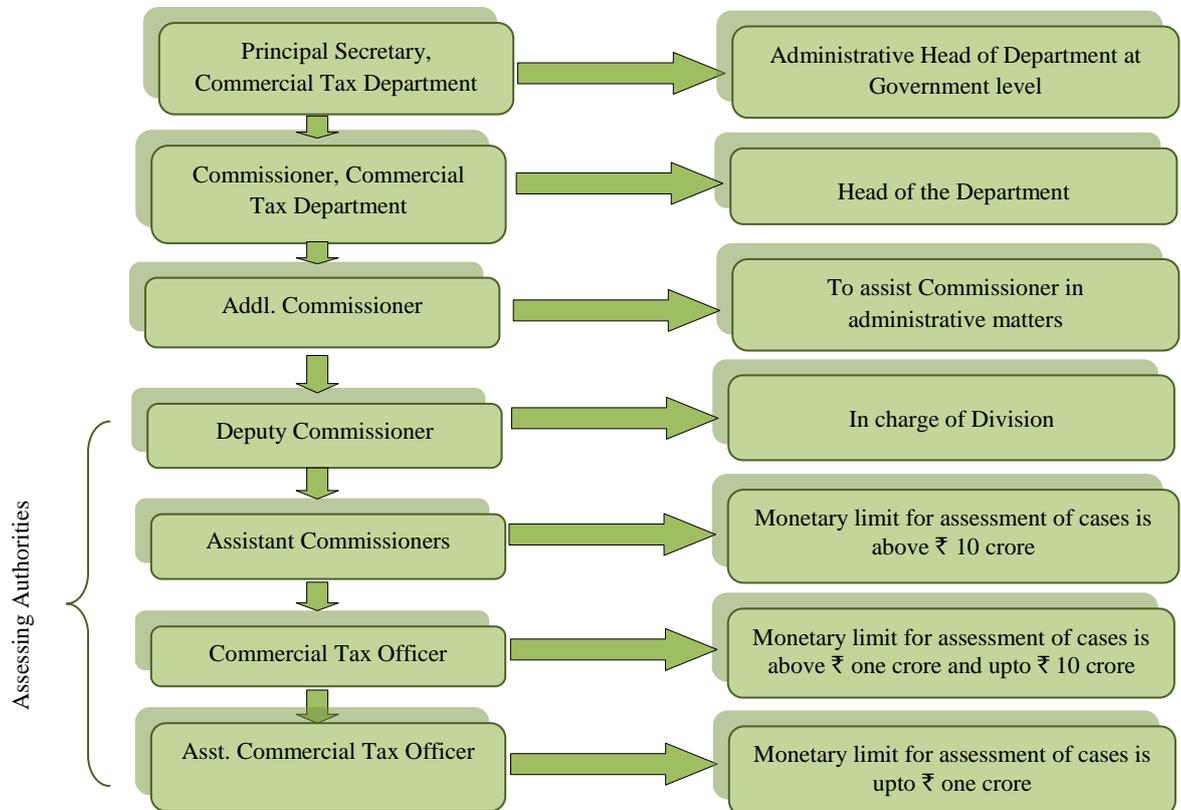


## CHAPTER 3: COMMERCIAL TAX

### 3.1 Tax administration

The Commercial Tax Department is headed by the Commissioner of Commercial Tax (CCT) who is assisted by four Additional Commissioners (Addl. Commissioners), 12 Deputy Commissioners (DCs), 26 Assistant Commissioners (ACs), 72 Commercial Tax Officers (CTOs), 121 Assistant Commercial Tax Officers (ACTOs) and 174 Inspectors of Commercial Tax (CTIs) in performance of such functions as may be assigned to them under the CGVAT Act. Against the above sanctioned posts, eight DCs, 25 ACs, 50 CTOs, 47 ACTOs and 100 CTIs are presently working in the Department. Organisational setup of the Department is given in **Chart 3.1**.

