



**Report of the
Comptroller and Auditor General of India
on
Revenue Sector
for the year ended March 2013**



Government of Odisha
Report No. 4 of the year 2014

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TABLE OF CONTENTS

	Reference to	
	Paragraph	Page
Preface		vii
Overview		viii
CHAPTER-I : GENERAL		
Trend of revenue	1.1	1
Response of the Departments / Government towards audit	1.2	3
Inadequate corrective action on audit observations	1.2.1	4
Departmental Audit Committee meetings	1.2.2	5
Non-production of records to Audit for scrutiny	1.2.3	6
Response of the Departments to the Draft Audit Paragraphs	1.2.4	6
Follow up on Audit Reports	1.2.5	6
Compliance to the earlier Reports – Position of recovery of accepted cases	1.2.6	7
Analysis of the mechanism for dealing with the issues raised by Audit	1.3	7
Position of Inspection Reports	1.3.1	8
Assurances given by Department/Government on the issues highlighted in the Audit Reports	1.3.2	8
Audit planning	1.4	9
Results of audit	1.5	10
Position of local audit conducted during the year	1.5.1	10
This Report	1.5.2	10
CHAPTER-II : VALUE ADDED TAX, CENTRAL SALES TAX, ENTRY TAX AND PROFESSION TAX		
Executive summary	-	11
Tax administration	2.1.1	12
Trend of receipts	2.1.2	13
Assessee profile under the OVAT Act	2.1.3	15
Arrears in assessment	2.1.4	15
Analysis of arrears of revenue (Sales Tax Cases)	2.1.5	16
Cost of collection	2.1.6	16
Analysis of collection	2.1.7	16
Analysis of arrears of revenue	2.1.8	17
Working of Internal Audit Wing	2.1.9	17

	Reference to	
	Paragraph	Page
Impact of Audit	2.1.10	17
Audit on “Deduction of Tax at Source from works contractors”	2.2	19
Other Audit observations	2.3	27
Non-observance/compliance of the provisions of the Act and Rules read with Government notifications	2.4	27
Short levy of tax due to application of lower rate of tax	2.4.1	28
Short levy of tax due to incorrect application of Norm	2.4.2	29
Escapement of tax on ‘Cotton Yarn’	2.4.3	30
Non levy of Tax on Duty Entitlement Pass Book	2.4.4	31
Non levy of penalty for non submission of Certified Report on Annual Audited Accounts	2.4.5	32
Non realisation of demanded tax and penalty	2.4.6	33
Non levy of interest and penalty for delayed payment of tax	2.4.7	34
Inadmissible ITC on spare parts of machinery	2.4.8	35
Short collection of tax	2.4.9	36
Non levy of penalty on audit assessment	2.4.10	37
Non-levy of penalty for non-amendment of Registration Certificate	2.4.11	38
Short levy of tax due to application of lower rate of Tax	2.4.12	39
Non-observance/compliance of the provisions of the Central Sales Tax Act/Rules read with Government notifications/executive orders	2.5	40
Excess adjustment of Input Tax Credit against Central Sales Tax payable	2.5.1	40
Short- levy of tax due to application of lower rate of tax	2.5.2	41
Non- levy of penalty for misutilisation of declarations in Form ‘C’	2.5.3	42
Non-levy of penalty on audit assessment	2.5.4	43
Short levy of Tax due to irregular allowance of concessional rate of tax against duplicate declarations in Form ‘C’	2.5.5	44
Non-observance/compliance of the provisions of Odisha Entry Tax Act/ Rules read with Government notifications	2.6	45
Non levy of Entry Tax on scheduled goods	2.6.1	45
Non-levy of Entry Tax on imported scheduled goods	2.6.2	46

	Reference to	
	Paragraph	Page
Short levy of Entry Tax on scheduled goods	2.6.3	47
Non levy of penalty on audit assessment	2.6.4	48
CHAPTER-III : MOTOR VEHICLES TAX		
Executive summary	-	49
Tax administration	3.1.1	50
Trend of receipts	3.1.2	50
Analysis of Arrears of Revenue	3.1.3	51
Cost of collection	3.1.4	52
Working of Internal Audit Wing	3.1.5	52
Impact of audit	3.1.6	52
Results of audit	3.1.7	53
Audit observations	3.2	53
Non-compliance of the provisions of the Acts/Rules	3.3	53
Non/short-realisation of motor vehicles tax and additional tax	3.3.1	54
Non/short levy/realisation of motor vehicle tax from Private Service Vehicles due to non-adoption of new rates	3.3.2	56
Non-realisation of fines for offences in respect of goods carriages	3.3.3	57
Non/short levy of penalty on belated payment of motor vehicles tax and additional tax	3.3.4	58
Short realisation of One Time Tax due to non adoption of new rates	3.3.5	58
Non-realisation of differential tax from stage carriages	3.3.6	59
Non/short realisation of motor vehicles tax and additional tax from Stage carriages plying on inter State routes	3.3.7	60
Non/short realisation of tax on VCRs of stage carriages	3.3.8	61
Loss of Revenue due to issue of Improper Permits	3.3.9	62
Plying of Goods vehicles with expired fitness	3.3.10	63
Non-compliance of Government notification/decision	3.4	64
Non-realisation of process fees	3.4.1	64

CHAPTER- IV : STAMP DUTY AND REGISTRATION FEE		
Executive summary	-	65

	Reference to	
	Paragraph	Page
Tax administration	4.1.1	66
Trend of receipts	4.1.2	66
Cost of collection	4.1.3	67
Impact of audit	4.1.4	67
Results of audit	4.1.5	67
Audit of “Levy of Stamp Duty and Registration Fee on Development Agreements”	4.2	68
Audit observations	4.3	72
Non-observance of the provisions of the Acts/Rules and Government instructions	4.4	72
Short Realisation of Stamp Duty & Registration fee due to omission of Land Development Cost	4.4.1	73
Short realisation of revenue due to under valuation	4.4.2	74
Short realisation of Stamp Duty and Registration Fee due to omission of ground rent and cess from the consideration money	4.4.3	76
Short-realisation of Stamp Duty and Registration Fee due to wrong of calculation/omission of cost of building	4.4.4	78
CHAPTER-V : STATE EXCISE DUTY AND FEES		
Executive summary	-	79
Tax administration	5.1.1	80
Trend of receipts	5.1.2	80
Analysis of arrears of revenue	5.1.3	81
Cost of collection	5.1.4	81
Impact of audit	5.1.5	82
Working of Internal Audit Wing	5.1.6	82
Results of audit	5.1.7	82
Audit observations	5.2	83
Non-observance of the provisions of the Acts/Rules/AEPs and instructions of Government	5.3	83
Non-realisation of differential State Excise Duty on Annual closing stock	5.3.1	83
Non-realisation of differential duty on belated arrival of stock at the OSBC depots	5.3.2	84
Non-realisation of differential duty on IMFL from OSBC Ltd. due to revision of landing cost	5.3.3	84
Irregularities in settlement of IMFL OFF shops resulted in loss of revenue	5.3.4	85

	Reference to	
	Paragraph	Page
State Excise Duty on spoilt Beer	5.3.5	87
Non-realisation of State Excise Duty on short lifting of MGQ of Country Spirit	5.3.6	88
Non-realisation of State Excise Duty on short lifted quantity of IMFL and Beer	5.3.7	89
Non-realisation of Establishment cost and extra hour operation charges	5.3.8	90
Non/Short- realisation of Depot License Fee	5.3.9	91
Non-realisation of Label Registration Fee on liquor stored/sold at OSBC godown	5.3.10	92
Non-demand of Utilisation Fee on Molasses	5.3.11	92
Non-realisation of revenue on trading of Molasses without obtaining Trading Licence	5.3.12	93
Non-realisation of Transport Fee on Denatured Spirit	5.3.13	94
Short-realisation of State Excise Duty on excess wastage of spirit	5.3.14	94
Non-realisation of composite Label Registration Fee and User Charges	5.3.15	95
Short-realisation of Licence Fee from 'ON' Hotels	5.3.16	96
Short-levy of Transport Fee on Mohua Flower	5.3.17	96
CHAPTER-VI : MINING RECEIPTS		
Executive summary	-	97
Non-tax revenue administration	6.1.1	98
Trend of receipts	6.1.2	98
Analysis of arrears of revenue	6.1.3	98
Impact of audit	6.1.4	99
Results of audit	6.1.5	99
A Performance Audit on Working of Steel and Mines Department	6.2	100
Audit observations	6.3	124
Non-observance of the provisions of Act/Rules	6.4	124
Irregular raising, dispatch and retention of minerals without valid lease	6.4.1	125
Non-levy of royalty on low-grade Chromite fines shown as loss during beneficiation	6.4.2	126
Short assessment of royalty on iron ore	6.4.3	127
Non-levy of interest on belated payment of royalty	6.4.4	127
Short-levy of royalty on steam coal	6.4.5	128

	Reference to	
	Paragraph	Page
Short-levy of royalty on 'B' Grade E-auction Coal	6.4.6	128

ANNEXURES

No.	Particulars	Reference to	
		Paragraph	Page
1	Statement showing number of dealers those belatedly furnished the true copies of the certified annual audited accounts to the respective AAs	2.4.5	130
2	Statement showing non-levy of interest and penalty for delayed payment of tax	2.4.7	131
	Glossary	--	132

PREFACE

This Report is prepared for submission to the Governor of the State of Odisha under Article 151 of the Constitution of India.

The audit of revenue receipts of the State Government is conducted under Section 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971. This Report presents the results of audit of receipts comprising sales tax/value added tax, stamp duty and registration fees, taxes on vehicles, other tax and non tax receipts of the Government of Odisha.

The cases mentioned in this Report are among those which came to notice in the course of test audit of records during the year 2012-13 as well as those noticed in earlier years, but could not be reported in the previous Audit Reports; matters relating to the period subsequent to 2012-13 have also been included, wherever necessary.

The audit has been conducted in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India.

OVERVIEW

This Report contains 61 paragraphs and one Performance Audit (PA) relating to non/short levy of tax, interest, penalty, revenue foregone, etc., involving ₹ 6,195.38 crore. Some of the major findings are mentioned below:

I General

The total revenue receipts of the Government for the year 2012-13 amounted to ₹ 43,936.91 crore against ₹ 40,267.02 crore in the previous year. Of this, 52.60 *per cent* was raised by the State through tax revenue (₹ 15,034.13 crore) and non-tax revenue (₹ 8,078.04 crore). The balance 47.40 *per cent* was received from the Government of India in the form of State's share of divisible Union taxes (₹ 13,965.01 crore) and Grants-in-aid (₹ 6,859.73 crore).

(Paragraph 1.1.1)

Test check of records of assessment/collection of Value Added Tax including Sales Tax, Entry Tax, Profession Tax etc., Motor Vehicles Tax, Stamp Duty and Registration Fees, State Excise Duty, Mining Receipts during the year 2012-13 revealed under assessment/short-levy/loss of revenue, and other observations amounting to ₹ 13,428.22 crore in 1,63,150 cases.

(Paragraph 1.5.1)

II Value Added Tax, Central Sales Tax, Entry Tax and Profession Tax

Audit on “**Deduction of Tax at Source from works contractors**” revealed the following:

TDS and penalty was not effected by the TDAs against the works contractors of 114 works involving payment of ₹ 1.02 crore.

(Paragraph 2.2.4.1(a))

TDS of ₹ 88.18 lakh was short deducted by 22 TDAs due to application of lower rate of tax and penalty of ₹ 1.76 crore was not imposed.

(Paragraph 2.2.4.1(b))

Tax, and penalty of ₹ 1.17 crore was not levied due to incorrect application of Standard Input Output Norm for production of sponge iron against a dealer.

(Paragraph 2.4.2)

Tax, penalty and interest of ₹ 2.31 crore was not levied treating “cotton yarn” as tax exempted goods.

(Paragraph 2.4.3)

Tax and penalty of ₹ 1.3 crore was not levied on Duty Entitlement Pass Book against one dealer.

(Paragraph 2.4.4)

Penalty of ₹ 15.96 crore was not imposed on 5542 dealers for non-submission of certified report on the audited accounts within the prescribed period.

(Paragraph 2.4.5)

Demanded Tax and penalty of ₹ 2.54 crore was not realised from two dealers.

(Paragraph 2.4.6)

Interest and penalty of ₹ 1.04 crore was not levied against 704 dealers towards delayed payment of tax.

(Paragraph 2.4.7)

Penalty of ₹ 4.40 crore was not levied against seven dealers for availment of concessional rate of tax without supporting declarations and production of books of accounts during assessment stage.

(Paragraph 2.5.4)

Tax and penalty of ₹ 2.53 crore was not levied against two dealers in two Ranges due to improper classification of goods.

(Paragraph 2.6.1)

Tax and penalty of ₹ 3.21 crore was not levied against a dealer due to treating imported scheduled goods as non-scheduled goods.

(Paragraph 2.6.2)

Tax and penalty of ₹ 1.55 crore was not levied against two dealers in one Circle and one Range due to application of incorrect rate of tax.

(Paragraph 2.6.3)

Penalty of ₹ 55.26 lakh was not levied in audit assessment against four dealers in three Circles and one Range.

(Paragraph 2.6.4)

III Motor Vehicles Tax

Motor Vehicles tax and additional tax of ₹ 83.01 crore including penalty was not /short-realised in respect of 37,098 vehicles under different categories.

(Paragraphs 3.3.1.1 and 3.3.1.2)

Compounding fee of ₹ 0.62 crore was not realised from 866 goods vehicles carrying extra load.

(Paragraph 3.3.3)

Penalty of ₹ 0.18 crore was non/short realised in 65 cases for belated payment of tax and additional tax.

(Paragraph 3.3.4)

Process Fee of ₹ 1.08 crore in respect of 1.08 lakh cases was not realised from the vehicle owners.

(Paragraph 3.4.1)

IV Stamp Duty and Registration Fee

Audit on “Levy of Stamp Duty and Registration Fee on Development Agreements” revealed the following:

Government sustained loss of revenue of ₹ 10.74 crore towards stamp duty and registration fee due to misclassification of documents as Development Agreement instead of conveyance.

(Paragraph 4.2.2(a))

Due to registration of instrument as Collaboration Agreement instead of conveyance there was Short levy of SD and RF of ₹ 99.93 lakh.

(Paragraph 4.2.2(b))

Due to non-levy of Stamp Duty and Registration Fee as applicable to conveyance on Registration of Power of Attorney involving transfer of possession, there was Loss of revenue of ₹ 114.10 crore.

(Paragraph 4.2.3(a))

Due to non-levy of SD and RF on Agreement to Sell involving transfer of possession as conveyance there was short levy of ₹ 7.85 crore.

(Paragraph 4.2.3(b))

There was short fall in realisation of Stamp Duty & Registration fee amounting to ₹ 11.05 lakh due to non-inclusion of land development cost in the consideration money.

(Paragraph 4.4.1)

Under valuation of documents value, led to Short realisation of Government revenue of ₹ 69.63 lakh.

(Paragraph 4.4.2(b))

V State Excise Duty and Fees

Differential State Excise Duty of ₹ 2.15 crore on Annual closing stock of 2011-12 was not realised from OSBC.

(Paragraph 5.3.1)

Irregularities in settlement of IMFL OFF shops in Rayagada district led to revenue loss of ₹ 1.02 crore.

(Paragraph 5.3.4)

State Excise Duty of ₹ 72.45 lakh was blocked due to non-destruction of spoilt Beer in a brewery in Bolangir District.

(Paragraph 5.3.5)

State Excise Duty of ₹ 72.43 lakh was not raised on short lifting of MGQ of Country Spirit.

(Paragraph 5.3.6)

Depots were allowed to be operated by OSBC at Sambalpur, Balasore, Cuttack and Khurda without levy of Depot Licence Fee of ₹ 35 lakh.

(Paragraph 5.3.9)

Utilisation Fee of ₹ 11.21 lakh on short fall in utilisation of the MGQ of molasses was not realised from a distillery.

(Paragraph 5.3.11)

Molasses was allowed to be sold by four sugar factories without obtaining Trading Licence on payment of licence fee amounting to ₹ 12.80 lakh.

(Paragraph 5.3.12)

Transport Fee ₹ 37.22 lakh was not levied on Mohua Flower utilised by the licensees.

(Paragraph 5.3.17)

VI Mining Receipts

Performance Audit on “**Working of Steel & Mines Department**” and test check revealed the following:

- State specific Mineral Policy envisaging a long term strategy for conservation and development of minerals in the State was absent.

(Paragraph 6.2.8)

- Absence of specific time limit for processing and disposal of application for Prospecting Licence/Mining Lease/Renewal of Mining Lease and lapsed proposal of non operating mines at various levels resulted in delayed disposal of applications and consequent impact on revenue.

(Paragraphs 6.2.9.1 and 6.2.9.2)

- Grant of permission for operation of mines in violation of the Act/Rules led to irregular extraction of minerals.

(Paragraph 6.2.10.2)

- Irregular removal/storage of 47.42 lakh MT minerals valued at ₹ 552.50 crore remained undetected for a long period.

(Paragraph 6.2.11.1)

- Due to improper checking of permitted and despatched quantity of minerals, despatch of 37.23 lakh MT minerals valued at ₹ 75.16 crore in excess of the permitted quantity remained undetected.

(Paragraph 6.2.11.2)

- Due to incorrect assessment there was short levy of royalty of ₹ 273.23 crore.
(Paragraph 6.2.12.1)

- Absence of any time limit for disposal of seized mineral resulted in blocking of Government revenue.
(Paragraph 6.2.12.4)

The Department permitted irregular extraction and removal of 22.72 lakh MT iron and 439.7 MT manganese ore valued at ₹ 201.31 crore.

(Paragraph 6.4.1)

Royalty of ₹ 13.84 crore was not levied on 4.16 lakh MT low-grade Chromite fines and shown as loss during beneficiation.

(Paragraph 6.4.2)

Royalty of ₹ 9.12 crore was short assessed on 4.70 lakh MT minerals.

(Paragraph 6.4.3)

Interest of ₹ 5.92 crore was not levied on belated payment of royalty.

(Paragraph 6.4.4)

Royalty of ₹ 2.11 crore was short levied by the Department while computing royalty on steam coal.

(Paragraph 6.4.5)

CHAPTER-I: GENERAL

1.1 Trend of revenue

1.1.1 Tax and non-tax revenue raised by Government of Odisha during 2012-13, State's share of net proceeds of divisible Union taxes and duties assigned to the State, grants-in-aid received from Government of India (GoI) during the year and corresponding figures for preceding four years are mentioned in the table below:

		(₹ in crore)				
		2008-09	2009-10	2010-11	2011-12	2012-13
1.	Revenue raised by State Government					
	• Tax revenue	7,995.20	8,982.34	11,192.67	13,442.74	15,034.13
	• Non-tax revenue	3,176.15	3,212.20	4,780.37	6,442.96	8,078.04
	Total	11,171.35	12,194.54	15,973.04	19,885.70	23,112.17
2.	Receipts from Government of India					
	• State's share of net proceeds of divisible Union taxes and duties	8,279.96	8,518.65	10,496.86	12,229.12	13,965.01 ¹
	• Grants-in-aid	5,158.70	5,717.02	6,806.25	8,152.20	6,859.73
	Total	13,438.66	14,235.67	17,303.11	20,381.32	20,824.74
3.	Total revenue receipts of State Government (1+2)	24,610.01	26,430.21	33,276.15	40,267.02	43,936.91
4.	Percentage of 1 to 3	45.39	46.14	48.00	49.38	52.60

Source – Finance Accounts for the year 2012-13 of Government of Odisha

During 2012-13, revenue raised by State Government (₹ 23,112.17 crore) was 52.60 per cent of total revenue receipts against 49.38 per cent in the preceding year. The balance (₹ 20,824.74 crore) 47.40 per cent of receipts during 2012-13 was from the GoI. Increase of 3.22 per cent in revenue raised by State Government in 2012-13 cited above was partially attributable to 15.85 per cent reduction in Grants-in-aid from GoI.

1 For details, please see Statement No. 11- Detailed accounts of revenue by minor heads in the Finance Accounts of the Government of Odisha for the year 2012-13. Figures under the minor head 901-Share of net proceeds assigned to the States under the major heads 0020 – Corporation tax; 0021 - Taxes on income other than corporation tax; 0028 - Other taxes on income and expenditure; 0032 - Taxes on wealth; 0037 - Customs; 0038 - Union excise duties; 0044 - Service tax and 0045 - Other taxes and duties on commodities and services booked in the Finance Accounts under A-Tax revenue have been excluded from the revenue raised by the State and exhibited as State's share of divisible Union taxes.

1.1.2 The following table presents details of tax revenue raised during 2008-09 to 2012-13:

(₹ in crore)

Sl. No.	Heads of revenue	2008-09	2009-10	2010-11	2011-12	2012-13	Percentage of increase (+)/ decrease (-) in 2012-13 over 2011-12
1.	OVAT including Orissa Sales Tax (OST)	4,268.72	4,914.99	6,221.28	7,463.39	8,929.61	(+) 19.65
	Central Sales Tax (CST)	534.61	493.77	585.52	733.45	755.07	(+) 2.95
2.	Taxes and Duties on Electricity	365.03	459.96	458.06	551.65	590.48	(+) 7.04
3.	Land Revenue	348.79	292.18	390.66	521.47	420.21	(-) 19.42
4.	Taxes on Vehicles	524.43	611.23	727.58	787.99	746.19	(-) 5.30
5.	Taxes on Goods and Passengers	638.32	815.25	1,111.37	1,312.36	1,342.54	(+) 2.30
6.	State Excise	660.07	849.05	1,094.26	1,379.00	1,498.64	(+) 8.68
7.	Stamp Duty and Registration Fee	495.66	359.96	415.82	498.14	544.88	(+) 9.38
8.	Other Taxes and Duties on Commodities and Services	47.39	50.40	54.84	68.39	70.52	(+) 3.11
9.	Other Taxes on Income and Expenditure-Tax on Professions, Trades, Callings and Employments	112.18	135.55	133.28	126.90	135.99	(+) 7.16
Total		7,995.20	8,982.34	11,192.67	13,442.74	15,034.13	

Source – Finance Accounts for the year 2012-13 of Government of Odisha

Reasons for variations as reported by concerned Departments were as follows:

Odisha VAT (OVAT) including OST/ CST: Increase (CST 2.95 *per cent* and OVAT 19.65 *per cent*) was due to increase in business activities of industry sector and vigorous collection drive by Department.

However, 99.53 *per cent* of total revenue for 2012-13 towards OVAT/ST/CST was collected at pre-assessment stage and only 0.47 *per cent* was attributable to assessments by the Department.

Taxes on Vehicles: Decrease (5.30 *per cent*) was due to decline in trend of registration of new vehicles caused by recession, increase in number of vehicles issued NOC to operate/pay tax in other States and increase in number of vehicles that remained off-road.

Stamp Duty and Registration Fees: Increase (9.38 *per cent*) was due to revision of bench mark value, disposal of pending undervaluation (UV) cases by way of one time settlement (OTS) and efforts of IGR, Odisha as well as field functionaries for collection of arrears.

Other Departments did not furnish (December 2013) reasons for variation despite being requested (April 2013) and reminded (July 2013).

1.1.3 Non-tax revenue raised during 2008-09 to 2012-13 is detailed in the following table:

(₹ in crore)							
Sl. No.	Heads of revenue	2008-09	2009-10	2010-11	2011-12	2012-13	Percentage of increase (+)/ decrease (-) in 2012-13 over 2011-12
1	Non-ferrous mining and metallurgical industries	1,380.60	2,020.76	3,329.25	4,571.57	5,695.70	(+) 24.59
2	Interest receipts	654.67	379.23	260.84	576.38	588.25	(+) 2.06
3	Forestry and wild life	139.29	109.03	157.68	192.39	188.92	(-) 1.80
4	Irrigation & inland water transport	52.95	70.13	143.09	333.11	396.76	(+) 19.11
5	Other administrative services	9.38	56.48	11.06	16.07	12.76	(-) 20.60
6	Public works	38.31	41.99	48.79	47.16	49.77	(+) 5.53
7	Police receipts	22.25	36.69	38.45	36.18	52.62	(+) 45.44
8	Education	10.65	14.88	25.98	21.18	89.10	(+) 320.68
9	Medical and public health	32.18	12.96	19.55	37.12	10.55	(-) 71.58
10	Miscellaneous general services	388.85	11.60	412.29	86.86	225.60	(+) 159.73
11	Power	0.63	2.66	2.07	3.37	2.14	(-) 36.50
12	Co-operation	2.01	1.99	2.18	1.92	2.97	(+) 54.69
13	Other non-tax receipts	444.38	453.80	329.14	519.65	762.90	(+) 46.81
Total		3,176.15	3,212.20	4,780.37	6,442.96	8,078.04	

Source: Finance Accounts for the year 2012-13 of Government of Odisha

Reasons for variation as reported by respective Departments were as follows:

Non-ferrous mining and metallurgical industries: Increase (24.59 per cent) was due to enhancement of rate of the royalty on iron ore and chromite etc.

Forestry and Wildlife: Decrease (1.80 per cent) was stated to be due to less realisation of royalty on Kendu leaf from Odisha Forest Development Corporation Ltd (OFDC Ltd.) during the year 2012-13 as compared to year 2011-12.

Other Departments did not furnish (December 2013) reasons for variation, despite being requested (April 2013) and reminded (July 2013).

1.2 Response of Departments/Government towards audit

Audit observations on incorrect assessments, non/short-levy of taxes, duties, fees etc. not settled on the spot are communicated to Heads of the Offices (HoOs)/Departments (HoDs) through Inspection Reports (IRs). Departments

are required to take corrective measures and furnish compliance within one month. On the basis of the compliance, paragraphs are settled by the Principal Accountant General (E&RSA), Odisha (PAG). Pending paragraphs are discussed in Departmental Audit Committee (DAC) meetings to expedite settlement of the same. Important paragraphs of IRs, Performance Audit (PA) Reports are included in the Report of Comptroller and Auditor General of India (CAG) which is presented in the State Legislature and discussed in the Public Accounts Committee (PAC). Before such inclusion, paragraphs are forwarded to Government seeking their views which are required to be furnished within six weeks. After the Report of CAG (Audit Report) is placed in the Legislature, Departments are required to furnish compliance notes within three months. The PAC, on receipt of compliance notes, discusses the paragraphs and makes recommendations if required. Action Taken Notes (ATNs) on recommendations of the PAC are required to be furnished by Departments within six months. Issues raised in Audit Report are finally settled after the PAC discusses ATNs submitted by Departments.

Response of Departments/Government to audit at different stages of action are discussed in succeeding paragraphs 1.2.1 to 1.2.6.

1.2.1 Inadequate corrective action on audit observations

The PAG conducts periodical inspection of Departments of Government to test check transactions and verify maintenance of important accounts and other records as prescribed in the Act, Rules and procedures thereunder. These inspections are followed up through IRs incorporating irregularities detected during inspection and not settled on spot. IRs are issued to Head of the Offices (HoOs) inspected with copies to next higher authorities for prompt corrective action. HoOs/ Head of the Departments (HoDs)/ Government are required to comply with the observations contained in IRs, rectify the defects and omissions and report compliance through initial reply to the PAG within one month from date of issue of IRs. Serious financial irregularities are reported to HoDs and Government.

Audit reviewed position of IRs issued up to December 2012 and noticed that 7884 paragraphs involving ₹ 5,442.03 crore relating to 2376 IRs were outstanding at the end of June 2013. Out of these, 3952 paragraphs involving ₹ 1172.91 crore relating to 1180 IRs are more than five years old and 3377 paragraphs involving ₹3,893.44 crore relating to 1037 IRs are one to five years old and balance 555 paragraphs involving ₹ 376.68 crore relating to 159 IRs pertained to current year. Corresponding figures for preceding two years are also given below.

	June 2011	June 2012	June 2013
Number of outstanding IRs	3,267	3,597	2,376
Number of outstanding audit observations	9,712	10,270	7,884
Amount involved (₹in crore)	6,258.05	7,454.18	5,442.03

Source: As per data maintained in office of the Principal Accountant General

Department-wise details of IRs and audit observations outstanding as on 30 June 2013 and amounts involved are mentioned in the following table:

Sl. No.	Name of the Department	Nature of receipts	Number of outstanding IRs	Number of outstanding audit observations	Money value involved (₹ in crore)	Number of IRs against which first reply was not received
1.	Finance	OVAT including OST/CST/ET/Exp.	739	1799	870.30	44
		Entry tax	245	430	125.91	
		Profession Tax	8	11	16.95	
2.	Excise	State excise	257	591	244.95	45
3.	Revenue & Disaster Management	Stamp duty and registration fee	517	850	408.02	123
4.	Steel and Mines	Mining receipts	154	418	3073.12	5
5.	Transport	Taxes on vehicles and taxes on goods and passengers	423	3570	690.14	33
		OSRTC	29	202	11.84	
		Government press	4	13	0.81	
Total :			2,376	7,884	5,442.03	250

Source: As per data maintained in office of the Principal Accountant General

Even the first replies required to be received from HoOs within one month from the date of issue of IRs were not received for 250 IRs issued up to December 2012. This large pendency of IRs due to non-receipt of replies indicates that HoOs/HoDs are yet to initiate action to rectify the defects, omissions and irregularities pointed out by the PAG in IRs.

Audit recommends that Government may take suitable steps to put in place an effective procedure for prompt and appropriate response to audit observations and send necessary replies to IRs/paragraphs as per the prescribed time schedules so that appropriate action is taken to prevent loss of revenue and to recover outstanding demands in a time bound manner.

1.2.2 Departmental Audit Committee (DAC) meetings

Government set up DACs to monitor and expedite the progress of settlement of IRs and paragraphs in IRs.

In order to achieve above objective, it is necessary that DACs meet regularly and ensure that final action is taken in respect of all audit observations outstanding for more than a year, leading to their settlement. During 2012-13, 18 meetings were held by DAC of three Departments in which 7 IRs and 159 paragraphs involving ₹ 1.09 crore were settled. No DAC meeting was held during 2012-13 by Steel & Mines and Revenue & Disaster Management Department.

Audit recommends that Government may suitably instruct concerned Departments to conduct more DAC meetings and to take rectificatory action on all audit observations, particularly those which are pending since long.

1.2.3 Non-production of records to Audit for scrutiny

Programme of local audit of offices is drawn up based on risk analysis covering revenue earning units and Departments are intimated sufficiently in advance to enable them to keep the relevant records ready for audit scrutiny.

During 2012-13, tax assessment records numbering 1,219 under OVAT including OST/CST/Entry Tax relating to 47 Commercial Tax Offices² were not made available to Audit. Of these, 575 assessments relate to 2012-13 and remaining 644 cases relate to earlier years.

1.2.4 Response of Departments to Draft Audit Paragraphs

The Government of Odisha in Finance Department have instructed from time to time the Administrative Departments to submit compliance to Draft Audit Paragraphs (DPs) proposed by the PAG for inclusion in Audit Report, within six weeks from the date of receipt of such DPs. DPs are forwarded by the PAG to Principal Secretary/Secretary of the Administrative Department concerned through demi-official letters seeking confirmation of factual position and comments thereon within stipulated period of six weeks.

Audit forwarded 78 DPs (clubbed into 62 paragraphs including one PA) proposed for inclusion in this Report, to Secretaries/Principal Secretaries of respective Departments between April 2013 and December 2013 through demi-official letters with a request for verification of factual position and comments thereon. Demi-official reminders were also issued after expiry of six weeks time in each case. The Secretaries/ Principal Secretaries of Departments did not send replies to 44 DPs. Therefore, these paragraphs have been proposed for inclusion in report without response of the Departments concerned.

1.2.5 Follow up on Audit Reports

Finance Department instructions also envisage that explanatory memoranda in respect of paragraphs included in Audit Reports should be furnished to the Odisha Legislative Assembly (OLA) within three months from the date of placing of Report before the OLA.

A review of outstanding explanatory memoranda on paragraphs included in the Audit Reports (Revenue Sector) as of December 2013 disclosed that against 819 paragraphs covered in Audit Reports (Revenue Receipts/Sector) for the years 1993-94 to 2011-12, paragraphs numbering 184 were discussed in the PAC. Of remaining³, 499 paragraphs pertain to Revenue Sector. Departments had not submitted explanatory memoranda in respect of 56

² **Ranges** : Angul, Balasore, Bhubaneswar, Bolangir, Cuttack I, Cuttack II, Jajpur, Koraput, Puri, Sambalpur and Sundargarh.

Circles: Angul, Balasore, Barbil, Bargarh, Bhadrak, Bhanjanagar, Bolangir, Boudh, Bhubaneswar I, Bhubaneswar II, Bhubaneswar III, Bhubaneswar IV, Cuttack I (Central), Cuttack I (City), Cuttack I (East), Cuttack I (West), Cuttack II, Dhenkanal, Ganjam I, Ganjam II, Jagatsinghpur, Jajpur, Jatni, Jharsuguda, Kalahandi, Kantabanji, Keonjhar, Koraput, Mayurbhanj, Nayagarh, Puri, Rayagada, Rourkela I, Rourkela II, Sambalpur I and Sambalpur II.

³ One hundred and thirty six paragraphs have been transferred to General Sector, Economic Sector-I and Economic Sector-II.

paragraphs of Audit Reports (Revenue Receipts/Sector) for the years 2010-11 to 2011-12.

With a view to ensure accountability of executive in respect of issues dealt with in Audit Reports, the PAC has directed that the Department concerned should furnish ATNs on recommendations of PAC relating to paragraphs contained in Audit Reports within prescribed time frame. Audit noticed from the PAC Reports submitted during the 10th, 11th, 12th, 13th and 14th Assembly that 31 Reports containing 428 paragraphs/ recommendations were presented by the PAC before the Legislature between February 1991 and December 2012 after examination of Audit Reports (Revenue Receipts) relating to five Departments for years 1985-86 to 2006-07. However, ATNs have not been received in respect of 16 recommendations of the PAC from three Departments⁴ as of December 2013.

This indicates that executive is yet to take adequate prompt action on important issues highlighted in the Audit Reports/ PAC Reports that involve unrealised revenue.

1.2.6 Compliance to earlier Audit Reports – Position of recovery of accepted cases

In Audit Reports for 2007-08 to 2011-12, audit observations relating to under assessments, non/short-levy of taxes, loss of revenue, failure to raise demands, etc. involving ₹ 3,382.28 crore were included. Of these, as of June 2013, Departments concerned accepted under assessments and other deficiencies involving ₹ 1,856.25 crore and recovered ₹ 35.80 crore. Report wise details of amount accepted and revenue recovered are as under:

(₹ in crore)

Sl. No.	Year	Money value of Audit Report	Amount accepted by Department	Amount recovered
1.	2007-08	484.80	142.69	15.33
2.	2008-09	578.83	67.13	5.14
3.	2009-10	304.94	181.72	0.25
4.	2010-11	1,032.61	891.03	15.08
5.	2011-12	981.10	573.68	Nil
Total		3,382.28	1,856.25	35.80

Source: Data maintained in office of the Principal Accountant General

1.3 Analysis of mechanism for dealing with issues raised by Audit

Succeeding paragraphs 1.3.1 to 1.3.2.2 discuss performance of **Commerce and Transport Department** in dealing with cases detected in course of local audit conducted during last five years and also cases included in Audit Reports for the years 2008-09 to 2012-13.

⁴ Commerce & Transport, Excise and Steel & Mines Departments.

1.3.1 Position of Inspection Reports

The summarised position of IRs issued during last five years, paragraphs included therein and their status as of March 2013 is tabulated below:

(₹ in crore)

Year	Opening balance			Addition during the year			Clearance during the year			Closing balance		
	IRs	Para-graphs	Money value	IRs	Para-graphs	Money value	IRs	Para-graphs	Money value	IRs	Para-graphs	Money value
2008-09	306	2,925	336.43	43	309	71.99	5	232	9.62	344	3,002	398.80
2009-10	344	3,002	398.80	26	238	67.83	84	550	3.06	286	2,690	463.57
2010-11	286	2,690	463.57	38	350	104.16	Nil	35	0.33	324	3,005	567.40
2011-12	324	3,005	567.40	18	135	45.81	Nil	6	0.01	342	3,134	613.20
2012-13	342	3,134	613.20	58	350	99.36	Nil	Nil	0.04	400	3,484	712.52

Source: Data maintained in the PAG's office

In order to expedite settlement of pending IRs/paragraphs, 76 DAC meetings were held during above period wherein 89 IRs and 823 paras were settled.

Besides the above, during regular inspection of offices the pending IRs/paragraphs are reviewed on spot after obtaining compliance. Settlement of IRs/paragraphs are also made on receipt of compliance from Department and also on *suomoto* review of pending cases.

1.3.2 Assurances given by Department/Government on issues highlighted in Audit Reports

1.3.2.1 Recovery of accepted cases

Position of paragraphs included in Audit Reports for last five years, those accepted by Commerce and Transport Department and amount recovered is detailed in the table below:

Year of the Audit Report	Number of paragraphs included	Money value of the paragraphs (₹ in crore)	Number of paragraphs accepted	Money value of accepted paragraphs (₹ in crore)	Amount recovered during the year (₹ in lakh)	Cumulative position of recovery of accepted cases (₹ in crore)
2007-08	9	60.37	8	59.20	0.42	8.79
2008-09	8+1(R)	74.06	8	72.51	0.04	9.66
2009-10	7	71.42	6	69.98	10.47	11.38
2010-11	7+1(PA)	72.28	7	70.90	-	14.75
2011-12	12	84.34	11	83.05	-	-
Total	43+1(PA)+1(R)	362.47	40	355.64	10.93	44.58

Source: Data maintained in the PAG's office

Recoveries out of accepted cases as reported to audit come to 12.54 per cent during the period from 2007-08 to 2011-12. As arrear demands of Motor Vehicle Tax and Fee are recoverable under the Schedule appended to the respective Act and the Odisha Public Demand Recovery (OPDR) Act, 1962, Government may initiate cases for realisation of balance amount of accepted cases.

1.3.2.2 Action taken on recommendations accepted by Departments/ Government

Outcome of Performance Audits (PA) conducted by the PAG are forwarded to concerned Departments/Government through Draft PA Reports for their information with a request to furnish their replies/comments. These Reports are also discussed in an Exit Conference and Department's/Government's views are included while finalising the Audit Report.

Following table shows PAs undertaken in Commerce and Transport wing of Commerce and Transport Department featured in last six Audit Reports, issues highlighted, recommendations made and action taken by Government/ Department thereon including recommendations accepted by them.

Year of the Audit Report	Name of the PA	Number of recommendations made	Action taken by the Department
2005-06	Receipts from Motor Vehicles Department	4	Recommendations have been carried out by the Department. Steps have been taken to maintain the DCB Register, collect the arrears, dispose tax recovery cases and fill up the vacant post of Auditors.
2008-09	Information Technology Audit of VAHAN in the Motor Vehicle Department	7	Many recommendations have been carried out by the Department. Discussions and meetings had taken place with the designated service provider company at frequent intervals to eradicate short comings and delay in delivery of documents to the users.
2010-11	Computerisation in Motor Vehicle Department	4	The Government's compliances have not yet been received.

1.4 Audit planning

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. Annual Audit Plan is prepared on the basis of risk analysis which 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 Taxation Reforms Committee, Statistical Analysis of the revenue earnings during past five years, features of tax administration, audit coverage and its impact during past five years, etc.

Two hundred and forty five auditable units were planned and audited during the year 2012-13.

In Compliance Audit, two paragraphs on "Levy of Stamp Duty and Registration Fee on Development Agreements" and "Tax Deduction at Source from works contractors" and one Performance Audit (PA) on "Working of Steel and Mines Department" were also conducted to examine the efficacy of administration of these receipts.

