# CHAPTER II

# VALUE ADDED TAX / CENTRAL SALES TAX

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## 2.1 Tax administration

The administration of the Department is vested with the Commissioner of Commercial Taxes (CCT). The State has been divided into 40 zones, comprising 334 Assessment Circles including four Large Taxpayers[4] units (LTUs) at Chennai and one Divisional Large Taxpayers unit at Coimbatore. Assessment, levy and collection of tax are done by the Assessing Authorities (AAs) in charge of the Assessment Circles. Monitoring and control at the Government level is done by the Principal Secretary, Commercial Taxes and Registration Department.

## 2.2 Internal audit

The Internal Audit wing comprises of one Assistant Commissioner (AC), one Commercial Tax Officer (CTO) and two supporting staff in each zone. The assessments finalised and the refunds made in the preceding year were to be taken up for audit in the succeeding year.

The details of offices programmed for conduct of internal audit and the offices in respect of which internal audit was done during the years 2014-15 to 2016-17 were not furnished by the Department. The year-wise break up of outstanding inspection reports was also not furnished by the Department, though the Department stated that 23,038 paragraphs involving ₹ 662 crore were pending for settlement as of 31 March 2017.

Our check of records in seven[5] out of 40 zonal offices revealed that despite CCT's emphasis (April 2014) on strengthening of internal audit, the sanctioned posts of AC and CTO were lying vacant for significant periods during 2014-15 to 2016-17. Our verification of files relating to audit programs revealed that during the period from 2014-15 to 2016-17, an average of 26.67 units of the total auditable units were programmed and an average of 18.67 units were covered. Thus, there was shortfall of coverage of even programmed units.

When this was pointed out, the Department replied that short fall in conduct of audit was due to vacancies and diversion of personnel to other assignments.

This indicated that least importance was being given to internal audit, though internal audit is an important component of internal control system and gives an opportunity to the Department to identify its weaknesses and undertake corrective measures.

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4 Large taxpayers – Dealers whose taxable turnover for a year exceeds ₹ 200 crore.

5 Zone V, Chennai, Zone VII, Chennai, Zone VIII, Chennai, Zone IX, Chennai, Madurai (East), Tiruppur and Virudhunagar

Despite CCT's instructions in 2014 that internal audit reports in respect of an Assessment Circle is to be communicated through online only to the concerned Assessment Circle within 15 days from the date of completion of audit, we observed that online communication of internal audit reports to the concerned Assessment Circle was not undertaken in any of the seven zones. We also observed that in four[6] zones, out of the total 30 reports issued, 14 reports (47 *per cent*) were issued to the Assessment Circles belatedly; the period of delay ranging from three to 78 days after the time prescribed for issue of report.

Failure to expedite finalisation and communication of inspection reports resulted in delay in pursuance of paras. In the remaining zones, no records were maintained for watching issue of internal audit reports to the concerned Assessment Circles after completion of audit.

We found the absence of monitoring system in the zonal offices to ensure timely action being taken by the Assessment Circles in respect of the observations contained in the internal audit reports. No records were maintained to watch the issue and disposal of internal audit reports. We observed in four[7] zones that replies to 25 out of a total of 30 reports (83 *per cent*) issued during the period of coverage were received beyond the stipulated period of 90 days; the period of delay ranging from 13 days to 907 days.

Thus, non-maintenance of records and lack of proper monitoring system to ensure timely action being taken in respect of issues contained in the internal audit reports has led to huge pendency of internal audit reports and audit observations.

We also noticed that the programme for internal audit is designed and approved by the DC (Territorial), who is also the administrative head for the AAs within the Zone. The same reporting officer for both internal audit as well as AA does not favour independence of internal audit. We, therefore, recommended that internal audit be placed under the independent authority within the department, who is not in charge of any assessment.

The Department accepted the audit observation / recommendation and stated that this would be taken care of at the time of functional re-organisation / cadre re-structuring.

[6] Zone V, Chennai, Madurai (East), Tiruppur and Virudhunagar

[7] Zone V, Chennai, Madurai (East), Tiruppur and Virudhunagar

## 2.3 Results of audit

Test check of records of departmental offices conducted during the period from April 2016 to March 2017 revealed under-assessment of tax and other irregularities amounting to ₹ 4,230.21 crore in 3,366 cases, which broadly fall under the following categories.

**Table: 2.1**

**(₹ in crore)**

| Sl. No. | Category | No. of cases | Amount |
|---|---|---|---|
| 1 | Audit of Assessment, levy and collection of VAT and CST on Petroleum Products | 1 | 1,376.63 |
| 2 | Audit of the Functioning of Business Intelligence Unit | 1 | 2,457.77 |
| 3 | Audit of Collection of arrears of tax in Commercial Taxes Department | 1 | 0.66 |
| 4 | Incorrect exemption of tax | 54 | 59.92 |
| 5 | Incorrect rate of tax | 152 | 10.38 |
| 6 | Incorrect computation of taxable turnover | 325 | 25.50 |
| 7 | Non/short levy of tax | 372 | 17.99 |
| 8 | Non-levy of penalty/interest | 171 | 18.05 |
| 9 | Incorrect allowance of input tax credit | 1,555 | 257.88 |
| 10 | Others | 567 | 5.41 |
| 11 | Expenditure audit | 167 | 0.02 |
| | **Total** | **3,366** | **4,230.21** |

The Department accepted under-assessment and other deficiencies amounting to ₹ 2.28 crore involved in 196 cases pointed out during the year 2016-17. The Department further accepted under-assessment and other deficiencies amounting to ₹ 20.11 crore in 396 cases, which were pointed out in earlier years. An amount of ₹ 5.98 crore in 442 cases had been collected.

Audit of Assessment, levy and collection of VAT and CST on Petroleum Products, Audit of the Functioning of Business Intelligence Unit, Audit of Collection of arrears of tax in Commercial Taxes Department and few illustrative cases involving ₹ 3,841.68 crore are discussed in the following paragraphs.

## 2.4 Audit of 'Assessment, levy and collection of VAT and CST on Petroleum Products'

### 2.4.1 Introduction

The levy of Value Added Tax on Petroleum products contribute significantly to the State's revenue from tax on sale of goods. The four[8] public sector oil companies are the highest contributors to revenue from petroleum products. The revenue from tax on sale of petroleum products constitutes nearly 20 *per cent* of the State's sales tax revenue.

The petroleum products are classified under the First and Second Schedule to the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act). The major petroleum products, namely, Aviation Turbine Fuel (ATF), Petrol, High Speed Diesel (HSD) Oil, Kerosene and Light Diesel Oil (LDO) are mentioned in the Second Schedule involving levy of tax at the point of first sale in the State. Other petroleum products such as Crude Oil, Liquefied Petroleum Gas (LPG), Lubricating oil and Kerosene sold through Public Distribution System (PDS) are mentioned in the First schedule and involve levy of tax at every point of sale in the State.

Audit was conducted to ascertain (i) the sufficiency of the existing system / statutory provisions for assessment, levy and collection of tax on sale of petroleum products; (ii) adherence to the provisions governing assessment; and (iii) the functioning of the e-transit pass system. Audit was conducted from April to August 2017 covering the assessments finalised during the period 2014-15 to 2016-17.

The audit observations were discussed with the Additional Chief Secretary to Government, Commercial Taxes and Registration Department in the Exit Conference held on 9 January 2018. The views expressed at the meeting have been considered and duly incorporated in relevant paragraphs of the Report.

### Audit Findings

The audit findings from the examination of records are given in the succeeding paragraphs. In the beginning, audit findings on common issues relating to petroleum products are given, followed by the specific issues relating to each petroleum product.

### Common issues

### 2.4.2 Exemption on the sale turnover among oil companies allowed without verification

As per Explanation II in the Second Schedule to the TNVAT Act, sale of petroleum products by one oil company to another oil company shall not be deemed to be the first sale in the State and is exempted. The oil companies are required to file a return in Form 'J' meant for goods mentioned in the Second

[8] Chennai Petroleum Corporation Limited (CPCL), Bharat Petroleum Corporation Limited (BPCL), Hindustan Petroleum Corporation Limited (HPCL) and Indian Oil Corporation Limited (IOC)

Schedule. The said return does not contain provision to furnish the details of name, TIN of the purchaser, quantity sold, invoice number and date relating to the sale of petroleum products amongst the oil companies. In the absence of these details, the correctness of the claim of exemption as sale by one oil company to another oil company is not susceptible to verification.

During check of records in four[9] Assessment Circles, we noticed from the Form 'J' returns that four oil companies had declared a turnover of ₹ 88,966.28 crore as sale of petroleum products amongst themselves during the years 2013-14 to 2015-16 and claimed exemption from levy of tax**.** We, however, noticed that the AAs of these Assessment Circles did not obtain the quantitative details of product-wise / dealer-wise sale pertaining to the above turnover, and verify with records of other oil companies to ensure the correctness of the claim of exemption.

After we pointed this out (June 2017), the AAs issued notices (July / August 2017) to the oil companies calling for the details of product-wise / dealer-wise sales of petroleum products. Further report was awaited (January 2018).

### 2.4.3 Levy of purchase tax

As per Section 12 of the TNVAT Act purchase tax is leviable, where a dealer purchases taxable goods without payment of tax within the State and sends the goods so purchased to a place outside the State, on stock transfer.

As per Explanation II in the Second Schedule, sale made amongst oil companies are exempted from levy of tax. Hence, levy of purchase tax is attracted if the goods so purchased without payment of tax are sent to other States on stock transfer.

**2.4.3.1** Scrutiny of Form WW[10] filed by an oil company assessed in LTU-II Assessment Circle indicated stock transfer of Motor Spirit (MS) and HSD to other State. The oil company had not paid purchase tax stating that locally purchased goods were not received at Ennore Terminal (at Chennai), from which stock transfer to other States was made during the years 2013-14 to 2015-16.

We, however, noticed from scrutiny of records that the oil company had received 6,42,499.8 kilo litres (KLs) of petroleum products without payment of tax from CPCL during the years 2013-14 to 2015-16. Since Ennore Terminal was commissioned only during the middle of 2013-14 and the other Terminal at Tondiarpet was shifted to Ennore, the claim of the oil company for non-payment of purchase tax in respect of stock transfer of petroleum products during the years 2013-14 to 2015-16 was not acceptable.

After we pointed this out (September 2017), the AA issued notice (September 2017) to the dealer calling for details of purchases and stock transfer of

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9 LTU-I, LTU-II, LTU-III and LTU-IV

10 Form WW is the statement of audited accounts filed by dealers whose turnover for a year is in excess of ₹ one crore.

petroleum products from the terminal at Ennore. Further report was awaited (January 2018).

**2.4.3.2** An oil company assessed in LTU-I Assessment Circle had not paid purchase tax on the ground that separate accounting records were maintained to establish track of source of product that is sold or stock transferred to other State.

We observed that since the products purchased from various sources are stored in a common tank, the contention of the dealer that stock transfers were made only out of the products sourced from refinery, interstate purchase and imports is not acceptable. Merely maintaining the source of purchase of the product that is being sold or stock transferred in the accounting records does not give separate identity to the product that is stored in common tank, especially when oil is the product in question. Hence, purchase tax was leviable.

After we sought (June 2017) the quantitative details of purchases made by the dealer from other oil companies within the State and the accounting thereof, the AA issued notice (July 2017) to the dealer. Further report was awaited (January 2018).

### 2.4.4 Absence of provision to levy tax at second point of sale

Under the TNVAT Act, petrol and diesel are taxable at the first point of sale in the State. These products are kept outside the ambit of levy of tax at every point of sale in respect of value addition that takes place at each stage. The oil manufacturing companies determine the retail price of petrol and diesel to be adopted by the retail outlets. The petrol and diesel is sold by oil manufacturing companies to dealers on cost plus profit basis. The dealers now own petrol and diesel. State VAT and dealers' commission are then added to the cost of petrol which determines the final retail price of petrol. The dealers' commission is not considered while determining the element of value added tax, though the sale price of petrol and diesel is inclusive of dealers' commission. This results in dealers' commission not being subjected to levy of tax since levy of tax on petrol and diesel is restricted to first point of sale inside the State.

We noticed that the commission paid to the dealers during the period from 2013-14 to 2015-16 was in the range of ₹ 1.09 to ₹ 2.04 per litre. The oil companies had effected sale of 1,96,31,712 KLs of petrol and diesel during the period 2013-14 to 2015-16. The commission realised by the dealers calculated at the minimum rate for the years works out to ₹ 2,695.68 crore. Thus, the non-inclusion of dealers' commission for determination of turnover subjected to levy of tax and the restriction of levy to first point of sale resulted in non-realisation of revenue on the dealers' commission, which is part of final sale price of petrol and diesel.

We observed that the Value Added Tax Acts of the State of Haryana and UT of Delhi does not restrict the levy of tax on petrol and diesel to the first point of sale. Hence, the retail outlets pay tax on their sale price, which is inclusive of dealers' commission. Similar provisions in the State of Tamil Nadu could have resulted in realisation of additional revenue of ₹ 645.35 crore by way of

tax on dealers' commission in respect of sales made at retail outlets during the period 2013-14 to 2015-16.

We, therefore, suggest for amendment of the TNVAT Act to provide for multi point levy of tax on sale of petrol and diesel in order to augment the revenue of the State.

During Exit Conference, the Additional Chief Secretary to Government stated that the suggestion of audit would be taken up for further consideration.

### 2.4.5 Non-inclusion of private sector oil companies in Explanation III to the Second Schedule

Tax on the petroleum products falling under Second schedule of the TNVAT Act is levied at the first point of sale in the State. As per Explanation II to the Second Schedule, a sale by one oil company to another oil company as specified in Explanation III, shall not be deemed to be the first sale in this State. Explanation III specifies six public sector oil companies with a provision that it shall include any other oil company notified in this behalf by the Government in the Tamil Nadu Government Gazette. The State Government, however, have not notified private sector oil companies. Thus, subsequent sale amongst public and private sector oil companies does not attract levy of tax since the earlier transaction of sale was subjected to levy of tax, as mentioned below.

- Sale of petrol and diesel by a private sector oil company for ₹ 151.45 crore was exempted from levy of tax as the preceding sale by two oil companies for ₹ 143.49 crore was subjected to levy of tax. Levy of tax in respect of sale effected by private oil company would have fetched additional revenue of ₹ 1.90 crore.

- Sale of petrol and diesel by two oil companies for ₹ 98.91 crore was exempted from levy of tax as the preceding sale by private sector oil company for ₹ 90.86 crore was subjected to levy of tax. Levy of tax in respect of sale effected by public sector oil companies would have fetched additional revenue of ₹ 2.05 crore.

We noticed that in Andhra Pradesh Value Added Tax Act, the private sector oil companies are also included along with public sector oil companies so that the sale amongst them is not considered as first sale.

We, therefore, suggest for amendment of the TNVAT Act to provide for inclusion of private sector oil companies under Explanation III, so as to augment the revenue of the State.

The Department stated during Exit Conference that proposal in this regard was pending with the Finance Department.

