

CHAPTER-II

CHAPTER II

VALUE ADDED TAX/SALES TAX

2.1 Tax administration

Value Added Tax (VAT) laws and rules framed thereunder are administered at the Government level by the Principal Secretary, Finance (Revenue) Department who was assisted by one Commissioner of Commercial Taxes (CCT), nine Special Commissioners, 37 Additional Commissioners, 108 Senior Joint Commissioners, 179 Joint Commissioners, 134 Deputy Commissioners, 581 Commercial Tax Officers, three Senior Joint Commissioners (Accounts) and three Senior Joint Commissioners (Audit) for administering the relevant tax laws and rules.

2.2 Internal audit

The Department had an Internal Audit Wing (IAW) under the charge of the Additional Commissioner of Commercial Taxes. He was assisted by one Senior Joint Commissioner, one Joint Commissioner and two Commercial Tax Officers. This Wing was to conduct scrutiny and detect irregularities in the assessments of VAT cases as well as to check different records and registers to ascertain whether internal control system as envisaged in the Acts and Rules made thereunder were properly followed.

Of the 77 Charge offices and nine Ranges under the Directorate of Commercial Taxes (DCT), West Bengal, the wing planned to audit five Charge offices/Ranges during the year 2015-16 for checking 100 cases. However, the wing audited only two Charge offices/Ranges and checked 37 cases only. IAW stated that the plan for audit of three charge offices could not be executed due to shortage of manpower. They also stated that there was no internal audit manual to formulate working procedure of IAW. Therefore, manpower of IAW needs to be strengthened.

2.3 Results of audit

In 2015-16, test check of the records of 46 units relating to VAT assessments and other records showed underassessment of tax and other irregularities involving ₹ 512.42 crore in 681 cases, which fall under the following categories as given in **Table 2.1**.

Table 2.1
Results of audit

(₹ in crore)

Sl. No.	Categories	Number of cases	Amount
1.	Incorrect determination of Contractual Transfer Price / turnover of sales	48	21.15
2.	Irregular allowance of transfer of goods/ Input Tax Credit /remission	89	45.15
3.	Application of incorrect rate of tax/mistake in computation	98	51.34
4.	Non/short levy of purchase tax/ penalty/ interest	224	86.76
5.	Others	222	308.02
Total		681	512.42

During the course of the year, the Department accepted underassessment and other deficiencies of ₹ 134.09 crore in 346 cases, of which 328 cases involving ₹ 132.35 crore were pointed out in audit during the year 2015-16 and the rest in the earlier years. An amount of ₹ 30.81 lakh was realised in 18 cases during the year 2015-16.

A theme-based compliance audit on “**Administration of recovery of assessed dues by the TROs under the Directorate of Commercial Taxes**” and a few illustrative cases involving ₹ 50.12 crore are discussed in the following paragraphs.

2.4 Audit on “Administration of recovery of assessed dues by the TROs under the Directorate of Commercial Taxes”

2.4.1 Introduction

The Tax Recovery offices under the Directorate of Commercial Taxes, West Bengal work for the recovery of assessed Government dues related to the Commercial Tax Acts⁶ and several other Acts⁷. Working of the Tax Recovery offices is guided by the provisions of the West Bengal Sales Tax (WBST) Act, 1994, the West Bengal Value Added Tax (WBVAT) Act, 2003 and the Bengal Public Demands Recovery (BPDR) Act, 1913. There are eight⁸ Tax Recovery offices in all for performing the recovery of assessed dues in the State, of which one⁹ office administers recoveries of Government dues assessed under Commercial Tax Acts as well as other Acts and the rest of the offices administer recovery of dues assessed under Commercial Tax Acts only. On

⁶ The Bengal Finance (Sales Tax) Act, 1941, the West Bengal Sales Tax Act, 1994, the West Bengal Value Added Tax Act, 2003 and the Central Sales Tax Act, 1956.

⁷ The West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979, the Bengal Amusements Tax Act, 1922, the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972, the West Bengal Entertainment-cum-Amusements Tax Act, 1982, the Bengal Agricultural Income Tax Act, 1944 and the West Bengal Multi Storeyed Building Act, 1979.

⁸ TROs: Berhampore, Durgapur, Howrah, Kolkata & 24 Parganas, Medinipur, Purulia, Raiganj and Siliguri.

⁹ Tax Recovery office, Kolkata & 24 Parganas.

receipt of the requisition from the Requiring Officers¹⁰ stating the total amount of dues to be recovered, the Tax Recovery Officer (TRO) shall take the following steps:

- issue a notice to the debtor for payment of Government dues;
- issue a warrant to the debtor intimating execution of certificate¹¹ for recovery of dues; and
- attach and sell the property and/or arrest the debtor to recover the Government dues.

2.4.2 Objectives, Scope and Methodology

Audit was undertaken with a view to ascertain:

- whether the recovery mechanism of the Tax Recovery offices was efficient and effective;
- whether the provisions of the Acts and Rules under which recovery was guided are adequate; and
- whether there was an effective internal control mechanism including internal audit.

The DCT, West Bengal has eight Tax Recovery offices for recovery of the assessed dues. All these eight offices were selected for audit. The audit covered the period from 2010-11 to 2014-15 and also includes cases of prior periods, where action was taken during the coverage period or was still due. Audit scrutinised the relevant files and documents relating to recovery of assessed dues in these eight TROs. Selection of cases was done mainly on the basis of recoverable amount.

Audit findings

Audit observed deficiencies related to the system, compliance and internal control in respect of administration of certificate cases by the Tax Recovery Officers (TROs). Observations in respect of 1,823 cases have been highlighted in the report, out of which 1,702 cases involve certificate dues of ₹ one lakh or more. These cases are illustrative and are based on test checks carried out by audit. The audit findings are discussed in the following paragraphs: -

2.4.3 Analysis of certificate cases received and disposed of by TROs

Certificate cases received vis-à-vis those disposed of by different TROs during the period from 2010-11 to 2014-15 are detailed in the following table:

¹⁰ Requiring officer means an officer who forwards to the Tax Recovery Officer a certificate for recovery of dues.

¹¹ Intimation made by the Requiring Officer to Tax Recovery Officer about the details of the amount to be recovered.

Table 2.2
Analysis of certificate cases received and disposed

(₹ in crore)

Sl. No.	Name of the TRO	Total number of cases/amount received during 2010-11 to 2014-15.		Total number of cases/amount disposed during 2010-11 to 2014-15.		Percentage of disposal in terms of cases	Percentage of disposal in terms of amount involved.
		Cases	Amount (in ₹)	Cases	Amount (in ₹)		
1.	TRO, Berhampore	273	5.72	65	0.21	23.81	3.67
2.	TRO, Durgapur	899	39.65	86	0.66	9.57	1.66
3.	TRO, Howrah	820	105.60	38	0.29	4.63	0.27
4.	TRO, Kolkata & 24 Parganas	6,206	1,691.22	1,342	73.67	21.62	4.36
5.	TRO, Medinipur	1,031	10.51	12	0.06	1.16	0.57
6.	TRO, Purulia	14	2.56	0	0	0	0
7.	TRO, Raiganj	272	2.63	25	0.03	9.19	1.14
8.	TRO, Siliguri	174	10.71	0	0	0	0
Total		9,689	1,868.60	1,568	74.92	16.18	4.01

Source: Information obtained from Tax Recovery Offices

The table above shows that disposal of the certificate cases in terms of number and amount stood at only 16.18 per cent and 4.01 per cent respectively, indicating the need for improvement in performances of the TROs. Such poor disposal of cases also resulted in accumulation of pending certificate cases.