1.5 Results of Audit

1.5.1 Position of local audit conducted during the year

From the test check of the records of 184 offices involved in assessment/ collection of OVAT (including OST)/CST/OET/PT etc., Motor Vehicles Tax, Stamp Duty and Registration Fee, State Excise Duty & Fees and Mining Receipts as well as one PA conducted during 2012-13, Audit noticed under assessment/ short-levy/loss of revenue etc., aggregating to ₹ 13,428.22 crore in 1,63,150 cases. During the year, Departments accepted under assessments and other deficiencies of ₹ 6,174.36 crore involved in 6,516 cases, of which 2,649 cases involving ₹ 6,166.08 crore were pointed out during 2012-13 and rest in earlier years. Departments collected ₹ 2.69 crore in 742 cases during 2012-13.

1.5.2 This Report

This Report contains 61 paragraphs including two paragraphs on “Deduction of Tax at Source from works contractors” and “Levy of Stamp Duty and Registration Fee on Development Agreements”, besides one Performance Audit on “**Working of Steel & Mines Department**” involving financial effect of ₹ 6,195.38 crore. The Departments/ Government have accepted audit observations involving ₹ 5,407.82 crore out of which ₹ 7.46 lakh has been recovered. Replies for the remaining cases have not been received (April 2014). These observations are discussed in the succeeding chapters II to VI.

CHAPER-II: VALUE ADDED TAX, CENTRAL SALES TAX, ENTRY TAX AND PROFESSION TAX

EXECUTIVE SUMMARY

Increase/decrease in tax collection.	In 2012-13, collection of taxes from Odisha Value Added Tax (OVAT) including Odisha Sales Tax (OST)/Central Sales Tax (CST), Odisha Entry Tax (OET) and Professional Tax (PT) increased by 18.15 <i>per cent</i> , 2.30 <i>per cent</i> and 7.16 <i>per cent</i> respectively in comparison to the actual collection of the previous year. Reasons for increase were attributed by the Department to increase in business activities of the industry sector and vigorous collection drive by the Commercial Tax (CT) wing of Finance Department (FD).
Working of Internal Audit Wing	Internal audit of various auditable entities of the CT wing of the FD has not been conducted since 2002-03 as the Internal Audit Wing (IAW) is not functional.
Low recovery by the Department against the observations pointed out by audit in earlier years	During the period 2007-08 to 2011-12, Audit pointed out non/short-levy and realisation, irregular allowance of exemption/set off of tax, non/short-levy of interest/penalty on tax with revenue implication of ₹ 1,061.99 crore in 24,497 cases. Of these, the Department/Government accepted audit observations in 131 cases involving ₹ 16.52 crore; but recovered only ₹ 0.91 crore in 25 cases. The recovery as compared to accepted audit observations was 5.5 <i>per cent</i> .
Results of audit in 2012-13	<p>In 2012-13, records of 52 units relating to OVAT, CST, OET and PT were test checked and audit on “Deduction of Tax at Source from works contractors” was also conducted. Cases of non/short-levy of tax/interest/penalty involving ₹ 438.02 crore in 2,860 cases were noticed.</p> <p>Department accepted underassessment and other deficiencies of ₹ 6.73 crore in 84 cases which were pointed out by audit during the year 2012-13 and in the earlier years. An amount of ₹ 0.39 crore was recovered in respect of ST, VAT and Entry Tax during the year 2012-13.</p>
Highlights	This Chapter contains Audit of “ Deduction of Tax at Source from works contractors ” with money value of ₹ 263.52 crore and other observations with money value of ₹ 56.35 crore relating to assessment and collection of OVAT, CST and OET in the offices of

the CT wing of the FD due to non-compliance of the provisions of the Acts/Rules.

It is a matter of concern that similar omissions have been pointed out by audit earlier also. The Department is yet to take adequate corrective action despite switching over to an IT-enabled system in all the CTOs.

Conclusions

The Department needs to improve the internal control system including strengthening and functioning of IAW to reduce recurrence of such omissions.

It also needs to initiate action to recover Government dues pointed out by audit especially in those cases where audit contention has been accepted.

2.1.1 Tax Administration

Assessment and collection of different taxes like Sales Tax, Value Added Tax, Entry Tax, Entertainment Tax, Luxury Tax and Profession Tax in the State are regulated under the erstwhile Odisha Sales Tax (OST) Act, 1947 (in force up to March 2005), the Central Sales Tax (CST) Act, 1956, the Odisha Value Added Tax (OVAT) Act, 2004, the Odisha Entry Tax (OET) Act, 1999, the Odisha Entertainment Tax (ET) Act, 2006, the Odisha Luxury Tax (OLT) Act, 1995 and the Odisha State Tax on Professions, Trades, Callings and Employments commonly known as PT Act, 2000 respectively.

Commissioner of Commercial Taxes (CCT) under the administrative control of Additional Chief Secretary, Finance Department, administers the above Acts and Rules made thereunder. For smooth tax administration, the State is divided into 12 Territorial Ranges which are sub-divided into 45 Circles and 14 Assessment Units (AUs) along with six Enforcement Ranges headed by Special Commissioners of Commercial Taxes (Enforcement), 15 Investigation Units (IUs) and six Vigilance Divisions headed by Addl. Commissioners to check inter/intra state tax evasions.

Under the provision of self-assessment in OVAT/OET Acts and CST (Odisha) Rules, 1957, dealers file returns and pay tax voluntarily, which are scrutinised by respective ACCTs/CTOs. In some cases Tax Audits are undertaken by audit teams headed by Range level officers with prior notice to dealers and thereafter Audit Assessments are made based on the Audit Visit Reports and additional taxes are demanded. However, Profession Tax (PT) is collected by the Assistant CTOs known as Assistant Profession Tax Officers (APTOS) under guidance of CTOs known as Profession Tax Officers (PTOs).

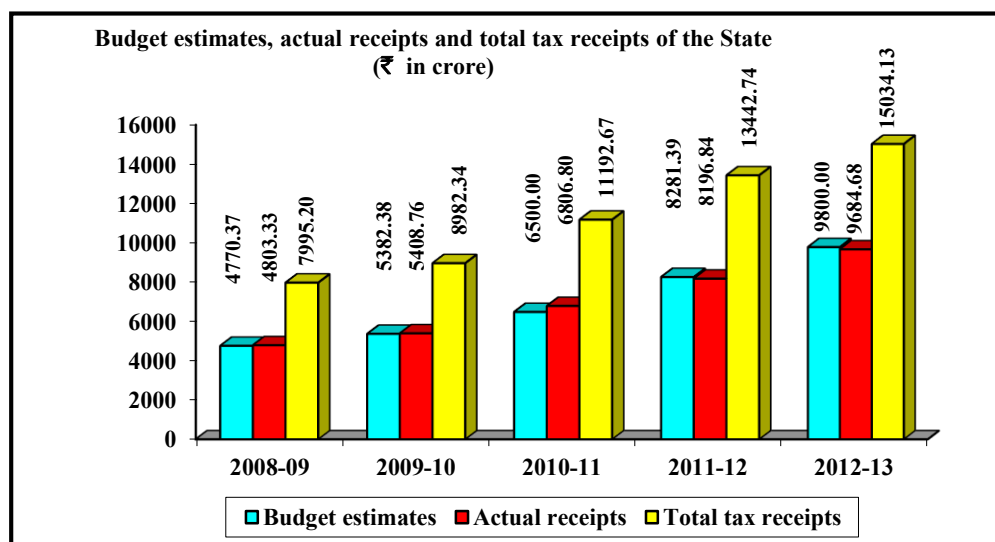
2.1.2 Trend of receipts

Actual Receipts from OST/OVAT/CST/OET/PT/ET and OLT during the last five years from 2008-09 to 2012-13 are as under:

A OVAT including OST/CST

(₹ in crore)

Year	Budget Estimates	Actual Receipts	Variation Excess (+)/ Shortfall (-)	Percentage of variation	Total Tax Revenue of the State	Percentage of Actual Receipts vis-à-vis total Tax Revenue of the State
2008-09	4,770.37	4,803.33	(+)32.96	(+)00.69	7,995.20	60.08
2009-10	5,382.38	5,408.76	(+)26.38	(+)00.49	8,982.34	60.22
2010-11	6,500.00	6,806.80	(+)306.80	(+)04.72	11,192.67	60.81
2011-12	8,281.39	8,196.84	(-)84.55	(-)01.02	13,442.74	60.98
2012-13	9,800.00	9,684.68	(-) 115.32	(-) 01.18	15,034.13	64.42



Source: CCT, Odisha

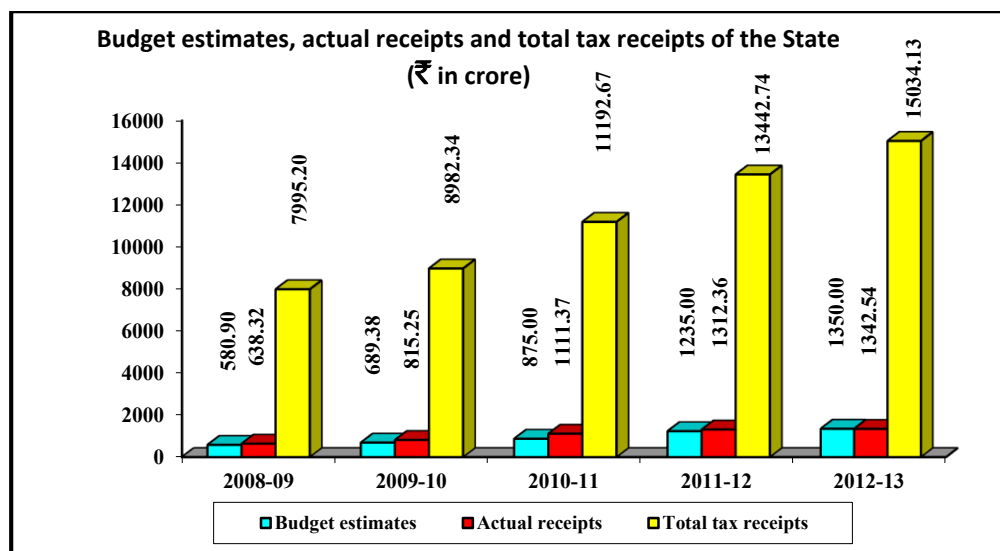
Trend of receipts showed that it increased from ₹ 4,803.33 crore in 2008-09 to ₹ 9,684.68 crore in 2012-13 (99.03 per cent) and its contribution to total Tax Revenue of the State varied between 60.08 per cent in 2008-09 and 64.42 per cent in 2012-13.

B Entry Tax

(₹ in crore)

Year	Budget Estimates	Actual Receipts	Variation Excess (+)/ Shortfall (-)	Percentage of variation	Total Revenue receipts of the State	Percentage of Actual Receipts vis-à-vis Total Tax Revenue of the State
2008-09	580.90	638.32	(+)57.42	(+)09.88	7,995.20	7.98
2009-10	689.38	815.25	(+)125.87	(+)18.26	8,982.34	9.08
2010-11	875.00	1,111.37	(+)236.37	(+)27.01	11,192.67	9.93
2011-12	1,235.00	1,312.36	(+)77.36	(+)06.26	13,442.74	9.76
2012-13	1,350.00	1,342.54	(-)7.46	(-) 0.55	15,034.13	8.93

Source: CCT, Odisha

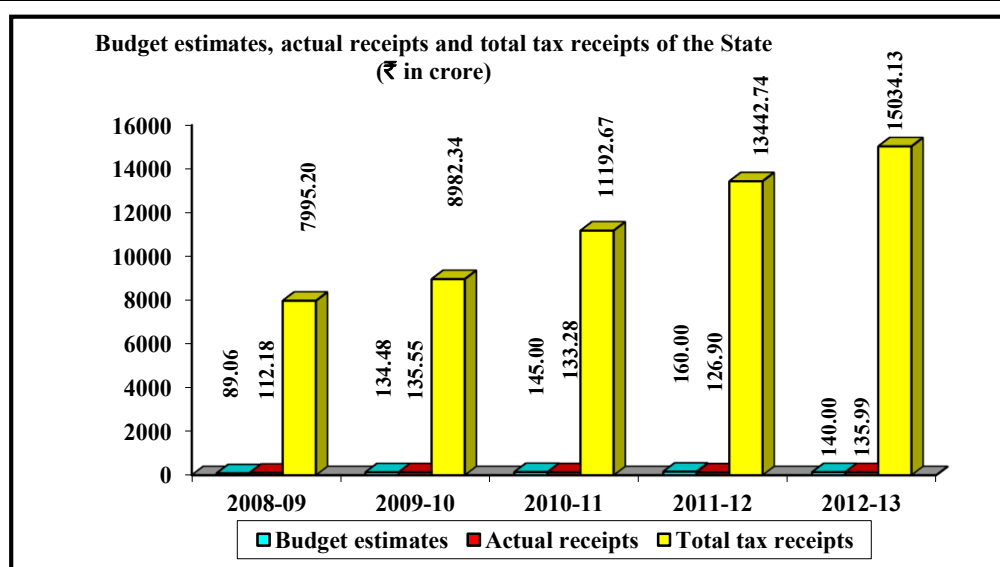


Trend of receipts showed that it increased from ₹ 638.32 crore in 2008-09 to ₹ 1,342.54 crore in 2012-13 (110.32 per cent) and its contribution to Total Tax revenue of the State varied between 7.98 per cent in 2008-09 and 9.93 per cent in 2010-11.

C Profession Tax

(₹ in crore)

Year	Budget Estimates	Actual Receipts	Variation Excess (+)/ Shortfall (-)	Percentage of variation	Total Tax Revenue of the State	Percentage of Actual Receipts vis-à-vis Total Tax Revenue of the State
2008-09	89.06	112.18	(+)23.12	(+)25.96	7,995.20	1.40
2009-10	134.48	135.55	(+)01.07	(+)00.80	8,982.34	1.51
2010-11	145.00	133.28	(-)11.72	(-)08.08	11,192.67	1.19
2011-12	160.00	126.90	(-)33.10	(-)20.69	13,442.76	0.94
2012-13	140.00	135.99	(-)4.01	(-)12.86	15,034.13	0.90



Source: CCT, Odisha

Trend of receipts showed that it increased from ₹ 112.18 crore in 2008-09 to ₹ 135.99 crore in 2012-13 and its contribution to total Tax Revenue of the State varied between 0.90 per cent in 2012-13 and 1.51 per cent in 2009-10.

Further, the contribution of Actual Receipts to the total Tax Revenue of the State showed a declining trend from 2009-10 onwards.

Audit recommends that the Department may take remedial measures to reverse the above trend by widening the tax net for Profession Tax.

2.1.3 Assessee Profile under the OVAT Act

Information furnished by the CCT on various types of dealers registered under the OVAT Act during the last three years (2010-11 to 2012-13) is given below.

Year	No. of LTU ¹ dealers	No. of TIN dealers other than LTU	No. of SRIN dealers	Total No. of dealers registered	No. of dealers required to file returns	No. of dealers who furnished returns in time	No. of dealers who have not furnished/ belatedly furnished returns	No. of cases where notices were not issued to the defaulted dealers
2010-11	670	1,01,268	24,594	1,26,532	1,26,532	1,00,706	25,826	12,026
2011-12	739	1,02,479	23,751	1,26,969	1,26,969	1,00,784	26,185	8,297
2012-13	713	1,05,213	13,009	1,18,935	1,18,935	79,629	39,306	11,554

Source: CCT, Odisha

Department stated that for ensuring cent *per cent* filing of returns by the dealers, the officers of the Department were taking statutory actions like suspension and cancellation of Registration Certificates (RCs) of non-existing dealers. During the year 2012-13 around 3,235 RCs were suspended and 15,040 RCs were cancelled for non-filing of return by the dealers.

The Government launched e-filing of return facility with effect from November 2010 and it was made mandatory for TIN dealers. Also, e-waybills were made fully system-generated (1 October 2012) based on the condition that the dealers have filed all tax returns under all Acts with payment of taxes due as per those returns. Steps were being taken to link issue of forms² with filing of returns under the CST Act for habitual non-filers. However, it was noticed that 11,554 returns were not filed during 2012-13 and notices were not issued to the defaulters as required under the Act.

2.1.4 Arrears in assessment

Details of assessment cases due under different Acts, cases disposed of during the year and pendency at the end of the year, 2012-13 were as under:

(Figures in numbers)

	OST	CST	OVAT	OET	PT	ET
(a) Opening Balance	6,429	1,090	2,343	3,619	52,897	160
(b) New cases due for assessment during the year 2012-13	0	0	4,253	0	21,739	43
(c) Total assessments due for 2012-13	6,429	1,090	6,596	3,619	74,636	203
(d) Cases disposed of during the year (by 31 st March 2013)	878	434	3,729	2,837	31,854	73
(e) Balance at the close of the year 2012-13	5,551	656	2,867	782	42,782	130
(f) Percentage of finalisation	13.65	39.81	56.53	78.39	42.67	35.96

Source: CCT, Odisha

The above position indicated that the number of assessment cases disposed of under the OST/CST/PT and ET Acts was low, being less than 50 *per cent* of

¹ LTU – Large Tax payers’ Units, TIN – Tax payer’s Identification Number, SRIN – Small Retailer’s Identification Number.

² C, F, H, E1 and E2 Forms.

the cases due for assessment during the year 2012-13.

The Department may take suitable measures to ensure early finalisation of the pending cases.

2.1.5 Analysis of arrears of revenue (Sales Tax Cases)

Position of arrears of revenue under the repealed OST Act for five years (2008-13) is given below:-

(₹ in crore)

Years	Opening balance of arrears	Additions during the year	Collection of Arrears by the end of the year	Closing Balance of Arrears
2008-09	1,034.05	38.66	11.33	1,061.38
2009-10	1,061.38	34.31	10.79	1,084.90
2010-11	1,084.90	01.37	05.16	1,081.11
2011-12	1,059.62*	8.95	7.39	1,061.18
2012-13	997.11*	214.93	9.23	959.12*

Source: CCT, Odisha

*Amounts of ₹21.49 crore, ₹64.07 crore and ₹243.69 crore were reduced in appellate forum during 2010-11 to 2012-13.

The Department did not furnish analysis of arrears. However, arrears reduced from ₹ 1,061.18 crore to ₹ 959.12 crore during last five years.

2.1.6 Cost of collection

Gross collection of tax revenue receipts under the Commercial Tax Wing of Department, expenditure incurred on their collection and percentage of such expenditure to gross collection during 2010-11, 2011-12 and 2012-13 along with all India average percentage of expenditure in collection to gross collection for the year 2010-11 is mentioned below.

(₹ in crore)

Head of Revenue	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure to collection	All India average percentage
Commercial Tax Organisation	2010-11	8,106.29	80.49	0.99	0.96
	2011-12	8,196.85	65.39	0.79	0.75
	2012-13	11,163.27	74.35	0.67	0.83

Source: CCT, Odisha

It is evident that the percentage of expenditure on collection of revenue is showing a decreasing trend and was below all India average percentage during 2012-13 by 0.16 per cent.

2.1.7 Analysis of collection

Breakup of total collection at the pre-assessment stage and after regular assessment of OST/CST/OVAT, OET, OLT, ET and PT for the year 2012-13 and the corresponding figures for preceding two years as furnished by the Department is mentioned in the following table.

(₹ in crore)

Head of Revenue	Year	Amount collected at pre-assessment stage	Amount collected after regular assessment (additional demand)	Amount of arrear demand collected	Amount refunded	Net collection as per Department	Net collection as per Finance account	Percentage of columns 3 to 8
1	2	3	4	5	6	7	8	9
Sales Tax/ VAT	2010-11	6,762.33	45.17	18.09	18.79	6,806.80	6,806.80	99.35
	2011-12	8,059.89	107.01	73.25	43.31	8,196.84	8,196.85	98.33
	2012-13	9,639.33	104.65	59.07	18.37	9,684.68	9,684.68	99.53
Entry Tax	2010-11	1,080.26	06.83	3.45	1.50	1,089.04	1,111.37	97.20
	2011-12	1,257.32	45.52	9.52	Nil	1,312.36	1,312.36	95.80

Head of Revenue	Year	Amount collected at pre-assessment stage	Amount collected after regular assessment (additional demand)	Amount of arrear demand collected	Amount refunded	Net collection as per Department	Net collection as per Finance account	Percentage of columns 3 to 8
	2012-13	1,246.95	69.38	26.20	Nil	1,342.53	1,342.53	92.88
Entertainment Tax	2010-11	3.35	0.00	0.07	Nil	3.42	3.42	11.70
	2011-12	7.74	1.26	0.09	Nil	9.09	9.09	85.15
	2012-13	9.56	Nil	0.22	Nil	9.78	31.36	30.48
Profession Tax	2010-11	125.26	0.14	0.13	Nil	125.53	133.28	93.98
	2011-12	126.11	0.36	0.46	Nil	126.93	126.90	99.38
	2012-13	134.49	0.54	1.03	Nil	136.06	135.99	98.85

Source: CCT, Odisha

Percentages of collection of tax at pre-assessment stage during last three years ranged between 98.33 per cent and 99.53 per cent in VAT; between 92.88 per cent and 97.20 per cent in Entry Tax; between 11.70 per cent and 85.15 per cent in Entertainment Tax and between 93.98 per cent and 99.38 per cent in Profession Tax.

2.1.8 Analysis of arrears of revenue

As per the information furnished by the Department, arrears of revenue as on 31 March 2013 under different Acts was ₹ 5,901.49 crore, which included ₹ 2,242.53 crore outstanding for more than five years. Demands amounting to ₹ 2,241.74 crore were stayed by the Supreme Court/ High Court/Departmental Authorities. Demands of ₹ 3,041.09 crore was covered by show cause notices, demands of ₹ 10.25 crore was covered under penalty and demands of ₹ 607.28 crore was covered under Certificate/ Tax Recovery (TR) Proceedings and ₹ 1.13 crore was proposed to be written off.

Above position indicates that amount of uncollected revenue as on 31 March 2013 was 52.53 per cent of the revenue of ₹ 11,233.73 crore collected under all Acts administered by the CCT during 2012-13.

Audit recommends that special efforts be made to collect arrears of revenue.

2.1.9 Working of Internal Audit Wing

The Department stated (August 2013) that the Internal Audit Wing was not functioning and steps were being taken to revive the same.

The Department may arrange for early functioning of the IAW with adequate staff.

2.1.10 Impact of Audit

2.1.10.1 Revenue impact

Year-wise details of units audited under ST/VAT, Entry Tax, PT Acts during the period 2007-08 to 2011-12 and impact of audit in terms of objections, their acceptance and recovery of amounts involved are given in the table below.

Years	No. of units audited	Amount Objected		Amount Accepted		Amount Recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2007-08	38	189	272.29	18	1.53	1	0.36

(₹ in crore)

Years	No. of units audited	Amount Objected		Amount Accepted		Amount Recovered	
		No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2008-09	44	340	310.61	20	2.49	2	0.08
2009-10	56	23,365	118.83	3	0.54	1	0.02
2010-11	60	275	94.07	10	0.42	1	0.01
2011-12	57	328	266.19	80	11.54	20	0.44
Total	255	24,497	1061.99	131	16.52	25	0.91

Source: Data maintained by the Principal Accountant General (E&RSA), Odisha

Recovery position as compared to accepted amount during last five years was low, being only 5.11 *per cent*.

Government may ensure prompt recovery of amounts involved at least in accepted cases.

2.1.10.2 Result of Audit

Test check of records of units relating to OST, OVAT, CST, OET and PT in commercial tax offices during 2012-13 besides audit on “**Deduction of Tax at Source from works contractors**” covering 24 Circles revealed non/short levy of tax, interest and penalty and incorrect allowance of ITC amounting to ₹ 438.02 crore in 2,860 cases.

During the year, Department accepted under assessment and other deficiencies of ₹ 6.73 crore in 84 cases which were pointed out by audit in 2012-13 and in earlier years and an amount of ₹ 0.39 crore was recovered in respect of ST, VAT and Entry Tax during the year.

2.2 Audit on “Deduction of Tax at Source from works contractors”

2.2.1 Introduction

The Odisha Value Added Tax (OVAT) Act, 2004 and Rules made thereunder provide for Deduction of Tax at Source (TDS) from the bills of the contractors by paying authorities called ‘Tax Deducting Authorities’ (TDAs). This issue, affecting tax liabilities of contractors and revenue of the State, was taken up by Audit to examine whether tax was correctly deducted at source, promptly remitted to Government account and system was in existence to monitor it.

The Commissioner of Commercial Taxes (CCT), Odisha, assisted by Sales Tax Authorities (STAs), administers the OVAT Act, 2004 and OVAT Rules, 2005 besides monitoring collection and remittance of TDS under overall control of the Finance Department.

2.2.2 Scope and methodology

Audit was conducted between April and July 2013 in 42³ out of 192 TDAs, covering periods from 2009-10 to 2011-12, selected on the basis of stratified random sampling method taking into consideration the financial materiality and risks involved. Besides, three undertakings⁴ and four Central Government Organisations⁵ were also covered. Audit collected information from TDAs executing works contracts and corroborated the findings with records of Sales Tax Authorities (STAs) of 24 Circles⁶ under the CCT who issued eight and above No Deduction Certificates (NDCs).

2.2.3 Trend of revenue collection from works contractors

Tax collected from works contractors, as compared to total tax receipts of the State under OVAT Act for last three years ending March 2012, was as follows:

(₹ in crore)			
Year	Total tax receipts of the State under the OVAT Act	Amount of tax collected from works contractors	Percentage of Col. 3 to 2
1	2	3	4
2009-10	4,915.00	297.94	6.06
2010-11	6,221.28	366.88	5.90
2011-12	7,463.38	477.33	6.40
Total	20,412.40	1,142.15	

Source: CCT Odisha

³ Roads and Buildings (R&B) Divisions (17): Angul, Bhubaneswar III & IV, Balasore, Bargarh, Cuttack, Ganjam I & II, Kendrapara, Keonjhar, Khurda, Koraput, Panikoili, Phulbani, Rairangpur, Sambalpur and Sundargarh. Rural Works (RW) Divisions(08): Bhubaneswar, Balasore, Cuttack I, Ganjam I, Koraput, Phulbani, Nuapada, Rayagada, Rural Water Supply and Sanitation (RWSS) Divisions (05): Bhubaneswar, Kendrapara, Nayagarh, Puri and Rayagada, Irrigation and Minor Irrigation Divisions(05): Bhanjanagar, Bhawanipatna, Gajapati, Kendrapara, Puri, Financial Advisor and Chief Accounts Officers (FA&CAOs) (02): Anandapur Barrage Project(ABP), Anandapur & Lower Indravati Irrigation Project(LIIP), Nuapada, Other Divisions (05): Drainage Division, Bhadrak: Telengiri Head Works Division, Ambaguda: Main Dam division, Burla, General Electrical Division (GED), Bhubaneswar and Project Management Unit, Odisha State Road Project, Bhubaneswar.

⁴ Odisha State Police Housing Welfare Corporation (OSPHWC), Odisha Mining Corporation (OMC) and Odisha Construction Corporation (OCC) Ltd.

⁵ Director, Biju Patnaik Airport, Bhubaneswar, Director, AIIMS, Bhubaneswar, Director, IIT, Bhubaneswar and Director, National Institute of Science and Research (NISER) at Bhubaneswar.

⁶ Circles: Angul, Bhubaneswar I, II, III, IV, Balasore, Bhadrak, Bhanjanagar, Bargarh, Cuttack I Central, Cuttack II, Dhenkanal, Jharsuguda, Jagatsinghpur, Jajpur, Koraput, Kendrapara, Nuapada, Phulbani, Puri, Rayagada, Sambalpur I & II and Assessment Unit: Talcher under Angul Circle.

Though tax collected from works contractors in absolute terms shows an increasing trend, percentage of its contribution to total collection under OVAT decreased during 2010-11 in comparison to earlier year. However, annual collection of TDS exclusively through TDAs of the State was not available with the CCT. Audit examined whether the provisions of the Act, Rules and executive orders issued from time to time were observed by all concerned in the matter of TDS.

2.2.4 Audit Findings

System and compliance deficiencies noticed in Audit are discussed in the succeeding sub paragraphs.

2.2.4.1 Deduction of tax from works contractors at prescribed rates

Under Section 10 of the Act, a works contractor, whose GTO during a period of twelve consecutive months exceeds the taxable limit of ₹ 50,000 shall be liable to pay tax. Under Section 54 (1), (2) and (3) of the Act, any person responsible for making payment of any sum to any contractor for execution of works contract exceeding the limit of ₹ 50,000 in a year which involves transfer of property in goods, in pursuance of a contract between the contractor and the Central/State Government or undertakings under them or any Local Authority (LA), or any Authority or Corporation established by Law, or any Company under the Companies Act, 1956 or any Co-operative Society, or any other Association registered under the Societies Registration Act, 1860, shall, at the time of credit of such sum to the account of the contractor or payment thereof in cash / cheque or draft or any other mode, deduct, tax equal to four *per cent* of such sum, subject to the NDC issued by the STA under Section 54 (5)(b), if any, produced before him. If any TDA contravenes the above provisions, the STA shall, after giving him an opportunity of being heard, by an order in writing, impose on him a penalty, equal to twice the amount of tax required to be deducted as TDS, under Section 54 (6) of the Act.

2.2.4.1(a) Non-deduction of TDS

Scrutiny of records of TDAs revealed that during 2009-12 nineteen TDAs⁷ paid ₹ 8.49 crore to 114 contractors and payments made to each contractor in a year exceeded ₹ 50,000. But the TDAs did not deduct tax of ₹ 33.94 lakh at source. Besides, penalty of ₹ 67.88 lakh was also leviable on the TDAs for not effecting deduction of tax from the contractors work bills.

After this was pointed out, TDA (R & B Division Phulbani) without furnishing recovery particulars, stated that the amount was recovered. Five

⁷ R&B Divisions(08): Bhubaneswar III, Ganjam I, Ganjam II, Keonjhar, Khurda, Kendrapara, Phulbani and Sambalpur, RWSS Divisions(04): Bhubaneswar Nayagarh, Puri and Rayagada, RW Divisions(02): Ganjam I and Rayagada; Other Divisions(05) Main Dam Division Burla; Minor Irrigation Division Gajapati, Irrigation Division Kendrapara, General Electrical Division No.1, BBSR and OMC, JK Road.

TDA⁸ assured recovery of the amount, six TDA⁹ stated they would furnish compliance after examining audit observations and three TDA¹⁰ did not furnish any reply. TDA (RWSS division Bhubaneswar) stated that TDS was not recovered as the executants were village committees. TDA, R&B Division Keonjhar stated that TDS was recovered from the bills where the value was more than ₹ 50,000 each and two TDAs (R&B Division Sambalpur and RW Division Rayagada) did not effect recovery treating the bills as supply contracts since they involved supply, fitting and fixing items.

However, village committee being an association of individuals is a person and a dealer as per the Act and liable for TDS when gross payment made in a financial year exceeds ₹ 50,000. Further, contracts involving supply, fitting and fixing works are works contracts and liable to TDS.

2.2.4.1(b) Short-deduction of TDS from works contractors

Scrutiny of records such as Cash Books and RA Bills revealed that from 407 RA Bills involving payment of ₹ 52.66 crore, 22 TDA¹¹ deducted ₹ 1.22 crore towards TDS against recoverable amount of ₹ 2.11 crore. The short fall was due to application of lower rate and reasons thereof could not be furnished to audit. This led to short deduction of TDS of ₹ 88.18 lakh. Besides, penalty of ₹ 1.76 crore was also imposable against the TDAs under Section 54 (6) of the Act.

After Audit pointed this out, TDAs stated between May and June 2013 that matter would be examined and short deduction, if any, would be collected from contractors and deposited into Government account.

2.2.5 Allowance of excess deductions of labour and services in NDCs

Section 54 (5) of the Act read with Rule 60 of the Rules made thereunder, provides that where, the STA is satisfied on an application from the contractor received in Part I of Form VAT 606 that any works contract involves both transfer of property in goods and labour or services, or involves only labour or services and, accordingly, justifies TDS on a part of the sum or no TDS in respect of the works contract, he shall, after giving the contractor a reasonable opportunity of being heard, grant him appropriate NDC, prescribed in Part II of Form VAT 606. Where the STA, in consideration of the facts and circumstances of the case, is of the opinion that such NDC on a part of the sum as claimed is not justified, he may, after allowing the dealer a reasonable opportunity of being heard, refuse to issue such a certificate.

⁸ Main Dam Division, Burla; R&B Division, Khurda, Ganjam II; RW Division Ganjam I; RWSS Division, Rayagada.

⁹ R&B Divisions (03): Bhubaneswar III, Kendrapara, Ganjam I; RWSS Divisions (02): Puri, Nayagarh and Minor Irrigation Division, Gajapati.

¹⁰ GED-I, Bhubaneswar, Irrigation Division, Kendrapara and OMC Ltd. JK Road.

¹¹ R&B Divisions (09): Cuttack, Panikoli, Kendrapara, Sambalpur, Bhubaneswar III, Khurda, Bargarh, Ganjam I and II; RW Divisions (04): Balasore, Cuttack, Phulbani, Ganjam I; RWSS Divisions (03): Kendrapara, Nayagarh and Rayagada; Others (06): Drainage Division Bhadrak; MI Divisions Bhawanipatna and Gajapati; Irrigation Division Kendrapara, Biju Patnaik Air Port Authority, Bhubaneswar and FA&CAO, LIIP, Nuapada.

2.2.5.1 Short-deduction of TDS

During test check of Cash Books, RA bills and NDCs of seven TDAs¹², audit noticed that in 18 cases, NDCs were issued by STAs for agreement value of ₹ 79.12 crore. But the value of work executed against these agreements was ₹ 88.29 crore. TDAs recovered TDS at the rate specified in the NDCs instead of full rate (four percent) on the excess turnover of ₹ 9.17 crore. This led to short deduction of tax of ₹ 18.09 lakh (on the payments of ₹ 9.17 crore made to the contractors beyond the amounts specified in the NDCs). Besides, penalty of ₹ 36.18 lakh was also leviable against the TDAs in term of Section 54 (6) of the Act.

After Audit pointed out the discrepancies, the STAs concerned stated, between July and August 2013, that the compliances would be furnished after due verification.

2.2.5.2 Issue of NDCs allowing excess percentage of deduction

Audit noticed that 31 TDAs¹³ on the basis of NDCs issued by the STAs allowed 32 to 80 *per cent* deduction on Running Account (RA) bills of ₹ 1,680.80 crore and effected TDS on the balance amount. On analysis of 12 works, Audit observed that the percentage of labour and services involved ranged upto 20 *per cent* of the estimated value for bridge works. For road and building works such percentage ranged upto 25 *per cent*. But the STAs issued NDCs for 548 agreements involving ₹ 2,675.86 crore by allowing 32 to 80 *per cent* deduction towards labour and services.

This led to short deduction of ₹ 17.36 crore towards TDS on 548 RA bills. On the balance value of work to be paid, there is scope for short deduction of ₹ 9.76 crore.

On the basis of information collected from 21 circles¹⁴ relating to 1267 NDCs involving work of ₹ 5,367.84 crore, Audit observed that the STAs allowed NDCs for labour and services ranging between 38 to 80 *per cent* for road works, 32 to 75 *per cent* for bridge works and 37 to 95 *per cent* for building works. Hence there is possibility for short deduction of tax at source amounting to ₹ 51.05 crore.

After this was pointed out, STAs of six circles¹⁵ assured to examine the cases, 10 circles¹⁶ and one assessment unit (Talcher) stated that NDCs were issued

¹² Drainage Division, Bhadrak; Irrigation Division, Bhanjanagar; RW Division, Balasore; R&B Division, Bargarh, Kendrapara, Koraput; and RW Division, Nuapada.

¹³ R&B Divisions(15): Angul, Bhubaneswar –III & IV, Balasore, Bargarh, Cuttack, Kendrapara, Keonjhar, Khurda, Koraput, Panikoili, Phulbani, Rairangpur, Sambalpur and Sundargarh; RW Divisions (08): Bhubaneswar, Balasore, Cuttack-I, Ganjam – I, Koraput, Phulbani, Nuapada, Rayagada; RWSS Divisions (01): Kendrapara. Irrigation Divisions (02): Bhanjanagar, Kendrapara; FA &CAOs (02): Anandapur and Nuapada; other Divisions (03) namely:- Drainage Division, Bhadrak: Main Dam division, Burla and Project Management, Odisha State Road Project Unit, Bhubaneswar.

¹⁴ Cuttack II, BBSR-I, II, III and IV, Puri, Angul, Bhadrak, Dhenkanal, Sambalpur I, Cuttack-I Central, Kendrapara, Phulbani, Bhanjanagar, Rayagada, Koraput, Nuapada, Bargarh, Balasore, Jajpur and Jharsuguda.

¹⁵ Bargarh, Bhanjanagar, Koraput, Nuapada, Phulbani and Sambalpur I.

¹⁶ Balasore, Bhadrak, Bhubaneswar III, Cuttack II, Cuttack I Central, Jajpur, Kendrapara, Puri, Rayagada and Sambalpur.

based on percentage prescribed in the Appendix to OVAT Rules, five circles¹⁷ issued NDCs considering the nature of work and one STA (Jagatsinghpur) did not furnish any reply. Further, nine circles¹⁸ replied that they would take care of the matter at the time of final assessment. However, NDCs were issued without considering proportion of labour and services in 1,815 (548 + 1267) cases. As only 0.51 per cent of the work contracts were assessed during 2009-12 by STAs, scope for final assessment and recovery is remote.

2.2.5.3 Short-deduction of TDS due to allowance of excess deduction over deduction allowed in NDCs

During scrutiny of records such as Cash Books, RA Bills and NDCs issued by the STAs, Audit noticed that 11 TDAs¹⁹ deducted TDS at the rate of four per cent from 97 RA bills on certain percentage of Gross Turnover (GTO), which was less than the percentage of GTO mentioned in the NDCs. Against TDS of ₹ 5.67 crore due for deduction as per NDCs, the TDAs effected TDS of ₹ 5.19 crore only which led to short deduction of ₹ 48.22 lakh. Besides, penalty of ₹ 96.44 lakh being twice the tax short deducted was also imposable by the STAs on the TDAs concerned under Section 54 (6) of the Act.

After Audit pointed this out, TDAs stated (between May and July 2013) that short deductions pointed out by Audit would be examined and if any found, would be collected from contractors and deposited into Government account.

2.2.6 Delay in deposit of TDS by the TDAs

As per Section 54 (3) of the Act, the TDA shall deposit the TDS into Government account or transmit the same to the STAs for eventual remittance into Government account within one week from the date of deduction. If any TDA contravenes the above provisions, the STA shall, after giving him an opportunity of being heard, by an order in writing, impose on him a penalty, equal to twice the amount of tax required to be deducted and deposited into Government Treasury under Section 54 (6) of the Act.

During scrutiny of Cash Books, RA bills, monthly accounts statements, Bank Cheque/ Draft issue register and Treasury Challans (TCs) of 45 TDAs²⁰, Audit noticed that during 2009-12 the TDAs deducted ₹ 169.88 crore from the

¹⁷ Angul, Bhubaneswar I, Bhubaneswar IV, Dhenkanal and Jharsuguda.

¹⁸ Angul, Balasore, Bhubaneswar III, Cuttack-I Central, Jajpur, Jharsuguda, Rayagada, Sambalpur I and II.

