Report of the
Comptroller and Auditor General of India
(Revenue Sector)

for the year ended March 2012

Government of Andhra Pradesh

Report No. 1 of 2013

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P R E F A C E

This Report on the Revenue Sector for the year ended 31 March 2012 has been prepared for submission to the Governor under Article 151(2) of the Constitution.

The audit of revenue sector of the State Government is conducted under Sections 13 and 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/VAT, state excise, taxes on motor vehicles, stamp duty and registration fees, land revenue, entertainments tax and other taxes of the State. It also includes the results of a Performance Audit on disaster preparedness.

The cases mentioned in the Report are among those which came to notice in the course of test audit of records during the year 2011-12 as well as those which came to notice in earlier years but could not be included in previous years' Reports.

OVERVIEW

The Report contains 33 paragraphs involving ₹ 195.31 crore relating to non/short levy of taxes, interest, penalty etc., and two Performance Audits on (i) "VAT Audits and Refunds", involving ₹ 49.39 crore, and (ii) "Disaster preparedness", thus having total financial impact of ₹ 244.70 crore. Some of the significant audit findings are mentioned below:

1 GENERAL

The total revenue receipts of the State Government for the year 2011-12 amounted to ₹ 93,553.69 crore against ₹ 80,996.30 crore for the previous year. 69 *per cent* of this was raised by the State through tax revenue (₹ 53,283.41 crore) and non-tax revenue (₹ 11,694.34 crore). The balance 31 *per cent* was received from the Government of India as State's share of divisible Union taxes (₹ 17,751.15 crore) and Grants-in-aid (₹ 10,824.79 crore).

(Paragraph 1.1.1)

Test check of the records of 1,024 units of VAT/sales tax, land revenue, taxes on vehicles, stamp duty and registration fee and other departmental offices conducted during the year 2011-12 revealed preliminary audit findings involving underassessment/short levy/loss of revenue etc., amounting to ₹ 506.19 crore in 2,658 cases.

(Paragraph 1.5.1)

2 SALES TAX/VAT

A Performance Audit on "VAT Audits and Refunds" was conducted covering the VAT audits completed by the Department and refunds granted during the period from 2006-07 to 2010-11, which indicated the following deficiencies:

- There were substantial arrears in completion of the planned audits for the period from 2006-07 to 2010-11, ranging from 13 to 51 *per cent*.

(Paragraph 2.7.6.1)

- There was no monitoring mechanism whereby status of audits authorised and completed could be verified.

(Paragraph 2.7.6.2)

- The VAT Audit files were not being transmitted to the jurisdictional offices soon after completion of audits.

(Paragraph 2.7.6.3)

- There had been poor utilisation of the audit module in the VATIS software package in the VAT audit process.

(Paragraph 2.7.6.4)

- Instructions issued by the Commissioner of Commercial Taxes (CCT) were not adhered to with regard to selection of dealers. As a result, the top dealers with high turnovers were not selected for audit since inception of APVAT Act in 2005. Consequently, the audits were selected in an arbitrary manner without any adherence to the risk parameters; audits of same dealers for the same or converging audit periods was authorised to different officers; there was no co-ordination between the divisional officers who authorise the audit and the jurisdictional CTO who was responsible for cancellation of registration of dealers.

(Paragraphs 2.7.6.5 and 2.7.6.6)

- There were several omissions in the audit files, as a result of which we do not have assurance that the audit officers had followed the prescribed checks.

(Paragraphs 2.7.7.1)

- Analysis of the information received from CCT revealed that the penalty of at least ten *per cent* of the under declared output tax or excess input tax claimed, as stipulated in the provisions was not levied, resulting in short levy of penalty at least by ₹ 133.16 crore.

(Paragraph 2.7.7.3)

- In Nandyal II circle, input tax credit (ITC) was incorrectly allowed by the Audit Officer though the dealer wilfully manipulated invoices, resulting in loss of revenue of ₹ 76 lakh.

(Paragraph 2.7.8.1)

- Failure to restrict the ITC by the Audit Officer by applying the prescribed formula resulted in short levy of tax of ₹ 72 lakh in 10 offices involving 13 dealers.

(Paragraph 2.7.8.2)

- Incorrect allowance of ITC on the exempt transactions/exempt sales by the Audit Officer resulted in short levy of tax of ₹ 56 lakh in 13 offices involving 14 dealers.

(Paragraphs 2.7.8.4 and 2.7.8.6)

- Incorrect determination of taxable turnover due to allowance of inadmissible deductions by the Audit Officer in respect of 56 dealers in 19 offices resulted in under declaration of tax of ₹ 7.44 crore.

(Paragraphs 2.7.9.1 and 2.7.9.2)

- Incorrect allowance by the Audit Officer, of exemption of turnover relating to earth work, royalty, excise duty, development charges received by the dealers in respect of four works contractors of four offices resulted in short levy of tax of ₹ 1.02 crore.

(Paragraph 2.7.9.3)

- Mis-classification of the works contracts under inappropriate sections of the APVAT Act by the Audit Officer resulted in short levy of tax of ₹ 64.10 lakh in five offices.

(Paragraph 2.7.9.4)

- Failure of Audit Officers to compare the turnovers declared in VAT returns with those in the profit and loss accounts resulted in short levy of tax of ₹ 7.03 crore in 74 cases under 24 offices.

(Paragraph 2.7.10)

- Failure of the Audit Officers to point out the incorrect availing of sales tax deferment by four industrial units under four offices resulted in short levy of tax of ₹ 1.02 crore.

(Paragraph 2.7.12)

- In 15 offices, Audit Officers did not levy penalty of ₹ 1.26 crore in respect of 19 dealers, although they had in the course of their audit, concluded that the dealers had wilfully suppressed their tax liabilities.

(Paragraph 2.7.23.1)

- In 21 offices, the Audit Officers failed to levy penalty at correct rate, resulting in short levy of penalty of ₹ 68 lakh in 27 cases.

(Paragraph 2.7.23.2)

- Refund was granted in excess by ₹ 11.82 crore to six works contractors in five offices due to incorrect determination of taxable turnover.

(Paragraphs 2.7.24.1 and 2.7.24.2)

- Refund of ₹ 8.58 crore was granted in excess in one case under one office based on High Court order without taking into account the liabilities due by the assessee.

(Paragraph 2.7.25)

- Refund of ₹ 1.77 crore was incorrectly granted by the Audit Officer without finalising Central Sales Tax (CST) assessment in two cases under one office.

(Paragraph 2.7.26)

- Excess refund of ₹ 1.02 crore was granted in two cases in two offices due to not exercising prescribed checks laid down in Government notifications.

(Paragraph 2.7.28)

- Excess refund of ₹ 87 lakh was granted to one dealer in one office due to non levy of penalty/interest on belated payment of tax.

(Paragraph 2.7.29)

Audit observations on Returns and Assessments

- VAT on works contract receipts amounting to ₹ 10.59 crore was under declared on account of allowing inadmissible deductions/adoption of incorrect rates/incorrect claim of ITC/under declaration of taxable turnover in 37 cases in 29 offices.

(Paragraph 2.9)

- In 51 offices, CST/penalty of ₹ 8.62 crore was either not levied or short levied on the turnovers relating to inter-State sales, consignment, transit sales and export sales covered by fake/invalid forms or not covered by forms.

(Paragraph 2.10)

- Misclassification of Sales as Works contracts resulted in under declaration of VAT of ₹ 4.49 crore in 15 cases in six offices.

(Paragraph 2.11)

- Declaration of taxable turnover as exempted turnover resulted in non-payment of VAT of ₹ 2.18 crore in five cases in five offices.

(Paragraph 2.12)

- In 30 offices, the Department allowed excess/incorrect claim of ITC of ₹ 1.86 crore in 41 cases.

(Paragraph 2.13)

3 STATE EXCISE DUTIES

- In nine offices of Prohibition and Excise Superintendents, additional licence fee of ₹ 1.42 crore was not levied on 29 bars and restaurants having non-contiguous consumption enclosures.

(Paragraph 3.8)

- Irregular adjustment of Earnest Money Deposit (EMD) in 24 cases in five offices of Prohibition and Excise Superintendents resulted in loss of revenue of ₹ 98.27 lakh.

(Paragraph 3.9)

4. TAXES ON VEHICLES

- Quarterly tax and penalty of ₹ 17.94 crore were not realised in the offices of one Joint Transport Commissioner (JTC), 16 Deputy Transport Commissioners (DTCs) and 25 Regional Transport Offices (RTOs).

(Paragraph 4.8)

- Non-renewal of fitness certificates of 3,23,878 transport vehicles in the offices of one JTC, 12 DTCs and 21 RTOs, resulted in non-realisation of fitness certificate fee of ₹ 9.94 crore.

(Paragraph 4.9)

- Life tax aggregating to ₹ 1.20 crore was short levied in offices of 13 DTCs and 18 RTOs in respect of 1,749 second or subsequent non-transport vehicles owned by individuals.

(Paragraph 4.10.1)

- Green Tax amounting to ₹ 1.30 crore was not levied in offices of 10 DTCs and 14 RTOs in respect of 42,575 transport vehicles and 15,303 non-transport vehicles that had completed seven years and 15 years respectively.

(Paragraph 4.11)

- Compounding Fee of ₹ 68.33 lakh was not levied in the offices of one JTC, 12 DTCs and 11 RTOs in respect of 2,038 vehicles involved in compoundable offences namely carrying overload, excess passengers etc.

(Paragraph 4.12)

- Bilateral tax and penalty of ₹ 79.68 lakh were not collected in respect of 1,270 Odisha State vehicles, which were granted countersignature permits of Andhra Pradesh.

(Paragraph 4.13)

5 STAMP DUTY AND REGISTRATION FEES

- Stamp Duty and Registration Fees of ₹ 53.51 crore was not realised on 21 lease agreements/authorisation agreements and memorandum of understanding as they were not registered as per the provisions of Indian Stamp Act, 1899.

(Paragraph 5.8.1)

- Stamp duty on 'Build Operate and Transfer' lease agreements was short levied by ₹ 1.70 crore due to adoption of total rent payable instead of market value of property.

(Paragraph 5.8.2)

- Stamp duty of ₹ 50.37 crore on 6,54,615 vehicles was not collected by private banks/financial institutions during the year 2010-11 on the vehicles hypothecated with them.

(Paragraph 5.9)

- Non-disclosure/misrepresentation of facts resulted in short levy of Stamp duty and Registration fees of ₹ 18.86 crore.

(Paragraph 5.10)

- Misclassification of 'dissolution of partnership' as 'partition deed' resulted in short levy of stamp duty and registration fees of ₹ 69.22 lakh.

(Paragraph 5.11.1)

6 OTHER TAX RECEIPTS

LAND REVENUE AND WATER TAX

- In six Tahsildars offices in five districts, conversion fee and fine of ₹ 89.38 lakh was not levied in 85 cases for conversion of 719.15 acres of agricultural land for non-agricultural purposes.

(Paragraph 6.2)

- In 34 offices of the Tahsildars in 11 districts, road cess of ₹ 1.31 crore was not levied/levied short on *ayacutdars* in the command areas of irrigation projects.

(Paragraph 6.3)

- Test check of records of offices of nine Tahsildars revealed that water tax amounting to ₹ 94.90 lakh was either not levied or levied short.

(Paragraph 6.4)

7 REVENUE DEPARTMENT

Performance Audit on "Disaster preparedness" was conducted in sampled districts of East Godavari, Sri Potti Sriramulu (SPS) Nellore, Visakhaptnam, Kurnool and Khammam districts for the period 2007-08 to 2011-12, which indicated the following:

- State Disaster Management Authority (SDMA) required to meet at least once in three months had met only twice between 2007-08 and 2011-12 and no annual reports were prepared, contrary to the provisions of Central Disaster Management Act (CDMA) and State Disaster Management Rules (SDMR) Rules 2007. There was shortfall in meetings of the test-checked District Disaster Management Authorities (DDMAs)

(Paragraphs 7.3.1.1 and 7.3.1.3)

- Regarding district level disaster planning, in SPS Nellore and East Godavari districts, consolidated and comprehensive district disaster management plans were prepared every year and in timely fashion. In Kurnool and Khammam districts, district plans were not prepared in time. However, in Visakhapatnam district, individual action plans were prepared by the concerned Line departments, but were not being consolidated.

(Paragraph 7.3.1.4)

- 30 Early Warning Systems (EWS) installed in East Godavari district in 2008 became unusable within one year of their procurement; in Nellore district, of the 30 EWS installed in 2008, 12 systems were with low power

battery and were installed at places where no power supply was available. The remaining 18 EWS, though in good working condition, became non-functional due to lack of maintenance within one year of their procurement.

(Paragraph 7.3.2.1)

- Out of 67 HAM Radios available in four districts(East Godavari, Visakhapatnam, SPS Nellore and Khammam), only one was functional and none of the eight satellite phones was in working condition.

(Paragraph 7.3.4.1)

- In Visakhapatnam and SPS Nellore districts, although funds were provided, no cyclone stores material or any communication equipment were procured.

(Paragraph 7.3.4.2)

- It was noticed from the physical inspection of 126 shelters in four districts (East Godavari, Visakhapatnam, Khammam and SPS Nellore) that only 29 were usable. The remaining shelters either required major or minor repairs or were in dilapidated condition.

(Paragraph 7.3.4.3)

- The rescue boats available in SPS Nellore, East Godavari and Visakhapatnam districts were either not in usable condition or were not commensurate with the population to be evacuated.

(Paragraph 7.3.4.4)

The following deficiencies in financial management for disaster preparedness were noticed:

- No funds for construction/maintenance of cyclone shelter were provided in East Godavari, Khammam and Visakhapatnam districts; funds for restoration of two shore stations at East Godavari district were not provided by Commissioner of Fisheries.

(Paragraph 7.3.5.2)

- It was noticed from the records of test checked districts that State disaster response Fund (SDRF) was either not utilized fully or utilised belatedly.

(Paragraph 7.3.5.4)

- Although the guidelines stipulated submission of Utilisation Certificates (UCs) for SDRF funds, the UCs for ₹ 4,024.38 crore released during 2007-12 (constituting 85.45 *per cent* of the funds released) had not been received.

(Paragraph 7.3.5.5)

CHAPTER I

GENERAL

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1.1 Trend of revenue receipts

1.1.1 The tax and non-tax revenue raised by the Government of Andhra Pradesh during 2011-12, 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:

Table 1.1 - Trend of revenue receipts

(₹ in crore)

Sl. No.	Particulars	2007-08	2008-09	2009-10	2010-11	2011-12
I	**Revenue raised by the State Government**					
	• Tax revenue	28,794.05	33,358.29	35,176.68	45,139.55	53,283.41
	• Non-tax revenue	7,064.13	9,683.40	7,802.26	10,719.72	11,694.34
	Total	**35,858.18**	**43,041.69**	**42,978.94**	**55,859.27**	**64,977.75**
II	**Receipts from the Government of India**					
	• State's share of divisible Union taxes	11,183.64	11,801.50	12,141.71	15,236.75	17,751.15
	• Grants-in-aid	7,100.73	8,015.26	9,557.70	9,900.28	10,824.79
	Total	**18,284.37**	**19,816.76**	**21,699.41**	**25,137.03**	**28,575.94**
III	**Total receipts of the State (I + II)**	**54,142.55**	**62,858.45**	**64,678.35**	**80,996.30**	**93,553.69**
IV	**Percentage of I to III**	**66**	**68**	**66**	**69**	**69**

(Source: Statement 11 of Finance Accounts of Andhra Pradesh for the relevant years)

The above table indicates that during the year 2011-12, the revenue raised by the State Government was 69 *per cent* of the total revenue receipts of ₹ 93,553.69 crore. The balance 31 *per cent* of the receipts during 2011-12 was from the Government of India.

1.1.2 The following table presents the details of tax revenue raised during the period from 2007-08 to 2011-12.

Table 1.2 - Details of Tax revenue

(₹ in crore)

Sl. No.	Head of revenue	2007-08	2008-09	2009-10	2010-11	2011-12	Percentage of increase (+) /decrease (-) in 2011-12 over 2010-11
1.	Value Added Tax (VAT)	17,593.41	20,596.47	22,278.14	27,443.24	33,251.87	(+) 21.17
	Central sales tax	1,433.08	1,255.19	1,362.07	1,701.61	1,658.14	(-) 2.55
2.	State excise	4,040.69	5,752.61	5,848.59	8,264.67	9,612.36	(+) 16.31
3.	Stamp duty and registration fee	3,086.06	2,930.99	2,638.63	3,833.57	4,385.25	(+) 14.39
4.	Taxes and duties on electricity	195.36	218.54	159.25	285.88	304.95	(+) 6.67
5.	Taxes on vehicles	1,603.80	1,800.62	1,995.30	2,626.75	2,986.41	(+) 13.69
6.	Taxes on goods and passengers	80.29	15.88	10.28	9.48	12.06	(+) 27.22
7.	Other taxes on income and expenditure, tax on professions, trades, callings and employments	355.72	374.46	430.36	490.33	539.90	(+) 10.11
8.	Other taxes and duties on commodities and services	171.00	203.13	170.01	206.28	234.46	(+) 13.66
9.	Land revenue	144.39	130.35	221.56	170.74	140.56	(-) 17.68
10.	Taxes on immovable property other than agricultural land	90.25	80.05	62.49	107.00	157.45	(+) 47.15
Total		**28,794.05**	**33,358.29**	**35,176.68**	**45,139.55**	**53,283.41**	**(+) 18.04**

(Source: Statement 11 of the Finance Accounts for Andhra Pradesh for the relevant years)

1.1.3 The following table presents the details of non-tax revenue raised during the period from 2007-08 to 2011-12:

Table 1.3 - Details of Non-Tax revenue

(₹ in crore)

Sl. No.	Head of revenue	2007-08	2008-09	2009-10	2010-11	2011-12	Percentage of increase (+)/decrease (-) in 2011-12 over 2010-11
1.	Interest receipts[1]	3,525.34	3,487.40	4,851.52	5,774.29	6,278.82	(+)8.74
2.	Non-ferrous mining and metallurgical industries (mines and minerals)	1,597.56	1,684.98	1,887.26	2,064.86	2,336.74	(+)13.17
3.	Miscellaneous general services	778.64	2,944.06	(-) 617.71	806.97	255.17	(-) 68.38
4.	Police	99.83	105.36	130.09	170.98	246.01	(+)43.87
5.	Forestry and wild life	90.92	93.22	103.11	139.06	149.22	(+)7.31
6.	Other non-tax receipts	971.84	1368.38	1447.98	1763.56	2428.38	(+) 37.70
	Total	**7,064.13**	**9,683.40**	**7,802.26**	**10,719.72**	**11,694.34**	**(+) 9.09**

(Source: Statement 11 of the Finance Accounts for Andhra Pradesh for the relevant years)

1.2 Response of the Departments/Government towards audit

The Principal Accountant General (PAG) conducts test check of the transactions of Government Departments and communicates the audit observations through Inspection Reports (IRs). The Heads of offices report compliance to the observations in IRs within one month from the date of issue of IRs.

The paragraphs remaining unsettled are expedited by the audit committees set up for the purpose. Serious audit observations converted as draft paragraphs proposed for inclusion in the Audit Report are communicated to the Department/Government. The Government is required to furnish the replies to such draft paragraphs within six weeks of their issue. Departmental explanatory notes to the paragraphs included in Audit Reports are required to be submitted within three months of an Audit Report being presented to the Legislature.

1.2.1 Failure of senior officials to enforce accountability and protect the interest of the State Government

The PAG conducts periodical inspection of Government Departments to test check the transactions and verify the maintenance of important accounts and

[1] Interest receipts include interest receipts from irrigation projects (2011-12 – ₹ 5726 crore), which is only a notional revenue, since it has arisen out of book adjustment.

other records as prescribed in the rules and procedures. These inspections are followed up with IRs, incorporating irregularities detected during the inspection and not settled on the spot, which are issued to the Heads of the offices inspected with a copy to the next higher authorities for taking prompt corrective action. The Heads of offices/Government are required to promptly comply with the observations contained in the IRs, rectify the defects and omissions and report compliance through initial reply to the PAG within one month from the date of issue of the IRs. Serious financial irregularities are reported to the Heads of Departments and the Government.

Details regarding IRs issued upto 31 December 2011 revealed that 34,117 paragraphs involving ₹ 12,873.06 crore relating to 11,444 IRs remained outstanding at the end of 30 June 2012 as mentioned below, alongwith the corresponding figures for the preceding two years:

Table 1.4 - Summary of outstanding audit observations

	June 2010	June 2011	June 2012
Number of outstanding IRs	10,689	11,417	11,444
Number of outstanding audit observations	28,990	32,322	34,117
Amount involved (Rs. in crore)	11,916.66	12,175.14	12,873.06

The Department-wise details of the IRs and audit observations outstanding as on 30 June 2012 and the amounts involved are mentioned below:

Table 1.5 - Department wise details of outstanding audit observations

(₹ in crore)

Sl. No.	Department	Nature of receipt	No. of outstanding IRs	No. of outstanding audit observations	Money value involved
1.	Commercial Taxes	VAT/ST/LT/ET	3,960	14,510	3,350.92
2.	Land Revenue	Water Tax, Conversion Fee	3,651	8238	2,324.94
3.	Registration and Stamps	Stamp duty & Registration fees	2,347	6,530	801.66
4.	Prohibition and Excise	State Excise Duty	711	1,788	177.81
5.	Transport	Taxes on vehicles	427	2,400	2,541.92
6.	Mines and Minerals	Mineral Receipts	265	550	1,729.31
7.	Sugar and Cane	Purchase tax	57	71	249.00
8.	Energy	Electricity duty	16	20	809.45
9.	Municipal Administration and Urban Development	Royalty on water	2	2	83.19
10.	Finance and Planning	Interest	4	4	474.81
11.	Irrigation and Command Area Development	Road cess	4	4	330.05
Total			**11,444**	**34,117**	**12,873.06**

Even the first replies required to be received from the heads of offices within one month from the date of issue of the IRs were not received for 323 IRs issued upto December 31, 2011. This large pendency of the IRs due to non-receipt of the replies is indicative of the fact that the heads of offices and heads of the Departments failed to initiate action to rectify the defects, omissions and irregularities pointed out by the PAG in the IRs.

We recommend that the Government should introduce a system for sending prompt and appropriate response to audit observations as well as taking action against those failing to send replies to the IRs/paragraphs as per the prescribed time schedules.

1.2.2 Departmental audit committee meetings

The Government set up audit committees to monitor and expedite the progress of the settlement of IRs and paragraphs in the IRs. The details of the audit committee meetings held during the year 2011-12 and the paragraphs settled are mentioned below:

Table 1.6 - Details of Departmental audit committee meetings

(₹ in crore)

Sl. No.	Head of revenue	No. of meetings held	No. of paras settled	Amount
1.	Commercial Taxes	5	545	16.42
2.	Taxes on Vehicles	3	177	20.03
3	Stamp Duty & Registration Fee	3	279	0.58
4	Land Revenue	1	271	0.09
Total		**12**	**1,272**	**37.12**

As the pendency of IRs and paragraphs are accumulating, we recommend that the Government may instruct all the Departments to conduct more audit committee meetings to expedite clearance.

1.2.3 Non-production of records to Audit for scrutiny

The programme of local audit is drawn up sufficiently in advance and intimations are issued, usually one month before the commencement of audit to the Departmental offices to enable them to keep the relevant records ready for audit scrutiny.

During 2011-12, audit of 1,024 offices was conducted. Out of these, in 110 offices certain important records like Sales Tax assessment files, DCB registers, Receipt books, Daily collection registers etc., were not produced to audit though the audit programme was intimated well in advance.

We recommend that the Government may issue suitable instructions to the heads of Departments concerned for production of all the relevant records for audit scrutiny.

1.2.4 Response of the Departments to draft audit paragraphs

The draft paragraphs/performance audits proposed for inclusion in the Audit Report are forwarded by the PAG to the Principal Secretaries of the concerned Departments through demi-official letters. According to the instructions issued (September 1995) by the Government, all the Departments are required to furnish their remarks on the draft paragraphs/reviews within six weeks of their receipt. The fact of non-receipt of replies from the Government is invariably indicated at the end of each such paragraph included in the Audit Report.

117 draft paragraphs clubbed into 35 paragraphs (including 2 Performance Audits) proposed for inclusion in the Report of the Comptroller and Auditor General of India (Revenue Sector) for the year ended 31 March 2012 were forwarded to the concerned Principal Secretaries to the Government and copies endorsed to the concerned heads of the Departments between March and October 2012. Of these, replies to only 23 draft paragraphs have been received from Government[2].

1.2.5 Follow up on Audit Reports – Summary

As per the instructions issued by Finance and Planning Department in November 1993, the Departments of the Government are required to prepare and send to the Andhra Pradesh Legislative Assembly Secretariat, detailed explanations (Departmental notes) on the audit paragraphs within three months of an Audit Report being laid on the table of the Legislature.

A review of the position in this regard revealed that as of January 2013, 14 Departments had not furnished the Departmental notes in respect of 191 paragraphs included in the Audit Reports for the years 2000-01 to 2010-11 due between June 2002 and June 2012. The delays ranged from 7 months to over 10 years as mentioned in the following table:

Table 1.7 - Status of Departmental notes due

Sl. No.	Department	Year of the Audit Report	Dates of presentation to the Legislature	Last date by which Departmental notes were due	No. of paragraphs for which the Departmental notes were due	Delay in months
1.	Commercial Taxes	2007-08 to 2010-11	September 2009 to March 2012	November 2009 to June 2012	74	7 to38
2.	State Excise	2008-09 to 2010-11	July 2010 to December 2011	October 2010 to March 2012	6	10 to 27
3.	Transport	2010-11	March 2012	June 2012	7	7
4.	Registration and Stamps	2009-10 & 2010-11	March 2011 & March 2012	June 2011 & June 2012	17	7 to 19
5.	Co-operation	2000-01 & 2008-09	March 2002 & July 2010	June 2002 & October 2010	4	27 to 127
6.	Irrigation	2000-01 & 2006-07	March 2002 & March 2008	June 2002 & June 2008	4	55 to 127

[2] Responses received from the Department on preliminary audit findings have been duly considered.

Sl. No.	Department	Year of the Audit Report	Dates of presentation to the Legislature	Last date by which Departmental notes were due	No. of paragraphs for which the Departmental notes were due	Delay in months
7.	Land Revenue	2001-02 to 2010-11	March 2003 to March 2012	June 2003 to June 2012	62	7 to 115
8.	Industries & Commerce	2004-05; 2005-06 & 2010-11	March2006, March2007 March2012	June2006, June 2007 June2012	6	79, 67 & 7
9.	Home	2006-07	March 2008	June 2008	1	55
10.	Energy	2001-02	March 2003	June 2003	1	115
11.	Municipal Administration and Urban Development	2002-03 & 2003-04	July 2004 & October 2005	October 2004 & January 2006	3	84 & 99
12.	Finance	2001-02 & 2009-10	March 2003 & March 2011	June 2003 & June 2011	2	19 & 115
13.	Forests	2003-04, 2005-06 & 2007-08	October 2005, March 2007 & September 2009	January 2006, June 2007 & November 2009	3	84, 67 & 38
14.	General Administration	2005-06	March 2007	June 2007	1	67
	Total	**2000-01 to 2010-11**	**March 2002 to March 2012**	**June 2002 to June 2012**	**191**	**7 to 127**

This indicates that the executive failed to take prompt action on the important issues highlighted in the Audit Reports that involved large sums of unrealised revenue.

1.2.6 Compliance with the earlier Audit Reports

During the years 2006-07 to 2010-11, the Departments/Government accepted audit observations involving ₹ 2359.85 crore, out of which an amount of ₹ 16.73 crore was recovered till September 2012 as mentioned below:

Table 1.8 - Recovery of accepted audit observations

(₹ in crore)

Year of Audit Report	Total money value	Accepted money value	Recovery made
2006-07	401.59	245.39	3.42
2007-08	443.46	177.31	4.42
2008-09	628.76	342.25	3.84
2009-10	1,168.41	1,046.51	4.25
2010-11	772.43	548.39	0.80
Total	**3,414.65**	**2,359.85**	**16.73**

The percentage of recovery of accepted cases as compared to the accepted money value was very low (0.71 *per cent*).

We recommend that the Government may advise the concerned Departments to take necessary steps for speedy recovery, especially in cases where the Departments have accepted audit's contention.

1.3 Analysis of arrears of revenue

As per the information furnished by the Departments, the arrears of revenue as on 31 March 2012 in respect of some principal heads of revenue amounted to ₹ 6,473.87 crore of which ₹ 3,552.54 crore were outstanding for more than five years as detailed in the following table:

Table 1.9 - Reported arrears of revenue

(₹ in crore)

Sl. No.	Head of revenue	Amount outstanding as on 31 March 2012	Amount outstanding for more than five years as on 31 March 2012	Remarks
1	Land revenue	427.51	370.39	Not furnished by Department.
2	Taxes on vehicles	3,316.54	1,330.50	₹ 3312.56 Crore is due from APSRTC. ₹ 3.98 crore is due from other individual cases.
3	Stamp duty and registration fee	40.80	NA	Write off proposal amounting to ₹ 7.15 crore is pending with Government.
4	Taxes and duties on electricity	2,599.04	1,539.69	Amount of ₹169.47 crore was stayed by High Court. Demand of ₹ 2429.57 crore is stated to be recoverable.
5	Mines and minerals	89.98	NA	Amount stated to be covered by Revenue Recovery process.
6	Receipts under Sugarcane (Regulation, Supply and Purchase Tax) Act	-	311.96	Not available.
Total		**6,473.87**	**3,552.54**	

The above figures are reported by the Departments and their reliability cannot be vouchsafed in audit.

1.4 Audit planning

The unit offices under various Departments are categorised into high, medium and low risk units according to their revenue position, past trends of audit observations and other parameters. The annual audit plan is prepared on the basis of risk analysis which *inter-alia* includes critical issues in government revenues and tax administration i.e., budget speech, white paper on state finances, reports of the finance commission (state and central), recommendations of the taxation reforms committee, statistical analysis of the

revenue earnings during the past five years, features of the tax administration, audit coverage and its impact during past five years etc.

Besides the compliance audit of individual unit offices under various Departments, two Performance Audits on 'VAT Audits and Refunds', 'Disaster Preparedness' were also taken up to examine the efficacy of the Departmental audits and authorization of refunds and status of preparedness in the state of Andhra Pradesh to deal with disasters.

1.5 Results of audit

1.5.1 Position of compliance audits conducted during the year

Test check of the records of 1,024 units of commercial tax, stamp duty and registration fees, state excise, motor vehicles, land revenue and other Departmental offices conducted during the year 2011-12 revealed preliminary audit findings involving under assessments/short levy/loss of revenue aggregating to ₹ 506.34 crore in 2,658 cases. During the course of the year, the departments concerned accepted under-assessments and other deficiencies of ₹ 115.40 crore involved in 1,254 cases of which 203 cases involving ₹ 76.56 crore were pointed out in audit during 2011-12 and the rest in the earlier years. The Departments collected ₹ 3.59 crore in 264 cases during 2011-12.

1.5.2 This Report

This report contains 33 paragraphs involving ₹ 195.31 crore (selected from the preliminary audit observations relating to short/non-levy of tax, duty, interest, penalty etc., made during local audit referred to above and during earlier years, but which could not be included in earlier reports); a Performance Audit on "VAT Audits and Refunds" involving revenue implication of ₹ 49.39 crore and a Performance Audit on "Disaster Preparedness." Out of the total financial effect of ₹ 244.70 crore, the Departments/Government have accepted audit observations involving ₹ 84.09 crore, out of which ₹ 0.86 crore had been recovered. The replies in the remaining cases have not been received (January 2013). These are discussed in the succeeding Chapters II to VII.

CHAPTER II

SALES TAX/VAT

CHAPTER II
SALES TAX/VAT

EXECUTIVE SUMMARY

Appreciable increase in tax collection	As indicated at para 1.1.2 of Chapter-I in 2011-12, the collections of taxes from Sales Tax increased by 21.17 *per cent* and Central Sales Tax decreased by 2.55 *per cent* over the previous year.
Very low recovery by the Department on observations pointed out by us in earlier years	During the period 2006-07 to 2010-11, we had pointed out non/short-levy, non/short-realisation, underassessment/loss of revenue, incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation etc., with revenue implication of ₹ 1,506.91 crore in 6,794 cases. Of these, the Department/ Government had accepted audit observations in 2,694 cases involving ₹ 406.39 crore but recovered only ₹ 5.78 crore in 185 cases. The recovery position in respect of accepted objections was very low at 1.42 *per cent* during the five year period.
Results of audits conducted by us in 2011-12	In 2011-12, we test-checked the records of 227 offices of the Commercial Taxes Department and noted preliminary audit findings involving underassessments of tax and other irregularities of ₹ 304.20 crore in 1,780 cases. The Department had accepted under assessments and other deficiencies of ₹ 42.98 crore in 735 cases, of which 52 cases involving ₹ 17.43 crore were pointed out in audit during the year 2011-12 and the rest in the earlier years. An amount of ₹ 35.43 lakh was realised in 37 cases during the year.
What we have highlighted in this chapter	In this chapter we present the results of a Performance Audit conducted on "VAT Audits and Refunds" involving tax effect of ₹ 49.39 crore and illustrative cases involving ₹ 30.21 crore. These cases were selected from observations noticed during 2011-12 in our test check of records relating to the Commercial Taxes Department as well as those which came to notice in earlier years but could not be included in previous years' reports, where we found that the provisions of the Acts/Rules were not observed. It is a matter of concern that similar omissions were pointed out by us repeatedly in the Audit Reports for the past several years, but the Department had not taken corrective action. We are also concerned that though these omissions were apparent from the records which were made available to us, the CTOs and Assistant Commissioners failed to detect them.

With reference to the Performance Audit, we observed that there were systemic deficiencies in the planning and execution of VAT audits as well as compliance deficiencies. Major deficiencies are summarized below

- There were substantial arrears of VAT audits planned;
- There was no monitoring mechanism whereby the status of audits authorised and completed could be verified;
- The files were not being transferred to jurisdictional offices soon after completion of audits, and we found delays in transmission of files ranging from three months to three years;
- There had been poor utilisation of audit module of VATIS package in the VAT audit process;
- Prescribed procedures and instructions issued by Commissioner of Commercial Taxes(CCT) were not adhered to with regard to selection of dealers for VAT audits;
- The top dealers with high turnover were not selected for audit since inception of APVAT Act in 2005;
- Authorisation of same dealer was entrusted to many audit officers for the same or converging audit periods and there was no coordination between the divisional officer who authorises the audit and the jurisdictional CTO who is responsible for cancellation of registration of dealers.
- Refunds were granted without finalising the tax liability and beyond the powers of the Assessing authority.
- Excess refunds were granted due to incorrect determination of taxable turnovers, incorrect exemption, non levy of penalty/interest etc.

Our conclusion The Department needs to improve the internal control system and initiate necessary corrective action to recover the non/short levy of tax, interest, penalty etc., pointed out by us, more so in cases where it has accepted our contention.

- The Department should focus on quality, rather than quantity of VAT audits, by adopting a risk-based approach which involves planning of fewer VAT audits but higher revenue collection (for which the auditing officers should be held accountable). They should also ensure a set of comprehensive and standardised guidelines for selection of dealers for VAT audits, so as to minimise discretionary and arbitrary selection; this must be invariably enforced in

all jurisdictions. The audit module in VATIS should be designed and implemented to facilitate automatic selection, based on these guidelines. Implementation of such standardised guidelines should be monitored, and failure penalised. If necessary, a specified percentage of VAT audits (10 *per cent* or so) can be selected by the DC, using his judgment based on specified parameters.

- The Department should ensure effective monitoring of completion of VAT audits by specifying timelines (say 1 or 2 months), after which the VAT audited files must be mandatorily transferred to the respective jurisdictional offices. If the Department believes that the assessing officers are under excessive time pressure to complete VAT audits in timely manner, they may consider setting up a dedicated VAT audit wing (as is being followed by Tamil Nadu for VAT and by AP itself for Registration and Stamps).

- VAT-audited cases should be subject to a random check (based on a statistical sample), and poor quality VAT audits should result in penal action. The Department may also consider interaction with the Vigilance & Enforcement Department to discuss systemic trends of tax evasion, so as to plug leakage of revenue and also enrich the approach to VAT audits.

During the Exit Conference, the Commissioner had given certain assurances on implementation of the recommendations made by audit which would be verified in future audits.

2.1 Tax Administration

The Commercial Taxes Department is under the purview of the Principal Secretary to Revenue Department at the Government level. The Department is mainly responsible for collection of taxes and administration of the AP Value Added Tax (VAT) Act, the Central Sales Tax (CST) Act, the AP Entertainment Tax Act, the AP Luxury Tax Act and the rules framed thereunder. The Commissioner of Commercial Taxes (CCT) is the Head of the Department entrusted with over all supervision and is assisted by Additional Commissioners, Joint Commissioners (JC), Deputy Commissioners (DC) and Assistant Commissioners (AC). Commercial Tax Officers (CTO) at circle level are primarily responsible for tax administration and are entrusted with the registration of dealers and collection of taxes while the DCs are controlling authorities with overall supervision of the circles under their jurisdiction. There are 218 offices (25 Large Tax Payer Units (LTUs) headed by the ACs and 193 Circles headed by the CTOs) functioning under the administrative control of the DCs. Further, there is an Inter State Wing (IST) headed by a Joint Commissioner within the Enforcement wing, which assists CCT in cross verification of inter-state transactions with different states.

2.2 Trend of Receipts

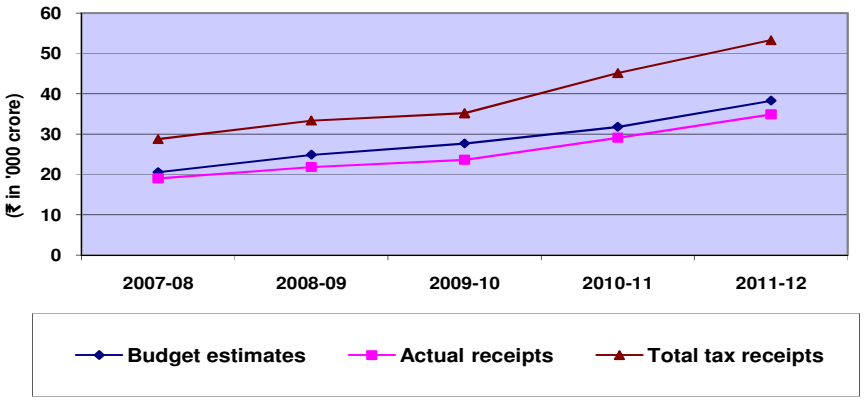
Actual receipts from VAT/CST during the last five year period from 2007-08 to 2011-12 along with the total tax receipts during the same period is exhibited in the following table and graphs:

Table 2.1 - Trend of receipts

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual VAT receipts vis-a-vis total tax receipts
2007-08	20,568.00	19,026.49	(-) 1,541.51	(-) 7.49	28,794.05	66.08
2008-09	24,887.28	21,851.66	(-) 3,035.62	(-) 12.20	33,358.29	65.51
2009-10	27,685.00	23,640.21	(-) 4,044.79	(-) 14.61	35,176.68	67.20
2010-11	31,838.00	29,144.85	(-) 2,693.15	(-) 8.46	45,139.55	64.57
2011-12	38,305.60	34,910.01	(-) 3,395.59	(-) 8.86	53,283.41	65.52

Graph 2.1: Budget estimates, Actual receipts and Total tax receipts



The total tax receipts of the state have been following an increasing trend for the last five years as is with the receipts of taxes on sales, trade etc. The percentage of the revenue contribution to the total tax receipts by the receipts of taxes on sales, trade etc. has been almost stable within a range of 65 *per cent* to 67 *per cent*.

2.3 Cost of collection

Gross collection of Commercial Taxes Department, expenditure incurred on collection and the percentage of such expenditure to gross collection during the years 2009-10, 2010-11 and 2011-12 along with the relevant all India average percentage of expenditure on collection to gross collection for the previous year are given below:

Table 2.2 - Cost of collection

(₹ in crore)

Head of revenue	Year	Gross collection	Expenditure on collection of revenue	Percentage of cost of collection to gross collection	All India average percentage for the previous year
Taxes/VAT on sales, trade etc.	2009-10	23,640.21	215.88	0.91	0.88
	2010-11	29,144.85	261.98	0.90	0.96
	2011-12	34,910.01	282.63	0.81	0.75

Although the percentage of cost of collection to gross collection decreased by 0.09 *per cent* during the year 2011-12 over the previous year, it is still higher than the All India average percentage of cost of collection of the previous year.

2.4 Impact of Local Audit

During the last five years, we had pointed out non/short levy, non/short realisation, underassessment/loss of revenue, incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation etc., with a revenue implication of ₹ 1,506.91 crore in 6,794 cases. Of these, the Department/Government had accepted audit observations in 2,694 cases involving ₹ 406.39 crore and had since recovered ₹ 5.78 crore. The details are shown in the following table:

Table 2.3 - Impact of local audit

(₹ in crore)

Year	No. of units audited	Objected		Accepted		Recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
1	2	3	4	5	6	7	8
2006-07	227	1,264	389.08	548	122.22	14	0.24
2007-08	209	980	196.63	141	80.26	43	1.02
2008-09	198	1,282	267.95	776	43.90	21	1.19
2009-10	210	1,646	279.61	647	72.46	64	2.83
2010-11	223	1622	373.64	582	87.55	43	0.50
Total	**1,067**	**6,794**	**1,506.91**	**2,694**	**406.39**	**185**	**5.78**

The insignificant recovery of ₹ 5.78 crore (1.42 *per cent*) as against the money value of ₹ 406.39 crore relating to the accepted cases during the period 2006-07 to 2010-11 highlights the failure of the Government/Department machinery to act promptly to recover the Government dues even in respect of the cases accepted by them.

2.5 Working of Internal Audit Wing

The Department did not have a structured Internal Audit Wing that would plan audits in accordance with a scheduled audit plan, conduct audits and follow up thereof. Internal audit is organised at Divisional level under the supervision of Assistant Commissioner (CT). There are 25 Large Tax Payers Units (LTUs) and 193 circles in the State. The internal audit of returns is conducted during the first quarter of the financial year and gets extended upto September. Each LTU/circle is audited by audit teams consisting of five members headed by either CTOs or Deputy CTOs. The internal audit report is submitted within 15 days from the date of audit to the DC (CT) concerned, who would supervise the rectification work giving effect to the findings in such report or internal audit.

2.6 Results of Audit

Test check of the records of 227 offices of the Commercial Taxes Department during 2011-12 relating to VAT, revealed underassessments of tax and other irregularities with preliminary audit findings involving ₹ 304.20 crore in 1,780 cases, falling under the following categories:

(₹ in crore)

Sl. No.	Category	No. of cases	Amount
1	Performance audit on "VAT Audit and Refunds"	1	49.39
2	Under declaration of VAT on works contract	230	23.94
3	Excess claim of input tax credit	408	27.17
4	Under declaration of VAT due to incorrect exemption	159	20.53
5	Non/short levy of interest/penalty	148	10.57
6	Application of incorrect rate	18	0.98
7	Other irregularities	816	171.62
Total		**1,780**	**304.20**

During 2011-12, the Department accepted underassessments and other deficiencies of ₹ 42.98 crore in 735 cases, of which 52 cases involving ₹ 17.43 crore were pointed out in audit during 2011-12 and the rest in earlier years. An amount of ₹ 28.60 lakh was realised in 33 cases during the year 2011-12.

After the issue of draft paragraphs, the Department reported (November 2012) recovery of ₹ 6.83 lakh in respect of four cases.

Performance Audit on "VAT Audits and Refunds" involving ₹ 49.39 crore and a few illustrative audit observations involving ₹ 30.21 crore which came to notice in the course of test audit of records during the year 2011-12, as well as those which came to notice in earlier years but could not be included in previous years reports, are mentioned in the following paragraphs.

