

CHAPTER II: COMMERCIAL TAX

2.1 Results of Audit

In 2014-15, test check of the records of 20¹ out of 52 units relating to VAT/Sales tax/Entry Tax assessments and other records showed under assessment of tax and other irregularities involving ₹ 32.90 crore in 176 cases, which fall under the categories as given in **Table-2.1**:

Table-2.1

(₹ in crore)

Sl. No.	Category	No. of cases	Amount
1	Performance Audit on“ System of Assessment under Value Added Tax ”	1	12.13
2	Non/short levy of tax	92	3.47
3	Incorrect grant of exemption/deduction	24	0.66
4	Application of incorrect rate of tax	11	1.66
5	Incorrect determination of taxable turnover	11	0.88
6	Other irregularities	37	14.10
Total		176	32.90

The Department accepted underassessment of ₹ 1.89 crore in thirty four cases.

After issuing Draft Paragraphs and Performance Audit, the Government intimated the recovery of ₹ 25.11 lakh in six cases.

A performance audit on “**System of Assessment under Value Added Tax**” involving financial impact of ₹ 12.13 crore and few illustrative cases involving ₹ 1.14 crore are discussed in the following paragraphs.

¹ Including three DCs, seven ACs and 10 CTOs.

2.2 Performance Audit on “System of Assessment under Value Added Tax (VAT)”

Highlights:

Survey of unregistered dealers under Section 57A of CGVAT Act to bring new dealers under tax net was not conducted during the period 2010-11 to 2014-15.

(Paragraph 2.2.8)

Growth rate of revenue over previous year drastically reduced from 24 *per cent* to six *per cent* during the period 2010-11 to 2014-15 in spite of increase in number of registered dealers and increase in rate of tax.

(Paragraph 2.2.9)

The Government extended the time limit for self-assessment by seven to 48 months for the years from 2008-09 to 2013-14. Similarly, time limit for assessment under other Sections was extended by 21 to 31 months for the years from 2008-09 to 2010-11. Such excessive extension in finalisation of assessment cases would result in huge backlog of cases for assessment.

(Paragraph 2.2.14)

The Commissioner did not select cases for tax audit under Section 21 (3) of CGVAT Act for the years 2008-09 and 2009-10. Further, only 11.59, 3.94 and 0.6 *per cent* of the self-assessment cases were selected for tax audit for the years 2010-11, 2011-12 and 2012-13 respectively.

(Paragraph 2.2.15)

The Department could not furnish information regarding closing stock of dealers whose registration was cancelled and reversal of ITR thereon. This indicated that there was no monitoring mechanism in cases of cancelled registration to ensure reversal recovery of ITR on closing stock.

(Paragraph 2.2.17)

There was short levy of tax of ₹ 21.82 lakh due to incorrect classification of contract for composition of tax in case of four dealers in three offices.

(Paragraph 2.2.18)

There was short levy of tax of ₹ 9.16 crore due to incorrect classification of goods and application of lower rate of tax in 26 cases out of 1430 test checked from 5951 dealers in 11 offices.

(Paragraph 2.2.19)

There were irregularities regarding Input Tax Rebate (ITR) like irregular/non-admissible ITR, excess ITR of ₹ 44.89 lakh in six cases out of 874 test checked from 2766 dealers in six offices.

(Paragraph 2.2.20)

The Assessing Officers incorrectly determined taxable turnover of ₹ 33.63 crore after taking into consideration the purchase price of material used in works contract, freight, profit etc. while in the light of Hon'ble Supreme Court judgement and circular issued by the Government, the taxable turnover should

be determined after deducting the expenses relating to the labour from the gross receipts. This resulted in short levy of VAT of ₹ 46.55 lakh.

(Paragraph 2.2.24)

There was incorrect allowance of exemption against inter-state sale and stock transfer, transit sale and invalid form in case of 18 dealers out of 1282 test checked from 2147 dealers in 12 offices. This resulted in Non/Short levy of tax of ₹ 1.68crore.

(Paragraph 2.2.25)

2.2.1 Introduction

With a view to bring more efficiency in the tax administration, equal opportunity of competition amongst the dealers and fairness in the taxation system, Value Added Tax was introduced in 2006 in Chhattisgarh. The Chhattisgarh Value Added Tax Act, 2005 (CGVAT Act) governs the levy, assessment and collection of VAT in Chhattisgarh at every point of sale. Goods pass through various stages in the manufacturing process and distribution chain till they reach final consumer. Under CGVAT Act, tax is levied at each stage of sales with allowance of rebate of tax paid on purchases (called input tax rebate) to nullify cascading effect of multiple taxation. Thus, all registered dealers are liable to pay tax only on each value addition.

2.2.1.1 Requirement of Registration

A dealer who imports goods into the state of value not less than rupees one lakh and whose turnover during a year exceeds rupees two lakh, a dealer who manufactures within the state any goods of value not less than rupees one lakh in any year and whose turnover exceeds rupees two lakh and a dealer other than above two dealers whose turnover exceeds rupees twenty lakh are liable to be registered under Section 16 of CGVAT Act.

2.2.1.2 Filing of Returns

A registered dealer shall file a quarterly e-return (made mandatory from April 2012) in Form 17 for each quarter of the year under Section 19 along with the list of challans in support of the payment of the tax if the tax is paid otherwise than e-payment. According to the Rule 35 of CGVAT Rules, 2006, all registered dealer whose tax payable is below rupees fifty² thousand per quarter or below rupees two lakh³ per annum shall make payment of tax on quarterly basis within 30 days of expiry of the quarter. Further, all registered dealer whose tax payable is above rupees fifty thousand per quarter or above rupees two lakh per annum shall make payment of tax on monthly basis. A registered dealer files online returns in the related circles.

2.2.2 System of Assessment under CGVAT Act

VAT collection and control procedures are based on self-assessment system. The overall objective of the VAT assessment system is to maximise the collection of VAT revenue by maximising the level of voluntary compliance and by deterring evasion. The dealer calculates his own liability and makes

² Rupees fifteen thousand upto 29.05.2012

³ Rupees sixty thousand upto 29.05.2012

payment of the tax due while the Commercial Taxes Department reviews the self-assessment subsequently by means of assessments to ensure that tax legally due is declared and paid by the tax payers.

Regular assessment by department was dispensed with and provisions (under Section 21 (2)) of self-assessment by the dealers have been made from 2008-09. Where a registered dealer has furnished all the returns for a year and/ or revised return for any quarter or quarters of such year and paid the tax payable according to such returns or revised returns along with interest payable, if any and furnished the annual statement along with audit report under Section 41(2) within the prescribed time, the returns furnished or revised returns furnished by such dealers for that year shall be accepted and his assessment shall be deemed to have been made under Section 21 (2) of the Act.

Further, to make good the deficiency of assessment and to see that the dealers are paying due tax after assessing their tax liability correctly, the AOs scrutinise the returns by exercising checks relating to arithmetical accuracy of the furnished information. As per provisions of the CGVAT Act, 2005 every dealer is assessed by the department⁴ under Section 21 for each year. A dealer may be assessed under Section 21 (2) (Self-assessment), Section 21 (3) (Assessment by selection), Section 21 (4) (Assessment by notice) and Section 21 (5) (Best Judgement assessment) by the AO.

2.2.2.1 Assessment by Selection

The dealers are selected on objective criteria or on risk analysis under Section 21(3) by computerised system duly approved by the Commissioner and assessed by the AO. Where sale or purchase of goods liable to tax under this Act has been underassessed/wrongly assessed or escaped in the assessment, the original assessment is completely re-opened (Section 22) and in its place a fresh assessment is made. While re-assessing a dealer, the AO does not merely assess him on the escaped turnover but he assesses him on his total estimated turnover and in that process, if required, he can resort to best judgment assessment also.

Special provision for assessment of cases relating to detection and prevention of Tax evasion has been stipulated in Section 54 and 57 of the Act.