**Chart 3.1: Organisational setup**



The receipts of commercial taxes are administered under the provisions of:

- Chhattisgarh Value Added Tax Act, 2005
- Chhattisgarh Value Added Tax Rules, 2006
- Central Sales Tax Act, 1956
- Central Sales Tax (Registration & Turnover) Rules, 1957
- Chhattisgarh Entry Tax Act, 1976
- Rules, circulars, exemptions, notifications and instructions issued by the Department and State Government from time to time.

### 3.2 Results of audit

Audit test checked records of 13<sup>1</sup> units out of 54 units relating to Commercial Tax Department in 2016-17. Revenue generated by the Department during the year 2015-16 aggregated to ₹ 9,956.64 crore of which, the audited units collected ₹ 2,028.11 crore. In addition, audit of “Process of refund under Value Added Tax” was also conducted during April 2017 to June 2017. Audit noticed irregularities involving ₹ 35.34 crore in 301 cases, which fall under the following categories as given in **Table 3.1**:

**Table 3.1: Results of audit**

(₹ in crore)			
Sl. No.	Category	No. of cases	Amount
1.	<b>Process of refund under Value Added Tax</b>	1	<b>8.30</b>
2.	Short levy of tax/tax not levied	105	10.57
3.	Incorrect grant of exemption/deduction	51	9.45
4.	Application of incorrect rate of tax	15	4.80
5.	Incorrect determination of taxable turnover	6	0.80
6.	Other irregularities <sup>2</sup>	123	1.42
<b>Total</b>		<b>301</b>	<b>35.34</b>

The Department accepted underassessment of ₹ 4.86 crore in 50 cases and recovered ₹ 11.17 lakh in four cases. In the remaining cases, Audit is pursuing the matter with the Department.

During 2016-17, the Department effected recovery of ₹ 1.27 crore in 63 cases in respect of audit objections pertaining to previous Audit Reports and Inspection Reports. Out of the recovered amount, ₹ 71.38 lakh pertains to Audit and Inspection Reports prior to 2011-12.

After issue of 10 draft paragraphs involving 101 cases during 2016-17, the Department accepted underassessment of ₹ 4.20 crore in 38 cases and recovered amount of ₹ 8.62 lakh in seven cases.

### 3.3 Follow up of previous Audit Reports

In the Audit Reports for the period 2011-16, Audit had pointed out various observations amounting to ₹ 52.46 crore in 36 paragraphs against which Department accepted observations involving ₹ 16.64 crore and recovered ₹ 1.16 crore.

The PAC had selected 30 paragraphs of Audit Reports (2002-16) for discussion and gave its recommendation (2010-16) on nine paragraphs. However, ATN has been received for only three paragraphs.

On the Audit Report 2007-08 (Paragraph 2.4) the PAC had recommended on 26 March 2015 (22<sup>nd</sup> Report) that the Department immediately recover tax in

<sup>1</sup> AC Raipur, Rajnandgaon; AC-1, Div-1, Bilaspur; AC-2, Div-1, Bilaspur; Commissioner, Commercial Tax, Raipur; CTO, Ambikapur, Manendragarh, Durg-Circle 1, Raipur-Circle 1, 2, 5, 8 and 9

<sup>2</sup> Other irregularities include observations on claim of excess/inadmissible ITR; non-inclusion of the credit note or discount received in the turnover; non-inclusion of labour component.

cases where tax exemption were claimed/given on the basis of form 'F' of doubtful authenticity. However, the Department has not complied (March 2017) with PAC's recommendation.

Though the Department had complied with PAC's recommendation (81<sup>st</sup> Report, 2010-11) relating to paragraph 7.13 of Audit Report 2002-03 by taking action against erring officials in case of incorrect determination of turnover, the Department did not develop mechanism to avoid recurrence of similar irregularities as Audit noticed (2016-17) incorrect determination of turnover in six cases.

