

**Report of the
Comptroller and Auditor General
of India**

for the year ended March 2008

Revenue Receipts

Government of West Bengal

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PREFACE

This report for the year ended 31 March 2008 has been prepared for submission to the Governor under Article 151 (2) of the Constitution.

The audit of revenue receipts of the State Government is conducted under Section 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971. This report presents the results of audit of receipts comprising sales tax, land revenue, stamp duty and registration fees, motor vehicles tax, profession tax, electricity duty, state excise, other tax receipts, mines and minerals, forest receipts and other non-tax receipts of the State.

The cases mentioned in this report are among those which came to notice in the course of test audit of records during the year 2007-08 as well as those noticed in earlier years but could not be covered in previous years' reports.

OVERVIEW

I. General

This Report contains 43 paragraphs including two reviews relating to underassessment/non-realisation/loss of revenue etc. involving Rs. 616.07 crore. Some of the major findings are mentioned below:

The total receipts of the Government for the year 2007-08 increased to Rs. 30,167.38 crore against Rs. 25,828.31 crore in the previous year. Of this, 48 *per cent* was raised by the Government through tax revenue (Rs. 13,126.33 crore) and non-tax revenue (Rs. 1,473.09 crore). The balance 52 *per cent* was received from the Government of India as the State's share of net proceeds of divisible Union taxes (Rs. 10,729.06 crore) and grants-in-aid (Rs. 4,838.90 crore).

(Paragraph 1.1)

Test check of the records of sales tax, land revenue, stamp duty and registration fees, motor vehicles tax, state excise, electricity duty, other tax receipts, forest receipts and other non-tax receipts conducted during the year 2007-08 revealed underassessment/short levy/loss of revenue amounting to Rs. 665.35 crore in 731 audit observations. During the course of the year, the departments accepted underassessment of Rs. 232.02 crore in 308 audit observations pointed out in 2007-08 and recovered Rs. 2.11 crore at the instance of audit. No replies have been received in respect of the remaining cases.

(Paragraph 1.10)

As on 30 June 2008, 1,188 inspection reports issued upto December, 2007 containing 3,292 audit observations involving Rs. 4,181.67 crore were outstanding for want of response or final action by the concerned departments.

(Paragraph 1.13)

II. Sales Tax

Review on "Concessions and exemptions under the sales tax Acts" revealed the following:

- Failure of the Commissioner of Commercial Taxes to prescribe a mechanism for cross verification of declaration forms before their acceptance led to evasion of tax of Rs. 36.35 lakh including penalty remaining undetected.

(Paragraph 2.2.8)

- The assessing authorities irregularly allowed concessions and exemptions of tax of Rs. 305.95 crore to the dealers who did not furnish the requisite statements.

(Paragraph 2.2.12)

- Acceptance of claims without purchase evidence and incomplete purchase evidence of scheduled IV goods by the assessing authorities resulted in irregular allowance of exemption of tax of Rs. 24.49 crore.

(Paragraph 2.2.13)

- Failure of the assessing authorities in applying correct rate of tax on disallowed claims of concessional rate of tax on interstate sales due to non-production of declaration forms resulted in short levy of tax of Rs. 4.91 crore.

(Paragraph 2.2.14)

- Irregular allowance of stock transfers by the assessing authorities resulted in irregular allowance of exemption/non-levy of tax of Rs. 3.59 crore.

(Paragraph 2.2.15)

- Failure of the assessing authorities in reassessment of tax and imposition of penalty against the dealers who had evaded tax by producing fake declaration forms resulted in non-levy of tax and penalty of Rs. 48.11 lakh.

(Paragraph 2.2.16)

Failure of the authorities in realising the tax and penalty from the errant transporters violating the provisions of the Act led to non-realisation of revenue of Rs. 29.64 crore.

(Paragraph 2.3)

Incorrect determination of gross turnover/taxable balance of the dealers resulted in short levy of tax of Rs. 30.29 crore.

(Paragraph 2.4)

Non-imposition of minimum penalty on concealed sales/purchases of Rs. 85.42 crore resulted in non-realisation of revenue of Rs. 7.53 crore.

(Paragraph 2.5)

Incorrect determination of taxable purchase price at Rs. 35.63 crore instead of Rs. 42.56 crore resulted in non/short levy of purchase tax of Rs. 42.88 lakh.

(Paragraph 2.10)

Incorrect deduction from the taxable turnover of tax collected by the dealers resulted in short levy of tax of Rs. 57.53 lakh.

(Paragraph 2.18)

Incorrect exemption on export sales of Rs. 13.88 crore resulted in underassessment of tax amounting to Rs. 1.11 crore.

(Paragraph 2.21)

III. Land Revenue

Non-execution of long term lease for 5.03 acres of non-agricultural land resulted in loss of annual rent of Rs. 3.32 lakh and non-realisation of *salami* of Rs. 20.15 lakh.

(Paragraph 3.2)

Failure in realising the cess from *raiya*s resulted in short realisation of revenue of Rs. 15.35 lakh.

(Paragraph 3.3)

Allowance of inadmissible rebate resulted in short realisation of land revenue of Rs. 8.54 lakh.

(Paragraph 3.6)

IV. State Excise

Failure of the officer-in-charge of a distillery to enforce the provisions regarding minimum yield of alcohol from molasses resulted in short realisation of excise duty of Rs. 10.62 crore.

(Paragraph 4.2)

Allowing the wastage of rectified spirit/India made foreign liquor in transit in excess of the maximum permissible limit resulted in non-realisation of excise duty of Rs. 26.83 lakh.

(Paragraph 4.3)

Fees of Rs. 17.46 lakh for import of spirit from outside the State was not realised from two manufacturers of country spirit.

(Paragraph 4.4)

V. Motor Vehicles Tax

Due to lack of proper monitoring on the part of taxing authorities, tax, additional tax and penalty of Rs. 3.73 crore was not realised from the owners of 707 motor vehicles.

(Paragraph 5.2)

Difference between life time tax and one time tax of Rs. 50.08 lakh including penalty was not realised from 1,143 motor cycle owners.

(Paragraph 5.3)

CHAPTER I GENERAL

1.1 Trend of revenue

The tax and non-tax revenue raised by the Government of West Bengal during the year 2007-08, the State's share of divisible Union taxes and grants-in-aid received from the Government of India during the year and the corresponding figures for the preceding four years are mentioned below:

| | | (Rupees in crore) | | | | |
|----------|--|-------------------|-----------|-----------|-----------|------------------------|
| Receipts | | 2003-04 | 2004-05 | 2005-06 | 2006-07 | 2007-08 |
| I. | Revenue raised by the State Government | | | | | |
| | • Tax revenue | 8,767.91 | 9,924.46 | 10,388.38 | 11,694.77 | 13,126.33 |
| | • Non-tax revenue | 605.84 | 1,345.66 | 1,018.81 | 1,248.76 | 1,473.09 |
| Total | | 9,373.75 | 11,270.12 | 11,407.19 | 12,943.53 | 14,599.42 |
| II. | Receipts from the Government of India | | | | | |
| | • State's share of net proceeds of divisible Union taxes | 5,341.65 | 6,384.89 | 6,668.33 | 8,505.60 | 10,729.06 ¹ |
| | • Grants-in-aid | 1,893.10 | 2,263.18 | 5,650.37 | 4,379.18 | 4,838.90 |
| Total | | 7,234.75 | 8,648.07 | 12,318.70 | 12,884.78 | 15,567.96 |
| III. | Total receipts of the State Government (I+II) | 16,608.50 | 19,918.19 | 23,725.89 | 25,828.31 | 30,167.38 |
| IV. | Percentage of I to III | 56 | 57 | 48 | 50 | 48 |

The above table indicates that during the year 2007-08, the revenue raised by the State Government was 48 *per cent* of the total revenue receipts (Rs. 30,167.38 crore) against 50 *per cent* in the preceding year. The balance 52 *per cent* of receipts during 2007-08 was from the Government of India.

¹ Figures under the heads 0020 - Corporation tax, 0021 - Taxes on income other than corporation tax, 0032 - Taxes on wealth, 0037 - Customs duty, 0038 - Union excise duties, 0044 - Service tax, 'Share of net proceeds assigned to States' booked in the Finance Accounts under A - Tax revenue have been excluded from revenue raised by the State and included in State's share of divisible union taxes in this statement.

1.1.1 Tax revenue

The following table presents the details of tax revenue raised during the period from 2003-04 to 2007-08:

(Rupees in crore)

| Sl. No. | Head of revenue | 2003-04 | 2004-05 | 2005-06 | 2006-07 | 2007-08 | Percentage of increase (+)/ decrease (-) in 2007-08 over 2006-07 |
|---------|---|----------|----------|-----------|-----------|-----------------------|--|
| 1. | • Sales tax | 4,276.12 | 5,086.33 | 5,394.81 | 6,279.83 | 7,262.92 | (+) 15.65 |
| | • Central sales tax | 554.46 | 629.97 | 713.97 | 799.20 | 797.54 | (-) 0.21 |
| 2. | State excise | 619.96 | 671.56 | 743.46 | 817.36 | 935.46 | (+) 14.45 |
| 3. | Stamp duty and registration fees | 794.52 | 1,006.54 | 1,177.59 | 1,258.57 | 1,416.96 | (+) 12.58 |
| 4. | Taxes and duties on electricity | 396.16 | 269.65 | 382.46 | 526.35 | 506.69 | (-) 3.74 |
| 5. | Taxes on vehicles | 535.37 | 527.66 | 537.56 | 508.97 | 532.07 | (+) 4.54 |
| 6. | Other taxes on income and expenditure-tax on professions, trades, callings and employment | 229.89 | 237.43 | 249.15 | 264.85 | 295.06 | (+) 11.41 |
| 7. | Other taxes and duties on commodities and services | 366.17 | 359.68 | 269.36 | 284.73 | 341.18 | (+) 19.83 |
| 8. | Land revenue | 993.26 | 1,132.55 | 917.11 | 952.69 | 1,039.58 | (+) 9.12 |
| 9. | Other taxes | 2.00 | 3.09 | 2.91 | 2.22 | (-) 1.13 ² | (-) 150.90 |
| Total | | 8,767.91 | 9,924.46 | 10,388.38 | 11,694.77 | 13,126.33 | (+) 12.24 |

The reason for variation in receipt for 2007-08 from those of 2006-07 in respect of principal head of revenue was as follows:

- **Sales tax:** The increase (15.65 *per cent*) was mainly due to larger receipts of sales tax from sale of cement, motor cars, foreign liquor, iron and steel.
- **State excise:** The increase (14.45 *per cent*) was mainly due to larger receipts of excise duty from country spirit and foreign liquor.

² Figure includes refund of Rs. 2.60 crore under the head 0022-Taxes on agricultural income.

- **Other taxes and duties on commodities and services:** The increase (19.83 *per cent*) was mainly due to larger receipts of luxury tax and taxes from hotels and restaurants.

The other departments did not intimate (September 2008) the reasons for variation in receipts from those of the previous year despite being requested.

1.1.2 Non-tax revenue

The following table presents the details of non-tax revenue raised during the period from 2003-04 to 2007-08:

(Rupees in crore)

| Sl. No. | Head of revenue | 2003-04 | 2004-05 | 2005-06 | 2006-07 | 2007-08 | Percentage of increase (+)/ decrease (-) in 2007-08 over 2006-07 |
|--------------|---|---------------|-----------------|-----------------|-----------------|---------------------|--|
| 1. | Interest | 110.11 | 589.31 | 378.08 | 683.66 | 689.96 ³ | (+) 0.92 |
| 2. | Dairy development | 50.27 | 38.42 | 26.44 | 22.25 | 26.94 | (+) 21.08 |
| 3. | Roads and bridges | 22.08 | 19.57 | 19.98 | 18.11 | 13.66 | (-) 24.57 |
| 4. | Forestry and wildlife | 45.97 | 40.44 | 38.61 | 40.87 | 49.84 | (+) 21.95 |
| 5. | Non-ferrous mining and metallurgical industries | 13.91 | 18.94 | 19.88 | 11.56 | 7.03 | (-) 39.19 |
| 6. | Food storage and warehousing | 27.67 | 180.23 | 191.50 | 87.67 | 247.71 | (+) 182.55 |
| 7. | Housing | 11.12 | 13.96 | 9.67 | 10.43 | 9.68 | (-) 7.19 |
| 8. | Medical and public health | 47.71 | 71.51 | 53.16 | 68.13 | 42.83 | (-) 37.13 |
| 9. | Education, sports, art and culture | 21.20 | 30.67 | 22.64 | 16.22 | 21.42 | (+) 32.06 |
| 10. | Public works | 6.39 | 7.29 | 6.73 | 5.42 | 7.86 | (+) 45.02 |
| 11. | Police | 44.69 | 56.85 | 57.05 | 71.33 | 63.02 | (-) 11.65 |
| 12. | Others | 204.72 | 278.47 | 195.07 | 213.11 | 293.14 | (+) 37.55 |
| Total | | 605.84 | 1,345.66 | 1,018.81 | 1,248.76 | 1,473.09 | (+) 17.96 |

The reasons for variation in receipt for 2007-08 from those of 2006-07 in respect of principal head of revenue was as follows:

- **Food storage and warehousing:** The increase (182.55 *per cent*) was mainly due to subsidy from the Government of India for supply of rice to families belonging to below/above poverty level.

³ Includes Rs. 3,528.02 lakh, Rs. 124.66 lakh and Rs. 3,160.54 lakh by book adjustment per contra debit to the heads "2700 - Major irrigation", "2701 - Medium irrigation", "2711 - Flood control and drainage" respectively.

- **Public works:** The increase (45.02 *per cent*) was mainly due to larger receipts on account of leave salary contribution.
- **Education, sports, art and culture:** The increase (32.06 *per cent*) was mainly due to larger collection from elementary and technical education.

The other departments did not intimate (September 2008) the reasons for variation in receipts from those of the previous year despite being requested.

1.2 Initiative for mobilisation of additional resources

In the budget for the year 2007-08, the Government had emphasised the need for reducing deficit and protecting plan expenditure through mobilisation of additional resources by introducing a modified scheme for settlement of disputes of sales tax till June 2007, enhancing the rate of sales tax on some commodities and by simplifying the procedure of payment/filing of tax return etc. Additional resource of Rs. 150 crore comprising Rs. 50 crore from sales/value added tax on tobacco and tobacco products, Rs. 30 crore from state excise, Rs. 50 crore from motor vehicles tax and Rs. 20 crore from stamp duty was estimated to be raised in the budget for the year 2007-08. The Government also expected that tax compliance would be made easier through a modern and improved tax administration. The actual collection (Rs. 14,599 crore) however, fell short of the budget estimate (BE) for Rs. 15,554 crore by Rs. 955 crore (6.14 *per cent*) as discussed in the following paragraph.

1.3 Variations between the budget estimates and actuals

The variation between the budget estimates and actuals of revenue receipts for the year 2007-08 in respect of the principal heads of tax and non-tax revenue are mentioned below:

| (Rupees in crore) | | | | | |
|------------------------|--|------------------|---------------|--|-------------------------|
| Sl. No. | Head of revenue | Budget estimates | Actuals | Variations excess (+) or shortfall (-) | Percentage of variation |
| Tax revenue | | | | | |
| 1 | Sales tax | 8,506 | 8,060 | (-) 446 | (-) 5.24 |
| 2 | State excise | 1,018 | 935 | (-) 83 | (-) 8.15 |
| 3 | Land revenue | 1,110 | 1,040 | (-) 70 | (-) 6.31 |
| 4 | Taxes on vehicles | 646 | 532 | (-) 114 | (-) 17.65 |
| 5 | Stamp duty and registration fees | 1,626 | 1,417 | (-) 209 | (-) 12.85 |
| 6 | Profession tax | 300 | 295 | (-) 5 | (-) 1.67 |
| 7 | Electricity duty | 633 | 507 | (-) 126 | (-) 19.91 |
| 8 | Other taxes and duties on commodities and services | 413 | 341 | (-) 72 | (-) 17.43 |
| 9 | Agricultural income tax | 2 | (-) 3 | (-) 5 | (-) 250.00 |
| 10 | Others | 2 | 2 | Nil | Nil |
| Total | | 14,256 | 13,126 | (-) 1,130 | (-) 7.93 |
| Non-tax revenue | | | | | |
| 11. | Forest receipts | 47 | 50 | (+) 3 | (+) 6.38 |

| | | | | | |
|--------------|------------------------------------|--------------|--------------|----------------|------------------|
| 12. | Interest receipts | 457 | 690 | (+) 233 | (+) 50.98 |
| 13. | Dairy development | 44 | 27 | (-) 17 | (-) 38.64 |
| 14. | Food storage and warehousing | 203 | 248 | (+) 45 | (+) 22.17 |
| 15. | Medical and public health | 109 | 43 | (-) 66 | (-) 60.55 |
| 16. | Education, sports, art and culture | 26 | 21 | (-) 5 | (-) 19.23 |
| 17. | Public works | 8 | 8 | Nil | Nil |
| 18. | Roads and bridges | 24 | 14 | (-) 10 | (-) 41.67 |
| 19. | Police | 133 | 63 | (-) 70 | (-) 52.63 |
| 20. | Major and medium irrigation | 6 | 7 | (+) 1 | (+) 16.67 |
| 21. | Minor irrigation | 23 | 20 | (-) 3 | (-) 13.04 |
| 22. | Others | 218 | 282 | (+) 64 | (+) 29.36 |
| Total | | 1,298 | 1,473 | (+) 175 | (+) 13.48 |

Thus, it would be seen that the collection of tax revenue fell short of the BE by 7.93 *per cent*, while in case of non-tax revenue the actuals exceeded the estimates by 13.48 *per cent*. The short fall in tax revenue was mainly due to less collection from sales tax, electricity duty, stamp duty and registration fees, agricultural income tax, motor vehicles tax, other taxes and duties on commodities and services. The excess collection of non-tax revenue was mainly on account of interest receipts, storage and warehousing and others.

The concerned departments did not intimate (September 2008) the reasons for variation despite being requested.

1.4 Analysis of collection

The break-up of the total collection at pre-assessment stage and after regular assessment of sales tax, agricultural income tax and amusement tax for the year 2007-08 and the corresponding figures for the preceding two years as furnished by the department is as follows:

| (Rupees in crore) | | | | | | | |
|-------------------------|---------|--|---|--|-----------------|-----------------------------|-----------------------------|
| Head of revenue | Year | Amount collected at pre-assessment stage | Amount collected after regular assessment (additional demand) | Penalties for delay in payment of taxes and duties | Amount refunded | Net collection ⁴ | Percentage of column 3 to 7 |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
| Sales tax | 2005-06 | 5,919.51 | 86.28 | 25.44 | 36.10 | 5,995.13 | 99 |
| | 2006-07 | 6,993.04 | 94.57 | 31.03 | 39.62 | 7,079.02 | 99 |
| | 2007-08 | 8,223.06 | 99.87 | 33.17 | 32.12 | 8,323.98 | 99 |
| Agricultural income tax | 2005-06 | 2.04 | 0.26 | Nil | 0.78 | 1.52 | 134 |
| | 2006-07 | 0.95 | 0.17 | 0.03 | 0.10 | 1.05 | 90 |
| | 2007-08 | 0.05 | 0.27 | 0.05 | 3.02 | (-) 2.65 | ⁵ |
| Amusement tax | 2005-06 | 57.19 | 8.51 | 0.11 | 7.11 | 58.70 | 97 |
| | 2006-07 | 59.09 | 7.72 | 0.09 | 0.03 | 66.87 | 88 |
| | 2007-08 | 72.00 | 6.63 | 0.16 | 1.65 | 77.14 | 93 |

⁴ The discrepancy in the figures of net collection of revenue furnished by the department with those in the Finance Accounts needs reconciliation.

⁵ Advance tax paid by tea companies for a period of three years from 1 April 2006 was refunded by the Government in 2007-08.

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Thus, the collection of tax at pre-assessment stage during the last three years ranged between 88 and 134 *per cent*. This indicates that voluntary compliance for payment of tax by the dealers was good.

1.5 Cost of collection

The gross collection in respect of major revenue receipts, expenditure incurred on their collection and the percentage of such expenditure to gross collection during the years 2005-06, 2006-07 and 2007-08 along with the relevant all India average percentage of expenditure on collection to gross collection for 2006-07 are mentioned below:

| (Rupees in crore) | | | | | |
|----------------------------------|---------|------------------|---------------------------|---|--|
| Head of revenue | Year | Gross collection | Expenditure on collection | Percentage of expenditure to gross collection | All India average percentage of expenditure on collection for the year 2006-07 |
| Sales tax | 2005-06 | 6,109 00 | 80 10 | 1 31 | 0 82 |
| | 2006-07 | 7,079 00 | 83 79 | 1 18 | |
| | 2007-08 | 8,060 46 | 92 42 | 1 15 | |
| State excise | 2005-06 | 743 00 | 39 38 | 5 30 | 3 30 |
| | 2006-07 | 817 00 | 42 38 | 5 19 | |
| | 2007-08 | 935 47 | 49 59 | 5 30 | |
| Stamp duty and registration fees | 2005-06 | 1,178 00 | 42 94 | 3 65 | 2 33 |
| | 2006-07 | 1,259 00 | 44 97 | 3 57 | |
| | 2007-08 | 1,416 96 | 60 10 | 4 24 | |
| Taxes on vehicles | 2005-06 | 538 00 | 9 70 | 1 80 | 2 47 |
| | 2006-07 | 509 00 | 9 89 | 1 94 | |
| | 2007-08 | 532 07 | 10 86 | 2 04 | |

Thus, the percentage of expenditure on collection of sales tax, state excise and stamp duty and registration fees was higher than the all India average and lower in case of taxes on vehicles. The percentage of expenditure on collection of stamp duty and registration fees showed a rising trend. However, the corresponding percentage for sales tax showed a declining trend though the figures are well above the all India average.