2.7 Performance Audit on "VAT Audits and Refunds"

2.7.1 VAT Audits

2.7.1.1 Importance of VAT Audits

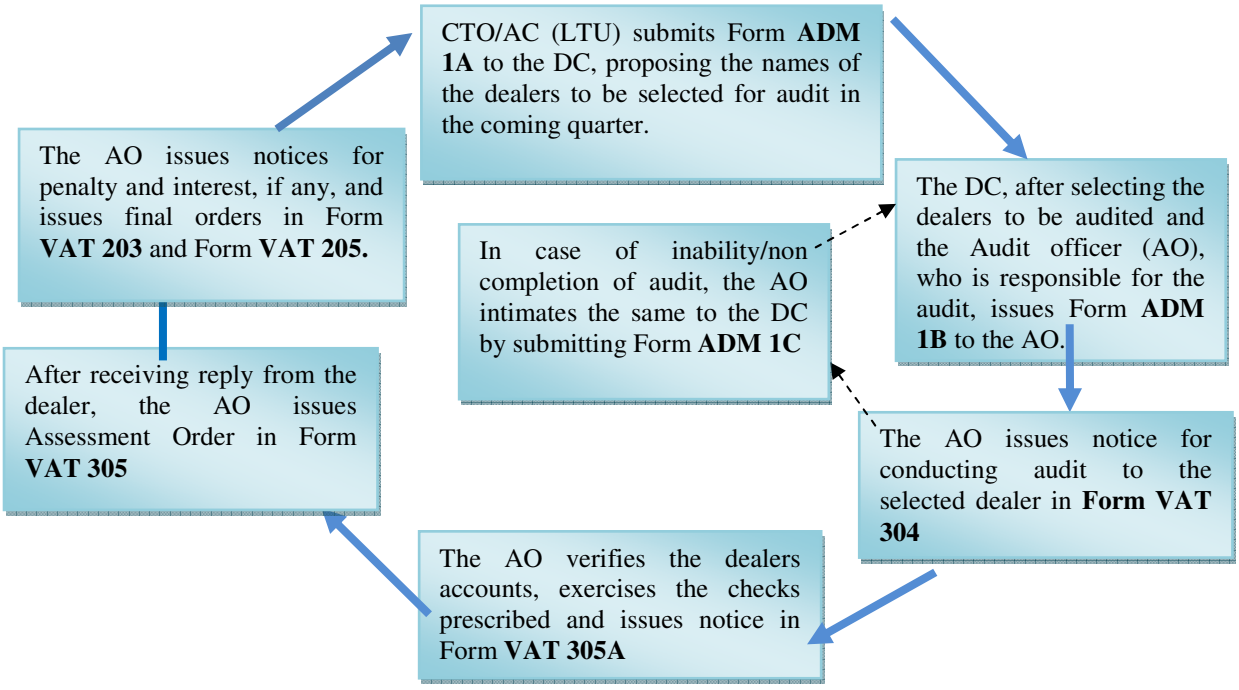
The APVAT Act, 2005 was introduced in April 2005 to replace the APGST Act 1957. The new Act aimed at a hassle-free system for the dealers to declare the tax on self-assessment basis, subject to random scrutiny or audit by the Department.

The two systems of annual assessment and inspection under the repealed APGST Act 1957 were replaced by the system of audit in the APVAT 2005, which includes both the functionalities of assessment and inspection. Audit is one of the four important pillars of VAT administration, the other three being Registration, Returns and Refunds. As per Rule 25(5) of the APVAT Rules, 2005, the returns submitted by the registered dealers are to be scrutinized for their correctness by the prescribed authority. As the self-assessment (in monthly return form VAT 200) will be deemed assessed if no assessment is conducted in four years after its due date, VAT audit and the resultant assessment is crucial to ensure revenue realisation in smooth manner and in bridging the gap between the tax due and the tax declared by the assessee.

2.7.1.2 Authorisation and conduct of audit

The VAT audit of dealers within the Division is authorised by the Deputy Commissioners (DC) to officers not below the rank of Deputy Commercial Tax Officer in a jumbling manner as prescribed in the VAT Audit Manual, 2005.

Procedure for VAT Audits



2.7.2 Refunds

Under section 15(1) of the Act, the Government may, if it is necessary to do so in the public interest and subject to conditions imposed, by a notification, provide for grant of refund of tax paid to any person on the purchases effected by him and specified under the notification. The input tax credit (ITC) in excess of liability or input tax paid on purchases used in exports will be refunded to the dealer subject to refund audit to be conducted. The refund audit is conducted on similar lines as audit of VAT dealers. The excess of tax shall be refundable within a period of 90 days from the date of claim, lest Government is liable to pay interest.

2.7.3 Trend of revenue (VAT Audits)

Analysis of the total revenue from VAT and additional revenue from VAT audits during the period from 2006-07 to 2010-11[1] was as under:

Table 2.4 - Trend of revenue (VAT Audits)

(₹ in crore)

Year	VAT	No. of audits completed	Additional revenue on VAT audits			Percentage of additional revenue demanded to total sales tax
			Demand	Collection	Balance (cumula-tive)	
2006-07	14,222.67	18,011	458.06	88.96	369.1	3.22
2007-08	17,593.41	17,225	1,133.08	321.47	1,180.71	6.44
2008-09	20,596.47	18,693	997.55	308.84	1,869.42	4.84
2009-10	22,278.14	22,254	727.70	228.82	2,368.30	3.27
2010-11	27,443.24[2]	25,935	903.85	307.53	2,964.62	3.29

Note: The demand of additional revenue includes levy of tax on telecom companies on sale of Recharge Cards, which was struck down by the AP High Court in September 2011. The demand may also include issues which are sub judice, the details of which are awaited from the Department.

As seen from the above table, although the number of audits completed show an increasing trend from the year 2007-08 onwards, the additional revenue generated showed a decreasing trend from 2007-08 up to 2009-10, after which there was a marginal increase in 2010-11. The increasing trend of arrears of additional revenue indicated either poor collection efforts on part of the Department or the doubtfulness of the demands raised as a result of VAT audits or both.

1 Source of figures - Commissioner of Commercial Taxes.

2 Of this, petroleum products and liquor constituted 50 per cent (₹ 13,697.75 crore) of the total revenue collection from VAT (Petroleum products – ₹ 8,226.30 crore and liquor – ₹ 5,471.45 crore). These products are taxed at the first point of sale i.e., by the PSU oil companies and Andhra Pradesh State Breweries Corporation Limited.

2.7.4 Trend of Refunds

The trend of refunds issued by the Department is as below:

Table 2.5 - Trend of refunds

(₹ in crore)

Year	No. of cases[3]	Category			Total
		Govt. notification[4]	Exports	Excess ITC/ Excess tax paid	
2008-09	130	56.40	55.89	22.09	134.38
2009-10	124	46.27	39.62	42.33	128.22
2010-11	179	67.57	82.61	97.46	247.64

As seen from the figures above, refunds showed an increasing trend in 2010-11. Refunds for exports also increased in that year.

2.7.5 Audit Approach

2.7.5.1 Audit Objectives

We conducted a Performance Audit on 'VAT Audits and Refunds' to assess

- whether there exists an adequate, efficient and effective system of planning for VAT audits (including criteria for selection and allotment of VAT Audits) as well as execution, reporting and monitoring of VAT Audits;
- whether VAT audits conducted pointed out deficiencies in respect of key risk areas, such as excess claims of Input Tax Credit(ITC), works contracts, VAT deferment, purchase tax etc.;
- whether there exists an adequate, efficient and effective system of processing and authorisation of refund claims;
- whether refunds authorised focus on specific areas of the return which gave rise to the refund, e.g., payment of interest, exports, excess ITC and cases of excess ITC due to lower rate of tax on output compared to inputs etc., and
- whether the Department effectively monitors the conduct of VAT audits and refunds of tax.

[3] Cases where amount refunded was more than ₹ 10 lakh.

[4] The major refunds through the Government notification are to GMR Rajiv Gandhi International Airport Limited and Krishnapatnam Port.

2.7.5.2 Scope and Methodology of Audit

We conducted the Performance Audit for the period from 2006-07 to 2010-11 between September 2011 and March 2012; this covered 13 circle[5] offices and seven[6] Divisions, which were selected based on higher number of VAT audits conducted and refund claims authorised. We also included relevant audit findings raised by the field parties during local audit of the remaining offices, as well as those commented in the Local Inspection Reports of these offices during earlier years.

2.7.5.3 Audit Criteria

The above objectives were benchmarked against the following sources of audit criteria:

- APVAT Act and Rules, 2005
- CST Act, 1956 and Rules 1957
- CST (AP) Rules 1956
- VAT Audit Manual, 2005[7] issued by the Government of AP and
- Orders/notifications issued by the Government/Department from time to time

2.7.5.4 Acknowledgement

We acknowledge the cooperation of the Commercial Taxes Department in providing necessary information and records to audit. We held an entry conference on 28 December 2011 with the CCT and other departmental officers, in which the Department was apprised of the scope and methodology of audit. The draft report was issued (August 2012) to the Government of Andhra Pradesh. Their response was awaited (January 2013).

An exit conference was held on 30 October 2012 wherein the main audit findings were discussed with Principal Secretary to Government (Revenue) and the CCT. The responses indicated during the Exit Conference have been duly considered, while finalising this Report.

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5 Anantapur-II, Bhimavaram, Eluru, Hyderabad (Hydernagar, Jubilee Hills, Malkajgiri and Srinagar Colony), Nandyala-II, Siddipeta, Tirupati-II, Vijayawada (Benz circle) and Visakhapatnam (Dabagardens and Dwarakanagar).

6 Anantapur, Eluru, Hyderabad (Abids, Punjagutta and Saroornagar), Nalgonda and Visakhapatnam.

7 The Department rescinded the earlier VAT Audit manual in the month of July 2011, and a revised manual was issued in June 2012 which was implemented from September 2012. The implementation of the revised manual will be scrutinised in future audits.

Audit findings

We have categorised the audit findings noted during the Performance Audit as below.

- System Deficiencies relating to VAT Audits;
- Compliance Deficiencies relating to VAT Audited cases; and
- Compliance Deficiencies relating to Refund cases.

System Deficiencies: VAT Audits

2.7.6 Planning of VAT Audits

2.7.6.1 Shortfall in completion of Audits

As per Para 4.9.2 of the VAT Audit Manual, 2005, the DC shall arrange for the computerized selection of the general audits based on the parameters prescribed in the manual. Further as per Para 4.8.2, the number of general audits and specific audits put together in a quarter shall not exceed 12.5 *per cent* of the number of total VAT dealers in the division.

The data relating to the number of registered dealers, number of audits to be completed/ completed, number of audits planned and shortfall in audits planned / completed during the period from 2006-07 to 2010-11, as furnished by the CCT Office, is given below:

Table 2.6 -Shortfall in Completion of Audits

Year	Total no. of registered dealers	Audits planned (percentage of total registered dealers)	Audits completed	Shortfall in completion of audit	Percentage of shortfall in completion
2006-07	1,97,250	36,895 (19)	18,011	18,884	51.18
2007-08	2,38,088	20,218 (08)	17,225	2,993	14.80
2008-09	2,69,153	23,082 (17)	18,693	4,389	19.01
2009-10	1,98,640	25,668 (13)	22,254	3,414	13.30
2010-11	2,16,110	29,837 (14)	25,935	3,958	13.08

As seen from the table, there were substantial arrears in completion of the planned audits in all the years, ranging from 13 to 51 *per cent*. Given the poor performance in completion of planned VAT audits, the targets for VAT audits set by the Department, appear to be unrealistic, nor are they commensurate with the additional collections resulting from such VAT audits.

2.7.6.2 Absence of VAT Audit monitoring registers

As per para 4.10 of the manual, the allocation of audit cases should be recorded on a computerized listing in divisional and circle offices with date of allocation, date of audit and date of finalisation. A watch register is to be maintained for monitoring the details of audit in each office.

We noticed that the watch registers and the details were not maintained in any of the test checked DC/CTO offices, without which the information on the status of audits authorised and completed could not be verified. Further, there is also a risk of duplicate or erroneous allocation of audits.

2.7.6.3 Non-production of files in the jumbling audit system

As per VAT Act and VAT Audit Manual, 2005 and the authorisation order in Form ADM 1B issued, after completion of audit, the Audit Officer shall transfer the files, along with the enclosures as prescribed in the manual, to the jurisdictional CTO for further action.

We noticed (September 2011 to March 2012) during audit that in five circles[8], the CTOs did not produce 970 audit files that were requisitioned by us. When reasons for non production were called for, it was replied that the files were not received from the respective Audit Officers.

A test check of the figures relating to completion of audits as given by the DC, Abids with the details furnished by the nine CTOs under his jurisdiction revealed that out of the 992 audits completed during 2010-11, these CTOs had received only 515 audit files; the balance 477 files though authorised for audit and shown as completed, were not received back by the respective jurisdictional CTOs. We are unable to derive an assurance regarding the completion of the audits. Further, even in respect of the files transferred, there was a delay in transmission of the files ranging from three months to three years.

2.7.6.4 Poor utilisation of the audit module in VATIS package

The VATIS software package has an audit module which provides for the departmental users for online processing of the various stages of audit such as (a) quarterly audit proposals by jurisdictional CTO through form ADM 1A, (b) the selection and authorisation by the DC in form ADM 1B, (c) audit notice in form VAT 304, (d) the basic information of the dealer by audit officer in form VAT 303, (e) the notice for assessment in form VAT 305A and (f) the assessment order in form VAT 305. The audit officers are required to submit the above at each stage of audit.

[8] Hyderabad (Hydernagar, Jubilee Hills, Malkajgiri and Srinagar colony) and Tirupati-II.

We noticed (between September 2011 and March 2012) in the test checked offices that the audit module was not being used by the Departmental officers at any stage of the VAT audit process. On enquiry, the Commissioner of Commercial Taxes stated (October 2012) that the Audit module of the VATIS package was not being used by all the departmental officials, but a few officers were using the module in a limited manner to the extent of generating form ADM 1B.

2.7.6.5 Non-adherence to the procedure for selection of dealers for VAT Audits

The Commissioner issued instructions[9] for the period from 2006-07 to 2007-08 that top 50/100 dealers were to be audited once in a year/two years. According to the instructions[10] issued for the years 2008-09 to 2009-10 first priority was to be given to the audits of dealers which were not taken up even once since 1 April 2005. As per instructions[11] issued for the year 2010-11, all the top 25 dealers were to be audited once in a year. Further, paras 4.4 and 4.5 of VAT Audit Manual envisage a risk related system, including parameters such as throughput, high availment of ITC, non-filing of returns, sensitive commodities etc.

We noticed (between September 2011 and March 2012) from the test checked cases that there was no evidence of the CTO/DC selecting them based on the risk related selection system, nor were based on the proposals from jurisdictional CTO in form ADM 1A.

(a) Top dealers in the circle not selected for Audit

We noticed (between September 2011 and March 2012) in the test check of the records relating to selection of dealers in 11 circles[12] out of 13 test checked circles that 629 top dealers with high turnover (ranging between ₹ 0.29 crore to ₹ 679.46 crore) were not selected for audit by the DCs concerned so far since the inception of the APVAT Act, 2005. An illustrative list of the top 10 dealers who were not selected for audit so far is indicated below:

(₹ in crore)

Name of the dealer	Name of the circle	Turnover in 2010-11
Regen Powertech Private Ltd	Jubilee Hills	679.46
Sneha Farms Private Ltd	Jubilee Hills	379.98
American Solutions P.Ltd	Jubilee Hills	352.01
Spectrum Power Generation Ltd	Jubilee Hills	346.25
Quality Steel Shoppe	Dwarakanagar	251.28
Harsha Automotives P ltd	Jubilee Hills	246.01
Ratna Infrastructure Projects pvt Ltd	Srinagar Colony	161.11
Aamoda Publications	Jubilee Hills	132.01
Donear Trading P Ltd	Malkajgiri	123.46
Srinivasa Hatcheries	Benz Circle	105.69

[9] CCT Ref No. BII(2)/122/2006 dated 19 June 2006.

[10] CCT Ref No. BV(3)/120/2008 dated 16 April 2008 and CCT Ref No. BV(3)/60/2009 dated 11 May 2009.

[11] CCT Ref No. BV(3)/37/2010 dated 29 March 2010.

[12] Anantapur-II, Bhimavaram, Eluru, Hyderabad (Jubilee Hills, Malkajgiri and Srinagar colony), Nandyala-II, Siddipeta, Tirupati-II Vijayawada (Benz circle) and Visakhapatnam (Dabagardens)

(b) Authorisation of audit of the same dealer to two/multiple AOs

We noticed that authorisation for audits in some cases was being issued to multiple AOs for the same dealers and for the same or converging audit periods. We noticed (October 2011) from the list of audits authorised by the DCs of three Divisions[13] that audit of 52 dealers for converging periods was authorised to two or three different audit officers. As a result, the AOs issued form ADM 1C for non completion, stating that the audit was taken up by another AO.

(c) Parts of financial year authorised for audit

Para 5.11.4 and Appendix VIII on "Examination of annual accounts" of the VAT Audit Manual, 2005 prescribed verification of the annual accounts of the dealers so as to review disparities between the details furnished in the VAT returns and annual accounts for the relevant period.

We noticed in three circles[14] from the VAT audit files of 168 dealers that the audit was authorised for fractions of financial year, which prevented the AOs from complying with the manual provisions noted above. As a result, AOs were not in a position to compare the turnovers declared by the dealers in their VAT returns vis-à-vis the turnover declared in their Annual Accounts. Consequently, we were also not able to verify the turnovers declared by the dealers in their returns.

(d) Fictitious invoices identified–but no special audit authorised

According to para 4.7 of the VAT Audit Manual, 2005, the selection of cases for special audit visits would result from other audits where AOs had identified evidence of serious fraud, cases where fraudulent intent could be proved.

We noticed (November 2011) in NS Road circle, that in respect of a dealer, a criminal case was registered as the dealer furnished fake invoices for ₹ 20 lakh. However, no special audit was authorised by the DC for conducting an in depth investigation into the matter and for further outcome of the issue.

2.7.6.6 Absence of coordination between offices resulting in faulty selection/non selection of dealers

We noticed that there was no co-ordination between the Divisional officer, who authorised the audit and the jurisdictional CTO, who was responsible for cancellation of registration of dealers. As a result, the DCs were not aware of the status of registration of the dealers. On one hand, authorisations were issued for conduct of audits in respect of dealers whose registrations were already cancelled; on the other hand, the cancelled dealers were not selected

[13] Hyderabad (Saroornagar and Secunderabad) and Visakhapatnam.
[14] Nandyala-II, Tirupati-II and Visakhapatnam (Dabagardens).

for audit before cancellation of their registration, as is described in the following paras.

2.7.6.7 Selection of dealers whose registrations are already cancelled for audit

We noticed (between November 2011 and March 2012) that three DCs[15] issued authorisations for audit of 27 dealers, whose registrations were already cancelled, by their respective jurisdictional CTOs. The AOs issued ADM 1C for non completion of audit, stating that the registrations of the selected dealers were already cancelled. Thus, poor coordination between the divisional and circle officers resulted in wastage of scarce human resources, which could have been deployed on other audits.

2.7.6.8 Non-selection for audit of dealers before cancellation of their registration

As per Section 19 (1) read with Rule 14(4), every dealer, whose registration is cancelled, shall pay back ITC availed in respect of all taxable goods on hand on the date of cancellation. If the dealer applies for cancellation, an audit should be conducted to ascertain the ITC availed by the dealer and only after completion of audit, the cancellation was to be allotted.

We noticed (between September 2011 and March 2012) during the test check of the records relating to eight circles[16] that 942 cancelled dealers were not selected for audit before cancelling their registration. This could result in probable loss of revenue to Government as their input tax claims and output tax liability went unverified and their assessments would become time barred due to lapse of time.

2.7.6.9 Authorisation of audit of same dealers consecutively by the same AOs

The Commissioner of Commercial Taxes issued clear instructions[17] that the DCs should ensure that the same dealer is not inspected by the same officer within a period of three years.

We noticed (October 2011) in Benz circle that the DC (CT), Vijayawada-II division authorised audit of three dealers to the same audit officers before completion of the period of three years from the date of completion of audit, clearly violating the Commissioner's instructions.

Sl. No.	Name of dealer	Audit officer/No. of times authorised for audit	Periods authorised for audit
1.	Sri Sai Constructions	CTO, Krishnalanka/ Two	2009-10 &2010-11
2.	Agrigold Constructions	CTO, Krishnalanka/ Two	2009-10 & 2010-11
3.	D.Jayaprakash Rao	DCTO I, Benz Circle/ Three	2006-07,2008-09& 2010-11

[15] Anantapur, Kurnool and Secunderabad Divisions.
[16] Bhimavaram, Eluru, Hyderabad (Malkajgiri and Srinagar colony), Nandyala-II, Siddipeta, Tirupati-II and Visakhapatnam (Dabagardens).
[17] CCT's Letter no.BII (2)/122/2006-1 dated 4 October 2006.

Thus, the requirement of maintaining objectivity and a neutral attitude towards the audit was defeated.

2.7.6.10 Authorisation of audit without verification of the dealer status

We noticed (November 2011) in two Divisions[18] that the DCs had issued authorisations to audit officers for audit of 112 dealers. However, the AOs, in these cases did not complete the audits, and issued ADM 1C for non-completion, stating that the dealers were not available at the stated addresses. This was unwarranted and could have been avoided had the selection been done as per the prescribed procedure.

2.7.7 Execution of VAT Audits

2.7.7.1 Non-observance of checks prescribed in Audit Manual

As per section 5.11 of the VAT Audit Manual, 2005, every Audit officer shall exercise the basic checks prescribed such as verification of the purchase particulars, comparison with the Annual Accounts, verification of payment of Output tax etc., and enclose these particulars along with the audit files.

We noticed (between September 2011 and March 2012) in six circles[19] that there were several omissions in the audit files, as a result of which we do not have assurance that the audit officers had followed the prescribed checks.

Sl. No.	Type of omission	No. of cases (percentage of the 1,777 test checked cases)
1.	Audit officers did not enclose the checklist	225 cases (13 *per cent*)
2.	P&L account was not enclosed	305 cases (17 *per cent*)
3.	Purchase particulars were not enclosed	286 cases (16 *per cent*)
4.	Audit period was not mentioned in the files	139 cases (8 *per cent*)
5.	Returns were not available	163 cases (9 *per cent*)
6.	Details of Closing stock were not available	307 cases (17 *per cent*)

As a result of the above omissions and absence of any documentary evidence, the assessment orders for levy of tax, penalty/the orders for completion with no variation were not susceptible for verification by higher authorities as well as audit at a later date.

[18] Anantapur and Secunderabad Divisions.

[19] Bhimavaram, Eluru, Nandyala-II, Siddipeta Tirupati-II and Visakhapatnam (Dabagardens).

2.7.7.2 Seizure not followed by auction

According to section 43(1) of the APVAT Act 2005, for the purpose of enforcing compliance of the provisions of the Act, any officer not below the rank of Deputy Commercial Tax Officer shall have the power of entry, inspection, search and seizure and confiscation. Further as per Rule 53(8) the APVAT Rules, the officer shall effect auction of the material so confiscated.

We noticed (November 2011) in Anantapur-II circle from the VAT audit file of one dealer that the AO issued a notification of seizure of goods as the dealer did not produce records for audit, and seized goods worth ₹ 1.01 crore. However, the AO directly proceeded to issue the assessment order, without issuing notice for assessment or auctioning the confiscated goods, in violation of the Rules. The AO without discussing the facts of the case, only stated that the dealer had affected unaccounted sale of rice valued at ₹ 1.10 lakh which was taxable at four *per cent*. Thus, the AO levied tax of a paltry amount of ₹ 8,800 including penalty, although goods worth over ₹ one crore were seized. The failure of the audit officer to follow the procedure of auction of seized material provided undue benefit to the dealer.

2.7.7.3 Short levy of penalty due to failure to adhere to the provisions of APVAT Act

As per section 53(1) of APVAT Act, 2005, where any dealer has under declared tax, and where it has not been established that fraud or willful neglect has been committed and where under declared tax is:-

i) less than ten *per cent* of the tax, a penalty shall be imposed at ten *per cent* of such under-declared tax.

ii) more than ten *per cent* of the tax due; a penalty shall be imposed at twenty five *per cent* of such under-declared tax.

For any audit finding of under declared tax, penalty of at least 10 *per cent* of the under declared output tax or excess claim of input tax raised should be levied by the audit officer.

From the analysis of information received (October 2011) from the CCT, we noticed that the penalty of 10 *per cent* as stipulated in the provisions was not levied. Consequently, there was short levy of penalty at least by ₹ 133.16 crore as summarised in the following table:

Table 2.7 - Short levy of Penalty

(₹ in crore)

Year	Under declaration of tax[20]	Minimum Penalty to be levied @10%	Penalty levied	Short levy of penalty
2006-07	418.39	41.84	30.21	11.63
2007-08	1083.51	108.35	40.12	68.23
2008-09	932.29	93.23	61.24	31.99
2009-10	669.47	66.95	45.64	21.31
Total	**3103.66**	**310.37**	**177.21**	**133.16**

Compliance Issues: VAT Audited cases

2.7.8 Failure to detect excess claims/incorrect allowance of ITC

2.7.8.1 Incorrect allowance of claim of ITC on manipulated invoices

According to Section 13(1) of the APVAT Act, 2005, ITC shall be allowed to the VAT dealer for the tax charged in respect of all purchases of taxable goods made by that dealer during the tax period, if such goods were for use in the business of the VAT dealer. ITC can be claimed under the sub-sections 3(a) (1) ibid, on the date the goods were received by him, provided he was in possession of a tax invoice.

We noticed (March 2012) during the course of audit of Nandyala-II Circle from the special audit file of a dealer that the assessing authority disallowed the claim of ITC of the dealer. However, when the matter was remanded by the Appellate DC on the ground that the dealer was not given reasonable time, the AA allowed the input tax claim of ₹ 76 lakh though the jurisdictional CTO of the selling dealers concerned confirmed that in respect of some invoices, the selling dealers issued invoices before their VAT registration. The dealer in respect of some invoices had manipulated the dates and TIN numbers so as to fit into the ITC claims, as the purchases were made well before their VAT registration.

Thus, incorrect allowance of ITC, though the dealer willfully manipulated the invoices, resulted in loss of revenue of ₹ 76 lakh.

We referred the matter to the Department between May and June 2012 and to the Government in August 2012; their reply has not been received (January 2013).

[20] The amount of additional demand raised has been taken as the under-declaration of tax.

2.7.8.2 Short levy of tax due to excess claim of ITC on exempt sales

According to Section 13 (5) (d) read with Rule 20(7), where a VAT dealer is making taxable sales and sale of exempt goods (Schedule I) for the tax period and inputs are common for both, the amount which can be claimed as ITC for the purchases of goods at each rate shall be calculated by the formula A*B/C (A: the input tax credit claimed by the dealer B: Taxable turnover C: total Turnover).

As per Section 13 (4) read with Rule 20(2) (o), no input tax is allowed on any goods purchased and used as inputs in job work.

Under Entry 59 of Schedule I to APVAT Act, sales of goods to any unit located in SEZ are exempted vide G.O.Ms.No.716, dt.4.6.2008 w.e.f. 1.6.2008.

Under entry 41, 14, 3 and 16 of Schedule I to APVAT Act, 'husk of pulses', 'firewood', 'poultry feed' and 'milk' are exempt from tax.

We noticed (between December 2010 and March 2012), during the test check of VAT audit files in 10 circles[21], 13 dealers effected job works, sales to SEZs and sale of commodities which were exempted from tax, along with taxable sales but the ITC was not restricted by applying A*B/C formula. However the audit officers failed to restrict the same during the VAT audit of the accounts of these dealers. This resulted in short levy of tax of ₹ 72 lakh.

After we pointed out the cases, the Department replied (November 2012) that in four cases action had been initiated for revision. Replies in respect of remaining nine cases have not been received (January 2013).

We referred the matter to the Government (August 2012); their reply has not been received (January 2013).

[21] Hyderabad (Hydernagar, Mahankali Street, Malkajgiri, Tarnaka and Vengalraonagar), Nandyala-II, Tirupati-II, Vijayawada (Governorpet) and Visakhapatnam (Dabagardens and Suryabagh).

2.7.8.3 Short levy of tax due to incorrect allowance of ITC on sales returns

According to Section 13(1) of the APVAT Act, 2005, ITC shall be allowed to the VAT dealer for the tax charged in respect of all purchases of taxable goods, made by that dealer during the tax period, if such goods were for use in the business of the VAT dealer.

According to Rule 23(6) of AP VAT Rules, if any VAT dealer having furnished a return on Form VAT 200, finds any omission or incorrect information therein, other than as a result of an inspection or receipt of any other information or evidence by the authority prescribed, he shall submit an application in Form VAT 213 within a period of six months from the end of the relevant tax period.

We noticed (February 2012) in Malkajgiri circle during the test check of VAT audit file of a dealer that the AO, while conducting the audit of tax returns of the period from 2005-06 to 2009-10, allowed ITC to the dealer in September 2010 for the purchases made by him in the month of December 2009, although the dealer had neither claimed the same nor had submitted the Form 213 correcting the details furnished by him in his VAT returns. Thus, the incorrect allowance of ITC by the AO resulted in short levy of tax of ₹ 32 lakh.

After we pointed out the case, the assessing authority replied that the matter would be examined and detailed reply would be submitted.

We referred the matter to the Department (between May and June 2012) and to the Government (August 2012); their reply has not been received (January 2013).

2.7.8.4 Short levy of tax due to excess claim of ITC on exempt transactions

According to Section 13 (5) (e) read with Rule 20(8), where transactions of a VAT dealer involve sale of taxable goods and exempt transaction* of taxable sales, the claim for eligible ITC should be restricted as prescribed in respect of purchases of goods taxable at 1 *per cent*, 4 *per cent* and for the 4 *per cent* tax portion in respect of goods taxable at 12.5 *per cent*, the VAT dealer shall apply formula i.e., A*B/C where A is input tax for common inputs for each tax rate, B is the taxable turnover and C is the total turnover.

** Exempt transactions involve inter-state branch transfer, sale on consignment basis where no tax is payable under the APVAT Act*

We noticed (between February 2011 and March 2012) during the test check of VAT audit files in two Divisions[22] and seven circles[23] of 10 dealers that though their transactions involved both taxable sales and exempt transaction, the audit officers allowed the ITC on the exempt transactions. This resulted in short levy of tax due to excess allowance of ITC of ₹ 32 lakh.

After we pointed out the cases, the Department replied (November 2012) that in one case action had been initiated for revision. Replies in respect of remaining nine cases have not been received (January 2013).

We referred the matter to the Government (August 2012); their reply has not been received (January 2013).

2.7.8.5 Short levy of tax due to incorrect allowance of input tax on the purchase of goods in the negative list

As per Section 13(4), no ITC is allowable in respect of the purchases of those taxable goods listed in Rule 20(2) of the APVAT Rules 2005, and also on purchase of goods listed in Schedule VI to the Act.

We noticed (between November 2010 and January 2012) during the test check of records of five circles[24] that the audit officers failed to disallow the claims of ITC by five dealers on their purchase of goods, such as proclains, furnace oil, cement, coal etc., listed in Rule 20(2). Thus, incorrect allowance of ITC resulted in short levy of tax of ₹ 23 lakh.

After we pointed out the cases, the Department replied (November 2012) that the audit observation was accepted in one case, and action had been initiated for revision in another case. Replies in respect of the remaining three cases have not been received (January 2013).

We referred the matter to the Government (August 2012); their reply has not been received (January 2013).

[22] Hyderabad (Begumpet) and Nizamabad Divisions.

[23] Eluru, Hyderabad (Hydernagar, Jeedimetla, Malkajgiri and Vengalraonagar), Nalgonda and Visakhapatnam (Suryabagh).

[24] Anantapur-II, Hyderabad (Mahanakali Street, Srinagar Colony and Vengalraonagar) and Kurnool-II.

2.7.8.6 Short levy of tax due to excess claim of ITC on exempt transactions and exempt sales

According to Section 13(5) of APVAT Act 2005, where transactions involve sale of taxable goods, exempt sales as well as exempt transaction of taxable sales, the claim for eligible ITC should be restricted by calculating the eligible ITC separately for different kinds of sales/ transactions as per the formula prescribed i.e., A*B/C where A is input tax for common inputs for each tax rate, B is the taxable turnover and C is the total turnover.

We noticed (between November 2011 and March 2012) in four circles[25] from the VAT Audit files of four dealers that they effected exempt sales, taxable sales and exempt transactions of taxable sales, but did not restrict the ITC. The AOs, while verifying their accounts during VAT Audits, also failed to restrict the ITC of the dealers and this resulted in short levy of tax of ₹ 24 lakh.

After we pointed out the cases, the Department replied (November 2012) that in two cases action had been initiated for revision. Replies in respect of remaining two cases have not been received (January 2013).

We referred the matter to the Government (August 2012); their reply has not been received (January 2013).

2.7.8.7 Short levy of tax due to excess claim of ITC

According to Section 13(1) of APVAT Act, 2005, ITC shall be allowed to the VAT dealer for the tax charged in respect of all purchases of taxable goods made by that dealer during the tax period, if such goods are for use in the business of the VAT dealer, provided that dealer is in possession of original tax invoices.

We noticed (between July 2011 and March 2012) during the test check of VAT audit files in four circles that the audit officers incorrectly allowed input tax of ₹ 8.42 lakh as shown below:

(₹ in lakh)

Sl. No.	Name of the Division/Circle	Excess claim of ITC	Audit observation
1	DC(CT), Adilabad	1.73	The dealer claimed incorrect ITC of the year 2006-07 in 2010-11. The audit officer did not restrict the ITC by disallowing the time-barred claim in the assessment.

[25] Bhimavaram, Hyderabad (Ashoknagar and Srinagar colony) and Nandyal-II

(₹ in lakh)

Sl. No.	Name of the Division/Circle	Excess claim of ITC	Audit observation
2	IDA Gandhinagar (Hyderabad)	3.22	The dealer, a works contractor, claimed 100 *per cent* ITC on the material used in the work under non-composition. As per section 4(7) (a) of the Act, the works contractor under non-composition shall claim only 90 *per cent* of input tax. The audit officer failed to restrict the ITC to 90 *per cent*. This resulted in short levy of tax due to excess ITC.
3	Narayanaguda (Hyderabad)	1.83	The dealer claimed higher rate of input tax than eligible under the Schedules. The audit officer failed to restrict the ITC which was claimed by the dealer at the rate of 12.5 *per cent* on Zinc Metal, Soda salt, Dimethyl Amine, Sodium Bromide, Pyridine etc., which were enlisted in Schedule IV (4 *per cent*) to the Act.
4	Tirupati-II	1.64	The dealer incorrectly claimed ITC on purchases from unregistered dealer. The audit officer failed to cross verify the invalid purchases on which ITC was claimed as the selling VAT dealer in this case was not registered on the date of issue of the sale invoice. This resulted in short levy of tax.
Total		**8.42**	

After we pointed out the cases, the Department accepted (November 2012) the audit observation in one case. Replies in respect of the remaining three cases have not been received (January 2013).

We referred the matter to the Government (August 2012); their reply has not been received (January 2013).

2.7.9 Failure to detect omissions in respect of Works Contracts

2.7.9.1 Short levy of tax due to incorrect determination of taxable turnover under non-composition where books of accounts were not available

According to Section 4(7)(a) of the APVAT Act, every dealer executing works contract shall pay tax on the value of goods at the time of incorporation of such goods in the works executed at the rates applicable to the goods under the Act. To determine the taxable turnover on works contract, the dealer should keep the records as prescribed under Rule 31 of the APVAT Rules.

Where no such accounts were maintained to determine the correct value of the goods at the time of incorporation, tax at the rate of 12.5 *per cent* was applicable on the total consideration received subject to the deductions specified under Rule 17(1) (g) of the APVAT rules. Further, the dealer is also not eligible to claim ITC.

We noticed (between June 2011 and March 2012) from test check of records of 14 circles[26] from the VAT audit files of 30 dealers that the assessing authorities determined taxable turnover after allowing deductions such as labour charges, hire charges etc under Rule 17(1)(e), though the dealers did not maintain or furnish books of accounts to arrive at correct value of goods incorporated in the works. In such cases, the tax should be calculated at the rate of 12.5 *per cent* on the gross receipts after standard deduction as the case may be, under Rule 17(1)(g). The audit officers failed to ensure adherence to the appropriate provisions under the Rules, resulting in under declaration of tax of ₹ 5.14 crore.

After we pointed out the cases, the Department accepted (November 2012) the audit observations in one case and in four cases the department contended that the assessing authority was satisfied with the findings of the audit officer. The reply is not acceptable as Section 4(7)(a) read with Rule 17(1)(g) is a separate charging section, applicable in cases where detailed accounts were not available. Replies in respect of the remaining 25 cases have not been received (January 2013).

We referred the matter to the Government (August 2012); their reply has not been received (January 2013).

[26] Anantapur-II, Aryapuram, Bhimavaram, Hyderabad (Malkajgiri, Rajendranagar, SD Road and Vanasthalipuram) Mandapeta, Nandyal-II, Tirupati-II, Vijayawada (Benz Circle and Seetharampuram) and Visakhapatnam (Dabagardens and Dwarakanagar)

2.7.9.2 Short levy of tax due to incorrect determination of taxable turnover under non-composition where books of accounts were available

When the dealers maintain books of accounts, the taxable turnover is to be determined under Rule 17(1) (e). The Rule prescribes the method to arrive at the value of goods at the time of incorporation after allowable deductions on pro rata basis at different rates.

We noticed during the course of audit of 10 circles[27] (between June 2011 and March 2012) from the VAT Audit files of 26 works contractors that the audit officers in their audits, determined the tax payable by the contractors by allowing inadmissible deductions from the taxable turnover in contravention of the above provisions. This resulted in under declaration of tax of ₹ 2.30 crore.

After we pointed out the cases, the Department accepted (November 2012) the audit observation in two cases and in 12 cases action had been initiated for revision. Replies in respect of the remaining 12 cases have not been received (January 2013).

We referred the matter to the Government (August 2012); their reply has not been received (January 2013).

2.7.9.3 Short levy of tax due to incorrect allowance of exemptions under composition

According to Section 4 (7) (b) or (c) of the APVAT Act, 2005, any dealer executing any works contracts for the Government, local authority or others may opt to pay tax by way of composition at the rate of 4 per cent on the total value of the contract or the total consideration received or receivable for any specific contract subject to such conditions as may be prescribed.

We noticed (between October 2011 and January 2012) during the test check of VAT audit files of four works contractors in four Circles[28] that the audit officers, in two cases, allowed exemption of turnover relating to earth work and royalty received by the dealers and in one case, the audit officer allowed exemption of excise duty etc. In the fourth case, the development charges were shown exempt from tax. In all these cases it was incorrect, as the tax at the rate of four *per cent* shall be levied on the gross receipt without allowing any exemptions. This resulted in short levy of tax of ₹ 1.02 crore.

[27] Bhimavaram, Hyderabad (Hydernagar, IDA Gandhinagar, Jubilee Hills and Rajendranagar), Vijayawada (Benz Circle) and Visakhapatnam (Dabagardens, Dwarakanagar, Gajuwaka and Steel Plant).

[28] Hyderabad (Jubilee Hills and Malakpet) and Vijayawada (Autonagar and Benz circle).

After we pointed out the cases, the Department replied (November 2012) that in one case action has been initiated for revision. Replies in respect of remaining three cases have not been received (January 2013).

We referred the matter to the Government in August 2012; their reply has not been received (January 2013).

2.7.9.4 Short levy of tax due to misclassification of works contract

Under section 4(7) (b) of the APVAT Act, 2005, any dealer executing any works contracts for the Government or local authority may opt to pay tax by way of composition at the rate of 4 *per cent* on the total value of the contract executed for the Government or local authority.

As per section 4(7) (c), any dealer executing works contracts other than for Government and local authority may opt to pay tax by way of composition at the rate of 4 *per cent* of the total consideration received or receivable for any specific contract subject to such conditions as may be prescribed.

As per section 4(7) (d), any dealer engaged in construction and selling of residential apartments, houses, buildings or commercial complexes may opt to pay tax by way of composition at the rate of 4 *per cent* of twenty five *per cent* of the consideration received or receivable or the market value fixed for the purpose of stamp duty, whichever is higher, subject to such conditions as may be prescribed.

Under Section 13(5)(a) of the Act, no input tax shall be claimed in case of the works contracts where the VAT dealer pays tax under the provisions of clauses (b),(c) and (d) of sub-section (7) of Section 4.

We noticed (between July 2011 and March 2012) in five circles from the VAT Audit files of five dealers that the audit officers misclassified the works contracts under inappropriate sections of the Act as shown below, resulting in short levy of tax of ₹ 64.10 lakh.

(₹ in lakh)

Sl. No.	Name of the circle	Nature of work and correct section to be applied	Section applied by the audit officer	Tax to be levied	Tax levied	Short levy	Observation
1	Ashok Nagar (Hyderabad)	Construction of flats 4(7)(c)	4(7) (d)	46.79	11.70	35.09	The builder entered into separate agreement for construction with the prospective buyer. The audit officer included the amount of construction agreement as part of sale of flat.

(₹ in lakh)

Sl. No.	Name of the circle	Nature of work and correct section to be applied	Section applied by the audit officer	Tax to be levied	Tax levied	Short levy	Observation
2	Jubilee hills (Hyderabad)	Construction of college building 4(7) (c)	4(7) (d)	14.54	3.93	10.61	The contract was only for construction of college building but the audit officer levied tax as applicable to construction and sale.
3	Somajiguda (Hyderabad)	Construction of flats 4(7)(c)	4(7) (d)	1.80	0.45	1.35	The builder collected development charges after sale of residential unit and the audit officer levied tax treating it as part of sale of flat.
4	Benz circle (Vijayawada)	Construction of commercial complex and swimming pool 4(7) (c)	4(7) (d)	14.61	5.86	8.81	The work of construction of commercial complex and swimming pool does not include the sale of the same. But the audit officer levied tax as applicable to construction and sale.
5	Dabagardens (Visakha-patnam)	Construction of Building for APSPHC Limited, Visakhaptnam 4(7)(b)	4(7) (a)	19.55	11.31	8.24	The contract was only for construction of residential building but the audit officer levied tax as applicable to works contract under non-composition scheme.
		Total		**97.29**	**33.19**	**64.10**	

After we pointed out the cases, the Department accepted (November 2012) the audit observations in two cases and in one case stated that action had been initiated for revision. Replies in respect of the remaining two cases have not been received (January 2013).

We referred the matter to the Government in August 2012; their reply has not been received (January 2013).

2.7.9.5 Incorrect determination of taxable turnover in case of builder of apartments

Under Section 4(7)(d) of the Act, any dealer engaged in construction and selling of residential apartments, houses, buildings or commercial complexes may opt to pay tax by way of composition at the rate of four *per cent* of 25 *per cent* of the consideration received or receivable or the market value fixed for the purpose of stamp duty whichever is higher subject to such conditions as may be prescribed.

Under Section 4(7)(e) of the Act, any dealer having opted for composition under clauses (b) or (c) or (d), purchases or receives any goods from outside the State or India or from any dealer other than a Value Added Tax dealer in the State and uses such goods in the execution of the works contracts, such dealer shall pay tax on such goods at the rates applicable to them under the Act and the value of such goods shall be excluded (from the total turnover) for the purpose of computation of turnover on which tax by way of composition at the rate of four *per cent* was payable.

We noticed in Khairatabad circle that the audit officer in one case deducted the turnover of purchases made out of state from the 25 *per cent* of the taxable turnover and levied tax on the balance of turnover. However, tax on the turnover of purchases made from out of state should be turnover levied according to the rates of tax applicable and such was to be deducted from the total turnover and then tax was to be calculated at the rate of four per cent on the 25 *per cent* of the turnover. This resulted in short levy of tax of ₹ 4 lakh.

After we pointed out the case, the Department replied (November 2012) that action had been initiated for revision.

We referred the matter to the Government in August 2012; their reply has not been received (January 2013).

2.7.9.6 Short levy of tax due to incorrect exemption

As per Section 4(7)(e) of the Act, any dealer having opted for composition under clauses (b), (c) or (d), purchases or receives any goods from outside the State or India or from any dealer other than a Value Added Tax dealer in the State and uses such goods in the execution of the works contracts, such dealer shall pay tax on such goods at the rates applicable to them under the Act and the value of such goods shall be excluded (from the total turnover) for the purpose of computation of turnover on which tax by way of composition at the rate of four percent is payable. The commodity 'Siporex Slabs and blocks' fall under Schedule V to the APVAT Act and were liable to tax at the rate of 12.5 *per cent* upto 14 January 2010 and at the rate of 14.5 *per cent* with effect from 15 January 2010.