## Specific issues relating to each petroleum products

### 2.4.6 Crude oil

Crude oil, being declared goods, is taxable at the rate of five *per cent* at every point of sale in the State as per entry 41 of Part B of First Schedule to the TNVAT Act.

#### 2.4.6.1 Non-reversal of input tax credit (ITC)

As per Section 19(9) of the TNVAT Act, no ITC shall be available to a registered dealer for tax paid at the time of purchase of goods, if such inputs are damaged in transit or destroyed at some intermediary stage of manufacture. As per Section 19(12) of the TNVAT Act, where a dealer has availed credit on inputs and when the finished goods becomes exempt, credit availed on inputs used therein, shall be reversed.

- During test check of records in LTU-III Assessment Circle, we noticed that reversal of ITC of ₹ 7.68 crore effected by the AA while finalising (December 2015) the assessment of the oil company for the year 2010-11 towards loss of inputs in manufacturing process was remanded back (February 2017) to the AA for fresh assessment by the Joint Commissioner (CT) Appeals. However, the AA did not take further action (September 2017). We noticed from the Annual Report for the years 2013-14 to 2015-16 that similar loss of inputs was incurred in manufacturing process involving reversal of ITC of ₹ 10.98 crore.

- During check of records in LTU-III Assessment Circle, we noticed (August 2017) that an oil company, which availed ITC on purchase of crude oil, had not reversed proportionate ITC relating to exempted sale of petroleum products specified in the Second Schedule to the TNVAT Act, *viz*., sale to another company. The non-reversal of ITC for the period from October 2012 to March 2013 worked out to ₹ 11.31 crore.

We pointed this out to the Department in July / August 2017. Reply was awaited (January 2018).

### 2.4.7 Aviation Turbine Fuel (ATF)

As per entry 5(i) of Second Schedule to the TNVAT Act, sale of ATF is leviable to tax at the rate of 29 *per cent* at the point of first sale in the State. Inter-State sale of ATF not covered by 'C' Form declaration is also taxable at the rate of 29 *per cent* as per Section 8(2) of the Central Sales Tax Act, 1956 (CST Act).

#### 2.4.7.1 Incorrect grant of exemption from levy of tax

The Notification issued by Government of India, Ministry of Civil Aviation in November 2002 provides for exemption from levy of all taxes and duties in India whether levied by the Central Government or the State Government, as the case may be, in respect of fuel and lubricants filled into receptacles forming part of any aircraft registered in any other Countries (other than India), which is a party to the convention or which had entered into the said agreement with India and operating a scheduled or non-scheduled international air service to or from India.

As per Section 5(5) of the CST Act, purchase of ATF by designated Indian carrier for the purpose of its international flight was granted exemption. Similarly, by issue of Notification in September 2008, exemption was granted by Government of Tamil Nadu in respect of tax payable on sale of ATF by the oil companies in Tamil Nadu to (i) aircraft of any country other than India, which was a party to the convention on International Civil Aviation or which had entered into Air Services Agreements with India and (ii) Indian carriers, specified by Government of India as "designated Indian carriers", for the purpose of their international flights. The exemption is subject to the condition that the oil companies obtain and furnish a certificate in the form prescribed.

- In LTU-I and LTU-II Assessment Circles, we noticed that exemption availed by two oil companies on a turnover of ₹ 2,067.35 crore as representing sale of ATF to international airlines during the years 2013-14 to 2015-16 was not supported by necessary certificates prescribed in this regard. The non-levy of tax in the absence of certificates worked out to ₹ 599.53 crore.

After we pointed this out, the AAs issued notices to the oil companies calling for the production of certificates in support of the claim of exemption.

- During check of records in LTU-III Assessment Circle, we noticed that the AA, while finalising (March 2017) the assessment of an oil company under the CST Act for the year 2015-16 exempted the turnover of ₹ 200.77 crore representing sale of ATF to another oil company at Bangalore. The incorrect grant of exemption resulted in short levy of tax of ₹ 58.22 crore (calculated at the rate of 29 *per cent* on the turnover of ₹ 200.77 crore).

- During check of records in LTU-IV Assessment Circle, we noticed that exemption claimed by an oil company on sale of ATF to international airlines for ₹ 23.32 crore during the year 2013-14 was not supported by certificates issued by the respective international airlines which effected purchase of ATF but by an agent who certified the genuineness of the actual purchaser (international airlines) and the supplier company. This was in contravention to the provisions of the Government order governing grant of exemption. The incorrect grant of exemption based on invalid certificates resulted in non-levy of tax of ₹ 6.76 crore.

- During check of records in LTU-IV Assessment Circle, we noticed that exemption was claimed by an oil company during the years 2014-15 and 2015-16 on a turnover of ₹ 18.10 crore as sale of ATF to international carrier, Air Arabia. Since the status of designated airline was not accorded to Air Arabia by the Government of India, Ministry of Civil Aviation in respect of its operations to Ras al-Khaima, the claim of exemption on sale of ATF to Air Arabia in respect of its operations to Ras al-Khaima was required to be disallowed. Similarly, the exemption claimed by the oil company on sale of ATF to World Fuel Services and Aviation Services Management for ₹ 78.70 lakh during the years 2012-13, 2014-15 and 2015-16 was required to be disallowed in the absence of Notification granting exemption on such sales. The levy of tax at the rate of 29 *per cent* on the turnover of ₹ 78.70 lakh worked out to ₹ 22.82 lakh.

After we pointed out the above, the AAs issued notices to the oil companies proposing disallowance of the claim of exemption. Further report was awaited (January 2018).

During Exit Conference, the Government stated that proposal prescribing time limit for furnishing of certificates / documents and denial of exemption / reduction in rate of tax in case of non-compliance would be considered.

#### 2.4.7.2 Application of incorrect rate of tax

As per entry 5(i) of the Second Schedule to the TNVAT Act, on sale of ATF including Jet fuel, tax is leviable at the rate of 29 *per cent* at the point of first sale in the State. With effect from 19 June 2012, ATF sold to an aircraft with a maximum take-off mass of less than forty thousand kilograms operated by scheduled airlines is taxable at the rate of five *per cent* at the point of first sale in the State.

During check of records in three[11] Assessment Circles, we noticed that the AAs had accepted the payment of tax at reduced rate of five *per cent* by three oil companies on sale of ATF including Jet Fuel to Turbo-prop aircraft during the years 2012-13 to 2015-16, though documentary evidences regarding compliance of the conditions governing such reduced rate were not furnished by the oil companies. The incorrect allowance of reduced rate of tax on the turnover of ₹ 880.64 crore resulted in short levy of tax of ₹ 211.35 crore.

After we pointed the above to the Department, the AAs issued notices to the oil companies proposing levy of tax at differential rate. Further report was awaited (January 2018).

### 2.4.8 Liquefied Petroleum Gas (LPG) and Lubricant oil

The petroleum products, *viz.*, Lubricants, Auto LPG and Commercial LPG Cylinders, not being specified elsewhere in any of the Schedules to the Act attract levy of tax at the rate of 14.5 *per cent* under entry 69 of Part C of the First Schedule to the TNVAT Act. These goods, when sold as industrial inputs for use in manufacture inside the State attract levy of tax at the concessional rate of five *per cent*. The grant of concessional rate is subject to the production of certificate by the purchasing dealer.

**2.4.8.1** During check of records in LTU-I and LTU-IV Assessment Circles, we noticed that two oil companies had effected sale of petroleum products as industrial inputs and paid tax at the rate of five *per cent* instead of at the rate of 14.5 *per cent* on the turnover of ₹ 4,143.26 crore during the years 2013-14 to 2015-16. However, the dealers did not furnish industrial input certificates in support of the concessional rate of tax. Hence, the adoption of concessional rate of tax was not in order. The amount of tax leviable at the differential rate of 9.5 *per cent* worked out to ₹ 393.61 crore.

We verified the database of Commercial Taxes Department (CTD) and followed up with further scrutiny of records in the Assessment Circles. Such scrutiny revealed that 73 dealers of 52 Assessment Circles to whom the sales were effected at concessional rate, had not filed returns under the TNVAT

[11] LTU-I, LTU-II and LTU-IV

Act. Of these 73 dealers, the RCs of 46 dealers were cancelled prior to the purchase of goods.

We pointed this out to the Department in September 2017. Reply was awaited (January 2018).

During Exit Conference, the Government stated that proposal prescribing time limit for furnishing of certificates / documents and denial of exemption / reduction in rate of tax in case of non-compliance would be considered.

**2.4.8.2** Our analysis of the database of CTD, followed up with further verification in Assessment Circles revealed that 129 dealers of 90 Assessment Circles had effected purchase of commercial LPG cylinders, lubricant oil and auto LPG for ₹ 23.82 crore during the years 2013-14 to 2015-16 subsequent to the cancellation of RC. The tax and penalty leviable on the turnover of ₹ 23.82 crore worked out to ₹ 5.18 crore.

After we pointed this out (September 2017), the AAs of 40 Assessment Circles issued notices (between September and December 2017) to 60 dealers proposing levy of tax and penalty of ₹ 3.39 crore. Further report regarding action taken after issue of notice and reply in respect of the remaining cases was awaited (January 2018).

**2.4.8.3** Exemption was granted (June 2011) in respect of tax payable on the sale of LPG for domestic use in the State, by an oil company as defined in Explanation III to the Second Schedule of the Act to another oil company listed in the above-mentioned Explanation or to a distributor in Tamil Nadu.

Our scrutiny of monthly returns for the years 2013-14 to 2015-16 filed by an oil company of LTU-III Assessment Circle revealed that the oil company had effected sale of LPG to the purchasing oil company and claimed exemption from levy of tax as 'LPG for domestic use'. We noticed that the dealer had, *inter-alia*, effected sale of LPG domestic bulk and LPG domestic bulk (Non-subsidised) to the purchasing oil company and claimed exemption for ₹ 922.05 crore under the category 'LPG for domestic use'.

The Bulk LPG were transported by the oil company through LPG road tankers (LPG Bullet vehicles) and supplied to various bottling plants of the purchasing oil company. Hence, we suggested that the end or ultimate use of Bulk LPG had to be ensured before allowing the exemption claimed by the assessee. In other words, it had to be ensured that the Bulk LPG sold had been converted only as LPG for domestic use and filled in 14.2 kg cylinders in the bottling plants of the purchasing oil company before allowing exemption from levy of tax. Hence, the quantum of sale made by the oil company under headings 'LPG domestic bulk and LPG domestic bulk (Non-subsidised)' requires further cross verification with the relevant production records of the purchasing oil company to ensure that the commodity had been ultimately sold only for domestic purpose.

After we pointed this out in August 2017, the AA issued notice (August / September 2017) to the dealer calling for production of documentary evidences in support of the claim of exemption on sale of bulk LPG. Further report was awaited (January 2018).

### 2.4.9 Superior Kerosene Oil (SKO)

As per entry 9 of Second Schedule to the TNVAT Act, Kerosene other than those sold through Public Distribution System (PDS) is assessable to tax at the rate of 25 *per cent* at the point of first sale within the State, while kerosene sold through PDS was assessable to levy of tax at the rate of five *per cent* under entry 72 of Part B of the First Schedule to the TNVAT Act.

By a Notification issued in March 2007, the rate of tax on sale of SKO was reduced from 25 *per cent* to four *per cent* (five *per cent* from 12 July 2011) subject to the condition that the sale is to the manufacturer for use in manufacture and the purchaser is not eligible for ITC under TNVAT Act.

**2.4.9.1** During check of records in LTU-I and LTU-IV Assessment Circles, we noticed that two oil companies had paid tax at the concessional rate of five *per cent* on sale of SKO effected during the years 2013-14 to 2015-16. However, documentary evidences in support of the concessional rate of tax were not furnished. In the absence of documentary evidences, levy of tax at the differential rate of 20 *per cent* on the sales turnover of ₹ 175.23 crore worked out to ₹ 35.05 crore.

After we pointed this out (June 2017), the AAs issued notice (July 2017) to the dealers. Further report was awaited (January 2018).

During Exit Conference, the Government stated that proposal prescribing time limit for furnishing of certificates / documents and denial of exemption / reduction in rate of tax in case of non-compliance would be considered.

**2.4.9.2** The Notification (March 2007) granting concessional rate of tax on sale of SKO provided that the purchasers shall not be eligible for claim of ITC.

We checked the details furnished by two oil companies regarding sale of SKO and compared the same with the database of CTD. Such verification revealed that 12 dealers of 10[12] Assessment Circles, who purchased industrial kerosene for ₹ 25.65 crore during the period 2012-13 to 2015-16 had claimed ITC of ₹ 1.28 crore in contravention to the conditions of the Notification. This also warranted levy of penalty of ₹ 64.03 lakh.

After we pointed this out in September 2017, the AAs issued (between September and November 2017) notices to the dealers proposing reversal of ITC and levy of penalty. Further report was awaited (January 2018).

**2.4.9.3** As per Section 19(20) of the TNVAT Act introduced in August 2010 with retrospective effect from 1 January 2007, where any registered dealer has sold goods at a price lesser than the price of the goods purchased by him, the amount of ITC over and above the output tax of those goods shall be reversed. The oil companies, which had sold SKO at subsidised price to various distributors / sub-distributors of kerosene had effected reversal of ITC in respect of such sales only from 18 July 2012 as the writ petition filed by them in respect of the earlier period was pending in the Madras High Court.

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[12] Alandur, Cholavaram, Dindigul (Rural), Esplanade, Hosur (North), Koyambedu, Lalgudi, Sembium, Sriperumbudur and Vepery

- During check of records in LTU-IV Assessment Circle, we noticed that an oil company had purchased 8,27,996 KLs of PDS Kerosene between August 2012 and March 2016 and made reversal of ITC of ₹ 108.50 crore under Section 19(20) of the Act. We noticed that the purchase price adopted for computation of reversal of ITC was lesser than the actual purchase price. This resulted in short reversal of ITC of ₹ 1.79 crore relating to the period from August 2012 to March 2016.

- During check of records in LTU-II Assessment Circle, we noticed that an oil company had made reversal of ITC of ₹ 21.06 crore involving purchase turnover of ₹ 643.30 crore relating to the years 2013-14 to 2015-16. This corresponds to 1,69,024.7 KLs of PDS Kerosene. Though reversal of ITC of ₹ 21.60 crore was required to be made in respect of this quantity, the dealer had reversed ITC of ₹ 21.06 crore. This resulted in short reversal of ITC of ₹ 53.39 lakh.

We pointed this out to the Department in September 2017. Reply was awaited (January 2018).

- Our scrutiny of the records of the Department of Civil Supplies and Consumer Protection revealed that the Oil Manufacturing Companies (OMCs) had requested (January 2011) the Government to give relief, due to extra burden in view of the introduction of Section 19(20) in the TNVAT Act. The increase in sale price of kerosene, which was linked to Section 19 (20) of the Act, was being paid by Civil Supplies and Consumer Protection Department, Chennai in the form of subsidy to OMCs, through the Tamil Nadu Civil Supplies Corporation.