1.6 Analysis of arrears of revenue

The arrears of revenue as on 31 March 2008 in respect of some principal heads of revenue as furnished by the departments amounted to Rs. 82.08 crore, of which Rs. 29.07 crore was outstanding for more than five years as shown in the following table:

(Rupees in crore)

| Head of revenue | Amount outstanding as on 31 March 2008 | Amount outstanding for more than five years as on 31 March 2008 |
|-------------------------|--|---|
| Sales tax | NA ⁶ | NA ⁶ |
| Amusement tax | 43.30 | 9.17 |
| Agricultural income tax | 23.71 | 13.37 |
| Excise duty | 15.07 | 6.53 |
| Total | 82.08 | 29.07 |

The stages at which these are pending were not intimated by the departments concerned despite being requested

1.7 Arrears in assessments

The following table shows the details of pending assessment cases in the preceding three years as furnished by the departments:

| Year | Opening balance | Cases due for assessment during the year | Total | Cases finalised during the year | Balance at the close of the year | Arrears as percentage of total cases |
|--------------------------------|-----------------|--|----------|---------------------------------|----------------------------------|--------------------------------------|
| Sales tax | | | | | | |
| 2005-06 | 1,84,198 | 1,30,038 | 3,14,236 | 1,45,160 | 1,69,076 | 54 |
| 2006-07 | 1,69,076 | 80,077 | 2,49,153 | 1,34,054 | 1,15,099 | 46 |
| 2007-08 | 1,15,099 | 39,271 | 1,54,370 | 1,21,325 | 33,045 | 21 |
| Profession tax | | | | | | |
| 2005-06 | 1,60,962 | 61,765 | 2,22,727 | 90,614 | 1,32,113 | 59 |
| 2006-07 | 1,32,113 | 54,536 | 1,86,649 | 51,514 | 1,35,135 | 72 |
| 2007-08 | 1,35,135 | 88,068 | 2,23,203 | 71,951 | 1,51,252 | 68 |
| Amusement tax | | | | | | |
| 2005-06 | 7,253 | 3,872 | 11,125 | 3,085 | 8,040 | 72 |
| 2006-07 | 8,040 | 3,126 | 11,166 | 2,499 | 8,667 | 78 |
| 2007-08 | 8,667 | 4,088 | 12,755 | 2,567 | 10,188 | 80 |
| Agricultural income tax | | | | | | |
| 2005-06 | 2,646 | 467 | 3,113 | 553 | 2,560 | 82 |
| 2006-07 | 2,560 | 665 | 3,225 | 676 | 2,549 | 79 |
| 2007-08 | 2,549 | 670 | 3,219 | 633 | 2,586 | 80 |

Thus, the percentage of pending cases in sales tax has come down considerably. Immediate action needs to be taken to finalise the remaining cases as value added tax has been introduced in the state from 2005-06. However, the number of pending cases in profession and amusement tax is

⁶ The department did not furnish these figures on the ground that the scheme for settlement of disputes of sales tax is in currency.

large and has been increasing over the years. The department should initiate concrete steps to complete the assessments within a definite time frame.

1.8 Evasion of tax

The details of cases of evasion of tax detected, finalised and the demands for additional tax raised as reported by the departments is mentioned below:

| Name of tax/duty | Cases pending ⁷ as on 31 March 2007 | Cases detected during 2007-08 | Total | No. of cases in which assessments/investigations completed and additional demand including penalty etc. raised | | No. of cases pending finalisation as on 31 March 2008 |
|------------------|--|-------------------------------|-------|--|-------------------------------|---|
| | | | | No. of cases | Amount demanded (Rs in crore) | |
| Sales tax | 153 | 2,276 | 2,429 | 2,231 | 48 70 | 198 |
| State excise | 8 | Nil | 8 | Nil | Nil | 8 |
| Amusement tax | 29 | Nil | 29 | 7 | NA ⁸ | 22 |

1.9 Refunds

The number of refund cases pending at the beginning of the year 2007-08, claims received and refunds made during the year and balance at the close of the year 2007-08, as reported by the departments are mentioned below:

| | Sales tax | | Amusement tax | | Agricultural income tax | |
|---|--------------|-----------------------|---------------|-----------------------|-------------------------|-----------------------|
| | No. of cases | Amount (Rs. in crore) | No. of cases | Amount (Rs. in crore) | No. of cases | Amount (Rs. in crore) |
| Claims outstanding at the beginning of the year | 284 | 1 40 | Nil | Nil | 35 | 5 76 |
| Claims received during the year | 319 | 31 92 | 7 | 1 67 | 13 | 0 34 |
| Refunds made during the year | 351 | 32 12 | 7 | 1 67 | 42 | 3 02 |
| Balance outstanding at the end of the year | 252 | 1 20 | Nil | Nil | 6 | 3 08 |

Thus, there was improvement in processing the refund cases in respect of sales tax and agricultural income tax but the position in respect of amusement tax remained static.

1.10 Results of audit

Test check of the records of sales tax, land revenue, stamp duty and registration fees, motor vehicles tax, state excise, electricity duty, other tax

⁷ The figures in respect of sales tax and state excise as shown in the Audit Report of 2006-07 have since been modified by the departments after inclusion of old cases.

⁸ Not available.

receipts, forest receipts and other non-tax receipts conducted during the year 2007-08 revealed underassessment/short levy/loss of revenue amounting to Rs. 665.35 crore in 731 audit observations. During the course of the year, the departments accepted underassessment of Rs. 232.02 crore in 308 audit observations pointed out in 2007-08 and recovered Rs. 2.11 crore at the instance of audit. No replies have been received in respect of the remaining cases.

This Report contains 43 paragraphs including two reviews relating to non/short levy of taxes, duties, interest and penalties etc., involving Rs. 616.07 crore. The departments accepted audit observations involving Rs. 193.74 crore of which Rs. 47.52 lakh had been recovered. The departments have contested paragraphs involving Rs. 1.69 crore and no reply has been furnished in respect of the remaining cases.

In respect of the observations not accepted by the department, a gist of the reasons for the department's non-acceptance has been included in the concerned paragraph along with further comments of audit.

1.11 Status of recovery against audit observations accepted by the Government

A review of the replies of the Government to the paragraphs of the Audit Reports for the last five years from 2002-03 to 2006-07 shows that against the revenue effect of Rs. 2,255.66 crore of the audit observations accepted by the departments, the actual recovery is very low at Rs. 324.32 crore (14.38 *per cent*). Year-wise break-up of the recovery of revenue till September 2008 is mentioned below:

| (Rupees in crore) | | | |
|----------------------|------------------------------------|------------------------------------|------------------|
| Year of Audit Report | Revenue effect of the Audit Report | Amount accepted by the departments | Amount recovered |
| 2002-03 | 204.77 | 150.96 | 0.29 |
| 2003-04 | 1,335.20 | 483.13 | 29.44 |
| 2004-05 | 554.93 | 442.16 | 285.10 |
| 2005-06 | 711.36 | 170.81 | 0.08 |
| 2006-07 | 2,483.81 | 1,008.60 | 9.41 |
| Total | 5,290.07 | 2,255.66 | 324.32 |

1.12 Departmental audit committee meetings

For prompt settlement of old outstanding inspection reports (IRs), departmental audit committees were constituted by the Government in the year 1985. The administrative department is required to convene meetings of the audit committees comprising the Secretary of the administrative department concerned, a senior officer of the Finance Department not below the rank of Joint Secretary and a representative of the office of the Accountant General, West Bengal.

The number of meetings held and the paragraphs settled during the last three years are mentioned below:

Audit Report (Revenue Receipts) for the year ended 31 March 2008

(Rupees in crore)

| Year | Name of the department | Number of meeting(s) held | Number of paragraphs settled | Money value of the paragraphs settled |
|---------|------------------------|---------------------------|------------------------------|---------------------------------------|
| 2005-06 | State excise | 2 | 45 | 2.17 |
| 2006-07 | State excise | 1 | 59 | 2.83 |
| 2007-08 | State excise | 1 | 33 | 39.37 |

Thus, out of eight departmental audit committees, only one committee held meetings regularly during the last three years and settled 137 paragraphs involving money value of Rs. 44.37 crore. The other departments did not hold any audit committee meeting till September 2008 despite several reminders.

1.13 Failure to enforce accountability and protect interest of the Government

The Accountant General (Receipt, Works and Local Bodies Audit), West Bengal arranges periodic inspection of the Government departments to test check the transactions and verify the maintenance of accounts and other records as per the prescribed rules and procedures. Following the inspections, IRs are issued to the heads of offices inspected with copies to the higher authorities for taking prompt corrective action. The Government have provided that first replies to the IRs should be furnished within three weeks of receipt. The heads of the offices and the Government are required to comply with the observations contained in the IRs and rectify the defects and omissions promptly and report their compliance to the office of the Accountant General within two months from the dates of issue of the IRs. Serious irregularities are also brought to the notice of the heads of the departments by the office of the Accountant General.

Of the IRs issued upto December 2007, 3,292 paragraphs relating to 1,188 IRs involving Rs. 4,181.67 crore remained outstanding at the end of June 2008. Of these, 258 IRs containing 491 paragraphs involving Rs. 89.42 crore had not been settled for more than 10 years. The concerned departments were the Finance Department (sales tax, amusements tax, agricultural income tax, profession tax, electricity duty and stamp duty and registration fees), Forest Department (forest receipts), Land and Land Reforms/Commerce and Industries Department (mines and minerals), Transport Department (taxes on motor vehicles), the Land and Land Reforms Department (land revenue) and other departments. In respect of 1,765 paragraphs of 516 IRs issued between April 1982 and December 2007 even the first replies were not furnished. As a result, the serious irregularities commented upon in these IRs remained unattended as of 30 June 2008.

Department wise break-up of the IRs and audit observations outstanding as on 30 June 2008 is given in the following table:

(Rupees in crore)

| Sl. No. | Department | Position of IRs issued upto December 2007 but not settled at the end of June 2008 | | | Position of IRs and paragraphs not settled for more than 10 years | | | Position of IRs in respect of which even the first reply has not been received | | |
|---------|--|---|-------------------|-----------------|---|-------------------|--------------|--|-------------------|-----------------------------------|
| | | No. of IRs | No. of Paragraphs | Money value | No. of IRs | No. of Paragraphs | Money value | No. of IRs | No. of Paragraphs | Earliest year to which IR relates |
| 1. | Finance | | | | | | | | | |
| | Sales tax | 123 | 584 | 75.07 | 10 | 18 | 0.38 | 93 | 468 | 2000-01 |
| | Profession tax | 94 | 240 | 11.26 | 20 | 27 | 0.16 | 44 | 116 | 2000-01 |
| | Stamp duty and registration fees | 266 | 447 | 56.72 | 28 | 32 | 1.70 | 145 | 221 | 1996-97 |
| | Electricity duty | 53 | 100 | 9.19 | 21 | 25 | 1.85 | 7 | 28 | 1998-99 |
| | Agricultural income tax | 17 | 24 | 1.84 | 4 | 7 | 0.06 | 5 | 6 | 1992-93 |
| | Amusement tax | 69 | 127 | 25.31 | 26 | 37 | 1.00 | 24 | 49 | 1982-83 |
| | Luxury tax | 17 | 25 | 0.69 | Nil | Nil | Nil | 10 | 12 | 2002-03 |
| 2. | Forest | | | | | | | | | |
| | Forest receipts | 107 | 245 | 63.39 | 22 | 31 | 0.13 | 50 | 156 | 1996-97 |
| 3. | Land and Land Reforms/Commerce and Industries | | | | | | | | | |
| | Mines and minerals | 78 | 249 | 104.40 | 21 | 43 | 1.61 | 33 | 204 | 1992-93 |
| 4. | Land and Land Reforms | | | | | | | | | |
| | Land revenue | 100 | 545 | 154.19 | 42 | 165 | 31.80 | 37 | 215 | 1992-93 |
| 5. | Excise | | | | | | | | | |
| | State excise | 39 | 115 | 38.67 | 1 | 1 | 10.07 | 29 | 181 | 1992-93 |
| 6. | Transport | | | | | | | | | |
| | Motor vehicles | 121 | 347 | 12.52 | 26 | 46 | 0.21 | 5 | 12 | 2003-07 |
| 7. | Other | | | | | | | | | |
| | Departmental receipts | 104 | 244 | 3,628.42 | 37 | 59 | 40.45 | 34 | 97 | 1994-95 |
| | Total | 1,188 | 3,292 | 4,181.67 | 258 | 491 | 89.42 | 516 | 1,765 | |

The above indicates the failure of the departmental officials in initiating action to correct the defects, omissions and irregularities pointed out in the IRs. The Principal Secretaries/Secretaries of the departments were informed of the position through half yearly reports, but there was no improvement in the position.

1.14 Settlement of paragraphs of the Audit Reports

The Committee on Public Accounts (PAC) discusses the Receipt Audit Reports and presents its own reports and recommendations for compliance by the Government. Normally 20 *per cent* of the total numbers of paragraphs of the Audit Report are selected every year for discussion. The remaining paragraphs are disposed of on the basis of replies of the Government.

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As of 31 March 2008, the Government had not furnished explanatory notes in respect of 42 selected and 1,222 unselected paragraphs including 422⁹ sub-paragraphs of Audit Reports from 1981-82 to 1991-92. The lack of response from the Government would adversely impact the revenue realisation.

1.15 Follow-up on Audit Reports - summarised position

As per the Rules of Procedure of the PAC of the West Bengal Legislative Assembly (Internal Working) framed in 1997, the concerned department shall send action taken notes (ATN) on the recommendations contained in the Report of the PAC within six months from the date of its presentation to the House. The position of outstanding ATNs due from the departments is mentioned below:

| PAC Report | Date of presentation in the Assembly | Name of the department | Year of Audit Report | No. of ATNs due |
|----------------------------------|---|-------------------------------|-----------------------------|------------------------|
| Seventeenth Report of 1988-89 | 5 May 1989 | Irrigation and Waterways | 1978-79 1983-84 | 3 1 |
| Twenty second Report of 1990-91 | 26 March 1991 | Transport | 1979-80 1980-81 | 1 1 |
| Second Report of 1991-92 | 9 April 1992 | Board of Revenue | 1980-81 1983-84 | 2 1 |
| Seventh Report of 1991-93 | 23 March 1993 | Finance | 1983-84 | 1 |
| Seventeenth Report of 1993-94 | 31 March 1994 | Land and Land Reforms | 1985-86 1986-87 | 1 1 |
| Twenty fifth Report of 1994-96 | 1 August 1995 | Transport | 1983-84 | 1 |
| | | Home (Police) | 1988-89 | 1 |
| Seventeenth Report of 1998-99 | 28 June 1999 | Land and Land Reforms | 1988-89 1992-93 | 1 1 |
| Twenty ninth Report of 1999-2000 | 2 December 1999 | Irrigation and Waterways | 1990-91 | 1 |
| Sixteenth Report of 2002-03 | 8 July 2003 | Finance | 1997-98 1998-99 | 1 2 |
| Twenty second Report of 2003-04 | 7 July 2004 | Finance | 1998-99 | 8 |
| Thirty fifth Report of 2004-05 | 8 July 2005 | Land and Land Reforms | 1999-2000 | 5 |
| Total | | | | 33 |

Thus, the departments failed to submit ATNs within the stipulated six months in respect of 33 paragraphs included in the Audit Reports upto the year ended 31 March 2000.

⁹ Sub-paragraphs of Audit Reports for the years 1981-82 to 1991-92 which remained unselected have since been included in the outstanding list awaiting replies from the Government.

CHAPTER II SALES TAX

2.1 Results of audit

Test check of the records relating to sales tax revealed underassessment of tax and other irregularities involving Rs. 428.13 crore in 417 cases which fall under the following categories:

| (Rupees in crore) | | | |
|-------------------|--|--------------|---------------|
| Sl. No. | Categories | No. of cases | Amount |
| 1. | 'Concessions and exemptions under Sales Tax Acts' (A Review) | 1 | 334.06 |
| 2. | Non/short levy of tax due to incorrect determination of gross turnover | 84 | 30.61 |
| 3. | Non/short levy of tax/penalty | 55 | 24.20 |
| 4. | Non/short levy of interest | 63 | 1.71 |
| 5. | Non/short levy of surcharge/additional surcharge | 12 | 0.48 |
| 6. | Other irregularities | 202 | 37.07 |
| Total | | 417 | 428.13 |

During the course of the year, the department accepted underassessment and other deficiencies of Rs. 44.29 crore in 134 cases, of which 133 cases involving Rs. 35.37 crore were pointed out in audit during the year 2007-08 and the rest in earlier years. An amount of Rs. 2.24 lakh was realised in three cases during the year 2007-08.

A few illustrative cases involving Rs. 78.45 crore and a review of 'Concessions and exemptions under Sales Tax Acts' with financial impact of Rs. 334.06 crore are mentioned in the following paragraphs.

2.2 "Concessions and Exemptions under the West Bengal Sales Tax Act and the Central Sales Tax Act"

Highlights

Failure of the Commissioner of Commercial Taxes to prescribe a mechanism for cross verification of declaration forms before their acceptance led to evasion of tax of Rs. 36.35 lakh including penalty.

(Paragraph 2.2.8)

The assessing authorities irregularly allowed concessions and exemptions of tax of Rs. 305.95 crore to the dealers who did not furnish the requisite statements.

(Paragraph 2.2.12)

Acceptance of claims without purchase evidence and incomplete purchase evidence of scheduled IV goods by the assessing authorities resulted in irregular allowance of exemption of tax of Rs. 24.49 crore.

(Paragraph 2.2.13)

Failure of the assessing authorities in applying correct rate of tax on disallowed claims of concessional rate of tax on inter-state sales due to non-production of declaration forms resulted in short levy of tax of Rs. 4.91 crore.

(Paragraph 2.2.14)

Irregular allowance of stock transfers by the assessing authorities resulted in irregular allowance of exemption/non-levy of tax of Rs. 3.59 crore.

(Paragraph 2.2.15)

Failure of the assessing authorities in reassessment of tax and imposition of penalty against the dealers who had evaded tax by producing fake declaration forms resulted in non-levy of tax and penalty of Rs. 48.11 lakh.

(Paragraph 2.2.16)

2.2.1 Introduction

Assessment, levy and collection of sales tax are regulated under the West Bengal Sales Tax (WBST) Act, 1994, the Central Sales Tax (CST) Act, 1956 and the Rules framed thereunder. From April 2005, the West Bengal Value Added Tax (WB VAT) Act, 2003 has been introduced in place of WBST Act. However, taxation on several commodities such as furnace oil, kerosene oil, petrol, diesel, aviation turbine fuel, mineral turpentine oil, motor spirit, country liquor and foreign liquor still continues to be governed under the WBST Act. During the years 2005-06 and 2006-07, the collection of sales tax under the WBST Act was 33.53 *per cent* and 31.63 *per cent* respectively of the total sales tax revenue collected during these years.

Under the WBST Act, registered dealers are eligible for concessional rate of tax/exemption from tax in case of intra state sales subject to collection of declaration forms 9, 10, 11, 12, 13, 14 and 60 from their purchasing dealers and production thereof to the assessing authorities (AA). Export sales are also exempt from tax on production of the evidence of export.

Under the CST Act, sales to registered dealers and Government departments are taxable at the concessional rate of four *per cent* subject to production of prescribed declaration forms C/D obtained from the purchasing dealers. Besides, stock transfers outside the state are exempt from tax on production of form F.

A review of the concessions and exemptions allowed on inter and intra state sales, stock transfers and export sales under the WBST Act and CST Act revealed a number of system and compliance deficiencies which are discussed in the subsequent paragraphs.

2.2.2 Organisational set up

The control and superintendence of the Directorate of Commercial Taxes (DCT) is vested with the Commissioner of Commercial Taxes (CCT), who is assisted by two special commissioners, 36 additional commissioners, 89 deputy commissioners (DCCTs), 325 assistant commissioners (ACCTs) and 655 commercial tax officers for administering the provisions of the Acts and the Rules made thereunder. The internal audit wing assists the management to enforce internal controls within the department.

2.2.3 Audit objectives

The review was carried out to ascertain whether

- the concessions and exemptions were allowed by the AAs as per the provisions of the Acts and Rules;
- the declaration forms furnished by the dealers for availing the exemptions and concessions were genuine;
- adequate mechanism was in place for verification of the genuineness of claims of concessions and exemptions by dealers; and
- the internal control systems were effective and ensured prevention of leakage of revenue by checking false and irregular claims of concessions and exemptions.

2.2.4 Scope and methodology of Audit

The assessments completed between 2002-03 and 2006-07 were reviewed between December 2007 and May 2008. Of the total 68 charge offices, 24¹ were selected by applying statistical sampling method in which 10,191 assessments were checked. Besides, cross verification of central declaration forms (C, D and F) furnished by the dealers was conducted to ascertain the genuineness of the claims of concessions and exemptions.

2.2.5 Acknowledgement

Indian Audit and Accounts Department acknowledges the co-operation of the Finance Department in providing necessary information and records for audit. The audit findings were reported to the Government in July 2008 and

¹ Alipur, Amratola, Asansol, Ballygunge, Bankura, Barupur, Bhowanipore, Burtola, Colootola, Corporate Division, Cossipore, Durgapur, Esplanade, Jorabagan, Krishnanagar, Lalbazar, Medinipur, Park Street, Postabazar, Purulia, Salkia, Shibpur, Siliguri and Taltola.

discussed in audit review committee meeting held in October 2008 in which the Principal Secretary, Finance (Revenue) and the CCT represented the West Bengal Government. The response of the Government to the audit observations has been appropriately incorporated in this review.

Audit findings

System deficiencies

2.2.6 Database of concessions and exemptions

As per the WBST Act, concessions and exemptions on sales tax are allowed to the dealers under certain terms and conditions and revenue is foregone in the process. A database of revenue foregone in concessions and exemptions is essential so that the department is vigilant about the charge offices as well as the commodities where the dealers prefer claims of concessions and exemptions in large numbers. It was noticed during audit that the DCT did not maintain a database of the exemptions and concessions allowed by obtaining information from the subordinate offices. In absence of such database, the department could not quantify the amount of revenue forgone due to concessions and exemptions, nor was it possible for the department or the audit to carry out a systematic study of the concessions and exemptions.

After this was pointed out, the Government stated (October 2008) that they were in the process of developing a format for collection of the figures in remission/deferment cases. However, no reply was furnished regarding collection of figures of other concessions and exemptions.

The Government may consider creation of a reliable database of the concessions and exemptions allowed to dealers by establishing a management information system to supplement the process of estimation of revenue and to facilitate a systematic review and effective monitoring of the concessions and exemptions.

2.2.7 Register of declaration forms

2.2.7.1 Under the WBST Act and the Rules framed thereunder, for obtaining the declaration forms for availing concessions or exemptions of tax, the dealer has to apply to the concerned AA along with a statement of the declaration forms received on the previous occasion in form 15A. After being satisfied with the particulars furnished in the application for declaration forms and *bonafide* use of the earlier forms, the AA issues declaration forms to the applicant dealer according to their requirement. To guard against the misuse/wrong use of the forms by the errant dealers, a register/database of the forms issued is to be maintained to have a control over the use of forms. Audit scrutiny revealed that no register has been prescribed for keeping record of the declaration forms issued to the dealers by the AAs.

After this was pointed out, the Government stated (October 2008) that they had already developed an electronic data base and that the number of central declaration forms issued to the dealers in West Bengal is available on the site

TINXSYS.com². The reply was silent regarding non-maintenance of a database of forms issued for intra state sales/purchases.

2.2.7.2 Scrutiny in audit revealed that declaration forms were being issued directly to the indenting dealers registered under Kolkata, Salt Lake and Howrah charge offices by the central form section of the Commissionerate on recommendation of the concerned AAs, while Rule 89 of the WBST Rules requires issue of such forms by the AA. The reasons for such deviation from the rules were not furnished to audit though sought for.

After this was pointed out, the Government stated (October 2008) that the supply of declaration forms to the charge offices would lead to the risk of either excess or under stock at the charge level and that sufficient space was an issue at least for present. The reply is not tenable as the Rules require the AAs to issue the forms to the dealers registered under their charges.