We noticed (June 2011) during the test check of SD Road circle from VAT returns for the year 2010-11 and assessment file of one dealer that the turnover of ₹ 2.64 crore towards imported siporex slabs and blocks was exempted based on Commissioner's circular[29] dated 23 January 2006. This was not correct, as neither was such exemption envisaged in the Act nor was the Commissioner empowered by the Act to allow such exemptions. This resulted in short levy of tax of ₹ 36 lakh.

We referred the matter to the Department between May and June 2012 and to the Government in August 2012; their reply has not been received (January 2013).

[29] Circular No.A1(3)/911/2005-1 dt.23 January 2006.

2.7.9.7 Short levy of tax due to incorrect claim of ITC under non-composition under Rule 17(1) (g)

As per section 4(7) (b) (c) or (d) the works contractor shall opt for composition in form VAT 250 to pay tax under composition i.e., at the rate of four *per cent*.

If not opting for composition, as per Rule 17 (1) (e) of the APVAT Rules, 2005, amounts like labour charges; charges for planning, designing etc.; cost of consumables like water, electricity, fuel etc.; hiring charges for machinery and tools etc.; profit earned by the contractor etc. used for execution of works contract were allowed as deductions from the total consideration to determine the correct value of the goods at the time of incorporation. In such cases the VAT dealer shall be eligible to claim under Rule 17 (1) (b) 90 *per cent* of the tax paid on the goods purchased.

Similarly, as per Rule 17(1) (g), where the VAT dealer has not maintained the accounts, he shall pay tax at the rate of twelve and a half *per cent* on the total consideration received or receivable subject to the standard deductions specified in the Rules. In such cases, the contractor VAT dealer shall not be eligible to claim ITC and shall not be eligible to issue tax invoices.

We noticed in Benz circle (in October 2011) from the VAT Audit file for the year 2010-11 of one dealer dealing in electrical works contracts who had not opted to pay tax under composition that the audit officer allowed deductions of labour charges only but did not make other deductions as per Rule 17(1)(e) and allowed ITC amounting to ₹ 11 lakh. It was observed that the details of other goods incorporated in the execution of works contract were not available in the file. In the absence of detailed accounts, the tax should have been levied under Rule 17(1)(g) at the rate of 12.5 per cent on the gross receipts after allowing standard deduction (25 *per cent* in the case of electrical works) and no ITC was to be allowable. Hence, the ITC of ₹ 11 lakh allowed by the AO was incorrect.

We referred the matter to the Department between May and June 2012 and to the Government in August 2012; their reply has not been received (January 2013).

2.7.10 Short levy of tax due to non comparison of turnover declared in VAT returns with that of Profit and Loss Accounts

As per para 5.11.4 of the VAT Audit Manual, 2005, the audit officer is required to verify whether there exists wide disparity between the details given by the dealer on the VAT returns and the annual accounts for that period.

A mention had been made at para no. 2.7.7.1 of this report, wherein the non-availability of P&L Accounts in 17 per cent (305 cases) of the test checked cases was pointed out. Even where it was enclosed, we noticed that the audit officers did not conduct the necessary checks.

We noticed (between June 2011 to March 2012) in 24 circles[30] from the VAT Audit files of 74 dealers that the audit officers failed to determine the correct turnover as they did not compare the turnovers declared in VAT returns with those declared in the Profit and Loss Accounts of the dealers for the same period. Consequently, the audit officers failed to observe under declaration of output tax as the dealers reported lesser sales in the VAT returns, while claiming excess input tax as they declared more purchases in their returns. This failure resulted in short levy of tax of ₹ 7.03 crore.

After we pointed out the cases, the Department communicated (November 2012) acceptance of the audit observations in two cases and stated that in three cases, action had been initiated for revision. In eight cases, the Department contended (November 2011) that the variation between annual accounts and returns are exempted turnovers. The reply of the Department is not acceptable since the dealers had not reported any exempted turnovers in monthly returns. In one case, the Department replied (November 2011) that the data operator incorrectly entered sale turnover as ₹ 1.61 lakh instead of ₹ 61.52 lakh for the month of June 2008. The reply of the Department is not acceptable as the turnover reported for the month of June 2008 was ₹ 26.26 lakh. In one case, it was stated (November 2011) that matter would be examined. Replies in respect of the remaining 59 cases have not been received (January 2013).

We referred the matter to the Government (August 2012); their reply has not been received (January 2013).

[30] Anantapur-II, Hyderabad (Fatehnagar, General Bazar, Hydernagar, Jeedimetla, Jubilee Hills, Madhapur, Malkajgiri, Musheerabad and Vengalraonagar), Kakinada, Mandapeta, Miryalaguda, Nandyala-I, Nandyala-II, Rajahmundry, Ramachandrapuram, Siddipeta, Tirupati-II, Vijayawada (Benz Circle and Seetharampuram) and Visakhapatnam (Dabagardens and Dwarakanagar).

2.7.11 Non-levy of tax on unregistered purchases

Under Section 4(4) of the APVAT Act, every VAT dealer, who in the course of his business purchases any taxable goods from a person or a dealer not registered as a VAT dealer or from a VAT dealer in circumstances in which no tax is payable by the selling VAT dealer, shall be liable to pay tax at the rate of four *per cent* on the purchase price of such goods, if after such purchase, the goods are used as inputs for goods which are exempt from tax under the Act or used as inputs for goods, which are disposed of otherwise than by way of sale or disposed otherwise than by way of sale or consumption.

We noticed (between May 2011 and March 2012) during the test check of VAT audit files of six dealers in four circles[31] that the audit officers failed to levy tax on purchases made by the dealers from persons not registered under the Act -which were used as input for exempt goods or disposed of otherwise than by way of sale like branch transfer or consignment sale. This resulted in non levy of tax of ₹ 12 lakh.

We referred the matter to the Department between May and June 2012 and to the Government in August 2012; their reply has not been received (January 2013).

2.7.12 Short levy of tax due to incorrect availing of deferment

According to Section 69 of the APVAT Act, 2005, any industrial unit availing a tax holiday or tax exemption on the date of commencement of the Act shall be treated as a unit availing tax deferment. The period of eligibility, the method of debiting eligibility amount, repayment and any other benefits for all units availing tax deferment shall be in the manner prescribed. According to Rule 67 of the APVAT Rules, 2005, where any unit is availing a tax holiday on the date of commencement of the Act, it shall be treated as converted to the unit availing tax deferment. The balance period available as on 31 March 2005 to such units shall be doubled. The Government amended the illustration given under the above rule in GO.Ms.No.503, Rev (CT-II) Dept. Dt. 8.5.2009 to the effect that the repayment of the first year shall start immediately after the expiry of the availment period.

Para 5.11.6(b) of the VAT Audit Manual, 2005 clearly prescribes the procedure for audit of units availing tax deferment such as verification of the eligibility stipulated in the Final Eligibility Certificate (FEC), and other conditions such as the product for which the deferment was sanctioned, the base turnover in case of expansion units etc.

[31] Medak, Nandyala-II, Siddipet and Tirupati-II.

We noticed (between September 2011 and March 2012) during the test check of the VAT audit files in one Division[32] and three circles[33] and that in case of four industrial units, the audit officers failed to verify the availing of the deferment of tax and repayment of the same by the dealers. In one case, the availing of the deferment of ₹ 9 lakh was allowed even though the base turnover prescribed in the FEC was not attained by the Company. In another case, the dealer availed deferment of tax and subsequently got cancelled his VAT registration. The AO found no variation, though he was to point out and recover the deferred tax of ₹ 2 lakh. In the third case, the FEC stipulated that the product and the location of the unit availing of deferment should not be changed but the audit officer did not comment on the fact that the dealer stopped production and changed the location, which would have been resulted in recovery of the deferred tax of ₹ 57 lakh. Further, in the remaining case, the deferment period was completed and the audit officer did not point out repayment of tax payable of ₹ 33 lakh.

Failure of the audit officers to point out the incorrect availing of deferment resulted in short levy of tax due of ₹ 1.02 crore.

We referred the matter to the Department between May and June 2012 and to the Government in August 2012; their reply has not been received (January 2013).

2.7.13 Short levy of tax due to non-conversion of Turnover Tax (TOT)[34] dealers as VAT dealers

Under Section 17(3) of the APVAT Act, every dealer whose taxable turnover in the preceding three months exceeds ₹ 10 lakh or in the preceding 12 months exceeds ₹ 40 lakh up to 30 April 2009 shall be liable to be registered as VAT dealer. Any dealer who fails to apply for registration shall be liable to pay penalty of 25 *per cent* of the amount of tax due prior to the date of registration. Further, there shall be no eligibility for ITC for sales made prior to the date from which the VAT registration is effective.

We noticed (between January 2012 and March 2012) during the test check of VAT audit files in three circles[35] that though the turnover of three TOT dealers exceeded ₹ 10 lakh in the preceding three month period, the audit officers did not convert these dealers into VAT dealers. Failure of the audit officers to insist upon the conversion of these dealers resulted in non-levy of tax of ₹ 13 lakh.

Thus, there was a failure in the monitoring mechanism in the Department, even during audit of the dealers, to watch the registration of the TOT dealers who may have crossed the threshold limit for registration as dealers under the

[32] Nizamabad.
[33] Hyderabad (Hydernagar and Malkajgiri) and Nandyala-II.
[34] Dealer, whose annual turnover is between ₹ 5 lakh and ₹ 40 lakh. The tax payable by a TOT dealer is one per cent of the total turnover and he is not eligible for ITC.
[35] Bhimavaram, Hyderabad (Begum Bazaar) and Nandyala-II.

APVAT Act, as a result of which the dealers continued business without being registered as VAT dealers with the Department.

We referred the matter to the Department between May and June 2012 and to the Government in August 2012; their reply has not been received (January 2013).

2.7.14 Non levy of tax on hire charges

Under Section 4(8) of the APVAT Act, every VAT dealer who transfers the right to use goods taxable under the Act for any purpose whatsoever, whether or not for a specified period, to any lessee or licensee for cash, deferred payment or other valuable consideration, in the course of his business shall, on the total amount realised or realisable by him by way of payment in cash or otherwise on such transfer of right to use such goods from the lessee or licensee pay a tax for such goods at the rates specified in the Schedules.

We noticed (between February 2011 and March 2012) in two circles[36] from VAT audit files that two dealers during 2007-08 received hire charges on equipment and generators but did not pay tax on the same. The audit officers, while conducting audit, failed to point out the tax liability on hire charge receipts though shown in the P&L Accounts of the assessees. This resulted in non-levy of tax of ₹ 15 lakh on turnover of ₹ 1.24 crore.

We referred the matter to the Department between May and June 2012 and to the Government in August 2012; their reply has not been received (January 2013).

2.7.15 Short levy of tax on sale of Bus Body Building Units

The Supreme Court of India held in the case of M/s. Mckenzies Ltd Vs State of Maharashtra (16 STC 518) and various other cases that construction of bus body building on the chassis supplied is a contract of sale.

The Commissioner of Commercial Taxes in his circular (circular no. Ref. no. LV(1)/892/2008 dt.30.12.2008) clarified that the transaction of fabrication of bus bodies on the chassis supplied by the APSRTC and others should be treated as 'sale' of bus bodies and not a transaction of works contracts and therefore liable to tax at the rate of 12.5 *per cent*.

We noticed (between November 2011 and February 2012) in two circles[37] in the test check of VAT audit files of two dealers that despite the ruling of the Supreme Court, the turnover relating to bus body building was treated as works contract and tax was declared accordingly. The AOs also failed to levy tax on the

[36] Guntur (Brodipet) and Hyderabad (Vanasthalipuram).
[37] Hyderabad (Malkajgiri) and Vijayawada (Autonagar).

turnover of receipts towards bus-body building as sale. This failure of the audit officers resulted in short levy of tax of ₹ 49 lakh.

We referred the matter to the Department between May and June 2012 and to the Government in August 2012; their reply has not been received (January 2013).

2.7.16 Non-Forfeiture of excess tax collected resulting in loss of revenue to Government

Under Section 57(2) (4) of the APVAT Act, no dealer shall collect any amount by way of tax at the rates exceeding the rates at which he is liable to pay tax under the provisions of the Act, and if any person collects tax in contravention of the provisions of this section, any sum so collected shall be forfeited to the Government. Further, under Section 57(5) of the Act, no order for forfeiture under this section shall be made after the expiry of three years from the date of collection of the amount.

We noticed (between July 2011 and November 2011) during the test check of VAT audit files of one dealer audited in 2009-10 in Hydernagar circle that the audit officer noticed tax collection from customers in excess of his liability by ₹ 11 lakh in the years 2007-08 and 2008-09. However, the audit officer did not order for forfeiture of the tax to the Government, as required under the provisions. In this case, the Department had lost the opportunity to forfeit the amount since there was a lapse of three years from the date of collection. Thus non forfeiture of ₹ 11 lakh towards excess tax collected resulted in loss of revenue to the Government.

We referred the matter to the Department (between May and June 2012) and to the Government (August 2012); their reply has not been received (January 2013).

2.7.17 Short levy of tax due to application of incorrect rate

Under section 4(1) of the APVAT Act, tax at the rates specified in the Schedules I, II, III, IV & VI of APVAT Act is leviable on the commodities included in these schedules. The commodities "storage tanks", "Xerox machines", "mosquito repellants, rat killers-chalks and sprays for domestic use" and "PSCC poles" were not specified in any of the schedules to the Act and hence fall under Schedule V and are liable to be taxed at the rate of 12.5 *per cent* from 1 April 2005.

We noticed (between August 2011 and March 2012) during the test check of VAT audit files in three circles and one division[38] that during the period from March 2006 to March 2011, four dealers declared tax on the turnovers relating to storage tanks, Xerox machines, 'mosquito repellants, rat killer-chalks and sprays for

[38] Anantapur-II, Hyderabad (Vidyanagar) and Peddapalli and DC(CT) Secunderabad.

domestic use' and PSCC poles at the rate of four *per cent*. The failure of the audit officers to comment on the same during audit and levy tax at the correct rates resulted in short levy of tax of ₹ 27 lakh.

After we pointed out the cases, the Department replied (November 2012) that in one case, action had been initiated for revision. Replies in respect of the remaining three cases have not been received (January 2013).

We referred the matter to the Government (August 2012); their reply has not been received (January 2013).

2.7.18 Short levy of tax due to incorrect application of rate of tax under section 4(9)(d) instead of under section 4(9)(c)

As per Section 4(9)(c) of the Act, every dealer, other than those not attached to hotels and whose annual total turnover is ₹ 1.5 Crore and above shall pay tax at the rate of 12.5 *per cent* of the taxable turnover of the sale or supply of goods, being food or any other article for human consumption or drink, served in restaurants, sweet-stalls, clubs, any other eating houses or anywhere whether indoor or outdoor or by caterers.

As per section 4(9)(d), if the annual turnover is less than ₹ 1.5 crore, he shall pay tax at the rate of four per cent.

We noticed (March 2012) during the test check of VAT audit files of Tirupati II Circle that a dealer paid tax at the rate of four *per cent* on the total turnover under Section 4(9)(d) of the Act, even though his total turnover exceeded ₹ 1.50 crore. The AO failed to levy tax under section 4(9)(c) of the Act. This resulted in short levy of tax of ₹ 14 lakh.

We referred the matter to the Department (between May and June 2012) and to the Government (August 2012); their reply has not been received (January 2013).

2.7.19 Short-levy of tax due to escapement of turnover

The commodity "Skimmed Milk Powder" exigible to tax at the rate of four *per cent* vide entry 58 of Schedule IV to the APVAT Act.

We noticed (February 2012) in Begum bazar circle from the VAT Audit file of a dealer that the AO had noticed in 2010-11 from the CST assessment relating to skimmed milk powder that the AA had treated it as transit sale during the year 2007-08 and allowed exemption accordingly. The AO after verification of records concluded that the transaction was not a transit sale and was not qualified for exemption under CST Act as it was first sale effected in the State and was liable to be taxed at the rate of four *per cent* under the APVAT Act. However, verification of VAT audit records for the year 2007-08 revealed that while the turnover of ₹ 6.67 crore was taxable, a turnover of ₹ 3.00 crore only was taxed and balance turnover of ₹ 3.67 crore had escaped assessment. This failure of the AO resulted in short levy of tax of ₹ 15 lakh.

We referred the matter to the Department (between May and June 2012) and to the Government (August 2012); their reply has not been received (January 2013).

2.7.20 Non/short payment of tax due

According to Section 4(1) of the APVAT Act 2005, every dealer registered or liable to be registered as a VAT dealer shall be liable to pay tax on every sale of goods in the State at the rates specified in the Schedules.

As per Rule 24 of APVAT Rules, in the case of a VAT dealer, the tax declared as due on Form VAT- 200, shall be paid not later than fifteen days after the end of the tax period if the payment is by way of cheque and not later than twenty days after the end of the tax period if the payment is by way of demand draft or bankers cheque or by way of remittance into the Treasury or by electronic funds transfer (EFT).

We noticed (between February 2012 and March 2012) in two circles[39] from the VAT audit files of three dealers that the audit officers failed to point out the fact that the dealers had either not paid or had short paid the tax along with the VAT returns. This resulted in short payment of tax of ₹ 15 lakh.

After we pointed out the cases, the Department contended (November 2012) in one case that the payment particulars were produced. The reply is not acceptable since on cross verification of the challan, particulars were not tallied with the VATIS report. Replies in respect of the remaining two cases have not been received (January 2013).

We referred the matter to the Government (August 2012); their reply has not been received (January 2013).

[39] Nandyala-II and Visakhapatnam (Dabagardens).

2.7.21 Short levy of tax due incorrect determination of taxable turnover

As per para 5.11.4 of the VAT Audit Manual, 2005, the audit officer is required to verify whether there exists wide disparity between the details given by the dealer in the VAT returns and the annual accounts for that period.

As per Section 2(39) of the APVAT Act, 2005, sale price means the total amount set out in the tax invoice or bill of sale or the total amount of consideration for the sale or purchase of goods as may be determined by the assessing authority, and shall include any other sum charged by the dealer for anything done in respect of goods sold at the time of, or before, the delivery of the goods.

Under Section 2(38), taxable turnover means the aggregate of sale prices of all taxable goods.

Under section 13(5)(a), no ITC shall be allowed on the purchases made in respect of works contracts where the VAT dealer pays tax under the provisions of clauses (b),(c) and (d) of sub-section (7) of Section 4.

We noticed (between August 2011 and March 2012) in six circles and two division offices from the VAT Audit files of eight dealers that the audit officers incorrectly determined the taxable turnover, which resulted in short levy of tax of ₹ 39 lakh.

(₹ in lakh)

Sl. No.	Name of the Division/Circle	Tax effect	Audit observation
1	Abids (Hyderabad) Division	6.46	The turnover of works contract receipts was correctly added in the notice for assessment but the audit officer failed to include the turnover in the final assessment order.
2	Hydernagar (Hyderabad)	6.77	In this case, the amount of labour charged to the sale of air conditioners was to be treated as incidental to sale. The audit officer misclassified the sale as works contract and allowed exemption of turnover relating to labour. This resulted in short levy of tax. In a similar case of elevators, the Honourable Supreme Court of India held in the case of assessee Vs state of AP (2005) 140 STC 22 that supply and installation of lifts is "sale" and not "works contract". It was held that the major component into the end product was the material consumed on producing the lift to be delivered and the skill and labour to be employed for converting the main component into the end product was only incidentally used and delivery of the end product to the customers constituted a sale and not works contract.
3	Nacharam (Hyderabad)	4.68	The dealer sold machinery to export oriented units and claimed exemption of tax. The AO allowed the exemption treating the same as sales to SEZ, which was not correct. This resulted in non levy of tax.

(₹ in lakh)

Sl. No.	Name of the Division/Circle	Tax effect	Audit observation
4	Vanasthalipuram (Hyderabad)	11.52	The audit officer incorrectly adopted the turnover of ₹ 15.49 crore of 12.5 *per cent* rated goods instead of actual taxable turnover of ₹ 16.74 crore. This resulted in short levy of tax**.**
5	Mandapeta	6.48	The dealer purchased gunnies from out of state and within the state and failed to report the same in the VAT returns. The AO failed to comment upon the same as he did not cross verify the returns data with the data at the check post in this regard, resulting in short levy of tax.
6	Nandyala-II	0.56	The dealer purchased tractors from out of state and failed to report the same in the VAT returns. The AO failed to comment on the same as he did not consider the data at the check post in this regard. Instead the audit officer issued VAT 312 for no variation. This resulted in short levy of tax.
7	Nizamabad Division	0.62	The AO, while issuing notice, proposed tax at the rate of 12.5 *per cent* on ₹ 15.38 lakh towards waste maize and paddy husk and dropped the objection basing on the dealer's plea that they are exempt commodities. However, while allowing the exemption, the AO deducted the turnover twice from the taxable turnover, resulting in short levy of tax.
8	Dabagardens (Visakhapatnam)	2.28	The AO incorrectly adopted the turnover to be taxable at the rate of two *per cent,* instead of the applicable four *per cent*, which resulted in short levy of tax.
	TOTAL	**39.37**	

After we pointed out the cases, the Department replied (November 2012) that in two cases, action had been initiated for revision. In respect of one case the Department contended that the dealer reported out of state purchases in his annual accounts. The reply is not acceptable as the dealer reported the same turnover as local purchases and claimed ITC. Replies in respect of the remaining five cases have not been received (January 2013).

We referred the matter to the Government (August 2012); their reply has not been received (January 2013).

2.7.22 Non /Short levy of Interest

According to Section 22(2) of the APVAT Act, if any dealer fails to pay the tax due on the basis of return submitted by him or fails to pay any tax assessed or penalty levied or any other amount due under the Act, within the time prescribed or specified there for, he shall pay, in addition to the amount of such tax or penalty or any other amount, interest calculated at the rate of one *per cent* per month for the period of delay from such prescribed or specified date for its payment. The interest in respect of part of a month shall be computed proportionately and for this purpose, a month shall mean a period of 30 days.

We noticed (between June 2011 and January 2012) during the course of audit of six circles[40] and two division offices[41], from the VAT audit files of eight assessees that the audit officers had conducted audits and issued assessment orders in Form VAT 305 in these cases. The audit officers in four cases did not issue interest order amounting to ₹ 7.53 lakh. In the other four cases, the AOs did not calculate interest leviable amounting to ₹ 11.55 lakh as per the provisions of the Act. This resulted in non/short levy of tax of ₹ 19.08 lakh.

After we pointed out the cases, the Department accepted (November 2012) the audit observation in one case and in another case stated that action had been initiated for revision. Replies in respect of the remaining six cases have not been received (January 2013).

We referred the matter to the Government (August 2012); their reply has not been received (January 2013).

2.7.23 Non/Short levy of penalty

According to Section 53(3) of APVAT Act, any dealer who has under declared tax, and where it is established that fraud or willful neglect has been committed, shall be liable to pay penalty equal to the tax under declared.

2.7.23.1 We noticed (between October 2010 and March 2012) in 15 circles[42] from the VAT Audit files of 19 dealers that the audit officers failed to levy penalty equal to tax although they had, in the course of their audit, concluded that the dealers had willfully suppressed their tax liabilities. This resulted in short levy of penalty of ₹ 1.26 crore.

[40] Hyderabad (Jubilee Hills, Market Street and Narayanaguda), Kadapa, Karimnagar and Siddipeta

[41] Abids and Secunderabad.

[42] Hyderabad (Begumbazar, Charminar, IDA Gandhinagar, Jubilee Hills, Lord Bazar , MJ Market, Malkajgiri, Nacharam, Tarnaka and Vidyanagar), Kavali, Kurnool-II, Nandyala-II, Tirupati-II and Visakhapatnam (Gajuwaka).

After we pointed out the cases, the Department replied (November 2012) that in two cases, action had been initiated for revision. Replies in respect of the remaining 17 cases have not been received (January 2013).

We referred the matter to the Government (August 2012); their reply has not been received (January 2013).

According to Section 53(1) of the APVAT Act, where any dealer has under declared tax, and where it has not been established that fraud or willful neglect has been committed and where under declared tax is (i) less than ten *per cent* of the tax, a penalty shall be imposed at ten *per cent* of such under-declared tax (ii) more than ten *per cent* of the tax due; a penalty shall be imposed at twenty five *per cent* of such under-declared tax.

2.7.23.2 We noticed (between April 2011 and March 2012) in 19 circles[43] and two division offices[44] from VAT Audit files of 27 dealers that the audit officers failed to levy penalty at a correct rate appropriate to the percentage of under declaration. This resulted in short levy of penalty of ₹ 68 lakh.

After we pointed out the cases, the department accepted (November 2012) the audit observations in three cases and in four cases stated that action had been initiated for revision. In one case, it was stated that the matter would be examined. Replies in respect of the remaining 19 cases have not been received (January 2013).

We referred the matter to the Government (August 2012); their reply has not been received (January 2013).

According to Section 51(1) where a dealer who fails to pay tax due on the basis of the return submitted by him by the last day of the month in which it is due, he shall be liable to pay tax and a penalty of ten *per cent* of the amount of tax due.

2.7.23.3 We noticed (between October 2011 and March 2012) in four circles[45] from VAT Audit files of four dealers that the audit officers failed to levy penalty at the rate of 10 *per cent* though the dealers did not pay tax in time on the basis of the return submitted by them. This resulted in short levy of penalty of ₹ 25 lakh.

After we pointed out the cases, the Department contended (November 2012) in one case that the tax payments were made within the prescribed time. The reply is not acceptable as the dealer paid tax after due dates as per VATIS

[43] Akiveedu, Anantapur-II, Bhimavaram, Bhongir, Eluru, Hyderabad (Basheerbagh, Gowliguda, Jeedimetla, Jubilee Hills, Malakpet, Market street, Srinagar Colony, Vengalraonagar and Vidyanagar), Jagtyal, Kakinada, Karimnagar-I, Kurnool-I and Peddapalli.

[44] Abids and Nellore.

[45] Hyderabad (Malkajgiri), Siddipet, Vijayawada (Seetharampuram) and Visakhapatnam (Dabagardens)

information. Replies in respect of the remaining three cases have not been received (January 2013).

We referred the matter to the Government in August 2012; their reply has not been received (January 2013).

According to Section 55(2) of the Act, any VAT dealer, who issues a false tax invoice or receives and uses a tax invoice, knowing it to be false, shall be liable to pay a penalty of 200 *per cent* of tax shown on the false invoice.

2.7.23.4 We noticed (March 2012) in two circles[46] from the VAT Audit files of four dealers that the audit officers instead of levying penalty under Section 55(2) either did not levy or levied penalty under Section 53(3) though they proved that the dealers used false invoices to claim ITC. This resulted in non-levy of penalty of ₹ 7 lakh.

After we pointed out the cases, the Department replied (November 2012) that in one case the department contended that the dealer had produced proper tax invoices but not false invoices. The reply is not acceptable since the audit officer himself levied penalty at the rate of 25 *per cent* by stating that the tax invoices are not proper and attracts penalty under section 55(2). Replies in respect of the remaining three cases have not been received (January 2013).

We referred the matter to the Government in August 2012; their reply has not been received (January 2013).

Compliance issues: Refunds

2.7.24 Excess grant of refund due to incorrect determination of taxable turnover in respect of works contracts

Under Section 4(7) (a) of the APVAT Act, tax is payable on the value of goods at the time of incorporation of such goods in the works at the rates applicable to such goods. To determine such value of goods incorporated in the works contract, deductions as prescribed under Rule 17(1)(e) were allowed from the consideration received.

Further, in the absence of detailed accounts to determine the taxable turnover under rule 17(1) (g) of the Rules, tax at the rate of 12.5 *per cent* after allowing the standard deduction prescribed.

According to Rule 17(1) (d), the value of the goods used in execution of work in the contract, declared by the contractor shall not be less than the purchase value and shall include seigniorage charges, blasting and breaking charges, crusher charges, loading, transport and unloading charges, stacking and distribution charges, expenditure incurred in relation to hot mix plant and transport of hot mix to the site and distribution charges.

[46] Nandyala-II and Visakhapatnam (Dabagardens).

2.7.24.1 We noticed (between December 2011 and March 2012) in two circles[47] that the assessing authorities granted refund to two works contractors, paying tax under non-composition after calculating the taxable turnover. However, the calculation was made under Rule 17(1)(e) even in the absence of the detailed accounts to arrive at the correct value of goods incorporated in the work. However, their tax was to be calculated under rule 17(1)(g) of the APVAT Rules i.e., at the rate of 12.5 *per cent* on the total consideration after allowing standard deduction of 30 *per cent* without input tax credit. The failure of the audit officers to follow Rule 17(1) (g) in the absence of the books of accounts resulted in excess grant of refund of ₹ 9.36 crore.

After we pointed out the cases, the Department replied (November 2012) that in one case, action has been initiated for revision. Reply in the remaining case has not been received (January 2013).

We referred the matter to the Government in August 2012; their reply has not been received (January 2013).

2.7.24.2 We noticed in four circles[48] (between September 2011 and March 2012) that the assessing authorities calculated the taxable turnover against the provisions of the Act and the Rules and granted refund to four works contractors. This incorrect determination of taxable turnover of the works contractors resulted in excess grant of refund of ₹ 2.46 crore.

After we pointed out the cases, the Department replied (November 2012) that in two cases action has been initiated for revision. Replies in respect of the remaining two cases have not been received (January 2013).

We referred the matter to the Government in August 2012; their reply has not been received (January 2013).

2.7.24.3 We noticed (between November 2011 and February 2012) in two circles[49] that the assessing authorities granted refund to two works contractors. Here the value of the material incorporated was lesser than the value of the material purchased and the other charges like seigniorage, blasting, crushing loading and unloading, stacking and distribution charges etc. However, the AO arrived at the taxable turnover as per Rule 17(1)(e) without observing Rule 17(1)(d). This resulted in excess grant of refund of ₹ 20 lakh.

We referred the matter to the Department between May and June 2012 and to the Government in August 2012; their reply has not been received (January 2013).

[47] Hyderabad (Basheerbagh) and Visakhapatnam (Suryabagh).
[48] Hyderabad (Basheerbagh, Khairatabad and Punjagutta) and Nellore.
[49] Hyderabad (Keesara) and Ongole-II.

2.7.25 Excess refund due to incorrect availing of deferment, non-levy of penalty and excess payment of interest

According to Section 38 of APVAT Act, 2005, every VAT dealer shall be eligible for refund of tax, if the ITC exceeds the amount of tax payable, subject to the conditions as prescribed. Further as per Rule 35(3) & (4) of APVAT Act, the assessing authority shall have power to adjust any amounts due to be refunded against taxes, penalty and interest outstanding under the Act.

We noticed (February 2012) in Nalgonda Division from refund audit file of one dealer engaged in manufacturing and sale of cement, that the company had two units, A (Cement Division) and B (Slag Division). Unit B showed procurement of the raw material i.e., clinker from Unit-A as inter-division-transfer. The AC (CT) LTU, Nalgonda Division completed the assessments of Unit-A for the years 2002-03 to 2004-05 under APGST Act and for 2005-06 under APVAT Act 2005 and raised a demand of ₹ 11.41 crore treating transfer of clinker from unit-A to unit-B as sale.

Aggrieved by the orders, the dealer filed an appeal before appellate authorities and the same was dismissed. Further, the dealer filed a second appeal before the Hon'ble STAT, Hyderabad. The STAT held that the material transferred from Unit-A to Unit-B is only an internal transfer, but not a sale of clinker. In the meantime, the dealer filed a writ petition in the Hon'ble High Court of AP for stay of collection of the above demand of ₹ 11.41 crore. The said court granted 50 *per cent* stay and accordingly, the dealer (Unit-A) paid ₹ 6.23 crore on 12/2005 for the years 2002-03 to 2004-05 and ₹ 1.18 crore for the year 2005-06. The Hon'ble High Court of AP allowed the dealer's appeal in its common order dated 31 July 2009 and directed the assessing authorities "to determine the amount payable to the petitioner within two weeks from the date of order and pay the amount so determined along with interest therein within four weeks thereafter". The Department received the order on 31 August 2009.

According to the directions of the Hon'ble High Court of AP, the AC (CT) Nalgonda Division issued a refund of ₹ 7.41 crore (` 6.23 crore for the years 2002-03 to 2004-05 and ₹ 1.18 crore for the year 2005-06) in September 2009 and paid interest of ₹ 2.47 crore (₹ 2.20 crore and ₹ 0.27 crore) in March 2011.

On scrutiny of the assessment file, we noticed the following:

(a) The Commissioner of Industries in its Proceedings[50] originally sanctioned Unit-B sales tax exemption for an amount of ₹ 36.35 crore to be availed during the period of 7 years from 11-03-2002 to 10-03-2009. The total tax exemption and deferment availed by the unit was ₹ 41.97 crore. Thus,

[50] 1. Proceeding no. 10/3/2000/0866/ID dated 6.6.2000.
2. Proceeding No. 30/2/2002/0788/0788/FD Dated 23-10-2002.

there was excess availing of ₹ 5.62 crore during the year 2006-07. After the AA issued notice for repayment, the dealer paid an amount of ₹ 2.65 crore from June 2008 to March 2009 on various dates. The remaining balance of ₹ 2.97 crore was not paid till the date of audit. Further, the AA issued an interest notice of ₹ 0.79 crore (i.e., interest levied on payment of ₹ 2.65 crore) and penalty notice of ₹ 1.41 crore for delay in payment of tax for the year 2006-07, which were also not paid by the dealer till date of audit.

(b) It is seen from the Vigilance & Enforcement report dated 20 July 2009 that the dealer had availed excess ITC of ₹ 0.80 crore and ₹ 0.38 crore on ineligible items for the years 2005-06 to 2008-09 and the same was communicated to AC (CT), LTU, Nalgonda.

However, while processing the refund amount due to the dealer, the AA did not take into account these amounts due to the Department.

(c) Interest of ₹ 2.20 crore was paid to dealer at the rate of 18 *per cent* on the amount refunded of ₹ 6.23 crore instead of at 12 *per cent* as prescribed under Section 33-E of APGST Act.

The above resulted in excess grant of refund of ₹ 8.58 crore.

After we pointed out the case, the Department replied (October 2012) during the Exit Conference that the records would be called for and reply would be submitted after examining the case.

We referred the matter to the Government in August 2012; their reply has not been received (January 2013).

2.7.26 Refund granted without completing CST assessment

According to Section 38 (1) read with Rule 35(4), the authority prescribed shall not refund any VAT where tax, penalty, interest or any other amount was outstanding against such VAT dealer under the Andhra Pradesh General Sales Tax Act, 1957 and/or under the Central Sales Tax Act, 1956.

We noticed (January 2012) in CTO, Jubilee Hills circle from the refund file that the assessing authority issued ₹ 1.77 crore in two cases (₹ 0.86 crore and ₹ 0.91 crore) without finalising the CST assessments for the years 2008-09 and 2009-10. This resulted in incorrect grant of refund of ₹ 1.77 crore.

2.7.27 Excess grant of refund due to incorrect exemptions for exports under CST Act

According to Section 38 of APVAT Act, 2005, a VAT dealer effecting sales falling under sub-section (1) or (3) of Section 5 (and sub-section (6) of Section 8) of the Central Sales Tax Act, 1956 in any tax period shall be eligible for refund of tax, if the ITC exceeds the amount of tax payable subject to the condition that the exports have been made outside the territory of India.

As per Rule 35(6) of the APVAT Rules, in the case of sales falling within the scope of sub section (1) of Section 5 of Central Sales Tax Act, 1956, the VAT dealer shall be in possession of the documents such as copy of contract or order from a foreign buyer, copy of the invoice issued to the foreign purchaser, transport documentation i.e. Bill of Lading, Airway Bill, or a like document, evidence of payment or evidence of letter of credit from the foreign purchaser or copy of the document in proof of export duly certified by Customs Department.

In the case of sales falling within the scope of sub-section (3) of Section 5 of Central Sales Tax Act, 1956, the VAT dealer shall be in possession of the documents viz., Declaration in Form 'H', purchase order from exporter, evidence of export in the form of transport documentation i.e., bill of lading, air way bill or a like document.

We noticed (between November 2011 and March 2012) in three circles[51] that the assessing authorities granted refunds to three dealers engaged in exports without the complete documentary evidence (such as the purchase order from the foreign buyer and the bill of lading and shipping bill in respect of exports; purchase agreement after the actual dispatch of goods bound to India and the bill of entry evidencing that the goods are delivered to third party in respect of high-sea sales) to prove that the goods they claimed as exported/imported actually crossed the customs barrier of India. In the absence of such evidence, the ITC claimed on purchase of such goods and the exemption of such sale turnover was incorrect. This resulted in excess refund of ₹ 1.10 crore.

We referred the matter to the Department between May and June 2012 and to the Government in August 2012; their reply has not been received (January 2013).

[51] Anantapur-II and Hyderabad (Basheerbagh and Jubilee Hills).

2.7.28 Excess grant of refund under Government notification

According to Section 15 of the APVAT Act, 2005, the Government may, subject to such conditions as it may impose, by a notification, provide for grant of refund of tax paid to any person, on the purchases effected by him and specified in the said notification. An application for refunds shall be made in duplicate to the Commissioner within a period of six months from the date of purchase or as the Government may prescribe in the notification and it shall be accompanied by the purchase invoice in original.

According to Section 51(1) of the Act, where a dealer who fails to pay the tax due to on the basis of the return submitted by him by the last day of the month in which it is due, shall be liable to pay tax and a penalty of ten *per cent* of the amount due.

We noticed (between September 2011 and March 2012) in two Divisions[52] from two refund files that the authorities allowed refund without conducting the prescribed checks and the conditions laid out in the respective notifications before granting refund of tax. The AO, in the case of M/s Larsen and Toubro Limited who claimed refund of ITC on purchases from M/s GMR International Airport Limited, basing on the Government notification[53] granted refund. The selling company did not report the sale, but the AO failed to verify and restrict the refund. In the second case, M/s Navayuga Engineering Company, being contractor to M/s Krishnapatnam Port Company Limited, claimed refund of tax paid based on the Government notification[54]. The AO failed to levy penalty on the belated payments before granting refund. This resulted in excess refund of ₹ 1.02 crore.

We referred the matter to the Department between May and June 2012 and to the Government in August 2012; their reply has not been received (January 2013).

[52] Hyderabad (Abids) and Visakhapatnam.
[53] GO.Ms.No.1254, Revenue (CTII) Department, dt.24-6-2005.
[54] GO.Ms.No.609 Rev(CT-II) Dt.29-5-2006.

2.7.29 Excess grant of refund due to non-levy of penalty and interest on belated payments

As per section 51(1) of the APVAT Act, where a dealer who fails to pay tax due on the basis of the return submitted by him by the last day of the month in which it is due, shall be liable to pay tax and a penalty of ten *per cent* of the amount of tax due.

As per Section 22(2) of the Act, if any dealer fails to pay the tax due on the basis of return submitted by him or fails to pay any tax assessed or penalty levied or any other amount due under the Act, within the time prescribed or specified there for, he shall pay, in addition to the amount of such tax or penalty or any other amount, interest calculated at the rate of one *per cent* per month for the period of delay from such prescribed or specified date for its payment.

We noticed (November 2011) from the refund file of one dealer in Division office, Anantapur that the assessing authority while granting refund to the dealer did not point out the fact that the dealer had not paid tax on the due dates and did not levy penalty and interest on such belated payments as prescribed in the above provisions. This resulted in excess grant of refund of ₹ 87 lakh.

We referred the matter to the Department between May and June 2012 and to the Government in August 2012; their reply has not been received (January 2013).

2.7.30 Excess grant of refund due to short levy of interest

According to Section 38 of APVAT Act, 2005, every VAT dealer shall be eligible for refund of tax, if the ITC exceeds the amount of tax payable, subject to the conditions as prescribed.

According to section 16(3)(b) of APGST Act,1957, if the delay in payment exceeds one year, the assessee is liable to pay interest at the flat rate of 36 *per cent* of the tax per annum.

We noticed (March 2012) in Hyderguda circle from the refund audit file of one dealer that the AA granted refund as per G.O.Ms. No. 383, Revenue (CT.II), dated 2.3.2009. But, the AA incorrectly calculated and adjusted the interest payable for the delayed payments at the rate of 12 *per cent* instead of at the rate of 36 *per cent* per annum. The failure of the AA resulted in short levy of interest of ₹ 41 lakh and excess refund to the same extent.

We referred the matter to the Department between May and June 2012 and to the Government in August 2012; their reply has not been received (January 2013).

2.7.31 Excess grant of refund due to incorrect allowance of concessional rate of tax on invalid 'C' declarations

As per Section 8(4) of the CST Act 1956 read with proviso to Rule 12(1) of CST (R&T) Rules 1957, a single declaration may cover all transactions of sale which take place in one quarter of financial year between the same two dealers, are eligible to claim concessional rate of tax.

We noticed (November 2011) from the Refund file of one dealer in Division office, Anantapur that the AA, while granting refund did not verify the validity of the 'C' declarations submitted by the dealer which covered transactions of more than a quarter of the financial year for claiming the concessional rate of tax under CST Act. The failure of the AA to verify the validity of the declarations resulted in short levy of tax, which in turn, resulted in excess grant of refund of ₹ 29 lakh.

We referred the matter to the Department between May and June 2012 and to the Government in August 2012; their reply has not been received (January 2013).

2.7.32 Excess grant of refund due to non-forfeiture of excess tax deducted

As per Section 38 (1) read with Rule 35 (9), where any refund is due to a VAT dealer, the authority prescribed shall issue a notice in Form VAT 351, either adjusting such refund against any tax, interest, penalty and any amount due under the Act outstanding against such dealer or notifying the refund within fifteen days of date of receipt of the order.

As per Section 4 (7) read with Rule 18(3)(b), where tax, collected at source, is in excess of the liability of the contractor, who has not opted for payment of tax by way of composition, such amount of tax, collected in excess of the liability shall be deemed to have been payable by the contractor and shall be liable to be forfeited.

We noticed (October 2011) in Vijayawada (Benz circle), that the AA while granting the refund to the dealer calculated the tax payable under composition scheme, though the dealer submitted the option for composition after the commencement of the work. Hence the tax should have been calculated under non-composition under rule 17(1) (e) of the Act and the excess tax deducted at source was to be forfeited which was not done This resulted in short levy of tax, which, in turn, resulted in excess refund of ₹ 11 lakh.

We referred the matter to the Department between May and June 2012 and to the Government in August 2012; their reply has not been received (January 2013).

2.7.33 Incorrect grant of refunds due to excess allowance of ITC on ineligible purchases

According to Section 13 read with Rule 20(2), input tax shall be claimed on the purchase of items used in the business of the VAT dealer and which are not in the negative list in the Rule.

We noticed in two circles[55] (between January and February 2012) that the audit officers in respect of two dealers (drugs manufacturers), while granting refund, allowed ITC on the purchases of construction material in one case and literature and vehicles in the second, which were ineligible for claiming ITC. This resulted in excess refund of ₹ 7 lakh.

After we pointed out the cases, the Department replied (November 2012) that in one case, action has been initiated for revision. Reply in respect of the remaining case has not been received (January 2013).

We referred the matter to the Government in August 2012; their reply has not been received (January 2013).

2.7.34 Excess grant of refund due to non-levy of purchase tax

Under Section 4(4) of AP VAT Act 2005, every VAT dealer, who purchases any taxable goods from a person or a dealer not registered as a VAT dealer or from a VAT dealer in whose case no tax is payable by the selling VAT dealers, if after such purchase, (a) the goods are used as input for goods exempt under the Act, (b) used as input for goods disposed not by way of sale in the state, dispatched not by sale (i.e., branch transfer or sale on consignment basis) or (c) directly disposed not by sale (i.e., branch transfer or sale on consignment basis) shall be liable to pay tax at the rate of four *per cent* on the value of purchase proportional to such use.

We noticed (February 2012) in Malkajgiri circle that the AA granted refund to a dealer without levying purchase tax although the dealer was purchasing chillis from farmers and effected branch transfer of the same, thus attracting the provisions of the Act. This resulted in excess grant of refund of ₹ 4 lakh.

We referred the matter to the department between May and June 2012 and to the Government in August 2012; their reply has not been received (January 2013).

[55] Hyderabad (Jubilee Hills and Malkajgiri).

