CHAPTER – III
COMMERCIAL TAX

Chapter III
Commercial Tax

3.1 Internal Audit

Internal audit is a vital arm of internal control mechanism and is generally defined as the control of all controls. It helps the organisation to assure that the prescribed systems are functioning reasonably well.

Commercial Tax Department intimated (August 2016) that internal audit wing did not exist in the Department. This issue was also highlighted in earlier Audit Reports, however, the system of Internal Audit has still not been established in the Department.

3.2 Results of Audit

We test checked records of all 114 units[1] of Commercial Tax Department involving total revenue of ₹ 19,883.30 crore units during the year 2015-16 and found underassessment of tax and other irregularities involving ₹ 290.02 crore in 1,072 cases, which fall under the following categories as mentioned in the **Table 3.1**.

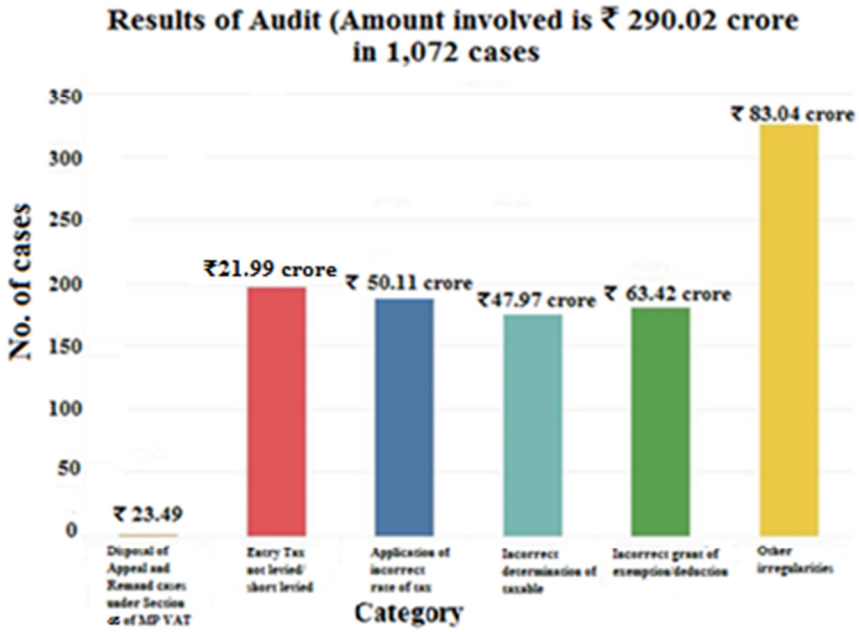
Table 3.1
Results of Audit

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
1.	**Disposal of Appeal and Remand cases under Section 46 of MPVAT Act, 2002**	**1**	**23.49**
2.	Entry Tax not levied/short levied	197	21.99
3.	Application of incorrect rate of tax	191	50.11
4.	Incorrect determination of taxable turnover	176	47.97
5.	Incorrect grant of exemption/deduction	181	63.42
6.	Other irregularities	326	83.04
	Total	**1,072**	**290.02**

[1] 32 Divisional Offices, 18 Regional Offices and 64 Circle Offices

Chart 3.1



All the above audit observations were communicated to the Department and the Government between May 2015 and July 2016. The Department accepted underassessment of tax and other irregularities of ₹ 145.42 crore in 236 cases, which were pointed out in audit during the year 2015-16 and reported realisation of ₹ 30.46 lakh in 45 cases.

Audit findings of the Audit on **"Disposal of Appeal and Remand cases under Section 46 of MP VAT Act 2002"** having money value of ₹ 23.49 croreand a few other illustrative cases involving ₹84.06crore are discussed in the following paragraphs:

3.3 Disposal of Appeal and Remand cases under Section 46 of MPVAT Act, 2002

3.3.1 Introduction

Levy and collection of Value Added Tax, Entry Tax, Central Sales Tax and *Vilasita, Manoranjan, Amod Evam Vigyapan Kar* are based on self-assessment system. The overall objective of the tax assessment system is to maximise the collection of revenue by maximising the level of voluntary compliance and by deterring evasion. The dealer calculates his own liability and makes payment of tax due while the Commercial Tax Department reviews the self-assessment subsequently by means of assessments to ensure that tax legally due is declared and paid by the tax payers.

As per Section 46 of Madhya Pradesh Value Added Tax (MPVAT) Act, any dealer or person aggrieved by an order passed under this Act, by any officer specified in clause (c) to (f) of sub-section (1) of section 3 or sub-section (14) of Section 57 as Assessment Authority (AA) may, in the prescribed manner, appeal against such order to the Appellate Authority (First appeal). Further, if he is aggrieved by an order passed in first appeal, he may, in the prescribed manner, appeal against such order to the Appellate Board (Second appeal).

Every appeal shall be filed within prescribed time of communication of the order against which the appeal is to be filed.

In the case of assessment order passed by the Deputy Commissioner, the first appeal is to be filed before the Additional Commissioner of the respective Zone designated as Appellate Authority. In other cases (assessment orders passed by authorities up to the rank of Assistant Commissioner), first appeal is to be filed before the respective Appellate Deputy Commissioner. In the case of revision order passed under Section 47(1) (revised assessment) by a Deputy Commissioner, first appeal can be filed under Section 46(1) to the Additional Commissioner.

As per Section 13 of "Madhya Pradesh *Sthaniya Kshetra Me Maal ke Pravesh par Kar Adhinium, 1976"* commonly known as Entry Tax (ET) Act, 1976, the provision of the MPVAT Act and the rules/orders/notifications issued thereunder regarding assessment, appeal, interest, penalty etc. shall apply *mutatis mutandis* to a dealer in respect of ET Act. Further as per Section 9(2) of the Central Sales Tax (CST) Act, 1956 and as per Section 8 of *Vilasita, Manoranjan, Amod Evam Vigyapan Kar Adhiniyam,* 2011, the provisions of the MPVAT Act regarding assessment, appeal, interest, penalty etc. shall also apply *mutatis mutandis* to a dealer registered under CST Act and *Vilasita, Manoranjan, Amod Evam Vigyapan Kar Adhiniyam.*

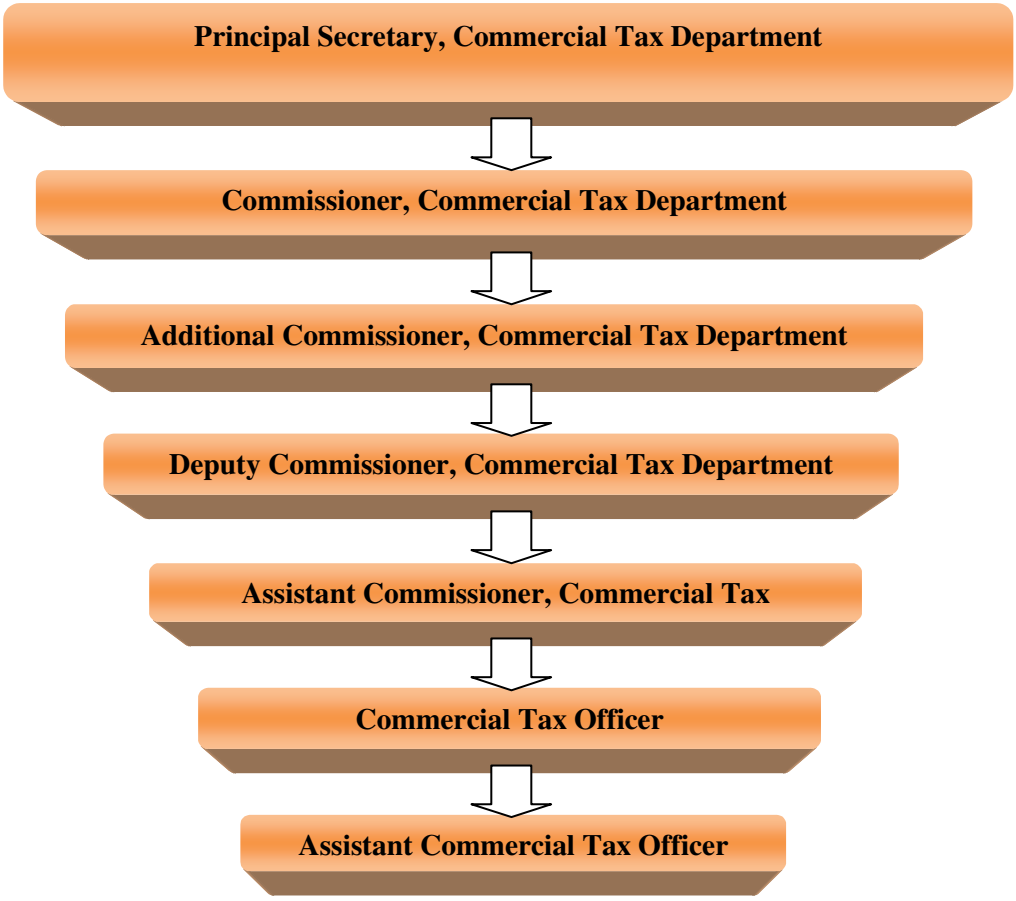
3.3.2 Organisation setup

Taxation Authorities and other Officers

The Principal Secretary, Commercial Tax Department is the Administrative head of the Department at the apex level. The Commissioner of Commercial Tax is the Head of the Department. The Commercial Tax Department functions under the overall control of Commissioner of Commercial Tax assisted by Additional Commissioners, Deputy Commissioners, Assistant Commissioners, Commercial Tax Officers, Assistant Commercial Tax Officers and Inspectors of Commercial Tax in discharge of such functions as may be assigned to him under the Act.