We noticed that the three oil companies had received subsidy of ₹ 55.07 crore during the years 2013-14 to 2015-16. However, the reversal of ITC effected by the oil companies as per Section 19(20) of the TNVAT Act was only ₹ 37.41 crore. The reversal of ITC was applicable only in respect of sales made out of locally purchased goods. The oil companies had effected purchase of PDS Kerosene from interstate also. We, however, noticed that subsidy for entire quantity of supply of PDS Kerosene was made to the oil companies, instead of restricting it to the sales effected out of locally purchased goods.

We, therefore, suggested that before releasing subsidy to oil companies, the details of the amount of ITC reversed by the oil companies on account of Section 19(20) be obtained so as to ensure release of correct amount of subsidy.

- We analysed the details of sale of SKO made by three oil companies with the database of CTD and followed up with further verification in Assessment Circles. Such verification revealed that 31 dealers of 28[13]

[13] Alandur, Amaindakarai, Brough Road, Choolai, Chromepet. Cuddalore (Taluk), Devakottai, Dindigul-IV, Gudiyatham, Kanchipuram, Lalgudi, Leigh Bazaar, Nannilam, Pollachi (East), Ponneri, Ramanathapuram, Sengottai, Singarathope, Sirgali, T.Nagar, Tallakulam, Tambaram, Thanjavur-I, Thiruvannamalai-II, Tindivanam, Tirukoilur, Vandavasi and Villivakkam

Assessment Circles whose RCs were cancelled, had effected purchase of PDS Kerosene for ₹ 63.52 crore subsequent to the dates of cancellation of RCs. The AAs could not verify the intended use of PDS Kerosene.

We pointed this out to the Department in September 2017. Reply was awaited (January 2018).

### 2.4.10 Light Diesel Oil

As per entry 8 of Second Schedule to the TNVAT Act, Light Diesel Oil (LDO) attracts levy of tax at the rate of 25 *per cent* at the point of first sale in the State. By issue of Notification in July 2011, Government reduced the rate of tax to five *per cent* on the sale of any goods except petrol, diesel and cement to the State and Central Government Departments including Indian Railways and Departments of other State Governments in Tamil Nadu subject to the condition that the dealer obtains and furnishes a certificate in the prescribed form. Similar reduction was granted on sale of any goods except petrol, diesel and cement to the Tamil Nadu Electricity Board, Tamil Nadu Generation and Distribution Corporation Limited, Tamil Nadu Transmission Corporation Limited, Neyveli Lignite Corporation Limited, Local Authorities and Co-operative Societies, subject to the condition that the dealer obtains and furnishes a certificate in the form specified.

During check of records in LTU-I and LTU-IV Assessment Circles, we noticed that two oil companies had paid tax at the rate of five *per cent* on the sales turnover of LDO of ₹ 24.94 crore relating to the years 2013-14 to 2015-16. Since the Notification specifically excluded diesel, the concessional rate of tax was not applicable in respect of sales of LDO**.** Levy of tax at the differential rate of 20 *per cent* worked out to ₹ 4.99 crore**.**

After we pointed this out (May and June 2017), the AA of LTU-I Assessment Circle issued notice (June 2017) to the dealer proposing disallowance of concessional rate of tax. The AA of LTU-IV assessment circle stated (May 2017) that notices were already issued in this regard and the issue would be considered while passing orders. The reply was not acceptable as though the dealer had filed their reply in January 2017 itself in respect of the Notice relating to the year 2014-15, and the AA had since initiated no action.

### 2.4.11 High Speed Diesel Oil and Furnace Oil

As per entry 7 of Second Schedule to the TNVAT Act, sale of High Speed Diesel Oil (HSD) is taxable at the rate of 21.43 *per cent* at the point of first sale in the State. As per entry 67A of First Schedule to the TNVAT Act, furnace oil is leviable to tax at the rate of five *per cent* at every point of sale inside the State. By issue of Notification (December 2004), Government reduced the tax payable by oil companies on sale of HSD, LDO and Furnace oil to foreign bound vessels, for use in such vessels for voyage to any place outside the country to four *per cent* subject to the condition that the oil companies obtain and furnish a declaration from the purchaser in the form appended to the Notification.

During check of records in LTU-IV Assessment Circle, we noticed that an oil company had effected sale of HSD and Furnace oil to international bunkers and paid tax at the reduced rate of four *per cent* during the years 2012-13 to 2015-16. Our scrutiny of the declaration forms filed in support of such sales revealed the following deficiencies.

- In 69 declaration forms relating to sale of HSD for ₹ 30.89 crore during the years 2012-13 and 2013-14, the destination was either not mentioned or the destination mentioned was a place within the Indian Territory. The adoption of reduced rate of tax in respect of sale to such vessels was not in order. This resulted in short levy of tax of ₹ 5.38 crore. Similarly, in 31 declaration forms relating to sale of Furnace oil for ₹ 16.48 crore during the years 2012-13 and 2013-14, the destination was either not mentioned or the destination mentioned was a place within the Indian Territory. The adoption of reduced rate of tax in respect of sale to such vessels was not in order. This resulted in short levy of tax of ₹ 16.48 lakh.

- Sale of HSD and Furnace oil effected during the years 2014-15 and 2015-16 were not covered by declaration forms. Hence, the payment of tax at the concessional rate of four *per cent* on the sales turnover of ₹ 43.45 crore and ₹ 45.60 crore respectively was not in order. Levy of tax at the differential rate of 17.43 *per cent* and one *per cent* respectively worked out to ₹ 8.03 crore.

After we pointed out (May and June 2017) the above aspects, the AA issued notices (July 2017) to the dealer proposing levy of tax at the scheduled rate. Further report was awaited (January 2018).

During Exit Conference, the Government stated that proposal prescribing time limit for furnishing of certificates / documents and denial of exemption / reduction in rate of tax in case of non-compliance would be considered**.**

## 2.4.12 Other audit findings

### 2.4.12.1 Non-levy of interest for belated payment of tax

As per Section 42(1) of the TNVAT Act, the tax assessed or that has become payable under this Act from a dealer shall be paid in such manner and in such instalments, if any, and within such time as may be specified in the notice of assessment, not being less than thirty days from the date of service of the notice.

As per Section 42(3) of the TNVAT Act, on any amount remaining unpaid after the date specified for its payment as referred to in sub-section (1) or in the order permitting payment in instalments, the dealer or person shall pay, in addition to the amount due, interest at one and a quarter *per cent* per month up to 28 May 2013 and at two *per cent* per month thereafter of such amount for the entire period of default. As per Section 9(2-B) of the CST Act, the provisions relating to levy of interest for belated payment of tax under the TNVAT Act, also apply in respect of the tax payable under the CST Act.

- During check of records in LTU-I and LTU-IV Assessment Circles, we noticed that two oil companies had not paid tax of ₹ 8.37 crore and ₹ 1.79 crore respectively in respect of sales effected by them to Tamil Nadu Fisheries Development Corporation Limited and Tamil Nadu State Apex Fisheries Cooperative Federation Ltd during the years 2010-11 and 2011-12, though the sales were not covered by any exemption notification.

The Government sanctioned (September 2016) ₹ 10.17 crore towards the amount of value added tax payable to the oil companies in respect of the sales effected in 2010-11 and 2011-12. While one oil company had remitted (December 2016) ₹ 8.37 crore, the other oil company was yet to remit tax of ₹ 1.79 crore. The amount of interest leviable for belated payment of tax in one case worked out to ₹ 9.32 crore, while the amount of interest accrued in the other case (as of August 2017) worked out to ₹ 2.19 crore.

After we pointed this out (July 2017), the AAs issued notices to the dealers proposing levy of interest for belated payment of tax. Further report was awaited (January 2018).

- On a scrutiny of the assessment orders passed under the CST Act and e-payment collection report, we noticed that demand of ₹ 3.18 crore relating to the years 2009-10, 2012-13 and 2013-14 was paid belatedly by a dealer; the period of delay ranging from seven months to 46 months. Interest of ₹ 1.74 crore relating to such belated payment of tax was, however, not levied and collected.

After we pointed this out (September 2017), the AA issued notices to the dealer proposing levy of interest for belated payment of tax. Further report was awaited (January 2018).

### 2.4.12.2 Functioning of e-transit pass system

The Sixth Schedule of the TNVAT Act consists of commodities, the transportation of which either into or outside the State shall be accompanied by transit pass. The Government amended (November 2011) the Sixth Schedule and brought petrol and diesel under the ambit of transit pass system to monitor interstate movement of petroleum products and to curb mid-dropping of the same.

The Department introduced (February 2014) e-transit pass system for sixth schedule goods and developed MIS module for use of territorial divisions / Assessment Circles to monitor the surrender of e-transit passes generated by the dealers before undertaking the interstate movement of the goods.

During the present audit, we sought to ascertain the adequacy and effectiveness of the e-transit pass system pertaining to monitor the movement of petroleum products from the State to the Union Territory of Puducherry.

As per the data provided for the period from 2014-15 to 2016-17, we noticed that 12,940 e-transit passes relating to interstate sale of petroleum products were not surrendered by three oil companies. Our test check in four border check posts revealed that out of 149 transit passes indicated as not having been surrendered, 128 were actually surrendered at the check posts and the

discrepancy was due to failure by the check post officers to enter the details of surrender of transit passes in the system. We observed that AAs of the oil companies were periodically issuing notices for non-surrender of transit passes without cross verifying the details with the concerned check post officers. The AA of LTU-IV Assessment Circle had confirmed the notices issued for the years 2014-15 and 2015-16 and levied additional demand of ₹ 53.08 crore and the Madras High Court had stayed recovery of the same on an appeal preferred by the dealer.

Thus, the introduction of e-transit pass system had not been effectively utilised by the Department to monitor the interstate movement of petroleum products. After the introduction of Goods and Services Tax with effect from 1 July 2017, the functioning of the check posts had been suspended and surrender of transit passes by carriers of petroleum products were not being monitored at the check posts. As difference in tax rates of petroleum products between this State and the Union Territory of Puducherry still persists, the Department may institute a mechanism to ensure the supply of petroleum products at the intended place of delivery outside the State and thereby safeguard against any diversionary trade practices that may be contemplated by the dealers in the light of the suspension of activities of the check posts.

The Additional Chief Secretary to Government, while accepting the audit's suggestion for evolving an alternate mechanism in the wake of abolishment of check posts, suggested the Department to consider preparation of e-way bill with Radio Frequency Identification tagging without human intervention.

### 2.4.13 Conclusion

Our audit exercise indicated deficiencies in existing system/statutory provisions regarding the assessment, levy and collection of tax in respect of petroleum products. The adherence to the conditions governing grant of exemption and applicability of reduced rate of tax was not ensured by the AAs. The system of e-transit pass introduced for monitoring the interstate movement of petroleum products was ineffective.

We referred the matter to the Government in September 2017. Reply was awaited (January 2018).

## 2.5 Audit of the Functioning of Business Intelligence Unit

### 2.5.1 Introduction

The Tamil Nadu Commercial Taxes Department established (December 2012) a 'Business Intelligence Unit' (BIU) in the office of the Commissioner of Commercial Taxes to improve revenue collection, check evasion of tax and to carry out analysis of various data gathered internally and externally, on commodities, dealers, exports and imports, etc. The functions of BIU include gathering business intelligence from external and internal sources, identifying the risk to revenue by analysing the gathered data, recommending cases for Audit / Surprise Inspection based on risk analysis, delivering the data in a utility form for investigation by Enforcement / Territorial Wing and monitoring the result of realisation of revenue from such detection. In order to monitor the overall business activities, gather information related to tax evasion and to improve the tax compliance at divisional level, Divisional Business Intelligence Units (DBIU) were constituted (March 2014) in each Enforcement Division under the control of the Joint Commissioner (Enforcement). The DBIU is responsible for sector-wise and territory-wise study and survey of the commercial activities in the division, gathering business intelligence from Government and non-Government agencies and exchange of intelligence and information with other DBIUs, BIU and Inter State Investigation Cell (ISIC)[14].

We undertook the audit exercise to ascertain the effectiveness of the functioning of BIU in improving revenue and checking evasion of tax by examining (i) the process of collection, analysis and dissemination of information; (ii) the extent of utilisation of information in assessment process and (iii) the follow up mechanism evolved to monitor such utilisation.

We covered three year period from 2013-14 to 2015-16 and the activities of BIU until 31 March 2017. We compiled the details gathered by BIU, which was spread across numerous excel sheets into a single data base. The turnover reported in the monthly returns by dealers falling under eight[15] categories was compared with the details gathered by BIU. Such comparison revealed that the turnover reported by 4,675 dealers of 320 Assessment Circles was lesser than the details gathered by BIU to the extent of ₹ 29,762 crore. Of these, 2,143 dealers of 160 Assessment Circles, involving discrepancy of ₹ 20,014 crore were taken up for detailed analysis by examining the extent of utilisation of BIU data by the AAs to reconcile the discrepancy in turnover and to detect suppression and tax evasion, if any. Apart from the above, we also independently collected data from a few sources like Spices Board, Rubber Board, Agricultural Marketing Committee, *etc.* and cross-verified the same with the database of CTD. The utilisation of BIU data by the Enforcement

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[14] Inter State Investigation Cell, headed by a JC is established to control evasion of tax on interstate transactions. This Cell focuses on movement of evasion prone commodities in and out of the State.

[15] K-Dealer, Annual Dealer, Corporation of Chennai, e-Commerce, Service Tax, Possible Bill Traders, Import and Spices board.

Wings and monitoring system for ensuring utilisation of BIU data was also examined.

## Audit findings

### 2.5.2 Collection and dissemination of data

The first objective of BIU is to identify various sources from which data could be collected and establish a mechanism for collection of data on a regular basis. We, however, observed that BIU did not obtain data from external agencies on a regular basis. The collection of data was intermittent and in parts. Thus, BIU did not adopt a systematic approach for collection of data. There was no mechanism to identify data sources systematically and to ensure that the data was procured from these sources on a regular and continuous basis and stored systematically (both raw data and processed data). Many efforts of collection were a onetime exercise, the details of which are mentioned in **Annexure 3.** We recommend implementing a mechanism for continuous and complete procurement of data from identified sources and for storage of both procured and processed data in a data warehouse.

The data procured from various internal and external agencies is cross-verified by BIU with the database of CTD based on the common field of PAN, to identify the TIN of dealers. The cases without TIN are forwarded to Enforcement divisions for further follow-up. The data of dealers with large turnover is analysed by BIU and based on such analysis, Investigation Files (IF) are prepared and forwarded to the Enforcement Wing for conduct of surprise inspection at the business premises of the dealers. The remaining cases with TIN are forwarded to the Territorial wing for further action. This data is also hosted in the intranet of the Department for utilisation by the AAs of the Assessment Circles. The data is uploaded in excel format in Microsoft Excel files under various tags, such as import of goods, e-commerce operators, service tax abatement in respect of materials, data from Corporation of Chennai, *etc*.

We observed that the complete data relating to a dealer was not available in a single place, but was spread across various tags and assessment years. As such, the AAs were not able to make use of data uploaded by BIU in assessment process.