¹⁹ R&B Divisions (07): Angul, Balasore, Keonjhar, Khurda, Panikoli, Rairangpur, Sambalpur; RW Divisions (02): Balasore and Nuapada; Others (02): FA&CAO, ABP, Anandpur and Drainage Division, Bhadrak.

²⁰ R&B Divisions(18): Keonjhar, Cuttack, Panikoli, Balasore, Rairangpur, Angul, Sambalpur, Phulbani, Bhubaneswar III, Khurda, Sundargarh, Bargarh, Koraput, Kendrapara, Ganjam I, Bhubaneswar IV, Ganjam II, PMU Bhubaneswar; RW Divisions(08): Balasore, Bhubaneswar, Phulbani, Ganjam I, Nuapada, Koraput, Cuttack, Rayagada; RWSS Divisions(05): Bhubaneswar, Puri, Kendrapara, Nayagarh, Rayagada; FA&CAOs (02): ABP, Anandapur and LIIP, Nuapada; Others(12): Drainage Division Bhadrak, Main Dam Divison Burla, MI Division Bhawanipatna; Irrigation division Kendrapara; General Electrical Division No.1, Bhubaneswar; Irrigation Division Bhanjanagar; MI Division Gajapati; Telengiri HW Division, Ambaguda, OPHWC Division, Bhubaneswar: AIIMS, Bhubaneswar: NISER, Bhubaneswar; and Biju Patnaik Airport, Bhubaneswar.

works contractors bills and remitted ₹ 165.04 crore²¹ to Government Account as of 7 April 2012 leaving a balance of ₹ 4.84 crore. Further, Audit noticed that out of ₹ 165.04 crore deposited by TDAs, ₹ 89.84 crore was deposited belatedly with delays ranging between one and 351 days after seventh day of the succeeding month in which the deduction was made. In two cases under one TDA²², delays ranged up to 1084 and 1089 days. Therefore, penalty of ₹ 179.69 crore i.e. twice the tax deposited belatedly was required to be imposed on TDAs under Section 54(6) of the Act after affording opportunities to be heard. Audit noticed that no record was prescribed by the Department for TDAs to watch date-wise deduction of TDS from works contractors, its timely remittance into Treasury and issue of TDS certificates. Further, no evidence showing the submission of monthly consolidated statements of TDS from contractors to STAs during 2009-12, as required under Rule 59 of OVAT Rules, could be furnished to Audit.

After Audit pointed this out, 14 TDAs²³ noted the audit observations for future guidance; nine TDAs²⁴ stated, between April and June 2013, that the detailed figure of non-deposit would be verified and compliance be furnished later on, five TDAs²⁵ did not furnish any reply and 17 TDAs²⁶ stated that due to want of Letter of Credit and inadequate staff, tax was not remitted into Treasury. However, this is in violation of provisions of Section 54 (3) of the OVAT Act.

Observations on delayed deposit of TDS by TDAs were corroborated with STAs of 24 Circles to assess whether any penalty was imposed on defaulting TDAs. The STAs stated that the TDAs were not furnishing TDS statements to assess delayed deposit and levy of penalty as required under the Act. However, they assured that after necessary examination, action as deemed proper under the Act, would be initiated.

2.2.7 Delayed deposit of TDS into Government account by STAs

As per note below Rule 6 (i) of Odisha Treasury Code (OTC) Vol I, money received towards Government revenue should be credited into the Government Account within three days in cases where Bank or Treasury exists in the same locality or within seven days in other cases.

During scrutiny of Bank Drafts/ Cheques, Receipt Registers with

²¹ This includes excess deposit of ₹ 16.08 lakh made by three TDAs viz. EEs, Bhanjanagar Irrigation Division (₹ 5 lakh), R&B Division, Sundargarh (₹10.88 lakh) and Main Dam Division, Burla (₹0.20 lakh).

²² RW Phulbani.

²³ R&B Divisions (04): Koraput, Ganjam I, Bhubaneswar IV and Panikoili; RW Divisions (02): Cuttack and Phulbani; Others (08): Drainage Division Bhadrak, F&CAO Nuapada; MI Division Nuapada; RWSS Division Kendrapara; GED I Bhubaneswar; Irrigation Division Kendrapara; Telengiri HW Division, Ambaguda and PMU Bhubaneswar.

²⁴ R&B Divisions (04): Cuttack, Bhubaneswar III, Kendrapara and Phulbani; RW Divisions (02): Nuapada and Ganjam I; Others (03): RWSS Divisions Puri; Irrigation Division Bhanjanagar and FA&CAO, ABP, Anandapur.

²⁵ R&B Division, Sundargarh, RW Division, Bhubaneswar, Director, Bijupatnaik Air Port Authority, Director, All India Institute of Medical Science and Director, National Institute of Science Education and Research at Bhubaneswar.

²⁶ R&B Divisions (08): Angul, Balasore, Sambalpur, Khurda, Bargarh, Rairangpur, Ganjam II and Keonjhar; RWSS Divisions (03): Nayagarh, Rayagada and Bhubaneswar; RW Divisions (03): Balasore, Rayagada and Koraput; Others (03): MI Division Gajapati; Main DAM Division Burla and OPH&WC Bhubaneswar.

reference to Progressive Collection Registers (PCRs) in Circles, Audit noticed that in contravention of the above provision of OTC, STAs in nine Circles deposited TDS of ₹ 11.88 crore with delays ranging between two and 68 days after receiving the same from the TDAs in shape of Bank drafts/ Cheques. The Circle-wise details are given below:

(₹ in crore)				
Sl. No	Name of the Circle	Number of cases	Amount deposited belatedly	Range of delay
1	Bhubaneswar II	8	0.69	3-13 days
2	Bhubaneswar III	18	1.49	4 to 68 days
3	Bhubaneswar IV	52	5.80	2-60 days
4	Bhadrak	4	0.10	4-10 days
5	Kendrapara	29	2.36	2 to 16 days
6	Nuapada	32	0.53	3-55 days
7	Phulbani	1	0.07	5 days
8	Sambalpur I	9	0.60	2 to 9 days
9	Sambalpur II	3	0.24	2 to 5 days
	Total	156	11.88	2 to 68 days

Source: PCRs of above STAs

After Audit pointed out the above cases, STAs of all Circles except Bhubaneswar II circle stated that observations of audit were noted for their future guidance. The STA, Bhubaneswar II circle stated that the Drafts/Cheques were deposited into Government account on the next working day of receipt of the same from the TDAs but could not show records to substantiate this. Moreover, the delay in credit was attributed to the Bank concerned. However, amounts were not credited into Government account within due dates and it was in violation of provisions of the OTC.

2.2.8 Internal Control Mechanism (ICM)

Internal Control Mechanism (ICM) is an inbuilt mechanism by which an Organisation can evaluate its own activities and performance to take corrective measures. Mention was made in Audit Reports for the year ended 31 March 2009 and 2012 regarding non-functioning of internal Audit system in the Department since 2002-03 and deficiencies noticed on ICM are discussed in succeeding paragraphs:

2.2.8.1 Irregularities in issue of NDCs

Section 54 of the Act read with Rule 58 and 59 of the Rules made thereunder, the Circular of the CCT dated 21 November 2005 tasked the TDAs/STAs with deduction of TDS and circular dated 28 July 2011 entrusted the Additional CCT/JCCTs of the State with the examination of NDCs issued by STAs.

During scrutiny of records of 24 circles, Audit noticed that STAs neither examined the returns of the contractors nor obtained TDS information from TDAs to ensure correctness of tax collected and its prompt deposit in to Government exchequer. The NDCs issued by STAs were not examined or received by any

higher authority to ensure correctness of the amount for which NDCs were issued.

There was no co-ordination between the STAs and TDAs for correct deduction of tax and assessment of the works contractors which led to

escapement of tax in the event of incorrect recovery of TDS as mentioned in following paragraphs.

2.2.8.2 Information on TDs

As per CCT's circular of November, 2005, the STA's are required to personally contact the TDAs under their jurisdiction and obtain information as regards allotment received, name and address of contractors, total amount of contracts and payment made to contractors from time to time.

In 23 out of 24 circles covered in the Audit, the Circles had not obtained information as directed in the aforementioned circular, in the absence of which they were not in a position to detect evasion of tax.

Further, to an audit query on existence of system for follow up actions to check the evasion of tax by the works contractors, the CCT stated that tax audit was being done to check evasion of tax, in respect of works contractors selected on the basis of the criteria as per the provisions of the Act. As already mentioned in para 2.2.5.2, tax audit was taken up by Department for registered works contractors of 18 Circles and only 0.51 *per cent* works contractors were covered during the period. As the coverage was low, the scope for assessment of all works contractors was remote. However, the existing provision for tax audit for "certain number" of assesseees without any specified number or percentage of the total assesseees registered under the Act appears to be inadequate.

This was brought to the notice of the Government and CCT in September 2013 and reply from Government is awaited (April 2014).

2.2.9 Conclusion

Audit noticed several deficiencies in implementation of mechanism of TDS for collection of tax from works contractors under the OVAT Act/Rules. There was non/short deduction of TDS and non-imposition of penalty by STAs for non/short collection of TDS by TDAs. There were delays in deposit of TDS into Government account by TDAs and STAs. There was absence of coordination between the TDAs and STAs. Internal Control Mechanism in the Department was weak and ineffective.

2.3 Other Audit observations

Audit test checked assessment records relating to the OVAT, CST and OET Acts in commercial tax Range/Circle offices of the State and noticed several cases of non-observance of provisions of the aforesaid Acts and Rules made thereunder which led to non/short levy of tax, interest and penalty as mentioned in succeeding paragraphs in this chapter. These cases are illustrative and based on a test check carried out by Audit. Audit pointed out similar omissions on the part of Assessing Authorities (AAs) every year, but not only do many of the irregularities persist; these remain undetected till an audit is conducted. The Government needs to improve the internal control system including strengthening of internal audit to avoid recurrence of such omissions.

Odisha Value Added Tax

2.4 Non-observance/compliance of the provisions of the Act and Rules read with Government notifications

The OVAT Act, 2004/Rules made thereunder provide for:

- *completion of audit assessments by Assessing Authorities (AAs) on the basis of Audit Visit Reports (AVRs) and levy of tax on correctly assessed Taxable Turnover (TTO) of outputs after giving due credit/adjustment of admissible Input Tax Credit (ITC);*
- *levy of interest on short payment of tax and penal interest for delayed payment of tax detected during regular scrutiny of monthly returns by the AAs;*
- *imposition of penalty at prescribed rates in addition to the tax assessed at the audit assessment stage by the AAs;*
- *demand and collection of tax/interest/penalty as per prescribed procedures; and*
- *levy of penalty for non-submission of certified reports on annual audited accounts within the prescribed date.*

The AAs, while finalising audit assessments of the dealers for certain tax periods, did not observe some of the aforesaid provisions read with Government notifications issued from time to time, as mentioned in following paragraphs:

2.4.1 Short levy of tax due to application of lower rate of tax

Under Section 14(1) of the OVAT Act, 2004, every registered dealer shall be liable to pay tax on his taxable turnover. Further, as per Section 43 of the above Act where, for any tax period, the Assessing Authority (AA), on the basis of any information in his possession, is of the opinion that the whole or any part of the turnover of the dealer in respect of such tax period has escaped assessment or been under assessed or been assessed at a lower rate, the AA may, after giving the dealer a reasonable opportunity of being heard, proceed to assess the dealer to the best of his judgment for arriving at the amount of tax due from the dealer. If the AA is satisfied that the escapement or under assessment of tax is without any reasonable cause, he may direct to pay, by way of penalty, a sum equal to twice the amount of tax additionally assessed under this Section. “Electric fans”, being unspecified item under Part III of Schedule B, are exigible to tax at the rate of 12.5 *per cent*.

During test check of assessment records of Cuttack I (West) Circle, Audit noticed (September 2012) that a registered dealer engaged in purchase and sale of electric fans was assessed (January 2012) on the basis of a Tax Evasion Report (TER). The AA, while finalising the assessment under Section 43 of the OVAT Act for the tax periods from April 2008 to March 2009, determined suppression of purchase of ₹ 28.19 lakh and levied tax at the rate of four *per cent* thereon instead of applicable rate of 12.5 *per cent*. This led to short levy of tax of ₹ 2.40 lakh. Besides, penalty of ₹ 4.79 lakh was also leviable.

On this being pointed out, Government stated (May 2013) that corrigendum order- cum- demand notice requiring the dealer to pay the extra demand ₹ 10.57 lakh was issued in September 2012, which included the differential tax liability of ₹ 7.19 lakh.

2.4.2 Short levy of tax due to incorrect application of Norm

Under Section 61 (1) of the OVAT Act, 2004 read with Rule 67(4) of the OVAT Rules, 2005, a registered dealer engaged in the manufacturing or processing of goods shall maintain true and up-to-date accounts of capital goods and inputs purchased, inputs used in manufacturing or processing of goods for sale, goods manufactured including manufacturing accounts, goods sold and stock accounts of inputs, consumables, packing materials, fuel and finished goods etc. Section 42(5) of the Act prescribes a penalty equal to twice the amount of tax assessed in audit assessment. Further, the CCT, Odisha, vide his letter dated 31 October 2009 circulated the Standard Input Output Norm (SION) for production of sponge iron. Sponge iron is exigible to tax at the rate of four *per cent* vide entry No. 68 of Part II of Schedule B of the Act.

During test check of assessment records of a registered dealer, in Cuttack-II Range for tax periods from 1 April 2009 to 31 May 2010, Audit noticed (September 2012) that based on the observation made in the Departmental

Enforcement Wing's TER (September 2011), audit assessment of the dealer was completed on 28 June 2011. As per the SION, 1.6 MT of iron ore is required for production of 1 MT of sponge iron. During the above period, production of sponge iron should have been 1.26 lakh MT against utilisation of 2.02

lakh MT of 62-64 grade sized iron ore as input. However, while completing assessment, the AA adopted a higher ratio of 1.7 MT of sized iron ore and arrived at production of sponge iron at 1.19 lakh MT. Thus, due to non-adherence to the SION prescribed by CCT (O), there was underassessment of production of sponge iron to the extent of 7434 MT valued at ₹ 9.78 crore at the prevailing rate (between April 2009 to May 2010) of ₹ 13,161 per MT (as adopted by the AA). Tax at rate of four *per cent* on the said under assessed turnover is arrived at ₹ 39.13 lakh. Besides, penalty of ₹ 78.27 lakh was also leviable.

After Audit pointed out the case, Government stated (June 2013) that notice for further reassessment has been issued to the dealer (February 2013). Final reply is yet to be received (April 2014).

2.4.3 Escapement of tax on 'Cotton Yarn'

Under Section 11 of the OVAT Act, 2004, every registered dealer shall be liable to pay tax on his TTO of sales at the rates specified in the Schedule to the Act. Further, Section 38 of the said Act provides for scrutiny of all the self-assessed returns filed by the dealers to ascertain the correctness of calculation, rate of tax paid, claim of ITC and payment of tax and in case the dealer is found to have paid less tax than what is payable, the AA is required to issue notice to the dealer directing him to pay the balance tax and interest thereon. Section 42(5) of the Act also provides for levy of penalty equal to twice the amount of tax assessed in Audit Assessment. 'Cotton Yarn' is exigible to tax at the rate of four *per cent* under Sl. 38 of Part -II of Schedule B of the Act.

(a) During scrutiny of audit assessment records of three dealers of two Circles²⁷ for tax periods from April 2005 to June 2010, Audit noticed (between August 2012 and March 2013) that the dealers engaged in processing of cotton yarn effected sale of 'Cotton Yarn' worth ₹ 11.97 crore inside the State during the above periods. However, tax of ₹ 47.90 lakh thereon was not paid, treating 'Cotton Yarn' as tax exempted goods. The contention of the dealer was accepted by the AA. Thus, there was escapement of tax of

₹ 47.90 lakh. Besides, penalty of ₹ 95.80 lakh was also leviable.

(b) During scrutiny of the self-assessed periodical returns in respect of six dealers in three Circles²⁸ for tax periods from April 2005 to May 2012, Audit noticed (August 2012 to March 2013) that though the dealers disclosed sales turnover of 'Cotton Yarn' valued at ₹ 15.68 crore in six cases in their periodical returns and did not pay any tax thereon treating the transactions as sales exempted from tax, the AAs accepted the returns without noticing this and further no notices were issued directing the dealers to pay tax of ₹ 62.74 lakh and interest of ₹ 24.72 lakh thereon. Thus, there was escapement of tax and interest of ₹ 87.46 lakh.

After Audit pointed out the above cases, the Government Stated (March 2014) that in respect three dealers of Bargarh circle reassessment was completed and extra demand of Tax (₹ 40.74 lakh) and Penalty (₹ 81.48 lakh) amounting to ₹ 1.22 crore was raised in January 2014.

²⁷ Bargarh and Ganjam-I.

²⁸ Bargarh, Ganjam-I and Ganjam-II.

2.4.4 Non levy of Tax on Duty Entitlement Pass Book

Under Section 12 of the OVAT Act, 2004, every dealer, who purchases or receives taxable goods from a registered dealer or any other person under the circumstances in which no tax is paid, is liable to pay tax on the purchase price or the prevailing market price of such goods, if after such purchase or receipt, the goods are not sold within or outside the State or in the course of export out of the territory of India, but are otherwise disposed of without payment of tax. Penalty equal to twice the amount of tax assessed in audit assessment is also imposable under Section 42(5) of the Act. All intangible goods like Duty Entitlement Pass Book (DEPB) are taxable at the rate of four *per cent* under the Act.

During test check of audit assessment records of a dealer in Bhubaneswar-III Circle, for the tax periods from April 2005 to March 2009, Audit noticed (June 2012) that the dealer received DEPB from the Director General of Foreign Trade (DGFT), Cuttack without payment of tax and subsequently transferred the same valued at ₹ 10.88 crore to its consignment agents outside the State on the strength of declarations in form "F" and no tax was paid on such goods. In such

circumstances, the receipt of DEPB was subject to tax at the rate of four *per cent*. However, the AA, while finalising the assessments (December 2010 and September 2011) of the dealer, did not levy such tax of ₹ 43.54 lakh. Besides, the dealer is liable for imposition of penalty of ₹ 87.08 lakh.

After audit pointed out the case, the Government stated (in March 2014) that re-assessment has been completed on 28 February 2013 raising extra demand of ₹1.13 crore.

2.4.5 Non levy of penalty for non submission of Certified Report on Annual Audited Accounts

Under Section 65 of the OVAT Act, 2004 read with Rule 73 of the OVAT Rules, 2005 a dealer having Gross Turnover (GTO) exceeding ₹ 40 lakh during a financial year shall furnish a true copy of the Annual Audited Accounts for that year duly certified by a Chartered/Cost Accountant by 31 October of the next financial year to the concerned AA for his record in the register prescribed by the CCT Odisha in September 2009 to monitor the timely submission of such accounts at the Circle level and also to act as a reference at the time of tax audit and assessment. The Act further provides that in case the dealer fails to furnish or furnishes the same belatedly, the AA shall, after giving the dealer a reasonable opportunity of being heard, impose on him a penalty of rupees one hundred for each day of default in submission.

During test check of records maintained by 21 Circles²⁹, from October 2011 onwards, Audit noticed between April 2012 and January 2013 that 5,542 dealers whose GTO exceeded ₹ 40 lakh during the previous financial year i.e. 2010-11 did not submit the copies of Certified Annual Audited Accounts (CAAA) within the prescribed time. Audit further noticed that in some circles the prescribed registers were also not maintained to monitor timely receipt of copies of CAAA. This warranted levy of penalty under the Act. Delay in submission of

copies of Reports ranged from 182 to 427 days, for which penalty of ₹ 15.96 crore was to be imposed (**Annexure-I**).

After audit pointed out the cases, Government stated (June/July 2013) that show cause notices to all the 394 dealers relating to Bhubaneswar-II Circle were issued out of which penalty orders for ₹ 74.71 lakh were passed against 131 non-responding dealers. Show cause notices in respect of 188 dealers of Cuttack-II Circle and 77 dealers of Cuttack-I Central Circle had been issued, out of which demand notices against 38 dealers of Cuttack-I Central Circle have been issued in pursuance to such show cause notices. Proceedings had been initiated against the 221 defaulting dealers of Barbil Circle and show cause notices had been issued against 74 dealers of Bargarh Circle. Replies of remaining 16 circles are yet to be received (February 2014). Final reply from Government is also awaited (April 2014)

²⁹ Angul, Balasore, Barbil, Bargarh, Bhadrak, Bhubaneswar-I, Bhubaneswar-II, Bhubaneswar-III, Cuttack-I Central, Cuttack-I West, Cuttack-II, Ganjam-I, Jagatsinghpur, Jatani, Jharsuguda, Kalahandi, Mayurbhanj, Nayagarh, Puri, Rourkela-I and Sambalpur-I.

2.4.6 Non realisation of demanded tax and penalty with interest

Under Section 50 (4 to 7) of the OVAT Act, 2004 net tax due, interest and penalty demanded on assessments made under Sections 39, 40, 42 to 45 thereunder shall be paid by the dealer within 30 days from the service of the demand notices; failing which, the AA, after giving the dealer a reasonable opportunity of being heard, shall levy a penalty at the rate of two per cent per month on such amount from the due date of payment. Besides, when a dealer is in default in making the payment of any amount as stated above, he is liable to pay interest at the rate of two *per cent* per month with effect from due date of payment till the amount is paid. All amounts that remain unpaid after the due date of payment in pursuance of the notice issued under Section 50 (4) and (5) shall be recoverable as arrears of public demand in accordance with the provisions contained in Schedule E appended to the Act.

During scrutiny of Demand Collection Registers (DCRs) in Jagatsinghpur Circle, Audit noticed (July 2012) that while finalizing audit assessment of two unregistered dealers for tax periods from 17 May 2006 to 26 July 2007 on the basis of Fraud Case Reports (FCRs) the AA assessed tax and penalty of ₹ 2.54 crore and issued demand notices thereon on 29 October 2008 with the instruction to pay the same within one month.

However, neither did the dealers pay the same, nor did the AA initiate any action for recovery of the Government dues till the date of Audit except issuing Show Cause Notices (SCNs) on 25 August 2009 to the dealers. Due to lack of prompt action on the part of the Department on FCRs dues of ₹ 2.54 crore could not be collected. In the event of TR proceedings under schedule E of OVAT Act interest is also leviable.

After audit pointed out the cases, Government stated (March 2014) that TR proceedings have been initiated against one dealer and final TR orders are awaited.

In respect of the other dealer the Govt. stated that the assessment order and demand notices could not be served upon the dealer due to non-availability of the dealer in the address indicated in the report.

2.4.7 Non levy of interest and penalty for delayed payment of tax

Under Section-33(5) of the OVAT Act, 2004 if any dealer, after filling the return discovers that a higher amount of tax was due than the tax admitted by him, he may voluntarily disclose the same by filing a revised return. However, no such disclosure shall be accepted after receipt of the notice for the tax audit. Further Section 34 (1) and (2) of the Act provides that where a dealer, who is required to file a return under the Act, fails without sufficient cause to pay the amount of tax due as per the return, he shall be liable to pay interest at the rate of one *per cent* per month in respect of the tax, which he fails to pay according to the return, from the due date of the return to the date of its payment or to the date of order of assessment, whichever is earlier. If the dealer fails to pay the above amount of tax and interest, the Commissioner may, after giving the dealer a reasonable opportunity of being heard, direct him to pay, in addition to tax and interest, a penalty at the rate of two *per cent* per month thereon from the date it had become due to the date of its payment or the order of assessment, whichever is earlier. Section 38 of the said Act provides that every return filled by the dealer shall be scrutinised to verify the correctness of calculation, application of correct rate of tax and interest etc. by the AA.

(a) During test check of audit assessment records in two Ranges³⁰ and three Circles³¹, between May and September 2012, pertaining to tax periods from April 2005 to August 2011, Audit noticed that seven dealers paid tax dues of ₹ 6.04 crore covering 152 tax periods either after the due dates of payments or after issue of notice for tax audit with delays ranging from two to 1559 days. Though the AAs completed assessments between April 2011 and March 2012, but did not levy interest amounting to ₹ 7.97 lakh at the rate of one *per cent* on the tax dues of ₹ 6.04 crore and penalty of ₹ 17.53 lakh at the rate of two *per cent* on ₹ 6.12 crore respectively.

(b) On verification of tax payment details generated from computerised VATIS³² and corroborated at random with the self-assessed VAT returns, Treasury Schedules, Progressive Collection Registers in eight Circles³³ for 2011-12, Audit noticed (August 2012 and February 2013) that 697 dealers paid tax dues of ₹ 30.46 crore covering

1472 tax periods with delays ranging between two and 443 days. However, while scrutinising the returns, the AAs neither levied interest of ₹ 25.65 lakh nor initiated action to levy penalty of ₹ 52.58 lakh as per the provisions of the Act.

Thus, total amount of non-levy of interest and penalty in the above cases (a) and (b) worked out to ₹ 1.04 crore in respect of 704 dealers of two Ranges and seven Circles covering 1,624 tax periods (**Annexure-II**).

³⁰ Bolangir and Sambalpur.

³¹ Balasore, Bhadrak and Sambalpur-II.

³² Value Added Tax Information System.

³³ Angul, Bhubaneswar-II, Cuttack-II, Cuttack-I Central, Rourkela-I, Rourkela-II, Koraput and Nayagarh.

After Audit pointed out these cases, Government stated (August 2013) that show cause notices had been issued to 668 dealers of Rourkela-I Circle; Koraput Circle raised demand of ₹ 12.01 lakh against one dealer and the rest 17 dealers had been issued with demand notices; Bhubaneswar-II Circle issued demand notices in respect of 14 cases, 15 dealers had deposited tax with interest on their own and in 39 cases the dealers had paid tax within the stipulated time. Replies in respect of other Ranges and Circles are awaited (April 2014).

2.4.8 Inadmissible ITC on spare parts of machinery

Under Section 20(3) (b) of the OVAT Act, 2004 and Rules made thereunder read with amended provision of Government Notification of 28 May 2008, ITC shall be allowed on purchase of components and spare parts of capital goods like plant and machinery, as defined under Section 2(8) of the above Act, purchased on or after 1 June 2008 and used directly in the process of manufacture. Purchase of such goods prior to 1 June 2008 was, therefore, not entitled to ITC. Section 42(5) of the Act, further provides for imposition of penalty equal to twice the amount of tax assessed in the audit assessment.

During test check of the audit assessment records of Jajpur Range, Audit noticed (September 2012) that while finalising (August 2011) the audit assessments of a dealer, engaged in mining of iron and manganese ore and sale thereof, for the tax periods from 01 April 2005 to 31 March 2006, as per the directions of the first Appellate Authority, the AA allowed ITC of ₹ 46.78 lakh on the purchase of components and spare parts of plant and machinery made prior

to 1 June 2008, which was inadmissible. Besides, the dealer was liable to pay penalty of ₹ 93.56 lakh under Section 42 (5) of the Act.

After Audit pointed out the above case, Government stated (May 2013) that the dealer was entitled to avail ITC on spare parts on the basis of un-amended definition of 'capital goods', since 'Component parts and spare parts' were included in plant and machinery. However, substitution of the words 'and shall include the components and spare parts thereof' was made on 28 May 2008 with the sole intention to include spare parts and machinery in the definition of capital goods under Section 2(8) of the OVAT Act, 2004 prospectively and hence it was effective from 1 June 2008 only and not retrospectively.

2.4.9 Short collection of tax

Under Section 38 of OVAT Act, 2004 and Rules made thereunder read with the instructions dated 28 April 2008 of the CCT, Odisha, each and every return shall be subject to scrutiny by the AA to verify the correctness of calculation, claim of ITC made there in. If any mistake is detected as a result of scrutiny, the AA shall serve a notice to the dealer to make payment of extra amount of tax along with interest at the rate of one *per cent*. The Government notified (26 March 2011) the enhanced tax rate of unspecified goods under Part-III of Schedule appended to the Act to 13.5 *per cent* from 12.5 *per cent* with effect from 1 April 2011.

(a) During test check of the data generated from the computerised VAT Information System (VATIS), between November 2012 and March 2013, in four Circles³⁴, Audit noticed that 95 dealers in 105 cases declared/paid tax of ₹ 80.19 lakh at lower rate on sale turnover of un-specified goods valued at ₹ 7.49 crore instead of tax liability of ₹ 1.01 crore at the rate of 13.5 *per cent* relating to the year 2011-12 payable by them which resulted in short collection of tax of ₹ 20.95 lakh.

After audit pointed out the above cases, Government stated (August 2013) that notices were issued to 54 dealers by the ACCT, Rourkela-I Circle for realisation of dues and notices were issued to 10 dealers by the ACCT, Koraput Circle, out of which three dealers paid their dues of ₹ 3,661, two dealers had more input tax than output tax and five dealers failed to respond to the notices. Final reply is yet to be received (February 2014).

(b) During test check of the data generated from the computerised VATIS in two Circles³⁵, Audit noticed (December 2012) that 37 dealers in 38 tax periods, during April to December 2011, declared/paid tax of ₹ 20.12 lakh on sale of goods valued at ₹ 12.13 crore instead of correct tax liability of ₹ 48.51 lakh at the rate of four *per cent*. This led to short payment of tax of ₹ 28.39 lakh.

After Audit pointed out the cases, AAs stated (December 2012) that action would be taken for realisation of dues and final result would be intimated to audit.

Audit brought the matter to the notice of CCT, Odisha in January 2013 and Government in June 2013. The replies are yet to be received (April 2014).

³⁴ Rourkela-I, Balangir, Rayagada and Koraput.

³⁵ Balangir and Rourkela 1.

2.4.10 Non levy of penalty on audit assessment

Under Section 42(1) and (5) of the OVAT Act, 2004, where the tax audit results in detection of any discrepancy such as suppression of purchases or sales or both, erroneous claims of deduction including claim of ITC, evasion of tax or contravention of any provision of the Act affecting the tax liability of the dealer, the AA is required to make audit assessment of the dealer, wherein penalty equal to twice the amount of tax additionally assessed shall be imposed against the dealer.

During test check of audit assessment records of one Range³⁶ and five Circles³⁷, Audit noticed, between June 2012 and January 2013, that while finalising the audit assessments of seven dealers for different tax periods ranging from April 2005 to October 2010, the AAs assessed (between February 2010 and October 2011) additional tax liability of ₹ 76.53 lakh for various contraventions of the provision

of the Act. However, they did not impose penalty of ₹ 1.53 crore i.e. twice the amount of tax additionally assessed.

After Audit pointed out the above cases in May 2013; Government stated (July 2013) that notice in Form VAT-307 has been issued to one dealer of Keonjhar Circle and the case is under examination. Final reply is yet to be received (April 2014).

³⁶ Jajpur Range.

³⁷ Bargarh, Bhubaneswar-IV, Ganjam-I, Keonjhar and Puri Circle.

2.4.11 Non-levy of penalty for non-amendment of Registration Certificate

As per Section 32(1) and (7) of the OVAT Act, 2004 read with Rule 29 of the OVAT Rules, 2005 “if any dealer registered under the Act sells or disposes of his business or any part thereof or the place of business or discontinues his business; or effects, or comes to know of any other change in the ownership of the business or changes the name, style, constitution or nature of business, or changes his place of business or warehouse, or opens a new place of business or makes any addition or deletion in the class or classes of goods dealt in or manufactured” he or any person duly authorised by him, shall, within the prescribed time of 14 days inform the Registering Authority (RA) such changes accordingly. Where a dealer fails to inform the above changes to the RA within the time prescribed, he shall be liable to a penalty of ₹ 100 for each day of default.

During scrutiny of registration records together with the assessment records in four ³⁸ units, Audit noticed, between June and November 2012, that four dealers were conducting their business without amending their Certificates of Registration (RCs) or intimating the changes to the RA of the Circle regarding the changed nature of their business, goods dealt with, operation of extra godowns, running of stone crusher etc. As such the dealers were liable to pay penalty of ₹ 5.16 lakh at the rate of ₹ 100 for each day of default calculated up to the respective dates of Audit. However, while finalising the assessments, the AAs failed to notice this and did not impose penalty.

After Audit pointed out the cases, Government stated (July 2013) that the case of one dealer of Cuttack-I East Circle was reopened and ₹ 0.83 lakh was demanded. However, replies in respect of three other dealers are yet to be received (April 2014).

³⁸

Ganjam Range and Bhubaneswar-IV, Bhadrak, Cuttack-I East Circle.

2.4.12 Short levy of tax due to application of lower rate of tax

Under Para III of Schedule B of the OVAT Act, 2004, unspecified goods are taxable at the rate of 12.5 *per cent*. Under Section 42(5) of the Act, penalty equal to twice the amount of tax assessed in audit assessment shall be imposed against the dealer for contravention of the provision of the OVAT Act affecting his tax liability.

During test check of audit assessment records of Cuttack II Range, Audit noticed (October 2012) that a registered dealer carrying on business in mosquito repellants, coils and mats etc. effected sale of above goods worth ₹ 58.05 crore, during tax periods from January 2009

to August 2010, and paid tax at the rate of four *per cent*, treating it as insecticide, instead of 12.5 *per cent*. This led to short levy of tax of ₹ 4.93 crore. Besides penalty of ₹ 9.87 crore was also leviable. The AA, while finalising the audit assessment (April 2011) for the above periods, did not detect these lapses despite earlier Audit observations mentioned in Audit Report (Revenue Receipts) for the years ended March 2010 and March 2011.

After Audit pointed out the case, the AA stated (October 2012) that as per the Entry Sl. No. 30 of Part II of Schedule B of the rate chart under the OVAT Act, insecticides are taxable at the rate of four *per cent*. But it was, however, noticed that the same AA has levied tax at the rate of 12.5 *per cent*/ 13.5 *per cent* on sales turnover of mosquito repellent effected by the instant dealer for the subsequent tax periods from September 2010 to June 2012 based on the judgment of the Hon'ble High Court of Andhra Pradesh in the case of M/s Reckitt Benckiser (India) Ltd v/s State of Andhra Pradesh reported under the citation 56-VST-1 (2012) wherein Hon'ble High Court had held that mosquito repellents like coil, mat, vaporiser and liquid vaporiser are liable to tax at the rate of 12.5 *per cent*.

Further, under the OVAT Act, 2004 mosquito repellants in any form are specifically excluded from Part-II of Schedule B by a Notification issued on 1 July 2005.

After Audit pointed out the case, Government stated (January 2014) that the case had been reopened and the reassessment proceeding was going on. Final reply is awaited (April 2014).

Central Sales Tax

2.5 Non-observance/compliance of the provisions of the Central Sales Tax Act/ Rules read with Government notifications/ executive orders

The Central Sales Tax (CST) Act, 1956 and Rules made thereunder read with Government notifications and executive orders issued from time to time provide for:

- (i) *completion of audit assessment based on Audit Visit Report (AVR) and levy of tax at the assessment stage at the prescribed normal/concessional rates, subject to certain conditions on the Net Taxable Turnover (NTO) of goods correctly determined at such stage and adjustment of admissible Input Tax Credit (ITC);*
- (ii) *levy of penalty at the prescribed rates, for contravention of provisions of the Act and Rules, on the tax liability determined by the AA in audit assessment including penalty for misutilisation of declaration in prescribed forms.*

Audit noticed that while finalising assessments, the AAs did not observe some of the above provisions read with Government notifications/orders as mentioned in the following paragraphs:

2.5.1 Excess adjustment of Input Tax Credit against Central Sales Tax payable

Under Section 20 of the OVAT Act, 2004 and Rules made there under, a registered dealer shall be eligible to claim ITC to the extent of the tax paid or payable on his purchases of taxable goods inside the State subject to fulfilment of certain conditions and restrictions as prescribed under the Act. As per the proviso (d) under the above Section (effective from 1 June 2008), the ITC on purchase of goods, when sold in course of inter-State trade or commerce, shall be allowed only to the extent of the CST payable under the CST Act, 1956. Section 38 of the OVAT Act 2004, read with Rule 39 of OVAT Rule, 2005 provide for scrutiny of each and every self-assessed return to verify the correctness of the ITC claimed by the dealer and issue of notices to the dealers and in case of any discrepancies to collect extra amount of tax along with interest. Further, Rule-12(3) (g) of the CST (Odisha) Rules, 1957 provides for imposition of penalty equal to twice the amount of tax additionally assessed during audit assessment.

During scrutiny of the audit assessment records of a dealer, for the tax periods from 11 December 2006 to 30 September 2010, Audit noticed (August 2012) that during the period from 1 April to 30 September 2010, the dealer purchased coal worth ₹ 18.79 crore within the State by paying tax of ₹ 75.16 lakh. The dealer availed ITC of ₹ 8.24 lakh under the OVAT Act

against the tax payable on intra-State sale. Although ITC of ₹ 41.30 lakh only was admissible for adjustment against the CST payable on interstate sale of

goods valued at ₹ 20.65 crore, the dealer adjusted the remaining amount of ₹ 66.92 lakh.

This led to excess adjustment of ITC of ₹ 25.62 lakh. Besides, the dealer was liable to pay a penalty of ₹ 51.24 lakh.

This was neither detected by the Tax Audit Team during its visit to the premises of the dealer nor by AA, while making scrutiny of the periodical returns and finalising audit assessment.

After Audit pointed out the above case, Government stated (July 2013) that the dealer made payment of ₹ 5.12 lakh against demanded amount of ₹ 76.85 lakh and preferred first appeal the result of which is awaited (April 2014).

2.5.2 Short- levy of tax due to application of lower rate of tax

Under Section 8(2) of the CST Act, 1956, the rate of tax on inter State sale of other than declared goods was 10 *per cent* or the rate applicable on sale of such goods under the appropriate State Act, whichever was higher up to 31 March 2007. From 01 April 2007, it was the same rate as applicable to the sale or purchases of such goods inside the State. As the system of tax audit and audit assessment in the pattern of OVAT Act, 2004 was extended to CST transactions with effect from 06 July 2006, penalty equal to twice the amount the tax assessed under the audit assessment shall be imposed under Rule 12(3) (g) of CST (O) Rules from the date. 'Cashew kernels' was taxable at the rate of 12.5 *per cent* under the CST Act, 1956 without declaration in form 'C' up to 29 February 2008 and at the rate of four *per cent* with effect from 1 March 2008 (being an item under four *per cent* tax group under the OVAT Act) onwards.

During test check of audit assessment records in Ganjam-II Circle, Audit noticed (August 2012) that a registered dealer engaged in manufacturing and sale of Cashew kernels was assessed *ex parte* for the tax periods from 1 April 2005 to 31 January 2010. The dealer effected inter-State sale and stock transfer of above goods worth ₹ 4.97 crore during the above period. However, the declarations in form 'C' and 'F' were not furnished before the Tax Audit Team as well as the AA. As such, the above transactions were to be taxed at the rate of 12.5

per cent up to 29 February 2008 and at the rate of four *per cent* thereafter. Audit calculated that tax of ₹ 38.81 lakh and penalty of ₹ 37.39 lakh was leviable against the above transaction. However, while finalising the audit assessment on 24 June 2011, the AA assessed an additional tax of ₹ 8.08 lakh and penalty of ₹ 16.17 lakh taking into account the payment of ₹ 12.75 lakh in self-assessment. This led to short levy of tax ₹ 17.98 lakh. Besides penalty of ₹ 21.22 lakh was also leviable against the dealer. Thus, the total tax and penalty of ₹ 39.20 lakh was leviable on the dealer.

After Audit pointed out the case, Government stated (December 2013) that the dealer was assessed on 24 June 2011. Hence reassessment would be done later. Final reply is awaited (April 2014).

