Audit pointed (November 2013) this out, AA stated (November 2013) that the case would be examined.

Audit reported the matter to the CCT, Odisha in February 2014 and the Government in May 2014. Their replies are awaited (November 2014).

2.8.3 Non levy of penalty on audit assessments

Under Section 9C(1) of the OET Act, 1999, where tax audit conducted under Section 9B of the Act results in detection of any discrepancy such as suppression of purchases or sales, or both, erroneous claims of deductions, evasion of tax or contravention of any provisions of the Act affecting the tax liability of the dealer, the AA is required to make audit assessment of the dealer. Further, Section 9C(5) of the Act provides for imposition of penalty equal to twice the amount of tax additionally assessed during the audit assessment.

During scrutiny of assessment records in two circles[25], Audit noticed (between June and December 2013) that the AAs while finalising the audit assessments of two dealers, levied tax of ₹ 22.38 lakh additionally but did not levy penalty of ₹ 44.76 lakh on such assessed tax.

After Audit pointed this out, AAs stated (between June and December 2013) that the cases would be re-examined and compliances would be intimated.

Audit reported the matter to the CCT, Odisha in May 2014 and the Government in June 2014. Their replies are awaited (November 2014).

2.8.4 Excess allowance of Entry Tax set-off

As per Rule 19 (5) of the OET Rules, 1999, the entry tax (ET) paid by a manufacturer of scheduled goods on the purchase value of raw materials which directly go into the composition of finished products shall be set off against the ET payable by the dealer on the value of finished products. The explanation below the said rule provides that where no entry tax is payable on a part of the sales effected, the set off admissible shall be reduced proportionately. Further, Section 9C(5) of the OET Act, 1999 provides for levy of penalty equal to twice the amount of tax assessed in respect of any assessment completed under the Act.

During scrutiny of assessment records of Rayagada Circle, Audit noticed (March 2014) that a registered dealer, engaged in manufacture of corrugated boxes and laminated wrappers, purchased raw materials valued at ₹ 23.35 crore and paid ET of ₹ 11.68 lakh at the rate of 0.5 *per cent* during the tax periods from 1 April 2006 to 31 March 2011. During this period, the dealer sold finished products valued at ₹ 33.86 crore which included goods valued at ₹ 21.01 crore sold inside the State on which ET was payable. Accordingly, the dealer was eligible to avail ET set off of ₹ 7.25 lakh[26] proportionately in respect of the purchase value of goods which was used in manufacture of finished products valued ₹ 21.01 crore sold inside the State. However, the AA, while finalising the audit assessment on 4 April 2012, incorrectly allowed ET

[25] Rourkela-I and Bhubaneswar-I Circle.

[26] ET set off admissible:

$$= \frac{\text{VAT sale of corrugated boxes} \times \text{ET paid on raw materials}}{\text{Total sale of finished products}}$$

$$= \frac{₹\ 21,00,77,258 \times ₹\ 11,67,603}{₹\ 33,85,58,686} = \textbf{₹ 7,24,503}$$

set off of ₹ 9.32 lakh instead of ₹ 7.25 lakh which resulted in short levy of ET of ₹ 2.07 lakh. Besides, the dealer was liable to pay a penalty of ₹ 4.14 lakh.

After Audit pointed this out, the AA stated (March 2014) that the case would be examined in detail and fact would be intimated.

Audit reported the matter to the CCT, Odisha in April 2014 and the Government in May 2014. Their replies are awaited (November 2014).

2.8.5 Non initiation of action by the Assessing Authorities for levy of interest and penalty for delayed payment of Entry Tax

Under Section 7(5) of OET Act, 1999 prevalent upto 30 June 2012, where a dealer required to file return under the Section fails without sufficient cause, to pay the amount of tax due as per the return for any tax period or fails to furnish return, such dealer shall be liable to pay interest in respect of the tax which he fails to pay according to the return or the tax payable for the period for which he has failed to furnish return, at a rate of two *per cent* per month from the date the return for the period was due to the date of its payment or to the date of order of assessment, whichever is earlier. If the dealer fails to pay the amount of tax due and interest payable thereon along with return in accordance with the above provision, the Commissioner may after giving the dealer a reasonable opportunity of being heard, direct him to pay in addition to the tax and the interest payable by him, a penalty at the rate of two *per cent* per month on the tax and interest so payable, from the date it had become due to the date of its payment or the order assessment, whichever is earlier.

Scrutiny of the assessment records and tax payment details in one Range[27] and two Circles[28] for the tax periods ranging from 1 April 2005 to 30 June 2011, Audit noticed (between December 2013 and March 2014) that four dealers paid the tax dues of ₹ 18.85 lakh with delays ranging from six to 485 days. Despite delay in payment of taxes, the AAs had not initiated any action as prescribed in the Act.

After Audit pointed this out, AAs replied (between December 2013 and March 2014) that the cases would be re-examined.

Audit reported the matter to the CCT, Odisha in June 2014 and the Government in August 2014. Their replies are awaited (November 2014).

[27] Angul.
[28] Cuttack-I West and Kalahandi.

EXPENDITURE SECTION

2.9.1 Excess payment for application software

For modernisation of Luhurachati check gate, the CCT, Odisha on behalf of Finance Department, the Transport Commissioner, Odisha on behalf of Transport Department and M/s Electronic Corporation of India Limited (ECIL), a Central Public Sector Enterprise entered into a tripartite agreement on 26 November 2010 at a contract price of ₹ 4.72 crore comprising of ₹ 3.48 crore towards material cost and ₹ 1.24 crore towards project implementation and capacity building. The material cost of ₹ 3.48 crore included ₹ 82.01 lakh towards the cost of application software.

During scrutiny of the records of the CCT relating to the expenditure incurred for the Luhurachati check gate, Audit noticed (February 2014) that as against the contract price of ₹ 4.72 crore, an amount of ₹ 4.79 crore had already been paid to ECIL during the period between 31 December 2010 and 1 March 2013 including the cost of application software. However, ECIL further submitted a bill in March 2013 claiming ₹ 90.46 lakh towards cost of application software including service tax of ₹ 8.45 lakh and the CCT, without verifying the details of such claims with reference to the payments made earlier, paid ₹ 82.01 lakh to the firm. This resulted in excess payment of ₹ 82.01 lakh which is recoverable from ECIL.

After Audit pointing out, Special Commissioner of Commercial Taxes (Enforcement), Odisha while admitting the fact of double payment, stated (February 2014) that since the final payment has not been made to ECIL, the excess payment so made would be adjusted from the remaining dues.

Audit reported the matter to the CCT, Odisha in July 2014 and the Government in August 2014. Their replies are awaited (November 2014).