2.7.35 Delays in grant of refund

According to Section 39 (1) read with Rule 35(9)(e), where the refund is not made within ninety days, the interest shall be payable at the rate of one *per cent* per month from the date after the expiry of the said ninety days till the date of actual refund.

We noticed (March 2012) in two circles[56] and Abids division that the assessing authorities in nine cases granted refund with a delay ranging from four days to 182 days beyond the prescribed 90 days. The Department, in such cases, shall be liable to pay interest to the dealers.

2.7.36 Refund granted beyond powers

According to Section 38 (1) read with Rule 35(6) (b) and para 6.4.1 of the VAT Audit Manual, 2005, the refunds related to export must contain the evidence of export in the form of copy of the customs clearance certificate, contract or purchase order from a foreign buyer, evidence of actual export in the form of transport documentation related directly to the goods like bill of lading, airway bill or a like document. Further, according to Section 13(1) of the APVAT Act, 2005, ITC shall be allowed to the VAT dealer for the tax charged in respect of all purchases of taxable goods, made by that dealer during the tax period, if such goods are for use in the business of the VAT dealer. Under the sub-section 3(a) ibid, a VAT dealer is entitled to ITC, on the date the goods are received by him, provided he was in possession of a tax invoice. As per Rule 59(1) (6) of the APVAT Rules, the refund beyond ₹ 10 lakh and above shall be granted by Joint Commissioner or Additional Commissioner in the office of Commissioner of Commercial Taxes.

We noticed (November 2011) from the refund file of a dealer in Anantapur circle that the dealer had applied for refund of input tax on the purchase of goods used for export. On examining the case, the AA reported (October 2006) to the Divisional Officer that the dealer did not possess the tax invoice as prescribed under the provisions of AP VAT Act and the Rules made thereunder and issued notice to the dealer questioning the eligibility of the refund. The dealer approached the Sales Tax Administrative Tribunal (STAT) on the plea that the assessing authority did not have jurisdiction to issue notice. The STAT struck down (December 2007) the notice and ordered grant of refund. The file was later sent to the JC by the Divisional Officer and refund of ₹ 12 lakh was ordered and paid (August 2008) without the orders of the JC.

Thus, the DC (CT), Anantapur Division issued refund beyond jurisdiction.

[56] Hyderabad (Basheerbagh and Nampally).

2.7.37 Conclusion

There were substantial arrears in completion of the planned audits in all the years from 2006-07 to 2010-11 ranging from 13 to 51 *per cent*. Further, there is no system to monitor the planning and selection of audits. Consequently, the audits were selected in an arbitrary manner without any adherence to the risk parameters prescribed or without the proposals from the jurisdictional officers. The audit module in the VATIS software package, which would help in selecting, monitoring and appraisal of VAT Audits, was not being utilised properly. As a result, we found audits of the same dealers for same/ overlapping periods being authorised to different audit officers, top dealers not being selected for audit since inception of the APVAT Act, audits being authorised without verification of the dealer status etc. The non-adherence to procedures like verifying the purchase particulars, documentary evidence in case of exports etc., also led to excess grant of refunds. Though the departmental audit manual and the circulars issued periodically prescribe the basic checks to be conducted in VAT audits and refund audits, the audit officers failed to follow them. This led to undue benefit to the dealers and loss of revenue in the form of short levy of tax due to excess claims of ITC, under declaration of output tax, incorrect determination of taxable turnover in works contracts, incorrect exemptions and excess deferment and excess refunds, etc.

Excess refunds were granted due to incorrect determination of taxable turnovers, incorrect exemption, non levy of penalty/interest etc. Refunds were granted without finalising the tax liability and beyond the powers of the Assessing authority.

2.7.38 Recommendations

We recommend that

- The Department should focus on quality, rather than quantity of VAT audits, by adopting a risk-based approach which involves planning of fewer VAT audits but higher revenue collection (for which the auditing officers should be held accountable). They should also ensure a set of comprehensive and standardised guidelines for selection of dealers for VAT audits, so as to minimise discretionary and arbitrary selection; this must be invariably enforced in all jurisdictions. The audit module in VATIS should be designed and implemented to facilitate automatic selection, based on these guidelines. Implementation of such standardised guidelines should be monitored, and failure penalised. If necessary, a specified percentage of VAT audits (10 per cent or so) can be selected by the DC, using his judgment based on specified parameters.

  During the Exit Conference (October 2012), the CCT, while agreeing with the recommendation for quality rather than quantity audits, stated that they would be starting a system, where initially 50 *per cent* of the audits would be selected through the system and 50 *per cent* based on local intelligence etc. The results of this system would be monitored over a period of six months, after which this would be reviewed.

The CCT also stated that the new VATIS (including the audit module) was in operation from 1 September 2012. The new audit module was so designed that no audit would be selected without going through VATIS, and every audit authorisation had a computer-generated unique ID.

- The Department should ensure effective monitoring of completion of VAT audits by specifying timelines (say 1 or 2 months), after which the VAT audited files must be mandatorily transferred to the respective jurisdictional offices. If the Department believes that the assessing officers are under excessive time pressure to complete VAT audits in timely manner, they may consider setting up a dedicated VAT audit wing (as is being followed by Tamil Nadu for VAT and by AP itself for Registration and Stamps).

  During the Exit Conference (October 2012), CCT stated that in most of the cases, audits would be completed within one month, and that all inordinate delays were monitored at his level. Further, the Principal Secretary to the Revenue Department stated that if records were not produced within 15 days, then best judgement should be exercised by the Department and the audit finalised.

- VAT-audited cases should be subject to a random check (based on a statistical sample), and poor quality VAT audits should result in penal action. The Department may also consider interaction with the Vigilance & Enforcement Department to discuss systemic trends of tax evasion, so as to plug leakage of revenue and also enrich the approach to VAT audits.

  During the Exit Conference (October 2012), the CCT stated that as per the new VAT Audit Manual, the Department had prepared a checklist and a model assessment order.

  The implementation of the systemic changes/commitments indicated by the Department during the Exit Conference would be verified in future audits.

2.8 Other Audit Observations

During scrutiny of the records of the Offices of the Commercial Taxes Department relating to revenue received from VAT and CST, we observed several cases of non-observance of the provisions of the Act/Rules resulting in non/short levy of tax/penalty and other cases as mentioned in the succeeding paragraphs in this Chapter. These cases are illustrative and are based on a test check carried out by us. We point out such omissions in audit every year, but not only do the irregularities persist; these remain undetected till an audit is conducted. There is a need for improvement of internal controls so that such omissions can be avoided, detected and rectified.

2.9 Payment of VAT on works contract

2.9.1 Payment of VAT under non-composition

2.9.1.1 Under declaration of tax by works contractors who did not maintain detailed accounts

According to Section 4(7)(a) of the Act, read with rule 17(1)(g) of the APVAT Rules, every dealer executing works contracts shall pay tax on the value of goods at the time of incorporation of such goods in the works executed at the rates applicable to the goods under the Act, provided that where the VAT dealer has not maintained accounts to determine the correct value of the goods at the time of incorporation, he shall pay tax at the rate of 12.5 *per cent* up to 25 April 2010 and 14.5 *per cent* with effect from 26 April 2010 on the total consideration received or receivable, subject to the deductions specified under the rules. Further, the dealer shall not be eligible to claim input tax credit (ITC).

We noticed (July and December 2011) during the test check of the records of four circles[57] that for the period 2009-10 and 2010-11, four dealers had not maintained accounts to ascertain the correct value of goods at the time of incorporation of such goods in the works executed by them. However, one of the dealers declared tax at the lower rate of four *per cent*, though purchase of goods was also made at 12.5/14.5 *per cent*. In the second case, the dealer claimed exemption on labour charges at a fixed rate though not stipulated under the Act. In the third case relating to installation of 'induced draft cross flow type timber cooling towers', the dealer reported the entire turnover as labour charges and claimed exemption, though the agreement stipulated 92.6 *per cent* of the contract as material value. In the fourth case, despite payment of tax under Rule 17(1)(g), the dealer claimed ITC, which is not stipulated under the Rules. These resulted in under declaration of tax of ₹ 52.11 lakh.

[57] Hyderabad (Bowenpally, Madhapur, and Nampally) and Peddapuram.

After we pointed out the cases, the AAs/Department stated that

- in one case (November 2012), the JC(CT) (Enf) had authorised CTO-III of enforcement wing to conduct audit of records of the dealer;
- in one case (August 2011) the books of accounts would be verified and intimated; and
- in the remaining two cases (November and December 2011), the matter would be examined.

We referred the matter to the Government between June and July 2012; their reply has not been received (January 2013).

2.9.1.2 Under declaration of tax due to claim of inadmissible deductions

Under Section 4(7)(a) of the Act, tax on works contract, is payable on the value of goods incorporated at the rates applicable to such goods. To determine the value of goods incorporated, deductions as prescribed under Rule 17(1)(e) were to be allowed from the total consideration received or receivable.

We noticed (between February and December 2011) during the test check of the VAT records of three circles[58] for the period April 2009 to March 2011 that in three cases, the dealers claimed deductions like erection charges, earth work etc., from the gross turnover, which were inadmissible under Rule 17(1)(e). This resulted in under declaration of tax of ₹ 34.64 lakh.

After we pointed out the cases, the AAs/Department stated that

- in one case (November 2012), assessment was revised and an amount of ₹ 2.32 lakh collected;
- in one case (November 2011), notice was issued to the dealer;
- in the remaining case (November 2011), the file was submitted to DC(CT) Secunderabad for necessary action.

We referred the matter to the Government in July 2012; their reply has not been received (January 2013).

[58] CTO-Hyderabad (Begumpet and Market Street) and Rajahmundry (Alcot Gardens) .

2.9.1.3 Declaration of VAT by works contractors at incorrect rates

According to Section 13(7) of the Act, the ITC (Input Tax Credit) allowable to dealers paying tax under Section 4(7)(a) of the Act on the value of goods incorporated in works is limited to 90 *per cent* of the related input tax. As per Section 4(7)(d) of the Act, the dealers who are engaged in construction and sale of residential apartments may opt to pay tax at the rate of four *per cent* on 25 *per cent* of the consideration received or receivable.

We noticed (between January 2011 and January 2012) during the test check of the records of six circles[59] for the period from 2009-10 to 2010-11 that in five cases, the dealers engaged in tyre retreading, electrical works, printing works had not opted to pay tax by way of composition, but paid tax at lesser rates though the purchase of goods used in works was at higher rates. One of these dealers claimed ITC in excess of the allowable 90 *per cent.* Further, one dealer engaged in construction and sale of apartments paid tax at the rate of four *per cent* on 25 *per cent* on the value of work covered under development agreement and not by way of sale. This resulted in under declaration of tax of ₹ 25.18 lakh.

After we pointed out the cases, the Assessing Authorities (AAs) stated that

- in one case (January 2011), notice would be issued to the dealer;
- in two cases (between September and October 2011), books of accounts of the dealers would be verified and tax levied if found liable;
- in one case (September 2011), the balance tax would be collected;
- in the remaining two cases (between February 2011 and January 2012), the matter would be examined.

We referred the matter to the Department between October 2011 and April 2012 and to the Government in July 2012; their reply has not been received (January 2013).

2.9.2 Payment of VAT under composition

2.9.2.1 Under declaration of tax due to incorrect claim of ITC

According to Section 4(7)(b),(c) read with Section 13(5)(a) of the Act, any dealer executing any works contract may opt to pay tax by way of composition at the rate of four *per cent* on the total value of the contract executed; such dealers are not entitled to claim any ITC on purchase of goods incorporated in the works.

We noticed (October 2011) during the test check of the VAT records of Tadepalligudem circle for the year 2010-11 that in one case, the assessee claimed ITC on purchases relating

[59] Hyderabad (Jubilee hills, Vanasthalipuram and Vidyanagar), Rajahmundry (Aryapuram), Vijayawada (Autonagar and Seetharamapuram).

to the period from November 2010 to January 2011, despite opting for composition. This resulted in under declaration of tax of ₹ 6.18 lakh.

After we pointed out the case, the AA stated (October 2011) that the accounts of the dealer would be audited with the authorisation of the DC (CT) Eluru.

We referred the matter to the Department in March 2012 and to the Government in June 2012; their reply has not been received (November 2012).

2.9.2.2 Under declaration of taxable turnover

Under Section 4(7)(b), (c) and (d) of the Act, payment of tax on works contract at a concessional rate under composition is allowable, provided the dealer opts so in the prescribed form before commencement of each work. No other deductions, except payments made to sub-contractors, are allowable to the dealers who opt for composition.

We noticed (between August 2010 and November 2011) during the test check of VAT records of the DC (CT) Secunderabad and 16 circles[60] for the period 2008-09 to 2010-11, that in 15 cases, the dealers had under declared tax either due to incorrect claim of exemption though they had opted for composition or due to non-reporting of correct turnover/tax in the monthly returns. In seven other cases, the dealers paid tax at the concessional rate of four *per cent,* though their option for payment of tax under composition was invalid due to filing of option after commencement of work. This resulted in under declaration of tax of ₹ 1.89 crore.

After we pointed out the cases, the AAs/Department stated that

- in two cases (November 2012), the assessments were revised and as a result an amount of ₹ 0.96 lakh was collected in one case;
- in two cases (May and July 2011), the dealer would file detailed statements at the time of finalisation of accounts in respect of each work;
- in one case (December 2011), collection particulars would be intimated;
- in five cases (February and November 2011), notices would be issued calling for records;
- in one case (July 2011), the amount received in Form 501A may not be for the same month and may relate to previous months. The reply is not acceptable, since tax deducted was not adjusted against the tax liability of previous months.
- in the remaining 11 cases (between November 2010 and November 2011), the matter would be examined.

[60] Hyderabad (Bowenpally, Charminar, Fatehnagar, Madhapur, Marredpally, Mehdipatnam, Narayanaguda, Somajiguda, Vanasthalipuram), Jangaon, Kamareddy, Medak, Nellore-II, Peddapally, Suryapet and Warangal (Ramannapet).

We referred the matter to the Government in July 2012; their reply has not been received (January 2013).

2.9.2.3 Under declaration of tax on non creditable purchases used in works contract

According to Section 4(7)(e)* of the APVAT Act (Act), 2005, every dealer, opting to pay tax under composition under clauses (b) or (c) or (d) of section 4(7) of the Act, who purchases or receives any goods from outside the State or India or from any dealer other than a VAT dealer in the State and uses such goods in the execution of the works contracts, shall pay tax on such goods at the rates applicable to them under the Act. The value of such goods shall be excluded from the total turnover for the purpose of computation of turnover on which tax by way of composition is payable. 'Diesel oil' falls under entry 5 of the Schedule VI to the Act, and tax is leviable at the rate of 22.25 *per cent.*

**The sub-section has been omitted with effect from 15 September 2011 and the case pointed out pertained to the period prior to the date.*

We noticed (July 2011), during the test check of the VAT records of Rajendranagar circle for the period April 2010 to March 2011 that in one case, the dealer was under composition and declared purchase of diesel oil and other goods from outside the State and used the same in the execution of works contract. However, the dealer had not paid tax on purchase of diesel oil at the rate of 22.25 *per cent* on the purchase turnover of ₹ 41.23 crore as per the provisions of Section 4(7) (e) of the Act. Instead, he declared tax at the rate of four *per cent* under composition on the total turnover received, without excluding the value of the non-creditable purchase of diesel purchased from outside the State. This resulted in under declaration of tax of ₹ 7.52 crore at a differential rate of 18.25 *per cent*.

After we pointed out the case, the AA stated (July 2011) that show cause notice was issued to the dealer.

We referred the matter to the Department in May 2012 and to the Government in July 2012; their reply has not been received (January 2013).

2.10 Inter-state sales

2.10.1 Non/short levy of tax on inter-state sales

According to Section 8(2) of the CST Act read with Rule 12 of the CST (R&T) Rules, every dealer, who in the course of inter-state trade or commerce sells goods to a registered dealer located in another State, shall be liable to pay tax under this Act at the rate of four *per cent* (three *per cent* with effect from 1 April 2007 and two *per cent* with effect from 1 June 2008), provided the sale is supported by a declaration in form 'C'. Otherwise, tax shall be calculated at double the rate in case of declared goods and at the rate of 10 *per cent* or at the rate applicable to sale of such goods within the State, whichever is higher, in case of other than declared goods. With effect from 1 April 2007, the respective State rate is applicable to all goods. Government by Act No. 16 of 2007, abolished the concessional rate of tax on sales to Government Departments on submission of 'D' forms with effect from 1 April 2007.

The commodity 'film processor' falls under entry 2 of Schedule VI to the APGST Act, 1957 and was liable to tax at the rate of eight *per cent;* the commodities 'bran oil', 'continuous cast (CC) copper rods', 'galvanised transmission parts', 'pulses' and 'software' fall under schedule IV to the Act and are taxable at the rate of four *per cent*; the commodities 'air conditioners', 'chimneys', 'confectionery', 'cranes', 'diesel generators', 'electrical and electronic goods', 'flushing cistern', 'foam sheets', 'granites', 'machinery', 'paints', 'protein powder' and 'weapon parts' fall under schedule V to the Act and are liable to tax at the rate of 12.5 *per cent;* and the commodity 'beer' falls under schedule VI to the Act and is liable to tax at the rate of 70 *per cent.*

We noticed (between September 2010 and February 2012) during test check of assessment files of four Divisions[61] and 20 circles[62] that the assessing authorities (AAs), while finalising the CST assessments in 27 cases between March 2009 and March 2011 for the years 2003-04 to 2009-10, levied tax at rates lesser than the applicable rates on inter-state sales of the goods mentioned above, not covered by proper declaration forms, while in three cases the AAs incorrectly allowed exemption on inter-state sales of 'rexine' and 'software'. This resulted in short levy of tax of ₹ 3.32 crore on a turnover of ₹ 74.67 crore.

[61] Abids, Saroornagar, Secunderabad and Warangal.

[62] Hyderabad (Basheerbagh, Barkatpura, Bowenpally, Ferozguda, Hyderguda, IDA Gandhinagar, Jeedimetla, Jubilee hills, MG Road, Madhapur, Malakpet, Marredpally, Saroornagar, Tarnaka and Vengalraonagar), Nellore (Markapur), Ramachandrapuram, Rajahmundry (Alcot Gardens), Suryapet and Vijayawada (Convent Street).

After we pointed out the cases, the AAs/Department stated that

- in two cases (November 2012), assessments were revised and an amount of ₹ 0.64 lakh was collected;
- in one case (December 2010), the differential tax would be collected;
- in four cases (between November 2011 and November 2012), assessment files were submitted to, the concerned DC(CT) for revision;
- in five cases (between January 2011 and November 2012), notices were issued/would be issued to the dealers;
- in one case November 2010), action would be taken to collect the tax;
- in one case (August 2011), error would be rectified and report submitted;
- in one case (September 2010), the commodity 'leather cloth' is exempt as per the Uttar Pradesh High Court judgement[63] and hence 'rexine' is also classifiable under entry 45 of Schedule 1 to the Act. The reply is not acceptable as the case law relates to the assessment year 1971-72 where the APGST Act was in force, which was repealed by the AP VAT Act with effect from 1 April 2005. Under this Act, a specific entry for 'rexine' exists and it was judicially held in the case[64] by the AP High Court that where there is a specific entry for an item under the Act, it would prevail over a general entry; and
- in the remaining 15 cases (between January 2011 and January 2012), the matter would be examined.

We referred the matter to the Government between June and July 2012; their reply has not been received (January 2013).

2.10.2 Grant of incorrect exemption due to acceptance of invalid forms (F-forms)

Under Section 6-A of the CST Act read with Rule 9 A(2) of the CST (AP) Rules, each declaration in form 'F' shall cover transactions effected during a period of one calendar month. Therefore, a single declaration issued to cover transfer of goods for more than one month is to be treated as invalid, and the turnover has to be brought to tax, treating it as inter-state sale not covered by proper declarations.

As per the Government memo[65], excess demand raised over and above three *per cent* was waived in case of inter-state sale of rice not covered by declarations for the period from 1 April 2007 to 31 May 2008.

[63] M/s Arora Material Store Vs Commissioner, Sales Tax (1982), 51 STC 0235.
[64] M/s Replica Agency Vs State of AP (2002) 124 STC 271 APHC.
[65] Memo No. 20354/CT-II(1)/2011-12 dated 8 June 2011.

We noticed (between November 2010 and February 2012) during the test check of the CST assessment files of the offices of two Divisions[66] and 13 circles[67] that in 17 cases, consignment sales/branch transfers of goods valued at ₹ 84.27 crore were either not supported by 'F' forms or supported by 'F' forms covering transactions of more than one calendar month/pertaining to irrelevant period/obtained from the local dealers and the same were liable to be treated as invalid. The AAs, while finalising the assessments between November 2009 and July 2011 for the years 2006-07 to 2009-10, incorrectly exempted the turnover from levy of tax. This resulted in non-levy of tax of ₹ 3.05 crore as detailed below:

(₹ in lakh)

Sl. No.	Name of the Circle/Year of assessment	No. of Forms	Nature of irregularity	Taxable TO	Non-levy of tax	Department's Remarks
1	DC, Chittoor 2007-08	1	The AAs while finalising the CST assessments incorrectly allowed exemption on branch /consignment transfers supported by 'F' forms covering transactions of more than one calendar month.	33.26	4.16	The AA stated (September 2011) that the matter would be examined.
		1		17.91	0.72	The AA stated (September 2011) that the matter would be examined.
2	DC, Saroornagar 2008-09	1		49.99	2.00	The AA stated (January 2012) that the matter would be examined and report submitted.
3	Adoni 2006-07	4		49.37	4.94	The AA stated (December 2010) that the dealer would be addressed to submit separate forms for each month.
4	Bhongir 2007-08	4		87.79	3.51	The Department stated (November 2012) that assessment was revised and an amount of ₹ 0.12 lakh was collected by way of adjustment. For the balance amount, demand notice had been issued to the dealer.

[66] Chittoor and Hyderabad (Saroornagar.)

[67] Adoni-I, Bhongir, Chittoor-II, Guntur (Main Bazaar), Hyderabad (Khairatabad, Malkajgiri, Mehdipatnam, Srinagar Colony, Tarnaka and Vengalraonagar), Special. Commodities Circle, and Vijayawada (Benz Circle and Suryaraopet).

(₹ in lakh)

Sl. No.	Name of the Circle/Year of assessment	No. of Forms	Nature of irregularity	Taxable TO	Non-levy of tax	Department's Remarks
5	Khairatabad (Hyderabad) (2007-08)	9	The AAs while finalising the CST assessments incorrectly allowed exemption on branch /consignment transfers supported by 'F' forms covering transactions of more than one calendar month.	5859.00	176.00	The Department stated (November 2012) that a pre-revision notice had been issued to the dealer.
6	Malkajgiri (Hyderabad) 2007-08	7		156.12	6.25	The AA stated (February 2012) that the matter would be examined.
7	Mehdipatnam (Hyderabad) 2007-08	3		41.58	5.20	The Department stated (November 2012) that assessment had been revised.
8	Srinagar Colony (Hyderabad) 2007-08	3		250.43	10.02	The AA stated (December 2011) that the matter would be examined.
	Srinagar Colony (Hyderabad) 2008-09	1		22.59	0.90	The Department stated (November 2012) that the assessment file was submitted to DC (CT) Punjagutta for taking up revision.
9	Vengalrao nagar (Hyderabad) 2007-08	1		12.99	0.52	The Department stated (November 2012) that revision show cause notice was issued to the dealer.
10	Benz Circle (Vijayawada) 2007-08	4		139.07	17.38	The AA stated (October 2011) that revision of the assessment would be taken up.
11	Suryaraopet (Vijayawada) 2007-08 to 2009-10	55		532.00	21.28	The AA stated (June 2011) that the matter would be examined.
12	Chittoor-II 2007-08	3	The AA while finalising the CST assessments, incorrectly exempted the turnover covered by 'F' forms obtained from local dealers.	39.12	1.56	The AA stated (October 2011) that the matter would be examined.

(₹ in lakh)

Sl. No.	Name of the Circle/Year of assessment	No. of Forms	Nature of irregularity	Taxable TO	Non-levy of tax	Department's Remarks
13	Main Bazaar, Guntur 2009-10	2	The dealer filed 'F' forms pertaining to the year 2008-09 in support of consignment sales for the year 2009-10. Based on these 'F' Forms, the AA while finalising the CST assessment, incorrectly exempted the taxable turnover.	16.10	0.65	The AA stated (September 2011) that the matter would be examined.
14	Tarnaka (Hyderabad) 2006-07 & 2007-08	-	The AA, while finalising the assessments, incorrectly exempted the job work turnover, even though the transactions were not supported by 'F' forms.	170.00	11.92	The AA stated (July 2011) that the assessment file was submitted to DC (CT) Secunderabad for revision.
15	Special commodities circle 2007-08	-	The AA, while finalising the CST assessments, incorrectly allowed exemption on branch/consignment transfers not covered by 'F' forms	949.51	37.98	The AA stated (December 2011) that the matter would be examined.
			Total	**8,426.83**	**304.99**	

We referred the matter to the Government between June and July 2012; their reply has not been received (January 2013).

2.10.3 Short levy of tax and non-levy of penalty on false/fake declarations

According to Section 9(2)(A) of the CST Act read with Section 7(A)(2) of the APGST ACT, 1957, where a dealer produces false/fake declarations, and claim concessional rate of tax in support of these documents, he shall be liable for a penalty of three to five times the tax due for such transaction. Under Section 16 of the APVAT Act, read with Section 55(4)(b), penalty of 200 *per cent* of the tax due is leviable for such offence.

'Cotton' is one of the declared goods and classified under entry 8 of Schedule III to the APGST Act, 1957 and under entry 79 of Schedule IV to the APVAT Act and is assessable to tax at the rate of four *per cent*.

We noticed (between February 2009 and December 2011) during the test check of the CST assessments of Warangal circle for the period 1999-2000, 2006-07 and 2007-08, finalised between December 2007 and March 2011 that in the cases of three dealers, AAs had incorrectly levied concessional rate of tax on turnover relating to sale of cotton valuing ₹ 3.84 crore supported by 37 fictitious 'C' forms of Maharashtra State. This resulted in short levy of tax of ₹ 14.77 lakh and non-levy of penalty of ₹ 84.54 lakh.

After we pointed out the cases, the AAs/Department stated that

- in two cases (November 2012), pre-revision notices had been issued and served to the dealers;
- in one case (February 2009), the dealer had submitted fresh forms in lieu of the forms filed before, which were accepted by the AA without levy of any penalty and the proposed revision was withdrawn. The reply is not tenable as a scrutiny of the fresh C forms by audit revealed that they were also fake.

We referred the matter to the Government in July 2012; their reply has not been received (January 2013).

2.10.4 Non-levy of tax on export sales not covered by documentary evidence

Under Section 5(1) and 5(3) of the CST Act, 1956, export of goods and goods sold for export are not liable to tax. Further, under Section 5(4) of the Act read with rule 12(10) of the CST (Registration &Turnover) Rules, 1957 the dealer selling the goods shall furnish documentary evidence such as bill of lading, purchase order, certificate from the Software Technology Park of India (STPI), 'H' form duly filled and signed by the exporter in support of the transaction, failing which the transaction is required to be treated as inter-state sale not covered by 'C' form and tax levied under section 8(2) of the Act at the rates applicable to the sale or purchase of such goods inside the appropriate State.

We noticed (between June 2011 and February 2012) during the test check of the CST assessment files of seven circles[68] for the period 2007-08 and 2009-10, that out of seven cases where the assessments were completed between July 2010 and March 2011, in one case, the AA incorrectly allowed exemption on direct exports of hardware and software effected during 2007-08 on the basis of bills of lading relating to the year 2006-07. In two cases relating to dry chillies and rice, the bill of lading and shipping bill were prior to the date of invoices. In two cases, the export sales of unclassified machinery and fabrication items were not supported by documentary evidence. In the remaining two cases, certificates from the STPI were not furnished in support of the exports. The incorrect exemption of commodities worth ₹ 15.06 crore in these cases resulted in non-levy of tax of ₹ 69.86 lakh as detailed below:

[68] Guntur (Eluru Bazaar), Hyderabad (Balanagar, Begumpet, Keesara, Nacharam, and Vengalraonagar) and Palakol

(₹ in lakh)

Sl. No.	Name of the circle /year of audit	Commodity /Schedule/ Rate of tax	Taxable turnover	Short levy of tax	Audit observation and Remarks
1	Palakol 2007-08 July 2011	Rice -entry 85 of Schedule IV to APVAT Act, 2005 Four *per cent* -	14.08	0.56	It was observed that the date of bill of lading and shipping bill were prior to the date of invoice issued by the exporter. Hence, exemption cannot be allowed and taxed @ 4 per cent as it is not covered by proper declaration forms. The AA stated (October 2011) that the matter would be examined.
2	Eluru Bazaar (Guntur) 2007-2008	Dry Chillies – entry 59 of Schedule IV of APVAT Act, 2005 Four *per cent*	18.76	0.75	It was observed that the date of bill of lading and shipping bill were prior to the date of invoice issued by the exporter. Hence, exemption cannot be allowed and taxed at the rate of 4 *per cent* as it is not covered by proper declaration forms. The AA stated (January 2012) that the matter would be examined.
3	Balanagar (Hyderabad) 2007-08	Hardware and Software – Schedule IV of APVAT Act, 2005 Four *per cent*	637.50	25.50	The AA incorrectly allowed exemption on direct exports of Hardware and Software effected during 2007-08 on the basis of bills of lading relating to the year 2006-07. The AA stated (January 2012) that the matter would be examined.
4	Begumpet (Hyderabad) 2009-10	Software - entry 2 Schedule IV of APVAT Act, 2005 Four *per cent*	14.70	0.59	The AA incorrectly allowed exemption on export sale turnover of software without requisite certificate and documentary evidence from the competent authority of STPI. Hence, exemption cannot be allowed and taxed @ 4 per cent as it is treated as inter-state sales not covered by proper declaration forms. The AA stated (November 2011) that a show cause notice was issued to the dealer.
5	Keesara (Hyderabad) 2007-2008	Fabrication items - Schedule V of APVAT Act, 2005 12.5 *per cent*	12.86	1.61	The AA incorrectly exempted the export sales of unclassified 'fabrication items' although they were not supported by documentary evidence in proof of export. The AA stated (June 2011) that the assessment record would be submitted to the DC(CT) Saroornagar Division for necessary revision.

(₹ in lakh)

Sl. No.	Name of the circle /year of audit	Commodity /Schedule/ Rate of tax	Taxable turnover	Short levy of tax	Audit observation and Remarks
6	Nacharam (Hyderabad) 2007-08	Software – entry 2 of Schedule IV of APVAT Act, 2005 Four *per cent*	706.48	28.26	The AA incorrectly allowed exemption on export sale turnover of software without requisite certificate and documentary evidence from the competent authority of STPI. Hence, exemption cannot be allowed and taxed @ 4 per cent as it is treated as inter-state sales not covered by proper declaration forms. The AA stated (January 2012) that the matter would be examined.
7	Vengalrao nagar (Hyderabad) 2007-2008	Machinery items- Schedule V of APVAT Act, 2005 12.5 *per cent*	100.75	12.59	The AA incorrectly exempted the export sales of unclassified 'machinery' although they were not supported by documentary evidence in proof of export. The AA stated (June 2011) that the matter would be examined.
		Total	**1505.13**	**69.86**	

We referred the matter to the Department between February and May 2012 and to the Government in July 2012; their reply has not been received (January 2013).

2.10.5 Grant of incorrect concessional rate of tax due to acceptance of invalid 'C' forms

According to Section 8(4) of the CST Act, 1956 read with Rule 12(1) every dealer shall file a single declaration in form 'C' covering all transactions of sale, which take place in a quarter of a financial year between the same two dealers with effect from 1 October 2005.

We noticed (between October 2010 and November 2011) during the test check of the CST assessments of the DC (CT) Nellore and nine circles[69] that the AAs, while finalising the CST assessments in 11 cases between November 2009 and February 2011 for the years 2006-07 to 2008-09, incorrectly allowed concessional rate of tax on the turnovers of plywood, electric laminations, iron scrap, dry chillies etc., amounting to ₹ 4.03 crore supported by 'C' forms covering transactions of more than a quarter in a financial year. This resulted in short levy of tax of ₹ 23.54 lakh.

After we pointed out the cases, the AAs/Department stated that

- in one case (November 2012), assessment was revised and an amount of ₹ 0.33 lakh was collected;

[69] Guntur (Kothapeta and Main Bazaar), Hyderabad (Begumpet, Charminar, Sanathnagar and Vengalraonagar), Vijayawada (Convent Street and Nandigama) and Vizianagaram (Narasannapeta).

- in six cases (November 2011 and November 2012), show cause notices/ revised show cause notices were issued/would be issued to the dealers;
- in one case (March 2011), assessment files were submitted to concerned DC (CT) concerned for revision;
- in one case (December 2010), the books of accounts would be called for, for verification;
- in one case (November 2010), action would be taken to collect the tax ; and
- in the remaining case (November 2010), the matter would be examined.

We referred the matter to the Government in July 2012; their reply has not been received (January 2013).

2.10.6 Non-levy of tax due to incorrect exemption of transit sales

According to Section 6(2) of the Central Sales Tax (CST) Act 1956, where sale of any goods in the course of inter-state trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement to a registered dealer, shall be exempt from tax under this Act, provided such transit sales are supported by E1/E 2 and C Forms as prescribed.

According to Section 8(2) of the CST Act, the rates of tax on sales in the course of inter-state trade or commerce not covered by 'C' form shall be calculated at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State (from 2007-08 onwards). 'Air compressors, batteries, electrical goods, granites and switch gears' fall under Schedule V to the APVAT Act, 2005 and are liable to tax at the rate of 12.5 *per cent*. 'Software' falls under Schedule IV to the Act and is taxable at the rate of four *per cent.*

We noticed (between July and December 2011) during the test check of assessment files of five circles[70] that in five cases, the AAs while finalising the assessments relating to the years 2007-08 and 2008-09 between July 2010 and March 2011, incorrectly exempted the taxable turnover valued at ₹ 2.88 crore of transit sales not supported by proper declaration forms. This resulted in non-levy of tax of ₹ 32.06 lakh.

After we pointed out the cases, the AAs stated that

- in two cases (November 2011), notices would be issued;
- in one case (November 2011), books of accounts of the dealer would be called for and report submitted.

[70] Hyderabad (Begumpet, Madhapur, Mahankali street, Marredpally and Ramgopalpet)

- in the remaining two cases (between August and December 2011), the matter would be examined

We referred the matter to the Department between April and May 2012 and to the Government in July 2012; their reply has not been received (January 2013).

2.11 Misclassification of 'sales' as 'works contracts'

'Air Conditioners' and 'Lifts' fall under Schedule V to the APVAT Act and tax is payable at 12.5 *per cent* from 1 April 2005 and at the rate of 14.5 *per cent* with effect from 15 January 2010.

The Supreme Court of India had held that the contract for supply and installation of lifts and elevators constitute 'sale' but not 'works contract'. It was held that the major component into the end product was the material consumed on producing the lift to be delivered and the skill and labour to be employed for converting the main component into the end product was only incidentally used. Similarly, all other transactions of such type e.g. installation of air conditioners, where the major component was the material consumed in delivering the end product and labour was incidentally used, would also be classifiable as 'sale' and not 'works contract'.

2.11.1 We noticed (between July 2010 and February 2012) during the test check of the VAT records of the office of the DC (CT) Begumpet and two circles[71] for the years 2009-10 and 2010-11, that in six cases, the dealers misclassified the sales turnover of ₹ 35.36 crore pertaining to supply and installation of 'air conditioners and lifts' as 'works contract' and declared tax of ₹ 1.10 crore instead of ₹ 5.12 crore. This resulted in under declaration of tax of ₹ 4.02 crore.

After we pointed out the cases, the AAs stated that

- in one case, (January 2012), the authorisation for conducting VAT audit was issued and the same was pending for finalisation;
- in one case (June 2011), the dealer purchased air conditioners from another dealer and installed the same to the customers by carrying out necessary ducting works. The air conditioners portion was shown under 14.5 *per cent* sales and the installation portion under four *per cent*. The reply is not acceptable in view of the Supreme Court Judgement, and also keeping in view the lesser percentage of labour involved;
- in the remaining four cases, (between July 2010 and December 2011) the matter would be examined.

[71] Hyderabad (Aghapura and Musheerabad).

We referred the matter to the Department between July 2011and April 2012 and to the Government between June and July 2012; their reply has not been received (January 2013).

'Bus body building' is taxable at the rate of 12.5 *per cent* up to 14 January 2010 and 14.5 *per cent* with effect from 15 January 2010 under Schedule V of the APVAT Act, as the same is not classifiable under other Schedules of the Act.

The Supreme Court of India held that 'construction of bus body building' on the chassis of motor vehicles supplied is a contract of 'sale'. Further, the Commissioner of Commercial Taxes clarified that transaction of 'fabrication of bus bodies' on the chassis supplied by APSRTC and others should be treated as 'sale' of bus bodies and not a transaction of 'works contract'. Further, Government in their Memo dated 21 May 2010 clarified that the levy of tax at the higher rate of 12.5 *per cent* will be from 30 December 2008.

2.11.2 We noticed (between July 2010 and February 2011) during the test check of VAT records of AC (LTU) Anantapur and two circles[72] that during the period from 2009-10, in nine cases, dealers had incorrectly declared VAT of ₹ 29.47 lakh instead of ₹ 85.40 lakh by treating the sale contract relating to 'bus body building' as 'works contract'. This resulted in short payment of VAT of ₹ 46.72 lakh after allowing the ITC of ₹ 9.21 lakh eligible to a dealer. We noticed that the respective AAs did not raise the demands for the short paid tax.

After we pointed out the cases, the AAs stated that

- in one case (July 2010), the assessment would be completed by rectifying omissions and commissions, if any.
- in the remaining eight cases (between January and February 2011), the matter would be examined.

We referred the matter to the Department between July and September 2011 and to the Government in June 2012; their reply has not been received (January 2013).

[72] Hyderabad (IDA Gandhinagar and Jeedimetla).

2.12 Under declaration of VAT due to incorrect exemption

The commodities 'rexine', 'bacterial culture' and 'empty glass bottles' are taxable at four *per cent* under respective entries 86/88/90 of Schedule IV to the APVAT Act. The commodities 'automobile spare parts', 'bakery items' are not specified in Schedules I to IV and VI to the APVAT Act and hence these goods fall under Schedule V and are liable to VAT at the rate of 12.5 *per cent* with effect from 1 April 2005 and 14.5 *per cent* with effect from 15 January 2010.

We noticed (between June 2010 and January 2012) during the test check of VAT records in the office of the DC (CT) Punjagutta and four circles[73] for the period from April 2005 to March 2011 that five dealers had incorrectly declared the sales turnover of ₹ 53.44 crore relating to rexine, bacterial culture (drugs and medicines), empty glass bottles, automobile spares, bakery items etc., as exempted turnover. In one case, the commodity 'rexine' was claimed as exempted by classifying it as 'cotton coated fabric'. In the remaining cases, the reasons behind claiming exemption of the turnover were not forthcoming from the records made available to audit. The incorrect claim of exemption of taxable turnover resulted in under declaration of tax of ₹ 2.18 crore.

After we pointed out the cases, the AAs/Department stated that

- in one case (October 2011), the matter would be brought to the notice of the DC (CT)-II Vijayawada;
- in another case, the AA contended (September 2010) that as per Uttar Pradesh High Court judgment[74] the commodity 'leather cloth' was exempted as cotton coated fabric. Hence 'rexine' was also classifiable under entry 45 of Schedule I of the APVAT Act and exempted under the APGST Act as 'cotton coated fabric'. The reply is not acceptable as the case law quoted is not relevant to the APVAT Act, as a specific entry for 'rexine' exists in the Act and it was judicially held[75] by the AP High Court that where there is a specific entry for an item under the Act, it would prevail over a general entry.
- in two cases (between July 2010 and October 2011), the matter would be examined; and
- in the remaining case (November 2012), levy of tax would be considered while finalising the audit.

We referred the matter to the Government between June and July 2012; their reply has not been received (January 2013).

[73] Hyderabad (Hyderguda), Jagtial, Vijayawada (Benz Circle) and Visakhapatnam (Steel Plant).
[74] M/s Arora Material Store Vs Commissioner, Sales Tax (1982), 051 STC 0235.
[75] Replica Agency Vs State of AP(2002) 124STC 271 APHC.

2.13 Input tax credit

2.13.1 Excess claim of input tax credit

Section 13(5) of the Act stipulates that no ITC shall be allowed on sale of exempted goods (except in the course of export), exempt sales and transfer of exempted goods outside the State otherwise than by way of sale. As per Section 13(6), ITC on transfer of taxable goods outside the State otherwise than by way of sale shall be allowed for the amount of tax in excess of four *per cent.*

As per sub-rules (7), (8), (9) of Rule 20 of the APVAT Rules, a VAT dealer making taxable sales, exempted sales and exempt transactions of taxable goods shall restrict his ITC as per the formula prescribed i.e., A*B/C, where A is the input tax for common inputs for each tax rate, B is the taxable turnover and C is the total turnover.

Entry 59 was inserted in Schedule I of the Act, with effect from 1 June 2008, by Act 28 of 2008, exempting the sale of goods to any unit located in Special Economic Zone (SEZ) from levy of VAT.

Under Section 20(3) of the Act, every return shall be subject to scrutiny to verify the correctness of calculation; application of correct rate of tax and input tax claimed therein and full payment of tax payable for such tax period. If any mistake is detected as a result of such scrutiny made, the authority prescribed shall issue a notice of demand in the prescribed form for any short payment of tax or for recovery of any excess ITC claimed.

We noticed (between January 2010 and January 2012) during the test check of the VAT records of six DC (CTs)[76] and 17 circles[77] that for the period from April 2006 to March 2011, in 29 cases, the sale transactions of the dealers involved taxable sales, exempt sales and exempt transactions. These exempt sales and exempt transactions were on account of sale of exempted (Schedule-I) goods and consignment sales/branch transfers respectively. The dealers claimed ITC in excess of amount entitled for, without proper restriction. Further, the returns had not been scrutinised as mandated under the Act, as a result of which the input tax was not restricted as per the formula prescribed. This resulted in excess claim of ITC of ₹ 1.14 crore.

After we pointed out the cases, the AAs/Department stated that

- in two cases (June 2011 and November 2012), assessments were revised. Of these, in one case ₹ 1.29 lakh was collected;

[76] Anantapur, Hyderabad (Abids), Kakinada, Nalgonda, Nizamabad. and Vijayawada-I

[77] Chittoor-II, Hyderabad (Aghapura, Jeedimetla, M.G. Road Maharajgunj, Sanathnagar, Srinagar colony, Tarnaka, Vanasthalipuram and Vengalraonagar), Medak, Nalgonda, Nandigama, Parchur, Sangareddy and Special commodities circle.

- in one case (January 2010), the DC(CT) Saroornagar would be addressed to take up audit and to disallow the excess claim of ITC;
- in two cases (June and August 2011), action would be taken to collect the tax;
- in five cases (December 2010 and November 2012), show cause notices/notices would be issued/issued to the dealers;
- in three cases (December 2010 and August 2011), books of accounts of the dealers would be verified;
- in one case (June 2011), the zero-rated sales and taxable sales are clearly defined in sub-section 47 and 38 of Section 2 of the Act, as per which zero-rated sales also include SEZ sales. Hence, SEZ sales fall under taxable turnover as defined in sub-section 37 of Section 2 of the Act. Further, the sub-section 5 of Section 13 of the Act denies ITC on many transactions but do not include SEZ sales. The reply is not acceptable since the item "Sale of goods to any unit located in SEZ" was deleted from the ambit of 'zero-rated sales' with effect from 24 September 2008 by Act No. 28 of 2008 though the definition of zero-rated sales in sub-section 47 of Section 2 was not altered[78].
- in one case (August 2011), the dealer restricted ITC as per rule 20(9) of the AP VAT Act. The reply is not acceptable, as the restriction of ITC was not correctly worked out.
- in the remaining 14 cases (between November 2010 and January 2012), the matter would be examined.

We referred the matter to the Government between June and July 2012; their reply has not been received (January 2013).

