

**FOURTEENTH KERALA LEGISLATIVE ASSEMBLY**

**COMMITTEE  
ON  
PUBLIC ACCOUNTS  
(2016-2019)**

**FOURTH REPORT  
(Presented on 8th March, 2017)**



**SECRETARIAT OF THE KERALA LEGISLATURE  
THIRUVANANTHAPURAM**

**2017**

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ON  
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**On**

**Paragraphs relating to Taxes Department contained in the Report of the  
Comptroller and Auditor General of India for the Financial Year  
ended 31st March 2011 (Revenue Receipts)**

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## COMMITTEE ON PUBLIC ACCOUNTS (2016-2019)

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Shri A. Jafar Khan, Under Secretary.

## INTRODUCTION

I, the Chairman, Committee on Public Accounts, having been authorised by the Committee to present this Report, on their behalf present the Fourth Report on paragraphs relating to Taxes Department contained in the Report of the Comptroller and Auditor General of India for the year ended 31st March, 2011 (Revenue Receipts).

The Report of the Comptroller and Auditor General of India for the year ended 31st March, 2011 (Revenue Receipts) was laid on the Table of the House on 6th March, 2012.

The Committee considered and finalised this Report at the meeting held on 8th February, 2017.

The Committee place on records their appreciation of the assistance rendered to them by the Accountant General by the examination of the Audit Report.

V. D. SATHEESAN,

*Chairman,*

*Committee on Public Accounts.*

Thiruvananthapuram,  
8th March, 2017.

# REPORT

## TAXES DEPARTMENT

### AUDIT PARAGRAPH

#### Foreign liquor

##### *Incorrect computation of tax:*

Section 7 of the KGST Act, 1963, as substituted by the Kerala Finance Act, 2006 provides that any bar attached hotel, not being a star hotel of and above three star hotel/heritage hotel etc., may at its option, instead of paying turnover tax foreign liquor in accordance with the provisions of section 5 (2), pay turnover tax calculated.

- at 10 per cent of 140 per cent of the purchase value of such liquor in the case of those hotels situated in municipality, corporation etc. and 135 per cent of the purchase value in other places; or
- 115 per cent of the highest turnover tax payable by it as conceded in the return or accounts or the turnover tax paid for any of the consecutive three years, whichever is higher.

We test checked the assessment records of dealers in foreign liquor who opted for payment of tax under Section 7 for the years between 2006-2007 and 2009-2010 and noticed that the amount of compounded tax worked out and remitted was not in accordance with the provision of the Act. The incorrect computation resulted in short levy of turnover tax of ₹ 2.37 crore in 44 cases in 10 CTOs.\*

We observed that the short remittance was due to the omission on the part of the assessing authorities in computing the amount of tax due.

**The Government may amend the KVATIS software so that IMFL dealers file the returns along with purchase statements electronically and the Department may issue necessary instructions to the AAs to complete the assessments promptly at the end of each year.**

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\* Special circle I & III Ernakulam, Special circles Kollam, Kottayam, Malappuram, CTOs Angamaly, Chalakuddy, Changanassery, Nedumangad and CTO II circle Mattancherry.

## **Internal Control**

Internal Control is an integral process by which an organization governs its activities effectively to achieve its objectives. Internal control is effected mainly through internal audit and proper maintenance of registers. Previously, there was a separate audit wing in the Department. But, consequent to the introduction of KVAT Act, 2003 with effect from 1st April 2005, the internal audit wing was not functioning. Maintenance of registers is an essential factor to have an internal control on the functioning of an office. However, no separate registers were prescribed/maintained to watch the details of dealers who had opted for payment of tax under the compounding scheme.

## **Conclusion**

- The omission/defects pointed out were mainly due to the non-adherence of the provisions of the Act and Rules.
- As far as jewellery is concerned, the loss sustained was due to the lack of scientific norm in fixing the compounded rate that factors hike in gold price and increase in volume.

## **General Recommendations**

We recommend that the Government may consider implementing the following recommendation for rectifying the system and compliance deficiencies:

- review of works contract compounding by a senior/supervisory officer;
- prescribe proper registers or implement IT systems to watch the details of dealers who have opted for payment of tax under the compounding scheme to have an effective internal control; and
- conduct periodic inspection of metal crusher units to ascertain the number of units in the possession of the assessee from time to time.

[Audit Paragraphs 2.11.2010 to 2.11.2013 contained in the Report of C&AG of India for the year ended 31st March 2011 (Revenue Receipts)]

Notes furnished by Government on the above audit paragraphs are included as Appendix II.

Regarding the audit paragraph 'Incorrect computation of tax', the Committee was informed that tax due had been collected in respect of Hotel Golda, Hotel Lake View, Arpitha Tourist Home, Breeze International, Hotel President, Mundadans Royal Inn, Rachana Tourist Home and Hotel Sabrina.

When informed that the amount due from Hotel Xaviers, Hotel Karthika, Quality Hotels (P) Ltd, Hotel Prestige, Hotel Pushpak, MKR Enterprises etc., could not be realized since the cases were either under stay or under RR proceedings, the Committee directed the Taxes Department to take effective measures to realise the amount at the earliest.

3. Regarding Hotel Surya, the Commissioner of Commercial Taxes admitted that there was a mistake in assessment because the opening stock was excluded from assessment. Direction had been given to re-assess the tax including the opening stock also.

4. Regarding the case of M/s Elite Tourist Home, an official from the Office of Accountant General informed that the department's contention that tax should be calculated on the basis of the turnover conceded in the returns was not acceptable. He brought into the notice of the Committee that if tax was paid, subsequently on the assessment completed as per the crime file, it would also be considered as tax paid and the compounding fee for the subsequent year should be calculated on the basis of total tax paid or payable. The Commissioner of Commercial Taxes submitted that it was assessed on the basis of accounts or returns disclosed, but the department had revised it subsequently. The Joint Commissioner, Commissionerate of Commercial Taxes submitted that, the conceded tax was calculated as ₹ 18.31 lakh; but the Audit assessed tax as ₹ 19 lakh by taking two times of the suppression shown in crime file. The Joint Commissioner, CCT accepted the Audit's point of view but disagreed with the amount pointed out as short levy. He claimed that considering the modified assessment of 2006-2007, it could be calculated as ₹ 1.56 lakh. The Committee accepted the explanation and urged the Taxes Department to realize the balance amount.

With regard to Hotel Amruth, Thoppumpady, the Commissioner of Commercial Taxes apprised that the amount due for the year 2008-2009 had been collected and the amount due for two years had been pending. When the Committee enquired the reason for the variation of ₹ 2 lakh between the figures



pointed out by Audit and that of department, the witness informed that the original demand of ₹ 46.82 lakh was later modified to ₹ 38.12 lakh by DC (Appeal).

### **Conclusion/Recommendation**

6. The Committee directs the Taxes Department to take effective measures to realize the amount due from Hotel Xaviers, Hotel Karthika, Quality Hotel (P) Ltd., Hotel Prestige, Hotel Pushpak, MKR enterprises etc.

7. The Committee directs the Taxes Department to re-assess the tax of Hotel Surya after including the opening stock which was excluded from assessment.

8. The Committee wants the Taxes Department to realise the balance amount due from M/s Elite Tourist Home as per the modified assessment.

### **AUDIT PARAGRAPH**

#### *"Utilisation of declaration forms in inter-state trade"*

The Central Sales Tax Act (CST Act), 1956 and the rules framed thereunder provide for concessional rate of tax in respect of inter-state sales of goods and exemption from tax in respect of branch transfers and export sales. These concessions/exemptions are subject to furnishing of declarations in the prescribed forms viz. 'C', 'F' and 'E-I/II' etc. Failure to furnish the declarations or submission of defective or incomplete declaration forms will make the transactions liable to tax as applicable to sale in the appropriate State.

We conducted a review on Utilisation of declaration forms in inter-state trade to check the genuineness of the claims for exemptions/concessions based on these forms. We found various irregularities as mentioned below:

### **Highlights**

- Cross verification of C Form declarations revealed purchase effected through bogus forms, understatement of purchase etc. amounting to ₹ 1.25 crore with a tax effect of ₹ 43.41 lakh.
- Concessional rate was allowed for Inter State sale without production of C forms, tax effect of which worked out to ₹ 92.91 crore.

- Exemption was allowed for Inter State transfer without production of F forms which resulted in short levy of tax ₹ 123.38 crore.
- Concession was allowed on defective C forms which resulted in short levy of tax of ₹ 109.55 crore.
- Exemption was allowed on defective F forms involving tax effect of ₹ 15.13 crore.

### **Introduction**

The Central Sales Tax Act, 1956, (CST Act) governs the levy and collection of tax on inter-state transactions. Section 8 and Section 6 A of the Act provide for certain concessions/exemptions to promote trade through registered dealers and to avoid cost escalation of goods to the ultimate purchaser. It is the responsibility of the Commercial Tax Department to ensure that the concession/exemption is not misutilised by fraudulent transactions.

Under the provisions of the CST Act, every dealer, who in the course of inter-state trade or commerce, sells to a registered dealer, goods of the classes, specified in the certificate of registration of the purchasing dealer, shall be liable to pay tax at the concessional rate of three per cent from 1st April 2007 and two per cent with effect from 1st June 2008 of such turnover provided such sales are supported by declarations in form 'C'.

Under Section 6 A of CST (Amendment) Act 1972, transfer of goods not by reason of sales by a registered dealer to any other place of his business outside the State or to his agent or principal in other States is exempt from tax on production of declaration in form 'F', duly filled in and signed by the principal officer of the other place of business or his agent or principal as the case may be, along with evidence of despatch of such goods.

The Empowered Committee of State Finance Ministers (EC) has introduced a website called Tax Information Exchange System (TINXSYS) which acts as repository of interstate transaction taking place between various States and Union Territories. TINXSYS is a centralised exchange of data related to transactions in respect of all inter-state dealers spread across the various States and Union territories of India. The website was designed to help the Commercial Tax Departments of various States and Union Territories to effectively monitor the inter-state trade.

The State of Kerala had evolved a new system, Kerala Value Added Tax Information System (KVATIS) which is a full fledged information system software that enables the automation of various functions of the Department KVATIS has introduced downloading of statutory forms including C/F form from January 2010 and dealers are not permitted to use manual declaration form from that date. The introduction of e-forms has practically eliminated all the drawbacks in the manual system where the dealers had to obtain blank forms in advance from the Department and furnish utilisation certificate for the used form.

We appreciate the introduction of e-form which is simple, transparent and managed without human intervention. Further the downloaded declarations are uploaded automatically to TINXSYS on a daily basis. The genuineness of the e-forms can be checked through the commercial taxes website and TINXSYS.

#### **Organisational setup**

The Department of Commercial Taxes which administers the levy and collection of tax under the KVAT Act 2003, the KGST Act 1963 and CST Act, 1956 is headed by the Commissioner of Commercial Taxes who functions with the assistance of Joint Commissioners, Deputy Commissioners and Inspecting Assistant Commissioners. Assessment, levy and collection of tax is done by Assistant Commissioners (Assessment) and Commercial Tax Officers.

#### **Audit Objectives**

The review aims to ascertain whether:

- There exists a foolproof system for custody and issue of the declaration forms;
- Exemption/concession of tax granted by the assessing authorities was supported by the original declaration forms;
- There is a system for ascertaining genuineness of the forms for preventing evasion of tax;
- There is a system of uploading the particulars in the TINXSYS website and the data available there is utilised for verifying the correctness of the forms;
- Appropriate steps are taken on receipt and detection of fake, invalid and defective (without proper or insufficient details) forms; and
- There exists an effective and adequate internal control mechanism.

### Scope and methodology of audit

- The review covered all the commercial tax units audited between November 2010 and January 2011, covering assessments completed during the period from 2007-2008 to 2009-2010, where exemptions/concessions were granted under the CST Act. Cases noticed during regular audit of other units during the current audit cycle were also included.
- The details of C/F forms issued by the dealers in the State in favour of dealers outside the State for effecting inter-state purchases were collected from the selling State by the concerned Accountant General's office and those details were cross verified by us with respect to the counter foils and utilisation registers of the respective assesseees in the State.

### Acknowledgement

We acknowledge the co-operation extended by the Commercial Tax Department for providing necessary information and records for review. We held an entry conference on 24th January, 2011 with the Secretary to the Government and Commissioner of Commercial Taxes where in the scope and methodology audit was explained. We held an exist conference on 31st October, 2011 with the Additional Secretary to the Government and have included their responses given during the Conference and on other occasions.

### Trend of revenue under CST

The budget estimated and actual realisation of revenue under Central Sales Tax for the period from 2006-2007 to 2007-2011 are mentioned below:

(₹ in crores)

Year	Budget estimates	Actual receipts	Variation excess(+)/shortfall(-)	Percentage of variation
2006-2007	443.00	339.66	(-) 103.34	(-) 23.33
2007-2008	569.25	1016.21	(+) 446.96	(+) 78.52
2008-2009	353.22	425.38	(+) 72.16	(+) 20.43
2009-2010	174.60	292.94	(+) 118.34	(+) 67.78
2010-2011	164.00	310.42	(+) 146.42	(+) 89.28

It may be seen from the above table that the actual realisation of revenue was more than the budget estimates except in 2006-2007. Further, the percentage of excess was more than two-thirds (67 per cent) of the budget estimates in three out of the five years, the reasons for which were not furnished by the Department.

## AUDIT FINDINGS

### *System deficiencies*

#### **Printing and issue of declaration forms**

For interstate transactions up to December 2009 printed declaration forms were issued to dealers and for transactions thereafter electronic forms are issued. Even after December 2009, printed forms were issued for transactions pertaining to earlier periods. The Joint Commissioner, under the supervision of the Commissioner of Commercial Taxes, was responsible for distribution of manual forms which was printed at the Kerala Books and Publication Society (KBPS) (A Government Autonomous Body) as per order and kept at their custody. The required number of forms were allotted to the Deputy Commissioners at the district level based on their requisition who in turn were required to collect it from KBPS and distribute them to the Assistant Commissioners as per their indent.

Cross check of records relating to printing and issue of declaration forms available at the Commissionerate and KBPS for the period from April 2005 to June 2011 revealed the following discrepancies which proves that the printing and issue of declaration forms was not properly monitored at the Commissionerate level:

- The closing balance of C Form books available as per the stock register maintained in KBPS as on 18th June, 2011 was 6,870. The balance as per the register maintained in the Commissionerate on the above date was 13,950. The excess of 7,080 books at the Commissionerate occurred due to the following reasons.
- Issue of 11,130 C forms books as per 21 sanctions granted between August 2007 and June 2011 were not entered in the stock register maintained at Commissionerate. On two occasions, the entry in the registers at the Commissionerate and KBPS differed by 200 and 100 books. Between October 2008 and February 2011 three DCs did not lift the allotted C forms books aggregating 2,100 from KBPS and four DCs lifted lesser number of books

(aggregate 2,250) than that allotted. No reconciliation/physical verification was seen to have been conducted. If (proper) reconciliation/physical verification was conducted, the above defects could have been detected.

### **Utilisation of declaration forms**

Consequent to introduction of VAT, the Central Sales Tax (Registration and Turnover) Rules, 1957 was amended to fix a time limit of three months (after end of the period to which the declaration or the certificate relates) for furnishing the declarations in Forms C and F along with the returns. Under the KVAT Rules as amended from 24th April, 2007, dealers are required to furnish along with the annual return, a statement on details of statutory forms issued during the return period.

We observed the following deficiencies in enforcing the above provisions and confirming the genuineness of the transactions covered by these forms:

- Though assessing authorities have been directed to assess the turnover in cases of non-submission of declaration forms, cases of non submission forms even after one to three years and allowing exemptions/concessions without their production was noticed in most cases. Some high value cases noticed are featured in the compliance deficiencies portion of the review.
- Utilisation statements of the declaration forms were not found in the file produced to us, though audit was conducted one to two years, after the end of the assessment year. This indicated that there was no system to promptly verify utilisation certificate at the time of scrutiny of returns/conducting tax audits.
- The Department has not issued guidelines prescribing a check list of points to be scrutinised (such as whether the date from which the registration entered is valid, date of issue, name and address of the seller with the name of State, purchase order number and date, purpose of goods purchased etc. are mentioned) prior to acceptance of the declaration forms.
- Grant of exemption based on incomplete forms was noticed and a few high value cases are incorporated in the review.

- The Department has not implemented a system to verify declaration forms submitted by the dealers with the database available in the TINXSYS website before allowing exemption/concession of tax.
- The Department has not installed a regular system of picking up a sample of declaration forms and taking them up for further verification with the concerned states; and
- No regular mechanism has been prescribed for monitoring forms sent to other states and forms received from other states for verification.

### **Enforcement measures**

Branch of the Enforcement Wing of the Department deals with investigation of interstate transactions.

We noticed the following deficiencies in the enforcement mechanism:

- There was no mechanism to report to the concerned authority, details of declaration in forms 'C' and 'F' found lost, destroyed, stolen etc. or defective forms noticed and to take necessary action to declare such forms as invalid by giving wide publicity through issue of notification or circulars to all divisions etc.
- There was no mechanism to notify cases of bogus or non-existent dealers detected by the Department and to intimate it to other State Governments for publication in their gazettes.
- There was no system of blacklisting dealers who have been found utilising invalid/fake declaration forms in the past and to circulate their names among various units and to alert other States. There was no system to monitor such dealers regularly to watch further mischief and to levy maximum penalty in case of repeated default.
- The Department did not maintain a data bank on forms declared invalid or dealers found to be fictitious or whose registration certificates were cancelled within and outside the State.

- The Department did not maintain a sample of the colour, design and format of the forms prevailing in different States for comparison in order to identify the fake or forged declaration forms.

[Audit paragraph 2.12.8 and 2.12.9 contained in the Report of C&AG of India for the year ended 31st March 2011 (RR).]

Notes furnished by Government on the above audit paragraph are included as Appendix II.

To a query, the Commissioner of Commercial Taxes submitted that, on physical verification of records at Commissionerate, shortage of 5600 C-Forms was detected. He continued that only after the verification of stock registers maintained at district level offices, the exact position could be realised. He also informed that from 2010 January onwards, the department had made online downloading of C-Forms mandatory and developed a centralized system of issuing statutory forms online. He hoped that this will resolve the issues regarding the statutory forms. The Committee directed the Taxes Department to take urgent steps to conduct periodical reconciliation of stock register at the Commissionerate and district level offices.

10. Regarding the audit paragraph, the CCT submitted that online submission facility was introduced with the help of TINXSYS, a centralized data base of statutory forms issued by different States and now the submissions were cross-checked and verified on the spot.

11. The Commissioner of Commercial Taxes submitted that the supply of forms had been made online since 2010 and the audit observation was of prior period. The Committee was informed that the department had no automatic verification control of the software and in the current setup, forms would not generate if registration was cancelled or not renewed. In this regard, the CCT deposed that in such cases check post alerts were being given and goods were not allowed to pass through check posts. He added that renewal would be allowed only after a grace time of one month.

12. The Committee directed the department to take necessary steps to publish the details of assessees whose registration got cancelled.



### Conclusion/Recommendation

13. The Committee directs the Taxes Department to take urgent steps to conduct periodical reconciliation of stock register at the Commissionerate and district level offices.

14. The Committee recommends that the Taxes Department should take necessary steps to publish the details of assessees whose registration gets cancelled.

#### AUDIT PARAGRAPH

##### Compliance deficiencies

*Results of cross verification of declaration forms*

*Results of verification received from other states*

We collected and forwarded details of 436 C forms and 229 F forms and we received result of verification of 264 C forms from 13 states and 111 F forms from five states. From cross verification results we received confirmation that three C forms issued from Maharashtra were fake. The turnover covered by the above forms was ₹ 32.57 lakh. Similarly inter-state sale value of two C form received from two states\* were understated by ₹ 92.58 lakh. When we pointed out this, ₹ 13.14 lakh was realised at Special Circle, Trivandrum in respect of an assessee. We also observed that sales effected under the cover of three C forms from a dealer from Tamilnadu amounting to ₹ 53.64 lakh was not accounted by the purchasing dealer. Short levy of tax on the above account worked out to ₹ 43.41 lakh including interest and penalty.

##### Concession allowed without production of C forms

The CST Act stipulates that every dealer, who in the course of inter-State trade or commerce, sells to a registered dealer, goods of the classes, specified in the certificate of registration of the purchasing dealer, shall be liable to pay tax at the concessional rate of three per cent for the period 2007-2008 and two per cent for the period 2008-2009 onwards of such turnover provided such sales are supported by declarations in form 'C'.

\* Gujarat and Jammu and Kashmir

As per Rule 12 (7) of CST (R&T) Rules (Amended), C/F forms shall be produced before the AA in the quarter following the quarter in which the transaction has occurred.

We verified CST assessment filed in the State, and observed that concessional rate for inter-state sale was allowed without production of C Forms. In respect of 17 offices\* inspected, we observed that in case of 80 assesseees, interstate sales turnover amounting to ₹ 545.82 crore was assessed at concessional rate of tax without production of C forms. Short levy of tax in this regard worked out to ₹ 92.91 crore including interest and penalty.

When we pointed this out, the assessment in respect of 18 assesseees in seven+ assessment circles were revised and an additional demand of ₹ 13.69 crore created. Reply in balance cases has not been received.

Audit paragraphs 2.12.10 and 2.12.2011 contained in the Report of C&AG of India for the year ended 31st March 2011 (Revenue Receipts)

Notes furnished by Government on the above audit paragraphs are included as Appendix II

15. To a query regarding the audit objection raised in the case of M/s Treads Direct, Palakkad, the Commissioner of Commercial Taxes submitted that a confirmation letter from the AA, Aurangabad had been received. The C-Form from Tamilnadu had been verified through TINXSYS and the sale statement in Form 52 had been accounted.

16. When the Committee asked the details regarding the audit paragraph about M/s. Associated Cashew Industries, the Joint Commissioner, CCT deposed that the dealer had specified the value of goods in C-Form as ₹ 19,94,640 by mistake instead of ₹ 19,44,640 and it was rectified subsequently.

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- \* Special Circles Alappuzha, Aluva, Ernakulam I, Kasargod, Kollam, Kottayam, Kozhikode II Mattanchery, Thrissur, CTO I Circle Palakkad, Perumbavoor, CTO II Circles, Palakkad, Kalamassery, Kottayam, CTO IV Circle Ernakulam, CTO V Circle Kozhikode, CTO Attingal.
  - + Special Circle Ernakulam III, Kollam, Kottayam, Palakkad, Thrissur, CTO II Circle Palakkad, Kottayam.

17. When the Committee wanted to know the present position in the case of Carborundum Chemicals Ltd., the CCT submitted that the balance amount has been pending under RR proceedings and the amount could be recovered only after liquidation of the company.

18. The Committee was informed that the short levied amount was completely recovered from the dealers like M/s Western Marketing Associates, M/s Godrej and Boyce Manufacturing, M/s Lajapathy Packers, M/s Philip Carbon Block, Indo-German Carbon (P) Ltd. (2007-2008), M/s Dynamic Techno Medicals (P) Ltd., M/s Veekeyes Polymers, M/s Asian Timber Industries and M/s Peekeyvee Timbers.

19. The cases of Mar Dec R. K. Latex, M/s Ultra Tiles (P) Ltd. and M/s Age Industries (P) Ltd. were stayed by High Court until further orders. The Appellate Authority stayed action in the case of Indo-German Carbon (P) Ltd. (2008-2009). The CCT also stated that the case of M/s Hindustan News Print was set aside by High Court and fresh disposal has been pending before AA and appeal has been pending in the case of M/s Sanitary Equipment Stores.

20. Regarding the case of State Trading Corporation, the witness, CCT informed that the High court of Kerala directed the department to file the case before the High Court of Karnataka since STCs registered office was located in Bangalore and the case has been pending before the Karnataka High Court.

21. To a query, the witness replied that no dues remained in the cases of M/s Web Cot (2007-2008 & 2008-2009), M/s Transformers and Electricals Kerala Ltd., TMS Leathers and M/s Green Land Timbers, as the dealers were produced C-Forms for all transactions.

22. He brought into the notice of the Committee that Revenue Recovery Proceedings were initiated in the case of M/s Haripriya Traders, M/s Cable Point, M/s Meenachil Rubber Marketing and processing Co-operative Society Ltd., Pala and M/s Pyarilal Agro and Exports Ltd.

23. He also informed that directions were issued to recover the balance amount pending to be realised in respect of M/s Best Wood Traders, M/s State Trading Corporation and Chathankulam Saw Mill.

24. With regard the case of Kerala Electrical and Allied Engineering Ltd. which sold material for electrical signal to the Integral Coach Factory, Perumbavoor, the CCT admitted that AG's observation was correct, since the trade being interstate, the concessional rate was not applicable. He informed that direction would be given to submit all documents for re-assessment.

#### **Conclusion/Recommendation**

25. The Committee directs the Taxes Department to recover the balance amount due from M/s Best Wood Traders, M/s State Trading Corporation and Chathankulam Saw Mill and submit a report regarding this.

26. The Committee observes that the concessional rate permitted in the case of Kerala Electrical and Allied Engineering Ltd. was incorrect, as it was a case of interstate trade. It urges the Taxes Department to furnish the details of re-assessment and the present status of the case to it at the earliest.

#### **AUDIT PARAGRAPH**

##### **Exemption allowed without production of F forms**

Section 6A of the CST (Amendment) Act, 1972, provides that transfer of goods not by reason of sales by a registered dealer to any other place of his business outside the State or to his agent or principal in other States is exempt from tax on production of declaration in form 'F', duly filled in and signed by the principal officer of the other place of business or his agent or principal as the case may be, along with evidence of despatch of such goods which shall be produced before the AA.

We verified CST assessment files in respect of 15 offices\* in the States, and observed that in case of 53 assesseees, interstate transfer of goods amounting to ₹ 799 crore was exempted without production of F forms. Short levy in this regard worked out to ₹ 123.38 crore including interest and penalty.

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\* Special Circle Ahuva, Emakulam I & III, Mattancherry, Kottayam, Kollam, Thrissur, CTO II Circles, Emakulam, Kalamassery, Palakkad, Kottayam, CTO III Circle Emakulam, Thrissur, Kollam, CTO IV Circle Emakulam.

When we pointed this out, the assessments in respect of three assesseees in three\* assessment circles were revised and an additional demand of ₹ 10.56 lakh created. Reply in balance cases has not been received.

Audit paragraph 2.12.12 contained in the Report of C&AG of India for the year ended 31 March, 2011 (Revenue Receipts).

Notes furnished by Government on the above audit paragraph is included as Appendix II.

27. Regarding the audit paragraph, the Committee was informed that the amount due was collected completely in the cases of M/s Western Marketing Associates and M/s Iris Computers. The witness, CCT added that collection was pending in case of Philips Carbon Black, M/s MRF Ltd. (2007-2008) and M/s Hilti India Pvt. Ltd. The Committee urged the Taxes Department to realise the amount in respect of which collection was not stayed by any authorities at the earliest.

28. The Committee was informed that the cases of M/s Supreme Industries Ltd., M/s Johnson and Johnson Ltd., Bharathi Airtel Ltd., M/s Panasonic Sales and Services (P) Ltd., M/s Berger Paints, M/s Philips Electronics India Ltd., M/s MRF Ltd. (2006-2007), M/s Emerson Network Power India (P) Ltd. and M/s Axis Bank Ltd. were stayed either by High Court or some other authority.

29. Regarding the audit observation, the CCT submitted that the case of M/s Dishnet Wireless Ltd. was an interstate transfer and as it was not an interstate sale, submitting F forms was not necessary.

30. The Committee observed that considerable amount was pending to be collected from M/s Axis Bank Ltd. and enquired the present position of the case. The CCT submitted that the case was stayed by High Court. The assessee had remitted a part of ₹ 14.78 lakh and F form was misplaced and could not be traced out.

31. To a query regarding collection, the Joint Commissioner, CCT submitted that out of the total assessment of ₹ 780 crore, less than ₹ 10 crore only could be collected so far and he continued that, major amount was stayed either by Appellate Authority or by High Court but Government had not stayed any case.

32. In this regard an official from the Office of the Accountant General informed that such discrepancies could be avoided if declaration should be made

\* Special Circle Kollam, Palakkad, Thrissur.

mandatory for concession or exemption. The Committee decided to recommend that rules should be made stringent, so that the discretion of the AA to grant extension should be limited to a maximum of one month.

33. The Committee directed the Taxes Department to take strenuous effort to dispose the pending cases either through adalaths or some other ways in a time bound manner.

#### **Conclusion/Recommendation**

34. The Committee finds that the collection is pending in case of Philips Carbon Black, M/s MRF Ltd. and M/s Hilti India Pvt Ltd. and it directs the Taxes Department to realise the amount at the earliest.

35. The Committee remarks that the discrepancies in Tax Collection can be avoided if declaration be made mandatory for concession or exemption and recommends that Taxes Department should take necessary steps to make stringent measures regarding tax collection under which the discretion of the AA to grant extension should be limited to a maximum of one month.

36. The Committee directs the Taxes Department to take effective measures to dispose the pending cases either through adalaths or some other ways in a time bound manner.

#### **AUDIT PARAGRAPH**

#### **Concession allowed on defective C forms**

Section 8 (1) (b) of the SCT Act, 1956 as it stood during the relevant period stipulates that turnover of interstate sale of goods to registered dealers other than Government where the rate of which under the State Act is more than four per cent would attract tax at the rate of four per cent only. Section 8 (4) (a) of the Act read with Rule 12 (1) of the CST (R&T) Rules, 1957 states that in order to prove that the transaction would fall under Section 8 (1) (b) the dealer is required to file declarations in Form C duly filled and signed by the authorised officer of the Government/registered dealer. Declarations not duly filled and signed and not containing the particulars are required to be treated as defective. The Hon'ble High Court of Kerala\* had ruled that in order to avail the reduced rate of tax under Section (8) (1) (a) (b) the declaration produced should be in original.

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\* 18 KTR 138

We verified the CST assessments completed between February and December 2010 in respect of three assesses in Special Circle II Ernakulam and observed that the AA accepted C Forms in which figures were erased and rewritten without authorisation; bills covered were not authenticated, and purchases effected before the date of registration etc. were covered. Total interstate sale of goods amounting to ₹ 160.62 crore was allowed concession on such defective declaration. The short levy of tax in this regard worked out to ₹ 109.55 crore including interest and penalty.

#### **Exemption allowed on defective F forms.**

Section 6A of CST (Amendment) Act 1972, provides that transfer of goods not by reason of sales by a registered dealer to any other place of his business outside the State or to his agent principal in other States is exempt from tax on production of declaration in Form 'F' duly filled in and signed by the principal officer of the other place of business or his agent or principal as the case may be, along with evidence of dispatch of such goods. Declarations not duly filled and signed and not containing the particulars are required to be treated as defective.

We verified the CST assessment files of three offices\* and observed that in case of three assesseees, interstate transfer of goods was exempted on defective F forms in which transfer relating to more than one month was covered corrections were made on invoices without authentication; transaction covering period beyond the validity of declaration etc. Total interstate transfer amounting to ₹ 107.19 crore was exempted on such defective form. The short levy of tax in this regards worked out to ₹ 15.13 crore including interest and penalty.

#### **Absence of systems to verify resale**

Section 8 (3) read with Section 8 (1) (b) of the CST Act, 1956, provides that a Registered dealer is entitled to effect interstate purchase of goods of the class or classes specified on the Certificate of Registration which are intended for resale by him by paying tax at four per cent subject to submission of declaration in Form C. Section 10 A read with Section 10 of the Act stipulated that if any persons after

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\* Special Circles Aluva, Ernakulam and Kollam.

purchasing any goods for any of the purpose specified in Section 8 (3) fails to make use of the goods for any such purpose, such persons were liable to pay a sum not exceeding one and half times of the tax which would have been levied under Section 8 (2) of the Act by way of penalty.

We observed in Special Circle II, Ernakulam that an assessee, had effected inter-state stock transfer of HSD valued ₹ 58.48 crore and ₹ 18.96 crore respectively for the years 2004-2005 and 2005-2006 out of the interstates purchase made by issuing declaration in Form C.

As per the Act, goods purchased against 'C' forms are meant for resale. In this case however, the goods were stock transferred to other States and the AA did not have systems in place to verify that the goods were resold.

We recommend that the Department may put in place a system to verify that resale had taken place where goods purchased against Form C are disposed outside the State.

### **Internal Control Mechanism**

Due to the changed procedure in assessment as a result of switchover from KGST to KVAT Rules the system of filing details of utilisation in form No. VI under CST assessment was dispensed with during the KVAT period. Though a provision to file the utilisation certificate along with annual return in KVAT Rules has been restored with effect from April 2007, the assesseees are not submitting the same and there was no system in the Department to ensure that the copy of Form No. VI was filed along with the annual return.

Even though instructions were issued by the Department to allow concessions/exemptions only on production of valid declarations in form C/F, the assessing officers were allowing concessions/exemptions without production of C/F forms.

The Department has not issued any instructions regarding the checks to be carried out to spot bogus/obsolete/invalid declarations before accepting declarations for allowing concession/exemption.



## Conclusion

### We found that

- The system of e-issue of declaration forms has been introduced which is a welcome step.
- Departmental instruction were not complied with by assessment circles.

### Recommendation

We recommended that the Government may consider implementing the following steps for rectifying the defects pointed out in the review

- Issue instructions regarding the checks to be carried out before accepting declarations for allowing concessions/exemption.
- Strengthen the internal control mechanism for the strict compliance of Departmental instructions.

Audit Paragraphs 2.12.13-2.12.18 contained in the Report of C&AG of India for the year ended 31 March, 2011 (Revenue Receipts)

Notes furnished by Government on the above audit paragraphs are included as Appendix II.

37. With regard to the audit paragraph, the witness informed that the defects pointed out by Audit were technical in nature and were rectified.

38. To a query regarding C Form submitted by a dealer for the purchase made before the date of registration viz., M/s. S. Kumar, the Joint Commissioner, Commissioner of Commercial Taxes submitted that the application of S. Kumar was ascertained and assessment was also revised accordingly.

39. The Committee was informed that proceedings for Revenue Recovery was initiated in the case of Rajkumar Impex and has been pending before the Deputy Collector, Kollam.

40. To a query, the Joint Commissioner, CCT informed that AG's stance was that the stock purchased against C Form was meant for resale or manufacture. But in this case stock was transferred to other State under F forms. He continued that in

a case, High Court specified that purchasing against C Form and selling it outside the State could not be considered irregular, since rule did not insist to sale the stock inside the State.

41. In this regard, an official from the Office of the Accountant General explained that irregularity was in stock purchased at concessional rate was retained as stock transfer to other branches outside the State and thereby evading tax to Kerala. Then the Joint Commissioner, CCT submitted that the department had sought the legal opinion of the Advocate General in this case and the opinion was in favour of the company. The Committee accepted the explanation.

42. The Committee accepted the reply furnished by the department regarding internal control mechanism.

### **Conclusion/Recommendation**

#### **No Remarks**

#### **AUDIT PARAGRAPH**

#### **Other audit observations**

We scrutinised assessment records of sales tax/value added tax (VAT) in Commercial Taxes Department and found several cases of non-observance provisions of the Acts/Rules, non/short levy of tax/penalty/interest, incorrect determination/classification of turnover 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 in audit. Such omissions on the part of Assessing Authorities (AA) are pointed out in audit each year, but not only the irregularities persist; these remain undetected till an audit is conducted. There is need for the Government to improve the internal control system including strengthening of the internal audit to ensure that such omissions are detected and rectified.

#### **Non-observance of provisions of Acts/Rules**

The Kerala General Sales Tax/Kerala Value Added Tax/Central Sales Tax Act and Rules made thereunder provide for:

- (I) levy of tax/interest/penalty at the prescribed rate;
- (ii) allowing exemption of turnover subject to fulfilment of the prescribed conditions; and
- (iii) allowance of input tax credit as admissible.

We noticed that the AAs while finalising the assessment did not observe some of the provisions which resulted in non/short levy/non-realisation of tax/interest penalty of ₹ 85.03 crore as mentioned in the paragraphs 2.14.1 to 2.14.25.

### **Value Added Tax**

#### **Allowance of incorrect concession**

(CTO, special circle II, Ernakulam; November 2010)

Serial No. 98 of Schedule III to the KVAT Act provides for levy of tax at four per cent on sale of petroleum products covered under the Act to KSEB, NTPC and other power generating undertakings in the joint sector. The Government of India issued Guidelines (February 1973) stipulating conditions to be fulfilled to qualify as a joint sector undertaking. These included minimum 26 per cent equity ownership by the State Industrial Development Corporation (SIDC) and holding of not more than 25 per cent share by private partner without prior approval of the Central Government. Further, naphtha, a petroleum product, was taxable at 12.5 per cent till June 2006.

We noticed from the assessment records that Indian Oil Corporation assessed tax on sale of naphtha for ₹ 18.84 crore during 2005-2006 and ₹ 43.64 crore during 2006-2007 (up to June) to BSES Kerala Power Ltd. at concessional rate of four per cent applicable to undertakings in joint sector. However, in the case of BSES Kerala Power Ltd. SIDC was holding 13.68 per cent equity shares and hence does not qualify as a Joint Sector undertaking as it did not meet the criteria specified by the Government of India. The application of incorrect rate of tax resulted in short remittance of tax and interest of ₹ 7.78 crore (at differential rate of 8.5 per cent on ₹ 18.84 crore + ₹ 43.64 crore).

When we pointed out the case to the Department (November 2010) and to the Government (April 2011), the Government replied (September 2011) that assessment under section 25 (1) of the Act has been completed (April 2011) and short levy pointed out by the audit made good. We have not received further information regarding collection (December 2011).

[Audit Paragraph 2.14 & 2.14.1 contained in the Report of Comptroller and Auditor General of India for the year ended 31st March 2011 (RR)].

Notes furnished by Government on the above audit paragraph is included as Appendix II.

43. The Committee enquired whether the conditions stipulated in the guidelines issued by Government of India for qualification as a Joint Sector Undertaking had been satisfied in this case. The Joint Commissioner, CCT submitted that there was agreement between power generating units and KSEB which stipulated to sell electricity to KSEB only at the rates fixed by KSEB. He also informed that as there was no clear definition for "Joint sector" in the KGST Act, these companies could be considered as Joint Sector Undertakings. He supplemented that there were only two companies dealing with such business in Kerala.

44. The Committee remarked that Government should formulate policy decisions in such cases to provide clear direction in future.

### **Conclusion/Recommendation**

45. The Committee notices that 'Joint Sector Undertakings' is not defined in KGST Act and hence it is not clear whether the companies mentioned in the audit para could be classified as joint sector undertaking or not. It recommends that Government should issue clear direction in this regard.

#### **AUDIT PARAGRAPH**

#### **Short levy due to non dis allowance of IPT/Special rebate stock transfer**

(CTO, special circles, Mattancherry, Malappuram and Special circle I Ernakulam; September 2010).

Proviso (3) to Section 11 (3) of KVAT Act provides that if goods purchased in the State are used in the manufacture of goods and the same are sent outside the State otherwise than by way of sale, input tax credit shall be limited to tax paid in excess of four per cent. Further Rule 12A of the KVAT Rules 2005 provides that where taxable goods are used during a return period partly in relation to taxable transaction and partly in relation to exempted or non-taxable transaction,

the input tax paid or special rebate to which the dealer has become entitled shall be apportioned between the taxable and exempted or non-taxable transaction on the basis of the ratio of taxable and exempted turnover and input tax credit allowable to exempted transaction shall be disallowed. Section 6 (1) of the Kerala Finance Act, 2008 provides that there shall be levied and collected from dealers a cess at the rate of 1 per cent on the tax payable by them under Section 6 and 8 of the KVAT Act, 2003. Section 31 (5) of KVAT Act provides that if tax or any other amount due under the Act is not paid by any dealer, such dealer shall pay simple interest at the rate of 12 per cent per annum on such amount defaulted.