**Recommendation:**

**The Department should ensure that there is no recurrence of similar irregularities wherever the PAC has given its recommendation in earlier cases.**

**3.4 Audit on 'Process of refund under Value Added Tax'**

**3.4.1 Introduction**

The Chhattisgarh Valued Added Tax Act (CGVAT Act) 2005 provides that if the Commissioner is satisfied that the tax or penalty or both or interest paid by or on behalf of a dealer for any year exceeds the amount of the tax to which he has been assessed or the penalty imposed or the interest payable for that year, he shall be entitled to refund of such amount, which has been paid in excess, in cash or by adjustment of such excess towards the amount of tax due in respect of any other year. If the amount of input tax rebate remains unadjusted and the dealer makes an application for refund of such amount, the assessment shall be made within one year from the date of application and such amount shall be granted by way of refund.

**3.4.2 Monetary limit for sanction of refund**

The monetary limit for sanction of refund by various officers is given below:

**Table 3.2: Monetary limit for sanction of refund**

Sanctioning Authority	Monetary limit for sanction of refunds (April 2012 to March 2014)	Monetary limit for sanction of refunds (April 2014 to June 2016)	Monetary limit for sanction of refunds (July 2016 till date)
Commercial Tax Officer (CTO)	Up to ₹ 2 lakh	Up to ₹ 5 lakh	Up to ₹ 2 lakh
Assistant Commissioner (AC)	Above ₹ 2 lakh and up to ₹ 5 lakh	Above ₹ 5 lakh and up to ₹ 10 lakh	Above ₹ 2 lakh and up to ₹ 5 lakh
Deputy Commissioner (DC)	Above ₹ 5 lakh and up to ₹ 15 lakh	Above ₹ 10 lakh and up to ₹ 25 lakh	Above ₹ 5 lakh and up to ₹ 10 lakh
Additional Commissioner (ADC)	Above ₹ 15 lakh and up to ₹ 25 lakh	Above ₹ 25 lakh and up to ₹ one crore	After July, 2016 the powers for sanction of refund were withdrawn
Commissioner	Above ₹ 25 lakh	Above ₹ one crore	Refund above ₹ 10 lakh after due verification by a Committee comprising ADC (Technical), AC (Technical) and one Chartered Accountant.

### **3.4.3 Audit objectives**

The audit was conducted with a view to ascertain whether:

- the system of refund of tax is effective and efficient;
- the Rules and procedures prescribed in the Act, Rules and directives regarding timeliness and accuracy of refund are scrupulously followed; and
- adequate internal control and monitoring mechanism exist for prompt exercise of constraints and checks prescribed for refunds.

### **3.4.4 Audit criteria**

The provisions of the following Acts, Rules and circulars of the Commercial Tax Department were used as sources for audit criteria:

- Chhattisgarh Value Added Tax Act, 2005 (CGVAT Act) ;
- Chhattisgarh Value Added Tax Rules, 2006 (CGVAT Rules);
- Central Sales Tax Act, 1956 (CST Act);
- Central Sales Tax (Registration & Turnover) Rules, 1957; and
- Notifications, circulars and instructions issued by the State Government from time to time.

### **3.4.5 Scope of audit and methodology**

Audit was conducted with a view to examine refund cases<sup>3</sup> sanctioned by various authorities between 1 April 2012 and 31 March 2017. Out of 56 units, 11<sup>4</sup> were selected (on the basis of stratified random sampling without replacement)<sup>5</sup> which constitutes 20 *per cent* of total units.

The audit exercise was primarily to ascertain whether the system and procedures established for refund are robust enough to prevent leakage of revenue. Audit scrutinised self-assessment and assessment cases to ascertain whether refund and carry forward of ITR was made correctly. During the period, the Department processed a total of 12,431 refund cases. Audit scrutinised 1,325 out of 2,953 cases in the 11 test checked units which constituted 44.87 *per cent* cases in test checked units and 10.65 *per cent* cases of total refund cases.

The audit objectives, criteria, scope and methodology were discussed with the Principal Secretary, Commercial Tax Department in an entry conference held on 2 May 2017. The exit conference was held on 3 January 2018 wherein the audit findings and the recommendations were discussed. Replies of the

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<sup>3</sup> Refund cases till the Financial Year 2012-13 only have been checked in audit since the refund cases for the Financial Year 2013-14 to 2016-17 have not been processed.