The organisational chart of the Department is as under:

Chart 3.2: Organisational Setup



Appellate Authority

As per Section 3-A of MPVAT Act, the State Government may, by order, appoint any officer not below the rank of Deputy Commissioner of Commercial Tax as the first Appellate Authority. The State Government has appointed seventeen[2] officers as first the Appellate Authority.

Appellate Board

As per Section 4 of MPVAT Act, the State Government shall constitute Appellate Board to exercise the powers and perform the functions conferred on the Appellate Board by or under this Act as the second appeal authority. The Appellate Board shall consist of a Chairman and such number of Judicial and Accountant Members as the State Government may decide. The Appellate Board shall be deemed to be a judicial body within the Indian Penal Code, 1860 and a Civil Court for the purpose of the Code of Criminal Procedure, 1973.

[2] **Additional Commissioner** Bhopal, Gwalior, Indore Zone-I , Indore Zone-II and Jabalpur; **Deputy Commissioner** Bhopal, Chhindwara, Gwalior, Indore-I, Indore-II, Indore-III, Jabalpur, Khandwa, Ratlam, Sagar, Satna and Ujjain

3.3.3 Audit Objectives

The Audit was conducted to see:

- whether the provisions/procedures of filing and acceptance of appeal were scrupulously followed,
- disposal of the appeal cases were as per the provisions of Acts, Rules, Notifications, Circulars and the Court's decisions and
- provisions of Acts and Rules were adequate to safeguard the interest of revenue in appeal cases.

3.3.4 Audit Criteria

The audit findings are based on the following criteria;

- Section 46 of MPVAT Act
- Provisions of MPVAT Act, 2002, ET Act, 1976, CST Act, 1956 and LEAT Act, 2011.
- Rules and instructions, Circulars/exemption notifications issued by the State Government and decision of the Courts and Appellate Authority.

3.3.5 Scope of audit and methodology

The audit was carried out between January 2016 and June 2016 to examine orders of Appeal passed by the first Appellate Authority (Deputy Commissioner, Appeal/Additional Commissioner, Appeal) between 1 April 2011 and 31 March 2016 in nine[3] out of total 17 appeal offices selected on the basis of Simple Random Sampling Method. Audit also examined records of Appellate Board to assess whether the provisions/procedures in filing, acceptance and disposal of appeal were scrupulously followed.

A total of 19,821 cases of appeal were disposed off by first appellate authorities between 2011-12 and 2015-16 in the test checked units. Out of this, we audited 10,108 cases (50 *per cent* approx.) and audit observations were made in 6,237 cases involving an amount of ₹ 434.51 crore.

- **Acknowledgement**

Indian Audit and Accounts Department acknowledges the cooperation of the Commercial Tax Department for providing necessary information and records to audit. The scope and methodology of audit was discussed with the Principal Secretary of the Department in an Entry Conference held on 7 April 2016. Audit findings were forwarded to the State Government and Department in June 2016 and were discussed with the Principal Secretary of the Department in the Exit Conference held on 3 September 2016. The views of the Government/Department have been suitably incorporated in respective paragraphs. All the recommendations of audit have been accepted by the Government/Department.

The compliance audit paragraphs included in this chapter were also discussed

[3] Additional Commissioner Zone -II Indore and Jabalpur, Deputy Commissioner Appeal, Bhopal, Gwalior, Indore II, Indore III, Jabalpur, Satna and Sagar.

in this meeting. The Department stated that detailed replies on these paragraphs would be sent to audit in due course. However, replies of the Department have not been received (October 2016).

Audit Observations

3.3.6 Delay in disposal of appeal cases

3.3.6.1 First appellate authorities

Position of disposal of appeal cases during the period 2011-12 to 2015-16 by the first appellate authorities is given in **Table 3.2**

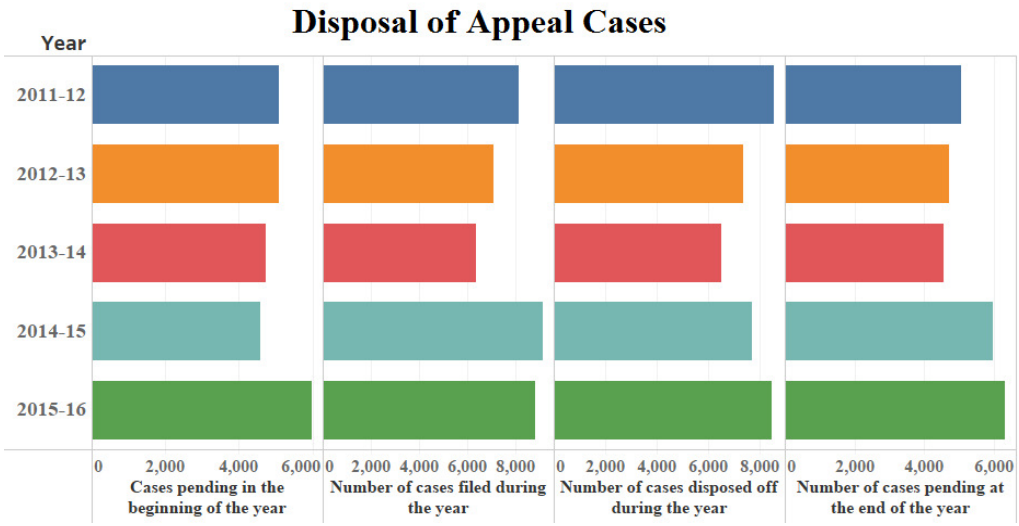
Table 3.2

Disposal of appeal cases by First Appellate Authority

Year	Cases pending in the beginning of the year	Number of cases filed during the year	Total	Number of cases disposed off during the year	Number of cases pending at the end of the year
2011-12	5494	8131	13625	8548	5077
2012-13	5077	7031	12108	7377	4731
2013-14	4731	6341	11072	6497	4575
2014-15	4575	9119	13694	7716	5978
2015-16	5978	8809	14787	8460	6327
			Total	**38598**	

(*Source: Information furnished by Commercial Tax Department*)

Chart 3.3



From the above table, it can be seen that number of pending cases are increasing in last three years. The Department needs to put more efforts in order to reduce pendency.

3.3.6.2 Appellate Board (Second Appellate Authority)

During the year 2011-12 to 2013-14, 3,291 appeal cases were filed while, 1,956 cases were already pending at the beginning of 2011-12. Only 2,106 appeal cases were disposed off during 2011-12 to 2015-16. Thus 3,141 cases remained pending for disposal at various stages.

As per Section 46(8) of MPVAT Act, the Appellate Board shall dispose off every appeal within two calendar years from the date of filing of appeal.

Information regarding amount involved and age-wise breakup of pending cases were not maintained by the Appellate Board as well as by the Department. Position of disposal of appeal cases during the period 2011-12 to 2015-16 by the second appellate authority is given in **Table 3.3.**

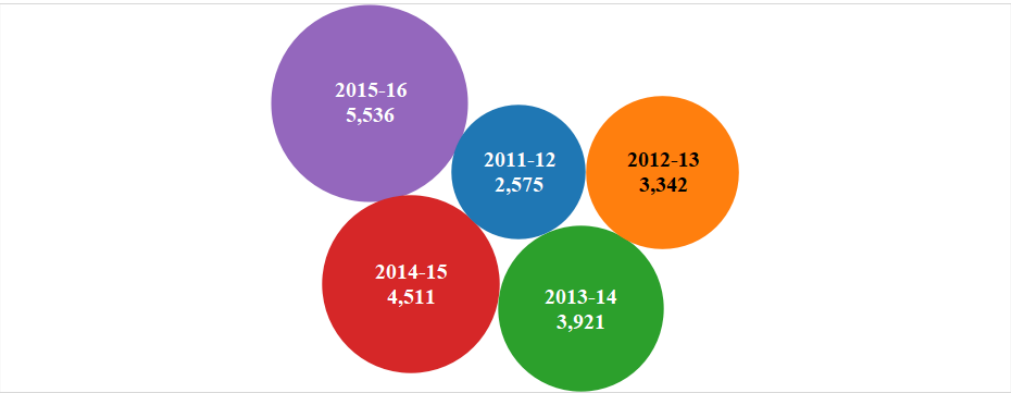
Table 3.3
Disposal of appeal cases by Second Appellate Authority

Year	Pending appeal cases in the beginning of the year	Number of appeal cases filed during the year	Total	Number of cases disposed off during the year	Number of appeal cases pending at the end of year
2011-12	1956	1108	3064	489	2575
2012-13	2575	1156	3731	389	3342
2013-14	3342	1027	4369	448	3921
2014-15	3921	1076	4997	486	4511
2015-16	4511	1319	5830	294	5536
			Total	**2106**	

(*Source: Information furnished by the Appellate Board*)

Chart 3.4

Number of Appeal cases pending at the end of the year



It can be seen from the above Table that the number of pending appeal cases at second appeal level increased from 1956 cases at the beginning of the year 2011-12 to 5,536 appeal cases at the end of the year 2015-16. Thus, pending appeal cases doubled in this five year span. Reasons for not disposing the pending cases in time were not provided by the Appellate Board.