We noticed from the assessment record that the AA either assessed the reverse Tax less than the required as per statute or not assessed such tax resulting in short levy of tax of ₹ 6.52 crore as detailed below:

(₹ in lakhs)

Sl. No.	Assessment Circle	Commodity Assessment year	IPT to be disallowed on various grounds	IPT disallowed / tax assessed by AA	Excess IPT/short levy of tax, cess and interest
1	CTO, Spl. Circle I, Ernakulam	<u>Gold Jewellery</u> 2008-09	439.02	Nil	540.96
2	CTO, Spl. Circle, Mattancherry	<u>Zinc Ingots</u> 2007-08	113.79	37.94	97.85
3	CTO, Spl. Circle, Malappuram	<u>Ayurvedic Medicine</u> 2007-08	18.19	14.51	4.57
4	CTO, Spl. Circle, Malappuram	<u>Ayurvedic Medicine</u> 2008-09	24.62	21.79	3.17
5	CTO, Spl. Circle, Mattancherry	<u>Pipes and fittings</u> 2008-09	5.67	Nil	5.67
<b>Total</b>					<b>652.22</b>

We pointed out the cases to the Department between April and September 2010 and to the Government between April and May 2011. We have not received further information (December 2011).

(CTO, Special circle, Kottarakkara; August 2010)

Government by a notification\* had exempted tax on interstate sale of rubber with effect from August 2008 on the condition that the rubber involved, had suffered tax under the KVAT Act, 2003. when sale in the course of interstate trade is exempted from tax, ITC should be limited to tax paid in excess of four per cent.

We observed from the assessment records that a dealer purchasing rubber latex from unregistered dealers sold 29.46 per cent of his turnover interstate during 2008-2009. However, the AA did not limit input tax credit availed in excess of four per cent on purchases corresponding to such sales. This resulted in short levy of tax and interest of ₹ 6.24 lakh.

We pointed out the matter to the Department in August 2010 and to the Government (April 2011). We have not received further information (December 2011).

(CTO, Manjeri; August 2010)

We noticed from the assessment records that a dealer in tread rubber sold 57.64 per cent of his total turnover interstate during 2008-2009 but input tax credit was not limited to tax paid in excess of four per cent on such sales. This resulted in excess availment of input tax and interest of ₹ 3.11 lakh.

We pointed out the matter to the Department (October 2010) and to the Government (May 2011). The Government replied (September 2011) that the assessment was completed (November 2010) with an additional demand of ₹ 2.65 lakh. We have not received further information (December 2011).

(CTO, special circle, Malappuram; April 2010)

Section 31 (6) of the KVAT Act provides that if the tax due is not paid by the assessee within the prescribed time, interest will become due with effect from the date on which the tax would have fallen due for payment. Further, Section 91 of the Act

\* S.R.O. 804/2008 dated 31-7-2008

stipulates that where any tax due or demanded under the Act is paid by any dealer, the payments so made shall be appropriated first towards interest accrued on such tax or other amount under Section 31 (5) and the balance shall be appropriated towards principal outstanding.

We noticed from the assessment records that an assessee remitted (March 2010) input tax credit of ₹ 14.51 lakh and ₹ 21.79 lakh availed in excess during 2007-2008 and 2008-2009 respectively, without remitting the interest due. Further, the Department did not assess interest and appropriate the remittance first towards interest, which resulted in short levy of tax of ₹ 5.73 lakh.

We pointed out the matter to the Department (April 2010) and to the Government (March 2011). The Government stated (July 2011) that the AA issued notice to the dealer to remit the amount. We have not received further information (December 2011).

[Audit Paragraph 2.14.2 contained in the Report of Comptroller and Auditor General of India for the year ended 31 March 2011 (RR)]

Notes furnished by Government on the above audit paragraph is included as Appendix II.

46. When enquired the present status of finalisation of assessment in the case of CTO, Special circle, Ernakulam, the Joint Commissioner, CCT submitted that the purchase turnover of Joy Alukkas was ₹ 800 crore and they had transferred gold stock for ₹ 416 crore. AG's objection was that 51% of IPT deduction permitted to the dealer should be disallowed. The CCT submitted that when records were verified it was found that there was stock transfer not for retail sale but to their showrooms outside the State and they had remitted the amount of ₹ 72 lakh towards the tax for the local purchase of ₹ 11 crore.

47. Regarding a case in CTO, Special Circle, Kottarakkara, the CCT informed that total demand was collected in three instalments. He added that an amount of ₹ 1,99,000 was collected out of ₹ 3.11 lakh from M/s Gem Treads, Payyanad and the balance amount was under stay.

48. Regarding the short levy in respect of M/s Aryavaidyasala, Kottackal, the CCT submitted that the amount remitted was appropriated towards interest.

### **Conclusion/Recommendation**

No Comments.

### **AUDIT PARAGRAPH**

#### **Application of incorrect rate of tax**

(CTO Special circle II&III, Ernakulam January 2011)

Under the KVAT Act 2003, gold coins attract tax at the rate of four per cent as per entry 4(4) of IIIrd Schedule. The Commissioner of Commercial Taxes had clarified \* that gold rectangular bars being semi-manufactured will fall under HSN Code 7108.13.00 and will be taxable at the rate of four per cent.

We cross verified the import details in respect of Bank and public limited company gathered from Customs House, Air cargo Complex, Nedumbassery, with their assessment records and noticed that the assessee imported semi finished gold bar with HSN Code 7108.13.00 during 2008-2009. The sale value of import worked out to ₹ 175.40 crore and the same was assessed to tax at the rate of one per cent instead of at the correct rate of four per cent resulting in short levy of tax, cess and interest of ₹ 6.48 crore.

The Bank and the public limited company, conceded sales turnover of bullion of ₹ 683.16 crore and 677.77 crore respectively for the year. As gold imported by them was semi finished, the entire turnover was likely to be related to such semi finished gold, liable to tax at the rate of four per cent.

We pointed this out to the Department (January 2011) and to the Government (June 2011). We have not received further information (December 2011).

(CTO, Special circle I, Ernakulam; January 2011)

We noticed from the assessment records that a bank assessed tax on sales turnover of gold bar with HSN code 7108.13.00 amounting to ₹ 35.64 crore and ₹ 72.95 crore for the years 2007-2008 and 2008-2009 respectively at one per cent



instead of the correct rate of four per cent. Application of incorrect rate of tax resulted in short levy of tax, cess and interest of ₹ 4.10 crore.

We pointed out the matter to the Department in March 2011 and to the Government (May 2011). The Department stated that they cannot complete an assessment under VAT simply on the basis of HSN code. Mere change of HSN code from 7108.12.00 cannot change the nature of bullion. The reply is not accepted as HSN recorded by Customs Authorities after inspection of goods was 7108.13 and under Rules for interpretation of Schedules, it is the basis for determination of rate of tax. Further, the CCT relied on HSN code while issuing the clarification and hence the Department is bound to assess the goods based on HSN code. We reported the case to the Government (May 2011). We have not received further information (December 2011).

(CTO, Second circle, Ernakulam; November 2010)

We noticed from the assessment records that a bank had effected sale of gold bars in small quantities of 20/50 gms for ₹ 1.86 crore during 2008-2009 and paid tax at the rate of one per cent applicable to bullion. This resulted in short levy of tax of ₹ 6.71 lakh.

When we pointed this out (to) the Department (December 2010), the AA replied that notice has been issued under Section 25 (1). We reported the case to the Government (April 2011). Further report has not been received (December 2011).

(IAC, Kattappana; December 2009)

Notification\* issued by the Government under the KVAT Act provides that Confectionery including toffee, chocolates and sweets of all kinds sold under brand name registered under the Trade Mark Act 1999 are taxable at the rate of 12.5 per cent.

We noticed from the assessment records that a manufacturer of confectionery sweets under brand name 'Cryptms' self assessed output tax on sales turnover of confectionery of ₹ 8.23 crore during the years 2005-2006, 2006-2007 and 2007-2008 at the rate of four per cent instead of at the correct rate of 12.5 per cent. This resulted in short levy of tax and interest of ₹ 84.50 lakh.

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\*S.R.O. 82/2006, Entry 24 (1) (c) and (d)

We pointed out (January 2010) matter to the Department and to the Government in March 2011. The Government stated (October 2011) that the assessments for the years 2005-2006, 2006-2007, and 2007-2008 were revised creating an additional demand of tax and interest of ₹ 1.01 crore. We have not received further information (December 2011)

(CTO, special circle, Mattancherry; August 2010)

The KVAT Act provides that bakery products including biscuits of all varieties, cakes, pastries, pizza and bread sold under brand name registered under Trade Marks Act, 1999 are liable to be assessed at the rate of 12.5 per cent.

We noticed from the assessment records that an assessee manufacturing and selling cakes and bakery products under registered brand name assessed tax on sales turnover of such products for ₹ 1.08 crore at four per cent instead of at the correct rate of 12.5 per cent during 2008-2009. This resulted in short levy of tax and interest of ₹ 10.73 lakh.

We pointed out the matter to the Department in October 2010 and (to) the Government in January 2011. We have not received further information (December 2011).

(CTO, special circle, Mattancherry; July 2010)

The High Court of Kerala had held\* that Ujala Supreme and Ujala Stiff and Shine are not industrial raw materials coming under list A of the Third schedule to the KVAT Act but are commodities taxable at 12.5 per cent under the Act. The KVAT Act provides that where the sale is to or by Canteen Stores Department, the tax payable shall be at half the rate applicable to such goods.

We noticed from the assessment records that dealer assessed tax for the year 2008-2009 on sales turnover of Ujala Supreme and Ujala Stiff and Shine valued at ₹ 4.93 crore at the rate of four per cent and sales turnover valued at ₹ 7.14 lakh to Canteen Store Department at two per cent instead of at the correct rate of 12.5 per cent and 6.25 per cent respectively. This resulted in short levy of tax and interest of ₹ 49.02 lakh.

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\*MP Agencies Vs State of Kerala reported in 18 KTR 82.

We pointed out the matter to the Department (July 2010) and to the Government (March 2011), the Government replied (October 2011) that the assessment has been revised (June 2011) applying the correct rate. We have not received further information (December 2011).

(CTO, Ettumanoor; December 2009)

We noticed from the assessment records that a dealer assessed tax on the sale turnover of Ujala Supreme and Ujala Stiff and Shine for ₹ 1.03 crore during the period 2007-08 at the rate of four per cent instead of at the correct rate of 12.5 per cent. This resulted in short levy of tax and interest of ₹ 10.62 lakh.

We pointed out the matter to the Department in December 2009 and to the Government (February 2011). The Government stated (July 2011) that the assessment was completed under Section 25 (1) of the Act creating additional demand of ₹ 14.14 lakh against which the assessee remitted ₹ 4.71 lakh in June 2010. We have not received further information (December 2011).

[CTO (WC & LT), Alappuzha; August 2010]

Section 6 (1) (f) of the KVAT Act provides that in the case of transfer of goods involved in execution of works contract, where the transfer is not in the form of goods, but in some other form, the tax liability is at the rate of 12.5 per cent.

We noticed from the assessment records that a works contracts assessed tax at four per cent instead of at the correct rate of 12.5 per cent on transfer value of materials amounting to the ₹ 4.25 crore for 2008-2009. As the contract was executed for Cochin International Airport Ltd., the assessee was not eligible for concessional rate of four per cent allowable to Government Departments etc. This resulted in shorty levy of tax and interest of ₹ 41.87 lakh.

We pointed out the matter to the Department in September 2010 and to the Government in February 2011. We have not received further information (December 2011).

[(CTO (WC & LT), Kollam, January 2010)]

We noticed from the assessment records that an assessee engaged in tyre retreading returned tax at the rate of four per cent instead of at the correct rate of

12.5 per cent for the contract receipts of ₹ 23.97 lakh and ₹ 33.47 lakh during the periods 2006-2007 and 2007-2008 respectively. This resulted in short levy of tax and interest of ₹ 6.15 lakh.

We pointed out the matter to the Department in February 2010 and reported to the Government in December 2010. The Government replied (September 2011) that the assessment were completed in January 2011 and demand raised. We have not received further information (December 2011).

[(CTO, special circle, Thrissur; May 2009)]

Entry Number 64 (8) of the notified list of goods provides that margarine is taxable at the rate of 12.5 per cent.

We noticed from the assessment records that a dealer assessed output tax on sales turnover of margarine for ₹1.53 crore at the rate of four per cent instead of at the correct rate of 12.5 per cent during the year 2005-2006, 2006-2007, 2007-2008. This resulted in short levy of tax and interest of ₹ 15.75 lakh.

We pointed out the matter to the Department (June 2009) and the Government (April 2011). The Government stated (September 2011) that the assessments were completed based on the audit observation and revenue recovery action is pending. We have not received further information (December 2011).

[(CTO, first circle, Kottayam; June 2009 and June 2010)]

Entry 30 of the notified list of 12.5 per cent taxable goods of KVAT Act provided that digital photocopiers are taxable at the rate of 12.5 per cent.

We noticed from the assessment records that a dealer in digital photo copier computed tax on the sales turnover of ₹ 39.45 lakh, ₹ 31.84 lakh, ₹ 9.20 lakh and ₹ 56.98 lakh for the years 2005-2006, 2006-2007, 2007-2008 and 2008-2009 respectively at the rate of four per cent instead of at the correct rate of 12.5 per cent. This resulted in short levy of tax and interest of ₹ 14.51 lakh.

We pointed out (July 2009) short levy relating to the years 2005-2006 to 2007-2008, based on which the Department revised the assessments and created additional demand of ₹ 15.42 lakh. However, we noticed (June 2010) that the same defect persisted in 2008-2009. The Department stated (June 2010) that the

commodity dealt with by the assessee is not digital copier but laser printer cum copier which comes under IT products chargeable at four per cent tax. The reply is not acceptable as the product is sold as digital copier as per the sales statement and further the Department had revised the assessment for the years 2005-2006 to 2007-2008. We reported the case to the Government (May 2011) and have not received any further information (December 2011).

[CTO(WC&LT), Kannur; June 2010]

Section 7(5) of the CST Act, 1956 stipulates that a registered dealer may apply not later than six months before the end of a year for cancellation of registration, and the authority shall, unless the dealer is liable to pay tax under this Act, cancel the registration accordingly. The cancellation shall take effect from the end of the year.

We noticed from the assessment records that during the year 2007-2008 the AA accepted the application dated 19-7-2007 for cancellation of registration of the works contractor with immediate effect and allowed him to pay compounded tax at three per cent instead of four percent payable. Cancellation of registration in violation of the CST Act resulted in short levy of tax and interest of ₹ 4.16 lakh.

We pointed out the matter to the Department (July 2010) and the Government (March 2011). The Government stated (May 2011) that the assessment under Section 25 of the Act had been completed (January 2011) creating a demand of ₹ 4.52 lakh, including interest. We have not received further information (December 2011).

[CTO (WC&LT), Kasaragode; May 2010]

We noticed from the assessment records that an AA accepted the application for cancellation of CST registration filed by a dealer in June 2006. The dealer assessed his works contract turnover of ₹ 2.21 crore relating to Government work at three per cent under Section 8 (a) (i) of the Act instead of four per cent under Section 8 (a) (ii) of the Act for the year 2006-2007, though the cancellation should have come into effect from the end of the year. This resulted in short payment of tax and interest to the tune of ₹ 3.30 lakh.

We pointed out the matter to the Department in June 2010 and to the Government in February 2011. The Department stated in July 2010 that notice was issued to the assessee. We have not received further information (December 2011).

[CTO (WC&LT), Mattancherry; May 2010]

The KVAT Act, 2003, as it stood prior to April 2008 provides that a dealer registered under the Central Sales Tax Act can opt to pay compounded tax at four per cent. Though dealers were liable to pay tax at eight per cent from April 2008, they were permitted to pay tax at pre revised rate in respect of work remaining partly unexecuted as on 1st April, 2008.

We noticed from the assessment records of 2008-2009 that a works contractor paid compounded tax at the rate of 2.3 per cent for the works remaining partly unexecuted as on 1st April, 2008. As the dealer had CST registration during 2007-2008, he was eligible to opt for compounding at the rate of four per cent under Section 8 (a) (ii) of KVAT Act, 2003. Application of incorrect rate of compounding resulted in short levy of Rs. 3.76 lakh.

When we pointed out this (June 2010) the Department stated that as per the Finance Act, 2009, works which commenced prior to 1st April, 2008 and remaining partly executed on that date are liable to be taxed at the rate that existed prior to April 2008 and hence there was not short levy. The reply is not tenable as the compounded rate of 2.3 per cent related to civil work contracts of pre-VAT period which was valid only up to March 2007. We reported it to the Government (April 2011). Further report had not been received (December 2011).

[Audit paragraph 2.14.3 contained in the Report of C&AG for the year ended 31st March, 2011 (RR)]

Notes furnished by Government on the above audit paragraph is included as Appendix II.

49. The CCT informed that the accounts of MMTCL Ltd. and Bank of Nova Scotia were verified and assessment was completed as per AG's direction. Later those firms approached High Court and the court directed to rectify the assessment since they purchased 1 Kg rectangular gold bar, which was included in

the second schedule. Then an Official from the Office of the Accountant General submitted that department's claim was that marking HSN code as 71081300 instead of 71081200 was by mistake and it was rectified when found. The Committee was at a loss to note that even at the time of correction of HSN Code, the department had not conducted physical verification of the nature of items transacted and Committee decided to recommend that physical verification of items should be conducted in future in the cases of similar nature.

50. To a query regarding the case of Indian bank, the Joint Commissioner, CCT submitted that DC (Appeal) directed to re-assess the case. Since the gold mentioned was not gold ornaments or semi-manufactured gold, it was re-assessed by considering it as bullion and demanded additional amount. They obtained conditional stay and in the meantime they remitted an amount of ₹ 2.34 lakh which was excess for the time being.

51. The Committee was also informed that M/s Cryptom Confectioneries (India) Pvt. Ltd. was removed from the website of Trademark, since registration was not renewed timely. Though application filed to continue registration subsequently, it was rejected. When re-assessed, the demand for 3 years from 2005-2006 to 2007-2008 was considered as nil. It was kept in abeyance till the disposal of an appeal filed in this regard.

52. The Committee understood that Hindustan Unilever Ltd. had got registered trademark 'Modern' for making breads. The Committee was surprised to note that tax was collected only @ 4% for the sales of its products instead of the actual rate of 12.5% for the branded items and remarked that such exemption seems granted only for multinational companies. The Joint Commissioner of Commercial Taxes argued that the firm had trademark for manufacturing 'breads' only. Though the name 'Modern' was imprinted on the packing material of cakes, they were not manufacturing cakes and had no trademark for the same. So turnover assessed @ 4% was correct. In this regard an officer from the Office of the AG invited the attention of the Committee over the fact that in the returns filed by the firm, the total turnover was shown against the entry 'total baking items' and there was no segregation of cakes or breads and suggested that department should not accept the

claims without verifying its authenticity. The Committee opined that the tendency of tax evasion was very particular among multinational companies and directed that Taxes Department should take effective measures to curtail such tendencies and directed the department to initiate steps to amend the laws in this regard, if necessary.

53. Regarding the case of 'Ujala Supreme' and 'Ujala Stiff and Shine', the CCT submitted that it was stayed conditionally and the appeal was pending. He continued that in the case of M/s Poonam Grah Nirman (P) Ltd. the assessment was completed on the basis of audit observation. But in the meantime, the assessee filed a case against the assessment and High Court ordered to re-assess the case. Accordingly, the amount was re-assessed as ₹ 23.88 lakh instead of ₹ 66.78 lakh and the case was pending under RR action.

54. The Committee was informed that a case in CTO (WC & LT) Kollam, regarding the claim of input tax for local purchase for interstate and intrastate purchase, was also pending with Revenue Recovery and the amount was not realized so far.

55. The Committee came to know that the amount was collected completely from M/s Anchery Distributers. To a query of the Committee regarding a case in CTO (WC & LT), Kannur on the cancellation of registration in violation of Central Sales Tax Act raised by Audit, the Joint Commissioner, CCT submitted that appeal was pending and there was some missing credits in respect of M/s Vishal Infrastructure Ltd., as TDS Certificate was not available earlier and later the assessment was revised on production of TDS Certificate and the demand was nil.

#### **Conclusion/Recommendation**

56. **The Committee criticizes the Taxes department for not conducting any physical verification of the nature of items transacted even at the time of correction of HSN Code and directs that physical verification should be conducted in future in the cases of similar nature.**



57. The Committee opines that the tendency of tax evasion is very particular among multinationals and directs the taxes department to initiate steps to amend laws in this regard and to take necessary measures to prevent such practice.

#### AUDIT PARAGRAPH

#### **Excess claim of input tax credit**

[CTO, Special circle (Produce), Mattanchery; July 2010]

The Assessing authority shall check all calculation and credits given in an assessment as per the instruction issued by the erstwhile Board of Revenue.

We noticed from the assessment records that an assessee in his annual return for 2008-2009 brought forward a tax credit of ₹. 51.46 lakh depicting it as excess input tax credit of the previous year. However, input tax credit carried forward to the year as per the annual return of 2007-2008 was nil. Besides computational mistakes resulted in further excess credit of ₹ 8.76 lakh as total of input tax was shown as ₹ 2,65,08,883 instead of ₹ 2,56,32,956. These resulted in short assessment of tax and interest of ₹ 69.25 lakh.

We pointed out (July 2010) the issue to the Department and to the Government (May 2011). We have not received further information (December 2011).

(C.T.O, Manjeri; October 2008)

Section 22 (3) of the KVAT Act provides that if any dealer files an incorrect return and fails to file a fresh return, the assessing authority shall estimate the turnover of the return period and complete the assessment to the best of its judgment. The Act also provides for levy of penalty, not exceeding twice the amount of tax or other amount evaded or sought to be evaded, where the assessee has made bogus claim of input tax.

We noticed from the assessment records of 2005-2006 that a dealer in timber claimed input tax credit twice on three purchase effected during December 2005 and March 2006 and availed excess input tax credit of ₹ 2.53 lakh. We consider that besides recovering excess credit of ₹ 2.53 lakh, the Department should levy penalty of ₹ 5.06 lakh for the offence.

We pointed out the matter to the Department in October 2008 and to the Government (February 2011). The Government stated (July 2011) that on the basis of audit observation tax, interest and penalty totalling to ₹ 8.62 lakh was demanded. The assessee paid ₹ 2.72 lakh and the balance was advised under Revenue Recovery. We have not received further information (December 2011).

[Audit paragraph 2.14.4 contained in the Report of C&AG for the year ended 31st March 2011 (RR)]

Notes received by Government on the above audit paragraph is included as Appendix II.

58. The Commissioner of CC informed the Committee that the Audit's stance was sustainable in the case pointed out in CTO Special Circle (Produce), Mattanchery and the reply furnished earlier in this regard by the department was wrong. The Committee directed to re-assess the same on the basis of annual returns.

59. With regard to the excess awarding of input tax by a dealer in timber, the witness, Joint Commissioner, CCT informed that an amount of ₹ 5.18 lakh, being the total dues ₹ 3.56 lakh with its interest, was collected.

### **Conclusion/Recommendation**

60. The Committee directs the taxes Department to reassess turnover in the case pointed out in CTO, special circle (produce), Mattanchery on the basis of annual returns.

#### **AUDIT PARAGRAPHS**

#### **Non-levy of reverse tax**

Section 2 (xlii) of the KVAT Act specifies 'reverse tax' as that portion of input tax of the goods for which credit has been availed but such goods remain unsold at the closure of business or are subsequently used for any purpose other than resale or manufacture of taxable goods. Further Section 11 (4) and 12 (2) of the Act stipulates that a dealer paying compounded tax shall not be eligible for input tax credit/special rebate.

(CTO, Special circle Kannur, August 2010).

We observed from the assessment records that a dealer in jewellery had a closing stock of ₹ 16.89 crore during 2007-2008 for which he had taken input tax credit. During 2008-2009 he switched over to the compounding scheme for which no input tax credit is allowable. The tax payable under the compounded scheme worked out on the basis of sale effected during the previous years. The huge closing stock at the end of 2007-2008, on which the dealer had taken input tax credit, was sold during the subsequent year (2008-2009), though the dealer was not eligible to available input tax credit under the compounding scheme. This resulted in leakage revenue of ₹ 67.54 lakh.

We pointed out the matter to the Department in October 2010 and to the Government (March 2011). The Department stated in December 2010 that the assessee availed input tax credit prior to the switching over to the compounding scheme and it need not be reversed. The reply is not acceptable as no ITC is to be allowed on goods sold under compounding scheme and as such on the stock sold under compounding, reverse tax is leviable.

[Audit paragraph 2.14.5 contained in the Report of C&AG of India for the year ended 31st March 2011 (RR)]

Notes furnished by Government on the above audit paragraph is included as Appendix II.

61. The Committee observed that there was difference of opinion between the Taxes Department and the Audit regarding the legality in availing input tax credit, in the case of the assessee opted for compounding scheme subsequently. An official from the Office of the Accountant General submitted that a new dealer would accumulate stock and it would be shown in the closing stock and would avail IPT for the same. But if he opted for compounding in the succeeding year, his eligibility for availing IPT would be challenged unless it was specified in the rules. So the Committee decided to recommend that necessary provision for reverse tax should be incorporated in the Act.

### Conclusion/Recommendation

**62. The Committee endorses the audit objection that the dealer who availed input tax credit under the compounding scheme was not eligible for it. The Committee directs, the Taxes Department to take steps to amend the portion regarding revenue tax in the KVAT Act to curtail such leakage of revenue.**

#### AUDIT PARAGRAPH

#### **Non-levy of interest/non-appropriation of payment to interest**

(CTO, special circle II, Ernakulam, February 2009)

Section 42 (2) of the KVAT Act, 2003 provides that where any dealer detect any omission or mistake in the annual return submitted by him with reference to the audited figures, he shall file a revised annual return rectifying the mistake or omission along with the audit certificate. Where, as a result of such revision, the tax liability increases, the revised return shall be accompanied by proof of payment of such tax, interest due thereon under sub-section (5) of section 31 and penal interest, calculated at twice the rate. Further, Section 91 of the Act stipulates that where any tax due or demanded under the Act is paid by the dealer, the payments so made shall be appropriated first towards interest accrued on such tax or other amount under Section 31 (5) and the balance shall be appropriated towards principle outstanding.

We noticed from the assessment records that an assessee filed revised return and differential tax of ₹ 1.61 crore during 2005-2006 without remitting interest and penal interest due. Further the Department did not assess interest and appropriate the remittance first towards interest which resulted in short levy of tax and interest of ₹ 41.98 lakh.

We pointed out the matter to the Department in April 2009. The Department stated that the case would be examined. The case was reported to the Government in December 2010. We have not received further information (December 2011).

Audit paragraph 2.14.6 contained in the Report of C&AG of India for the year ended 31st March 2011 (RR)

Notes furnished by Government on the above audit paragraph is included as Appendix II.

63. The witness, Commissioner of Commercial Taxes submitted that the stay by High Court has been prevailing.

### **Conclusion/Recommendation**

**64. The Committee urges the Taxes Department to inform the present status of the case.**

#### **AUDIT PARAGRAPH**

#### **Short levy due to turnover escaping assessment**

Section 6 (1) (f) of the KVAT Act, provides that in the case of transfer of goods involved in execution of works contract, where the transfer is not in the form of goods, but in some other form, tax at the rate of 12.5 per cent shall be levied. Further proviso to rule 10 (2) (a) of KVAT Rules 2005 provides that when taxable turnover in respect of works contract not in the execution of works contract, an amount equal to the cost of goods transferred together with profit, if any, shall be the taxable turnover.

[CTO, (WC&LT), Mattancherry, May 2010]

We noticed from the assessment records of 2008-2009 that a works contractor conceded taxable turn over of ₹ 4.13 crore. Out of the taxable turnover, ₹ 2.58 crore was assessed at four percent instead of at 12.5 per cent. Further, the taxable turnover of ₹ 4.13 crore was less than cost of goods consumed in the works contract which amounted to ₹ 4.87 crore. Escapement of turnover from assessment coupled with application of incorrect rate resulted in short levy of tax and interest of ₹ 35.52 lakh.

We pointed out the case to the Department (May 2010) and Government (April 2011). We have not received further information (December 2011).

[CTO (WC&LT), Alappuzha, August 2010).

We noticed from the assessment records of 2008-2009 that a works contractor who had contract receipts of ₹ 13.30 crore assessed tax on turnover of

₹ 4.92 crore only. The turnover was less than the cost of goods transferred to works contract ₹ 6.33 crore. Hence, the taxable turnover including profit should be ₹ 6.38 crore and turnover of ₹ 1.46 crore that escaped assessment resulted in short levy of tax and interest of ₹ 21.10 lakh.

We pointed out the matter to the Department in September 2010 and to the Government in February 2011. We have not received further information (December 2011).

[CTO (WC), Malappuram; July 2009]]

Under Section 42 (2) of KVAT Act, 2003 if there is omission or mistake in annual return with reference to audited figures he shall file revised annual return along with audit certificate rectifying the defect. If tax liability increases he shall file proof of payment of balance tax, interest and twice the amount of interest as penal interest.

We noticed from assessment records that a dealer returned to and taxable turnover of ₹ 1.84 crore and ₹ 3.73 crore for years 2006-2007 and 2007-2008 respectively as against ₹ 2.34 crore and ₹ 4.37 crore shown in the profit and loss accounts for the respective years. This resulted in short levy of tax interest and penal interest of ₹ 32.08 lakh.

We pointed out the matter to the Department in July 2009 and to the Government in December 2009. The Government stated (July 2011) that the loss of revenue as pointed out by audit was assessed and is being collected. We have not received further reply (December 2011).

- (CTO, special circle, Mattanchery; September 2010)

We noticed from the assessment records that the sales turnover of mineral depicted in the annual return for 2008-2009 and assessed to tax by an assessee was less than the certified accounts figure by ₹ 4.14 crore. This resulted in non-levy of tax of ₹ 19.75 lakh at rate of four per cent.

We pointed out the matter to the Department in October 2010 and to the Government in January 2011. We have not received any further information (December 2011).

(CTO, special circle 1, Ernakulam; January 2011)

According to Entry 67 of notified list of 12.5 per cent taxable goods under KVAT Act, spare parts of motor vehicle are liable to be taxed at 12.5 per cent. Further, the Supreme Court held\* that warranty charges received from the manufactures by the agents for replacing defective parts of vehicles are sale of goods and hence liable to tax.

We noticed from the assessment records that the AA did not assessed warranty claim of ₹ 1.80 crore received by a dealer in 2008-2009 resulting in short levy of tax and interest of ₹ 27.58 lakh.

We pointed out the matter to the Department (March 2011) and to the Government (May 2011). We have not received replies (December 2011).

[(CTO, special circle III, Ernakulam; July 2010)]

We noticed from the assessment records that an assessee did not pay tax on goods involved in warranty replacement amounting to ₹ 78.67 lakh on the ground that a review petition on the issue is pending with the Supreme Court of India. As the Supreme Court decision has not been stayed the assessee is liable to comply with the existing decision and pay tax. Failure to do so resulted in short levy of tax, interest and cess of ₹ 11.50 lakh.

We pointed out the matter to the Department (July 2010) and to the Government (May 2011). The Government state (September 2011) that assessment was revised (October 2010) and the assessee paid the additional demand in full in February 2011. Collection particulars are awaited (December. 2011).

[CTO(WC & LT), Kannur; June 2010]

The KVAT Rule provide that the taxable turnover in relation to a works contract, where transfer of property takes place not in the form of goods but in some other form, shall be arrived at after deducting labour and other specified charges from the contract receipt. If the turnover so arrived at falls below the cost of goods transferred in the execution of works contract, an amount equal to the cost of goods transferred in the execution of works contract together with profit shall be the taxable turnover in respect of such works contract.

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\* Mohd Ekram Khan & Sons VS Commissioner of trade tax (2004) 12 KTR 572.

We noticed from the assessment records that the AA did not assess the turnover that escaped assessment due to excessive exemption claimed by a dealer during 2008-2009 resulting in short levy of tax of 17.39 lakh.

We pointed out the matter to the Department (June 2010) and the Government (February 2011). The Government stated (May 2011) that the assessment under section 25 was completed creating a demand of ₹ 31.50 lakh including interest. We have not received further information (December 2011).

(CTO, special circle, Thiruvananthapuram; January 2010).

Entry 30 (2) (c) (1) of the Notified list of the KVAT Act provides that tax at the rate of 12.5 per cent shall be levied on photo copier spares. Materials involved in Full Service Maintenance Agreement (FSMA) and warantee charges are taxable at the appropriate rate. Rule 9 (2) C of the Act provides that if goods transferred in the execution of Annual Maintenance Contract (warantee charges) is not ascertainable, 50 per cent of such contract amount is assessable to tax. Further Section 25 (1) of the Act, provides that where for any reason the whole or any part of the turnover of business of a dealer has escaped assessment to tax in any year, the assessing authority may proceed to determine, to the best of its judgment the turnover which has escaped assessment to tax.

We noticed from the assessment records that a dealer in photocopiers, fax machines and consumables did not include in the return an amount of ₹ 1.01 crore being recovery of FSMA material cost and copier warantee charges during the year 2007-2008. This was not detected by the AA which resulted in show levy of tax and interest of ₹ 15.11 lakh.

We pointed out the matter to the Department in January 2010 and Government in August 2010. We have not received further information (December 2011).

(CTO, third circle; Thiruvananthapuram; February 2010).

Explanation VII under Section 2 (liii) of the KVAT Act, 2003, stipulates that where a dealer sells any goods purchased by him at a price lower than that at which it was purchased and subsequently receives any amount from any



person towards reimbursement of the balance price, the amount so received shall be deemed to be turnover in respect of such goods.

We noticed from the assessment records that a dealer in home appliances who sold goods at price lower than purchase price did not assess to tax, the incentive of ₹ 75.89 lakh received as incentive during the period 2007-2008. This resulted in short levy tax and interest to the tune of ₹ 11.67 lakh.

We pointed out the matter to Department (April 2010) and to the Government (December 2011). Government stated (September 2011) the assessment was revised (June 2011) with additional demand of ₹ 12.72 lakh including interest, We have received further information (December 2011).

(C.T.O. Tirurangadi; October 2009)

Sale of IT software attracts tax at the rate of four per cent under the Third schedule to the KVAT Act 2003. Further, the Act stipulates that the assessing authority can proceed to determine to the best of his judgement, the turnover which has escaped assessment to tax and assess the tax thereon.

We noticed from the assessment records that a dealer in software did not assess the sales turnover of software amounting to ₹ 34.40 lakh and 2.07 crore for the years 2006-2007 and 2007-2008 respectively. This resulted in short levy of tax and interest of ₹ 11.56 lakh.

We pointed (November 2009) out the Department and to the Government (December 2010). The Government stated (April 2011) that the assessments were revised creating an additional demand of ₹ 12.94 lakh. We have not received any further information (December 2011).

(CTO, special circle, Palakkad; January 2011)

Sale of Duty Entitlement Pass Book (DEPB) licence attract tax at the rate of four per cent under the Third schedule to the KVAT Act, 2003.

We noticed from the assessment records that an assessee did not pay tax on the sales turnover of DEPB license amounting to ₹ 2.17 crore during 2008-2009. This resulted in short levy tax of ₹ 8.78 lakh.

We pointed out the matter to the Department (January 2011) and the Government (May 2011). The Government replied (October 2011) that the assessee followed accrual basis of accounting and based on Accounting Standard (AS) 9, revenue should be recognized to the extent expected to be realized. It was also stated that the amount of ₹ 2.17 crore represents a prudent estimate arising out of DEPB which was treated as income recognized, as required by AS 12 and corresponding debit has been made in 'miscellaneous receivable' account. The reply is not acceptable as the 'other income as furnished in the accounts at the time of audit by the assessee specifically includes income out of sale of DEPB licenses. We have not received further information (December 2011).

- (CTO, special circle, Thiruvananthapuram; November 2009)

We noticed from the assessment records that a dealer in software did not assess the sales turnover of licences amounting to ₹ 15.60 lakh for 2006-2007 and ₹ 46.15 lakh for 2007-2008. This resulted in short levy of tax and interest of ₹ 2.99 lakh.

We pointed out the matter to the Department (November 2009) and reported it to the Government (February 2011). The Government replied (September 2011) that the assessments were completed based on audit observation. We have not received further information (December 2011).

[CTO (WC & LT), Kottayam; September 2010]

Section 2 (xliv) of KVAT Act, 2003 provides that "sale price" means the amount of valuable consideration received or receivable by a dealer for the sale of any goods inclusive of any sum charged for anything done by the dealer in respect of the goods or service at the time of or before delivery there of. The Hon'ble Supreme Court\* held that expenditure incurred by the seller on freight would become part of the amount for which the goods are sold to the buyer and would fall within the scope of "turnover". Sale of manufacture goods to Kerala State Electricity Board (KSEB) is taxable at four per cent from April 2008.

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\* 34 VST 273 (SC).

We noticed from the assessment records that works contractor supplying poles to KSEB at specified locations did not assess tax on transportation charge amounting to ₹ 19.72 lakh ₹ 25.20 lakh and ₹ 10.14 lakh received during 2006-2007, 2007-2008 and 2008-2009 respectively, This resulted in short levy of tax, cess and interest of ₹ 7.96 lakh.

We pointed out the matter to Department (September 2010) and to the Government (April 2011). The Government stated (August 2011) that the audit objection is sustainable and the AA created additional demand as per order dated March 2011. We have not received further information (December 2011).

(CTO, special circle, Malappuram; February 2009)

The KVAT Act stipulates that motor vehicles used for a minimum period of fifteen months subsequent to registration under Motor Vehicles Act, 1988 are used vehicles and are taxable at four per cent. All other motor vehicles are taxable at the rate of 12.5 per cent.

We noticed from assessment records that dealer in motor vehicles did not assess tax on the sales turnover of demo vehicles ₹ 7.99 lakh and ₹ 34.98 lakh for the year 2005-2006 and 2006-2007 respectively. This resulted in short levy of tax and interest of ₹ 7.09 lakh.

We pointed out the matter to Department in February 2009. The Department stated that the demo vehicles were purchased within the State and sold as used vehicles and as the sale price was less than purchase price no tax was levied. The reply is not tenable as the vehicles sold were not registered under the Motor Vehicles Act and setting of purchase price from sale price is against the provisions of the KVAT Act. The case was reported to the Government December 2010. We have not received further information (December 2011).

(CTO, Vadakara; August 2010)

The Departmental procedures prescribes, inter alia, internal and external surveys on a regular basis for collecting necessary data for enabling the

assessing authorities to make proper assessments. Internal survey consist of gathering useful information from records of the assessing officers, whereas external survey consists of collection of necessary details from publications, reports, registers of other Departments. Every dealer who import goods shall be liable to pay tax on his sales irrespective of the turnover.

We noticed from the assessment records that an assessee included in his accounts import purchase of flooring material for ₹ 1.36 crore and ₹ 62.78 lakh during 2008-2009 and 2007-2008 respectively. We found that as per customs records his import purchase during these years were ₹ 1.56 crore and ₹ 74.08 lakh respectively. Failure to assess sales turnover corresponding to understated purchase turnover resulted in short levy of tax and interest of ₹ 5.07 lakh.

We pointed out the matter to the Department in September 2010 and reported to the Government in January 2011. The Department stated that the details of import was not available and the matter would be examined. We have not received further information (December 2011).

(CTO, Kodungallur; December 2010)

We noticed from the assessment records that an assessee included in his accounts import purchase of flooring materials for ₹ 90.67 lakh during the year 2008-2009. We found that as per customs records his import purchase during the year was ₹ 1.05 crore, Failure to conduct external surveys to verify purchase turnover resulted in short levy of tax, interest and penal interest of ₹ 2.91 lakh.

We pointed out the matter to the Department in January 2011 and reported to the Government (May 2011). We have not received further information (December 2011).

(CTO, second circle, Thiruvananthapuram; March 2010)

Section 6 (1) (f) of the KVAT Act, 2003 provides that in the case of transfer of goods involved in execution of works contract, where the transfer is not in the form of goods, but in some other form the liability to pay tax shall be 12.5 per cent.

We noticed from the monthly returns that an assessee engaged in fabrication and installation of machinery had a turnover of ₹ 70.10 lakh for the year

2007-2008. We however, noticed that the assessee disclosed a turnover of ₹ 38.90 lakh only in his annual return, resulting in escapement of turnover. Further, the taxable turnover was assessed at four per cent. This was not correct as the turnover relates to works contract not in the form of goods, and hence the transfer value of materials amounting to ₹ 49.07 lakh is liable to be assessed at 12.5 percent. These defects resulted in short levy of tax, interest and penalty of ₹ 4.58 lakh.