<sup>4</sup> DC, Durg; AC-1, Durg, AC, Korba, AC-3, Raipur, AC-5, Raipur; CTO-2, Durg, CTO-1, Raigarh, CTO-2, Raipur, CTO-3, Raipur, CTO-4, Raipur and CTO-8, Raipur (DC, AC and CTO units considered separately with decreasing order of value of refund)

<sup>5</sup> Stratified Random Sampling without Replacement (SRSWR) divides the data into smaller groups, or strata, based on shared characteristics. A random sample is taken from each group in direct proportion to the size of the group compared to the data without taking the repeated sample (i.e. without replacement).

Department received in the exit conference have been suitably incorporated in relevant paragraphs.

### 3.4.6 Acknowledgement

The cooperation of the Commercial Tax Department in providing necessary information and records to audit in time is acknowledged.

### 3.4.7 Trend of revenue and refund

Actual receipts under Value Added Tax (VAT) and Central Sales Tax (CST) during the year 2012-13 to 2016-17 are mentioned in **Table 3.3**:

**Table 3.3: Trend of revenue**

(₹ in crore)

Year	Receipts under VAT	Receipts under CST	Total receipts
2012-13	6,072.77	855.88	6,928.65
2013-14	7,001.34	928.17	7,929.51
2014-15	7,495.75	932.36	8,428.11
2015-16	7,997.04	911.32	8,908.36
2016-17	9,012.96	914.25	9,927.21

(Source: Finance Accounts of the Government of Chhattisgarh)

Out of the total revenue collection, 89 per cent revenue comes from VAT and 11 per cent from CST.

Number of refund claims received and refund allowed along with amount during the year 2012-13 to 2016-17 are detailed in **Table 3.4**:

**Table 3.4: Trend of refund**

(₹ in crore)

Year	Number of registered dealers	Claims received		Refund allowed		Percentage of number of refund cases allowed to number of claims received
		Number of cases	Amount	Number of cases	Amount	
2012-13	65,719	7,660	87.34	1,183	36.70	15.44
2013-14	75,076	7,106	109.00	2,813	85.65	39.59
2014-15	86,966	5,555	137.56	3,056	131.35	55.01
2015-16	87,915	7,542	153.23	2,995	110.29	39.71
2016-17	1,07,047	5,175	136.85	2,384	74.24	46.07

(Source: Information furnished by the Department)

It can be seen from the above table that number of refund cases allowed along with amount did not show secular trend. It can also be seen that percentage of number of refund cases to the number of refund claims received was in the range of 15.44 to 55.01. This shows that the refunds processed by the Department were low.

Audit noticed from the self-assessment cases and assessment orders passed by the Assessing Authorities (AAs) that all the refunds claimed by the dealers related to carry forward of Input Tax Rebate (ITR)<sup>6</sup>

<sup>6</sup> Mainly due to sales to exempted industries and inter-State sales on which input tax suffered on raw material was eligible for refund.

## Audit findings

### 3.4.8 Inordinate delay in payment of refund

The CGVAT Act, 2005 stipulates that any refund is to be made within 60 days from the date of passing the order of such refund. Otherwise, the Department is liable to pay interest to the dealers at six *per cent* per annum.

Audit observed from scrutiny of refund registers maintained by 11 test checked AAs that dealers were allowed refunds in 2,953 cases during the year 2012-13 to 2016-17. In 1,039 out of 2,953 cases (35.18 *per cent*) refund was made with delays ranging from one to 2,234 days after 60 days from the date of refund order. Out of 1,039 cases, in 295 cases (28.39 *per cent*) delay was more than a year after the due date. The Department is liable to pay interest amounting to ₹ 93.91 lakh to the dealers for delay in payment of refund, which however, was not paid. Detail are mentioned in **Table 3.5**.