It was also noticed that 1,956 appeal cases were pending at the beginning of the year 2011-12 and 3,291 appeal cases were filed during 2011-12 to 2013-14. Hence, as per the prescribed time limit of two year for disposal, total 5,247 appeal cases should have been disposed off up to 2015-16. However, only 2,106 appeal cases were disposed off during five years. At this pace of disposal, it will take eight years for disposal of remaining 3,141 cases. This could result in adverse bearing on the tax revenue as well as on dealers who have grievances against assessment orders.

The Appellate Board replied (June 2016) that the proposal for amendment in Section 46(8) (b) and (8B) of the MPVAT Act regarding increase of time limit for disposal of appeal cases is under consideration at the Government level.

During exit conference the Government stated that matter would be taken up with the Appellate Board.

We recommend that timeline for disposal of appeal cases at various stages as stipulated in the Act may be scrupulously followed so that while revenue interest of the Department is safeguarded, the grievances of the aggrieved dealer may also be addressed in time.

3.3.7 Disposal of appeals

3.3.7.1 Appeal orders passed to reduce tax without obtaining Assessing Authority's views

A total of 6,229 cases involving tax of ₹ 434.17 crore were passed in favour of appellants without obtaining the views of the Assessing Authorities concerned.

As per provision of Section 46(8) of the MPVAT Act, the Appellate Authority may, if the order appealed against is not an *ex parte* order, confirm, reduce, enhance or annul the assessment or reassessment of tax or interest or imposition of penalty or both or pass such order as it may deem fit. The Appellate Authority may, before disposing of any appeal, make such further enquiry from the Assessing Authority concerned as it thinks fit. Further, as per instruction of the Commissioner of Commercial Tax Department vide circular No. 60 dated 20.01.2014, the Appellate Authority should obtain written note of the Assessing Authority in respect of each point raised by the appellant.

We observed in nine Appeal Offices[4] between January 2016 and June 2016, that in 6,229 cases involving tax of ₹ 434.17 crore, disposed off between April 2011 and March 2016, the appeal orders were passed in favour of appellants without obtaining the views of the Assessing Authorities concerned. Even after the Commissioner's instruction dated 20.01.2014 to obtain written views of the AAs, the Appellate Authorities did not obtain views of AAs in 1829 cases while granting tax relief of ₹138.57 crore. Two illustrative cases are discussed in **Table 3.4.**

[4]Additional commissioner Zone -II Indore and Jabalpur, Deputy Commissioner Appeal Bhopal, Gwalior, Indore II, Indore III, Jabalpur, Sagar and Satna

Table 3.4
Illustrative cases where views of Assessing Authorities were not obtained
(₹ in lakh)

Sl. No.	Name of unit/ No. of cases	Amount of tax relief	Audit observation	Reply and our comments
1	DC Appeal, Satna /01	9.38	The Check Post Officer levied tax and imposed penalty on transporter because during checking of vehicle it was found that the transporter carried plant and machinery without Form-49. The appellant argued in appeal that there was no intention of tax evasion because he transported plant and machinery from UP to MP to complete civil contract works, and after completion of works he took back above Plant and Machinery. Hence, Form 49 was not required. The Appellate Authority accepted appeal and granted relief without any detailed explanation in order passed and also without obtaining the views of AA. The check post officer correctly imposed penalty on transporter for not producing the Form 49 as Form 49 was mandatory for transportation of notified goods for all purposes. Moreover, the dealer for whom goods was being transported was defaulter as his registration was cancelled from 31.05.2014. Thus, penalty order of AA was correct as per Section 57(8) of MPVAT Act.	Appellate Authority replied (May 2016) that the dealer imported machinery for use in contract works only and that there was no intention of tax evasion as per "Explanation-clause" under Section 57(8) of MP VAT Act. We do not agree with the reply because machinery is notified goods andForm 49 is mandatory for all notified goods transported for any purpose. In the absence of Form 49, there is a possibility that the imported goods may not be included in the purchases account as these purchases were not in prior knowledge of the Department. Thus dealer's intention of tax evasion may not be ruled out.
2	DC Appeal, Indore III / 01	7.02	The AA determined turnover and levied VAT and interest on the basis of books of accounts and VAT Returns filed by the dealer. The appellate authority granted relief treating the transaction as branch transfer. The appeal order was passed without taking views of AA and was not as per provision because dealer collected tax on this branch transfer sale and sale was certified as per audited account.	The Appellate Authority replied (May 2016) that after verification of facts, action would be taken

The mechanism of appeal is biased in favour of the appellants as original assessing authorities were not given any opportunity of being heard. Further, the Department did not prefer second appeal in any of the cases where decision was passed in favour of appellant as pointed out in subsequent paragraphs.

Passing the appeal orders without considering the views of assessing authorities may have resulted in insufficient analysis of all the facts of the cases and may have deprived the Department of the revenue in the shape of tax, penalty and interest.

During exit conference, the Government accepted audit observation and stated that the old circular issued in this regard would be reviewed, and if required, new circular would be issued directing the Appellate Authority to invariably

obtain the views of assessing authority. Subsequently, the Department issued (October 2016) instruction to the appellate authorities to follow Circular No. 60 dated 20.01.2014 and obtain written views of the AAs before passing the appeal orders.

We recommend that amendment may be carried out in the codal provisions to unequivocally incorporate the provisions by which assessing authority should be given an opportunity of being heard in order to incorporate their views for fair proceedings in appeal cases.

3.3.7.2 Mechanical acceptance of declaration forms byAppellate Authority

In 256 cases, the Appellate Authorities accepted declarations or certificates and allowed relief of tax amounting to ₹ 19.92 crore in favour of appellants, although requests for extension of time for submission of such declarations/certificates were notfound in assessment and appeal files.

As per provisions of Rule 12 (7) of the Central Sales Tax (Registration and Turnover), 1957, the declaration in Form C or Form F or the certificate in Form E-I or Form E-II shall be furnished to the prescribed authority within three months after the end of the period to which the declaration or the certificate relates. It further provides that if prescribed authority is satisfied that the persons concerned was prevented by sufficient cause from furnishing such declaration or certificate within the aforesaid time, that authority may allow such declaration or certificate to be furnished within such further time as that authority may permit. As per Circular dated 20.09.2011 of the Commissioner of Commercial Tax, Madhya Pradesh, the appellate authority should not accept the declaration or certificate mechanically. They should examine and satisfy before passing an appeal order, that the person concerned was prevented by sufficient cause from furnishing such declaration or certificate within the aforesaid time.

The delayed submission of declaration forms is fraught with the risk of evasion and escapement of taxable turnover. Besides, the flaws/irregularities/incomplete forms/ fake forms cannot be detected timely.

We observed between January 2016 and June 2016 in nine Appeal Offices[5], that in 256 cases out of 1,053 cases, disposed off between April 2011 and March 2016, the Appellate Authorities accepted declarations or certificates and allowed relief of tax amounting to ₹ 19.92 crore in favour of appellant. Request for extension of time regarding delayed submission of such declaration or certificate at the time of final assessment was not found in assessment order and appeal file. This indicated that in these cases, without ascertaining the facts that the person concerned was prevented from furnishing such declaration or certificate within the prescribed time impugned order was passed. Two illustrative cases are discussed in **Table 3.5**

[5]Additional commissioner Zone -II Indore and Jabalpur, Deputy Commissioner Appeal Bhopal, Gwalior, Indore II, Indore III, Jabalpur, Sagar and Satna.

Table 3.5

Appellate Authorities allowed relief of tax without request for extension of time

(₹ in crore)

Sl. No.	Detail of unit/ No of cases	Tax relief allowed	Reply of Appellate Authority	Audit Comments
1	Additional Commissioner Zone Jabalpur/22	7.66	The Appellate Authority replied (April 2016) that the declaration form had been accepted after verification which is as per rule and valid.	Reply is not acceptable because the Appellate Authority has not verified whether the appellant had applied for time extension to produce declaration form in due course.
2	DC CT Appeal Indore III/60	4.35	The Appellate Authority replied (May 2016) that the selling dealer received all the central Forms C, F, and H from the purchaser dealer which was not in their control. Hence reason for delay is justified. It is procedural issue and there is no impact on revenue.	Reply is not acceptable because no request for time extension regarding delayed submission of such declaration or certificate at the time of final assessment was found in assessment order and appeal file.

During exit conference, the Government accepted the audit observations and stated that appropriate action would be taken on the issue. Subsequently, the Department instructed (October 2016) the appellate authorities to mandatorily obtain reasons for delay in submission of forms in writing from the appellants and to record the basis of acceptance of the reasons of delay in the appeal orders.

3.3.7.3 Incorrect waiver of penalty under Section 57 of MP VAT Act

The Appellate Authority incorrectly waived off penalty amounting to ₹ 1.08 crore in 30 cases of 12 dealers.

As per Section 57(2) of MP VAT Act, 2002, the driver or the person in-charge of a vehicle or carrier of goods in movement shall- (a) carry with him an invoice, bill, or challan or other document and prescribed declaration form issued by the consignor or consignee of the goods in movement and (b) stop the vehicle or carrier at every check post while entering and leaving limits of the State and if the transporter transporting goods carries with him an electronically issued declaration form specified in clause (a), particulars of which including date and approximate time of entering or leaving, as the case may be, in the State of Madhya Pradesh, have been uploaded on the official web portal of the Department, along with the documents, he shall be deemed to have complied with the requirement made under clause (b), where a transporter fails to furnish before the check post officer, all the documents including prescribed declaration forms, he shall be liable for penalty imposed upon him in accordance with provisions under Section 57(8) and Section 57(10) of the MP VAT Act. Further, it is provided under Section 57(8) where the explanation submitted lead to the conclusion that there is no possibility of sale of goods within the State of MP or there was no attempt to evade tax in respect of the goods, it shall be deemed that no violation of the provisions of sub-section (2).