Compliance deficiencies

2.4.4 Failure of TRO to serve notices for recovery

Section 7 of the BPDR Act, 1913 and Rule 2 of the 'Rules regulating the procedure for recovery of tax, late fee, penalty and interest' as mentioned in Schedule 'X' of the WBST Act, 1994 and Schedule 'F' of the WBVAT Act, 2003, prescribe that when a certificate has been filed in the office of a Certificate Officer (CO)/TRO, he shall cause to be served upon the certificate-debtor¹², in the prescribed manner, a notice in the prescribed form and a copy of the certificate.

Rule 6 under Schedule II of the BPDR Act and Rule 2A of the 'Rules regulating the procedure for recovery of tax, late fee, penalty and interest' of Schedule 'F' of WBVAT Act, 2003, prescribe that the notice may be served upon the addressee personally, by messenger/courier or registered/speed post. If the TRO is satisfied that the defaulter is avoiding service or for any other reason notice cannot be served upon him, the same may be served by affixing a copy thereof in some conspicuous place in his office or the last notified place of business of the defaulter, and the notice so served shall be deemed to have been duly served.

Audit observed from the test check of the certificate case registers (Register-X) and relevant case records maintained by eight¹³ TROs that out of the 134 certificate cases, which were received during April 2005 and September 2015,

¹² A certificate debtor is the person from whom recovery is to be made and named as a 'debtor' in the certificate.

¹³ TROs: Berhampore, Durgapur, Howrah, Kolkata & 24 Parganas, Medinipur, Purulia, Raiganj and Siliguri.

notices were not issued in 25 cases and in 109 cases notices were issued but were returned undelivered. No further action was taken to serve the notices even after expiry of periods ranging from eight to 133 months from the date of receipt of certificate cases by the TROs. Certificate dues involved in these 134 cases were more than ₹ one lakh in each case. Total Government revenue involved in these certificate cases was ₹ 29.62 crore which could have been recovered if action was taken by the TROs. As the notices under these certificate cases were not served, no further action for recovery of the Government dues could be initiated by the TROs. Thus, failure of the TROs to serve the notices resulted in non-recovery of certificate dues of ₹ 29.62 crore.

On this being pointed out, four¹⁴ TROs accepted (between May and June 2016) audit observations in 56 cases involving ₹ 6.97 crore and stated that action was being taken to serve notices. In the remaining cases TROs did not furnish any/specific reply (October 2016).

2.4.5 Delay in service of notices for recovery

Audit observed from the certificate case records maintained under two¹⁵ TROs that notices in 11 cases were issued by the TROs between January 2014 and April 2016, after expiry of periods ranging from eight to 52 months from the date of receipt of certificate cases. These cases were received by the TROs between August 2009 and November 2014. No reason was available on record for such inordinate delay in issue of notices. Certificate dues involved in these 11 cases were more than ₹ one lakh in each case. Total Government dues recoverable under these cases stood at ₹ 1.21 crore.

After this was pointed out, the TRO, Durgapur accepted (May 2016) audit observations in eight cases involving ₹ 1.14 crore and stated that the delay in service of notices was due to vacancy in the post of TRO. The reply is not tenable as posting of TROs was also departmental responsibility. In the remaining cases the TRO, Siliguri did not furnish reply (October 2016).

2.4.6 Non execution of certificate cases

Section 10 of Bengal Amusements Tax Act, 1922, Section 7 of West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972, Section 9 of West Bengal Entertainment-cum-Amusements Tax Act, 1982, Section 45 of Bengal Agricultural Income Tax Act, 1944, Section 11 of West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979 and Section 11(4) of Bengal Finance (Sales Tax) Act, 1941 prescribe that all arrears of tax and penalty due from the person liable to pay assessed dues under these Acts and Rules shall be recoverable as arrears of revenue under BPDR Act, 1913.

Sections 13 and 14 of BPDR Act, 1913 prescribe that CO/TRO may execute the certificate after expiry of a period of 30 days from the date of service of notice. The mode of execution of the certificate may be attachment and sale of property, attachment of any decree or arresting of certificate debtor.

¹⁴ TROs: Berhampore, Medinipur, Purulia and Raiganj.

¹⁵ TROs: Durgapur and Siliguri.

Under provisions of Rule 2 and 3 of 'Rules regulating the procedure for recovery of tax, late fee, penalty and interest', as mentioned in Schedule 'X' of WBST Act, 1994 and Schedule 'F' of WBVAT Act, 2003, when a certificate has been received by TRO from Requiring Officer, the TRO shall cause to be served upon the defaulter a notice requiring the defaulter to pay the amount specified in the certificate within 15 days from date of service of the notice. A certificate may be executed after a period of 15 days from date of service of the notice.

2.4.6.1 Audit observed from Administrative Report of DCT, West Bengal for the year 2014-15 that in addition to other cases, 75,227 certificate cases related to Bengal Finance (Sales Tax) Act, 1941 were pending for disposal as on March 2015. Further, Audit observed from Administrative Reports for previous years and certificate case registers (Register -X) that no action was taken by the CO during the last five years for disposal/recovery of these cases. A test check showed that in 402 cases involving ₹ 95.70 crore, no action other than issue of the notice was initiated by CO for recovery of certificate dues and only ₹ 19.40 lakh was found to have been noted as recovered. Though COs were required to take further action to execute the certificates, no action was found to have been taken by them. Further, unlike the settlement scheme introduced under the West Bengal Finance Act, 2010 for settlement of certificate cases of WBST Act, 1994, no such settlement scheme had been introduced by DCT/Government to dispose of these long pending certificate cases under BF (ST) Act. This has resulted in non-recovery of certificate dues of ₹ 95.51 crore.

After this was pointed out, the concerned TRO did not furnish any specific reply (October 2016).

2.4.6.2 Audit observed from Register-X and case records maintained by seven¹⁶ TROs that in 335 cases of dues pertaining to Amusement Tax, Profession tax, Sales Tax and Value Added Tax, notices were issued between December 2005 and June 2015. Government revenue recoverable under these cases stood at ₹ 82.55 crore. Though TROs were required to execute certificate cases under the provisions of the Act, no action was taken by them even after expiry of periods ranging from eight to 124 months from the dates of service of the notices. Inaction of the TROs to comply with the provisions of the Acts resulted in non-recovery of Government revenue of ₹ 82.55 crore as detailed in following table:

Table 2.3

Non execution of certificate cases

(₹ in crore)

Sl. No.	Name of Tax	Number of cases	Notice issued between	Delay in execution (in months)	Total Dues Involved
1.	Amusement tax	107	July 2010 and April 2015	8 to 65	13.07
2.	Profession Tax	21	July 2012 and December 2014	12 to 41	1.25
3.	Sales Tax/VAT	207	December 2005 and June 2015	11 to 124	68.23
Total		335	December 2005 and June 2015	8 to 124	82.55

¹⁶ TROs: Berhampore, Durgapur, Howrah, Kolkata & 24 Parganas, Medinipur, Raiganj and Siliguri.