**Table 3.5: Delay in payment of refund**

Name of the Unit	Total number of refund cases	Number of refund cases where delay is observed	Range of delay	Amount of interest to be paid by the Government (₹ in lakh)
AC Korba	185	91	02 days to 673 days	2.27
CTO-2, Raipur	297	245	02 days to 1,480 days	24.97
AC-3, Raipur	123	3	37 days to 199 days	1.28
CTO-2, Durg	310	136	01 day to 1,539 days	5.48
AC-1, Durg	191	26	03 days to 259 days	2.60
CTO-8, Raipur	472	87	08 days to 2,194 days	8.42
DC, Durg	99	47	03 days to 430 days	12.28
CTO-1, Raigarh	411	129	01 day to 2,234 days	15.82
CTO-3, Raipur	394	143	01 day to 1,622 days	8.17
AC-5, Raipur	14	11	04 days to 885 days	2.49
CTO-4, Raipur	457	121	06 days to 2,132 days	10.13
<b>Total:</b>	<b>2,953</b>	<b>1,039</b>		<b>93.91</b>

The reasons for delay in payment of refund were recorded neither in the refund register nor in the case files.

In the exit conference (January 2018), the Department stated that delay in sanctioning of refund had occurred due to non-updation of bank accounts and Indian Financial System Codes (IFSC) by the dealers, technical error in e-refund portal and non-submission of related documents with annual returns.

The reply is not acceptable, as it does not address the issue of inordinate delay of more than a year.

#### **Recommendation:**

**The Department should devise a work plan to deal with refund cases in a timely manner to avoid liability of payment of interest.**

### 3.4.9 Failure of AAs to cross verify ITRs resulted in acceptance of incorrect claims and irregular carry forward/ refund of ITR

The legislative intent of submission of Form-18, VIII & VB (Annual Statement for VAT, Entry Tax & CST respectively) and Audit Report (Form-

50 or Income Tax Audit Report) by the dealers is to compare/cross-check sales, purchases, gross turnover, taxable turnover, deductions etc. The comparison/cross-checking needs to be carried out by the AAs during the assessment so as to levy and collect correct amount of tax and sanction correct refund.

The Commissioner, Commercial Tax Department ordered (November 2013) that all dealers should mandatorily submit details of sale/purchase (more than ₹ one lakh) so as to cross check the ITR claimed by them.

Audit cross check of self-assessment/refund records in various CT circles revealed failure of AAs to cross check the ITR claims with enclosed annexures resulting in incorrect allowance of claims, as detailed below.

**(i) Erroneous carry forward of ITR of ₹ 4.19 crore**

During test check of self-assessment/refund records of the CTO-2, Durg for the period 2011-12, 2012-13 and 2013-14, Audit cross checked the ITR claimed by a contractor<sup>7</sup> against the purchases shown in his annual VAT and Entry Tax returns to verify the ITR claimed during above period. Audit found that the AA irregularly allowed the dealer to avail of excess ITR of ₹ 4.19 crore (computed at minimum of five *per cent* on ₹ 83.83 crore), as per details in **Table 3.6**.

**Table 3.6: Declaration of purchases and ITR**

Year	ITR calculated in Form-18 <sup>8</sup> on		Total purchase value as per Form-18 (computed on the basis of ITR)	Total purchase value as per Form-VIII <sup>9</sup> Gross purchase	Difference in purchase value (4) – (5)
	5% goods	14% goods			
	(1)	(2)			
2011-12	78.02	39.01	1,839.07	195.05	1,644.02
2012-13	226.94	157.48	5,663.63	384.42	5,279.21
2013-14	69.27	34.63	1,632.83	173.18	1,459.65
<b>Total:</b>					<b>8,382.88</b>

The AA permitted the dealer to carry forward the balance ITR every year, even though the dealer did not enclose any purchase or sale annexures with the annual returns in all the three years which are mandatory and no purchase proof was also enclosed with the cases in support of the ITR availed of by the dealer. This represents gross negligence on the part of the AA.

In the exit conference (January 2018), the Department stated that case has been reopened under Section 22(1) of CGVAT Act, 2005. Further response is awaited (August 2018).