2.5.3 Non levy of penalty for misutilisation of declarations in Form 'C'

Under Section 10 (d) of the CST Act, 1956, if any person after purchasing any goods for the purposes like resale, use in manufacture and processing of goods for sale or in the telecommunication network or in the mining or in the generation or distribution of electricity or any other form of power as specified in Section 8(3) (b) of the Act, fails without reasonable excuse, to make use of such goods for the very purpose, he is liable for prosecution. Under section 2(g)(ii) of CST Act' 1956, sale is defined as "a transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract". However, under Section 10A of the CST Act, the AA may, after giving him a reasonable opportunity of being heard, impose upon him by way of penalty a sum not exceeding one and a half times of the tax which would have been levied in respect of the sale of such goods, in lieu of prosecution. Automobiles tyres and tubes are taxable at the rate of 12.5 per cent during 6 May 2008 to 31 January 2010.

During test check of assessment records of Bhubaneswar-IV Circle, Audit noticed (June 2012) that a dealer was engaged in execution of labour oriented works contract not involving transfer of properties in goods during the tax periods from 6 May 2008 to 31 January 2010. The dealer purchased automobile tyres and tubes worth ₹ 63.21 lakh at concessional rate from outside the State through declarations in form 'C' for resale in course of use in execution of the works contract. However, there was no resale through transfer of such goods in course of execution of labour oriented works. Thus, there was

contravention of Section 10(d) of the CST Act and the dealer was liable to be imposed with a penalty of ₹ 11.85 lakh³⁹ as per the provision of Section 10A *ibid*. While finalising the assessment of the dealer, the AA did not impose the same.

After Audit pointed out the case, Government stated (December 2013) that penalty amounting to ₹ 11.85 lakh was imposed on the dealer by the AA on 1 August 2013. However, the amount is yet to be realised (April 2014).

³⁹ One and a half times of the tax of ₹ 7.90 lakh (12.5% on ₹63.21 lakh).

2.5.4 Non-levy of penalty on audit assessment

Under Rule 10(3) read with Rule 12(3) (a), (e) and (f) of the CST (O) Rules, 1957 as amended on 6 July 2006, where the tax audit results in detection of suppression of purchases or sales or both, erroneous claims of deduction, evasion of tax or contravention of any provision of the Act affecting the tax liability of the dealer, the AA is required to make audit assessment of the dealer and impose penalty equal to twice the amount of tax so assessed in such assessment as per Rule 12(3) (g) of the CST (O) Rules, 1957.

During test check of the audit assessment records of one Range⁴⁰ and three Circles⁴¹, Audit noticed, between July and December 2012, that in seven cases pertaining to seven registered dealers the concerned AAs, while assessing the dealers for different tax periods from 1 July 2006 to 31 March 2011, assessed tax of ₹ 2.20 crore due to availment of concessional rate of tax without supporting declarations

and production of books of accounts during the assessment stage. Though tax levied for the above irregularities warranted imposition of penalty, the AAs did not impose penalty of ₹ 4.40 crore.

After audit pointed out the above cases, Government stated that in respect of Ganjam-I Circle the dealer filed 1st appeal and produced required statutory forms and demand was reduced to ₹ 0.75 lakh as against the earlier demand of ₹ 1.13 lakh along with a penalty of ₹ 1.49 lakh. In respect of Rourkela-I Circle the 1st appeal of the dealer was set aside by the JCCT, Sundargarh Range with direction for reassessment and the case had been reopened accordingly. In respect of Sundargarh Range and Rourkela-II Circle Government, however, stated that defaulters were liable for penal action under Rule 8A. However, levy of penalty was mandatory under Rules.

⁴⁰ Sundargarh Range.

⁴¹ Ganjam-I, Rourkela-I and Rourkela-II Circle.

2.5.5 Short levy of Tax due to irregular allowance of concessional rate of tax against duplicate declarations in Form 'C'

Under Section 8 of the CST Act, 1956 read with the Rules made there-under, inter-State sale of goods made to registered dealers and supported by valid declarations in form 'C' is exigible to tax at the concessional rate of two *per cent* from 1 June 2008 onwards or at such lower rate as applicable to the intra State sale or purchase of such goods. Inter-State sales of all goods, not supported by valid declarations in form 'C', are taxable at the same rate as applicable to sale or purchase of such goods inside the State with effect from 1 April 2007. Rule 12 (3) (g) of the CST (Odisha) Rules, 1957 provides for imposition of a penalty equal to twice the amount of tax assessed in the audit assessment of any dealer.

During test check of audit assessment records in two Ranges⁴², Audit noticed, between October and December 2012, that the concerned AAs, while finalising audit assessments, allowed concessional rate of tax to three dealers on inter-State sale of goods valued at ₹ 2.17 crore, although the dealers furnished duplicate/counterfoil copies of declarations in form 'C'. This led to short levy of tax of ₹ 5.04 lakh. Besides penalty of ₹ 10.09 lakh is also leviable.

After audit pointed out the above cases, Government stated (August 2013) that the two cases related to Cuttack-II Range have been reopened and were under examination. The final reply in respect of such cases as well as compliance to the objection related to Bolangir Range are yet to be received (April 2014).

⁴² Cuttack-II Range and Bolangir Range.

Entry Tax

2.6 Non-observance/compliance of the provisions of Odisha Entry Tax Act/ Rules read with Government notifications

The Odisha Entry Tax (OET) Act, 1999 and Rules made thereunder read with Government notifications issued from time to time provide for:

- *levy of tax on the entry of scheduled goods into a local area for consumption, use or sale therein at the prescribed normal/concessional rates and levy of penalty at prescribed rates for the tax levied in audit assessment;*
- *allowance of proportionate set off towards tax paid on purchase of scheduled goods by the manufacturers and utilised as raw materials on the Entry Tax (ET) payable on the sale value of taxable finished goods;*

Audit noticed that while finalising the assessments, the AAs did not observe the above provisions in some cases as mentioned in the following paragraphs:

2.6.1 Non levy of Entry Tax on scheduled goods

Under Section 3(1) of the OET Act 1999, entry of the scheduled goods into a local area for consumption, use or sale therein is taxable at prescribed rates of the Schedule appended to the Act. As per the Odisha Minor Minerals Concession Rules, 2004, ordinary clay, sand, morrum and chips etc. being minor minerals are scheduled goods and liable for entry tax at the rate of one *per cent*, as per entry 59 of Part-I of the Schedule. 'Pepper and other spices' are also scheduled goods and exigible to tax at the rate of one *per cent* under the Act as per entry 21 of Part I of the Schedule. Further, under Section 9C(5) of the Act, without prejudice to any penalty or interest that may have been levied under any provision of the Act, an amount equal to twice the amount of tax assessed in audit assessment shall be imposed by way of penalty.

On scrutiny of Entry Tax assessment records in Cuttack-II and Ganjam Range between July and October 2012 Audit noticed that the AAs while completing the assessment of two registered dealers under the OET Act did not levy tax on the purchase turnover of ₹ 84.45 crore, for the tax periods from April 2005 to March 2010, assessed between November 2011 and January 2012, treating the said turnover of sand, morrum, chips, turmeric and dry chillies as non-scheduled goods. This led to non-levy of tax of ₹ 0.84 crore. Besides penalty of ₹ 1.69 crore was also leviable.

After this was pointed out Government stated (July 2013) that the case has been reopened in respect of Cuttack-II Range where as in respect of Ganjam Range the re-assessment order has been passed on 2 April 2013 raising extra demand of tax and penalty of ₹ 49.21 lakh.

Further reply on realisation of the amount is awaited (April 2014).

2.6.2 Non-levy of Entry Tax on imported scheduled goods

Under Section 3(1) of the OET Act, 1999 read with Rule 3 (4) (a) of OET Rules, 1999, there shall be levied and collected a tax at concessional rate of 50 percentum of the normal tax prescribed under Part I and Part II of the Schedule appended to the Act on entry of the scheduled goods into a local area for use as a raw material for manufacture of goods for sale. 'Ferro alloys' including 'Ferro silicon' are scheduled goods and are liable to tax at the rate of two *per cent* as per entry 38 under Part II of the Schedule to the OET Act and at the rate of one *per cent* only, when these are used as raw materials for manufacturing. Further, under Section 9C (5) of the Act, the dealer is liable to pay penalty equal to twice the amount of tax assessed in audit assessment.

During scrutiny of audit assessment records in Bolangir Range, Audit noticed (November 2012) that a registered dealer imported scheduled goods such as Ferro vanadium, Ferro molybdenum worth ₹ 107.25 crore for manufacture of high speed steel during the tax period from 1 April 2005 to 31 March 2008 and paid no tax thereon. The AA, while finalising the audit assessment in December 2011 of the dealer for the above period, did not levy tax of ₹ 1.07 crore on such imported goods, treating the same as non-scheduled

goods despite recommendations made by the Tax Audit Team in Audit Visit Report (31 March 2011) to levy tax thereon at appropriate rate. Besides, a penalty of ₹ 2.14 crore is also leviable.

After Audit pointed out the case, AA stated (December 2012) that the proceeding under Section 10 of the OET Act would be initiated against the dealer and result would be intimated to audit. Further reply is yet to be received (January 2014).

Audit referred the matter to CCT, Odisha in January 2013 and Government in June 2013. The replies are yet to be received (April 2014).

2.6.3 Short levy of Entry Tax on scheduled goods

Under Section 26 of the OET Act 1999 read with Section 3, entry tax shall be levied at the prescribed rates on the scheduled goods. 'Materials for transmission towers' are scheduled goods and exigible to tax at the rate of two *per cent* as per entry-2 under Part II of the Schedule to the OET Act. Further, under Section 9C (5) of the Act, without prejudice to any penalty or interest that may have been levied under any provision of the Act, an amount equal to twice the amount of tax assessed under Section 9C shall be imposed by way of penalty.

(a) On scrutiny of audit assessment records in Bhubaneswar II Circle, Audit noticed (August 2012) that the AA while completing assessment on 30 March 2012 of a registered dealer under the OET Act incorrectly levied tax at the rate of one *per cent* on purchase value of scheduled goods worth ₹ 19.83 crore instead of the correct rate of two *per cent*. This led to short levy of entry

tax of ₹ 0.20 crore. Besides penalty of ₹ 0.40 crore is also leviable.

(b) Similarly on scrutiny of assessment records in Balasore Range (April 2012), Audit noticed that the AA while finalising the assessment of a registered dealer under the OET Act, on 27 February 2012, incorrectly levied tax at the rate of one *per cent* on the sale value of finished goods worth ₹ 31.60 crore instead of correct rate of two *per cent*. This resulted in short levy of entry tax of ₹ 0.32 crore. Besides, penalty of ₹ 0.63 crore was also leviable.

After Audit pointed out the above cases, Government stated (May 2013) that the reassessment proceeding of the dealer pertaining to Bhubaneswar-II Circle had been completed in April 2013 raising extra demand of ₹ 0.59 crore inclusive of penalty whereas, in case of the dealer pertaining to Balasore Range the AA had completed assessment in November 2012 raising extra demand of ₹ 0.32 crore. No reason was attributed for non-levy of penalty of ₹ 0.63 crore. However, the dealer of Balasore Range had preferred appeal against the demand by depositing a sum of ₹ 6.32 lakh. Further reply is awaited (April 2014).

2.6.4 Non levy of penalty on audit assessment

Under Section 3 (1) of OET Act, 1999, tax at prescribed rates is levied and collected on entry of the scheduled goods into a local area for consumption, use or sale therein. Further Section 9C (5) of the OET Act, specifies that, without prejudice to any penalty or interest that may have been levied under any provision of the Act, an amount equal to twice the amount of tax assessed under Section 9C(3) or (4) shall be imposed by way of penalty in respect of any assessment made thereunder.

During test check of audit assessment records in three Circles⁴³ and one Range⁴⁴ for different tax periods from 1 April 2006 to 30 April 2010, Audit noticed between May 2012 and January 2013 that though tax of ₹ 27.71 lakh was assessed in four cases against four dealers, the respective AAs of three Circles, while finalising the assessments in three cases, did

not impose penalty of ₹ 12.33 lakh; whereas the AA of the concerned Range levied penalty of ₹ 0.15 lakh only against the leviable penalty of ₹ 43.08 lakh. Thus, there was non/short levy of penalty of ₹ 55.26 lakh.

After Audit pointed out the above cases, AAs stated (between May 2012 and July 2013) that the cases would be re-examined and compliances would be intimated after verification. Further compliances are awaited (June 2013).

Audit reported the matter to CCT, Odisha in May 2013 and Government in June 2013. The replies are yet to be received (April 2014).

⁴³ Bargarh, Bhubaneswar III and Keonjhar.

⁴⁴ Jajpur.

CHAPTER-III: MOTOR VEHICLES TAX

EXECUTIVE SUMMARY

Marginal increase in tax collection	In 2012-13, the collection of taxes from motor vehicles was less by 12.21 <i>per cent</i> as compared to the Budget Estimate for the year and decreased by 5.30 <i>per cent</i> over the previous year which was attributed by the Department to decline in the trend of registration of new vehicles, recessive tendency in the economy which had a major impact on transport sector, number of vehicles taking No Objection Certificate to other States and vehicles remaining off road.
Internal audit not conducted	Internal Audit of units under Transport Department has not been conducted since 2007-08 due to shortage of staff in the Internal Audit Wing.
Low recovery by the Department against the observations pointed out by audit in earlier years	During the period 2007-08 to 2011-12, audit pointed out non /short-levy, non/short-realisation of tax, fee etc., with revenue implication of ₹ 375.83 crore in 8,53,077 cases. Of these, the Department/Government accepted audit observations in 79,225 cases involving ₹ 149.75 crore; but recovered only ₹ 7.48 crore in 3,525 cases. The average recovery position, being 4.99 <i>per cent</i> as compared to acceptance of objections, was low.
Results of audit in 2012-13	<p>In 2012-13, Records of 43 units relating to taxes on motor vehicles were test checked and audit noticed non / short-realisation / levy of tax, fees, penalty etc., involving ₹ 87.34 crore in 1,52,794 cases.</p> <p>The Department accepted non/short-realisation / levy of tax and other deficiencies involving ₹ 8.62 crore in 3,868 cases, of which one case involving ₹ 0.34 lakh was pointed out by audit during 2012-13 and rest in the earlier years. An amount of ₹ 0.53 crore was recovered in 432 cases during the year 2012-13.</p>

Highlights

In this Chapter, Audit findings of illustrative cases involving ₹ 86.40 crore selected from the observations noticed during test check of records relating to assessment and collection of motor vehicles tax in the office of the Transport Commissioner-cum-Chairman, State Transport Authority and the Regional Transport Officers (RTOs), due to non-adherence to provisions of the Acts / Rules are presented.

It is a matter of concern that similar omissions have been pointed out by audit in the earlier Audit Reports also; but the Department has not taken adequate corrective action despite switching over to an IT-enabled system in all the RTOs. Though these omissions were apparent from the records/database made available to audit, the RTOs were unable to detect these mistakes.

Conclusions

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 audit are avoided in future.

It also needs to initiate immediate action to recover non-realisation, undercharge of tax, fees etc. pointed out, more so in those cases where audit contentions have been accepted.

3.1.1 Tax administration

Levy and collection of taxes on motor vehicles is regulated under the Motor Vehicles (MV) Act, 1988 and the Odisha Motor Vehicles Taxation (OMVT) Act, 1975. The Transport Commissioner (TC)-cum-Chairman, State Transport Authority (STA), under the overall supervision of the Principal Secretary, Commerce and Transport (Transport) Department, administers the above Acts and Rules made thereunder and is assisted by the Headquarters and field staff. RTOs are the Assessing Authorities (AAs) as well as the Tax Recovery Officers (TROs).

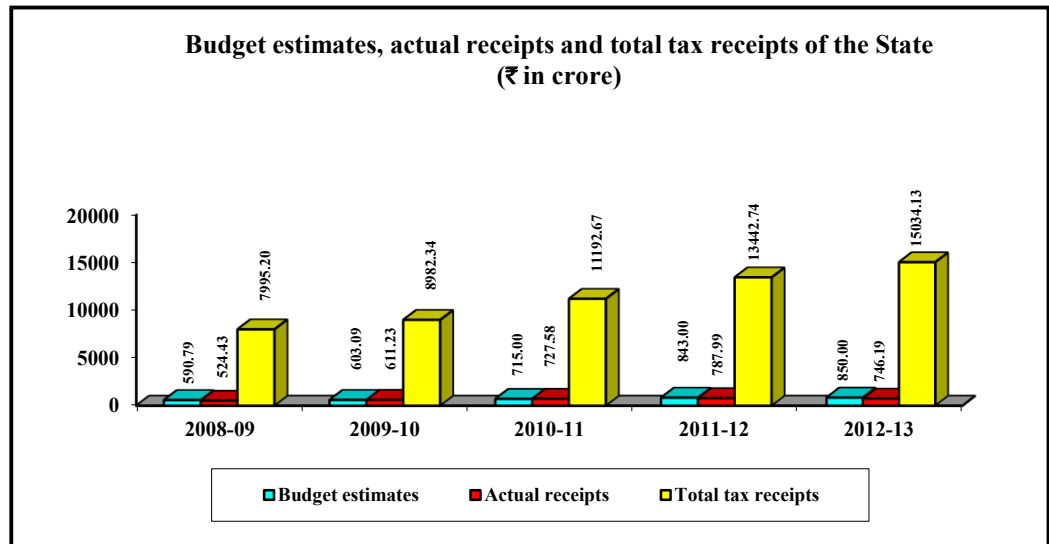
3.1.2 Trend of Receipts

Actual Receipts from taxes on motor vehicles during the years 2008-09 to 2012-13 along with the Total Tax Receipts of the State during the same period are exhibited in the following table.

(₹ 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 Receipts
2008-09	590.79	524.43	(-)66.36	(-)11.23	7,995.20	6.56
2009-10	603.09	611.23	(+)8.14	(+)1.35	8,982.34	6.80
2010-11	715.00	727.58	(+)12.58	(+)1.76	11,192.67	6.50
2011-12	843.00	787.99	(-)55.01	(-)6.52	13,442.74	5.86
2012-13	850.00	746.19	(-)103.81	(-)12.21	15,034.13	4.96

Source: Finance Accounts



Increase of revenue during 2011-12 was due to increase in registration of vehicles and increase in enforcement activities, amendment of OMVT Act and arrear collection. Wide fluctuations in Budget Estimates and Actuals during 2012-13 was stated to be due to decline in trend of registration of new vehicles, recessive tendency in the economy which had a major impact on transport sector, number of vehicles taking NOC to other States and remaining off road.

3.1.3 Analysis of Arrears of Revenue

As per the information furnished by the Department arrear of revenue as on 31 March 2013 amounted to ₹ 137.75 crore, which included ₹ 63.78 crore outstanding for more than five years. Arrears of ₹ 41.81 crore was covered by certificate cases; ₹ 15.07 crore was stayed by Judicial/Departmental authorities and ₹ 80.87 crore was at other stages. The Department stated that reconciliation of payment of taxes by the vehicle owner in the region other than home region was being done to account for the tax paid in other regions. Besides demand notices/ Tax Recovery (TR) cases have been initiated for realisation/reconciliation of arrears. All present vehicle owners are instructed to pay tax in any one region through computers instead of manual mode, so that arrear tax would be minimised. However, the fact remained that there was arrears of ₹ 137.75 crore, which needs early realisation.

3.1.4 Cost of collection

The gross collection under taxes on motor vehicles, expenditure incurred for their collection and the percentage of such expenditure to gross collection during the years 2010-11, 2011-12 and 2012-13 along with the relevant all India average percentage of expenditure on collection to gross collection in the respective previous years are mentioned in the following table:

(₹ in crore)

Year	Gross collection	Expenditure on collection	Percentage of expenditure to gross collection	All India average percentage
2010-11	727.58	30.73	4.22	3.07
2011-12	787.99	25.96	3.29	3.71
2012-13	746.19	23.08	3.09	2.96

Source: Information furnished by STA

In 2010-11 and 2012-13 the cost of collection was more than the all India average.

3.1.5 Working of internal audit wing

Although the Internal Audit Wing (IAW) of the Department exists, audit was not conducted since 2007-08 due to absence of staff and non-filling up of the retirement vacancies.

The Government may take suitable steps to strengthen the IAW so as to ensure effective implementation of the Acts / Rules and for prompt and correct realisation of revenue.

3.1.6 Impact of audit

Revenue impact

During the last five years (2007-08 to 2011-12) Audit pointed out non/short levy, non/short realisation of tax, fee etc., with revenue implication of ₹ 375.83 crore in 8,53,077 cases. Of these, the Department/Government accepted audit observations in 79,225 cases involving ₹ 149.75 crore; but recovered ₹ 7.48 crore only in 3,525 cases. The recovery position as compared to acceptance of objections was low and ranged between 1.32 and 6.14 *per cent*. The Government may take appropriate steps to improve the recovery position.

3.1.7 Results of audit

Audit of Revenue Receipts

During 2012-13, Audit test checked records of 43 units involved in assessment and collection of taxes and fees on motor vehicles and found non/short realisation of tax, fees etc. of ₹ 87.34 crore in 1,52,794 cases.

The Department accepted non/short realisation/levy of tax and other deficiencies involving ₹ 8.62 crore in 3,868 cases, of which one case involving ₹ 0.34 lakh related to the year 2012-13 and the rest to earlier years. An amount of ₹ 0.53 crore was recovered in 432 cases during the year 2012-13.

3.2 Audit observations

Audit scrutinised records relating to assessment and collection of Motor Vehicles Tax (MVT) in the offices of the Transport Commissioner (TC)-cum-Chairman, State Transport Authority (STA) and Regional Transport Officers (RTOs) and found several cases of non-observance of some of the provisions of the Acts/Rules and other cases as mentioned in the succeeding paragraphs in this chapter. The cases are illustrative and are based on a test check carried out by Audit. Such omissions remain undetected till an Audit is conducted. The Government may direct the Department to improve the internal control system including strengthening of Internal Audit so that such omissions can be detected, corrected and avoided in future.

3.3 Non-compliance of the provisions of the Acts/Rules

The provisions of the Motor Vehicles (MV) Act 1988, Odisha Motor Vehicles Taxation (OMVT) Act, 1975 and Rules made thereunder require levy and payment of:

- (i) *motor vehicles tax/additional tax by the vehicle owner at the prescribed rate in advance and within the grace period so provided;*
- (ii) *compounding fee from the goods vehicles carrying excess load;*
- (iii) *penalty up to double the tax for belated payment of tax, if the tax is not paid on time within two months after the expiry of the grace period of 15 days;*
- (iv) *One Time Tax (OTT) from goods vehicles of Gross Vehicle Weight (GVW) not exceeding 3000 Kg;*
- (v) *differential tax when a Stage carriage is used as a Contract carriage;*
- (vi) *additional tax at specified rates from the Stage carriages plying on inter State routes;*
- (vii) *tax/additional tax at the highest rate of the slab of the Stage carriages if the Stage carriage was found plying without permit and*
- (viii) *fitness/renewal fee and penalty for late application for renewal of goods vehicles.*

Non-compliance of the provisions of the Act/Rules in some cases as follows are mentioned in the following paragraphs:

3.3.1 Non/short realisation of motor vehicle tax and additional tax

3.3.1.1 Non-realisation of tax in respect of Goods carriages, Contract carriages, Tractor-trailer combinations and Stage carriages

Under Section 3, 3A and 4 (1) of the OMVT Act, 1975, motor vehicle tax and additional tax due on a motor vehicle should be paid in advance at the rates prescribed in the Act, unless exemption from payment of such tax is allowed for the period covered by off road undertaking. The rates of tax/additional tax for different classes of vehicles were prescribed in the Taxation Schedule-I appended to the Act and dependent on the seating capacity of vehicles in respect of stage carriages and contract carriages and on the laden weight of vehicles in respect of goods carriages and tractor-trailer combinations. If such tax is not paid within two months after expiry of the grace period of 15 days, penalty is to be levied at double the rate of tax due. As per the executive instruction (February 1966) of the TC, the RTOs are required to issue demand notices within 30 days from the expiry of the grace period for payment of tax.

During test check of the database of *Vahan*¹ and cross check of records like General Registration Register² (GRR), Permit Register³ (PR) and Off Road Register⁴ (ORR) of 26 RTOs mentioned in the table below, Audit noticed, between May 2012 and March 2013, that motor vehicle tax and additional tax⁵ from 37,023 vehicles, for different periods between April 2011 and March 2012, was not realised even though the vehicles were not covered by off road declarations. This resulted in non realisation of motor vehicle tax and additional tax of ₹ 27.60 crore and penalty of ₹ 55.21 crore as detailed in the table:

¹ *Vahan* is an application software for registration of vehicles and collection of taxes. The information such as laden weight of vehicles relevant to goods carriages and tractor trailer combinations, seating capacity of vehicles relevant to stage carriages and contract carriages are available in the *Vahan* database required for determination of tax.

² GRR is a register containing details of the owner and technical details of the vehicles etc.

³ Permit Register is register containing the permit particulars like distance covered in a day, nature of permit (Express/Ordinary) etc.

⁴ Off Road Register is a register containing declaration of the registered owner for making the vehicle off road for a particular period and acceptance thereof by the concerned RTOs.

⁵ Additional tax is leviable in respect of Public Service Vehicles in addition to motor vehicle tax whereas motor vehicle tax is leviable on two wheelers, personal vehicles, tractor-trailers etc.

(₹ in crore)

Sl. No.	No. of regions Type of vehicles	No. of vehicles	Non-realisation of tax/additional tax	Penalty leviable	Total
1.	²⁶ Goods carriages	17,156	19.37	38.75	58.12
2.	²⁷ Contract carriages	8,057	4.92	9.85	14.77
3.	²⁸ Tractor-trailer combinations	11,769	3.18 ⁹	6.35	9.53
4.	¹⁷ ¹⁰ Stage carriages	41	0.13	0.26	0.39
Total		37,023	27.60	55.21	82.81

Source: Audit observation

This occurred due to lack of monitoring by the Tax Authorities and non-issuance of demand notices by the RTOs by generating the list of tax unpaid vehicles available in *Vahan* MIS reports.

After Audit pointed this out, all RTOs assured between May 2012 and December 2012 to issue demand notices for realisation of the dues.

Audit brought the matter to the notice of TC-cum-Chairman, STA, Odisha and Government in April and May 2013 respectively. Further replies are awaited (April 2014).

3.3.1.2 Short-realisation of tax due to non adoption of the prescribed rates of tax

The motor vehicle tax and additional tax in respect of Stage carriages are determined on the basis of permit particulars/parameters such as distance covered by the vehicle in a day, nature of permit (Express/Ordinary) and seating capacity of the vehicles. Rates of tax for Stage carriages was prescribed in item 4 A of the Taxation Schedule-I appended to the OMT Act, 1975.

During test check of General Registration Register (GRR), Permit Register (PR), Off Road Register (ORR), permit case records and *Vahan* database of 21 RTOs¹¹, Audit noticed (between May 2012 and March 2013) that motor vehicles tax/additional tax of ₹ 6.74 lakh pertaining to 75 stage carriages, for the period between December 2008 and March 2012, was short realised due to change in permit particulars like distance covered in a day, nature of permit etc and non adoption of prescribed rates of tax. Besides, penalty of ₹ 13.48 lakh was also leviable. Though the *Vahan* database captures the owners' details and technical details of the vehicles during registration, permits were not issued through *Vahan* and permit details of stage carriages were not captured in *Vahan*. The above lapses occurred due to non mapping and non integrating taxations particulars with their permit particulars in the computerised system for Stage

6 Angul, Balasore, Bargarh, Bhadrak, Bhubaneswar, Bolangir, Chandikhol, Cuttack, Dhenkanal, Gajapati, Ganjam, Jagatsinghpur, Jharsuguda, Kalahandi, Keonjhar, Koraput, Mayurbhanj, Nawarangpur, Nayagarh, Nuapada, Phulbani, Puri, Rayagada, Rourkela, Sambalpur and Sundargarh.

7 As at footnote 6.

8 As at footnote 6.

9 Motor vehicle tax only.

10 As at footnote 6 except Balasore, Bargarh, Bhadrak, Dhenkanal, Jharsuguda, Koraput, Nuapada, Phulbani and Sambalpur.

11 All region as footnote 6 except Bolangir, Balasore, Koraput, Nuapada and Phulbani.

carriages, since the permit module of *Vahan* was not made operational.

After Audit pointed this out, all RTOs assured between May 2012 and December 2012 to issue demand notices for realisation of the dues.

Audit brought the matter to the notice of TC-cum-Chairman, STA, Odisha and Government in April and May 2013 respectively. Further replies are awaited (April 2014).

3.3.2 Non/Short levy/realisation of motor vehicle tax from Private Service Vehicles due to non-adoption of new rates

Under Section 3, 3A and 4 (1) of the OMVT Act, 1975, motor vehicle tax shall be levied and realised on the basis of the seating capacity of a Private Service Vehicle (PSV) excluding the driver's seat at the rates specified in item 5-A of the Taxation Schedule-I appended to the Act, unless exemption from payment of such tax is allowed for the period covered by off road undertaking. The tax rate in respect of PSV was raised by the Government to ₹ 800 from ₹ 270 per seat per annum with effect from 14 May 2010. In the event of non-payment of tax within the specified period, the vehicle owner/possessor shall be liable to pay penalty ranging from 25 to 200 *per cent* of the tax due, depending upon the period of delay.

During test check of taxation records such as GRRs, Registration case records and database of *Vahan* of 22 RTOs¹², Audit noticed, between May and December 2012, that the revised rate of ₹ 800 per seat per annum effective from 14 May 2010 was not adopted by the RTOs for levy/realisation of tax from Private Service Vehicles (PSVs). It was noticed that RTOs did not collect tax of ₹ 9.97 lakh from 85 PSVs though these vehicles were not covered by off road undertakings. RTOs also in respect of 133 PSVs continued to collect tax at the pre-revised rate of ₹ 270 per seat per annum.

This led to short-realisation of tax of ₹ 18.52 lakh for the periods between May 2010 and March 2012. Besides, penalty of ₹ 56.99 lakh was also leviable.

After Audit pointed out these cases, all the RTOs concerned stated between May 2012 and December 2012 that action would be taken to realise the amount.

Audit brought the matter to the notice of TC-cum-Chairman, STA, Odisha and Government in April 2013 and May 2013 respectively. Further replies are awaited (April 2014).

¹² Angul, Balasore, Bargarh, Bhubaneswar, Bolangir, Chandikhol, Cuttack, Dhenkanla, Gajapati, Ganjam, Jagatsinghpur, Jharsuguda, Kalahandi, Keonjhar, Koraput, Mayurbhanja, Nabarangpur, Puri, Rayagada, Rourkela, Sambalpur and Sundargarh.

3.3.3 Non-realisation of fines for offences in respect of goods carriages

Under Section 194 (1) of the MV Act, 1988 read with the Government notification of 29 September 1995, whoever drives a motor vehicle exceeding the permissible weight shall be punishable with minimum fine of ₹ 2,000 and an additional amount of ₹ 1,000 per ton of excess load for such offences. Further the TC, Odisha in July 2005 instructed the RTOs for expeditious disposal of Vehicle Check Reports (VCRs) by issue of notices to the owners or persons having possession or control over the vehicles for compounding the offence, failing which the Certificate of Registration (RC) of the vehicle shall be suspended/cancelled.

During test check of Miscellaneous Proceeding Registers¹³ (MPRs), VCRs along with the database of *Vahan*, MIS reports of seven RTOs¹⁴, database of *Disha*¹⁵ in STA, Odisha, Audit noticed, between May 2012 and December 2012, that the VCRs issued from July 2002 to March 2012 by the Enforcement Wing (EW) of the RTOs and STA against 866 goods vehicles for carrying excess loads beyond the permissible weight ranging from 177 kgs to 34,280 kgs were lying undisposed. No action was taken for early disposal of such VCRs

through issue of notices and realising fines for the offences or suspension/cancellation of the RCs. This resulted in non-realisation of fines of ₹ 62.22 lakh and Department failed to enforce the penal provision of the Act to minimise the offences.

After Audit pointed out these cases, RTOs and STA, Odisha, stated between May and December 2012 that steps would be taken to dispose the pending VCRs by issuing demand notices for realisation of the Government dues.

Audit brought the matter to the notice of TC-cum-Chairman, STA, Odisha and Government during April and May 2013 respectively. Further replies are awaited (April 2014).

¹³ MPR is a register containing details of VCRs issued by the Enforcement Wing (EW) of RTOs and STA and watching its disposal through realisation of fines.

¹⁴ Angul, Baleswar, Chandikhol, Cuttack, Ganjam, Keonjhar and Rourkela.

¹⁵ *Disha* is a database containing Vehicle Check Reports (VCRs) issued by STA's EW and not related to *Vahan* database of RTOs.

3.3.4 Non/short levy of penalty on belated payment of motor vehicles tax and additional tax

Under Section 9 (1) of the OMVT Rules, 1976, due date of payment of tax and additional tax of a vehicle shall be the date of expiry of the period for which tax had been last paid. In the event of non-payment of tax within a grace period of 15 days from the due date, the vehicle owner/possessor shall be liable to pay penalty ranging from 25 to 200 *per cent* of the tax due depending upon the period of delay under Section 13(1) of OMVT Act, 1975 read with Rule 9(2) of the OMVT Rules, 1976.

During test check of the records of 18 RTOs¹⁶, Audit noticed, between May and December 2012 that for 65 vehicles, tax / additional tax for different periods between April 2002 and March 2012 were paid, between April 2011 and March 2012, belatedly beyond the grace period of 15 days from the due date of payment. The delays ranged from 10 days to more than 9 years. However, in 10 cases penalty of ₹ 3.83 lakh was not collected and in 55 cases penalty of ₹ 14.14 lakh was short realised. Also, the MIS reports available in the system

regarding unpaid instalments of penalty were not utilised by RTOs in issuing notices to the defaulters timely for realisation of the dues.

After Audit pointed out the cases, all the RTOs stated, between May and December 2012 that demand notices would be issued to realise the dues.

Audit brought the matter to the notice of TC-cum-Chairman, STA, Odisha in March 2013 and Government in April 2013. Further replies are awaited (April 2014).

3.3.5 Short realisation of one time tax due to non adoption of new rates

Under Section 4 B of the OMVT Act, 1975, as amended by the Government on 14 May 2010, every goods carriage, the Gross Vehicle Weight (GVW) of which does not exceed 3,000 Kg, is liable to pay One Time Tax (OTT) at the rate equal to ten times of the annual tax specified in the Taxation Schedule-I appended to the Act or five *per cent* of the cost of such vehicle, whichever is higher at the time of registration of the vehicle.

Prior to introduction of OTT, (May 2010) tax on goods carriage was realised annually as per the tax rate specified in the Schedule-I of the Act. During test check of taxation records such as Registration case records and *Vahan* database of 10 RTOs¹⁷, Audit noticed, between June 2012 and November 2012, that in respect of 38 vehicles with GVW not exceeding 3,000 Kg, the RTOs, at

the time of registration realised annual tax only instead of OTT. This resulted in short realisation of tax of ₹ 6.52 lakh.

¹⁶ Angul, Bargarh, Bhubaneswar, Chandikhol, Cuttack, Dhenkanal, Gajapati, Ganjam, Jagatsinghpur, Kalahandi, Keonjhar, Koraput, Mayurbhanj, Nabarangpur, Puri, Rayagada, Rourkela and Sundargarh.

¹⁷ Balasore, Chandikhole, Dhenkanal, Ganjam, Kalahandi, Koraput, Nawarangpur, Nayagarh, Puri and Sambalpur.

After Audit pointed out the cases, the RTOs concerned stated, between June 2012 and November 2012, that action would be taken to realise the amount by issuing demand notices.

Audit brought the matter to the notice of TC-cum-Chairman, STA Odisha in March 2013 and Government in April 2013. Further replies are awaited (April 2014).

3.3.6 Non-realisation of differential tax from stage carriages

Under Section 6 of the OMVT Act, 1975 and Rules made thereunder, when a vehicle, for which motor vehicle tax and additional tax for any period has been paid, is proposed to be used in a manner for which tax at higher rate is payable, the owner of the vehicle is liable to pay the differential tax on the date of alteration of use or within a period of 15 days from the due date. If such tax is not paid within two months after the expiry of the grace period of 15 days, penalty equal to twice the tax due shall be charged.

During test check of GRR, Special Permit Registers¹⁸ (SPRs) and database of *Vahan* in respect of 18 RTOs¹⁹, Audit noticed, between May 2012 and December 2012, that 129 stage carriages were permitted to ply temporarily by altering the use as Special Contract carriages during different periods, between April and March 2012, on which higher rate of tax was leviable for such alteration. However,

differential tax of ₹ 3.90 lakh was not collected in advance in respect of all such vehicles by the RTOs. Besides, penalty of ₹ 7.80 lakh was also leviable.

After Audit pointed out the cases, the RTOs concerned stated, between May 2012 and December 2012 that demand notices would be issued to realise the Government dues.

Audit brought the matter to the notice of TC-cum-Chairman, STA, Odisha during March 2013 and Government in April 2013. Further replies are awaited (April 2014).

¹⁸ Special Permit Register contains the details of Special Contract carriages permits issued to Stage carriages along with permit number and route/destination, period of permits etc.

¹⁹ Balasore, Bargarh, Bhubaneswar, Bolangir, Chandikhol, Cuttack, Ganjam, Jagatsinghpur, Kalahandi, Keonjhar, Mayurbhanj, Nayagarh, Phulbani, Puri, Rayagada, Rourkela, Sambalpur and Sundargarh.

3.3.7 Non/short realisation of motor vehicle tax and additional tax from Stage carriages plying on inter State routes

Under item 4 (v) and (vi) of the Taxation Schedule-I appended to the OMVT Act, 1975 where, a Stage carriage plies on a route partly within the State of Odisha and partly within other State in pursuance of any agreement between the Government of Odisha and Government of any other State, such stage carriage is liable to pay tax/additional tax calculated on the total distance covered by it on the approved route in the State of Odisha at the rates as specified in the above mentioned schedule appended to the Act. In case of delay in payment of such tax after the grace period of 15 days, penalty extending up to 200 *per cent* of tax/additional tax shall be levied.

stage carriages.

After Audit pointed out (April 2013) the cases, the Government replied (October 2013) that motor vehicles tax/additional tax in respect of two vehicles amounting to ₹ 0.68 lakh was realised in time and so penalty of ₹ 1.36 lakh was also not leviable. However, tax/additional tax of ₹ 1.32 lakh and penalty of ₹ 2.65 lakh remained unrealised (April 2014).

During test check of taxation records of STA, Odisha and three RTOs²⁰ along with permit particulars, Audit noticed (between May and August 2012) that due to non adoption of prescribed tax rates, tax/additional tax of ₹ 1.81 lakh was not realised from four Stage carriages and ₹ 0.20 lakh was short realised from two stage carriages though these were authorised to ply on inter-state routes with valid permits for different periods between April 2011 to March 2012. Besides, penalty of ₹ four lakh was also leviable on the above six

²⁰ RTOs Cuttack, Kalahandi and Nawarangpur.

3.3.8 Non/short realisation of tax on VCRs of stage carriages

Under Section 3 and 3A of the Odisha Motor Vehicles Taxation (OMVT) Act, 1975, motor vehicles tax and additional tax should be levied in respect of a Stage carriage on the basis of the number of passengers (including standees), which the vehicle is permitted to carry, and total distance to be covered in a day as per the permit. When any such vehicle is detected plying without a permit and caught by the Enforcement Wing (EW) during checking of vehicles, a VCR is issued under Section 192(A) of MV Act, 1988. In such cases, tax/additional tax is leviable at a rate considering the distance exceeding 320 km of express service for the period for which the vehicle has no permits as prescribed in explanation ii (b) of item 4 of the Taxation Schedule-I appended to the Act. In case of default in payment of tax, penalty up to double the tax due is also leviable depending upon the period of delay.