2.13.2 Incorrect claim of ITC

According to Section 13 (1) of the AP VAT Act, 2005 (Act), subject to the conditions prescribed, ITC shall be allowed to the VAT dealer for the tax charged in respect of all purchases of taxable goods made by that dealer during the tax period, if such goods are for use in the business of the VAT dealer. Section 5 of the Act inter-alia stipulates that the Act does not authorise the imposition of a tax on the sale or purchase of any goods outside the State.

As per Section 14 of the Act, a VAT dealer making a sale liable to tax to another VAT dealer shall issue at the time of sale, a tax invoice in such form as may be prescribed. Further, under Section 13(3), a VAT dealer shall be entitled to claim ITC, provided that he is in possession of a tax invoice. The ITC can be adjusted towards VAT or CST liability of the dealer.

[78] A separate letter has been written by us to the Commissioner of Commercial Taxes pointing out this incongruence and suggesting that the definition of zero rated sales in Section 2 also be altered in line with the deletion of sales to SEZ units from the ambit of zero rated sales in Section 13 of the Act.

We noticed (between November 2010 and February 2012) during the test check of the records of five circles[79] that in five cases for the years 2007-08, 2009-10 and 2010-11, the dealers claimed ITC on purchases reportedly made. However, on scrutiny of the VAT records of the selling dealers, it was observed that in two cases, the purchases were made from dealers whose registrations were cancelled. In one case, the sales turnover reported by the selling dealer was less than the purchase turnover reported. In one case, the AA, while finalising the CST assessment of the dealer for the year 2007-08 in March 2010, made an adjustment of ITC of ₹ 33.30 lakh in excess of the credit available under VAT against the CST liability of the dealer. In the remaining case, the dealer claimed ITC on the purchases made from out of the State. This resulted in incorrect/excess claim of ITC of ₹ 46.02 lakh.

(₹ in lakh)

Sl. No.	Name of the Circle/Year of assessment	Audit observation	Excess ITC claimed	Reply of the Assessing Authority/Department
1	Kothapet (Guntur) 2009-10	On scrutiny of the VAT ledger of the dealer from whom the purchases were reportedly made by the assessee, it was noticed that no sale turnover was reported in the corresponding month and also the dealership of the said dealer was already cancelled in the month of September 2008. Hence the claim of ITC by the assessee was not correct. This resulted in incorrect claim of ITC of ₹ 1.21 lakh.	1.21	The AA stated (March 2011) that action would be initiated by issuing VAT 305A to the dealer
2	Madhapur (Hyderabad) 2009-10	An assessee declared purchase turnover valued at ₹ 20.08 crore and claimed ITC for an amount of ₹ 80.31 lakh. However, on cross verification with the trading account, it was noticed that the actual purchases were valued at ₹ 18.62 crore inclusive of tax of ₹ 71.60 lakh. The dealer incorrectly claimed ITC of ₹ 80.31 lakh instead of ₹ 71.60 lakh. This resulted in excess claim of ITC of ₹8.71 lakh.	8.71	The AA stated (August 2011) that the matter would be examined.
3	Nacharam (Hyderabad) (2007-08)	An assessee had excess ITC of ₹ 1.15 crore as per VAT assessment order for the year 2007-08. The AA while finalising the CST assessment of the same dealer for the year 2007-08, adjusted an amount of ₹ 1.48 crore against the CST liability of the dealer. Thus, the excess adjustment of ITC resulted in short payment of tax of ₹ 33.30 lakh.	33.30	The AA stated (January 2011) that action would be taken to rectify the mistake.

[79] Guntur (Kothapet), Hyderabad (Madhapur and Nacharam), Nandigama and Nizamabad-III.

(₹ in lakh)

Sl. No.	Name of the Circle/Year of assessment	Audit observation	Excess ITC claimed	Reply of the Assessing Authority/Department
4	Nandigama (Vijayawada) 2009-10	On scrutiny of the VAT records of the selling dealers from whom the purchases were made by the assessee, it was observed that one dealer was not registered under the APVAT Act and the registration of the other dealer was cancelled in October 2008. Hence the claim of ITC by the assessee was not correct. This resulted in incorrect claim of ITC of ₹ 1.43 lakh.	1.43	The AA stated (December 2010) that the books of accounts of the dealer would be called for and after verification, a detailed reply would be sent to audit.
5	Nizamabad-III 2010-11	On scrutiny of VAT returns of the assessee it was observed that ITC was claimed on the purchases made out of the State (i.e., Maharashtra State) which is inadmissible. This resulted in incorrect claim of ITC of ₹ 1.37 lakh.	1.37	The AA stated (May 2011) that show cause notice would be issued and further action taken.
	Total		**46.02**	

We referred the matter to the Government between June and July 2012; their reply has not been received (January 2013).

2.13.3 Incorrect claim of input tax credit on ineligible items

According to Section 13(1) of the APVAT Act (Act), 2005, ITC shall be allowed to the VAT dealer for the tax charged in respect of all purchases of taxable goods made by that dealer during the tax period, if such goods are for use in the business of the VAT dealer. As per Section 13(4) of the APVAT Act, 2005 read with Rule 20(2)(q), with effect from 1 May 2009, an assessee is not entitled to claim ITC on 'furnace oil'. Further, as per Rule 20(2)(a),(i)(o) spare parts of automobiles including tyres and tubes, any input used in construction or maintenance of any buildings including factory or office buildings, unless the dealer is in the business of executing works contracts and has not opted for composition and any goods purchased and used as inputs in job work respectively, are not eligible for ITC. Under Rule 20(2)(d) of the APVAT Rules, 2005, ITC is not allowable for any goods purchased and used for personal consumption and as per Section 13(5)(d) of the Act, no ITC is allowable on exempt sales.

We noticed (between October 2010 and June 2011) during test check of VAT records of two DC (CTs)[80] and four circles[81] that during the period 2009-10 and 2010-11 in one case, the dealer claimed ITC of ₹ 4.81 lakh on the inputs

[80] Chittoor and Vijayawada-I.

[81] Hindupur, Hyderabad (Vanasthalipuram), Vijayawada (Nandigama) and Visakhapatnam (Steel Plant).

used by him in the execution of job works and also on exempt sales. In another case, a dealer manufacturer of cement incorrectly claimed ITC of ₹ 6.42 lakh on self-consumption of cement. In five other cases, the dealers claimed ITC of ₹ 15.25 lakh on purchase of 'furnace oil, tyres, tubes and spares of automobiles' and on items used in construction or maintenance of buildings not as a part of execution of works contract. This resulted in excess claim of ITC of ₹ 26.48 lakh.

After we pointed out the cases, the AAs stated that

- in two cases (December 2010), the books of accounts of the dealers would be called for, for verification;
- in one case (February 2011), notice would be issued to the dealer;
- in one case (October 2010), necessary action would be taken to conduct VAT audit of the dealer after verifying all the registers and records and a report would be submitted; and
- in the remaining three cases (between November 2010 and June 2011), the matter would be examined.

We referred the matter to the Department between June 2011 and January 2012; and to the Government between June and July 2012; their reply has not been received (January 2013).

2.14 Non-payment of purchase tax

Under Section 4(4) of the APVAT Act, 2005, every VAT dealer, who in the course of business, purchases any taxable goods from a person or a dealer not registered as a VAT dealer or from a VAT dealer in circumstances in which no tax is payable by the selling VAT dealer, shall be liable to pay tax at the rate of four *per cent* on the purchase price of such goods, if after such purchase, the goods are –

(i) used as inputs for goods which are exempt from tax under the Act; or

(ii) used as inputs for goods, which are disposed of otherwise than by way of sale in the State or dispatched outside the State otherwise than by way of sale in the course of inter-state trade and commerce or export out of the territory of India.

Provided that wherever a common input is used to produce goods, the turnover, taxable under this sub-section, shall be the value of the inputs, proportionate to the value of the goods, used or disposed of in the manner as prescribed under this section.

We noticed (May and December 2011) during the test check of the VAT records of the two DC (CTs)[82] for the year 2010-11 that in one case, the dealer purchased soya bean seeds from unregistered dealers within the State and

[82] Adilabad and Warangal.

effected taxable sales of soya bean oil and exempt sales of soya bean de-oiled cake; in the other case, the dealer purchased wood from unregistered dealers within the State and effected exempt sales, taxable sales and exempt transactions of paper and paper products. However, in the first case, the dealer did not pay purchase tax and in the second case, the dealer had not paid the purchase tax proportionately. This resulted in non/short payment of purchase tax of ₹ 77.41 lakh.

After we pointed out the cases, the AAs stated

- in the first case (December 2011), a notice had been issued to the dealer to produce the books of accounts and the correct liability of purchase tax would be arrived after verification of the books of accounts and
- in the second case (May 2011), the matter would be examined.

We referred the matter to the Department between July 2011 and April 2012 and to the Government in July 2012; their reply has not been received (January 2013).

2.15 Sales tax incentives for industrial units

With a view to encouraging the growth of industries in the State, the Industries Department has been notifying various incentive schemes from time to time providing sales tax incentives in the form of sales tax deferment and sales tax holiday (exemption) to industrial units. After introduction of the APVAT Act, with effect from 1 April 2005, Sales Tax Exemptions were converted into Sales Tax Deferment with the remaining period of availment being doubled without change in monetary value.

The Government constituted State Level Committee (SLC) and District Level Committees (DLC). On the basis of sanctions, the Commissioner of Industries issues final eligibility certificate indicating the extent and duration of incentives for implementation by the Commercial Taxes Department. Some of the discrepancies noticed by audit are presented in the following paras.

2.15.1 Incorrect availment of incentives under deferment

According to the guidelines, if the units availing tax deferment/holiday go out of production for a period exceeding one year before the stipulated period of availment, the cumulative incentive availed shall be repaid to the Government account.

We noticed (August 2011) during the test check of Vidyanagar circle that in one case, the unit had stopped production in 2007-2008, i.e., before the stipulated period (February 2009). The unit had however, availed an incentive of ₹ 49.16 lakh up to 2007-08, which had not been demanded by the Department. This resulted in non-realisation of revenue of ₹49.16 lakh.

After we pointed out the case, the AA stated (August 2011) that the records would be verified and final report submitted.

We referred the matter to the Department in May 2012 and to the Government in July 2012; their reply has not been received (January 2013).

2.15.2 Non-levy of interest on belated payment of deferred sales tax

As per Government order (G.O.Ms.No.503 dated 8 May 2009), amendment to Rule 67 of the AP VAT Act, was made with effect from 1 May 2009 and the repayment of deferred Sales Tax shall be commenced after the completion of deferred sales tax period. In case of non-remittance of deferred tax on the due dates, interest at the rate of 21.5 *per cent* per annum (as mentioned in the Final Eligibility Certificate (FEC)) is liable to be paid.

We noticed (September 2011) during the test check of Nellore-I circle that in one case, the dealer who availed sales tax deferment had paid tax belatedly (delay ranging from 187 days to 691 days) for the period 2005-06 to 2006-07. However, interest was not levied. This resulted in non-levy of interest of ₹ 20.05 lakh.

After we pointed out the case, the Department stated (November 2012) that assessment was revised and an amount of ₹ 5.50 lakh was collected. A notice was issued (August 2012) to the dealer for collection of the balance amount.

We referred the matter to the Government in July 2012; their reply has not been received (January 2013).

2.15.3 Excess availment of tax towards deferment

According to 'Target 2000 sales tax incentive scheme' promulgated by the Government in 1996, sales tax incentive of deferment of tax was available for the products manufactured by the industrial units to the extent of incentive limit as mentioned in the Final Eligibility Certificate**.**

We noticed (November 2011) during the test check of records of Hydernagar circle that in one case, a dealer was sanctioned 'sales tax deferment' for an amount of ₹ 94.03 lakh under Target 2000 scheme for the period from April 1999 to April 2013. Though the unit exhausted the amount sanctioned during the year 2006-07 itself, it had availed an amount of ₹ 100.35 lakh by the end of 2008-09. This resulted in excess availment of tax of ₹ 6.32 lakh towards deferment.

After we pointed out the case, the AA stated (November 2011) that the matter would be examined.

We referred the matter to the Department in April 2012 and to the Government in July 2012; their reply has not been received (January 2013).

2.16 Application of incorrect rate

Under Section 4(1) of the AP VAT Act, VAT is leviable at the rates prescribed in schedules I to IV & VI to the Act. Commodities not specified in any of the schedules fall under schedule V and are liable to VAT at 12.5 *per cent* from 1 April 2005 and at 14.5 *per cent* with effect from 15 January 2010.

We noticed (between November 2010 and December 2011) during the test check of the VAT records of 17 circles that during the period from April 2006 to March 2011, 20 dealers declared VAT of ₹ 135.24 lakh instead of ₹ 187.53 lakh on turnover relating to commodities falling under Schedule V to the Act such as air curtains, paraffin, hydrochloric acid, automobile body building, dyes and chemicals, mosquito repellents etc., due to application of incorrect rate and due to reporting of turnover taxable at 12.5 *per cent,* though the rate of tax was enhanced to 14.5 *per cent* with effect from 15 January 2010 (26 April 2010 in case of works contracts). This resulted in under declaration of VAT of ₹ 52.29 lakh as detailed below:

(₹ in lakh)

Sl. No	Name of the circle/year of assessment	Commodity/ item No./ Schedule to APVAT Act	Rate of applicable / applied (per cent)	Tax leviable/ tax levied	Short levy	Reply of the Assessing Authority
1	Ambajipeta 2010-11	Cement poles Schedule V w.e.f. 1-7-08	14.5/ 4	6.22/ 1.72	4.50	The Department stated (November 2012) that assessment was revised and an amount of ₹ 0.35 lakh was collected.
2	Adoni-I 2009-10	Dyes and chemicals Schedule V	12.5/ 4	2.12/ 0.66	1.46	The AA stated in December 2010 that a show cause notice would be issued.
3	Begumpet (Hyderabad) 2010-11	Chewing gum Schedule V	14.5/ 4	15.46/ 4.26	11.20	The AA stated in November 2011 that a show cause notice was issued.
4	Jeedimetla (Hyderabad) 2009-10	Air Curtains Schedule V	12.5/ 4	4.01/ 1.27	2.74	The AA stated in January 2012 that a show cause notice was issued to the dealer.
		Mosquito coils Schedule V	12.5/ 4	2.83/ 0.90	1.93	The AA stated in January 2012 that the assessment file was submitted to DC (CT) Hyderabad (Rural) for revision.
5	Khairatabad (Hyderabad) 2010-2011	Works contract	14.5/ 12.5	41.26/ 35.57	5.69	The AA replied in March 2012 that the DC (CT) Punjagutta Division had given authorisation to the Assistant Commissioner (CT) (LTU) Punjagutta to audit the books of accounts of the dealer and the extract of audit objection was submitted to him for further action.

(₹ in lakh)

Sl. No	Name of the circle/year of assessment	Commodity/ item No./ Schedule to APVAT Act	Rate of applicable / applied (per cent)	Tax leviable/ tax levied	Short levy	Reply of the Assessing Authority
6	Malakpet (Hyderabad) 2010-11	Furniture Schedule V	14.5/ 4	3.30/ 0.91	2.39	The Department stated (November 2012) that a show cause notice had been issued to the dealer.
7	Narayanguda (Hyderabad) 2010-11	Transformers Schedule V	14.5/ 12.5	6.34/ 5.47	0.87	The AA stated in June 2011 that the dealer's books would be verified and tax collected.
8	Somajiguda (Hyderabad) 2010-11	Snacks Schedule V	14.5/ 12.5	33.87/ 29.20	4.67	The Department stated (November 2012) that assessment was revised and an amount of ₹ 3.64 lakh was collected.
		Snacks Schedule V	14.5/ 12.5	7.97/ 6.87	1.10	The Department stated (November 2012) that matter was under verification.
		Bakery/ confectionery Schedule V	14.5/ 12.5	7.60/ 6.55	1.05	The Department stated (November 2012) that a show cause notice had been issued to the dealer.
9	Tarnaka (Hyderabad) 2009-2010	Others Schedule V	14.5/ 12.5	7.43/ 6.40	1.03	The Department stated (November 2012) that a show cause notice had been issued to the dealer.
10	Vidyanagar (Hyderabad) 2010-2011	Tyres- Schedule V	14.5/ 12.5	4.92/ 4.27	0.65	The AA stated in August 2011 that notice would be issued.
11	Jadcherla 2010-2011	Others - Schedule V	14.5	4.96/ 4.28	0.68	The AA replied in July 2011 that action would be taken to collect the amount.
12	Kurnool-II 2010-11	Paraffin, hydrochloric acid etc., Schedule V	14.5/ 12.5	27.01/ 23.28	3.73	The AA stated in January 2012 that proposals were submitted to the DC (CT), Kurnool for taking up revision.
12	Parchur 2009-10	Others - upto 14-1-10 and from 15-1-10 Schedule V	12.5/14.5 /4	2.58/ 0.76	1.82	The Department stated (November 2012) that assessment was revised and demand raised.
14	Tirupati-II 2009-2010	Manurope compressor, Aluminium water tanks, Drilling machine, motorcycle etc. Schedule V	12.5/ 4	1.56/ 0.50	1.06	The AA stated in March 2011 that the matter would be examined.
15	Autonagar (Vijayawada) 2009-10	Automobile body building Schedule V	14.5/ 4	1.39/ 0.52	0.87	The AA stated in February 2011 that the matter would be examined.

(₹ in lakh)

Sl. No	Name of the circle/year of assessment	Commodity/ item No./ Schedule to APVAT Act	Rate of applicable / applied (per cent)	Tax leviable/ tax levied	Short levy	Reply of the Assessing Authority
16	Samarangam Chowk (Vijayawada) 2010-11	Mosquito repellents Schedule V	14.5/ 4	3.41/ 0.94	2.47	The AA stated in September 2011 that the matter would be examined
17	Vizianagaram East 2010-11	Cement poles Schedule V	14.5/ 4	3.29/ 0.91	2.38	The AA stated in September 2011 that the details of accounts would be collected from the dealer and report submitted.
			Total	**187.53 135.24**	**52.29**	

We referred the matter to the Government between June and July 2012; their reply has not been received (January 2013).

2.17 Non/short levy of penalty on belated payment of tax

Under Section 51 of the Act, where a dealer who fails to pay tax due on the basis of the return submitted by him by the last day of the month in which it is due, he shall be liable to pay tax and a penalty of 10 *per cent* of the amount of tax due.

2.17.1 We noticed (between February 2010 and November 2011) during the test check of the records of four circles[83] for the period 2010-11, that in 10 cases, the dealers paid tax of ₹ 3.69 crore as declared in their monthly VAT returns with delays ranging from 20 days to 655 days from the scheduled dates. The AAs, however, did not levy penalty of 10 per *cent* of the amount of tax due on belated payments of tax. This resulted in non/short levy of penalty of ₹ 22.25 lakh in the above cases.

After we pointed out the cases, the AAs/Department stated that

- in three cases (November 2012), penalty orders were passed. Out of these, penalty of ₹ 1.10 lakh was collected in one case, demand was taken into Debt Management Unit (DMU) in one case and penalty orders were served to the dealer in other case; and
- in the remaining seven cases (between June and November 2011), the matter would be examined.

We referred the matter to the Government between June and July 2012; their reply has not been received (January 2013).

[83] Hyderabad (Sanathnagar and Vengalraonagar), Nalgonda and Special Commodities Circle.

Under Section 53(1) of the Act where any dealer has under declared tax, and where it has not been established that fraud or wilful neglect has been committed and where the under declared tax is (i) less than 10 *per cent* of the tax, a penalty shall be imposed at 10 *per cent* of such under declared tax (ii) more than 10 *per cent* of the tax, a penalty shall be imposed at 25 *per cent* of such under declared tax.

2.17.2 We noticed (February 2010) during the test check of the records of Proddatur-I circle for the period 2008-09, that in one case the AA did not levy penalty of 25 *per cent* on the under declared tax of ₹ 22.65 lakh noticed, although the under declared tax was more than 10 *per cent* of the tax due. This resulted in non-levy of penalty of ₹ 5.66 lakh.

After we pointed out the case, the AA stated that the matter would be examined.

We referred the matter to the Department in August 2011 and to the Government in July 2012; their reply has not been received (January 2013).

2.18 Non-paying back of ITC on cancellation of VAT Registration

According to Rule 14 (4) of APVAT Rules, 2005, every VAT dealer whose registration is cancelled under this rule shall pay back ITC availed in respect of all taxable goods on hand on the date of cancellation.

We noticed (February 2012) during the test check of the VAT records of Gowliguda circle that in one case, the assessee had not paid back the ITC on hand at the time of cancellation of his VAT registration. This resulted in non-payment of tax of ₹ 7.61 lakh.

After we pointed out the case, the AA stated (February 2012) that action would be taken if the refund is claimed. The reply is not acceptable, since as per rule, the dealer should pay the ITC back at the time of cancellation of VAT registration.

We referred the matter to the Department in May 2012 and to the Government in July 2012; their reply has not been received (January 2013).

2.19 Short payment of tax due to non-conversion of TOT dealer as VAT dealer

Under Section 17(7) of the Act, every dealer not registered or not liable for registration as VAT dealer and who sells any goods and has a taxable turnover exceeding ₹ five lakh in a period of twelve consecutive months, shall apply for registration as TOT dealer and as per Section 4(2), is liable to pay tax at the rate of one *per cent* of the turnover. Under Section 17(3) of the Act, every dealer whose taxable turnover in the preceding three months exceeds ₹ 10 lakh or in the preceding 12 months exceeds ₹ 40 lakh up to 30 April 2009 shall be liable to be registered as a VAT dealer. From 1 May 2009, every dealer whose taxable turnover in the 12 preceding months exceeds ₹ 40 lakh shall be registered as a VAT dealer. In terms of section 49(2) of the Act, any dealer who fails to apply for registration shall be liable to pay penalty of 25 *per cent* of the amount of tax due prior to the date of registration. Further, there shall be no eligibility for ITC for sales made prior to the date from which the VAT registration is effective.

We noticed (January 2011) during the test check of turnover tax (TOT) ledger of Mancherial circle that though the turnover of one TOT dealer exceeded ₹ 40 lakh in the preceding 12 months by April 2009, the AA did not convert the dealer into VAT dealer. The turnover that exceeded the threshold limits in this case worked out to ₹ 38.54 lakh, on which VAT was leviable by registering the dealer as VAT dealer. Thus the dealer was liable to pay VAT of ₹ 4.43 lakh on this turnover. The dealer had not applied for registration as VAT dealer nor was registered by the Assessing Authority. This resulted in short realisation of revenue of ₹4.43 lakh towards VAT. Besides, penalty of ₹ 1.11 lakh was also leviable.

After we pointed out the case, the AA stated (January 2011) that the matter would be examined.

We referred the matter to the Department in July 2011 and to the Government in June 2012; their reply has not been received (January 2013).

CHAPTER III

STATE EXCISE DUTIES

CHAPTER III
STATE EXCISE DUTIES

EXECUTIVE SUMMARY

Increase in tax collection	In 2011-12, the collections of State Excise Duty increased by 16.31 *per cent* over the previous year.
Lack of a Structured Internal audit wing	The Department did not have a structured internal audit wing to plan audit in accordance with scheduled audit plan. In response to an audit observation regarding absence of Internal audit programme, Government replied (July 2011) that it was being chalked out. No further response has been received (January 2013).
Action taken by the Department in respect of observations pointed out by us in earlier years	During the period five year period from 2006-07 to 2010-11, we had pointed out non/short levy, irregular adjustment of Earnest Money Deposit (EMD) etc., with revenue impact of ₹ 66.60 crore in 337 cases. Of these, the Department/Government had accepted audit observations in 36 cases involving ₹ 20.81 crore and recovered ₹ 15.65 crore in 12 cases.
Results of audits conducted by us in 2011-12	In 2011-12, we test checked the records of 68 offices relating to Prohibition and Excise Department and found preliminary audit observations relating to non/short levy of additional licence fee, irregular adjustment of EMD, excess drawal of pay and allowances etc., involving ₹ 26.60 crore in 101 cases. The Department accepted underassessments and other deficiencies of ₹ 1.15 crore in 29 cases, of which 10 cases involving ₹ 1.10 crore were pointed out during the year 2011-12 and the rest in the earlier years. An amount of ₹ 17.31 lakh was recovered in 24 cases during the year 2011-12.
What we have highlighted in this Chapter?	During the year 2011-12, we observed non levy of duty and other irregularities as a result of the test check of records relating to bar licenses, census records, challan registers and the auction of shops in the offices of Prohibition and Excise Department, where we found that the provisions of the Acts/Rules were not observed. In this Chapter, we present illustrative cases involving

	tax effect of ₹ 2.40 crore relating to 'non-levy of additional licence fees payable by bars/restaurants with additional enclosures' and 'irregular adjustment of EMD towards resultant loss' selected from the preliminary audit observations.
Our conclusion	The Department needs to re-look into weaknesses in the system and strengthen its internal controls. It also needs to initiate action to recover the loss from irregular adjustments of EMD, where audit's contention was accepted by the Department. Further, the Department may consider clearly specifying the definition of 'contiguity', so as to ensure consistent treatment of all licensees. The Department should also focus on improving its internal audit mechanism.

3.1 Tax administration

The Prohibition and Excise Department is governed by the Andhra Pradesh Excise Act, 1968, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Andhra Pradesh Prohibition Act, 1995 etc. The Principal Secretary to Government, Revenue Department is the controlling Authority at Government level. The Commissioner, Prohibition and Excise Department is the head of the Department in all matters connected with administration. All the 23 districts of the State are divided into 53 excise districts. Each of the excise districts is under the charge of a Prohibition and Excise Superintendent who is assisted by the Assistant Excise Superintendent and other staff. Prohibition and Excise Inspectors are in charge of excise stations and check posts, while 23 Deputy Commissioners and Assistant Commissioners supervise the overall functioning of the offices of Excise Superintendents.

3.2 Trend of receipts

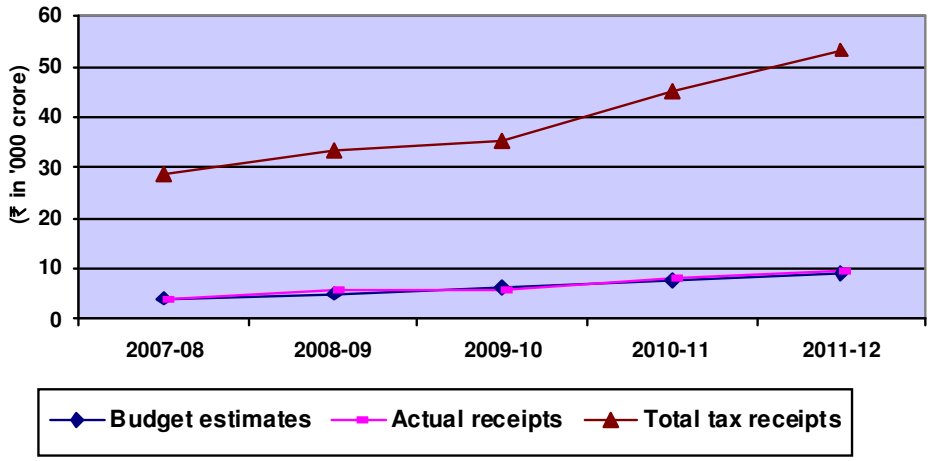
Actual receipts from State Excise Duty during the years 2007-08 to 2010-11 along with the total tax receipts during the same period is exhibited in the following table and graph.

Table 3.1: Receipts from State Excise Duty

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2007-08	4.125.00	4,040.69	(-) 84.31	(-) 2.04	28,794.05	14.33
2008-09	4,991.25	5,752.61	(+) 761.36	(+) 15.25	33,358.29	17.24
2009-10	6,260.00	5,848.59	(-) 411.41	(-) 6.57	35,176.68	16.63
2010-11	7,512.00	8,264.67	(+) 752.67	(+) 10.02	45,139.55	18.31
2011-12	9,014.40	9,612.36	(+) 597.96	(+) 6.63	53,283.41	18.04

Graph 3.1: Budget estimates, actual receipts and Total tax receipts



As seen above, while the total tax receipts of the State have increased by 85.05 *per cent* during the last five years, increase in the receipts from State Excise Duty has been recorded as 137.89 *per cent*. The contribution of the State

Excise Duty in the total tax receipts has also increased from 14.33 *per cent* to 18.04 *per cent* during this period.

3.3 Cost of collection

The figures of gross collection in respect of State Excise Duty, expenditure incurred on collection and the percentage of such expenditure to gross collection during the years 2009-10, 2010-11 and 2011-12, along with the relevant all India average percentage of expenditure on collection to gross collection, are mentioned below:

Table 3.2: Cost of collection of State Excise Duty

(₹ in crore)

Head of revenue	Year	Gross collection	Expenditure on collection of revenue	Percentage of cost of collection to gross collection	All India average percentage for the previous year
State Excise Duty	2009-10	5,848.59	183.78	3.14	3.66
	2010-11	8,264.67	233.64	2.83	3.64
	2011-12	9,612.36	263.81	2.74	3.05

Although there is an increase in the cost of collection in absolute terms, the increase in the gross collections of the Department was much higher, resulting in a lower cost of collection in percentage terms.

3.4 Impact of Local Audit

During the last five years, audit through its audit reports had pointed out non/ short levy, non/short realisation and non levy of interest with total revenue implication of ₹ 66.60 crore in 337 cases. Of these, the Department/ Government had accepted audit observations in 36 cases involving ₹ 20.81 crore, and had since recovered ₹ 15.65 crore in 12 cases. The details are shown in the following table:

Table 3.3: Impact of Local audit on State Excise Duty

(₹ in crore)

Year	No. of units audited	Amount objected		Amount accepted		Amount recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2006-07	95	20	4.45	0	0	0	0
2007-08	50	79	6.41	8	0.01	0	0
2008-09	58	77	10.32	2[1]	0.00	2	0.00
2009-10	55	136	18.88	12	0.28	9	0.23
2010-11	55	25	26.54	14	20.52	1	15.42
Total	**313**	**337**	**66.60**	**36**	**20.81**	**12**	**15.65**

Recovery of ₹ 15.65 crore (75.21 *per cent)* against the money value of ₹ 20.81 crore relating to accepted cases during the period 2006-07 to 2010-11 indicates that the Government/Departmental machinery had acted promptly to recover the Government dues in respect of the cases accepted by them.

[1] Insignificant amount i.e. less than ₹ one lakh.

3.5 Working of Internal Audit Wing

Internal audit is an important part of internal control mechanism for ensuring proper and effective functioning of a system for detection and prevention of control weaknesses. The orders issued by the Government of Andhra Pradesh from time to time stipulate, among others, that it is the responsibility of the Accounts branch of the Head of the Department to conduct internal Audit of the Regional Offices, District Offices, Unit Offices etc., periodically (at least once in a year) and furnish reports to the Commissioner.

The fact of not conducting any internal audit of the offices of Deputy Commissioners (23)/Assistant Commissioners (28)/Prohibition and Excise Superintendents (53) and absence of an internal audit programme was brought out in the stand-alone Audit Report on the 'Functioning of the Prohibition and Excise Department' (Paragraph 4.6). In response to our observation regarding absence of internal audit programme, Government had replied (July 2011) that it was being chalked out. No further response has been received (January 2013).

3.6 Results of Audit

During the year 2011-12, test check of the records of 68 offices of the Prohibition and Excise Department revealed preliminary audit findings relating to non-levy/short realisation of duty and other irregularities involving ₹ 26.60 crore in 101 cases which fall under the following categories:

(₹ in crore)

Sl. No.	Category	No. of cases	Amount
1	Non-levy of additional licence fee	33	9.63
2	Loss of excise duty	2	3.70
3	Irregular adjustment of Earnest money deposit	10	1.11
4	Excess drawal of pay and allowances	13	0.86
5	Non-levy of penal interest on belated payments	11	0.49
6	Short collection of stamp duty and registration fees	12	0.43
7	Other irregularities	20	10.38
Total		**101**	**26.60**

During the year 2011-12, the Department accepted underassessments and other deficiencies of ₹ 1.15 crore in 29 cases, of which 10 cases involving ₹ 1.10 crore were pointed out during the year 2011-12 and the rest in earlier years. An amount of ₹ 5.41 lakh was realised in 19 cases.

After the issue of two draft paragraphs, the Government reported (June 2012) recovery of ₹ 11.90 lakh in respect of five offices.

A few illustrative cases involving ₹ 2.40 crore are mentioned in the succeeding paragraphs.

3.7 Audit observations

During scrutiny of the records in the offices of Prohibition and Excise Department, we observed several cases of non-observance of the provisions of the Acts/Rules, resulting in non levy of additional licence fee and irregular adjustment of EMD as mentioned in the succeeding paragraphs in this Chapter. These cases are illustrative and are based on a test check carried out by us. We pointed out such omissions in audit each year, but not only do the irregularities persist; these remain undetected till an audit is conducted. There is a need for the Government to consider directing the Departments to improve the internal control system, including strengthening internal audit so that such omissions can be avoided, detected and rectified.

3.8 Non-levy of additional licence fees payable by bars/restaurants with additional enclosures

As per Section 28 of the Andhra Pradesh (AP) Excise Act, 1968, read with Rule 10 of AP Excise (Grant of licence of selling by bar and conditions of licence) Rules, 2005, the enclosures for consumption of liquor, which are not contiguous, shall attract levy of an additional licence fee at 10 *per cent* for each such additional enclosure.

In terms of explanation given below the Rule, the word 'enclosure' means an area of consumption of liquor which is contiguous in utility for consumption'. If one consumption enclosure is separated from another enclosure by non-contiguity and interposition of areas of different utilities other than consumption of liquor, it attracts additional license fee.

We noticed (between August 2011 and January 2012) during test check of the records relating to bar licences, census records, challan register etc., of nine offices[2] of Prohibition and Excise Superintendents (PESs) that the concerned PESs did not levy 10 *per cent* additional licence fee amounting to ₹ 1.42 crore for the years 2008-09 to 2010-11 on 29 bars and restaurants with non-contiguous consumption enclosures.

After we pointed out the cases, the Government replied (June 2012) that

- Restaurants/Bars were functioning with one entrance to reach liquor consumption halls and the total consumption area was under one roof;
- they were not separated by areas of different utilities other than consumption of liquor; hence, 10 *per cent* additional license fee was not levied;
- corridor, counter, staircase, washbasin, kitchen, parking etc. were mandatory for issue of 2B license and were not to be treated as other utilities.

[2] Adilabad, Guntur, Jagtial, Machilipatnam, Nalgonda, Narasaraopet, Ongole, Parvathipuram and Srikakulam.

The replies are not acceptable, as enclosures for consumption of liquor were separated by enclosures utilised for purposes other than for the consumption of liquor. As such, these were not contiguous and attracted levy of additional fee. Further, subsequent audit scrutiny also revealed that the Department had collected additional license fee in similar cases[3]; which is contrary to the reply furnished to us.

The Department may consider clearly specifying the definition of 'contiguity', so as to ensure consistent treatment of all licensees.

3.9 Irregular adjustment of Earnest Money Deposit (EMD) towards resultant loss

Under Rule 12 of Andhra Pradesh Excise (Lease of right of selling by shop and condition of license) Rules 2005, the tenderer shall be required to deposit as earnest money a sum equal to 5 *per cent* of the upset price fixed and notified by the auctioning authority for each shop notified for auction in the form of a demand draft. As per Section 17(3) of the AP Excise Act read with Rule 20 of the above mentioned Rules, in case of failure to pay 1/6th of the lease amount and/or furnish the Fixed Deposit Receipts (FDRs)/Bank Guarantees (BGs) as required under Rule 19 within the time specified, the auction shall be cancelled by the auctioning authority, and amounts already paid shall be forfeited to the Government. The right of sale is to be given to the next highest tenderer if the tender amount is equal to or higher than the upset price or re-auctioned, as the case may be, or alternate arrangements are to be made at the risk of the original auction purchaser, who shall continue to be liable in respect of the lease till the next auction purchaser takes over or re-auction is carried out, as the case may be.

We noticed (between July 2011 and January 2012) during the scrutiny of files relating to auction of liquor shops for the years 2008-10 and 2010-12 of five offices[4] of PESs in 24 cases that the first/second bidder failed to attend/pay 1/6th lease amount on the day of auction. Therefore, the shops were allotted to the second/third highest bidder, whose bid amount was lesser than the first/second highest bidder by a sum of ₹ 9.44 crore. As per the Rules, alternate arrangements are to be made at the risk of the original auction purchaser. However, the Department incorrectly computed the resultant loss by adjusting EMD of ₹ 98.27 lakh paid by the first bidder, which already stood forfeited to the Government, thus extending undue favor to the first highest bidders. This incorrect computation of resultant loss led to loss of revenue of ₹ 98.27 lakh.

[3] Passage between two enclosures/consumption halls on the same floor, consumption halls separated by lawn, counter between two consumption halls, office & toilets between two consumption halls.

[4] Amalapuram, Khammam, Kothagudem, Machilipatnam and Visakhapatnam.

After we pointed out the cases, Government intimated (June 2012) that the Commissioner had issued instructions (February 2012) to all the Prohibition and Excise Superintendents to forfeit the EMD wherever there was a monetary loss on account of the highest bidder not complying with the conditions of the auction, and to revise the demand by not taking into account the EMD money while computing the resultant loss. It was further replied that P&ES Amalapuram, Khammam and Kothagudem had forfeited the EMD and revised the demand by correctly computing the resultant loss. P&ES Machilipatnam forfeited the EMD and requested the District Collector to take immediate action for realisation of dues under the provisions of AP Revenue Recovery Act, 1864 by sale of immovable properties of the defaulters.

CHAPTER IV

TAXES ON VEHICLES

CHAPTER IV
TAXES ON VEHICLES

EXECUTIVE SUMMARY

Increase in tax collection	In 2011-12, the collection of taxes from motor vehicles increased by 13.69 *per cent* over the previous year.
Very low recovery by the Department against the observations pointed out by us in earlier years	During the period 2006-07 to 2010-11, we had pointed out non/short realisation of tax, fee etc., with revenue implication of ₹ 1036.77 crore in 1051 cases. Of these, the Department/ Government accepted audit observations in 413 cases involving ₹ 175.72 crore and recovered only ₹ 11.15 crore in 277 cases. The recovery position as compared to acceptance of audit observations was very low (6.34 *per cent*).
Results of audits conducted by us in 2011-12	In 2011-12 we test checked the records of 44 offices of the Transport Department and found preliminary audit observations involving non/short levy of tax, fees, penalty, realisation etc., of ₹ 74.96 crore in 230 cases. The Department accepted underassessments and other deficiencies of ₹ 20.94 crore in 236 cases, of which 79 cases involving ₹ 9.87 crore were pointed out during the year 2011-12 and the rest in earlier years. An amount of ₹ 70.30 lakh was realised in 39 cases.
What we have highlighted in this chapter	In this chapter we present illustrative cases involving tax effect of ₹ 32.19 crore selected from observations noticed during our test check of records relating to levy and collection of taxes on vehicles in the offices of the Transport Commissioner, Joint Transport Commissioner, Regional Transport Officers, where we found that the provisions of the Acts/Rules were not observed. It is a matter of concern that similar omissions have seen pointed out by us repeatedly in the Audit Reports for the past several years, but the Department had not been taking adequate corrective action. We are also concerned that though these omissions were apparent from the data which were made available to us, Deputy

	Transport Commissioners (DTCs) and Regional Transport Officers (RTOs) were unable to detect them.
Our conclusion	The Department needs to improve its internal control system so that weaknesses in the system are addressed and omissions of the nature detected by us are avoided in future. Further, action to expedite recovery in cases of non-realisation, non levy/short levy of quarterly taxes and penalties brought out through audit observations may also be taken. With regard to payment of life tax on non transport vehicles, we recommend that the Government may take necessary steps to update the Citizen Friendly Services in Transport department (CFST) package so as to ensure levy of Life tax on second/subsequent non transport vehicles as well as those owned by companies, institutions, societies and organisations at applicable rates and minimize scope for non/ short levy of tax. With regard to audit observation on 'non-levy of green tax', we recommend that Government may consider putting in place a proper monitoring mechanism as part of CFST package to raise alerts for demanding green tax on completion of 14 years 10 months in accordance with provisions of Central Motor Vehicles Rules, 1989. Further, they may also introduce necessary mechanism to update the demand of green tax when payments are made at places other than office counters like APonline, e-seva etc.

4.1 Tax administration

The Transport Department of the Government of Andhra Pradesh is governed by the Motor Vehicles (MV) Act, 1988, the Central Motor Vehicle (CMV) Rules, 1989, the Andhra Pradesh Motor Vehicles Taxation (APMVT) Act, 1963 and the Andhra Pradesh Motor Vehicle (APMV) Rules, 1989. The Transport Department is primarily responsible for enforcement of the provisions of the Acts and the rules framed thereunder which *inter alia* includes the collection of taxes and fees, issuance of driving licences, certificates of fitness to transport vehicles, registration of motor vehicles and granting regular and temporary permits to vehicles. At the Government level, the Principal Secretary (Transport, Roads and Buildings Department) heads the Transport Department. Transport Commissioner (TC) is in charge of the Department at the apex level. At the district level, there are Deputy Transport Commissioners (DTCs) and Regional Transport Officers (RTOs) who are in turn assisted by Motor Vehicles Inspectors (MVIs) and other staff.

4.2 Trend of receipts

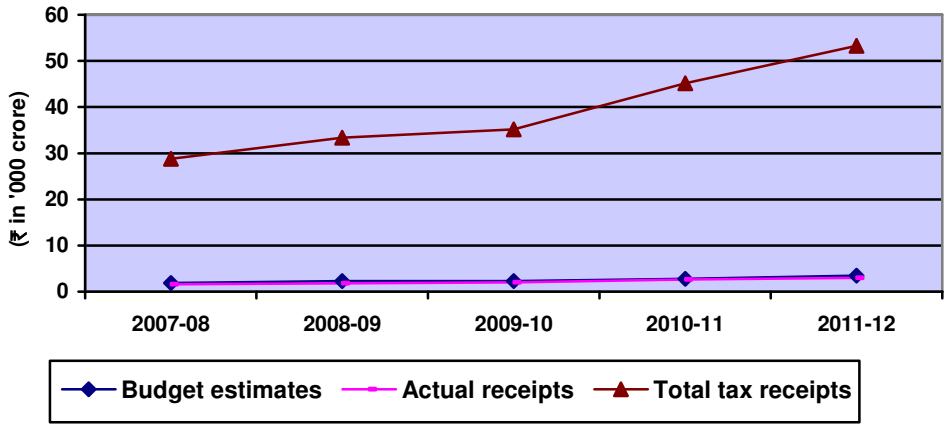
Actual receipts from taxes on vehicles during the years 2007-08 to 2011-12, along with the total tax receipts during the same period, is exhibited in the following table and graphs:

Table 4.1: Receipts from taxes on vehicles

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2007-08	1,892.40	1,603.80	(-) 288.60	(-) 15.25	28,794.05	5.57
2008-09	2,289.80	1,800.62	(-) 489.18	(-) 21.36	33,358.29	5.40
2009-10	2,315.00	1,995.30	(-) 319.70	(-) 13.81	35,176.68	5.67
2010-11	2,778.00	2,626.75	(-) 151.25	(-) 5.44	45,139.55	5.82
2011-12	3,433.60	2,986.41	(-) 447.19	(-) 13.02	53,283.41	5.60

Graph 4.1: Budget estimates, actual receipts and Total tax receipts



It has been observed that there was an increasing trend in the receipts from taxes on motor vehicles, matching the trend in the total tax receipts of the state. It has also been noticed that the budget estimates viz-a-viz. actual receipts varied between (-)5 *per cent* and (-)21 *per cent*.

4.3 Cost of collection

The figures of gross collection in respect of taxes on vehicles, expenditure incurred on collection and the percentage of such expenditure to gross collection during the years 2009-10, 2010-11 and 2011-12 along with the relevant all India average percentage of expenditure on collection to gross collection are mentioned below:

Table 4.2: Cost of collection of taxes on vehicles

(₹ in crore)

Head of revenue	Year	Gross collection	Expenditure on collection of revenue	Percentage of cost of collection to gross collection	All India average percentage for the previous year
Taxes on vehicles	2009-10	1,995.30	64.99	3.26	2.93
	2010-11	2,626.75	85.17	3.24	3.07
	2011-12	2986.41	100.38	3.36	3.71

Cost of collection in respect of taxes on motor vehicles has constantly been stable at less than 3.5 *per cent* during the last three years; efforts need to be continued to maintain the status quo.