**(ii) Short levy of tax of ₹ 3.24 crore and consequent incorrect refund of ₹ 2.76 crore**

**(a)** During scrutiny of the assessment/refund records of AC-3, Raipur, Audit noticed that a dealer<sup>10</sup> had shown sale of rice (tax free) of ₹ 20.22 crore and sale of bran, *pili mutter dal*, rice (tax free) of ₹ 6.94 crore during 2013-14

<sup>7</sup> M/s. New Lakshmi Construction Company

<sup>8</sup> Annual Statement for Value Added Tax

<sup>9</sup> Annual Statement for Entry Tax

<sup>10</sup> M/s. Shivalik power and Steel Private Limited

and 2014-15 respectively. However, Audit cross checked the business activities from his registration certificate and found that he was only a manufacturer of machined, semi-machined, un-machined steels, cast iron and other alloys steel casting and did not have any other selling activity. Further, as per his Income Tax Audit Report for 2013-14 and 2014-15, the dealer had shown turnover of trading goods as 'nil'. Hence diversion and inclusion of taxable goods in the sale of tax free goods by the dealer cannot be ruled out. In any event, the AA allowed short levy of VAT of ₹ 1.36 crore (at 5 per cent of ₹ 27.16 crore) against the purported tax free goods and incorrectly refunded ₹ 1.32 crore against excess ITR.

In the exit conference (January 2018), the Department stated that the case has been reopened under Section 22(1) of CGVAT Act, 2005. Further response is awaited (August 2018).

(b) Details of incorrect determination of turnover detected in audit are given in **Table 3.7**.

**Table 3.7: Incorrect determination of turnover**

(₹ in lakh)								
Sl. No.	Name of Unit	Assessment year (Month and year of assessment)	Gross turnover determined by AA	Gross turnover shown in IT Audit Report	Difference in turnover	Rate of tax leviable/levied	Tax short/not levied	Refund
1	AC-3, Raipur	2011-12 (March 2016)	9,097.39	12,848.59	3,751.20	5/0	187.56	144.00
A dealer engaged in manufacture and sale of electric energy and steel inserts had sold fixed assets of ₹ 37.51 crore during the year 2011-12 which the AA failed to include under gross turnover attracting tax at the rate of 5 per cent. This resulted in short levy of tax of ₹ 1.88 crore (5% of ₹ 37.51 crore). Further, the AA refunded an amount of ₹ 1.44 crore treating it as excess tax deposited by the dealer.								

In the exit conference (January 2018), the Department stated that the case had been reopened. Further response is awaited (August 2018).

**Recommendation:**

**The Department should introduce a mechanism making it mandatory to cross-check ITR with VAT, Entry Tax and other returns and take disciplinary action against AAs who fail to perform required cross checks.**

**3.4.10 Incorrect determination of turnover of works contract**

**The AA did not comply with the circular issued (September 2012) by the Department regarding determination of taxable turnover of works contractors which resulted in incorrect refund of ₹ 86.77 lakh.**

The Government instructed (September 2012) that the taxable turnover in respect of works contract should be determined after deducting expenses relating to labour and services in the light of a Supreme Court judgment<sup>11</sup>

Audit test check of assessment/refund records of DC, Durg, revealed that in respect of a dealer engaged in works contract for the period 2009-10, the AA determined (February 2014) the taxable turnover as ₹ 25.98 crore and levied

<sup>11</sup> M/s Gannon Dunkerley & Company vs. State of Rajasthan (1993).

tax of ₹ 1.53 crore. Further, the AA carried forward the ITR of ₹ 1.49 crore after adjusting tax and TDS. However, the AA failed to determine the taxable turnover as per above judgment. Audit computed the taxable turnover<sup>12</sup> as ₹ 41.90 crore and tax as ₹ 2.40 crore<sup>13</sup> after deducting components like subletting of work, labour expenses, cost of machinery etc. This resulted in short levy of tax of ₹ 86.77 lakh. Audit also noticed that the dealer in the year 2010-11 availed refund of ₹ 95.00 lakh out of the ITR brought forward from the previous year. Had the above irregularity as pointed out by audit been noticed by the AA, refund of ₹ 95.00 lakh would have been reduced to ₹ 8.23 lakh. This resulted in excess allowance of ITR of ₹ 86.77 lakh.