The State Government has notified[6] certain goods as 'sensitive' which should be transported with prescribed statutory declarations (Form 49) and documents. The Form 49 is a controlling document which provides information relating to a consignment of goods including details of the consigner, consignee and place where goods are loaded and destined to.

We observed between January 2016 and June 2016 in five Appeal Offices [7] that in 30 cases of 12 dealers, disposed off between November 2011 and October 2015, the Appellate Authorities waived off penalty amounting to ₹ 1.08 crore on the basis of electronically issued declaration forms on considering that there was no intention of tax evasion by the dealer. However, in case files, it was found that AAs imposed penalty as per provisions of MPVAT Act as in these cases either Form 49 were not available with transporters or they produced such Form 49 which were already used, produced incomplete downloaded declarations or assessing authority found details of purchaser/seller/other details in bills as doubtful. Therefore, in these cases the Appellate Authority should have taken the views of the AAs as to why he felt that these were cases of evasion of tax and imposed penalty. Details of these cases along with replies of Appellate Authorities and our comments thereon have been mentioned in the **Appendix V**. Two illustrative cases are given in **Table 3.6:**

Table 3.6
Incorrect waiver of penalty

(₹ in lakh)

Sl. No.	Detail of unit/No of cases	Amount of penalty waived	Audit observations	Reply and our comments
1	DC Appeal, Indore-III/04 (given at serial No. 5 Appendix-V)	24.61	The appellant had explained in appeal that there was no intention of tax evasion and AA charged fine on the basis of technical /clerical mistake. The appellant also explained that Consignor and Consignee is same and firm transferred unblended tea from Guwahati. After blending, the tea was packed for sale in MP and out of State. The appellate authority accepted appeal in favour of the appellant considering Form 49 produced by appellant as new one and not reused on the basis that entries are not same in re-used Form 49 and it is only clerical mistake. Though the check post officer correctly imposed penalty on the transporter on the basis of bogus Form 49 (used, incomplete, downloaded and manipulated forms) available with the four numbers of vehicles which had entered in Madhya Pradesh transporting unblended tea and after 12 days they produced relevant Form 49 which were downloaded after seizure of vehicles. Thus transporter's intention of evasion of tax could not be ruled out.	The Appellate Authority replied (May 2016) that after verification of facts action would be intimated.
2	DC Appeal, Indore-III/01 (given at	27.81	The appellant had explained in appeal that there was no intention of tax evasion because he was importing Capital Goods	The Appellate Authority replied (May 2016) that there was no intention of

[6] Notification No. A-3-195-2005-1-V-(25) dated 31-03-2006

[7] Deputy Commissioner Appeal Gwalior, Indore III, Jabalpur, Sagar and Satna.

	serial No. 7 of Appendix-V)		for installation and not for sale. He also produced Form 49 after seizure of vehicle. The appellate authority accepted the appeal and granted relief of penalty, though the check post officer correctly imposed penalty on the transporter on the basis of failure to produce compulsory Form 49. Transporter's intention of evasion of tax could not be ruled out as the transporter downloaded Form 49 after seizure of the vehicle.	tax evasion as per "Explanation-clause" under section 57(2) because goods were not for sale in M.P., hence, penalty was not levied. We do not agree with the reply as the dealer knew all provisions very well and he also had facility to download Form 49 but did not download it. In the absence of Form 49, there is a possibility of the imported goods remaining unaccounted for and also the purchase not coming to notice of the Department in absence of Form 49 for the purpose of taxation. Hence dealer has intention of tax evasion.

However, during exit conference, the Government replied that facts of these cases would be scrutinised and action would be taken accordingly.

3.3.7.4 Input tax rebate not reversed/short reversed in the cases of goods stock transferred out of State

In nine cases of seven dealers, the Appellate Authority granted relief without reversing the input tax rebate amounting to ₹ 87.15 lakh.

As per Section 14(5)(a)(i) of the MP VAT Act 2002, where a registered dealer has claimed and adjusted input tax rebate towards the tax payable by him according to his return, such dealer shall in the event of disposal of, such goods or goods, specified in scheduled II, manufactured or processed or mined out of such goods, otherwise than by way of sale within the State of Madhya Pradesh or in the course of inter-State trade or commerce or in the course of export out of the territory of India, be liable to pay the amount of input tax or the amount at the rate of four *per cent* of the purchase price, net of input tax, of such goods, whichever is lower, towards the input tax rebate in respect of the aforesaid goods adjusted by him.

We test checked appeal cases between January 2016 and June 2016 in four Appeal Offices[8] and found in nine cases of seven dealers disposed off between September 2011 and August 2014, the Appellate Authority granted relief without reversing ITR amounting to ₹ 87.15 lakh as mentioned in **Appendix VI** along with reply of the Appellate Authorities and our comments thereon**.** A few instances are given in **Table 3.7.**

[8] Additional Commissioner Appeal Jabalpur, Deputy Commissioner Appeal Bhopal, Gwalior and Jabalpur

Table 3.7
Illustrative cases showing Input tax rebate not reversed/short reversed

(₹in lakh)

Sl. No.	Detail of unit	Name of Appellant, TIN, Period Appeal Case no. and date of appeal order	Amount of ITR short/not reversed	Audit observations	Reply and our comments
1	Additional Commissioner Jabalpur	M/s Sharda Maa Enterprises Pvt. Ltd. Katni, 23716204180, 2010-1180/2013-14 VAT & 25/2013-14 CST 21-04-14	39.92	The AA rejected Stock transfer of ₹ 20,58,18,458 as Form F not submitted hence levied central tax on such amount treating as interstate sale and allowed full claimed ITR without reversal. During appeal, the Appellate authority allowed stock transfer value of ₹ 20,58,18,458 after submission of Forms F and granted relief of CST without reversal of ITR in new circumstances as disposal of goods, otherwise than by way of sale.	No reply was given.
2	Additional Commissioner Jabalpur	M/s Birla Corporation Ltd Satna, 23757000140, 2008-09133/12 21-01-13	16.59	The AA reversed ITR on purchases of plant and machinery in respect of stock transfer of manufactured goods in proportion of stock transfer. During appeal, the Appellate authority granted relief of such ITR reversal by elaborating that there should be no proportionate reversal of ITR pertaining to plant and machinery even if there is stock transfer of manufactured goods. Moreover the reversal done by AA was as per section 14(5)(a)(i) of the MP VAT Act 2002.	No reply was given.
3	DC CT Appeal Bhopal	M/s Sanfield India Bhopal, 23893602638, 2010-11404/13 26-03-14	5.48	The AA rejected Stock transfer of ₹ 8,73,77,566/- as Form F not submitted, hence levied central tax on such amount treating as interstate sale and allowed full claimed ITR without reversal. During appeal, the Appellate authority allowed stock transfer value of ₹ 8,73,77,566/- after submission of Form F and granted relief of CST without reversal of ITR in new circumstances as disposal of goods, otherwise than by way of sale.	The Appellate authority stated that reply would be submitted after verification.

During Exit Conference, the Government replied that facts of the cases would be scrutinised and action would be taken accordingly.

3.3.7.5 Application of incorrect rate of tax by the Appellate Authority

In 11 cases of 11 dealers, Appellate Authority granted incorrect relief of tax of ₹ 86.98 lakh in favour of appellant by applying lower rates of tax.

The MPVAT Act, read with the Central Sales Tax (CST) Act, and notifications issued thereunder specify the rates of VAT leviable on different commodities. Under the MPVAT Act, a dealer is liable to pay penalty under Section 21(2) of the Act *ibid* at minimum three times but not exceeding 3.5 times of assessed tax where omission leading to assessment is attributable to dealer.