During test check of records of 10 RTOs²¹, Audit noticed, between May and November 2012, that 24 Stage carriages were plying without permits as detected by the EW during different periods between April 2011 and March 2012. Though the EW issued VCR in each case, the RTOs concerned did not finalise the VCRs promptly by issuing notices to the owners for collection of tax at the rate applicable to Express service slab for the period of plying of the vehicle without permit. This resulted in non-realisation of tax and additional tax of ₹ 0.16 lakh in one case and short realisation of ₹ 2.18 lakh in 23 cases. Besides, penalty of ₹ 4.68 lakh was also leviable.

After Audit pointed out the cases, the RTOs concerned stated, between May and November 2012, that demand notices would be issued to realise the dues.

Audit brought the matter to the notice of TC-cum-Chairman, STA, Odisha in March 2013 and Government in April 2013. Replies are yet to be received (April 2014).

²¹ Angul, Bhubaneswar, Chandikhole, Cuttack, Dhenkanal, Ganjam, Kalahandi, Keonjhar, Koraput, and Puri.

3.3.9 Loss of Revenue due to issue of Improper Permits

As per Rule 2(d) of OMV Rules, 1993, Express Stage Carriage means a Stage carriage with a permit authorising the same to stop, pick up and set down passengers once in an average distance of 25 kms covered by its route with the exception of District, Sub-division, Tehsil, Block Headquarters en-route and the place of its starting and terminus point whereas the average distance of such stoppage is 5 kms for Ordinary Service. Besides, the Service shall be Express, if it covers more than 160 km one way of the route and 75 per cent or more portions thereof is covered under the National Highway (NH), State Highway (SH), Express State Highway (ESH) taken together as per the decision taken in the 231st Board meeting of the STA. The rates of tax/additional tax for Ordinary and Express services is prescribed in item 4 A of the Taxation Schedule-I appended to the OMVT Act, 1975.

During test check of inter district permits issued by STA along with the permit case records and *Vahan* database showing tax payments and registration particulars, Audit noticed during August 2012, that 12 stage carriages were issued with ordinary class service permits instead of express class service permits, though the distance covered was more than 160 kms each way of the route, more than 75 per cent of the route was covered under NH or SH and the average distance of pick up of passengers was more than 25 kms in each case. Hence misclassification of service/nature of permit issued contravened the norms

prescribed in the OMV Rules 1993 read with the decision of Board of STA referred to above; and resulted in loss of tax/additional tax of ₹ 7.11 lakh for the period from August 2008 to March 2012.

After Audit pointed out the above cases, STA, Odisha, stated in August 2012 that the poor would be deprived of the benefit of going to distant places in Ordinary Service, if there was a limit of 160 km. However, in view of the decision of the STAs 231 Board meeting read with Rule 2(d) of OMV Rules 1993 as amended on 13 April 2007, which clearly indicated the criteria for express stage carriages, tax was leviable at the appropriate rate.

Audit brought the above matters to the notice of TC-cum-Chairman, STA, Odisha and Government in May 2013. Replies are awaited (April 2014).

3.3.10 Plying of Goods vehicles with expired fitness

Under Section 56 of the Motor Vehicles (MV) Act, 1988 read with Rule 62 of the Central Motor Vehicles (CMV) Rules, 1989, a transport vehicle shall not be deemed to be validly registered, unless it carries a Certificate of Fitness (FC) issued by the prescribed authority in the prescribed form. The FC in respect of a new transport vehicle shall be valid for two years; otherwise it shall be renewed every year against receipt of prescribed fees for inspection and testing of the vehicles and grant or renewal of FC under Rule 81 of the CMV Rules, 1989. The fee for conducting test of fitness of the vehicles was fixed at ₹ 400 per motor vehicle in addition to a fee of ₹ 100 towards grant or renewal of FC. Further, Rule 22(7) of the Odisha Motor Vehicles (OMV) Rules, 1993 prescribes a penalty of ₹ 100 for non-filing of the renewal of FC application within the prescribed date.

During test check of taxation records together with database of *Vahan* and MIS reports of 14 RTOs²², Audit noticed, during June and November 2012 that FCs of 4,775 goods vehicles expired between April 2011 and March 2012. The RTOs realised up to date taxes without renewing their FCs. As registration of these vehicles were validated on realisation of taxes, the vehicle owners did not obtain the FCs on payment of the requisite fees and penalty. The RTOs did not make use of *Vahan* MIS reports in which the date of expiry of FCs was available. This resulted in loss of Government revenue of ₹ 23.85 lakh towards fitness fee and penalty of ₹ 4.77 lakh.

After Audit pointed out the cases, the concerned RTOs stated, between July and November 2012, that action would be taken to realise the amounts by issuing demand notices. Since FCs for the current period only can be insisted upon and no FC can be issued for earlier periods, the possibility of recovery of the amounts is unlikely.

Audit brought the matter to the notice of TC-cum-Chairman, STA, Odisha in April 2013 and the Government in May 2013. Replies are yet to be received (April 2014).

²² Angul, Balasore, Bargarh, Chandikhole, Dhenkanal, Ganjam, Jharsuguda, Keonjhar, Koraput, Nuapada, Puri, Rourkela, Sambalpur and Sundergarh.

3.4 Non-compliance of Government notification/decision

Government of India (GoI) notified in February 2004 the enhanced Pollution Under Control (PUC) norms for strict enforcement of the same by regular tests of the vehicles using the Pollution Testing Equipments (PTEs) at prescribed intervals against receipt of prescribed fees. Further, the decision of Government of Odisha was notified on 24 January 2003 for payment of process fee at the prescribed rate. Non-compliance of the above norms/instructions and decisions in some cases as mentioned in paragraphs 3.4.1, resulted in blockage of funds.

3.4.1 Non-realisation of process fees

Under Section 96 of the MV Act, 1988 read with the Government notification of 24 January 2003, process fee of ₹ 100 on every application/objection filed was introduced with effect from 28 January 2003. The Department, by an order of March 2003, however, postponed the collection of the fees at the rate prescribed in the notification.

During test check of the PR and other connected records in the office of the STA, Odisha and 22 RTOs²³, Audit noticed, between May and November 2012, that the process fees of ₹ 1.08 crore were not realised against 1,08,007 cases of application/objection filed between April 2011 and March 2012.

After Audit pointed this out, STA, Odisha, and all the RTOs stated, between May and December 2012 that the collection of fees was postponed in view of the Government letter dated 7 March 2003. However, executive orders cannot overrule the statutory provisions in the Law.

Audit brought the matter to the notice of TC-cum-Chairman, STA, Odisha in April 2013 and Government in May 2013. Their replies are yet to be received (April 2014).

²³ Angul, Balasore, Bargarh, Bhadrak, Bhubaneswar, Chandikhol, Cuttack, Dhenkanal, Gajapati, Ganjam, Jagatsinghpur, Jharsuguda, Kalahandi, Keonjhar, Koraput, Mayurbhanj, Nawarangpur, Nayagarh, Phulbani, Puri, Sambalpur, Sundergarh and STA, Odisha, Cuttack.

CHAPTER-IV: STAMP DUTY AND REGISTRATION FEE

EXECUTIVE SUMMARY

Increase/decrease in tax collection	During 2012-13 collection of Stamp Duty (SD) and Registration Fee (RF) increased by 9.38 <i>per cent</i> over the previous year. However, it decreased by 0.93 <i>per cent</i> as compared to the Budget Estimate (BE) for the year which was attributed by the Department to excess target fixed in comparison to previous year.
Low recovery by the Department against the observations pointed out by audit in earlier years	During the period 2007-08 to 2011-12, Audit pointed out non / short-levy, non / short-realisation of Stamp duty and Registration fee etc., with revenue implication of ₹ 594.98 crore. Of these, the Department accepted audit observations in 13,461 cases involving ₹ 15.57 crore; but recovered ₹ 5.92 crore in 2,618 cases. Average recovery was 38.02 <i>per cent</i> , as compared to accepted audit observations.
Results of audit conducted in 2012-13	<p>During 2012-13, Audit test checked records relating to assessment and collection of SD and RF and found short levy/realisation of SD and RF of ₹ 217.06 crore in 5,609 cases. Audit on levy of SD and RF on Development agreement was also conducted during the year.</p> <p>The Department accepted under assessment, non-realisation of revenue and other irregularities involving ₹ 50.33 crore in 1,984 cases pointed out in 2012-13 and recovered ₹ 0.20 crore in 170 cases pointed out during 2007-08 to 2010-11.</p>
Highlights	<p>In this Chapter a paragraph on Audit on “Levy of Stamp Duty and Registration Fee on Development Agreements” with money value of ₹ 133.69 crore and other observations of ₹ 1.25 crore selected from the audit observations during test check of records relating to Stamp Duty and Registration Fee in the offices of the District Sub-Registrars (DSRs) and Sub Registrars (SRs), where provisions of the Acts / Rules were not followed, are included.</p> <p>It is a matter of concern that similar omissions have also been pointed out in earlier Audit Reports but Department has not taken adequate corrective action.</p>
Conclusions	<p>The Department needs to improve internal control system including strengthening of internal audit wing so that weaknesses in the system are addressed and omissions of the nature detected by audit are avoided in future.</p> <p>It also needs to initiate action to realise Government dues as pointed out.</p>

4.1.1 Tax administration

Levy and collection of Stamp Duty (SD) and Registration Fee (RF) is regulated under the Indian Stamp (IS) Act, 1899, the Registration Act, 1908 and Rules made thereunder. The Inspector General of Registration (IGR) under overall control of the Principal Secretary to the Government in Revenue and Disaster Management (R&DM) Department administers the above Acts and Rules being assisted by a Joint Inspector General (JIG), three Deputy Inspector General (DIGs), 30 District Registrars (DRs) and 30 District Sub Registrars (DSRs) at the district level and 151 Sub Registrars (SRs) at the unit level.

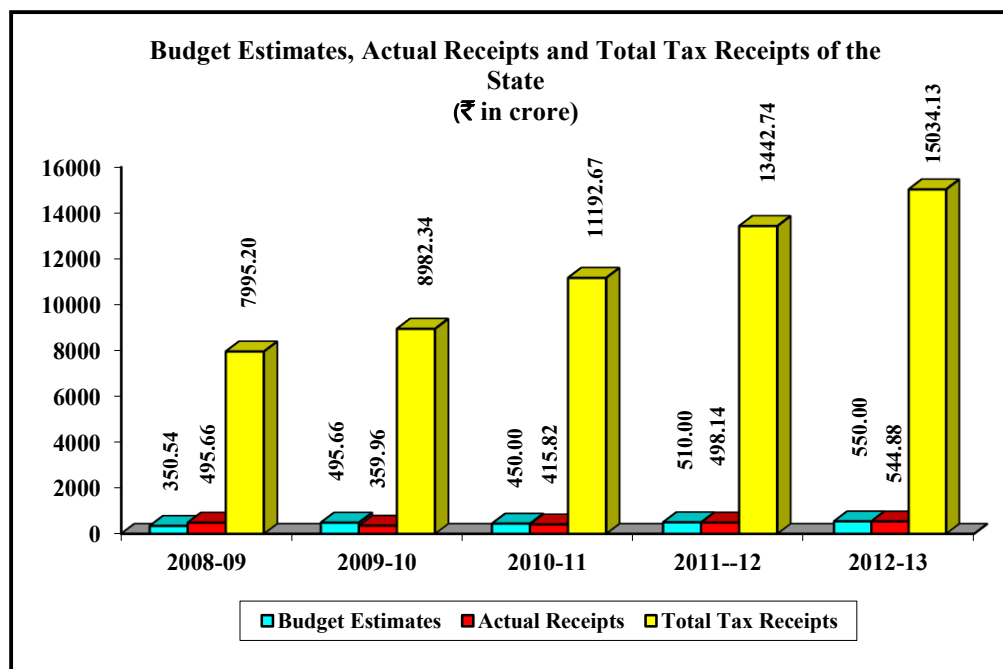
4.1.2 Trend of receipts

Actual Receipts from SD and RF during 2008-09 to 2012-13 vis-à-vis budget estimate and total tax receipts are exhibited in the following table and bar graphs showing the percentage of variations and their contribution to total Tax Receipts of the State.

(₹ in crore)

Year	Budget estimate	Actual Receipts	Variation Excess (+) / Short fall (-)	Percentage of variation	Total Tax Receipts of the State	Percentage of Actual Receipts vis-à-vis Total Tax receipts
2008-09	350.54	495.66	(+)145.12	(+)41.40	7,995.20	6.20
2009-10	495.66	359.96	(-)135.70	(-)27.38	8,982.34	4.01
2010-11	450.00	415.82	(-)34.18	(-)7.60	11,192.67	3.72
2011-12	510.00	498.14	(-)11.86	(-)2.33	13,442.74	3.71
2012-13	550.00	544.88	(-) 5.12	(-) 0.93	15,034.13	3.62

Source: Finance Accounts



Reason for increase in collection during 2012-13 compared to 2011-12 was attributed by the Department to sincere efforts taken by IGR, Odisha as well as field functionaries, revision of BMV and disposal of pending under valuation cases by way of one time settlement scheme. Reason for decrease of actual receipt from Budget Estimate of 2012-13, was attributed to excess target fixed in comparison to previous year.

4.1.3 Cost of collection

Gross collection under SD and RF, expenditure incurred on their collection and percentage of such expenditure to gross collection during the years 2010-11, 2011-12 and 2012-13 along with all India average percentage of expenditure for collection to gross collection in respect of the previous years are mentioned below.

(₹ in crore)

Year	Gross collection	Expenditure on collection	Percentage of expenditure to gross collection	All India average percentage
2010-11	415.82	17.09	4.11	2.47
2011-12	498.14	23.87	4.79	1.60
2012-13	544.88	29.62	5.44	1.89

Source : Information furnished by Department

Percentage of cost of collection exceeded all India average percentage during year 2010-11, 2011-12 and 2012-2013. Infact the cost of collection has been increasing every year. The Government may take appropriate steps to reduce cost.

4.1.4 Impact of audit

Revenue Impact

During last five years (2007-08 to 2011-12), Audit pointed out non/short levy/realisation of SD and RF etc. with revenue implication of ₹ 594.98 crore in 1,25,905 cases. Of these, the Department/Government had accepted Audit observations in 13,461 cases involving ₹ 15.57 crore and recovered ₹ 5.92 crore in 2,618 cases.

Amount recovered as compared to acceptance of Audit observations was low. The Government may take appropriate steps for recovery of amount already accepted apart from early finalisation of cases under objection.

4.1.5 Results of audit

During 2012-13, Audit test checked records relating to assessment and collection of Stamp Duty (SD) and Registration Fees (RF) and found short levy/realisation of SD and RF of ₹ 217.06 crore in 5,609 cases of which the department accepted under assessment and non-realisation of revenue and other irregularities of ₹ 50.33 crore in 1,984 cases and recovered ₹ 0.20 crore in 170 cases pointed out during 2004-05 to 2010-11.

4.2 Audit of “Levy of Stamp Duty and Registration Fee on Development Agreements”

4.2.1 Introduction

Development Agreement (DA) or Collaboration Agreement (CA) is a mechanism for marketing of Land/immovable property situated in urban/semi urban areas of the State by entering into an agreement creating mutual rights and obligations, where owner agrees to transfer ownership of land to developer for a consideration either in form of cash or a portion of the constructed property or both. Then Developer promotes and develops the land, without any interference from the owner and sells the same in smaller units to the intending buyers. Alternatively, where owner of land entrusts the land to the developer only for the purpose of managing the construction of structures/houses, ownership of the land remains with the owner of the land. In the State, DAs /CAs have been registered by paying nominal SD and RF and the developers develop the land and construct house for sale by executing documents termed as General Power of Attorney (GPA)/Agreement to Sell (ATS) evidencing *de facto* transfer of immovable property.

Inspector General of Registration (IGR) working under the Board of Revenue (BOR) administers the Acts/Rules regulating levy and collection of SD & RF in the State under the overall control of the Secretary to Government in Revenue and Disaster Management Department. He is assisted by one joint IGR, 3 Deputy IGRs, 30 Additional District Magistrates (ADMs) designated as the District Registrars (DRs) at the District level. Besides the above 30 District Sub-Registrars (DSRs) and 151 Sub- Registrars (SRs) at unit levels are empowered to levy and collect the SD and RF in the State at the time of registration of the documents.

Audit of levy of SD and RF on DA was conducted by selecting 19¹ out of 181 field level units involving 17,722 DA, CA, ATS and POA registered during 2007-08 to 2011-12 based on risk perception. Audit revealed some cases of evasion/short levy of SD and RF which are discussed in the following paragraphs.

¹ **DSR:** Angul, Balasore, Bhadrak, Cuttack, Dhenkanal, Jharsuguda, Khurda(Bhubaneswar) Mayurbhanj, Puri, Sambalpur and
SR: Balipatna, Berhampur (Rural), Berhampur (Town), Dolipur, Jatni, Khandagiri, Khurda, Panposh and Pipili.

4.2.2 Short collection of SD and RF

As per Section 2(10) of IS Act, 1899, “Conveyance” includes every instrument by which property, whether movable or immovable, is transferred *inter vivos* and which is not otherwise specifically provided for in Schedule 1A of the Act. Further, as per Section 5 of the Transfer of Property (TP) Act, 1882, transfer of property means an act by which a living person conveys property, in present, or in future to one or more other living persons or to himself and Section 54 of the said Act defines “sale” as a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Classification of an instrument depends upon the nature of transaction recited therein. In case possession of property is handed over after receipt of full amount of consideration or promise to pay consideration later on, the instrument becomes a conveyance deed warranting levy and collection of SD and RF at prescribed rates.

4.2.2(a) Audit noticed, in nine DSRs/SRs², that 350 documents involving Ac. 211.483 of land with market value of ₹ 154.99 crore were registered during 2007-12 as Agreement for Development of land with refundable security deposit of ₹ 6.23 crore. As per recitals of the documents the owners of land handed over or agreed to deliver peaceful and vacant physical possession of the said lands to developers/builders on the date of execution of such agreements and by executing registered irrevocable General Power of Attorney authorised to sell the developers’ shares of super built up area along with impartible undivided shares of land to intending buyers. On completion of housing complexes, the developers agreed to hand over the land owner’s share as consideration within stipulated period. Thus, the transaction evidenced transfer of property.

Hence, based on nature of transaction, the documents were required to be treated as Conveyance instead of Agreement for development and SD at the rate of five *per cent* and RF at the rate of two *per cent* were to be levied and collected for such conveyance on the consideration set forth therein or at the market value (BMV) of the property whichever is higher. Though BMV of the property amounted to ₹ 154.99 crore on the date of registration, SD (₹ 0.19 crore) and RF (₹ 0.08 crore) on these agreements were found to have been levied and collected on the nominal amount of ₹ 6.23 crore set forth in the documents as security deposits/advances received by the land owners. This resulted in short collection of SD of ₹ 7.73 crore and RF of ₹ 3.01 crore.

4.2.2(b) Similarly, Audit noticed that in three DSRs/SRs³ 50 instruments involving land measuring Ac.24.257 with market value of ₹ 14.73 crore were registered between 2007-12 as Collaboration Agreement between the developers and land owners. As per recitals of such documents the owners handed over or agreed to hand over possession of the properties to developers with refundable advance/security deposit amounting to ₹ 95 lakh and agreed to execute irrevocable GPA for sale of builders share in favour of prospective

² **DSRs:** Khurda, Cuttack, Jharsuguda and **SRs:** Berhampur (Town), Baliana, Dolipur, Jatni, Khandagiri (at Bhubaneswar) and Pipili.

³ DSR, Khurda, SR, Dolipur and SR, Khandagiri.

purchasers (third parties) where the owners of the land were in no way responsible for any sort of agreement between the developers and such third parties. Such documents evidencing transfer of properties to the developers were required to be treated as conveyances and based on the market value SD ₹ 73.67 lakh and RF ₹ 29.47 lakh was to be levied and collected thereon at the rates prescribed for conveyance deed. However, the DSR/SRs concerned levied SD of ₹ 2.19 lakh and RF of ₹ 1.01 lakh on the advance/ security deposit amount. Such incorrect classification of the documents resulted in short levy of SD of ₹ 71.47 lakh and RF of ₹ 28.46 lakh.

4.2.3 Short levy of SD & RF on Power of Attorney /Agreement to Sale documents

As per the provision of Article 48 (f) read with Article 23 of Schedule I-A of IS Act, 1899 as amended by the State in 2003 and Section 78 and 79 of the Registration Act, an agreement to sell any immovable property or a POA (Power of Attorney) shall in case of transfer of the possession of such property before or at the time or after the execution of such agreement or POA be deemed to be a conveyance and S.D thereon shall be chargeable accordingly. Further it was clarified (December 2011) by the Dy I.G.R. (Central Region) that as the 'Principal' permanently handed over the possession of the property to the 'Attorney Holder' for development of the land and relinquished his power to cancel the POA in future, the document should be classified as a deed of conveyance and SD and RF shall be charged as per BMV of the property. Under Section 33 of the IS Act 1899 the Registering authority may impound the case if it is not duly stamped.

4.2.3(a) Audit noticed that as per recitals of 2,472 POA documents registered in 14 DSRs/ SRs⁴ 2,366.373 Acres of land with a market value of ₹ 1,585.25 crore was transferred with possession of the properties at the time of or after execution of such POAs to the developers for converting to residential plots/ apartments/ commercial complexes etc. with a nominal consideration of ₹ 1.43 crore as recorded in the instrument on payments of ₹ 8.77 lakh towards SD and ₹ 2.49 lakh towards RF. The POA holders (developers) were also authorised to sell the developed properties and execute sale deeds or any other deeds of conveyance in favour of the third parties without any reference to the owners of the lands and to receive the

consideration values thereof from the intending purchasers and deliver physical possession of the said properties. Considerations of scheduled land recited in documents were less than the market values or BMVs. As these documents were required to be treated as conveyance deeds SD and RF was to be levied as per BMV of land. The Registering Authority, while registering the documents did

⁴ **DSRs:** Angul, Balasore, Bhadrak, Cuttack, Jharsuguda, Khurda, Mayurbhanj, Puri and Sambalpur.
SRs:, Berhampur (Rural), Berhampur (Town), Khandagiri (at Bhubaneswar), Panposh and Pipili.

not take recourse to Section 33, 38 and 41 of IS Act to impound the cases. This resulted in short levy of SD of ₹ 82.42 crore and RF of ₹ 31.68 crore.

4.2.3(b) Similarly, in three DSRs⁵, Audit noticed that in 89 ATS documents involving land measuring 158.708 Acres with a market value of ₹ 88.45 crore were registered by the land owners in favour of developers on payment of SDs (₹ 22.45 lakh) and RFs (₹ 9.30 lakh). As per recitals of the documents owners delivered the physical possession along with all original rights and titles of the scheduled properties to the second parties. However, SD and RF were collected on the advance amount set forth in the documents only instead of treating them as conveyances for collection of SD and RF. The Registering Authority did not impound the cases under Section 33, 38 and 41 of the IS Act and Rules framed thereunder. This resulted in short levy of SD of ₹ 5.61 crore and RF of ₹ 2.24 crore.

4.2.4 Registration of documents outside jurisdictional area

As per Section 28 of the Registration Act, 1908 every document mentioned in subsection (g) of Section 17 in so far as such document affects immovable property, shall be presented for registration in the office of a Sub-Registrar within whose sub-district the property to which such document relates is situated.

Audit noticed that 19 POA documents with handing over possession of lands were executed and registered by Sub-Registrar (SR), Panposh against collection of ₹ 2,004 only towards SD. As per recitals in the documents, these lands were situated in West Bengal. Since,

registration, in Odisha of any document related to the property of another State, is not covered under laws, registering authority was not authorized to do so. In reply, SR, Panposh stated that compliance would be furnished after collection of copies of Agreements from the parties.

After these cases (paragraphs 4.2.2 to 4.2.3) were pointed out in Audit, the Government in January 2014 replied that exclusion of the documents covered under audit from levy of SD and RF as conveyance were as per the Registration Laws in force and such documents could not be booked under 47-A (undervaluation). No reply was furnished for paragraph 4.2.4. However, Audit pointed out the shortcomings in the prevalent Acts and Rules which could not prevent evasion of SD and RF as stated above. Also, reply by the Government is silent about the action initiated so far to prevent such revenue leakages. As some other State Governments have provided for levy of SD on Development Agreements at the rate applicable to conveyance and some States have fixed percentage of the land value involved, the Government may consider similar steps in this direction.

⁵ DSRs: Balasore, Khurda and Sambalpur.

4.2.5 Conclusion

Audit noticed that documents titled development agreements and power of attorney documents evidencing transfer of possession of land were not treated as conveyance for levy of SD and RF. Further, these documents could not be booked under Section 47A (under valuation) due to restriction under Article 23 of Schedule IA of IS Act. As a result there was escapement of SD and RF as discussed in the foregoing paragraphs. The Government may take necessary measures to prevent such revenue leakage.

4.3 Audit observations

Audit scrutinised records relating to assessment and collection of stamp duty and registration fees which revealed short realisation of revenue due to under valuation of land, omission of ground rent and cess from the consideration money and wrong calculation of cost of buildings as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out by audit. There is need for the Government to improve the internal control system including strengthening of internal audit so that these omissions can be avoided, detected and corrected.

4.4 Non-observance of the provisions of the Acts/Rules and Government instructions

The Indian Stamp (IS) Act, 1899 and the Registration Act, 1908 prescribe that deeds of agreements for sale, lease and conveyance etc. are to be registered on realisation of Stamp Duty (SD), and Registration Fee (RF) at the prescribed rates on the consideration truthfully and correctly mentioned therein keeping in view the Market Value Guidelines (MVG) or the rates prescribed in the Industrial Policy Resolutions (IPRs) of the Government. The documents registered with under valuation of properties are to be impounded for correct valuation and realisation of deficient SD and RF.

Non-observance of the provisions of the above Acts by the Assessing Authorities (AAs) in the cases as mentioned in paragraphs 4.4.1 to 4.4.4, resulted in under valuation of documents and short realisation of SD and RF.

4.4.1 Short Realisation of Stamp Duty and Registration fee due to omission of Land Development Cost

Section 27 of the IS Act, 1899* read with Section 3 thereof require that the consideration (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth. Under Section 33 of IS Act, 1899, every person in charge of public office, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same and collect the deficient amount of SD. As per Section 47A of the IS Act, 1899, in case of under valuation of any property noticed before or after registration of a document, the RO shall refer the matter to the Collector for determination of the market value of such property and proper SD payable thereon. Section 64 of the IS Act, 1899 prescribes a fine upto ₹ 5,000 as a measure of penalty for omission to comply with provisions of Section 27.

During test check of a deed of agreement for sale⁶ registered by the District Sub Registrar (DSR), Khurda, Bhubaneswar, Audit noticed (March 2012) that a General Power of Attorney (GPA) holder entered into an agreement (August 2011) with a Prospective Purchaser (PP) for sale of 0.27148 Acres of land in Unit 31 of Mauza Laxmisagar, Bhubaneswar at a price of ₹ 3.20 crore which included land development cost of ₹ 1.57 crore. However, the sale deed⁷ later registered on 1 October

2011 stated the consideration money as ₹ 1.63 crore only without considering land development cost of ₹ 1.57 crore although it was recited in the deed of agreement for sale executed on 19 August 2011. The prescribed SD and RF was realised on ₹ 1.13 crore (after taking into account the advance amount of ₹ 50 lakh) instead of ₹ 3.20 crore. Thus, the sale deed was undervalued by ₹ 1.57 crore contravening the provision of Section 27 of IS Act, 1899 and resulted in short realisation of SD and RF of ₹ 11 lakh and penalty of ₹ 5,000 leviable under Section 64 of the said Act.

After Audit pointed out this, DSR, Khurda stated (March 2012) that Section 47-A of Indian Stamp Act could not be imposed due to restriction in the provision. The reply of the DSR, Khurda, is not tenable because deficit SD and RF was to be realised at the time of registration of the sale deed by impounding it under Section 33 of the IS Act, 1899, as the GPA holder and the PP have executed prior agreement for sale and also in view of the fact that Section 47-A of IS Act was not applicable for such agreement to sale. However, it was assured that matter would be reviewed.

* As amended in Odisha Amendment (OA) No.7 of 1987.

⁶ Document dated 19 August 2011 and Registered Sale Deed (RSD) dated 20 August 2011.

⁷ Registered Sale Deed (RSD) dated 1 October 2011.

Audit reported (March 2013) the matter to Inspector General of Registration(IGR), Odisha, Cuttack and Government (April 2013); the replies are awaited (April 2014).

4.4.2 Short realisation of revenuedue to under valuation

As per clause 16.2 of the IPR, 2007, effective from 2 March 2007, Government Land earmarked for Land Bank scheme for industrial and infrastructure use may be allotted at a concessional industrial rate of ₹one lakh per acre in respect of the areas available outside Municipal/ NAC under the Revenue Sub-Division of Koraput, coming under Zone C.

Section 3 of the IS Act, 1899 read with Article 23 (b) of Schedule 1A of the above Act, and Section 78 of the Registration Act, 1908 prescribe that lease deeds are to be registered on realisation of SD at the rate of five *per cent* and RF at the rate of 2 *per cent* on the consideration value of the immovable property. Article 35 (c) read with Article 35 (a) (vi) of Schedule 1A of the IS Act, 1899 stipulates that where the lease is granted for a fine or premium or for money advanced in addition to rent reserved, SD will be charged at the prescribed rate on the premium along with four times of annual ground rent and cess by treating it as a conveyance, in case the lease period exceeds 30 years; but does not exceed 100 years.

4.4.2 (a) During test check of a lease deed⁸ registered by DSR, Koraput at Jeypore, Audit noticed (August 2012) that 113.61 Acres of land was leased out by Odisha Industrial and Infrastructure Development Corporation (IDCO) as lessor to a firm for a period of 90 years for establishment of an Alumina Refinery Project. The recitals of the document mentioned the Consideration as ₹ 194.45 lakh instead of the applicable value of ₹ 160.62⁹ lakh. This led to undervaluation of land by ₹ 66.17 lakh and hence short realisation of SD of ₹ 3.16 lakh and RF of ₹ 1.27 lakh aggregating ₹ 4.43 lakh.

After Audit pointed this out, Government stated (August 2013) that C.G.M., IDCO had been requested to take immediate necessary follow up action to realise the short assessed premium, rent and cess and to execute the supplementary lease deed for realisation of deficit S.D and R.F. However, the facts remained that the registering authority did not book the documents under Section 47-A nor impound the case under section 33 of IS Act.

⁸ No. 332 dt.13.2.2009.

⁹ Land cost as per IPR 2007 @ ₹ 1 lakh/Acre for 113.61 acre	₹ 113.61 lakh
Four times Ground Rent and Cess	₹ 7.95 lakh
Tree cost	₹ 29.26 lakh
Asset	₹ 9.80 lakh

Total	₹ 160.62 lakh
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As per Section 3 of IS Act read with article 1A/23 (b) of OA of 5 December 2005, conveyance deed of an immovable property is leviable with SD at the rate of five *per cent* of the consideration set forth in the deed or the market value of the property whichever is higher. Article 35 (c) read with Article 35(a) (vi) of Government of Odisha, Revenue and Excise Department prescribed (May 1963) annual ground rent equal to one *per cent* of the market value of the Government/ private land leased out for specific purposes.

4.4.2 (b) During test check of lease records in DSR, Puri, Audit noticed (June 2012), that a lease deed for 88 years was executed (27 July 2011) for 35.00¹⁰ Acres land by IDCO, the lessor with the lessee, for establishment of a Rural University in the Industrial Estate at Kurki, Nijigad under

Pipili Tahasil of Puri District at a consideration money of ₹ 123.89 lakh at the rate of ₹ 3.54 lakh per Acre. Audit noticed that in the same industrial estate, two other parcels of land were allotted (March 2011 and July 2011) at considerations of ₹ 244.20 lakh and ₹ 750 lakh respectively at the rate of ₹ 30 lakh per acre as per the revised rate of IDCO effective from 24 February 2010 to two other lessees. Due to non-application of the revised rate of ₹ 30 lakh per acre in the instant lease deed of July 2011 there was undervaluation of land by ₹ 10 crore and resultant short realisation of SD of ₹ 49.74 lakh and RF of ₹ 19.89 lakh, aggregating to ₹ 69.63 lakh.

4.4.2 (c) During test check of a sale deed of the DSR, Sambalpur, Audit further noticed (September 2012), that Ac.0.17 of land was sold by a person and two others through their attorney (vendor) to another person and three others (Vendees) for a consideration of ₹ 10.08 lakh at the rate of ₹ 59,290 per decimal which was below the Bench Mark Value (BMV) of ₹ 22.22 lakh at the rate ₹ 1.31 lakh per decimal applicable for commercial land. Thus, there was under valuation of land by ₹ 12.14 lakh and resultant short realisation of SD of ₹ 0.61 lakh and RF of ₹ 0.24 lakh aggregating to ₹ 0.85 lakh.

After Audit pointed out the above cases, DSR, Puri stated (June 2012) that IDCO (the lessor) would be intimated about observations of audit and DSR, Sambalpur stated (September 2012) that the party concerned would be intimated to deposit the deficit dues.

Audit reported (April 2013) the matter to IGR, Odisha, Cuttack and Government (April 2013). Replies are awaited (April 2014).

As per Article 35 (a)(vi) and (c) of Schedule IA of IS Act 1899, where the lease is for a term, exceeding 30 years but not exceeding 100 years, the SD and RF should be the same under Article 23(b) for a consideration/premium as deemed fit, in addition to four times the amount of the average annual rent reserved.

4.4.2 (d) During test check of a tripartite lease deed executed (9 September 2010) by DSR, Keonjhar, Audit noticed (September 2012) that

¹⁰ Industrial type of land bearing plot no. 12 and 12A.

18.466 Acres of Government land at Mouza, Matkambeda under Barbil Tahasil of Keonjhar District was leased out to a lessee for 62 years (by cancellation of original lease of 17.75 Acres of land earlier leased out to other party by the lessor on 26 December 1980) for a consideration of ₹ 19.23 lakh¹¹, on which SD and RF of ₹ 1.80 lakh was levied. Audit observed that the value of 18.466 Acres of land leased out was ₹ 2.18 crore at the rate of ₹ 11.81 lakh per acre and accepted by all the parties to the deed, while adopting the valuation of ₹ 8.45 lakh for 0.716 Acres of additional land leased out. The total consideration value inclusive of four times of average annual rent reserved (₹ 0.15 crore) worked out to ₹ 2.33 crore, on which SD and RF of ₹ 16.33 lakh was leviable and collectable at the time of registration of the deed. However, this was not taken into account by the DSR Keonjhar. This resulted in short levy of SD of ₹ 10.38 lakh and RF of ₹ 4.15 lakh both aggregating to ₹ 14.53 lakh.

After Audit pointed this out, DSR, Keonjhar stated (September 2012) that Land Officer, IDCO, Bhubaneswar would be intimated to take necessary action to recover the deficit amount.

Audit reported (April 2013) the matter to IGR, Odisha, Cuttack and Government (April 2013). Their replies are awaited (April 2014).

4.4.3 Short realisation of Stamp Duty and Registration Fee due to omission of ground rent and cess from the consideration money

Article 35 (c) read with Article 35(a) (vi) of schedule 1A of the IS Act, 1899 stipulates that where the lease is granted for a fine or premium or for money advanced in addition to rent reserved, SD and RF will be charged at the prescribed rates on the premium along with four times the annual rent and cess reserved for such property by treating it as a conveyance, in case the lease period exceeds 30 years, but does not exceed 100 years. Government of Odisha, Revenue and Excise Department prescribed (May 1963) annual ground rent equal to one *per cent* of the market value of the Government/ private land leased out for specific purposes.

4.4.3 (a) During test check of records of DSR, Sambalpur, Audit noticed (September 2012) that two lease deeds¹² were executed on 1 November 2011 by IDCO, Jharsuguda Division with a lessee for leasing out 533.13 Acres of private land for a period of 90 years for establishment of an Alumina Smelter and

Power project for a total consideration value of ₹ 30.41 crore, which included dutiable consideration of ₹ 23.03 crore. However, Audit noticed that against levy of ₹ 1.61 crore towards SD and RF of ₹ 1.55 crore only was levied and realised and it led to short realisation of Government revenue of ₹ 6.12 lakh. This was due to omission of SD and RF on ₹ 87.50 lakh being four times the annual rentals (Ground rent and Cess).

After Audit pointed this out (April 2013), Government stated (August 2013) that both the documents were impounded and lessees were directed to deposit the deficit amount, failing which action under Odisha Public Demand

¹¹ ₹ 10.77 lakh towards transfer fee and ₹ 8.45 lakh towards additional land cost of Ac 0.716.

¹² Lease deeds dated 01.11.2011.

Recovery(OPDR) Act would be initiated for realisation of the same. Further reply on realisation is awaited (April 2014).

4.4.3 (b) During test check of three¹³ lease deeds of two DSRs Audit noticed (July 2012 and August 2012), that IDCO, the lessor leased out land, acquired from private owners, measuring 1,224.22 Acres in favor of a Mumbai based industry (the lessee) for a period of 90 years for establishment of an Alumina Refinery Project at Kansariguda site in Koraput and Rayagada Districts. The total consideration money for the above lands was ₹ 57.80 crore¹⁴ including land cost of ₹ 30.91 crore. While registering the documents, the DSR did not include four times of the annual average rent (ground rent and cess) for arriving at the prescribed valuation in each case; although the terms of the lease deeds specifically provided that the lessee should pay ground rent at the rate of one *per cent* of the land value and cess at the rate of 75 *per cent* of the ground rent. As a result, SD and RF of ₹ 2.95 crore only was realised instead of ₹ 3.09 crore at the time of registration. This led to short realisation of SD ₹ 10.48 lakh and RF of ₹ 4.19 lakh.

After audit pointed this out, DSR, Rayagada stated (August 2012) that the fact would be intimated to IDCO (lessor) and lessee and action would be taken after examination of the documents. The DSR, Koraput at Jeypore stated (July 2012) that the document shall be examined and classified as lease under Article 35 (c) and if it was found that the document was deficiently stamped, it would be impounded and compliance would be reported at the earliest.

Audit reported (April 2013) that matter to IGR, Odisha, Cuttack and Government (April 2013). Their replies are awaited (April 2014).

¹³ DSR, Rayagada (Lease Deed dated 13.02.2009 for Ac. 404.52 and Lease Deed dated 09.06.2009 for Ac.499.59) and of DSR, Koraput at Jeypore (Lease Deed dated 13.02.2009 for Ac.320.11).

¹⁴ ₹ 17.36 crore+₹ 27.54 crore+₹ 12.90 crore =Total ₹ 57.80 crore.

4.4.4 Short realisation of Stamp Duty and Registration Fee due to wrong calculation/omission of cost of building

Under Section 27 of the IS Act, 1899 Section 3, the consideration (if any), and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein. Further, Government of Odisha issued (24 March 2011) latest guidelines for valuation of building/superstructure which should be followed by all registering offices for checking the valuation of building/superstructure set forth in the instruments presented for registration.