After this was pointed out, three¹⁷ TROs accepted (between May and June 2016) audit observations in 145¹⁸ cases involving ₹ 17.66 crore and stated that action had been/was being taken for recovery. In the remaining cases, TROs did not furnish any/specific reply (October 2016).

2.4.7 Non disposal of petitions filed by certificate debtors

Sections 52 (7) and (8) of WBST Act, 1994 and Sections 55 (7) and (8) of WBVAT Act, 2003 prescribe that the certificate debtor may present to the TRO a petition in the prescribed form, denying his liability in the certificate in whole or in part. The TRO shall hear the petition, take evidence and determine whether the certificate debtor is liable for the whole or any part of the amount in the certificate.

Audit observed from certificate case records maintained by TRO, Raiganj that in seven cases involving certificate dues of more than ₹ one lakh in each case, notices were issued by TRO between November 2006 and June 2011. These certificate debtors filed petitions with the TRO denying liability on grounds like non-receipt of demand notice, defective demand, etc. TRO called for production of relevant records from Requiring Officers between July 2009 and August 2011 for disposal of petitions. In four cases involving ₹ 13.38 lakh, even after expiry of periods ranging from 57 to 59 months from the dates of such references, no responses were received from the Requiring Officers as no timeline has been fixed for the Requiring Officers to respond. No further action was taken by TRO for disposal of petitions, as required. In the remaining three cases involving ₹ 5.07 lakh, Requiring Officers furnished relevant records however the TRO did not dispose of these petitions. Thus, due to non-disposal of petitions filed by debtors, further recovery proceedings could not be initiated and certificate demand of ₹ 18.45 lakh remained unrecovered.

After this was pointed out, TRO stated (June 2016) that action was being taken for recovery.

2.4.8 Non attachment of property of defaulters

Under provisions of Rule 4 of 'Rules regulating the procedure for recovery of tax, late fee, penalty and interest', as mentioned in Schedule 'X' of WBST Act, 1994 and Schedule 'F' of WBVAT Act, 2003, when the amount mentioned in notice is not paid, the TRO shall proceed to realise it by attachment and sale of defaulter's movable/immovable property or by arrest of the defaulter or by appointing a receiver for management of the defaulter's movable and immovable properties.

Further, under Rule 20 and 21 of Rules *ibid*, when any movable property is to be attached, a warrant in writing and signed with the name of TRO specifying the name of the defaulter and the amount to be realised, was required to be served. Further, Rule 22 prescribes that if the amount is not paid forthwith, the TRO shall proceed to attach movable property of the defaulter.

¹⁷ TROs: Berhampore, Kolkata & 24 Parganas and Medinipur.

¹⁸ 107 cases involving ₹ 15.66 crore related to Sales Tax & VAT, 19 cases involving ₹ 82.33 lakh related to Amusement Tax and 19 cases involving ₹ 1.17 crore related to Profession Tax.

Audit observed from certificate case records maintained by four¹⁹ TROs that in 69 cases, involving certificate dues of more than ₹ one lakh in each case, warrants of attachments were issued by the TROs and reports²⁰ by the warrant serving officer/*Nazir* were furnished between August 2006 and June 2014. Neither the property was attached in any case nor was any further action taken for recovery of dues. Recoverable Government dues in those cases stood at ₹ 12.38 crore.

Out of these 69 cases, in 20 cases involving ₹ 4.91 crore, though the debtors were existent/traceable at the time of delivery of warrants, no action was taken by the TROs to attach the property/body arrest of debtors even after expiry periods ranging from 22 to 114 months from the dates of the reports.

In 27 cases involving ₹ 5.75 crore, though debtors were found to be non-existent, no further details were sought from Requiring Officers about the debtors even after expiry of periods ranging from 20 to 59 months from the dates of the reports. Police authorities were also not instructed by the TROs to produce these debtors before the TROs.

In the remaining 22 cases involving ₹ 1.72 crore, reports were not available with the case records. Thus, neither existence of these dealers could be established nor any action was taken by the TROs to realise certificate dues.

Inaction of TROs to comply with the provisions of Rules resulted in non-recovery of dues of ₹ 12.38 crore.

After this was pointed out, two²¹ TROs accepted (between May and June 2016) audit observations in 54 cases involving ₹ 11.12 crore and stated that action had been/was being taken. In the remaining cases, the TROs did not furnish any/specific reply (October 2016).

2.4.9 Non-assessment and non-raising of demand of cost and charges

Under provisions of Rule 5 of 'Rules regulating the procedure for recovery of tax, late fee, penalty and interest' as mentioned in Schedule 'X' of WBST Act, 1994 and Schedule 'F' of WBVAT Act, 2003, expenses incurred in respect of service of notice upon the defaulter and of warrants and other processes and all other proceedings taken for realising arrears of tax, penalty, late fee or interest are also realisable from the defaulters.

Audit observed from Register X and certificate case records maintained in five²² TROs that in 37 cases, where the amounts requisitioned by Requiring Officers was recovered in course of pursuance of the certificate cases, the amount of cost and charges, though realisable from the certificate debtors, were not realised. Audit observed that there was no system in place to maintain the accounts of costs and charges. As a result, cost and charges were neither assessed nor demanded by the TROs even after expiry of periods ranging from 28 to 121 months from the dates of payment of the certificate dues.

¹⁹ TROs Berhampore, Durgapur, Kolkata & 24 Parganas and Siliguri.

²⁰ Except in 22 cases where reports of the concerned officer/*Nazir* was not available.

²¹ TROs: Berhampore and Kolkata & 24 Parganas.

²² TROs: Berhampore, Durgapur, Howrah, Medinipur and Raiganj.

After this was pointed out, two²³ TROs in 13 cases accepted (June 2016) the audit observations and stated that action was being taken for realisation of cost and charges. In the remaining cases, the TROs did not furnish specific reply (October 2016).

2.4.10 Failure of TRO to settle certificate cases under WBST Act, 1994

A scheme for settlement of certificate cases was introduced by State Government in 2010 by inserting Section 56(A) of WBST Act, 1994 vide West Bengal Finance Act, 2010 to dispose of the certificate cases under WBST Act, 1994. According to the scheme certificate cases, in which notices were issued by TROs on or before 31 March 2004 were eligible for settlement. This scheme was valid for the period upto 31 March 2011.

As the scheme related to old certificate cases, TRO/DCT had to make public/certificate debtors aware of the scheme. Further, as WBST Act, 1994 was repealed²⁴ in 2005 after enactment of WBVAT Act, 2003, TRO and DCT had to link the Registration Certificates (RCs) of certificate debtors with the new RCs obtained by them under WBVAT Act, 2003, if any, for proper monitoring and realisation of certificate dues under WBST Act, 1994.

Audit observed that no records pertaining to any attempt made by the TRO/DCT to make the public/certificate debtors aware of the scheme was available. TRO/DCT also did not make any attempt to link RCs of certificate debtors with new RCs obtained by them under WBVAT Act.

Data in respect of 6,162 certificate cases eligible for settlement under Section 56(A) of the WBST Act, 1994 was obtained from the DCT. Of these, 1,901 cases were selected for audit scrutiny. Dealers involved in these cases were registered under the WBVAT Act, 2003 also. Tax Recovery Officer received all these cases between 1999-2000 and 2003-04.