2.2.3 Organisational Set-up

The Secretary, Commercial Tax Department (CTD) is the Administrative head of the Department at the Government level. The Commissioner of Commercial Tax is the Head of the Department. The Commercial Tax Department functions under the control of the Commissioner of Commercial Tax assisted by four Additional Commissioners, 12 Deputy Commissioners (DCs), 26 Assistant Commissioners (ACs), 72 Commercial Tax Officers (CTOs), 121 Assistant Commercial Tax Officers (ACTOs) and 174 Inspectors of Commercial Tax in performance of such functions as may be assigned to them under the Act. Against the above sanctioned posts, eight DCs, 20 ACs, 36 CTOs, 71 ACTOs and 90 CTIs are presently working in the Department. The State is divided into five Commercial Tax Divisions each under the

⁴ Assessments of the cases are carried out by Dy. Commissioner, Assistant Commissioner, Commercial Tax Officer and Assistant Commercial Tax Officer

charge of DCs. Under these divisions, there are 30 circle offices headed by CTOs. The Assistant Commercial Tax Officers (ACTOs), Commercial Tax Officers (CTOs), Assistant Commissioners (ACs) and Deputy Commissioners (DCs) have been vested with the powers of assessment of cases.

The individual officer is responsible for assessment/sanction of refunds in the cases on the basis of monetary limit as given in the following **Table 2.2:**

Table 2.2

Sanctioning Authority	Monetary limit for assessment of cases	Monetary limit for sanction of refunds
Assistant Commercial Tax Officer	Upto ₹ one crore	--Nil--
Commercial Tax Officer	Above ₹ one crore and up to ₹ 5 crore	Up to ₹ 5 lakh
Assistant Commissioner	Above ₹ 5 crore and upto ₹ 50 crore	Above ₹ 5 lakh and up to ₹ 10 lakh
Deputy Commissioner	Above ₹ 50 crore	Above ₹ 10 lakh and up to ₹ 25 lakh
Additional Commissioner	Assessment of cases not done at this level	Above ₹ 25 lakh and up to ₹ one crore
Commissioner		Above ₹ one crore

In addition to the above, there is an Enforcement Wing (Headquarters) headed by Additional Commissioner and assisted by DCs posted in field offices located at Raipur and Bilaspur for conducting surprise inspections and unearthing evasion of tax.

2.2.4 Audit Objectives

The Performance Audit was conducted with a view to ascertain and evaluate whether:

- the system of assessment under VAT are adequate to prevent leakage of revenue and are being duly followed;
- exemptions/concessions granted by the assessing authority were supported by valid declaration forms;
- validity and correctness of the information furnished in the tax return and effective rate of tax is ensured by the Department and followed by appropriate action if warranted; and
- adequate internal control and monitoring mechanism exists to the extent to which compliance is maximized under the system of assessment of VAT.

2.2.5 Audit Criteria

Provisions of the following Acts, Rules and circulars/notifications were used as audit criteria:

- Chhattisgarh Value Added Tax Act, 2005 (CGVAT Act)
- Chhattisgarh Value Added Tax Rules, 2006 (CGVAT Rules)
- Central Sales Tax Act, 1956 (CST Act)
- Central Sales Tax Rules, 1957 (CST Rules)
- Rules, Circulars, Exemption Notification and Instructions issued by the department and state Government from time to time.

2.2.6 Scope of audit and methodology

The Performance Audit was conducted between May 2015 to June 2015 and the assessment done by the AOs between 1 April 2010 and 31 March 2015, in 14 offices (three⁵ DCs, six⁶ ACs and five⁷ CTOs) were examined. These 14 offices were selected out of total 57 offices on the basis of simple random sampling. Audit observation noticed during compliance audit of CTO-2, Bilaspur has been updated and incorporated. During the period covered in Performance Audit, the Department assessed 28,645 cases in the selected 14 offices, out of which 1,905 assessment cases were examined.

The Department did not hold an entry conference to discuss the scope, objective and methodology of audit. The Department also did not provide system password and user-id for the audit team to access data online. Audit performed the task from the physical records available. The information regarding number of assessees, number of returns filed, number of returns due but not filed and assessments done under different Sections of CGVAT Act were also not furnished (August 2015).

The exit conference was held on 11 August 2015 wherein the audit findings, conclusions and recommendations were discussed. The Government was represented by the Secretary, Commercial Tax Department whereas the Commissioner represented the Department. The replies received during the exit conference and at other points of time have appropriately been included in the relevant paragraphs.

2.2.7 Acknowledgement

Indian Audit and Accounts Department acknowledges the co-operation of the test-checked field formations of Commercial Tax Department in providing necessary information and records to audit in time.

2.2.8 Number of registered dealers and conducting of survey of unregistered dealers

Percentage of growth of registered dealers during the year 2010-11 to 2014-15 is detailed in the following **Table 2.3**:

Table 2.3

Year	No. of registered dealer	Percentage of growth of registered dealers over previous year
2010-11	50446	-
2011-12	57030	13.05
2012-13	65719	15.24
2013-14	75076	14.24
2014-15	86966	15.84

(Source: - Information furnished by the department)

⁵ Division-I Bilaspur, Durg and Division-II Raipur

⁶ Division-I Bilaspur, AC-3 Durg, Division-I Raipur (Smt. Lata Tyagi), Division-II Raipur (Sh. Deepak Giri), Raigarhand Rajnandgaon

⁷ CTO-2 Bilaspur, CTO-3 Durg, CTO-3 Raipur, CTO-6 Raipur and CTO-9 Raipur

It can be seen from the above table that the percentage of growth of registered dealers during the last five years ranged between 13.05 and 15.84 *per cent*.

As regards survey, the Department replied that no survey was done by the Department during last five years. This is indicative of the fact that the Department did not make effort to bring new dealers under tax net by the way of survey (under Section 57A of the CGVAT Act) of unregistered dealers.

During the exit conference, the Government stated (August 2015) that survey would be done in future.

We recommend that the Department may consider issuing instructions to the assessing authorities for conducting periodic survey of unregistered dealers under Section 57A of CGVAT Act to bring new dealers under tax net.

2.2.9 Trend of revenue

Actual receipts under VAT and CST during the year 2010-11 to 2014-15 are detailed in following **Table 2.4** :

Table 2.4

(₹ in crore)

Year	Budget estimates (BEs)	Actual receipts (ARs)			Variation between BEs and ARs/Percentage of variation	Percentage growth of actual receipts over previous year
		VAT	CST	Total		
2010-11	4524.13	4094.96	745.83	4840.79	(+) 316.66/7.00	-
2011-12	6000.00	4886.25	1120.00	6006.25	(+) 6.25/0.10	24.08
2012-13	7310.20	6072.77	855.88	6928.65	(-) 381.55/5.22	15.36
2013-14	8436.00	7001.34	928.17	7929.51	(-) 506.49/6.00	14.45
2014-15	9800.00	7495.75	932.36	8428.11	(-) 1371.89/14.00	6.29

(Source: Finance Accounts of Government of Chhattisgarh)

It may be seen from Table 2.4 that though there was continuous growth of revenue from year to year but the percentage of growth of revenue was in downward trend and drastically declined from 24 to 6 *per cent* during the last five years in spite of increase in number of registered dealers and increase in rate of tax.

During the exit conference, the Government stated (August 2015) that the rate of tax was increased from 1 January 2010 so the rate of growth of revenue was 24.08 *per cent* in 2011-12 which was an anomalous growth. The growth in number of registered dealers is not directly proportionate to revenue; it depends on various macro-economic circumstances for which actual indicator was increase in GSDP. The average growth of GSDP was 15.9 *per cent* whereas average growth of revenue was 17.9 *per cent* during the said period which was two *per cent* more than the growth of GSDP.