We test checked appeal cases between January 2016 and June 2016 in six Appeal Offices[9], and found that in 11 cases of 11 dealers disposed off between June 2011 and October 2014, the AAs levied tax on sale of motor parts, wiring harness and old /second hand motor car, home UPS, machinery and Cement as per schedule rate while the Appellate Authority granted incorrect relief of tax in favour of appellant by applying lower rates of tax. This resulted in short levy of tax amounting to ₹ 86.98 lakh, as mentioned in **Appendix VII** along with replies of the Appellate Authorities and our comments thereon. A few illustrative cases are discussed in **Table 3.8:**

Table 3.8
Application of incorrect rate of tax by the Appellate Authority

(₹ in lakh)

Sl. No	Detail of Unit /No of cases	Commodity	Rate of tax appli-cable/ applied	Amount of relief	Audit observation	Reply and our comments
1	DCCT Appeal Jabalpur/04 (given at serial No. 3,4,5 and 6 of APPENDIX - VII)	Old Motor Vehicles	12.5/1.5	7.29	On the sale of Old Car/Vehicle appellate authority allowed tax rebate to dealer. However, in the year 2006-07, old car/Vehicle was taxable @12.5 *per cent*.	Appellate authority Jabalpur and Sagar replied that as per second amendment of Act (w.e.f 1.4.06) those motor vehicles which were registered under MP Transport Department are taxable @ 1.5 *per cent* as per II/III/9. Reply is not acceptable because as per entry of schedule, rate of tax is 1.5 *per cent* on "old and second hand motor vehicles" where principal business is of buying and selling of motor cars. However in the instant cases, the principal business of the dealers was other than buying and selling of motor cars hence not covered under the said notification. In the case of DCCT III Indore, Appellate Authority accepted the audit observation.
	DCCT Appeal Sagar/01 (given at serial No. 11 of APPENDIX - VII)			0.15		
	DCCT Appeal Indore III/01 (given at serial No. 9 of APPENDIX - VII)			0.66		
2	DC CT Appeal Satna (given	Old Motor Vehicle	12.5/4	1.756	The Appellate Authority	The Appellate Authority replied that the records of original assessment had

[9] Additional commissioner Jabalpur, Deputy Commissioner Appeal Indore II, Indore III, Jabalpur, Sagar and Satna

	at serial No. 7 of APPENDIX - VII)				short levied VAT due to wrong calculation of taxable value of higher rate sale.	been returned to the AO after disposal of appeal; hence no action is required at appeal level. Reply was not acceptable as VAT was short levied at the instance of orders of appellate authority.

During exit conference, the Government replied that facts of the cases would be scrutinised and action would be taken accordingly. Further reply has not been received (October 2016).

3.3.7.6 Entry Tax not levied / short levied

In 12 cases of 12 dealers, the Appellate Authority allowed incorrect relief of entry tax amounting to ₹ 74.47 lakh.

As per the Entry Tax Act, 1976 and Rules and notifications issued thereunder, Entry Tax (ET) is leviable at the specified rates on the goods entering into local area for consumption, use or sale therein under the *Adhiniyam* and the MPVAT Act, 2002.

We test checked case files related to cases of entry tax and found that AAs levied entry tax after determination of taxable turnover on the basis of audited account/purchase list/bill invoices etc., and tax was levied as per entry tax schedule. However, in appeal orders passed between January 2016 and June 2016 in seven Appeal Offices[10], we found that in 12 cases of 12 dealers disposed off between November 2011 and October 2015, the Appellate Authority allowed incorrect relief of entry tax amounting to ₹ 74.47 lakh as mentioned in the **Appendix VIII** along with reply of the Appellate Authorities and our comments thereon. A few instances are given in **Table 3.9:**

Table 3.9
Cases showing Appellate Authority allowed incorrect relief of entry tax

(₹ in lakh)

Sl. No.	Detail of unit	Name of Appellant, TIN, Period Appeal Case no. and date of appeal order	Name of commodity / amount of Entry Tax	Audit observation	Reply and our comments
1	Additional Commissioner Jabalpur	M/s Sharda Maa Enterprises Pvt. ltd. Katni, 23716204180 / 2010-11 118/13-14 21-04-14	Coal / 29.42	The appellant claimed entry tax exemption on the basis of declaration certificate provided by dealer M/s Prism Cement TIN 2331700844, however, as per sale bills, the aforesaid sale certified to another dealer M/s Prism cement having TIN 23127002475.	No reply was given by appellate authority.
2	Additional Commissioner Zone II, Indore	Ms Prakash Solvex Indore , 23361400981 /2008-09 08/11 21-03-12	RBD Palm Oil / 7.65	The Appellate Authority granted relief to the appellant on the basis of material of closing stock (2008-09), which had been stock-transferred in the year 2009-	Appellate authority replied that the objection is raised on assumption basis only. Reply was not

[10] Additional Commissioner Appeal-II Indore and Jabalpur, Deputy Commissioner Appeal Gwalior, Indore III, Jabalpur, Sagar and Satna.

				10. The Appellate Authority did not verify fact that the dealer also claimed deduction of purchase value of those stock transferred goods for computation of ET in the year 2009-10. However the AA also allowed deduction of ET on the basis of stock- transfer in the year 2009-10.	acceptable because it is certified from next year (2009-10) assessment order of ET itself, that the dealer claimed deduction of entire stock on purchase value of transferred goods for computation of ET and the AA allowed the same.
3	DC CT Appeal Indore-III	M/s Associated Alcohol & Breweries Limited, Indore, 23581200555/ 2004-05 173/10 14-11-11	Decayed Cereals/ 16.61	The AA levied ET @ one *per cent* on purchases of imported *decayed cereals* as per entry tax schedule-II, entry no.-57 "all kinds of cereals and pulses". The appellate Authority granted relief of ET to appellant by treating that *decayed cereals* are not covered in cereal because it is useless to human as well as animal. However, there was no specific entry of *decayed cereals* and dealer used *decayed cereals* as raw material in manufacture of liquor, hence *decayed cereals* are taxable as per entry tax schedule-III entry no 1- "all goods other than those specified under schedule-I and II are taxable at the rate of one *per cent*".	The Appellate Authority replied that after verification of the facts action would be intimated.

During Exit Conference, the Government replied that facts of the cases would be scrutinised and action would be taken accordingly.

3.3.8 Second appeal not preferred in permissible cases.

As per Act, even though Commissioner has the power to prefer second appeal, in 476 cases, the Appellate Authority allowed relief of tax amounting to ₹ 291.86 crore in favour of appellant but the Department did not prefer second appeal in any of the cases. Moreover, the Act does not contain any enabling provision for filing of a second appeal by authorities other than Commissioner.

As per provisions of Section 46 (3) of the Act, where the Commissioner considers any order passed by any appellate authority other than Deputy Commissioner erroneous, he may file an appeal against such order before the Appellate Board within two calendar years from the date of such order.

During audit we test checked appeal orders between March 2016 and April 2016 in two Appeal Offices – Additional Commissioner Zone II Indore and Zone Jabalpur and found in 1216 cases, disposed off between April 2011 to March 2015 that the Appellate Authority allowed relief of tax amounting to ₹ 291.86 crore in favour of appellant in 476 cases, as detailed given in **Table 3.10.**

Table 3.10
Cases where the Department did not prefer second appeal

(₹ in crore)

Sl. No.	Name of Office of the Appellate Authority	Number of cases in which appeal order passed in favour of appellant	Amount of appeal order
1	Additional Commissioner, Appeal Zone-Jabalpur	209	43.10
2	Additional Commissioner, Appeal Zone- II Indore	267	248.76
	Total	**476**	**291.86**

As per Act, even though Commissioner has the power to prefer second appeal, in cases that were decided in favour of appellant in first appeal, the Department did not prefer second appeal against the order passed by the appellate authority in any of the cases. There was nothing on record to suggest that Commissioner scrutinised these cases to justify that second appeal was not required in cases where appellate authority gave decision in favour of appellant.

Further, the Act does not have provisions by which second appeal could be filed by the Commissioner in cases where he considers any order passed by the Deputy Commissioner (Appeal) erroneous. Further the Act does not contain any enabling provision for filing of a second appeal by an authority other than Commissioner.

During Exit Conference, the Department accepted the fact and said that Act will be amended so that in future all such cases where the Appellate Authority decided the cases in favour of assessee, appeal order will be reviewed by the competent authority and action of second appeal will be followed accordingly.

We recommend that adequate provisions may be made in the Act to empower the assessing authorities to appeal against the orders of the appellate authorities, in cases where AA is of the view that certain provisions of the Act were ignored or overlooked while passing the order in favour of appellant dealer.

3.3.9 Conclusion

- The first Appellate Authorities accepted the cases of appeal filed by the dealers who did not deposit the requisite amount for filing of appeal.
- The first Appellate Authorities accepted cases of appeal filed by the dealers which were delayed beyond stipulated period. Appeal cases were not disposed off in a timely manner in second appeal.
- In respect of cases decided in first appeal in favour of appellant, the Department did not prefer second appeal against the order passed by the appellate authority. There was nothing on record that the Commissioner scrutinised these cases to ascertain that second appeal was not required in cases where appellate authority gave decisions in favour of appellant.

3.3.10 Recommendations

- The Appellate Authority may admit only those appeal cases where requisite amount is deposited with the memorandum of appeal, in consonance with the Section 46 (5) of the MP VAT Act.

- Amendment may be carried out in the codal provision to incorporate a provision by which the Assessing Authority should be given an opportunity of being heard in order to incorporate their views for a fair trial in appeal cases.
- Adequate provisions may be made in the Act to empower the assessing authorities to appeal against the orders of the Appellate Authorities, where Assessing Authorities are of the view that while considering the appeal of the dealer, certain provisions of the Act were ignored or overlooked while passing the order in favour of appellant dealer.

All recommendations were accepted by the Department (September 2016).

Other audit observations

3.4 Irregular grant of deduction

While determining the turnover, the Assessing Authorities allowed deduction of tax from the aggregate of sale price, though tax was not included in the sale price. This irregular grant of deduction resulted in short levy of tax of ₹ 8.76 crore and penalty of ₹ 22.60 crore.

Section 2 (x) (iii) of the MP VAT Act, 2002 provides a formula to arrive at the amount of taxable turnover. It also provides that no deduction on the basis of formula shall be made if the amount by way of tax collected by registered dealer had been otherwise deducted from the aggregate of sale prices or not included in the sale prices.