4.4 Impact of Local Audit

During the last five years, we had, pointed out non/short levy, non/short realisation, loss of revenue with revenue implication of ₹ 1036.77 crore in 1051 cases. Of these, the Department/Government had accepted audit observations in 413 cases involving ₹ 175.72 crore and had since recovered ₹ 11.15 crore. The details are shown in the following table:

Table 4.3: Impact of Local audit on Taxes on Vehicles

(₹ in crore)

Year	No. of units audited	Amount objected		Amount accepted		Amount recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2006-07	39	43	697.53	28	135.48	22	2.66
2007-08	39	230	74.16	128	13.92	90	3.43
2008-09	44	242	80.81	68	14.62	27	1.80
2009-10	44	277	69.18	50	2.31	50	2.34
2010-11	44	259	115.09	139	9.39	88	0.92
Total	**210**	**1051**	**1036.77**	**413**	**175.72**	**277**	**11.15**

Recovery of only ₹ 11.15 crore (6.34 *per cent)* against the money value of ₹ 175.72 crore relating to accepted cases during the period 2006-07 to 2010-11 highlights the failure of the Government/Departmental machinery to act promptly to recover Government dues, even in respect of the cases accepted by them.

4.5 Working of Internal Audit Wing

Internal audit provides a reasonable assurance of proper enforcement of laws, rules and departmental instructions, and this is a vital component of the internal control framework. There was no system of internal audit in the Department to ascertain the compliance with Rules/Government orders by the Department. When this was pointed out in the Audit Report for 2008-09, the Department assured that internal audits would be conducted in future. However, the Department did not furnish any information regarding implementation of internal audit (January 2013).

4.6 Results of Audit

Test check of the records of 44 offices of the Transport Department revealed preliminary audit observations involving underassessment of tax and other irregularities of ₹ 74.96 crore in 230 cases, which fall under the following categories:

(₹ in crore)

Sl. No.	Category	No. of cases	Amount
1.	Non-realisation of quarterly tax and penalty	42	11.07
2.	Non-realisation of fee due to non-renewal of fitness certificate	43	5.44
3.	Non/short levy of life tax	63	1.47
4.	Non-levy and collection of green tax	42	1.76
5.	Non-levy and collection of compounding fee	32	0.53
6.	Non-levy of stamp duty on vehicles registered with hypothecation[1]	1	50.37
7.	Other irregularities	7	4.32
Total		**230**	**74.96**

During 2011-12, the Department accepted underassessments and other deficiencies of ₹ 20.94 crore in 236 cases of which 79 cases involving ₹ 9.87 crore were pointed out during 2011-12 and the rest in earlier years. An amount of ₹ 52.82 lakh was realised in 36 cases.

In response to audit observations relating to application of different rates for issue of driving licenses that had featured in Audit Reports for the years ended 31 March 2005 to 2008 and 2011, the Department revised the system and started charging a uniform rate for issue of driving licenses with effect from 12 January 2012.

After issue of two draft paragraphs, the Department reported (October 2012) recovery of ₹ 17.48 lakh in 3 cases.

[1] Para on the subject has been included in 'Chapter V - Stamp duty and Registration fees'.

A few illustrative cases involving ₹ 32.19 crore are mentioned in the succeeding paragraphs. These include cases which came to notice during audit of records during the year 2011-12 as well as those which came to notice in earlier years, but which could not be included in the previous years' reports.

4.7 Audit observations

During scrutiny of the records in the offices of the Transport Department relating to revenue received from quarterly tax, green tax, life tax etc., on the vehicles, we observed several cases of non-observance of the provisions of the Acts/Rules resulting in non/short levy of tax/penalty and other cases as mentioned in the succeeding paragraphs in this Chapter. These cases are illustrative and are based on a test check carried out by us. We point out such omissions in audit each year, but not only do the irregularities persist; these remain undetected till an audit is conducted. There is a need for the Government to improve the internal control system including strengthening the internal audit so that such omissions are detected and rectified.

4.8 Non-realisation of quarterly tax and penalty

Section 3 of the Andhra Pradesh Motor Vehicles Taxation (APMVT) Act, 1963 stipulates that every owner of a motor vehicle is liable to pay tax at the rates specified by the Government from time to time. Section 4 of the Act specifies that the tax shall be paid in advance either quarterly, half yearly or annually within one month from the commencement of the quarter. Under Section 6 of the Act read with rule 13(1) of the APMVT Rules 1963, penalty for belated payment shall be leviable.

- at the rate equivalent to the quarterly tax demanded, if the tax is paid within two months from the beginning of the quarter, and
- at twice the rate of the quarterly tax if the tax is paid beyond two months from the beginning of the quarter on the cases detected.

In case of voluntary payment by the registered owner, the penalty is leviable

- at the rate of 25 *per cent* of the quarterly tax, if tax is paid within two months from the beginning of the quarter and
- at 50 *per cent* if the tax is paid beyond two months from the beginning of the quarter.

In terms of section 53 of the Motor Vehicles Act read with Rule 102 of AP Motor Vehicle Rules 1989, any registering authority or other prescribed authority may suspend the registration of a motor vehicle by sending a notice if the provisions of the Act are not complied with.

We noticed (between August 2010 and February 2012) during test check of the records and analysis of data of the offices of the Joint Transport Commissioner (JTC), Hyderabad, 16 Deputy Transport Commissioners

(DTCs)[2] and 25 Regional Transport Officers (RTOs)[3] that quarterly tax of ₹ 5.98 crore for the years 2009-10 and 2010-11 was neither paid by the owners of 10,023 transport vehicles nor demanded by the Department. Besides, penalty of ₹ 11.96 crore, leviable at twice the rate of quarterly tax for delay over two months in respect of all the cases, was not levied. This resulted in non-realisation of tax and penalty amounting to ₹ 17.94 crore.

After we pointed out the cases,

- 24 DTCs/RTOs[4] replied (between October 2010 and December 2011) that show cause notices would be issued/action taken to collect tax and penalty (in respect of 5,370 vehicles);
- 16 DTCs/RTO[5] replied (between December 2010 and September 2012) that show cause notices were issued to registered owners of 1663 vehicles and an amount of ₹ 16.29 lakh had been recovered in 422 cases.
- In respect of 1564 vehicles, it was replied (between August 2010 and February 2012) that the matter would be examined/details verified and necessary action taken.
- JTC, Hyderabad and RTO, Narasaraopet contended (December 2011 and February 2012 in respect of 256 vehicles) that only in case of detection of vehicles by enforcement wing, was penalty to be levied at 200 *per cent* for vehicles found plying without payment of taxes, whereas 50 *per cent* penalty was to be levied in respect of vehicles pointed out by audit. The replies are not tenable as non-payment of quarterly tax pointed out by audit is also tantamount to detection and 200 *per cent* penalty is leviable, since there has been no voluntary compliance by the vehicle owners (where the penalty of fifty *per cent* would be applicable).
- In respect of the remaining 748 vehicles, final reply is awaited.

We referred the matter to the Department in August 2011 and April 2012 and to the Government in June 2012; their reply has not been received (January 2013).

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[2] Adilabad, Anantapur, Chittoor, Eluru, Kadapa, Kakinada, Karimnagar, Kurnool, Medak, Nellore, Nizamabad, Ranga Reddy, Srikakulam, Vijayawada, Visakhapatnam and Warangal.

[3] Amalapuram, Anakapalle, Bheemavaram, Gudivada, Hindupur, Hyderabad (East, North, South and West), Ibrahimpatnam, Khammam, Mahabubnagar, Mancherial, Medchal, Nalgonda, Nandigama, Nandyal, Narasaraopet, Ongole, Proddatur, Rajahmundry, Ranga Reddy (East), Siddipet, Tirupati and Vizianagaram.

[4] DTCs – Anantapur, Eluru, Kadapa, Karimnagar, Medak, Nellore, Nizamabad, Rangareddy, Srikakulam, Vijayawada and Warangal.
RTOs – Amalapuram, Anakapalle, Hindupur, Hyderabad (East, North and South), Ibrahimpatnam, Khammam, Mahabubnagar, Medchal, Nalgonda, Ongole and Siddipet.

[5] DTCs - Adilabad, Chittoor,Kurnool and Warangal.
RTOs – Bheemavaram, Gudivada, Hyderabad (West), Medchal, Nalgonda, Nandigama, Nandyal, Ongole, Rajamundry, Siddipet, Tirupathi and Vizianagaram.

4.9 Non-renewal of fitness certificates

As per Section 56 of the Motor Vehicle (MV) Act, 1988, a transport vehicle shall not be deemed to be validly registered, unless it carries a certificate of fitness issued by the prescribed authority. As per Rule 62 of the Central Motor Vehicle (CMV) Rules, 1989, the certificate of fitness in respect of the transport vehicles shall be renewed every year. Rule 81 of CMV Rules, prescribes the fee for conducting test of a vehicle for grant and renewal of the Certificate of fitness.

We noticed (between August 2010 and February 2012) during the test check of the records and an analysis of the data of offices of JTC, Hyderabad, 12 DTCs[6] and 21 RTOs[7] that fitness certificates in respect of 3,23,878 transport vehicles, whose status was 'active' as per the Citizen's Friendly Services in Transport Department (CFST) system database and that had completed two years of life during 2009-10 and 2010-11, had not been renewed. This jeopardised public safety, besides non-realisation of fitness certificate fee of ₹ 9.94 crore.

After we pointed out the cases

- 30 DTCs/RTOs[8] stated (between August 2010 and July 2012 in respect of 2,18,622 vehicles) that the fitness fee cannot be collected until and unless the owners of the vehicles approach the office for the purpose of renewal of fitness certificate.
- Five DTCs/RTO[9] replied (between October 2010 and January 2012 in respect of 88,272 vehicles) that the individual cases would be examined and reply furnished to audit.
- JTC, Hyderabad contended (February 2012 in respect of 7,478 vehicles) that where the fitness certificate is not renewed, it meant that the vehicle was not on road and hence not detected by enforcement authorities; provisions of Motor Vehicles Act do not provide for collection of arrears of fitness fee for the period not renewed as vehicles were not plying on roads.
- RTO, Proddatur replied (January 2012 in respect of 466 vehicles) that if the vehicle did not have a valid fitness certificate and was caught by

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6 Adilabad, Anantapur, Eluru, Kadapa, Kakinada, Karimnagar, Medak, Nellore, Nizamabad, Vijayawada, Visakhapatnam and Warangal.

7 Amalapuram, Anakapalle, Bheemavaram, Hyderabad (East, North, South and West), Ibrahimpatnam, Khammam, Mahabubnagar, Mancherial, Medchal, Nalgonda, Nandigama, Nandyal, Ongole, Proddatur, Rajahmundry, Siddipet, Tirupathi and Vizianagaram.

8 DTCs – Adilabad, Anantapur, Eluru, Kakinada, Karimnagar, Medak, Nellore, Nizamabad, Vijayawada, and Warangal.
RTOs – Amalapuram, Anakapalle, Bhimavaram, Hyderabad (East, North, South and West), Ibrahimpatnam, Khammam, Mahabubnagar, Mancherial, Nalgonda, Nandigama, Nandyal, Ongole, Proddatur, Rajahmundry, Siddipet, Tirupati and Vizianagaram.

9 DTCs – Kadapa, Karimnagar, Nizamabad and Visakhapatnam. RTO – Vizianagaram.

the enforcement authorities, every penal action was being taken as per Rules. Hence, there was no fault on the Department's front.

- RTO, Nandyal replied (December 2010 in respect of 8,184 vehicles) that as per Rule 12(A) of AP Motor Vehicle Taxation Rules, 1963, even though the vehicle had no valid fitness certificate, the liability to pay rested with the registered owner till stoppage report was filed. It was added that the registered owner voluntarily paid the tax and penalties for the vehicles, which had no valid fitness certificates, hence the payment of tax was not sufficient to prove that vehicles were plying on roads.
- Relevant reply has not been furnished by RTO Medchal (856 vehicles).

The Department's contentions are not tenable as under section 56 of the MV Act, it is mandatory to renew the FC. Further, Rule 62 of the CMV Rules prescribes that FC in respect of transport vehicles shall be renewed every year. Further, audit observed that the status of these vehicles was 'active' on the CFST system and the owners were paying taxes regularly. The presumption that vehicles without fitness certificates would be invariably caught by enforcement authorities and vehicles not so detected were not plying on the road is invalid. Thus, the failure of the Department to ensure checking of fitness of these 'active' vehicles led to non-realisation of fitness fee. Absence of an inbuilt mechanism in the CFST package for compliance viz., to give alerts every time the vehicle owner approaches the office/e-seva etc., for any transaction, namely issue/renewal of permits, payment of quarterly tax etc., led to non-renewal of fitness of the vehicle, resulting in loss of fitness fee.

The matter was referred to the Department in July 2011 and to the Government in June 2012; their reply has not been received (January 2013).

4.10 Non/short levy of life tax on non transport vehicles

As per Section 4 (aa) of Andhra Pradesh Motor Vehicles Taxation Act 1963, the tax levied under the second proviso to sub Section (2) of Section 3 shall be for the life time of the motor vehicle and shall be paid in advance in lump sum by the registered owner of the motor vehicle or any other person having possession or contract thereof.

The Government of Andhra Pradesh amended Section 3(2) of APMVT Act through an Ordinance (No.1/2008) dated 2 January 2008, enhancing life tax from nine *per cent* to 12 *per cent* and the same was enhanced to 14 *per cent* as per Ordinance (No.2/2010) dated 2 February 2010* at the time of registration of second or subsequent non-transport vehicles owned by individuals and on all non-transport vehicles owned by institutions, organisations, companies or societies.

** This Ordinance was extended vide Ordinance No.5/2010 dated 20 April 2010 and replaced by Act No.11/2010 dated 31 July 2010.*

The enhanced tax was to be collected from the new vehicles sold and registered on or after 2 January 2008. Further, the Transport Commissioner (TC) issued a Circular memo (No. 17831/S/2005) dated 4 January 2008 instructing all the registering authorities to collect the enhanced life tax.

4.10.1 We noticed (between August 2010 and February 2012) during the audit of offices of 13 DTCs[10] and 18 RTOs[11] that life tax in respect of 1,749 second or subsequent non-transport vehicles owned by individuals was collected during 2009-10 and 2010-11 at pre-revised rate, instead of enhanced rate, resulting in short levy of life tax amounting to ₹ 1.20 crore.

After we pointed out the cases,

- Seven DTCs/RTO[12] replied (between March 2011 and September 2012) that an amount of ₹ 5.02 lakh was collected in respect of 91 vehicles and show cause notices were issued to registered owners of 414 vehicles.
- 14 DTCs/RTOs[13] replied (between October 2010 and February 2012) that action would be taken to collect life tax in respect of 562 vehicles.
- With regard to the balance 682 vehicles, final reply has not been received.

We referred the matter to the Department between July 2011 and March 2012 and to the Government in June 2012; their reply has not been received (January 2013).

4.10.2 We noticed (between November 2010 and February 2012) during the test check of records of offices of four DTCs[14] and two RTOs[15] that life tax on 62 non-transport vehicles owned by companies, institutions, societies and organisations was collected at pre-revised rate instead of enhanced rate. This resulted in short levy of life tax of ₹ 21.97 lakh.

After we pointed out the cases,

- DTC, Vijayawada and RTO, Hyderabad (North) stated (between November 2010 and February 2012) that action would be taken to collect the differential tax in respect of 36 vehicles.
- DTC, Guntur stated (December 2011) that notices were issued to owners of four vehicles.

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[10] Adilabad, Anantapur, Chittoor, Eluru, Kadapa, Karimnagar, Medak, Nellore, Nizamabad, Rangareddy, Srikakulam, Vijayawada and Warangal.

[11] Amalapuram, Anakapalle, Bheemavaram, Gudivada, Hyderabad (East, North, South, West) Mahabubnagar, Mancherial, Medchal, Nandyal, Nalgonda, Ongole, Rajahmundry, Siddipet, Tirupati and Vizianagaram.

[12] DTCs Adilabad, Eluru, RTOs – Bheemavaram, Gudivada, Rajamundry, Tirupathi and Viziangaram.

[13] DTCs Adilibad, Anantapur, Chittoor, Karimnagar, Nellore and Nizamabad. RTOs Amalapuram, Hyderabad (East, North and South), Mahabubnagar, Nalgonda, Ongole and Siddipet.

[14] Anantapur, Guntur, Karimnagar and Vijayawada.

[15] Hyderabad (North) and Medchal.

- The remaining authorities replied (between November 2010 and January 2012) that the matter would be examined and report submitted in due course.

Government may take necessary steps to update the Citizen Friendly Services in Transport department (CFST) package so as to ensure levy of Life tax on second/subsequent non transport vehicles as well as those owned by companies, institutions, societies and organisations at applicable rates and minimize scope for non/short levy of tax.

We referred the matter to the Department in June 2011 and March 2012 and to the Government in June 2012; their reply has not been received (January 2013).

As per the amended provisions of Section 3(2) of APMVT Act through an Ordinance (No. 2/2010) dated 2 February 2010*, the rate of life tax on construction equipment vehicles was 6.5 *per cent* of the cost of the vehicle if it was already registered and its age from the month of the registration was less than three years.

Rule 13 of AP MV Rules read with section 6 of AP MV Act specifies levy of penalty at the rate of one *percent* of the life time or lumpsum tax for each calendar month or part thereof.

4.10.3 We noticed (January and February 2012) during the test check of the records of offices of the DTC, Adilabad and RTO, Siddipet that life tax on seven construction equipment vehicles was not levied/short levied. Besides, penalty leviable was also not levied. This resulted in non levy/ short levy of life tax of ₹ 8.27 lakh and penalty of ₹ 2.79 lakh.

***** *This Ordinance was extended vide Ordinance No.5/2010 dated 20 April 2010 and replaced by Act No.11/2010 dated 31 July 2010.*

After we pointed out the cases,

- DTC, Adilabad replied (July 2012) that life tax of ₹ 1.33 lakh and entire penalty of ₹ 0.31 lakh was collected in one case and show cause notice was issued to the registered owner of another vehicle.
- RTO, Siddipet replied (February 2012) that steps would be taken to realise the pending amount.

We referred the matter to the Department in March 2012 and to the Government in June 2012; their reply has not been received (January 2013).

4.11 Non-levy of green tax

Government by an order (G.O.Ms.No.238, Transport, Roads and Buildings (TR.I)) dated 23 November 2006, levied "green tax" on the transport vehicles and non-transport vehicles that have completed seven years and 15 years of age respectively from the date of registration. The rate of tax was ₹ 200 per annum for transport vehicles. In respect of non-transport vehicles, it was ₹ 250 for every five years in the case of motorcycles and for other vehicles, it was ₹ 500 for every five years.

We noticed (between September 2010 and February 2012) during test check of the records and analysis of data of 10 DTCs[16] and 14 RTOs[17] that green tax aggregating ₹ 1.30 crore in respect of 42,575 transport vehicles and 15,303 non-transport vehicles that had completed seven years and 15 years of age respectively was not levied and collected for the period from April 2009 to March 2011.

After we pointed out the cases,

- RTO (Hyderabad-West) reported (May 2012) recovery of ₹ 9.95 lakh in respect of 2110 vehicles; further report in respect of 4583 vehicles is awaited.
- 17 DTCs/RTOs[18] replied (between September 2010 and May 2012 in respect of 39,551 vehicles) that the system has the provision in such a way to collect green tax as and when the owners approached the office, for any transaction if the vehicle had completed 7/15 years of age. Therefore green tax could not be collected unless the owners approached for further transactions.

The reply is not tenable as green tax was not collected for the period covered by audit even though the owners of these vehicles had approached the Department's office for transactions and had valid registration as on date.

- DTC, Nellore stated (December 2011 in respect of 7,566 vehicles) that action would be taken to collect green tax under intimation to audit.
- DTCs, Kadapa and Proddatur replied (January 2012 in respect of 964 vehicles) that transport vehicles paying taxes at e-seva and AP online were escaping payment of green tax. However, the same would be intimated to higher authorities.

[16] Guntur, Kadapa, Karimnagar, Nellore, Nizamabad, Proddatur, Rangareddy, Vijayawada, Visakhapatnam and Warangal.

[17] Gudivada, Hindupur, Hyderabad (East, North, South and West), Mahabubnagar, Medchal, Nalgonda, Nandyal, Ongole, Ranga Reddy (East), Siddipet and Tirupati.

[18] DTCs Guntur, Karimnagar, Nizamabad, Rangareddy, Vijayawada and Warangal. RTOs Gudivada, Hindupur, Hyderabad (East, North and South), Mahabubnagar, Nalgonda, Nandyal, Ongole, Siddipet and Tirupati.

- DTC, Visakhapatnam and RTO, Rangareddy (East) replied (September and November 2011 in respect of 2,678 vehicles) that the matter would be examined and replies submitted to audit in due course.

- RTO Medchal replied (October 2010 in respect of 426 vehicles) that demand for green tax would be shown by the system only after completion of 15 years; hence there was no fault in collection of green tax.

Government may consider putting in place a proper monitoring mechanism as part of CFST package to raise alerts for demanding green tax on completion of 14 years 10 months in accordance with provisions of the Central Motor Vehicles Rules, 1989. Further, they may also introduce necessary mechanism to update the demand of green tax when payments are made at places other than office counters like APonline, e-seva etc.

We referred the matter to the Department in April 2012 and to the Government in June 2012; their reply has not been received (January 2013).

4.12 Non-levy of compounding fee

Under Section 200 of the Motor Vehicles (MV) Act, 1988, the Assessing Authority may compound certain offences punishable under the Act by collecting compounding fee in lieu of the penal action as prescribed by the Government. The Government, in its order (G.O.Ms.No.332 Transport, Roads and Buildings (TR1) Department dated 13 November 2008, prescribed minimum rates of compounding fee for various offences. The checking officers of the Transport Department prepare Vehicle Check Reports (VCRs) on the motor vehicles checked by them and forward these to the Regional Transport Officer for taking departmental action against the defaulting permit holders/owners of the concerned vehicles. These reports are to be noted in the register of VCR for taking necessary action to suspend/cancel the licence/ permit or to levy the compounding fee.

We noticed (between September 2010 and February 2012) during the test check of the VCR registers for the years 2009-10 and 2010-11 of JTC Hyderabad, 12 DTCs[19] and 11 RTOs[20] that 2,038 vehicles were involved in compoundable offences viz., carrying overload, excess passengers etc. In all these cases, neither was any penal action taken nor was compounding fee levied. This resulted in non-realisation of compounding fee of ₹ 68.33 lakh.

[19] Anantapur, Eluru, Kadapa, Kakinada, Karimnagar, Kurnool, Nellore, Nizamabad, Rangareddy, Srikakulam, Vijayawada and Visakhapatnam.

[20] Anakapalle, Hindupur, Hyderabad (East, North and South), Mahaboobnagar, Nalgonda, Nandyal, Proddatur, Siddipet and Vizianagaram.

After we pointed out the cases,

- 3 DTCs/RTO[21] reported (April/June 2012) recovery of ₹ 0.75 lakh in 30 cases and issue of show cause notices in 15 cases.

- 16 DTCs/RTOs[22] stated (between September 2010 and February 2012) that action would be taken to collect the fee in respect of 876 vehicles.

- DTCs Eluru and Kadapa stated (October and November 2010) that VCRs would be verified for 196 vehicles.

- RTO Vizianagaram replied (December 2010) that notices were issued to 50 vehicle owners.

- Three DTCs [23] replied (between October 2010 and November 2011) that payment particulars would be verified for 509 vehicles.

- RTO, Hindupur stated (October 2011) that action would be taken to dispose off VCRs in respect of 118 vehicles.

- Final reply had not been received in respect of remaining 244 vehicles.

We referred the matter to the Department between July 2011 and March 2012 and to the Government in June 2012; their reply has not been received (January 2013).

[21] DTCs Kurnool and Visakhapatnam RTO Nandyal.

[22] DTCs Anantapur, Eluru, Kadapa, Karimnagar, Nellore, Nizamabad, Rangareddy, Srikakulam and Vijayawada. RTOs – Anakapalle, Hyderabad (East, North and South), Mahabubnagar, Nalgonda, and Siddipet.

[23] DTCs – Kadapa, Kakinada and Srikakulam.

4.13 Non–realisation of bilateral tax and penalty

Interstate vehicular traffic of goods between one State and other States is regulated by bilateral agreement under the provisions of Motor Vehicles Act, 1988 and Rules made thereunder. In terms of Section 88 of the Motor Vehicles Act, a permit granted by State Transport Authority (STA)/Regional Transport Authority (RTA) of any one State/Region shall not be valid in any other State/Region, unless the permit has been countersigned by the STA of that state or by the RTA concerned.

As per the Government Order (G.O.Ms.No.38, Transport, Roads and Buildings (Tr. II) Department) dated 22 February 2000, tax of ₹ 3,000 per annum per State is to be levied under the APMVT Act, irrespective of the laden weight, on every goods carriage which is registered and normally kept in the states of Tamil Nadu, Karnataka, Maharashtra and Odisha covered by countersignature of permits and operating on the routes lying partly in the State of Tamil Nadu/ Karnataka/Maharashtra/Odisha and partly in the State of Andhra Pradesh, in pursuance of the bilateral agreement entered into with the States of Tamilnadu, Karnataka, Maharashtra and Odisha. The tax shall be paid in advance in lumpsum before the 15th of April every year, failing which an additional sum of ₹ 100 for each calendar month of default shall be paid as penalty in addition to the tax.

Government enhanced the bilateral tax to ₹ 5,000 per annum through order No. 362 dated 16 December 2008. It was directed that in respect of the goods carriages covered by counter signature of permits granted earlier based on G.O. dated 22 February 2000 for which bilateral tax for the year ended 31 March 2008 was paid, the difference for the balance of the year was to be paid within 30 days from notification of the G.O.

We noticed (December 2010 and October 2011) during the test check of the office of the DTC, Srikakulam that bilateral tax was not collected in respect of 1,270 Odisha State vehicles, which were granted countersignature permits of Andhra Pradesh. A scrutiny of the countersignature permit registers in respect of Odisha State vehicles revealed that bilateral tax amounting to ₹ 64.20 lakh and penalty of ₹ 15.48 lakh for the years 2008-09 to 2010-11 was not collected. This resulted in non-realisation of bilateral tax and penalty of ₹ 79.68 lakh.

After we pointed the cases,

- DTC, Srikakulam replied (December 2010) that in respect of 52 vehicles pertaining to the period 2008-09 and 2009-10, the vehicles were Odisha based and as the vehicles were not plying in Andhra

Pradesh, the amount was not realised. However, action would be taken to realise the tax.

- In respect of 1,218 vehicles for the tax period 2010-11 it was stated (November 2011) that the checking officers would seize the vehicles and collect composite tax. Further, as the primary permits were issued by the Odisha State, the permits would be surrendered at respective RTA offices. Therefore, the details would be verified and compliance intimated to audit.

We referred the matter to the Department in March 2012 and to the Government in June 2012; their reply has not been received (January 2013).

CHAPTER V

STAMP DUTY AND REGISTRATION FEES

CHAPTER V
STAMP DUTY AND REGISTRATION FEES

EXECUTIVE SUMMARY

Increase in tax collection	In 2011-12 the collection of stamp duty and registration fees increased by 14.39 *per cent*.
Very low recovery by the Department against the observations pointed out by us in earlier years	During the period 2006-07 to 2010-11, we had pointed out undervaluation of properties, misclassification of documents, incorrect exemption etc., with revenue implication of ₹ 522.80 crore in 2,208 cases. Of these, the Department/Government had accepted audit observations in 693 cases involving ₹ 142.00 crore and had since recovered ₹ 2.62 crore in 316 cases. The recovery position (1.85 *per cent*) as compared to acceptance of objections was very low.
Results of audits conducted by us in 2011-12	In 2011-12, we test checked the records of 334 offices relating to District Registries and Sub-Registries and found preliminary audit observations involving non/short levy, misclassification of documents, under valuation of properties, incorrect exemption etc., of ₹ 84.29 crore in 362 cases. The Department accepted underassessments and other deficiencies of ₹ 46.97 crore in 165 cases, of which 42 cases involving ₹ 46.45 crore were pointed out during the year and the rest in the earlier years. An amount of ₹ 2.09 crore was realised in 147 cases.
What we have highlighted in this Chapter	In this Chapter, we present illustrative cases involving tax effect of ₹ 126.29 crore selected from observations noticed during our test check of records relating to assessment and collection of stamp duty and registration fees in the offices of District Registries and Sub- Registries, where we found that the provisions of the Acts/Rules were not observed. It is a matter of concern that similar omissions have been pointed out by us repeatedly in the Audit Reports for the past several years, but the Department has not taken corrective action.

Our conclusion	The Department needs to improve the internal control system including strengthening of internal audit so that weaknesses in the system are addressed and omissions of the nature detected by us are avoided in future. It is also required to initiate immediate action to recover the stamp duty and registration fees etc., pointed out by us, especially in those cases where audit's contention is accepted. In cases where the audit observations relating to unregistered leases emanated from cross verification of data with other departments/authorities, it is recommended that an effective mechanism be put in place to coordinate with all the Government/semi-Government Departments/organisations to get the details of leases /agreements executed on a periodic basis. In respect of non registration of motor vehicle hypothecation documents, clearly the Transport Department is best placed to track hypothecation of vehicles, since it is responsible for making necessary entries regarding hypothecation in the vehicles Registration Certificate (RC). We, therefore, recommend that the Registration and Stamps Department and the Transport Department should jointly evolve a mechanism whereby the Transport Department collects the stamp duty as an agent of the Registration and Stamps Department. It is also recommended that District Registrar may take up inspection of public offices periodically, so as to minimize the leakage of revenue.

5.1 Tax administration

The Registration and Stamps Department is responsible for administration of the Indian Stamp (IS) Act, 1899 and the Registration Act, 1908, as amended from time to time by the Union and State legislations. The Department is primarily entrusted with registration of documents and is responsible for determining and collecting stamp duty and registration fees on registration of various documents/instruments by the general public. The Commissioner and Inspector General (IG), Registration and Stamps exercises overall superintendence over all the registration offices in the State. He is assisted by the region-wise Deputy IGs. The District Registrar (DR) is incharge of the district and superintends and controls the Sub-Registrars (SR) in the district concerned.

5.2 Trend of receipts

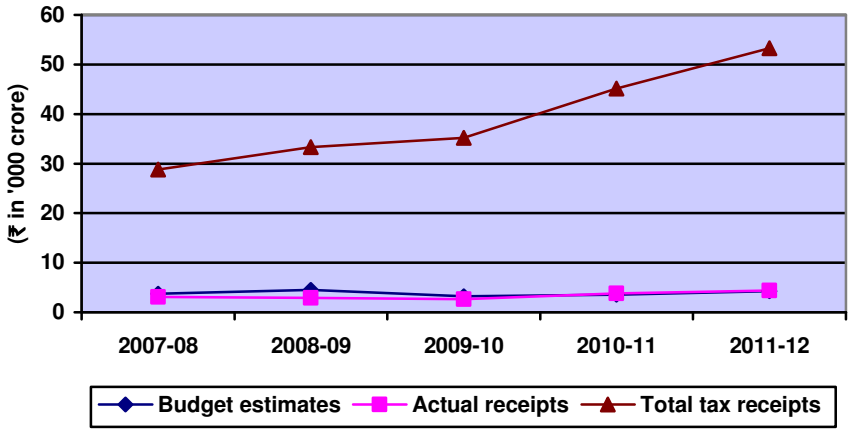
Actual receipts from Stamp Duty and Registration Fees (SDRF) during the years 2006-07 to 2010-11 along with the total tax receipts during the same period is exhibited in the following table and graphs.

Table 5.1: Receipts from Stamp Duty and Registration Fees

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-a-vis total tax receipts
2007-08	3,750.00	3,086.06	(-) 663.94	(-) 17.71	28,794.05	10.72
2008-09	4,537.50	2,930.99	(-) 1,606.51	(-) 35.41	33,358.29	8.79
2009-10	3,224.00	2,638.63	(-) 585.37	(-) 18.16	35,176.68	7.50
2010-11	3,546.00	3,833.57	(+) 287.57	(+) 8.11	45,139.55	8.49
2011-12	4,240.00	4,385.25	(+) 145.25	(+) 3.43	53,283.41	8.23

Graph 5.1: Budget estimates, actual receipts and total tax receipts



It is evident from the above table and graph that revenue contribution from Stamp Duty and Registration Fees to the total tax receipts of the State has been almost stable for the last four years. Variation in the Budget Estimates and Actual Receipts was minimum in the year 2011-12.

5.3 Cost of collection

Figures of gross collection in respect of the stamp duty and registration fees, expenditure incurred on collection and the percentage of such expenditure to gross collection during the years 2009-10, 2010-11 and 2011-12, along with the relevant all India average percentage of expenditure on collection to gross collection for the previous year, are mentioned below:

Table 5.2: Cost of collection of Stamp Duty and Registration Fees

(₹ in crore)

Head of revenue	Year	Gross collection	Expenditure on collection of revenue	Percentage of cost of collection to gross collection	All India average percentage for the previous year
Stamp duty and registration fees	2009-10	2,638.63	87.75	3.33	2.77
	2010-11	3,833.57	94.99	2.48	2.47
	2011-12	4,385.25	101.67	2.32	1.60

Although the cost of collection has marginally reduced this year as compared to the previous year, it is much higher than the All India Average cost of collection of the previous year.

5.4 Impact of Local Audit

During the last five years, audit had pointed out misclassification of documents, under valuation, short levy of stamp duty and registration fee etc., with revenue implication of ₹ 522.80 crore in 2,208 cases. Of these, the Department/Government had accepted audit observations in 693 cases involving ₹ 142 crore and had since recovered ₹ 2.62 crore. The details are shown in the following table:

Table 5.3: Impact of Local Audit of Stamp Duty and Registration Fees

(₹ in crore)

Year	No. of units audited	Amount objected		Amount accepted		Amount recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2006-07	302	329	28.33	68	1.33	44	0.25
2007-08	303	449	20.45	61	0.76	36	0.15
2008-09	294	508	47.98	126	6.89	49	0.83
2009-10	276	590	275.20	63	6.45	48	0.41
2010-11	270	332	150.84	375	126.57	139	0.98
Total	**1445**	**2208**	**522.80**	**693**	**142.00**	**316**	**2.62**

Recovery of only ₹ 2.62 crore (1.85 *per cent)* against the money value of ₹ 142 crore relating to accepted cases during the period 2006-07 to 2010-11 highlights the failure of the Government/Department machinery to act promptly to recover the Government dues even in respect of the cases accepted by them.

5.5 Working of internal audit wing

A separate wing for internal audit team headed by Sub-Registrar (Market value (MV) and Audit)/District Registrar (MV and Audit) would draw up the audit programme very month and conduct audit of offices of sub-Registrars. DIG concerned would supervises the progress of audit and monitor the collection of deficit stamp duty in the finalised audit paras and disciplinary action against responsible registering officers, who caused the loss of revenue due to their deliberate lapses.

It was reported (October 2012) that the audit observations mainly relate to undervaluation of documents, due to wrong adoption of guideline values.

5.6 Results of Audit

Test check of the records of 334 offices of district registrars and sub-registrars conducted during the year 2011-12 revealed preliminary audit findings involving non/short levy of stamp duty and registration fees of ₹ 84.29 crore in 362 cases, which broadly fall under the following categories:

(₹ in crore)

Sl. No.	Category	No. of cases	Amount
1.	Non/short levy of stamp duty and registration fees	232	64.76
2.	Non disclosure of facts/Misclassification of documents	67	18.17
3.	Undervaluation of properties	32	0.95
4.	Incorrect exemption	9	0.06
5.	Other irregularities	22	0.35
Total		**362**	**84.29**

During the year 2011-12, the Department accepted underassessments and other deficiencies of ₹ 46.97 crore in 165 cases, of which 42 cases involving ₹ 46.45 crore were pointed out during the year 2011-12 and the rest in earlier years. Out of this, an amount of ₹ 2.09 crore in 147 cases was realised during the year.

A few illustrative cases involving ₹ 126.29 crore are mentioned in the succeeding paragraphs. These include cases which came to notice during audit of records during the year 2011-12 as well as those which came to notice in earlier years, but which could not be included in the previous year's reports.

5.7 Audit observations

During scrutiny of the records in the offices of DRs and SRs, we observed several cases of non-observance of the provisions of the Acts/Rules, resulting in non/short levy of duties and fees as mentioned in the succeeding paragraphs in this Chapter. These cases are illustrative and are based on a test check carried out by us. We point out such omissions in audit each year, but not only do the irregularities persist; these remain undetected till an audit is conducted. There is a need for the Government to consider directing the Departments to improve the internal control system, including strengthening internal audit so that such omissions can be avoided, detected and rectified.

5.8 Non levy/Short levy of stamp duty on lease deeds

5.8.1 Non-realisation of stamp duty and registration fees on un-registered lease deeds

As per Article 31 (c) of Schedule 1-A to the Indian Stamp (IS) Act 1899, where the lease is granted for a fine or premium or for money advanced in addition to rent reserved, stamp duty is leviable at five *per cent* of the market value of the property or the amount or value of such fine or advance, as set forth in the lease whichever is higher, in addition to the duty which would have been payable on such lease, if no fine or premium or advance had been paid or delivered. Further, under Article 31(d) of Schedule IA to the Act ibid, where the lessee undertakes to effect improvements in the leased property and agrees to make the same to the lessor at the time of termination of lease falling under clauses (a), (b) or (c), stamp duty is also leviable at 5 per cent on the value of the improvements contemplated to be made by the lessee as set forth in the deed in addition to the duty chargeable under clauses (a), (b) or (c).

5.8.1.1 We noticed (April 2012) from the information obtained from Andhra Pradesh State Road Transport Corporation (APSRTC), Hyderabad that APSRTC entered into a lease agreement and authorisation agreement with Soma Hyderabad City Centre Pvt. Limited and Soma SVEC Consortium for leasing out land to the extent of 9.14 acres on Build Operate and Transfer (BOT) basis for a period of 33 years on 21 August 2008. Subsequently, an amendatory agreement to the lease agreement was executed on 14 October 2009, revising the term "lease" as "authorisation" and "lease rentals" as "premium". However, this amendment did not make any change in the liabilities towards stamp duty and registration fee. As per the agreement conditions, the lessee had paid upfront authorisation premium of ₹ 95 crore and non refundable Development Fee of ₹ 6 crore. Further, the lessee had to pay annual premiums of a total amount of ₹ 2,055.59 crore for the entire authorisation period of 33 years on quarterly basis. The lessee was also to effect

improvements to an extent of 1,25,630 sq.mt. in the leased property and was to transfer the same to the lessor at the time of termination of lease.

All these agreements were not registered as per the provisions of the IS Act, and were executed on non-judicial stamp paper of ₹ 100 each. Audit cross verified the fact of non-registration with the Sub-registrar concerned and APSRTC.

Non registration of these documents resulted in non-realisation of Stamp Duty and Registration fee amounting to ₹ 45.14 crore.

After this was pointed out the case, the Government stated (January 2013) that they had taken up (June 2012) the matter of collection of stamp duty with the Managing Director, APSRTC to get the documents validated.

As per Section 2 (16) of the IS Act, 'lease' includes any writing on an application for a lease intended to signify that the application is granted.

Section 17 (1) (d) of the Registration Act, 1908, stipulates that all leases of immovable property are to be registered compulsorily with effect from 1 April 1999. Stamp duty on lease deed is chargeable at the rates prescribed for a consideration equal to the amount or value of fine, premium or advance in addition to the amount of the average annual rent reserved and on the basis of the term of lease.

5.8.1.2 We noticed (March 2012) from the information obtained from Andhra Pradesh Housing Board (seven cases), Andhra Pradesh Tourism Development Corporation Limited (five cases), and five other lessors[1] that 18 license agreements/ authorisation agreements /memorandum of understanding for transfer of immovable property were entered into (between April 2004 and April 2011) for a period ranging from three years to 35 years for development and maintenance of scheduled properties on payment of licence fee/additional development premium periodically. It was noticed (March 2012) by audit that these agreements were executed on non-judicial stamp paper of ₹ 100 in each case and were not registered as per the provisions of IS Act. The fact of not registering these documents was also confirmed from the Sub Registrars concerned. Failure to insist upon registration of these lease deeds by the lessors resulted in non-realisation of stamp duty and registration fees of ₹ 8.30 crore.

[1] Osmania University, South Central Railway, AP State Finance Corporation, Hyderabad Metropolitan Development Authority (2 cases) and AP Industrial Infrastructure Corporation Ltd.

In response to the audit observation, the Government replied (January 2013) that the para pertains to the Tourism Department and they were being addressed in the matter; the unit offices reported (July & August 2012) recovery of ₹ 0.59 lakh[2].

5.8.1.3 Non levy of stamp duty and registration fees on distillery leases

As per Article 31 a (ii) of Schedule IA to IS Act, where the lease purports to be for a term of not less than one year but not more than five years, stamp duty is leviable at two *per cent* of the whole amount payable or value of the average annual rent reserved whichever is higher up to 13 May 2010 and at 0.4 percent of the total rent payable thereafter. Section 17 (1) (d) of the Registration Act, 1908 stipulates that all leases are to be registered compulsorily with effect from 1 April 1999.

As per Rule 11 of AP Distillery (Manufacture of IMFL other than beer and wine) Rules, 2006, the Commissioner of Prohibition and Excise may permit the license holder of a distillery to sub-lease the manufactory/distillery on payment of a sum equal to 10 *per cent* of the proportionate license fee. Sub rule 1 thereunder provides that sub lease deed between the licensee and the proposed sub lessee shall be registered on a non judicial stamp paper of requisite value as per provisions of Indian Stamp Act, within 15 days from the grant of permission for sub lease.

As per clause (vii) of Rule 11(1), both the licensee and sub-lessee undertake to furnish duly registered lease deed within 15 days from the date of grant of permission of sub-lease. An undertaking is to be furnished on a non judicial stamp paper of ₹ 100/- under rule 11(1) (vii)(d) that both the licensee and sublease holder agree to the condition that the license was liable to be cancelled for any lapse contravening the provisions of any rule or any conditions of license.

We noticed (February 2012) during test check of the records of Commissioner of Distilleries and Breweries, Hyderabad that two companies had sub leased (April 2010 and April 2011) their distilleries without registering the lease deeds as required under the above provisions. However the Excise Department had neither insisted upon registered documents of sublease nor were their licenses cancelled. The violation of the provisions resulted in non levy of stamp duty and registration fee of ₹ 7.22 lakh.

[2] AP Housing Board (2 cases).

After we pointed out the case, Government replied (January 2013) that the para pertains to the Prohibition and State Excise Department and they were being addressed in the matter.

Since the non registration of lease deeds has the consequent effect of loss of revenue towards stamp duty and registration fee, it is suggested that coordinated efforts be made by the Registration and Stamps Department with the relevant lessors concerned to plug the revenue leakage. In addition the Registration and Stamps Department may consider setting up a mechanism to coordinate with all the Government/semi-Government Departments/organisations to get the details of leases executed on a periodic basis.

5.8.2 Short levy of stamp duty on 'Build Operate and Transfer' lease agreements

As per Article 31 a (vi) of Schedule I-A to the IS Act, where a lease purports to be for a period in excess of thirty years or in perpetuity or does not purport to be for a definite period, stamp duty is chargeable at five *per cent* on the market value of the property under lease as declared by the party or 0.8 *per cent* on the total rent payable on such lease, whichever is higher. C&IG in his memo (Registration and Stamps Memo No.S1/ 12097/2009 dated 28 October 2009) clarified that stamp duty as applicable on date of presentation of document is to be adopted.

We noticed (September 2011) during test check of the records of District Registry (DR), Visakhapatnam that a lease deed was executed and registered in November 2010 by the lessor[3] in favour of the lessee[4], leasing the property for a period of 32½ years effective from 2 June 2005. As the lease period exceeded 30 years, stamp duty is leviable at five *per cent* on the market value of property under lease as declared by the party or 0.8 *per cent* on the total rent payable on such lease, whichever is higher. However, the registering officer levied stamp duty at 0.8 *per cent* on total rent payable for 32½ years even though the market value of the property on the date of presentation was higher and hence duty chargeable was 5 *per cent* on the market value. This resulted in short levy of stamp duty of ₹ 1.70 crore.