We pointed out the Department (March 2010) and the Government (February 2011). The Government stated (September 2011) that the assessment was revised and demand of ₹ 4.58 lakh created. We have not received further information (December 2011).

Audit paragraph 2.14.7 contained in the Report of C & AG of India for the year ended 31st March 2011 (RR).

Notes furnished by Govt. on the above audit paragraph is included as Appendix II.

65. Regarding a case in CTO (WC&LT), Alappuzha, the Committee was informed that an amount of ₹ 20.94 lakh had to be collected.

66. The witness submitted that in a case in CTO (WC), Malappuram the additional demand was collected.

67. Regarding a case in CTO Special Circle I, Ernakulam, the Commissioner of Commercial Taxes apologized for furnishing the wrong reply that warranty charges were already included in the total turnover. He continued that recently on verification of records, it was realised that warranty charge was not included in the total turnover. The Committee expressed its anguish over the lackadaisical attitude of the department in furnishing RMT without having any scrutiny and directed to revise the assessment considering the warranty charge too.

68. When enquired whether arrear had been collected from the dealer in home appliances in CTO 3rd Circle, Thiruvananthapuram, the Commissioner of Commercial Taxes submitted that the Hon'ble High Court quashed the order of revised assessment and directed to assess it afresh.

69. Regarding the case of a dealer in software in CTO, Thirurangadi , the CCT informed that being an interstate sale, it should have been assessed under Central Sales Tax. But it was calculated as per the provisions of KVAT by mistake. At present the case has been remanded by the Tribunal.

70. The Committee directed the Taxes Department that the turnover relating to DEPB should be assessed.

71. In this regard the CCT deposed that the assessee had obtained conditional stay on payment of 30% of the total balance due.

72. The Committee directed the Taxes Department to delete the words 'Hence there is not short levy in this case' from the RMT note furnished by the department and wanted to revise the assessment as the department concede the contention of the Accountant General.

73. The CCT informed that direction had been issued to reassess the case of the assessee in the CTO, Kodungalloor as pointed out by Audit. The Committee reprimanded the Taxes Department for furnishing inaccurate statements and exhorted the department that it should confirm the accuracy of the reply before submitting it to the Committee.

74. With regard to an assessee engaged in fabrication and installation of machinery in CTO, second circle, Thuvananthapuram, the witness submitted that the amount was collected completely.

#### **Conclusion/Recommendation**

75. **The Committee warns the Taxes Department in furnishing RMT without having scrutiny and directs to re-assess the tax regarding the case of CTO special circle I Ernakulam considering the warranty charges too.**

76. **The committee directs the Taxes Department that the turnover relating to Duty Entitlement Pass Book (DEPB) license tax should be assessed.**

77. **The Committee rejected the department's stand that there was no short levy in this case and insists to revise the assessment.**

78. The Committee reprimands the Taxes Department for the negligence on the part of the officials in furnishing inaccurate RMT statements and warns the department to confirm the accuracy of the reply before submitting it to the committee. The Committee directs to re-assess the case of CTO Kodungalloor.

79. The Committee directs the Taxes Department to submit the latest position of the cases which were under stay or re-assessed to it at the earliest.

#### AUDIT PARAGRAPH

#### **Irregular claim of input tax credit**

[CTO, Special Circle (Produce), Mattanchery; July 2010]

Section 6 of the Kerala Finance Act 2008 provided for levy of one per cent social security cess from 1st April 2008, on tax payable under the KVAT Act on commodities other than declared goods. Section 6 (5) of the Act stipulates that the provisions regarding assessment, input tax credit, special rebate and recovery in the KVAT Act, 2003 shall mutatis mutandis apply to the cess also. Therefore goods not eligible for ITC, are not eligible for credit of cess also.

We noticed from the assessment records that an assessee did not avail ITC of ₹ 20.53 crore on purchase of rubber valued at ₹ 513.13 crore during 2008-2009, as the goods were transferred to other States. However, the assessee availed credit of corresponding cess amounting to ₹ 20.53 lakh. Besides, the assessee availed credit of ₹ 12.09 lakh as excess cess brought forward from the previous return period. As cess was introduced from April 2008, there could not be any carry forward of cess from 2007-2008. These mistakes resulted in short levy of cess of ₹ 32.62 lakh.

We pointed out this issue to the Department in July 2010 and the Government (May 2011). The Government stated (October 2011) that the AA issued notice and the dealer paid an amount ₹ 9.76 lakh being cess, interest and penal interest. We have not received further information(December 2011).

(CTO, Special Circle, Mattancherry; September 2010)

Notification issued in March 2005 under the KVAT Act provides that building material and fixtures used in construction activities are outside the purview of capital goods and are not eligible for input tax credit.

We noticed from the assessment records that the AA did not disallow the input tax credit availed by an assessee during 2008-2009 which related to purchase of building material used for construction purpose, resulting in short remittance of tax and interest of ₹ 12.10 lakh.

We pointed out the matter to the Department in October 2010 and the Government (May 2011). We have not received further information (December 2011).

[CTO, Special Circle, (Produce), Mattancherry; June 2010]

The KVAT Act provides that the input tax credit availed in respect of tax paid on purchase of goods which are used subsequently for any purpose other than resale or manufacture of taxable goods or execution of works contract of use as container or packing materials of taxable goods within the State shall be assessed as reverse tax. The reverse tax so determined shall be deemed to be an amount due under the Act.

We noticed from the assessment records that the AA did not reverse the input tax credit of ₹ 8.23 lakh claimed by a dealer during 2008-2009, being the tax paid on purchase of goods like cleaning powder, fire extinguisher, soap, iron products etc. which were used for purpose other than resale or manufacture of taxable goods etc. This resulted in short assessment of tax of ₹ 8.23 lakh.

We pointed out the matter to the Department in August 2010 and reported to the Government (May 2011). The Department stated (August 2010) that goods were purchased in the course of a continuing business and that it is not remaining unused or unsold and hence reverse tax will not apply.

The reply is not acceptable as the items pointed out by audit were not used for resale or manufacture of taxable goods and hence would attract reverse tax.



(CTO, Special Circle, Kannur; August 2010)

Section 11 (5) (e) of the KVAT Act stipulates that no input tax credit shall be allowed on purchase of goods used in manufacture, processing and packing of goods mentioned in Schedule I. The input tax credit already availed of in respect of such goods shall be assessed as reverse tax.

We noticed from the assessment records that a manufacturer availed input tax credit for the year 2008-2009 on raw materials used in production of Schedule I goods. The input tax credit availed was not assessed as reverse tax. This resulted in short levy of tax and interest of ₹ 3.00 lakh.

We pointed out the matter to the Department (October 2010) and the Department stated in December 2010 that the assessment had been finalised under Section 25 (1) creating an additional demand of ₹ 3.91 lakh based on audit objection.

The case was reported to the Government in February 2011. We have not received further information (December 2011).

[Audit paragraph 2.14.8 contained in the Report of C & AG of India for the year ended 31st March 2011 (RR)].

Notes furnished by Government on the above audit paragraph is included as Appendix II.

Regarding the audit observation that input tax credit should be disallowed in the case of purchase of building material, the CCT submitted that owing to the mechanical process carrying out in plants, they bought bricks, coolers and wooden parts to reduce heat and claiming IPT for those products was irregular. As bricks was coming under the commodity group-cement products, all were entered under that category in the returns. The Committee accepted the explanation.

Regarding non-reversal of ITC by a dealer in CTO, Special Circle (Produce), Mattanchery, the Committee was informed that all items were verified as per the direction of AG and accordingly the amount was revised to ₹ 0.65 lakh.

The CCT apprised that as per the direction of DC Appeal, penalty was deleted and the balance amount of ₹ 3.18 lakh was collected.

### Conclusion/Recommendation

No remarks.

#### AUDIT PARAGRAPH

##### Irregular Exemption

[CTO, (WC), Palakkad; October 2009]

Section 8 of the KVAT Act stipulates that any works contractor, may at his option instead of paying tax in accordance with the provisions of Section 6 of the said Act, pay tax at four per cent of the whole contract amount received during 2007-2008 and at three per cent during 2008-2009. The Act also provided that an assessing authority can proceed to determine, to the best of his judgement, the turnover which has escaped assessment to tax and assess the tax payable thereon.

We noticed from the assessment records that an assessee who is engaged in works contract of building flats did not assess tax on whole contract amounts of ₹ 12.02 crore while paying tax under Section 8 for the year 2007-2008. The assessee deducted ₹ 5.31 crore from the whole contract amount stating that the amount represented value of land. This was not correct as the assessee was liable to pay tax on the whole contract amount. The AA did not detect the mistake and revise the assessment under Section 25 (1). This resulted in short levy of tax and interest of ₹ 24.87 lakh.

We pointed out the matter to the Department. The Department stated in August 2010 that assessment was revised with an additional demand of ₹ 26.57 lakh. We reported the case to the Government in January 2011. We have not received further information (December 2011).

[CTO, (WC& LT), Kottayam; August 2010]

We observed from the assessment records that two works contractors who opted to pay tax at the compounded rate of three per cent claimed exemptions under Rule 10 on account of labour etc. of ₹ 2.14 crore during 2008-2009. As no exemptions under the compounding is permissible, the irregular exemption resulted in short levy of tax and interest of ₹ 7.44 lakh.

We pointed out the matter to the Department (August 2010) and the Government (May 2011). The AA stated (December 2010) and action was initiated to realize the short levy. We have not received further information (December 2011).  
(CTO, Chathannur; July 2009)

Item 67 (6) of the notified list of goods under the KVAT Act provides that bodies of motor vehicles are taxable at the rate of 12.5 per cent. Blacksmith products of units approved by Khadi and Village Industries are exempted from tax.

We noticed from the assessment records that a Khadi and Village Industries unit sold tipper bodies of Mahindra and Tata for ₹ 1.14 crore during 2007-2008. The assessee paid tax on sales turnover of tipper bodies up to September 2007 at four per cent. From October 2007 the assessee claimed exemption treating tipper body as product of blacksmiths, approved by Khadi and Village Industries. However, Mahindra and Tata bodies built by the unit would not come under products of blacksmiths. Failure to assess tax at the correct rate of 12.5 per cent resulted in short levy of tax and interest of ₹ 13.83 lakh.

We pointed out the case to the Department in July 2009 and Government in December 2009. The Government stated in July 2010 that the assessment was completed demanding tax and interest of ₹ 16.21 lakh. We have not received further information (December 2011).

(CTO, First Circle, Tripunithura; March 2009)

Section 2(iv) of the KVAT Act provides that works contract includes any agreement for carrying out for cash or for deferred payment or other valuable consideration the construction, fitting out, improvement, repair, manufacture, processing, fabrication, erection, installation, modification or commissioning of any movable or immovable property. Further where the labour cost involved in works contract is not ascertained, the taxable turnover shall be arrived at after deducting labour charges as provided in the table to Rule 10 (2).

We noticed from the assessment records that a dealer engaged in the manufacture of plastic moulded components considered receipts on works contract of ₹ 39.60 lakh and ₹ 38.44 lakh during 2005-2006 and 2006-2007 as labour charges even though goods were used in the above works. The AA did not detect this which resulted in short levy tax of ₹ 7.32 lakh.

We pointed out the matter to the Department in March 2009 and to the Government in January 2010. The Government stated in March 2010 that the assessment had been revised creating an additional demand of ₹ 8.75 lakh. We have not received further information (December 2011).

Audit paragraph 2.14.9 contained in the Report of C & AG of India for the year ended 31st March 2011 (RR). Notes furnished by Government on the above audit paragraph is included as Appendix II.

80. The Committee was informed that the file relating to the case of an assessee engaged in works contract of building flats has been under consideration of Law Department. With regard to the case of M/s South India Foundation, an official from the Office of the Accountant General interfered to inform that there was a variation of about ₹ 1 crore between the figures of AG and the department, the CCT assured to re-examine the matter.

81. The CCT submitted that the appeal filed by the assessee was disposed. But the case was pending since they claimed an exemption stating that the unit was recognized by Khadi and Village Industries Commission as a blacksmithing unit.

82. To a query, the Joint Commissioner, Commissionerate of Commercial Taxes submitted that the assessee had remitted ₹ 3.54 lakh after vacating the stay. Accordingly assessment was modified. He continued that on re-assessment the demand was nil since it was a labour contract. Hence the amount remitted became excess. In this regard an official from the Office of the Accountant General pointed out that as per the assessment records, the dealer was engaged in the manufacture of plastic moulded components and that indicates the classification as labour contract as incorrect. The Committee directed the department to verify the agreements and work schedule and ascertain whether the contract was only for work or for labour.

#### **Conclusion/Recommendation**

83. The Committee directs the department to ascertain whether the contract was only for labour or for works in the case of a dealer engaged in the manufacture of plastic moulded components.

**AUDIT PARAGRAPH****Short/Non-assessment of CST**

[CTO (WC), Ernakulam; February 2010]

Section 7 (5) of the CST Act, 1956 stipulates that a registered dealer may apply not later than six months before the end of a year for the cancellation of registration, and the authority shall, unless the dealer is liable to pay tax under this Act, cancel the registration accordingly. The cancellation shall take effect from end of the year.

We noticed from the assessment records that the AA accepted the application for cancellation of CST registration filed by a dealer in June 2005. The assessee opted for compounding and assessed contract receipt of ₹ 6.67 crore for the year 2005-2006 to tax at two per cent plus purchase tax. As the cancellation of CST registration takes effect from the end of year, the assessee was liable to four per cent tax for the entire year (2005-2006). Further, the assessee had not paid the tax assessed and admitted full and the AA did not initiate action to collect the balance tax.

Hence, interest under, Section 31 (5) read with Rule 31(6) of KVAT Act and Rule of ₹ 6.10 lakh is leviable. Total short remittance works out to ₹ 19.65 lakh.

We pointed out the matter to the Department in March 2010 and report to Government in June 2010. The Government stated in December 2010 that the assessment was revised in April 2010 assessing tax at compound rate of four per cent. We have not received further information from the Government (December 2011)

(CTO, Special circle, Mattancherry at Aluva; August 2010)

The CST Act provides that interstate sales turnover covered by C form shall be taxed at the rate of three per cent from April 2007 to May 2008 and at two per cent thereafter.

We noticed from the monthly returns that a dealer assessed tax on interstate sales turnover of power tiller for ₹ 13.37 crore pertaining to April and May 2008 at the rate of two per cent instead of correct rate of three per cent. This resulted in short levy of tax and interest of ₹ 15.51 lakh.

We pointed out the matter to the Department in October 2010. The Department replied that the assessee, a public limited company, had enjoyed concessional rate till March 2005 and it had applied for similar concession and was awaiting Government orders. The reply is not tenable as tax is payable as per extant provisions till concessions are permitted. We reported the case to the Government in May 2011. We have not received further information (December 2011) (CTO, Special Circle, Alappuzha; June 2010)

Section 8 (2) (b) of Central Sales Tax Act, 1956 provides that the tax payable by any dealer on his turnover in so far as the turnover or any part thereof related to the sale of goods in the course of interstate trade or commerce not falling within sub section (1), shall be calculated at the rate applicable to the sale or purchase of goods inside the appropriate state. Electrical goods come under entry 33 of the notified list of goods taxable at the rate of 12.5 per cent.

We noticed from the assessment order that the AA assessed tax on interstate sales turnover of electrical goods of dealer for ₹ 4.73 crore not covered by declaration in form C for the year 2007-2008 at 10 per cent instead of at the correct rate of 12.5 percent. This resulted in short levy of tax and interest of ₹ 14.89 lakh.

We pointed out the matter to the Department (June 2010) and to the Government (January 2011) the Government stated (July 2011) that the assessment was revised based on the audit observation, demand notice issued, and amount advised for Revenue Recovery. We have not received further information (December 2011).

(CTO, Special Circle, Alappuzha; June 2010)

By an amendment to Central Sales Tax Act, Government had withdrawn concessional rate of tax on interstate sale of goods to Government Departments granted on production of Form D with effect from April 2007 and the goods are liable to tax at the rate mentioned in the schedules to the KVAT Act. Sales to Railways is taxable at four per cent.

We noticed from the assessment records that the AA did not assess tax on sales turnover of electrical goods for ₹ 2.09 crore, while finalizing the assessment for the year 2007-2008. The sales were effected to Railways and the turnover was covered by declaration in Form D. As the concessional rate of tax on the basis of declaration in Form D was withdrawn from April 2007, the assessee was liable to pay tax at four per cent applicable to Railways. This resulted in short levy of tax and interest of ₹ 10.52 lakh.

We pointed out the matter to the Department (June 2010) and reported to the Government (January 2011), the Government stated (July 2011) that the assessment was revised based on audit observation assessing the turnover at the rate of 12.5 per cent with interest. We have not received further information (December 2011).

(CTO, Special Circle, Alappuzha; June 2010)

Central Sales Tax Act, stipulates that interstate sales turnover supported by valid declaration in Form C is taxable at the concessional rate of three per cent during 2007-2008.

We noticed from the assessment records of 2007-2008 that the AA, while finalizing the assessment of an assessee, did not assess tax at the rate of three per cent on interstate sales turnover of electrical goods for ₹ 1.98 crore covered by declarations in Form C for the year. This resulted in short levy of tax and interest of ₹ 7.50 lakh.

We pointed out the matter to the Department (June 2010) and to the Government (January 2011). The Government stated (July 2011) that the assessment was revised assessing the turnover at the rate of three per cent. We have not received further information (December 2011).

(CTO, Special circle, Mattancherry; August 2010).

The CST Act provides for assessment and collection of interest in respect of delayed payment of tax due under the Act at the rate applicable to tax due under the State Act, as if tax and interest payable under CST Act were a tax and interest under such sales tax law. The KGST Act provides for levy of interest on defaulted payment of tax at the rate of one per cent for the first three months and two per cent per month thereafter.

We noticed from the assessment records that while completing (July 2007) the CST assessment for the year 1995-1996 the AA levied interest on belated payment of tax due at one per cent instead of 23 per cent for the period from November 1999 to December 2000, resulting in short levy of interest of ₹ 5.49 lakh.

We pointed out this case to the Department (August 2010) and to the Government (May 2011). We have not received further information (December 2011)

[Audit paragraph 2.4.10 contained in the Report of C & AG of India for the year ended 31st March 2011 (RR):]

Notes furnished by Government on the above audit paragraph is included as Appendix II.

84. The Joint Commissioner, CCT submitted that the case in CTO (WC), Ernakulam was pending with RR proceedings, and the case in CTO special circle Mattancherry, out of the total demand of ₹ 5,48,000, no amount could be collected yet.

85. The Committee was informed that entire C-Form had been produced by the dealer in CTO, Special Circle, Mattancherry, mentioned by Audit and no dues left. Also the three cases mentioned by Audit were in connection with Alind Industries, Mannar. These were included in BIFR and tax up to 2013-2014 was paid by the firm.

### **Conclusion/Reccommendation**

**No remarks**



## AUDIT PARAGRAPH

*Incorrect carry forward of input tax.*

(CTO, Special circle, Malappuram; March 2009)

Rule 16 of the KVAT Rules provides that the net tax payable by a registered dealer for a return period shall be the amount arrived at after deducting the input tax under Section 11 and special rebate under section 12 from the sum of the output tax, tax on the purchase under Section 6 (2) and reverse tax under Section 11 (7). There is no provision to adjust the excess credit available under the KGST Act against output tax.

We noticed from the assessment records that an assesee included ₹ 30.14 lakh stated to be due to him under the KGST Act in the input tax credit claim for the year 2005-2006. After disallowing the incorrect input tax credit of ₹ 30.14 lakh the assesee was liable to pay tax of ₹ 12.55 lakh which was not demanded. This resulted in short levy of tax and interest of ₹ 16.81 lakh.

We pointed out the matter to the Department in April 2009 and to the Government (May 2011). The Department stated (April 2010) that the assessment of the dealer for 2005-2006 was completed in February 2010 creating an additional demand of ₹ 16.81 lakh. We have not received further information (December 2011).

- (CTO, special circle, Malappuram; march 2009)

We noticed from the assessment records that the total input tax credit of an assesee for 2005-2006 included ₹ 8.46 lakh being excess carry forwarded of credits from 2000-2001 and 2001-2002. The incorrect carry forward of credit against output tax resulted in short assessment of VAT and interest of ₹ 5.48 lakh.

We pointed out the matter to the Department (March 2009) and to the Government (March 2011). The Government stated (August 2011) that the AA completed the assessment (February 2010) and the short levy pointed out was made good. Collection particulars are awaited (December 2011).

**AUDIT PARAGRAPH*****Misclassification of goods***

(CTO, Chittur, August 2009)

As per Entry 105 (28) of the third schedule to the KVAT Act, readymade garments are taxable at the rate of four per cent.

We noticed from the assessment records that a dealer in readymade garments assessed taxable turnover of ₹ 0.74 lakh and ₹ 0.83 lakh and non taxable turnover of fabrics for ₹ 1.06 crore and ₹ 98.55 lakh in the annual returns for the years 2006-2007 and 2007-2008 respectively. However, we noticed that in the audited accounts the assessee had disclosed the cost of goods manufactured as ₹ 1.07 crore and ₹ 92.69 lakh and the sale of finished goods as ₹ 1.10 crore and ₹ 99.38 lakh for the years 2006-2007 and 2007-2008 respectively. As such the assessee is liable to pay tax on the sale of finished goods disclosed in the annual accounts. The AA did not detect the misclassification of sale of finished (readymade) garments as fabrics which resulted in short levy of tax and interest of ₹ 10.06 lakh.

We pointed out the matter to the Department in September 2009. The Department stated in January 2010 that the assessment was revised with an additional demand of ₹ 8.26 lakh. We reported the case to the Government in February 2011. We have not received further information (December 2011).

**AUDIT PARAGRAPH****Loss due to delay in collection of cheques**

(CTO, Manjeri; August 2008)

Rule 98 (1) of the KVAT Act stipulates that where any payment by Cheque or demand draft is permitted by these rules, the cheque or demand draft shall be of a bank or branch of a bank, which is a member of the clearing house, situated in the headquarters of the authority before whom it is presented.

We noticed from the assessment records that a dealer in vehicles, paid tax by way of cheques drawn on a bank at Kottayam during the year 2005-2006. Delay of 18 to 95 days occurred in crediting the amounts to Government account. This resulted in loss of interest of ₹ 8.66 lakh.

We pointed out the case to the Department in October 2008. The matter was reported to the Government in December 2008. The Government stated (November 2009) that the assessment was completed demanding tax and interest of ₹ 12.40 lakh. We have not received further information (December 2011).

#### AUDIT PARAGRAPH

##### **Short levy due to mistake in computation**

(CTO, Special Circle, Kottayam; January 2009)

KVAT Act, stipulates that centrifugal latex and skim crepe are taxable at the rate of four per cent.

We noticed from the assessment records that an assessee incorrectly computed four per cent tax on sale turnover of ₹ 20.87 crore as ₹ 76.57 lakh instead of as ₹ 83.50 lakh during the period 2006-2007. Besides, the assessee availed an excess input Tax credit of ₹ 1.25 lakh. These resulted in short levy of tax of ₹ 8.18 lakh.

We pointed out the matter to the Department in January 2009 and to the Government in December 2010. We have not received their reply (December 2011)  
(CTO, Special circle III, Ernakulam; June 2010)

Section 6 (1) of the Kerala Finance Act, 2008 provides that there shall be levied and collected from dealers a cess at the rate of one per cent on the tax payable by them under Section 6 and 8 of the KVAT Act.

We noticed from the assessment records that AA incorrect, calculated the cess at 0.1 per cent of tax of ₹ 6.99 crore related to 2008-2009. The Short levy worked out to ₹ 6.98 lakh.

We pointed out the matter to Department (June 2010) and to the Government (April 2011). The Government stated (July 2011) that the AA rectified the mistake under Section 66 (1) of the Act and an order was served to the dealer to recover the short levy. We have not received further information (December 2011).

### Short levy due to incorrect compounding

(CTO, Special circle II Kozhikode, December 2010)

Section 8 (f) of the KVAT Act, 2003 provides that any dealer in ornaments or wares or articles of gold, silver or platinum group metals including diamond may at his option, instead of paying tax in respect of such goods in accordance with the provisions of section 6, pay tax at one hundred and fifty per cent, in case their annual turnover for the above goods for the preceding year exceeded ₹ one crore, of the highest tax payable by him as conceded in the return or accounts, or tax paid by him under this Act, whichever is higher, for a year during any of the three consecutive years preceding that to which such options relates.

We noticed from the assessment records that a dealer in jewellery remitted compounded tax of ₹ 9.21 lakh for the year 2008-2009 being 150 per cent of the tax for 2006-2007. The tax for 2006-2007 was revised to ₹ 10.96 lakh in January 2010. However, the compounded tax for 2008-2009 was not correspondingly revised, which resulted in short levy of tax of ₹ 7.30 lakh.

We pointed out the matter to the Department (January 2011) and to the Government (May 2011). The Government stated (October 2011) that the assessment was re-opened and revised (February 2011). We have not received further information (December 2011).

(CTO, Special Circle, Kannur; August 2011)

We noticed from the assessment records that a dealer in jewellery was permitted to pay compounded tax of ₹ 1.52 crore for the year 2008-2009 instead of ₹ 1.58 crore. Incorrect determination of compounded tax resulted in short levy of tax of ₹ 6.09 lakh.

We pointed out the matter to the Department in October 2010 and reported to the Government in December 2010. The Department stated (April 2011) that the assessment had been revised creating an additional demand of ₹ 7.12 lakh and the assessee remitted the amount along with interest (October 2011).

[CTO (WC), Thiruvananthapuram; March 2010]

Works contractors undertaking electrical work were not permitted to opt for payment of compounded tax under section 8 (a) (ii) of the Act as it stood prior to April 2008.

We noticed from the assessment records that an assessee engaged in electrical works during 2007-2008 opted to pay tax at the compounded rate of four per cent instead of assessing tax under section 6 (1) at the rate of 12.5 per cent on a taxable turnover of ₹ 59.86 lakh. This resulted in short levy of tax and interest to the tune of ₹ 5.52 lakh.

We pointed out the matter to the Department in March 2010 and to the Government in December 2010. The Department stated in November 2010 that the assessment was revised creating an additional demand of ₹ 5.79 lakh. We have not received further information (December 2011)

Audit Paragraph 2.14.11-2.14.15 contained in the Report of C&AG of India for the year ended 31st March 2011 (RR).

Notes furnished by Government on the above audit paragraph are included as Appendix II.

86. The Joint Commissioner, CCT submitted that the case in CTO, Special Circle, Malappuram was pending under RR proceedings.

87. The Joint Commissioner, CCT apprised that the dealer in ready-made garment in Chittur had remitted ₹ 1,03,000 out of the total dues of ₹ 1.93 lakh and an amount of ₹ 90,000 was pending.

88. To a query of the Committee, the CCT replied that Court had quashed the order insisting to levy interest in the case in CTO, Manjeri.

89. The Joint Commissioner, CCT apprised that the additional demand created was collected in the case of CTO, Special Circle, Kottayam.

90. The CCT submitted that the amount had been collected in two instalments of ₹ 1 lakh and ₹ 87,211.

**Conclusion / Recommendation**

No Remarks

**AUDIT PARAGRAPH**

Sales Tax.

**Incorrect allowance of concessional rate of tax.**

(CTO, Special Circle II, Ernakulam; November 2010).

Government by a notification issued in December 1999 had reduced the rate of tax on the sale of goods for use in generation and distribution of power to power generating undertakings in the joint sector, with capacity of above 25 kilo watts, to four per cent. Government of India in their guidelines on the formation and functioning of joint sector has stipulated certain conditions which include minimum 26 per cent equity ownership by the State Industrial Development Corporations (SIDCs) of Government. Further no private partner can hold equity capital more than the SIDCs and no large Industrial House or foreign majority company can have any holding at all in the projects promoted by SIDCs except with the prior permission of the Central Government.

We noticed from the assessment order that the while finalising the assessment of an oil company for the year 2000-2001 to 2004-2005 and another company for the years 2001-2002 to 2003-2004 between March 2008 and March 2010, sale of petroleum products to two power generating companies were assessed to tax at concessional rate of four per cent applicable to undertakings in the joint sector. However these undertakings do not qualify as join sector undertakings as they did not meet the equity ownership criteria specified by Government of India. Incorrect grant of concessional rate of tax resulted in short levy of tax of ₹ 42.46 crore.

When we pointed out the case to the Department in November 2010, the AA stated that the cases in respect of Naphtha and HSD would be examined and remarked that rate of tax applicable to LSHS is 20 per cent as per a reduction notification of October 2000. The reply in respect of LSHS is not relevant as the reduced rate was effective only upto 31 March 2002 and the same was consider for

computing short levy up to 2001-2002. Rate of tax for LSHS from 3 April 2002 was 30 per cent as per a notification of April 2002. Thus the rate of tax on LSHS taken in audit was correct.

We reported the case to the Government in May 2011. We have not received further information (December 2011).

(CTO, Special Circle II, Ernakulam; November 2010)

Serial No. 98 of Schedule III to KVAT Act provides for levy of tax at four per cent on sale of petroleum products covered under the Act to KSEB, NTPC and other power generating undertakings in the joint sector. The Government of India issued guidelines (February 1973) stipulating conditions to be fulfilled to qualify as a joint sector undertaking. These included minimum 26 per cent equity ownership by the State Industrial Development Corporations (SIDCs) and holding of not more than 25 per cent share by private partner without prior approval of the Central Government. Under KVAT Act, Low Sulphur Heavy Stock (LSHS), a petroleum product, was taxable at the rate of 12.5 per cent (Sl. No. 58).

We noticed from the assessment records that a petroleum company assessed tax on sale of LSHS for ₹ 2.84 crore and ₹ 14.83 crore during 2005-2006 and 2007-2008 respectively to a power generating unit, BSES Kerala Power Ltd., at concessional rate of four per cent applicable to undertakings in the joint sector. However, BSES Kerala Power Ltd., does not qualify as a joint sector undertaking as it did not meet the equity ownership criteria specified by Government of India. The application of incorrect rate of tax resulted in short remittance of tax of ₹ 1.50 crore and interest of ₹ 53.75 lakh.

When we pointed out the case to the Department in November 2010, the Department stated that the genuineness of the Form 41\* would be examined on the basis of assessment under Section 24 or 25 of the Act. The reply is not correct as all assessments are not taken up under Section 24 or 25. Further the assessment for 2005-2006 was revised under Sections 25 and the AA did not detect the above omission.

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\* Declaration form for concessional rate of tax for purchase of petroleum product by power generating public sector undertaking.

The case was reported to Government. We have not received any further information (December 2011).

(CTO, Special Circle II, Ernakulam; November 2010).

Government by a notification issued on 4th January 2001 under the KGST Act, reduced the rate of tax on the sale of bitumen to State and Central Government Departments to four per cent. The reduction was extended for sale to local bodies also with effect from 11 April 2003. Bitumen was taxable at 24 per cent during 2001-2002 and 30 per cent thereafter.

We noticed from the assessment orders that, while finalizing the assessment of four petroleum companies, turnover of bitumen sold to local bodies prior to 11 April 2003 and to the State Farming Corporation during 2004-2005 were assessed to tax at four per cent applicable to Government Department. Incorrect grant of concession resulted in short levy of tax of ₹ 80.07 lakh.

We pointed out the matter to the Department (November 2010) and to the Government (April 2011). We have not received further reply (December 2011).

#### **Non – forfeiture of illegal collection of tax**

(CTO, Special Circle II; Ernakulam, November 2010)

The KGST Act, provides that any sum collected by way of tax against the provision of the Act should be forfeited to the Government. The Government of India wide notification in November 2002, exempted from the levy of all taxes and duties in India, fuels and lubricants filled into receptacles forming part of any aircraft registered in any other country and operating international air services to and from India, with effect from 23 November 2002.

We noticed from assessment records that the AA did not forfeit to Government an amount of ₹ 1.89 crore being tax illegally collected an oil company in respect Aviation Turbine Fuel sold international aircraft from 23rd November 2002 to 15th January 2003.



We pointed out the matter to the Department in January 2011 and to the Government (May 2011). We have not received further information (December 2011).

### **Turnover escaping assessment**

(CTO, Special Circle II, Ernakulam; November 2010)

A notification issued (December 1999) under KGST Act provided for reduced rate of tax of four per cent on sales turnover of goods for use in generation and distribution of power to National Thermal Power Corporation (NTPC) provided a certificate in Annexure I to the notification was produced. The Act empowers the assessing authority to assess to the best of his judgment the turnover escaping assessment.

We observed from the assessment records of an oil company that it had in 2000-2001 returned turnover naphtha taxable at the concession rate of four per cent as ₹ 539.09 crore against ₹ 550.38 crore as revealed by the declaration furnished by the purchaser. This resulted in escapement of turnover of ₹ 11.28 crore and consequent short levy of tax and interest of ₹ 1.16 crore.

We pointed out the matter to the Department in January 2011. The Department accepted the matter (May 2011) and stated that action will be taken to make good the loss. We reported the case to the Government (May 2011). We have not received further information (December 2011).

(CTO, Special Circle, Mattancherry at Aluva; August 2010)

As per the KGST Act, sales turnover of Duty Entitlement Pass Book (DEPB) was to be taxed at the rate of eight per cent under first schedule to the Act.

We noticed from the assessment records that while finalising the assessments of a dealer for the period from 2000-2001 to 2002-2003, the AA did not assess tax on sales turnover of DEPB for ₹ 41.29 lakh resulting in short levy of tax, AST and interest of ₹ 8.27 lakh.

We pointed out the matter (October 2010) to the Department and to the Government (May 2011). We have not received further information (December 2011).

*Non – levy of tax*

(CTO, Special Circle II, Ernakulam; November 2010)

Goods specified in the Fifth schedule are taxable at two points if the sale is to a registered dealer under Section 5 (v) of KGST Act. Petroleum products were under the Fifth Schedule during 1 and 2 April 2002 as amended wide Finance Act, 2002. First point of levy being sale by an oil company to another oil company was taxable at four per cent.

We noticed from the assessment records that while finalising the assessment for the year 2002-2003 in December 2009 of an oil company, the AA did not assess tax on turnover of first sale of petroleum product effected on 1 and 2 April 2002. Short levy of tax and additional sales tax on this accounts, on a proportionate turnover of ₹ 24.79 crore, worked out to ₹ 1.14 crore.

We pointed out the matter to the Department (November 2010) and the Government (April 2011). We have not received further reply (December 2011).

*Incorrect Compounding*

(CTO, Second circle, Mattencherry; December 2010)

Section 7 of the Kerala General Sales Tax Act, 1963, as amended from July 2006, stipulates that any bar attached hotel not being a star hotel of and above three star hotel, heritage hotel or club, may, at its option, pay turnover tax on the turnover of foreign liquor calculated at one hundred and forty per cent of the purchase value of such liquor or at one hundred and fifteen per cent of the highest turnover tax payable by it as conceded in the return or accounts or the turnover tax paid for any of the previous consecutive three years, whichever is higher.

We noticed from the assessment order that a bar attached hotel in municipal corporation area, was assessed to compounded tax during 2006-2007 and 2007-2008 on the basis of 140 per cent of purchase value of liquor, even though 115 per cent of tax paid /payable for the preceding years was higher. Incorrect determination of compounded tax resulted in short levy of ₹ 19.39 lakh.

We pointed out the matter to the Department (December 2010) and reported it to the Government (May 2011). The Government replied (October 2011) that the assessments were completed base on the audit observation (April 2011) and RR action initiated. We have received further information (December 2011).

*Incorrect grant of exemption*

(CTO, Special Circle II, Ernakulam; November 2010)

The Goods specified in the Fifth Schedule are taxable at two points unless the sale is to a person other than a registered dealer. Petroleum products were under the Fifth schedule during 1st and 2nd April 2002 as amended by the Finance Act 2002. First point of levy was at the point of first sale by an oil company to another oil company and second point of levy was at the point of second sale by an oil company. Liquefied petroleum gas was taxable at four per cent and eight per cent at the first point and at the second point of sale respectively.

We noticed from assessment records that while finalising the assessments for the year 2002-2003 of three oil companies\* in January 2010 the AA did not assess tax on second sale of LPG. This included proportionate turnover of 1 and 2 April 2002 which was liable to be taxed at eight per cent. Incorrect grant of exemption resulted in short levy tax of 15.75 lakh.

When we pointed out matter to the Department in November 2010, the AA stated that action will be taken to make good the loss. We reported the case to the Government in April 2011. We have not received further reply (December 2011).

*Non- assessment of additional sales tax*

(CTO, Special Circle, Mattancherry at Aluva; August 2010)

The KGST Act stipulates that the tax payable under Section 5 and Section 5 A shall be increased by an additional sales tax (AST) at the rate of 15 per cent of the tax payable under the said section.

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\* Bharat Petroleum Corporation, Hindustan Petroleum Corporation Limited and Indian Oil Corporation Limited.

We noticed from the assessment order that the AA did not assess AST from July 2003 in respect of an assessee, though the same was mentioned in the assessment order (October 2010). This resulted in short levy of AST of ₹ 12.99 lakh.

We pointed out the matter to the Department (October 2010) and to the Government (May 2011). The Government stated (October 2011) that the assessment was revised (June 2011) rectifying the defect as pointed out by audit. We have not received further information (December 2011).

*Application of incorrect rate of tax*

(CTO, Special Circle, Mattancherry, July 2009)

Entry 113 of schedule 1 to the KGST Act provides that HDPE sheets are taxable at the rate of 12 per cent.

We noticed from the assessment order that while finalising the assessment of a dealer for the years 2003-2004 and 2004-2005, the AA assessed sales turnover of HDPE Sheets used for covering autorikshaws, jeeps etc. at four per cent treating it as packing materials against the correct rate of 12 per cent. Application of incorrect rate of tax resulted in short levy of tax and interest of ₹ 12.13 lakh.

We pointed this out to the Department (September 2009) and to the Government (December 2010). The Government stated (February 2011) that the assessments for the year 2003-2004 and 2004-2005 were revised in October 2010 creating an additional demand of ₹ 7.59 lakh and that the amount has been advised for revenue recovery. Further reply has not been received (December 2011).

(CTO, Special Circle III, Ernakulam; June 2010)

Non-stick Cookware and utensils are taxable at the rate of 12 per cent under Schedule I of the KGST Act.

We noticed from the assessment order that turnover assessed at the rate of four per cent by the AA included sales turnover of non-stick cookware and utensils amounting to ₹ 37.95 lakh and ₹ 36.33 lakh respectively for the years 2003-2004 and 2004-2005. Application of incorrect rate of tax resulted in short levy of tax of ₹ 6.83 lakh and interest of ₹ 4.87 lakh (total ₹ 11.70 lakh)

We pointed out the matter to the Department (June 2010) and to the Government (April 2011). The Government stated (September 2011) that the assessments were reopened under section 17 D (2) of the Act and revised (February 2011). We have not received further information (December 2011).

(CTO, Special Circle III, Ernakulam; June 2010)

Canon Kinetiser (Hot Plate) comes under entry 54 (1) of Schedule I to the KGST Act and is taxable at the rate of 12 per cent from 1<sup>st</sup> April 2004.

We noticed from the assessment order that while completing the assessment for the year 2004-2005 (July 2009) sales turnover of Canon Kinetiser (Hot Plate) of ₹ 1.50 crore was assessed to tax at the rate of eight per cent instead of correct rate of 12 per cent. Application of incorrect rate of tax resulted in short levy of tax and interest of ₹ 11.13 lakh.

We pointed out the matter to the Department (June 2010) and to the Government (April 2011). The Government stated (October 2011) that the assessment was reopened and completed applying correct rate of tax (February 2011). We have not received further information (December 2011).

(CTO, first circle, Kollam; October 2010)

The KGST Act, 1963 stipulates that footwear of all kinds are taxable at the rate of 12 per cent.

We noticed from the assessment orders that while completing (February 2010) the assessment of a dealer in footwear for the years 2003-2004 and 2004-2005 tax was assessed at the rate of eight per cent instead of at 12 per cent on the turnover of ₹ 21.18 lakh and ₹ 25.42 lakh respectively. This resulted in short levy of tax of ₹ 3.67 lakh.

We pointed out the matter to the Department (November 2010) and to the Government (May 2011). The Government stated (September 2011) that the assessments were reopened under Section 17 D (2) of the Act and revised (June 2011) taking into consideration all aspects pointed out by audit. We have not received any further information (December 2011).