After we pointed this out (August 2017), BIU stated that since all the AAs are familiar with MS excel application, the data was easily usable in the Assessment Circles. The AAs of 71 out of 160 Assessment Circles, however, felt that BIU data was not easily usable. Though the AAs of 24 Assessment Circles felt that the BIU data was easily usable, the actual utilisation of data was poor, as mentioned in the succeeding paragraphs. Data involving turnover of ₹ 2,000 crore uploaded by BIU in intranet in respect of 150 dealers (including 27 dealers whose registration certificates were cancelled) was not utilised by the AAs.

Hence, we suggest that the data be made available as a single database for each assessment year of a dealer in a consolidated form as part of the dealer details in Registration module. This would enable the AA to view all the transactions effected by a dealer / TIN and to initiate further action. The

Department accepted the audit recommendation and stated (August 2017) that the concept of consolidated database will be considered for implementation in future.

In the Exit Conference, the Additional Chief Secretary to Government, Commercial Taxes and Registration Department, while accepting the audit observation, directed BIU to look into the issue and take necessary action.

### 2.5.3 Utilisation of data by the Assessing Authorities

**Data obtained by BIU**

We sought to ascertain the extent of utilisation of BIU data by the AAs in assessment process to detect suppression and evasion of tax. For this purpose, we examined the action taken by the AAs of 160 Assessment Circles in respect of 2,143 dealers based on the details uploaded by BIU in intranet of CTD. We noticed that the AAs had initiated action only in respect of 275 dealers, which correspond to just 13 *per cent* of the total number of dealers. In respect of 1,392 dealers, notices were issued by the AAs based on our audit observation, while in respect of the remaining 476 dealers, reply was awaited from the AAs concerned. These details are mentioned in Table below.

**Table 2.2: Utilisation of BIU data uploaded in Format 'B' by jurisdictional AAs**

**(₹ in crore)**

| Tag | Test checked by Audit | | Action already initiated by AAs | | Action initiated by AA based on audit observation | | Reply awaited | |
|---|---|---|---|---|---|---|---|---|
| | No. of dealers | DTO | No. of dealers | DTO | No. of dealers | DTO | No. of dealers | DTO |
| K-Dealer | 209 | NQ | 51 | NQ | 133 | NQ | 25 | NQ |
| Annual Dealer | 370 | 46.41 | 8 | 3.59 | 111 | 31.83 | 251 | 10.98 |
| Chennai Corporation | 220 | 321.16 | 2 | 50.59 | 177 | 222.54 | 41 | 48.03 |
| e-Commerce | 108 | 76.27 | 9 | 8.64 | 94 | 66.55 | 5 | 1.08 |
| Service Tax | 125 | 1,376.96 | 9 | 11.21 | 100 | 1,173.57 | 16 | 192.17 |
| Possible bill traders | 151 | NQ | 26 | NQ | 58 | NQ | 67 | NQ |
| Import | 929 | 17,062.26 | 170 | 2,766.17 | 688 | 10,683.50 | 71 | 3,612.59 |
| Spices Board | 31 | 1,131.32 | 0 | 0 | 31 | 1,131.32 | 0 | 0 |
| **Total** | **2,143** | **20,014.38** | **275** | **2,840.20** | **1,392** | **13,309.31** | **476** | **3,864.85** |

*DTO – Differential Turnover; NQ – Not Quantified.

This indicates that BIU data was not effectively utilised by the AAs in unearthing evasion of tax. The poor utilisation of data by AAs is also indicative of absence of the existence of proper monitoring mechanism.

We examined the extent of utilisation of BIU data by the AAs in respect of the following categories of dealers. The findings are given below.

### 2.5.3.1 Importers

We observed that details of import of goods relating to February 2016 and the period from April to June 2016 was uploaded in intranet of CTD only in July 2017. Prior to February 2016, BIU obtained details regarding import of specific category of goods[16] for various periods from the Customs department and uploaded the same in the intranet of CTD for use of AAs. BIU did not obtain data of imports for the period subsequent to June 2016. Though details of filing of returns was available in database of CTD, BIU did not take steps to cross verify the details of imports by the dealers with the turnover reported by them in the monthly returns. This would have enabled BIU to identify dealers, who had suppressed import of goods and thereby the AAs concerned could have been addressed to initiate action instead of uploading the entire data in intranet.

We cross verified the data uploaded in intranet by BIU with the monthly returns filed by the dealers with CTD to ascertain the proper accounting of imports by the dealers. Such cross verification revealed that 929 dealers, who imported goods valued at ₹ 31,119.92 crore, had reported turnover of ₹ 14,057.65 crore in the monthly returns filed by them with CTD. Our scrutiny regarding utilisation of BIU data in the Assessment Circles revealed in respect of 170 dealers alone, the AAs had initiated action and in respect of the remaining dealers, the suppression remained undetected. After we pointed this out, the AAs issued notices to 688 dealers proposing levy of tax of ₹ 642.94 crore and penalty of ₹ 964.41 crore, where the discrepancy between the value of imports and the turnover reported by the dealers in the monthly returns was ₹ 10,683.50 crore. Reply in respect of 71 dealers involving tax and penalty of ₹ 271.22 crore was awaited (January 2018).

We further noticed that 462 out of the above mentioned dealers, who imported goods valued at ₹ 4,538.03 crore, either did not file monthly returns or filed 'Nil' returns with the CTD. The RCs of 167 dealers who had imported goods valued at ₹ 2,828.20 crore was cancelled.

### 2.5.3.2 K- Dealers

As per Section 3(4)(a) of the TNVAT Act, every dealer, who effects second and subsequent sale of goods purchased within the State, whose total turnover, for a year, is less than rupees fifty lakh, may, at his option, instead of paying tax under sub-section (2), pay a tax at 0.5 *per cent*, for each year, on his total turnover. BIU identified 2,269 dealers who had purchased goods for more than ₹ 50 lakh during the years 2008-09 to 2014-15 and uploaded the details in intranet of CTD for use by the AAs in assessment process.

We examined the utilisation of data in respect of 209 out of 2,269 dealers and found that apart from 51 dealers, the AAs did not initiate action in the remaining cases. After we pointed this out, the AAs of 64 Assessment Circles

[16] Gold, Sugar, Iron and Steel, Tiles, Scrap, Timber, Electric and electronic goods, Liquor, Mobile, Computer and laptop, Vehicles and Edible oil

issued notices to 133 dealers and collected ₹ 10.65 lakh from two dealers. Further report regarding action taken by AAs after issue of notice and reply in respect of the remaining 25 dealers was awaited (January 2018).

#### 2.5.3.3 Annual return filing dealer

As per Rule 7(7) of TNVAT Rules, every registered dealer, who is not liable to pay tax under the TNVAT Act, shall file return for each year in Form I-1 on or before 20th day of May of the succeeding year showing the actual turnover in respect of all goods dealt with by him. The turnover shall not exceed ₹ 10 lakh. Dealers with annual turnover in excess of ₹ 10 lakh shall file monthly return in Form I and pay tax.

On the basis of details of purchase taken from Annexure I of other dealers, BIU identified 1,916 dealers, who had made business of more than ₹ 10 lakh. This data was uploaded in intranet of the CTD. We examined the utilisation of BIU data in respect of 370 selected dealers and found that the AAs had initiated action only in respect of eight dealers. In the remaining cases, the AAs did not initiate action by utilising the BIU data available in intranet. After we pointed this out, the AAs issued notices to 111 dealers proposing levy of tax of ₹ 4.62 crore and penalty of ₹ 6.94 crore. Further report regarding action taken after issue of notice and reply in respect of the remaining 251 dealers, involving tax and penalty of ₹ 4.15 crore was awaited (January 2018).

#### 2.5.3.4 Corporation of Chennai

The details of contract awarded by the Corporation of Chennai during the years 2011-12 to 2015-16, the contractor-wise project details for the period 2013-14 and 2014-15 was hosted by BIU in intranet during July 2016. The cases without TIN were forwarded to the Enforcement Wing.

We examined the action taken by the AAs in respect of 220 out of 717 dealers and found that the AAs had initiated action only in respect of two dealers. In respect of the remaining dealers, the AAs did not initiate action by utilising the BIU data available in intranet. After we pointed this out, the AAs issued notices to 177 dealers proposing levy of tax and penalty of ₹ 26.74 crore. Report regarding further action taken after issue of notice and reply in respect of 41 dealers involving tax and penalty of ₹ 5.84 crore was awaited (January 2018).

#### 2.5.3.5 e-Commerce dealers

The data relating to 6,078 e-commerce dealers involving a turnover of ₹ 1,252.84 crore, pertaining to the years 2013-14 to 2015-16 was hosted in the intranet of CTD by BIU. We analysed 108 cases, where the difference between the turnover reported in the monthly returns and the turnover hosted by BIU was more than ₹ 10 lakh and examined the utilisation of BIU data by the AAs. We observed that apart from nine dealers, the AAs did not utilise BIU data and initiate action. After we pointed this out, the AAs issued notices to 94 dealers proposing levy of tax and penalty of ₹ 24.12 crore. Report regarding further action taken after issue of notice and reply in respect of the remaining five dealers involving tax and penalty of ₹ 40 lakh was awaited (January 2018).

We further noticed that the RCs of 378 dealers (out of 6,078 dealers) were cancelled by the registering authorities. Of this, 212 dealers did online trading for ₹ 16.89 crore after cancellation of RC. In the remaining cases, where online trading was done for ₹ 10.05 crore, the RCs were cancelled later. Thus, this demonstrates the significance of timeliness of procurement, analysis and uploading of data by BIU for use by AAs.

#### 2.5.3.6 Service Tax

BIU collected (September 2014) the details of Service Tax Registration for the year 2013-14 and uploaded the same in intranet of CTD for use by the AAs. The data related to 2,938 service providers of "work contract services", who claimed abatement of ₹ 4,752.20 crore on account of transfer of materials.

We analysed 125 cases where the abatement claimed was more than ₹ 10 lakh, and examined whether the abatement was reported by the dealers and whether AAs had taken action in cases where the turnover was not reported by the dealers. We found that only in respect of nine dealers, the AAs had initiated action. The AAs issued notices proposing levy of tax of ₹ 58.37 crore and penalty of ₹ 87.56 crore to 100 dealers after being pointed out by Audit. Report regarding further action taken after issue of notice and reply in respect of the remaining 16 dealers involving tax of ₹ 9.58 crore and penalty of ₹ 14.37 crore was awaited (January 2018).

#### 2.5.3.7 Bill Traders

BIU prepared a list of 173 suspected Bill Traders based on information received from external and internal agencies and forwarded the same to the Assessment Circles. The CCT instructed (July 2014) the AAs to finalise the assessments of the dealers after verification of the transactions. We test checked 151 cases and observed that the AAs had taken action only in respect of 26 dealers. After we pointed this out, the AAs issued notices to 58 dealers. Further report regarding action taken after issue of notice and reply in respect of the remaining 67dealers was awaited (January 2018).

#### 2.5.3.8 Star Hotels

BIU prepared a list of star hotels based on the details taken from the website of Tourism Department and forwarded the same to the Assessment Circles to ensure levy of tax on sale of food and drinks at higher rate applicable to star hotels. We collected the list of Star hotels from the Department of Tourism and found that out of 49 dealers, the AAs had not taken action in respect of three dealers involving levy of differential tax of ₹ 76.78 lakh.

We pointed this out to the Department in April / May 2017. Reply was awaited (January 2018).

#### 2.5.3.9 Spices Board

Spices Board is an autonomous body responsible for the export promotion of 52 scheduled spices and development of Cardamom. Its main functions include research, development and regulation of domestic marketing of small and large Cardamom. Spices Board introduced e-Auction of Cardamom in Bodinayakanur, Theni District in Tamil Nadu in August 2007. In the e-

Auction system, licensed dealers are provided with user id and password. The dealers have to log into the system to participate in an Auction.

BIU collected data of Cardamom dealers of Tamil Nadu from Spices Board, Cochin and forwarded the same to JC (Enforcement), Madurai for transmission to the territorial wing for use in assessment process.

We collected data (up to September 2015) from BIU and after ascertaining the TIN of dealers, we cross verified the purchase details of Cardamom dealers obtained from Spices Board with the turnover reported in the monthly return filed by them with the CTD. Such cross verification revealed suppression of turnover by 31 out of 130 dealers, who purchased Cardamom at the auction centre during the years 2007-08 to 2013-14. The non-utilisation of BIU data by the AA resulted in non-levy of tax and penalty of ₹ 56.18 crore and ₹ 84.28 crore respectively.

We also noticed that four dealers whose RC was cancelled, participated in the auction and procured cardamom. The CT Department did not send the cancellation details of the dealers to the Spices Board, Cochin or Auction Centre at Bodinayakanur.

We obtained the details of auction sales from the Spices Board, and observed that a registered dealer of Bodinayakanur Assessment Circle was one of the licensed auctioneers from Tamil Nadu during the period from February 2015 to December 2016. We cross verified the auction sales effected by the auctioneer for 19 days with the turnover reported in the monthly returns filed with CTD. Such cross verification revealed that the auctioneer had suppressed turnover of ₹ 56.80 crore. After we pointed this out (April 2017), the AA, Bodinayakanur Assessment Circle revised the assessment and raised additional demand of tax and penalty of ₹ 2.51 crore. The AA, however, failed to obtain the complete details from Spices Board and restricted the levy of tax and penalty to the turnover pertaining to 19 days auction sales.

As per the statement of auction sales available with BIU for the years 2007-08 to 2014-15 (upto September 2014), the total sales conducted by the auctioneer was ₹ 463.74 crore. The above data of auction sales was also available with JC Enforcement, Madurai. These details were not passed on to the AA of Bodinayakanur Assessment Circle to enable cross verification with the turnover reported by the dealer in the monthly returns to detect the suppression of turnover, if any.

The above observations illustrate the inadequate coordination between Spices Board and CTD and also between different wings of CTD resulting in leakage of revenue due to the Government.

The Additional Chief Secretary to Government, Commercial Taxes and Registration Department accepted (January 2018) the audit observation regarding poor utilisation of data and instructed BIU to pursue the matter. The JC, BIU stated that a consolidated report in this regard would be furnished to audit.

**Data collected by Audit**

Apart from the above, we also gathered details from the following sources and analysed the same with the turnover reported by the dealers in the returns filed by them with CTD. The result of such verification revealed the following.

### 2.5.3.10 Import

We collected (June 2017) details of import from DG Systems, Customs Department, New Delhi in respect of the commodities[17] relating to the years 2014-15 and 2015-16. We cross verified with the database of CTD to ascertain the TIN of the importers and conducted further scrutiny in respect of dealers whose RC was cancelled and where the difference between the value of imports and the turnover reported by the dealers was more than ₹ one crore. Such a scrutiny revealed that 104 dealers whose RC was cancelled had imported goods valued at ₹ 1,000.44 crore. The turnover reported by the dealers in the monthly returns filed by them was, however, ₹ 104.30 crore. Thus, turnover of ₹ 896.14 crore was suppressed by the dealers.