2.2.10 Arrears of revenue

The arrears of revenue in respect of VAT and CST as on 31 March 2015 amounted to ₹ 424.52 crore, of which ₹ 165.96 crore was outstanding for more than five years, as detailed in **Table 2.5**:

Table 2.5

(₹ in crore)

Sl. No.	Head of Revenue	Total amount outstanding as on 31 March 2015	Amount outstanding for more than five years as on 31 March 2015	Status of Arrears outstanding for more than five years	
				Amount irrecoverable	Arrear in which recovery is in progress
1.	VAT	328.48	102.45	40.83	61.62
2.	CST	96.04	63.51	37.81	25.70
Total		424.52	165.96	78.64	87.32

(Source: Information furnished by the Department)

The Department could not provide the break-up of the cases of arrear pertaining to different categories such as court cases, appeal cases etc. In absence of the break-up, audit could not ascertain the effort made by the Department in this regard.

During the exit conference, the Government stated (August 2015) that the amount outstanding for more than five years were not immediately realisable. It was also stated by the Department that efforts were being made to collect the break-up of arrears of revenue outstanding for more than five years in respect of VAT and CST from the field formation and would be made available after receipt of the same. No further progress has been received from the Department in this regard (November 2015).

2.2.11 Refund

On being requested to furnish information regarding refund cases for the period 2010-11 to 2014-15, the Department provided the information pertaining to the period 2012-13 to 2014-15 only, which is detailed in **Table 2.6**:

Table 2.6

(Amount in ₹)

Year	Number of cases involved		Amount of refund allowed	
	VAT	CST	VAT	CST
2012-13	381	8	13,16,22,735	11,59,708
2013-14	2,520	74	74,08,94,028	87,09,668
2014-15	2,683	105	15,13,69,92,861	3,49,60,826

During the Performance Audit, it was noticed from the assessment orders passed by the AOs that most of the refunds claimed by the dealers were related to ITR carried forward instead of excess payment of tax during the current year.

During the Exit conference, the Government stated (August 2015) that information relating to refund in respect of the year 2010-11 and 2011-12 would be provided after receipt of the same from the field offices.

2.2.12 Unreliability of online system

CGCOMTAX software was developed in June 2005 for computerization of departmental activities. It is based on three-tier architecture and has 11 modules initially. Further, e-challan, e-registration and e-return module commenced from the year 2006, 2011 and 2012 respectively to facilitate the day-to-day activities of the registered dealers.

The data generated by the modules are unrealistic and unreliable as revenue collected under Section 21(2) as per the module of CGCOMTAX were more than actual receipt of revenue as per Finance Account of Government of Chhattisgarh for the period 2010-11 to 2012-13 as evident from the **Table 2.7:**

Table 2.7*(₹ in crore)*

Year	No. of cases assessed under Section 21(2)	Revenue as per Finance Account of Government of Chhattisgarh	Revenue collected under Section 21(2) as per the module of CGCOMTAX
2010-11	19,637	4,094.96	6,424.19
2011-12	42,157	4,886.25	6,655.05
2012-13	44,797	6,072.77	7,089.53
2013-14	15,380	7,001.34	3,894.32
2014-15	2,025	7,495.75	17.50

During the exit conference, the Government stated (August 2015) that e-challan module of the Treasury Directorate is not interlinked on real-time basis with Commercial Tax Department's software and only a 'view option' exists with the Department currently and the Department would initiate steps to link the software of the two departments.

2.2.13 Assessment under various Sections of CGVAT Act

The Department did not furnish information regarding number of dealers assessed under various Sections of the CGVAT Act for the period 2010-11 to 2014-15. During field audit, we obtained the requisite information in 14 selected offices. In absence of data pertaining to the whole State, we analysed the information obtained from selected offices.

In 14 selected offices, 28,645 cases were assessed during the period 2010-11 to 2014-15. Out of this, 9,140 cases were assessed under Section 21(2), 434 cases under Section 21 (3), 177 cases under Section 21 (4) and 18,894 cases under Section 22 (5). Percentage of cases under self-assessment and regular assessment (Section 21 (5)) were 32 and 66 respectively. This is an indication that self-assessment which should be the prime mode of assessment has not been very effective.

After we pointed this out, the Government stated (August 2015) that special drives were under taken for motivating the dealers for self-assessment and time limits for assessment were also extended.

AUDIT FINDINGS

2.2.14 Inordinate extension of time limit for assessment

The Government extended the time limit for self-assessment by seven to 48 months for the period from 2008-09 to 2013-14. Similarly, time limit for assessment under other Sections was extended by 21 to 31 months for the period from 2008-09 to 2010-11.

According to Section 21(2) of CGVAT Act, a registered dealer who has furnished all the returns or revised of any period of a year and paid full amount of tax and interest if any, payable as per returns along with annual statement and audit report within eight months from expiry of the year, his assessment shall be deemed as self-assessment. Further, as per Section 21 (7) (i) read with Section 21 (4) (a), the assessment in respect of a registered dealer (except in self-assessment) shall be made within a period of two calendar year from the end of the period for which the assessment is to be made.

Scrutiny of notifications issued by the Government revealed that the last date of assessment under various sections of the Act for the financial year 2008-09 to 2013-14 were extended by virtue of issue of scores of notifications even though ample time (two years) was given to finalise the assessment for a particular year. It was also noticed from the records of the Commissionerate that dates of assessment were extended with the request of the Chamber of Commerce of Chhattisgarh. The year-wise details of last dates are enumerated in **Table 2.8:**

Table 2.8

Financial Year	Assessment under Sections 21(2)			Assessment under other Sections		
	Actual last date of assessment	Extended date vide notification	Extension of time limit for assessment (month)	Actual last date of assessment	Extended date vide notification	Extension of time limit for assessment (month)
2008-09	30.11.2009	15.12.2012	37 months	31.12.2011	30.09.2013	21 months
2009-10	30.11.2010	30.11.2014	48 months	31.12.2012	31.07.2015	31 months
2010-11	30.11.2011	30.11.2014	36 months	31.12.2013	30.09.2015	21 months
2011-12	30.11.2012	31.05.2015	30 months	31.12.2014	31.03.2016	15 months
2012-13	30.11.2013	30.06.2015	19 months	31.12.2015	----	----
2013-14	30.11.2014	30.06.2015	7 months	31.12.2016	----	----

It is evident from the above table that extension in finalising assessment cases under Section 21 (2) for the years 2008-09 to 2013-14 ranged between 7 and 48 months. Similarly, extension in finalising the assessment cases under other Sections for the years 2008-09 to 2010-11 ranged between 21 and 31 months. It is worth mentioning here that last dates of assessment for the year 2009-10 and 2010-11 were still not over by June 2015. Such excessive extension in finalisation of assessment cases would result in huge backlog of assessment cases.

During the exit conference, the Government replied (August 2015) that to encourage more dealers to opt for self-assessment the time for assessment was extended. The reason was also attributed to shortage of staff and tax consultants being not well versed with filing online returns. Further, while

accepting the observation, the Government stated that it would evolve a system of completing the assessment of cases within specified time frame to avoid accumulation of arrears.

2.2.15 Selection for assessment under Section 21(3)

The Department selected 2275, 1661 and 273 dealers under Section 21(3) out of 19637, 42157 and 44797 dealers who opted self-assessment under Section 21(2) during the year 2010-11, 2011-12 and 2012-13. The percentage of selection for scrutiny in the aforesaid years ranged between 0.6 and 11.59 per cent.

Section 21 (3) of CGVAT Act prescribes that the Commissioner shall select for re-assessment a number of such dealers as he deems fit whom had been self-assessed under Section 21(2) and such selection shall be made within one calendar year from the end of the financial year.