#### *Short levy of turnover tax*

(CTO, Kottarakkara; December 2009)

Section 5 (2c) of the KGST Act, provides that every dealer of foreign liquor in a bar hotel shall pay turnover tax on the sales turnover of liquor at the rate of 10 per cent.

We observed from the assessment order that while completing the assessment of a dealer of foreign liquor in a bar hotel for the year 2004-2005, on best judgement basis, the assessing officer assessed turnover tax of ₹ 13.42 lakh on escaped turnover of ₹ 1.11 crore. Against this tax assessed, the AA gave credit of ₹ 11.30 lakh being tax paid on the turnover already conceded by the assessee. This resulted in short levy of tax of ₹ 11.30 lakh.

We pointed out the matter to the Department (January 2010) and reported it to the Government (October 2010). The Government stated (October 2011) that the assessments were reopened and revised rectifying the mistake. We have not received further information (December 2011).

#### **Short levy of tax and interest due to non- appropriation of payment**

(CTO, Special Circle Palakkad; February 2009)

Section 55 C of the KGST Act stipulates that where any tax or any other amount due or demanded under the Act is paid by any dealer, the payments so made shall be appropriated first towards the interest accrued on such tax on such date of payment and the balance available shall be appropriated towards principal outstanding.

We noticed from the assessment records that the AA while finalising the assessment (August 2007) of a dealer for the year 2002-2003, had incorrectly appropriated the amount paid by the assessee towards tax due instead of appropriating it first towards interest. This resulted in short levy of tax and interest of ₹ 9.34 lakh.

We pointed out the matter to the Department (February 2009) and to the Government (February 2010). The Government stated (August 2011) that the assessment has been revised creating additional demand of ₹ 14.52 lakh and that necessary directions have been issued to initiate RR action. We have not received further information (December 2011).

[Audit Paragraph 2.14.16 to 2.14.25 contained in the Report of Comptroller and Auditor General of India for the year ended 31 March 2011 (RR)]

Notes furnished by Government on the above audit paras are included as Appendix II.

91. The Committee reiterated the same comments as that of audit para 2.14.1 as the cases were of joint sector undertakings.

92. The witness, Joint Commissioner, CCT submitted that the re-assessment notices issued to IOC for the years 2001-2002, 2002-2003 and 2004-2005 were stayed by High Court.

93. Regarding the cases of KRL, HPCL and BPCL referred by Audit, the witness Joint Commissioner, CCT submitted that re-assessment was completed and amount was pending under Revenue Recovery.

94. The Committee viewed with grave concern over the inertia on the part of the department as it could not take any action to realize the amount even in cases where realisation was not stayed by any authority and directed to expedite action in such cases.

95. The witness CCT submitted that dues from IOC for the year 2002-2003 were not yet recovered and the committee was informed that the stay was not vacated in the case of BPCL. He continued that the case of

M/s Cochin Refineries Ltd. was pending with RR proceedings and complete amount based on the modified assessment was remitted by the dealer regarding the Audit Paragraph incorrect compounding.

96. To a query of the Committee about a case in CTO, Special Circle, Ernakulam the Joint Commissioner, CCT submitted that the additional demand in the case of IOC and re-assessment notice in the case of Hindustan Petroleum Corporation were stayed by the High Court. But in the case of BPCL assessment was completed and RR action had been initiated to realise the amount.

97. The Joint Commissioner, CCT submitted that the amount was under RR at Gurgaon, Haryana State and the District Collector of that district had not responded to the request for the same. The Committee mooted for a discussion between the department and oil companies and to settle the issue.

98. In the case of assessing tax for HDPE sheets at 4 per cent, the witness, Joint Commissioner, CCT submitted that the assessee had remitted ₹ 4.47lakh under Amnesty scheme. Whereas the issues in respect of non-stick cookware and utensils and Canon Kinetizer in CTO Special Circle III, Ernakulam were settled as they remitted the entire amount. He continued that short levy by a dealer in footwear in Kollam could not be settled yet as RR proceedings were pending.

99. The CCT submitted that the appeal filed by the assessee in a case in CTO, Kottarakara was pending before the Tribunal.

#### **Conclusion/Recommendation**

100. The Committee expresses its concern over the inertia on the part of Taxes Department as it could not take any action to realise the amount even in the cases which were not stayed by any authority. It directs the department to expedite action in such cases.

101. The Committee notices that the assessment of dealer in CTO, special circle, Mattancherry was revised and RR Proceedings had been initiated to realise the amount in Gurgaon, Haryana State and the District Collector did not respond yet. It moots for a discussion between the Taxes Department and oil company to settle the issue.



**AUDIT PARAGRAPH****b. Luxury tax**

Non-observance of the provisions of Luxury Tax Act by the assessing officers resulted in short collection of luxury tax of ₹ 7.63 lakh as mentioned in paragraph 7.8 and 7.9.

**Application of incorrect rate of tax**

(CTO, LT Thiruvananthapuram, March 2011)

Section 4 (2) (a) of the Kerala Tax on Luxuries Act, 1976 provides that if gross charges of accommodation for residence and other amenities provided in a hotel exceeds ₹ 500 per day per room, luxury tax leviable is 15 per cent with effect from July 2006.

We noticed that while completing the luxury tax assessment of a hotel for the year 2006-2007 charging rent exceeding ₹ 500 per room, luxury tax on the turnover of ₹ 1.02 crore for the period from July 2006 to March 2007 was assessed to tax at 10 per cent instead of at the correct rate of 15 per cent. This resulted in short levy of tax of ₹ 5.11 lakh.

We pointed out the matter to the Department in March 2011 and reported to the Government in May 2011. We have not received further information (December 2011).

**Incorrect Computation of tax**

(CTO (LT), Thiruvananthapuram; March 2010)

The Kerala Tax on Luxuries Act, 1976, stipulates that where the rate of charges for accommodation for residence and other amenities and service are not more than ₹500 per day per room luxury tax is leviable at 10 per cent.

We noticed from the records that luxury tax of a hotel on a turnover of ₹ 28.03 lakh was wrongly assessed (October 2008) as ₹ 28,027 instead of ₹ 2.80 lakh. This clerical mistake resulted in short levy of tax of ₹ 2.52 lakh.

We pointed out the matter to the Department (March 2010) and the Government in May 2011. The Government stated (November 2011) that the assessment has been modified (August 2011) and demand notice issued. We have not received further information (December 2011).

[Audit Paragraph 7.8 and 7.9 contained in the Report of Comptroller and Auditor General of India for the year ended 31st March 2011 (Revenue Receipts)]

Notes furnished by Government on the above audit paragraphs are included as Appendix II.

102. The witness informed that the demand of ₹ 15,96,196 was modified to ₹ 8,48,000 on re-assessment and the amount was remitted. The CCT submitted that in the case reported in CTO, (LT), Thiruvananthapuram, March 2010, the amount was fully remitted as per the modified assessment.

#### **Conclusion / Recommendation**

No Remarks.

Thiruvananthapuram,  
8th March, 2017.

V. D. SATHEESAN,  
*Chairman,*  
*Committee on Public Accounts.*

## APPENDIX-I

## SUMMARY OF MAIN CONCLUSION/RECOMMENDATION

Sl. No.	Para No.	Department concerned	Conclusion/Recommendation
1	2	3	4
1	6	Taxes Department	The Committee directs the Taxes Department to take effective measures to realise the amount due from Hotel Xaviers, Hotel Karthika, Quality Hotel (P) Ltd., Hotel Prestige, Hotel Pushpak, MKR enterprises etc.
2	7	Taxes Department	The Committee directs the Taxes Department to re-assess the tax of Hotel Surya after including the opening stock which was excluded from assessment.
3	8	Taxes Department	The Committee wants the Taxes Department to realise the balance amount due from M/s Elite Tourist Home as per the modified assessment.
4	13	Taxes Department	The Committee directs the Taxes Department to take urgent steps to conduct periodical reconciliation of stock register at the Commissionerate and district level offices.
5	14	Taxes Department	The Committee recommends that the Taxes Department should take necessary steps to publish the details of assesseees whose registration gets cancelled.
6	25	Taxes Department	The Committee directs the Taxes Department to recover the balance amount due from M/s Best Wood Traders, M/s State Trading Corporation and Chathankulam Saw Mill and submit a report regarding this.
7	26	Taxes Department	The Committee observes that the concessional rate permitted in the case of Kerala Electrical and Allied Engineering Ltd was incorrect, as it was a case of interstate trade. It urges the Taxes Department to furnish the details of re-assessment and the present status of the case to it at the earliest.

1	2	3	4
8	34	Taxes Department	The Committee finds that the collection is pending in case of Philips Carbon Black, M/s MRF Ltd. and M/s Hilti India Pvt. Ltd. and it directs the Taxes Department to realise the amount at the earliest.
9	35	Taxes Department	The Committee remarks that the discrepancies in Tax Collection can be avoided if declaration be made mandatory for concession or exemption and recommends that Taxes Department should take necessary steps to make stringent measures regarding tax collection under which the discretion of the AA to grant extension should be limited to a maximum of one month.
10	36	Taxes Department	The Committee directs the Taxes Department to take effective measures to dispose the pending cases either through adalaths or some other ways in a time bound manner.
11	45	Taxes Department	The Committee notices that 'Joint Sector Undertakings' is not defined in KGST Act and hence it is not clear whether the companies mentioned in the audit para could be classified as joint sector undertaking or not. It recommends that Government should issue clear direction in this regard.
12	56	Taxes Department	The Committee criticises the Taxes department for not conducting any physical verification of the nature of items transacted even at the time of correction of HSN Code and directs that physical verification should be conducted in future in the cases of similar nature.
13	57	Taxes Department	The Committee opines that the tendency of tax evasion is very particular among multinationals and directs the taxes department to initiate steps to amend laws in this regard and to take necessary measures to prevent such practice.
14	60	Taxes Department	The Committee directs the taxes Department to reassess turnover in the case pointed out in CTO, Special circle (Produce), Mattanchery on the basis of annual returns.

1	2	3	4
15	62	Taxes Department	The Committee endorses the audit objection that the dealer who availed input tax credit under the compounding scheme was not eligible for it. The Committee directs, the Taxes Department to take steps to amend the portion regarding revenue tax in the KVAT Act to curtail such leakage of revenue.
16	64	Taxes Department	The Committee urges the Taxes Department to inform the present status of the case.
17	75	Taxes Department	The Committee warns the Taxes Department in furnishing RMT without having scrutiny and directs to re-assess the tax regarding the case of CTO Special circle I, Ernakulam considering the warranty charges too.
18	76	Taxes Department	The Committee directs the Taxes Department to submit the latest position of the cases which were under stay or re-assessed to it at the earliest.
19	77	Taxes Department	The committee directs the Taxes Department that the turnover relating to Duty Entitlement Pass Book (DEPB) license tax should be assessed.
20	78	Taxes Department	The Committee rejected the department's stand that there was no short levy in this case and insists to revise the assessment.
21	79	Taxes Department	The Committee reprimands the Taxes Department for the negligence on the part of the officials in furnishing inaccurate RMT statements and warns the department to confirm the accuracy of the reply before submitting it to the Committee. The Committee directs to re-assess the case of CTO Kodungalloor.

1	2	3	4
22	83	Taxes Department	The Committee directs the department to ascertain whether the contract was only for labour or for works in the case of a dealer engaged in the manufacture of plastic moulded components.
23	100	Taxes Department	The Committee expresses its concern over the inertia on the part of Taxes Department as it could not take any action to realise the amount even in the cases which were not stayed by any authority. It directs the department to expedite action in such cases.
24	101	Taxes Department	The Committee notices that the assessment of dealer in CTO, Special Circle, Mattanchery was revised and RR Proceedings had been initiated to realise the amount in Gurgaon, Haryana State and the District Collector did not respond yet. It moots for a discussion between the Taxes Department and oil company to settle the issue.

## APPENDIX-II

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Concession allowed without production of C form.
	(c)	Paragraph No.	2.12.11 (7,8,28,30,33,37,41,42,43,44,59)
	(d)	Report No. and Year	C&AG report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	<p>Verification of CST assessment filed in the State and observed that concessional rate for interstate sale was allowed without production of 'C' Forms.</p> <p><u>7) M/s Cable Point (2008-09)</u> Interstate sales turnover :Rs. 4887065 Short levy : Rs. 16.77lakhs</p> <p><u>8) Manjillas Rice Mill (2008-09)</u> Interstate sales turnover :Rs. 21847041 Short levy : Rs. 14.28 lakhs</p> <p><u>28)M/s Kamcore Ingredients Ltd (08-09)</u> Interstate sales turnover :Rs.109198098 Short levy : Rs. 230.12lakhs</p> <p><u>30)Indo German Carbon Ltd (2008-09)</u> Interstate sales turnover :Rs.56748934 Short levy : Rs. 37.11 lakhs</p> <p><u>33)Lab Tech (2007-08)</u> Interstate sales turnover :Rs.9155119 Short levy : Rs. 29.48 lakhs</p> <p><u>37)T.M.S Leathers (2007-08)</u> Interstate sales turnover :Rs. 28306300 Short levy : Rs. 9.59lakhs</p>

			<p><u>41)M/s Web Coat (2007-08)</u> Interstate sales turnover :Rs.28317660 Short levy : Rs. 9.59 lakhs</p> <p><u>42)Southern Minerals and Chemicals (07-08)</u> Interstate sales turnover :Rs. 37127994 Short levy : Rs. 12.58lakhs</p> <p><u>43)M/s Sanitary Equipment Stores (07-08)</u> Interstate sales turnover :Rs. 2387832 Short levy : Rs. 7.69 lakhs</p> <p><u>44)M/s Dynamic Techno Medicals (Pvt Ltd 07-08)</u> Interstate sales turnover :Rs. 11893986 Short levy : Rs. 4.03 lakhs</p> <p><u>59)M/s Fathima Company (2006-07)</u> Interstate sales turnover :Rs.2382189 Short levy : Rs. 7.10 lakhs</p>
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	



## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p><b>2.12.11(7)</b>  <u>M/s Cable Point (2008-09)</u>  The assessee produced C form for Rs.4466543/- against the total interstate sales conceded Rs.4887065/-. Assessment under CST Act for the year 2008-09 was completed vide this office Order No.32080209524/2008-09 dated 31.12.2013 with an addl.demand of Rs.68635 and interest of Rs.39122. The amount is under RR.</p> <p><b>2.12.11(8)</b>  <u>Manjillas Rice Mill (2008-09)</u>  The assessee produced C form for Rs.20738941/- against the total interstate sales of Rs.21847041/-. The assessment under CST Act for the year 2008-09 was completed vide this office order No.32080267574/2008-09 CST dated 12.03.2014 with balance tax of Rs.22162 and interest Rs.13297. The assessee has remitted Rs.35902 vide chalan No.402 dated 24.05.2014.</p> <p><b>2.12.11(28)</b>  <u>M/s Kamcore Ingredients Ltd (2008-09)</u>  The assessee produced entire C form for interstate sales turnover of Rs.109198098/- and assessment was completed vide order No.32150238895 dt.14.6.13.</p> <p><b>2.12.11 (30)</b>  <u>Indo German Carbon Ltd (2008-09)</u>  C- forms produced for Rs.45691953/- out of the interstate sales turnover Rs.56748934/- and concessional rate was allowed @ 2 % on the same. Balance turnover has been assessed @ 4 % as per order No.321507751052 dt.14.6.13. Addl. demand comes to Rs.530438/-. This is under RR.</p> <p><b>2.12.11 (33)</b>  <u>Lab Tech (2007-08)</u>  Dealer has filed C - forms to the tune of Rs.8438685/-. Sales return claimed Rs.329612/- was claimed and which was allowed. But the turnover of Rs.386822/- was assessed at higher rates vide order No.32150847284 dt.7.6.13. Creating addl.demand Rs.51811/- which was paid as per ch.No.70/27.7.13.</p> <p><b>2.12.11 (37)</b>  <u>T.M.S Leathers (2007-08)</u>  Dealer has produced C-Forms for the entire interstate sales turnover for the claim of concessional rate.</p>
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Accordingly CST assessment for the year 2007-08 was completed vide order No.32150251495 dtd.3.2.12.

**2.12.11 (41)**

M/s Web Coat (2007-08)

Dealer has produced C-Form for the entire interstate sales turnover for the reduced rate of claim. Assessment was completed accordingly vide order No.32150792935 dtd.17.5.12.

**2.12.11 (42)**

Southern Minerals and Chemicals (2007-08)

The assessment was completed on 18.05.2011. The assessee has produced C form of Rs.36410440 only]. Balance turnover was assessed vide order No.32150947342 dt.18.5.11 at higher rate and additional demand created was Rs.58764/- which was remitted by the dealer as per chalan No.210/02.01.2012.

**2.12.11 (43)**

M/s Sanitary Equipment Stores (2007-08)

Dealer has produced C form for Rs.167406/- CST assessment was completed vide order No.32150225305 dt.28.2.14 with an additional demand of Rs.282575/- which is under RR with IAC, Mattancherry.

**2.12.11(44)**

M/s Dynamic Techno Medicals (Pvt Ltd 2007-08)

Total interstate sales-turnover disclosed by the dealer is Rs.20948751/-, out which the dealer had filed C form declaration covering a turnover of Rs.9875869/-. Balance turnover of Rs.251110/- was assessed @ 4 % along with interest vide order No.32150255185 dtd.19.3.10. The additional demand created as per CST assessment order dated 19.03.2010 was already collected vide cheque No.12018 /22.03.2010.

**2.12.11 (59)**

M/s Fathima Company (2006-07)

Total interstate sales of the dealer for the year 06-07 was Rs.6230275/-. Of this, the dealer has filed C-form to the tune of Rs.6158168/- which was assessed @ 4 %. Balance interstate sales turnover of Rs.72107/- was assessed @ 12.5%. Additional demand created was Rs.11272/- vide order No.32151236572(c) dtd.29.3.14. This amount was remitted by the dealer vide chalan 780/08/07/2014.

(b) Recovery of overpayment pointed out by audit

(c) Recovery of under assessment, short levy or other dues

	(d)	Modification in the schemes and programmes including financing pattern	--
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Concession allowed without production of C Form
	(c)	Paragraph No.	2.12.11 (25,34)
	(d)	Report No. and Year	C&AG report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	<p>Concessional rate for interstate sale was allowed without production of C Form. M/s.Philips Carbon Black (07-08 &amp; 08-09)</p> <p>2007-08: Interstate sales turnover : Rs.133460711 Short levy : Rs.45.24 lakh</p> <p>2008-09: Interstate sales turnover: Rs.144843758 Short levy : Rs.89.68 lakh</p>
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p><u>M/s Philips Carbon Black (2007-08 &amp; 2008-09)</u></p> <p>As per the audit of AG, non production of Form C declaration was to the tune of Rs.133460711/- for the year 07-08 and Rs.144843758/- for the year 08-09. Verification of the books of accounts for the above years revealed that C form to be produced was an amount of Rs.136033011 and Rs.1444643757 for the years 07-08 and 08-09 respectively. Of this, the dealer produced C form for Rs.135647604 for the year 07-08 and failed to produce C form declaration for a turnover of Rs.385407 and this turnover stand assessed to tax as per order No.32150200814/07-08 dt.24.10.14 with addl. demand of tax Rs.82114 and interest Rs.73903. For the year 08-09 the dealer produced C form for Rs.14432880 and failed to produce C form for Rs.210878. Assessment was completed as per order dt.27.10.14 creating addl. demand of tax of Rs.34294 and interest of Rs.30864. Short levy is set right accordingly.</p>
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Concession allowed without production of C Form.
	(c)	Paragraph No.	2.12.11 (29)
	(d)	Report No. and Year	C&AG report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/ Review	<p>Concessional rate for interstate sales was allowed without production of C Form. M/s Web Cot (2008-09).</p> <p>Interstate sales turnover : Rs.30469163  Short levy tax effect : Rs.5.51 lakh  Interest : Rs.1.48 lakh  Penalty : Rs.11.02 lakh  Total : Rs.18.03 lakh</p>
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

	(a)	Improvement in system and procedures, including internal controls.	<u>M/s Web Cot (2008-09)</u> Dealer has produced entire C-Form for the reduced rate of claim for the year 2008-09 valued to Rs.30469163. Accordingly CST assessment for the year 2008-09 was completed on 17.05.2012.
	(b)	Recovery of overpayment pointed out by audit	
	(c)	Recovery of under assessment, short levy or other dues	--
	(d)	Modification in the schemes and programmes including financing pattern	--
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Concession allowed without production
	(c)	Paragraph No.	2.12.11 (31)
	(d)	Report No. and Year	C&AG report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/ Review	Concessional rate for interstate sale was allowed without production of C-Form.  Transformer and Electricals Kerala Ltd (2007-08) Interstate sales turnover: Rs.1303321909 Short levy : Tax effect : Rs.1208.36 lakh Interest : Rs.471.26 lakh Penalty : Rs.2416.72 lakh Total : Rs.4096.34 lakh
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	



VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	<u>M/s Transformers and Electricals Kerala Ltd (2007-08)</u> The dealer produced entire C forms to the tune of Rs.1303321909/- and on verification the declarations were found acceptable. Assessment was completed based on the above as per order No.32150234812/07-08 dt.25.10.14.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Exemption allowed without production of C forms
	(c)	Paragraph No.	2.12.11 (32) (Annexure V)
	(d)	Report No. and Year	C&AG report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	<p>Concessional rate for interstate sale was allowed without production of C Forms. M/s.Merchem Ltd (2007-08).</p> <p>Interstate sales turnover : Rs.315642309  Short levy : Tax effect : Rs.3156423  Interest : Rs.1231005  Penalty : Rs.6312846  Total : Rs.10700274</p>
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	<u>M/s Merchem Ltd (2007-08)</u> The interstate sales turnover with C form was Rs.315896843/-. Of this, C forms were produced to the tune of Rs.314502289/-. The balance amount of Rs.1394554/- was assessed to tax at 4% with demand of Rs.55782/- and interest Rs.36816/-. This was collected vide chalan No.612 dt.31.3.13.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Concession allowed without production of C form
	(c)	Paragraph No.	2.12.11 (35)
	(d)	Report No. and Year	C&AG report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	<u>Philips Electronics India Ltd. (07-08)</u> AG observed that concessional rate for interstate sale was allowed without production of C form. Interstate sales turnover Rs.2013162 Short levy : Rs.6.48 lakh (including penalty)
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	<u>Philips Electronics India Ltd (2007-08)</u> The assessee has produced C form for the entire turnover. Accordingly CST assessment was completed vide order No.32150216575/07-08 dt.31.5.13. So there is no short levy.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Concession allowed without C form
	(c)	Paragraph No.	
	(d)	Report No. and Year	2.12.11 (36) C&AG report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	Concessional rate for interstate sale was allowed without production of C Form. Indo German Carbon (P) Ltd 2007-08. C form not produced was to the tune of Rs.17450080.  Short levy tax effect : Rs.1.74 lakh Interest : Rs.0.68 lakh Penalty : Rs.3.49 lakh Total : Rs.5.91 lakh
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	<u>Indo German Carbon (P) Ltd 2007-08</u> Dealer has filed entire C Forms for the reduced rate of claim amounting to Rs.17450080. Accordingly CST assessment for the year 2007-08 was completed.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C & AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Concession allowed without production of C forms.
	(c)	Paragraph No.	2.12.11 (46,47,48)
	(d)	Report No. and Year	C&AG report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	<p>Concessional rate for interstate sale was allowed without production of C-Form. M/s State Trading Corporation (06-07).</p> <p>Interstate sales turnover : Rs.268288036  Short levy : Tax effect : Rs.160.34 lakh  Interest : Rs.81.77 lakh  Penalty : Rs.320.69 lakh  Total : Rs.562.82 lakh</p> <p><u>2007-08</u>  Interstate sales turnover : Rs.268288036  Short levy : Tax effect : Rs.107.29 lakh</p> <p><u>Sony Trading Company (07-08)</u>  Interstate sales turnover : Rs.389466368  Short levy : Tax effect : Rs.33.81 lakh</p>
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	



VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p><b>2.12.11(46)</b>  <u>M/s State Trading Corporation (2006-07)</u>  CST assessment for the year 2006-07 in respect of the dealer was completed as per order No. dt. 26.03.2013. The taxable turnover fixed was Rs.30,01,50,156/- and the assessee produced C Forms for Rs.267001630/-. The balance turnover was assessed at a higher rate. The balance CST due with interest was Rs.5593629/- RRC was issued to the Inspecting Assistant Commissioner, Mattancherry. Stay petition filed before the DC(A), Ernakulam was disposed with direction to remit 1/3<sup>rd</sup> of demand. Aggrieved by the order, on request of the Corporation vide application No.731/14, the assessee filed appeal before Hon'ble High Court of Kerala. The Hon'ble High Court of Kerala directed to file fresh appeal before the High Court of Karnataka and the appeal filed before Hon'ble High Court of Karnataka is still pending.</p> <p><b>2.12.11(47)</b>  <u>State Trading Corporation (2007-08)</u>  CST assessment in respect of the above dealer has been completed on 30.04.2013 fixing taxable turnover of Rs.30,58,98,370/-. The assessee produced C Forms for Rs.30,53,30,760/- and availed concessional rate and the balance turnover assessed. The assessee remitted Rs.9191809/-. The balance due to interest was Rs.40048/-. The demand is under RR before the IAC, Mattancherry. The assessee filed appeal before Deputy Commissioner (Appeals), Ernakulam and the appeal is pending.</p> <p><b>2.12.11(48)</b>  <u>Sony Trading Company (07-08)</u>  In the light of the audit objection, CST assessment was completed on 12.12.2008 itself. The dealer has effected interstate sales for Rs.38,94,66,368/- The assessee produced entire 'C' Forms and availed concessional rate of tax.</p>
(b)	Recovery of overpayment pointed out by audit	

(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Concession allowed without production
	(c)	Paragraph No.	2.12.11(63)
	(d)	Report No. and Year	C&AG report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	Concessional rate for interstate sale was allowed without production of C-Form. M/s.Chathankulam Saw Mill (2007-08)  Interstate sales turnover : Rs.13100411 Short levy: Tax effect: Rs.1244539 Interest : Rs.485370 Penalty : Rs.2489078 Total : Rs.4218987
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<u>M/s Chathamkulam Saw Mill (2007-08)</u> The assessee was a dealer in Black boards and Wooden planks. Assessee filed C- Forms except for Rs.2,16,728/- which was assessed at higher rate as per order dt. 25.02.2010. The tax amount Rs.27091/- was demanded with interest Rs.6502/- An amount of Rs.29120 was adjusted towards excess credit during the year and balance amount of Rs.4773/- is still pending for collection.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Concession allowed without production of C forms
	(c)	Paragraph No.	
	(d)	Report No. and Year	2.12.11 (64) C&AG report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	Concessional rate for intestate sale was allowed without production of C forms. M/s.Agro Plastics Pvt Ltd. for the year 2007-08. Amount of C form not produced Rs.9701567. Short levy Rs.31.24 lakhs.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p><b>M/s Agros Plastics (P) Ltd (2007-08)</b>  The assessee produced C form for Rs.9451337 only and the assessment was completed as per Order No.32090573035/2007-08 dated 05.03.2010 as detailed below.</p> <table border="1" data-bbox="440 361 844 585"> <tr> <td>Tax dues @ 3 % Rs.9451337 (covered by C form)</td> <td>Rs.283540</td> </tr> <tr> <td>Tax dues @ 4 % on Rs.176884</td> <td>Rs.7705</td> </tr> <tr> <td>Tax due @ 12.5 % Rs.73346</td> <td>Rs.9168</td> </tr> <tr> <td>Total tax due</td> <td>Rs.299783</td> </tr> <tr> <td>Tax paid</td> <td>Rs.292780</td> </tr> <tr> <td>Balance tax due</td> <td>Rs.7003</td> </tr> <tr> <td>Interest due @ 25 %</td> <td>Rs.1750</td> </tr> <tr> <td>Total dues</td> <td>Rs.8753</td> </tr> </table> <p>This was paid by the assessee vide chalan No.72 dated 17.04.2010.</p>	Tax dues @ 3 % Rs.9451337 (covered by C form)	Rs.283540	Tax dues @ 4 % on Rs.176884	Rs.7705	Tax due @ 12.5 % Rs.73346	Rs.9168	Total tax due	Rs.299783	Tax paid	Rs.292780	Balance tax due	Rs.7003	Interest due @ 25 %	Rs.1750	Total dues	Rs.8753
Tax dues @ 3 % Rs.9451337 (covered by C form)	Rs.283540																	
Tax dues @ 4 % on Rs.176884	Rs.7705																	
Tax due @ 12.5 % Rs.73346	Rs.9168																	
Total tax due	Rs.299783																	
Tax paid	Rs.292780																	
Balance tax due	Rs.7003																	
Interest due @ 25 %	Rs.1750																	
Total dues	Rs.8753																	
(b)	Recovery of overpayment pointed out by audit																	
(c)	Recovery of under assessment; short levy or other dues	--																
(d)	Modification in the schemes and programmes including financing pattern	--																
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--																

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Concession allowed without production of C forms
	(c)	Paragraph No.	2.12.11 (58)
	(d)	Report No. and Year	C&AG report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	<p>Verification of CST assessment file reveals the concessional rate for interstate sale was allowed without production of C forms. M/s. Sheela Kochouseph, Electro Control (2007-08)</p> <p>Short levy : Tax effect : Rs. 507276  Interest : Rs. 197838  Penalty : <u>Rs. 1014552</u>  Total : Rs. 1719666</p>
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	<u>M/s. Sheela Kochouseph, Electro Control (2007-08)</u>  Dealer has produced C forms for Rs.5235693. Balance turnover of Rs.112017 was assessed at higher rate as per order dt. 29.10.2012 with an additional demand of Rs.15322 and this was paid by the dealer.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--



**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Exemption allowed without production of F forms.
	(c)	Paragraph No.	2.12.12 (1,21,28,36,38)
	(d)	Report No. and Year	C&AG report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	<p>Interstate transfer of goods was exempted without production of F forms.</p> <p><u>Carborundon Chemical Ltd 2008-09</u>  Stock transfer (out): Rs.134239728  Short levy : Rs.54.87 lakh</p> <p><u>Bharati Airtel Ltd (2006-07)</u>  Stock transfer (out): Rs.171283989  Short levy : Rs.240.48 lakh</p> <p><u>Berger Paints (2008-09)</u>  Stock transfer (out): Rs.15885161  Short levy : Rs.64.93 lakh</p> <p><u>M/s Adani Wilmar Ltd (2007-08)</u>  Stock transfer (out): Rs.31537765  Short levy : Rs.42.76 lakh</p> <p><u>M/s Tolin Tyres (P) Ltd (2007-08)</u>  Stock transfer (out): Rs.4798376  Short levy : Rs.6.50 lakh.</p>
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>2.12.12 (1) <u>Carborundon Chemical Ltd (2008-09)</u> The assessee produced valid for F form declaration supporting the interstate stock transfer (out) for the entire amount of Rs.134239730.20. These are verified and found correct. Hence the exemption is in order.</p> <p>2.12.12 (21) <u>Bharati Airtel Ltd (2006-07)</u> The dealer filed F form but the same are not accepted in the absence of transport documents. Assessment was completed accordingly as per Order No.32070460645 dated 11.03.2014. RRC has been issued on 05.07.2014. The Hon'ble High Court has stayed the recovery vide Order No.WP(C) No.14473/2014 (H) dated 09.06.2014. Stay continuing.</p> <p>2.12.12 (28) <u>Ecoger Paints (2008-09)</u> Dealer filed F form declaration covering a turnover of Rs.14894423. The balance turnover was assessed @ 12.5 % creating additional demand of Rs.291955 as per assessment order dated 24.02.2014. The amount is pending for collection under RR.</p> <p>2.12.12 (36) <u>M/s Adani Wilmar Ltd (2007-08)</u> The assessee proved the entire turnover towards interstate stock transfer with documentary evidences and hence assessment was completed as a case of NIL demand.</p> <p>2.12.12 (38) <u>M/s Tolin Tyres (P) Ltd (2007-08)</u> The dealer filed 'F' forms for the turnover of interstate stock transfer conceded for Rs.4798376. The forms were verified and filed in the assessment records and the assessment was completed as per order dt: 15.06.2012 with 'NIL' demand.</p>
(b)	Recovery of overpayment pointed out by audit	

	(c)	Recovery of under assessment, short levy or other dues	--
	(d)	Modification in the schemes and programmes including financing pattern	--
	(c)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C&AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Exemption allowed without production of F forms.
	(c)	Paragraph No.	2.12.12 (4)
	(d)	Report No. and Year	C&AG report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	Verification of CST assessment file of an assessee reveals interstate stock transfer of goods exempted without production of F forms. M/s Coats India for the year 08-09) Stock transfer (out) : Rs.218545204 Short levy tax effect : Rs.87.41 lakh Interest : Rs.23.60 lakh Penalty : Rs.174.83 lakh Total : Rs.285.85 lakh
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	<u>M/s Coats India 32080270612/ 2008-09</u>  The assessee had already submitted the F form for Rs.21,80,52,052/- as stock transfer in the audit reports and returns. The figure shown in the audit objection i.e., Rs.21,85,45,204/- is not therefore found correct.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases/ complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Exemption allowed without production of F forms.
	(c)	Paragraph No.	
	(d)	Report No. and Year	2.12.12 (5) C&AG report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	Interstate transfer of goods was exempted without production of F forms. M/s.Hykon India (2008-09)  Stock transfer out Rs.22183760 Short levy Rs.59.84 lakh
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	<u>M/s. Hylcon India (2008-09)</u> Entire stock transfer amount of Rs.22183760/- is supported by valid F form declaration. Hence the exemption claimed by the dealer is in order and there is no short levy as observed in the audit.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Exemption allowed without production of F form
	(c)	Paragraph No.	2.12.12(9) Annexure-VI
	(d)	Report No. and Year	C&AG Report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	Interstate transfer of goods was exempted without production of F form. M/s.Biria Tyres (2007-08)  Stock transfer (out) : Rs.3341482 Short levy : Rs.12.43 lakh (including penalty)
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	



VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	<u>M/s Birla Tyres (2007-08)</u>  The assessee had submitted F form for the entire amount of Rs.3341482/-. So objection is cured.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Exemption allowed without production of F forms.
	(c)	Paragraph No.	2.12.12 (12,13,15)
	(d)	Report No. and Year	C&AG report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	<p>Verification of CST assessment file of an assessee reveals interstate stock transfer of goods exempted without production of F forms.</p> <ol style="list-style-type: none"> <li>1. M/s.Auto Cop (India) Pvt. Ltd. Stock transfer (out) : Rs.1656567 Short levy : Rs.7.01 lakh</li> <li>2. The Supreme Industries Ltd. Stock transfer (out) : Rs.1149734 Short levy : Rs.4.12 lakh</li> <li>3. M/s.Acro Club Stock transfer (out) : Rs.5991553 Short levy : Rs.25.38 lakh</li> </ol>
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>2.12.12 (12)  <u>M/s Auto cop India (P) Ltd 2007-08</u>  The assessee filed F forms for Rs.14,24,157/- F forms has not been furnished for Rs.232410/-. This turnover is assessed at higher rate with interest as per order No.32070218905/2007-08 dated 20.08.2014. The demand of Rs.79776/- was paid by the assessee as per DD No.057364 dt.17.09.2014)</p> <p>2.12.12 (13)  <u>M/s The Supreme Industries Ltd 2007-08</u>  Based on audit objection the assessment was completed on 29.03.2014. The assessee filed appeal before the Deputy Commissioner (Appeals) II Ernakulam and obtained conditional stay vide Order No.KVATA 1353/2014 dated 25.04.2014. As per the order, the assessee paid 1/3<sup>rd</sup> of demand, i.e. Rs.137377/-vide DD No.037088 dated 13.05.2014 of ICICI Bank.</p> <p>2.12.12 (15)  <u>M/s Agro Club 2007-08</u>  Dealer has filed F forms for interstate stock transfer for Rs.59,83,651/- The balance amount of Rs.7902/- was assessed to tax at higher rate and the assessee submitted DD for Rs.1749 on 20.08.2014.</p>
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complets scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Exemption allowed without production of F forms.
	(c)	Paragraph No.	2.12.12 (14)
	(d)	Report No. and Year	C&AG report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	<u>M/s. Johnson &amp; Johnsons Ltd (07-08)</u> Verification of CST assessment file of an assessee reveals interstate stock transfer of goods exempted without production of F forms. For stock transfer returned : Rs.36104896 Short levy : Tax : Rs.3533472 Interest: Rs.1378054 Penalty: Rs.7066944 Total : Rs.11978470
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p><u>M/s. Johnson &amp; Johnsons Ltd (07-08)</u>          Entire F forms produced were rejected as they were found to be defective and assessment was completed on 25.3.14 creating an additional demand of Rs.6308101 and interest of Rs.5235724. The assessee had filed appeal before DC(A), Ernakulam. DC(A) has granted conditional stay as per order KVATA No.1496/14 dt.14.5.14. As per stay order assessee remitted (30% of disputed amount) Rs.3463148/- vide ch.No.163/7.6.14. Balance amount is under RR. The appeal is still pending.</p>
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Exemption allowed without production of F forms
	(c)	Paragraph No.	2.12.12 (19,20)
	(d)	Report No. and Year	C&AG report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	<p>Interstate transfer of goods was exempted without production of F forms. M/s.Bharathi Airtel Ltd. for the year 2007-08 and 08-09.</p> <p>Short levy :  2008-09 ; Tax effect : Rs.92.19 lakh</p> <p>Stock transfer (out) : Rs.230476070  Interest : Rs. 24.89 lakh  Penalty : Rs. 184.38 lakh  Total : Rs. 301.46 lakh</p> <p>2007-08  Stock transfer (out) : Rs.132133347  Short levy : Rs.179.17 lakh</p>
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	<u>Bharati Airtel Ltd (2007-08 &amp; 2008-09)</u>  The dealer had filed valid 'F' forms and transport documents for the entire claim of exemption. Assessment was completed accordingly as per Order No.32070460645/2007-08 & 2008-09 dated 29.09.2014.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Exemption allowed without production of F forms.
	(c)	Paragraph No.	2.12.12 (29,34)
	(d)	Report No. and Year	C&AG report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	<p><u>M/s. Phillips Carbon Black 07-08 &amp; 08-09</u></p> <p>Verification of CST assessment file reveals that interstate transfer of goods was exempted without production of F forms.</p> <p>2007-08: Stock transfer out: Rs.136759238 Short levy: Rs.462.99 lakh</p> <p>2008-09: Stock transfer out: Rs.353972516 Short levy: Rs.185.44 lakh</p>
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	



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## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p><u>Philips Carbon Black 2007-08 &amp; 2008-09</u></p> <p>Short levy pointed out by the AG was for non production of F forms for Rs.136789238 for the year 07-08 and Rs.353972516 for the year 08-09. But the books of accounts revealed stock transfer to the tune of Rs.139548483 and Rs.354818077 respectively for 07-08 &amp; 08-09. Of this, the dealer produced entire F form for the year 07-08 and assessment was completed as per order dt.24.10.14 as "Nil" demand against stock transfer. But for the year 08-09 assessed produced F form for turnover Rs.353972259 only. Balance turnover not covered by F form (Rs.545818) was assessed to tax of Rs.47366 and interest Rs.42629. Since the short levy is set right, the audit objection may be dropped.</p>
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complets scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Exemption allowed without production of F forms
	(c)	Paragraph No.	2.12.12 (31,37)
	(d)	Report No. and Year	C&AG report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	Verification of CST assessment file reveals interstate transfer of goods was exempted without production of F forms. M/s L'Oreal India Pvt Ltd (2007-08 & 2008-09)  Stock transfer (out) 07-08: Rs.1950917 Short levy : Rs.8.26 lakh Stock transfer (out) 08-09: Rs.2505302 Short levy : Rs.10.24 lakh
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

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**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	<u>M/s L'Oréal India Pvt Ltd (2007-08 &amp; 2008-09)</u> CST assessment for the year 2007-08 and 2008-09 were completed and dealer has produced 'F' Form declaration for the entire claim of exemption for both the years. So there is not short levy.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern.	--
(e)	Review of similar cases/complets scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Exemption allowed without production of F forms
	(c)	Paragraph No.	2.12.12 (32)
	(d)	Report No. and Year	C&AG report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	Verification of CST assessment file reveals interstate transfer of goods was exempted without production of F forms. M/s Merchem Ltd (2807-08).  Stock transfer (out) : Rs.288746915 Short levy : Rs.391.54 lakh
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	<u>M/s Merchem Ltd (2007-08)</u> CST assessment for the year 2007-08 was completed as per order dt.15.03.2013. Dealer has produced Form F for the entire interstate stock transfer (out) for the claim of exemption valued to Rs.288746915. So there is not short levy.
(b)	Recovery of overpayment pointed out by audit.	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Exemption allowed without production of F forms
	(c)	Paragraph No.	2.12.12 (33)
	(d)	Report No. and Year	C&AG report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para./Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	Verification of CST assessment file reveals interstate transfer of goods was exempted without production of F forms. M/s Hindustan Lever Ltd (2007-08).  Stock transfer (out) : Rs.73962506 Short levy : Rs.313.41 lakh
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

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**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	<u>M/s Hindustan Lever Ltd (2007-08)</u> CST assessment for the year 2007-08 was completed as per order dtd. 03.05.2013. The dealer has filed Form F declaration for the entire interstate stock transfer out, valued to Rs.73962506. Hence exemption claimed was genuine and allowed. So there is no short levy.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Exemption allowed without production of F forms
	(c)	Paragraph No.	2.12.12 (35)
	(d)	Report No. and Year	C&AG report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review.	<u>M/s. Philips Electronics India Ltd (07-08)</u> AG observed that interstate transfer of goods was exempted without production of F form.  Stock transfer (out) : Rs.132853176 Short levy : Rs.4.90 crore (including penalty)
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	



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**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	<p><b>M/s. Philips Electronics India Ltd (07-08)</b></p> <p>The assessee has produced F form for Rs.65605846. Of this, F form for an amount of Rs.29159172 were found defective and hence rejected. Assessment was completed vide order No.32150215575/07-08 dt.30.10.14 creating an addl. demand of Rs.14872471 towards tax and interest.</p>
(b)	Recovery of overpayment pointed out by audit	---
(c)	Recovery of under assessment, short levy or other dues.	---
(d)	Modification in the schemes and programmes including financing pattern	---
(e)	Review of similar cases/completes scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	---

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Exemption allowed without production of F forms.
	(c)	Paragraph No.	2.12.12 (39,40,41)
	(d)	Report No. and Year	CS&AG report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para./Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	<p>Interstate transfer of goods was exempted without production of F forms.</p> <p><u>Sona Trading Company 2007-08</u>            Stock transfer (out) : Rs.7407000            Short levy : Rs.10.04 lakh</p> <p><u>Maha raja Industries 2007-08</u>            Stock transfer (out) : Rs.34972405            Short levy : Rs.47.72 lakh</p> <p><u>M/s K.O.Kohra &amp; Co 2007-08</u>            Stock transfer (out) : Rs.14669017            Short levy : Rs.19.89lakh</p>
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary.	