2.4.10.1 Audit observed from certificate case registers (Register X) maintained by TRO, Kolkata & 24 Parganas that in 352 cases involving dues more than ₹ one lakh in each case, RCs of dealers were cancelled after December 2005. Thus, the dealers had been running their businesses for a minimum period of 21 months from the dates of receipt of certificate cases by the TRO. Certificate amount involved in these cases stood at ₹ 54.01 crore, of which ₹ 49.31 lakh only was realised before introduction of this scheme, the rest remained unrealised. As RCs of the dealers had been cancelled, the possibility of realisation of the certificate dues was remote. Failure of the TRO in initiating prompt action against certificate debtors, who had not applied for settlement, resulted in non-settlement of certificate cases involving ₹ 53.52 crore under WBST Act, 1994.

After this was pointed out, the TRO did not furnish any/specific reply (October 2016).

2.4.10.2 Audit observed from the certificate case registers (Register X) maintained by TRO, Kolkata & 24 Parganas that in 119 cases having certificate dues of more than ₹ one lakh in each case, the certificate debtors

²³ TROs: Berhampore and Raiganj.

²⁴ Except in case of a few commodities like liquor and motor spirit.

were still operating their business. Certificate dues involved in these cases stood at ₹ 49.69 crore, of which ₹ 2.30 crore only was recovered. TRO did not initiate any further action to recover dues of ₹ 47.39 crore that remained unpaid by them. The cases were not involved in any appeal, revision or court cases. Thus, failure of the TRO to bring the certificate debtors under the settlement scheme and initiate prompt action against certificate debtors who did not apply for settlement resulted in non-settlement of certificate cases involving ₹ 47.39 crore under WBST Act, 1994.

After this was pointed out, the TRO did not furnish any/specific reply (October 2016).

2.4.11 Non-pursuance of the cases sent to Requiring officer/ Police/ Bank

Under provisions of Rule 20 and 21 of the “Rules regulating the procedure for recovery of tax, late fee, penalty and interest” as mentioned in Schedule ‘X’ of the WBST Act, 1994 and Schedule ‘F’ of the WBVAT Act, 2003, when any movable property is to be attached, a warrant in writing and signed with the name of TRO specifying name of the defaulter and amount to be realised, is required to be served. Rule 31 provides that for attachment of property in custody of court or public officer, the TRO may issue a notice to such authorities requesting to hold that property till his further orders.

2.4.11.1 Audit observed from certificate case records maintained in five²⁵ TROs, that in 63 cases involving certificate dues of more than ₹ one lakh in each case, notices/warrants of attachment of movable property were issued by the TROs between July 2006 and June 2015. The copy of the notice/warrant however could not be served as the defaulters were either declared non-existent/non traceable or the certificate debtors avoided appearing before the TROs. The cases were referred to the Requiring Officers or Officers-in-charge of the concerned police stations between March 2007 and September 2015 to furnish further information about the address of the certificate debtor or to produce the debtor before the TROs. In 62 cases, even after expiry of five to 110 months from the dates of such references, neither the Requiring Officer/Officer-in-charge of police stations had responded nor were any reminder issued to them by the TROs. In one case involving ₹ 4.06 crore, although the desired information was furnished by the Requiring Officer, no action against the debtor was taken by the TRO. Government dues involved in these cases stood at ₹ 87.71 crore.

Thus, inaction of the TROs to pursue the cases with the Requiring Officers/ police authorities resulted in non-recovery of Government dues amounting to ₹ 87.71 crore.

After this was pointed out, three²⁶ TROs accepted (between May and June 2016) the audit observations in 26 cases involving ₹ 6.99 crore and stated that the cases had been/were being pursued. In the remaining cases, the TROs did not furnish specific reply (October 2016).

²⁵ TROs: Berhampore, Durgapur, Howrah, Kolkata & 24 Parganas and Medinipur.

²⁶ TROs: Berhampore, Kolkata & 24 Parganas and Medinipur.

2.4.11.2 Audit observed from certificate case records maintained by the TRO, Howrah that in six cases involving certificate dues of more than ₹ one lakh in each case, notices for bank attachment were issued in prescribed format to the bank authorities by the TRO between February 2013 and January 2014. Government dues liable to be recovered under these cases were ₹ 70.21 lakh. In all these cases, neither the bank authorities had responded nor any action was taken by the TRO regarding pursuance of the cases with the bank authorities even after lapse of periods ranging from 28 to 39 months from the dates of notices for bank attachment. This resulted in non-recovery of certificate dues of ₹ 70.21 lakh.

After this was pointed out, the TRO did not furnish specific reply (October 2016).

2.4.12 Non-initiation of recovery proceedings after adjournment

Audit observed from certificate case records maintained by two²⁷ TROs that in 14 cases involving certificate dues of more than ₹ one lakh in each case, recovery proceedings were stopped between November 2010 and January 2015 for various reasons like the debtors requesting for some additional time, the hearing being adjourned by the TROs, etc. Audit also observed that no further action was taken by the TROs even after the expiry of eight to 65 months from the completion of adjournment periods up to the dates falling between December 2010 and June 2015. Failure of the TROs to restart the certificate cases after adjournment resulted in non-recovery of Government revenue amounting to ₹ 3.18 crore.

After this was pointed out, the TROs accepted (between May and June 2016) the audit observation and stated that action had been/was being taken for recovery.

2.4.13 Non-compliance with process while sending demand to the Official Liquidator and non-raising of demand of interest

During the course of execution of three certificates for recovery of WB VAT dues amounting to ₹ 14.72 crore, received in July 2014, November 2014 and September 2015, a requisition for recovery of this amount was made by the TRO, Kolkata & 24 Parganas to the Official Liquidator, High Court Calcutta in respect of a dealer under liquidation. The requisition was made in January 2016 through an official letter addressed to the Dy. Official Liquidator, High Court, Calcutta. There was a prescribed 'FORM-66' in the Companies (Court) Rule, 1959 for lodging claim of dues in respect of the companies under liquidation.

When enquired by Audit, the Official Liquidator intimated that the requisition for recovery of the Government dues in respect of the dealer had not been received in appropriate Form and in proper manner from the TRO, Kolkata & 24 Parganas, as the TRO did not claim Government dues in the prescribed Form.

Under provisions of Rule 5 of the 'Rules regulating the procedure for recovery of tax, late fee, penalty and interest' of Schedule 'F' of the West Bengal Value Added Tax Act, 2003, interest at the rate of one *per centum* for each calendar

²⁷ TROs: Kolkata & 24 Parganas and Raiganj.

month from the date immediately following the end of the period of time specified in the notice issued under Rule 2 upon the amount of tax, penalty, late fee and interest or other sum to which the certificate relates shall be recoverable in the proceedings in execution of every certificate.

Audit observed that in the requisition the total certificate dues were intimated as ₹ 14.72 crore instead of ₹ 16.75 crore, without incorporating the interest recoverable. This resulted in non-incorporation of interest amounting to ₹ 2.03 crore in the requisition sent to the Official Liquidator for recovery.