The Government may consider prescribing a register to be maintained by the AAs for keeping the details of declaration forms issued to the dealers and making it mandatory to issue the declaration forms through respective charge offices only in compliance with the Rules for better control and monitoring. Besides, they may also consider introducing a database similar to TINXSYS for uploading the details of inter-state declaration forms.

2.2.8 Cross verification of declaration forms not being done

The CCT by a circular issued in April 1970, instructed all the AAs to conduct cross verification of the declaration forms C, EI and EII with the issuing states of Assam, Bihar and Orissa in 10 *per cent* cases and to maintain a prescribed register for this purpose showing memo number and date, registration certificate number, name of state, date of issue of reminder, date of receipts of reports of the state authorities to whom referred and date on which action taken in dealer's file etc. Audit scrutiny revealed that no such instruction was issued for cross verification of declaration forms received from the states other than Bihar, Orissa and Assam. Also, no such register was maintained by any of the charge offices to show that the cross verification was conducted. It was also noticed that though the CCT issued circular in 1970 for cross verification of forms issued by the States of Assam, Bihar and Orissa, yet no periodic report/return was prescribed to be furnished by the circle/charge offices to the higher authorities which weakened the control mechanism and monitoring by the CCT.

Cross verification of the declaration forms C submitted by two tea dealers of Siliguri charge office with the record of forms maintained by the issuing authority revealed that the dealers availed concessional rate of tax at the rate

²

Tax Information Exchange System (TINXSYS) is a centralised exchange of all inter-state dealers spread across the various States and Union territories of India. TINXSYS is an exchange authored by the Empowered Committee of State Finance Ministers (EC) as a repository of inter-state transactions taking place among various States and Union Territories. This will help the Commercial Tax departments of various States and Union Territories to effectively monitor the inter-state trade.

of two *per cent* under the provisions of the CST Act on the basis of declaration forms C obtained from fake dealers as mentioned below:

| (Rupees in lakh) | | | | | |
|--|--|-------------------|------------------------|---|--|
| Name of the dealer and RC No. | Assessment period Date of assessment | Short levy of tax | Minimum penalty u/s 76 | Name of the purchasing dealer and state | Remarks |
| Rajendra and Company [CST No.1627 (SG)C] | <u>2002-03</u> June 2005 | 9.53 | 14.30 | Prasidhi Tea Co., Ahmedabad, Gujarat | Deputy Commissioner of Sales Tax, Circle II, Ahmedabad stated that the purchasing dealer was bogus. |
| Shivshankar Enterprise [CST No.3347 (SG)C] | <u>1999-2000 to 2001-02</u> Between June 2002 and June 2004 | 5.01 | 7.51 | Agarwal Trading Company and Baba Trading Company, Rewari, Haryana | Deputy Excise and Taxation Commissioner (Sales Tax), Rewari, Haryana stated that the purchasing dealer was not registered in the district. |
| Total | | 14.54 | 21.81 | | |

This resulted in evasion of tax of Rs. 14.54 lakh and non-imposition of minimum penalty of Rs. 21.81 lakh.

After this was pointed out, the Government while stating (October 2008) that both the cases had been sent for *suo motu* revision clarified that references were being made by the directorate to other States for confirmation of the forms issued to the dealers in those States and that with the introduction of TINXSYS, the verification had become web-based. The reply is not tenable as from TINXSYS website, it was seen that the position of master data of dealers fed into the website differed from State to State. While some States had uploaded data upto October 2008, in some cases the last date of data uploaded was as back as July 2006. Further verification of the site also revealed that as on 5 November 2008, both Gujarat and Haryana have not fed any data regarding issue and utilisation of the declarations forms by the dealers of those States. Thus, in the interest of revenue of the State, physical cross verification of declaration forms should continue parallel to the web-based checking until the electronic system becomes fully operational.

The Government may consider implementing a sound system of cross verification of declaration forms received from all states through a combination of physical and web-based verification and a review of such cross verifications by the higher authorities.

2.2.9 Absence of provisions for declaration forms in intra state sales made to the Government departments

Under section 17(2)(f) of the WBST Act, a dealer is eligible for concessional rate of tax at the rate of four *per cent* on his intra state sales of goods to the Government or an undertaking established by Government or other specified bodies. However, unlike the inter-state sales to Government departments/bodies, no declaration form or certificate has been prescribed in the WBST Act for availing concessional rate of tax on intra state sale to the

Government or the specified authorities. As a result there was no scope for the AAs to ascertain the genuineness of the claims.

Test check of the records of Medinipur and Taltala charges revealed that in five cases for the assessment periods between March 2002 and March 2004, the dealers claimed concessional rate of tax on sales of Rs. 8.82 crore to the Government departments without mentioning the names of the purchasers. The AAs levied tax of Rs. 35.29 lakh at the concessional rate of four *per cent* though the dealers did not produce any documents in support of their claims of sales to Government departments.

After this was pointed out, the Government admitted the audit observation in one case involving tax of Rs. 16.36 lakh and stated (October 2008) that in the remaining four cases the sales were made to Government/*zila parishad* and the details had been subsequently furnished by the dealers. A report on recovery of tax has not been received (September 2008).

The Government may consider prescribing declaration form for availing concessions in case of intra state sales to Government or other specified bodies.

2.2.10 Absence of time limit for reassessment of evasion cases detected by Bureau of Investigation

The Bureau of Investigation (BOI) headed by the Additional Commissioner under the DCT carries out investigations or inquiry into the cases of alleged or so-called evasion of tax as well as malpractices connected therewith, sends a report to the CCT and assesses or reassesses tax, imposes penalty, determines interest or collects or enforces payment of tax, penalty or interest. Audit scrutiny revealed that no time limit has been prescribed under the Acts and Rules for the reassessment of tax by the BOI.

Scrutiny of the records of the Corporate Division revealed that the BOI conducted investigation in respect of two dealers on allegations of fictitious claims of stock transfer of jute goods. The Additional Commissioner of the BOI sent the investigation reports to the CCT with copies to the Additional Commissioner, the DCCT and the ACCT of the corporate division. Scrutiny of the investigation reports revealed that the BOI detected bogus claims of stock transfer of Rs. 5.13 crore by the dealers on production of fake declaration forms F. The BOI determined tax involvement of Rs. 12.62 lakh but did not reassess the tax and impose any penalty. The AAs or the Commissioner to whom the reports were sent also had not assessed the evaded tax and the penalty till May 2008. This resulted in non-assessment of tax of Rs. 12.62 lakh and non-imposition of minimum penalty of Rs. 18.93 lakh as mentioned below:

| (Rupees in lakh) | | | | | | |
|----------------------------------|------------------------------|---------------------|-----------------------------------|----------------------------|--------------|------------------|
| Name of the dealer | Registration Certificate No. | Assessment period | Date of sending report to the CCT | Value of stock transferred | Tax involved | Penalty involved |
| Gouri Shankar Jute Mills Limited | AW/1141 and 1141(AW) C | 1999-00 and 2001-02 | 23.03.2006 | 108.00 | 4.30 | 6.45 |

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| | | | | | | |
|---------------------------|------------------------|---------|------------|---------------|--------------|--------------|
| The Hooghly Mills Co. Ltd | AW/1096 and 1096(AW) C | 1999-00 | 15.06.2006 | 405.00 | 8.32 | 12.48 |
| Total | | | | 513.00 | 12.62 | 18.93 |

After this was pointed out, the Government admitted the audit observation but stated that the BOI was constituted for detection of tax evasion and not for assessment. The reply is not acceptable since under section 7 (6) of the WBST Act, the BOI may assess or reassess tax, impose penalty, determine interest or collect or enforce payment of tax, penalty or interest in respect of such a case. Besides, no action was also taken by the DCCT/ACCT on the basis of the reports of the BOI for assessing the dealers and realisation of dues.

The Government may consider prescribing a time limit for reassessment of the cases of evasion of tax detected by the BOI.

2.2.11 Internal audit

Internal audit is generally defined as the control of all controls which enables an organisation to assure itself that the prescribed systems are functioning reasonably well. It also provides a reasonable assurance of proper enforcement of law, rules and departmental instructions.

The DCT has an internal audit wing working under the direct supervision of the CCT. Audit noticed that there were no prescribed norms or manualised instructions for the inspections of its various charges, ranges and check posts for conducting the internal audit. The department also failed to produce the details of the number of units audited during the period 2002-03 to 2006-07, despite being requested. The details regarding audit planning, compliance with internal audit observations etc. were also not available with the department. This indicates that the department needed to streamline its internal audit.

After this was pointed out, the Government stated (October 2008) that necessary steps for utilising the officials posted in internal audit wing were being taken.

The Government may take immediate steps to strengthen the internal audit wing at the earliest to ensure strict compliance with the provisions of the Act and the Rules by various wings of the department and to prevent leakage of revenue.

Compliance Deficiencies

2.2.12 Irregular grant of concession and exemption

Under Rule 178 (1) of the WBST Rules read with notice in form 29, for claiming concessions and exemptions, it is mandatory for dealers to furnish a statement of sales in the prescribed format supported by declaration forms. The statement of sales should contain serial number of the declaration form, registration certificate number of the purchasing dealers and the amount of sales covered by the forms. Under the CST Act, the provisions also apply *mutatis mutandis* in respect of declaration forms C, F and H.

Scrutiny of the assessment records of 19 charge offices revealed that in 157 cases of 99 dealers the claims of concessions and exemptions of tax on sales of Rs. 8,893.13 crore were allowed by the AAs during the assessment periods between 1999-2000 and 2004-05, even though the dealers did not produce the statements of sales or produced incomplete statements. This was in contravention of the Rules and resulted in irregular grant of concessions and exemptions of tax of Rs. 305.95 crore as mentioned below:

(Rupees in Crore)

| Sl. No. | Name of charge office | No. of dealers /cases | Sales amount involved | Tax impact | Nature of irregularity |
|---------|-----------------------|-----------------------|-----------------------|------------|--|
| 1. | Asansol | 11/23 | 7417.32 | 167.16 | Statements of form C and D were not furnished in 10 cases. In 13 cases statements of form C and D did not contain name and RC number of the purchasing dealers. |
| 2. | Amratala | 2/2 | 5.22 | 0.50 | Statements of form C and F did not contain RC number of the purchasing/ transferee dealers. |
| 3. | Bhowanipore | 22/23 | 19.68 | 1.41 | |
| 4. | Corporate Division | 6/15 | 812.17 | 108.53 | |
| 5. | Esplanade | 2/3 | 3.83 | 0.29 | |
| 6. | Purulia | 1/3 | 440.83 | 17.39 | Statement of form C did not contain name and RC number of the purchasing dealers. |
| 7. | Park Street | 8/10 | 61.04 | 4.51 | Statements of form 12, 14, C and F did not contain RC number of the purchasing / transferee dealers. |
| 8. | Ballygunge | 4/9 | 41.74 | 1.88 | Statements of form C and F did not contain name and RC number of the purchasing dealers. |
| 9. | Durgapur | 5/10 | 39.88 | 1.32 | In 6 cases statement of form 10 ³ not produced. In 4 cases statement of form F did not contain RC number of the transferee dealers. |
| 10. | Salkia | 4/15 | 18.09 | 0.89 | Date of issue of form C was either not available or it was issued on dates much earlier than the date of actual sales. Statement of form C did not contain RC number of the purchasing dealers. |
| 11. | Shibpur | 9/11 | 11.85 | 0.77 | In 7 cases statement of form 12 was not furnished. In 2 cases statement of form 12 was furnished with incorrect prefix of form serial number/without RC number of purchasing dealers/with <i>ad seriatim</i> form no. of form 13 ⁴ issued from different charge offices. In 2 cases statement of form C did not contain RC number of purchasing dealers. |

³ Form 10 alongwith form 12 is produced by a dealer for claiming exemption of tax on his sales to dealers enjoying tax holiday or deferment/remission of tax.

⁴ Form 13 is produced by a dealer for availing concessional rate of tax on his sales of footwear, furniture, hardware goods, hosiery goods etc. to reselling dealers.

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| | | | | | |
|-------|---------------|--------|----------|--------|---|
| 12. | Colootala | 3/3 | 8.06 | 0.54 | Statements of form C and F were not produced. |
| 13. | Alipur | 8/13 | 6.14 | 0.38 | In 9 cases statements of form C and F did not contain RC number of purchasing dealers. In 4 cases statement of form 12 ⁵ was not furnished. |
| 14. | Baruipur | 6/8 | 3.54 | 0.17 | In 2 cases statement of form 12 was not furnished. In 6 cases statements of form 14 ⁶ and C did not contain name and RC number of the purchasing dealers. |
| 15. | Cossipore | 1/1 | 0.34 | 0.01 | Statement of form C did not contain RC number of purchasing dealers. |
| 16. | Krishna Nagar | 1/1 | 0.48 | 0.04 | |
| 17. | Jorabagan | 3/3 | 0.89 | 0.03 | |
| 18. | Taltala | 2/3 | 0.88 | 0.08 | In 2 cases statement of form C did not contain RC number of purchasing/transeree dealers. In one case statement of form 14 was not furnished. |
| 19. | Posta Bazar | 1/1 | 1.15 | 0.05 | Statements of form 10, 12 and C were not produced. |
| Total | | 99/157 | 8,893.13 | 305.95 | |

The Government admitted the audit observation in four cases involving tax of Rs. 87.54 lakh and stated (October 2008) that in the 59 cases involving tax of Rs. 4.58 crore, the statements had been subsequently collected from the dealers. In the remaining 94 cases involving tax of Rs. 300.49 crore the Government did not furnish any reply.

2.2.13 Irregular grant of exemption on sales of schedule IV goods

Under the WBST Act, goods liable to be taxed only once on the first point of sale in West Bengal are called schedule IV goods. The resale of schedule IV goods, which are shown to the satisfaction of the CCT to have been purchased within West Bengal and have already suffered tax on the first point of sale, are exempt from levy of tax. As per the circular of the CCT of December 1999, the dealers preferring claims of such exemptions would have to furnish purchase documents as proof of their claims. The purchase documents will provide the names and addresses of the selling dealers so that the AAs can verify the payments of tax at the selling dealer's end.

Scrutiny of the assessment records revealed that in 15 charge offices, 66 dealers in 90 cases declared their sales of Rs. 338.54 crore as sales of schedule IV goods purchased within West Bengal and claimed exemption of tax

⁵ Form 12 is produced by a selling dealer for availing concessional rate of tax on his sales of raw materials etc. to manufacturer dealers.

⁶ Form 14 is produced by a selling dealer for availing exemption of tax on his sales immediately prior to export.

thereon. Though the dealers did not produce purchase evidence or produced incomplete purchase evidence, yet the AAs exempted tax of Rs. 24.49 crore on such sales without conducting any verification as required under the circular of December 1999. This resulted in irregular exemption of tax of Rs. 24.49 crore as mentioned below:

| (Rupees in Crore) | | | | | |
|-------------------|---------------|-----------------------|------------------|-------------------|--------------|
| Sl. No. | Charge office | No. of dealers /cases | Assessed between | Turnover involved | Tax exempted |
| 1. | Ballygunge | 7/15 | 6/02 and 3/07 | 42.62 | 10.41 |
| 2. | Shibpur | 4/5 | 10/03 and 3/07 | 22.12 | 2.53 |
| 3. | Taltala | 6/12 | 4/02 and 3/07 | 31.30 | 2.42 |
| 4. | Park Street | 5/5 | 6/04 and 3/07 | 105.77 | 2.24 |
| 5. | Amratala | 9/10 | 12/04 and 3/07 | 21.62 | 1.89 |
| 6. | Siliguri | 4/5 | 5/03 and 3/07 | 41.79 | 1.57 |
| 7. | Posta Bazar | 6/7 | 6/05 and 3/07 | 43.82 | 1.24 |
| 8. | Purulia | 5/6 | 4/02 and 6/05 | 7.47 | 0.94 |
| 9. | Bhowanipore | 3/3 | 5/04 and 9/06 | 5.85 | 0.58 |
| 10. | Jorabagan | 8/11 | 6/03 and 3/07 | 6.21 | 0.24 |
| 11. | Salkia | 1/1 | 6/04 | 4.23 | 0.17 |
| 12. | Colootala | 3/3 | 6/04 and 5/06 | 2.43 | 0.08 |
| 13. | Cossipore | 1/2 | 4/04 and 5/05 | 1.90 | 0.07 |
| 14. | Baruipur | 2/3 | 6/05 and 3/07 | 0.96 | 0.07 |
| 15. | Alipur | 2/2 | 4/02 and 6/06 | 0.45 | 0.04 |
| Total | | 66/90 | | 338.54 | 24.49 |

The Government admitted the audit observation in five cases involving tax of Rs. 31.20 lakh and stated (October 2008) that in 23 cases involving tax of Rs. 1.31 crore, the statements had been collected subsequently from the dealers. In the remaining 62 cases involving tax of Rs. 22.87 crore, the Government did not furnish any reply.

2.2.14 Short levy of tax on disallowed claims of concessions and exemptions

Under the provisions of sales tax laws, in case of disallowance of claims of concessions and exemptions on export sales/inter-state sales/stock transfers, such sales are required to be taxed at the rate of 10 *per cent* or tax leviable on such goods within the state whichever is higher.

2.2.14.1 In Durgapur charge, in two cases of a dealer for the years 2003-04 and 2004-05, the AA disallowed (between June 2006 and March 2007) the claims of concessional rate of tax on inter-state sales of Rs. 198 crore due to non-production of declaration forms C. The AA, however, taxed such sales at the rate of eight *per cent* instead of 10 *per cent*, as required under the CST Act. This resulted in short levy of tax of Rs. 3.96 crore.

2.2.14.2 In Ballygunge charge, a dealer claimed exemption of tax on stock transfer, sales prior to export and export sales totaling Rs. 44.06 crore during the period April 2002 to December 2002. The AA disallowed (December

2004) the claims due to non-production of declaration forms and dispatch evidences, but taxed the sales at the rate of eight *per cent* instead of 10 *per cent* as required under the CST Act. This resulted in short levy of tax of Rs. 88 lakh.

2.2.14.3 In Durgapur circle, the appellate authority disallowed the claims of consignment sales of rice of Rs. 3.63 crore of a dealer, but the sales was taxed at the rate of two *per cent* instead of four *per cent* as required under the CST Act. This resulted in short levy of tax of Rs. 7.26 lakh.

2.2.15 Irregular grant of exemption on stock transfer

Under the CST Act and the Rules made thereunder, a dealer's stock transfer outside the state is exempt from levy of tax on production of declaration in form 'F'. The form should be duly filled in and signed by the principal officer or his agent of the other state as a proof of such stock transfer. A single declaration form 'F' may cover transfer of goods effected during one calendar month. Otherwise, such transfer of goods is liable to be taxed at normal rate applicable to inter-state sale of such goods. The production of form 'F' was made mandatory from June 2002 for claiming exemptions on account of stock transfer. Further, under section 17(2A) of the WBST Act as amended from August 2001, a registered dealer purchasing tea from auction sales in West Bengal at the concessional rate of tax of one *per cent* cannot effect its stock transfer subsequently.

2.2.15.1 Test check of the records revealed that in three cases of three dealers in Corporate Division, Medinipur and Siliguri charges, the claims of stock transfers amounting to Rs. 26.51 crore for assessment periods between 2002-03 and 2003-04 were allowed by the AAs while finalising assessments between June 2005 and June 2006 though the dealers did not produce form 'F' or list of form 'F' in support of their claims. The AAs also did not record any reason for non-production of form 'F' or list of form 'F' in the assessment orders. Hence, such stock transfers were liable to be taxed at the rate of 10 *per cent*. The irregular allowance of exemption on stock transfers resulted in non-levy of tax of Rs. 2.65 crore.

2.2.15.2 Test check of the records revealed that in 14 cases of 11 dealers in Corporate Division and Medinipur circle, the AAs allowed exemption of tax on stock transfers of Rs. 7.38 crore for assessment periods between March 2000 and December 2002 though each single declaration form 'F' produced in support of stock transfers contained transactions of more than one calendar month. This resulted in irregular exemption of tax of Rs. 69.87 lakh.

2.2.15.3 Test check of the records revealed that in two cases of Siliguri charge, the dealers claimed exemption of tax of Rs. 23.99 lakh on stock transfer of tea of Rs. 2.40 crore outside West Bengal after purchasing it from Siliguri Tea Auction Committee paying tax at the concessional rate of one *per cent*. The AA allowed the claims of exemption in contravention of the provision of section 17(2A) of the WBST Act. This resulted in irregular exemption of tax of Rs. 23.99 lakh.

After this was pointed out, the Government admitted (October 2008) the audit observation but did not intimate further action taken.

2.2.16 Non-levy of tax and penalty on fake claims of concession and exemptions

Under Section 76 of the WBST Act, if a dealer has concealed any turnover or furnished incorrect particulars thereof with the intent to reduce the amount of tax payable, the AAs in addition to the tax, may impose penalty which shall not be less than one and half times and not more than thrice the amount of tax that would have been avoided by him. According to instructions (June 1991) of the CCT, where the AA did not initiate penal proceedings in a case, he should record the reasons for not doing so in the assessment order.

Scrutiny of the records revealed that the ACCT, Siliguri detected three cases of two dealers who had claimed remission/concession by producing fake declaration form 'C' and 'F', but did not reassess the tax and impose penalty for evasion of tax as mentioned below:

| (Rupees in lakh) | | | | | |
|---|---|--------------------------------|-------------------|------------------------|--|
| Name of dealer and RC No. | Assessment <u>period</u> Date of assessment | Amount involved in transaction | Short levy of tax | Minimum penalty u/s 76 | Remarks |
| M/s PCM Tea processing (P) Ltd. [CST No. 5227(SG)C] | 2002-03 June 2005 | 48.15 | 13.45 | 20.18 | As per report of the sales tax authorities of Maharashtra, Punjab and Haryana, the declaration form 'C' and 'F' produced by the dealer are fake. Additional Commissioner, Commercial Taxes, Siliguri Zone passed <i>suo motu</i> revision order on September 2007. No reassessment of tax by ACCT, Siliguri charge was done nor was penalty imposed. |
| M/s Jainsons & Bros [CST No. 3502(SG)C] | 2000-01 and 2001-02 June 2003 and June 2004 | 73.85 | 5.79 | 8.69 | The ACST (Admn.) M-79, Jalgaon, Maharashtra declared purchasing dealer M/s Ncha Enterprises as bogus dealer. ACCT, Siliguri charge sent the case to the ACCT, Siliguri Circle for <i>suo motu</i> revision of assessment orders. ACCT, Siliguri Circle did not revise the assessment till April, 2008. |
| Total | | 122.00 | 19.24 | 28.87 | |

This resulted in short levy of tax of Rs. 19.24 lakh and non-imposition of minimum penalty of Rs. 28.87 lakh.

Besides, the ACCT, Siliguri charge did not take action against M/s PCM Tea processing (P) Ltd. which was holding an eligibility certificate for remission of tax under section 41 of the WBST Act for furnishing incorrect particulars as per the provision of rule 135 of the WBST Rules, 1995.