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## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p><u>Sona Trading Company 2007-08</u> Dealer filed F form for the entire amount of interstate stock transfer (out). Accordingly CST assessment was completed for the year 2007-08.</p> <p><u>Maharaja Industries 2007-08</u> During the period 2007-08 the dealer had effected consignment sales for Rs.3,49,72,405/- and claimed exemptions. The dealer filed 'F' form for the entire turnover of consignment sales for the proof. This was verified and assessment completed accordingly.</p> <p><u>M/s K. O. Kohra &amp; Co 2007-08</u> CST assessment in respect the dealer for the year 2007-08 was completed. F form declaration was filed for the entire claim of exemption. There is no short levy.</p>
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	---
(d)	Modification in the schemes and programmes including financing pattern	---
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	---

**Action taken Notes on C& AG's Reports**

(a)	Department	COMMERCIAL TAXES
(b)	Subject/Title of the Review Paragraph	Exemption allowed without production of F form
(c)	Paragraph No.	2.12.12(50) Annexure-VI
(d)	Report No. and Year	C&AG Report for the year ended 31.03.2011
(a)	Date of receipt of the Draft Para/Review in the Department	
(b)	Date of Department's Reply	
	Gist of Paragraph/ Review	Interstate transfer of goods was exempted without production of F form. M/s.Das Net works Ltd (2008-09)  Stock transfer (out) : Rs.3290262 Short levy tax effect: Rs.1.31 lakh Interest : Rs.0.35 lakh Penalty : Rs.2.63 lakh Total : Rs.4.30 lakh
(a)	Does the Department agree with the facts and figures included in the paragraph?	
(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
(a)	Does the Department agree with the Audit conclusions?	
(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

	(a)	Improvement in system and procedures, including internal controls.	<u>M/s. Das Net works Ltd (2008-09)</u>  The audit objection is sustainable. The assessment was completed on the basis of audit enquiry as per order No.3207/1312484/08-09 dtd.15.3.14 and addl. demand created Rs.159920/- (tax Rs.99950+ int.Rs.59970) RRC issued to the District Collector as per RRC No.RR/14/663b/T.
	(b)	Recovery of overpayment pointed out by audit	
	(c)	Recovery of under assessment, short levy or other dues	
	(d)	Modification in the schemes and programmes including financing pattern	
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Exemption allowed without production of F form.
	(c)	Paragraph No.	2.12.12(51) Annexure-VI
	(d)	Report No. and Year	C&AG Report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	Interstate transfer of goods was exempted without production of F form.  M/s.P.John Zacharia & Co. (P) Ltd. (2006-07)  Stock transfer (out) Rs.23035515 Short levy tax effect : Rs.23.03 lakh Interest : Rs.11.74 lakh Penalty : Rs.46.07 lakh Total : Rs.80.85 lakh
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

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**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	M/s.P.John Zacharia & Co. (P) Ltd. (2006-07)  Assessee filed valid F form for the entire turnover of stock transfer valued to Rs.23035515. Assessment completed on 13.3.14.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Concession allowed on defective C Forms
	(c)	Paragraph No.	2.12.13 (1,2,3,4&5)
	(d)	Report No. and Year	C&AG report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	The observation of AG is that defective C form is considered and concessional rate of 4% is allowed by finalizing the assessment for the years 2000-01 to 2004-05. The defective pointed out in Audit is that C form is duplicate not dated and issued to IOC, Chennai. Short levy pointed out by the AG was Rs.19.83 crore, Rs.20.83 crore, Rs.27.82 crore, Rs.30.79 crore and Rs.35.19 crore respectively for the years 2000-01 to 2004-05 including penalty.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	



## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>The audit observation was examined in the light of assessment records for the year 2000-01 to 04-05. It is noted that the statutory forms produced for the sale of HSD by M/s. Southern Railway, Chennai were not C form but D form.</p> <p>IOC, Kochi is having its administrative office at Chennai. The books of accounts pertaining to Kochi unit of IOC are maintained and consolidated there. Each and every statement pertaining to the business activities of the IOC, Kochi is received from Chennai. So also, in the case of M/s. Southern Railway, the administrative office is located at Chennai. The purchase order for HSD from IOC was actually placed by Southern Railway, Chennai before the IOC, Chennai. Pursuant to this, IOC, Chennai had directed IOC, Kochi to effect the transfer materials from Kochi unit of IOC. Since the order was placed before IOC, Chennai, naturally the D form was placed before them by the Southern Railway. This is reason why the D form was addressed to IOC, Chennai.</p> <p>Regarding the other defect, namely, the D form is not dated and the declaration issued is the duplicate copy of D form, it may be noted that vital information required are available in the D form. The invoices no. and date, name of commodity, tax amount, total value etc. are clearly mentioned in D form. The declarations are authenticated by the responsible officer of Southern Railway, Chennai. The audit has not made a case that the goods did not move outside the state.</p> <p>The defect pointed out by audit is only technical and can be cured. There is a number of court directions that declaration having defects may not be rejected but returned to the assessee for the correction.</p> <p>Some of the citations against rejection of defective declaration forms of various High Courts are cited below:</p> <ol style="list-style-type: none"> <li>1. M/s. Karnataka Dairy Development Corporation Vs. Commissioner of Commercial Taxes (1992/87-STC321[Kar].</li> <li>2. Deputy Commissioner Vs. Manohar and Brothers (1962) 13 STC 686(Madras).</li> <li>3. State of Orissa Vs. Orissa Polish works (1970) 26 STC 480(Orissa).</li> </ol> <p>Short levy worked out by the AG is inclusive of penalty. Penalty is not automatic and that it will be attracted only if there is a conscious attempt on the part of the defaulter to defraud the revenue. Imposition of penalty may not be justified unless and until the offence in this regard is established beyond reasonable doubt.</p>
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		<p>The above position is supported by so many decisions of various High Courts. Some of them are cited below.</p> <ol style="list-style-type: none"> <li>1. M/s.Karthic Electric Controls Vs. CTO, Coimbatore 15 VST 450 of Madras High Court.</li> <li>2. State of Madras Vs. Radio and Electricals Ltd 18-STC 222 SC</li> <li>3. Agfa Gavent India Ltd. Vs. Sate of Tamil Nadu (2001) 123 STC 108(Madras)</li> <li>4. Hindustan Steel Ltd Vs.State of Orissa (1970) 25 ST 211 SC</li> </ol> <p>In the light of the above citations action is being taken by the assessing authority to get the corrected D Forms.</p>
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Concession allowed on defective C Forms
	(c)	Paragraph No.	2.12.13 (6,7,8,9 & 10))
	(d)	Report No. and Year	C&AG report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	The audit observation is that defective C form is considered and concessional rate of 4% is allowed while finalizing the assessment for the years 2000-01,01-02, 2000-01, 02-03 and 03-04 in respect of M/s.BPCL Kochi. The defective pointed out in audit is that C form is duplicate not dated and issued to BPCL, Chennai as against to the assessee, M/s.BPCL, Kochi. Short levy pointed out by the AG is Rs.16.15 crore, Rs.11.00 crore, Rs.9.11 crore, Rs.25.07 crore and Rs.25.98 crore respectively for 2000-01, 01-02, 01-02, 02-03 and 03-04.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>The audit observation was examined with reference of assessment records. It is noted that the statutory forms obtained for the sale of HSD to M/a.Southern Railway, Chennai were not C form but D form.</p> <p>The Administrative officers of BPCL is at Chennai and Bangalore. Books of accounts pertaining to Kochi unit of BPCL are prepared and consolidated at Chennai. Each and every statement relating to the business activities of BPCL, Kochi received from there. The purchase belonging to the State of Karnataka placed their orders before the BPCL, Bangalore and the purchase belonging to Tamil Nadu State had submitted their purchase order before the BPCL, Chennai. Naturally the D form were submitted before the BPCL, Chennai and Bangalore (through the transfer) of materials were effected from BPCL, Kochi unit.</p> <p>This is the reason why the D forms were addressed to the BPCL, Chennai and Bangalore. Regarding the supply of HSD to Tamil Nadu the purchaser was M/a.Southern Railway, Chennai and regarding the supply of HSD to Karnataka the purchasers are various Govt. departments in the state of Karnataka.</p> <p>With respect to other defects, namely, the D forms is not dated the declaration issued are duplicate and the annexure is signed by the assessee company themselves. It may be noted that vital informations required are available in the D form. The invoices no. and date name of commodity, total value etc. are clearly mentioned in the D form. The audit has not made a case that the goods did not move out side the state.</p> <p>The defect pointed out by audit is only technical and can be cured. There is a number of court directions that declaration having defects may not be rejected but returned to the assessee for the correction and get it corrected.</p> <p>Some of the citations against the rejection of defective declaration forms of various High Courts are cited below:</p> <ol style="list-style-type: none"> <li>1. M/a.Karnataka Dairy Development Corporation Vs. Commissioner of Commercial Taxes [1992/87 STC321(Kar)].</li> <li>2. Deputy Commissioner Vs. Manohar and Brothers [1962] 13 STC 686(Madras).</li> <li>3. State of Orissa Vs. Orissa Polish works (1970) 26 STC 480(Orissa).</li> </ol>
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			<p>Short levy worked out by the AG is inclusive of penalty. Penalty is not automatic and that it will be attracted only if there is a conscious attempt on the part of the defaulter to defy the revenue. Imposition of penalty may not be justified unless and until the offence in this regard is established beyond reasonable doubt. The above position is supported by so many decisions of various High Courts. Some of them are cited below.</p> <ol style="list-style-type: none"> <li>1. M/s.Karthic Electric Controls Vs. CTO, Coimbatore 15 VST 450 of Madras High Court.</li> <li>2. State of Madras Vs. Radio and Electricals Ltd 18 STC 222 SC</li> <li>3. Agfa Gavert India Ltd. Vs. State of Tamil Nadu (2001) 123 STC 108(Madras)</li> <li>4. Hindustan Steel Ltd Vs.State of Orissa (1970) 25 ST 211 SC</li> </ol> <p>In the light of the above citations, action is being taken by the assessing authority to get the corrected D Forms.</p>
	(b)	Recovery of overpayment pointed out by audit	
	(c)	Recovery of under assessment, short levy or other dues	
	(d)	Modification in the schemes and programmes including financing pattern	
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Concession allowed on defective C Forms
	(c)	Paragraph No.	2.12.13 (11)
	(d)	Report No. and Year	C&AG report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	The objection is that the C form No.TCC 108553 issued by M/s.S.Kumar, Nationwide Ltd., Mysore for the purchase of furnace oil for Rs.63466433 is defective. The defect pointed out is that the purchasing dealer got registration in CST Act is w.e.f. 30.9.02 (CST No.2045287-1)whereas the transaction covered in the declaration includes purchase effected prior to 30.9.02 amounting to Rs.33745947. Hence interstate sale of furnace oil to S.Kumar prior to 30.9.02 amounting to Rs.33745947 cannot be considered as sale to registered dealer under sec.8(1) (b) of CST Act and therefore concessional rate of tax at 4% against C form is not allowable. The short levy worked out by AG is Rs.3.85 crore including penalty.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>CST Registration is compulsory in the case of all dealers liable to pay tax under the CST Act. An application for registration under sub sec.(1) of sec.7 shall be made not later than 30 days from the date on which the dealer becomes liable to pay tax under the Act. Registration may be taken in the case of a dealer liable to pay tax under the Sales Tax Act of the appropriate state even if he is not liable to pay tax under the CST Act. In the case of M/s.Rajadhani Waste Cotton Agency Vs. Commissioner of Sales Tax (1991) 83 STC (530) Delhi, the court held that certificate of registration takes effect from the date of application or from the date on which liability to pay sales tax is incurred whichever is later and not from the date of issue of certificate. The certificate though granted later, would relate back to that date. It is not correct to say that the certificate of registration take effect only from the date of its issue.</p> <p>In the case of M/s. Commissioner of Sales Tax Vs. Gopal Das Khotmji Trading Company 46 STC 60(MP) the Court held that a dealer to whom registration was granted, with effect from the date of application must be treated as a registered dealer possessing a registration certificate. All sales made to him from the date of applications are to be treated as sales made to a registered dealer.</p> <p>Hence in the present case, though the effective date of CST Registration mentioned in the seal affixed on the C forms furnished by S.Kumar was 30.9.02, the date of application was prior to that date in view of the above citation, the dealer is eligible for the purchase made prior to the date of registration and issue of C form. There is no infirmity in allowing the C form purchase in view of spirit of the court decision.</p> <p>In the audit enquiry penalty has not been brought to notice. But in the statement now attached penalty amounting Rs.20585028 is included. Penalty is not leviable in this case, since the dealer has filed the 'C' Forms.</p> <p>On a detailed examination of assessment records, it is found that, there is no evidence for the claim of purchases made in between the date of application for registration and the date of obtaining of registration. Also, it is not ascertainable from the records that the date of registration in the seal</p>
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			affixed is whether the date related to issue of registration certificate or the effective date of registration. In the absence of evidences, the AC (Assmt.), Spl.Cle-II, EkM has been directed to revise the assessment based on audit observation and to report the result within 15 days.
	(b)	Recovery of overpayment pointed out by audit	
	(c)	Recovery of under assessment, short levy or other dues	
	(d)	Modification in the schemes and programmes including financing pattern	
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	



**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Concession allowed on defective C Forms
	(c)	Paragraph No.	2.12.13 (12)
	(d)	Report No. and Year	C&AG report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	The objection is that the C form No.mmo 10326 issued by M/s.GE India Technologies Centre Pvt. Ltd., Bangalore for the purchase of LSHS is defective. The defect pointed out is that the purchasing dealer got registration under CST Act w.e.f. 9.3.04 only, and hence C form declaration purchase effected amounting to Rs.37593345 was effected prior to 9.3.04 cannot be considered as sale to registered dealer under sec.8(1) (b) of CST Act and therefore concessional rate of tax at 4% against C form is not allowable. The short levy worked out by AG is Rs.4.30 crore including penalty.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>CST Registration is compulsory in the case of all dealers liable to pay tax under the CST Act. An application for registration under sub sec.(1) of sec.7 shall be made not later than 30 days from the date on which the dealer becomes liable to pay tax under the Act. Registration may be taken in the case of a dealer liable to pay tax under the sales tax law of the appropriate state even if he is not liable to pay tax under the CST Act. In the case of <i>M/s.Rajadham Waste Cotton Agency Vs. (1991) 83 STC (530) Delhi</i>, the court held that certificate of registration takes effect from the date of application or from the date on which liability to pay sales tax is incurred whichever is later and not from the date of issue of certificate. The certificate though granted later, would relate back to that date. It is not correct to say that the certificate of registration take effect only from the date of its issue.</p> <p>In the case of <i>Commissioner of Sales Tax Vs. Gopal Das Khenji Trading Company 46 STC 60(MP)</i> the Court held that a dealer to whom registration was granted with effect from the date of application must be treated as a registered dealer possessing a registration certificate. All sales made to him from the date of application are to be treated as sales made to a registered dealer.</p> <p>Hence in the present case, though the effective date of CST Registration mentioned in the seal affixed on the C forms furnished by <i>M/s.GE India Technologies Centre Pvt. Ltd., Bangalore</i> was 9.3.04, the date of application was prior to that date in view of the above citation, the dealer is eligible for the purchase made prior to the date of registration and issue of C form. There is no infirmity in allowing the C form purchase in view of spirit of the court decision.</p> <p>In the audit enquiry, penalty was not brought to notice. But in the annexure now enclosed, penalty amounting to Rs.22931940 is included. Since the dealer has furnished C Forms, penalty is not leviable in this case.</p> <p>On a detailed examination of assessment records, it is found that, there is no evidence for the claim of purchases made in between the date of application for registration and the date of obtaining of registration. Also, it is not ascertainable from the records that the date of registration in the seal affixed is whether the date related to issue of registration certificate or the effective date of registration. In the absence of evidences, the AC (Assmt.), Spl.Cie-II, Elkm</p>
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			has been directed to redo the assessment based on audit observation and to report the result within 15 days.
	(b)	Recovery of overpayment pointed out by audit	
	(c)	Recovery of under assessment, short levy or other dues	
	(d)	Modification in the schemes and programmes including financing pattern	
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Concession allowed on defective C Forms
	(c)	Paragraph No.	2.12.13 (13)
	(d)	Report No. and Year	C&AG report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	The objection is that the C form filed by dealers as M/s. Iswarya Petroleum, Mahe and Subhyathra Fuels, Mahe for the year 04-05 were effected purchase prior to CST Registration under CST Act. The amount of purchase prior to CST Registration date is Rs.15.97 lakh. The short levy worked out is Rs.12.89 lakhs.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

(a)	Improvement in system and procedures, including internal controls.	<p>CST Registration is compulsory in the case of all dealers liable to pay tax under the CST Act. An application of registration under sub sec.(1) of sec.7 shall be made not later than 30 days from the date on which the dealer becomes liable to pay tax under the Act. Registration may be taken in the case of a dealer liable to pay tax under the sales tax of the appropriate state even if he is not liable to pay tax under the CST Act. In the case of <i>M/s.Rajadhard Waste Cotton Agency Vs. (1991) 83 STC (530) Delhi</i>. The court held that certificate of registration take effect from the date of application or from the date on which liability to pay sales tax is incurred whichever is later and not from the date of issue of certificate. The certificate though granted later, would relate back to that date. It is not correct to say that the certificate of registration take effect only from the date of its issue.</p> <p>In the case of <i>Commissioner of Sales Tax Vs. Gopal Das Khejni Trading Company 46 STC 60(MP)</i> the Court held that a dealer to whom registration was granted with effect from the date of application must be treated as a registered dealer possessing a registration certificate. All sales made to him from the date of application are to be treated as sales made to a registered dealer.</p> <p>Hence in the present case, though the effective date of CST Registration mentioned in the seal affixed on the C forms furnished by Iswarya Petroleum (Mahc), Subhyatara Fuels (Mahc) was subsequent to the date of purchase date but the date of application was prior to that date then in view of the above citation the dealer is eligible for the concessional rate in support of C Form. There is no infirmity in allowing the C form purchase in view of spirit of the court decision.</p> <p>In the audit enquiry, penalty was not brought to notice. But in the annexure now enclosed, penalty amounting to Rs.687978 is included. Since the dealer has furnished C Forms penalty is not leviable in this case.</p> <p>On a detailed scrutiny of assessment records, it is found that there is no evidence for the claim of purchases made in between the date of application for registration and the date of obtaining of registration. Also, it is not ascertainable from the records that the date of registration in the seal affixed is whether the date related to issue of registration certificate or the effective date of registration. In the absence of evidences, the AC (Assmt). Spl.Ce-II,Elom has been</p>
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		directed to redo the assessment based on audit observation and to report the result within 15 days.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases / complete scheme / project in the light of findings of sample check by Audit findings of sample check by Audit	

**Action taken Notes on C& AG's Reports**

	(a) Department	COMMERCIAL TAXES
	(b) Subject/Title of the Review Paragraph	Concessions allowed on defective C forms
	(c) Paragraph No.	2.12.13(14)
	(d) Report No. and Year	C&AG Report for the year ended 31.03.2011
II	(a) Date of receipt of the Draft Para./Review in the Department	
	(b) Date of Department's Reply	
III	Dist of Paragraph/Review	It was observed in audit that sales of Bitumen for Rs.26299037/- in respect of M/s.BPCL for the year 03-04 to various Govt departments in Karnataka at 4% against C form which is defective and irregular. The short levy worked out is Rs.79.93 lakhs including interest.
IV	(a) Does the Department agree with the facts and figures included in the paragraph?	
	(b) If not, Please indicate areas of disagreement and also attach copies of relevant documents in support.	
V	(a) Does the Department agree with the Audit conclusions?	
	(b) If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	<p>The defects pointed out by AG is that though purchases were made from M/s.BPCL, Cochin, C Form declarations are seen issued to M/s.BPCL, Bangalore. Further, the annexure enclosed showing the details of invoices are signed by M/s.BPCL, Chennai instead of to be signed by the purchasers in Karnataka State.</p> <p>This case is examined in detail. First of all, the declaration forms stated as defective by the audit are not 'C' Forms but 'D' Forms. The D forms are seen furnished by the following department officials of the Govt. of Karnataka against supply of Bitumen for Govt. purposes.</p> <ol style="list-style-type: none"> <li>1. The Chief Executive Officer, Zilla Panchayat, Dhorrwad.</li> <li>2. Deputy Director, Karnataka Land Army Corporn. Ltd., Bagalkot, Karnataka.</li> <li>3. The Chief Executive Officer, Zilla Panchyath, Karwar.</li> <li>4. The Chief Executive Officer, Zilla Panchayath, Gadag.</li> <li>5. The Deputy Director, KLAC, Raichur.</li> <li>6. The Deputy Director, KLAC, Mysore.</li> </ol> <p>The D forms are furnished by Govt. officials such as the Chief Executive Officer of Zilla Panchayath and Deputy Director of KLAC. There is no need of rejecting the D form filed by Govt. departments. All the D declarations are signed by responsible officers. The enclosure contains invoice No. and date, name of commodity, quantity received, tax, value of goods etc. The defects pointed out by audit is only technical and can be cured. There are a number of court decisions that declarations having defects may not be rejected but returned back to the assessee for correction and get it corrected.</p> <p>Some of the citations against rejection of defective declarations are given below.</p> <ol style="list-style-type: none"> <li>1. M/s.Karnataka Dairy Development Corporation Vs. Commissioner of Commercial Taxes [1992] 87 STC 321 (Karnataka)</li> </ol>
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		<p>2. Deputy Commissioner Vs. Manohar and Brothers (1962) 13 STC 656 (Madras)</p> <p>3. State of Orissa Vs. Orissa Polish Works (1970) 28 STC 480 (Orissa)</p> <p>In the light of the above circumstance, the AC(Assmt.), Spl.Cle-II, Ernakulam has been directed to inform as to whether the defective D Forms are rectified and resubmitted by this time. Otherwise, the AC is directed to initiate urgent action to complete the assessment afresh after considering audit observation and to furnish the report within 15 days.</p>
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Concessions allowed on defective C forms
	(c)	Paragraph No.	2.12.13(15)
	(d)	Report No. and Year	C&AG Report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	It was observed in audit that sales of Bitumen for Rs.1714072/- of Divisional Engineer (H&RW), Tuticorin in respect of M/s.BPCL, Kochi for the year 01-02 against C form is not allowable. The C form is defective and is silent about to whom issued. Short levy is worked out Rs.19.60 lakhs including penalty.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>The defects pointed out by AG is that sales of Bitumen for Rs.1714072 to the Divisional Engineer (H&amp;RW), Tuticorin from M/s.BPCL, Kochi for the year 01-02 against C form is defective. The form is silent about to whom issued.</p> <p>The case is examined with reference to the assessment records. The declaration form stated to have been effective is not C Forms but D Forms. D form is seen furnished by the Divisional Engineer (H&amp;RW), Tuticorin. This is an unit of Tamil Nadu Govt. and authority signed on the D form is a Govt. official. The enclosure contains invoice No. and date, name of commodity, quantity tax amount and value etc.</p> <p>The defects pointed out by AG is only technical and can be cured. There are a number of court decisions that defective declarations may be not be rejected but returned back to the assessee for rectification and resubmitting.</p> <p>Some of the citations made by various court in the above lines are given below.</p> <ol style="list-style-type: none"> <li>1. M/s.Karnataka Dairy Development Corporation Vs. Commissioner of Commercial Taxes (1992) 87 STC 321 (Karnataka)</li> <li>2. Deputy Commissioner Vs. Manohar and Brothers (1962) 13 STC 656 (Madras)</li> <li>3. State of Orissa Vs. Orissa Polish Works (1970) 28 STC 480 (Orissa)</li> </ol> <p>In the light of the facts and circumstances stated above, action is being taken to rectify the defects in the D form submitted by M/s.BPCL, Kochi.</p>
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme, project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C&AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Concession allowed on defective C Forms
	(c)	Paragraph No.	2.12.13 (16)
	(d)	Report No. and Year	C&AG report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	The audit objection is that the exempted turnover of Rs.25031050 related to interstate sales of speed governors, The sales were effected to United Group Bangalore, and C Forms filed on support of the sales to claim concessional rate of 3 %. But the CST registration number and the date of registration are not noted in the forms. In the absence of details of registration the turnover was assessable @ 12.5 % under Section 8(2)(b) of the CST Act. Differential tax @ 9.5 % amounted to RS.23,77,960/-.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	The audit objection is not found sustainable on verification. M/s Cresol Technologies India Pvt. Ltd has produced C Forms to prove interstate sales effected by them for the year 2007-08. The registration details of the supplier M/s United group Bangalore has been verified in the TINXYS and on verification, it is found that the supplier M/s United Group Bangalore is having CST registration with TIN 29090756902 with effect from 22.05.2007. In the circumstances the C Forms produced by the dealer to prove concessional rate is not found defective and therefore no short levy of tax.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Exemption allowed on defective F forms
	(c)	Paragraph No.	2.12.14(1)
	(d)	Report No. and Year	C&AG Report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	In the case of M/s.Ashok Leyland Ltd., 2006-07 interstate transfer of goods was exempted on defective F forms in which transfer relating to more than one month was covered, corrections were made on invoices without authentication, transactions covering period beyond the validity of declaration etc. Short levy Rs : 43.45lakhs
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p><u>M/s Ashok Leyland Ltd., Ernakulam</u></p> <p>Audit objection is that the F form is defective since it covers the transaction of two months.</p> <p>On the basis of the above observation, the assessee furnished new F forms rectifying the mistake and on verification, it was found that the declarations are acceptable. In the light of the above, assessment was completed as per order No.32070200174/06-07 dtd.31.7.10.</p>
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Exemption allowed on defective F forms
	(c)	Paragraph No.	2.12.14(2)
	(d)	Report No. and Year	C&AG Report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	<u>Raikumar Impex (2007-08)</u> Interstate transfer of goods was exempted on defective F forms in which transfer relating to more than one month was covered, corrections were made on invoices without authentication, transactions covering period beyond the validity of declaration etc. Short levy Rs.: 14.25 crores
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	



VI

## Remedial action taken

	(a)	Improvement in system and procedures, including internal controls.	<p><u>Rajkumar Impex (2007-08)</u></p> <p>AG's objection is that out of interstate stock transfer (out) for Rs.1176650849/-, the dealer has submitted F form only for Rs.1051208974/- and the same cannot be accepted since it is filed after 3 months.</p> <p>The audit observation is not found sustainable for the following reasons.</p> <p>As per rule 12(7) of the Central Sales Tax [Registration and turnover] Rules 1957 as amended by Notification No.GSR 588(E) dtd.16.9.05 w.e.f. 1.10.05, a proviso was appended as follows.</p> <p>"provided that if the prescribed authority is satisfied that one person concerned was prevented by sufficient cause may allow such declaration as certificate to be furnished within such further time as that authority may permit." Besides the Rule 1B of CST (Ker) Rules 1957, prescribes that declaration forms in form C/F relating to any assessment may be produced before the assessing authority, at any time before the assessment for the year is made. Thus the time limit of 3 months can be extended by the assessing authority provided there should be sufficient cause.</p> <p>It is true that the Rules prescribe a time frame for furnishing statutory form. But, it may also be noted that as per Rule 12(7) of CST (R&amp;T) Rules the assessing authority is competent to condone the delay in filing of statutory forms. The delay in filing the same cannot by itself a reason to deny the reduced rates of the tax based at Forms which are available at the time of assessment. In a similar case, the Appellate Authority, Deputy Commissioner, Kollam directed the assessing authority to accept the statutory forms available in the records though it was filed belatedly (order no.KVATA 1013/11 dtd.19.10.2012).</p> <p>Hence audit objection is not found sustainable. Since the dealer failed to submit declaration for stock transfer amounting to Rs.12,54,41,875/- the assessment on this amount is completed at the higher rate of tax by the Asst.Commissioner, Special Circle,</p>
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			Kollam as per order No.32020260952/07-08 dtd.18.7.2014 creating an additional demand of Rs.50,17,675/- (tax) and Rs.38,13,433/- (interest). The demand is under RR before the District Collector, Kollam.
(b)	Recovery of overpayment pointed out by audit		
(c)	Recovery of under assessment, short levy or other dues	--	
(d)	Modification in the schemes and programmes including financing pattern	--	
(e)	Review of similar cases/complete schemes/project in the light of findings of sample check by Audit findings of sample check by Audit	--	

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Exemption allowed on defective F forms
	(c)	Paragraph No.	2.12.14(3)
	(d)	Report No. and Year	C&AG Report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	M/s. Videocon Industries (2007-08) interstate transfer of goods was exempted on defective F forms in which transfer relating to more than one month was covered, corrections were made on invoices without authentication, transactions covering period beyond the validity of declaration etc. Short levy Rs: 44.14 lakhs
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	<p><u>M/s. Videocon Industries (2007-08)</u></p> <p>The Accountant General has pointed out defects in 6 F forms furnished by M/s.Videocon Industries Ltd. for 2007-08.</p> <p>The matter was taken up with the Deputy Commissioner, Aurangabad who vide letter dtd.3.2.2011 have clarified that the forms were issued by Central Repository Cell, Aurangabad Division and the transactions were found correct. So audit objection is not sustainable.</p>
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	---
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Absence of systems to verify resale.
	(c)	Paragraph No.	2.12.15
	(d)	Report No. and Year	C&AG report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	In Spl.Ce-II, Ernakulam, an assessee had effected interstate stock transfer of HSD valued at Rs.58.48 crore and Rs.18.96 crore respectively for the years 04-05 & 05-06 out of the interstate purchase made by issuing declaration in Form C. AG is of the view that it is violation of sec.8 of CST Act and penalty u/s 10A of CST Act is to be levied. Short levy Rs. 2788.15 lakh. AG also recommended that the department may put in place a system to verify that resale had taken place where goods purchase against Form C are disposed outside the state.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support.	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>The audit observation of AG is that M/s. Reliance Petroleum Pvt. Ltd., Kochi had effected interstate stock transfer of HSD valued at Rs.58.48 crores and Rs.18.96 crore, respectively in the years 04-05 to 05-06, out of the interstate purchase made by issuing declaration in Form C.</p> <p>The audit observation was examined with reference to the assessment records and found that stock transfer of HSD outside the state under cover of F form out of purchase made with the support of C form is correct. The short levy (penalty u/s 10/10A of the CST Act) pointed out by the AG is not found sustainable in this case in view of the latest judgment of the Division Bench of the Hon'ble High Court of Kerala dtd.8.4.14 in the case of M/s. Savex Computer Ltd. reported in 2014-VII-159-KER. In the case it has been categorically held by the Hon'ble Division Bench that as far as the assessee is concerned, he is governed by the sec.8(3)(b) of the CST Act, which does not contain any fetter on his freedom to resell the goods even outside the state. Therefore, there is no violation attracting penalty provided u/s 10A.</p> <p>In the light of the above decision of the Division Bench of Hon'ble High Court of Kerala the short levy pointed out by AG is not sustainable.</p>
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Internal Control mechanism
	(c)	Paragraph No.	2.12.16 Annexure-VI
	(d)	Report No. and Year	C&AG Report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	<p>1. Even though instruction were issued by the department to allow concession/exemption only on production of valid declarations in Form C/F the assessing officers were allowing concession and exemption without production of C/F forms.</p> <p>2. The department has not issued any instructions regarding the checks to be carried out to spot bogus/obsolete and invalid declaration before accepting declaration for allowing concession/exemption.</p>
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>1. The defect pointed out by the AG is not correct. Audit was conducted in offices prior to the completion of CST assessment. Due to the changed procedure in assessment as a result of switchover from KGST to KVAT, there was a lagging on the part of assessing authority in completing the CST assessments. Pursuant to the audit, CST assessment relating to those periods were completed and created addl. demand disallowing the concession and exemption in the absence of C/F form.</p> <p>2. There is no permanent establishment to cross verify interstate movement as a matter of routine work. In the present scenario, teams are formed only for specific cases reported by the DC/ DC(I)s. The department has conducted interstate investigation on false declaration forms during VAT period in specific areas like cashew, plywood, pepper and arecanut and this has yielded considerable revenue to the department.</p> <p>Regarding action to preventing the use of bogus C/F forms, the department has mandated online downloading of statutory forms and have developed a centralized system of issuing statutory forms through online. TINKSYS is a nation wide centralized data base on statutory form issued by different states which can be used to cross verify the forms issued and received by different states. Necessary instructions were issued, by the department for proper inspection of C form and F form in the light of Circular No.1/2010 dtd:1.2.10 and also directions issued to the assessing authorities to periodically verify the tax performance of the dealers vis-à-vis the utilization of declarations forms issued.</p>
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--



	(e) Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	
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**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Conclusion
	(c)	Paragraph No.	2.12.17
	(d)	Report No. and Year	C&AG Report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	<ol style="list-style-type: none"> <li>1. The system of E-issue of declaration forms has been introduced which is a welcome step.</li> <li>2. Departmental instructions were not complied with by the assessment circles.</li> </ol>
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	Issue of e-statutory form was made mandatory from January 2010 onwards. The department had issued circular instruction vide circular No.1/10 dtd.1.2.10 containing the procedure for downloading and scrutiny of statutory declarations. In para 7 of the circular instruction, all the assessing authorities were directed to periodically verify the tax performance of the dealers vis-à-vis the utilization of declaration forms issued through this procedure. Production and correctness of utilization of the statutory forms are being verified by the controlling officers while approving the CST assessment orders/notices.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	-
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Recommendation
	(c)	Paragraph No.	2.12,18
	(d)	Report No. and Year	C&AG Report for the year ended 31.03,2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	<ol style="list-style-type: none"> <li>1. Issue instructions regarding the checks to be carried out before accepting declaration for allowing concession/exemption.</li> <li>2. Strengthen the internal control mechanism for the strict compliance of departmental instruction.</li> </ol>
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	—
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	<p>1) Newly appointed assessing officers are given training regarding the guidelines to scrutinize the declaration forms in such a way that the date from which the registration is valid, date of issue of C forms, name and address of the seller with the name of state, purchase order no. and date, purpose of goods, purchased for etc. The department had issued circular instructions vide Circular No.28/07 dt.21.7.07 by which it was directed that statutory forms in support of claim of exemption or reduction in tax rate shall be filed in a quarterly basis provided the return shall be scrutinized on a monthly basis.</p> <p>2) The Internal wing of the department consists of 1 DC, 3 ACs and 6 CTOs with its head quarters at Trivandrum. With the limited manpower, the internal audit wing has managed to conduct audit inspection in 60 units during the year 2013-14. As per order No.G.O.(MS) No.130/11/7D dtd.14.8.14. Govt. has decided to restore of audit assessment wing with a view to strengthen the process of audit as there is no possibility to extent the working of internal audit wing with the limited manpower now available.</p>
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

S DEEPA DEVI  
 Additional Secretary to Govt.  
 Taxes Dept., Govt. Secretariat

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Recommendation
	(c)	Paragraph No.	2.13
	(d)	Report No. and Year	C&AG Report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	There is need for the Govt. to improve the internal control system including strengthening of the internal audit to ensure that omissions are detected and rectified.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	The internal audit wing of the department consists of 1 DC, 3ACs and 6 CTOs with its headquarters at Trivandrum. With the limited manpower, the internal audit wing has managed to conduct audit inspection in 60 units during the year 2013-14. As per order No.G.O(MS)No.130/11/TD dtd.14.8.14. Govt. has decided to restore of audit assessment wing with a view to strengthen the process of audit as there is limitation to extent the working of internal audit wing with the limited manpower now available.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	-
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	-

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Non observance of provision of Act /Rules.
	(c)	Paragraph No.	2.14
	(d)	Report No. and Year	C&AG Report for the year ended 31.03.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	Assessing authorities while finalising the assessment did not observe some of the provision which resulted in non-short levy/ non-relation of tax/ interest penalty of Rs.85.03 crore as mentioned in the paragraphs 2.14.1 to 2.14.25.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	



VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	Findings of the AG is that assessing authorities while finalising the assessment did not observe some of the provisions. The observations on assessments in paras 2.14.1. to 2.14.16 are discussed separately.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases/project in the light of findings of sample check by Audit findings of sample check by Audit	