After we pointed this out (August 2017), the AAs issued notices in respect of 19 dealers involving tax of ₹ 8.02 crore and penalty of ₹ 12.04 crore respectively. Further report regarding action taken after issue of notice and reply in respect of the remaining dealers involving tax and penalty of ₹ 159.88 crore was awaited (January 2018).

### 2.5.3.11 Rubber Board, Kottayam

Rule 43B of the Rubber Rules, 1955 prescribes that transportation of rubber from one State to another shall be accompanied by a valid declaration in the prescribed Form (Form N2) issued by the Rubber Board. A copy of the N2 Form (in quadruplicate) shall be forwarded by the consignor to the Rubber Board at Kottayam.

The details of N2 forms issued to the dealers were collected by JC (Enforcement), Tirunelveli, from the Rubber board, Kottayam. The details relating to 34 dealers were forwarded (October 2015) to the AA of Thuckalay Assessment Circle. BIU also collected the data from Rubber Board, Kottayam, regarding N2 forms submitted by dealers after completion of their transaction. We, however, noticed that this information was not utilised in the assessment of the dealers.

We collected (March 2017) the details of filled in N2 forms (data relating to dealers registered in Tamil Nadu) from Rubber Board. The total value in the N2 forms for the period from 2012-13 to 2016-17 was ₹ 52 crore. We cross verified the same with the details in the CST return of the dealers and observed suppression of turnover of ₹ 38.28 crore by 17 dealers of Kuzhithurai and Thuckalay Assessment Circles involving tax of ₹ 1.94 crore and penalty of ₹ 2.91 crore. After we pointed this out, the AAs agreed to issue notices to the dealers. We also noticed that out of 17 dealers, the registration certificates of four dealers were already cancelled.

[17] Precious metals, iron and steel, electrical goods and parts

### 2.5.3.12 Agricultural Marketing Committee

The functions of BIU, *inter alia*, involve gathering business information from external sources like the Marketing Committees. At the Marketing Committee, fees / cess is collected at prescribed percentage from the traders on the value of sale / purchase.

We obtained (March 2017) from the Kanyakumari Agricultural Marketing Committee, details of the transaction of sale / purchase of cashew relating to the years 2013-14 to 2015-16 and cross verified the same with the returns filed by the dealers with CTD. Such cross verification revealed that three dealers of Thuckalay Assessment Circle, who purchased cashew without payment of tax from the unregistered cashew growers at the Marketing Committee, had sent the same valued at ₹ 21.40 crore to other States otherwise than by way of sale. Though the stock transfer of cashew purchased from unregistered dealers to other States involves payment of purchase tax under Section 12 of the TNVAT Act, purchase tax was neither paid by the dealers nor was the same levied by the AA. The amount of tax and penalty leviable worked out to ₹ 2.68 crore.

We brought this to the notice of the Department in May 2017. Reply was awaited (January 2018).

### 2.5.3.13 Tamil Nadu Civil Supplies Corporation

The Government of Tamil Nadu decided (June 2011) to implement the scheme of free distribution of a package to women beneficiaries consisting of electric table fan, induction stove, domestic electric food mixer and tabletop wet grinder through the Tamil Nadu Civil Supplies Corporation (TNCSC).

TNCSC purchased the goods from the dealers on payment of appropriate tax and distributed it to the eligible beneficiaries, free of cost. The free distribution was done in five phases from the year 2011-12 to 2015-16 and the total tax revenue involved in this was around ₹ 500 crore.

BIU collected details of purchase from TNCSC and uploaded the same in intranet after ascertaining the TIN of dealers. We observed that TNCSC had also forwarded copies of purchase order to BIU. However, BIU neither took any action to follow these huge transactions with CCT nor issued instructions to the AAs of Assessment Circles.

We obtained the details (February 2017) from TNCSC and compared the same with the monthly returns of the dealers, who supplied goods to TNCSC. Such comparison revealed incorrect claim of ITC of ₹ 4.40 crore by 16 dealers of 11[18] Assessment Circles and the same was utilised by the dealers against the output tax liability.

As per the purchase order of TNCSC, the balance five *per cent* of payments relating to supply of goods would be made upon only on submission of the tax payment certificate, as certified by the AAs of the concerned Assessment Circles. The AAs had issued tax payment certificate without ascertaining the correct amount of ITC.

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[18] Avarampalayam, Avinashi, Dr. Nanjappa Road, Esplanade, Harbour, Kodungaiyur, Mylapore, Peelamedu (N), Thudiyalur, Trichy Road and Washermanpet

We cross verified the details of sales declared by the dealers in the monthly returns with the data obtained from TNCSC. Such cross verification revealed that seven dealers of six[19] Assessment Circles, who supplied goods valued at ₹ 477.01 crore to TNCSC had reported turnover of ₹ 200.78 crore in the monthly returns filed by them with CTD.

During Exit Conference, the Additional Chief Secretary to Government, Commercial Taxes Department accepted the audit observation and instructed BIU to obtain data from all agencies like Spices Board, Rubber Board, *etc*.

### 2.5.4 Investigation files initiated by BIU

An investigation file on suspected tax evasion is prepared on the basis of complaints, and various other sources of information obtained from internal and external sources. The revenue impact as per various findings is summarized in the investigation file. The additional aspects with respect to various provisions of the Act which have to be scrutinised by the investigation team is also detailed in the investigation file. The Investigation Files (IF) are prepared and forwarded to the Joint Commissioners of Enforcement Wing for conduct of surprise inspection (SI) at the business premises of the dealers.

As per the information provided by BIU, 499 investigation files were prepared as on June 2017; of which, 197 investigation files were based on the petitions and complaints. This shows that 40 *per cent* of investigation files were initiated based on sources other than the data collected by BIU. The disadvantage with regard to such files is the lack of additional information with the Department other than the details already furnished by the dealers in their returns. The details of status of investigation files as provided by BIU are detailed in the Table below.

**Table 2.3: Status of IFs initiated by BIU (as per data available in BIU)**

| Year | Number of IFs proposed by BIU | Number of IFs processed | Demand raised (₹ in crore) | Number of IFs pending due to | | |
|---|---|---|---|---|---|---|
| | | | | Non-conduct of SI | Non-finalisation of SI proposal | Non-implementation of proposal |
| 2013-14 | 11 | 8 | 48.68 | 1 | 0 | 2 |
| 2014-15 | 220 | 93 | 172.58 | 5 | 10 | 112 |
| 2015-16 | 91 | 9 | 26.92 | 34 | 9 | 39 |
| 2016-17 | 107 | 1 | 0 | 100 | 0 | 6 |
| 2017-18 | 70 | 0 | 0 | 70 | 0 | 0 |
| **Total** | **499** | **111** | **248.18** | **210** | **19** | **159** |

Source: As per data available in BIU

The above Table indicates pendency of 78 *per cent* of the IFs due to various reasons. While 42 *per cent* of the IFs were pending due to non-conduct of Surprise Inspection, four *per cent* were pending due to non-finalisation of Surprise Inspection Proposal by the Enforcement wing and 32 *per cent* were

[19] Harbour, Kodungaiyur, Madhavaram, Mylapore, T. Nagar and Washermanpet

pending due to non-implementation of the proposals by the Assessment Circles. However, BIU did not conduct review meetings to monitor the progress of action taken on IFs forwarded to the Enforcement Wings.

Out of 499 investigation files prepared by BIU, 305 investigation files were forwarded to the two Enforcement Divisions of Chennai, out of which, in respect of 116 cases, surprise inspection was yet to be undertaken (September 2017). We scrutinised 101 cases, where surprise inspection was undertaken by the Enforcement Divisions of Chennai and observed that in 51 cases, surprise inspection was conducted within 15 days from the receipt of investigation file. In the remaining 50 cases, surprise inspection was conducted beyond the period of 15 days since the receipt of investigation files; the period of delay being one month and more in 39 cases. We further observed delay in communication of surprise inspection proposals to the territorial wing for implementation by the AAs. Out of 101 proposals, 89 proposals were communicated beyond the prescribed period of 20 days since the conduct of surprise inspection.

The Additional Chief Secretary to Government, Commercial Taxes Department, accepted the audit observation and instructed BIU to monitor IF files in work flow on a task basis.

During scrutiny, we observed deficiencies in two proposals evolved by the Enforcement Wing.

- A surprise inspection proposal was evolved based on investigation file created by BIU, in respect of a dealer assessed in Kilpauk Assessment Circle. The import data procured by BIU indicated import of goods for ₹ 44.23 crore and ₹ 30.87 crore during 2012-13 and 2013-14 respectively. The audited accounts in Form WW, however, mentioned import of goods valued at ₹ 13.65 crore and ₹ 4.53 crore during 2012-13 and 2013-14 respectively. Thus, there was short reporting of imports amounting to ₹ 56.92 crore. The surprise inspection proposal formulated by the Enforcement Wing, however, mentioned the suppression of import purchases as ₹ 50.23 crore; thereby resulting in short levy of tax and penalty of ₹ 73.42 lakh.

- Similarly, in another case relating to MMDA Colony Assessment Circle, we noticed that failure to adopt BIU data procured from the Corporation of Chennai for the year 2013-14 and 2014-15 resulted in short levy of tax and penalty of ₹ 5.41 lakh.

We pointed this out in August 2017. Reply was awaited (January 2018).

### 2.5.4.1 Other Investigation Files

Apart from the above IFs, we observed that BIU also initiated investigation files based on instructions issued by CCT from time to time. The scrutiny of records relating to these files revealed the following deficiencies.

- The CCT instructed (June 2015) BIU to prepare 20 investigation files in respect of non-surrendering of transit passes during the period 2014-15. We observed that though the extraction of data could have been done by the Assistant Programmer posted in BIU, the JC, BIU requested (July 2015) the JC, Computer Systems to provide details for further analysis. These details were not received as of June 2017. After we pointed this out (June 2017), the

BIU stated that relevant data was being extracted by the Deputy Programmer in BIU.

- The set-top boxes provided for DTH connection by the service providers to the customers is liable to tax under Section 4 of TNVAT Act. Based on CCT's instructions (March 2015), the details of tax levied and collected on the leasing of set top boxes were called for from eight dealers through BIU. However, we observed that report was received only in respect of one case. After we pointed this out, it was stated that the concerned Joint Commissioners were reminded (August 2017) in this matter and the progress would be followed by BIU. Thus, proper follow up action was not taken by BIU, with the result; the details were not obtained even after a lapse of two years since the details were sought for.

- Chennai Trade Centre falling under the jurisdiction of Nandambakkam Assessment Circle organises exhibitions on various commodities every weekend, where sales are effected. Based on a complaint regarding evasion of tax by two unregistered dealers who were event organisers, the CCT directed (June 2015) BIU to collect schedule of all exhibitions through the AA of Nandambakkam Assessment Circle and create a control system to check evasion of tax. Apart from addressing Joint Commissioner, Chennai (East) in June 2015, no further action was taken by BIU to obtain the necessary information.

We, however, ascertained (September 2017) from the events details that the organisers had collected rent of ₹ 22.60 crore during 2013-14 to 2015-16, which revealed significant amount of participation and potential activity of sale of related goods. However, BIU did not take effective steps to collect the requisite information and guard against evasion of tax.

### 2.5.4.2 Investigation files initiated by DBIUs

Apart from BIU, the DBIUs also *suo motu* initiate investigation files. During the audit of DBIU, under the control of JC, Enforcement I & II, Chennai, we test checked ten surprise inspection files prepared by the DBIU and found that the investigation files were based on the data collected from intranet of CTD and not on information collected by DBIU from any external source. This defeated the objective of regional specialisation with which DBIU was established.

In order to curb large scale evasion of tax taking place in interstate transaction, CCT instructed (June 2014) six JCs (Enforcement) to obtain details of interstate transactions relating to the years 2012-13 and 2013-14, which were recorded in the border check posts. However, the information was awaited from the Enforcement Wings.

After we pointed this out, it was stated by JC, BIU that reminders were issued in August 2017. The laxity of DBIU is evident from the failure to obtain requisite information even after a lapse of three years since issue of instructions by CCT.

### 2.5.5 Follow-up action taken by Enforcement Wings in respect of cases without TIN

The BIU forwards the data relating to cases, without TIN numbers, to the Enforcement Wing for further investigation. The following paragraphs enumerate the audit findings relating to such cases.

- The data received from Corporation of Chennai was processed and data relating to 312 cases without TIN was forwarded by BIU to the Enforcement Divisions for further investigation. These cases related to the years 2011-12 to 2015-16 and the total value of work involved was ₹ 165.13 crore. However, BIU did not have any details regarding the follow-up action taken by the enforcement divisions.

- The data received from Tamil Nadu Slum Clearance Board was processed by BIU and data pertaining to dealers without TIN was forwarded to the enforcement divisions for further investigation. The data related to transactions pertaining to the years 2013-14 to 2015-16. However, BIU did not have any details regarding the follow-up action taken by the enforcement divisions.

- The import data received from the Directorate of Revenue Intelligence (DRI) Chennai for the period from 1 April 2014 to 12 November 2014 did not contain information regarding TIN of importers in respect of 206 cases. The information relating to 201 cases (where the import value was more than ₹ 10 lakh) was forwarded to enforcement divisions for further action. However, BIU did not have any details regarding the follow-up action taken by the enforcement divisions.

Thus, we observed absence of monitoring mechanism to follow up the cases referred to the enforcement divisions for further investigation. BIU did not even have the basic information of action taken by the enforcement divisions in respect of cases forwarded by it.

### 2.5.6 Role of BIU in VAT Audit

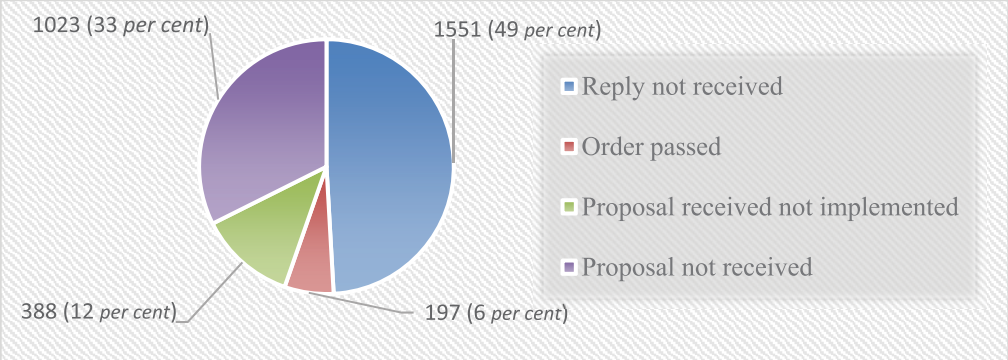
In order to fetch additional revenue, BIU was vested with the responsibility of selection of cases for VAT Audit to be conducted by the Enforcement Wings. The following criteria were adopted by BIU for selection of cases for conduct of VAT Audit.

- Large dealers (Dealers whose taxable turnover in the previous year was in excess of ₹ 200 crore) who were required to file returns on the 12$^{th}$ day of every month.