[3] APSRTC.
[4] M/S Chandana Brothers, Visakhapatnam.

After we pointed the case, Government replied (January 2013) that

- adoption of rate by audit as on the date of presentation of lease deeds is not sustainable, since lease period had commenced and property was handed over to the lessee on 02 June 2005;

- the adoption of market value as on the date of execution of the deed as per market value guidelines is not sustainable, since the chargeability was only on value declared by the parties but not on market value as per Government notification.

The reply is not tenable as C&IG had clarified in his memo dated 28 October 2009, that stamp duty as applicable on the date of presentation of document was to be adopted. Further, the Department had themselves adopted the market value as on 2 June 2005 and not the value declared by the party (lessee) while computing the chargeability of the deed.

5.9 Non-levy of stamp duty on vehicles registered with hypothecation agreement

As per Article 7(b) of Schedule I-A to the IS Act, the pawn, pledge, or hypothecation of movable property, where such pawn, pledge, or hypothecation has been made by way of security for the repayment of money advanced, or to be advanced by way of loan or an existing or future debt, is leviable with stamp duty at 0.5 *per cent* of the amount secured subject to a maximum of two lakh rupees, if such loan or debt is repayable on demand or more than three months from the date of the instrument, evidencing the agreement. Further, every instrument has to be properly stamped as per the provisions of the IS Act.

We noticed (February 2012) during the test check of 'Form 20' relating to the registration of vehicles and the analysis of the data of the office of Transport Commissioner, that 6,54,615 vehicles were hypothecated to private banks and other financial institutions during the year 2010-11. Based on the information furnished by the private banks/financial institutions, it was found that in respect of 1,16,376 vehicles (18 per cent) the documents were executed only on ₹ 20/₹ 100 stamp paper, and stamp duty at 0.5 per cent was not collected in terms of the provisions of IS Act. We found that other financial institutions/banks were not levying the requisite stamp duty, but we do not have assurance regarding the same. The loss to the State Government on stamp duty was ₹ 50.37 crore for one year alone, assuming that the amount hypothecated was 80 per cent of the vehicle cost.

A para on 'non-levy of stamp duty on vehicles registered with hypothecation agreement' was printed in the CAG's Audit Report for the year ended 31 March 2011. In response, the Government had stated that the matter would be pursued by the Stamps and Registration Department by exploring different approaches. However, the same position continues to persist.

We also noted that there were differences among different banks/institutions with regard to levy of such stamp duty on hypothecation agreements;

a) Nationalised banks like Canara Bank, State Bank of Hyderabad etc were levying the stipulated stamp duty.

b) Private banks/Institutions such as Hinduja Leyland Finance and Indus Ind Bank were not levying requisite stamp duty.

In addition to loss of revenue, such difference also amounted to discrimination against nationalised banks and their customers, who were being charged the stipulated stamp duty, and undue favour in respect of other financial institutions, who were able to get away with non-compliance with statutory provisions.

Government (Revenue Department) replied (January 2013) that the para pertains to the Transport Department and that they were being addressed in the matter.

Clearly, the Transport Department is best placed to track hypothecation of vehicles, since it is responsible for making necessary entries regarding hypothecation in the vehicles Registration Certificate (RC).

We, therefore recommend that the Registration and Stamps Department and the Transport Department should jointly evolve a mechanism whereby the Transport Department collects the stamp duty as an agent of the Registration and Stamps Department for collection of stamp duty on vehicle hypothecation.

5.10 Short levy of duties and fees due to non-disclosure of facts/ misrepresentation of facts

As per Section 27 of the IS Act, the consideration, if any, the market value of the property and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of duty with which it is chargeable, shall be truly and fully set forth therein. Section 41 A(1) provides for levy of penalty of three times of the deficit stamp duty along with the stamp duty short levied, for suppression of facts with an intent to evade duty.

5.10.1 We noticed (June 2011) during test check of the records of DR, Rangareddy that a sale deed was executed in June 2010 by the vendor[5] in favour of the vendee[6], conveying land of 26.97 acres for a consideration of ₹ 16.18 crore through bidding. It was observed from the recitals of a Development Agreement executed earlier in November 2006 by the same parties in respect of the same property that the vendor specified the total sale price of ₹ 4.27 crore payable by the developer/vendee which included cost of land (₹ 60 lakh per acre) and development premium (₹ 3.67 crore per acre). However, the parties suppressed the aspect of payment of development premium in the sale deed. This resulted in short levy of duties and fees of ₹ 9.40 crore. Further, penalty of three times of the deficit stamp duty is also leviable for suppression of facts.

After we pointed out the case, Government replied (January 2013) that

- the vendor did not receive any extra sale consideration towards the said land and produced documentary evidence to this effect;
- the vendor being a concern wholly owned by the Government, sale consideration shown in the document was adopted as per the provisions of Section 47 A of IS Act.

The reply of the Government is not tenable for the following reasons:

- As per the provisions of transfer of Property Act, 1882, sale is in exchange for price paid or promised or part paid and part promised. In this case, the development agreement entered into between the two parties had been concluded through a sale deed and amount of development premium was paid through development agreement itself before conclusion of sale deed.
- The reply given by the Government that the premium was not paid is not correct as the fact of payment of ₹ 213.50 crore (between October 2005 and July 2006) towards 50 *per cent* of the cost of land including

[5] Andhra Pradesh Industrial Infrastructure Corporation Ltd. (APIIC).
[6] M/s Lanco Hills Technology Park Pvt. Ltd.

development premium is evident (at para 2.2.1 of article 2) from the development agreement executed by both the parties in November 2006.

- As per C&IG's circular Memo No. MV3/16180/ 2004 dated 20 March 2010, where the properties were acquired through public auction and the rate was fixed by the Government, the sale consideration fixed would prevail. As the fact of sale consideration fixed by the agency of the state has not been truly and fully set forth in the sale deed, the sale consideration specified in the development agreement fixed by the way of auction would prevail.

C&IG Registration and Stamps in his Memo (C&IG's memo No. MV1/8184/93) dated 9 June, 1993 instructed that any one of the following, whichever is higher, be adopted for levying stamp duty and registration fees.

(i) consideration set forth in the document;

(ii) market value as declared by the party;

(iii) market value arrived at by the Sub Registrar on the basis of the guidelines and the schedule of rates of construction;

(iv) eighteen times the annual rental value.

5.10.2 We noticed (June 2011) during test check of the records of DR, Rangareddy that a sale deed was executed and registered in March 2011 by the vendor[7] in favour of a vendee[8]. The registering officer levied stamp duty and registration fees of ₹ 11.88 crore on the market value of ₹ 158.40 crore.

Cross verification of a lease deed executed earlier revealed that the same scheduled property had been leased out by the vendor to another lessee for a period of nine years for a monthly rent of ₹ 1.13 crore. The average annual rent of this property was declared as ₹ 1 crore in the sale deed. Based on monthly rent of ₹ 1.13 crore, the average annual rent worked out to ₹ 13.56 crore and 18 times the average annual rent worked to ₹ 243.81 crore. Since 18 times the average annual rent was higher than the market value of the property, stamp duty and registration fee were leviable on 18 times of the annual rental value. The misrepresentation of the average annual rent resulted in short levy of stamp duty and registration fee of ₹ 6.40 crore. Further, penalty of three times of the deficit stamp duty is also leviable for suppression of facts.

After we pointed out the case, the registering officer stated (June 2011) that the matter would be examined.

[7] M/s L&T Infocity Limited.
[8] M/s ENN ENN Corp Limited.

We referred the matter to the Department in November 2011 and to the Government in June 2012; their reply has not been received (Janaury 2013).

As per Article 31 (c) of Schedule-I A to the IS Act, where a lease is granted for a fine or premium or for money advanced in addition to rent reserved, stamp duty is leviable at five *per cent* on the market value of the property or the amount or value of such fine or premium or advance, set forth in the lease, whichever is higher, in addition to the stamp duty which would have been payable on such lease, if no fine or premium or advance has been paid or delivered.

5.10.3 We noticed (August 2011) from the information collected from Andhra Pradesh Industrial Infrastructure Corporation Limited (APIIC) that a lease deed was executed and registered in November 2009 by the lessor (APIIC) in favour of a lessee[9] for a period of 21 years with an annual lease rent of ₹ 1,000 per annum per acre and stamp duty of ₹ 1.74 lakh was paid. Correlation of the registered documents with related records available with APIIC revealed that the lessee had paid an upfront amount of ₹ 61.24 crore (at ₹ 9.00 lakh per acre on 680.55 acres of land), which was not disclosed in the document and on which stamp duty at the rate of five *per cent* was also leviable. This resulted in short levy of stamp duty of ₹ 3.06 crore due to non-disclosure of facts affecting chargeability of lease deed.

After we pointed out the case, Government replied (January 2013) that as per terms and conditions of the lease, only the rent of ₹ 1000 per acre was fixed and payment of upfront fee was outside the purview of the registered lease deed. It was also added that as per C&IG's memo[10] dated 29 May 2009, the amount paid in addition to rent reserved was chargeable only in respect of instruments of lease for a period exceeding 30 years. The reply is not tenable as in terms of Article 31(c), duty is chargeable on premium or money advanced in addition to rent reserved irrespective of the period of lease.

[9] M/s Thermal Powertech Corporation India Limited.
[10] C&IG memo No. S2/2198/2009.

5.11 Short levy of stamp duty and registration fees due to misclassification of documents

According to Article 41 C of Schedule 1-A to the IS Act, where the property which belonged to one partner or partners when the partnership commenced is distributed or allotted or given to another partner or partners in case of dissolution of partnership, stamp duty is leviable at five *per cent* on the market value of the property distributed or allotted or given to the partner or partners under the instrument of dissolution in addition to the duty which would have been chargeable on such dissolution if such property had not been distributed or allotted or given.

5.11.1 We noticed (July 2011) during test check of the records of DR, Hyderabad that a document styled as "partition deed" was executed and registered in May 2010 between the partners of a partnership firm. It was recited in the document that all the partners accepted and agreed to divide the property. As the property was distributed and the partnership ceased to exist, the document is to be treated as 'dissolution of partnership' and stamp duty is leviable at five *per cent* on the market value. However, the registering officer levied stamp duty at three *per cent* treating the document as 'partition' and levied stamp duty and registration fee of ₹ 32.95 lakh instead of ₹ 1.02 crore. Misclassification of 'dissolution of partnership' as 'partition deed' thus resulted in short levy of stamp duty and registration fees of ₹ 69.22 lakh.

After we pointed out the case, the registering officer stated (July 2011) that an instrument between partners dividing the outstanding partnership without dissolving the partnership is a partition and not dissolution of partnership. The reply is not tenable as in terms of Section 2 (15) of the IS Act, "instrument of partition" means "any instrument whereby co-owners of any property divide or agree to divide any such property in severalty, and includes also a final order for effecting a partition passed by any revenue authority or any Civil Court and an award by an arbitrator directing a partition". This clearly applies to a partition of a property amongst family members and other "co-owners". In the extant case, the partners of a purchasing firm cannot be equated with the co-owners of the property as per Section 2(15) of the IS Act.

Further, in terms of Section 40 of the Indian Partnership Act, 1932, a firm may be dissolved with the consent of all the partners. It had been judicially held[11] that it was not necessary in every case that the fact of dissolution should be evidenced by a document; dissolution may be inferred from circumstances of the case and conduct of the parties. In the present case, the partners were earlier registered as a firm and due to financial disputes/differences, they have accepted and agreed to divide the property. It is thus clear that the extant case

[11] Rambharusa singh vs Government state of Bihar AIR 1953 (pat 271).

is a dissolution of partnership and not a partition of a property amongst its co-owners.

We referred the matter to the Department in November 2011 and to the Government in June 2012; their reply has not been received (Janaury 2013).

As per Article 49 A of Schedule I-A to the IS Act, "Settlement in favour of family members" is chargeable to stamp duty at one *per cent* on the market value of property and "Settlement in favour of others" is chargeable at six *per cent*. For this purpose "family" means father, mother, husband, wife, brother, sister, son, daughter and includes grandfather, grandmother, grandchild, adoptive father or mother, adopted son or daughter.

5.11.2 We noticed (May 2011) during test check of the records of SR, Bhongir that a 'gift settlement deed' was executed in June 2010, settling the property by the Managing Directors of two companies in favour of the Managing Director of another company. The registering officer levied stamp duty of one *per cent* applicable to 'settlement deed in favour of family members' instead of at six *per cent* applicable to 'settlement deed in favour of other than family' members, even though the gift deed was registered in the capacity of Managing Director of the company and falls outside the ambit of the definition of the term 'family' for the purpose of this Article. This resulted in short levy of stamp duty of ₹ 5.69 lakh.

After we pointed out the case, the Government accepted (January 2013) the audit observation and stated that instructions were issued to the District Registrar, Nalgonda to collect the deficit amount of stamp duty.

5.12 Short levy of stamp duty and registration fee due to undervaluation of property

As per Article 47-A of Schedule 1-A to the IS Act, instruments of 'sale' are chargeable to stamp duty on the amount or value expressed in the instrument or the market value of the property, whichever is higher.

We noticed (June 2010 and October 2011) during test check of the sale documents of two Sub Registries (SRs)[12] that two documents styled as sale deed/ agreement of sale-cum-General Power of Attorney (GPA) were executed in June 2009 and January 2010 respectively by the vendors in favour of the vendee/GPA holder. The registering officer, while registering the document, adopted the agricultural/acreage rate instead of square yard rate even though the land was already converted into non-agricultural land. Thus, undervaluation of properties resulted in short levy of stamp duty and registration fees of ₹ 46.11 lakh.

[12] Bheemunipatnam and Gopalapatnam.

After we pointed out the cases, Government replied (January 2013) in respect of SR, Gopalapatnam that the issue of applying for permission to construct the houses cannot alter the nature of the land to non-agriculture unless the land is actually developed and developed as sites or the said property was sold and registered adopting sq.yard rate previously. It was also clarified that in the memo[13] dated 5 March 2009, that sq.yard rate applicable for developed house sites could not be fixed merely because the party was planning to build houses in the land at a later date. The reply is not acceptable, since notice was already issued by the Revenue Department in 2009 and conversion fee was paid by the developer in July 2010. Further, as per Section 6 of AP Agricultural Land (Conversion for non-agricultural purpose) Act, 2006 where lands already have been converted without obtaining the permission, the land shall be deemed to have been converted into non-agricultural purpose and upon such deemed conversion, fine is leviable. Therefore, the date of effect of conversion is the date on which the notice had been issued by the Revenue Department, after detecting the same.

The Sub Registrar, Bheemunipatnam stated (June 2010) that only the tentative layout was approved and the land was not developed. The reply is not tenable as the layout of the schedule property was approved by Visakhapatnam Urban Development Authority (VUDA) as far back as in 2007 and the same was not disclosed in the document. Further, since the land was converted from agricultural to non-agricultural purposes, square yard rate was applicable.

Government's reply in respect of SR, Bheemunipatnam has not been received.

5.13 Short levy of stamp duty and registration fees on sale deed

As per the Commissioner and Inspector General (R&S) Circular Memo (No. MV3/ 16180/2004 dated 20 March 2010) in the light of the judgment of the Honourable High Court of AP (W.A. 1455/2004), where the properties are acquired in public auction and the rate is fixed by the Government/ Tribunals/Courts, such rate should be taken for the purpose of chargeability of the document.

We noticed (May 2011) during test check of the records of the SR, Bodhan, that a sale deed was presented by the Official Liquidator, High Court of AP, for registration on behalf of the vendor in favour of the vendee conveying land together with buildings and plant and machinery for ₹ 8.24 crore. While registering the document the registering officer levied stamp duty and registration fee of ₹ 3.93 lakh only on land value (₹ 41.32 lakh), leaving out the value of buildings, plant and machinery mentioned in the sale deed. This resulted in short levy of stamp duty and registration fees of ₹ 29.89 lakh.

[13] Memo No.MV3/15056/2008.

After we pointed out the case, Government accepted (January 2013) the audit observation and directed DR, Nizamabad to collect the deficit amount.

5.14 Short levy of stamp duty on Development Agreement/Development Agreement-cum-GPA

As per Article 6(B) of Schedule I-A to the IS Act, read with Government Order (G.O.Ms.No.1481 Revenue (Registration I) Department) dated 30 November 2007 effective from 03 December 2007, in respect of documents relating to agreement for construction/development or sale of immovable properties combined with GPA, stamp duty is chargeable at one *per cent* on the sale consideration shown in the document or the market value of the property as per the market value guidelines or the estimated market value for land and complete construction made or to be made in accordance with the schedule of rates approved by Commissioner and Inspector General of Stamps, whichever is higher.

5.14.1 Short levy due to suppression of facts

We noticed (December 2011) during test check of records of SR, Marredpally that a document styled as 'Development Agreement-cum-GPA' was registered in September 2010 by the landowners in favour of the developers for development of land into residential flats. The property was agreed to be shared in the ratio of 40 *per cent* to the land owners and 60 *per cent* to the builders and developers. The proposed built up area as stated in the document was approximately 20,000 sq. ft.

Cross verification with the partition deed executed by the landowners in October 2010 revealed that 40 *per cent* of the share of the property allotted to the landowners constituted 84,208 sq. feet. However, the proposed area of construction was suppressed in the 'Development Agreement cum GPA'. Stamp duty leviable at one *per cent* on the estimated market value of land and complete construction to be made worked out to ₹ 26.88 lakh, as against ₹ 15.71 lakh levied. This resulted in short levy of stamp duty of ₹ 11.17 lakh. Further, penalty under Section 41(A) is also leviable as the proposed area of construction was suppressed in the document, despite the fact that the plan was approved by the municipal authorities in June 2010 itself.

After we pointed out the case, Government reported (January 2013) remittance (November 2012) of ₹ 6 lakh.

5.14.2 Short levy due to non inclusion of land/structure cost

5.14.2.1 We noticed (September 2011) during test check of the records of DR, Anantapur that a document styled as 'Development Agreement-cum-GPA' was executed and registered in February/March 2011 by the land owner in favour of the developer for development of 18.15 acres of land into a project comprising residential buildings. The proposed area of construction was declared by the parties as 99,201 sq.ft. in the document for the purpose of chargeability of stamp duty. As per the terms of the agreement, the owners were entitled to 50.8 *per cent* in the area and remaining 49.2 *per cent* would be the entitlement of the developer. The owner's share of the area had been worked out to 1,26,964.27 sq.ft and proportionate share of the developer was estimated at 1,22,964.27 sq.ft. Accordingly, the total proposed structure worked out to 2,49,929.66 sq.ft valuing ₹ 13.75 crore as per the market value guidelines. Stamp duty was to be levied at one *per cent* on the value of land and complete construction to be made. However, the registering officer levied stamp duty of ₹ 9.64 lakh instead of ₹ 20.77 lakh, resulting in short levy of stamp duty of ₹ 11.13 lakh.

After we pointed out the case, Government accepted (January 2013) the audit observation in so far as extent of land computed by the registering authority is concerned. As regards the structure, it was stated that the developer and owners mutually agreed to construct the buildings in the land share earmarked to owners only. But in the share earmarked to the developer, no constructions would be immediately undertaken. The reply of the Government is not correct as stamp duty is leviable on the entire area proposed to be developed/ constructed, irrespective of the fact whether construction in developer's share is immediately under taken or not. Further, it is also evidenced by the documents that the developers had sold out their share of land and permission to construct villas had been obtained.

5.14.2.2 We noticed (between July 2009 and May 2011) during test check of records of the three DRs[14] and SR, Kukatpally that four documents styled as 'Development Agreement/Development Agreement-cum-GPA' were registered between April 2008 and August 2010 by the land owners in favour of the developers for development of land into residential plots/flats. Stamp duty of ₹ 13.33 lakh at one *per cent* on the estimated market value of land and complete construction to be made was leviable. However, the registering officers levied stamp duty of ₹ 7.34 lakh only by ignoring cost of the land/part of structure in three documents, and in the other document, stamp duty of ₹ 20,000 only was levied. This resulted in short levy of stamp duty of ₹ 5.99 lakh.

[14] Rangareddy (East), Medak and Nalgonda.

After we pointed out the cases, the Government replied (January 2013) that an amount of ₹ 1.62 lakh was collected and remitted (January and April 2011) into Government account in respect of DR Nalgonda. The Government's replies in respect of the remaining registering officers have not been received (Janaury 2013).

5.15 Short levy of stamp duty due to incorrect exemption

As per Article 47-A (d) of Schedule 1-A to the IS Act, stamp duty of five *per cent* is payable on the sale deeds in respect of residential flats/apartments. The Government of AP by an order (G.O.Ms. No.1 Revenue (regn. II) Department) dated 01 January 2009, exempted stamp duty on the registration of flats/apartments including semi finished structures admeasuring plinth area of less than 1,200 square feet. The exemption was applicable from 01 January 2009 to 31 December 2010.

We noticed (April 2011) during test check of the sale deeds of SR, Kamareddy that the registering officer did not levy stamp duty of five *per cent* on eight sale deeds registered after December 2010 in cases of flats measuring less than 1,200 sq.ft. Thus, incorrect exemption of stamp duty resulted in short levy of stamp duty of ₹ 5.13 lakh.

After we pointed out the cases, Government accepted (January 2013) the audit observation and directed District Registrar, Nizamabad to collect the deficit amount.

CHAPTER VI

OTHER TAX RECEIPTS

CHAPTER VI
OTHER TAX RECEIPTS

6.1 Results of Audit

Test check of the records of offices of the Revenue[1] Department conducted during the year 2011-12, revealed preliminary audit findings of underassessments of tax and other irregularities involving ₹16.14 crore in 185 cases, which fall under the following categories:

(₹ in crore)

Sl. No.	Nature of irregularity	No. of cases	Amount
I	**REVENUE DEPARTMENT**		
	A. Land Revenue		
1.	Non finalisation of alienation proposals	16	3.55
2.	Non/short levy of conversion fee and fine	32	5.97
3.	Non/short levy of road cess	36	1.24
4.	Non-levy of interest on arrears of revenue	2	0.06
5.	Other irregularities	8	0.03
	B. Water Tax		
1.	Incorrect grant of remission of water tax	14	2.09
2.	Non/Short levy of water tax	22	2.20
3.	Incorrect depiction of arrears of water tax	1	0.20
	C. Professions tax		
1.	Non-levy of professions tax	50	0.66
	D. Entertainments and Betting tax		
1.	Short collection of security deposit	4	0.14
Total		**185**	**16.14**

During the year 2011-12, the Department accepted underassessments and other deficiencies of ₹ 3.36 crore in 89 cases, of which 20 cases involving ₹ 1.71 crore were pointed out in audit during the year and the rest in the earlier years. An amount of ₹ 22.39 lakh was realised in 14 cases during the year 2011-12.

After issue of a draft paragraph, the Chief Commissioner of Land Administration (CCLA) reported (July 2012) recovery of ₹ 4.33 lakh in respect of three cases.

A few illustrative cases involving ₹ 4.22 crore are mentioned in the succeeding paragraphs. These include cases which came to notice during audit of records during the year 2011-12, as well as those which came to notice in earlier years but which could not be included in previous years' reports.

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[1] Observations relating to land revenue and water tax were raised as a result of audit of Offices of the Tahsildars and objections relating to professions tax, entertainments and betting tax were raised as a result of audit of Commercial Tax Offices.

LAND REVENUE

6.2 Non/short levy of conversion fee and fine for conversion of agricultural land to non-agricultural purpose

As per Section 3(1) of Andhra Pradesh Agricultural Land (Conversion for non-agricultural purposes) Act 2006 (Act), no agricultural land in the State shall be put to non-agricultural purpose, without prior permission of the competent authority.

Section 4(1) of the Act provides that every owner or occupier of agricultural land shall pay a conversion fee at the rate of 10 *per cent* of the basic value of the land converted for non-agricultural purposes. Under section 5 of the Act, Revenue Divisional Officer (RDO) is competent to convert the land use from agricultural purpose to non-agricultural purpose. If the conversion fee so paid is found to be lesser than the fee prescribed, a notice shall be issued by the competent authority to the applicant within 30 days of the receipt of application intimating the deficit amount to him. In case no intimation is received by the applicant from the Department within 30 days about the deficit payment of the conversion fees, it shall be deemed that the amount paid is sufficient for the purpose. Further, under Section 6(2) of the Act, if any agricultural land has been put to non-agricultural purpose without obtaining permission, the competent authority shall impose a fine of 50 *per cent* over and above the conversion fee.

(i) We noticed (between April and December 2011) during the test check of the records of offices of six Tahsildars in five districts[2] that 85 applicants had not filed applications for the conversion of 719.15 acres of agricultural land for non-agricultural purpose, resulting in non-levy of conversion fee of ₹ 59.59 lakh and fine of ₹ 95.57 lakh. The details are as follows:

- In 15 cases covering four districts[3] on land admeasuring area of 122.82 acres, conversion fee of ₹ 59.59 lakh and fine of ₹ 29.79 lakh was not levied.
- In 70 cases in Vizianagaram District covering 596.33 acres of land, though notices were issued for levy of conversion fee amounting to ₹ 131.57 lakh, fine of ₹ 65.78 lakh was not levied.

After we pointed out the cases,

- In respect of the Tahsildar office, Siddipet, CCLA replied (July 2012) that conversion fee and penalty would be collected.

[2] YSR Kadapa (Lakkireddypalli), Medak (Siddipet), Nizamabad (Kamareddy), Rangareddy (Nawabpet) and Vizianagaram (Bhogapuram and Denkada).

[3] YSR Kadapa, Medak, Nizamabad and Ranga Reddy.

- Three[4] Tahsildars replied (between June and December 2011) that the matter would be brought to the notice of the RDO.
- The remaining Tahsildars replied (April and September 2011) that the matter would be examined and reply sent in due course.

(ii) During the test check of records of offices of four Tahsildars in four districts[5], we noticed, (between May and July 2011) that the RDO adopted lesser basic value while calculating the conversion fee of land measuring 137.43 acres, than was proposed for conversion by 29 applicants. Adoption of incorrect basic value of land/incorrect computation resulted in short levy of conversion fee of ₹ 5.85 lakh.

After we pointed out the cases,

- Tahsildar Razole replied (July 2011) that the matter would be examined and detailed reply furnished in due course.
- In respect of Tahsildar Sabbavaram, the CCLA replied (July 2012) that notice was issued to the applicant and amount was being collected.
- The remaining two Tahsildars[6] replied (June and July 2011) that matter would be brought to the notice of the competent authority.

The matter was referred to the Government in May 2012; their reply has not been received (Janaury 2013).

6.3 Non/short levy of road cess

Under the Andhra Pradesh Irrigation Utilisation and Command Area Development (IU & CAD) Act, 1984, read with the notifications issued there under, road cess at the rate of ₹ 12.35 per hectare per annum is leviable for laying of roads and their upkeep in the command areas of Nagarjunasagar, Sriramsagar and Tungabhadra projects. The Commissioner of Land Revenue, clarified in No.Z2/486/88 dated 28 August 1989 that road cess is leviable on all *ayacutdars* irrespective of the formation of roads and supply of water in their command areas relating to the above projects.

[4] Nawabpet, Bhogapuram and Denkada.
[5] East Godavari (Razole), Mahaboobnagar (Manopad), Visakhapatnam (Subbavaram) and Vizianagaram (Bhogapuram).
[6] Bhogapuram and Manopad.

We noticed (between November 2009 and December 2011) during the test check of the *Jamabandi*[7] records of 34 offices of the Tahsildars pertaining to 11 districts[8] that road cess of ₹ 1.13 crore was not levied on *ayacutdars*[9] in the command areas of the above projects in 27 offices, while it was short levied by ₹ 18.00 lakh in seven offices during the period 1 July 1999 to 30 June 2010 (*fasli*[10] years 1409 to 1419). This resulted in non/short levy of road cess of ₹ 1.31 crore.

After we pointed out the cases, CCLA replied (July 2012) that

- Road cess of ₹11.90 lakh was collected in 12 offices[11].
- Demand had been raised in 10 offices[12].
- Road cess would be levied/collected as arrears in 1422 *fasli* in respect of eight offices[13].
- In respect of Tahsildar office, C.Belgal it was replied (July 2012) that water received from the Tungabhadra project was not to be subjected to road cess. The reply is not tenable as road cess is leviable on the command area of the Tungabhadra project.
- Final reply has not been received in respect of remaining three cases (July 2012).

We referred the matter to the Government in May 2012; their reply has not been received (Janaury 2013).

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7 "Jamabandi" means finalisation of village accounts and demands.

8 Anantapur (Bommanahal, Guntakal Narpala, Peddavadugur and Tadipathri), Guntur (Chilkaluripeta, Guntur, Krosur, Medikondur, Narasaraopeta, Nekarikallu, Prathipadu, Rompicherla and Tadikonda), YSR Kadapa (Kamalapuram, Thondur and Yerraguntla), Karminagar (Choppadandi, Dharmapur and Ramagundam), Krishna (G.Konduru), Kurnool (C.Belgal, Halaharvi and Kallur,), Mahbubnagar (Manopad), Nalgonda (Huzurnagar and Kodad), Nizamabad (Balkonda), Prakasam (Addanki, Chimakurthy, Jankavaram, Pullalachervu and Santhanuthalapadu), and Warangal (Parkal).

9 Land owners in command areas of irrigation projects.

10 "Fasli" year means a period of 12 months from July to June.

11 Bommanahal, Choppadandi, Dharmapuri, G.Konduru, Huzoornagar, Narsaraopeta, Peddavadugur, Pullela Cheruvu, Rompicherla, Tadipatri, Thonduru and Nakarikallu.

12 Chilakaluripeta, Guntakal, Guntur, Kamalapuram, Krosur, Manopad, Medikonduru, Prathipadu, Tadikonda and Yerraguntla.

13 Addanki, Chimakurthi, Janakavaram, Kalluru, Narpala, Parkal, Ramagundam and Santhanuthalapadu.

WATER TAX

6.4 Non/short levy of water tax

As per the AP Water Tax Act, all lands receiving water for irrigation from a Government notified source of irrigation shall be subjected to water tax. Water tax is levied according to the source of irrigation in the locality. For this purpose, all major and medium irrigation sources shall be regarded as category-I and all other sources, which are capable of supplying water for not less than four months in a year shall be regarded as category-II. Based on this categorisation, water tax is levied according to the source of irrigation in the locality. As per the instructions issued by the CCLA, read with instructions issued in Board Standing Order *Jamabandi* is required to be conducted immediately after the close of the fasli year, so as to finalise the settled demand in respect of water tax. The Jamabandi of annual settlement comprises a detailed scrutiny of the village and taluk registers and accounts with the object of ascertaining whether all items of Land Revenue, including careful inspection of cultivable and poromboke (Government) lands, have been properly determined and brought to account and whether the statistics prescribed for economic and administrative purposes have been correctly complied. However, no return has been prescribed by the Department for watching the progress in completion of jamabandi by each mandal.

We noticed (between November 2010 and December *2011*) during the test check of the records of the offices of nine Tahsildars[14] that water tax amounting to ₹ 94.90 lakh was either not levied or was levied short by the Tahsildars during the period from 1 July 2001 to 30 June 2002 (*fasli* year 1411) and 1 July 2003 to 30 June 2009 (*fasli* years 1413 to 1418).

After we pointed out the above cases, CCLA replied (July 2012)

- In respect of Chejerla, Manubolu and Pellakur Tahsildars, short levy
- (₹ 39.48 lakh) had been included in the demand.
- In respect of Kothapet, Nagireddypet and Tenali, instructions were issued to collect the water tax short levied (₹ 22.70 lakh).
- As regards Kruthivenu, discrepancy in respect of area irrigated had since been rectified and the amount was being collected (₹ 14.48 lakh).

Tahsildar Parkal replied (May 2011) that water tax demand would be revised and included in 2009-10 *Jamabandi* and collection watched (₹ 4.76 lakh). Reply from Tahsildar, Nidamanoor is awaited (₹ 13.48 lakh)

[14] Chejerla, Kothapet, Kruthivennu, Manubolu, Nagireddypet, Nidamanoor, Parkal, Pellakur and Tenali.

We referred the matter to the Government in May 2012. Their reply has not been received (Janaury 2013).

6.5 Short realisation of revenue due to incorrect depiction of arrears of water tax

Article 8 of A.P. Financial Code Vol. I, stipulates that every departmental controlling officer should watch closely the progress of realisation of the revenues under his control and check the recoveries made against the demand.

We noticed (December 2009 and September 2011) during the test check of the *Jamabandi* records and Demand Collection Balance (DCB) statements of offices of two Tahsildars[15] that in one case, opening balance of arrears of water tax for the *fasli* year 1410 (1 July 2000 to 30 June 2001) was taken as 'nil' even though the closing balance for the *fasli* year 1409 (1 July 1999 to 30 June 2000) was ₹ 19.75 lakh. In another case, while carrying forward the opening balance of demand for the *fasli* year 1411 (1 July 2001 to 30 June 2002), an amount of ₹ 9.07 lakh was taken short. This was neither detected by the Tahsildars nor by the *Jamabandi* officers. This resulted in short realisation of revenue of ₹ 28.82 lakh due to incorrect depiction of demand in the DCB registers.

After we pointed out the cases, CCLA replied (July 2012) that

- In respect of Peddavaduguru, water tax was levied and an amount of ₹ 10.08 lakh was recovered
- In respect of Yeddanapudi, it was stated that demand would be included in *fasli* year 1418 and collected.

We referred the matter to the Government in May 2012; their reply has not been received (Janaury 2013).

6.6 Non-levy of interest on collected arrears

As per Section 8 of AP Water Tax Act, water tax payable by an owner in respect of any land shall be deemed to be public revenue due upon the land and the provisions of the AP Revenue Recovery (APRR) Act, 1864 shall apply. Further, under Section 7 of APRR Act, arrears of revenue shall bear interest at the rate of six *per cent* per annum.

We noticed (between March and November 2010) during the test check of the records of offices of three[16] Tahsildars that during the period from 1 July 2003 to 30 June 2010 i.e., *fasli* years 1413 to 1419, arrears of water tax amounting to ₹ 1.10 crore were collected. However, interest of ₹ 6.57 lakh[17] was not levied and collected. This resulted in short realisation of Government revenue of ₹ 6.57 lakh.

[15] Peddavadugur and Yeddanapudi
[16] Bhattiprolu, Narpala and Pamaru (K.Gangavaram).
[17] Calculated for one year in the absence of year wise collections.

After we pointed out the cases, the CCLA replied (July 2012) that

- In respect of Bhattiprolu, interest had been included in the demand for *fasli* year 1419.
- In respect of Pamarru, interest of ₹ 0.41 lakh had been collected; instructions were issued to collect the balance amount.
- Report from Tahsildar Narpala was awaited.

We referred the matter to the Government in May 2012; their reply has not been received (Janaury 2013).

CHAPTER VII

REVENUE DEPARTMENT

CHAPTER VII
REVENUE DEPARTMENT

Executive Summary

Background

Disaster management has moved from a reactive and relief-centric approach to a holistic and integrated approach covering prevention and preparedness measures in the pre-disaster phase; and mitigation, rehabilitation and reconstruction measures in the post-disaster phase. Andhra Pradesh is vulnerable to major natural disasters like cyclones, floods, earthquakes and droughts, as well as man-made disasters. We conducted a Performance Audit on disaster preparedness, covering the period 2007-08 to 2011-12, in five sampled districts (East Godavari, Khammam, Kurnool, SPS Nellore and Visakhapatnam). In addition to scrutiny of records at various offices, we also conducted verification of 126 cyclone shelters out of the 478 shelters in four test checked districts (except Kurnool).

Major Audit Findings

- Contingency plans for cyclones, floods and earthquakes had been prepared, and these listed out the detailed actions to be taken before, during and after the occurrence of the disaster. However, the status of district-level disaster planning in the five districts presents a mixed position. While in SPS Nellore and East Godavari districts, consolidated and comprehensive district disaster management plans were prepared every year and in timely fashion, in the other three districts, such plans were either not consolidated or not prepared in time.

- Shore stations and Early Warning Systems in East Godavari and SPS Nellore District were not functional. Most of the communication equipment (HAM radio, VHF sets and satellite phones) in four sampled districts was not in working condition. Cyclone kits were not procured in Visakhapatnam and SPS Nellore districts. Shelters meant for accommodating flood/cyclone victims were not properly maintained and no funds were provided by the Panchayat Raj Department for taking up repairs. Rescue boats with the Fisheries Department were in need of repairs/ replacement and no funds were provided.

- Financial management for disaster preparedness was deficient, with huge pendency of UCs and several instances of non-provision of funds in time, non-utilisation/delayed utilisation and irregular diversion of State Disaster Response Funds (SDRF).

Major Recommendations

- Annual District Disaster Management Plans should be prepared and consolidated in time. Early Warning Systems (EWS) for cyclones should be maintained properly and inspected periodically. Further, communication equipment and adequate quantity of cyclone kits should be available in the districts for relief and rescue operations during disasters.

- All shelters, which were unauthorisedly occupied by Government/private parties should be got vacated and maintained properly. Likewise, rescue boats not in fit condition, should be immediately repaired.

- Financial management of SDRF funds should be strengthened, and strict action initiated for non-utilisation/delayed utilisation of funds, as well as diversion of funds/irregular expenditure. Non-submission of UCs should be viewed seriously, and personal accountability of the concerned officials ensured for such non-submission.

7 Performance Audit on "Disaster Preparedness"

7.1 Disaster Management –Introduction

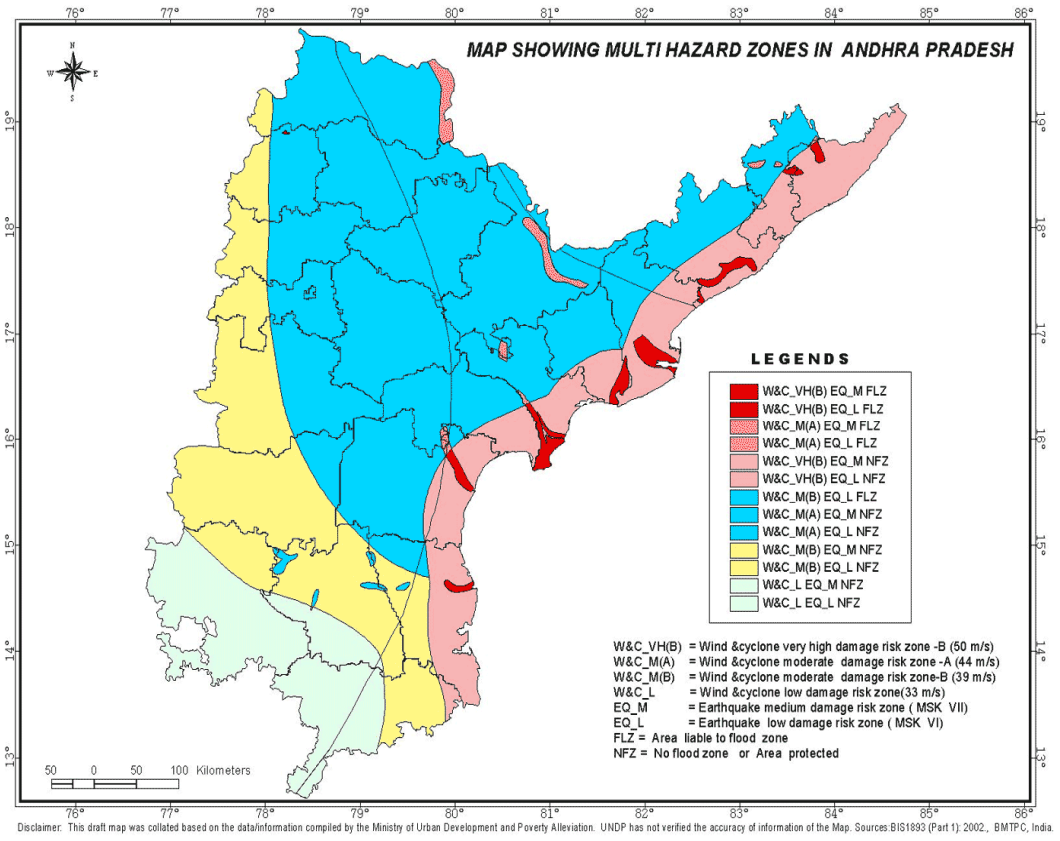
7.1.1 Disaster Management Act

Disasters are catastrophes, calamities or grave occurrences, arising either from natural or man-made causes, which result in substantial loss of life, human suffering, and/or damage to property/environment and whose nature or magnitude exceeds the coping capacity of the community of the affected area. Disaster management has moved from a reactive and relief-centric approach to a holistic and integrated approach covering prevention, mitigation and preparedness in the pre-disaster phase; and response, rehabilitation and reconstruction in the post-disaster phase.

In December 2005, the Government of India enacted the Disaster Management Act, 2005. The Act provides the legal and institutional framework for the effective management of disasters; under its provisions, the National Disaster Management Authority (NDMA) headed by the Prime Minister, State Disaster Management Authorities (SDMAs) headed by the Chief Ministers, and District Disaster Management Authorities (DDMAs) headed by the Collectors have been established. Further, the Act also provides for Disaster Management Plans at the national, State and District levels, as well as the creation of a National Disaster Response Fund and a National Disaster Mitigation Fund.

7.1.2 Andhra Pradesh – Vulnerability Profile

Andhra Pradesh (AP), with a 972 km long coastline, covers 274,000 square km of area on the east coast of India, and is vulnerable to major natural disasters like cyclones, floods earthquakes and droughts, as well as man-made disasters e.g. industrial/chemical hazards.



Vulnerability map[1] of Andhra Pradesh for major natural disasters

The vulnerability of AP to major natural disasters covers[2]:

- ***Cyclones and Floods***: According to the available disaster inventories, AP has suffered the most from the adverse effects of severe cyclones. It has been estimated that about 44 percent of AP's total territory is vulnerable to tropical storms and related hazards, while the coastal region suffers repeated cyclones and floods. Further, Khammam district in the Telangana region, Kurnool in the Rayalaseema region along with three districts in Coastal Andhra Pradesh are affected by monsoon floods.

- ***Earthquakes***: 34 per cent of Andhra Pradesh falls in Seismic Zone III[3], which has the possibility of earthquakes up to MSK intensity VII[4] or more. Major urban centres of the State with mushrooming apartments and commercial complexes are Hyderabad (Zone II) with population over 7.5 million, Visakhapatnam (Zone II) with population of over 2.0 million and Vijayawada (Zone III) with population over 1.8 million. Other important towns falling in zone III are Tirupati, SPS Nellore and YSR Kadapa.

1 Source: Hazard map of Andhra Pradesh – mapsof.net/map/hazard-map-of-andhra-pradesh

2 Source: Disaster Management Department. *(www.disastermanagement.ap.gov.in)*

3 Source: Categorized as per Seismic Zone map of India given in the earthquake resistant design code of India [IS 1893 (Part 1) 2002]

4 MSK (Medvedev-Sponheuer-Karnik) scale is an intensity scale for measuring the severity of earthquakes. The MSK scale has 12 intensity degrees from 'I-not perceptible' to 'XII-very catastrophic', with 'VII' corresponding to 'very strong'.

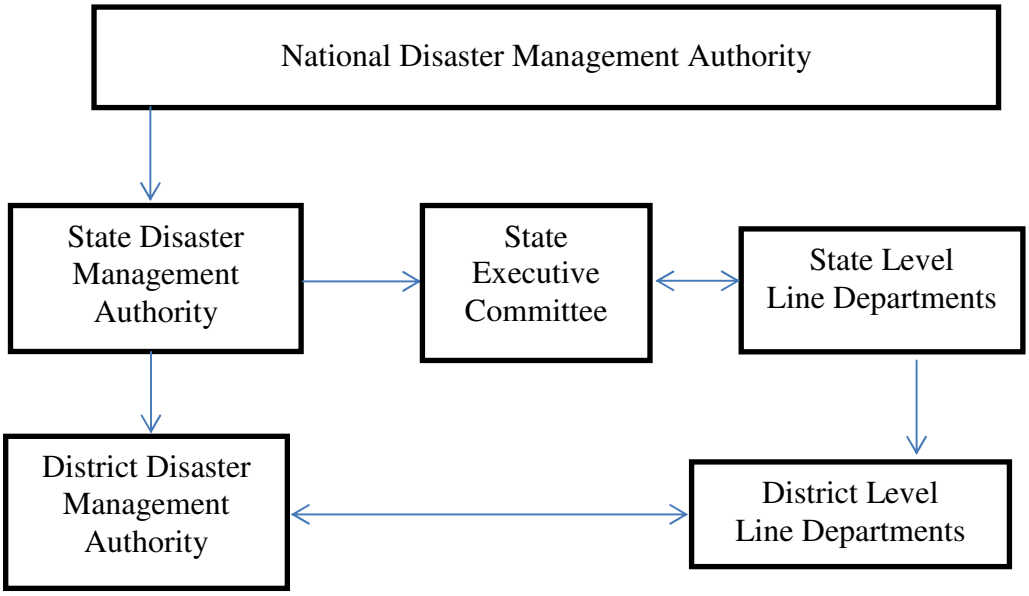
- ***Drought:*** Andhra Pradesh has historically been most severely affected by drought. The failure of monsoons has had a disastrous effect on the State's sizable agriculture for livelihood. Eight districts out of the 23 districts in AP are particularly vulnerable to drought viz., Anantapur, Chittoor, YSR Kadapa and Kurnool in Rayalaseema; Rangareddy, Mahabubnagar and Nalgonda in Telangana; and Prakasam in coastal Andhra. Together, these districts are home to about 30 million people and account for about 70 *per cent* of State wide crop production loss due to drought.