After this was pointed out, the TRO stated (May 2016) that the matter would be intimated to the law section of the Directorate and the claim of ₹ 14.72 crore in Form-66 would be resubmitted as per guidance of law section however TRO did not furnish any reply regarding interest.

Adequacy of Provisions

2.4.14 Allowing payment of dues in instalments not prescribed under the WBST/WBVAT Act

Audit observed from the records of six²⁸ TROs that in 80 cases, certificate debtors were allowed to make payment of certificate dues in instalments. The cases were either related to the WBST Act, 1994 or WBVAT Act, 2003, where no provision was prescribed for payment of certificate dues in instalments. Certificate dues involved in these cases stood at ₹ 1.50 crore, of which the certificate debtors had paid ₹ 29.32 lakh only. Audit observed that the certificate debtors had stopped payments during the period between March 2006 and January 2015. No action was taken by the TROs to recover the unpaid dues of ₹ 1.20 crore.

In another 11 certificate cases of ₹ 92.30 lakh, TRO, Kolkata & 24 Parganas fixed instalments of less than one *per cent* of the total certificate dues. Under such circumstances, these certificate debtors would be able to pay off their dues in 133 to 1,986 months. Considering interest leviable on certificate dues, the period in which these certificate debtors would be able to pay off the dues would be longer. Such decisions of the TRO were neither reasonable nor in favour of Government revenue. The certificate debtors have paid ₹ 7.56 lakh only. Certificate dues of ₹ 84.75 lakh remained unrecovered.

Thus, allowing payment of certificate dues in instalments without having such provisions in the Acts and Rules resulted in non-recovery of ₹ 2.05 crore.

After this was pointed out, TRO Berhampore and TRO Kolkata & 24 Parganas accepted (between May and June 2016) audit observations in 14 cases involving ₹ 19.16 lakh, of which TRO, Kolkata & 24 Parganas has initiated action for recovery in seven cases involving ₹ 11.67 lakh. In the remaining cases, other TROs did not furnish any/specific reply (October 2016).

²⁸ TROs: Berhampore, Durgapur, Howrah, Kolkata & 24 Parganas, Medinipur and Siliguri.

Internal Control Mechanism

Internal Control is an integral component of an organisation's management processes established in order to provide reasonable assurance that the organisation's operations are carried out effectively, economically and efficiently. Evaluation of internal control mechanism in the administration of different taxes under the Directorate showed deficiencies in the administrative, operational and monitoring controls. Deficiencies in the internal control mechanism are discussed in the following sub-paragraphs:

2.4.15 Non-monitoring of instalments under certificate cases of BPDR Act

Under provisions of Rule 80 of Schedule II of the BPDR Act 1913, payment of the amount due under any certificate may be made by instalments, if the CO decides so.

Audit observed from certificate case registers and records that in 22 certificate cases involving ₹ 18.97 lakh of dues under BPDR Act, TRO Kolkata & 24 Parganas had allowed payment in instalments. After payment of ₹ 2.64 lakh in a few instalments, the certificate debtors stopped payments. No actions like attachment of property, arrest of certificate debtor etc. were taken by the TRO.

Audit observed that no instalment register was maintained to monitor the receipts of the instalments. In the absence of such a register, actual number of certificate cases where payment of certificate dues in instalments were allowed by the TRO, and payments received thereagainst, could not be ascertained.

Thus, in the absence of a system to monitor payment of dues in instalments, certificate dues of ₹ 16.33 lakh remained unrecovered.

After this was pointed out, the TRO did not furnish any specific reply (October 2016).

2.4.16 Absence of a database of certificate cases

A centralised database, preferably computerised, is absolutely necessary in the present age of information technology for proper monitoring of functions of a large institution and appropriate decision making at different levels of hierarchy.

Audit observed from records and discussions held with TROs that no database had been maintained either by TROs or by the Directorate²⁹ to monitor the status of certificate cases. In absence of such a database, two³⁰ TROs could not ascertain the total number of pending certificate cases and amount involved therein for recovery. In the remaining six TROs 1,01,666 certificate cases involving ₹ 4,296.54 crore were pending for final disposal. These TROs were unable to assess the present status of the certificate cases as well as total amount of Government revenue lying pending at various stages of recovery in those certificate cases.

²⁹ The Directorate started maintaining a computerised database of cases involving VAT under TRO, Kolkata & 24 Parganas only.

³⁰ TROs: Howrah and Purulia.

In absence of a database, disposal of certificate cases were not monitored by the TROs. Further, TROs were unable to consolidate the cases of the same dealer received at different dates for various periods of assessment, due to absence of computerised database. Thus, further actions like attachment of property, arrest of certificate debtor etc., were not taken by TROs even against evasive dealers and habitual defaulters. Though the process of computerisation of Directorate of Commercial Taxes was initiated much earlier, certificate cases were not digitised in TROs except the TROs, Kolkata & 24 Parganas till 2015 by the DCT.

After this was pointed out, four³¹ TROs accepted (between May and June 2016) the audit observation and stated that no computerised database had been maintained. The remaining TROs did not furnish any/specific reply (October 2016).

2.4.17 Non-availability of records of certificate cases

2.4.17.1 During the course of audit in TRO, Howrah, 261 case records selected for audit were requisitioned; however, due to poor maintenance of records only 166 case records could be made available to the Audit for scrutiny. In the absence of any cases records in TRO office, Audit could not verify the status of recovery in these certificate cases. Certificate dues involved in the cases, records of which were not made available, stood at ₹ 24.21 crore.

After this was pointed out, the TRO did not furnish specific reply (October 2016).

2.4.17.2 Cross-verification of certificate case register (Register-IX) maintained by the JCCT, Purulia and certificate case records maintained by the TRO, Purulia showed that 61 certificate cases were sent by JCCT to the TRO during the period from 1996-97 to 2001-02 for recovery of dues. Receipt of the certificate cases were acknowledged by the TRO office. Entry of these cases in Register X, action taken thereon, status of the cases and realisation made could not be verified as neither Register X for the relevant period nor the concerned case records were available with the TRO. None of the case records in respect of pending and disposed certificate cases could be made available to audit. Government dues involved in these 61 certificate cases stood at ₹ 86.43 lakh.

After this was pointed out, the TRO stated (May 2016) that efforts would be made to locate the registers and detailed reply would be furnished shortly.

2.4.18 TROs not audited by the internal audit wing (IAW) of the Directorate

The audit questionnaire issued to the TROs and replies received from them showed that the performance of the TROs had never been evaluated by the IAW. During the period covered under audit, none of the TROs was inspected and records thereof were scrutinised by the IAW. Apart from these, the TROs were never inspected by any of the higher authorities of the Directorate/Department as no evidence in the form of inspection report, compliance report, etc. had been found on record.

³¹ TROs: Berhampore, Durgapur, Purulia and Raiganj.

2.4.19 Other points of interest

Audit observed from certificate case records maintained in TRO, Berhampore that in four cases, notices for attachment (VATCP-10) were issued by the TRO between July 2013 and November 2013 to the bank authorities for realisation of ₹ 85.67 lakh. The bank authorities intimated the TRO between November 2013 and March 2014 that they were unable to realise the dues from the certificate debtors as the accounts were non-existent, closed/nil balance, etc. In all these cases, even after expiry of 25 to 30 months from the dates of such intimation from the bank authorities, no further action regarding attachments of other movable properties, attachment of immovable properties etc. was taken by the TRO. This has resulted in non-recovery of certificate dues amounting to ₹ 85.67 lakh.