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to allowance of incorrect concession.
	(c)	Paragraph No.	2.14.1
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	19.4.11
	(b)	Date of Department's Reply	23.6.11
III		Gist of Paragraph/Review	Indian Oil Corporation assessed tax on sale of naphtha for Rs.18.84 crore during 05-06 and Rs.43.64 crore during 06-07 (upto June) to BSES Kerala Power Ltd. at concessional rate of 4% applicable to undertakings in joint sector. However, in the case of BSES Kerala Power Ltd. SEDCO was holding 13.68% equity shares and hence does not qualify as a Joint Sector undertaking as it did not meet the criteria specified by the Government of India. The application of incorrect rate of tax resulted in short remittance of tax and interest of Rs.7.78 crore (at differential rate of 8.5% on Rs.18.84 crore + Rs.43.64 crore).
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>The audit objection is that the Indian Oil Corporation assessed tax on sale of Napthiha for 18.84 crore during 2005-06 and 43.64 crore during 2006-07 to BSES Kerala Power Ltd at concessional rate of 4% applicable to undertakings in Joint Sector. However BSES Kerala Power Ltd does not qualify as a Joint Sector undertaking as it did not meet the equity ownership criteria specified by Government of India. The application of incorrect rate of tax resulted in short remittance of tax Rs.5.31 crore and interest of Rs.2.47 crore.</p> <p>Based on the audit objection, the assessment for the year 2005-06 was completed. Aggrieved by the above order, M/s. Indian Oil Corporation filed appeal before the Deputy Commissioner (Appeals) Ernakulam. While deciding the appeal the Deputy Commissioner (Appeals) held that Clause (ii) of SRO 319/2005 makes a reduction in the rate of tax payable under the Act that, on the turnover of sale of Petroleum products coming under serial number 1 of the schedule to the Act, for use in the generation and distribution of power, to Kerala State electricity Board, National Thermal Power Corporation and power generating Public Sector Undertakings in the Joint Sector with a capacity above 25 KW, from the rates specified against such goods in the schedule to the Act to four percent subject to the condition that the seller shall file a certificate in Annexure II issued by the purchaser.</p> <p>In the Indian context, industrial units are classified as Public sector-promoted exclusively by the State, Private sector-promoted exclusively by private individuals and joint sector promoted jointly by Public and private sectors. A detailed analysis of the notification reveal that it deals with only two categories of industrial units: (1) public sector industrial units and (2) joint sector industrial units. The public sector industrial units covered by the notification are Kerala State Electricity Board, and National Thermal Power Corporation. It is pertinent to note that industrial units in the private sector are clearly excluded from the ambit of the notification.</p> <p>As per the Electricity (supply) Act 1948, permission from the government is required to establish, operate and maintain Power Projects in Kerala. Other than units in the public sector, the Government of Kerala has accorded such permission to BSES and this is as per letter No.4245/B1/99/PD dated 30.4.1999. Moreover, the words used to provide similar type of reduction in the rate of tax on the sale of goods coming under the KGST Act for use in the generation of electricity is " the Power Generating</p>
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		<p>Undertakings in the Joint Sector". In the order No.STA-367/11/ dated 02-11-11 of the Deputy Commissioner (Appeals), Ernakulam, it has been observed that BSES is a joint sector undertaking which is eligible for concessional rate of tax @ 4%. The Hon'ble Sales Tax Appellate Tribunal, Additional Bench, Ernakulam while disposing the 2<sup>nd</sup> appeal, filed by the State in TA No.9/2012 dated 29.6.13 also held that since M/s.BSES has already fulfilled the requirements of the notification, denial of reduced rate of tax claimed by M/s.IOC is illegal and the assessing authority was directed to accept the certificates already filed by M/s.BSES and levy tax @ 4% only on the turnover of sales effected to BSES and supported by the prescribed certificates in the Annexure II to SRO.No.319/2005". In addition to the above, the Tribunal opined that the term "Joint Sector" is not defined in the KGST Act. It is true that BSES is neither exclusively a private sector undertaking nor exclusively public sector undertaking. If an undertaking is neither a private sector nor a public sector then it can only be an undertaking in the joint sector and no matter whatever be their ratio of share participation.</p> <p>In short, M/s. BSES Kerala Power Ltd. is a joint sector undertaking fulfilled the conditions subject to the notification and hence the sales turnover of petroleum products to the company M/s. IOC is eligible for reduced rate of 4%.</p>
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to non disallowance of IPT/special rebate on stock transfer
	(c)	Paragraph No.	2.14.2.1(1)
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	7.6.11
	(b)	Date of Department's Reply	22.2.2012
III		Gist of Paragraph/Review	During the scrutiny of records in the Office of the Assistant Commissioner (A), Spl. Circle I, Ernakulam it was noticed that 51.49 per cent of stock disposal of bullion and gold jewellery of a dealer M/s Joy Alukkas Traders (India) Ltd. during 2008-09 constituted interstate stock transfer which is not liable to tax. But the assessee availed ITC on the entire tax paid on purchase from registered dealers and did not assess purchase tax on local purchase of gold jewellery from unregistered dealers. Failure to limit ITC and special rebate on stock transfer turnover, to tax paid in excess of four per cent resulted in short levy of tax, cess and interest of Rs.5.41 crore.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes

	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	In the light of audit, assessment was revised on 20.12.2011 after analyzing the reply dtd. 24.9.2011 and further evidences produced by the assessee. Tax and Cess for Rs.2,57,02,126 and interest due there on Rs.97,66,808 was demanded - RRC was issued on 07.01.2012 for realization of the arrears. Tax and Cess with regard to the Accountant General's observation comes to Rs.2,03,18,207/- only. As per the RR proceedings, the assessee has paid Rs.70,00,000/- vide chalan no.108 dated 17.2.2012.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to non disallowance of IPT/special rebate on stock transfer
	(c)	Paragraph No.	2.14.2.1(2)
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	25.4.11
	(b)	Date of Department's Reply	5.1.2012
III		Gist of Paragraph/Review	While auditing the office of the Assistant Commissioner, Special Circle, Mattancherry the Accountant General has noticed that while finalizing the assessment of a manufacturer of Zinc ingots M/s. Binani Zinc Ltd. for the year 2007-08, the assessing authority assessed reverse tax based on the quantity of goods disposed instead of adopting proportionate turnover of stock transfer to total turnover of goods disposed. Hence, reverse tax was assessed as Rs. 37.94 lakh instead of Rs. 1.14 crore. This resulted in short levy of tax and interest of Rs. 97.85 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes



	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	The objections raised in the audit was found as sustainable. Hence, the assessment for the year 2007-08 was completed on 25-10-2011 under section 25(1) of the KVAT Act rectifying the defects raised by the Accountant General and demanding Rs. 1,56,75,196/- as tax and interest. The assessee had approached the Hon'ble High Court of Kerala against the said assessment and since certain mistakes had crept in while issuing the assessment order, the Hon'ble Court vide order in WPC)33371/11 dtd.16.12.11 has quashed the assessment order already made, with a direction to re-do the assessment afresh after granting an opportunity of being heard to the assessee. Fresh notice has been issued and the assessment is pending finalisation.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to non disallowance of IPT/special rebate on stock transfer
	(c)	Paragraph No.	2.14.2.1(3 & 4)
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para./Review in the Department	25.4.11
	(b)	Date of Department's Reply	30.3.2012
III		Gist of Paragraph/Review	In the office of the Assistant Commissioner, Special Circle, Malappuram the Accountant General noticed that 23.055 and 22.07% of the turnover of M/s.Aryavaidyasala, Kottakkal, Malappuram, an assessee engaged in the manufacture of ayurvedic medicine related to interstate stock transfer and sale to Special Economic Zone during the years 2007-08 and 2008-09. Assessee availed input tax credit and special rebate for the entire purchase without limiting input tax credit proportionate to exempted turnover to tax paid in excess of 3% during 07-08 and 4% during 08-09. This resulted in short levy of tax and interest of Rs.7.74 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No

	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	Section 11(3) restricts input tax credit on interstate stock transfer. However it specifically mentions that this restriction is not applicable to (1) inter state sales (2) Exports and (3) interstate sale exempted from payment of tax. The sale under Form (1) falls under the third category and hence not covered by third proviso of section 11(3) of the KVAT Act.
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p><u>2007-08</u> : As per audited statement filed for the year 07-08, the total sales turnover was Rs.1,10,84,56,795/- out of which stock transfer effected was Rs.21,43,07,187/-. These figures are net sales value (sales less trade discount). Hence the percentage of stock transfer to total sales was 19.33% (ie <math>214307187 \div 1108456798 \times 100</math>) But the Accountant General has taken the total sales turnover at Rs.1,15,05,93,646 (ie without considering trade discount) and the stock transfer value as Rs.25,36,74,679/- at gross value (ie without considering trade discount). The actual percentage to be calculated for reversing the percentage of stock transfer to total sale was 19.33% which the assessee has done. Hence there is no short fall in this case.</p> <p><u>2008-09</u> : As per the Audited statement filed for the year 08-09 the total sales turnover was Rs.1,19,74,40,934/- out of which Rs.23,70,42,427/- was stock transfer. These figures are net sales value (sales after discount). Hence the percentage of stock transfer to total sales was 19.8% (ie <math>237042427 \div 1197440934 \times 100</math>). But the Accountant General has taken the total sales turnover at Rs.1,22,59,12,839 (ie before considering trade discount) and the stock transfer for value as Rs.26,16,27,022/- is at gross value (ie before trade discount). The actual percentage to be calculated for reversing the percentage of stock transfer to total sales was 19.80% which the assessee has done. Hence there is no short fall in this case.</p> <p>As regards sales to Special Economic Zone, during the year 07-08 and 08-09 there is a sale of Rs.1,15,13,900/- and Rs.89,56,300/- under form 1 respectively.</p> <p>This sale is to a Unit in Special Economic Zone at Kandla in Gujarat State. When goods are sold under form 1 to a unit outside Kerala, it is an interstate sale exempted from payment of tax. According to third proviso to section 11(3) of the KVAT Act 2003 where any goods purchased in the state are subsequently sent to</p>
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			<p>out side the state or used in the manufacture of goods and the same are sent outside the state otherwise than by way of sale in the course of interstate trade or export or when the sale in the course of interstate trade is exempted from tax input tax credit under this section shall be limited to the amount of input tax paid (in excess of 4%) on the purchase turnover of such goods sent outside the state.</p> <p>This shows that section 11(3) restricts input tax credit on interstate stock transfer. However it specifically mentions that this restriction is not applicable to (1) interstate sale (2) Exports and (3) interstate sale exempted from payment of tax. Sale under form 1 falls under third category and hence not covered by the third proviso of section 11(3) of the Act. Hence there will be no short levy as pointed out in audit.</p>
	(b)	Recovery of overpayment pointed out by audit	
	(c)	Recovery of under assessment, short levy or other dues	
	(d)	Modification in the schemes and programmes including financing pattern	
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to non disallowance of IPT/special rebate on stock transfer.
	(c)	Paragraph No.	2.14.2.1(5)
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	7.4.11
	(b)	Date of Department's Reply	24.3.2012
III		Gist of Paragraph/Review	During the course of audit in Special Circle, Mattancherry at Aluva it is pointed out that M/s. Plumbers Choice Plastics (P) Ltd. has availed entire tax paid on purchase as input tax credit during the year 08-09. The dealer, a manufacturer of pipes and pipe fittings has transferred 14.81% of his products to other states. The assessing officer has not disallowed proportionate input tax credit and this resulted in short levy of tax of Rs. 5.67 Lakhs.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	Yes
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	Assessment revised u/s 25(1) of KVAT Act and demanding tax of Rs.7,55,886 and interest of Rs.2,87,237/-. The assessee is allowed, on request, to remit the demand in six instalments. The first instalment is remitted vide cheque no.060613 dtd 10.7.12 of SBT, Aluva for Rs.1,75,000/-.
(b)	Recovery of overpayment pointed out by audit.	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--



**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to non disallowance of IPT/special rebate on stock transfer.
	(c)	Paragraph No.	2.14.2.2(a)
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	19.4.11
	(b)	Date of Department's Reply	4.10.11
III		Gist of Paragraph/Review	In the office of the Assistant Commissioner, Special Circle, Kottarakkara it was noticed by the audit party that M/s.Kerala Latex Pvt. Ltd, Punalur a dealer in rubber latex, did not assess tax under Section 6(2) of KVAT Act 2003 on rubber purchased from unregistered dealers and sold interstate. The dealer sold 29.46 per cent of his turnover interstate during 2008-09 and input tax credit was not limited to tax paid in excess of four per cent on such sales. This resulted in short levy of tax and interest of Rs.6.24 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

	(a)	Improvement in system and procedures, including internal controls.	The assessment has been completed under section 25(1) of the KVAT Act vide order No.32020234435/08-09 dtd.13.9.10 after considering the contentions of the assessee which was supported with relevant records and evidences, and a demand of Rs.5,67,935/- has been created. The newly created demand has been recommended for revenue recovery and an amount of Rs.5,00,000/- has already been collected.
	(b)	Recovery of overpayment pointed out by audit	
	(c)	Recovery of under assessment, short levy or other dues	--
	(d)	Modification in the schemes and programmes including financing pattern	--
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to non disallowance of IPT/special rebate on stock transfer.
	(c)	Paragraph No.	2.14.2.2(b)
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	6.6.11
	(b)	Date of Department's Reply	12.8.11
III		Gist of Paragraph/Review	In the Commercial Tax Officer, Manjeri, M/s. Gem Treads Payyanad, a dealer in tread rubber sold 57.64 per cent of his total turnover interstate during 2008-09 and input tax credit was not limited to tax paid in excess of four per cent on such sales. This resulted in excess availment of input tax and interest of Rs. 3.11.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI.

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	M/s. Gem Treads, Payyanad, a registered dealer on the rolls of the Commercial Tax Officer, Manjeri bearing TIN 32100430274 disclosed a total turnover of Rs. 1,36,71,840.81 for the year 2008-09. The dealer purchased raw materials for Rs. 1,13,03,580.00 during the year and availed Rs. 4,60,152.54 as input tax. The dealer had reported an interstate sale of Rs. 78,80,086.00 and claimed exemption on the whole turnover. On being pointed out in the audit that the input tax credit was not limited to tax paid in excess of four percent, a notice under section 25(1) was issued to the dealer on 25.10.2010. The escaped assessment was completed on 15.11.2010 with an additional demand of Rs. 2,65,232 + 2652 cess with interest of Rs.45090/-. The dealer has filed appeal before the Deputy Commissioner (Appeals), Ernakulam. The appellate authority has disposed the stay petition as directed by the Hon'ble High Court and has granted conditional stay. The dealer has complied with the order by remitting the amount before the IAC, Manjeri in RRC No.56, 60/11.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to non disallowance of IPT/special rebate on stock transfer.
	(c)	Paragraph No.	2.14.2.3
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	24.3.11
	(b)	Date of Department's Reply	4.7.11
III		Gist of Paragraph/Review	In the office of the Asst. Commissioner, Special Circle, Malappuram, M/s. Arya Vaidyasala, Kottakkal, an assessee remitted (March 2010) input tax credit of Rs. 14.51 lakh and 21.79 lakh availed in excess during 2007-08 and 2008-09 respectively, without remitting the interest due. Further, the department failed to assess interest and appropriate the remittances first towards interest, which resulted in short levy of tax of Rs. 5.73 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	M/s. Aryavaidyasala, Kottakkal has remitted the interest due as under:			
		Year	Interest	Chalan No. Date	Name of Treasury
		2007-08	Rs. 3,33,673	708/18.08.2010	District Treasury, Malappuram.
		2008-09	Rs. 2,39,704	718/18.08.2010	-do
		Total	Rs. 5,73,377	--	--
(b)	Recovery of overpayment pointed out by audit				
(c)	Recovery of under assessment, short levy or other dues	--			
(d)	Modification in the schemes and programmes including financing pattern	--			
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--			

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.14.3.1(c)
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	18.4.11
	(b)	Date of Department's Reply	14.7.11
III		Gist of Paragraph/Review	Audit objection in this case is that Indian Bank an assessee on the rolls of 2 <sup>nd</sup> Circle, Ernakulam has effected sale of gold bars in small quantities of 20/50 gms for Rs.1.86 crore and paid tax at the rate of one percent applicable to bullions instead of 4%. This resulted in short levy of Rs.6.71 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	The assessing authority completed assessment under Section 25 of the KVAT Act raising additional demand of Rs.5,61,663/- and interest due from 4/09 onwards. The assessment order and the demand notice were served on the assessee. The assessee filed appeal No.KVATA 1755/2011 before the Deputy Commissioner (A), Ernakulam. As per the direction of the Deputy Commissioner (A), assessee paid Rs.2,34,022/- as per chalan No.291 dated 2.8.2011 (1/3 <sup>rd</sup> of disputed tax due as per the demand notice).
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--



**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.14.3.2
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/ Review in the Department	7.6.11
	(b)	Date of Department's Reply	2.8.11
III		Gist of Paragraph/ Review	In Asst. Commissioner, Spl. Circle, Thodupuzha, during scrutiny of records it was noticed that M/s. Cryptoms Confectioneries (I) Pvt. Limited a manufacturer of confectionery sweets under brand name 'Cryptoms' self assessed output tax on a sales turnover of confectionery of Rs. 8.23 crore during the years 2005-06, 2006-07 and 2007-08 at the rate of four per cent instead of at the correct rate of 12.5 per cent. This resulted in short levy of tax and interest of Rs. 84.50 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>M/s. Cryptom Confectioneries (India) Pvt. Ltd. is an assessee on the rolls of office of the Assistant Commissioner, Special Circle, Thodupuzha bearing TIN 32060405632, manufacturing and trading in confectionery sweet under brand name 'Cryptoms'. Tax levied on the sale of confectionery sweets was at 4% only. But as per item 24, 24(C) and (d) of SRO 82/06, confectionery of all kinds, boiled sweets, toffee, caramel etc. sold under brand name are taxable @ 12.5% which resulted in short levy of tax. Based on the audit observations, the assessment for the years 2005-06 and 2006-07 were revised under Section 25(1) of the KVAT Act on 24.6.2010. Aggrieved by the orders, the assessee filed a writ petition before the Hon'ble High Court of Kerala. As per judgment No. WPC) 26488/10 dtd: 1.10.2010 of the Hon'ble High Court of Kerala, writ petition was allowed and the assessing authority was directed to finalize the assessment afresh after affording a reasonable opportunity to the dealer for a personal hearing and for production of documents in this regard.</p> <p>The assessment for the years 2005-06, 2006-07 and 2007-08 were completed afresh on 18.1.2011. Subsequently the assessee filed writ petition before the Hon'ble High Court of Kerala on 7.3.2011 in WP(C) 5662 of 2011, and the Hon'ble court quashed the above order and directed to finalize the assessment for these years afresh after according a reasonable opportunity to the dealer for a personal hearing and for production of documents in support of their objections raised. In pursuance of the High Court order fresh assessment for the years 2005-06, 2006-07 and 2007-08 were completed under Section 25(1) of the KVAT Act on 3.6.2011 demanding the tax and interest as follows.</p>																
		<table border="1"> <thead> <tr> <th></th> <th>2005-06</th> <th>2006-07</th> <th>2007-08</th> </tr> </thead> <tbody> <tr> <td>Tax</td> <td>18,53,911</td> <td>25,56,730</td> <td>23,96,518</td> </tr> <tr> <td>Interest</td> <td>11,49,425</td> <td>12,78,365</td> <td>9,10,677</td> </tr> <tr> <td>Total</td> <td>30,03,336</td> <td>3835095</td> <td>33,07,195</td> </tr> </tbody> </table>		2005-06	2006-07	2007-08	Tax	18,53,911	25,56,730	23,96,518	Interest	11,49,425	12,78,365	9,10,677	Total	30,03,336	3835095	33,07,195
	2005-06	2006-07	2007-08															
Tax	18,53,911	25,56,730	23,96,518															
Interest	11,49,425	12,78,365	9,10,677															
Total	30,03,336	3835095	33,07,195															

			<p>The assessment order and the Demand Notice had been served on the dealer as on 30.6.2011.</p> <p>The above demand was advised under Revenue Recovery as per office requisitions dated 7.9.2011 through the Inspg.Asst.Commissioner, Idukki at Kattappana. As per letter no.2091/12 dated 2.3.12 received from the office of the Finance Minister, Thiruvananthapuram, coercive steps are directed to be kept in abeyance till the disposal of the petition filed by the dealer. The dealer has also filed appeals before the Deputy Commissioner (Appeals), Kottayam.</p>
	(b)	Recovery of overpayment pointed out by audit	
	(c)	Recovery of under assessment, short levy or other dues	--
	(d)	Modification in the schemes and programmes including financing pattern	--
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.14.3.3
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	24.3.11
	(b)	Date of Department's Reply	2.12.11
III		Gist of Paragraph/Review	While auditing the Office of the Assistant Commissioner, Special Circle, Mattancherry the Accountant General noticed that M/s. Hindustan Unilever Ltd., Mattancherry an assessee manufacturing and selling cakes and bakery products under brand name assessed tax on sales turnover of such products for Rs. 1.08 crore at four per cent instead of at the correct rate of 12.5 per cent during 2008-09. This resulted in short levy of tax and interest of Rs. 10.73 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	M/s. Hindustan Unilever Ltd., has got registered Trade Marks only for making "BREADS". Even though the name "Modern" is imprinted on the packing Materials of Cakes, M/s. Hindustan Unilever has not attained registered trade

			<p>Marks for the sale of cake. Moreover they are not manufacturing cakes and only trades in them. In view of the above, the audit objection is not sustainable and the turnover of cakes assessed @ 4% is correct.</p>
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

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## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	M/s. Hindustan Unilever Ltd., has got registered Trade Marks only for making "BREADS". Even though the name "Modern" is imprinted on the packing Materials of Cakes, M/s. Hindustan Unilever has not attained registered trade Marks for the sale of cake. Moreover they are not manufacturing cakes and only trades in them. In view of the above, the audit objection is not sustainable and the turnover of cakes assessed @ 4% is correct.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	

Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.14.3.4(a)
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	24.3.11
	(b)	Date of Department's Reply	31.8.11
III		Gist of Paragraph/Review	While auditing the office of the Assistant Commissioner, Special Circle, Mattancherry at Aluva the Accountant General has noticed that M/s. Travancore Trading Corporation a dealer assessed tax for the year 2008-09 on sales turnover of 'Ujala Supreme' and 'Ujala Stiff and Shine' valued at Rs. 4.93 crore at the rate of four per cent and sales turnover valued at 7.14 to canteen stores department at two per cent instead of at the correct rate of 12.5 per cent and 6.25 per cent respectively. This resulted in short levy of tax and interest of Rs. 49.02 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	The assessment for the year 2008-09 has been revised on 06-06-2011 applying the correct rate of tax as pointed out by the Accountant General. The short levy of Rs. 42. 63 Lakhs and interest Rs. 11.5 Lakhs has been demanded from the assessee. The assessee filed appeal against the assessment order and vide order KVATA 2131/11 dtd.6.1.12 conditional stay was granted against RR proceedings on payment of 50% of the amount due and thus the amount of Rs.27,07,546/- was paid as demand draft which was cleared vide chalan No.222 dtd.8.2.12.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	



**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.14.3.4(b)
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	28.2.11
	(b)	Date of Department's Reply	1.6.11
III		Gist of Paragraph/Review	A dealer M/s.Kairali Stock Suppliers-CTO, Ettumanoor assessed tax on the sales turnover of ujala supreme and ujala stiff and shine for Rs.1.03 crore during the period of 2007-08 @ 4% instead of @ 12.5%. This resulted in short levy of tax and interest of Rs.10.62 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>Sri.T.V.Vipin, M/s.Kairali Stock Suppliers is an assessee on the rolls of Commercial Tax Officer, Ettumanoor with TIN-32051116765. During the year 07-08, the dealer had filed monthly and annual return in Form No.10 declaring a sales turnover of Ujala supreme and ujala stiff and shine amounting to 1.03 crores @ 4% tax rate only. Hon'ble High Court of Kerala, M.P.Agencies Vs. State of Kerala reported in 18 KTR 82 had held that ujala supreme and ujala stiff and shine are not industrial raw materials under list A of 3<sup>rd</sup> schedule to the KVAT Act and is taxable @ 12.5%. This resulted in short levy of tax and interest amounting Rs.10.62 lakhs. The KVAT assessment in respect of M/s.Kairali Stock Suppliers for the year 07-08 was completed under section 25(1) of the KVAT Act 2003 on 19.2.10 creating an additional demand of Rs.14,14,419/-.</p> <p>The writ petition No.WP(c)18327/10-11 filed by Sri.T.V.Vipin, Kairali Stock Suppliers, Perumbalkkad had been disposed of on 14.6.10 staying the collection of balance amount outstanding for the year 07-08, on condition that the dealer remits 1/3<sup>rd</sup> of the dues amounting to Rs.14,14,419/-. The dealer remitted Rs.4,71,473/- on 8.7.10.</p> <p>The first appeal filed by the dealer had been dismissed vide order dated 24.8.11 of Dy.Commissioner (Appeals), Kollam.</p> <p>He has filed second appeal before Hon'ble KVAT Appellate Tribunal, Ernakulam and the Hon'ble Tribunal has granted stay of collection of balance dues if the defaulter pays 50% of the balance dues. As per the said order the dealer remitted Rs.2,35,737/- on 18.10.11.</p>
(b)	Recovery of overpayment pointed out by audit	

	(c)	Recovery of under assessment, short levy or other dues	
	(d)	Modification in the schemes and programmes including financing pattern	
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.14.3.5(a)
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	25.3.11
	(b)	Date of Department's Reply	1.6.11
III		Gist of Paragraph/Review	In Commercial Tax Office (WC&LT) Alappuzha, during scrutiny of records it was noticed that a works contractor M/s.Poonam Grah Nirman (P) Ltd. assessed tax @ 4% instead of @ 12.5% on transfer value of materials amounting to Rs.11.10 crore for 08-09 which resulted in short of levy of tax and interest of Rs.41.87 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	<p>M/s.Poonam Grah Nirman (P) Ltd. is an assessee on the rolls of the CTO (WC&amp;LT), Alappuzha bearing TIN No. 32041520932. On the basis of audit objection the assessment completed under section 25(1) of the KVAT Act 2003 as per order dated 25.4.11. As a result an amount of Rs.66,77,212/- including interest arises by way of demand and demand notice issued to the assessee. This additional demand includes Rs.36,09,167 (Tax) and Rs.8,30,109 (interest). The assessee filed WPC against this assessment in WPC No. 14636/2011 and the Hon'ble High Court of Kerala in the judgment dated 13-06-2011 has quashed the assessment order on a finding that the order was passed without any reflection about the merits of the contention of the dealer and has directed the assessing authority to consider the matter and to pass the order, after affording an opportunity of hearing to the assessee and for production of books of accounts and other documents.</p> <p>Notice has been issued to the assessee in Form No. 17. The dealer has requested for further time to furnish more details regarding the assessment. A revised assessment notice under section 2.5(1) of KVAT Act was issued to the dealer on 10-05-2012. An opportunity of being heard and to file objections if any has been given.</p>
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2:14.3.5(b)
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	6.4.11
	(b)	Date of Department's Reply	20.7.11
III		Gist of Paragraph/Review	Scrutiny of records in CTO (WC), Kollam in respect of M/s.Quilon Tyres and Treads, Kollam, an assessee engaged in tyre retreading returned tax at the rate of 4% instead of at the correct rate of 12.5% for the contract receipts of Rs.23.97 lakh and Rs.33.47 lakh during the periods 06-07 and 07-08 respectively. This resulted in short levy of tax and interest of Rs.6.15 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	The assessee filed annual return for the year 06-07 and 07-08 with the following details.				
		Year	Total contract receipt (Rs.)	Exemption (Rs.)	Total contract receipt (Rs.)	Tax due @ 4% (Rs.)
		06-07	5197204.40	1898490.40	3298714.00	131949
		07-08	5334769.25	2133907.74	3200801.61	128034
		<p>While on audit it is objected that the assessee is purchasing tread rubber and gum for retreading both interstate and intrastate claiming input tax on the local purchase of goods purchased. For the year 06-07 and 07-08, the assessee returned tax @ 4% on the taxable turnover after deducting labour u/s 6(1)(e). The objection is that tyre retreading involves transfer of goods involved in execution of works contract where the transfer is not in the form of goods it was liable to be assessed u/s 6(1)(f).</p> <p>The books of accounts of the assessee were subsequently called for and verified by Commercial Tax Officer, Works Contract and assessment completed vide proceedings dated 30.1.11. For the year 06-07 tax due is Rs.2,81,950.66 and for the year 07-08 Rs.3,01,585.35. This was demanded with interest. Revenue Recovery steps are initiated against the dealer for the realization of arrears.</p>				
(b)	Recovery of overpayment pointed out by audit					
(c)	Recovery of under assessment, short levy or other dues	--				
	Modification in the schemes and programmes	--				

	(d)	including financing pattern	
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	



**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.14.3.6
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	25.4.11
	(b)	Date of Department's Reply	12.8.11
III		Gist of Paragraph/Review	While auditing the Office of the Asst. Commissioner, Special Circle, Thrissur, it is noticed that M/s. Anchery Distributors, Thrissur, a dealer, self assessed output tax on a sales turnover of margarine for Rs. 1.53 crore at the rate of four per cent instead of at the correct rate of 12.5 per cent during the year 2005-06, 2006-07 and 2007-08. This resulted in short levy of tax and interest of Rs. 15.75 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	-
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary.	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	M/s. Anchery Distributors, a dealer in Vanaspathy and Margarine etc. has self assessed out put tax on a sales turnover of Margarine for Rs. 1.53 Crore @ 4% instead of 12.5%. This resulted in short levy of tax and interest of Rs. 15.88 lakhs. Based on the observation of the Accountant General, the assessment for the years 2005-06, 2006-07 and 07-08 were completed under section 25(1) of the Act by fixing the tax liability and interest at Rs. 1,64,127/-, Rs. 5,83,820/-, Rs. 5,48,872/- respectively. This amount is pending under RR.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/ complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.14.3.7
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	6.6.11
	(b)	Date of Department's Reply	6.12.11
III		Gist of Paragraph/Review	M/s.K.M.Technologies a dealer computed tax on the sales turnover of 'digital printer' of Rs.39.45 lakh, Rs.31.84 lakh, Rs. 9.20 lakh and 56.98 lakh for the years 2005-06, 2006-07, 2007-08 and 2008-09 respectively at the rate of four per cent instead of at the correct rate of 12.5 per cent. This resulted in short levy of tax and interest of Rs.14.51 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	The item dealt with is multi-functional digital products with HSN code 8471 taxable at 4%.
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

## VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>M/s.K.M.Technologies, Kanjilkuzhy, Kottayam is an assessee on the rolls of Commercial Tax Officer, 1<sup>st</sup> Circle, Kottayam, with TIN 32050512202. The audit party had pointed out that the item 'Digital Printer' dealt with by the assessee Co, is taxable at 12.5% as against 4% conceded by the assessee. On verification of the assessment records, purchase bills and sales bills of the assessee, it is undoubtedly clear that the item dealt with by the assessee is "Digital Printer Mfd". The assessee is a second seller of the product, the assessee had purchased the commodity from M/s.Sharp Business Systems (P) Ltd., Cargo Complex, Ernakulam, which is a registered dealer with TIN 32070325735. The rate of tax of the commodity 4% as evidenced from the sales bills. As per the clarification issued by the seller M/s.Sharp Business Systems (P) Ltd., Ernakulam, the commodity "Printer" imported and sold by them are capable of printing, copying facsimile transmission capable of being connected to an automatic data processing machine or a net work. The commodity is taxable at 4% vide entry 69 (22) C (1) of the 3rd schedule to KVAT Act with HSN code 8471. The KVAT assessment completed by the Commercial Tax Officer, vide office proceedings dated 9.2.2010, has been ordered to be modified by the Deputy Commissioner (A), Kollam vide proceedings No.KVATA.67/10, 159/10 and 163/10 dated 17.07.2010 with direction to allow one more opportunity to prove the claim of the dealer that the item purchased from M/s.Sharp Business Systems (P) Ltd., was multifunctional digital products with HSN code 8471 taxable at 4%. Accordingly the assessment for the years 2005-06, 2006-07 and 2007-08 has been modified with tax effect 'Nil'.</p>
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			In the above circumstances, the item dealt with by the assessee is nothing but "Digital Printer Mfd." which has multifunctional facilities of printing, copying and facsimile transmission capable of connecting network which is taxable at 4% rate of tax.
	(b)	Recovery of overpayment pointed out by audit	
	(c)	Recovery of under assessment, short levy or other dues	--
	(d)	Modification in the schemes and programmes including financing pattern.	--
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	

**Action taken Notes on CA AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.14.3.9
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	25.4.11
	(b)	Date of Department's Reply	13.3.12
III		Gist of Paragraph/Review	In the Office of the Commercial Tax Officer (WC & LT), Mattancherry the Accountant General has noticed that M/s. Viahai Infrastructure Ltd., Angamaly a works contractor paid compounded tax at the rate of 2.3 per cent for the works remaining partly unexecuted as on 1 <sup>st</sup> April 2008. As the dealer had CST registration during 2007-08, he was eligible to opt for compounding at the rate of four per cent under Section 8 (a) (ii) of KVAT Act, 2003. Application of incorrect rate of compounding resulted in short levy of Rs. 3.76 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	The assessee M/s. Vishal Infrastructure Ltd. disclosed a total contract receipt of Rs. 31,61,61,720/- for the year ending 31.03.2008 in which Rs. 1,93,83,290/-, Rs. 29,45,24,614/- and Rs. 22,83,816/- was compounded at 2.3%, 4% and 8% respectively. Since the assessee had under taken works awarded by persons other than Government of Kerala, Kerala Water Authority and Local authority and since the dealer is registered under CST Act also the compounding section applicable was Section 8 (a) (ii) in which they are liable to pay tax @ 4%. In the light of audit assessing authority issued notice U/s 25 (1) and completed assessment demanding the difference tax due at 1.7% on Rs. 1,93,83,290/-. The VAT due along with interest due has been demanded.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Excess claim of input tax credit.
	(c)	Paragraph No.	2.14.4.1
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	6.6.11
	(b)	Date of Department's Reply	24.3.12
III		Gist of Paragraph/Review	In Assistant Commissioner, Spl. Circle (Produce), Mattancherry, M/s.Harisson Malayalam Ltd., an assessee in his annual return for 08-09 brought forward a tax credit of Rs.51.46 lakh depicting it as excess input tax credit of the previous year. However, excess input tax credit, was not available as per the annual return of 07-08. Besides, computational mistakes resulted in further excess credit of Rs.8.76 lakh. These resulted in short assessment of tax and interest of Rs.69.25 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	The figures shown in the audit enquiry and draft para has no nexus with the returns available in the files. The tax of credit shown by the assessee in the return is the following: 1) Input tax paid for: Rs. 13860138 the return period.



			2) Special rebate :Rs. 6626633 3) Form 20F :Rs. 1003747 Total :Rs. 21490515  The audit enquiry observes that the assessee has claimed an Input Tax of Rs. 26508883/-. These figures do not relate to the file of the assessee for the year 08-09.
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary.	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>The audit team has noted that the assessee in their annual return for 08-09 brought forward a tax credit of Rs.5146185/- depicting it as excess input tax credit of the previous year. However, excess input tax credit was not available as per annual return of 07-08. Besides, computational mistake resulted in further excess credit of Rs.875927/-. This resulted a short levy of Rs.69,25,429/-. It is further observed that the total input credit availed including the excess credit carried forward amounts to Rs.26050888, against the actual credit available Rs.204686771/- on the purchase of Rs.823792106/-</p> <p>The Input Tax availed by the assessee in the monthly returns are the following:</p> <table border="1" data-bbox="485 561 813 879"> <thead> <tr> <th>Month</th> <th>IPT</th> </tr> </thead> <tbody> <tr> <td>April</td> <td>1334959</td> </tr> <tr> <td>May</td> <td>3086785</td> </tr> <tr> <td>June</td> <td>2683979</td> </tr> <tr> <td>July</td> <td>3235246</td> </tr> <tr> <td>August</td> <td>436646</td> </tr> <tr> <td>September</td> <td>631847</td> </tr> <tr> <td>October</td> <td>366937</td> </tr> <tr> <td>November</td> <td>431005</td> </tr> <tr> <td>December</td> <td>702300</td> </tr> <tr> <td>January</td> <td>287111</td> </tr> <tr> <td>February</td> <td>140545</td> </tr> <tr> <td>March</td> <td>522578</td> </tr> <tr> <td><b>Total</b></td> <td><b>13860168</b></td> </tr> </tbody> </table> <p>The total purchase conceded by the assessee in the annual return is Rs.605648961/- and total availed IPT is Rs.13860138/-. The said figures tally with the monthly return. If the assessee has availed any excess Input Tax brought down, which will be reflected in the monthly return for the month of April 2008 and the annual return for the year 2008-09 and revised annual return. The figures shown in the audit enquiry and draft para has no nexus with the returns available in the files. The tax of credit shown by the assessee in the return is the following:</p> <p style="text-align: right;">1) Input tax paid for: Rs. 13860138 the return period</p>	Month	IPT	April	1334959	May	3086785	June	2683979	July	3235246	August	436646	September	631847	October	366937	November	431005	December	702300	January	287111	February	140545	March	522578	<b>Total</b>	<b>13860168</b>
Month	IPT																													
April	1334959																													
May	3086785																													
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March	522578																													
<b>Total</b>	<b>13860168</b>																													

			2) Special rebate :Rs. 6626633 3) Form 20F :Rs. 1003742 Total :Rs. 21490518
			The audit enquiry observes that the assessee has claimed an Input Tax of Rs.26508883/-. These figures do not relate to the file of the assessee for the year 08-09.
	(b)	Recovery of overpayment pointed out by audit	
	(c)	Recovery of under assessment, short levy or other dues	
	(d)	Modification in the schemes and programmes including financing pattern	
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Excess claim of input tax credit.
	(c)	Paragraph No.	2.14.4.2
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	21.2.11
	(b)	Date of Department's Reply	6.6.11
III		Gist of Paragraph/Review	In respect of commercial Tax Office, Manjeri, M/s. M.S. Timbers, Vazhakkad for 05 - 06, a dealer in timber claimed input tax credit twice on three purchases effected during December 2005 and March 2006 and availed excess input tax credit of Rs. 2.53 lakh and the department should levy penalty of Rs. 5.06 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes

	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken****2005 - 06**

(a) Improvement in system and procedures, including internal controls.

The dealer has availed input tax credit on tax paid on FDT on the following purchase which is not eligible.

Month	Bill No.	Purchased Firm	FDT	Input tax claimed @ 12% FDT
05/05	3	DRO Kannavam	7419	927
07/05	22	PRO Karolai	19350	2418
		GTD Marjikal	22731	2841
	52	GTD Koyalad	28838	2979
		GTD Aruvaidu	3872	484
		GTD Aruvacode	5260	658
09/05	02/05	PRO Kelliyoor	7354	919
10/05		GTD Marjikal	16140	2018
		GTD Kannothe	11552	1444
	76/05	GTD Kannothe	2870	359
12/05	201/05-06	GTD Kannothe	10673	1334
	17/05-06	GTD Kannothe	9126	1141
02/06	159/06	GTD Koyalad	34326	4291
				21813

It is also noticed that the dealer has availed input tax credit Rs. 90104 on purchase of timber as per bill No. 285/05 dated 16.12.05 during the months of 02/06 and 03/06 at two times. This resulted an excess avail of input tax Rs. 90104.

**2006 - 07**

The dealer claimed input tax credit for an amount of Rs. 243297 which included two purchases as follows.

Sl. No.	Bill No. & Date	Purchase From	Total amount	Input tax paid
1	318/05-06 dt 13.03.06	Govt. Timber	1262194	149372

		depot Kannoth		
2	134/05-06 dt 13.03.06	Forest Range Office Kannavam	243400	13691

During the month of May 2006, the assessee had claimed input tax credit for an amount of Rs. 179797 for two purchase details as below:

Sl. No.	Bill No. & Date	Purchase From	Total amount	Input tax paid
1	318/05-06 dt 13.03.06	Govt. Timber depot	1262194	149372
2	134/05-06 dt 13.03.06	Forest Range Office Kannavam	243400	30425
				179797

From the above it is evident that double drawal of input tax credit has been availed during May 2006 for which input tax credit has already been availed during April 2006.

The amount double drawal worked out as follows.

4/ 2006	Rs. 13,691.00
5/ 2005	Rs. 1,49,372.00
	Rs. 1,63,063.00

The assessment was completed as per proceedings dated 21.04.2009 creating an additional demand as follows:

Year	Tax	Interest	Penalty	Total
05 - 06	111919	40291	180248	332458
06 - 07	163063	40766	326126	529955
	274982	81057	506374	862413

The order was served on the dealer and the dealer paid Rs. 109026/- as per chalan No. 105/15-06-2009 for the year 2005-06 and Rs. 163063 as per chalan No. 1008/01-07-2009 and chalan 08/20-08-2009 for the year 2006-07. The balance amount of Rs. 590324/- was advised under RR vide KRC. No. 24 and 25 dated 20.08.2009 and 15.09.2009 respectively.