Total number of dealers opted for self-assessment under Section 21 (2), parameters fixed for selection (as available in the Departmental website for the years 2010-11 to 2012-13) and number of cases selected by the Commissioner for the years 2008-09 to 2012-13 has been mentioned in **Table 2.9** below:

Table 2.9

Financial Year	No of dealers opted for self-assessment under Section 21 (2)	Parameters for selection under Section 21 (3)	Number of cases selected under Section 21 (3) (Date of selection)
2008-09	3059	No cases were selected	Not selected
2009-10	14923	No cases were selected	Not selected
2010-11	19637	(i) Turnover more than rupees ten crore (ii) Turnover rupees sixty lakh to ten crore (iii) ITR more than rupees five lakh (iv) Inter-state sale more than 25 per cent of GTO (v) Refund more than rupees twentyfive thousand	2275 (21.12.2012)
2011-12	42157	Not available	1661 (15.10.2013)
2012-13	44797	(i) Increase in TTO is less than 10% from previous year. (ii) Sale of tax free goods increase (more than 20%) in comparison to GTO from previous year. (iii) GTO less than 80% of the total purchase. (iv) Stock transfer-ITR claimed ratio (v) Lower rate under (5%) sale increase more than 20% of TTO comparison from previous year (vi) ITR claimed increase more than 20% in comparison to tax payable (vii) GTO and tax deposit difference more than 20%.	273 (31.12.2014)

It can be seen from Table 2.9 that the Commissioner did not select any cases for assessment under Section 21(3) for the years 2008-09 and 2009-10, which used to draws an assurance that revenue realisation by dealers is well upto the mark. For the years 2010-11 to 2012-13, 2275, 1661 and 273 dealers respectively were selected for scrutiny under the criteria fixed which was 11.59, 3.94 and 0.6 per cent respectively of the number of registered dealers opted for self-assessment. Selection of dealers for year 2012-13 was dismal

as only 0.6 per cent of the cases of self-assessment had been selected for scrutiny.

During the exit conference, the Government stated (August 2015) that every year the risk parameters for selection of cases under the Section 21 (3) would be changed and necessary efforts would be made to select more cases under Section 21(3).

We recommend that the Department may consider selecting significant number of self-assessed cases for tax audit every year to prevent leakage of revenue.

2.2.16 Non-existence of ITR verification mechanism for purchases below ₹ 1 lakh

The Government amended the Form 18 (Annual Statement) and prescribed that list of all purchases/sales of value more than ₹ 1 lakh is to be submitted. This *inter-alia* exempted the dealers from submission of list of purchases/sales valuing up to ₹ 1 lakh. This resulted in absence of mechanism for verification of ITR in respect of purchases up to ₹ 1 lakh.

Ever since the introduction of VAT in Chhattisgarh, a dealer was required to submit Form 18 along with the list of all the purchases/sales irrespective of the value of transactions from a dealer in a year. Form 18 was amended (March 2008) and monetary limitation of transactions of ₹ 1 lakh was inserted.

In reply to an audit query regarding existence of ITR verification mechanism, the Department stated (July 2015) that ITR verification mechanism in the Department is computerised. On the basis of requirement of Form 18 and reply of the Department, it transpired that the Department was verifying the ITRs only in respect of purchases from a dealer in a year having value more than ₹ 1 lakh but not the purchases having value less than ₹ 1 lakh.

Non-verification of purchase below ₹ 1 lakh by the Department may encourage the dealers to claim fraudulent ITR. Thus the prevailing system in the Department is not robust to look properly into all the cases of ITR verification.

During the exit conference, the Government replied (August 2015) that suitable amendment would be made in CGVAT Rules regarding submission of list of dealers from whom the purchases were made below ₹ 1 lakh from within the State.

2.2.17 Non-monitoring of reversal of ITR on closing stock in respect of cancelled registration

Five CTOs did not furnish information regarding closing stock of cancelled dealers and reversal of ITR thereon if any. This shows lack of mechanism of monitoring the reversal of ITR.

According to Section 13 (5) (a) (iii) of CGVAT Act, 2005 where the registration certificate of a registered dealer who having purchased any goods referred to in clause (a) or clause (b) of sub-section (1) and having claimed

ITR in respect of the said goods under the said clauses, is cancelled under sub-Section (10) of Section 16, such dealer shall pay the amount claimed by way of ITR under the said clauses in respect of the goods held in stock by him on the date the order of cancellation of the registration certificate takes effect.

We found during test check of records of office of five⁸CTOs between May 2015 and June 2015 that 5600 registrations were cancelled by the CTOs during 2010-11 to 2014-15. The CTOs did not furnish information regarding closing stock of dealers whose registrations were cancelled and reversal of Input Tax Rebate thereon, if any.

Above facts indicate that ITR monitoring mechanism in the case of cancelled registration to ensure reversal recovery of ITR on closing stock is lacking in the Department.

During the exit conference, the Government stated (August 2015) that the matter would be re-checked.

We recommend that the Department may consider evolving ITR monitoring mechanism in respect of cancelled registrations to ensure reversal of ITR on closing stock.

2.2.18 Short realisation of revenue due to incorrect classification of contract for composition of tax

There was an application of lower rate of tax in respect of composition of tax due to wrong categorization of contract work of ₹ 22.67 crore and consequential short levy of tax of ₹ 21.82 lakh.

During test check of three⁹AOs, we found (between May 2015 and June 2015) that the AOs concerned applied lower rate of tax in six cases of four dealers due to wrong categorization of work which is infringement of Rule 8 of CGVAT Rules, 2006, as detailed in following **Table 2.10**:

Table 2.10

Name of Unit	Assessment year (month & year of assessment)	Audit observation
CTO, Circle 3, Durg	2012-13 (Self-assessed case)	A dealer had undertaken the construction work of crusher and limestone belt conveyor of proposed clinkerisation/ grinding plant having contract value of ₹ 18.40 crore and opted for composition of tax. The dealer deposited tax at the rate of two <i>per cent</i> and AO accepted treating it as civil works. Actual rate applicable was three/four <i>per cent</i> under the work fabrication and installation of plant and machinery. This resulted in short realisation of ₹ 16.94 lakh.
DC, Div.I, Bilaspur	2009-10 (March 2014)	A dealer had undertaken the work of installation, testing and commissioning of ash water recirculation system in super thermal power project, Sipat (stage-2) having contract value of ₹ 4.06 crore and opted for composition of tax. The AO levied tax at the rate of two <i>per cent</i> treating it as civil works. Actual rate applicable was three <i>per cent</i> under the work fabrication

⁸ CTO-2, Bilaspur, CTO-3, Durg; CTO-3 Raipur; CTO-6, Raipur and CTO-9 Raipur

⁹ DC, Division-I, Bilaspur; CTO-3 Durg and CTO-3 Raipur

		and installation of plant and machinery. This resulted in short levy of VAT amounting to ₹ 4.06 lakh
CTO, Circle-3 Raipur	2014-15 (self-assessed case)	A dealer had undertaken the work of providing and fixing vitrified tiles having contract value of ₹18.14 lakh and opted for composition of tax in three cases. The AO levied tax at the rate of one <i>per cent</i> treating it as civil works instead of five <i>per cent</i> applicable to “all others goods not specified in serial no. 1 to 3 of the type of contract”. This resulted in short levy of tax amounting to ₹ 72,523.
	2014-15 (Self-assessed case)	A dealer has undertaken the work of fitting of pipes under Bhagirathi yojana having contract receipts of ₹ 2.19 lakh and opted for composition of tax. The AO levied tax at the rate of one <i>per cent</i> treating it as civil works instead of five <i>per cent</i> applicable to “all others goods not specified in serial no. 1 to 3 of the type of contract”. This resulted in short levy of tax amounting to ₹ 8,752.

After we pointed this out, the Government stated (August 2015) that necessary action would be taken after verification of the records.

2.2.19 Non/Short levy of Value Added Tax due to application of incorrect rate of tax

While assessing the cases, the AOs levied incorrect rates of tax on turnover of ₹ 136.05 crore which resulted in non/short levy of VAT amounting to ₹ 9.16 crore.

Section 8 of CGVAT Act provides for levy of tax at the rates as prescribed in the Schedules to the Act, depending upon the classification of the goods. Further, as per Schedule II Part IV entry no. 1, all goods not included in Schedule I, Part I (1 *per cent*), Part II (4 *per cent up to* January 2010 and 5 *per cent* afterwards) and Part III (25 *per cent*) of Schedule II are taxable at the rate of 12.5 *per cent up to* January 2010 and 14 *per cent* afterwards.