After this was pointed out, the Government admitted (October 2008) the audit observation but did not intimate the action taken.

2.2.17 Conclusion

There were several systemic deficiencies that affected the efficiency and effectiveness of the assessments and collection of revenue. These included absence of a reliable database of concessions and exemptions and the revenue foregone, absence of a system for ascertaining the genuineness and correctness of declaration forms submitted by the dealers for claiming concessions and exemptions of tax on account of intra state and inter-state sales/stock transfer/export sales through cross verification of transactions from the states concerned. There was absence of provision for declaration forms in intra state sales to Government organisations and absence of time limit for reassessment of evasion cases detected by the BOI. The functioning of the internal audit cell and the verification cell needed to be streamlined to increase their effectiveness. Non-compliance with the existing rules and instructions led to leakage of considerable amount of revenue.

2.2.18 Summary of recommendations

The Government may consider implementation of the following recommendations for addressing the system and compliance issues:

- prescribing a system for maintaining a database of concessions and exemptions of sales tax and the revenue foregone on this account;
- prescribing a register for keeping the records of the declaration forms issued to the dealers by the AA and also a register of issue of forms by the Declaration Forms Section for maintenance of charge wise records;
- prescribing a system for ascertaining the genuineness and correctness of declaration forms submitted by the dealers in support of concessions and exemptions of tax through cross verification of transactions from the concerned states; and
- streamlining the functioning of the internal audit wing and the verification cell by prescribing specific targets/norms for carrying out audit/verification.

2.3 Non-levy of tax on goods transported on transit declarations

Under the WBST Act, transportation of goods from one state to another through West Bengal is not liable for taxation. The transporter will make a transit declaration at the entry check post declaring that the goods in transport shall not be sold in West Bengal. He shall also declare the approximate date and the name of the exit check post of West Bengal. In case the transporter fails to report at the declared exit check post within the specified date, it shall be presumed that the goods so transported have been sold in West Bengal. Thereafter, he shall be deemed to be a dealer in West Bengal and will be liable for levy of tax and interest. The above provision continues to be in force *mutatis mutandis* under the WBVAT Act as well. Such transporters are also liable to pay penalty not exceeding 25 and 30 *per cent* of the value of the goods so transported under the WBST Act and the WBVAT Act respectively.

Test check of the records of the Chichira, Phansidewa and Duburdih check posts under Kharagpur, Siliguri and Asansol range offices, audited between November 2007 and May 2008 revealed that in 348 cases, the transporters carrying goods valuing Rs. 82.65 crore entered West Bengal between February 2004 and February 2007 furnishing transit declarations at the entry check post but did not report at the exit check posts till April 2008. The transporters, thus, were liable for assessment of tax and imposition of penalty. However, the AAs did not take any action to cross verify these cases with the exit check posts and assess the tax and impose penalty even after 14 to 41 months from the specified dates of exit, till April 2008. The inaction of the authorities led to non-realisation of tax of Rs. 29.64 crore including penalty.

The cases were reported to the department/Government in June 2008; their reply has not been received.

2.4 Incorrect determination of gross turnover

Under the WBST Act, turnover of sales in relation to any period means the aggregate of the sale price or part of sale price receivable by a dealer, or if a dealer so elects, actually received by the dealer during such period. A dealer is liable to pay tax at the prescribed rate on the amount of such turnover after allowing permissible deductions.

Scrutiny of records of 17⁷ charge offices between October 2003 and November 2007 revealed that while assessing/reassessing 38 cases of 28 dealers between June 2002 and June 2006 for different assessment periods ending between March 2000 and March 2004, the AAs incorrectly determined the gross turnover (GT)/taxable balance (TB) at Rs. 6,345.48 crore instead of Rs. 6,676.79 crore leading to short levy of tax of Rs. 30.29 crore as mentioned below:

⁷ Alipore, Armenian Street, Ballygunge, Barasat, Baruipur, Bhowanipore, Corporate Division (CD 2011 – CD 2020), Corporate Division (CD 2031 – CD 2040), Corporate Division (DCA 1 – DCA 10), Durgapur, Lalbazar, Medinipur, Naren Dutta Sarani, New Market, Postabazar, Purulia and Siliguri.

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| Sl. No. | No. of cases | Short determination of GT/TB Tax effect (Rs. in lakh) | Reasons for the short determination of GT/TB | Reply of the department/Government |
|---------|--------------|---|--|--|
| 1. | 3 | <u>18,190.42</u> 2,262.46 | Non-inclusion of sale of taxable Schedule - IV goods in the GT. | The cases were sent for <i>suo motu</i> revision. |
| 2. | 6 | <u>8,753.28</u> 404.68 | Erroneous calculation of TB | Five cases involving Rs. 400.75 lakh were admitted. In the remaining case involving Rs. 3.93 lakh no reply was furnished. |
| 3. | 16 | <u>5,427.68</u> 317.07 | Irregular exemption of sales from GT not eligible for exemption | In 15 cases involving Rs. 236.21 lakh, the department admitted the audit observation while in the remaining case involving Rs. 80.86 lakh the department did not furnish reply. |
| 4. | 3 | <u>239.70</u> 25.80 | Non-inclusion of difference between sales figures of returns and trading accounts/ledgers | In all the three cases the department admitted audit observation. Further development has not been received. |
| 5. | 2 | <u>56.58</u> 6.77 | The opening stock figure was Rs. 56.58 lakh less than closing stock of previous year decreasing the sales. | In one case involving Rs. 37,000 the department admitted audit observation and in the remaining case involving Rs. 6.40 lakh did not furnish reply. |
| 6. | 1 | <u>357.58</u> 4.11 | Non-inclusion of sale value of DEPB [*] | The department admitted the audit observation. Further development has not been received. |
| 7. | 1 | <u>35.41</u> 2.01 | Non-inclusion of "processing charge" received | The department admitted the audit observation. |
| 8. | 1 | <u>26.61</u> 2.66 | Non-inclusion of "income from street branches" | The department did not furnish any reply. |
| 9. | 1 | <u>12.83</u> 1.63 | Short disclosure of sale value | The department admitted the audit observation. Further development has not been received. |
| 10 | 3 | <u>18.31</u> 1.62 | Excess allowance of claim of credit note | Two cases involving Rs. 89,000 were admitted. In the remaining case involving Rs. 73,000, the department stated that rectification of accounts had been carried out subsequently by the dealer. However, the position of reassessment has not been reported. |
| 11 | 1 | <u>12.20</u> 0.55 | Non-inclusion of sale value of scraps | The department admitted the audit observation. |
| | 38 | <u>33,130.60</u> 3,029.36 | | |

The cases were reported to the Government between November 2003 and November 2007, followed by reminders issued upto January 2008; their reply has not been received (September 2008).

^{*} Duty entitlement pass book.

2.5 Non levy of penalty on evaded tax

Under the WBST Act, if a dealer has concealed any turnover or furnished incorrect particulars thereof with the intent to reduce the amount of tax payable by him, the AAs in addition to tax, may impose penalty which shall not be less than one and half times and not more than thrice the amount of tax that would have been avoided by him. According to the instructions (June 1991) of the CCT, West Bengal, where the AA did not initiate penal proceedings in a case, he should record the reasons for not doing so in the assessment order.

Scrutiny of the records of seven⁹ charge offices between March 2005 and August 2007 revealed that while assessing 27 cases of 25 dealers for assessment periods ending between March 2001 and March 2004, the AAs levied tax of Rs. 5.02 crore on concealed sales/purchases and sales to fake dealers of Rs. 85.42 crore but did not levy minimum penalty of Rs. 7.53 crore nor recorded reasons in the assessment orders for not doing so.

After the cases were pointed out, the department admitted the audit observations in 10 cases involving Rs. 2.30 crore. In nine cases involving Rs. 26.61 lakh, it was stated that the consignee dealers were valid/not fake. The reply is not tenable as verification of the records available with the department indicates that those dealers had already been declared non-existent by the Sales Tax Department of the concerned States. In the remaining eight cases involving Rs. 4.97 crore, the department did not furnish reply.

The cases were reported to the Government between May 2006 and November 2007, followed by reminders issued upto February 2008; their reply has not been received (September 2008).

2.6 Undue benefit to the dealers due to irregular adjustment of excess tax

Under the provisions of the WBST Act, if a dealer collects any amount in excess of the amount of tax payable by him, he should deposit such excess amount into the Government account within 30 days from the date of collection under intimation to the CCT for arranging refund to the purchaser and under no circumstances, the same could be allowed to be adjusted against the assessed dues of the dealer at the time of assessment. In case of failure to deposit the excess tax collected, the dealer has to pay penalty not less than the amount of tax so collected and not exceeding twice the amount of tax.

Scrutiny of the records of four¹⁰ charge offices between May 2005 and March 2007 revealed that during the assessment periods ending between March 2000 and March 2002, 14 dealers in 18 cases collected tax of Rs. 26.74 crore against payable tax of Rs. 25.38 crore resulting in excess collection of tax of Rs. 1.36 crore. The AAs while assessing those cases between April 2002 and

⁹ Ballygunge, Corporate Division (CD 101 – CD 110), Corporate Division (CD 2011 – CD 2020), Corporate Division (CD 2031 – CD 2040), Kadamtala, Park Street and Purulia.

¹⁰ Corporate Division (CD 101 – CD 110), Corporate Division (CD 2011 – CD 2020), Corporate Division (CD 2031 – CD 2040) and Corporate Division (DCA 1 – DCA 10).

April 2005, allowed the dealers to adjust the excess collected tax against their assessed dues in contravention of the provision of the Act. This resulted in irregular adjustment of excess tax of Rs. 1.36 crore and non-imposition of minimum penalty of Rs. 1.36 crore.

After the cases were pointed out, the replies of the department were as mentioned below:

- In two cases involving Rs. 11.75 lakh, the department accepted the audit observation;
- In one case involving Rs. 3.96 lakh, it was stated that excess payment of Rs. 2.85 lakh arose due to payment of Rs. 12 lakh on *ad hoc* basis and the amount was refunded after taking sanction from the appropriate authority. The reply was not tenable as collection of tax as per original return was more than actual payment made by the dealer;

In 15 cases involving Rs. 1.20 crore, the department did not furnish any reply.

The cases were reported to the Government between May 2006 and November 2007, followed by reminders issued upto February 2008; their reply has not been received (September 2008).

2.7 Non/short levy of interest

Under the WBST Act, a dealer who

- furnishes return in respect of any period by the prescribed date or thereafter but fails to make full payment of tax payable in respect of such period by the prescribed date; or
- fails to furnish a return in respect of any period before assessment and on such assessment it is found that full amount of tax payable for such period has not been paid by him by such prescribed date; or
- fails to make payment of any tax demanded after assessment by the date specified in the demand notice,

is liable to pay simple interest for each calendar month of default. In case of non-payment, interest is to be included in the demand upto the month preceding the month of initiation of certificate proceedings. This provision is also applicable in case of assessments completed under the CST Act.

Scrutiny of records of 19¹¹ charge offices between June 2005 and August 2007 revealed that while assessing/initiating certificate proceedings between May 2003 and June 2007 in 64 cases of 57 dealers for assessment periods ending between March 1995 and March 2005, the AAs levied interest of Rs. 12.33 lakh instead of Rs. 1.90 crore realisable for non/delayed payment of tax of Rs. 6.37 crore resulting in non-levy of interest of Rs. 1.78 crore.

After the cases were pointed out, the replies of the department were as mentioned below:

¹¹ Alipore, Barasat, Budge Budge, Chinabazar, College Street, Corporate Division (CD 2011 – CD 2020), Corporate Division (CD 2031 – CD 2040), Corporate Division (DCA 1 – DCA 10), Diamond Harbour, Durgapur, Kadamtala, Lalbazar, Netaji Subhash Road, Park Street, Postabazar, Rajakatra, Raiganj, Siliguri and Taltala.

- In 40 cases involving Rs. 1.40 crore, the department admitted the audit observation;
- In one case involving Rs. 3.10 lakh, it was stated (September 2006) that the dealer was eligible for remission. However, records showed that the dealer's claim for remission of tax had been disallowed in June 2005;
- In one case involving Rs. 2.30 lakh, it was stated that the actual short payment was Rs. 1.40 lakh. The reply is not tenable as total admitted tax was Rs. 4.79 crore against which the dealer paid Rs. 4.71 crore resulting in short payment of Rs. 7.81 lakh and consequent short levy of interest of Rs. 2.30 lakh;
- In one case involving Rs. 1.16 lakh, it was stated that the dealer was assessed *ex parte* and interest is not leviable on the tax so assessed. The reply is not tenable since the dealer furnished part return for the assessment year and interest was leviable on the due assessed tax.
- In the remaining 21 cases involving Rs. 30.87 lakh, the department did not furnish any reply.

All the cases were reported to the Government between July 2005 and November 2007, followed by reminders issued upto February 2008; their reply has not been received (September 2008).

2.8 Non/short levy of surcharge and additional surcharge

Under the WBST Act, a dealer has to pay surcharge of 10 *per cent* on the amount of sales tax payable by him with effect from May 1995 and additional surcharge of five *per cent* on the amount of tax payable with effect from May 1997. The surcharge and additional surcharge were abolished from April 2000 but re-introduced from April and August 2002 respectively.

2.8.1 Scrutiny of the records of five¹² charge offices between August 2006 and May 2007 revealed that while assessing/reassessing seven cases of seven dealers between May 2005 and March 2007 for different assessment periods ending between March 2000 and March 2005, the AAs did not levy surcharge and additional surcharge. This resulted in non-levy of surcharge and additional surcharge of Rs. 19.32 lakh.

After the cases were pointed out, the department between March and August 2007 accepted the audit observation in four cases involving Rs. 15.88 lakh and in the remaining three cases involving Rs. 3.44 lakh did not furnish reply. Further developments have not been reported (September 2008).

2.8.2 Scrutiny of the records of five¹³ charge offices between July 2006 and May 2007 revealed that while assessing six cases of six dealers between June 2002 and May 2006 for different assessment periods ending between March 2000 and March 2004, the AAs levied surcharge and additional surcharge of

¹² Alipore, Kadamtala, Lalbazar, Medinipur and Park Street.

¹³ Budge Budge, Corporate Division (DCA 1 – DCA 10), Lalbazar, Medinipur and Park Street.

Rs. 30.84 lakh instead of Rs. 67.60 lakh. This resulted in short levy of surcharge and additional surcharge of Rs. 36.76 lakh.

After the cases were pointed out, the department between September 2006 and May 2007 admitted audit observations in four cases involving Rs. 32.50 lakh and in the remaining two cases involving Rs. 4.26 lakh did not furnish reply. Further developments have not been received (September 2008).

The cases were reported to the Government between December 2006 and August 2007, followed by reminders issued upto December 2007; their reply has not been received (September 2008).

2.9 Short realisation of tax due to excess credit

Under the WBST Act, a dealer is liable to pay admitted tax on the basis of self assessment at the time of furnishing the returns of his turnover. The amount of tax so paid is adjusted against the tax assessed at the time of final assessment.

Scrutiny of the records of three¹⁴ charge offices between April 2004 and August 2006 revealed that while assessing four cases of three dealers between June 2003 and August 2005 for assessment periods ending between March 2001 and March 2004, the AAs assessed tax including penalty and interest of Rs. 30.05 crore but adjusted an amount of Rs. 28.97 crore instead of Rs. 28.50 crore deposited as admitted tax by the dealers. This resulted in short realisation of tax of Rs. 47.31 lakh.

After the cases were pointed out, the department admitted the audit observations in all the four cases. A report on further development has not been received (September 2008).

The cases were reported to the Government between July 2004 and June 2007, followed by reminders issued upto December 2007; their reply has not been received (September 2008).

2.10 Non/short levy of purchase tax

Under the WBST Act, a dealer engaged in manufacture of goods is liable to pay purchase tax at the rate of four *per cent* on all purchases from unregistered dealers intended for direct use in manufacture of goods for sale in West Bengal. A registered dealer, who is not a manufacturer, is also liable to pay purchase tax on all purchases from unregistered dealers on sale of such goods within the State. The dealers making such purchases shall furnish annexure 'P' with the return indicating therein the taxable specified purchase price (TSPP) and the tax payable.

Scrutiny of records of eight¹⁵ charge offices between February 2006 and May 2007 revealed that in assessing/reassessing 16 cases of 14 dealers between April 2004 and October 2006 for assessment periods ending between March 2000 and March 2004, the AAs incorrectly assessed taxable purchase price as Rs. 35.63 crore instead of Rs. 42.56 crore due to short assessment of TSPP

¹⁴ Barasat, Corporate Division (DCA 1 – DCA 10) and Park Street.

¹⁵ Alipore, Asansol, Barasat, Barrackpore, Corporate Division (CD 2011 – CD 2020), Corporate Division (CD 2031 – CD 2040), Park Street and Postabazar.

vis-à-vis those admitted by the dealers; the TSPP was considered 'nil' though documents of registered purchase was not produced and import was not supported by way bill. This resulted in underassessment of taxable purchase price of Rs. 6.93 crore and consequent non-levy of purchase tax of Rs. 42.88 lakh.

After the cases were pointed out, the replies of the department were as mentioned below:

- In six cases involving Rs. 12.22 lakh, the department accepted the observation;
- In one case involving Rs. 24.73 lakh, it was stated that the dealer had additional business places at Vishakhapatnam and Kandla in addition to his main business place at Kolkata and the total purchase enters the customs bonded warehouse at Kolkata from where it was transferred to the customs bonded warehouse located at other places of business and as such were not recorded in the statement of way bill. The reply was not tenable since the entire purchase made in Kolkata from outside the State of West Bengal should enter into the State and must be supported by way bill;

In the remaining nine cases involving Rs. 5.93 lakh, the department did not furnish any reply.

The cases were reported to the Government between April 2006 and November 2007, followed by reminders issued upto January 2008; their reply has not been received (September 2008).

2.11 Mistake in computation of tax

Under the WBST Act, tax, surcharge and additional surcharge are to be levied at the rate applicable from time to time along with interest and penalty, if any, on the goods/commodities sold.

Scrutiny of the records of six¹⁶ charge offices between March 2006 and March 2007 revealed that while assessing/reassessing eight cases of eight dealers between June 2004 and June 2006 for assessment periods ending between March 1999 and March 2004, the AAs assessed tax including surcharge and additional surcharge at Rs. 69.59 lakh instead of Rs. 1.10 crore due to mistake in computation. This resulted in short levy of tax including surcharge and additional surcharge of Rs. 40.69¹⁷ lakh.

After the cases were pointed out, the department accepted the audit observations in five cases involving Rs. 28.30 lakh. A report on further development in these cases and replies in the remaining three cases involving Rs. 12.39 lakh have not been received (September 2008).

¹⁶ Baruipur, Corporate Division (CD 2011 – CD 2020), Corporate Division (CD 2031 – CD 2040), Park Street, Radhabazar and Siliguri.

¹⁷ The difference of tax computable and tax computed comes to Rs. 40.41 lakh. The difference of Rs. 28,000 is due to conversion of computable tax of Rs. 110.28 lakh into Rs. 1.10 crore.

The cases were reported to the Government between December 2006 and November 2007, followed by reminders issued upto January 2008; their reply has not been received (September 2008).

2.12 Allowance of concessions/exemptions without evidence

Under section 46A of the WBST Act and the court decision mentioned thereunder, assessment cases of all the dealers for the periods ending March 1998 and March 1999, having turnover below Rs. 3 crore, would be deemed to have been completed on 31 December 1999 subject to the condition that the dealers shall submit to the AAs by 31 March 2001 all the declaration forms and certificates necessary for claiming concessions/exemptions. In case of failure to do so, they were liable to pay the balance tax in respect of sales not supported by declaration forms or the cases were liable to be reopened within four years i.e. before December 2003.

Scrutiny of records of Siliguri charge revealed that in nine cases of four dealers for the periods 1997-98 and 1998-99, the AAs allowed (December 1999) concessions/exemptions of Rs. 34.20 lakh on sales of Rs. 10.90 crore though the dealers did not produce the declaration forms and certificates in support of the claim. This irregular allowance of concessions/exemptions led to loss of revenue of Rs. 34.20 lakh as the cases became barred by limitation of time in December 2003.

The cases were reported to the department and the Government in June 2008; their reply has not been received (September 2008).

2.13 Underassessment of tax due to irregular allowance of tax holiday

Under the WBST Act and Rules made thereunder, a registered dealer who possesses a valid certificate of eligibility (EC) in the prescribed form and manufactures goods in his newly set up industrial unit¹⁸ in West Bengal enjoys tax holiday (exemption) for a prescribed period on sale of the goods mentioned in the EC.

Scrutiny of the records of Netaji Subhash Road charge in May 2007 revealed that while assessing one case of a dealer in June 2006 for assessment period ending in March 2004, the AA allowed claim of Rs. 2.03 crore as tax holiday though the unit ceased to be covered under the purview of newly set up industrial unit. This resulted in irregular allowance of tax holiday and underassessment of tax of Rs. 23.34 lakh.

The case was reported to the department and the Government in July 2007, followed by reminders issued upto December 2007; their reply has not been received (September 2008).

¹⁸

An industrial unit in which the amount of investment on plant and machinery including the value of those obtained on hire, lease, rent or loan but excluding the value of land, building and the cost of generator and moulds does not exceed Rs. 35 lakh.

2.14 Incorrect exemption of tax due to misclassification of goods

Under the sales tax laws, sales of goods of special importance in inter-state trade and commerce are exempt from tax under section 17 (3) (a) (iv) of the WBST Act. Under section 21(1)(a) of the Act, the value of the declared goods used in works contract by a dealer is to be deducted from his gross turnover and is exempt from taxation.

2.14.1 Test check of records of Ballygunge charge in January 2008 revealed that in two cases of a dealer, the AA while finalising the assessments in June 2005 and June 2006 for the years 2002-03 and 2003-04, allowed deductions under section 17 (3) (a) (iv) of the WBST Act amounting to Rs. 3.97 crore being sale of declared goods. Scrutiny, however, revealed that the sales were of mobile phone sets/accessories which do not fall under the category of declared goods and attract tax at the rate of four *per cent*. Thus, misclassification of goods resulted in incorrect exemption of tax of Rs. 15.86 lakh.

2.14.2 Scrutiny of the appeal case records in Durgapur Circle in January 2008 revealed that the AA while completing the assessment of a dealer in February 2004 for the year 1999-2000 included bitumen component amounting to Rs. 2.67 crore in the contractual transfer price and taxed it. However, on appeal the appellate authority excluded the value of bitumen from the transfer price and exempted it from taxation, though bitumen does not fall under the category of declared goods. This resulted in incorrect exemption of tax of Rs. 10.68 lakh due to misclassification of goods.

The cases were reported to the department and the Government in June 2008; their reply has not been received (September 2008).

2.15 Non/short raising of demand

Under the provisions of the WBST Act, the AA shall serve a notice of demand in the prescribed form to the dealer after final assessment showing, *inter alia*, the amount of tax, interest, penalty etc. and the date of payment of such dues.