Cyclones generally occur during April/May and September to December, while floods occur during July to September. No specific periodicity of occurrence can be ascribed to forest fires, earthquakes and droughts.

The worst cyclonic disaster in Andhra Pradesh occurred in November 1977 in Krishna District (around Diviseema Taluka) with officially estimated loss of more than 10,000 lives. During the last decade there were 20 incidents of Cyclones/Floods causing a financial loss of ₹ 44,765.27 crore (includes cost of damages of 17.52 lakh houses and 50.74 lakh hectares of crops) and 1,021 human deaths.

7.1.3 Organisational arrangements for disaster management

Organisational Chart



A comprehensive institutional mechanism has been put in place by the Government of Andhra Pradesh (GoAP) for disaster preparedness and management. The nodal agency at the State level for disaster management is the Commissioner for Disaster Management & Ex-Officio Principal Secretary (CDM), who provides guidance and coordinates with other line departments for disaster preparedness work in accordance with the guidelines laid down by NDMA, and is responsible for preventive, relief and rehabilitation activities in the State.

At the District Level, the District Collector is responsible for overall coordination and implementation of disaster management at the district level. The Collector prepares the District Disaster Management Plan for the district, and monitors and ensures that the guidelines for prevention, mitigation, preparedness and response measures laid down by the SDMA are followed by all the line departments and the local authorities in the district.

Individual Line Departments (e.g., Panchayat Raj Department; Agriculture; Irrigation & CAD; Fire Services; Local Bodies; Power Discoms; Medical; Civil Supplies) discharge specific responsibilities relating to disaster preparedness within their jurisdictional area of operation.

7.2 Audit Approach

7.2.1 Audit Objectives

We conducted the performance audit with the objective of assessing the following:

- Whether the institutional and administrative arrangements for disaster management, as well as planning thereof, were adequate and effective;
- Whether early warning systems for natural disasters were adequate and effective;
- Whether communication and awareness programmes for target groups (including mock drills of disaster plans) were effective;
- Whether protective/preventive and preparatory measures for recurring disasters were adequate; and
- Whether allocation of funds was adequate, timely availability of funds was ensured, and funds were utilised efficiently and economically.

The main focus of the performance audit has been on cyclones and floods, given the State's vulnerability to these disasters.

7.2.2 Audit Criteria

The implementation of various components of disaster preparedness was evaluated with reference to the following criteria:

- Disaster Management Act, 2005
- National Policy on Disaster Management, 2009
- AP Disaster Management Rules, 2007
- Standard Operating Procedures for Disaster Management Manual published by GoAP.

7.2.3 Audit Methodology

In addition to State level issues, five districts[5] were selected based on vulnerability profile of AP, prepared by Commissioner for Disaster

[5] East Godavari, Khammam, Kurnool, SPS Nellore and Visakhapatnam.

Management, covering all the three regions (Coastal, Rayalaseema and Telangana) in the State for the Performance Audit on disaster preparedness covering the period from 2007-08 to 2011-12. We conducted field audit between June and September 2012, covering audit scrutiny of records of Commissioner for Disaster Management and Heads of Line departments at State level; and District Collector and other line departmental offices at the District levels. Our audit teams also conducted physical inspection of 126 cyclone shelters out of 478 shelters in four districts (excluding Kurnool).

7.2.4 Acknowledgement

We acknowledge the co-operation extended by the Commissioner for Disaster Management and other Departments of Government of Andhra Pradesh and their officials during the conduct of the Performance Audit. We held an Entry Conference on 7 June 2012 with the Commissioner for Disaster Management & Ex-Officio Principal Secretary to Government, Revenue (DM) Department along with other departmental officials, wherein the audit scope, objectives and approach was explained. We held an Exit Conference on 6 December 2012 with the Commissioner for Disaster Management & Ex-Officio Principal Secretary to Government, Revenue (DM) Department along with other departmental officials, wherein the audit observations were discussed in detail. The replies from the State Government are awaited. The responses furnished during the Exit Conference have been duly considered, while finalising the Report.

7.3 Audit findings

7.3.1 Institutional and Administrative arrangements for disaster management and planning thereof

7.3.1.1 State Disaster Management Authority (SDMA)

The State Disaster Management Authority (SDMA), which was constituted in 2007 under the provisions of the Central Disaster Management Act, is headed by the Chief Minister and includes other Cabinet Ministers as members. As per Rule 4(1) of AP Disaster Management Rules 2007 (Rules), the SDMA was required to meet at least once in three months. However, it met only twice between 2007-08 and 2011-12. No annual reports on its activities were prepared by the SDMA, though prescribed in the Rules.

7.3.1.2 State Executive Committee (SEC)

The State Executive Committee (SEC) was constituted in 2007 under the provisions of the Central Disaster Management Act. It is headed by the Chief Secretary to State Government, who is Chairperson, ex-officio; other members include Principal Secretaries/Secretaries of Finance; Panchayat Raj & Rural Development; Irrigation & Command Area Development, with the Commissioner for Disaster Management being the Member Convener. The SEC shall meet as often as necessary but at least once in three months as per Rule 8(6). However, only one meeting of the SEC was held in June 2008 till date.

7.3.1.3 District Disaster Management Authority (DDMA)

As per Rule 10 of the Andhra Pradesh Disaster Management Rules notified in November 2007, District Disaster Management Authorities (DDMAs) to be headed by the District Collectors were to be constituted. We observed in the five test-checked districts that while the DDMAs in East Godavari, Visakhapatnam and Khammam were constituted in November 2007, the DDMAs in Kurnool and SPS Nellore were constituted in April 2008 and May 2008 respectively. Further, as per Rule 11(1), the DDMAs were to meet at least once in three months each year. However, there was a shortfall of 65 *per cent* in DDMA's meetings in the test-checked districts during the last five years as shown in the following table:

Table 7.1 Shortfall in meetings of test-checked DDMAs

Sl. No.	Name of the District	Date of constitu - tion	No. of meetings to be held, meetings held and shortfall thereof													
			2007-08			2008-09			2009-10			2010-11			2011-12		
			TH	H	S	TH	H	S	TH	H	S	TH	H	S	TH	H	S
1.	East Godavari	11/2007	2	0	**2**	4	0	**4**	4	0	**4**	4	1	**3**	4	0	**4**
2.	Visakhapatnam	11/2007	2	2	**0**	4	2	**2**	4	1	**3**	4	2	**2**	4	3	**1**
3.	SPS Nellore	05/2008	4	0	**4**	4	2	**2**	4	1	**3**	4	2	**2**	4	2	**2**
4.	Kurnool	04/2008	4	0	**4**	4	3	**1**	4	4	**0**	4	1	**3**	4	2	**2**
5.	Khammam	11/2007	2	2	**0**	4	0	**4**	4	1	**3**	4	1	**3**	4	1	**3**

(TH-to be held; H-held; S-shortfall)

A scrutiny of the minutes of the meetings held revealed that responsibilities of the Line departments and the critical areas for pre-preparedness and post disaster situations were broadly discussed, which justified the purpose of holding these meetings. Not holding of these meetings resulted in non-consideration of such vital issues on a regular basis.

7.3.1.4 Planning for impending disasters

The SDMA had prepared a State Action Plan in 2010 and sent it to NDMA in February 2010, which returned the plan with suggestions for better implementation. CDM has also prepared manuals/contingency plans on cyclones (date not available), floods (1995) and earthquakes (2002). As regards District-level Plans, no calendar was prescribed in the Rules for preparation and finalisation of District Disaster Management Plans. However, the plans are prepared before the onset of the cyclone season. Generally, cyclones occur during April/May and October/November and floods occur during South-West Monsoon from July to October.

- As an example, the cyclone contingency plan lists out, with admirable clarity and detail, the action to be taken immediately before, during and after the occurrence of a cyclone by every Department. However, the plan does not appear to have been updated in the light of subsequent

technological and other developments (e.g., easy availability of mobile phones, internet/e-mail etc.)

We observed that

- In SPS Nellore and East Godavari, consolidated and comprehensive District Disaster Management Plans were prepared every year during the period 2007-12 and in timely manner[6]. While the district plans in SPS Nellore district were prepared and submitted to SDMA, the district plans in East Godavari district were not submitted to SDMA during 2007-12.

- In Visakhapatnam, individual action plans for major disasters (i.e., cyclone, floods and drought) were prepared every year in time by the concerned line departments such as Revenue, Agriculture, Medical, Fisheries; Fire Services; and Local bodies etc., involved in disaster preparedness. However, these Departmental plans were not consolidated, and an integrated District Plan was not prepared and submitted to the SDMA for any of the years from 2007 to 2012.

- In Kurnool, the plan was prepared for 2009-10 in time. However the plan for 2010-11 was prepared and sent to the SDMA only in April 2011. Further the plan for 2011-12 was reportedly under preparation (as of September 2012).

- In Khammam, district plans were prepared only for 2008-09 and 2010-11 and submitted to SDMA. But, these were not prepared in a timely manner.

Thus, the status of disaster planning in the five sampled districts presents a mixed position. While in East Godavari and SPS Nellore district the plans for recurring disasters like floods/cyclones were prepared in time, in the other three districts, such plans were either not consolidated or not prepared in time. This indicates lack of monitoring and control system at SDMA level for the timely preparation and consolidation of the disaster management plans.

Audit scrutiny also revealed that despite being provided for in the Standard Operating Procedures (SOP) Manual for Disaster Management published by GoAP, the following lacunae were found:

- No mapping of roads in the vulnerable areas in East Godavari district was done by the Roads & Buildings Department though action plans were prepared by the DDMAs. Further, no measures were taken to identify vulnerable roads and alternative routes for the transportation and evacuation of the residents of vulnerable areas to safer places.

- For the purpose of identification of vulnerability in urban areas, the Master Plan of Kakinada town (headquarters of East Godavari district) prepared as long back as in 1977 was required to be revised every 20 years by the Municipal Commissioner with the approval of Director of Municipal

[6] Specifically, before the onset of the cyclone season.

Administration. However, no revision took place till date. It was stated that the revision of Master Plan is under progress.

7.3.2 Early Warning Systems for natural disasters

7.3.2.1 Early Warning Systems for Cyclones

We found that after receipt of cyclone message/warnings from CDM, Hyderabad and the Cyclone Warning Centre, Visakhapatnam, the District Collectors immediately disseminate the same up to the mandal level through different modes of communication (SMS, e-mail, VHF sets etc.) and alert all the line departments concerned for preparedness work. However, we found the following deficiencies in the sampled districts:

- In East Godavari district, two shore stations[7] established at Balusutippa and Antharvedi became non-functional due to breakdown of the communication system after the effect of Jal Cyclone during November 2010. The status remained the same till date (June 2012), and no funds were provided for its restoration, although a proposal in this regard was submitted by the Assistant Director of Fisheries, Amalapuram, East Godavari district to the Dy. Director of Fisheries, Kakinada on 02 November 2011 to take up the issue with the Commissioner of Fisheries, Hyderabad.

- In East Godavari District, 30 Early Warning Systems (EWS) procured by Project Director, District Rural Development Agency (DRDA) with UNDP funds were installed in December 2008 but became unusable due to repairs within one year of their procurement and were not in working condition from October 2009 onwards. The District Collector, who is responsible for maintenance of the equipment, did not take any action either to get the systems repaired or to get new ones installed at the needy places in the district.

- In SPS Nellore district, 30 EWS were installed in 2008. The installation report showed that 12 systems were with low power battery and these were installed at places[8] where even power supply was not available, defeating the very purpose of their installation. The remaining 18 EWS, though in good condition, also became non-functional due to lack of maintenance. Thus, all the 30 EWS became non-functional. Further, we physically verified three sets kept at Indira Nagar SC colony; Utukuru P. Palem; and Pathapalem and found that they were either completely missing or their key parts were missing. Though the situation had been persisting for the last two years, as reported by the local residents, no action had been taken by the Revenue authorities. Also, no revenue

[7] To create shore-to-vessel communication system and to disseminate cyclone/weather forecast and to receive distress/SOS calls during urgency to safe guard lives and vessels at sea.

[8] Gangapatnam P.Palem, Karikadu, Kattuvapally, Kollapattu, Koridi, Kothapatnam, Madhavapuram, Meejuru, Mudivarthi SC Colony, Pathapalem, Srinivasasatram and Utukuru P.Palem.

authorities i.e., Tahsildars/Mandal Development Officers had noticed the same and reported these deficiencies to higher authorities. This indicates lack of monitoring by the concerned authorities for pre-disaster preparedness by the Revenue Department.

- Though a toll free number 1077 is functioning in the control rooms in all the Collectorates of the selected districts except Kurnool (where neither was a control room established nor was a toll free number in existence), this number could be accessed only through BSNL and Idea Networks, causing inconvenience to the public using other networks available for telecommunication in emergency during disasters. The District Collectors concerned promised to take necessary steps in this regard.

7.3.2.2 Early Warning Systems for Floods

We found the EWS for floods in all the test-checked districts to be adequate. Flood levels are being recorded by the offices of the Central Water Commission at various stations on an hourly basis. This data is collected during the flood season and analysed at Hyderabad using a computer simulated model of rivers to predict water levels for the next 24 hours. In turn, this information is communicated to the District Collectors concerned through wireless sets; HAM sets; Radio Sets; and Telephones for further dissemination.

7.3.2.3 Emergency Operation Centres at State and District Level

Emergency Operation Centres (EOCs) at State and District level are responsible for dissemination of warnings to all the line departments in the district. We observed in the test checked districts that the EOCs were equipped with latest technologies and communication facilities viz., telephones; computers with internet and fax; and wireless sets, with sufficient staff, and functioning satisfactorily round the clock during disasters.

7.3.3 Communication and awareness programmes for target groups (including mock drills of disaster plans)

We found that the Fisheries Department, in coordination with the Coast Guard and in association with District Fishermen Youth Welfare Association was conducting awareness meets/programmes in Visakhapatnam and East Godavari districts. However, in SPS Nellore district, no such programmes were conducted and the Fisheries department did not furnish any information in this regard. No awareness programmes were conducted in Kurnool and Khammam districts as there were no fishermen colonies. In East Godavari District, DD (Fisheries), Kakinada reported that most of the fishermen do not agree and cooperate for evacuation to safer places due to illiteracy and ignorance.

We also noted that publicity for inculcating awareness among the public for disaster preparedness was being given through organising photo exhibitions on post disaster events and publicity in local newspapers etc. Also, cyclone warnings were being circulated through fishermen societies.

Fishermen residing nearby seashore are generally well aware of the weather conditions, floods, cyclones etc., with their experience and information through media and other sources. Hence, in our opinion, this aspect does not appear to be a major risk factor for the fishermen.

We found that in all the five test-checked districts, the line departments viz., Revenue, Fire Services, Fisheries, Factories conduct mock drills every year as stated in their action plans. However, the number of mock drills to be conducted per year by them was not prescribed.

7.3.4 Protective/preventive and preparatory measures for recurring disasters

7.3.4.1 Communication equipment

We found that in four out of five sampled districts[9], a majority of the communication equipment (which were procured between 1992 and 1998) was not in working condition due to repairs, which could affect both disaster preparedness and relief. Details are given below:

Table 7.2 Status of Communication Equipment

Name of the District	Equipment available			In working condition			Not in working condition		
	HAM Radio	VHF Sets	Satellite Phones	HAM Radio	VHF Sets	Satellite Phones	HAM Radio	VHF Sets	Satellite Phones
East Godavari	10	92	03	0	92	0	10	0	03
Visakhapatnam	08	66	02	01	38	0	07	28	02
SPS Nellore	22	55	03	0	55	0	22	0	03
Khammam	27	10	0	0	02	0	27	08	0
Total	**67**	**223**	**08**	**01**	**187**	**0**	**66**	**36**	**08**

Thus, out of 67 HAM Radios available in four districts only one was functional; and none of the eight satellite phones in these districts was in working condition. Despite availability of funds the non-functional communication equipments were not repaired/replaced in Visakhapatnam and Nellore districts by the DDMAs.

7.3.4.2 Cyclone Kits/Stores

We observed that

- In East Godavari district, 10 cyclone kits[10] were procured in June 2010. Of these, 9 kits were allotted to needy places; and one kit kept in the Collectorate was lying idle though one highly vulnerable Mandal (Thondangi) needed the same. The Department, in reply, stated that the kit would soon be installed at Thondangi Mandal.

[9] No such communication equipment was procured in Kurnool District, which is not along the coastline.

[10] Comprising 35 items like life jackets, helmets, ropes, gas torch, rain coats, petromax lights, gloves, tapes, oxygen cylinder, first aid box etc.

- In Visakhapatnam district, although funds amounting to ₹ 70.50 lakh (₹ 50 lakh for procurement and maintenance of cyclone stores material and ₹ 20.50 lakh for maintenance and procurement of communication equipment) were provided by GoAP in June 2009, no cyclone stores material or any communication equipment were procured. It was replied that out of the amount of ₹ 70.50 lakh provided, an amount of only ₹ 5.60 lakh was utilised towards repairs and maintenance of existing VHF sets in the year 2009-10 and the balance amount had lapsed. GoAP had been addressed for revalidation of budget for the year 2010-11 but in vain, and no further funds were provided from 2010-11.

- Similarly, in SPS Nellore district, though funds amounting to ₹ 90.49 lakh (₹ 41.08 lakh for procurement and maintenance of cyclone stores material and ₹ 49.41 lakh for maintenance and procurement of communication equipment) were provided in June 2009, no cyclone kits/communication equipment were procured though the requirement for the kits was projected in the action plan by the Tahsildars. It was replied that due to administrative delays (non-receipt of relaxation of treasury control orders), the funds could not be utilised in time before lapsing of the budget. No further funds were provided from 2010-11 by the GoAP.

7.3.4.3 Cyclone Shelters

Cyclone shelters had been constructed between 1985 and 2001 in four out of the five test checked districts[11]. However, we found that since no funds had been released by GoAP for renovation and repairs of the shelters during 2007-12, their condition was very poor and they were not in a usable condition. In East Godavari district, no funds were released despite proposal being submitted (21.09.2011) to Government. In Visakhapatnam, the Panchayat Raj (PR) Department, which was responsible for construction/maintenance of cyclone shelters, did not furnish any information on release of funds. We observed from the physical and financial reports furnished for the last five years that no expenditure was incurred on repair works of cyclone shelters. In reply to an audit query Superintending Engineer (PR), SPS Nellore district stated that though the funds were released for repairs of shelters but it was not sufficient.

We conducted physical inspection of 126 shelters out of a total of 478 in four districts and noticed that only 29 out of 126 shelters were usable and the remaining 97 were unusable, either requiring major or minor repairs or in a dilapidated condition. The usable shelters were occupied by government agencies or private persons. The deficiencies noticed in the condition and maintenance of the 126 shelters are summarised below:

[11] The fifth district, Kurnool, is not prone to cyclones.

Name of the District	No. of shelters constructed	No. of shelters visited by audit team	Condition of the shelters visited
East Godavari	168	22	Insufficient accommodation; lacking basic amenities like drinking water, electricity, bath and toilets; unsafe due to leaky/damaged roof requiring major repairs. Two shelters were occupied by private persons; one each by Fair Price (FP) shop, Veterinary and Medical dispensary, GP/VRO office and library etc. Two shelters were located in low lying areas.
Visakha-patnam	141	36	Six shelters were in dilapidated condition, another 12 shelters required major repairs and were unsafe for living. Other shelters, though in usable condition, were lacking basic amenities. Two shelters were occupied by FP shops; one each by GP office, Veterinary dispensary and private milk centre; and two occupied by private families. Shelter at Gandivanipalem was occupied by BARC (Bhabha Atomic Research Centre) unit.
SPS Nellore	161	60	Shelter at Monapalem near sea shore, which was dismantled in 2000, was not rebuilt although 200 persons of the fishermen community were residing in that area. While five shelters were in dilapidated condition, the shelter at Ramdupalem was located within 100 metres from the sea coast and was in poor condition and unsafe for dwelling. The other shelters, though in usable condition, required major/ minor repairs, besides lacking basic amenities such as drinking water, electricity and bath/toilet facilities. Three shelters were occupied by FP shops; 12 by private persons; one each by GP office and private hospital; and two were occupied by PHCs. Shelter in the Collectorate was used by Government offices and SBI.
Khammam	8	8	Though each shelter was intended to accommodate 250 people, they could provide shelter for 80 people only. Shelter at VR Puram was used for residential purposes by MPDO and his staff. Two shelters at Jaggavaram village and one each at Kothur and Jeediguppa villages were in poor condition and lacked basic amenities like electricity, water and bath/toilet facilities.

Photographs taken during the field visit by the audit teams to the shelters indicate the poor status/irregular occupation of these shelters.

Toilets at Konapapet shelter in East Godavari District

Shelter in dilapidated condition at Dibbavanipalem-2 in Visakhapatnam District

Shelter at VR Puram used as staff quarter in Khammam District

Shelter at G.Palem used as FP shop in SPS Nellore District

The Revenue Department and Panchayat Raj Engineering Division are collectively responsible for inspection of the status of the shelters and maintenance of the shelters through periodic review respectively, to ensure proper upkeep. It is evident from the above that there was no proper watch on the status of the shelters and thus, most of the shelters were not fit for accommodating the cyclone victims in the event of any disaster.

7.3.4.4 Rescue Boats

As regards the status of rescue boats, audit scrutiny revealed the following:

- Since cyclones are recurring disasters in East Godavari district that generally occur during October – November every year, the rescue boats are required to be kept ready prior to occurrence of the cyclones. However, none of the 12 rescue boats available were in usable condition due to repairs. Deputy Director of Fisheries, Kakinada, East Godavari District replied (June 2012) that proposals were submitted to District Collector for release of Rs.3.22 lakh to take up repairs to the rescue boats.

- In Visakhapatnam district, though 10 out of 43 Mandals were very close to the seashore (within 1 to 2 Km), only 9 rescue boats were available with the Fisheries Department for evacuation of 1.5 lakh fishermen community residing in 70 hamlets of these Mandals. Even out of these nine boats, two were not in working condition. Thus, the availability of boats is not commensurate with the population residing in vulnerable Mandals. It was

replied that floods occurred in the district as far back as in 1990 and thereafter there was no such incidence and also all the fishermen were having their fishing crafts at their village. The reply is not acceptable, as the administrative machinery should be prepared for any eventuality and responsibility devolves upon them to take up rescue operations during disasters without depending on the fishermen themselves. It was also stated that a proposal was submitted to GoAP for sanction of new boats in place of damaged boats.

The Fisheries Department offices in East Godavari and Visakhapatnam districts admitted that due to lack of sufficient equipments like rescue boats, lifesaving equipments, fishermen safety kits etc., the evacuation of humans and their belongings to safer places became hazardous and was consuming more time during disasters.

- In SPS Nellore district, the JD (Fisheries) reported that out of five rescue boats only one was not usable. However, during field visit, we noticed that two more boats at Gudur and Tada were also not usable as depicted below. Hence, a total of three out of five boats were not in working condition.

Boat at Gudur

Boat at Tada

Further in the same district, although four Distress Alert Transmitter Systems (DATS) were procured (July 2012), they were not allotted to any of the boat owners of fishermen society so far and kept idle with the Joint Director of Fisheries, SPS Nellore. It was stated that the same would be distributed very soon. Further these systems appeared to be inadequate for the 21 fishermen boats in the district.

- In Khammam district, no rescue boats and lifesaving equipment were available with the Fisheries Department. It was stated that during disasters, private boats were hired for rescue operations in the district.

7.3.4.5 Buildings in dilapidated condition

In the Greater Hyderabad Municipal Corporation jurisdiction, 144 buildings were identified in dilapidated condition out of which only five were demolished. Notices were issued to the remaining 139 buildings during 2004-12, but no action was taken till date, though 53 were in most dangerous condition and unsafe for living.

7.3.5 Allocation and timely availability; and economic and efficient utilisation of funds

Budgetary position: The following table indicates the budget received under State Disaster Response Fund (SDRF) and expenditure incurred thereof:

Table 7.3: Receipts and Expenditure under SDRF

(₹ in crore)

Year	Opening balance	Amount received			Total funds available	Amount utilised	Closing balance
		Central share	State share	NCCF			
2007-08	Nil	284.51	94.84	-64.52	314.83	307.05	7.78
2008-09	7.78	298.73	69.78	29.82	406.11	425.98	Nil
2009-10	Nil	313.67	104.56	685.81	1104.04	1536.49	Nil
2010-11	Nil	381.63	127.21	474.78	983.62	1052.36	Nil
2011-12	Nil	300.71	133.57	850.72	1285.00	1207.09	77.91

(NCCF: National Calamity Contingency Fund)

We found financial management for disaster preparedness was deficient, with several instances of non-provision of funds in time, non-utilisation/delayed utilisation of State Disaster Response Fund (SDRF), non-submission of UCs for SDRF/UNDP funds, as well as numerous cases of irregular diversion of SDRF and non-remittance/improper remittance of SDRF. Details of the above deficiencies are summarised below.

7.3.5.1 Delayed Provision of Funds

We found that on many occasions, funds were released by the SDMA with delays ranging from three months to one year from the date of occurrence of disasters, defeating the very purpose of establishing the SDRF. The delay in release of funds is tabulated below:

(₹ in crore)

Sl. No.	Nature & Date of disaster	Date of reporting of loss by Depts.	No. & Date of issue of GO releasing funds	Amount	Delay from date of disaster
1.	Hail storm April 2010	03.05.10 by Horticulture Dept. 30.11.10 by Agriculture Dept.	315/28.09.10 389/11.12.10	19.36 3.43	5 months 7 months
2.	Drought in Kharif September 2009	12.10.09 by Agriculture Dept.	145/18.04.10	279.38	6 months
3.	Laila Cyclone May 2010	19.06.10 by MAU Dept.	312/18.09.10	84.39	3 months
4.	Laila Cyclone May 2010	11.06.10 by PR (R&B)	308/17.09.10	115.96	3 months
5.	Laila Cyclone May 2010	14.06.10 by AH Dept.	307/17.09.10	9.37	3 months
6.	Jal Cyclone Oct-Nov'2010	--NA--	316/05.12.11 730/25.06.11	259.88 88.15	12 months 7 months
7.	Heavy Rains/ floods - Dec'10	09.02.11 by Horticulture Dept.	157/06.06.11	35.94	6 months

In Visakhapatnam district during Kharif 2009, 42 Mandals were declared as drought affected in two spells (27 mandals in September 2009 and 15 mandals in December 2009) by the Government. As against the input subsidy requirement of ₹ 779.39 lakh, the District received (02.11.2009) only ₹ 439.17 lakh. Additional funds of ₹ 339.22 lakh were sought by the District Collector only in February 2010. But, due to non-receipt of detailed proposal with fresh enumeration list of farmers, no further funds were provided by the Government till May 2012.

7.3.5.2 Non-Provision of Funds

Audit scrutiny revealed that:

- Funds for maintenance/construction of shelters were not provided by the Government during 2007-12 in East Godavari district, although a proposal was submitted by the PR Department in April 2012 for repairs, renovation/ construction of 99 shelters at a cost of ₹ 173.80 lakh. Similarly, no funds were provided by Government for repairs to the cyclone shelters in Visakhapatnam and Khammam districts.

- Funds for restoration of two shore stations sought (2 November 2011) by AD (Fisheries), Amalapuram, East Godavari district were not provided so far by the Commissioner of Fisheries, Hyderabad.

7.3.5.3 Non-creation of State/District Disaster Mitigation Funds

Audit scrutiny revealed that the State Disaster Mitigation Fund, required to be created under the Disaster Management Act, had not been created for the reason that constitution of National Disaster Mitigation Fund is awaited. Further, in the five sampled districts, District Disaster Mitigation Funds (DDMFs), required to be created under the Disaster Management Act, had also not been created in any of the five test-checked districts for the same reasons.

7.3.5.4 Non-utilisation/delayed utilisation of SDRF

We found in test-checked districts that the SDRF amounts were either not utilised fully or utilised belatedly, as indicated below:

Amount (₹ in lakh)	Details of non-utilisation/delayed utilisation	Department's response
600.00	Funds receivable towards capacity building (13th Finance Commission grant in 2010-11) not released till March 2012 to the State.	It was stated that there was a delay in submission of plans/ proposals and mismatch of funds among various components by the Government.
275.28	In Visakhapatnam district, as against ₹ 696 lakh sanctioned	It was replied that the balance amount was not drawn due to freezing of budget.

Amount (₹ in lakh)	Details of non-utilisation/delayed utilisation	Department's response
	by Government for relief under Sampoorna Grameena Rozgar Yojana - SGRY (SC) works in 2008-09, an amount of ₹ 420.72 lakh only was drawn and disbursed between June 2008 and October 2009, leaving a balance of Rs.275.28 lakh, depriving the relief to the victims of drought affected Mandals.	
50.00	The amount released in June 2009 towards procurement of cyclone kits in East Godavari district was utilised only in December 2010, by which time four more cyclones had already struck the district.	It was replied that the delay was due to observance of tender procedure.
---	In East Godavari district, more than 20 per cent of the SDRF funds released towards payment of input subsidy to the farmers whose crops were damaged due to cyclones/floods remained unspent every year continuously between 2006 and 2010	It was stated that due to delay in receipt of information and finalisation of list of beneficiaries with joint verification by Agriculture and Revenue officials, the input subsidy could not be disbursed completely. This indicates lack of coordination between officials in the Agriculture and Revenue departments at village and mandal level in preparation/finalisation of enumeration lists.
---	Though 14 Mandals in East Godavari district were declared as drought affected in 11/2011, no funds were provided by Government till 31-03-12. Further, although ₹ 11 crore was provided in April 2012, no disbursements were made to the affected farmers so far defeating the very purpose of providing SDRF.	It was replied that action was being taken to credit the input subsidy directly to the individual bank accounts of the farmers as per the latest guidelines.

Amount (₹ in lakh)	Details of non-utilisation/delayed utilisation	Department's response
822.07	In Kurnool district, out of ₹ 4,655 lakh released (2009-10) towards FDR (Flood Damage Repairs) works, an amount of ₹ 3832.93 lakh was utilised as of June 2012 and the balance of ₹ 822.07 lakh was lying with the Municipal Corporation.	It was replied that the balance amount would be utilised for restoration of permanent works for which tenders were already called for in April 2012. Due to non-availability of sand and fluctuation of rates the works were delayed. The reply is not acceptable since the unspent funds should be remitted to Govt.
90.00	Though ₹ 90 lakh was provided in 2007-08 for water supply schemes for the year 2007-08 to RWS, Visakhapatnam, the amount was utilised between 2007-12, i.e., over a period of 5 years and still there was a balance of ₹ 2.04 lakh available with the department.	It was replied that the balance amount would soon be spent.

7.3.5.5 Non-submission of Utilisation Certificates

As per information furnished by Commissioner, Disaster Management, ₹ 4709.53 crore was released from the SDRF to various departments during 2007-12. Although the guidelines stipulated submission of UCs for SDRF funds, the UCs for ₹ 4024.38crore[12] of funds released during 2007-12 (constituting 85.45 per cent of the funds released), had not been received, which reflects extremely deficient financial management.

The Commissioner for Disaster Management, GoAP, during the exit conference stated that audited UCs for ₹ 3829.32 crore were to be received, as of November 2012, from different Heads of Departments for the CRF/SDRF amounts released during the years 2005-06 to 2011-12, major among them pending from the Commissioner, Agriculture (₹ 1806.88 crore), Engineer in Chief (Panchayat Raj Department) (₹ 456 crore), Engineer in Chief (R&B) (₹ 440.16 crore), Commissioner (MAUD) (₹ 319.93 crore) and Engineer in Chief (RWS) (₹ 207.87 crore). It was also stated that the Commissionerate had been corresponding repeatedly with the various departments for submission of audited UCs.

[12] 2007-08 (₹ 205.67 crore); 2008-09 (₹ 258.97 crore); 2009-10 (₹ 1215.60 crore); 2010-11 (₹ 1078.74 crore); and 2011-12 (₹ 1265.40 crore).

Further, audit scrutiny in the test checked districts also revealed the following instances of non-submission of audited UCs:

Amount (₹ in lakh)	Audit Finding	Department's Response
7,101.22	In Kurnool district, the Collector drew ₹ 3101.22 lakh and ₹ 4000 lakh during 2007-08 and 2009-10, respectively, and disbursed to RDOs/Tahsildars/ DWMA/APSCSC Ltd. The audited UCs are still awaited.	It was replied that the audited UCs would soon be obtained from all the agencies concerned.
3,188.15	In Visakhapatnam district, the JD (Agriculture) drew ₹ 3188.15 lakh towards payment of input subsidy during 2007-12. Though an amount of ₹ 3004.05 lakh was disbursed and the unspent balance of ₹ 184.11 was remitted, the expenditure was not got audited by State Audit Department.	The Department promised to take early action in this regard.
202.50	In SPS Nellore district, the UCs for the expenditure out of the SDRF funds amounting to ₹.202.50 lakh released during 2008-12 and utilised for supply of drinking water during summer seasons by PH&ME Department were not furnished.	The Department stated that action would be taken to get the audited UCs from SPS Nellore Municipal Corporation and 5 Municipalities viz., Kavali, Gudur, Venkatagiri, Sullurpet and Atmakur.
150.46	As against ₹ 211.62 lakh provided to RWS, Visakhapatnam during 2007-12, audited UCs were still due for ₹ 150.46 lakh	It was replied that necessary action would be taken early.
149.50	In SPS Nellore District, the UCs for the expenditure incurred out of SDRF funds amounting to ₹ 149.50 lakh released in July 2009 and utilised for clearance of pending bills of PH&ME Department for supply of drinking water in Municipal Corporation limits relating to previous years were not furnished.	The Department stated that action would be taken to get the audited UCs from SPS Nellore Municipal Corporation and 5 Municipalities viz., Kavali, Gudur, Venkatagiri, Sullurpet and Atmakur.
102.00	UCs for UNDP funds amounting to ₹ 102 lakh released during 2007-12 were not received by the Commissioner for Disaster Management	It was replied that the audit of expenditure by State Audit Department was under process.

Amount (₹ in lakh)	Audit Finding	Department's Response
34.21	Audited UCs were not submitted by the EE, RWS, Nandyal for ₹ 34.21 lakh released during the year 2011-12 towards drought relief measures.	It was replied that the audit of expenditure by State Audit Department is under process.

7.3.5.6 Diversion of Funds and Irregular Expenditure

Audit scrutiny in the test checked districts revealed the following cases of diversion of funds towards inadmissible expenditure like office expenditure, payment of POL expenses, electricity charges, etc.

Amount (₹ in lakh)	Audit Finding	Department's response
275.80	In East Godavari district, an amount of ₹ 441.77 lakh was drawn on AC bill (April 2011) for supply of drinking water during summer, of which an amount of ₹ 275.80 lakh was spent, and a balance of ₹ 165.97 lakh remained unspent.	It was replied that the amount was spent as per the orders of the Government for supply of drinking water during summer. But, since the drinking water problem in summer was not a disaster, utilising the funds from SDRF for this purpose was not in order.
149.50	In SPS Nellore district, the SDRF funds amounting to ₹ 149.50 lakh released in July 2009 were utilised for clearance of pending bills of PH&ME Department for supply of drinking water in municipal corporation limits relating to previous years.	The Department did not furnish reply. But, as per Section 46 (2) of DM Act the SDRF amounts were to be used only for meeting the expenditure for providing immediate relief to the victims of cyclone, drought, earthquake, fire, flood, tsunami, hailstorm, landslide, avalanche, cloud burst and pest attack. Since the drinking water problem in summer was not a disaster, utilising the funds from SDRF for this purpose was not in order.
120.04	In SPS Nellore district, the SDRF funds amounting to ₹ 120.04 lakh released in	It was replied that the Government in

Amount (₹ in lakh)	Audit Finding	Department's response
	April 2008 were utilised for clearance of pending bills of Rural Water Supply department pertaining to previous years.	G.O.Ms.No.29, Revenue (DM) Department dt.18.04.2008 released the funds for clearance of pending bills only. But, as per Section 46 (2) of DM Act the SDRF amounts were to be used only for meeting the expenditure for providing immediate relief to the victims of cyclone, drought, earthquake, fire, flood, tsunami, hailstorm, landslide, avalanche, cloud burst and pest attack. Since the drinking water problem in summer was not a disaster, utilising the funds from SDRF for this purpose was not in order.
57.34	The District Collector, Kurnool diverted ₹ 57.34 lakh from the SDRF funds (2009-10) towards repairs to office, Government vehicles and other contingent expenditure of other departments in the district.	It was replied that the amounts were disbursed as per the orders of the District Collector. The reply is not acceptable as the amounts were to be utilised for the purpose for which it was sanctioned.
41.49	In East Godavari district, supply of food and catering expenses incurred in October-November 2010 (for 8 days) was not supported by authenticated bills/vouchers; payments were made by obtaining hand receipts from the suppliers.	It was stated that since it was a part of immediate relief measures during calamity and food cannot be supplied through registered caterers/reputed hotels having TIN number/printed receipts etc. The reply is not tenable as in some cases, bills from registered suppliers were furnished by the Tahsildars (Kakinada Urban, Pithapuram and Inavilly). Further since the amounts

Amount (₹ in lakh)	Audit Finding	Department's response
		involved were substantial, expenditure should have been supported by authenticated bills/ vouchers.
33.22	In East Godavari district, payment of ₹ 33.22 lakh towards electricity charges of the office, POL charges of office vehicles and levelling of Police Parade Ground were made out of SDRF funds.	It was replied that due to non-availability of sufficient budget, the SDRF amounts were utilised on reimbursement basis. However, we observed that no reimbursements were made so far.
26.50	In Kurnool district, an amount of ₹ 34.50 lakh was diverted from SDRF for payment of ex gratia to suicidal deaths of farmers in two spells during 2009-10, on reimbursement basis. Out of this, ₹ 8 lakh was only reimbursed in December 2011.	It was replied that necessary action would be taken for early reimbursement of the SDRF amounts diverted.
2.42	In East Godavari district, printing charges of farmers' leasehold cards and exhibition of drama on the life of Jyothirao Phule were met out of SDRF funds amounting to ₹ 2.42 lakh.	
1.50	Payment of ex gratia in respect of one suicide death of farmer in Kajuluru Mandal of East Godavari district amounting to ₹ 1.50 lakh.	

7.3.5.7 Non-remittance/improper remittance of unspent funds

It was also observed that in the following cases in the test checked districts, SDRF amounts were either not remitted to the Government account or remitted to the Departmental receipt head of account, which is improper.

Amount (₹ in lakh)	Audit Finding	Department's Response
30.62	In Visakhapatnam district, out of a total release of ₹ 211.62 lakh, the EE, RWS retained the unspent funds of ₹ 30.62 lakh relating to the years 2007-12.	It was replied that the unspent funds would also be utilised for the future works.

Amount (₹ in lakh)	Audit Finding	Department's Response
		The reply is not acceptable as the unspent funds were to be remitted to Government.
25.82	In East Godavari district, out of the amount of ₹ 5 crore drawn between August 2010 and November 2010 for relief measures during floods and Jal Cyclone the unspent balance of ₹ 25.82 lakh was not remitted to Government account till date.	It was stated that the unspent funds would soon be remitted to Government account.
20.57	Out of ₹ 78.22 lakh drawn by Joint Director (Animal Husbandry), East Godavari district on 05.01.2011, an amount of ₹ 57.65 lakh was spent and the balance of ₹ 20.57 lakh was remitted on 03.12.2011 to departmental receipts HOA (0403-800-81-003).	It was stated that the unspent funds were remitted to departmental receipts head as ordered by the Director of Animal Husbandry, Hyderabad. The reply is not tenable as remittance of SDRF amounts to departmental receipts head of account was not proper.

7.4 Conclusion

The Performance Audit revealed a mixed picture about the preparedness of the State Government for disasters. Regarding the institutional arrangements, the State Executive Committee and District Disaster Management Authorities, though formed in all the test checked districts, did not meet at the stipulated frequencies. We found that the State Disaster Management Plan (SDMP), which spells out the policies and structure for State Government in management of disasters is still in the draft stage, even after seven years of commencement of the Act. As regards district plans, in SPS Nellore and East Godavari districts, consolidated and comprehensive district disaster management plans were prepared every year and in timely fashion. In Kurnool and Khammam districts, district plans were not prepared in time. However, in Visakhapatnam district, individual action plans were prepared by the concerned Line departments, but were not being consolidated.

While the system for transmission of cyclone warnings/messages by the District Administration though various modes of communication was effective, the EWS equipment in the test checked districts were either non-functional or unusable. The Emergency Operation Centres (EOCs) at the State and District levels were fully equipped and functioning satisfactorily, although the toll free number (1077) was functional only with BSNL & IDEA networks.

Awareness of preparedness for major natural disasters was, in our opinion, not a major risk factor and mock drills were being conducted by the Line departments every year.

Cyclone kits were not procured in Visakhapatnam and SPS Nellore districts. Also, shelters meant for accommodating flood/cyclone victims were not properly maintained and no funds were provided by the Panchayat Raj Department for taking up repairs. As revealed during our site inspections, non-monitoring of use of these shelters lead to irregular occupation by various departments/persons. Rescue boats with the Fisheries Department were in need of repairs/replacement and no funds were provided.

We found that financial management for disaster preparedness was deficient, with several instances of non-provision of funds in time, non-utilisation/delayed utilisation of State Disaster Response Funds (SDRF), as well as numerous cases of irregular diversion of SDRF and non-remittance/improper remittance of SDRF. We also observed that UCs for ₹ 4024.38 crore (constituting 85.45 per cent of the SDRF funds released during 2007-12) were due from the departments.

7.5 Recommendations

We recommend that

- Commissioner for Disaster Management needs to ensure that District Disaster Management Plans are prepared and consolidated every year in time, well before the projected onset of recurring disasters like cyclones and floods.

- Early Warning Systems (EWS) for cyclones should be maintained properly and a drill for periodical inspection of all EWS equipment before the cyclone season should be put in place.

- The Commissioner for Disaster Management needs to ensure that all the communication equipment and adequate quantity of cyclone kits are available in the districts for relief and rescue operations during disasters; and the funds provided from Government are fully / timely utilised by the DDMAs for procurement and maintenance.

- Shelters are meant to be available for use in times of cyclones & other disasters. All shelters, which were unauthorisedly occupied by Government/private parties (e.g. Panchayat Offices, Libraries, Dispensaries etc.), should be got vacated. Necessary funds must be provided to ensure repairs and maintenance of these shelters. There should be proper watch and ward and all the shelters need periodical inspection to ensure proper maintenance. Further, rescue boats not in fit condition, should be immediately repaired and for this purpose, necessary funds need to be provided by the Government / DDMAs.

- Financial management of SDRF funds is deficient, needs to be substantially strengthened, and strict action should be initiated against the

concerned Departments / officials for non-utilisation/delayed utilisation of funds, as well as diversion of funds/irregular expenditure. The non-submission of UCs for more than ₹ 4,000 crore of SDRF fund is completely unacceptable. Given the nature of disaster management works, it is difficult in most cases to withhold future releases, pending non-submission of UCs for earlier releases. However, if UCs are not submitted within 3 months, the concerned officials should be held personally accountable.

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