- Dealers whose total turnover is greater than ₹ 50 crore with ITC mismatch of more than ₹ 10 lakh and dealers whose claim of ITC from cancelled dealers exceeds ₹ 5 lakh.

- Dealers whose total turnover is greater than ₹ 10 crore and whose total sales is less than 75 *per cent* of purchases and claim of ITC from cancelled dealers exceeds ₹ 5 lakh.

The total number of cases selected for VAT Audit by BIU for the years 2013-14 and 2014-15 was 6,181. Out of this, we selected 3,159 cases pertaining to 166 Assessment Circles for analysing the status of implementation. The status of implementation of VAT Audit notes in respect of these 3,159 cases is depicted in the pie chart given below.




As seen from the pie chart, VAT audit notes was implemented only in respect of six *per cent* of the cases, which were selected for conduct of VAT audit by BIU. The Department did not furnish reply in respect of 49 *per cent* cases, which were selected for VAT audit. Thus, the Department was still unable to provide complete statistical information despite computerisation of the functioning of the Department, even after the implementation of Total Solution Project (TSP).

Apart from the above, we noticed that the following cases were selected by CCT for VAT audit based on specific inputs. We noticed that these cases were pending due to absence of proper follow-up mechanism as detailed below.

- Based on CCT's instructions, BIU issued (September 2014) notice to an airlines company to get registered under the TNVAT Act as the supply of food and drinks to the flight passengers exceeded the prescribed threshold limit for registration. Another notice was issued instructing the airlines to furnish the details of supply of food and drinks in respect of flights that originated from the State relating to the years 2006-07 to 2014-15. However, these details were not furnished till December 2017. Similar details in respect of other private airlines were also awaited. This issue was kept pending for more than two years, indicating absence of follow up action.

- Thirty two dealers including five organisations were selected (September 2015) for VAT Audit by the CCT and the list of dealers was also forwarded to the Enforcement Wings concerned. However, report from the Enforcement Wings regarding conduct of VAT Audit was still awaited by BIU.

Thus, BIU was not aware of the status of implementation of VAT audit proposals indicating inadequacy of the monitoring and follow-up mechanism.

## 2.5.7 Internal control mechanism

Internal control is an important management tool and comprises of all the methods and procedures adopted by the Department to assist in achieving the objective of BIU to prevent and detect suppression of turnover and tax evasion by data analysis using Information Technology. Further, a well-defined monitoring mechanism and Management Information System (MIS) would enable to make timely, adequate and accurate information available to the relevant authority in the organisation for effective monitoring and for use in decision making process.

### 2.5.7.1 Monitoring mechanism

During scrutiny of functioning of BIU, we observed that circulars, instructions, or guidelines were not issued by CCT to fix time limit for collection of data, dissemination of information and furnishing of follow-up reports on any activity of BIU. No registers were maintained to monitor the progress of action taken by the enforcement wings and the Assessment Circles in respect of cases referred by BIU. The Assessment Circles also do not submit any progress report regarding utilisation of BIU data to unearth additional revenue. Further, we observed that no review meeting was conducted by CCT after October 2015 to monitor the functioning of BIU. The officials / officers posted in BIU had not been imparted specific training that would enable them to process the data received from internal and external agencies efficiently and effectively.

The absence of monitoring mechanism resulted in ineffective utilisation of the data by enforcement and jurisdictional assessment circles, inadequate implementation of IF files, delayed conduct of VAT audit and Surprise Inspections, delay in communication of VAT Audit notes and Surprise Inspection Proposals as described in the previous sections of the report. There was no follow-up of any activity initiated by BIU and most leads initiated by BIU were not utilised promptly and effectively to unearth tax evasion.

Further, there was no hierarchical organisational structure among the DBIUs and BIU. The BIU was unaware of any activities performed by DBIU such as IFs initiated by DBIUs, additional data procurement, etc. Further, the JC (Enforcement) plays multiple roles, *i.e.* being the head of a DBIU and head of the enforcement wing, which conducts the surprise inspections and VAT Audits in cases proposed by BIU. BIU did not follow-up the cases referred to the Enforcement Wings nor does the Enforcement Wings submit any return to BIU.

### 2.5.7.2 Total Solution Project

The delay in utilisation of data hosted by BIU, by the jurisdictional AAs was pointed out in the Report of the Comptroller and Auditor General of India on Revenue Sector for the year ended 31 March 2015 Government of Tamil Nadu. Government stated (December 2015) that the workflow mechanism of TSP would ensure that delay does not occur in future. During the Exit Conference, the Department stated that time limit had been fixed to complete the pending cases before December 2015 to ensure revenue generation before March 2016. We, however, observed (August 2017) that TSP rolled out in

June 2016, did not include modules for BIU, and thus did not cater to the needs of AA to take prompt action (August 2017).

#### 2.5.7.3 Business Intelligence Solution

A proposal for Selection of System Integrator for Implementation of Total Solution for e-Governance (TSP) was proposed (March 2012) to enhance MIS and reporting capabilities and business intelligence for system-aided decision-making. The main objective of deploying a Business Intelligence solution is to provide the Department with enhanced capabilities to process and analyse large volume of data in a smarter, intelligent and faster manner to support it in its goal of maximising revenue and controlling tax evasion.

The key components of the scope of work of the System Integrator includes the following.

- Development / procurement, customisation, implementation and maintenance of Business Intelligence, Analytics and Reporting Solution.
- Procurement, commissioning and maintenance of any enabling hardware, storage, system software, manpower *etc.*, for the BI solution.
- Creation of data warehouse / data store including any interfaces / scripts for exchange of data with internal and external sources.
- Extraction, transformation and loading of data from source systems (internal sources of the Department) to Data warehouse.
- Data cleansing (if required) to ensure data quality before or after migration.

When audit enquired the status of implementation, it was replied (August 2017) by JC, BIU that implementation of Business Intelligence solution would be considered in future.

### 2.5.8 Conclusion

BIU did not engage itself in timely and continuous collection of data. Further, the manner in which the raw data was converted into information and disseminated was inadequate and ineffective. The information was not disseminated in a planned and timely manner and was not readily available for utilisation by the AAs in assessment process. This led to poor utilization by AAs of the data procured and uploaded by BIU in intranet of CTD. Investigation Files initiated by the BIUs was not followed up properly. BIU's role is significant in unearthing tax evasion, especially in the era of voluntary compliance taxation. However, the absence of monitoring mechanism had led to the different wings of the Department work in *silos*, thus resulting in ineffective utilization of data in unearthing tax evasion, which was the primary objective of BIU.

## 2.6 Audit of "Collection of Arrears of Tax in Commercial Taxes Department"

### 2.6.1 Introduction

The arrears of revenue of the State predominantly comprises of the arrears pertaining to sales tax / value added tax. The arrears of principal heads of revenue of the State at the end of March 2017 was ₹ 31,048.57 crore; of which arrears of sales tax / value added tax of Commercial Taxes Department was ₹ 27,320.65 crore (88 *per cent*). The powers for collection of tax including arrears are contained in TNVAT Act. The TNVAT Act provides that the tax admitted by a dealer as per return shall become due without any notice of demand to the dealer on the last date of the period for filing return. In other cases, the TNVAT Act provides that the tax assessed or has become payable under the Act shall be payable within 30 days from the date of service of notice. In case of failure on the part of the dealer to pay the amount demanded within the prescribed date, Department may recover the amount through any of the following methods:

- as arrears of land revenue under the Revenue Recovery Act (RR Act) / Central Revenue Recovery Act (CRR Act);
- by application to the magistrate for recovery as a fine; and,
- by a demand on any person owing money to the assessee by issue of notice.

As on 31 March 2017, the amount of tax, which was pending collection in all the 334 Assessment Circles of the State was ₹ 27,320.65 crore. Of these, 34[20] Assessment Circles involving arrears of ₹ 10,953.51 crore (40 *per cent* of total arrears) were selected for test check by random sampling method to assess the effectiveness of the system for collection of arrears of revenue. The audit was conducted from June to August 2017, the findings of which are given below.

### Audit Findings

### 2.6.2 Deficiencies noticed in maintenance of demand register

The register for watching demands and collection, *viz.,* Vat Register – 003 (known as the 'L' register under the earlier TNGST regime) is the basic register that is maintained in the Assessment Circles. Any demand raised against a dealer has to be entered therein with details of nature of demand, date of issue of notice, date of service of notice, due date of payment and date of actual collection. Our scrutiny of the 'L' register and connected records

[20] Anna Salai, Ambattur, Aruppukottai, Bodinayakanur, Chepauk, Chitrakara Street, Chokikulam, DLTU Coimbatore, Kamarajar Salai, Kilpauk, LTU-I, LTU-II, LTU-III, LTU-IV, Melur, Munichalai Road, Nethaji Road, Pattaravakkam, Poonamallee, P N Palayam. Sattur, South Avani Moola Street, Sriperumbudur, Tallakulam, Tamil Sangam Salai, Thudiyalur, T. Nagar, Tiruvallikeni, Tuticorin-III, Vengalakadai Street, Virudhunagar-I, Virudhunagar-II, Virudhunagar-III and West Tower Street

such as assessment orders, revision orders and demand notices in the Assessment Circles indicated the following deficiencies.

### 2.6.2.1 Omission to enter demands in 'L' register

During check of records and connected 'L' register in Kilpauk Assessment Circle, we noticed that demand of ₹ 3.09 crore raised in respect of a dealer in December 2012 relating to the assessment year 2011-12 was omitted to be entered in the 'L' register. Further, demand of ₹ 7.68 crore raised in June 2014 was omitted to be entered in 'L' register. Similarly, in another case, demand of tax and penalty of ₹ 82.56 lakh relating to the years 2007-08 to 2011-12 were not entered in the 'L' register of the year 2014-15, though the demands were raised on completion of assessments in July 2014. The demands were only entered in the 'L' register for the year 2015-16.

After we pointed this out, demand of ₹ 3.09 crore was entered in the 'L' registers of VAT and CST for the year 2017-18. Regarding the omission to enter the demand of ₹ 7.68 crore, the AA stated that it was only a notice for payment of tax. The reply is not acceptable as the notice was regarding non-payment of tax admitted by the dealer in the monthly returns of April, May and November 2012. As per Section 21 of the TNVAT Act, the tax payable as per return filed by the dealer becomes due for payment without issue of any notice to the dealer on the last date prescribed for filing of return. The AA stated (August 2017) that collection of demand of ₹ 82.56 lakh would be enforced based on the outcome of the appeal preferred by the dealer.

### 2.6.2.2 Incorrect entry of demands in 'L' register

During check of records and 'L' register in Thudiyalur Assessment Circle, we noticed that penalty of ₹ 6.88 crore raised (January 2015) against a dealer in respect of assessment year was entered in the 'L' register as ₹ 68.76 lakh. Similarly, demand of tax of ₹ 7.89 crore and penalty of ₹ 5.42 crore raised (January 2015) against the dealer in respect of assessment year 2011-12 were entered as ₹ 89.36 lakh and ₹ 54.69 lakh respectively in the 'L' register.

In Bodinayakanur Assessment Circle, tax of ₹ 1.50 crore relating to the assessment year 1993-94 of a dealer was entered in the 'L' register as ₹ 15.00 lakh; while penalty of ₹ 2.27 crore was entered in the 'L' register as ₹ 22.62 crore.

Similarly, in Tiruvallikeni Assessment Circle, tax of ₹ 3.42 lakh pertaining to the assessment year 2005-06 of a dealer was entered in the 'L' register as ₹ 34.12 lakh in September 2011.

After we pointed this out, the AA, Thudiyalur Assessment Circle, while attributing the incorrect entries in 'L' register to clerical error, stated (July 2017) that demand notices for correct amounts were issued to the dealer. The AA, Tiruvallikeni Assessment Circle attributed the same to typographical error and stated (August 2017) that corrections had since been made in the 'L' register for the year 2017-18.

### 2.6.2.3 Non-elimination of demands

Elimination of tax or penalty demand is an important work in preparation of Demand, Collection and Balance (DCB) Statement. The demands that are collected or that are set aside by appellate forums or that are ordered to be waived or written off are required to be deleted from the VAT Register 003, so that the register depicts the correct amounts of demands that are required to be collected. Our scrutiny of the demand register and records pertaining to the demands entered therein revealed that in the following cases, certain demands which were realised or set aside or waived / written off were still shown as pending, thereby overstating the arrear position.

- In five[21] Assessment Circles, though demands of ₹ 213.89 crore were set aside by judicial forums, the same were not eliminated.
- Based on Supreme Court's decision rendered in July 2006 that sale of lottery tickets does not involve sale of goods, the Commissioner had issued instructions in May 2015 that arrears accrued in lottery ticket cases should be eliminated. However, lottery ticket arrears of ₹ 165.56 crore were not eliminated in four[22] Assessment Circles.
- Demand of tax of ₹ 2.18 crore pertaining to braided cords were not eliminated in three[23] Assessment Circles, though Government waived the same by Orders issued in February 2009.
- Demand of ₹ 0.37 crore though collected in March 2016 was still shown as pending in Divisional Large Taxpayers' Unit (DLTU), Coimbatore.
- Demand of ₹ 190.61 crore, though transferred to other Assessment Circle in August 2016, instead of being eliminated on such transfer, was still shown as pending in LTU-IV Assessment Circle.

## 2.6.3 Pursuance of cases pending in appeals

Wherever appeals are filed by the assessees against the assessments before the appellate / judicial fora, it is imperative that the AAs initiate prompt action to vacate stay, if any, granted by the appellate fora or to file the counter affidavits and take necessary steps for expeditious disposal of the cases so as to ensure realisation of revenue. Where the appeals are dismissed restoring the original orders, revenue recovery action should be initiated immediately for realisation of arrears.

Our scrutiny of records revealed deficiencies on non-follow up, non-compliance or delay in compliance or non-pursuance of the appellate / High Court / other judicial orders. This had resulted in long drawn or protracted legal proceedings resulting in delay in collection of arrears.

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21 LTU-I, LTU-II, LTU-III, LTU-IV and Sriperumbudur

22 Nethaji Circle, Madurai, South Avani Moola Street, Tallakulam and Tiruvallikeni

23 Kamarajar Salai, South Avani Moola Street and Tamil Sangam Road

➢ Scrutiny of records in five[24] Assessment Circles revealed that in five cases, writ appeal / special leave petition / counter affidavit had not been filed by the Department thereby resulting in blocking of arrears of ₹ 63.23 crore.

➢ The absence of system to monitor disposal of cases pending with various appellate / judicial fora resulted in failure to undertake timely follow up action to ensure early realisation of revenue of ₹ 768.71 crore in four[25] Assessment Circles.

➢ Eight disputed cases pertaining to seven[26] Assessment Circles and involving revenue of ₹ 98.78 crore were covered by writ petitions filed (between 2006 and 2015) by the dealers. The Department had not taken any action to file the counter affidavits or vacation petitions to expedite disposal of the cases or for vacation of stays granted against collection of tax.