Scrutiny of the records of five¹⁹ charge offices between June 2006 and May 2007 revealed that while assessing/reassessing five cases of five dealers between June 2002 and June 2006 for assessment periods ending between March 2000 and March 2004, though the AAs assessed tax including interest and penalty of Rs. 1.24 crore, but in four cases demand was raised short by Rs. 23.20 lakh and in the remaining case did not raise demand for tax of Rs. 1.37 lakh. This resulted in non-realisation of Rs. 24.57 lakh.

After the cases were pointed out, the department admitted the audit observations in four cases involving Rs. 14.96 lakh. In one case involving Rs. 9.61 lakh, the department did not furnish any reply. A report on further development has not been received (September 2008).

The cases were reported to the Government between March and November 2007, followed by reminders issued upto January 2008; their reply has not been received (September 2008).

¹⁹ Baruipur, Corporate Division (DCA 1 – DCA 10), Corporate Division (CD 2011 – CD 2020), Netaji Subhash Road and Park Street.

2.16 Incorrect determination of contractual transfer price

Under the WBST Act, any transfer of property in goods involved in the execution of works contract shall be deemed to be a sale by the person making such transfer attracting levy of tax at the prescribed rates on such contractual transfer price (CTP).

Scrutiny of records of two²⁰ charge offices between November 2005 and September 2006 revealed that while assessing four cases of four dealers between December 2004 and June 2005 for assessment periods ending between March 2001 and March 2003, the AAs determined CTP as Rs. 5.58 crore instead of Rs. 7.14 crore due to non-inclusion of the value of taxable materials involved in the execution of works contract. This resulted in non/short determination of CTP by Rs. 1.56 crore with consequential tax effect of Rs. 12.95 lakh including surcharge and additional surcharge.

After the cases were pointed out, the department admitted the audit observations in three cases involving Rs. 10.59 lakh and stated that proposals for revision of the assessment orders had been sent to the appropriate authority. In the remaining case involving Rs. 2.36 lakh, the department did not furnish reply.

The cases were reported to the Government between July and December 2006, followed by reminders issued upto January 2008; their reply has not been received (September 2008).

2.17 Application of incorrect rate of tax

Under the WBST Act, the rate of tax depends on the nature of sales and also on the nature of goods/commodities sold. Under the CST Act, inter-state sales supported by declaration forms are taxable at the rate of four *per cent*. Otherwise, tax is leviable at the rate of ten *per cent* or the rate of tax applicable in the concerned State, whichever is higher, and in case of declared goods, double the rate of tax.

Scrutiny of the records of 12²¹ charge offices between December 2004 and August 2007 revealed that while assessing 23 cases of 18 dealers between June 2003 and June 2006 for assessment periods ending between March 2001 and March 2005, the AAs short levied tax of Rs. 90.27 lakh inclusive of surcharge and additional surcharge due to application of incorrect rate of tax as mentioned below:

²⁰ Corporate Division (201 – 210) and Park Street.

²¹ Alipore, Asansol, Baruipur, Belgachia, Budge Budge, Corporate Division (CD 2011 – CD 2020), Corporate Division (CD 2031 – CD 2040), Malda, Park Street, Purulia, Radhabazar and Siliguri.

| (Rupees in lakh) | | | | | | |
|--------------------------|--|-----------------------------|---|--|--|---|
| Sl. No. | Item Commodity code No. | No. of dealers/ cases | Periods of assessment/ Dates of assessment | Rate leviable/ Rate levied (per cent) | Short levy of tax (including surcharge and additional surcharge) | Nature of Irregularity |
| Intra state Sales | | | | | | |
| 1. | <u>Stone Chips</u> 9999999 | 1/1 | March 2003/ May 2005 | 10/4 | 0.57 | Sale of stone chips was taxed at the rate leviable for coal instead of higher general rate applicable. |
| 2. | Toothpaste, tooth powder, mouthwash etc. 1911200 | 2/3 | March 2003/ June 2005 | 17/10-15 | 33.74 | Sale of toothpaste, tooth powder, mouthwash etc. (whether medicated or not) was taxed at the rate leviable for cream, paste, body powder etc. under drugs and medicines. |
| 3. | RCC ²² pipe, septic tank, manhole cover etc. 2211200 | 1/4 | Between March 2002 and March 2005/ Between June 2004 and August 2005 | 12/10 | 1.11 | Sale of RCC pipe was taxed at general rate instead of higher rate applicable. |
| 4. | Rubber solution 1717000 | 1/1 | March 2001/ June 2003 | 12/10 | 0.76 | Sale of rubber solution was taxed at general rate instead of higher rate applicable. |
| 5. | Aluminum wire 2310100 | 1/2 | March 2001 and March 2002/ June 2003 and June 2005 | 5/4 | 1.08 | Sale of aluminium wire was taxed at the rate applicable to aluminium caps used for sealing bottles. |
| 6. | <u>Paper Board</u> 1611203 | 1/1 | March 2001/ June 2003 | 8/7 | 1.47 | Sale of paper board was taxed at lower rate instead of higher rate applicable. |
| 7. | Sanitary ware fittings other than PVC ²³ goods 1717300 | 1/1 | March 2002/ June 2004 | 15/12 | 0.42 | Sale of sanitary ware fittings other than PVC goods was taxed at flat rate of 12 per cent instead of at higher rate of 15 per cent applicable during first four months of the year. |
| 8. | Motor parts etc. 2010301 | 1/1 | March 2003/ June 2005 | 8/4 | 26.80 | Tax on sale of motor parts etc. was erroneously calculated at lower rate. |

²² Reinforced cement concrete.

²³ Poly vinyl chloride.

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| | | | | | | |
|--------------------------|---|--------------|----------------------------------|-------|--------------|--|
| 9. | <u>Machinery</u> 2611900 | 1/1 | March 2003/ June 2005 | 8/4 | 2.66 | Sale of machinery was taxed at lower rate instead of higher rate applicable. |
| 10. | <u>Rubber cloth</u> 1717100 | 1/1 | March 2003/ June 2005 | 10/4 | 0.74 | Sale of rubber cloth was taxed at lower rate instead of higher rate applicable. |
| 11. | <u>Copper wire</u> 2010600 | 1/1 | March 2003/ June 2005 | 8/5 | 5.14 | Sale of copper wire was taxed at the rate leviable for non-ferrous item instead of the applicable rate. |
| Inter-state Sales | | | | | | |
| 12. | <u>Air conditioner</u> 1710100 | 1/1 | March 2004/ June 2006 | 12/10 | 0.74 | Sale of air conditioner, refrigerator, colour TV, washing machine and microwave oven was taxed at lower general rate instead of higher rates applicable. |
| 13. | <u>Refrigerator</u> 1716900 | | | 15/10 | | |
| 14. | <u>Colour TV</u> 1717900 | | | 15/10 | | |
| 15. | <u>Washing Machine</u> 1718900 | | | 15/10 | | |
| 16. | <u>Microwave Oven</u> 2010100 | | | 12/10 | | |
| 17. | <u>Motor launches and Motor boats</u> 2811600 | 1/1 | March 2004/ June 2006 | 12/10 | 0.96 | Sale of motor launches and motor boats was taxed at lower general rate instead of the higher rate applicable. |
| 18. | <u>Umbrella, spare parts, components thereof</u> 1718000 | 1/1 | March 2003/ March 2004 | 10/3 | 4.07 | Sale of umbrella and spare parts and components thereof not supported by declaration forms were taxed at lower rate instead of the higher rate applicable. |
| 19. | <u>Jute goods</u> 1714900 | 1/1 | September 2002/ December 2004 | 10/8 | 9.08 | Sale of jute goods not supported by declaration forms were taxed at lower rate treating it as declared goods instead of the higher rate applicable. |
| 20. | <u>Cement</u> 2210500 | 1/1 | March 2004/ June 2006 | 15/10 | 0.44 | Sale of cement was taxed at lower rate instead of the higher rate applicable. |
| 21. | <u>Tea</u> 1211000 | 1/1 | March 2003/ June 2005 | 10/8 | 0.49 | Sale of tea not supported by declaration forms was taxed at lower rate instead of the general rate applicable. |
| | Total | 18/23 | | | 90.27 | |

After the cases were pointed out, the department accepted the audit observations in 15 cases involving Rs. 85.04 lakh. Further developments in these cases and replies in the remaining eight cases involving Rs. 5.23 lakh have not been received (September 2008).

The cases were reported to the Government between January 2005 and November 2007, followed by reminders issued upto January 2008; their reply has not been received (September 2008).

2.18 Underassessment of tax due to incorrect deduction

Under the WBST Act and the Rules made thereunder, in determining the taxable turnover of a dealer, a deduction on account of tax collected by him is allowable from the aggregate of sales turnover in accordance with the prescribed formula²⁴. The Commissioner, Commercial Taxes (CCT), West Bengal reiterating the provisions in a circular in December 1998, instructed all the AAs to restrict the deduction to the amount of sales tax deposited and included in the turnover by the dealers. This provision is also applicable to the assessments made under the CST Act.

Scrutiny of the records of 10²⁵ charge offices between February 2005 and September 2007 revealed that while assessing/reassessing 31 cases of 26 dealers between May 2003 and March 2007 for assessment periods ending between March 1999 and March 2005, the AAs allowed deduction of Rs. 456.37 crore against actual collection of tax by the dealers of Rs. 450.40 crore as shown in the returns. The excess allowance of deduction of Rs. 5.97 crore by the AAs resulted in short levy of tax of Rs. 57.53 lakh including surcharge and additional surcharge.

After the cases were pointed out, the department accepted the audit observations in 22 cases involving Rs. 38.54 lakh. Further developments in these cases and replies in the remaining nine cases involving Rs. 18.99 lakh have not been received (September 2008).

The cases were reported to the Government between March 2006 and November 2007, followed by reminders issued upto February 2008; their reply has not been received (September 2008).

2.19 Incorrect allowance of concessional rate of tax

Under the WBST Act and the Rules made thereunder, a dealer is eligible for concessional rate of tax for sales of goods to registered resellers or manufacturing dealers/Government departments, if such sales are supported by prescribed declaration forms or certificate furnished by such purchasing dealers/Government departments. Further, as per the CST Act, inter-state sales of goods are also exigible to tax at the concessional rate subject to production of prescribed form C and D by the selling dealers.

²⁴
$$\frac{\text{Rate of tax} \times \text{the balance of gross turnover of sales after making deduction therefrom under clause (a)}}{100 + \text{rate of tax}}$$

²⁵ Barasat, Baruipur, Corporate Division (CD 201 - CD 210), Corporate Division (CD 301 - CD 310), Corporate Division (CD 2031- CD 2040), Corporate Division (DCA 1 - DCA 10), Durgapur, Kadamtala, Park Street and Purulia.

Scrutiny of records of eight²⁶ charge offices between November 2005 and May 2007 revealed that while assessing/reassessing 12 cases of 12 dealers between November 2002 and June 2006 for assessment periods ending between March 2000 and March 2004, the AAs levied tax at concessional rates ranging between one and four *per cent* instead of rates ranging between four and 17 *per cent* on the turnover of Rs. 9.50 crore. Levy of tax at concessional rate in these cases was incorrect as the sales were either not supported by the requisite declaration forms or not made to registered dealers/Government organisations. In three cases, statements supporting the claim for concessional rate of tax included sales prior to the period of assessment/date of purchase order. Allowance of incorrect concessional rate resulted in short levy of tax of Rs. 54.72 lakh.

After the cases were pointed out, the department accepted the audit observations in five cases involving Rs. 12.44 lakh. Further developments in these cases and replies in the remaining seven cases involving Rs. 42.28 lakh have not been received (September 2008).

All the cases were reported to the Government between January 2006 and November 2007, followed by reminders issued upto January 2008; their reply has not been received (September 2008).

2.20 Revenue foregone due to assessment becoming barred by limitation of time

Under the WBST Act, reassessment in pursuance of an order of the appellate authority shall be made by the AA within two years from the date of the appellate order, otherwise the case becomes barred by limitation of time.

Scrutiny of the records of two²⁷ charge offices between October 2005 and February 2007 revealed that six appeal petitions of four dealers under the WBST and the CST Acts for assessment periods ending between March 2000 and March 2002 were disposed of by the appellate authority between June 2003 and November 2004. But reassessments as directed by the appellate authorities were not completed as a result of which the cases became barred by limitation of time. This resulted in foregoing of revenue of Rs. 54.02 lakh.

After the cases were pointed out, the department in February 2008 admitted the audit observation in one case involving Rs. 12.07 lakh and stated that proposal for *suo motu* revision had been sent to the appropriate authority. In the remaining five cases involving Rs. 41.95 lakh, the department did not furnish reply.

The cases were reported to the Government between December 2005 and November 2007, followed by reminders upto January 2008; their reply has not been received (September 2008).

²⁶ Baruipur, College Street, Corporate Division (CD 2011 – CD 2020), Corporate Division (CD 2031 – CD 2040), Corporate Division (DCA 1 – DCA 10), Kadamtala, Serampore and Siliguri.

²⁷ Corporate Division (CD 2011 – CD 2020) and New Market.

2.21 Incorrect exemption on account of export sales

Under the CST Act, sales of goods made in the course of export out of India are exempt from tax if such sales are supported by proper evidence of export. Sales not supported by necessary evidence are to be taxed at the prescribed rates treating these as sales in the course of inter-state trade.

Scrutiny of the records in three²⁸ charge offices and Kolkata (South) circle between June 2006 and May 2008 revealed that in assessing/reassessing six cases of six dealers between June 2003 and June 2006 for assessment periods ending between March 2000 and March 2004, the AAs allowed exemption on account of export sales of Rs. 178.98 crore instead of Rs. 165.10 crore. Allowance of incorrect exemption of export sales of Rs. 13.88 crore resulted in underassessment of tax of Rs. 1.11 crore as mentioned below:

| (Rupees in crore) | | | | |
|-------------------|----------------------|-------------------------------|------------------------|--|
| Sl. No. | No. of dealers/cases | Amount of incorrect exemption | Underassessment of tax | Nature of irregularity |
| 1. | 2/2 | 0.76 | 0.05 | Dates of bill of lading were prior to the dates of bill of invoice |
| 2. | 1/1 | 11.65 | 0.93 | Exemption was allowed without any evidence in support of claim. |
| 3. | 1/1 | 0.99 | 0.10 | Export in excess of claim preferred was allowed. |
| 4. | 1/1 | 0.43 | 0.03 | Claim pertaining to pre-assessment period was allowed. |
| 5. | 1/1 | 0.05 | 0.004 | Claim not supported by customs clearance certificate |
| Total | 6/6 | 13.88 | 1.11 | |

After the cases were pointed out, the department accepted the audit observations in four cases involving Rs. 7.53 lakh. Further developments in these cases and replies in the remaining two cases involving Rs. 1.03 crore have not been received (September 2008).

The cases were reported to the Government between June and November 2007, followed by reminders issued upto January 2008; their reply has not been received (September 2008).

2.22 Incorrect exemption on account of stock transfer

Under the CST Act and the Rules made thereunder, a dealer claiming exemption from sales tax on goods transferred outside the state otherwise than by sale is liable to furnish declarations in form 'F' duly filled in and signed by the principal officer or his agent of the other place of business as a proof of transfer along with the evidence of despatch. A single declaration is required to cover transfer of goods during a calendar month. Failure to comply with this procedure renders the transfer of goods liable to tax at the normal rate.

Scrutiny of records of nine²⁹ charge offices between March 2006 and May 2007 revealed that while assessing/reassessing 28 cases of 28 dealers between

²⁸ Corporate Division (CD 2011 – 2020), Corporate Division (DCA 1 – DCA 10), and Park Street.

²⁹ Baruipur, Corporate Division (CD 2011 – CD 2020), Corporate Division (CD 2031 – CD 2040), Corporate Division (DCA 1 – DCA 10), Lalbazar, Malda, Medinipur, Park Street and Siliguri.

December 2002 and September 2006 for assessment periods ending between March 1999 and March 2004, the AAs allowed exemption on account of transfer of goods to the branches/agents outside the State for Rs. 241.64 crore.

Audit scrutiny revealed that in 19 cases involving transfer of goods of Rs. 4.90 crore, single 'F' form covered transactions beyond one calendar month. In four cases involving transfer of goods of Rs. 3.07 crore, the transaction on which exemptions were allowed by the AAs were not related to the periods of assessment. In three cases involving transfer of goods of Rs. 2.65 crore, the exemptions allowed were not supported by 'F' forms. In one case, transfer of goods of Rs. 39.80 lakh was made to a non-existent dealer and in the remaining case, tax was not levied on the disallowed portion of transfer of goods of Rs. 2.45 crore. Thus, incorrect allowance of exemption on transfer of goods valued at Rs. 13.46 crore resulted in underassessment of tax of Rs. 1.09 crore.

After the cases were pointed out, the replies of the department were as mentioned below:

- In 12 cases involving Rs. 41.84 lakh, the department admitted the audit observations;
- In one case involving Rs. 1.15 lakh, it was stated that there was no financial involvement during the period underassessment since transactions pertained to another period of assessment. The reply is not tenable since excess allowance of exemption reduced the taxable balance for the period of assessment and thus the tax for the period was underassessed;
- In two cases involving Rs. 15.95 lakh, it was stated that production of 'F' form was not mandatory;
- In one case involving Rs. 1.73 lakh, it was stated that the dealer raised proforma invoices in two different months but the transfer of goods was effected during one calendar month on the basis of which the dealer received 'F' forms.

The replies in both the cases are not tenable as a single 'F' form can cover transactions of one calendar month only and production of form 'F' has been made mandatory from the year 2002. Moreover, in the latter case the department failed to furnish the copies of evidence in support of their reply;

- In one case involving Rs. 3.98 lakh stated that the consignee dealers were not fake. The reply is not tenable as cross verification of earlier assessment records indicates that those dealers had already been declared non-existent by the sales tax department of the concerned States;

In the remaining 11 cases involving Rs. 44.56 lakh, the department did not furnish any reply.

The cases were reported to the Government between December 2006 and November 2007, followed by reminders issued upto January 2008; their reply has not been received (September 2008).

CHAPTER III LAND REVENUE

3.1 Results of audit

Test check of the records of land revenue in District Land and Land Reforms (DL and LR) offices conducted during the year revealed non-realisation of revenue amounting to Rs. 6.15 crore in 44 cases, which fall under the following categories:

| (Rupees in crore) | | | |
|-------------------|--|--------------|--------|
| Sl. No. | Categories | No. of cases | Amount |
| 1. | Loss/non-realisation of revenue due to non-settlement of land | 5 | 2.88 |
| 2. | Non-levy and non-realisation of rent and <i>salami</i> | 12 | 1.40 |
| 3. | Blockage/loss of revenue due to non-leasing of <i>sairati</i> interest | 6 | 0.15 |
| 4. | Other irregularities | 21 | 1.72 |
| Total | | 44 | 6.15 |

During the course of the year, the department accepted observations with money value of Rs. 17.34 crore pertaining to 52 cases, of which 33 cases involving Rs. 5.34 crore were pointed out in audit during the year 2007-08 and the remaining in earlier years. An amount of Rs. 1.42 crore was realised in 13 cases at the instance of audit during the year 2007-08.

A few illustrative cases involving Rs. 70.14 lakh are mentioned in the following paragraphs.

3.2 Loss/non-realisation of revenue due to non-execution of long term lease

Under the provisions of the West Bengal Land and Land Reforms (WBLLR) Manual, 1991, the process of settlement of long term lease is to be completed ordinarily within five months from the date of application. The annual rent is payable at the rate of four *per cent* of market value of the land and *salami* is payable at the rate of 10 times the annual rent.

Scrutiny of the records of three¹ DL and LR offices between February and June 2006 revealed that in three cases, applications for long term lease settlement of 5.03 acres of non-agricultural land were submitted between January 2003 and March 2004. However, the cases could not be finalised till September 2007 even after lapse of period ranging between 42 and 81 months. Thus lack of timely action by the department to settle the land with the applicants resulted in loss of Rs. 3.32 lakh on account of annual rent and non-realisation of Rs. 20.15 lakh of *salami* for different periods falling between 2003-04 and 2005-06.

After the cases were pointed out, the district authorities, Burdwan and Nadia stated between February and June 2006 that as the long term settlement proposals were being processed the question of blocking of revenue did not arise. The reply is not tenable as the Manual stipulates that the process of settlement is to be completed within five months from the date of application and the replies were silent about the inordinate delay on the part of the DL and LR officers in submitting the cases to higher authorities which led to loss of annual rent and non-realisation of *salami*. The district authority, Darjeeling did not furnish any reply.

The cases were reported to the Government between May 2006 and October 2007, followed by reminders issued upto June 2008; their reply has not been received (September 2008).

3.3 Short realisation of cess from patta holders

Under the provisions of the Cess Act, 1880, read with the West Bengal Primary Education Act, 1973, road cess, public works cess and education cess at the rate of 41² paise per rupee of land rent are payable by the *raiya*s³. *Raiya*s who are exempted from paying land rent are liable to pay all the above cess. By an order issued in November 2003, the State Government waived the unpaid cess in respect of the exempted *raiya*s for the period from 1385 BS⁴ (1978-79) to 1407 BS (2000-01). However, they were liable to pay cess from 1408 BS (2001-02) onwards. The *bhumi sahayaks*⁵ posted in the revenue inspector's office under the Block Land and Land Reforms (BL and LR) offices are responsible for collection of the cess.

¹ Burdwan (West), Darjeeling and Nadia.

² Road cess: 6 paise; public works cess: 25 paise and primary education cess: 10 paise.

³ *Raiyat* means a person or an institution holding land for any purpose.

⁴ Bengali calendar year commencing from 15 April to 14 April of the following year.

⁵ Employee posted in the Revenue Inspector's office for collection of land revenue, cess and Government dues.

Scrutiny of the records of three⁶ DL and LR offices between May and September 2007 revealed that in 24 BL and LR offices, a total area of 2.34 lakh acres of vested land⁷ was distributed among the landless persons on *raiya* basis for which *pattas*⁸ were given. Although cess of Rs. 19.22 lakh on the notional rent of the land for the period between 1410 BS (2003-04) and 1413 BS (2006-07) was realisable in these cases, the department realised Rs. 3.87 lakh only resulting in short realisation of revenue of Rs. 15.35 lakh.

After the cases were pointed out, the district authorities stated between June and September 2007 that action would be taken for realisation of cess from the *patta* holders. A report on recovery has not been received (September 2008).

The cases were reported to the Government between August and October 2007, followed by reminders issued upto June 2008; their reply has not been received (September 2008).

3.4 Non/short realisation of rent, cess and surcharge

Under the provisions of the West Bengal Land Reforms (WBLR) Act, 1955, *raiya*s using land for different purposes are liable to pay rent as well as cess and surcharge⁹. In case of default in payment of rent, a *raiya* is liable to pay interest at the rate of 6.25 *per cent* on the amount of the rent in arrear. The *bhumi sahaya*ks posted in the revenue inspector's office under the BL and LR office are responsible for collection of rent.