During test check of assessment cases of 1430 out of 5951 dealers of eleven¹⁰AOs, we noticed (between May 2015 and June 2015) that while finalising the assessment between August 2011 and December 2014 the AOs concerned applied lower rate of VAT due to incorrect classification of goods in 26 cases resulting in non/short levy of tax of ₹ 9.16 crore as detailed in *Appendix 2.1*. The difference between the rate of tax leviable and levied ranged between four to 14 *per cent*.

After we pointed this out, the Government stated (August 2015) that demand notice of ₹ 2.67 lakh had been issued in one case, out of which ₹ 1.40 lakh had since been recovered. Further, in one case the Government stated that in the case of Commissioner of Commercial Taxes, Tamil Nadu and others and M/s. Chitrahhar Traders, Hon’ble Supreme Court held (March 2011) that scrap of plant and machinery was taxable at the rate of 4 *per cent*. We do not agree with the reply as judgement in case of M/s. Chitrahhar Traders is not applicable in this case because in Tamil Nadu General Sales Tax Act, there were specific entries for different categories of scrap. However, there is entry of only iron

¹⁰ AC-2, Division-I, Bilaspur; CTO-2, Bilaspur; AC-3, Durg; AC-1, Division-II, Raipur; AC, Raigarh; AC, Rajnandgaon; CTO-3, Raipur; CTO-9, Raipur; DC, Durg; DC, Division-II, Raipur and CTO-3,Durg

scrap in the Schedule of CGVAT Act. Since plant and machinery consists of different types of metals and alloys, it is not covered under iron scrap as clarified (2005) by the Commissioner of Commercial Tax in the case of M/s. Veergaon Steel and Mineral Company, Raipur and hence taxable at the rate of 12.5 percent as residuary goods. Regarding the remaining cases, the Government replied that necessary action would be taken after verification of the records.

2.2.20 Incorrect/ excess allowance of Input Tax Rebate (ITR)

Six dealers were allowed ITR of ₹ 1.82crore instead of ₹ 1.37 crore due to wrong computation, inadmissible goods etc. and the AOs allowed the same resulting in incorrect/excess allowance of ITR of ₹ 44.89 lakh.

We found between May 2015 and June 2015 during test check of assessment cases of 874 out of 2766 dealers of six AOs that in the case of six dealers the AOs concerned had allowed (between August 2012 and December 2014) excess/ incorrect ITR on wrong computation, inadmissible goods etc., as detailed in **Table 2.11** below:

Table 2.11

Sl. No.	Name of unit	Assessment year (Month & year of Assessment)	Audit observation
1	ACCT, Raigarh	2007-08 (December 2014)	The AO incorrectly computed and allowed ITR of ₹ 4.75 lakh at the rate of four <i>per cent</i> on the purchases of ₹ 12.35 lakh from within the State whereas the correct ITR was of ₹ 47,482. Thus there was an excess allowance of ITR of ₹ 4.27 lakh due to wrong computation of ITR.
2	ACCT-1, Division-II, Raipur	2009-10 (December 2012)	According to the audit report, the dealer had purchased plant and machinery of ₹ 53.00 lakhs during the year on which ITR of ₹ 2.12 lakh at the rate of four <i>per cent</i> was allowable while the ITR claimed by the dealer and allowed by the AO was ₹ 11.49 lakh. This resulted in excess allowance of ITR of ₹ 9.37 lakh.
3	CTO Circle-9, Raipur	2009-10 (May 2013)	The dealer engaged in trading of Iron and Steel. As per Assessment year 2008-09 ITR carried forwarded to next financial year was ₹ 1.69 lakh but the dealer had carried forward ITR of ₹ 3.93 lakh. Thus excess ITR of ₹ 2.23 lakh should have been disallowed by the AO.
4	ACCT-1, Division-1, Raipur	2009-10 (August 2012)	The dealer incorrectly computed and claimed ITR of ₹ 1.23 crore on purchases of ₹ 9.02 crore whereas ITR allowable was ₹ 1.15 crore. The AO could not notice computation error which resulted in excess allowance of ITR of ₹ 7.90 lakh.
5	CTO Circle-6, Raipur	2008-09 (June 2013)	The AO had allowed excess ITR of ₹ 57,275 on purchase of ₹ 4.58 lakh, the invoices/purchase bills of which did not show amount of VAT separately which was violation of Rule 9 of CGVAT Rules, 2006 which prescribes that no ITR shall be made or be allowed if the bill, invoice or cash memorandum does not indicate the amount of tax collected by the selling registered dealer.
6	DCCT, Durg	2008-09 (Aug. 2012) &	As per the circular of the department dated 07.09.2012, transfer of property in goods whether as goods or in some other form, involved in the execution of works contract is

	(Dec.2013)	covered under sale and is eligible for ITR whereas other goods such as machinery/equipment, diesel, spare parts etc. used in the execution of works contract are not eligible for ITR. The dealer had purchased tipper of ₹ 2.63 crore from within the State on which ITR of ₹ 20.54 lakh was disallowed by the AC. The Appellate Authority allowed ITR treating it as capital goods thus resulting incorrect allowance of ITR of ₹ 20.54 lakh.
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The above table shows that the AOs concerned allowed incorrect/excess ITR of ₹ 44.89 lakh.

After we pointed this out (between May 2015 and June 2015), the Department stated (October 2015) that demand notice of ₹ 20.54 lakh had been issued in one case. In remaining cases, the Government stated (August 2015) that cases were being re-opened under Section 22(1).

2.2.21 Non-levy of tax on discount received through credit notes

The dealers received discount of ₹ 25.19 lakh through credit notes and the same was not included in the sale value by the AOs resulting in non-levy of tax of ₹ 3.53 lakh.

As per the definition of sale price under Section 2(t) of CG VAT Act, any other consideration payable to a dealer as valuable consideration for the sale of any goods is includible in the sale price. Further, as per the circular no./CTO/tech./2013/19/2043 dated 07.09.2013 issued by the Commissioner, Commercial Tax, Raipur, the amount received from the seller under credit note shall not form the part of sale price if the dealer submits a declaration as prescribed by the department. In cases of non-submission of prescribed declaration form, discount received shall form part of sale price. Further more, according to Part IV of Schedule II of Chhattisgarh Value Added Tax Act, 2005 "All other goods not included in Schedule I and in part I, II and III of this Schedule are taxable at the rate of 14 *per cent* for the year 2011-12" and accordingly tyre and paint are taxable at the rate of the 14 *per cent*.

We found (May 2015) during test check of assessment cases of 234 out of 532 dealers of CTO-3, Raipur that two dealers engaged in purchase and sale of tyre and paint received discount of ₹ 25.19 lakh through credit notes in connection with sale during the year 2010-11 and 2011-12. Further scrutiny of Trading and Profit & Loss Account revealed that the discount on purchase received during the year was not included in the sale price but full ITR was claimed on total purchases made from within the State.

Since the dealers had not submitted prescribed declaration as per the circular of September 2013, consideration received for the sale of any goods should have been included in the sale price. Non-observance of provisions of Section 2 (t) of the Act and instructions contained in above circular led to non-inclusion of discount of ₹ 25.19 lakh in sale price which resulted in non-levy of tax of ₹ 3.53 lakh.

After we pointed this out (May 2015), the Government replied (August 2015) that credit notes received from seller as discount do not form part of the sale price. We do not agree with the reply of the Government because in these

cases prescribed declarations were not submitted by the dealers and as such discount received should form the part of sale price.

2.2.22 Incorrect deduction from turnover

The dealer claimed deduction of labour charges of ₹ 56.33 lakh in fabrication works and the AO allowed the same resulting in short levy of VAT amounting to ₹ 7.04 lakh.