During test check records in three¹⁵ DSRs Audit noticed (between March 2012 and September 2012) that through five¹⁶ sale/conveyance deeds five parcels of land having area 0.326 Acre, with a total built up area of 15,945 sq.ft, were sold by the respective Vendors to the Vendees for total consideration value of ₹ 154.54 lakh. Audit observed that the consideration value of the above buildings should have been recited at ₹ 202.59 lakh by taking into account the Government's latest guidelines dated 24 March 2011. This resulted in undervaluation of buildings by ₹ 48.05 lakh and resultant short realisation of SD of ₹ 3.21 lakh and RF of ₹ 0.96 lakh, both aggregating to ₹ 4.17 lakh.

After Audit pointed this out between March 2012 and September 2012, DSR, Khurda stated (March 2012) that action would be taken as per the observation of Audit, DSR, Puri stated (June 2012) that cases were instituted under Section 47-A as per observation of Audit in 2012 and DSR, Baragarh stated (September 2012) that the case would be studied and action would be taken for realisation of Government dues.

Audit reported (April 2013) the matter to IGR, Odisha, Cuttack and Government (April 2013). Their replies are awaited (April 2014).

¹⁵ DSR, Khurda (one conveyance deed); DSR, Puri (two sale deed) and DSR, Baragarh (two sale deed).

¹⁶ Three documents dated 26.03.2011; One document dated 6.6.2011 and one document 09.12.2011.

CHAPTER-V: STATE EXCISE DUTY AND FEES

EXECUTIVE SUMMARY

Increase/decrease in tax collection	In 2012-13 the collection of State Excise Duty (SED) and Fees increased by 8.68 <i>per cent</i> over that of the previous year which was attributed to enhancement in the fee structure and SED against last year's fee and duty structure. However, it decreased by 0.09 <i>per cent</i> as compared to the Budget Estimate (BE) for the year which was attributed by Department to non-opening of more legal outlets and negative trend in lifting of IMFL/Beer by the licensees.
Working of Internal audit	Internal Audit Wing (IAW) of the Department was created only in September 2010 for audit of its units from 2010-11 onwards. During the period 2010-13 the internal audit wing covered only 18 out of 26 units planned and shortfall was attributed by Department to acute shortage of staff.
Recovery by the Department against the observations pointed out by audit in earlier years	During the period 2007-12 audit pointed out non/short-levy, non/short-realisation of SED and Fee etc., with revenue implication of ₹ 136.38 crore in 31,509 cases. Of these, the Department accepted audit observations in 28,042 cases involving ₹ 46.33 crore; but recovered only ₹ 1.84 crore in 269 cases. The average recovery position was 3.97 <i>per cent</i> compared with accepted audit observation.
Results of audit in 2012-13	<p>In 2012-13, records on assessment and collection of State Excise duties and fees were test checked and Audit noticed non/short levy/realisation, loss of revenue etc. of ₹ 141.17 crore in 1,001 cases.</p> <p>The Department accepted non-levy/short-realisation of Excise revenue of ₹ 18.04 crore in 374 cases pointed out during the year 2012-13 and recovered ₹ 0.08 crore in 51 cases for the earlier years i.e. 2008-09 to 2011-12.</p>

Highlights

In this Chapter, illustrative cases with revenue implication of ₹ 7.17 crore selected from the observations noticed during test check of records relating to assessment of SED and Fees in the District Excise Offices (DEOs) are highlighted, where audit noticed that the provisions of the Acts /Rules/ Annual Excise Policies were not adhered to.

It is a matter of concern that similar omissions have been pointed out by audit repeatedly in the Audit Reports for the past several years, but the Department has not taken adequate corrective action.

Conclusions

The Department needs to improve the internal control system including strengthening of IAW so that weaknesses in the system are addressed and omissions of the nature detected by audit are avoided in future.

5.1.1 Tax administration

Levy and collection of State Excise Duty (SED), Fees and Penalty etc. are governed by the Bihar and Odisha Excise (B&OE) Act, 1915, Odisha Excise Rules (OER), 1965, the Board's Excise (BE) Rules, 1965, the Odisha Excise Exclusive Privilege (OEEP) Rules, 1970, the Odisha Excise (Exclusive Privilege) Foreign Liquor (OEEPFL) Rules 1989, the Odisha Excise (Methyl Alcohol) Rules, 1976, the Board of Revenue (BOR)'s Excise (Fixation of Fees on Mahua Flower) (BEFFMF) Rules, 1976 and the Annual Excise Policies (AEPs) framed by the Department. The Excise Commissioner (EC) being the head of the Department administers the various provisions of the above Act / Rules under the control of BOR as well as the overall control of the Principal Secretary of the Department. He is assisted by three Excise Deputy Commissioners (EDCs) at three Revenue Divisions, 30 Superintendents of Excise (SEs) at the District level and the field level staff thereunder.

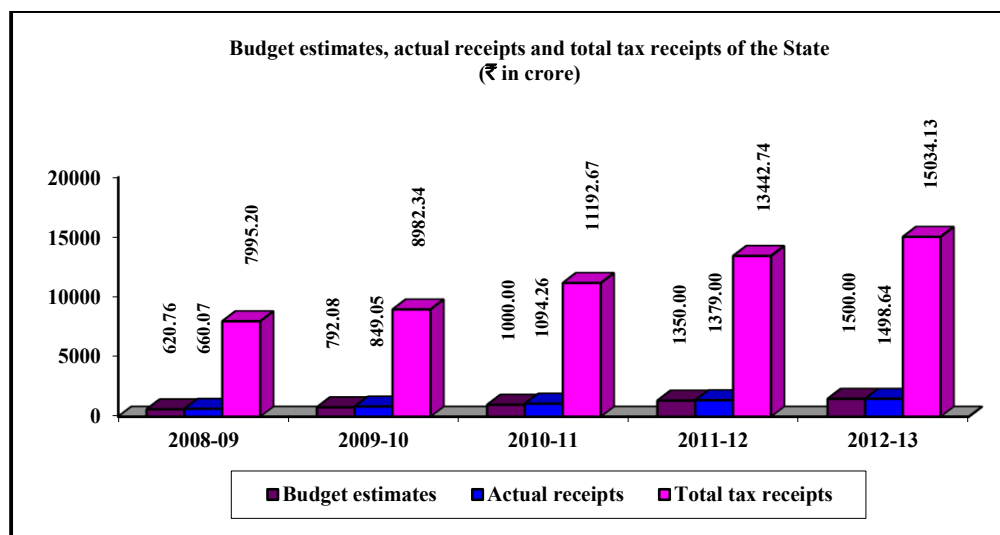
5.1.2 Trend of receipts

Actual Receipts from SED and Fees during the years 2008-09 to 2012-13 along with the Budget Estimates and total tax receipts of the State during the same period is exhibited in the following table and graph.

(₹ 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
2008-09	620.76	660.07	(+)39.31	(+) 6.33	7,995.20	8.26
2009-10	792.08	849.05	(+)56.97	(+) 7.19	8,982.34	9.45
2010-11	1,000.00	1,094.26	(+)94.26	(+) 9.43	11,192.67	9.78
2011-12	1,350.00	1,379.00	(+) 29.00	(+) 2.15	13,442.74	10.26
2012-13	1,500.00	1,498.64	(-)1.36	(-)0.09	15,034.13	9.97

Source : Finance Accounts



The above table shows that excise revenue increased from ₹ 660.07 crore in 2008-09 to ₹ 1,498.64 crore in 2012-13 and its contribution to total tax receipt of the State varied between 8.26 and 10.26 *per cent*. Reason for increase in collection during 2012-13 was attributed to enhancement in fee structure and SED against last year's fee and duty structure. Decrease of Actual Receipts from Budget Estimate of 2012-13, however, was attributed to non-opening of more legal outlets and negative trend in lifting of IMFL / Beer by the licensees.

5.1.3 Analysis of arrears of revenue

Arrears of excise revenue was ₹ 28.80 crore as on 31 March 2013. Year wise/item wise breakup of the same as well as arrears outstanding for more than five years could not be supplied by the Department. However, the Department stated that arrears of ₹ 13.18 crore was covered by Certificate proceedings, ₹ 12.26 crore was stayed by the Supreme Court/High Court/other Judicial/Departmental authorities of the Government; ₹ 0.49 crore was under dispute and ₹ 2.87 crore had been proposed to be written off.

Audit recommend that the Department may pursue speedy disposal of pending cases.

5.1.4 Cost of collection

The gross collection of state excise revenue, expenditure incurred on collection and the percentage of such expenditure to gross collection during 2010-11 to 2012-13 along with all India average percentages of expenditure for collection to gross collection in respective previous years are mentioned below.

(₹ in crore)				
Year	Gross collection	Expenditure on collection	Percentage of expenditure to gross collection	All India average percentage
2010-11	1094.26	36.25	3.31	3.64
2011-12	1379.00	38.37	2.78	3.05
2012-13	1498.64	41.76	2.79	2.98

Source : Information furnished by Department

The percentages of the cost of collection during 2010-11, 2011-12 and 2012-13 were within the all India average percentages.

5.1.5 Impact of audit

Revenue impact

During the last five years (2007-08 to 2011-12), Audit pointed out non / short levy, non / short realisation of SED and Fees etc., with revenue implication of ₹ 136.38 crore in 31,509 cases. Of these, Department accepted audit observations in 28,042 cases involving ₹ 46.33 crore and recovered ₹ 1.84 crore in 269 cases.

The recovery position as compared to acceptance of audit observations was low. The Government may take appropriate steps to improve it, at least for the accepted cases.

5.1.6 Working of Internal Audit Wing

The internal audit of the units under the Department was being conducted by the Internal Audit Wing (IAW) of the Board of Revenue along with that of other offices under the Revenue Department to ensure correct assessment, prompt collection and timely deposit of excise revenue to Government account and to arrest leakage of such revenue. Since Excise is one of the major revenue earning departments of the State, IAW in the Department was created (September 2010) for internal audit of its units from 2010-11 onwards. Internal audit for 2010-11 and 2011-12 only was completed in 18 out of 26 units planned by the end of March 2013.

The Department may take appropriate steps to clear the backlog of internal audit.

5.1.7 Results of audit

During 2012-13, Audit test checked records on assessment and collection of state excise duties and fees and found loss, non/short levy/realisation of revenue of ₹ 141.17 crore in 1,001 cases. The Department accepted non-levy/short-realisation of Excise revenue of ₹ 18.04 crore in 374 cases pointed out during the year and recovered ₹ 0.08 crore in 51 cases for the earlier years i.e. 2008-09 to 2011-12.

5.2 Audit observations

Audit scrutinised assessment records of excise duty and fees in District Excise Offices (DEOs) and found several cases of non-observance of provisions of the Act/Rules/Annual Excise Policies (AEPs) leading to non/short-levy and realisation of excise duty, fees, fine etc., 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 Audit. Such omissions on the part of the Superintendents of Excise (SEs) are pointed out by Audit each year, but not only do the irregularities persist; these remain undetected till an audit is conducted. There is need for the Department to improve the internal control system including strengthening of internal audit so as to avoid recurrence of such irregularities.

5.3 Non-observance of provisions of the Acts/Rules/Annual Excise Policies and instructions of Government

The Bihar and Orissa Excise (B&OE) Act, 1915 and Rules made thereunder by the Government as well as by the Board of Revenue (BOR) read with the Excise Manual, Annual Excise Policies (AEPs) and notifications of Government provide for levy and collection of State Excise Duty (SED), fees like Utilisation Fee (UF), Import Fee (IF), Bottling Fee (BF), Transportation Fee (TF) and cost of charges like Establishment cost and Extra hour operation charges etc. at the prescribed rates.

The Superintendents of Excise (SEs) while finalising the assessments did not observe above provisions in some cases as mentioned in subsequent paragraphs which resulted in non/short-levy and non-realisation of SED/cost/charges/fees, fine etc. of ₹ 7.17 crore.

5.3.1 Non-realisation of differential State Excise Duty on Annual closing stock

As per Government notification of February 2001, Odisha State Beverage Corporation Ltd. (OSBC) obtains the entire stock of IMFL/Beer/CS, stores it in its depots and issues to the retailer at the issue price inclusive of SED. In AEP (2011-12), SED was increased by ₹ 2 to 25 per BL of Beer/LPL of IMFL/CS based on the brands.

During test check of pass issue (FL 16) records and stock taking reports in office of the Superintendent of Excise (SE), Khordha, Audit noticed (March 2013) that OSBC revised issue prices of IMFL/Beer/CS from 1 April 2011 incorporating enhanced SED as per the AEP 2011-12 and collected the enhanced SED as per revised rates from the retailers on the closing stock¹ of 2010-11. However, the enhanced SED of ₹ 2.15 crore so collected on the closing stock of 2010-11 of IMFL (₹ 2.05 crore), Beer (₹ 0.09 crore) and CS (₹ 0.01 crore) was not deposited by OSBC to the Government account nor was any demand raised by SE, Khordha for realisation of the amount.

After audit pointed this out, SE, Khordha, accepted the audit observation and raised demand in March 2013.

¹ IMFL (11,46,772 LPL), Beer (2,94,354 BL) and CS (65,328 LPL).

Audit reported the matter to Excise Commissioner (EC), Odisha, Cuttack and the Government in May and June 2013. The replies are awaited (April 2014).

5.3.2 Non-realisation of differential duty on belated arrival of stock at OSBC depots

From 1 February 2001 onwards OSBC took over the wholesale trading of IMFL and Beer which it procures from manufacturers on presentation of passes in form FL16 issued by the SE, Khordha on payment of prescribed SED. After obtaining the stock, one copy of FL16, with endorsement of stock arrival particulars, is required to be submitted to the pass issuing authority (SE, Khordha), for his record and reference. However, the Officers-in-Charge (OICs) posted in OSBC depots, were not authorised to record the stock arrival reports. The passes issued in a particular year lapse on 31 March of the same year. The SEDs on IMFL and Canned Beer were revised from 1 April 2011 by way of revision of the slabs for IMFL and enhancement of SED on Canned Beer upto ₹ 3 per Beer.

During test check of Duty Paid Register available with SE, Khordha and Goods Received Notes (GRNs) for the month of April 2011 of OSBC depots, Audit noticed (February and March 2013) that 1,09,200 BL of Beer and 2,52,210 LPL of IMFL were received at OSBC depots on and after 1 April 2011 against passes obtained from SE, Khordha and valid till 31 March 2011. Moreover, OSBC revised the issue prices of IMFL/Canned Beer with effect from 1 April 2011 and realised SED from retailer at revised rate applicable for 2011-12. However, neither OSBC deposited the differential SED nor did SE,

Khordha raise any demand for the same. This resulted in non-realisation of differential SED of ₹ 49.84 lakh.

After Audit pointed this out, SE, Khordha raised demand (March 2013) for the same which was yet to be realised (May 2013).

Audit reported the matter to EC, Odisha, Cuttack in May 2013 and Government in June 2013. The replies are awaited (April 2014).

5.3.3 Non-realisation of differential duty on IMFL from OSBC Ltd. due to revision of landing cost

Under clause 10(2) of the AEP for 2011-12, SED is levied on IMFL on the basis of the Landing Cost (LC) per case of any liquor brand at OSBC Depot based on slabs. As per procedure adopted for fixation of issue price, the LC of any brand is based on the offer price of the supplier.

During test check of the records of Price Fixation Committee (PFC) and the accounts of the OSBC available in SE, Khordha, Audit noticed (March 2013) that due to increase in offer price and landing cost, the applicable slabs for levy of SED were changed

and attracted higher rate of SED for four brands of IMFL with three different sizes and OSBC revised the issue price of these brands from 22 November 2011. While OSBC collected the enhanced rate of SED from the retailers on the closing stock of 17,733 LPL of IMFL as on 21 November 2011, which were procured at lower rate of SED, the differential SED of ₹ 3.55 lakh so collected

was not deposited to the Government account. The SE also did not take any action to realise the amount till the date of audit (March 2013).

After Audit pointed this out, SE, Khordha issued (March 2013) demand notice to the concerned unit.

Audit reported the matter to EC, Odisha, Cuttack in April 2013 and Government in May 2013. The replies are awaited (April 2014).

5.3.4 Irregularities in settlement of IMFL OFF shops resulted in loss of revenue

As per the existing provisions of Excise Laws², licence for the wholesale or retail vend of intoxicants may be granted by the Collector of the District for a financial year after inviting objection from public through notice in Form 'A' indicating the specified place for which the exclusive privilege is to be granted with wide publicity. After a shop is sanctioned by Government against the proposal of the Collector through the Excise Commissioner (EC), it shall be put to sale to the interested applicants by way of inviting applications and in case of more than one applicant through drawal of lottery. As per clause 22 (b) of the Annual Excise Policy (AEP) for 2010-11 and 2011-12 a non-refundable application fee of ₹ 10,000 and ₹ 25,000 respectively is to be deposited along with the application for the exclusive privilege. A shop, which has started operating in its sanctioned locality, shall not ordinarily be shifted within the financial year. Shifting of a sanctioned shop to any other site for any special reason shall be subject to the prior approval of the EC, Odisha. While proposing for shifting of a shop, the consideration money of the nearby shops may be taken into account.

During the test check of records of the EC, liquor shop settlement register and files, licence fee register of the District Excise Office (DEO), Rayagada, Audit noticed (December 2012 and February 2013) the following irregularities;

(A) One IMFL 'Off shop' was settled with a monthly consideration money (C money) of ₹ 35,000 in Mukundpur on 4 January 2011. However, without obtaining prior approval of the EC, the collector, based on the proposal of SE, permitted shifting of the shop to another GP area³ on the ground of public opposition and security problems. As per the prescribed procedure C money of the Shop at the

new place should have been

fixed at ₹ 85,051 (2010-11) considering that of the nearby shop. Due to non-adoption of prescribed procedure revenue of ₹ 40.39 lakh towards C money and SED on applicable minimum guarantee quantity (MGQ) could not be earned.

It was also noticed that no dues certificate (NDC) from competent authority was not submitted by licensee while applying for the shop.

² Section 22, 26(A) and 38 (2) of Bihar and Odisha (B&OE) Act, 1915 read with Rule 31 of Odisha Excise Rules (OER) 1965, Rule 3 of the Odisha Excise (Exclusive Privilege) Foreign Liquor (OE, EP, FL) Rules, 1989 and paragraph 92 of Board's instruction and paras 3(v) and XI b of sale notice prescribed under Statutory Rules and Orders of 28 April 2005.

³ B.C Road of JK pur under Chandeli GP.

(B) The Collector, Rayagada submitted two proposals to the EC on 9 June 2011 for opening eight⁴ new IMFL 'OFF' shops with the monthly C. money of ₹ 35,000 each for GP area and ₹ 40,000 each for Municipal area respectively which was sanctioned by the Government on 18 July 2011 for the remaining period of 2011-12. On 3 August 2011, only after six days of getting license, (27 July 2011) the shops were shifted (20 October 2011) to new locations due to public objections. Audit noticed that

- proposal regarding location of the shop and C money were not called for from the charge officers (Sub Inspector of Excise) by the DEO;
- wide publicity was not given while settling the shop;
- prior approval was not obtained from the EC for shifting the shop. However, approval of EC was obtained in the same month and
- C money of the nearby shops were not considered for determining that for shops at the new location.

Due to non-adoption of C money of the nearby shops, ₹ 61.22 lakh in form of C money and SED on applicable MGQ could not be earned.

After Audit pointed this out, SE, Rayagada as well as EC, Odisha stated that detailed reply would be furnished after verification of records.

Audit reported the matter to EC, Odisha, in May 2013 and the Government in June 2013. Replies are not yet received (April 2014).

⁴ Bethiapada, Bhatpur, Dumurnelli plus Gurumguda, Ward No-1, Jayaramguda, Ward No.-23, Konda Tambiguda, Ward No.-14, Kotlaguda Ward No.-24, R.P. Office area and Ward No.-1.

5.3.5 State Excise Duty on spoilt Beer

As per Rule 39A (7) of the Board's Excise Rules (BER) 1965 if any stock of IMFL/Beer stored becomes unfit for human consumption, the licensee shall be liable to pay the SED along with fine equal to five times of the duty payable to the Government on the stock so spoiled. As per item No.10 of AEP 2011-12, the SED on Beer is ₹ 20 per BL. Further as per the liquor sourcing policy of OSBC Beer more than six months period from the date of manufacture shall be destroyed under the orders of the collector /EC depending on the quantity.

During scrutiny of records of District Excise Office (DEO), Bolangir (February 2013), relating to stock position of a Brewery, Audit noticed that 60,376 BL (7,740 cases) of Beer manufactured between 10 May and 8 August 2011 were lying in the brewery warehouse beyond six months from the date of manufacture. Neither the licensee nor the OIC posted in the brewery initiated any proposal for destruction of the stock due to

prolonged storage and also no chemical analysis was done to check its fitness for human consumption. Even after lapse of 15 months from date of its manufacture, Beer was not disposed and so Government revenue of ₹ 72.45 lakh was blocked towards SED (₹ 12.07 lakh) and penalty (₹ 60.38 lakh) for a period exceeding one year.

After Audit pointed this out, S.E Bolangir replied (February 2013) that EC was moved for destruction of Beer in November 2012 and his orders were awaited.

Audit reported the matter to EC, Odisha, Cuttack and Government in May 2013. The replies are awaited (April 2014).

5.3.6 Non-realisation of State Excise Duty on short lifting of MGQ of Country Spirit

As per Rules 6 and 6(A) of the Odisha Excise Exclusive Privilege (OE, EP) Rules, 1970, every successful bidder for CS shop shall, before obtaining Licences, guarantee the sale of MGQ of CS as fixed by the Collector of the district concerned. The Collector may permit the Licensee to lift the short drawn MGQ of a previous month in the subsequent month except for the month of February; whereas the EC can do so for any month up to the month of January by the end of February. The licensee shall remit the SED on CS in two equal installments into Government treasury. The Collector may insist on Bank Guarantee (BG) from any bidder upto the extent of Consideration money and SED against the MGQ for the entire year. As per Clause 20(b) of the AEP for 2011-12, SED at the rate of ₹ 20 per LPL is payable on CS. Deficit in payment of SED is to be adjusted from the BG.

During test check of MGQ return statements of two DEOs⁵, Audit noticed (February and April 2013) that 44⁶ CS shop licensees could not lift 3,62,143 LPL⁷ of CS against the monthly MGQ fixed for different months of 2011-12, resulting in non-realisation of SED of ₹ 72.43 lakh . Neither was SED deposited by the licensee on the shortfall quantity nor did SEs raise demand for realisation of the amount.

After Audit pointed this out, SE, Cuttack stated (March 2013) that necessary report would be submitted after proper verification of records and the SE, Khordha stated (April 2013) that the demand notices were being issued.

Audit reported the matter to EC, Odisha, Cuttack in May 2013 and Government in June 2013. The replies are awaited (April 2014).

⁵ Cuttack and Khordha.

⁶ DEO Cuttack (24 licensee) and DEO, Khordha (20 licensee).

⁷ Cuttack: 193027 LPL and Khordha: 169116 LPL.

5.3.7 Non-realisation of State Excise Duty on short lifted quantity of IMFL and Beer

As per Rule 6A of the Odisha Exclusive Privilege (Foreign Liquor), Rules, 1989, the licensee shall lift the monthly MGQ of liquor in respect of every FL ON/OFF* shop, failing which the licensee is liable to make good the loss of SED at the end of the year as per the prescribed rate of the AEP with fine of 10 *per cent* on the deficit SED. The minimum rate of SED on IMFL and Beer was fixed at ₹ 150 per LPL and ₹ 20 per BL respectively in the AEP for 2011-12.

During test check of MGQ registers and monthly statements on lifting of IMFL/Beer under three⁸ SEs, Audit noticed (between February and March 2013) that for the year 2011-12, eight licensees in different months short-lifted 6,725 LPL of IMFL and 9,879 BL of Beer against the monthly MGQ fixed for respective shops. This resulted in non-realisation of ₹ 12.06 lakh towards SED and fine of ₹ 1.21 lakh.

After Audit pointed this out, the SE, Khordha, issued the demand notice and the SE Rayagada, stated that final compliance would be submitted after verification of records. The SE, Mayurbhanj, stated that licence of the shop which was sealed with effect from August 2011 for selling of duplicate liquor was cancelled on 17 January 2013. However, the SEs are to keep track on lifting of MGQ and there is no provision for relaxation of the Rules in the event of sealing of shop.

Audit reported the matter to EC, Odisha, Cuttack and Government in June 2013. The replies are awaited (April 2014).

* 'ON' shop licence issued for consumption of liquor in the shop, where as 'OFF' shop is licenced to sale sealed bottles of intoxicant only.

⁸ Khordha, Mayurbhanj and Rayagada.

5.3.8 Non-realisation of Establishment cost and extra hour operation charges

i. Non-realisation of Extra hour operation charge and Overtime fee:

As per Rule 20 of BER 1965, all operations in a Distillery, Bottling Unit, Brewery which require the presence of an Excise officer shall be stopped on Sundays, other public holidays and specially declared holidays. As per the provisions of Rule 34 of BER, the production unit may function for the second shift with prior permission of the EC and additional staff shall be posted as determined by the EC. The cost of the Excise establishment shall be borne by the unit along with payment of Extra hour fee at the rate of ₹ 1,000 for each hour of operation beyond the scheduled hours in addition to the overtime fees payable to the excise staff at the rate of one seventh of a day's pay of the Officer-In-Charge (OIC) per extra hour of operation. The EC instructed the DEOs as early as in February 1989 and January 1990 for realisation of cost of establishment from the licencees of Foreign Liquor (FL) bonded warehouses including the warehouse of the FL manufacturers but did not include the distilleries in the order.

During test check of records relating to realisation of Government dues like Establishment cost, Extra hour fee, overtime fee etc. in two⁹ DEOs, Audit noticed (February and March 2013) that Government dues amounting to ₹ 31.14¹⁰ lakh remained unrealised till the dates of audit.

After Audit pointed this out, SE, Ganjam stated that demand for Extra hour/Overtime fee only had already been raised (April 2012), but the unit did not deposit the amount, and SE, Khordha, stated that demands for Establishment cost and Extra hour/Overtime fee were raised (March 2013). However, in all these cases, no amount was realised despite clear provision in the BER, 1965.

ii. Non-raising of demand for establishment cost:

From the files relating to reimbursement of establishment cost of DEO, Dhenkanal, Audit noticed (February 2013) that an amount of ₹ 5.21 lakh was paid towards pay and allowance of two excise officials posted in a Distillery under the SE, Dhenkanal. But the amount was neither claimed by the SE nor reimbursed by the Distillery till the date of audit. Hence the amount remained unrealised. After Audit pointed this out, SE, Dhenkanal replied that suitable clarification in this regard was sought from the Excise Commissioner.

Audit reported the matter to EC, Odisha, Cuttack and Government in June 2013. The replies are awaited (April 2014).

⁹ Ganjam and Khordha.

¹⁰ ₹ 5.72 lakh as Establishment cost from five units of Distilleries/ Breweries, of ₹ 5.49 lakh as overtime fee from five units and ₹ 19.93 lakh for extra hour operation fee from Aska Co-operative Sugar Industries Ltd (ACSIL) under the DEO Ganjam.

5.3.9 Non/Short- realisation of Depot Licence Fee

As per the instructions at paragraph 154 of the BOR Odisha, the Licences and premises for sale of CS and FL should be separate. The OSBC has the exclusive right to carry on wholesale trade and distribution of CS from May 2001 onwards. As per AEP 2010-12, all depots established by OSBC will pay an amount of ₹ 5 lakhs each per annum towards depot licence fee (DLF). Separate Depot Licences for storing CS and IMFL are issued by the Collectors of the District concerned in different forms specified for the purpose.

During test check of Licence Registers and related records of four¹¹ SEs, Audit noticed (May 2011 February and March 2013) that Collectors of three districts¹², though issued two separate licences each, for storing CS and IMFL in form No. DW5 and FL1 respectively, for the year 2010-11 and 2011-12, realised DLF for one depot only. Collector, Sambalpur issued one license on realisation of DLF for one depot though two depots were functioning at two different premises situated at two different localities during 2011-12. Hence annual DLF was not collected from the OSBC in respect of three depots for 2010-11 and 2011-12 and for one depot¹³ for 2011-

12, which resulted in non/short-realisation of ₹ 35 lakh.

After Audit pointed this out, the SE, Khordha raised (March 2013) the demand. SE, Sambalpur and Balasore accepted the observation and agreed to realise the amount. The SE Cuttack, however, contended (April 2013) that the amount is not realisable as different licences were not issued to OSBC for sale of IMFL/Beer/CS. However, Audit found, separate licenses were issued and renewal endorsed in separate forms, warranting collection of DLF for both the depots at prescribed rates.

Audit reported the matter to EC, Odisha, Cuttack and Government in May and June 2013. The reply is awaited (April 2014).

¹¹ Balasore, Cuttack, Khordha and Sambalpur.

¹² Balasore, Cuttack and Khordha.

¹³ Sambalpur.

5.3.10 Non-realisation of Label Registration Fee on liquor stored/sold at OSBC godown

As per Rule 41A of BER 1965, FL manufactured in or imported into the State shall not be stored in a warehouse or issued for sale unless the brand names and labels are approved and permits are issued by EC, Odisha, on payment of the prescribed fees. The permit once issued shall remain valid until 31 March next. As per Section 4 of B&OE Act 1915, Beer is also treated as foreign liquor. As per the AEP for 2011-12, the minimum slab rate of Label Registration Fee (LRF) was fixed at ₹ 50,000. In the AEP the application fees at the rate of ₹ 20,000 per brand for Beer and ₹ 15,000 per brand of IMFL were prescribed. Further, as per the letter dated 26 March 1998 of BOR, renewal of brands and labels beyond February, but by end of March and beyond March attracts penalties of 50 per cent and 100 per cent respectively over the prescribed fees fixed by the Board.

are awaited (April 2014).

During test check of records related to label registration, Annual stock taking report of one OSBC Depot at Nirgundi and relevant records in the Office of the EC, Audit noticed (December 2012) that during 2011-12 OSBC procured and stored 29 brands of IMFL/Beer for sale without registration of the brand name and labels which led to non-realisation of ₹ 33.20 lakh from the manufacturers towards application fee (₹ 4.90 lakh), LRF (₹ 14.15 lakh) and penalty (₹ 14.15 lakh) till the date of audit. The SE and the OIC posted at the depot did not notice this lapse and did not raise the demand.

After Audit pointed this out, EC stated (December 2012) that compliance would be furnished later.

Audit reported the matter to EC, Odisha, Cuttack in May 2013 and Government in June 2013. The replies

5.3.11 Non-demand of Utilisation Fee on Molasses

As per Rule 6D of the Odisha Excise Exclusive Privilege (OE, EP) Rules, 1970 read with the AEP for 2011-12, for shortfall in utilisation of annual MGQ of Molasses fixed by Collector, the licensee is required to pay the Utilisation Fee (UF) on the quantity of shortfall at the rate of ₹ 130 per MT along with a fine of 15 per cent of the UF. In the event of non-payment of the dues, the licence is liable for cancellation and the amount is required to be realised as arrears of land revenue under the Odisha Public Demand Recovery (OPDR) Act, 1962.

During scrutiny of copies of the distillery licences, returns relating to utilisation of molasses and stock utilisation accounts of a licensee in SE, Ganjam, Audit noticed (January and February 2013) that the licensee had utilised 3,866 MT of molasses against the annual MGQ of 11,362 MT fixed for 2011-12. Thus, there was shortfall in utilisation of 7,496 MT of Molasses, for which ₹ 11.21 lakh was realisable towards UF (₹ 9.75 lakh) and fine (₹ 1.46 lakh). The amount was, however, neither demanded from the licensee nor was the licence cancelled till date of audit.

After Audit pointed this out, though SE replied (January 2013) that demand would be raised soon, no demand was raised (January 2014).

Audit reported the matter to the EC, Odisha, Cuttack in March 2013 and Government in May 2013. The replies are awaited (April 2014).

5.3.12 Non-realisation of revenue on trading of Molasses without obtaining Trading Licence

As per Section 20 of the B&OE Act, 1915, no intoxicant shall be sold except under the authority and subject to the terms and conditions of a licence granted by the Collector of the District. Molasses is an intoxicant as per Section 2 (12 (a)) of the above Act. As per Sl. 9 of the AEP for 2011-12, the application fee and license fee for trading on Molasses was fixed at ₹ 20,000 and ₹ 3 lakh respectively. The EDC is required to inspect the Sugar factories at least once in a year. In the event of unlawful import, export, transport, manufacture and sale etc. of Molasses penalty of ₹ 20,000 to ₹ 50,000 per case is leviable against the offender under Section 47 (g)(i) of the above Act.

During test check of records, (sale figures of licensees of molasses) in four¹⁴ SEs, Audit noticed (December 2012 to April 2013) that during 2011-12 four sugar factories sold molasses without obtaining licences. Hence application fee of ₹ 0.80 lakh and licence fee of ₹ 12 lakh was not realised. Besides this minimum penalty of ₹ 0.80 lakh is also leviable.

After Audit pointed this out SE, Bargarh and Ganjam agreed to realise the amount whereas SE, Cuttack admitted the fact. SE, Bolangir stated clarification from EC on the matter would be obtained.

Audit reported the matter to EC, Odisha, in May 2013 and Government in June 2013. The replies are awaited (April 2014).

¹⁴ Bargarh, Bolangir, Cuttack and Ganjam (Chattrapur).

5.3.13 Non-realisation of Transport Fee on Denatured Spirit

As per Section 17 of the B&OE Act, 1915, no intoxicant shall be removed from any Distillery, Brewery, Warehouse or other place of storage, unless SED and Transport Fee (TF) have been paid or bond executed for such payment. As per AEP for 2011-12, the TF on Denatured Spirit (DS) is realisable at ₹ 4 per BL. Further, as per Section 2 of the above Act 'Transport' means to remove from one place to another within the State and 'Place' includes building, house, shop, booth, vessel, raft, vehicle or tent. Licence for wholesale trading of DS are issued in Form DS-1 and that for retail sale in Form DS-2.

During test check of DS pass issue registers of two¹⁵ DEOs, Audit noticed (February and April 2013) that 929 passes for transportation of 2.34 lakh BL of DS were issued to DS-2 licensees without realisation of TF of ₹ 9.36 lakh.

After Audit pointed this out, SE, Khordha, raised the demand (March 2013). However, SE, Cuttack replied that TF was not realised as per instruction dated 10 July 2007 of EC. However, unlike SED, Transport Fee (TF) is leviable in the event of transportation of DS from one place to other on each occasion.

Audit reported the matter to EC, Odisha, Cuttack and Government in June 2013. The replies are awaited (April 2014).

5.3.14 Short-realisation of State Excise Duty on excess wastage of spirit

As per Rule 16 of the BER, 1965, the concerned SE shall take an account of the Distillers stock of spirit at least once in every quarter and the wastage upto a maximum 2 per cent of all spirits in the process of re-distillation shall be allowed. Rectified Spirit (RS) the raw material for foreign liquor is also categorised as 'foreign liquor' under Section 2 of B&OE Act. The minimum ED on IMFL as per the AEP for 2010-11 was fixed at the rate of ₹ 150 per LPL.

During test check of reprocessed stock statement of an IMFL distillery under SE, Khordha, Audit noticed (February and March 2013) that during the year 2010-11, the distillery reprocessed 83,132 LPL and obtained 70,240 LPL of IMFL. The differential quantity of 12,892 LPL was shown as processing loss against the admissible wastage of 1,663 LPL (2 per cent of quantity reprocessed). Thus, there was excess wastage of 11,229 LPL. However, against realisable SED of ₹ 16.84 lakh for the above excess wastage at the minimum rate of ₹ 150/LPL, the unit

paid ₹ 10.22 lakh only in March 2011. The balance SED of ₹ 6.62 lakh was not realised by the SE (March 2013).

After Audit pointed this out, SE, Khordha issued (March 2013) demand notice and stated that on receipt of collection report, final compliance would be furnished.

¹⁵ SE, Khordha and Cuttack.

Audit reported the matter to EC, Odisha, Cuttack and Government in May 2013. The replies are awaited (April 2014).

5.3.15 Non-realisation of composite Label Registration Fee and User Charges

As per the AEPs, the Retail Licensees have to annually register the labels of different brands of IMFL/Beer at the District level on payment of Composite LRF at the rate of ₹ 10,000 for each shop per annum. The licensees of IMFL/OS/CS shops were also required to pay a non-refundable User Charges (UC) of ₹ 5,000 per annum per shop.

During test check of Licence Fee (LF) Registers and Challan Registers of six¹⁶ SEs, Audit noticed (between February and April 2013) that 16 Military Canteens with retail licence to sell excisable goods did not pay the Composite LRF and UCs of ₹ 4.05 lakh. The DEOs concerned failed to notice this and did not raise the demand.

After Audit pointed this out, SE, Khordha raised (March 2013) demand and SE, Rayagada agreed (February 2013) to raise demand. SE, Balasore and

Bolangir stated, clarification on the matter would be obtained from EC/Government. SE, Jagatsinghpur stated, they would submit compliance after verification of records, whereas SE, Cuttack stated, they had issued notice to concerned units. Replies of SE Bolangir and Balasore are not acceptable as Military canteens are also licensees of retail shops where IMFL/Beer are sold and not being exempted by Government are required to deposit the above fees/charges.

Audit reported the matter to EC, Odisha, Cuttack and Government in June 2013. Their replies are awaited (April 2014).

¹⁶ Balasore, Bolangir, Cuttack, Jagatsinghpur, Khordha and Rayagada.

5.3.16 Short-realisation of Licence Fee from 'ON' Hotels

As per Clause 14 of the AEP for the year 2011-12, all the existing IMFL 'ON' licenses may be renewed for the year on payment of annual Licence Fee (LF) on fulfillment of other stipulated conditions including the MGQ fixed for them. Hotels situated in six major cities of the State including Bhubaneswar with lodging facilities are to pay annual licensee fee of ₹ 3.50 lakh with monthly MGQ of 100 LPL of IMFL and 300 BL of Beer. Three-star hotels and above are to pay annual LF of ₹ 3.00 lakh, with the monthly MGQ of 75 LPL of IMFL and 200 BL of Beer.

During test check of LF register of SE, Khordha, Audit noticed (February and March 2013) that five hotels situated in Bhubaneswar renewed their Licences for the year 2011-12 on payment of annual LF at the rate of ₹ 3 lakh instead of the applicable rate of ₹ 3.50 lakh. This resulted in short realisation of LF of ₹ 2.50 lakh.

After Audit pointed this out, SE, Khordha, issued a demand notice in March 2013.

Audit reported the matter to EC, Odisha, Cuttack in June 2013 and Government in June 2013. Their replies are awaited (April 2014).

5.3.17 Short-levy of Transport Fee on Mohua Flower

Rule 6C of the OE (EP) Rules, 1970 read with Rule 11 of the Odisha Excise Mohua Flower (MF) Rule 1976 and provision of Annual Excise Policies (AEPs) for 2010-12 provide for realisation of TF at the rate of ₹ 15 per quintal of MF and Utilisation Fee (UF) at prescribed rates against the MGQ of MF fixed by Collector of the district for lifting and utilisation in a financial year. The licensee has to pay TF in addition to UF on the entire MGQ of MF irrespective of its short lifting/ utilisation.

During test check of records of three¹⁷ SEs, Audit noticed between December 2012 and March 2013, that 163 outstill shops under their jurisdiction lifted and utilised 3.52 lakh quintal of MF against MGQ of six lakh quintal fixed for the years 2010-12. Thus there was shortfall of lifting and utilisation of 2.48 lakh quintal of MF. Though UF at the prescribed rates was realised on the entire MGQ, TF of

₹ 37.22 lakh remained un-realised on the short lifted quantity of MF.