Scrutiny of the records of three¹⁰ DL and LR offices between March and September 2007 revealed that 724 *raiya*s under nine BL and LR offices used 5,324.69 acres of land for different purposes between 2002-03 and 2006-07. In case of 11 *raiya*s, the district authority realised revenue of Rs. 1.41 lakh instead of Rs. 2.25 lakh realisable while in case of the remaining 713 *raiya*s, rent, cess and surcharge of Rs. 11.31 lakh was neither paid by the *raiya*s nor was any action taken by the department to realise the dues. Besides, interest of Rs. 60,000 was also leviable on the unpaid dues. This resulted in non/short realisation of revenue of Rs. 12.76 lakh.

After the cases were pointed out, the district authorities stated between March and September 2007 that the concerned block offices would be asked to realise the Government dues. A report on recovery has not been received (September 2008).

The cases were reported to the Government between April and October 2007, followed by reminders issued upto June 2008; their reply has not been received (September 2008).

⁶ Burdwan (East), Dakshin Dinajpur and North 24 Parganas.

⁷ The property acquired becomes a property of the Government without any condition or limitation either as to title or as to the possession.

⁸ A document evidencing lawful possession of land by a person.

⁹ Road cess: 6 paise; public works cess: 25 paise; education cess: 10 paise; rural employment cess: 30 paise and surcharge: 15 paise.

¹⁰ Dakshin Dinajpur, Murshidabad and North 24 Parganas.

3.5 Loss of revenue due to non-settlement of *sairati* interest

Under the provisions of the WBLLR Manual, *sairati* interests¹¹ like big water areas, *khal*¹², fisheries etc. vested in the Government should be settled on lease basis with a registered co-operative society of fishermen. The Collector of a district is required to fix the economic rent and realise 25 *per cent* of the lease rent at the time of settlement of the *sairati* interests and the balance before the beginning of the year. The Commissioner of Jalpaiguri division in January 2003 directed the district authorities to resume the *sairati* interests having an area of more than five acres that had been handed over to the *panchayat* bodies and fix minimum production of such water body at Rs. 1 lakh per hectare per annum and economic rent at 10 *per cent* of annual production i.e. Rs. 10,000.

Scrutiny of the records of the DL and LR office, Uttar Dinajpur in September 2007 revealed that in four cases, water areas of 39.87 acres were not resumed from the *panchayat* bodies and in two cases water areas of 22 acres were not leased out during the period from 2003-04 to 2006-07. This resulted in loss of revenue of Rs. 10.02 lakh.

After the cases were pointed out, the district authority in respect of two cases involving Rs. 3.56 lakh stated that the matter was being processed. In respect of the remaining four cases involving Rs. 6.46 lakh it was stated that the *sairati* interests had been handed over to the *panchayat* bodies. The reply was silent regarding the reasons for failure to resume the *sairati* interests from the *panchayat* bodies despite specific directive of the Commissioner.

The cases were reported to the Government in October 2007, followed by reminders issued upto June 2008; their reply has not been received (September 2008).

3.6 Undue allowance of rebate

Under the provisions of the Kolkata Land Revenue Act, 2003 as amended from time to time, *raiya*ts using land for mill, factory, workshop or other commercial purposes situated in municipal areas outside the jurisdiction of the Kolkata and Howrah Municipal Corporations and Bidhannagar Municipality are liable to pay rent at the rate of Rs. 175 per decimal¹³. Besides, rural employment surcharge of 15 paise per rupee is also realisable on land rent payable by the *raiya*ts. The Act also provides that *raiya*ts who make payment of revenue within the prescribed period shall be entitled to a rebate of five *per cent* on the amount of revenue paid. The *bhumi sahayaks* posted in the revenue inspector's office under the BL and LR office are responsible for the collection of rent.

Scrutiny of the records of DL and LRO, North 24 Parganas in August 2007 revealed that a demand of Rs. 6.42 crore including rent of Rs. 1.70 crore on

¹¹ Derived from the word *sair*. The duties which the owners of *hat*, *bazaar*, markets, ferries, fisheries etc. used to levy on commodity sold or benefits derived from those places were designated as *sair* collection. Such *hat*, ferries etc. are known as *sairati* interests.

¹² Large water channel.

¹³ One decimal is equal to 456.2 square feet.

975.49 acres of land for the year 1413 BS (2006-07) after allowing a rebate of Rs. 8.54 lakh was raised on the International Airports Authority of India (IAAI), Kolkata on 21 November 2006. Of this, the IAAI paid Rs. 1.18 crore only on 2 April 2007 leaving a balance of Rs. 5.24 crore. As per the provision of the Act, to avail of the rebate, the IAAI was required to pay the balance amount by 14 April 2007 which was not paid. Further scrutiny revealed that at the time of issuing the demand notice for 1414 BS (2007-08), opening balance of arrear was shown as Rs. 5.24 crore instead of Rs. 5.33 crore i.e. after disallowing the rebate of Rs. 8.54 lakh, which resulted in short raising of demand of Rs. 8.54 lakh.

After the case was pointed out, the district authority stated in August 2007 that the block office had been asked to issue fresh demand notice after disallowing the rebate. A report on recovery has not been received (September 2008)

The case was reported to the Government in September 2007, followed by reminders issued upto June 2008; their reply has not been received (September 2008).

CHAPTER IV STATE EXCISE

4.1 Results of audit

Test check of the records of state excise revenue conducted during the year revealed non-realisation of excise duty and other irregularities amounting to Rs. 19.04 crore in 91 cases, which fall under the following categories:

| (Rupees in crore) | | | |
|-------------------|---|--------------|--------------|
| Sl. No. | Categories | No. of cases | Amount |
| 1. | Non-realisation of additional/import pass/privilege fee etc. | 25 | 1.86 |
| 2. | Non-realisation of additional fee on excess quantity of spirit obtained due to operation | 3 | 0.83 |
| 3. | Non/short realisation of excise duty on excess transit/handling/bottling wastage of spirit/IMFL | 8 | 0.44 |
| 4. | Non/short realisation of establishment cost/house rent allowance | 13 | 0.45 |
| 5. | Other irregularities | 42 | 15.46 |
| Total | | 91 | 19.04 |

During the course of the year, the department accepted underassessment and other deficiencies of Rs. 88.27 lakh involved in 37 cases, of which 26 cases involving Rs. 75.49 lakh had been pointed out by audit during the year 2007-08 and the rest in earlier years. An amount of Rs. 42.24 lakh has been realised in 19 cases at the instance of audit during the year 2007-08.

A few illustrative cases involving Rs. 11.13 crore are mentioned in the following paragraphs.

4.2 Short realisation of revenue due to low production of alcohol from molasses

Under the Bengal Excise (BE) Act, 1909 and the rules made thereunder, every distiller has to maintain specified fermentation and distillation efficiency to recover a minimum of 92 london proof litre (LPL)¹ of alcohol per quintal of fermentable sugar present in the molasses consumed for production. The Rules require that the sample of molasses used for production of spirit shall be sent to the chemical examiner (CE), Government of West Bengal (WB) or any other expert authorised by the Excise Commissioner (EC) for determination of fermentable sugar present in the molasses. The minimum yield of spirit from molasses should be calculated on the basis of the report of the CE and explanation for shortfall, if any, in production should be called for from the distiller. Further, as per the Government instruction of November 2004, the minimum yield per MT of molasses was fixed at 390 LPL of alcohol.

Scrutiny of the records of a distillery under the Superintendent of Excise (SE), South 24 Parganas in November 2007 revealed that the distiller had used 20,987.62 MT molasses during the period from April to June 2006 and reported yield of 76,14,441.10 LPL of alcohol. Though the yield was less than the minimum yield of 81,85,171.80 LPL calculated at the rate of 390 LPL of alcohol per MT of molasses as prescribed by the Government, the officer-in-charge did not take any action either to send the samples of the molasses to the CE for determining the fermentable sugar content in the molasses or to recover the excise duty considering the minimum yield prescribed by the Government. Instead, the yield reported by the chemist of the distiller was accepted by him for levy of duty. This resulted in short realisation of excise duty of atleast Rs. 10.62 crore calculated at the rate of Rs. 186 per LPL on the differential yield of 5,70,730.70 LPL of alcohol.

The matter was reported to the department and the Government in December 2007; their reply has not been received (September 2008).

4.3 Allowance of excess wastage of spirit/IMFL in transit

Under the BE Act and the rules made thereunder, the permissible loss of spirit in transit by way of leakage and evaporation during transport/import is between 0.5 and 2 *per cent* of the quantity depending upon the duration of journey upto 30 March 2005 and between 0.25 and 1 *per cent* thereafter. In case of foreign liquor (FL) transported in glass bottles or any other approved metal container, no wastage in transit is allowable. Wastage of spirit in excess of the allowable limit and any loss or deficiency of FL in transit is chargeable at the highest rate of duty applicable to India made foreign liquor (IMFL).

Scrutiny of the records in three² district excise offices between November 2006 and November 2007 revealed that in five cases 29 transport passes were issued by the excise authorities between August 2004 and April 2007 to the

¹ Strength of alcohol is measured in terms of 'degree proof'. Strength of alcohol, 13 parts of which weigh exactly equal to 12 parts of water at 51 degree Fahrenheit is assigned 100 degree proof. Apparent volume of a given sample of alcohol when converted into volume of alcohol having strength 100 degree is called LPL.

² Darjeeling, Hooghly and South 24 Parganas.

licensees of one distillery, one FL manufactory, two country spirit bottling plants and two FL bonded warehouses for a total quantity of 4,46,743.45 LPL of rectified spirit and IMFL. Of this, 17,811.23 LPL was shown as lost in transit. As per the Excise Rules, a maximum of only 2,331.88 LPL of rectified spirit/IMFL was allowable as transit wastage. Thus, excess wastage of spirit/IMFL of 15,479.35 LPL was allowed on which excise duty of Rs. 27.63 lakh was realisable from the licensees. In one case, an amount of Rs. 80,000 only had been levied and realised as against Rs. 3.84 lakh and in the remaining cases no duty had been levied and realised by the district excise officers. This resulted in non/short realisation of excise duty of Rs. 26.83 lakh.

The Government to whom the cases were reported between February and December 2007 stated in July 2008 that in two cases Rs. 23.37 lakh had been realised between April 2007 and May 2008. In two cases involving Rs. 3.07 lakh, it was stated that West Bengal Taxation Tribunal had directed both the licensees to appeal before the EC within 30 July 2008 and the cases would be disposed of as soon as the licensees were heard by the Excise Commissioner. Report on further progress has not been received (September 2008).

In the remaining one case involving Rs. 39,554, it was stated that total wastage was not exceeding the allowable limit for journey between two and nine days. The reply was not tenable as the journey involved in this case was two days for which maximum transit loss at the rate of 0.5 *per cent* was admissible as per the West Bengal Excise (Foreign Liquor) (WBEFL) Rules, 1998.

4.4 Non-realisation of fee for import of spirit

Under the West Bengal Excise (Manufacture of Country Spirit in Labelled and Capsuled Bottles) Rules, 1979, a country spirit manufacturer shall pay a fee of 60 paise, in case the bottling plant is situated outside the metropolitan area of Kolkata, for each bulk litre (BL) of spirit imported by him from outside the State for the purpose of use as country spirit for sale by wholesale, provided that such manufacturer does not distill the spirit in a distillery licenced for the purpose, at the time of receipt of such spirit at his warehouse on the quantity so received.

Scrutiny of the records of the SE, North 24 Parganas between October and November 2007 revealed that two³ manufacturers of country spirit imported 29,10,000 BL of rectified spirit from the States outside West Bengal against 56 import permits issued by the EC, West Bengal between 2004-05 and 2006-07, for the purpose of use as country spirit for sale by wholesale. The manufacturers, however, did not pay the requisite fee at the rate of 60 paise per BL nor was any demand raised by the excise authorities to realise it. This resulted in non-realisation of fee of Rs. 17.46 lakh.

The Government to whom the matter was reported in December 2007 stated in July 2008 that abolition of the fee for spirit imported from outside the State for the purpose of manufacturing bottled country spirit had been agreed in principle from 7 March 1987 subject to fulfillment of certain conditions and an order to that effect had been issued by the EC in March 1995. The reply is not

³ M/s Bhattacharya Bottling Plant and M/s Sengupta and Sengupta Bottling Plant.

tenable as the import pass fee was imposed through Act/Rule passed by the Legislature and the executive order of the EC cannot override it.

4.5 Non-realisation of establishment cost

Under the WBEFL Rules, the licensee of a bonded FL warehouse is to pay to the Government, a monthly fee equivalent to the monthly cost comprising average pay, compensatory allowances and contribution towards leave salary and pension in respect of the excise personnel deployed in a warehouse. The monthly fee is to be paid in cash within seven days after the expiry of the month to which the fee relates.

Scrutiny of the records of the Collector of Excise, Kolkata (North) between July and August 2007 revealed that the establishment cost had not been realised from the licensees of two⁴ FL bonded warehouses in respect of four excise personnel deployed therein for various periods ranging between April 2006 and July 2007. This resulted in non-realisation of establishment cost of Rs. 6.72 lakh.

The Government to whom the cases were reported in September 2007 stated in July 2008 that in one case involving Rs. 3.77 lakh the matter had been forwarded to the Collector, South 24 Parganas for initiation of certificate case and in the other case involving Rs. 2.95 lakh, the licensee had applied for surrender of licence in December 2005 which was under examination of EC. Report on further development has not been received (September 2008).

⁴ M/s Karan Chand Thapper & Co. Ltd. and M/s White Field Beverages (P) Ltd.

CHAPTER V MOTOR VEHICLES TAX

5.1 Results of audit

Test check of the records relating to taxes on motor vehicles conducted in audit during the year revealed non-realisation and loss of revenue of Rs. 6.08 crore in 47 cases, which fall under the following categories:

| (Rupees in crore) | | | |
|-------------------|--|--------------|-------------|
| Sl. No. | Categories | No. of cases | Amount |
| 1. | Non/short realisation of tax, additional tax and penalty | 10 | 4.16 |
| 2. | Non-realisation of difference of life time tax and one time tax | 9 | 0.73 |
| 3. | Non-realisation of revenue due to non-reference of offence cases to the Court of law | 4 | 0.04 |
| 4. | Non-realisation of revenue due to non-disposal of seized vehicles | 2 | 0.03 |
| 5. | Other irregularities | 22 | 1.12 |
| Total | | 47 | 6.08 |

During the course of the year, the department accepted underassessment and other deficiencies of Rs. 4.85 crore in 38 cases of which 36 cases involving Rs. 4.83 crore were pointed out in audit during the year 2007-08 and the rest in earlier years. An amount of Rs. 1.85 lakh in two cases was realised during the year 2007-08.

A few illustrative cases involving Rs. 4.66 crore are mentioned in the following paragraphs.

5.2 Non-realisation of tax, additional tax and penalty from the owners of vehicles

The West Bengal Motor Vehicles (WBMV) Tax Act, 1979 and the West Bengal Additional Tax and One Time Tax on Motor Vehicles (WBATOTTMV) Act, 1989 as amended in January and September 2003 and Government notifications of December 1998 and August 1999 prescribe the rate of tax and additional tax on motor vehicles based on their use, seating capacity or weight. Both the Acts provide for levy of penalty equal to the tax and additional tax in case of non-payment of tax beyond 75 days from the due date.

Scrutiny of the records of the Public Vehicles Department (PVD), Kolkata, Regional Transport Office (RTO), Purulia and three¹ Additional Regional Transport Offices (ARTO) between September 2007 and January 2008 revealed that though the owners of 707² vehicles did not pay tax and additional tax for different periods between April 2001 and September 2007, no action was taken by the taxing officers (TO) to realise the dues. The delay in non-payment of tax and additional tax ranged between 3 and 76 months for which 100 *per cent* penalty was leviable. This resulted in non-realisation of tax, additional tax and penalty of Rs. 3.73 crore.

After the cases were pointed out, four³ TOs stated in respect of 244 cases involving Rs. 51.42 lakh that steps would be taken to realise the dues. A report on realisation of tax and replies in respect of the remaining 463 cases involving Rs. 3.22 crore has not been received (September 2008).

The cases were reported to the Government between November 2007 and March 2008, followed by reminder issued in June 2008; their reply has not been received (September 2008).

5.3 Non-realisation of differential tax from the owners of motor cycles

Under the provisions of the WBATOTTMV Act, the owner of a motor cycle registered after 25 November 1991 has to pay the difference of the rate of life time tax payable as specified in schedule III and one time tax already paid within the appointed date. The State Government, by a notification issued in December 2004, stipulated 16 March 2005 as the appointed date for payment of the difference of such tax. In case of non-payment of the differential tax within the prescribed date, penalty was to be charged.

Scrutiny of the records of three⁴ RTOs and three⁵ ARTOs between August 2006 and December 2007 revealed that in respect of 1,143 motor cycles registered between November 1991 and May 2004, the differential tax of Rs. 25.04 lakh was not realised from the owners even after 17 to 33 months

¹ Alipurduar, Asansol and Durgapur.

² Autorickshaw - 60, trailer - 73, trucks - 389, mini buses - 119, pickup van - 1, mixer - 2, dumper - 3, tipper - 4, mini truck - 5, loader - 6, omni buses - 8, tractors - 9 and contract carriages - 28.

³ RTO, Purulia, ARTOs, Alipurduar, Asansol and Durgapur.

⁴ Burdwan, Dakshin Dinajpur and Purulia.

⁵ Alipurduar, Asansol and Durgapur.

from the appointed date. This resulted in non-realisation of tax of Rs. 50.08 lakh including penalty.

After the cases were pointed out, the TOs, Burdwan, Alipurduar and Dakshin Dinajpur in respect of 483 cases involving Rs. 20.34 lakh stated between August 2006 and September 2007 that steps would be taken to realise the dues. In the remaining 660 cases involving Rs. 29.74 lakh, the TOs, Asansol, Durgapur and Purulia did not furnish any reply.

The cases were reported to the Government between November 2006 and March 2008, followed by reminder issued in June 2008; their reply has not been received (September 2008).

5.4 Non/short realisation of one time tax and special tax from the owners of non-transport vehicles

Under the provisions of WBATOTTMV Act, one time tax and special tax are realisable at the prescribed rate for five years from the owners of non-transport vehicles based on their use, engine capacity and seating capacity in lieu of the annual tax payable under the WBMVT Act. In case of non-payment of one time tax and special tax beyond 15 days after the due date, penalty ranging between 5 and 100 *per cent* of the unpaid tax is leviable.

Test check of the records of three⁶ RTOs, two⁷ ARTOs and the Director, PVD, Kolkata between June 2006 and December 2007 revealed that in case of 147 non-transport vehicles registered between June 2002 and December 2006, the one time tax and special tax was either not paid or paid partially by the vehicle owners. The TOs did not initiate any action to realise the one time tax and special tax along with penalty for default in the payment for period ranging between 1 to 35 months. This resulted in non/short realisation of tax and penalty of Rs. 26.29 lakh.

After the cases were pointed out, the TO, PVD, Kolkata in 28 cases involving Rs. 6.30 lakh stated in November 2006 that the National Informatics Centre had been requested to introduce new software for quick detection and realisation of taxes. The reply was silent regarding action taken to recover the dues pointed out by audit. In 97 cases involving Rs. 15.59 lakh, the TOs, Alipurduar, Dakshin Dinajpur, Durgapur and Purulia stated between June 2006 and September 2007 that action would be taken to realise the dues. In the remaining 22 cases involving Rs. 4.40 lakh, two⁸ TOs did not furnish any reply.

The cases were reported to the Government between November 2006 and February 2008, followed by reminder issued in June 2008; their reply has not been received (September 2008).

5.5 Loss of revenue due to non-issue of saleable forms

Statutory application forms for issue of learner's licence, driving licence, permit and registration as required under the provisions of the WBMV Rules,

⁶ Bankura, Dakshin Dinajpur and Purulia.

⁷ Alipurduar and Durgapur.

⁸ RTO, Bankura, ARTO, Durgapur.

1989 and Central Motor Vehicles (CMV) Rules, 1989 are to be supplied by the registering authority on payment of Rs. 5 per page.

Scrutiny of the records of two⁹ RTOs and two¹⁰ ARTOs between August and December 2007 revealed that 41,798 learner's licences, 71,732 driving licences, 2,499 transfers of ownership, 41,509 registrations, 10,619 temporary/permanent permits and 4,620 certificates of fitness were granted between April 2002 and March 2007 for which application forms were not supplied by the offices of TOs but were obtained from other sources by the applicants. Thus, inability of the department to supply the forms resulted in loss of revenue of Rs. 16.39 lakh.

After the cases were pointed out, the TO, Dakshin Dinajpur stated in 41,115 cases involving Rs. 4.11 lakh that a counter would be opened in the near future to earn revenue by selling forms. In 89,381 cases involving Rs. 8.71 lakh, the TOs, Alipurduar and Asansol stated between September and December 2007 that they were unable to sell these to the applicants due to non-supply of forms from the Government. The TO, Purulia stated that forms could not be printed by the department due to shortage of funds.

The cases were reported to the Government between November 2007 and March 2008, followed by reminder issued in June 2008; their reply has not been received (September 2008).

⁹ Dakshin Dinajpur and Purulia.

¹⁰ Alipurduar and Asansol.

CHAPTER VI OTHER TAX RECEIPTS

6.1 Results of audit

Test check of the records of amusement tax, stamp duty and registration fees, profession tax and electricity duty conducted in audit during the year revealed non-levy/realisation etc. of revenue of Rs. 14.17 crore in 59 cases, which fall under the following categories:

| (Rupees in crore) | | | |
|--|--|--------------|--------------|
| Sl. No. | Categories | No. of cases | Amount |
| A. AMUSEMENT TAX | | | |
| 1. | Non/short realisation of revenue | 4 | 0.14 |
| 2. | Other irregularities | 6 | 1.32 |
| Total | | 10 | 1.46 |
| B. STAMP DUTY AND REGISTRATION FEES | | | |
| 1. | Blockage of Government revenue | 2 | 1.01 |
| 2. | Non-realisation of deficit stamp duty and registration fees | 1 | 0.27 |
| 3. | Other irregularities | 18 | 7.05 |
| Total | | 21 | 8.33 |
| C. PROFESSION TAX | | | |
| 1. | Non-realisation of profession tax due to non-enrolment | 6 | 0.11 |
| 2. | Non-realisation of profession tax from enrolled professionals/registered employers | 5 | 0.46 |
| 3. | Other irregularities | 10 | 1.37 |
| Total | | 21 | 1.94 |
| D. ELECTRICITY DUTY | | | |
| 1. | Non/short raising of demand | 2 | 2.37 |
| 2. | Non-assessment/realisation of electricity duty | 2 | 0.05 |
| 3. | Other irregularities | 3 | 0.02 |
| Total | | 7 | 2.44 |
| Grand total | | 59 | 14.17 |

During the course of the year, the departments concerned accepted audit observations of Rs. 3.78 crore in 32 cases, of which 29 cases involving Rs. 3.77 crore were pointed out in audit during the year 2007-08 and the rest in earlier years. An amount of Rs. 12.31 lakh was realised in eight cases during the year 2007-08.