➢ In seven[27] Assessment Circles, though the Madras High Court had remanded back (between June 2012 and October 2016) the cases involving revenue of ₹ 176.42 crore, reassessment was yet to be made by the AAs even after the lapse of one to five years, which indicated laxity on the part of the Department.

➢ In four[28] Assessment Circles, the Department did not take action for recovery of arrears of ₹ 12.15 crore after the assessment was upheld by the appellate authority. Out of the above, in respect of a case relating to an assessee in the State of Kerala; the AA did not initiate measures to recover ₹ 1.58 crore.

After we pointed this out, the Department replied that the individual cases were referred to the Assessment Circles concerned and details of action taken thereon would be intimated.

### 2.6.4 Inordinate delay in implementation of VAT Audit / Surprise Inspection proposal

The CCT instructed (June 2010) that VAT Audit notes / Surprise inspection proposals should be forwarded by the Enforcement Wing within one month from the date of completion of audit and the same should be implemented by the AAs within three months from the date of receipt of the reports. As per revised instructions issued in July 2013, notice incorporating the proposals of VAT Audit / Surprise inspection was to be issued by the AA within 30 days from the date of receipt of proposals in case of LTU assessees and within 15 days in case of other assessees. Orders were required to be passed within two months from the date of service of notice in case of LTU assessees and in

[24] LTU-II, LTU-III, Tiruvallikeni, Sattur and Sriperumbudur

[25] Anna Salai, Bodinayakanur, DLTU, Coimbatore and Kilpauk

[26] Anna Salai, DLTU, Coimbatore, LTU-IV, Pattaravakkam, Sriperumbudur, Thudiyalur and T.Nagar

[27] DLTU, Coimbatore, Kilpauk, LTU-I, LTU-III, Thudiyalur, Tiruvallikkeni and T.Nagar

[28] DLTU, Coimbatore, LTU-I, P N Palayam and Tuticorin-III

respect of proposals involving revenue of more than ₹ 5 crore. In other cases, orders were required to be passed within one month of date of service of notice.

Our check of records revealed that in five[29] Assessment Circles, there were delays in implementation of VAT Audit / Surprise inspection reports, much beyond the three month period prescribed for implementation of the same. This, in turn, delayed initiation of action for recovery of ₹ 70.28 crore.

We pointed this out to the Department. Reply was awaited (January 2018).

### 2.6.5 Recovery of arrears under the Revenue Recovery Act

As per Section 42 (2) of the TNVAT Act, any tax assessed on or has become payable by, or any other amount due under this Act from a dealer or a person shall have priority over all other claims against the property of the said dealer and the same may be recovered as land revenue.

When a dealer defaults in payment of tax, the AA himself can take action under the Revenue Recovery Act for enforcing collection. When a defaulter does not own any property in a district and enquiries show that he has properties in other districts, requisitions should be sent to the Assessment Circle of the other district for enforcing collection. Whenever coercive action for collection is taken, various stages of process should be enforced quickly and the results watched closely, lest any delay should render recovery impossible.

➢ We noticed in eight[30] Assessment Circles that in 23 cases involving arrears of ₹ 105.06 crore, details of property owned by the defaulters were not ascertained even after long periods of time since the amounts fell into arrears due to lack of sustained action on the part of the Department. Thus, the process of undertaking coercive action for enforcing collection through distraint / attachment of moveable and immoveable properties of the defaulting dealers could not be commenced despite lapse of long periods of time.

➢ We noticed in three[31] Assessment Circles that though the properties of the defaulting dealers were attached (between August 2005 and January 2013) for non-payment of arrears of ₹ 87.66 crore, auction of the properties was not conducted. The non / delay in initiation of action for auctioning the property after attachment under the RR Act had resulted in non-realisation of arrears of tax.

➢ The Notice of assessment and demand issued to the dealer in the prescribed form mentions that the amount of tax demanded as per the notice shall be paid within the prescribed period of date of service of notice, failing

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29 Kilpauk, LTU-I, LTU-II, Sriperumbudur and Tiruvallikeni

30 Chokkikulam, Bodinayakanur, LTU-III, LTU-IV, Munichalai Road, Sattur, Tuticorin-III and Virudhunagar-II

31 Bodinayakanur, Melur and Nethaji Road

which the amount will be recovered as if it were an arrear of land revenue or fine imposed by a Magistrate.

We, however, noticed in 26 cases that though there was default in payment of arrears of ₹ 527.87 crore by the dealers, no action was initiated for recovery of the same, resulting in arrears remaining uncollected.

➢ When a defaulter does not own any property in a district and enquiries show that he has properties in other districts, requisitions should be sent to the Assessment Circle of the other district for enforcing collection. On receipt of such a requisition, action will be taken to collect the arrears as if the arrears had accrued in that district.

In three[32] Assessment Circles, for collection of arrears of demand of ₹ 13.61 crore raised against three dealers, requisitions were sent to other districts wherein the properties of the dealers were situated. But the arrears remained uncollected due to lack of co-ordination among the officers in the department and improper / no response from the officers in the other districts.

➢ In LTU-I and Bodinayakanur Assessment Circles, the arrear action files relating to 22 cases involving arrears of ₹ 84.60 crore were not produced to audit for verification. Therefore, the measures taken by the Department for collection of arrears could not be ascertained.

After we pointed this out, the AA, Bodinayakanur Assessment Circle attributed the reasons for deficiency in recovery of arrears under the RR Act to vacancy in the post of sales tax collection inspector. The AA further stated that since the post was filled in August 2017, necessary action would be taken to collect the arrears. The AAs of other Assessment Circles stated that action would be initiated for recovery of arrears. However, reasons which hindered the AAs in taking action for recovery of arrears were not furnished.

### 2.6.6 Failure to initiate follow up action on waiver petition

Section 31 of the TNVAT Act provides the Government the power to waive the whole or any part of tax or penalty or interest or fee payable in respect of any period by any dealer under the Act. As per the powers derived from the above Section, waiver orders are to be issued in eligible cases.

During check of records in Melur Assessment Circle, Madurai, we observed that though proposal for waiver of demand of ₹ 18.36 crore relating to a Co-operative Spinning Mills was submitted by the AA to Deputy Commissioner (CT) Madurai (East) in September 2011, no decision was taken to accept and forward the proposals to Government or to reject it. The amount continued to remain in arrears.

After we pointed this out (July 2017), the AA stated that necessary follow up action would be taken. Further report was awaited (January 2018).

[32] Ambattur, Kilpauk and Nethaji Circle, Madurai

### 2.6.7 Incorrect elimination of demand

Elimination of tax or penalty demand is an important work in preparation of DCB Statement. The assistant responsible for preparation of DCB Statement should not eliminate any demand on his own but obtain orders from the AA before such deletion. Entries to this effect should be made in the relevant registers and note order should be filed in the DCB Statement.

However, we noticed in P.N. Palayam Assessment Circle, Coimbatore that demand of ₹ 7.41 crore in respect of seven dealers which was raised in September 2015 was written off without any proper proceedings.

When the incorrect elimination of demand was pointed out in June 2017, the AA replied that statement of audited accounts in Form WW were filed by the dealer and the demands raised in best judgment assessment were eliminated. The reply was not acceptable since the assessments, which were made on best judgment basis were not amenable to revisionary proceedings as envisaged in Section 84 of the TNVAT Act. Further, revision proceedings were not passed even in a single case and the demands were just eliminated from the 'L' register.

Similarly, in Tiruvallikeni Assessment Circle, scrutiny of the statistics for the month of March 2017 revealed that demand of ₹ 35.24 crore in 779 cases were eliminated, for which there was no corresponding files or entries in the 'L' register. The above elimination of the demands was carried out without any proper proceedings or approval of the higher authorities.

We pointed this out in August 2017. Reply was awaited (January 2018).

### 2.6.8 Non-levy of interest

As per Section 42(3) of the TNVAT Act, on any amount remaining unpaid after the date specified for its payment as referred to in sub-section (1) or in the order permitting payment in instalments, the dealer or person shall pay, in addition to the amount due, interest at one and a quarter *per cent* per month upto 28 May 2013 and at two *per cent* per month thereafter of such amount for the entire period of default.

During check of records in DLTU and Tiruvallikeni Assessment Circles, we noticed that arrear of ₹ 48.18 lakh relating to the years 1994-95 and 2005-06 was recovered from two assessees during September 2014 and March 2016 with delay ranging from 50 to 170 months. However, interest of ₹ 66.55 lakh was not levied and recovered by the AAs.

We pointed this out to the Department and their reply was awaited (January 2018).

## 2.6.9 Internal control mechanism

An internal control mechanism safeguards against errors and irregularities in operational and financial matters. It examines and evaluates the extent of compliance of the departmental rules and procedures. The failure to prepare DCB Statements, the non-usage of TSP for generation of MIS report on arrear position and the failure to forward detailed list of arrear cases along with the monthly statistics is evidence of the existence of weak internal control system.

### 2.6.9.1 Preparation of DCB Statement

The TNVAT Manual (Part II Chapter XV) of the CT Department prescribes a system of preparation and onward transmission of DCB Statement through which the demands raised in respect of tax, interest, penalty, registration and other miscellaneous receipts and balance could be watched. However, we noticed that in 13[33] Assessment Circles, the above system of furnishing of DCB statements had been discontinued at different quarters and no DCB statement had been sent to the higher authorities from the Assessment Circles. This had resulted in non-monitoring of collection and balance of the taxes and arrears respectively by the supervisory authorities.

### 2.6.9.2 Preparation of DCB Statement in Total Solution Project

The TSP software was introduced (with effect from June 2016) with a view to reduce paper work and documentation and introduce system aided administration and collection of tax. However, we observed that in spite of a lapse of more than a year since the implementation of TSP, the legacy data relating to arrears of tax had not been uploaded in the TSP. Hence, TSP could neither be used for generation of accurate MIS reports on the arrear position nor could be used for effective monitoring and follow up of collection of arrears.

### 2.6.9.3 Preparation of consolidated arrear position

The Assessment Circles prepare monthly statistics in respect of the arrear and collection position and the same is forwarded to the territorial DC, who in turn consolidates the circle statistics and forwards it to the jurisdictional JC, who in turn consolidates the DCs statistics and forward it to the Commissioner's office. We noticed that the detailed list of cases of the arrear position as per the statistics are not prepared and submitted by the Assessment Circles. We observed that the amount of arrears as per the monthly statistics did not agree with the actual arrear position in the Assessment Circles.

### 2.6.9.4 Follow up mechanism of collection of arrears

We observed that during the monthly review meetings, no specific follow up in respect of the pending arrears had been discussed and no minutes were maintained in the Assessment Circles consistently.

In the Exit Conference, the Additional Chief Secretary to Government instructed the Department to upload the legacy data of arrears in the TSP

[33] Ambattur, Anna Salai, Chepauk, Kilpauk, LTU-I, LTU-II, LTU-III, LTU-IV, Pattaravakkam, Poonamallee, Sriperumbudur, Tiruvallikeni and T.Nagar

module and make use of MIS reports for effective monitoring and follow up of collection of arrears.

### 2.6.10 Conclusion

The collection of the arrear demands is one of the significant and important work of the Commercial Taxes Department. Any lapse or deficiency or inaction on the part of the Department on the above process will have a serious impact on the revenue of the Government and their ability to balance the budget. A sample study of the arrear position revealed that there was no effective control, follow up and pursuance of arrears. There were instances of non-initiation of recovery proceedings, delay or non-follow up of revenue recovery proceedings, non-follow up of legal cases, non-compliance to judicial forums' orders etc. There was no effective internal control mechanism to watch the above deficiencies by the higher authorities, which had resulted in the huge accumulation of arrears.

## 2.7 Other Audit Observations

## Value Added Tax

### 2.7.1 Application of incorrect rate of tax

As per Section 3(2) of TNVAT Act, in the case of goods specified in part B or Part C of the First Schedule, the tax shall be payable by a dealer on every sale made by him within the State at the rate specified therein. As per entry 13A of Part C of First Schedule to the TNVAT Act, introduced with effect from 12 July 2011, Compact Discs (CDs) / DVDs were taxable at the rate of 14.5 *per cent.*

During test check (December 2015 and February 2017) of records in Nungambakkam Assessment Circle, we noticed from the monthly returns and the statement of audited accounts in Form-WW that a dealer had paid tax at the rate of five *per cent* on the turnover of ₹ 2.27 crore pertaining to sale of CDs / DVDs instead of the correct rate of 14.5 *per cent* during the assessment years 2012-13 to 2014-15. The AA also failed to ensure the payment of tax at correct rates by scrutiny of monthly returns filed by the dealer. This resulted in short realisation of tax of ₹ 21.62 lakh.

After we pointed this out (January 2016 and March 2017), the AA, Nungambakkam Assessment Circle revised (June 2017) the assessment of the dealer for the year 2014-15 and raised additional demand of ₹ 7.18 lakh. Collection particulars of the additional demand and reply in respect of the remaining years was awaited (January 2018).

The matter was referred to the Government in August 2017. Reply was awaited (January 2018).

### 2.7.2 Incorrect allowance of compounded rate of tax

Section 3(2) of the TNVAT Act provides that in the case of goods specified in Part B or Part C of the First Schedule, the tax shall be payable by a dealer on every sale made by him within the State at the rate specified therein.

Section 3(4)(a) of the TNVAT Act read with Notification dated 1 January 2007 provides that notwithstanding anything contained in Section 3(2), a dealer who effects second and subsequent sales of goods purchased within the State and whose turnover relating to taxable goods for a year is less than ₹ 50 lakh, may at his option pay tax at the rate of 0.5 *per cent*.

As per Section 3(4)(b) of the TNVAT Act, as it stood upto 31 March 2012, if the taxable turnover of a dealer in a year reaches ₹ 50 lakh at any time during the year, he is liable to pay tax under Section 3(2) of the Act on all his sales turnover. The Section further provides that such dealer whose turnover has reached ₹ 50 lakh during the previous year shall not be entitled to exercise such option for subsequent years.

During scrutiny (April 2016) of records in Vaniyambadi Assessment Circle, we noticed that a dealer in hardware had paid tax of ₹ 0.27 lakh and ₹ 0.25 lakh at the compounded rate of 0.5 *per cent* during the years 2011-12 and 2012-13 on the sales turnover of ₹ 54 lakh and ₹ 50.02 lakh respectively. As the taxable turnover of the dealer during the two years was in excess of ₹ 50 lakh, payment of tax at compounded rate was not in order. The AA, however, failed to ensure payment of tax at correct rate.

After we pointed this out (April 2016), the AA revised the assessment (October 2016) and after deducting ₹ 0.52 lakh, raised additional demand of ₹ 14.58 lakh. Collection particulars of the additional demand was awaited (January 2018).

The matter was referred to the Government in February 2017. Reply was awaited (January 2018).

### 2.7.3 Non-levy of purchase tax

As per Section 12 of the TNVAT Act, every dealer who in the course of his business purchases from a registered dealer or from any other person any goods (the sale or purchase of which is liable to tax under the Act) in circumstances in which no tax is payable by that registered dealer on the sale price of such goods under this Act and dispatches them to a place outside the State, except as a direct result of sale or purchase in the course of inter-state trade or commerce shall pay tax on the turnover relating to the purchase aforesaid at the rate specified in the Schedules to the Act.