We test checked 18,850 assessment cases in four Divisional offices[11], two Regional offices[12], and five circle offices[13], between July 2015 and April 2016 and found that in 12 cases of 11 dealers, assessed between June 2013 and February 2015 for the period between 2010-11 and 2012-13, the AAs, while determining the turnover, allowed deduction of tax from the aggregate of sale price. Since the tax was not included in the sale price, no deduction should have been allowed. This irregular grant of deduction resulted in short levy of tax of ₹ 31.37 crore including penalty of ₹ 22.60 crore, as shown in **Appendix IX**.

We reported the matter to the Government and Department between April 2016 and July 2016. The Department replied in the meeting (September 2016) that detailed reply would be forwarded after scrutiny of the cases. Further reply has not been received (October 2016).

3.5 Application of incorrect rate of tax

The Assessing Authorities applied incorrect rates of tax on turnover of ₹ 75.29 crore which resulted in short levy of tax amounting to ₹ 11.23 crore including penalty of ₹ 5.70 crore.

As per Section 9 (1) of Madhya Pradesh VAT act 2002, tax shall be levied on goods specified in schedule-II, at the rate mentioned in the corresponding entry in column (3) thereof and such tax shall be levied on the taxable turnover

[11] **DCCT** Bhopal I, Gwalior–I, Indore – II and Ujjain
[12] **ACCT** Indore I and Indore II
[13] **CTO** Bhind, Bhopal I, Narsinghpur, Indore XIV, and Shivpuri

of dealer liable to pay tax under this Act. Photocopy machine/parts/accessories, Battery, Inverter, Knives, Gas lighter, Tractor accessories are commodities taxable at the rate of 13 *per cent* under entry No.1 of Part-IV of Schedule-II of VAT Schedules.

We test checked records such as assessment orders, audited accounts, returns, purchase list etc. in respect of 26,076 assessment cases in two Divisional offices[14], four Regional offices[15] and 14 Circle offices[16] between April 2015 and April 2016 and found that in 27 cases of 24 dealers assessed between April 2013 to September 2015 for the period between April 2010 and March 2013, the AAs applied lower rate of tax on turnover of ₹ 75.29 crore due to incorrect classification of goods. This resulted in short levy of VAT of ₹ 5.53 crore and penalty of ₹ 5.70 crore thereon as shown in **Appendix X**. Replies of the AAs and our comments thereon are given in the Appendix.

We reported the matter to the Government and the Department between November 2015 and August 2016. The Department replied in the meeting (September 2016) that detailed reply would be forwarded after scrutiny of the cases. Further reply has not been received (October 2016).

3.6 Input Tax Rebate

3.6.1 Allowance of inadmissible input tax rebate

The Assessing Authorities allowed input tax rebate of ₹ 6.76 crore which was not in accordance with relevant provisions and rules. This resulted in short realisation of ₹ 10.32 crore including penalty of ₹ 3.56 crore.

As per Section 14 of MPVAT Act, where a registered dealer purchases any goods specified in Scheduled II of the Act, other than those specified in part III of the said Schedule within the state of the Madhya Pradesh, from another registered dealer after payment of input tax, he shall be allowed input tax rebate (ITR) of the amount of such input tax for the same year. Under Rule 9 of the MPVAT Rules 2006, no input tax rebate shall be claimed or be allowed if the bill, invoice or cash memorandum does not indicate separately the amount of tax collected by the selling registered dealer.

We test checked records such as assessment orders, audited accounts, returns, purchase list etc. in respect of 35,209 cases in three Divisional Offices[17], four Regional Offices[18] and 20 Circle Offices[19] (between March 2015 and March 2016) and found that in 51 cases of 47 dealers, assessed between July 2013 and March 2015 for the period between 2010-11 and 2013-14, the assessing authorities allowed inadmissible ITR on evaporation of petrol and diesel, ITR granted on purchases in excess of that shown in audited accounts and allowed ITR on notified goods. This resulted in grant of inadmissible ITR of ₹ 6.76

[14] **DCCT** Bhopal II and Khandwa
[15] **ACCT** Chhindwara, Indore II, Indore IX and Neemuch
[16] **CTO** Annuppur, Betul, Bhind, Gwalior IV, Indore II, Indore VII, Indore IX, Indore XII, Indore XIV, Indore XV, Jabalpur I, Khandwa, Shivpuri, and Waidan
[17] **DCCT** Bhopal II, Gwalior I and Jabalpur II
[18] **ACCT** Gwalior I, Indore II, Ratlam and Sagar
[19] **CTO** Anuppur, Balaghat, Betul, Chhindwara I, Damoh, Gwalior II, Gwalior III, Gwalior IV, Indore II, Indore IX, Indore XIV, Jabalpur I, Guna, Itarsi, Katni II, Khandwa, Narsinghpur, Rewa, Sagar and Shivpuri

crore. Penalty of ₹ 3.56 crore was also leviable against this inadmissible ITR. This resulted in short realisation of revenue amounting to ₹ 10.32 crore as shown in **Appendix XI**. Replies of the AAs and our comments thereon are given in the Appendix.

We reported the matter to the Government and the Department between November 2015 and July 2016. The Department replied in the meeting (September 2016) that detailed reply would be forwarded after scrutiny of the cases. Further reply has not been received (October 2016).

3.6.2 Input tax rebate not reversed/short reversed in the cases of goods stock transferred out of State

The Assessing Authorities did not make reversal or made short reversal of input tax rebate in the ratio of stock transferred to branch offices. As a result, reversal of ITR amounting to ₹ 11.46 lakh was not done.

Input tax rebate should be allowed to the dealers after due verification of returns submitted by them and purchases shown in certified audited accounts. Further, As per Section 14(5)(a)(i) of the MP VAT Act 2002, where a registered dealer has claimed and adjusted input tax rebate towards the tax payable by him according to his return, such dealer shall in the event of disposal of, such goods or goods, specified in scheduled II, manufactured or processed or mined out of such goods, otherwise than by way of sale within the State of Madhya Pradesh or in the course of inter-State trade or commerce or in the course of export out of the territory of India, be liable to pay the amount of input tax or the amount at the rate of four *per cent* of the purchase price, net of input tax, of such goods, whichever is lower, towards the input tax rebate in respect of the aforesaid goods adjusted by him.

We test checked records such as assessment orders, audited accounts, returns, purchase list etc. in respect of 35,029 cases in Divisional Office, DCCT, Sagar and Circle Office, CTO, Balaghat (between July 2015 and September 2015) and observed that in three cases of three dealers, assessed (between September 2013 and January 2015) for the period between 2010-11 and 2012-13, the assessing authorities did not make reversal or made short reversal of ITR in the ratio of stock transferred to branch offices. As a result, reversal of ITR amounting to ₹ 11.46 lakh was not done. A penalty of ₹ 1.35 lakh was also leviable thereon **(Appendix XII)**.

After this was pointed out, the CTO, Balaghat stated that action would be taken after verification, while the DCCT, Sagar in respect of two cases, stated that ITR reversal given in the ratio of branch transfer and gross sale.

We do not agree with the reply as ratio of stock transferred and gross sale should have been calculated after deducting the value of scrap sale, canteen sale and VAT from gross turnover, which was not done in these cases.

We reported the matter to the Government and Department between 2015 and July 2016. The Department replied in the meeting (September 2016) that detailed reply would be forwarded after scrutiny of the cases. Further reply has not been received (October 2016).

3.7 Incorrect determination of Turnover

The Assessing Authorities under determined the taxable turnover by ₹ 51.63 crore against the turnover recorded in the audited books of accounts/sale list/relevant records of the dealers, as a result, tax of ₹ 10.24 crore including interest of ₹ 1.90 crore and penalty of ₹ 5.22 crore could not be levied.

According to Section 2 of the Madhya Pradesh *Vanijyik Kar Adhiniyam* 1994 and the Madhya Pradesh VAT Act 2002, turnover in relation to any period means the aggregate of sale prices received and receivable by a dealer in respect of any sale or supply or distribution of goods made during that period, excluding the amount of sales return within the prescribed period. For the purpose of determining taxable turnover (TTO), the *Adhiniyam* and the Madhya Pradesh VAT Act provides for deduction from turnover the sale price of tax paid goods and the amount of tax, if included in the aggregate of sale prices. Further, Section 21(3) provides that the assessment or re-assessment under Sub-section (1) shall be made within a calendar year from the date of commencement of the proceedings. Further, a dealer is liable to pay interest at the rate of 1.5 *per cent* per month under Section 18 (4) (a), if he fails to pay tax payable by him according to the periodic returns and also liable to pay penalty under Section 21(2) of the Act *ibid* at minimum three times of the assessed tax, where omission leading to assessment is attributable to the dealer.

We test checked records such as assessment orders, audited accounts, returns, purchase list etc. in respect of 35,274 cases in seven Divisional Offices[20],seven Regional Offices[21]and 20 Circle Offices[22] (between March 2015 and April 2016)and found that taxable turnover in 56 cases of 53 dealers, assessed between July 2013 and March 2015 for the period between 2010-11 and 2012-13 was under determined by ₹ 51.63 crore as against the turnover recorded in the audited books of accounts/sale list/relevant records of the dealers. As a result, tax of ₹ 10.24 crore including interest of ₹ 1.90 crore and penalty of ₹ 5.22 crore could not be levied. Details along with reply of the AAs and our comments thereon are given in the **Appendix XIII.**

We reported the matter to the Government and the Department between November 2015 and July 2016. The Department replied in the meeting (September 2016) that detailed reply would be forwarded after scrutiny of the cases. Further reply has not been received (October 2016).