A few illustrative cases involving Rs. 2.21 crore are mentioned in the following paragraphs.

A. Amusement Tax

6.2 Non-realisation of entertainment tax on horse racing

Under the Bengal Amusement Tax Act, 1922, entertainment tax shall be charged at the rate of 60 *per cent* on all payments for admission to horse racing for entertainment. Under the Act 'admission' means admission as a spectator, an audience and also as a participant.

Scrutiny of the records of Royal Calcutta Turf Club under the Agricultural Income Tax Office (AITO), Kolkata in January 2008 revealed that the club received Rs. 37.15 lakh as entry money, entrance fee and subscription during 2005-06. But the club neither paid the entertainment tax nor was any demand raised by the assessing authority (AA) for payment of tax. This resulted in non-realisation of entertainment tax of Rs. 22.29 lakh.

After the case was pointed out, the local office stated in January 2008 that entertainment tax was payable by the people who were entertained after admission to the race course and not by the owners of the horses or the horse-riders who took part in the competition after depositing entry fee which was not chargeable for entertainment tax as they were providers of the entertainment. It was also stated that entrance fee and subscription were payable by the members of the club for being and remaining members irrespective of their taking part in the entertainment. The reply is not tenable as all payments including those for admission to take part in the horse racing either as a spectator or a participant are taxable as per the Act.

The case was reported to the Government in February 2008, followed by reminder issued in June 2008; their reply has not been received (September 2008).

6.3 Non-levy of luxury tax on banquet hall charges

Under the provisions of the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972, a luxury tax is to be charged, levied and paid to the State Government by the proprietor of every hotel in which there is provision of luxury i.e. airconditioning. Such tax is calculated at the rate of 10 *per cent* of the daily charges realised or realisable for an occupied room provided with luxury. The Government by a notification issued in April 1997 clarified that the daily charge for an occupied room would cover the charge for lodging only.

Scrutiny of the records of two star hotels under the AITO, Kolkata in January 2008 revealed that the hotels received Rs. 1.70 crore as rental/hire charges for banquet halls provided with luxury as reflected in their annual accounts for the year 2004-05. But the AA while assessing luxury tax in January 2007, did not include rental/hire charges for banquet halls which resulted in non-levy of luxury tax of Rs. 16.97 lakh.

After the cases were pointed out, the department in January 2008 stated that for the occupation of banquet hall was for a purpose completely different from lodging and hence luxury tax was not charged. The reply is not tenable as hire/rental charge for banquet hall is for temporary accommodation which

means lodging and is subject to tax under the provisions of the Act. Further, the same AA while completing the assessments between February 2000 and February 2004 for the years 1999-2000 and 2001-02 had levied luxury tax on hire/rental charges of banquet halls of two other hotels.

The cases were reported to the Government in February 2008, followed by reminder issued in June 2008; their reply has not been received (September 2008).

B. Stamp Duty and Registration Fees

6.4 Non-realisation of deficit stamp duty and registration fees

Under the Indian Stamp Act, 1899 as applicable in West Bengal read with the departmental circular issued in July 1998, where the registering authority has reason to believe that market value of the property has not been truly set forth in the document presented for registration, he is authorised to register such document provisionally, ascertain the market value of the property thereafter and issue notice to the executants directing them to pay the deficit stamp duty and registration fees within 30 days from the date of receipt of such notice. In case of non-payment within the stipulated period, the case is to be referred to the Collector/Deputy Inspector General of Registration (DIGR) within 15 days for determination of the market value of the property and deficit stamp duty and registration fees.

6.4.1 Scrutiny of the records of eight¹ Additional District Sub-Registrars (ADSRs) in four² districts between December 2006 and July 2007 revealed that 413 documents presented for registration between April 2002 and March 2007 were registered provisionally due to undervaluation of the properties. In all the cases the market value of the property was subsequently determined, but demand notices were not issued to the executants for payment of the deficit stamp duty and registration fees. This resulted in non-realisation of revenue of Rs. 91.13 lakh (stamp duty: Rs. 76.90 lakh and registration fees: Rs. 14.23 lakh).

After the cases were pointed out, ADSRs, Sutahata, Jhargram and Baruipur in 143 cases involving Rs. 35.54 lakh stated between December 2006 and July 2007 that demand notices were being issued. In case of ADSRs, Bhatar, Burdwan (Sadar), Mankar, Paschim Medinipur and Sonarpur in 270 cases involving Rs. 55.59 lakh, reply has not been received (September 2008).

6.4.2 Scrutiny of the records of five³ ADSRs in three⁴ districts between December 2006 and January 2007 revealed that 208 documents presented for registration between January 2002 and March 2006 were registered provisionally and stamp duty of Rs. 11.48 lakh was levied on the consideration of Rs. 2.74 crore set forth in the instruments. The market value of the properties were subsequently assessed by the registering authorities as

¹ ADSR, Baruipur; ADSR, Bhatar; ADSR, Burdwan (Sadar); ADSR, Jhargram; ADSR, Mankar; ADSR, Paschim Medinipur; ADSR, Sonarpur and ADSR, Sutahata.

² Burdwan, Paschim Medinipur, Purba Medinipur and South 24 Parganas.

³ ADSR, Asansol; ADSR, Durgapur; ADSR, Jhargram; ADSR, Sutahata and ADSR, Tamluk.

⁴ Burdwan, Paschim Medinipur and Purba Medinipur.

Rs. 10.72 crore and notices for payment of deficit stamp duty and registration fees were issued. Though the executants did not pay the dues within the time limit, neither any action was taken by the registering authorities (RA) to recover the dues nor were the cases referred to the Collector/DIGR within the stipulated period of 15 days for further action. This resulted in non-realisation of revenue of Rs. 51.13 lakh (stamp duty: Rs. 42.65 lakh and registration fees: Rs. 8.48 lakh).

After the cases were pointed out, the RAs of Jhargram, Satahata and Tamluk stated in December 2006 that the cases were being sent to the Collector/DIGR while the RAs, Durgapur and Asansol did not furnish reply (September 2008).

The cases were reported to the Government between January and August 2007, followed by reminders issued upto June 2008; their reply has not been received (September 2008).

6.5 Non-realisation of stamp duty and registration fees

Under the provisions of the West Bengal Land and Land Reforms Manual, 1991, settlement of land for non-agricultural purposes should be made under a registered lease deed. As per the Indian Stamp Act, the stamp duty and registration fees required for execution of such deed should be borne by the lessee.

Scrutiny of the records of three⁵ District Land and Land Reforms (DL and LR) offices between January 2006 and March 2007 revealed that in three cases, 15.03 acres of non-agricultural land had been settled on long term lease basis as per the Government orders issued between December 2001 and December 2005. However, the lease deeds were not registered till the date of audit which resulted in non-realisation of stamp duty and registration fees of Rs. 5.52 lakh⁶.

After the cases were pointed out, the district authorities stated between January 2006 and March 2007 that action would be taken to register the lease deeds. Further developments in these cases have not been reported (September 2008).

The cases were reported to the Government between May 2006 and May 2007, followed by reminders issued upto December 2007; their reply has not been received (September 2008).

C. Profession Tax

6.6 Non-realisation of profession tax due to non-enrolment of dealers

Under the West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979, every person coming under the purview of the Act shall be liable to be enrolled and pay tax at the prescribed rates.

⁵ Darjeeling, Hooghly and Murshidabad.

⁶ Stamp duty: Rs. 4.83 lakh and registration fees: Rs. 69,729.

Cross verification of the records of 10 licence issuing offices⁷ with those of four unit offices⁸ of profession tax conducted between December 2006 and June 2007 revealed that 501⁹ professionals, traders etc. failed to apply for enrolment/registration under the Act and continued with their professions during the period from 2002-03 to 2006-07 without payment of tax. No action was initiated by the profession tax officers (PTOs) to enroll those professionals/traders and recover tax at the prescribed rates. This resulted in non-realisation of profession tax of Rs. 27.09 lakh.

After the cases were pointed out, three¹⁰ PTOs admitted the audit observations in 346 cases involving Rs. 16.73 lakh. A report on recovery in these cases and replies of two¹¹ PTOs in the remaining 155 cases involving Rs. 10.36 lakh have not been received.

The cases were reported to the Government between February and July 2007, followed by reminders issued upto June 2008; their reply has not been received (September 2008).

D. Electricity Duty

6.7 Non-realisation of interest for delayed payment of electricity duty

Under the provisions of the West Bengal Duty on Inter State River Valley Authority Act, 1973 as amended with effect from April 2003, where the Inter State River Valley Authority or the licensee or the person liable to pay electricity duty fails to pay electricity duty by the prescribed date, such authority or licensee or person shall be liable to pay a simple interest at the rate of one *per cent* for each English calendar month of default upon the duty remaining unpaid at the end of each month of default.

Scrutiny of the records of the District Collector, Burdwan in December 2006 revealed that two licensees¹² deposited electricity duty of Rs. 22.54 lakh on 10 occasions between March 2005 and September 2006 which were due between July 2001 and October 2003. For delay in payment of duty ranging between 23 and 41 months, interest of Rs. 7.10 lakh though leviable was not levied. This resulted in non-realisation of revenue of Rs. 7.10 lakh.

After the cases were pointed out, the department in June 2008 stated in respect of one case involving Rs. 6 lakh that the demand for payment of interest had

⁷ Assistant Commissioner, Commercial Taxes - Asansol and Medinipur; Additional Chief Medical Officer, Health - Asansol; ARTO - Asansol; Chief Medical Officer, Health - Paschim Medinipur; District Magistrates - Burdwan and Howrah; Municipal Corporation - Asansol; Superintendent of Excise - Asansol and North 24 Parganas.

⁸ PTOs, West Bengal, Central Unit - V, Barasat, North 24 Parganas; South Unit - I, Howrah, South Unit - III, Medinipur and West Unit - III, Asansol, Burdwan.

⁹ Motor training schools - 9, licensed foreign liquor vendors - 62, computer training centres - 14, beauty parlours - 15, licensed country liquor vendors - 40, money lenders - 44, licensed stamp vendors - 45, pathological laboratories - 55, dealers - 62; nursing homes - 72, licensed *pachwai* vendors - 83.

¹⁰ PTOs, West Bengal, Central Unit - V, Barasat, South Unit - I, Howrah and West Unit - III, Asansol.

¹¹ PTOs, West Bengal, South Unit - III, Medinipur and West Unit - III, Asansol.

¹² Bharat Aluminium Co. Ltd. and Chittaranjan Locomotive Works.

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been raised by the Collector, Burdwan against which the firm had prayed for waiver. In the remaining case involving Rs. 1.10 lakh, it was stated that the Collector, Burdwan had been requested to initiate certificate case for recovery of interest payable by the firm. A report on further development has not been received (September 2008).

The cases were reported to the Government in February 2007, followed by reminders issued upto June 2008; their reply has not been received (September 2008).

CHAPTER VII NON-TAX RECEIPTS

7.1 Results of audit

Test check of the records relating to mines and minerals under different district land and land reforms (DL and LR) offices, offices of the cess deputy collectors, Chief Mining Officer as well as other mining offices and other non-tax receipts conducted during the year revealed underassessment and non-realisation of revenue amounting to Rs. 191.78 crore in 73 cases, which fall under the following categories:

| (Rupees in crore) | | | |
|---------------------------------|--|--------------|---------------|
| Sl. No. | Categories | No. of cases | Amount |
| A. MINES AND MINERALS | | | |
| 1. | 'Assessment and collection of revenue from minor minerals' (A review) | 1 | 183.37 |
| 2. | Non/short assessment/levy/realisation of royalty and cess | 18 | 1.05 |
| 3. | Non/short assessment/realisation of price of minor/major minerals extracted unauthorisedly | 5 | 0.48 |
| 4. | Non/short assessment/realisation of surface/dead rent | 2 | 0.22 |
| 5. | Other irregularities | 21 | 1.17 |
| Total | | 47 | 186.29 |
| B. FOREST RECEIPTS | | | |
| 1. | Non-realisation of revenue | 23 | 2.86 |
| C. DEPARTMENTAL RECEIPTS | | | |
| 1. | Short realisation of revenue | 3 | 2.63 |
| Grand total | | 73 | 191.78 |

During the course of the year, the department accepted observations involving Rs. 183.67 crore in 54 cases of which 51 cases involving Rs. 181.96 crore were pointed out in audit during the year 2007-08 and the rest in earlier years. An amount of Rs. 10.61 lakh was realised in eight cases during the year 2007-08.

After issue of the draft paragraph, the Forest Department recovered Rs. 24.15 lakh in full in one case during the year 2007-08.

A few illustrative cases involving Rs. 1.24 crore highlighting important observations and a review of 'Assessment and collection of revenue from minor minerals' with a financial impact of Rs. 183.37 crore are mentioned in the following paragraphs.

A. MINES AND MINERALS

7.2 Assessment and collection of revenue from minor minerals

Highlights

Issue of operational modalities for extraction of earth by the brick kilns in contravention of the provisions of the Rules *inter alia* led to non/short realisation of royalty of Rs. 77.79 lakh.

(Paragraph 7.2.7)

Failure to prescribe a system of inter-departmental cross verification of data resulted in non-detection of excess extraction of minerals and consequently there was non-realisation of revenue of Rs. 164.62 crore.

(Paragraph 7.2.8)

Non-conducting of periodic inspection led to illegal extraction of minerals without valid permits remaining undetected and consequently there was non/short realisation of revenue of Rs. 13.29 crore.

(Paragraph 7.2.9)

There was non/short realisation of revenue of Rs. 2.02 crore on unauthorised extraction of earth by the brick kiln owners.

(Paragraph 7.2.14)

For short extraction of minerals against the permitted quota, penalty of Rs. 1.44 crore though leviable was not levied.

(Paragraph 7.2.15)

7.2.1 Introduction

Minor minerals comprise earth, sand, stone, boulder, gravel etc. and any other mineral which the Central Government may by notification declare to be a minor mineral. Prospecting and mining of minor minerals, assessment, levy and collection of royalty and other mining dues are governed by the Mines and Minerals Development and Regulations (MMDR) Act, 1957, the West Bengal Minor Minerals (WBMM) Rules, 2002 framed thereunder and instructions issued by the Government from time to time. The recovery of outstanding mining dues is governed by the Bengal Public Demands Recovery (BPDR) Act, 1913.

The mining receipts comprise mainly the application fees for lease/permit and prospecting licence, royalty for extraction of minor mineral, fines and penalties for offences and interest for delayed payment of dues etc.

In addition, cess for the extraction and despatch of minerals is realised from the holders of quarry permits and mining leases under the provision of Cess Act, 1880 as amended in 1984 read with the West Bengal Primary Education Act, 1973 and Rural Employment Cess under the West Bengal Rural Employment and Production Act, 1976.

A review of the assessment and collection of receipts from minor minerals conducted in audit revealed a number of system and compliance deficiencies which are mentioned in the succeeding paragraphs.

7.2.2 Organisational set up

The assessment and collection of revenue from minor minerals is administered by the Land and Land Reforms (L and LR) Department headed by the Principal Secretary who is assisted by the Director of Land Records and Survey (DLRS), 18 district land and land reforms officers (DL and LRO), 59 sub-divisional land and land reforms officers (SDL and LRO) and 698 block land and land reforms officers (BL and LRO)/special revenue officer (SRO)-II.

7.2.3 Audit objectives

The review was conducted with a view to examine whether

- the provisions of the Acts/rules and departmental instructions issued thereunder were adequate and enforced accurately; and
- the internal control mechanism in the department was effective and working efficiently to check non/short levy of revenue.

7.2.4 Scope of audit and methodology

The records pertaining to the years 2002-03 to 2006-07 in seven¹ out of 18 DL and LR offices in addition to the office of the DLRS were reviewed between October 2007 and April 2008. The DL and LR offices were selected from three strata based on the average revenue collection during 2002-03 to 2006-07. During the course of audit, the information/records obtained from district offices were cross verified with those of the National Highway Authority of India (NHAI). The information contained in the audit observations raised during the normal audit has also been included in this review.

7.2.5 Acknowledgement

Indian Audit and Accounts Department acknowledges the co-operation of the L and LR Department in providing necessary information and records for audit. The findings of this review were reported to the Government in May 2008 and discussed in the audit review committee meeting held in September 2008. The replies of the Government have been appropriately incorporated in the relevant paragraphs.

Audit findings

7.2.6 Deficiencies in the budgetary process

Paragraph 16 of the West Bengal Budget Manual read with the Rules 338, 339 and 343 of the West Bengal Financial Rules states that in framing the budget estimate (BE) of the ensuing year, the actual of the previous years and revised

¹ Burdwan, Darjeeling, Hooghly, Murshidabad, North 24 Parganas, Paschim Medinipur and Purba Medinipur.

estimate (RE) of the current year should be the best guide. Paragraphs 10 and 11 say that the 'RE' are forecasts, as accurate as possible, of the actual receipts of the current year and for preparation of 'RE', the actual receipts of those months of the current year which have already elapsed are the most important guide.

The table below indicates BE, RE and actual figure of the revenue under the head "royalty from mines and minerals" and their inter se variations.

(Rupees in crore)

| Year | BE | RE | Actual | Percentage of variation between BE and RE | Percentage of variation between BE and actual | Percentage of variation between RE and actual |
|---------|-------|-------|--------|---|---|---|
| 2002-03 | 13.00 | 15.16 | 11.24 | (+)16.61 | (-) 13.53 | (-) 25.85 |
| 2003-04 | 17.43 | 12.93 | 31.30 | (-) 25.82 | (+) 79.58 | (+) 142.07 |
| 2004-05 | 70.00 | 35.06 | 21.88 | (-) 49.91 | (-) 68.74 | (-) 37.59 |
| 2005-06 | 39.27 | 24.61 | 30.03 | (-) 37.33 | (-) 23.53 | (+)22.02 |
| 2006-07 | 27.69 | 33.03 | 29.35 | (+)19.28 | (+) 5.99 | (-) 11.41 |

The variations between BE and RE ranged from (-) 49.91 to 19.28 *per cent*, between BE and actual from (-) 68.74 to 79.58 *per cent* and between RE and actual from (-) 37.59 to 142.07 *per cent*. The wide variations indicated that the budget estimation was not realistic.

The existing procedure requires preparation of budget based on estimates from the field offices. However, an evaluation of how and whether this was being done could not be made as the documents relating to preparation of budget were not produced by the Finance Department (Budget) or by the LR Department. However, during the audit review committee meeting, the LR department agreed to ensure better co-ordination with the field offices and the Finance department while preparing the BEs in future.

System deficiencies

1.2.7 Grant of quarry permits for extraction of earth

The WBMM Rules regulate the grant of quarry permits for extraction and removal of minerals. Quarry permits for minor minerals are to be issued by the DL and LROs on receipt of application and prepayment of royalty. The Rules prescribe that quarry permits shall not be granted unless the mining dues, if any, are cleared beforehand. A register with the specified columns is required to be maintained by the SDL and LROs/DL and LROs to monitor the realisation of royalty and cess against the permits issued.

In order to augment the revenue from minor minerals, the DLRS issued (August 2000) a memorandum to the DL and LROs containing the modalities for extraction of earth for manufacturing of bricks by the brick field owners. Audit scrutiny revealed that though the memorandum was issued with the basic objective of augmenting revenue from brick earth, yet no report/return was prescribed to be furnished by the DL and LROs to the directorate intimating the revenue realised during the returned period. In absence of this, the directorate was unable to analyse the revenue before and after introduction of the modalities. Further, the operational modalities contradicted the corresponding provisions in the WBMM Rules and there was no evidence that

these instructions were issued with the approval of the Government. The WBMM Rules were revised in 2002 but these instructions were not incorporated in the revised Rules. Point wise anomalies between the Rules and the operational modalities and cases of deviation from the provisions of the Rules and also the executive instruction are mentioned below:

7.2.7.1 The Rules require that a permit will be issued for a specified area, period and quantity. However, according to the instruction, a discussion with the brick field owners would be held to fix in advance the quantum of earth to be extracted depending on the capacity and types of chimneys, which is not as per the Rules.

7.2.7.2 While the Rules require extraction only after a permit is granted on payment of advance royalty, the instruction permitted the brick field owners to extract and remove earth and to pay royalty before 31 January every year. This was in violation of the twin conditions viz., prior permit and prepayment of royalty required for extraction. In fact, the instruction allowed for issue of permit by 31 March of the year i.e. towards the end of the brick season. There were instances of individual agreements with brick field owners permitting payment even after 31 January. Besides, there were also cases in which payment was allowed to be made in installments though part payment of royalty was not permissible under the DLRS's instruction.

7.2.7.3 The Rules require that the issuing authority of the permit shall arrange for occasional inspection and checking of the quantity of the mineral removed. However, the instruction stated that frequent measurements of any form are not necessary and a final measurement shall have to be taken to complete the formality. Audit scrutiny revealed that no measurement was being taken of the earth actually extracted by the brick field owners to determine the royalty payable for the earth extracted.

Thus, the instructions of the DLRS have resulted in dilution of the controls provided in the Rules, which have resulted in non/short realisation of revenue as mentioned below:

- In case of 64 brick fields, although the owners extracted 2.14 crore cft. of brick earth between 2002-03 and 2006-07 on which royalty of Rs. 53.97 lakh was due, yet neither did the brick field owners pay the royalty nor was any action taken by the DL and LROs to realise the unpaid royalty.
- In 46 brick fields, the owners extracted 1.63 crore cft. brick earth and paid royalty of Rs. 18.67 lakh against the payable amount of Rs. 42.49 lakh. The DL and LROs did not take any action to realise the unpaid royalty, resulting in short realisation of Rs. 23.82 lakh.

After the cases were pointed out, the Government stated (September 2008) that the concerned district authorities had been asked to send the latest position of realisation of revenue in these cases.

The Government may immediately order for reconciliation of the operational modalities with the provisions of the Rules to ensure that the modalities prescribed by the department do not contradict any of the provisions of the Rules. Besides, it may also be investigated how the operational modalities which contradicted the provisions of the WBMM Rules were circulated without the approval of the Government.

7.2.8 System of inter-departmental cross verification of data

As per clause (5) of schedule V (conditions of quarry permit) of WBMM Rules, the quarry permit holders are required to submit a weekly statement of the raising and despatch of minerals against the quarry permit. Audit scrutiny revealed that neither the Rules prescribe for cross verification of the statements submitted by the permit holders with the information available with other organisations using the minerals nor was any executive instruction issued by the department for cross verification of the records to guard against unauthorised extraction and evasion of revenue.