The dealer filed an appeal before the Deputy Commissioner (A), Ernakulam and the Deputy

			Commissioner (A) as per Order No. KVATA 2400/09 Dated 11.11.09 and 1632 and 1633 dated 30-10-2009 has stayed the collection of the amount due till the disposal of appeal, provided the appellant remits 40% of the amount due for the year 2005 -06 and 2006 - 07. The dealer paid Rs. 110962 as per chalan No. 968 dated 13.10.2009 and chalan No.149 dated 24.12.2009 for the year 2005 - 06 and Rs. 130455 as per chalan No. 202/03.11.2009 and chalan No. 210/16-01-2010 for the year 2006 - 07.
	(b)	Recovery of overpayment pointed out by audit	
	(c)	Recovery of under assessment, short levy or other dues	--
	(d)	Modification in the schemes and programmes including financing pattern	--
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--



**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Non levy of reverse tax.
	(c)	Paragraph No.	2.14.5
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	24.3.11
	(b)	Date of Department's Reply	3.6.11
III		Gist of Paragraph/Review	While auditing the office of the Asst. Commissioner (KVAT), Special Circle, Kannur, the Accountant General had observed that M/s.Kunhikannan Jewellery a dealer in jewellery had a closing stock of Rs.16.89 crore during 07-08 for which he had taken input tax credit. During 08-09 he switched over to compounding scheme for which no input tax credit is allowable. The tax payable under the compounded scheme is worked out on the basis of sales effected during the previous years. The huge closing stock at the end of 07-08, on which the dealer had taken input tax credit, was sold during the subsequent year (2008-09), though the dealer was not eligible to avail input tax under compounding scheme. This resulted in leakage of revenue of Rs.67.54 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No

	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	<p>The assessee availed input tax credit prior to the switching over to the compounding scheme, once the assessee came in the ambit of the compounding system the sale of the goods against which the input tax credit had been availed also took place and the tax amount went to the exchequer, the tax to be paid was determined in advance.</p> <p>In this case the question of reverse tax does not arise since the goods at the end of the penultimate fiscal was not used for the purpose mentioned in the definition for the reverse tax as specified in the Act but the goods were subjected to sale in the course of the business as per law which negate the reversal. In the circumstances the audit objection relating to the reverse tax liability of the dealer opted for the compounded rate of tax is not sustainable.</p>
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>The compounding facility is one of the important provisions incorporated in the tax regime of the KVAT Act, 2003. It may be noted that the rules governing the compounding system do not envisage the reversal of input tax that had availed during the penultimate fiscal on the stock at the end of the year if a dealer opt to come in the ambit of the system. As per section 11(7) of the KVAT Act, 2003, "if goods in respect of which input tax credit has been availed of are subsequently 'used' fully or partly for purposes in relation to which no input tax credit is allowable under the Section, the input tax availed in respect of such goods shall be reverse tax". In the present case the assessee had not 'used' the goods in respect of which input tax credit has been availed. The assessee has sold the goods subsequently in the course of the business. The assessee has not used the goods for their own use or any other purpose. The 'sale' in the course of the business does not come under the purview of reverse tax. The only thing the dealer had done is that they had opted payment of tax under Section 8 of the KVAT Act, 2003. This has made a difference in the mode of payment of tax only. Also as per Section 11(4) of the KVAT Act 2003, unregistered dealers or dealers paying presumptive tax under sub section (5) of section (6) or dealer paying compounded tax under section (8) or dealer who transfer the right to use goods under clause (c) of sub section (1) of Section (6) shall not be eligible for input tax.</p> <p>As per Section 11(7) the statement is "no input tax credit is allowable". On the other hand in Section 11(4) it is stated as "shall not be eligible for input tax credit". The meanings of input tax credit "not allowable" and "not eligible" is different.</p> <p>The assessee availed input tax credit prior to the switching over to the compounding scheme, once the assessee came in the ambit of the compounding system the sale of the goods against which the input tax credit had been availed also took place and the tax amount went to the exchequer, the tax to be paid was determined in advance.</p> <p>In this case the question of reverse tax does not arise since the goods at the end of the penultimate fiscal was not used for the purpose mentioned in the definition for</p>
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			the reverse tax as specified in the Act but the goods were subjected to sale in the course of the business as per law which negate the reversal. In the circumstances the audit objection relating to the reverse tax liability of the dealer opted for the compounded rate of tax is not sustainable.
	(b)	Recovery of overpayment pointed out by audit	
	(c)	Recovery of under assessment, short levy or other dues	--
	(d)	Modification in the schemes and programmes including financing pattern	--
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Non levy of interest/ Non appropriation of payment to interest.
	(c)	Paragraph No.	2.14.6
	(d)	Report No. and Year	C& AG report ended 31.3.2011.
II	(a)	Date of receipt of the Draft Para/Review in the Department	7.6.11
	(b)	Date of Department's Reply	22.2.12
III		Gist of Paragraph/Review	During the scrutiny of records in the Office of the Commercial Tax Officer, Special Circle II Ernakulam it was noticed that an assessee M/s Reckit Benckiser (India) Ltd. filed revised return and remitted differential tax of Rs.1.61 crore during 2005-06 without remitting interest and penal interest due. Further the department failed to assess interest and appropriate the remittance first towards interest which resulted in short levy of tax and interest of Rs.41.98 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	In the light of audit objection, the assessing authority issued a notice dated 08.05.2009 to the assessee proposing to adjust an amount of Rs.38,62,806/- towards interest and penal interest for the period 5/06 to 12/06 and demanding Rs.38,62,806/- towards tax and Rs.10,42,958/- towards interest from 1/2007 to 4/2009. But without giving any reply to the notice, the assessee filed Writ Petition before the Hon'ble High Court of Kerala. As per WP(C) 15230/2009, Hon'ble High Court, Ernakulam granted stay on 08.06.2009 and the stay is continuing till date.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaping assessment.
	(c)	Paragraph No.	2.14.7.1(a)
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	7.4.11
	(b)	Date of Department's Reply	24.3.12
III		Dist of Paragraph/Review	In the office of the CTO (WC&LT), Mattancherry, the Accountant General has noticed that M/s. Jyuthi Structurals Ltd. a works contractor conceded taxable turnover of Rs. 4.13 crore. Out of the taxable turnover, Rs. 2.58 crore was assessed at four per cent instead of at 12.5 per cent. Further, the taxable turnover of Rs. 4.13 crore was less than the cost of goods consumed in the works contract which amounted to Rs. 4.87 crore. Escape of turnover from assessment coupled with application of incorrect rate resulted in short levy of tax and interest of Rs. 35.52 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	First point raised in the audit objection is that an amount of Rs. 2,57,93,429/- taxed @ 4% is not in order. In case of declared goods a new proviso has been inserted by the Kerala Finance Act 2008-(Act 21 of 2008) w.e.f. 1.04.2008 which reads "Provided also that the tax payable under clause (F) in respect of transfer of declared goods, not

			<p>in the form of goods, but in some other form shall be at the rates prescribed under respective schedule.</p> <p>In this case the declared transfer value of Rs. 2,57,93,249/- @ 4% is in order.</p> <p>The taxable turnover conceded is more than the value of goods executed on the works contract. (Detailed report furnished in column VI(a).</p>
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	



VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>M/s. Jyothi Structural is an assessee on the rolls of Commercial Tax Officer (WC&amp;LT), Mattancherry bearing TIN 92151058402. They are engaged in the work of power grid Corporation of India Ltd.</p> <p>First point raised in the audit objection is that an amount of Rs. 2,57,93,429/- taxed @ 4% is not in order. In case of declared goods a new proviso has been inserted by the Kerala Finance Act 2008 (Act 21 of 2008) w.e.f. 1.04.2008 which reads "Provided also that the tax payable under clause (F) in respect of transfer of declared goods, not in the form of goods, but in some other form shall be at the rates prescribed under respective schedule.</p> <p>In this case the declared transfer value of Rs. 2,57,93,249/- @ 4% is in order.</p> <p>Another point raised in the audit objection is that the assessee had not reported taxable turnover which is below the value of goods transferred in execution of works contract in violation of Rule 10 (2) (a).</p> <p>The audit party calculated the cost of goods transferred for the execution of works contract as under.</p> <table border="0"> <tr> <td>Opening Balance</td> <td>Rs. 70,33,589</td> </tr> <tr> <td>Add Purchase</td> <td>Rs. 5,56,45,912</td> </tr> <tr> <td>Transportation charges</td> <td>Rs. 25,69,463</td> </tr> <tr> <td></td> <td>Rs. 6,52,48,964</td> </tr> <tr> <td>Less closing stock</td> <td>Rs. 1,65,70,597</td> </tr> <tr> <td></td> <td>Rs. 4,86,78,367</td> </tr> </table> <p>The assessee has declared purchase of Rs. 4,86,12,323/- in the P&amp;L Account for 2008-09 as mentioned as under.</p> <table border="0"> <tr> <td>Steel</td> <td>Rs. 3,47,69,060</td> </tr> <tr> <td>Cement</td> <td>Rs. 24,68,069</td> </tr> <tr> <td>Sand</td> <td>Rs. 10,39,081</td> </tr> <tr> <td>Stone Chips</td> <td>Rs. 4,72,555</td> </tr> <tr> <td>Ready Mix concrete</td> <td>Rs. 92,62,915</td> </tr> <tr> <td>Other materials</td> <td>Rs. 6,00,643</td> </tr> <tr> <td>Total</td> <td>Rs. 4,86,12,323</td> </tr> </table> <p>The audit party wrongly added opening stock of Rs. 70,33,589/- with this figure and arrived the figure Rs. 5,56,45,912/- as purchase.</p> <p>During the year assessee spent amount, given under towards exemption.</p> <table border="0"> <tr> <td>Transportation charges</td> <td>Rs. 13,66,908</td> </tr> </table>	Opening Balance	Rs. 70,33,589	Add Purchase	Rs. 5,56,45,912	Transportation charges	Rs. 25,69,463		Rs. 6,52,48,964	Less closing stock	Rs. 1,65,70,597		Rs. 4,86,78,367	Steel	Rs. 3,47,69,060	Cement	Rs. 24,68,069	Sand	Rs. 10,39,081	Stone Chips	Rs. 4,72,555	Ready Mix concrete	Rs. 92,62,915	Other materials	Rs. 6,00,643	Total	Rs. 4,86,12,323	Transportation charges	Rs. 13,66,908
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			<p>Vehicle hire charges Rs. 5,90,742          Diesel and petrol expenses Rs. 4,38,066          Vehicle Insurance Rs. 44,459          Vehicle Maintenance Rs. 1,29,288          Total Rs. 25,69,463</p> <p>All the above items are entered in the P&amp;L Account under the heading transportation charges. The assessee has declared actual transportation expenses along the quarterly returns and sum total of these figures is Rs. 13,66,908/- during 2008-09. In computing transfer value of goods the Audit party took the figure Rs. 25,69,463/- instead of Rs. 13,66,908/-.</p> <p>The transfer value of goods is re-computed as follows.</p> <p>Opening Balance Rs. 70,33,589          Add Purchase Rs. 4,86,12,323          Transportation charges Rs. 13,66,908          Rs. 5,70,12,820          Less closing stock Rs. 1,65,70,597          Balance Rs. 4,04,42,223          Taxable turnover amount Rs. 4,13,20,805</p> <p>In this case the taxable turnover conceded is more than value of goods executed in the Works Contract.</p>
	(b)	Recovery of overpayment pointed out by audit	
	(c)	Recovery of under assessment, short levy or other dues	--
	(d)	Modification in the schemes and programmes including financing pattern	--
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaping assessment.
	(c)	Paragraph No.	2.14.7.1(b)
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	25.3.11
	(b)	Date of Department's Reply	26.8.11
III		Gist of Paragraph/Review	In Commercial Tax Officer (Works Contract & Luxury Tax), Alappuzha during scrutiny of records it was noticed that a works contractor Anantha Narayanan, Poonam Grah Nirman(P) Ltd who had contract receipts of Rs.13.30 crore assessed tax on turnover of Rs.4.92 crore only during 2008-09. The turnover was less than the cost of goods transferred to works contract of Rs.6.33 crore. Hence, the taxable turnover including profit should be Rs.6.38 crore and turnover of Rs.1.45 crore that escaped assessment resulted in short levy of tax and interest of Rs.21.10 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>As per P&amp;L Account for the year ended 31.03.2009 the total cost of goods transferred in the execution of work is Rs.6,33,16,324/-. The taxable turnover would be the cost of goods transferred plus gross profit. The accounted gross profit as per P&amp;L Account is 0.75%. So the taxable turnover would be Rs.6,37,91,196/-. There is a suppressed turnover of Rs.1,45,55,677/-, since the turnover returned Rs.4,92,35,519/- falls below the cost of goods transferred plus gross profit. The taxable turnover worked out as follows.</p> <table data-bbox="466 522 971 639"> <tr> <td>Cost of goods transferred</td> <td>: Rs.6,33,16,324-00</td> </tr> <tr> <td>Add Gross profit @ 0.75%</td> <td>: Rs. 4,74,872-00</td> </tr> <tr> <td>Taxable turnover fixed</td> <td>: Rs. 6,37,91,196-00</td> </tr> <tr> <td>Taxable turnover returned</td> <td>: <u>Rs. 4,92,35,519-00</u></td> </tr> <tr> <td>Turnover suppressed</td> <td>: <u>Rs.1,45,55,677-00</u></td> </tr> </table> <p>This is assessed @ 12.5% Tax Rs.18,19,460-00 and Interest due U/a.31(6) read with 31(v) Rs.4,18,476-00 is levied as per order dated 25-4-2011 u/s 25(1) of the KVAT Act.</p> <p>The assessee filed WP (C ) 14636/11 before the Hon' ble High Court of Kerala. In the Judgment dated 13/6/11, the writ petition is allowed and revised assessment order in the light of audit is quashed with direction to afford an opportunity to the petitioner to produce books of accounts and other documents in support of the objections raised.</p>	Cost of goods transferred	: Rs.6,33,16,324-00	Add Gross profit @ 0.75%	: Rs. 4,74,872-00	Taxable turnover fixed	: Rs. 6,37,91,196-00	Taxable turnover returned	: <u>Rs. 4,92,35,519-00</u>	Turnover suppressed	: <u>Rs.1,45,55,677-00</u>
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(b)	Recovery of overpayment pointed out by audit											
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(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaping assessment.
	(c)	Paragraph No.	2.14.7.2(a)
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	7.4.11
	(b)	Date of Department's Reply	4.7.11
III		Gist of Paragraph/Review	In the Commercial Tax Office (WC), Malappuram, the Accountant General (A) has pointed out that M/s.P.K.K.Constructions a dealer returned total and taxable turnover of Rs.1.84 crore and Ra.3.73 crore for the years 06-07 and 07-08 respectively as against Ra.2.34 crore and Ra.4.37 crore shown in the profit and loss accounts for the respective years. This resulted in short levy of tax, interest and penal interest of Ra.32.08 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support.	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>Shri.P.K.Kannad icuttu, Prop:P.K.K.Constructions, P.O. Keedhuparamba, Areaacode, Malappuram district is a registered contractor on the rolls of Commercial Tax Office (WC &amp; LT), Malappuram engaged in the Government works and paying tax as prescribed u/s 6(f). The assessee has filed the returns for the years 06-07 and 07-08 and also filed the audited statement of accounts. The assessee was paying tax on the estimated turnover at the rates application to the goods purchased and used in the execution of the works contract. Sec.6(f) was amended as per the Kerala Finance Act 2006 w.e.f. 1.7.06 by which the assessee was liable to pay tax @ 12.5% on the taxable turnover.</p> <p>Notices were issued to the assessee to produce the books of accounts for verification in order to ascertain the correctness of the returns and to complete the assessment for the years.</p> <p>In response to the notice by the assessing authority the assessee has produced the books of accounts for verification and the assessment for the years 06-07 and 07-08 have been completed. The taxable turnover calculated for the year 06-07 is as per rule 9 2A (a) and for the year 07-08 is as per rule 10 2(a). Hence the loss of revenue as pointed out by the Accountant General was assessed.</p> <p>Details of assessments completed are as under:</p> <p><b>2006-07</b></p> <table border="0"> <tr> <td>Total contract receipts</td> <td>Ra.75867708</td> </tr> <tr> <td>Taxable turnover determined</td> <td>Ra.22739410</td> </tr> <tr> <td>OFT due</td> <td>Ra. 2738778</td> </tr> <tr> <td>Less IPT</td> <td>Ra.1152222</td> </tr> <tr> <td>Special rebate</td> <td>Ra. 48775</td> </tr> <tr> <td>VAT paid</td> <td>Ra.145608</td> </tr> <tr> <td>Balance</td> <td>Ra. 1346604</td> </tr> <tr> <td>Interest</td> <td>Ra. 1392174</td> </tr> <tr> <td></td> <td>Ra. 334122</td> </tr> </table> <p><b>2007-08</b></p> <table border="0"> <tr> <td>Total turnover determined</td> <td>Ra.35260392</td> </tr> <tr> <td>Taxable turnover determined</td> <td>Ra.14107103</td> </tr> <tr> <td>OFT</td> <td>Ra. 1677088</td> </tr> <tr> <td>Less IPT credit</td> <td>Ra. 599258</td> </tr> <tr> <td>Special rebate</td> <td>Ra. 43626</td> </tr> </table>	Total contract receipts	Ra.75867708	Taxable turnover determined	Ra.22739410	OFT due	Ra. 2738778	Less IPT	Ra.1152222	Special rebate	Ra. 48775	VAT paid	Ra.145608	Balance	Ra. 1346604	Interest	Ra. 1392174		Ra. 334122	Total turnover determined	Ra.35260392	Taxable turnover determined	Ra.14107103	OFT	Ra. 1677088	Less IPT credit	Ra. 599258	Special rebate	Ra. 43626
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			VAT paid <u>Rs.280569</u> Rs. 922453 Balance Rs. 753635 Interest Rs. 165700												
			The assessee has paid the tax due as follows:												
			<table border="1"> <thead> <tr> <th colspan="4">VAT</th> </tr> </thead> <tbody> <tr> <td>06-07</td> <td>467652</td> <td>100237</td> <td>301/ 27.7.10</td> </tr> <tr> <td>07-08</td> <td>226091</td> <td>49710</td> <td>302/ 27.7.10</td> </tr> </tbody> </table>	VAT				06-07	467652	100237	301/ 27.7.10	07-08	226091	49710	302/ 27.7.10
VAT															
06-07	467652	100237	301/ 27.7.10												
07-08	226091	49710	302/ 27.7.10												
			The collection of balance tax have been stayed by the Deputy Commissioner (Appeals), Ernakulam as per order No.KVATA 1267/10, 1267A/10 and 1267B dated 30.6.10.												
	(b)	Recovery of overpayment pointed out by audit													
	(c)	Recovery of under assessment, short levy or other dues	--												
	(d)	Modification in the schemes and programmes including financing pattern	--												
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--												



**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaping assesment.
	(c)	Paragraph No.	2.14.7.2(b)
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	25.4.11
	(b)	Date of Department's Reply	5.1.12
III		Gist of Paragraph/Review	While auditing the Office of the Asst. Commissioner, Spl. Circle, Mattancherry, the Accountant General has noticed that the sales turnover of minerals conceded in the annual return and assessed to tax by M/s. Cochin Minerals and Rutiles Ltd. an assessee was less than the certified accounts figure by Rs.4.14 crore for 2008-09. This resulted in non-levy of tax of Rs.19.75 lakh at the rate of four per cent.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support.	"Being a Public Limited Company, the annual reports are prepared as per requirements of Companies Act 1956 and there are schedules as explanatory notes to accounting policies and final accounts of the company. In the annual report, as per schedule 19 I (g) and as pointed out by the Audit, it is noted that "Sales include excise duty and sales tax and are net off discount". Thus the sales turnover given in the annual

			<p>report include Foreign Exchange loss (incurred due to fluctuation in Dollar value), tax and cess arriving the total export turnover Rs. 104,95,18,511/- (98,07,28,224 + 687,90,287) Foreign exchange loss is not shown in Annual Return or Annual accounts filed in the office, as it will not form part of the actual value of business transacted.</p> <p>The assessee has entered freight separately in the sale bill and as per Rule 10 (e) of KVAT Rules 2005, claimed exemption on the same. Thus in the annual return, the total turnover given is inclusive of freight, but tax due is only on taxable turnover i.e. exclusive of freight. Hence, the total sales turnover as per annual return and 13, 13A filed are found matching and there was no difference in turnover.</p>
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>*Being a Public Limited Company, the annual reports are prepared as per requirements of Companies Act 1956 and there are schedules as explanatory notes to accounting policies and final accounts of the company. In the annual report, as per schedule 19 I (g) and as pointed out by the Audit, it is noted that "Sales include excise duty and sales tax and are net off discount". Thus the sales turnover given in the annual report include Foreign Exchange loss (incurred due to fluctuation in Dollar value), tax and cesa arriving the total export turnover Rs. 104,95,18,511/- (98,07,28,224 + 687,90,287) Foreign exchange loss is not shown in Annual Return or Annual accounts filed in the office, as it will not form part of the actual value of business transacted.</p> <p>The assessee has entered freight separately in the sale bill and as per Rule 10 (e) of KVAT Rules 2005, claimed exemption on the same. Thus in the annual return, the total turnover given is inclusive of freight, but tax due is only on taxable turnover i.e. exclusive of freight. Hence, the total sales turnover as per annual return and 13, 13A filed are found matching and there was no difference in turnover i.e.</p> <p style="text-align: center;">Total Export sales turnover :Rs. 980728224          Interstate sales turnover :Rs. 36374923          Local sales turnover :Rs. 145009627          Total Taxable turnover :Rs.1162112774</p> <p>The calculation of escaped turnover based on the above explanations and adopted by the audit are given below:-</p>																									
		<table border="1"> <thead> <tr> <th></th> <th>AO's figure</th> <th>Actual Figure</th> <th>Difference</th> <th>Remarks</th> </tr> </thead> <tbody> <tr> <td>Total Sales turnover as per annual report</td> <td>1237552530</td> <td>1237552532</td> <td></td> <td></td> </tr> <tr> <td>Less Export sales</td> <td>980728224</td> <td>1049518511</td> <td>+68790287</td> <td>(Foreign exchange loss)</td> </tr> <tr> <td>Balance</td> <td>256824306</td> <td>188034021</td> <td></td> <td></td> </tr> <tr> <td>Less</td> <td>57006278</td> <td>37164783</td> <td>-19841495</td> <td>(freight +</td> </tr> </tbody> </table>		AO's figure	Actual Figure	Difference	Remarks	Total Sales turnover as per annual report	1237552530	1237552532			Less Export sales	980728224	1049518511	+68790287	(Foreign exchange loss)	Balance	256824306	188034021			Less	57006278	37164783	-19841495	(freight +
	AO's figure	Actual Figure	Difference	Remarks																							
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Balance	256824306	188034021																									
Less	57006278	37164783	-19841495	(freight +																							

		Interstate sales turnover				(tax+cess)
		Balance	199818028	150869238	-48948790	
		Local sales turnover	156716619	150869238	5847381	(freight + tax + Cess)
		Escaped turnover + tax + Cess	43101409	0	43101409	
(b)	Recovery of overpayment pointed out by audit					
(c)	Recovery of under assessment, short levy or other dues		--			
(d)	Modification in the schemes and programmes including financing pattern		--			
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit		--			

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaping assessment.
	(c)	Paragraph No.	2.14.7.3(a)
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	6.6.11
	(b)	Date of Department's Reply	20.9.11
III		Gist of Paragraph/Review	On verification of assessment records in the office of the Asst. Commissioner, Special Circle-1, Ernakulam the Accountant General(A) noticed that, the assessing authority failed to assess the warranty claim of Rs.1.80 crores received by a dealer M/s.Popular Mega Motors Ltd. in 08-09 resulting a short levy of tax and interest of Rs.27.58 lakhs.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	The dealer has already included the turnover of Rs.1,80,51,784/- being warranty claim received in the monthly return for the period from 4/08 to 3/09 and remitted VAT.
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>For the year 08-09 the dealer filed annual return disclosing a total and taxable turnover of Rs.1,77,19,70,991.11 which includes turnover of Rs.33,697/- relating to the turnover of 6(2) purchase. The dealer has already included the turnover of Rs.1,80,51,784/- being warranty claim received in the monthly return for the period from 4/08 to 3/09 and remitted VAT. The details of sales turnover are as follows:</p> <p>Turnover at 12.5% Rs.1,74,96,81,473.77  " 4% Rs. 37,44,338.10  " 0.5% Rs. 4,59,678.00  " 12.5% Rs. 1,80,51,784.00</p>
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	---
(d)	Modification in the schemes and programmes including financing pattern	---
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	---

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaping assessment.
	(c)	Paragraph No.	2.14.7.3(b)
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para./Review in the Department	6.6.11
	(b)	Date of Department's Reply	29.7.11
III		Gist of Paragraph/Review	In Commercial Tax Office, Special Circle-III, Ernakulam, it is noticed that an assessee M/s. GMMCO Ltd., Edappally did not pay tax, on the warranty replacement value, amounting to Rs. 78,66,507, on the ground that a review petition on the issue is pending with the Supreme Court of India. The Hon'ble Supreme Court has not given any stay in this case. Hence the assessee is liable to pay tax. Failure to do so resulted in short levy of tax, interest and Cess of Rs. 11,50,476/.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	Escaped turnover specified in the audit objection for the year 2008-09 is assessed as per proceedings dated 19.10.2010, making good the short levy. The tax due @ 12.5% Rs. 9,83,355 Cess @ 1% Rs.9,834/- and the interest due Rs. 1,78,774/- [Total Rs. 11,71,963] is paid by the assessee vide chalan No. 2589 dated 24.2.2011 at Sub-Treasury, Ernakulam.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--



**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaping assessment.
	(c)	Paragraph No.	2.14.7.4
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	6.6.11
	(b)	Date of Department's Reply	25.6.11
III		Gist of Paragraph/Review	While auditing the Office of the Commercial Tax Officer (WC & LT), Kannur the Accountant General (Audit) has pointed out that the assessing authority failed to assess the turnover that escaped assessment due to excessive exemption claimed by a dealer Sri. Raghavan. T.C., Kunhimangalam, Kannur during 2008-09 resulting in short levy of tax of Rs. 17.39 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	The dealer has claimed exemption to an extent of 83% and it includes Rs. 66,60,313/- being the value of materials purchased from unregistered dealers which is not acceptable under Rule 10(2) (b) of KVAT Act 2003. This defect has been brought to the notice of the dealer, Sri. T.C. Raghavan, Kunhimangalam, affording him an opportunity to file revised return on the basis of audit report in Form 13 & 13 A and to remit balance amount of tax along with interest and penal interest under section 42 of the Act. Since the dealer did not comply with the notice, assessment under section 25 of the Act was proposed and not satisfied by the reply filed by the dealer against the proposal, assessment under section 25 of the Act was completed as per order No.32121271732/08-09 dated 7.3.2011, creating a demand of Rs. 31,49,695/- including interest. Appeal preferred by the dealer is remanded for fresh disposal. Fresh assessment completed on 26.11.11 creating a demand of Rs.30.10 lakhs including interest and subsequently advised for RR. The said assessment was again remanded by the Deputy Commissioner(A), Kozhikode vide order dated 9.4.12 for fresh disposal and the same is under progress.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(c)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaping assessment.
	(c)	Paragraph No.	2.14.7.5
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	7.2.11
	(b)	Date of Department's Reply	15.1.12
III		Gist of Paragraph/Review	In the office of the Asst. Commissioner(A), Spl.Circle, Thiruvananthapuram the Accountant General (A) has noticed that M/s.Divya Business Systems Ltd. a dealer in photocopier, fax machines and consumables failed to include in the return an amount of Rs.1.01 crore being recovery of FSMA Material cost and copier warrantee charges during the year 07-08. This defect was not detected by the assessing authority which resulted in short levy of tax and interest of Rs.15.11 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	Detailed report furnished in column VI(a)
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

	(a)	Improvement in system and procedures, including internal controls.	<p>Notice u/s 25 of the KVAT Act 2003 has been issued to the dealer proposing to assess the turnover escaped. The dealer filed reply in response to the notice. The Asst. Commissioner (Assmt.), Spl.Circle, Thiruvananthapuram has examined the case in detail with assessment records. It is clear that the company has entered into Full Service Maintenance Agreement with customers for maintenance of Xerox photocopiers. The monthly billing comprises of material cost as well as labour. It is seen that VAT has been paid on material cost and it figures as FSMA customers as the last entry in the sales statement @ 12.5% every month. The dealer had paid VAT for a taxable value of Rs. 88,17,875.32 which works out 70% much above the percentage fixed under the Act.</p> <p>Service charges Rs.17,71,883.46 related to service charges collected from such customers for the labour component. Labour charges do not attract VAT. The dealer had collected service charges Rs.17,71,883.16 from non contract customers. In the case wherever material is used, it is shown as sales in the bill and VAT is levied. The amount mentioned above is only labour income on which service tax has been paid and VAT is not attracted.</p> <p>The dealer had received discount for an amount of Rs.15,26,595.78. But on verification of records, it is found that, the amount related to business provision incentives received from their suppliers under various schemes. These were credit notes passed subsequent to actual sales. These credits had no impact on the purchase value of input tax. The suppliers had not availed these credits from their turnover of the tax due. In this circumstances the discount received are in order.</p> <p>Over Achievement Bonus of Rs.10,69,744.05 is seen received by the dealer. It is an incentive payment made by the principal company through distributors, on achievement of quarterly sales targets. This is not an item attracting VAT. This comes under business auxiliary service on which service tax has been paid by the company. Turnover escape in this regard is also not correct.</p>
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		<p>The accounts reveals the acceptance of Rs.4,25,914/- and it is the income mainly related to maintenance of EPABX System, under contract for periodical servicing. No 'material' is used in this regard. As no material cost is involved, the dealer paid service tax on the whole AMC charges. It is seen that there is no transfer of goods involved in these service contracts and hence no VAT is leviable. Therefore there is no turnover escape in this regard.</p> <p>The accounts reveals the wiring charges Rs.4,31,950/- it is an item in which no VAT is involved. The materials purchased for wiring Rs.1,85,418.75 is seen accounted under wiring expenses and in which no VAT credit availed.</p> <p>The assessee had received target incentive on Rs.40,000/-. It was an incentive paid to the assessee's sales head, by their principal company. VAT is not applicable in this regard. The assessee had received interest on deposit of Rs.5484/- and Rs.160165/- in the head of interest on deferred payment of installments. It also attracts no VAT.</p> <p>The assessee received rental charges of Rs.60653/- and which has been collected from those who made machines on rent for short periods on monthly basis. No material is involved in this regard. The assessee had also received SSMA charges. This was also an annual maintenance contract where no material is involved. This entire income is labour charges. Labour charges for warranty machines for Rs.123243/- has been received in which also attracts no VAT.</p> <p>The assessee had received commission of Rs.31,618/-. This was sales commission for orders secured in the name of principal company Xerox India Ltd. The principal company had issued bills to the customers directly. This will not in any way affect taxable value. In view of the above, the audit objections are not sustainable.</p>
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--

	(e) Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	
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**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaping assessment.
	(c)	Paragraph No.	2.14.7.6
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	6.4.11
	(b)	Date of Department's Reply	20.7.11
III		Gist of Paragraph/Review	In Commercial Tax Office, 3 <sup>rd</sup> Circle, Thiruvananthapuram it was noticed that a dealer in home appliances M/s. M.K.P Marketing Net who sold goods at a price lower than purchase did not assess to tax, incentive of ` 75.89 lakh received through credits during the period 2007-08. This resulted in short levy of tax and interest to the tune of ` 11.67 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	In the light of audit, assessment for the year 2007-08 has been revised so as to assess the incentive to tax. Against this revised assessment order the assessee filed Writ Petition before the Hon'ble High Court of Kerala, and the Court vide its judgment in WPC No. 35044/2010 dated 01.12.2010 has quashed the revised order with direction to complete the assessment afresh, after affording a reasonable opportunity of hearing to the petitioner. Accordingly assessment was again completed as per Order dated 18.06.11. In the revised order the benefit of incentive Ra. 10,65,664/- passed on to the subsequent dealers as is evident from the books of accounts is deducted from incentive received Ra. 75,88,653/- and the balance turnover of Ra. 65,22,988/- is assessed to tax at 12.5%. Balance tax and interest due is Ra. 12,72,478/- (Tax Ra. 9,15,452/-, interest 3,57,026/). Demand Notice is issued. The arrears are pending collection under RR.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/completes schemes/project in the light of findings of sample check by Audit findings of sample check by Audit	--



**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaping assessment.
	(c)	Paragraph No.	2.14.7.7
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	6.6.11
	(b)	Date of Department's Reply	26.7.11
III		Gist of Paragraph/Review	In Commercial Tax Officer, Tirurangadi, M/s. Digifour Technologies (P) Ltd, Kakkancherry, a dealer in software did not assess the sales turnover of software amounting to Rs. 34.40 lakh and Rs. 2.07 crore for the year 2006-07 and 2007-08 respectively. This resulted in short levy of tax and interest of Rs. 11.56 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	Final assessment for 06-07 and 07-08 were completed under section 25 on 20.1.2011. Turnover for 2006-07 of Rs. 34,40,461/- was assessed to tax creating additional demand, of Rs. 1,37,618/- (Vat), Rs. 63,304/- (Int.), Total Rs. 2,00,922/- Turnover for the year 07-08 Rs. 2,07,09,827 was also assessed to tax creating additional demand Rs. 8,28,393/- (Vat), Rs. 2,65,085/- (Int.), Total Rs. 10,93,478/-. The demand was recommended for Revenue Recovery as per RRC.No.63, 64/11 dated 16.2.2011 before the Inspecting Assistant Commissioner, Manjeri. As per Order No. WP(C) 7774/2011 dated 14.3.2011 High Court stayed collection of arrears with a direction to dispose of the appeal filed by the dealer before Assistant Commissioner (Appeals), Palakkad. The matter is now pending before the Tribunal. The STAT, Addl.Bench, Ernakulam granted interim stay with direction to furnish security for the balance amount within one month. The dealer furnished adequate security in Form 6 dated 4.1.12 & 2.1.12 for full amount.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/completes scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaping assessment.
	(c)	Paragraph No.	2.14.7.8(a)
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	6.6.11
	(b)	Date of Department's Reply	14.9.11
III		Gist of Paragraph/Review	In the Office of the Assistant Commissioner, Special Circle, Palakkad, M/s. SEPR Refractories India Ltd, Kanjilcode West, Palakkad, an assessee failed to pay tax on the sales turnover of DEPB license amounted to Rs. 2.17 crore during 2008-09. This resulted in short levy of tax of Rs.8.78 lakhs.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	During the assessment year 2008-09, the assessee had reported in their financial statement an income of Rs.2,14,76,786/- under the head "sale of DEPB License". The corresponding debit entry for this item has been shown on Miscellaneous Receivable Account also.  Actually no sale of DEPB has taken place during the year.
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>The method of accounting procedure followed by the assessee with regard to DEPB claim is detailed below.</p> <ol style="list-style-type: none"> <li>1. Each month, the income on account of DEPB claim will accrue at 6.8% of export sales for the month. The accrual entry will be credited in the DEPB Income Ledger (Ledger Account No.31000100). DEPB Income rate for assessee's product is 18%. But the assessee, as a matter of prudence, reckons the accrual of the income only at 85% of 8% i.e. 6.8% of the export value. This is to cover the probable discount to be given at the time of sales or value difference in license issued by the Director General of Foreign Trade. The assessee would pass journal entry for the balance 15% of the license i.e., 100% - 85% on utilization of DEPB.</li> <li>2. The debit entry for this income will be on Miscellaneous Receivable Account (Ledger Account No.25100000) since the amount is to be received from no particular party as this is only a journal entry to recognize the revenue in accordance with the Accounting Standard.</li> <li>3. On receipt of DEPB Licence from Department of Foreign Trade, the assessee will either sell the license or utilize the same for payment of import duty. Sales proceeds as well as the utilization of the license will be credited to Miscellaneous Receivable Ledger.</li> <li>4. So the Miscellaneous Receivable Account show the opening balance, accrual amount, utilization/sales and closing balance of DEPB income accrued.</li> <li>5. Balance of Rs.3,39,93,651/- reported in the Miscellaneous Receivable Account includes the accrual of Rs.2,14,76,786/- utilization of Rs.1,32,35,450.15 and a closing balance of Rs.2,96,70,087.77 of DEPB income. The Miscellaneous Receivable Account is grouped into Advances for the purpose of grouping of heads in the financial statement. Advances of Rs.8,14,37,749/- and prepaid Expenses of Rs.11,03,349/- constitute the main head - Advances Recoverable in cash or in kind or for</li> </ol>
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		<p>value to be received of Rs.8,25,41,098/- in the Schedule No.10 to the Financial Statements under the main head Loans and Advances.</p> <p>It may be noted that the DEPB sales noted in the audit is Rs.2,17,25,962/- against the actual income of Rs.2,14,76,786/- reported in the finance statements. The figure arrived for audit is by adding the amount of Rs.2,49,176/ towards miscellaneous income of SEPR Refractories India Ltd.</p> <p>From the above, it is seen that</p> <p>1) During the year certain entitlements accrued to the assessee on account of export sales. The amount of Rs.2,14,76,786/- represents a prudent estimate of the income arising out of the DEPB which has been recognized as required by the Accounting Standard 12 (AS-12) of the Institute of Chartered Accountants of India.</p> <p>The corresponding debit has been made in MISCELLANEOUS RECEIVABLE a/c.</p> <p>Actually no sale of DEPB has taken place during the year.</p>
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaping assessment.
	(c)	Paragraph No.	2.14.7.8(b)
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	21.2.11
	(b)	Date of Department's Reply	7.5.11
III		Dist of Paragraph/Review	In Special Circle, Trivandrum, M/s.Scot Technology a dealer in software did not assess the sales turnover of licences amounting to Rs.15.60 lakhs for the year 06-07 and Rs.46.15 lakhs for the year 07-08 which resulted in short levy of tax and interest of Rs.2.99 lakhs.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>According to the audit report though the goods dealt with the dealer was taxable at 4% only the dealer had assessed part of sales turnover and purchase turnover for 06-07 at 12.5%. It was noticed by the Audit Wing that out of a sales turnover of Rs.6,28,51,176/- tax was collected at 4% on Rs.2,32,97,951/- and at 12.5% on Rs.3,95,53,225/-. So also input tax was paid at 4% on Rs.73,08,179/- and at 12% on Rs.3,77,66,891/-. Since the assessee had dealings on computer software alone collection of out put tax on a part of turnover was illegal and required forfeiture u/s 72 of the Act. So also under the first proviso below sub section (3) of section 11 no input tax credit shall be allowed on tax collected illegally by the selling dealer of software. The short levy of VAT amounted to Rs.31,82,611/- interest leviable under section 31(5) for the period from 5/07 to 10/09 was Rs.9,54,783/-.</p> <p>In respect of 07-08 assessee collected output tax on sale of computer software amounting to Rs.19,62,789/- against output tax due of Rs.15,60,354/- at 4% on Rs.3,90,08,845/- but showed output tax collected as due. The assessee had purchased software from registered dealers for Rs.2,78,02,093/- and availed of input tax credit of Rs.14,95,502/- against ITC due of Rs.11,12,084/- (at 4%). ITC availed of in excess was required to be disallowed. Failure to do so resulted in short payment of VAT at Rs.3,83,410/-. Interest due was to the tune of Rs.69,014/- penalty for availing of excess ITC and for collecting OPT at in applicable rates attracted penalty. Total tax effect evolved Rs.45,89,818/-.</p> <p>The assessment for the years 06-07, 07-08 were completed based on the following observations made by the Accountant General.</p> <ol style="list-style-type: none"> <li>1. Tax illegally collected as per section 72(1) for 06-07 amounting to Rs.34,00,962/- was forfeited.</li> <li>2. Excess input tax claim was disallowed.</li> <li>3. Balance tax and interest due for 06-07 amounting to Rs.33,43,974/- and Rs.12,45,540 respectively. Total amount due for 06-07 is to the tune of Rs.45,89,314/-.</li> </ol>
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			<p>4. Balance tax and interest due in respect of 07-08 is Rs.7,31,954/- (Rs.5,89,305/- (Tax) and Rs.1,42,649.83 (interest).</p> <p>Subsequently the assessment for the year 06-07 has been remanded by Deputy Commissioner (Appeals), Thiruvananthapuram. The assessment records for the year 06-07 has been forwarded to Law Officer, Thiruvananthapuram, proposing to file second appeal before the Hon'ble Tribunal. On the basis of the appellate order of Deputy Commissioner (Appeal), Thiruvananthapuram no assessment was done afresh. The demand created for the year 07-08 is under revenue recovery.</p>
	(b)	Recovery of overpayment pointed out by audit	
	(c)	Recovery of under assessment, short levy or other dues	--
	(d)	Modification in the schemes and programmes including financing pattern	--
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--



**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaping assessment.
	(c)	Paragraph No.	2.14.7.9
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para./Review in the Department	19.4.11
	(b)	Date of Department's Reply	6.7.11
III		Gist of Paragraph/Review	A works contractor D.Ajayakumar, Vrindavanam, office of the CTO (WC), Kottayam supplying poles to KSE Board in specified locations did not assess tax on transportation charges amounting to Rs.19.72 lakh, 25.20 lakh and Rs.10.14 lakh received during 2006-07, 2007-08 and 2008-09 respectively. This resulted in short levy of tax, cesa and interest of Rs.7.96 Lakhs.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	In the light of audit assessment revised as per order dt.1.3.11 and addl.demand created as under:			
		Year	Tax	Interest	Total
		06-07	2,73,906	1,31,475	4,05,381
		07-08	6,19,285	2,22,943	8,42,228
		08-09	1,16,006	27,841	1,43,847
		Total	10,09,197	3,82,259	13,91,456
		Demand notice sent to the assessee to realize the amount due. RRC issued dated 25.4.2011 and the recovery proceedings were pending before the Inspecting Assistant Commissioner, Kottayam. The assessee has preferred appeal against the said assessment orders before the Deputy Commissioner (Appeals), Ernakulam and has obtained conditional stay on payment of 30% of the balance due and on compliance of the directions contained in order No.KVATA 1375/11, 1376/11 & 1377/11 dated 6.5.11 of the Deputy Commissioner (A), Ernakulam.			
(b)	Recovery of overpayment pointed out by audit				
(c)	Recovery of under assessment, short levy or other dues				
(d)	Modification in the schemes and programmes including financing pattern				
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit				

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaping assessment.
	(c)	Paragraph No.	2.14.7.10
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	7.4.11
	(b)	Date of Department's Reply	26.8.11
III		Gist of Paragraph/Review	M/s. A.M. Motors, Varangode, a dealer in motor vehicles Special Circle, Malappuram did not assess tax on the sales turnover of demo vehicles of Rs. 7.99 lakh and Rs. 34.98 lakh for the year 2005-06 and 2006-07 respectively. This resulted in short levy of tax and interest of Rs. 7.09 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	The demo vehicles have been registered under the Motor Vehicles Act and the rate of tax under rule 10(1) of the KVAT Rules 2005 is 4% being used vehicles.
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p><b>2005-06 :</b> During the year the assessee has sold 4 demo vehicles for Rs.9,98,905.00. All four vehicles sold have been registered under the Motor Vehicles Act and the rate of tax under Rule 10(1) of the KVAT Rules 2005 is 4% being used vehicles. The assessee has paid Rs. 46,108.00 as per Chalan No.258/10.7.2009 for the year 2005-06. They have also paid Rs. 15,839.00 with interest of Rs. 9,662.00 as per Chalan No.270/31.5.2011. Hence the total payment for the year 2005-06 is Rs. 71,609.00. The audit party has taken 12.5% as the rate of tax which is against the spirit of Rule 10(1) of the KVAT Rules 2005.</p> <p><b>2006-07 :</b> During the year the assessee has sold 15 demo vehicles for Rs. 33,92,753.00 at a loss of Rs. 1,05,274.00. Since the assessee has sold the vehicles at a loss of Rs. 1,05,274.00 the sale value of the demo vehicles will be Rs. 33,92,753.00 as against Rs. 34,98,027.00 pointed out in Audit. All the 15 demo vehicles sold are registered under the Motor Vehicles Act the rate of tax to be assessed under Rules 10(1) KVAT Rules is 4% of the sales turnover. The assessee has paid Rs. 2,20,094.00 as per Chalan No.258/10.7.2009. Hence there is no short levy in this case.</p>
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--

	(e) Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	
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**Action taken Notes on CA AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaping assessment.
	(c)	Paragraph No.	2.14.7.11(a)
	(d)	Report No. and Year	CA AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	24.3.11
	(b)	Date of Department's Reply	22.5.11
III		Gist of Paragraph/Review	M/s. K.F.Distributors an assessee in CTO, Vadakara included in his accounts import purchase of flooring material for Rs. 1.36 crore and Rs. 62.78 lakh during 2008-09 and 07-08 respectively. The audit team found that as per customs records his import purchase during these years were Rs. 1.56 crore and Rs. 74.08 lakh respectively. Failure to assess sales turnover corresponding to understated purchase turnover resulted in short levy of tax and interest of Rs. 5.07 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support.	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary.	