After Audit pointed this out, SE, Bargarh and Sambalpur stated (December 2012 and March 2013) that demand notice would be issued for realisation of Government dues and SE, Bolangir (February 2013) stated that compliance would be submitted after verification of records.

Audit reported the matter to EC, Odisha, Cuttack and Government in May 2013. Their replies are awaited (April 2014).

¹⁷ Baragarh, Bolangir and Sambalpur.

CHAPTER VI: MINING RECEIPTS

EXECUTIVE SUMMARY

Steady increase in tax collection	In 2012-13 the collection from mining receipts increased by 13.91 <i>per cent</i> as compared to the Budget Estimate and 24.59 <i>per cent</i> over the previous year which was attributed by the Department to the enhancement of the rate of royalty of iron ore, chromite etc. by the Indian Bureau of Mines (IBM).
Low recovery by the Department against the observations pointed out by audit in earlier years	During the period 2007-12 audit pointed out non / short-levy, non / short-realisation of royalty, dead rent, surface rent etc., with revenue implication of ₹ 2,929.97 crore in 1,180 cases. Of these, the Department accepted audit observations in 865 cases involving ₹ 2,018.05 crore; but recovered only ₹ 9.16 crore in 210 cases. The average recovery position was 0.45 <i>per cent</i> , as compared to acceptance of objections.
Results of audit in 2012-13	<p>In 2012-13, a Performance Audit on “Working of Steel and Mines Department” was conducted, records of 18 units relating to mining receipts were test checked and found non / short-demand of royalty, dead rent / surface rent, non / short-recovery of interest and irregularities of miscellaneous nature involving ₹ 12,544.63 crore in 886 cases.</p> <p>The Department accepted underassessment and other deficiencies involving mining receipts of ₹ 6,090.64 crore in 206 cases, pointed out by audit during the year 2012-13 and an amount of ₹ 1.49 crore was recovered in five cases.</p>
Highlights	<p>In this Chapter Audit present a Performance Audit on “Working of Steel and Mines Department” with money value of ₹ 5,414.45 crore and other illustrative cases of ₹ 232.54 crore from the audit observations noticed during the test check of records relating to assessment and collection of mining receipts in the offices of the Director of Mines, Odisha (DMO), Deputy Directors of Mines (DDMs) and Mining Officers (MOs) where provisions of the Acts / Rules were not adequately adhered to.</p> <p>It is a matter of concern that similar omissions have been pointed out by audit repeatedly in the Audit Reports for the past several years, but the Department has not taken adequate corrective action.</p>
Conclusions	The Department needs to revamp its revenue recovery machinery to ensure recovery of non-realisation, undercharge of royalty / fees etc. pointed out by audit, more so in those cases, where it has accepted audit contentions.

6.1.1 Non-tax revenue administration

Assessment and collection of mining receipts are regulated by the Mines and Minerals (Development and Regulation) (MMDR) Act, 1957, the Mineral Concession (MC) Rules, 1960 and Mineral Conservation and Development (MCD) Rules, 1988 and Odisha Minerals, Prevention of Theft, Smuggling and Illegal Mining and Regulation of Possession, Storage, Trading and Transportation (OM) Rules 2007 framed thereunder. The above Act / Rules are administered by Director of Mines, Odisha under the overall supervision of Principal Secretary to the Government in the Department of Steel and Mines. He is assisted by headquarters staff and Deputy Directors of Mines and Mining Officers at the Circle levels who are the Assessing Authorities (AAs) of mining receipts like royalty, fees and fines etc. on raising and removal of minerals.

6.1.2 Trend of receipts

Actual receipts from mining during the years 2008-09 to 2012-13 along with the Total non-tax receipts during the same period are exhibited in the following table.

(₹ in crore)						
Year	Budget estimates	Actual receipts	Variation excess (+)	Percentage of variation	Total non-tax receipts of the State	Percentage of actual receipts vis-à-vis total non-tax receipts
2008-09	1,250.00	1,380.60	130.60	10.45	3,176.15	43.47
2009-10	1,550.00	2,020.76	470.76	30.37	3,212.20	62.91
2010-11	2,556.48	3,329.25	772.77	30.23	4,780.37	69.64
2011-12	3,804.63	4,571.57	766.94	20.16	6,442.96	70.95
2012-13	5,000.00	5,695.70	695.70	13.91	8,078.03	70.51

Source : Finance Accounts

The receipts from mining have been steadily increasing over the years and accounted for a major source (70.51 per cent) of the total Non-Tax Revenue of the State in 2012-13. The Department attributed the reason for increase to enhancement of the rate of royalty of iron ore, chromite etc.

6.1.3 Analysis of arrears of revenue

Department could not furnish the extent of arrear of revenue as on 31 March 2013 due to non-finalisation of the Demand Collection Balance (DCB) for the year 2012-13, indicating that did not take prompt action for realisation of the dues. **Audit recommends that the Department finalise the DCB position and take action for realisation of dues.**

6.1.4 Impact of audit

Revenue impact

During the last five years 2007-08 to 2011-12 Audit pointed out non/ short-levy and non / short-realisation of royalty, dead rent, surface rent, interest etc., with revenue implication of ₹ 2,929.97 crore in 1,180 cases. Of these, the Department accepted audit observations in 865 cases involving ₹ 2,018.05 crore and recovered ₹ 9.16 crore in 210 cases.

The Department recovered only 0.45 *per cent* of the amount accepted by it during last five years.

Audit recommends that the Department recover at least the amounts, involved in accepted cases at the earliest.

6.1.5 Results of audit

During 2012-13, a Performance Audit on “Working of Steel and Mines Department” was conducted and records maintained in offices of the Commissioner-cum-Secretary to Government, Director of Geology, Director of Mines, Odisha, Mining Officers and Deputy Directors of Mines were test checked and Audit pointed out non/short-levy of royalty, dead rent/surface rent, non/short recovery of interest, illegal/unauthorised mining and other irregularities involving ₹ 12,544.63 crore in 886 cases relating to revenue receipts of the Department.

During the year 2012-13, the Department accepted under assessment and other deficiencies of ₹ 6,090.64 crore in 206 cases under revenue receipts pointed out in 2012-13 and realised ₹ 1.49 crore in five cases relating to objection raised in the year 2008-09.

6.2 Performance Audit on working of Steel and Mines Department

Highlights

State specific Mineral Policy envisaging a long term strategy for conservation and development of minerals in the State was absent.

(Paragraph 6.2.8)

Absence of specific time limit for processing and disposal of application for Prospecting Licence/Mining Lease/Renewal of Mining Lease and Lapsed proposal of non operating mines at various levels resulted in delayed disposal of applications and consequent impact on revenue.

(Paragraphs 6.2.9.1 & 6.2.9.2)

Provisions of Acts and Rules were not observed while granting mining leases in three cases.

(Paragraph 6.2.9.3)

Due to ineffective monitoring mechanism, transfer of Mining Leases without consent of the State Government remained unnoticed.

(Paragraph 6.2.10.1)

Grant of permission for operation of mines in violation of the Act/Rules led to irregular extraction of minerals.

(Paragraphs 6.2.10.2 & 6.2.10.3)

Irregular removal/storage of 47.42 lakh MT minerals valued at ₹ 552.50 crore remained undetected for years.

(Paragraph 6.2.11.1)

Due to incorrect assessment, there was short levy of royalty of ₹ 273.23 crore.

(Paragraph 6.2.12.1)

6.2.1 Introduction

Odisha occupies a prominent place in the mineral map of the country. Abundant reserves of high grade iron, bauxite, chromite and manganese ores along with other minerals such as coal, limestone, dolomite, tin, nickel, vanadium, gemstone, lead, graphite, etc. are available in the State.

Minerals are classified into two groups, namely, major minerals and minor minerals. Minor minerals include building stones, gravels, ordinary clay, ordinary sand other than sand used for prescribed purposes and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral. Minerals not classified as minor minerals are treated as major minerals. It includes coal, iron, chromite, manganese, bauxite, limestone etc.

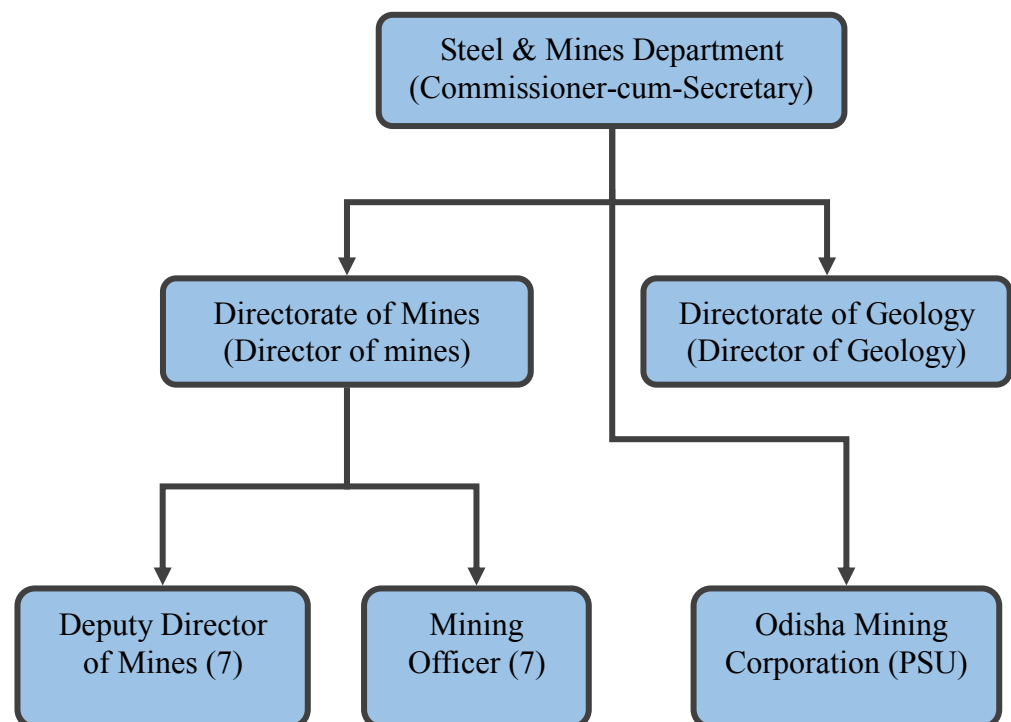
Grant of leases, licenses and levy of royalty for major minerals are governed under the provisions of Mines and Mineral (Development & Regulation) Act, 1957 and the Rules framed thereunder. Minor minerals are regulated under Odisha Minor Mineral Concession Rules, 2004. When decorative stones and minor minerals occur in the leasehold areas of major minerals it is the

responsibility of the Directorate of Mines. Other minor minerals are administered by the Revenue & Disaster Management Department.

Steel and Mines Department under the regulatory powers, works for the development of the mineral resources of the State. Main functions and activities of the Department are systemic survey and assessment of the mineral deposits of the State, their exploitation, administration of mines and mineral concessions, enforcement measures for prevention of illegal mining and smuggling of minerals, assessment and collection of mining revenue, study of the impact of mining operations on environment and research and development for meeting the needs of mineral based industries in the State. Director of Mines administers mines and minerals of the State for proper utilisation of its abundant mineral resources and collection of mining revenue. Its main function includes processing of applications for mineral concession, matters relating to execution of mineral concession. Director of Geology takes up the mineral investigation programme to augment the mineral resources of the State.

6.2.2 Organisational setup

The Steel and Mines Department is the administrative department and is currently headed by the Commissioner-cum-Secretary to Government. Two Directorates of the Department i.e. Mines and Geology are headed by the Director of Mines and Director of Geology respectively. The Director of Mines, Odisha (DMO) is assisted by the Joint Director of Mines at Headquarters and Deputy Directors of Mines (DDM) and Mining Officers (MO) at the field level. Director of Geology is assisted by Joint Directors of Geology at the field level. The Department has one Public Sector Undertaking (PSU) under its control. Organisational chart of the department is as follows.



6.2.3 Audit objectives

Performance Audit (PA) on Working of Steel and Mines Department, Odisha was conducted to ascertain whether:

- Grant of Permit, License and lease for extraction of minerals were transparent and in consonance with applicable Policies, Acts and Rules;
- Extraction of mineral was as per approved mining plan, covenants of lease and relevant rules and regulations;
- Overall physical performance in terms of extraction witnessed achievements envisaged in targets;
- Mines were operated as per rules and environmental regulations and transportation of mineral was in compliance with laid down procedures/rules;
- Levy and collection of royalty, dead rent, surface rent, penalty and interest were in consonance with the Act and Government instructions; and
- Internal controls and monitoring mechanism at all levels were commensurate with the activities of the Department.

6.2.4 Audit criteria

Audit criteria were sourced from following Acts and Rules.

- Mines and Minerals Development & Regulation (MMDR) Act, 1957;
- Mineral Concession Rules (MC Rules), 1960;
- Mineral Conservation & Development Rules (MCDR), 1988;
- Environment Protection Act, 1986;
- Air (Prevention & Control of Pollution) Act, 1981;
- The Water (Prevention & Control of Pollution) Act, 1974;
- Odisha Minor Mineral Concession Rules (OMMC Rules) 2004;
- Odisha Minerals (Prevention of Theft, Smuggling & Illegal Mining & Regulation of Possession, Storage, Trading and Transportation) Rules, (OM Rules) 2007;
- Indian Stamp (IS) Act, 1899;
- Indian Registration (IR) Act, 1908 and
- Executive instructions issued from time to time by the Central Government, State Government and Director of Mines, Odisha.

6.2.5 Scope and methodology of Audit

Performance Audit on working of Steel and Mines Department covered the period from 2007-08 to 2011-12. Field audit was undertaken during May to September 2013. Audit test checked records in Steel & Mines Department, Directorate of Mines and seven¹ out of 14 mining circle offices selected by stratified random sampling based on quantum of revenue collected during 2011-12. Further, records of Directorate of Geology pertaining to mineral

¹ DDM Joda, DDM Koira, DDM Jajpur Road, DDM Rourkela, DDM Sambalpur, MO Keonjhar, MO Berhampur.

reserves explored, investigated and recommended for grant of mineral concession were also examined. The data obtained from Indian Bureau of Mines (IBM), Commercial Tax Department, and Registration Offices were cross checked with records of the department. Odisha Mining Corporation, the only PSU under the Department is in the status of a lessee. Its activities as a mining lease holder were scrutinised.

Entry conference was held on 25 May 2013 where audit objectives, criteria, scope etc. were discussed and the audit findings were discussed in the Exit Conference held on 6 January 2014. Replies of the Government (April 2014) have been duly incorporated in the report.

6.2.6 Acknowledgement

We acknowledge the co-operation of the Department in providing necessary information and records to audit and for furnishing compliance to the audit observations.

6.2.7 Audit observations

6.2.7.1 Reserve of Minerals and Production

Reserve of some important major minerals and production during 2007-08 to 2011-12 are given in the table below.

(In lakh MT)

Mineral	Estimated reserve	Production				
		2007-08	2008-09	2009-10	2010-11	2011-12
Coal	6,63,073.00	896.86	977.87	1,054.89	1,110.95	1,051.20
Iron ore	59,302.00	745.05	771.95	796.79	728.10	660.86
Bauxite	18,105.00	46.86	47.35	48.79	48.57	50.46
Limestone	17,830.00	28.31	30.71	27.09	38.09	31.35
Chromite	1,900.00	32.84	27.94	34.08	43.03	37.93
Manganese	1,900.00	7.06	9.51	6.04	6.29	5.43

Source: Directorate of Geology and Directorate of Mines

Government attributed (January 2014) the decrease in production of minerals in 2011-12 except Bauxite in comparison to that of 2010-11, to suspension of mining operations for want of statutory clearances or violation of Mining Acts and Rules and capping placed by State Government since 2011-12 on despatch of mineral.

6.2.7.2 Collection of revenue

Mining revenue collected under different components during 2007-12 was as under:

Component-wise collection of mining revenue								(₹ in crore)
Year	Royalty		Dead Rent	Surface Rent	Trading Licence fees	Penalty	Others	Total
	major minerals	minor minerals						
2007-08	967.53	111.89	1.73	0.05	5.17	3.00	36.69	1,126.06
2008-09	1,216.59	142.59	1.72	0.06	4.09	5.94	9.61	1,380.60
2009-10	1,791.49	202.65	2.75	0.05	5.67	10.65	7.50	2,020.76
2010-11	3,034.93	231.89	4.27	0.07	5.10	11.68	41.31	3,329.25
2011-12	4,287.17	255.70	5.75	0.05	4.51	2.54	15.85	4,571.57

Source: Directorate of Mines and Finance Accounts

Surface Rent, Trading Licence Fee and others showed a fluctuating trend during 2008-12 whereas the penalty realised reduced from ₹ 11.68 crore (2010-11) to ₹ 2.54 crore (2011-12). Government attributed reduction in penalty from offence cases to reduction in incidence of illegal mining and theft cases as there were frequent raids by the enforcement staff.

Government stated that due to conduct of frequent raids by the Circle offices and Enforcement Squads the incidents of theft and illegal mining had drastically been reduced thereby resulting in reduction of penalty amount. During 2007 to 2012, 18.35 lakh² MT minerals were seized in 1,167 cases with ₹ 61.49 crore being price of mineral realised as penalty. However, the reply could not be verified as records pertaining to year wise raids scheduled to be conducted and those actually conducted were not furnished to audit.

6.2.8 Non-finalisation of State specific Mineral Policy

National Mineral Policy 1993 and 2008 emphasized the role of State Governments in mineral development, survey and exploration, maintaining inventory of mineral resources, strategy on mineral development, research and development, etc. Audit scrutiny of records relating to formulation of State Mineral Policy revealed that a committee for formulation and finalisation of the said policy prepared draft State Mineral Policy in 2005 and was further modified in 2007 and 2010. Even after a lapse of seven years, the State Mineral Policy is yet to be finalised.

The Government, in reply, stated that a high power committee had been formed in February 2011 to look into the matter. However, the fact remained that a State specific Mineral Policy could have further helped in framing a long term strategy for conservation and development of minerals and boosting investors' confidence in mining sector.

6.2.9 Grant of permits/licences/mining leases

6.2.9.1 Pendency of PL/ML applications

Rule 63 A of MC Rule 1960, requires the Government to dispose applications for grant of PL within nine months and ML within 12 months from date of its receipt. Under Section 9 and Section 22 of MMDR Act, an application for the grant of PL/ML shall be made to the State Government through an authorised officer.

As per circular issued by the State Government in May 1966, applications are received by concerned Collectors and processed by Circle Offices who will obtain orders of the Collector for forwarding the same to the DMO and submission to the Government for final decision.

The pendency of Prospecting Licence (PL) and Mining Lease (ML) applications for 2007 to 2012 was as under:

² Iron 18,19,045.122 MT, Manganese 15,418.120 MT, Coal 294.790 MT and Bauxite 270 MT.

Name of the Circle	Number of applications									
	Pending as on 1 st April 2007		Received during 2007-12		Total		Forwarded to Director of Mines		Pending as on 31 st March 2012	
	PL	ML	PL	ML	PL	ML	PL	ML	PL	ML
Keonjhar	362	691	312	128	674	819	57	124	617 ³	695 ⁴
Rourkela	0	29	258	121	258	150	247	120	11	30
J.K.Road	29	50	84	32	113	82	8	2	105	80
Sambalpur	49	7	211	35	260	42	22	5	238	37
Berhampur	0	0	6	8	6	8	3	7	3	1
Total	440	777	871	324	1,311	1,101	337	258	974	843

Source: Data furnished by Department

Audit noticed that in five out of seven Circles the pendency of PL applications increased from 440 to 974 and ML applications increased from 777 to 843 over a span of five years and in respect of other two⁵ circles, DMO and Government did not furnish the required information.

Government replied that the applications were pending for want of reports from Forest and Revenue authorities. However, the fact remained that applications for PL/ML were not timely disposed of.

6.2.9.2 Disposal of applications for renewal of mining lease

According to Rule 24A (1) and (6) of MCR 1960, application for the renewal of a mining lease shall be made at least twelve months before the date on which the lease is due to expire. In the event of non-disposal of the application before expiry of the original lease the lease shall be deemed to have been extended for a further period till Government passes order thereon.

An application for renewal of a mining lease shall be made to the State Government through the Collectors and processed by the Circle Offices who

will obtain orders of the Collector for forwarding the same to the DMO and submission to the Government for final decision.

Audit noticed that in three⁶ circles 17 RML applications out of 52 applications received between 2007 and 2012 were forwarded to DMO and remaining 35 applications were pending at the Circle level. Other four⁷ Circles did not furnish the information.

Position of disposal of RML applications between 2007 and 2012 was also not furnished by DMO and Government. However, on scrutiny of records in Directorate of Mines, Audit noticed that 111 RML applications received between 1992 to 2011 were forwarded to Government during 2008 to 2011 which were yet to be finalised by way of grant/rejection although the original lease period was already over and these mines were working under deemed extension provision without execution and registration of lease deeds.

³ Government in January 2014 revised the figure to 688.

⁴ Government in January 2014 revised the figure to 624.

⁵ DDM, Joda, DDM, Koira.

⁶ J.K. Road, Keonjhar and Rourkela.

⁷ Joda, Sambalpur, Koira and Berhampur.

The Government in reply stated that committees have been constituted to examine the RML applications and expedite the process for statutory clearances for early disposal of the cases.

6.2.9.3 Irregularities in grant of Mining Lease

Under Section 11 of MMDR Act, a ML is to be granted to a PL holder if he has applied for the lease within three months after the expiry of PL and has undertaken prospecting operation to establish mineral resources in such land and has not committed any breach of the terms and conditions of PL. As per Section-2 of the FC Act, forest land cannot be used for non-forest purpose without prior approval of the Central Government. Further, as per guidelines on FC Act if a project involves forest as well as non-forest land, work should not be started on non-forest land without approval of the Central Government.

An application for ML is required to be disposed of within one year from the date of receipt.

During scrutiny of records in selected circles, DMO and the Department, Audit noticed that in two⁸ Circles three MLs were granted and executed between 2007 and 2012 irregularly. The discrepancies noticed were as follows:

(i) One ML under Joda Circle for lease of 47.219 hectare which included forest area of 26.89 hectare was granted in January 2009 against the application of November 1998 and the lease deed was executed in November 2009. Audit noticed that lessee was granted Prospecting Licence (PL) for two years from April 1998, but carried out prospecting operation in the area without obtaining approval from MoEF which was a breach of licence condition. Further the ML application was entertained though the application was submitted before expiry of PL period (February 2000). Besides above, lease was granted for iron and manganese though total quantity of manganese was extracted during the PL period and no reserve of manganese was available in the leased area.

(ii) In one case, under Joda Circle, one ML for 4.84 hectare of forest area was granted in September 2008 which was applied in February 1986 and lease deed was executed in January 2010. The lessee did not obtain approval of MoEF for the total forest area included in the lease in spite of clarification (June 2008) of Forest and Environment Department not to grant lease and execute lease deed without prior approval. Further, ML application was entertained before expiry of PL period (July 1986) and ML granted despite submission of incomplete prospecting report.

(iii) In another case under Sambalpur Circle, ML for 25.046 hectare was granted in April 2007 and lease deed was executed in November 2007 though lessee applied for ML in October 1995 i.e. before expiry of PL period (October 1996).

The Government in their reply did not furnish reasons for such lapses.

⁸ Joda and Sambalpur.

6.2.9.4 Non realisation of differential SD & RF

As per notification (January 2012) of the Department, at the time of execution and registration of ML, stamp duty shall be assessed by calculating the anticipated royalty basing on the highest annual production planned in the mining plan/mining scheme submitted by the lessee. These guidelines shall also be made applicable to the leases already executed wherever the applicant paid less SD.

Audit scrutiny of lease files in three⁹ out of seven Circles revealed that in five ML grant cases, registered between 2005 and 2011, Stamp Duty (SD) and Registration Fee (RF) of ₹ 61.39 lakh was levied and collected on the basis of average annual production quantity. However, on the basis of highest annual production disclosed in the mining plan/mining scheme, amount leviable worked out to

₹ 156.27 lakh. This resulted in non-levy of differential SD and RF of ₹ 94.88 lakh. The Circles did not reassess these cases to realise the differential SD and RF and also DMO and Government did not review the cases for levy and realisation of the amount.

Government in reply stated that demand notice was issued between July 2013 and January 2014 of which ₹ 6.78 lakh was realised (April 2014).

6.2.9.5 Delay in terminating non-operating leases

Under Rule 28 of MCR, where mining operations are not commenced within a period of two years from the date of execution of the lease, or is discontinued for a continuous period of two years after commencement of such operations, the State Government shall, by an order, declare the ML as lapsed and communicate the declaration to the lessee.

Proposals to terminate non-operating leases are forwarded by Circle Offices on obtaining orders of the Collector for forwarding the same to the DMO and submission to the Government for final decision.

Audit scrutiny of records in four¹⁰ Circles, revealed that though in 56 cases no mining operation was carried out for more

than two years after execution of lease or were discontinued for a continuous period of two years after commencement of mining operation, concerned Circles submitted the proposals to terminate these leases with a delay of one to 34 years.

At DMO and Government level no information was furnished on non-operating leases for the year 2007 to 2012. However, Audit noticed that 76 proposals to terminate non-operating leases forwarded by DMO between 2007 and 2011 were yet to be disposed by the Government. Thus, there was delay in processing the proposals at Circle and Government level.

The Government replied that there was a provision in the rules on the basis of which the State Government may consider the case under certain reasonable grounds and the lapsing proposals were being examined. However, the reply

⁹ Berhampur, Joda and Sambalpur.

¹⁰ Jajpur Road, Joda, Koira and Sambalpur.

does not justify such large period of pendency in view of the provision of MCR that provides for termination of mining leases not working for more than two years.

6.2.10 Extraction of minerals

6.2.10.1 Transfer of Mining leases

Under Rule 37 of MCR, the lessee shall not without the previous consent in writing of the State Government, assign, sub-let, mortgage, or in any other manner, transfer the mining lease, or any right, title or interest therein or enter into or make any bonafide arrangement, contract or understanding whereby the lessee will or may be directly financed to a substantial extent by, or under which the lessee's operations or undertakings will or may be substantially controlled by any person or body of persons other than the lessee. The State Government may determine any lease at any time of the lessee has, in opinion of the State Government committed any breach of any of the above provisions.

Audit scrutiny of 18 cases relating to transfer of MLs registered in two¹¹ Registration Offices, between 2003 and 2012, eight lessees without previous consent of the State Government made arrangements, by registration of documents titled as Partnership (one case) / General Power of Attorney (seven cases) for transfer of interest and operational rights in respect of seven MLs over 639.553 hectare with iron, manganese, lime stone and quartzite minerals, by which operation of their

mines would be substantially controlled by a person other than the lessee. However, department did not have a mechanism in place to detect such cases. The registering authorities also did not ensure prior approval of Government for registration of such deeds. Thus, department failed to notice such irregular transfers of mining leases and take suitable action to comply with provisions of Rules.

In reply, Government stated that four lessees had violated the rules, in two cases no lease was granted and one case was under examination. However, the reply is silent about the action initiated against lessees. In one case, no reply was furnished.

¹¹ DSR, Khordha and DSR, Keonjhar.

6.2.10.2 Irregular working of mines

Under Section 8 (2) of MMDR Act a mining lease may be renewed for a period not exceeding 20 years. Under sub Rule 3, if the State Government is of the opinion that in the interest of mineral development it is necessary to do so, it may, reasons to be recorded, authorise 2nd and subsequent renewal for further periods not exceeding 20 years in each case. Rule 24A (3) provides that for second and subsequent renewal of a mining lease, the State Government shall seek a report from IBM as to whether it would be in the interest of mineral development to grant the renewal of the mining lease. Under Rule 24A (6) of the MCR introduced in September 1994, in the event of non-disposal of application for RML made by a ML holder to the State Government twelve months before the date of expiry of the lease, the period of lease shall be deemed to have been extended by a further period till the State Government passes order thereon. Also, under Rule 31(2), the date of commencement of the period for which a mining lease is granted shall be the date on which a duly executed deed is registered. Further, under Section 21 (5) of MMDR Act, whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax. Again, as per Section 2 of FC Act, forest land cannot be used for any non-forest purpose without prior approval of Central Government.

Scrutiny of lease files, monthly returns and royalty assessment files of 14 MLs revealed that in five cases mining operation was carried out, on the basis of Temporary Working Permission (TWP) issued by the State Government, without obtaining prior approval from GoI for working in forest area, working in renewal period without valid lease deed and operation of mine by a company other than the lessee.

The nature of irregularity is detailed below:

(i) ***Jajpur Road Circle, Chromite ore, 107.240 hectare (forest area of 101.850 hectare):***

- Original lease was valid till 1988. Pending finalisation of application of 1st RML (1987) the State Government permitted operation of mines in broken up forest area by granting TWP up to November 1997 ignoring instruction of MoEF in August 1989 to stop issuing TWP.
- 1st RML was approved by GoI in 1996 with stipulation that before grant of 1st RML State Government should ensure the compliance to amended provisions of MMDR Act and Rules framed thereunder and other applicable Act and Rules including FC Act. As lessee failed to obtain clearance from MoEF on forest land State Government issued (2003) show cause notice for rejection of RML but did not pursue the same and instead of cancellation of the lease, allowed the lessee to operate mine during 1st RML (upto February 2008) in violation of FC Act.

- The above lessee applied for 2nd renewal in February 2007 i.e. before twelve months of expiry of 1st RML considering 20 years from the expiry of original lease. However, lease deed for 1st RML though granted retrospectively in 2009 was not executed and registered (due for grant in 1988 for 20 years upto 2008) and report from IBM on grant was sought for by the State Government in December 2013. In absence of valid lease deed, working of mine from 2008 onwards under deemed extension provision (treating it as 2nd RML period) lessee continued mining operation and extracted 8.70 lakh MT of ore during 2000-12 which was in violation of provisions of the Act. However, department did not take any action to stop mining operation and to demand ₹ 294.08 crore towards price of mineral.

After Audit pointed out this, Government, stated that the lessee was asked (January 2014) to deposit ₹ 294.08 crore. However, particulars of realisation were awaited (April 2014).

(ii) *Koira Circle, Iron and Manganese ore, 1,212.470 hectare (forest area of 1,205.940 hectare):*

- Original lease was valid till April 1985. Pending finalisation of application of 1st RML (1984), department allowed lessee to operate mine in broken up forest area during 1st RML period (1985 to 2005) on the basis of TWP granted by the State Government without obtaining prior approval from GoI. However, different spells for which TWP granted by State Government were not on record. Thus, allowing operation of mine during 1st RML period (upto April 2005) violated the provisions of FC Act.
- Application for grant of 2nd renewal was submitted (April 2004) by the lessee before twelve months of completion of 1st RML (considering it as if granted for 20 years from the expiry of original lease). However, 1st RML was not granted, lease deed was not executed and registered. Report from IBM on grant was also not sought for by the State Government. Thus, there was no valid lease deed with lessee for 2nd renewal. Hence extraction of 120.82 lakh MT of minerals during the period April 2005 to March 2012, valued at ₹ 1,566.62 crore was in violation of provisions of the Act. However, Department allowed lessee to operate mine from 2010 onwards (treating it as 2nd RML period) and did not demand the price of mineral so raised and take steps for suspension/cancellation of lease.

Government stated that demand notice was issued for ₹ 1,718.09 crore (October 2012) for the period from 2000-01 to 2009-10. However, this amount was demanded based on report of a departmental committee formed (July 2010) for verification of excess production of minerals during last ten years and reply is silent about mineral extracted between April 2010 and March 2012 for ₹ 645.86 crore being price of mineral.

(iii) Koira Circle, Iron and Manganese ore 2,486.383 hectare, (forest area of 2,347.673 hectare)

- Original lease was valid till January 1990. Pending finalisation of application of 1st RML (1989) for 20 years from 1990 onwards lessee was allowed to operate mine upto 1995 on the basis of TWP granted by the State Government and continued thereafter without obtaining prior approval from GoI for diversion of forest land. Diversion of 395.639 hectare (part of forest area) was approved by MoEF in January 1998. Thus, allowing mining operation without diversion of total forest land during 1st RML period (1990 to 2010) was in violation of FC Act.
- Application for grant of 2nd renewal was submitted (September 2007) by the lessee before twelve months of expiry of 20 years from completion of original lease (considering 1st RML period as 20 years). However, 1st RML was not granted and lease deed was not executed and registered. Report from IBM on grant was not obtained (sought for in December 2013). Thus, there was no valid lease deed with lessee for 2nd renewal. Lessee extracted 57.72 lakh MT mineral during April 2010 to March 2012, valued at ₹ 1,232.34 crore in violation of provisions of the Act. However, instead of suspension/cancellation of lease department allowed lessee to operate mine.

Government stated that ₹ 3,990.26 crore was demanded (October 2012) for the period from 2000-01 to 2009-10. However, this amount was demanded based on report of a departmental committee formed (July 2010) for verification of excess production of minerals during last ten years and reply is silent about mineral extracted between April 2010 and March 2012 for ₹ 1,232.34 crore being price of mineral.

(iv) Joda Circle, Iron ore 74.870 hectare, (forest area of 71.035 hectare):

- Original lease was valid till September 1987. Pending finalisation of application of 1st RML (1986) department allowed the lessee to operate the mine in broken up forest area from 1989 to December 1995 on the basis of TWP granted by the State Government without obtaining prior approval from GoI and allowed operation of mine thereafter.
- Diversion of 27.10 hectare (out of 71.035 hectare) of forest land was approved by MoEF in August 1997. Thus without approval for diversion of total forest land, department allowed mining operation during 1st RML period which was in violation of FC Act.
- Application for grant of 2nd renewal was submitted (August 2006) by the lessee before twelve months of 20 years from the completion of original lease considering 1st RML period as 20 years. However, 1st RML was not granted and lease deed was not executed and registered. Report from IBM on grant was not sought for. Thus, there was no valid lease deed with lessee for 2nd renewal (2007 onwards). However, instead of suspension/cancellation of lease department allowed lessee to operate mine from 2007 onwards (treating it as 2nd RML period) which was in violation of provisions of the Act and also did not demand price of mineral of 57.34 lakh MT extracted during September 2007 to March 2012 for ₹ 922.59 crore.

Government stated that show cause notice was issued in 2011 for recovery of ₹ 646.03 crore towards price of mineral extracted during the period 2000-01 to 2009-10. However, this amount was demanded based on report of a departmental committee formed (July 2010) for verification of excess production of minerals during last ten years and reply is silent about mineral extracted between April 2010 and March 2012 for ₹ 572.36 crore.

(v) Joda Circle, Iron Ore, 365.026 hectare:

- Lease was granted in 1986. Based on findings of a committee set up by the Government (July 2011), Government issued show cause notice (September 2011) to the lessee for undertaking mining operation by company other than the lessee.
- Lessee admitted that mining operation was carried out by another company up to March 2011 which was violation of Section 4 of MMDR Act. However, department was not aware of such irregular operation till July 2011 and did not demand ₹ 2,814.36 crore towards price of 239.57 lakh MT Iron ore extracted during 2003-04 to 2010-11(calculated by Audit as per available production data).

Government in reply stated that show cause notice was issued (October 2011 and 2012) for realisation of ₹ 3,872.62 crore for the period from 2000-01 to 2009-10. However, this amount was demanded based on report of a departmental committee formed (July 2010) for verification of excess production of minerals during last ten years and reply is silent about 46.88 lakh MT of mineral extracted during 2010-11 for ₹ 845.24 crore.

In four cases (ii to v), demand/show cause notice issued by State Government pertained to price of mineral against excess quantity produced by lessees exceeding the statutory limits during 2000-01 to 2009-10. Hence there is immediate need to review all lease cases and take action to ensure compliance with provisions of relevant Act and Rules.

6.2.10.3 Extraction of minerals not covered under mining plan and other statutory clearances

As per Rule 22A of MCR and Rule 9 and 10 of MCDR, mining operations in any area shall be done in accordance with an approved mining plan/mining scheme. It was judicially opined in M.C. Mehta vs. Union of India, AIR 2004 SC 4016 Supreme 685 that mining operation cannot be commenced forthwith merely on approval of mining plan and mining scheme. A mining lease holder is also required to comply with other statutory provisions such as Environment (Protection) Act, Air (Prevention and Control of Pollution) Act, Water (Prevention & Control of Pollution) Act and FC Act. Under Section 21 (5) of MMDR Act, whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax.

As per the executive instruction issued by the Department in August 1974, each lessee shall furnish a monthly return to the Circle offices in prescribed form showing details of production and despatch taking the extract from the register maintained by him for that purpose. Audit scrutiny of lease files and returns in six Circles revealed that, between 2007 and 2012, the lessees extracted minerals¹²

without/in excess of approved mining plans and other statutory clearances as detailed below.

(i) Under three¹³ circles in 10 mines, 429.17 lakh MT of minerals valued at ₹ 912 crore was extracted without approved mining plan/without environmental clearance/clearance from SPCB or exceeding the limits stipulated under those clearances, but Department did not issue notice to suspend the mining operation.

(ii) Under two¹⁴ Circles in 57 mines, 564.28 lakh MT minerals was extracted without approved mining plan/without environmental clearance/clearance from SPCB or exceeding the limits stipulated under those clearances for which show cause notices were issued during October and November 2012 after a lapse of 65 to 68 months.

Under Rourkela Circle in one case, 264.55 lakh MT of coal valued at ₹ 1,565.38 crore was extracted without approved Mining Plan during 2007 to 2011, but the Mining Plan was approved post facto in March 2011. No action was taken by the Department to recover the price of minerals.

Thus, Circle offices allowed operation of mines without having requisite clearances or in violation of stipulations provided in clearances though extraction data were supplied by lessees and maintained by them. DMO and Government also failed to timely notice such irregular operation of mines and

¹² Iron and manganese, chromite, dolomite and coal.

¹³ Keonjhar, Koira, and Sambalpur.

¹⁴ Joda and Keonjhar.

initiate action for and seizure and confiscation of minerals so raised and realisation of price.

The Government, in reply, stated that show cause/demand notices were issued up to March 2010 by the concerned Circles. However, the fact remained that Department failed in ensuring lawful extraction by initiating timely action.

6.2.10.4 Auction of Stone quarries

Under Rule 27 (1) of the OMMC Rules 2004, the Tahasildar shall seek a report from the concerned Deputy Director/Mining Officer on geological point of view with regard to the suitability of the rock for decorative purposes in case of applications for stone quarry and the report is to be furnished within two months of receipt of intimation. Otherwise it would be deemed that Deputy Director/Mining Officer has no objection for grant of quarry lease or its renewal.

Lease of decorative stone is administered by Steel and Mines department whereas that of ordinary stone is administered by Revenue and Disaster Management Department.

Audit obtained information on grant of Stone quarries from Tahasildar, Berhampur and Kanisi under the jurisdiction of MO, Berhampur and found that

during 2007 to 2012, in 358 cases these stone quarries were settled on annual lease/auction without seeking report of MO, Berhampur before grant/renewal of such quarry lease. No action was also taken by the Mining Circle to notice such cases.

In the absence of report from the mining authorities, nature and quality of the stones could not be ensured. In such circumstances, there is scope for loss of revenue in form of royalty and improper use of the valuable mineral as the royalty of decorative stone is much higher than that of ordinary stone.

Government replied that the Tahsildars had started obtaining NOC from mining authorities. The cases pointed out in Audit would be examined by the MO Berhampur for initiating appropriate action.