After this was pointed out, the TRO accepted (June 2016) the audit observation and stated that action was being taken as per provision of the law.

2.4.20 Conclusion

Audit on administration of recovery of assessed dues by the TROs under the DCT showed poor disposal of certificate cases by TROs which was merely 4.01 *per cent* in terms of amount involved in certificate cases and 16.18 *per cent* in terms of number of certificate cases received during last five years. TROs failed to serve notices, execute certificate cases and attach properties of defaulters even after lapse of a considerable span of time. Non-pursuance of cases with Requiring Officers/police authorities/banks etc., also led to non-recovery of certificate dues. Deficiencies in internal controls were also observed like absence of a computerised database, non-availability of records and inadequacy of internal audit.

Other audit observations

2.5 Irregular allowance of remission of tax

In terms of Section 116(1)(c) read with Section 118(1)(c) of West Bengal Value Added Tax (WBVAT) Act, 2003, subject to prescribed conditions and restrictions, a dealer is eligible for remission of tax on sale of goods manufactured in a newly set up industrial unit or in an expanded portion of the existing industrial unit. The Commissioner, Commercial Taxes, West Bengal in a circular issued in October 2002, had instructed all assessing authorities (AAs) to limit remission of tax on sale of goods manufactured in an industrial unit to the annual capacity of production as specified in the eligibility certificate (EC)³². West Bengal Taxation Tribunal in a case³³ had held (November 2008) that remission could not be on the sale of goods manufactured in excess of the approved annual capacity as mentioned in the EC, unless amended by the competent authority.

³² A certificate issued by the Commissioner, Commercial Taxes to an industrial unit for enjoying tax incentives namely, remission of tax, deferment of payment of tax and tax holiday.

³³ Case No. RN-384/2006 in respect of Lintex Tea and Industries Ltd.-vs-Assistant Commissioner, Sales Tax, Special Cell.

Directorate of Industries (DI), West Bengal had issued certificate of registration under West Bengal Incentive Scheme, 1999 to Haldia Petrochemicals Limited in December 1999, with annual capacity of production in respect of benzene and linear low density polyethylene (LLDPE) fixed at 77,055 MT and 2,25,000 MT respectively. In April 2004, DI had amended the certificate of registration and increased the annual capacity of production of benzene and LLDPE to 85,000 MT and 2,60,000 MT, respectively.

The dealer was granted EC by the Special Cell, Directorate of Commercial Taxes (DCT) in August 2000 for remission of tax under Section 41 of West Bengal Sales Tax (WBST) Act, 1994 on sale of plastic granules and petrochemical products manufactured in a unit located in Haldia for a period of 12 years. With the introduction of WBVAT Act in the State from April 2005, DCT issued fresh EC to the dealer for remission of output tax on sales of plastic granules and petrochemical products for the unexpired period of 88 months for which the dealer was eligible under the previous Act. In the EC it was specifically mentioned that the dealer was eligible for remission of output tax in respect of sales of plastic granules and petrochemical products up to the approved annual capacity of production mentioned against each product manufactured in its unit in West Bengal. The commodities, on sale of which remission was admissible, included LLDPE and benzene.

In course of scrutiny of assessment records in Large Taxpayers Unit (LTU), Audit observed that the dealer had sold LLDPE and benzene in 2008-09 and 2010-11, in excess of the annual capacity of production approved by DI and claimed remission of payment of tax on sale thereof. Assessing authority had allowed remission of payment of tax without restricting the claim to the sale as per annual capacity of production. This resulted in incorrect allowance of remission of payment of tax of ₹ 26.92 crore, as shown in the following table:

Table 2.4

Irregular allowance of remission of tax

Assessment period	Sales (in MT)		Sales of goods admissible for remission (in MT)		Sales of goods in excess of production capacity (in MT)		Value of the finished goods sold in excess of approved production capacity (₹ in crore)		Remission allowed in excess (₹ in crore)*
	LLDPE	Benzene	LLDPE	Benzene	LLDPE	Benzene	LLDPE	Benzene	
2008-09	2,91,966	1,02,656	2,60,000	85,000	31,966	17,656	203.24	61.37	10.58
2010-11	2,97,885	1,22,560	2,60,000	85,000	37,885	37,560	250.57	157.92	16.34
Total									26.92

*Tax calculated at the rate of four per cent.

After this was pointed out, the AA accepted (June 2015) audit observations in both the cases and stated that proposal for *suo motu* revision of the case in respect of assessment period 2008-09 had been sent to the Special Commissioner, Commercial Taxes and that in respect of assessment period 2010-11 would be sent in due course.

The cases were reported to Government in December 2015 followed by reminders issued up to November 2016; their reply has not been received.

2.6 Short levy of additional sales tax

In terms of Section 18A of the WBST Act, 1994, an additional sales tax is to be levied on the tax payable by a dealer under Section 17 in respect of sales of motor spirit at the rate of 20 *per cent* of such tax.

In course of scrutiny of assessment case records in LTU, Audit observed in February 2015 that in assessing a case of a dealer in June 2012 for the assessment period 2009-10 the AA had determined tax on motor spirit at ₹ 416.55 crore that was exigible to additional sales tax of ₹ 83.31 crore. While calculating the additional sales tax, AA had incorrectly deducted the rebate on high speed diesel and light diesel oil of ₹ 16.67 crore from ₹ 416.55 crore and levied additional sales tax of ₹ 79.98 crore on the tax amounting to ₹ 399.88 crore. This resulted in short levy of additional sales tax of ₹ 3.33 crore.

After this was pointed out AA, while accepting the observation, stated (June 2015) that proposal for *suo-motu* revision of the assessment order had been sent to the Special Commissioner, Commercial Taxes, West Bengal.

The case was reported to the Government in December 2015 followed by reminder issued up to November 2016. Further report on realisation is awaited.

2.7 Incorrect determination of turnover of sales

In terms of Section 2(55) of WBVAT Act, 2003 and Section 2(40) of WBST Act, 1994, turnover of sales (TOS) in relation to any period means the aggregate of the sale prices or parts of sale prices received or receivable by a dealer in respect of sales of goods made during such period which remains after making deductions therefrom as prescribed under both the Acts. Section 16 of WBVAT Act and Section 17 of WBST Act provide for levy of tax at applicable rates on such part of the TOS which remains after making deductions therefrom as prescribed under the Acts.

Audit found in three³⁴ Charge offices between April 2015 and September 2015 that in assessing eight cases of five dealers between June 2012 and August 2014 for the assessment periods between 2009-10 and 2011-12, AA had incorrectly determined TOS at ₹ 1,474.35 crore instead of ₹ 1,491.46 crore. This resulted in short determination of TOS of ₹ 17.11 crore with consequent short levy of tax of ₹ 2.20 crore, as detailed in the following table:

³⁴ Ballygunge, Salt Lake and LTU.