We found between May 2015 and June 2015 during test check of assessment cases of 234 out of 532 dealers of CTO-3, Raipur that a dealer engaged in manufacturing and trading of fabrication works had shown sales valuing ₹ 65.57 lakh from which ₹ 56.33 lakh was deducted as labour charges and tax of ₹ 86,634/- at the rate of 12.5 per cent on taxable turnover ₹ 6.93 lakh was paid by the dealer. Further scrutiny of the entry tax returns (Form-VIII) revealed that the dealer had paid entry tax on raw material of ₹ 21.18 lakh at the rate of one per cent which shows that dealer had purchased and consumed raw material, made fabrication goods and sold them during the course of his business.

Since the dealer neither undertook works contract nor job work, hence deduction of labour charges of ₹ 56.33 lakh from GTO was incorrect which should be included in taxable turnover being manufacturer of fabricated goods. Above goods are not included in Schedule I and in part I, II and III of Schedule II and hence taxable at the rate of 12.5 per cent for the year 2008-09. This resulted in short levy of tax of ₹ 7.04 lakh at the rate of 12.5 per cent.

After we pointed this out (between May 2015 and June 2015), the Government replied (August 2015) that action would be taken after verification.

2.2.23 Suppression of turnover

The AO did not levy tax and penalty on the suppressed sale of ₹ 21.47 lakh resulting in non-levy of tax and penalty of ₹ 5.67 lakh.

We found (May 2015) during test check of assessment cases of 74 out of 74 dealers of ACCT-3, Durg that two dealers engaged in 'trading of whole sale agency goods' and manufacturing and sale of Ferro-alloys' were assessed under Section 21(2) in June 2013 for the period 2009-10 and 2010-11 respectively. Scrutiny of records viz. Form-18 (Annual Financial Statement) and Audit Report revealed that the dealers had shown Gross Turnover (GTO) as ₹ 5.03 crore and ₹ 7.25 crore respectively and remitted their tax liability on the same after being allowed necessary permissible deductions.

Further scrutiny of SAS¹¹ report of purchase and sale revealed that above two dealers had suppressed their sales to the tune of ₹ 5.58 lakh and ₹ 15.89 lakh when compared with the purchase of dealers who had purchased goods from aforesaid two dealers. This resulted in evasion of tax to the tune of ₹ 1.42 lakh as detailed in *Appendix 2.2*. Penalty of ₹ 4.25 lakh under Section 54 of CGVAT Act was also leviable.

¹¹ System Analyst's Software is a module which cross verifies the sale and purchase of different dealers.

After we pointed this out, the Government replied (August 2015) that cases had been re-opened under section 22(1) for re-assessment.

2.2.24 Incorrect determination of taxable turnover

Non-compliance of the circular issued by the Government (September 2012) regarding calculation of taxable turnover in respect of works contract resulted in short levy of VAT amounting ₹ 46.55 lakh.

As per judgment of Hon'ble Supreme Court (SC) in the case of M/s. Gannon Dunkerly & company Vs. State of Rajasthan (1993), the taxable turnover in respect of works contract should be determined after deducting the expenses relating to the labour i.e. labour charges for execution of works contract, amount paid to sub contractor for labour and services, charges for planning and designing and architect fees, cost of establishment etc. Further, the Government instructed (September 2012) that the taxable turnover in respect of Works Contract should be determined in the light of the above judgment of Supreme Court.

We found between May 2015 and June 2015 during test check of assessment cases of 300 out of 345 dealers of three¹² units that five dealers engaged in works contract (assessed between August 2012 and December 2014) had shown gross receipts as ₹ 142.75 crore during the period 2007-08 and 2011-12. Further scrutiny of the records revealed that the AOs determined the taxable turnover of ₹ 33.63 crore after taking into consideration the purchase price of material used in works contract, freight, profit and tax and accordingly levied tax of ₹ 1.78 crore.

This was violation of aforesaid judgment and Government instruction. After applying the procedure prescribed in the aforesaid judgement and Government instructions, the taxable turnover should have been determined as ₹ 43.30 crore and accordingly tax of ₹ 2.24 crore should have been levied. Thus non-observance of the Judgment and the Government instruction by the AOs resulted in short levy of VAT of ₹ 46.55 lakh as detailed in **Appendix 2.3**.

After we pointed this out, the Department stated (November 2015) that demand notice of ₹ 19.60 lakh had been issued in two cases. Remaining cases were being re-opened under Section 22(1) for re-assessment.

2.2.25 Irregularity in submission of statutory forms and supporting documents in inter-state transaction under CST Act

There was incorrect allowance of exemption/concessional rate of tax against inter-state sale, stock transfer, transit sale and invalid forms. This resulted in Non/Short levy of tax of ₹ 1.68 crore.

Section 8 of the Central Sales Tax (CST) Act, 1956 provides for levy of tax at the rate of three *per cent* between April to May 2008 and two *per cent* with effect from June 2008 on interstate sales of goods made against declaration in Form 'C'. Similarly in respect of transit sale i.e. sales made during the

¹² AC, Rajnandgaon, AC Raigarh and DC, Durg

movement of goods, selling dealers are required to furnish Form E-I/II and Form-C in support of such sale for claiming exemption from payment of tax.

Further, under section 6(A) of the CST Act, consignment sale (branch transfer) shall be exempt from payment of tax on production of statutory Form-F. In the absence of the statutory forms and supporting documents, the tax on these goods is leviable at the rates prescribed in the CGVAT Act.

2.2.25.1 We found between May 2015 and June 2015 during test check of assessment cases of 558 out of 790 dealers of five¹³ units that out of 11 cases, nine dealers having inter-state transactions of ₹ 113.27 crore had not furnished 'C' forms valuing ₹ 8.82 crore in support of interstate sales and two dealers having inter-state transactions of ₹ 271.43 lakh submitted defective 'C' forms amounting ₹ 24 lakh. Due to non-submission/submission of defective 'C' forms, the dealers were liable to pay the tax at local rates prescribed in CGVAT Act. However, all the dealers availed concessional rate of tax under CST resulting in short realisation of tax amounting to ₹ 23 lakh as detailed in **Appendix 2.4**.

2.2.25.2 We found (June 2015) during test check of assessment cases of 41 out of 41 dealers of DC, Div.-II, Raipur that a dealer was engaged in trading of jute bag was assessed in April 2014 for the year 2009-10, had submitted 'C' forms in support of interstate sales of ₹ 74.31 crore. Further, it was found that 'C' forms of ₹ 35.17 crore were actually issued in favour of his other branch at Kolkata. Hence the above sale should have been treated as inter-state sales without 'C' form. However by allowing concessional rate of tax there was a short realisation of tax of ₹ 1.06 crore.

2.2.25.3 We found (June 2015) during test check of assessment cases of 297 out of 496 dealers of three¹⁴ units that the three dealers engaged in manufacturing /purchase and sale of sponge iron, and jute yarn were assessed between April 2014 and March 2015 for the period 2007-08, 2009-10 and 2011-12. In one case the dealer had not furnished 'C' form in support of inter-state sale amounting ₹ 4.60 crore. In absence of the form, the AO levied lower rate of tax resulted in short realisation of tax amounting ₹ 10.40 lakh as detailed in **Table 2.12**:

Table-2.12

(₹ in lakh)

Sl. No.	Name of Unit	Assessment year (Month & year of assessment)	Amount of inter-state sale	Amount which was Supported/ Not supported with Form 'C'	Rate of tax leviable/ levied	Short levy	Nature of observation
1	DC, Durg	2011-12 (Mar 15)	6840.55	460.22	5/4	4.51	The Government increased rate of tax on sponge iron from four to five <i>per cent</i> from April 2011. The

¹³ AC-III, Durg;AC, Rajnandgaon;AC, Division II, Raipur;CTO-9, Raipur and DC Division-II Raipur

¹⁴ DC, Durg;CTO-9, Raipur and DC, Division II, Raipur

							AO levied tax at the rate of four <i>per cent</i> instead of five <i>per cent</i> .
2	CTO-9, Raipur	2007-08 (Dec. 14)	258.37	152.71	3/2	1.53	The Rate of tax on re-rolled products for the period 2007-08 was three <i>per cent</i> while AO levied the tax @ two <i>per cent</i> .
3	DC, Div. II, Raipur	2009-10 (April 2014)	7431.18	436.00	2/1	4.36	AO levied tax at the rate of one <i>per cent</i> instead of two <i>per cent</i> on jute yarn.
Total			14530.1	1048.93		10.40	

2.2.25.4 We found between May 2015 and June 2015 during test check of assessment cases of 302 out of 616 dealers of two¹⁵ units that in three dealers, sales turnover valued at ₹ 6.06 crore was not supported with E1-C form of ₹ 2.56 crore, E1 form of ₹ 2.68 crore and C form of ₹ 17.28 lakh. The dealers were not entitled for exemption of tax of ₹ 16.30 lakh availed by them as detailed in **Appendix 2.5**.