6.2.11 Despatch of ores/minerals

6.2.11.1 Unlawful Stacking of minerals

Under Section 9(2) of the MMDR Act 1957, the holder of a ML shall pay royalty in respect of any mineral removed or consumed by him. Under Section 21(4) of the Act, whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, shall be liable to be seized by an officer or authority specially empowered in this behalf and shall be confiscated and disposed of. Further, as per Section 2 of FC Act, forest land cannot be used for non-forest purpose without prior approval from GoI.

6.2.11.1(a) During scrutiny of the enquiry report (August 2011) of State Level Enforcement Squard (SLES) and other connected records in Jajpur Road Circle, Audit noticed (June 2013) that a lessee had stacked 5.56 lakh MT of iron ore in a forest area outside the lease area for which de-reservation

proposal was not finalised by MoEF, GoI. Transit permit or transit pass was also not issued by the Mining Authorities for removal of the ore from the lease hold area to stacked place (Baliparbat). Hence transportation and storage of the minerals was unlawful and the above stock of minerals valued at ₹ 149.60 crore (royalty ₹ 13.60 crore and price ₹ 136.00 crore) should have been seized and confiscated. But the DDM neither seized nor raised demand for realisation of price of the mineral.

Government in reply stated that demand notice was issued (July 2013) to the lessee, amount was not realised (April 2014).

6.2.11.1(b) Audit scrutinised (March 2013) lease files of a lessee in Joda Circle and noticed that Senior Inspector of Mines, Joda during his inspection of mines (November 2011) found that 41.86 lakh MT Iron ore fines valued at ₹ 402.90 crore were stored outside the lease hold area and the same was not reflected in the monthly returns furnished by the lessee. As such storing was unlawful, the mineral should have been seized, confiscated and disposed of for realisation of Government revenue. However, Audit observed that no action was taken by DDM to confiscate the minerals till the date of audit though the lessee furnished compliances (August & December 2011) to the show cause notices issued for aforesaid irregularities.

Government stated that show cause notice was issued (July 2013) to the lessee by DDM and further action would be taken after field verification. However, no action was taken to seize and dispose of the mineral for realisation of the price. (April 2014).

6.2.11.2 Removal of ore in excess of the permitted quantity

Under Rule 27 of MCR, the lessee shall keep accurate and faithful accounts showing the quantity and other particulars of all minerals obtained and despatched from the mine and to furnish a return to MO/DDM taking the extract from the register maintained by him for that purpose. Further as per Rule 10(8) of OM Rules, 2007 the MO/DDM shall issue a permit for removal/transportation of minerals. Under Section 21(4) of the Act, whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, shall be liable to be seized, confiscated and shall be disposed of.

On scrutiny of records, pertaining to permit, returns and production despatch register of five lessees in three¹⁵ Circles, Audit noticed that during 2008-09, lessees despatched 67.82 lakh MT mineral on payment of royalty against removal permit obtained for 30.59 lakh MT minerals. Thus, 37.23 lakh MT of mineral valued at ₹ 75.16 crore despatched was not covered under valid permits.

MO/DDM failed to detect such discrepancies on scrutinizing the returns and initiate action to seize and confiscate mineral dispatched not covered under valid permits. DMO also did not issue any instruction for reconciliation of mineral dispatched against permits issued and monitor it.

¹⁵ Jajpur Road, Joda and Sambalpur.

After audit pointed this out, Government stated that show cause notices were issued by DDM Jajpur Road and in other cases permit returns of the mines concerned were under scrutiny by concerned DDMs and final compliance would be submitted after verification of records. Final reply is awaited (April 2014).

6.2.11.3 Grant and regulation of Licence for trading

Under Rule 3 of OM Rules, 2007 no person shall carry on the business of buying, possessing, storing, selling, supplying, distributing or delivering for sale or processing of minerals at any place except under and in accordance with the terms and conditions of a trading licence. Under Rule 7, the licensee is required to furnish monthly returns in prescribed forms within 1st week of the subsequent month and obtain No Objection Certificate from Odisha State Pollution Control Board. Under Rule 10, the licensee shall obtain permission for removal or transport of the materials under prescribed Transit Pass (TP) obtained from the Competent Authority. Under Rule 9 Competent Authority may, at any time during the tenure of the licence, suspend and cancel the licence for breach of any of the terms and conditions of the licence.

6.2.11.3(a) Any unlawful act on the part of the licensee attracts Section 21 of the MMDR Act for levy of penalty.

Audit scrutinised 139 cases of grant of trading licence under six¹⁶ Circles and noticed the following deficiencies:

Under three circles¹⁷ 10 licensees stored minerals without

obtaining consent to operate from the State Pollution Control Board, Odisha during the period from 2008 to 2012.

No action was taken to suspend and cancel 14 licenses for trading of minerals in three¹⁸ Circles though they did not furnish monthly returns.

Contrary to licence conditions, in four¹⁹ Circles, seven trading licences were granted without ensuring that consent in the name of the applicant was obtained in support of his place of business from port authority for export of Iron ore.

Though the department was required to enforce pollution control measures and ensure genuine source of procurement, store and sale by licensees for regulating mineral trading activities in the State which could not be ensured.

The Government in reply (January 2014) admitted the audit observation.

¹⁶ Jajpur Road, Joda, Sambalpur, Koira, Keonjhar and Rourkela.

¹⁷ Jajpur Road, Joda, Sambalpur.

¹⁸ Jajpur Road, Joda, Sambalpur.

¹⁹ Jajpur Road, Joda, Koira, Rourkela.

6.2.11.3(b) Non-reconciliation of export sale

Audit obtained the data on despatch of ore from annual performance report furnished by one licensee to DDM Joda for 2008-09. On cross-check of the same with the data on export obtained from Paradeep Port Authority, Audit noticed that the licensee disclosed 9,32,872 MT to DDM whereas as per Port Authority 9,40,072 MT of Iron ore was despatched. Thus, export of 7,200 MT of Iron ore valued at ₹ 1.05 crore was suppressed by the licensee for which the price of the ore was to be realised under Section 21(4) of the MMDR Act. The department failed to reconcile the export of ore in coordination with Port Authority and take action for realisation of price of mineral.

After this was pointed out the Government in reply stated that due to lack of a system to match the figures with the Railways and Ports such discrepancies could not be detected. It would be seamlessly integrated soon. Government further replied that the DDM concerned raised demand of ₹ 1.05 crore against the licensee and realisation was awaited (April 2014)

6.2.11.3(c) Handling loss of minerals

Act and Rules for administration of minerals do not provide for allowing any loss of mineral in transit or in course of handling. Audit scrutiny of the details of procurement and despatch of minerals for the period October 2008 to September 2010 furnished (October 2011) by one licensee under Joda Circle, revealed that 18,870.670 MT of iron ore valued at ₹ 1.91 crore was shown as transit and handling loss in the month of March 2010 & September 2010. Such loss is required to be treated as unlawful dispatch. However, DDM, Joda could not detect such loss of mineral on scrutinising returns and realise price of mineral.

The Government in reply stated that demand for ₹ 1.91 crore was raised for realisation of the amount.

6.2.12 Assessment and collection of revenue

6.2.12.1 Short-levy of royalty on ad-valorem basis

As per the guidelines prescribed under Rule 64D of MCR 1960 the State-wise average value for different minerals published by IBM in the 'Monthly Statistics of Mineral Production' shall be the bench mark for computation of royalty. The State Government shall add twenty per cent to this bench mark value which shall be reckoned to be the sale price for computation of royalty. This guideline was modified in 10.12.2009 by Ministry of Mines, GoI by which the rate of royalty was to be calculated on the sale price of mineral published by IBM.

Royalty on ad-valorem basis was to be worked out by adding 20 *per cent* to the average value of minerals published by the IBM. After the notification of 10 December 2009 royalty on ad-valorem basis was to be charged on average sale price of the minerals published by IBM. During

scrutiny of assessment records, Audit noticed that department worked out royalty taking into account average value of minerals adopting it as average sale price of mineral though the same was not published by IBM up to January 2011. It did not add 20 *per cent* to the average value published by the IBM to arrive at the sale price for working out the royalty. This resulted in short levy of royalty of ₹ 273.23 crore in 33 cases under four²⁰ Circles involving iron, chromite and manganese mineral.

After audit pointed it out, DMO instructed (December 2013) concerned Circle Offices to re-assess the cases by adding 20 *per cent* to the average value published by IBM. However, Government in reply (January 2014) stated that the levy was as per the price published by IBM and IBM had clarified that there was no difference between "average value" published from 10 December 2009 to January 2011 and "average sale price" published thereafter. However, as per amended guidelines of Ministry of Mines, GoI issued on 10 December 2009, sale price of minerals was to be published by IBM by calculating from the weighted average price per tonne of Pit Mouth Value of mineral, but IBM had not done so.

6.2.12.2 Short levy of royalty on sized coal

As per notification dated 10 August 2007 of GoI, Ministry of Coal, royalty of coal shall be calculated with one fixed component (grade-wise rate of royalty) and one variable component being five *per cent* of basic Pit head price of ROM coal as reflected in the sale invoice excluding taxes, levies and other charges. Under rule 64 B (1) of MCR 1960, in case of processing of run-of-mine mineral within the leased area, royalty shall be chargeable on the processed mineral removed from the leased area.

During check of assessment records in Sambalpur Circle, Audit noticed that one Coal mine of M/s Mahanadi Coalfields Ltd (MCL) despatched 48.62 lakh MT of sized coal (sized to less than 100mm) during April 2010 to March 2012 and paid

²⁰ Jajpur Road, Joda, Keonjhar and Koira.

royalty at the rate applicable to ROM coal. However, sizing charge at the rate of ₹ 61 per MT was not included in the price of said coal to arrive at the variable component for computation of royalty. Due to non-inclusion of the sizing charge in the price of sized coal there was short-levy of royalty of ₹ 1.48 crore.

The Government in reply stated that DDM, Sambalpur issued show cause notice in July 2013 for ₹ 1.48 crore, however details of realisation are awaited (April 2014).

6.2.12.3 Discrepancy in despatch figures reported by the lessees

Under Rule 45 of MCD Rules each lessee shall submit monthly and annual return in the prescribed form. Under Rule 52 each lessee shall simultaneously submit copy of returns to the State Government.

(i) Audit scrutinized statement regarding dispatch of minerals furnished by DMO and obtained copy of details of despatch from mines head as reflected in annual returns on despatch furnished to IBM in respect of nine lessees under three²¹ Circles, for the years 2007 to 2012 and found that the figures were at variance. Value of minerals (7.45 lakh MT) not disclosed by lessees in the return furnished to DMO worked out to ₹ 156.07 crore.

(ii) Similarly Audit obtained details of sales of iron ore made by six lessees under two²² Circles from the Commercial Tax Department and compared the same with despatch figures supplied by DMO and found that there were discrepancies leading to suppression of despatch figure furnished to DMO. Value of minerals (58.63 lakh MT) sold in excess of that disclosed to DMO by four lessees worked out to ₹ 696.15 crore.

Due to lack of reconciliation of the figures between IBM, Commercial Tax Department with returns furnished to Mining authorities in respect of quantity of mineral despatched, audit could not ascertain whether royalty was collected on the minerals. Hence, there is a need for periodical reconciliation of the despatch quantities furnished by lessees to different organisations to arrive at the correct figure of despatch to avoid loss of revenue.

The Government in reply stated that the cases are under examination and appropriate action would be initiated.

6.2.12.4 Non-disposal of seized minerals

As per guidelines prescribed in November 2008, immediately after seizure of minerals by different Circle offices, the same shall be handed over to OMC for lifting to their stock yard for storing, processing and sale.

During scrutiny of records on seized minerals in three²³ Circles, Audit noticed that as of March 2012, minerals like iron ore, manganese ore, coal etc. of 46,411.082 MT seized by the Department in the earlier

period were lying for disposal. This resulted in non-realisation of ₹ 6.29 crore being value of the minerals based on the IBM price of March 2012 and spot auction price (for coal). Age wise analysis of seized minerals was not furnished

²¹ Jajpur Road, Joda and Koira.

²² Joda and Koira.

²³ Rourkela, Koira and Keonjhar.

to audit. Information on seized minerals though called for was not furnished by four²⁴ Circles.

The Government, in reply, stated that the circle offices had taken up the issue with the OMC through repeated correspondences. However, the fact remained that no initiative was taken at the Government level for disposal of the materials though OMC being a PSU works under the overall control of the Department.

²⁴ Jajpur Road, Joda, Sambalpur and Berhampur.

6.2.13 Internal Control Mechanism

The Internal Control Mechanism is intended to provide reasonable assurance of proper enforcement of laws, rules and departmental instructions. It also helps in creation of reliable financial and management information systems and safeguards Government revenue.

6.2.13.1 Infrastructure and manpower in check posts and weigh bridges

State Government framed OM Rule, 2007 based on Section 23C of the MMDR Act, 1957. As per the Rule, with a view to check the transport and storage of minerals raised without lawful authority and to check the quality and quantity of minerals transported from lease hold areas depot, the Government may set up check post(s) and weighbridge(s) at any place within the State.

Audit test checked records relating to rationalisation of weigh bridges and check posts and found that Government in July 2009 formed a committee to make a quick study of the existing system of weighment and check gate management

including manpower and establishment of additional weigh bridges for cent per cent supervision of weighment and to arrest theft of mineral in the State. Director of Mines in his proposal (November 2009) suggested installation of 16 new weigh bridges, operation of 11 defunct weigh bridges, posting of additional 251 Check Gate Clerk and 251 Check Gate Peon in Government as well as private weigh bridges managed by the lessees. However, steps taken for installation/renovation of weigh bridges and filling up the vacancies were not on record (August 2013). In the absence of adequate check posts and weigh bridges with required manpower neither could theft of minerals be checked nor could cent per cent supervision of weighment be ensured.

After this was pointed out, Government, in reply, stated that the existing check gates and weigh bridges have been synchronised to electronics system, more focus has been given for transportation of minerals through railway and steps were being taken to recruit check gates clerks/peon and propose to establish new check gates and weigh bridges.

6.2.13.2 Inspection of mines.

As per the instructions of DMO (July 1987), the DDMS/ MOs are required to inspect all the working leases at least once in six months, non-working leases once in a year and large mines at least once in each quarter. The inspection reports are required to be submitted to the Directorate by 15th of the month following the month of inspection.

Information furnished by one Circle (Joda) revealed that during the period from 2007-08 to 2011-12, 76 and 65 inspections were conducted in respect of working and non-working mines respectively against 536 and 237 number of inspections prescribed as per the norms. The percentage of annual inspection of working mines ranged

between 11 and 21 whereas percentage of annual inspection of non-working mines ranged between 22 and 32 of the norms prescribed by DMO. Thus the

frequency of inspection was inadequate. Three²⁵ Circles did not furnish information and three²⁶ Circles furnished incomplete information.

Non-inspections of mines could lead to illegal mining and unauthorised extraction/transportation of minerals which would affect the State revenue adversely.

The Government in reply stated that the Circles were conducting inspection regularly. However, no details in support of inspection conducted by the Circles were furnished.

6.2.13.3 Internal Audit

There are two Internal Audit Wings, one functioning under the Department and the other functioning under the DMO. During test check of records in Steel & Mines Department Audit noticed the following deficiencies.

During the period from 2007-08 to 2011-12, 34 units were programmed for audit and 15 units were audited pertaining to 14 mining circles.

Out of 82 paras with money value of ₹ 370.61 crore, 12 paras with money value ₹ 3.97 crore were settled leaving 70 paras with money value of ₹ 366.64 crore pending for settlement at the end of March 2012.

Similarly test check of activities of Departmental Audit Wing functioning under the Administrative control of DMO revealed that -

During 2007-08 to 2011-12 only 12 units were programmed for audit and completed.

Out of 67 paras with money value of ₹ 137.59 crore, 5 paras with money value ₹ 5.96 crore were settled leaving 62 paras with money value of ₹ 131.63 crore pending for settlement as of March 2012.

Thus, there was lack of proper planning and short fall in auditing of field units programmed for and inadequate follow up action of ARs issued in respect of both internal audit units functioning in the Department.

After Audit pointed it out, Government, in reply, stated that due to shortage of staff adequate coverage in internal audit could not be made.

6.2.14 Conclusion

Performance Audit revealed a number of deficiencies in enforcement of the provisions of MMDR Act and Rules made thereunder. State specific Mineral Policy envisaging a long term strategy for conservation and development of minerals in the State was absent. Deficiencies were noticed in the system of grant of mining lease, operation of mines as well as levy and collection of mining receipts. Time frame prescribed for disposal of ML/RML/PL applications was not adhered to by the State Government and this led to large pendency of cases with consequential adverse impact on revenue. Non-operating mining leases were not promptly terminated and transfer of lease cases were not watched. Cases of irregular mining without forest clearance, operation of mines without environmental clearance, non-adherence to mining plan stipulations remained undetected. Required check on transport of minerals

²⁵ Koira, Rourkela and Sambalpur.

²⁶ Berhampur, Jajpur Road and Keonjhar.

was not exercised effectively. Inspections of mines were not conducted regularly. The internal audit wing was weak and ineffective. Seized minerals were not disposed of promptly. These deficiencies resulted in leakage, non-levy, short-levy, short-realisation, blockage of revenue and unlawful mining operation in the State.

6.2.15 Recommendations

Government may:

- Consider prescribing time limit for disposal of Prospecting Licenses/Mining Lease/Renewal of Mining Lease applications by each authority involved in the process of granting licenses /leases etc.;
- Institute a mechanism to ensure timely termination of non-operating mines and to detect illegal transfer of mining leases;
- View with concern irregular grant of ML, unlawful operation of mines, incorrect assessment of revenue and ensure regular inspection of mines;
- Consider prescribing time limit for disposal of seized minerals and
- Internal audit may be conducted regularly and observance of Rules/ provisions of Act ensured.

6.3 Audit observations

Audit scrutinised the records maintained in the office of the DMO, DDMs and MOs where noticed cases of non/short levy of royalty, unlawful raising of minerals, and loss of revenue as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out by Audit. Government may consider issuing instructions for effective internal control mechanism to prevent recurrence of such omissions.

6.4 Non-observance of the provision of Acts/Rules

MMDR Act, 1957, MC Rules, 1960, MCD Rules, 1988 read with the notifications and instructions of the State/Central Governments issued from time to time provide for assessment, levy and realisation of

- *the cost of minerals unlawfully raised without any valid lease as well as over and above the production level of 1993-94 and in excess of the permissible limit when it is already disposed of;*
- *the cost of minerals unlawfully extracted, removed, transported etc, by seizure and disposal of same under orders of competent Court of Law;*
- *royalty at prescribed rates against different grades of minerals from the leaseholders of mines;*
- *royalty on unprocessed mineral in case of processing of mineral other than Run-of-Mine (RoM) minerals; and*
- *interest for delayed payment of mining dues.*

Non-observance of the above provisions are mentioned in following paragraphs:

6.4.1 Irregular raising, despatch and retention of minerals without valid lease

Under Section 4(1) of the MMDR Act, no person shall undertake any mining operations in any area, except under and in accordance with the terms and conditions of a mining lease, granted. Further, under Section 21(4) (4A) and (5) any mineral raised without any lawful authority may be seized by the competent authority for final confiscation and disposal of the same. Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax. Moreover, under Rules 24A(1)(6) and (10) of MC Rules, an application for the Renewal of Mining Lease shall be made to the State Government, at least twelve months before the date on which the lease is due to expire, through the Competent Authority specially authorised. If an application for the RML made within the prescribed time is not disposed of by the Government before the date of expiry of the lease, the period of the lease shall be deemed to have been extended by a further period till the Government passes order thereon. As per Rule 31 of the MC Rules the lease deeds are to be registered within six months from the date of grant of lease.

During test check of ML/RML file, monthly returns and assessment files in the office of the Deputy Director of Mines (DDM) Joda, Audit noticed (March 2013) that lease of two mines were granted for 20 years (1 February 1964 up to 31 January 1984) to one lessee. The first RMLs were conditionally granted in December 1986 for 20 years up to 31 January 2004. The lessee did not comply with the terms and condition of such RML orders which included furnishing of

the mining plans and surveyed maps and descriptions within three months from the date of such orders to the Collector.

However, in violation of the provisions of MCR, lease deeds were executed by the lessee before the expiry of the first RML on 31 January 2004 and even up to the date of audit (March 2013). Thus, the mining operations made by the lessee during January 1987 to January 2004 was not covered under the deemed extension provision and became irregular.

In the absence of data on details of minerals irregularly raised by the lessee during January 1987 to January 2004, Audit could not calculate the extent of non-realisation of price of minerals for that period.

Further applications (31 December 2003) for second RMLs were not filed by the lessee before 12 months of expiry of leases (31 January 2004) nor was the delay condoned by the Department. Hence the deemed extension provision was also not applicable to both the mines beyond December 1986 and working of both the mines from February 2004 onwards was without any authority. Hence, cost of 21.42 lakh MT iron ore and 188.5 MT manganese ore valued at ₹ 176.43 crore, despatched during 2004-2011 was required to be recovered by the

Department from the lessee. Besides, the Department did not seize 1.30 lakh M.T. of iron ore and 251.2 MT of manganese ore valued at ₹ 24.88 crore unlawfully raised and lying as closing stock at the mines sites, for their eventual disposal.

Audit also observed that Government granted Temporary Working Permits (TWPs) along with permissions for removal of ores and issued Transit Permits (TPs) on several occasions during February 1984 to June 1994, although the lessee had no legitimate right to operate the mines beyond December 1986.

After Audit pointed this out, the DDM, Joda stated that the reply furnished by the lessee to the show-cause notice would be examined and after finalisation, appropriate action would be taken.

Audit reported the matter to the DMO in May 2013 and the Government in August 2013. The Government replied (November 2013) that DDM, Joda has raised demand for an amount of ₹ 201.32 crore in respect of Mines in October 2013.

6.4.2 Non-levy of royalty on low-grade Chromite fines shown as loss during beneficiation

Under Section 9 (2) of the MMDR Act, holder of an ML shall pay royalty in respect of any mineral removed or consumed by him from the leased area at the rate specified in the second Schedule of the Act. In respect of Lumps and Fines of chromite minerals, the rates of IBM are prescribed for three grades containing chromite contents up to 40, 40-52 and above 52 *per cent* for calculation of *ad-valorem* royalty thereon.

During scrutiny of assessment records with monthly returns and permission file of a lessee in the office of the DDM, Jajpur Road, it was noticed (February / March 2013) that 9.05 lakh MT chromite fines with chrome content below 40 *per cent* were issued by the company up to March 2011 to their Chrome Ore Beneficiation Plant (COBP) for production of high grade chrome concentrate. During 2011-12, in course of beneficiation of these ores, 4.16 lakh MT of chromite ore with chrome content up to 25 *per cent*, was termed as tailings (non-saleable sub-grade ore) and shown as loss by the company. The AA, while assessing the royalty on chromite ore, did not levy royalty of ₹ 13.84 crore on the above which resulted in loss of revenue to the Government.

After Audit pointed this out, the DDM, Jajpur Road stated that action would be taken after scrutiny of records.

Audit reported the matter to the DMO in May 2013 and the Government in June 2013. The replies were not received (April 2014).

6.4.3 Short assessment of royalty on iron ore

Under Section 9 of MMDR Act, holder of an ML shall pay royalty in respect of any mineral removed or consumed at the rate specified in the Second Schedule of the Act. As per Rule 64 B (1) of the MC Rules in case of processing of Run-of-Mines (ROM) minerals within the leasehold area, royalty is chargeable on the processed minerals removed from the leased area. Thus, where the ore fed to crusher unit was not ROM i.e. mineral ore not containing foreign material, royalty is to be charged on unprocessed mineral i.e. mineral extracted from the same.

During test check of assessment files, monthly returns and removal permission of a lessee in the office of the DDM, Joda, Audit noticed (March 2013) that the lessee despatched minerals obtained on crushing +65 *per cent* Fe lumps as inputs with no loss towards tailings/rejects/ wastes in its production-cum-beneficiation process.

However, 0.24 lakh MT of +65 *per cent* Fe fines and 4.46 lakh MT of - 65 *per cent* Fe fines dispatched between April 2010 and October 2010 on payment of royalty at the rates applicable for fines, (less than that of lumps) was produced from + 65 Fe lumps. The royalty paid was accepted by the AA, and this resulted in short realisation of royalty of ₹ 9.12 crore. Further, audit noticed that the lessee despatched 3.01 lakh MT²⁷ of Iron ore between May 2004 and March 2010 without the month wise details. Hence, the Department may verify the factual position and levy royalty at appropriate rate under intimation to audit.

Audit reported the matter to the DMO in June 2013 and Government in July 2013. The Government stated (October 2013) that the DDM, Joda raised demand for ₹ 9.12 crore (July 2013) against the lessee and realisation of amount is awaited (April 2014).

6.4.4 Non-levy of interest on belated payment of royalty

Under Rule 64A of the MC Rules, 1960, for belated payment of royalty, simple interest at the rate of 24 *per cent* on the unpaid amount is chargeable from the sixtieth day of the expiry of the due date of payment of such royalty.

During test check of assessment file, monthly returns of royalty and treasury challan of four²⁸ Mining Circles, Audit noticed (January and March 2013) that in eight cases royalty of ₹ 140.17 crore, payable by the licensees during the period from September 2009 to December

2011, was belatedly paid between March 2011 and April 2012 and the delay ranged from one to 775 days. But the concerned DDM/MO did not levy interest for the delay in payment of the dues. This resulted in non-levy of interest of ₹ 5.92 crore on the concerned lessees.

After Audit pointed this out, the Government stated (February 2014) that demand notices for the entire amount have been issued to the concerned lessees between July 2013 and January 2014 for realisation of the amount.

²⁷ 50405.7 MT of +65 *per cent* Fe plus 250446.278 MT of -65 *per cent* Fe.

²⁸ DDM, Joda, MO, Keonjhar, DDM, Koira and DDM, Sambalpur.

6.4.5 Short-levy of royalty on steam coal

The GoI, Ministry of Energy, Department of Coal (MoE, DoC), in their notification of 16 July 1979, clarified that ROM coal comprises of all sizes of coal as it comes out of the mine without any crushing or screening. The fraction of ROM coal as is retained on a screen, when subject to screening or is picked out by a fork-shovel during loading, is called steam coal. The ad-valorem variable part of royalty is levied as per the price chart notified by Coal India Ltd (CIL) from time to time in addition to the fixed part of royalty.

During test check of the monthly returns, wagon loading statements and assessment orders of a lessee²⁹ in the office of the DDM, Talcher, Audit noticed (February 2013) that the lessee dispatched 27.38 lakh MT of 'F' grade coal of + 100 mm size

between April and December 2011 from their coal mine. Coal of + 100 mm size was to be categorised as steam coal, since such size is obtained by segregation through a screening process. Hence royalty as applicable to steam coal was leviable on coal of + 100 mm size. The AA, while assessing royalty adopted the rate applicable to ROM coal which resulted in short levy/realisation of royalty of ₹ 2.11 crore.

After Audit pointed this out, DDM, Talcher stated (February 2013) that action would be taken to demand differential royalty against the lessee after verification of records.

Audit reported the matter to the DMO in May 2013 and the Government in July 2013. The replies were not received (April 2014).

6.4.6 Short-levy of royalty on 'B' Grade E-auction Coal

As per notification dated 1 August 2007 of the GoI, Ministry of Coal (MoC), royalty on coal shall be a combination of specific amount and variable *advalorem* amount which is five *per cent* of pit head price of ROM coal as reflected in the invoice excluding taxes levies and other charges. CIL revised the basic price of 'B' grade coal from ₹ 1,290 to ₹ 3,990 with effect from 27 February 2011. Accordingly, the rate of royalty per tonne of 'B' grade coal was revised from ₹ 194.50 (₹ 130 plus five *per cent* of ₹ 1,290) to ₹ 329.50 (₹ 130 plus five *per cent* of ₹ 3,990) from that date. As per the scheme of e-auction coal introduced by the GoI, MoC through their OM dated 18 October 2007, coal companies are allowed to fix an undisclosed reserve price not below the notified price.

During test check of assessment records along with monthly returns of a lessee³⁰ in the office of the DDM, Talcher, Audit noticed (February 2013) that between March and October 2011 the

lessee dispatched 0.28 lakh MT of 'B' grade coal on the basis of e-auction and paid royalty at the rate of ₹ 194.50 per MT which was less than the revised and notified rate of ₹ 329.50 per MT. This resulted in short realisation of royalty

²⁹ Mahanadi Coal Fields Limited (MCL).

³⁰ Talcher Colliery of Mahanadi Coalfield Ltd. (MCL).

of ₹ 24.34 lakh. The above lapse was not noticed by AA, while assessing royalty for the aforesaid period.

Audit reported the matter to the DMO and Government in June 2013. The Government stated (September 2013) that the DDM, Talcher raised demand of ₹ 24.34 lakh (July 2013) against lessee. Final compliance was not received (April 2014).

Bhubaneswar
The

(S.S. DADHE)
Principal Accountant General (E & RSA)
Odisha

Countersigned

New Delhi
The

(SHASHI KANT SHARMA)
Comptroller and Auditor General of India

ANNEXURE-I

(Refer Para 2.4.5 at page 32)

Statement showing number of dealers not furnished the true copies of the certified annual audited accounts to the respective AAs

Sl. No.	Name of the Circles	Year	No. of dealers liable to submit audited accounts	No. of dealers who did not furnish audited accounts	Due date for submission	Date up to which not submitted	Period of delay (number of days)	Penalty leviable but not levied (in ₹)
1	Angul	2010-11	154	145	31.10.2011	30.11.2012	396	5742000
2	Balasore	2010-11	782	675	31.10.2011	07.05.2012	189	12757500
3	Barbil	2010-11	344	221	31.10.2011	31.12.2012	427	9436700
4	Bargarh	2010-11	413	74	31.10.2011	31.12.2012	427	3159800
5	Bhadrak	2010-11	454	237	31.10.2011	31.07.2012	274	6493800
6	Bhubaneswar-I	2010-11	784	407	31.10.2011	30.04.2012	182	7407400
7	Bhubaneswar-II	2010-11	815	394	31.10.2011	31.08.2012	305	12017000
8	Bhubaneswar-III	2010-11	739	437	31.10.2011	28.05.2012	210	9177000
9	Cuttack-I-Central	2010-11	713	77	31.10.2011	31.10.2012	365	2810500
10	Cuttack-I West	2010-11	343	160	31.10.2011	15.09.2012	319	5104000
11	Cuttack-II	2010-11	509	173	31.10.2011	19.10.2012	354	6124200
12	Ganjam-I	2010-11	942	564	31.10.2011	31.07.2012	273	15397200
13	Jagatsinghpur	2010-11	262	236	31.10.2011	30.06.2012	243	5734800
14	Jatni	2010-11	354	79	31.10.2011	31.05.2012	213	1682700
15	Jharsuguda	2010-11	549	191	31.10.2011	30.09.2012	334	6379400
16	Kalahandi	2010-11	266	189	31.10.2011	10.12.2012	406	7673400
17	Mayurbhanj	2010-11	498	444	31.10.2011	16.10.2012	351	15584400
18	Nayagarh	2010-11	53	32	31.10.2011	31.10.2012	365	1168000
19	Puri	2010-11	401	246	31.10.2011	31.05.2012	213	5239800
20	Rourkela-I	2010-11	773	373	31.10.2011	30.11.2012	396	14770800
21	Sambalpur-I	2010-11	568	188	31.10.2011	31.08.2012	304	5715200
	21 Circle		10716	5542				159575600

Annexure-II
(Refer Para 2.4.7 at page 34)
Statement showing non-levy of interest and penalty for
delayed payment of tax

Sl. No.	Name of the Range/ Circle	Number of dealers	Range of tax period for which analysis made	Number of tax periods for which tax paid belatedly	Amount of tax involved (In ₹)	Range of delay (In days)	Interest leviable but not levied @ 1 % on tax (In ₹)	Total Tax + Interest (In ₹)	Penalty leviable@ 2% on Tax+ Interest (In ₹)	Total (Tax+ Interest) (In ₹)
Assessment Cases										
1	Balasure Circle	1	April 2005 to August 2011	1	135725	1559	70532	206257	214370	284902
2	Bhadrak Circle	1	April 2008 to March 2010	19	20156484	07 to 132	324644	20481128	664894	989538
3 (i)	Bolangir Range(i)	1	April 2007 to March 2008	1	96882	1006	32488	129370	86764	119252
3(ii)	Bolangir Range(ii)	1	April.2005 to March.2006	3	12047995	02 to 10	83192	12131187	168025	251217
3(iii)	Bolangir Range(iii)	1	June.2008 to July.2011	60	11891885	02 to 386	177324	12069209	395788	573112
4	Sambalpur-II Circle	1	April.2009 to February.2010	11	630551	08 to 281	33982	664533	72836	106818
5	Sambalpur Range	1	January 2007 to July 2010	57	15409669	04 to 63	74747	15484416	150472	225219
	Sub-Total	7		152	60369191		796909	61166100	1753149	2550058
Return Cases										
6	Angul Circle	34	2011-12	53	6051498	06 to 182	54192	6105690	110947	165139
7	BBSR-II Circle	56	2011-12	68	16121803	10 to 159	399495	16521298	822188	1221683
8	Cuttack-II Circle	43	2011-12	65	24586533	06 to 443	196806	24783339	411377	608183
9	Cuttack-I Central Circle	17	2011-12	19	1919885	20 to 156	26422	1946307	53782	80204
10	Rourkela-I Circle	286	2011-12	688	94657497	02 to 312	775704	95433201	1595572	2371276
11	Rourkela-II Circle	241	2011-12	518	126109876	06 to 260	925020	127034896	1882870	2807890
12	Koraput Circle	19	2011-12	49	18677816	07 to 150	166643	18844459	338639	505282
13	Nayagarh Circle	1	April 2011 to January 2012	12	16498341	02 to 06	21081	16519422	42252	63333
	Sub-Total	697		1472	304623249		2565363	307188612	5257627	7822990
	G. Total (Two Ranges & 11 Circles)	704		1624	364992440		3362272	368354712	7010776	10373048

GLOSSARY

Abbreviation	Expansion
AA	Assessing Authority
ACCT	Assistant Commissioner of Commercial Tax
ADM	Additional District Magistrate
AEP	Annual Excise Policy
ASD	Additional Stamp Duty
ASP	Average Sale Price
ATN	Action Taken Note
ATS	Agreement to Sale
AVR	Audit Visit Report
B&OE	Bihar and Orissa Excise
BE	Budget Estimate
BER	Board's Excise Rules
BF	Bottling Fee
BG	Bank Guarantee
BMV	Bench Mark Valuation
BOR	Board of Revenue
C Money	Consideration Money
CA	Collaboration Agreement
CAAA	Certified Annual Audited Accounts
CAG	Comptroller and Auditor General of India
CCT	Commissioner of Commercial Tax
CIL	Coal India Limited
CMV Act	Central Motor Vehicle Act
COBP	Chrome Ore Beneficiation Plant
CS	Country Spirit
CST	Central Sales Tax
CTO	Commercial Tax Officer
DA	Development Agreement
DAC	Departmental Audit Committee
DCB	Demand Collection and Balance
DCCT	Deputy Commissioner of Commercial Taxes
DCR	Demand Collection Register
DDM	Deputy Director of Mines
DEO	District Excise Officer
DEPB	Duty Entitlement Pass Book
DGFT	Director General of Foreign Trade
DLF	Depot License Fee
DM	Director of Mines
DoC	Department of Coal
DP	Draft Paragraph
DS	Denatured Spirit
DSR	District Sub-Registrar
EC	Excise Commissioner, Odisha
EC	Environment Clearance
ED	Excise Duty
EDC	Deputy Commissioner of Excise

Abbreviation	Expansion
ESH	Express State Highway
ET	Odisha Entertainment Tax
EW	Enforcement Wing
FC	Certificate of Fitness
FD	Finance Department
FL	Foreign Liquor
GoI	Government of India
GPA	General Power of Attorney
GRN	Goods Received Note
GRR	General Registration Register
GTO	Gross Turnovers
GVW	Gross Vehicle Weight
HoDs	Heads of the Departments
HoOs	Heads of the Offices
IA	Internal Audit
IAR	Internal Audit Report
IAW	Internal Audit Wing
IBM	Indian Bureau of Mines
ICM	Internal Control Mechanism
IDCO	Industrial Infrastructure Development Corporation of Odisha Ltd.
IF	Import Fee
IGR	Inspector General of Registration
IMFL	India Made Foreign Liquor
IPR	Industrial Policy Resolution
IR	Inspection Report
IS	Indian Stamp
ITC	Input Tax Credit
JCCT	Joint Commissioner of Commercial Taxes
LA	Local Authority
LC	Landing Cost
LF	Licence Fee
LRF	Label Registration Fee
LTU	Large Tax payer Unit
MC	Mineral Concession
MCDR	Mineral Conservation Development Rules
MCL	Mahanadi Coalfield Limited
MF	Mahua Flower
MGQ	Minimum Guaranteed Quantity
MIS	Management Information System
ML	Mining Lease
MMDR	Mines and Minerals (Development and Regulation)
MO	Mining Officer
MoC	Ministry of Coal
MoE	Ministry of Energy
MoEF	Ministry of Environment and Forest
MPR	Miscellaneous Proceeding Register
MV	Motor Vehicle

Abbreviation	Expansion
MVG	Market Value Guidelines
MVT	Motor Vehicle Tax
NDC	No Deduction Certificates
NH	National Highway
NTO	Net Taxable Turnover
OBM	Odisha Budget Manual
OEEP	Odisha Excise Exclusive Privilege
OEEPFL	Odisha Excise (Exclusive Privilege) Foreign Liquor Rules
OET	Odisha Entry Tax
OIC	Officer In-Charge
OLA	Odisha Legislative Assembly
OM	Odisha Minerals
OM	Odisha Mining
OMC	Odisha Mining Corporation
OMMC	Odisha Minor Mineral Concession
OMV	Odisha Motor Vehicles
OPDR	Odisha Public Demand Recovery
OR	Off Road
ORR	Off Road Register
OS	Out-Still
OSBC	Odisha State Beverages Corporation Limited
OST	Odisha Sales Tax
OTC	Odisha Treasury Code
OTT	One Time Tax
OVAT	Odisha Value Added Tax
PA	Performance Audit
PAC	Public Accounts Committee
PAG	Pr. Accountant General (E&RSA), Odisha
PCR	Progressive Collection Registers
PL	Prospecting License
POA	Power of Attorney
PP	Prospective Purchaser
PR	Permit Register
PSU	Public Sector Undertaking
PSV	Private Service Vehicle
PTE	Pollution Testing Equipment
PUC	Pollution Under Control
RC	Certificate of Registration
RF	Registration Fee
RI	Revenue Inspector
RML	Renewal of Mining Lease
ROM	Run-Of-Mines
RS	Rectified Spirit
RTO	Regional Transport Office
SCN	Show Cause Notices
SD	Stamp Duty
SE	Superintendent of Excise

Abbreviation	Expansion
SE	Superintending Engineer
SED	State Excise Duty
SH	State Highway
SION	Standard Input Output Norm
SLES	State Level Enforcement Squad
SPCB	State Pollution Control Board
SPR	Special Permit Register
SR	Sub-Registrar
STA	State Transport Authority
STA	Sale Tax Authority
TC	Transport Commissioner
TC	Treasury Challan
TDA	Tax Deducting Authorities
TDS	Deduction of Tax at Source
TER	Tax Evasion Report
TF	Transport Fee
TP	Transit Permits
TP	Transfer of Property
TTO	Taxable Turn Over
TWP	Temporary Working Permits
UC	User Charges
UF	Utilisation Fee
VATIS	Value Added Tax Information System
VCR	Vehicle Check Register