3.8 Entry Tax not levied/short levied/exempted without declaration form

Entry Tax on goods like iron and steel, machinery, HDPE sheet, TMT bars, coal, limestone, tiles etc. having turnover of ₹ 184.43 crore, was either not levied or was levied at incorrect rates on their entry into local area or AAs granted incorrect exemption of ET to the dealer without submission of prescribed declaration form. As a result, entry tax of ₹ 9.27 crore including penalty of ₹ 2.01 crore could not be realised.

[20] **DCCT** Chhindwara, Indore II, Indore (LTPU), Khandwa and Sagar

[21] **ACCT** Gwalior I, Gwalior II, Indore I, Indore II, Indore III, Indore XI and Sagar I

[22] **CTO** Anuppur, Balaghat, Betul, Bhopal VI, Burhanpur, Chhindwara I, Chhindwara II, Gwalior III, Gwalior IV, Gwalior XIV, Hoshangabad, Indore II, Indore XIV, Jabalpur I, Khandwa, Mandsour, Nawgaon, Ratlam II, Rewa and Sagar

Under the Madhya Pradesh *Sthaniya Kshetra Me Mal Ke pravesh Par Kar Adhiniyam*, 1976 and Rules and Notification issued thereunder, entry tax (ET) is leviable at the specified rates on the goods entering into local area for consumption, use or sale therein. Under the *Adhiniyam* and the MPVAT Act 2002, a dealer is liable to pay penalty where omission leading to assessment is attributable to dealer.

As per Notification No. 21 and 22 dated 4 April 2005, registered dealers who establish a new industrial unit in the state of Madhya Pradesh and hold an eligibility certificate in respect of Exemption Scheme 2004 is exempted from the payment of Entry Tax (ET), when they enter into local area any goods specified in Schedule II and III for consumption or use as raw material or for use as an incidental goods or for use in the packing of goods manufactured in his industrial units; or when the goods specified in schedule II are entered into a local area by a dealer, for sale and such goods are accordingly sold by him to another such dealer of any local area against a declaration in form appended to the Notification to the effect that the goods being purchased are intended for consumption or use as raw material or incidental goods in his industrial unit, are exempted from ET.

We test checked records such as assessment orders, audited accounts, purchase list etc. in respect of 36,037 cases, (Between May 2015 and March 2016) of six Divisional offices[23], eight Regional offices[24] and 22 Circle offices[25] and found that in 59 cases of 58 dealers, assessed/reassessed (between September 2013 and March 2015) for the period 2010-11 to 2013-14. We observed that Entry Tax on goods like iron and steel, machinery, HDPE sheet, TMT bars, coal, limestone, tiles etc. valued at ₹ 102.77 crore, was either not levied or was levied at incorrect rates on their entry into local area or incorrectly granted exemption of ET to the dealer on the purchase value of goods sold to unit exempted under ET Exemption Scheme 2004, although the dealer did not submit the prescribed declaration form. As a result of this, entry tax amounting to ₹ 9.27 crore including penalty of ₹ 2.01 crore could not be realised. Details along with reply of the AAs and our comments thereon are given in the **Appendix XIV.**

We reported the matter to the Government and the Department between November 2015 and July 2016. The Department replied in the meeting (September 2016) that detailed reply would be forwarded after scrutiny of the cases. Further reply has not been received (October 2016).

3.9 Penalty not imposed

Assessing Authorities did not impose penalty on dealers under Section 21, although omissions leading to assessment were attributable to the dealers. This resulted in short realisation of revenue of ₹ 5.39 crore.

Section 21 of the Madhya Pradesh VAT Act provides that where an assessment or reassessment has been made under the Act and for any reason

[23] **DCCT** Bhopal I, Bhopal II, Chhindwara, Indore II, Sagar and Ujjain

[24] **ACCT** Sagar II, Indore I, Indore II ,Indore III, Chhindwara, Sagar I, Gwalior I and Ratlam

[25] **CTO** Satna II, Jabalpur II, Narsinghpur, Hoshangabad, TAW-2 Indore, Indore III, Indore IX, Shahdol, Jabalpur IV, Indore VII, Bhopal VI, Indore VIII, Balaghat, Anuppur, Waidhan, Damoh, Betul, Morena, Indore XIV, Indore VIII, Indore IX and Gwalior IV

any sale or purchase of goods liable to tax during any period, has been under-assessed or has escaped assessment or any wrong deduction has been made or rebate of input tax has incorrectly been allowed while making the assessment, is rendered erroneous and prejudicial to the interest of revenue, the Commissioner may at any time within the specified period by issue of a notice assess or reassess to tax. And where the omission leading to assessment or reassessment is attributable to the dealer impose upon him a penalty which is minimum three times of the tax so assessed.

We test checked records such as assessment orders, audited accounts, returns, purchase list etc. in respect of 3,832 cases (between March 2014 and March 2015) in one Regional Office(ACCT Indore II) and three circle offices (CTO – Damoh, Dhar and Waidhan). It was observed that in the cases of four dealers (out of 3,832 cases examined) assessed under Section 21 of the Act between December 2013 and February 2015 for the period between 2009-10 and 2011-12, the AAs while finalising the assessment levied interest and penalty as per Section 18 and 39 of the Act instead of imposing penalty under Section 21 of the Act, as it was evident that dealers got C Forms of more value than the sale verified on TINXYS. This was a deliberate act of omission on the part of the dealer, leading to underassessment. This resulted in short realisation of revenue of ₹ 5.39 crore as shown in the **Appendix XV**. Reply of the AAs and our comments thereon are given in the Appendix.

After we pointed out, the CTO Waidhan, stated (March 2016) that taxation has been done as per Section 21 and Rule 31 (2) (3) the best of judgment after considering the surrounding circumstances.

We do not agree with the reply as Rule 31 (2) and (3) are applicable in only such cases where dealer had submitted any evidence at the time of assessment or reassessment after considering the objection raised by the dealer and examining such evidence. However, in this case, the dealer was neither submitted any account or presented himself. The dealer also did not raise any objection, thus penalty under Section 21(2) was leviable on the dealer.

We reported the matter to the Government and the Department between April 2016 and August 2016. The Department replied in the meeting (September 2016) that detailed reply would be forwarded after scrutiny of the cases. Further reply has not been received (October 2016).

3.10 Tax not levied on material procured for contract work

Department incorrectly determined the turnover and did not levy tax on certain items procured by contractor for use in project. This resulted in short levy of tax amounting to ₹ 2.48 crore.

As per section 2(z) of Madhya Pradesh VAT Act 2002, turnover, in relation to any period means the aggregate of the amount of sale prices received and receivable by a dealer in respect of any sale or supply or distribution of goods made during that period, whether or not the whole or any portion of such turnover is liable to tax but after deducting the amount, if any, refunded by the dealer to a purchaser, in respect of any goods purchased and returned by the purchaser within six months from the date of such sale.

We test checked records such as assessment orders, audited accounts, returns, purchase list etc. in respect of 117 cases (in February 2016)in Divisional

office, Jabalpur and found that in the case of a dealer (M/s G.K.C. Projects Limited), engaged in the work of Omkareshwar Project, assessed in April 2014 for the assessment year 2011-12, the AA while finalising the assessment, incorrectly determined the taxable turnover at ₹ 94.05 crore against the taxable turnover of ₹ 143.66 crore (Steel procurement ₹ 101,63,87,240 and Pipes ₹ 42,02,87,175) as evident from the memorandum of payment and running bills. This resulted in the short realisation of tax of ₹ 2.48 crore on differential turnover of ₹ 49.62 crore at the tax rate of five *per cent*.

After we pointed out, the AA stated (February 2016) that the total of sale price of goods transferred in work contract in a year is Gross Turnover (GTO) and not the Gross Receipts, because gross receipts includes labour, services, profit on labour etc. which does not come under the definition of "Goods" and tax cannot be levied on such receipts. In audit objection calculation has been made without making difference in GTO and GR which is against the principle and not fair because taxation cannot be done on GR in any condition.

We do not agree with the reply as after deducting the amount of mobilisation and machinery advances given to the dealer from total receipt of ₹ 152.16 crore, the amount of₹ 101.64 crore paid against the supply of MS Plate (Steel procurement) and ₹ 42.03 crore is against supply of pipes according to Memorandum of payment No.15, 11th Running bill and Memorandum of payment No.16, 9th running Bill.

We reported the matter the Government and the Department in July 2016. The Department replied in the meeting (September 2016) that detailed reply would be forwarded after scrutiny of the cases. Further reply has not been received (October 2016).

3.11 Short levy of tax/ irregular grant of exemption/concession under Central Sales Tax Act

Assessing authorities while finalising the assessment in two cases applied concessional rate on the sale, which was not supported by Form 'C', allowed concessional rate on Form 'C' of Madhya Pradesh State in one case, granted concession on the basis of false declaration form and made incorrect calculation in other. This resulted in Short realisation of tax of ₹ 1.34 crore. Besides, penalty of ₹ 55.84 lakh was also leviable.

Under Section 8 of CST Act, every dealer, who in the course of inter-state trade or commerce, sells to a registered dealer, goods of the classes specified in the registration certificate of the dealer, shall be liable to pay tax, which shall be two *per cent* of his turnover, provided that such sale is supported by declaration in Form 'C'. Further, if the selling dealer fails to furnish the prescribed declaration form obtainable from purchasing dealer, he shall be liable to pay tax on his interstate sale turnover at the rate applicable to the sale or purchase of such goods inside the appropriate State.