In response to the audit observation, the Department reopened the case under Section 22(1) of CGVAT Act, 2005 and raised (March 2018) demand of ₹ 86.77 lakh. Report on recovery is awaited (August 2018).

## Compliance Audit observations

### Value Added Tax

#### 3.5 Incorrect classification of goods

**AAs failed to detect incorrect classification of goods declared by dealers which resulted in short levy of tax of ₹ 4.64 crore.**

Audit test check of the records in AC, Rajnandgaon and three circle offices<sup>14</sup> revealed that in seven cases (self assessed: four and assessed: three) of four dealers assessed between November 2013 and August 2016 for the period between 2011-12 and 2013-14, the dealers applied incorrect rate of tax of five *per cent* on residuary goods as against applicable rate of 14 *per cent*. The AAs failed to detect misclassification of goods even in assessed cases and levied tax at 5 *per cent*. However, Audit cross-checked the documents (sale/purchase details) enclosed with the returns and found that these were residuary goods (surface mounted water pump, fabricated/structural item, electric panel and metalised film) attracting tax at the rate of 14 *per cent*. This resulted in short levy of tax of ₹ 4.64 crore.

<sup>12</sup> Gross receipts (₹ 113.44 crore)-expenses and profit relating to labour and services (₹ 71.54 crore) = Taxable Turnover (₹ 41.90 crore)

<sup>13</sup>

Sale value (after dividing the total sale in the ratio of purchases)	Rate of tax	Amount of tax (in lakh)
524.79	12.5%	58.31
322.71	14%	39.63
2,766.95	4%	106.42
151.92	5%	7.23
192.36	Tax free	NIL
231.40 (Trading goods)	12.5%	28.42
<b>4,190.13</b>		<b>240.01</b>

<sup>14</sup> CTO, Raipur-1; Raipur-5 and Raipur-9

Audit further noticed that the Department was using CGCOMTAX IT system for assessment and levy of VAT, however, the system did not have provision for codified commodity/goods along with rate of tax to be fed by the dealers. In absence of such system, misclassification of commodity/goods by the dealers and non-detection of the same by the AAs occurred year after year resulting in short levy/payment of tax.

On this being pointed out (May 2017), the Department replied (July 2017) that in five cases demand notices of ₹ 1.26 crore had been raised and two cases were being reopened. Report on recovery is awaited (August 2018).

**Recommendation:**

**The Department should examine the failure of Assessing Authorities to levy correct rate of tax on residuary goods from a vigilance angle and take appropriate action.**

### **3.6 Non-levy of interest on delayed payment of tax**

#### **Interest of ₹ 1.02 crore not levied on delayed payment of tax.**

Audit test check of assessment records in two units<sup>15</sup> revealed that while the AAs had raised demand (December 2015 and May 2016 respectively) for ₹ 2.41 crore on Divisional Forest Officers (DFOs), Bilaspur and North Surguja towards unpaid VAT (of ₹ 1.43 crore and ₹ 97.18 lakh respectively) on the sale of timber, bamboo, etc., for the years 2010-11 and 2011-12 but failed to levy interest amounting to ₹ 1.02 crore on delayed payment.

Audit further noticed that the Department was using CGCOMTAX IT system for assessment and levy of VAT. However, the system did not have the provision to compute interest on delayed payment of tax. In the absence of such system, computation of interest on delayed payment of tax was left to the discretion of the AA.

In reply, the Department replied (July 2017) that necessary demands for interest had since been raised. Further progress is awaited (August 2018).

**Recommendation:**

**The Department should evolve an IT mechanism to compute interest on delayed payment of tax without leaving it to the discretion of AA.**

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<sup>15</sup> AC-1 and AC-2, Div.-1, Bilaspur