Table 2.5
Incorrect determination of TOS

(₹ in crore)

Sl. No.	No. of cases/No. of dealers	Nature of irregularity	TOS assessable	TOS assessed	TOS determined short	Short levy of tax
Cases assessed under WBVAT Act, 2003						
1.	3/2	Deduction allowed from aggregate of sales prices was more than that admissible to the dealer	110.18	104.17	6.01	0.26
2.	1/1	Turnover of sales determined was less than that shown in returns	4.56	4.38	0.18	0.01
3.	1/1	Sales as per database of DCT was higher than that determined on the basis of returns filed	7.20	6.42	0.78	0.10
Cases assessed under WBST Act, 1994						
1.	3/1	Turnover of sales accepted as per returns was short of that shown in P & L Account	1,369.52	1,359.38	10.14	1.83
Total	8/5		1,491.46	1,474.35	17.11	2.20

After this was pointed out, two³⁵ Charge offices accepted (between May 2015 and August 2015) audit observations in four cases involving ₹ 26.44 lakh and intimated that action for *suo motu* revision of assessments was initiated. Report on realisation is, however, awaited (October 2016). In three cases involving ₹ 1.83 crore, the AA, LTU stated (April 2016) that sales of manufactured alcohol/India made foreign liquor (IMFL) as shown in Profit & Loss Accounts included sales of other goods also. The reply is not tenable, as in schedules to Profit & Loss Accounts showing stock and sale of finished goods, price and quantity of alcohol/IMFL sold were disclosed separately. Ballygunge Charge office did not furnish specific reply in one case (October 2016).

The cases were reported to the Government between July 2015 and December 2015, followed by reminders issued up to November 2016; their reply has not been received.

2.8 Irregular allowance of input tax credit

Section 22 of WBVAT Act, 2003 provides that a registered dealer can avail of the benefits of input tax credit (ITC) to the extent of tax paid or payable by him in respect of purchases of taxable goods from the registered dealers of West Bengal. However, ITC on purchases made from dealers paying tax at compounded rate is not admissible. In terms of Rule 19(8) of WBVAT Rules, 2005, a dealer claiming ITC shall make payment to the seller by account payee cheque or account payee draft or through electronic banking clearance.

³⁵ Salt Lake and LTU.

Audit found in six³⁶ Charge offices that in 12 cases of 11 dealers assessed between June 2012 and August 2014 for assessment periods between 2009-10 and 2011-12, AAs had allowed ITC of ₹ 2.83 crore, instead of ₹ 1.35 crore, resulting in irregular allowance of ITC of ₹ 1.48 crore, as detailed in the following table:

Table 2.6

Irregular allowance of input tax credit

(₹ in lakh)

Sl. No.	Nature of irregularity	No. of dealers/cases	ITC allowed	ITC allowable	Irregular allowance of ITC
1.	Inadmissible claim of ITC brought forward from previous assessment period was allowed	5/5	120.31	0.68	119.63
2.	ITC was allowed on purchases made without making payment by account payee cheque/draft or electronic banking clearance to the selling dealer	1/1	32.03	19.99	12.04
3	ITC was allowed on purchases from the dealer paying tax at compounded rate	1/1	4.67	0	4.67
4.	ITC was allowed on sale of tax free goods	1/2	8.00	4.15	3.85
5.	ITC, net of reverse credit, was determined excess	1/1	59.70	56.11	3.59
6.	ITC brought forward from previous assessment period was set off twice	1/1	33.72	30.69	3.03
7.	ITC was allowed on claim of purchase from a dealer having cancelled Registration Certificate	1/1	25.05	23.65	1.40
Total		11/12	283.48	135.27	148.21

After this was pointed out, the concerned Charge offices accepted (between April and June 2015) audit observations in 10 cases involving ₹ 74.97 lakh. However, no report on realisation of tax has been furnished. In the remaining cases, LTU did not furnish any reply (October 2016).

The cases were reported to the Government between May and December 2015 followed by reminders issued up to November 2016; their reply has not been received.

2.9 Application of incorrect rate of tax

Section 16(2) of the WBVAT Act, 2003 prescribes rates of tax on sale of goods according to classification of the goods. Section 8(2) of Central Sales Tax (CST) Act, 1956 provides that in case of inter-state sales of goods made to unregistered dealers, tax is leviable at the rates applicable to the sale/purchase of such goods within the State.

Audit observed in 11³⁷ Charge offices that in 24 cases of 23 dealers assessed between June 2012 and June 2014 for the assessment periods from 2009-10 to 2011-12, AAs in 21 cases, involving sales of ₹ 55.11 crore, levied tax short by ₹ 5.03 crore due to application of incorrect rates owing to misclassification of

³⁶ Bally, Behala, Darjeeling, LTU, Maniktala and N. D. Sarani.

³⁷ Asansol, Bally, Ballygung, Behala, Belgachia, Darjeeling, Howrah, LTU, Princep Street, Raja Katra and Salt Lake.

goods, whereas in three cases involving inter-state sales of ₹ 2.16 crore to unregistered dealers, levied tax short by ₹ 6.65 lakh due to application of rates of tax lower than the rates applicable within the State. This resulted in overall short levy of tax of ₹ 5.10 crore.

After this was pointed out, eight³⁸ Charge offices accepted (between August 2011 and March 2016) audit observations in 18 cases involving ₹ 3.94 crore, but did not furnish any report on levy and realisation of tax. In the remaining six cases, four³⁹ Charge offices did not furnish any/specific reply (October 2016).

The cases were reported to the Government between October 2014 and December 2015, followed by reminders issued up to November 2016; their reply has not been received.

2.10 Incorrect determination of contractual transfer price

In terms of Section 2(10) of WBVAT Act, 2003, contractual transfer price (CTP) in relation to any period is the amount received or receivable by a dealer in respect of transfer of property in goods in the execution of any works contract.

Sections 14 and 18 of the Act prescribe that any transfer of property in goods involved in the execution of a works contract shall be deemed to be a sale by the person making such transfer and tax at prescribed rates shall be levied on his CTP after allowing deductions towards labour, service and other charges, like payments to sub-contractors etc. Under Section 40 of the Act, a contractee shall deduct tax at source at the rate of two *per cent* from payments made to a registered dealer for execution of a works contract.

Audit found in four⁴⁰ Charge offices that in five cases, assessed between June 2012 and June 2013 for the assessment periods between 2009-10 and 2010-11, AAs had allowed tax credit of ₹ 7.05 crore on the basis of certificates of tax deducted at source (TDS) produced by the dealers. According to TDS certificates, the dealers received payments of ₹ 352.57 crore as CTP for execution of works contract during the period of assessment. The AAs, however, determined CTP for the purpose of assessment at ₹ 278.78 crore only. This resulted in short determination of CTP by ₹ 73.79 crore with consequent short levy of tax by ₹ 5.25 crore.

After this was pointed out, two⁴¹ Charge offices accepted (March 2016) audit observations in two cases involving tax effect of ₹ 21.43 lakh and stated that proposal for revision of the assessment orders had been sent to the higher authorities. In the remaining cases, Charge offices did not furnish any/specific reply (October 2016).

The cases were forwarded to the Government between October 2014 and September 2015, followed by reminders issued up to November 2016; their reply has not been received.

³⁸ Bally, Ballygung, Behala, Belgachia, Darjeeling, Howrah, Princep Street and Salt Lake.

³⁹ Asansol, Ballygung, LTU and Raja Katra.

⁴⁰ Asansol, Belgachia, Jalpaiguri and LTU.