2.2.25.5 We found between May 2015 and June 2015 during test check of assessment cases of 83 out of 204 dealers of AC, Division-I, Raipur (Smt. Lata Tyagi) that in two cases the dealers had made branch transfer of goods valued at ₹ 3.61 crore without submitting Form- F valuing ₹ 87.05 lakh in support of such branch transfer. This resulted in non-levy of tax of ₹ 12.19 lakh.

After we pointed this out, the Government stated (August 2015) that cases were being reopened under Section 22(1) for re-assessment.

We recommend that the Department may consider issuing instructions to the assessing authorities to ensure submission of prescribed forms by the dealers before allowing exemption/concessional rate of tax in cases of inter-state transactions.

2.2.26 Internal Control Mechanism (ICM)

The Internal Audit Wing (IAW) of a Department is a vital arm of the internal control mechanism and is generally defined as the control of all controls to enable an organization to assure itself that the prescribed systems are functioning reasonably well.

When we asked the Department regarding existence of ICM consisting of Internal Audit Wing (IAW), ITR verification mechanism and provisions of audit of Commercial Tax Department (CTD) by the Finance Department, the Department stated that only four chartered accountants are posted in the wing to look after the internal audit (from January 2015). The Department neither furnished any information relating to annual audit plan, number of units audited during the last five years nor produced any records in respect of audit

¹⁵ CTO-9, Raipur and AC, Division I, Raipur (Smt. LataTyagi)

inspection reports, ITR verification mechanism adopted (manual or computerised) etc.

Thus lack of functioning of internal audit coupled with wide spread system deficiency pointed out in the report is a fair indication that the internal control environment is weak.

The CTOs were required to maintain table diary regarding the disposal of the cases and Demand & Collection register to monitor tax due and collected. In test checked units, above registers were duly maintained and reported to their higher authority.

We recommend that the Department may consider establishing the Internal Audit Wing with adequate manpower and authorities.

2.2.27 Conclusion

The Performance Audit revealed the following:

- Survey of unregistered dealers under Section 57A of the CGVAT Act to bring new dealers under tax net was not conducted during period 2010-11 to 2014-15.
- There was inordinate extension of time limit for assessment which would result in backlog of assessment cases. Last dates of assessment for the year 2009-10 and 2010-11 were not over by June 2015.
- The Commissioner did not select cases for tax audit under Section 21 (3) of CGVAT Act for the years 2008-09 and 2009-10. Further, only 11.59, 3.94 and 0.6 *per cent* of the self-assessment cases were selected for tax audit for the years 2010-11, 2011-12 and 2012-13 respectively.
- There was absence of mechanism for verification of ITR by the Department in respect of purchases up to ₹ 1 lakh.
- The Department could not furnish information regarding closing stock of dealers whose registration was cancelled and reversal of ITR thereon. This indicated that there was no monitoring mechanism in cases of cancelled registration to ensure reversal recovery of ITR on closing stock.
- Suppression of turnover, incorrect determination of turnover, incorrect allowance of ITR, non/short levy of VAT and exemption/concessional rate of tax in cases of inter-state transactions without submission of declaration forms led to leakage of revenue.

OTHER AUDIT OBSERVATIONS

VALUE ADDED TAX

2.3 Short/non-levy of Value Added Tax

2.3.1 Application of incorrect rate of tax

While assessing the cases, the AOs levied incorrect rates of VAT on the residuary goods which resulting in short levy of VAT amounting to ₹ 39.47 lakh.

During test check (between May 2014 and November 2014) of 1,480 assessment cases out of 2,270 cases in two Commercial Tax Offices¹⁶, we noticed that in seven cases the AOs levied the VAT at the lower rates on conveyer rollers and toasts. The above goods are not included in Schedule I and in part I, part II and part III of Schedule II of CGVAT Act. Thus, as per entry I of part IV of Schedule II, these goods are taxable as residuary goods at the rate of 12.5 per cent. However, the AOs levied the VAT at the rate of zero and four per cent as detailed in **Table 2.13**:

Table 2.13

(₹ in lakh)

Sl. No.	Name of Unit	Item	Assessment Year (month and year of assessment)	Schedule/ Part/ Item	Turn-over of net sales	Rate of Tax leviable/ levied	Non/ Short levy of Tax	Nature of observation
1.	CTO I, Korba	Convey or Roller	2006-07 and 2007-08 (May 10 to Aug 11)	II/ IV/ 1	359.45	12.5/ 4	30.55	In five cases, AO levied tax at the rate four per cent.
After we pointed out in the audit, the Government replied (September 2015) that additional demand of revenue amounting to ₹ 17.43 lakh have been issued in four cases. No reply was furnished in one case. Further progress of recovery in the accepted cases is awaited (November 2015).								
2.	CTO II, Raigarh	Toast	2007-08 (August 10)	II/ IV/ 1	71.39	12.5/ 0	8.92	In two cases, AO did not levy tax treating toast as tax free goods.
After we pointed out in audit, the Government replied (September 2015) that demand has been raised in both cases and RRC proceedings have been initiated. Further progress of recovery in the cases is awaited (November 2015).								
Total					430.84		39.47	

The above table shows that the AOs concerned applied the lower rates of VAT due to incorrect classification of commodities which resulted in non/short realisation of VAT amounting to ₹ 39.47 lakh.

¹⁶ CTO 1, Korba and CTO-2, Raigarh

2.3.2 Arbitrary assessment of profit

While assessing the cases of works contract, the AO overlooked the audit report of the Chartered Accountant (CA) and arbitrarily assessed the profit of the assessee which resulting in short levy of VAT amounting to ₹ 5.15 lakh.

During test check (October 2013) of 336 assessment orders in the office of ACCT V, Division II, Raipur, we noticed that in three cases pertaining to assessment year 2008-09, dealers engaged in construction business consumed material valuing ₹ 8.58 crore. While assessing the cases in 2012-13, the AO calculated the taxable sale as ₹ 9.30 crore assuming the profit ranging between 5 and 10.50 per cent.

However, as per the audit reports, attached in the cases in accordance with the Section 42 (2) of CGVAT Act, 2005, the profit percentage ranged between 13.67 to 19.61 per cent. As such, taxable sale as per the actual profit reported by the CAs in their Audit Reports was ₹ 10.10 crore. Further, no reason was found recorded in these cases regarding arbitrary calculation of profit at the rates lower than those reported upon by the CAs in their audit reports.

Thus, Audit Reports of CAs were overlooked while assessment of the cases and arbitrary rates of profit were applied. As a result of this, the taxable sale was short assessed by ₹ 80 lakh which led to short levy of VAT amounting to ₹ 5.15 lakh as detailed in the *Appendix 2.6*.

After this was pointed out in audit, the Government replied (August 2015) that on the basis of audit observations, cases were reopened under Section 22 (1) of CGVAT Act and demand notices for additional revenue of ₹ 5.15 lakh had been issued. Further progress of recovery is awaited (November 2015).