As per entry 18 of the Fourth Schedule to the TNVAT Act, turmeric sold by any dealer whose total turnover does not exceed ₹ 300 crore in a year is exempt from levy of tax**.** As per entry 52 of Part B of the First Schedule to the TNVAT Act, turmeric other than those specified in the Fourth Schedule is taxable at the rate of five *per cent*.

During scrutiny of records in Leigh Bazaar Assessment Circle (January 2016), we noticed that a dealer whose total turnover during the years 2013-14 and 2014-15 was less than ₹ 300 crore had purchased turmeric from agriculturists and other dealers without payment of tax. The dealer had sent turmeric to places outside the State otherwise than by way of sale during the said years. As turmeric had not suffered tax earlier in the State, purchase tax was leviable for the stock transfer. However, purchase tax of ₹ 13.42 lakh and ₹ 9.09 lakh relating to the assessment years 2013-14 and 2014-15 respectively was not paid by the dealer, and the AA also failed to levy the same.

After we pointed this out (January 2017) the AA stated (March 2017) that since the total turnover of the dealer did not exceed ₹ 300 crore in a year, levy of purchase tax was not attracted.

The reply is not acceptable as the exemption upto ₹ 300 crore was applicable only for sale of turmeric. In the instant case, the dealer had purchased turmeric without payment of tax under the circumstance that the turnover of the selling dealers was less than ₹ 300 crore. The turmeric so purchased was sent outside the State otherwise than by way of sale. Hence, the conditions governing levy of purchase tax was satisfied.

The matter was referred to the Government in March 2017. Reply was awaited (January 2018).

### 2.7.4 Incorrect claim of input tax credit

As per Section 19 (1) of the TNVAT Act, there shall be input tax credit (ITC) of the amount of tax paid or payable under this Act, by the registered dealer, to the seller on his purchase of taxable goods specified in the First Schedule.

As per Section 27(2) of the TNVAT Act, where for any reason, ITC has been availed wrongly, the AA shall reverse the ITC availed and determine the tax due. Section 27(4) of the Act, *ibid*, provides for levy of penalty, in the case of first detection, at the rate of 50 *per cent* of the ITC wrongly claimed.

Our test check of records revealed the following irregularities in claim of ITC by the dealers.

**2.7.4.1** Under Section 2(24) of the TNVAT Act, 'input tax' means the tax paid or payable under the Act by a registered dealer to another registered dealer on purchase of goods in the course of his business.

During test check of records (between April and September 2016) in three[34] Assessment Circles, we cross verified the details contained in the monthly returns of the purchasing dealers with the details contained in the monthly returns filed by the selling dealers. We noticed that the claim of ITC of five dealers during the year 2014-15, *inter alia,* included claim of ₹ 96.19 lakh in respect of purchase of goods valued at ₹ 19.24 crore effected from three dealers whose registration certificates were cancelled prior to the transaction of sale / purchase. Thus, at the time of purchase made by the dealers, the selling dealers were not registered under the Act and the claim of ITC by the purchasing dealers was not in order. The incorrect claim of ITC preferred by the dealers in the monthly returns was, however, allowed by the AA.

After we pointed this out (between May and September 2016), the AAs revised (between June 2016 and March 2017) the assessments and raised additional demand of ₹ 96.19 lakh. The appeal filed by a dealer after paying ₹ 16.44 lakh, being 50 *per cent* of the disputed tax was pending before JC (CT) Appeal, Chennai. Outcome of appeal and collection particulars of the balance amount was awaited (January 2018).

The matter was referred to the Government in August 2017. Reply was awaited (January 2018).

**2.7.4.2** As per Section 19(11) of the TNVAT Act, in case any registered dealer fails to claim ITC in respect of any transaction of taxable purchase in any month, he shall make the claim before the end of the financial year or before 90 days from the date of purchase, whichever is later.

During test check of records (November / December 2016) in Mylapore and Salem (Town) (North) Assessment Circles, we noticed that two dealers had, in

[34] Gudiyatham, LTU-II and Vaniyambadi

the monthly returns of April, July and August 2014, claimed ITC of ₹ 1.08 crore in respect of purchase of goods effected between April and December 2013. As the claim of ITC was not preferred within the prescribed time, the same had to be disallowed and the amount recovered from the dealers. The AAs, however, failed to invoke the provisions of Section 19 (11) of the Act and allowed the time barred claim of ITC. The incorrect claim of ITC of ₹ 1.08 crore was required to be reversed along with levy of penalty of ₹ 54.08 lakh.

The matter was brought to the notice of the Department in November / December 2016 and referred to the Government in July / August 2017. Reply was awaited (January 2018).

The IT application of the Department has a facility for the Assessing Authorities (AAs) to generate MIS reports on the claims of ITC. It was however, observed that AAs were not effectively utilising these reports to detect deficiencies in the returns submitted by the dealers despite instructions having been issued by the Commissioner of Commercial Taxes whereby AAs were required to undertake the annual verification of consolidated and e-filed monthly returns. As a result, AAs were not able to link the cases of ITC claims of cancelled dealers as well as the time barred cases.

It is recommended that the IT software should be strengthened to ensure avoidance of such occurrences in future. The department should also ensure expeditious modifications and updation of the IT software as per the requirements.

### 2.7.5 Non / short reversal of input tax credit

**2.7.5.1** As per Section 19(1) of the TNVAT Act, there shall be ITC of the amount of tax paid or payable under this Act, by the registered dealer to the seller on his purchases of taxable goods specified in the First Schedule. As per Section 19 (5) (a) of the Act no ITC shall be allowed in respect of goods exempted under Section 15. As per Section 19(12) of the Act, where a dealer has availed credit on inputs and when finished goods become exempt, credit availed on inputs used therein should be reversed. As per Section 15 of the Act, sale of goods specified in the Fourth Schedule and goods exempted by notification by the Government by any dealer shall be exempted from tax. By issue of Notification in August 2012, Government granted exemption on the sale of furnace oil to HT consumers for use in Gensets for the period from 1 February 2012 to 30 September 2012.

During scrutiny (September 2016) of records in LTU-IV Assessment Circle, we noticed that tax paid by a dealer through monthly returns on sale of furnace oil during the period from February 2012 to September 2012 was refunded by orders issued in January 2016. The AA, however, failed to reverse proportionate ITC corresponding to such exempted sales.

After we pointed (September 2016) this out, the AA revised (October 2016) the assessment and collected additional demand of ₹ 1.02 crore, partly by cash (December 2016 and January 2017) and partly by way of adjustment from the refund available to the dealer in respect of the assessment year 2011-12.

The mater was referred to the Government in June 2017. Reply was awaited (January 2018).

**2.7.5.2** As per Section 19(5)(a) of the TNVAT Act, ITC is not available in respect of sale of goods exempt from levy of tax. Sale of goods to Special Economic Zone (SEZ) located in other States is exempt as per Section 8(6) of the CST Act.

During scrutiny (between August and October 2016) of records in three[35] Assessment Circles, we noticed that three dealers had claimed ITC of ₹ 148.99 crore on purchase of inputs during the years 2013-14 and 2014-15. The total sales turnover of ₹ 8,676.83 crore of the dealers for the years 2013-14 and 2014-15, *inter alia,* included sale of goods valued at ₹ 73.23 crore to SEZs located in other States. As such sale was exempt from levy of tax, proportionate ITC of ₹ 97.08 lakh corresponding to such sales was required to be reversed. The dealers failed to reverse proportionate ITC in respect of sale to SEZs located in other States and the AAs also failed to enforce the same.

After we pointed this out (between August and October 2016), the AAs of LTU-I and LTU-IV Assessment Circles revised the assessment and raised additional demand of ₹ 24.94 lakh. Report regarding collection and reply in respect of the remaining cases was awaited (January 2018).

The matter was referred to the Government between May and August 2017. Government accepted the audit observation in a case pertaining to LTU-IV Assessment Circle and stated that the amount of ₹ 9.70 lakh was collected. Reply of the Government in the other cases was awaited (January 2018).

**2.7.5.3** As per Section 19 (5) (a) of the TNVAT Act, no ITC shall be allowed in respect of goods exempted under Section 15. As per Section 19(12) of the Act, where a dealer has availed credit on inputs and when finished goods become exempt, credit availed on inputs used therein should be reversed.

During scrutiny (May 2016) of records in Amaindakarai Assessment Circle, we noticed that a dealer had claimed ITC of ₹ 35.10 lakh on purchase of inputs during the year 2014-15. The total sales turnover of ₹ 15.37 crore of the dealer for the year 2014-15 *inter alia* included sale of goods valued at ₹ 7.82 crore which were exempt from levy of tax. Therefore, proportionate ITC of ₹17.86 lakh corresponding to such exempted sales was required to be reversed. The dealer failed to reverse proportionate ITC in respect of exempted sale and the AA also failed to enforce the same.

After we pointed this out in June 2016, the AA revised the assessment in November 2016 and raised additional demand of ₹ 17.86 lakh; the collection particulars of which was awaited (January 2018).

The matter was referred to the Government in August 2017. Reply was awaited (January 2018).

[35] LTU-I, LTU-IV and Tiruverumbur

**2.7.5.4** As per Section 19(4) of the TNVAT Act, ITC shall be allowed on the tax paid or payable on the purchase of goods in excess of *five per cent* relating to such purchases, if the goods purchased are transferred or used in the manufacture of other goods and transferred to other States otherwise than by way of sale. The Section provides that if a dealer has already availed ITC, there shall be reversal of credit against such transfer.

During scrutiny (November 2016 and February 2017) of records in three[36] Assessment Circles, we noticed that four dealers who claimed ITC of ₹ 8.12 crore on purchase of goods during the year 2014-15, had transferred goods valued at ₹ 66.12 crore to other States, otherwise than by way of sale. The transfer of goods to other States, otherwise than by way of sale, warranted reversal of proportionate ITC of ₹ 91.31 lakh. We, however, observed that as against ₹ 61.42 lakh, reversal of ₹ 39.93 lakh alone was made in one case, while in the other cases, reversal was not made by the dealers. Thus, there was non / short reversal of ITC of ₹ 51.38 lakh. The AAs also failed to notice the non / short reversal of ITC pertaining to stock transfer of goods to other States otherwise than by way of sale.

After we pointed this out (between November 2016 and February 2017), the AAs revised the assessments (January and July 2017) and raised additional demand of ₹ 51.38 lakh; the collection particulars of which was awaited (January 2018).

The matter was referred to the Government between March and August 2017. Reply was awaited (January 2018).

### 2.7.6 Non / short levy of interest

As per Section 21 of the TNVAT Act, every dealer registered under the Act, shall file return, in the prescribed form showing the total and taxable turnover within the prescribed period, in the prescribed manner along with the prescribed documents and proof of payment of tax. The tax under this Section shall become due without notice of demand to the dealer on the last date of the period of filing return.

As per Section 42(1) of the TNVAT Act, the tax assessed or has become payable under this Act from a dealer shall be paid in such manner and in such instalments, if any, and within such time as may be specified in the notice of assessment, not being less than thirty days from the date of service of the notice. As per Section 42(3) of the TNVAT Act, on any amount remaining unpaid after the date specified for its payment as referred to in sub-section (1) or in the order permitting payment in instalments, the dealer or person shall pay, in addition to the amount due, interest at one and a quarter *per cent* per month upto 28 May 2013 and at two *per cent* per month thereafter of such amount for the entire period of default.

As per Rule 7(8) of the Tamil Nadu Value Added Tax Rules, 2007, the dealers making electronic payment of tax and whose taxable turnover in the previous

[36] Alwarpet, Nandambakkam and Nungambakkam

year is ₹ 200 crore and above, shall file the returns on or before 14th of the succeeding month along with proof of payment of tax.

During scrutiny (July 2015 / September 2016) of records in four[37] Assessment Circles, Chennai, we noticed that six dealers had, during certain months of the assessment years 2013-14 and 2014-15, paid tax of ₹ 629.94 crore belatedly; the period of delay ranging from one day to 1,917 days. The belated payment of tax attracts levy of interest of ₹ 5.11 crore. The AAs, however, levied interest of ₹ 4.44 crore for belated payment of tax. This resulted in short levy of interest of ₹ 66.74 lakh.

After we pointed this out (between July 2015 and October 2016), the AAs did not accept the audit observation and stated (July 2015 / March 2017) that where the due date of payment of tax falls on a holiday, the period of delay had been calculated by reckoning the next working day as due date and interest has been correctly levied as per the provisions of the Tamil Nadu General Clauses Act.

Government to whom the matter was referred (July 2016) also stated (February 2017) in respect of two cases pertaining to LTU-II and LTU-III Assessment Circles that where the due date of payment of tax falls on a holiday, the period of delay had been calculated by reckoning the next working day as due date and interest had been correctly levied as per the provisions of the Tamil Nadu General Clauses Act.

The reply was not acceptable as the Tamil Nadu General Clauses Act does not provide for shifting of due date to the next working day. Section 11 of Tamil Nadu General Clauses Act only provides that where any act was directed to be done in any office within a period of time, if the office is closed on the last day of the prescribed period, then the act is considered to be done in the due time, if it is done on the next day afterwards on which the office is open. Hence, in cases where due date for payment of tax falls on a holiday, if tax is not paid on the next working day following the holiday, period of default has to be reckoned from the due date, though the same happens to be a holiday.

Reply of the Department and the Government in respect of the remaining cases was awaited (January 2018).

## Central Sales Tax

### 2.7.7 Incorrect computation of taxable turnover

Article 286(1)(b) of the Constitution of India, envisages that no law of a State shall impose (or) authorise the imposition of a tax on the sale (or) purchase of goods where such sale takes place in the course of import of goods into the territory of India.

As per Section 5(2) of the CST Act, a sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the Territory of India if sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the Customs frontiers of India.

[37] LTU-III, LTU-IV, Mahal and Pudukkottai-I

As per Section 8(2) of the CST Act, interstate sale of goods not covered by valid declaration forms are assessable to tax at the rate applicable to sale of such goods inside the State. Stainless steel scraps were taxable at the rate of four *per cent* inside the State.

During scrutiny (October 2016) of records in Gummidipoondi Assessment Circle, we noticed that the AA, while finalising the assessment of a dealer for the year 2010-11 under the CST Act, had allowed exemption on a turnover of ₹ 2.37 crore as sales having been effected by transfer of documents of title to the goods before the goods had crossed the Customs frontier of India. We, however, noticed that documentary evidences in proof of such sale having taken place by transfer of documents of title to goods were not available in the assessment file. We, therefore, suggested that the sales turnover be assessed at the rate of four *per cent* as sales not covered by valid declaration forms involving tax of ₹ 9.50 lakh.

After we pointed this out (October 2016), the AA revised the assessment and raised additional demand of ₹ 9.50 lakh; the collection particulars of which was awaited (January 2018).

The matter was referred to the Government in July 2017. Reply was awaited (January 2018).