⁴¹ Asansol and Belgachia.

2.11 Incorrect determination of taxable contractual transfer price

Under Section 18(2) of WBVAT Act, 2003, taxable contractual transfer price (TCTP) of a dealer is determined after deducting contractual transfer of goods, sales of which are declared tax free, labour charges, payments to sub-contractors etc. from CTP. Under Section 18(3) of WBVAT Act, 2003, where TCTP for application of proper rates of tax are not ascertainable from the books of accounts and records maintained by the dealer or where a dealer does not maintain books of accounts and records worthy of credence, as found by the AA or the auditing authority, taxable CTP and application of proper rates of tax thereon shall be determined according to percentage of CTP as specified in the table provided under Rule 30(2). According to the type of works contract, different percentages of CTP have been prescribed under the table for determination of labour, service and other like charges and taxable CTP for application of proper rates of tax.

Audit found in two⁴² Charge offices that in four cases assessed between April and June 2013 for the assessment period 2010-11, the AAs had determined labour, service and other like charges and taxable CTP in accordance with the provisions under Section 18(3). However, due to application of incorrect percentages of the CTP, taxable CTP for application of tax at the rate of four *per cent* was determined at ₹ 4.21 crore, instead of ₹ 3.25 crore, and that for application of tax at the rate of 12.5/13.5 *per cent* at ₹ 3.50 crore instead of ₹ 5.44 crore. This resulted in net short levy of tax of ₹ 17.61 lakh as shown in the following table:

Table 2.7
Incorrect determination of taxable contractual transfer price

(₹ in lakh)

Sl. No.	Name of the Charge office	No. of case(s)	TCTP assessable to tax @		Total tax assessable	TCTP assessed to tax @		Total tax assessed	Net short levy of tax(F-I)
			4 <i>per cent</i>	12.5/13.5 <i>per cent</i>		4 <i>per cent</i>	12.5/13.5 <i>per cent</i>		
A	B	C	D	E	F	G	H	I	J
1.	Asansol	3	320.17	466.65	71.44	392.62	311.44	57.29	14.15
2.	Princep Street	1	4.80	76.86	9.80	28.82	38.43	6.34	3.46
Total		4	324.97	543.51	81.24	421.44	349.87	63.63	17.61

After this was pointed out, Princep Street Charge office accepted (March 2016) the audit observation in one case and stated that proposal for revision had been sent to the higher authority. In the remaining cases, Asansol Charge office did not furnish any specific reply (October 2016).

The cases were reported to the Government between March and October 2015 followed by reminders issued up to November 2016; their reply has not been received.

2.12 Non-levy of penalty on evaded tax

Section 96 of the WBVAT Act, 2003 prescribes levy of penalty, if a dealer has claimed excess ITC but has not reversed the same within the tax period or concealed any sales/purchases. Further, the quantum of penalty should not

⁴² Asansol and Princep Street.

exceed twice the amount of tax which would have been avoided if such concealment was not detected.

Audit found in seven⁴³ Charge offices that in 26 cases of 24 dealers assessed between June 2012 and September 2014 for assessment periods 2008-09 and 2011-12, AAs detected evasion of tax of ₹ 11.67 crore by dealers resorting to claim of excess amount of ITC or concealment of sales/purchases. Though the AAs detected evasion of tax, they did not initiate proceedings to levy any penalty under Section 96 of WBVAT Act. Penalty to the extent not exceeding ₹ 23.07 crore was leviable for evasion of tax.

After this was pointed out, six⁴⁴ Charge offices accepted (between May 2015 and April 2016) the audit observations in 17 cases involving ₹ 12.10 crore and penalty proceedings were initiated. In the remaining cases, the Charge offices did not furnish any/specific reply (October 2016).

The cases were reported to the Government between January 2015 and December 2015, followed by reminders issued up to November 2016; their reply has not been received.

2.13 Non/short levy of interest

Sections 33 and 34 of the WBVAT Act, 2003 prescribe that a dealer, who fails to adjust any amount of reverse credit by way of deducting inadmissible ITC from the amount of ITC claimed for a tax period or fails to make full payment or delays payment of net tax in respect of any tax period of a return period or delays payment of assessed tax by the date specified in the demand notice issued after assessment, shall be liable to pay interest at the rate of 12 *per cent* per annum.

Audit found in 11⁴⁵ Charge offices that in 19 cases assessed between June 2011 and July 2014 for assessment periods between 2008-09 and 2011-12, AAs in one case short levied interest of ₹ 3.63 lakh due to incorrect calculation of number of days involved in delay of payment of tax, in eight cases AAs did not levy interest of ₹ 29.10 lakh where the dealers did not pay tax by prescribed dates. In the remaining 10 cases, AAs did not levy interest of ₹ 82.72 lakh where dealers did not reverse credit by way of deduction of the inadmissible ITC in their returns. This resulted in non/short levy of interest of ₹ 1.15 crore.

After this was pointed out, 10⁴⁶ Charge offices accepted (between December 2014 and March 2016) audit observations in 14 cases involving ₹ 1.05 crore, but did not furnish any report on realisation. In the remaining five cases, four⁴⁷ Charge offices did not furnish any/specific reply (October 2016).

The cases were reported to the Government between October 2014 and December 2015, followed by reminders issued up to November 2016; their reply has not been received.

⁴³ Alipur, Asansol, Behala, Belgachia, LTU, Princep Street and Salt Lake.

⁴⁴ Alipur, Asansol, Behala, LTU, Princep Street and Salt Lake.

⁴⁵ Bally, Ballygunj, Belgachia, Darjeeling, Howrah, LTU, Medinipur, N. D. Sarani, Park Street, Princep Street and Raja Katra.

⁴⁶ Bally, Belgachia, Darjeeling, Howrah, LTU, Medinipur, N. D. Sarani, Park Street, Princep Street and Raja Katra.

⁴⁷ Ballygunj, Belgachia, Darjeeling and Medinipur.

2.14 Short levy of tax due to mistake in computation

Under the WBVAT Act, 2003, tax is to be computed at prescribed rates along with interest and penalty, if any, on the goods sold. The Act also provides for levy of purchase tax on unregistered purchases of goods by a dealer which are not directly related to his business or fall in the negative list of the Act.

Audit observed in 12⁴⁸ Charge offices that in 22 cases assessed between June 2011 and September 2014 for assessment periods between 2007-08 and 2011-12, the AAs had assessed tax and interest of ₹ 163.56 crore, instead of ₹ 168.07 crore due to mistakes in computation. This resulted in short levy of tax of ₹ 4.51 crore.

After this was pointed out, eight⁴⁹ Charge offices accepted (between November 2014 and September 2015) the audit observations in 11 cases involving ₹ 3.61 crore; but did not furnish any report on realisation of tax and interest. In the remaining cases, the Charge offices did not furnish any/specific reply (October 2016).

The cases were reported to the Government between October 2014 and December 2015, followed by reminders issued up to November 2016; their reply has not been received.

⁴⁸ Alipur, Asansol, Bally, Ballygunj, Behala, Burdwan, Durgapur, LTU, Princep Street, Purulia, Salt Lake and Siliguri.

⁴⁹ Alipur, Bally, Burdwan, Durgapur, LTU, Purulia, Salt Lake and Siliguri.