2.4 Excess allowance of Input Tax Rebate

The AO allowed Input Tax Rebate (ITR) in respect of whole quantity of coal purchased by the assessee without reducing the part used for generating tax free electricity sold within the State. This resulted in excess allowance of ITR amounting to ₹ 13.34 lakh.

During test check (April 2014) of 287 assessment cases out of 799 assessment cases of DC, Commercial Tax, Raipur (Headquarters), we noticed that in one case, a dealer, engaged in manufacture, sale and purchase of sponge iron, purchased coal (included in Schedule II of CGVAT Act) valuing ₹ 11.32 crore in 2007-08 and used coal worth ₹ 7.38 crore in his Power Plant Division for generation of electrical energy. Out of this, coal valuing ₹ 4.04 crore was used for captive consumption in his Sponge and Steel iron Division. The remaining coal valuing ₹ 3.34 crore (7.38 crore - 4.04 crore) was used in generation of electrical energy which was sold by the dealer.

Since, Electrical Energy is included in Schedule I as tax free goods, and the sale was not made to dealers of SEZ or outside India (there is no SEZ in the State and the sale is made within the State), ITR should have been reduced in respect of coal (valuing ₹ 3.34 crore) used in production of Electrical Energy sold by the dealer in accordance with the Section 13(1)(b) of CGVAT Act. However, while assessing the case (August 2011), the Assessing Officer (AO)

allowed ITR of ₹ 45.29 lakh (@4%) on account of total purchase of coal (₹ 11.32 crore) as raw material. This resulted in excess allowance of ITR amounting to ₹ 13.34 lakh¹⁷.

After this was pointed out in audit, the Department replied (August 2015) that case had been reopened and action had been initiated under Section 22 (1) of the CGVAT Act. Further progress in the case is awaited (November 2015).

CENTRAL SALES TAX

2.5 Short levy of Central Sales Tax on interstate sale not supported by declaration

Central Sales Tax (CST) at the rate of four per cent was levied by the AOs instead of 12.5 per cent on the interstate sale of goods not supported with form “C” which resulted in short levy of CST amounting to ₹ 45.45 lakh.

During test check (between June 2013 and May 2014) of 396 assessment orders of ACCT, Division II, Raipur and CTO I, Korba, we noticed that in two cases, the interstate sale of MS and GI¹⁸ fabricated structures and Conveyor rollers were not supported with “C” forms.

As per Section 8 of CST Act, in case of interstate trade without declaration in form “C”, tax shall be levied at the rate applicable for sale of such goods within the state. MS and GI fabricated structures and Conveyor rollers were not included in part I, II and III of Schedule II of CGVAT Act. Thus, as per part IV of the Schedule II of CGVAT Act, CST was leviable at the rate of 12.5 per cent. However, the AOs assessed the cases at the rate of four per cent. As such, the AOs applied lower rates of taxes during the assessment of inter-state sales as detailed in **Table 2.14**:

Table 2.14

(₹ in lakh)

Sl. No.	Name of Unit	Item	Assessment Year (month and year of assessment)	Turnover of net sales	Rate of Tax leviable/levied	Non/Short levy of Tax	Nature of observation
1.	ACCT, Div. II, Raipur	MS and GI fabricated structures	2008-09 (June 2013)	Total inter-state sale was ₹ 644.89 lakh; not supported with “C” form ₹ 427.02 lakh	12.5/4	36.63	MS and GI fabricated structures were not included in part I, II and III of Schedule II of CGVAT Act. Thus, CST was leviable at the rate of 12.5 per cent. However, the AO levied the same at the rate of four per cent.

After this was pointed out in audit, Department replied (August 2015) that on the basis of audit observation, reassessment had been done under Section 22 (1) and demand notice for ₹ 73.26 lakh had been issued. Recovery was in progress through RRC and action for attachment of bank account of the dealer had been

¹⁷ Total ITR allowed = ₹ 45.29 lakh
 Allowable ITR (on coal valuing ₹ 4.04 crore) = ₹ 31.95 lakh
 Excess allowance of ITR = ₹ 13.34 lakh

¹⁸ Mild Steel and Galvanised Iron

initiated. Further progress is awaited (November 2015).							
2.	CTO-1, Korba	Conveyor rollers	2007-08 (August 2011)	103.77	12.5/4	8.82	Conveyor roller being the residuary item, CST was leviable at the rate of 12.5 <i>per cent</i> . However the AO levied the same at the rate of four <i>per cent</i> .
After we pointed out in the audit, Department replied (August 2015) that on the basis of audit observation, reassessment had been done under Section 22 (1) and demand notice for ₹ 11.15 lakh had been issued. Recovery is in progress. Further progress is awaited (November 2015).							
Total				530.79		45.45	

The above table shows that the AOs, while assessing the cases, did not apply the correct rate of CST which resulted in short levy of CST amounting to ₹ 45.45 lakh.

ENTRY TAX

2.6 Non/ Short levy of entry tax due to incorrect application of rates

Application of incorrect rates of Entry Tax (ET) on the entry of the Goods by the AOs resulted in non/short levy of ET amounting to ₹ 10.45 lakh.

During scrutiny (between March 2013 and September 2013) of the 1544 assessment records of ACCT I, Division I, Bilaspur and ACCT (Headquarters), Raipur, we noticed that in three cases, the AOs did not apply correct rates of ET in accordance with the provisions of Section 3 of CGET Act, whereby a dealer is liable to pay ET on the entry in the course of business of a dealer of goods specified in Schedule III into each local area for consumption or use of such goods but not for sale therein. Further, entry tax at the rates of 0.5 *per cent* on Bicycle, tyres, tubes and parts thereof and one *percent* is leviable on goods specified in Schedule II and III respectively. State Government issues notifications from time to time relating to rates of ET and their applicability. The application of incorrect rates of ET is detailed in the **Table 2.15** below:

Table 2.15

(₹ in lakh)

Sl. No.	Name of Unit	Commodity	Assessment Year (month and year of assessment)	Schedule/ Notification No. & Date	Turn-over of net purchases	Rate of Tax leviable/ levied	Non/ Short levy of Tax
1.	ACCT (Hqrs.), Raipur	Bitumen	2009-10 (Aug 2011)	III	529.60	1/0	5.30
Bitumen is included in Schedule III of CGET Act and was consumed in construction of the road. Thus, ET at the rate of one <i>per cent</i> was leviable. However, the AO did not levy tax treating it as tax paid. After this was pointed out in audit, the Government replied (September 2015) that the demand notices had been issued. Further progress in the case is awaited (November 2015).							
2.	ACCT (Hqrs.),	Bicycle, tyres, tubes and parts	2007-08 (Aug 2011)	II	606.30	0.5/0	3.03

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<p>Bicycle, tyres, tubes and parts thereof is included in Schedule II of CGET Act and ET at the rate of 0.5 <i>per cent</i> was leviable. However, the AO did not levy tax. After this was pointed out in audit, the Government replied (September 2015) that the demand notices and RRC had been issued. Further progress in the case is awaited (November 2015).</p>							
3.	ACCT (Hqrs.), Raipur	Iron and steel	2007-08 (Jul 2011)	Notification No. 33 dated 13.04.2000	423.14	1.5/1	2.12
<p>As per the above notification, ET at the rate of 1.5 <i>per cent</i> was leviable on entry of any category of iron & steel as specified in clause (iv) of Section 14 of CST Act into any local area or State from outside the State or within the State for consumption as raw material in manufacture of goods not covered by the above. However, the AO levied the ET at the rate of one <i>per cent</i> only. After this was pointed out in audit, the Government replied (September 2015) that the demand notices and RRC had been issued. Further progress in the case is awaited (November 2015).</p>							
Total					1558.04		10.45

The above table shows that while assessing the cases, the AOs did not apply the correct rates of ET as prescribed in the Schedules and notifications which resulted in short/ non levy of ET amounting to ₹10.45 lakh.