Under the provisions of Section 8(2) of the CST ACT, tax on inter-state sales of goods supported by the prescribed declaration in Form 'C' shall be levied at the rate of two *per cent,* otherwise rate of tax prevailing in the state shall be applicable. Further, as per Section 9(2) of CST Act, read with Section 21(2) of VAT Act, if the omission leading to assessment or reassessment is

attributable to the dealer he shall be liable to pay penalty which is three times of the tax so assessed.

We test checked records such as assessment orders, audited accounts, returns, purchase list etc. in respect of954 cases, two Divisional offices (Dy. Commissioner Div. II, Indore and Tax Audit Wing, Indore), three regional office[26] and two circle offices[27] and office of Deputy Commissioner, Tax Audit Wing Gwalior (between July 2014 and March 2016) and observed that in cases of four dealers,(assessed between June 2014 and February 2015 for the period between 2011-12 and 2012-13), the assessing authority while finalising the assessment in two cases applied concessional rate on the sale not supported by Form 'C' whereas in rest two cases, allowed concessional rate on Form 'C' of Madhya Pradesh State in one case and made incorrect calculation in other. And in five cases of five dealers out of 4,064 cases examined, the assessing authority allowed concessional rate of tax on interstate sale of ₹ 371.99 lakh supported with declaration in Form 'C'. On cross verification from TINXSYS it was found that these declaration Forms were either not issued by the concerned circle offices of the other state or issued to some other dealer or issued for lesser amount than as shown in the dealer's copy.

This resulted in short realisation of tax of ₹ 1.34 crore and penalty of ₹ 55.84 lakh, the details of which and reply of assessing authority in respect of each observation and our comments thereon are mentioned in the **Appendix XVI.**

The matter was reported to the Government and the Department in June 2016. The Department replied in the meeting (September 2016) that detailed reply would be forwarded after scrutiny of the cases. Further reply has not been received (October 2016).

3.12 Sales incorrectly treated as tax free/tax paid

The assessing authorities (AAs), while assessing the cases, did not levy tax on the taxable commodities like Auto LPG, Drip line, Pesticides, etc., valued at ₹ 3.87 crore by incorrectly treating them as tax free goods. This resulted in short levy of tax of ₹ 69.08 lakh. Besides, a penalty of ₹ 15.71 lakh was also leviable.

The Madhya Pradesh VAT Act, and notifications issued thereunder prescribe rates of tax leviable on different commodities except those which are specified under Schedule I of the Act or exempted through notifications. Under Section 21(2) of the Act, a dealer is liable to pay penalty minimum three times of tax assessed where omission leading to assessment is attributable to the dealer.

We test checked records such as assessment orders, audited accounts, returns, purchase list etc. in respect of 7,961 cases in four circle offices[28] between May 2015 and September 2015 and found that in the cases of five dealers assessed between May 2014 and September 2014 for the period between 2011-12 and 2012-13, the Assessing Authority (AA) while finalising the assessment did not levy tax on the sale of lubricant, sprinkler pipe, jute, petrol and diesel valued at

[26] **ACCT** Gwalior II, Indore III and Ratlam
[27] **CTO** Indore XII and Morena
[28] **CTO** Balaghat, Betul, Indore and Jabalpur

₹3.87 crore treating the goods as tax free/tax paid goods. This resulted in short realisation of tax of ₹ 69.08 lakh. Penalty of ₹ 15.71 lakh was also leviable as taxable goods were incorrectly treated as tax free goods (**Appendix XVII**).

After this was pointed out, the AAs stated (between May 2015 and September 2015) that action would be taken after verification.

We reported the matter to the Government and the Department (May 2016). The Department replied in the meeting (September 2016) that detailed reply would be forwarded after scrutiny of the cases. Further reply has not been received (October 2016).

3.13 Irregular grant of deduction and application of incorrect rate of tax in composition cases

In two cases of composition, the assessing authorities irregularly granted deductions in respect of Section 2(x)(iii) and service tax against purchases from unregistered dealer and applied incorrect rate of tax in the case of purchases from unregistered dealer. This resulted in short levy of tax of ₹ 50.58 lakh including penalty of ₹ 33.14 lakh.

As per Section 11 of the Madhya Pradesh VAT Act 2002, a registered dealer purchasing goods specified in Schedule II from another such dealer within the State after payment to him of tax under Section 9 of the Madhya Pradesh VAT Act 2002 and/or purchasing goods specified in Schedule I, may opt for a lumpsum payment, in lieu of tax payable by him under Section 9. Further, as per Rule 8-A(4) of Madhya Pradesh VAT Rule 2006, (amended vide Notification No. 27 dated 24 September 2009), the amount to be paid in lump sum by way of composition shall be determined at the specified rate on the total monetary consideration received or receivable by the registered dealer in respect of work contract. The rate of tax is one *per cent*, if the dealer supplies wholly(Wholesale) goods specified in Schedule II that were purchased from another such dealer within the State after payment to him tax under Section 9 and/or goods specified in schedule I, otherwise, dealer has to pay tax at the rate of 5 *per cent*. Further, a dealer is liable to pay penalty under Section 21(2) of the Act *ibid* at minimum three times of the assessed tax, where omission leading to assessment is attributable to the dealer.

We test checked records such as assessment orders, audited accounts, returns, purchase list etc. in respect of 792 cases in one regional office (Assistant Commissioner Commercial tax, Division-1, Sagar) and in one circle office (Commercial tax officer, Anuppur) between August 2015 and December 2015, and found that in two cases of two dealers (Dealer assessed at ACCT Dn. I Sagar – Driplex Water Engineering Ltd. executing work contract of GAIL India Ltd. And Jabalpur Municipal Corporation) and (Dealer assessed at CTO Anuppur – S K Minerals executing work contracts awarded by MPRRDA), assessed between July 2014 and December 2014 for the period 2011-12 and 2012-13, the assessing authority (AA) in Sagar Division, that while finalising the assessment, AAs incorrectly granted deduction in respect of Section 2(x)(iii) and service tax as the tax was to be levied on total monetary consideration received by the dealer without allowing any deductions. In Anuppur circle, tax was levied at the rate of one *per cent* instead of five *per cent* on all the purchases related to the composition work of the dealer, although no document was made available to audit in support of the claim that

purchases were made from registered dealer. This resulted in short realisation of tax of ₹ 17.44 lakh as detailed below in **Table 3.11**:

Table 3.11

Details of short levy of tax from dealers

(Amount in ₹)

Sl. No.	Total Monetary Consideration	Rate of Tax	Tax	Monetary consideration taken in Assessment order	Tax determined in Assessment order	Difference	Difference in tax
	ACCT, Division –I Sagar						
1.	23.38 crore	5%	1.17 crore	21.22 crore	1.06 crore	10.81 lakh	
2.	1.52 crore	4%	6.10 lakh	1.47 crore	5.86 lakh	23,472	
					Total	**11.05 lakh**	
	CTO- Anuppur						
1.	1.59 crore	5 %	1 %	4%	7.98 lakh	1.59 lakh	**6.38 lakh**

As the dealer furnished incorrect particulars (ACCT, Div-I, Sagar), he was liable to pay penalty of ₹ 33.14 lakh, being three times of tax assessed as per Section 21(2) of the VAT Act. Thus the total short levy of tax worked out to be ₹ 50.58 lakh.

After we pointed out, the AAs stated (between August 2015 and December 2015) that action would be taken after verification.

We reported the matter to the Government and the Department (May 2016). The Department replied in the meeting (September 2016) that detailed reply would be forwarded after scrutiny of the cases. Further reply has not been received (October 2016).

3.14 Purchase Tax not levied

Purchase tax amounting to ₹ 38.37 lakh was not levied from a trader even though the conditions for exemption of purchase tax as per Section 10 (A) were not fulfilled.

Under Section 10(A) of Madhya Pradesh VAT Act, 2002, every dealer, who in course of his business purchase notified goods whose value exceeded ₹ five crore in that year, shall be liable to pay tax at the rate of four *per cent* on the purchase value.

Section 10 (A) (2) further provides that no tax under this Section shall be levied in respect of the purchases made from a registered dealer by whom tax under this section is payable and who has declared by putting a statement on the sale bill that tax under this section is payable by him on such goods.

We test checked records such as assessment order, audited accounts and purchase list etc. in respect of 384 cases in Assistant Commissioner, Khandwa in August 2015 and found that a dealer, assessed in February 2015 for the

period 2012-13, purchased wheat of ₹ 9.5 crore on which purchase tax was leviable. However, the AA while finalising the case did not levy purchase tax treating it as tax free. As a result, purchase tax amounting to ₹ 38.37 lakh was not levied.

After we pointed out the case (February 2015), the AA stated that the trader has purchased wheat fromFood Corporation of India (FCI) which is a registered dealer (TIN 23594000697) on which no tax was to be levied. We do not agree with the reply as in view of the Section 10 (A) (2), as no statement on the sale bill issued by FCI was found stating that tax under this section is payable by FCI.

We reported the matter to the Government and the Department in July 2016. The Department replied in the meeting (September 2016) that detailed reply would be forwarded after scrutiny of the cases. Further reply has not been received (October 2016).