Cross verification conducted by audit revealed a number of discrepancies as mentioned below:

7.2.8.1 In Medinipur, one company² entrusted with the work of widening of National Highway-6, had extracted 2,274.63 lakh cft. of minerals between February 2001 and June 2006 in excess of the permitted quantity as revealed from the materials consumption statements received through the National Highway Authority of India (NHAI). Thus, extraction of the minerals in excess of the permitted quantity was unauthorised for which price of minerals of Rs. 155.02 crore though realisable was not realised. The details are mentioned below:

| Name of the minor minerals | Permitted quantity for extraction | Quantity extracted | Quantity of unauthorised extraction | Rate of price of minerals (per 100 cft.) | Price of minerals recoverable (Rupees in crore) |
|----------------------------|-----------------------------------|--------------------|-------------------------------------|---|--|
| | (cft. in lakh) | | | | |
| Earth | 51.60 | 105.44 | 53.84 | 66 | 0.36 |
| Sand | 166.09 | 1,687.34 | 1,521.25 | 481 | 73.17 |
| Morrum | 54.60 | 87.25 | 32.65 | 141 | 0.46 |
| Stone | 96.00 | 762.89 | 666.89 | 1,215 | 81.03 |
| Total | 368.29 | 2,642.92 | 2,274.63 | | 155.02 |

7.2.8.2 Scrutiny of the records of DL and LR office, Paschim Medinipur revealed that a company³ entrusted with widening of National Highway - 6, had extracted 21.10 crore cft. earth, five crore cft. morrum and 39.54 lakh cft. gravel in excess of the permitted quantity as revealed from the materials consumption statements received from the NHAI.

| Minor Minerals | Quantity of unauthorised extractions (cft. in lakh) | Rate of price of minerals (Rs. per 100 cft.) | Price of minerals recoverable | Payments made by the company | Short realisation of price of minerals |
|----------------|--|---|-------------------------------|------------------------------|--|
| | | | (Rs. in crore) | | |
| Earth | 2,109.62 | 66 | 13.92 | 13.27 | 9.60 |
| Morrum | 500.28 | 141 | 7.05 | | |
| Gravel | 39.54 | 481 | 1.90 | | |
| Total | | | 22.87 | | |

For unauthorised extraction, Rs. 22.87 crore towards price of the minerals was recoverable, against which the company had deposited only Rs. 13.27 crore, resulting in short realisation of Rs. 9.60 crore.

² Hindusthan Construction Company (HCC).

³ B. Scenaiah and Company (Project) Ltd.

After the cases were pointed out, the Government stated in September 2008 that the district authorities had been advised to cross verify the materials consumption statements furnished to the NHAI and report back the outcome of the verification. The Government also stated that inter-departmental cross verification of data would be enforced to guard against unauthorised extraction and removal of minor minerals and evasion of revenue by the quarry permit holders.

The Government may take early action for issuing guidelines stipulating cross verification of information furnished by the permit holders with the records of other organisations to prevent evasion of revenue.

7.2.9 Non/short realisation of revenue due to non-conducting of inspections

Under sub-section 5 of section 21 of the MMDR Act and Rules made thereunder, no person is entitled to undertake mining operation without a valid permit. In the event of violation, apart from other penal action, the authority is empowered to recover either the minerals raised unlawfully or the price thereof. To prevent unauthorised mining, transportation and storage of minor minerals, the Rules empower the authority to establish check posts for checking of minerals in transit and to inspect, check and search minor minerals at the place of excavation or storage or during transit and maintain a register for the purpose.

Audit scrutiny revealed that though the Rules required inspection, checking and search of minor minerals at the place of excavation or storage or during transit and maintenance, yet the department has not prescribed the periodicity and other modalities for such inspection. In the absence of a system of regular inspection, the department was unaware of the quantity of minerals actually extracted and had to accept the figures disclosed by the companies to assess the dues payable. Besides, no register of inspection was maintained by the SDL and LROs/DL and LROs. Further scrutiny revealed that while calculating the dues, royalty and cess was demanded instead of the price of the minerals which resulted in non/short realisation of revenue as mentioned below:

7.2.9.1 Scrutiny of the records of the DL and LR office, Darjeeling revealed that one corporation⁴ extracted 88.99 lakh cft. stone/boulders, 32.19 lakh cft. sand and 10.02 lakh cft. clay between 2004-05 and 2006-07 for a project⁵ without any permit. The extraction was unauthorised for which price of minerals of Rs. 13.06 crore was recoverable against which the corporation had paid Rs. 1.03 crore as royalty and cess. This resulted in short recovery of Rs. 12.03 crore.

7.2.9.2 Scrutiny of records of 21 BL and LR offices under four⁶ DL and LR offices revealed that in 137 cases, 96 brickfield owners and two companies extracted 1.89 crore cft. of brick earth during 2000-01 to 2006-07 without any valid quarry permit. However, in 26 cases, the full price of brick earth/earth of Rs. 24.20 lakh was not realised while in the remaining 111 cases, Rs. 35.24

⁴ National Hydroelectric Power Corporation (NHPC).

⁵ Teesta Low Dam Project, Stage-III.

⁶ Burdwan (East), Murshidabad, North 24 Parganas and Uttar Dinajpur.

lakh was realised, by applying lower rates instead of Rs. 1.02 crore⁷ realisable. This resulted in non-realisation of revenue of Rs. 90.60 lakh.

7.2.9.3 Scrutiny of the records of DL and LRO, Dakshin Dinajpur revealed that Malda Construction Company entrusted with widening, strengthening and upgrading the Abidpur Gangarampur Laskarhat Road extracted 34.14 lakh cft. of earth during 2000-01 without valid quarry permit. Thus extraction of the entire quantity of earth was unauthorised for which Rs. 20.48 lakh was recoverable as the price of earth, but the DL and LRO, Dakshin Dinajpur had raised demand (in 2002-03 and 2006-07) for Rs. 11.95 lakh under the PDR Act as royalty and cess instead of Rs. 20.48 lakh as price of earth. Of the amount demanded, the company had paid Rs. 6.50 lakh only in 2002-03. This resulted in non-realisation of Rs. 13.98 lakh.

7.2.9.4 Scrutiny of the records of the DL and LR office, Burdwan revealed that two construction companies⁸ extracted 25.69 lakh cft. of earth between 2004-05 and 2006-07 for construction of railway track⁹ without any permit. Thus, the extraction was unauthorised for which price of earth of Rs. 16.78 lakh was recoverable. In case of one¹⁰ company, the district authority subsequently assessed royalty and cess of Rs. 9.04 lakh instead of the price and recovered Rs. 4 lakh. Thus there was short recovery of Rs. 12.78 lakh.

7.2.9.5 Scrutiny of the records of the DL and LRO, Paschim Medinipur revealed that Gamon India Ltd. extracted 53.72 lakh cft. earth between February 2004 and February 2006 against the permitted quantity of 87,303 cft. for construction of bridges on National Highway-60. Thus, extraction of 52.85 lakh cft. earth in excess of the permitted quantity was unauthorised for which price of minerals amounting to Rs. 34.88 lakh was recoverable. But the DL and LRO, Paschim Medinipur demanded Rs. 26.32 lakh as royalty and cess instead of price of minerals. This resulted in short demand of Rs. 8.56 lakh as price of earth.

After the cases were pointed out, the Government stated in September 2008 that the district authorities had been asked to send the latest position on the issue. It was also stated that a register for inspection is normally maintained; however, they were taking steps to operationalise better monitoring.

The Government may consider strengthening the inspection system by prescribing detailed modalities to prevent illegal extraction and removal of minor minerals. The DL and LRO / BL and LRO should be made accountable for illegal extraction of minerals and non-recovery of the price of minerals.

7.2.10 Initiation of certificate proceedings

Assessment and collection of royalty, cess, price of earth, etc. are governed under the MMDR Act and Rules made thereunder. Further, MMDR Act provides that the assessed dues remaining unpaid are recoverable as arrears of land revenue under the BPDR Act, 1913. Audit scrutiny revealed that the Government had not prescribed any time limit for initiating the certificate

⁷ The realisable amount of Rs. 101.64 lakh has been rounded off to Rs. 1.02 crore.

⁸ National Projects Construction Corporation (NPCC) Ltd. and Nirman Construction.

⁹ Bankura Damodar River (BDR).

¹⁰ NPCC.

proceedings nor had it instituted a periodic review and monitoring mechanism to ensure that the certificate proceedings are instituted in time.

Test check of the register of certificate cases of the DL and LR office, Purba Medinipur revealed that against the mining dues of Rs. 42.29 lakh as of March 2004 in respect of 22 extractors, only Rs. 2 lakh was realised between 2003-04 and 2006-07, during which period further dues of Rs. 1.23 lakh had accrued. The cases of the defaulters were not sent for certificate proceedings even after lapse of time ranging between one to five years. This resulted in non-recovery of revenue of Rs. 41.52 lakh.

After the case was pointed out, the Government stated in September 2008 that instruction had been given to the district authorities to initiate the certificate cases and to pursue the same before the certificate officer for early disposal.

The Government may consider prescribing a time frame for processing certificate cases either by issuing executive orders or by amending the Rules.

7.2.11 Absence of environmental protection measures

The WBMM Rules require that brick fields situated within a radius of 50 kms. of a thermal power plant should mix 30 *per cent* fly ash with brick earth as an environmental protection measure.

Audit scrutiny revealed that there were 746 brick kilns in 23 blocks of the five districts of the State having thermal power plants. However, no record was made available to audit to establish that the BL and LROs and DL and LROs enforced the use of fly ash in compliance of the provisions. Scrutiny also revealed that the BL and LROs and DL and LROs allowed the brick field owners to operate the brick fields without the clearance certificate from the Pollution Control Boards, on production of documents stating that the brick field owners had applied to the Pollution Control Board for consent to operate.

After the case was pointed out, the Government stated (October 2008) that instruction had already been given in this regard and steps were being taken to enforce the environment protection measures.

The Government may make it mandatory that permission for working of brick kilns is granted with the pre-condition that the kilns would use the requisite percentage of fly ash with the brick earth.

7.2.12 Internal audit

The internal audit is a vital tool available to the management to monitor the functioning of an organisation. It helps the management to take corrective measures wherever necessary to ensure that the systems are functioning reasonably well and the stated objectives are achieved.

No internal audit system existed in the department at the time of audit. The department informed that an internal audit wing had since been established from the year 2007-08. Thus, due to the absence of internal audit wing, adherence to the provisions of the statutes and instructions for reduction of the risk of committing errors and irregularities to guard against leakage of revenue was not ensured.

The Government may take immediate action to operationalise the internal audit wing and ensure compliance of the observations made by it.

7.2.13 Non/short realisation of cess

Cess is realisable under Cess Act at a consolidated rate of Rs. 15¹¹ per 100 cft. of minor minerals extracted and despatched from the quarry site. Audit scrutiny revealed that neither the WBMM Rules prescribe for any control register for watching the status of recovery of cess nor was any executive instruction issued.

Scrutiny of the records of 632 out of 746 brick fields in 23 BL and LR offices for which information was available revealed that in 144 cases (23 *per cent*) no cess was realised while in 37 cases (six *per cent*) the cess was not realised in full, as detailed below:

7.2.13.1 During 2002-07, in 226 cases the brickfield owners extracted 4.81 crore cft. of brick earth, but the BL and LROs did not raise the demand for cess of Rs. 72 lakh.

7.2.13.2 During 2002-07, in 39 cases the brickfield owners extracted 1.21 crore cft. of brick earth for which cess of Rs. 18.07 lakh was realisable against which Rs. 8.32 lakh was realised by the BL and LROs. This resulted in short realisation of cess of Rs. 9.75 lakh.

Thus, due to the absence of a provision for control register to watch the status of realisation of cess, the department remained unaware about the above cases of non/short realisation of cess.

After the cases were pointed out, the Government stated in September 2008 that the district authorities had been advised to keep a cess realisation register, if not already done. The reply, however, did not mention the action taken to realise the balance cess.

The Government may consider introducing a monitoring system to watch the realisation of cess by the DL and LROs and BL and LROs.

Compliance deficiencies

7.2.14 Non/short realisation of price of brick earth in cases of unauthorised brick fields

Under the MMDR Act and the Rules made thereunder, mining without a valid quarry permit is liable to penal action and the authority is empowered to recover the minerals raised unlawfully or the price thereof.

Scrutiny of the register of unauthorised brick fields maintained by the BL and LRO and DL and LRO revealed that 603 unauthorised brick fields in 24 BL and LR offices under six¹² DL and LR offices operated during the period 2002-03 to 2006-07. Scrutiny of the records of 527 such brick fields revealed the following:

7.2.14.1 Brick earth of 1.80 crore cft. was extracted by 59 unauthorised brick field owners for which the price of earth of Rs. 1.17 crore was realisable from the owners, but the district authorities did not realise the amount despite being aware of the unauthorised extraction.

¹¹ PW cess, Road cess, Rural employment cess, at the rate of Rs. 3 each and Primary education cess at the rate of Rs. 6.

¹² Burdwan, Hooghly, Murshidabad, North 24 Parganas, Paschim Medinipur and Purba Medinipur.

7.2.14.2 Brick earth of 2.12 crore cft. was extracted by 71 unauthorised brick field owners for which the price of earth of Rs. 1.38 crore was realisable from the owners but only Rs. 53.73 lakh was realised. This resulted in short realisation of price of brick earth of Rs. 84.59 lakh.

The Government stated in September 2008 that the concerned district authorities had been asked to send the latest report on realisation of the dues.

7.2.15 Non-imposition of penalty

Under the provisions of the WBMM Rules, the holders of mining lease shall extract and despatch the minimum quantity of minerals from the leasehold area annually as prescribed in the lease deed. In case there is any shortfall in the extraction and despatch of the said minimum quantity without any satisfactory reason, penalty to the extent of twice the amount of royalty that should have accrued on such shortfall shall have to be paid by the lessee.

Scrutiny of 60 out of 301 long term mining lease cases in four BL and LR offices under three¹³ DL and LR offices revealed that in 23 cases the lessees had extracted 51.81 lakh cft. of minerals against the minimum extractable quantity of 1.66 crore cft. as per the lease deeds. Thus, the lessees were liable to pay penalty of Rs. 1.44 crore for short extraction of 1.14 crore cft. of minerals. Although the lessees submitted monthly statements of raising and dispatch, the returns were not verified and reconciled with the lease deeds to ensure that the minimum quantity of minerals were extracted. Failure of the district authority to comply with the Rules resulted in non-imposition of penalty of Rs. 1.44 crore.

After the cases were pointed out, the DL and LRO, Burdwan admitted (November 2007) the audit observation in 17 cases involving Rs. 44.26 lakh while the DL and LRO, Darjeeling stated (March 2008) that the concerned mining authority was being informed and the realisation would be made thereafter. The DL and LRO, Paschim Medinipur did not furnish any reply.

The Government admitted the observations but did not state whether the amount had been realised.

7.2.16 Short realisation of royalty and cess due to application of pre-revised rates

The Government of West Bengal by a notification issued in November 2002 revised the rates of royalty and cess for extraction of earth, sand, stone and *morrum* etc. with effect from 8 November 2002. However, the rates of royalty had not been revised after November 2002 though there is a provision that the rate may be revised once in three years.

7.2.16.1 Scrutiny of the records of three¹⁴ BL and LR offices under the DL and LR office, North 24 Parganas revealed that the district authority granted 67 quarry permits during 2003-04 to 2006-07 for extraction of 1.01 crore cft. brick earth and realised royalty of Rs. 20.24 lakh instead of Rs. 34.41 lakh due to the application of pre-revised rate. This resulted in short realisation of royalty of Rs. 14.17 lakh.

¹³ Burdwan (East), Darjeeling and Paschim Medinipur.

¹⁴ Baduria, Habra – I and Hasnabad.

7.2.16.2 Scrutiny of the records of two¹⁵ DL and LR offices revealed that the district authorities had granted 53 quarry permits for extraction of 27.07 lakh cft. minor minerals between 8 November 2002 and 18 December 2002, but the DL and LROs had realised the royalty and cess of Rs. 13.36 lakh at the pre-revised rates instead of Rs. 20.61 lakh realisable at the revised rates. This resulted in short realisation of royalty and cess of Rs. 7.25 lakh.

After the cases were pointed out, the Government stated in September 2008 that the notification of November 2002 reached the districts late, hence, the district authority realised the royalty and cess at the old rate and that the persons who extracted the earth had no fixed address and were untraceable making it impossible to realise the difference.

7.2.17 Short imposition of penalty

Under the provisions of the WBMM Rules, if the permit issuing authority finds that the quarry permit holder has either during the validity of the quarry permit or thereafter, removed more minerals than the quantity authorised by the quarry permit, he may demand from the quarry permit holder an additional amount for the excess quantity of minerals removed as penalty at a rate not exceeding 10 times the royalty at which the quarry permit was issued.

Scrutiny of the records of SDL and LR office, Burdwan Sadar (South) revealed that the agents of a company¹⁶ entrusted with the construction work of Durgapur Expressway extracted 54.30 lakh cft. earth in excess of the permitted quantity. The DL and LRO, Burdwan (East) directed the SDL and LRO to impose penalty at the rate of 1.5 times of the royalty and cess. The SDL and LRO, Burdwan Sadar (South), however, imposed a penalty of Rs. 27.69 lakh only, resulting in short imposition of penalty of Rs. 12.22 lakh.

After the case was pointed out, the Government admitted the observation but did not state whether the amount had been recovered (October 2008).

7.2.18 Short realisation of royalty and cess

Under the provisions of the WBMM Rules, an application for mining lease shall be disposed of within one year from the date of its receipt. If any application is not disposed of within the specified period, it shall be deemed to have been refused. Further, the State Government may refuse to grant mining lease for the reasons to be recorded and communicated to the applicant in writing.

Scrutiny of the records of the BL and LR office, Burwan revealed that the mining lease applications of 42 persons, submitted between 1994 and 2000, were not disposed of within the specified period. The applicants obtained an interim order from the High Court in 2001 allowing them to extract sand on payment of royalty and directing the authorities to dispose of the applications within three months.

The department did not dispose of the application within the time directed by the Court. Seven out of 23 applicants had extracted 20.98 lakh cft. sand between March 2005 and November 2007 but paid Rs. 8.90 lakh only of royalty and cess against the payable amount of Rs. 16.36 lakh. This resulted

¹⁵ Burdwan and Paschim Medinipur.

¹⁶ Gamuda WCT (I) Pvt. Ltd.

in short realisation of Rs. 7.46 lakh. The BL and LRO, Burdwan did not take any action to realise the balance amount.

After the case was pointed out, the Government stated in September 2008 that the concerned DL and LROs had been asked to send a report in the matter.

7.2.19 Conclusion

Audit review revealed a number of deficiencies in the system of levy and collection of revenue from minor minerals leading to revenue leakages. Operational modalities for extraction of brick earth were issued which contravened the corresponding provisions of the WBMM Rules and without the approval of the Government leading to non/short realisation of revenue. No system of cross verification of departmental records with other organisations was put in place. Non-conducting of periodic inspection resulted in non-detection of unauthorised extraction of minerals without valid permits. The internal control mechanism in the department was weak as is evidenced by the absence of an internal audit wing and non-maintenance of vital registers by the BL and LROs / DL and LROs.

7.2.20 Summary of recommendations

The Government may consider implementation of the following recommendations for improving the revenue administration and prevent leakage of revenue:

- reconciling the operational modalities prescribed for extraction of brick earth with the provisions of the Rules to ensure that the modalities prescribed by the department do not contradict any of the provisions of the Rules. Besides, it may also be investigated how the operational modalities which contradicted the provisions of the WBMM Rules were circulated without the approval of the Government;
- taking early action for issuing guidelines stipulating cross verification of information furnished by the permit holders with the records of other organisations to prevent evasion of revenue;
- strengthening the inspection system to prevent illegal extraction and removal of minor minerals. The DL and LRO/BL and LRO should be made accountable for illegal extraction of minerals and non-recovery of the price of minerals;
- prescribing a time frame for processing certificate cases either by issuing executive orders or amending the Rules;
- introducing a monitoring system to watch the realisation of cess by the DL and LRO and BL and LROs; and
- taking immediate steps to make the internal audit wing operational and issuing compliance of the observations made by it to guard against leakage of revenue.

7.3 Non-realisation of water rate due to non-completion of assessment

Under the provisions of the Mineral Concession Rules, 1960 and terms and conditions of the mining lease, the lessee shall pay water rate at the prescribed

rate in respect of all parts of surface of land occupied or used by him. Water rate is realisable at the rate of Rs. 54 per acre per annum under the West Bengal Irrigation (Imposition of Water Rate) Act, 1974.

Scrutiny of the records of the Cess Deputy Collector (CDC), Asansol in January 2007 revealed that water rate on 25,362.16 acres of land occupied/used by four¹⁷ lessees for extraction of coal during the year 2005-06 was not assessed and realised. This resulted in non-realisation of revenue of Rs. 13.70 lakh.

After the cases were pointed out, the CDC, Asansol stated in January 2007 that clarification from the Government had been sought regarding the authority which was responsible for assessment and collection of water rate. Further development has not been reported (September 2008).

The cases were reported to the Government in February 2007, followed by reminders issued upto June 2008; their reply has not been received (September 2008).

B. RECEIPTS FROM IRRIGATION AND WATERWAYS

7.4 Non/short assessment of water rate

Under the provisions of the West Bengal Irrigation (Imposition of Water Rate) Act, 1974, occupiers of land receiving irrigation from the canals are required to pay water rates as prescribed by the Government from time to time. Assessment of water rates is made by the respective revenue division on receipt of test notes from the engineering divisions of the Irrigation and Waterways (I and W) Department. According to the instruction issued by the department in June 1977, any difference between the areas irrigated as shown by the engineering division and the assessment figure as shown by the revenue division should be reconciled by both the offices within one month.

Scrutiny of the records of four¹⁸ revenue offices (ROs) between September 2006 and March 2007 revealed that test notes from the concerned engineering divisions indicating the area irrigated as 17.90 lakh acres, during the assessment periods between 2002-03 and 2005-06 were received in these revenue divisions. It was, however, noticed that the RO, Kangsabati Revenue Division – I did not make any assessment of water rate on test notes of 1.21 lakh acres during the period between 2002-03 and 2003-04 while the RO, Kangsabati Division – II, RO, Mayurakshi Revenue Division – I and II made assessments on 13.37 lakh acres only during the assessments period between 2002-03 and 2005-06. Thus, erroneous assessment of water rate by the revenue divisions without reconciling the information/data furnished by the engineering divisions led to non/short assessment of water rate on 4.53 lakh acres¹⁹ and consequential non/short realisation of revenue of Rs. 1.10 crore.

¹⁷ M/s Bengal EMTA Coal Mines Ltd., M/s Bharat Coking Coal Ltd., M/s Eastern Coal Fields Ltd. and M/s Integrated Coal Mines (P) Ltd.

¹⁸ Kangsabati Revenue Division - I; Kangsabati Revenue Division - II; Mayurakshi Revenue Division - I and II.

¹⁹ RO, Kangsabati – I: 1.21 lakh acres, RO, Kangsabati – II: 1.10 lakh acres, RO, Mayurakshi – I: 1.95 lakh acres and RO, Mayurakshi – II: 0.27 lakh acres.;

The cases were reported to the department and Government between November 2006 and May 2007, followed by reminders issued upto June 2008; their reply has not been received (September 2008).



Kolkata
The 18 MAR 2009

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