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>In the light of audit objection, the assessing authority verified the books of account and found that the dealer has not returned and accounted the floor price fixed by the customs department for the levy of customs duty. The observation is on the basis of details of customs department. The total import for the year 2008-09 as per the audit includes Rs. 11,85,420/- (Assessed value Rs. 9,52,746/- + customs duty Rs. 2,32,674/-) as per invoice No. JJ0216090221101 dated 3.03.09 Yiwujiajie Plastic Co. Ltd., China and the same reported by the dealer during 2009-10, since the goods received in April 2009. Hence Rs. 11,85,420/- has to be deducted from the total purchase turnover for the year 2008-09 determined by the Accountant General. The Commercial Tax Officer has revised the assessment of the dealer for the year 2007-08 and 2008-09 as per order dated 18.04.11, under Section 25(1) of KVAT Act 2003 on the basis of floor price fixed by the customs department for the levy of customs duty, after ignoring the objection filed by the dealer that the purchase value adopted by the customs department was illegal and untenable. The additional demand created for the year 2007-08 and 2008-09 on the basis of floor price adopted by the customs department is as under.</p> <table border="1" data-bbox="456 785 943 859"> <thead> <tr> <th>Year</th> <th>VAT &amp; Cess</th> <th>Interest</th> <th>Total</th> </tr> </thead> <tbody> <tr> <td>07-08</td> <td>155466</td> <td>57522</td> <td>212988</td> </tr> <tr> <td>08-09</td> <td>105011</td> <td>26298</td> <td>131309</td> </tr> </tbody> </table>	Year	VAT & Cess	Interest	Total	07-08	155466	57522	212988	08-09	105011	26298	131309
Year	VAT & Cess	Interest	Total											
07-08	155466	57522	212988											
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(b)	Recovery of overpayment pointed out by audit													
(c)	Recovery of under assessment, short levy or other dues													
(d)	Modification in the schemes and programmes including financing pattern													

(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	
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**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaping assessment.
	(c)	Paragraph No.	2.14.7.11(b)
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	6.6.11
	(b)	Date of Department's Reply	25.8.11
III		Gist of Paragraph/Review	In the office of the CTO, Kodungallur, it is noticed that M/s. Thyagi Enterprises, Edavilangu, an assessee included in his accounts import purchase of flooring materials for Rs.90.67 lakh during the year 08-09. As per customs records his import purchase during the year was Rs.1.05 crore. Failure to conduct external surveys to verify purchase turnover resulted in short levy of tax, interest and penal interest of Rs.2.91 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	The purchase turnover reported in annual return & 13A and books of accounts is the actual purchase and not the assessable value.
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>With reference to the audit a notice u/s 25(1) dtd. 18.6.11 was issued to the assessee proposing to assess the difference in turnover inviting objections and directed to produce the books of accounts for 08-09 for verification.</p> <p>In response to the notice the assessee filed a written reply along with copies of bills of import purchase made during 2008-09 and produced books of accounts in support of the documents filed. Verification revealed the following:</p> <p>The dealer has returned Rs.66,07,380/- towards import purchase turnover in the annual return and Form 13A filed in office. The books of accounts produced revealed also the same turnover whereas in Accountant General's audit the import purchase turnover taken is assessable value amounting Rs.80,49,077/- based on the records received from Customs Receipt (Audit Wing of Accountant General's office at Customs House). All the import purchase bills are seen accounted. Freight charges and customs duty are separately accounted in the books of accounts. The purchase turnover reported in Annual return &amp; 13A and books of accounts is the actual purchase cost in the Indian Rupee and not the assessable value. In the circumstances there is no short levy of tax and no loss of revenue in this case.</p>
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	

	(e) Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	
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**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaping assessment.
	(c)	Paragraph No.	2.14.7.12
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	21.2.11
	(b)	Date of Department's Reply	22.7.11
III		Gist of Paragraph/Review	In CTO, 2 <sup>nd</sup> Circle, Trivandrum M/s. Harikrishna Industries, an assessee engaged in fabrication and installation of machinery had a turnover of Ra.70.10 lakh as per his monthly returns for the year 2007-08. In audit it is noticed that the assessee disclosed a turnover of Ra. 38.90 Lakh only in his annual return, resulting in escape of turnover. Further, the taxable turnover was assessed at four per cent. This was not correct as the turnover relates to works contract not in the form of goods, and hence the transfer value of material amounting to Ra.49.07 Lakh is liable to be assessed at 12.5%. These defects resulted in short levy of tax, interest and penalty of Ra. 4.58 Lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>The assessment for the year 2007-08 in respect of M/s. Harikrishna Industries has subsequently been revised and creating additional demand as follows:</p> <table data-bbox="551 341 902 440"> <tr> <td>Tax</td> <td>-</td> <td>Rs. 3,64,923.00</td> </tr> <tr> <td>Interest</td> <td>-</td> <td>Rs. 83,794.00</td> </tr> <tr> <td>Penalty</td> <td>-</td> <td>Rs. 10,000.00</td> </tr> <tr> <td></td> <td></td> <td><u>Rs. 4,58,716.00</u></td> </tr> </table> <p>Out of the above an amount of Rs.1,95,000/- has already been collected.</p>	Tax	-	Rs. 3,64,923.00	Interest	-	Rs. 83,794.00	Penalty	-	Rs. 10,000.00			<u>Rs. 4,58,716.00</u>
Tax	-	Rs. 3,64,923.00												
Interest	-	Rs. 83,794.00												
Penalty	-	Rs. 10,000.00												
		<u>Rs. 4,58,716.00</u>												
(b)	Recovery of overpayment pointed out by audit													
(c)	Recovery of under assessment, short levy or other dues	--												
(d)	Modification in the schemes and programmes including financing patterns	--												
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--												

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Irregular claim of input tax credit.
	(c)	Paragraph No.	2.14.8.1
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	6.6.11
	(b)	Date of Department's Reply	8.8.11
III		Gist of Paragraph/Review	In the Office of the Asst. Commissioner, Special Circle (Produce), Mattancherry it is noticed that M/s. J.K. Tyre and Industries Ltd., Kochi an assessee did not avail ITC of Rs.20.53 crore on purchase of rubber valued Rs. 513.13 crore during 2008-09, as the goods were transferred to other States. However, the assessee took credit of corresponding cess amounting to Rs. 20.53 lakh. Besides, the assessee availed credit of Rs. 12.09 lakh as excess cess brought forward from previous return period. As cess was introduced from April 2008, there could not be any carry forward of cess from 2007-08. These mistakes resulted in short levy of cess of Rs. 32.62 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph? If not, Please indicate areas of disagreement and also	Yes

	(b)	attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>The assessee filed returns manually for the period from 4/08 to 7/08 and correctly paid the OPT and 1% cess thereon and not taken any credit of cess paid on natural rubber. Provisions for collecting cess at 1% has been introduced with effect from 28.7.08. The dealer started e-filing of returns on 28.8.08 for the months of 4/08 onwards. While e-filing the cess paid on natural rubber has been automatically shown by the system as cess creditable in the KVATIS summary and got adjusted towards cess to be paid on the sale of tyres and tubes and balance shown as excess credit of cess. Due to the error in the KVATIS system the dealer's liability of cess on the sale of tyre/tube/flaps got adjusted with the ineligible cess paid on purchase of natural rubber stock transferred and the excess got credit to the dealer.</p> <p>On receipt of the audit objection notice has been issued to the dealer demanding cess due of Rs. 5,93,975/- with 1% interest and 2% of the interest as penal interest. The dealer paid cess due Rs. 5,93,975/- interest Rs. 1,27,363/- and penal interest Rs. 2,54,726/- totaling to Rs.9,76,064/- vide DD No.021649 dated 20.07.10 enc ashed vide chalans S.39 dated 09.08.10.</p> <p>Even after adjusting cess due, there is still excess credit of cess for Rs. 14.68 lakh. The escapement of tax occurred due to the problems faced at the initial stages of e-filing. Before that the dealer had paid OPT &amp; Cess on OPT and not taken credit of cess on IPT paid.</p> <p>The short levy occurred due to the technical problems in the KVATIS and the dealer had paid the amount pointed out as short levy in the audit.</p>
(b)	Recovery of overpayment pointed out by audit	



	(c)	Recovery of under assessment, short levy or other dues	--
	(d)	Modification in the schemes and programmes including financing pattern	--
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Irregular claim of input tax credit.
	(c)	Paragraph No.	2.14.8.2
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	6.6.11
	(b)	Date of Department's Reply	6.1.12
III		Dist of Paragraph/Review	In the office of the Assistant Commissioner, Special Circle, Mattancherry, the Accountant General (Audit) noticed that the assessing authority failed to disallow the input tax credit availed by an assessee M/s.Cochin Minerals & Rutiles Ltd. during 08-09 which related to purchase of building material used for construction purpose; resulting in short remittance of tax and interest of Rs.12.10 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	The assessing authority has physically verified the working process of the plants. Due to the frequent maintenance of the plant machinery, the purchased items mentioned by the Accountant General in the audit are used purely for the maintenance purpose and not for any building construction. Hence they are eligible for input

			tax credit and the objection raised by the Accountant General is not sustainable.
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	The assessing authority has physically verified the working process of the plants. Due to the frequent maintenance of the plant machinery, the purchased items mentioned by the Accountant General in the audit are used purely for the maintenance purpose and not for any building construction. Hence they are eligible for input tax credit and the objection raised by the Accountant General is not sustainable.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Irregular claim of input tax credit.
	(c)	Paragraph No.	2.14.8.3
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	6.6.11
	(b)	Date of Department's Reply	31.12.11
III		Gist of Paragraph/Review	In Commercial Tax Office, Special Circle (Produce), Mattancherry, the assessing authority failed to reverse the input tax credit of Rs.8.23 lakh claimed by M/s.AVT Natural Products, Aluva during 2008-09, being the tax paid on purchase of goods like cleaning powder, fire extinguisher, soap, iron products etc. which were used for purposes other than resale or manufacture of taxable goods etc. This resulted in short assessment of tax of Rs. 8.23 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Partially sustainable.
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	Out of the 51 items pointed out by Accountant General, 26 items were eligible for taking IPT while other 25 items not eligible and IPT related to these ineligible items will come to Rs.64,560/-and the claim has already been disallowed.
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>The result of the enquiry conducted by the assessing authority at the plant of the assessee and verification of the items involved was as follows:-</p> <ol style="list-style-type: none"> <li>1. <u>Rectified Spirit</u>: The item purchased was ethanol i.e. ethyl alcohol used as a solvent for the extraction of the solvent extraction of cercumin from turmeric and in strict sense this will become a consumable. Before getting the extract the powdered turmeric has to be mixed with ethanol, since that was soluble only in ethanol. The negative character of input tax in 11 (5) (g) was omitted as per Finance Act (Act 10 of 2005) with effect from 01/04/05, and therefore was eligible for claiming input tax.</li> <li>2. <u>Aluminium Products</u>: The assessee has purchased the Aluminium sheet for covering the pipelines which carries the solvent, i.e. including the hot and cold pipelines for maintaining the heat and cold. All these pipes were part of the plants and eligible for input tax as per Section 2 (x).</li> <li>3. <u>Batteries</u>:- The said items were purchased for the UPS maintained for the control of computers and directly connected with the plant and eligible for input tax.</li> <li>4. <u>Bearings</u>: These items are the spare part of the machinery and comes in the explanation to section 11 (5) of the Act.</li> <li>5. <u>Brushes</u>:- The brushes are used for removing the waste in the process of solvent extraction and that can be termed as tool to machinery and coming in the explanation to section 11 (5) of the Act.</li> <li>6. <u>Cables</u>:- The cable purchase are for Rs.524266.00 and was for the connection in the control panel with the plant and that are the part of the plant and the said purchase is not through one bill hence the said item will come under section 2 (x) and eligible for IPT at a lumpsum.</li> <li>7. <u>Cement</u>:- The cement purchase effected was not the ordinary cement and that is the refractory cement, (i.e. high density cement) and used for</li> </ol>
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			<p>the inner cover of the furnace used for boiler and that is also a part of the plant and eligible for IPT as per section 2 (x) and eligible for IPT at a lumpsum.</p> <p>8. <u>Electrical Goods</u>: The electrical goods for Rs.475608/- @ 4% and Rs.1726483/- @ 12.5% was purchased for the renovation of plant and all the purchases above not in lump sum and all the bills were below 5 lakhs and on enquiry all the electric goods were purchased in connection with the control panel and for the renovated extract plant and all are the parts of the said plant. And on verification of the plant and the said bills, no electric goods which were used to fix as fixture in the building were included in the said electric goods. Hence the purchases were parts of plant and eligible for input tax as per section 2 (x) in a lumpsum.</p> <p>9. <u>Electrodes</u>:- Electrodes are used in the maintenance of plant and the said item is a consumable and eligible for IPT since it was deleted from section 11 (5) (g) of the Act and eligible for IPT.</p> <p>10. <u>Electronic goods</u>. The said purchases are purchases of parts of program logic control system and distribution control system and that were electronically controlled and are the parts of the plant, and eligible for IPT as per Section 2 (x).</p> <p>11. <u>Fly extinguisher</u>:- The item is inevitable part in the security of the plant and is a capital good eligible for IPT as per section 2 (x).</p> <p>12. <u>Furniture</u>:- The furniture purchased by the assessee is not the ordinary furniture and is one specialized for the use in the plant. The security door for the furnace and the steel chair used inside the plant. All these items were inevitable for a plant and will come under head a part of plant and eligible for IPT as per section 2 (x).</p> <p>13. <u>Gases</u>:- This is a consumable used in the furnace and other heating chambers and for welding and it is also a consumable used in connection with manufacture and eligible for IPT.</p> <p>14. <u>Glassware &amp; Mirror</u>:- The word mirror was included since the entry in the commodity coding is like that. The purchases were actually glass funnel, pipette etc. in the lab and that were eligible for IPT as per section 2 (x) being lab equipment.</p> <p>15. <u>Hardware</u>. During this year the assessee has purchased nut and bolt and other hardware</p>
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items in the manufacture of tanks and maintenance of plant. The purchases were Ra.353045/- @ 4% and Ra.22272/- @ 12.5%. This consists of steel bolt, iron bolt, gasket, aluminium bolts, corn washer. These bolts are not ordinary and having huge size and high quality to protect leak also. These items are spares of plant and eligible for IPT, since it comes in the explanation to section 11 (5) of the Act.

16. Hylsem sheets:- The Hylsem sheets were purchased for the covering of the conveyor belt and is part of the machinery coming under Section 2 (x) and eligible for IPT.
17. Iron Products:- The premises of the assessee is having so many tanks for the storage of so many items and the life of the said tanks are very short. Hence periodically they were changing the same for maintaining the quality. The said tanks were fabricated in the workshop attached to the factory. During the enquiry of the assessing authority also the fabrication of tank were going on. The purchases of iron products were not in lumpsum. That were effected as and when required and as per the specification. These are included in the addition in the plant in the asset schedule, eligible for IPT as per section 2 (x) of the Act.
18. Software:- The IT Software purchase were not connected with the administrative purpose and that program was for computerized control of machines and that were inevitable for functioning of the plant. Hence will come in the explanation to section 11 (5) of the Act and eligible for IPT.
19. Lubricants:- purchased were used in the machinery attached to the plant and the said lubricants will certainly come in the definition of consumable in the process of manufacture, and eligible for IPT.
20. Metallic Products:- The said purchases are copper tube for vapour absorption heat pump evaporator coil and that has to be included in the part of the plant and eligible for input tax.
21. Paints:- The paint purchased were not for the use in the painting factory. The said paint were used for painting the drums used for packing of the extract and that were eligible for input tax.
22. Pipes:- The pipes were purchased for the periodical changes in the pipes of the plant and not the sanitary pipes and, the said pipes were part of the plant and eligible of IPT as per Section



		<p>2 (x) of the Act.</p> <p>23. <u>Rubber products</u>:- The assessee has conceded purchases of rubber product @ 12.5% for Rs.12,77,997/- and @ 4% for Rs.35,98,25/-. This include the purchase of seals and bushes of machinery and gloves of rubber and leather used in the plant and which were eligible for input tax.</p> <p>24. <u>Tools</u>:- The tools purchased were specific tools used in the plant and that are eligible for IPT as per explanation to Section 11 (5) of the Act.</p> <p>25. <u>Tank</u>:- The PVC tanks are purchased for the storage of different items. These tanks were not used for the part of the building and are eligible for IPT as per Section 2 (x) of the Act.</p> <p>26. <u>Air Conditioner</u>:- The assessee has effected the purchase of Air-Conditioner system for the fabrication of cold storage for the storing of finished goods, the process done in the food material and which need utmost care in the preparation and preservation. Hence that also will come under definition of capital goods in section 2 (x) of the Act and eligible for input tax.</p> <p>All the above goods were purchased from registered dealer and the tax paid on these purchases will come under the definition of "input tax" in section 2 (xxiii) and the dealer is liable to tax under sub section (i) of section 6 and eligible for input tax credit as defined in section 11 (1) of the KVAT Act. As per the existing provision related to Input tax in section 2(xxiii) a dealer is eligible for input tax on the purchase of goods in the course of business. The assessee has shown a purchase of goods worth Rs.75,17,3910/- and effected local purchase of goods for Rs.10,30,60,91/- for the administrative and other purpose and not claimed input tax.</p> <p>The assessee has purchased the above goods in the exercise of business and the assessee is liable to pay tax u/s 6(1) of the KVAT Act, and eligible for input tax as per section 2 (xxiii) of section 11(1) of the KVAT Act. Out of the 51 items pointed out by the Accountant General in the Draft Para, 26 items discussed above were eligible for taking IPT. Other 25 items are not eligible for IPT and IPT related to these items will comes to Rs.64,860/- and the claim has already been disallowed.</p>
(b)	Recovery of overpayment pointed out by audit	

(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Irregular claim of input tax credit.
	(c)	Paragraph No.	2.14.8.4
	(d)	Report No. and Year	C& AG report ended 31.3.2011.
II	(a)	Date of receipt of the Draft Para/Review in the Department	17.5.11
	(b)	Date of Department's Reply	23.6.11
III		Gist of Paragraph/Review	In the Asst. Commissioner, Special Circle, Kannur for the year 08-09 M/s.Mawa Coir Products a manufacturer availed input tax credit on raw materials used in production of schedule 1 goods. The input tax credit availed was not assessed as reverse tax. This resulted in short levy of tax and interest of Rs.3.00 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	In this case the assessment of the assessee had been finalized incorporating the short levy noticed in auc as per order No.32120647424/08-09 dated 31.8.10 the Asst.Commissioner (KVAT), Special Circle, Kannur. The assessee was liable to pay an amount of Rs.2,54,132/- (tax) and Rs.45,744/- (interest) and Rs.91,488/- (penalty). Consequent to the failure on the part of the assessee in remitting the amount in time the same has been advised for Revenue Recovery action before the Inspg.Asst.Commissioner, Kannur. The assessee remitted an amount of Rs.3,18,545/- including tax, interest and collection charges. The assessee preferred appeal before the Deputy Commissioner (Appeals), Kozhikode and the Deputy Commissioner (Appeals) directed to delete the penalty of Rs.91,488/-. The collection of the balance amount is being watched.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Irregular exemption
	(c)	Paragraph No.	2.14.9.1(a)
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	5.2.11
	(b)	Date of Department's Reply	10.3.11
III		Gist of Paragraph/Review	M/s. Oceanus Dwellings Pvt. Ltd. an assessee on the rolls of Commercial Tax Officer (WC), Palakkad engaged in works contract of building flats did not assess tax on whole contract amount of 12.02 crore while paying tax under section 8 for the year 2007-08. The assessee deducted 5.31 crore from the whole contract amount stating that the amount represented value of land. This was not correct as the assessee was liable to pay tax on the whole contract amount. The assessing authority failed to detect the mistake and revise the assessment under section 25(1). This resulted in short levy of tax and interest of 24.87 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>In accordance with the audit, the assessment was completed by the Commercial Tax Officer (WC) as per Order No. 32437360916/07-08 dated 25.06.10 demanding tax 21,25,622/- and interest 5,31,406/-. This amount has been advised for collection under RR Act. Aggrieved by the Order, the assessee preferred appeal before the Deputy Commissioner (Appeals), Ernakulam and also approached the Hon'ble High court of Kerala with a WP(C) No. 27497/10(j). The Hon'ble High court of Kerala has disposed of the Writ Petition vide judgment dated 03.09.2010 with the following directions.</p> <ol style="list-style-type: none"> <li>1. The appellate authority is Deputy Commissioner (Appeal), Ernakulam to consider the appeal filed by the assessee and pass orders within one month from the date of receipt of judgment.</li> <li>2. Till orders are passed by the Deputy Commissioner (Appeals), recovery of amount shall be kept in abeyance.</li> </ol> <p>And the case is pending before Deputy Commissioner (A), Ernakulam.</p>
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complets scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Irregular exemption
	(c)	Paragraph No.	2.14.9.1(b)(1)
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	17.5.11
	(b)	Date of Department's Reply	26.8.11
III		Gist of Paragraph/Review	In the Commercial Tax Officer (WC & LT), Kottayam, during scrutiny of records in respect of M/s. South India Foundations, Kottayam for the year 2008-09 it was noticed that a works contractor who opted to pay tax at compounded rate of three per cent claimed exemption on a turnover of Rs.1.12 crore during 2008-09. The irregular exemption resulted in short levy of tax as d interest of Rs. 3.90 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	As the works executed were exclusive labour contract proved with agreement and schedules no short levy is caused.
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)

Improvement in system and procedures, including internal controls.

M/s. South India Foundation is an assessee on the roll of Commercial Tax Officer(WC & LT), Kottayam bearing TIN 32051613532 engaged in piling works.

The assessee has opted for annual compounding under section 86(f) of the Act and paid tax quarterly.

The accounts for the year 2008-09 were verified. The exemption is claimed on the labour contract receipt for which no material transfer is involved. The agreement showing the labour contract is submitted to the assessing authority. According to Rule 9(4), the amount payable for a contract which does not involve any transfer of goods, whether as goods, or in some other form, shall not be deemed to be turnover for the purpose of this rule. In this case, transfer of goods is not involved in any form and the turnover in respect of this labour contract, will not form part of the turnover of the contractor. Though as per Section 8 a (i) of the KVAT Act 2003, the assessee had to pay tax at 3% of the whole contract amount the turnover in respect of purely a labour contract will not form part of the turnover of the contractor. So dealer/ contractor is not liable to pay tax on turnover including that from the labour contract.

During 2008-09, the contractor is claiming deduction in respect of labour contract as follows:

Sl.No	Awarder details	Amount received
1	Mary Matha, Panavally Site	16,88,525.00
2	Mary Matha, Puzhambkulam	5,15,625.00
3	Velloppally Constructions	25,720.00
4	Vettivil Constructions	1,27,670.00
5	Alfa One Global	14,22,547.00
6	Trinity Foundations	39,15,984.00
7	Silver Builders	13,00,000.00
8	AVS Project	92,000.00
9	Vasanthinasenan	20,23,000.00
10	C.F.Joseph.	74,925.00
	Total	1,11,85,996.00



			As the works executed were exclusive labour contract proved with agreement and schedules no short levy is caused.
(b)	Recovery of overpayment pointed out by audit		
(c)	Recovery of under assessment, short levy or other dues	-	
(d)	Modification in the schemes and programmes including financing pattern	--	
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	-	

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Irregular exemption
	(c)	Paragraph No.	2.14.9.1(b)(2)
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para./Review in the Department	6.5.11
	(b)	Date of Department's Reply	9.8.11
III		Gist of Paragraph/Review	In Commercial Tax Officer (WC & LT), Kottayam, during scrutiny of records it was noticed that a works contractor, Sony Mathew, Palathira who opted to pay tax at compounded rate of three per cent claimed exemption on a turnover of Rs. 1.02 crore during 2008-09. The irregular exemption resulted in short levy of tax and interest of Rs. 3.54 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	The tax is deducted for the whole contract amount. The copies of 20F issued by the PWD and the schedule is produced to prove that the tax is deducted for the whole contract amount including the material supplied by the PWD. So there is no short levy.
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>Sri. Sony Mathew, Palathra, Thuruthy.P.O, Changanacherry is an assessee on the rolls of the Commercial Tax Officer (WC &amp; LT), Kottayam with TIN 32051647912 engaged in contract works with PWD and idea cellular etc.</p> <p>The assessee had opted annual compounding and paid tax quarterly. The accounts for the year 2008-09 were verified. The exemption was claimed on the material supplied by the awarder PWD Road Division. The schedule of Sales Tax Certificate issued by PWD was verified. PWD has deducted tax from the whole contract amount. The contract amount includes provision for Department materials, Sales Tax, Income Tax and Welfare Fund. PWD issued final bill for Rs. 4,29,30,597 and deducted tax @ 3.03%. The contract amount from PWD is Rs. 4,29,30,597/- and that from private awarders is Rs. 3,41,57,961/-. The material supply from PWD is Rs. 1,01,50,010. The final bill amount includes the amount for material supplied from the Department, and tax is deducted for this material supply also. Thus tax is deducted for the whole contract amount. The copies of 20F issued by the PWD and the schedule is produced to prove that the tax is deducted for the whole contract amount including the material supplied by the PWD. So there is no short levy.</p>
(b)	Recovery of overpayment pointed out by audit	
(c.)	Recovery of under assessment, short levy or other dues	--

	(d)	Modification in the schemes and programmes including financing pattern	--
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Irregular exemption
	(c)	Paragraph No.	2.14.9.2
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	18.6.11
	(b)	Date of Department's Reply	12.8.11
III		Gist of Paragraph/ Review	In Commercial Tax Office, Chathannoor, M/s Kingston Automotives, a Khadi and Village Industries unit sold tipper bodies of Mahindra and Tata for Rs.1.14 crore during 2007-08. The assessee paid tax at four per cent up to September 2007 and paid no tax since October 2007. However, Mahindra and Tata bodies built by the unit would not come under products of black smithy. Failure to assess tax at the correct rate of 12.5% resulted in short levy of tax and interest of Rs.13.83 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>The assessee is a manufacturer and seller of bodies of Eicher Tipper/S.K. Tata Tipper, Bodies of Mahindra etc. In the annual return and the certified Accounts in Form 13 and 13A, the total sales turnover was shown as Rs.1,13,86,907/-.</p> <p>The assessee had paid tax @ 4% only for the sales turnover up to 9/2007 and paid no tax for the remaining months of the year 2007-08 and claimed exemption stating that the unit was recognized by the Khadi &amp; Village Industries Board as a 'Black Smithy' Unit.</p> <p>But under item 55 of the first schedule, '21' products notified by Khadi &amp; Village Industries Commission, at the point of sale by manufacturing units approved by the Kerala Khadi &amp; Village Industries Board are exempted. The assessee has stated that the above unit comes under the 'Products of Black Smithy'. But the manufacturing of Eicher Tipper Bodies, Mahindra &amp; Tata Bodies would not come under the purview of 'Products of Black Smithy' and cannot be treated as a Khadi Product eligible for exemption. Hence the entire sales turnover of Tipper Lorry bodies are taxable at 12.5%, vide item No. 67(6), of SRO 82/06 all parts of motor vehicles, Bodies of Motor vehicles etc.</p> <p>As the assessee paid tax Rs.2,22,764/- up to 9/2007 (4% on Rs.55,83,282) the differential tax leviable for the months from 4/07 to 9/07 works out to Rs.4,74,579/-.</p> <table data-bbox="425 893 893 1019"> <tr> <td>(5583282 x 8.5%)</td> <td>= Rs. 474579/-</td> </tr> <tr> <td>Tax leviable for the remaining turnover</td> <td></td> </tr> <tr> <td>(Rs. 5803625 x 12.5%)</td> <td>= Rs. 725453/-</td> </tr> <tr> <td>Total Tax leviable</td> <td>= Rs. 1200032/-</td> </tr> <tr> <td>Interest under Sec. 31(5) 16%</td> <td>= Rs. 192005/-</td> </tr> </table> <p>This being pointed out, books of account of the assessee were called for and verified by the then assessing authority. Best judgment u/s 25(1) of the Act was completed assessing the entire turnover at 12.5% tax rate vide the order dated 24/2/2010 of Commercial Tax Officer, Chathannoor demanding tax of Rs.13,44,653/- and interest of Rs.2,76,007/- Aggrieved by the said order the assessee went in appeal before the</p>	(5583282 x 8.5%)	= Rs. 474579/-	Tax leviable for the remaining turnover		(Rs. 5803625 x 12.5%)	= Rs. 725453/-	Total Tax leviable	= Rs. 1200032/-	Interest under Sec. 31(5) 16%	= Rs. 192005/-
(5583282 x 8.5%)	= Rs. 474579/-											
Tax leviable for the remaining turnover												
(Rs. 5803625 x 12.5%)	= Rs. 725453/-											
Total Tax leviable	= Rs. 1200032/-											
Interest under Sec. 31(5) 16%	= Rs. 192005/-											

		Deputy Commissioner (Appeals), Kollam. The contention of the assessee was that the assessee unit is recognized by the Kerala Khadi & Village Industries Board as Village Industry eligible for tax exemption as Black Smithy Unit under Entry 55 (12) of the 1 <sup>st</sup> Schedule to KVAT Act. The argument of the assessee was not accepted and hence the appeal was not allowed. Against this Appellate Order (VATA No. 394/10, dtd: 20/9/2010 of Deputy Commissioner (A)- II, Kollam), the assessee preferred 2 <sup>nd</sup> appeal before the Hon'ble KVAT Tribunal, Ernakulam. The assessee has also filed Writ OP No. WP(C) No. 30542/2010 before the Hon'ble High Court of Kerala for stay of collection of demand. The Hon'ble Tribunal has granted conditional stay on furnishing Security for the disputed tax, vide Order No. 358/10 in TA 563/10 filed by the assessee. The assessee has furnished security bond in Form No. 6 for Rs.15,50,510/-.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Irregular exemption
	(c)	Paragraph No.	2.14.9.3
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	28.2.11
	(b)	Date of Department's Reply	9.5.11
III		Gist of Paragraph/Review	M/s. Micro Plastics a dealer on the rolls of Commercial Tax Officer, 1 <sup>st</sup> Circle, Tripunithura who is engaged in the manufacture of plastic moulded components conceded receipts on works contract of Rs. 39.60 lakhs and Rs. 38.44 lakhs during 2005-06 and 06-07 as towards labour charges even though goods were used on the above works. The assessing authority did not detect this which resulted in short levy of tax of Rs. 7.32 lakhs.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	



VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	In the light of audit, assessment for 05-06 and 06-07 were completed creating demand of Rs.4,46,217.50 and Rs.4,29,152/- respectively. The assessee had filed appeal and the Deputy Commissioner (Appeals) as per order No.KVATA 283/10 & 282/10 dtd. 18.12.10 had disposed the appeals filed by M/s.Micro Plastics for the years 05-06 and 06-07 and ordered to modify the assessments for these two years. Aggrieved by this order the assessee filed second appeal before KVAT Appellate Tribunal. The Appellate Tribunal as per order No.TA(VAT)Nos.797/11 & 798/11 dtd. 20.9.11 of KVAT Appellate Tribunal has granted interim stay for the collection of balance amount. The assessee had remitted Rs.187,334/- vide chalan No.359 dtd 26.11.10 towards balance tax due for 05-06 and Rs.1,66,932/- vide chalan No.360 dtd. 26.11.10 for the year 06-07 at the first appellate stage. As per the direction of the Appellate Tribunal the assessee has fulfilled the stay condition by furnishing security for the disputed amount.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short / Non assessment of CST
	(c)	Paragraph No.	2.14.10.1
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para./Review in the Department	6.6.11
	(b)	Date of Department's Reply	27.3.12
III		Gist of Paragraph/Review	<p>Commercial Tax Officer (WC), Ernakulam accepted the application for cancellation of CST registration filed by M/s.N.J.K.Builders in June 2005. The said assessee opted for compounding and assessed contract receipt of Rs.6.67 crore for the year 05-06 to tax at 2% plus purchase tax. As the cancellation of CST registration takes effect only from the end of the year, the assessee was liable to 4% tax for the entire year (05-06). Further, the assessee had not paid the tax assessed and admitted in full and the assessing authority did not initiate action to collect the balance tax.</p> <p>Hence, interest, under section 31(5) read with Rule 31(6) of KVAT Act and Rules, of Rs.6.10 lakh is leviable. Total short remittance works out to Rs.19.65 lakh.</p>
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes

	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	Based on the Audit objection the final assessment in respect of M/s.N.J.K.Builders for the year 05-06 was completed by the Asst.Commissioner (WC), Ernakulam as per order dated 5.4.10 creating additional demand of Rs.26,59,867/-. Subsequently the assessee filed appeal before the Deputy Commissioner (Appeals), Ernakulam. The Deputy Commissioner (Appeals) as per Order No.KVATA 2713/10 dtd 31.10.11 has remanded the assessment for fresh disposal with direction to verify the total turnover adopted in the assessment order. Accordingly the revised assessment is completed on 27.3.12. The tax and interest balance is Rs.18,21,480/- and the amount is pending collection under RR.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short / Non Assessment of CST
	(c)	Paragraph No.	2.14.10.2
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	6.6.11
	(b)	Date of Department's Reply	31.12.11
III		Gist of Paragraph/Review	In the Asst. Commissioner, Mattancherry the Accountant General, has noticed that a dealer M/s.Kamco Ltd, Athani assessed tax on interstate sales turnover of power tiller for Rs.13.37 crore pertaining to April and May 2008 at the rate of 2% instead of correct rate of 3%. This resulted in short levy of tax and interest of Rs.15.51 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>M/s.Kamco Ltd. Athani being a public limited company, engaged in the manufacturing and sale of Agricultural machinery, supporting the mechanization of farming operations had been granted various concessions by the Government. The assessee was allowed concessional rate on interstate sale @ 2% from 1.8.91. But on introduction of VAT all earlier notifications were rescinded and though the assessee had applied for concessional rate, it has not been yet sanctioned by the Government. Thus as pointed out in the audit, the applicable rate is 3% on interstate sales under the prevailing conditions.</p> <p>Notice was issued to assess the tax due and in reply the assessee had requested time till 15.1.12. As per the letter No.C1-51212/09/CT dated 18.4.12 of Joint Commissioner-I, it is directed that no coercive steps should be taken against the assessee, since the government is contemplating to reduce tax rate payable under CST Act for interstate sale of power tillers.</p>
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	

Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short / Non assessment of CST
	(c)	Paragraph No.	2.14.10.3
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/ Review in the Department	21.3.11
	(b)	Date of Department's Reply	25.6.11
III		Gist of Paragraph/Review	In Asst. Commissioner (Assmt.), Special Circle, Alleppey, during the period of audit in the file of Aluminium Industries, Mannar for the year 2007-08, Accountant General pointed out that the tax on interstate sales turnover of electrical goods for Rs. 4,72,78,508/- not covered by 'C' Form for the year 2007-08 was assessed to tax @ 10% instead of @ 12.5%. This resulted in short levy of tax and interest of Rs. 14.89 lakhs.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	Based on the audit objection the assessment is revised by assessing the turnover not covered by 'C' form for Rs. 7,38,17,444/- at 12.5%, as per revised order dated 7.3.2011, out of this the turnover of Rs. 4,72,78,508/- was already assessed as per order dated 25.3.2010 @ 10%. The differential rate of 2.5% on Rs. 4,72,78,508/- included in the turnover assessed on 7.3.2011. Demand notice issued accordingly and the amount is advised for Revenue Recovery.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--



**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short / Non assessment of CST
	(c)	Paragraph No.	2.14.10.4
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	20.4.11
	(b)	Date of Department's Reply	25.6.11
III		Gist of Paragraph/Review	While finalizing the assessment for the year 07-08 relating to M/s.Aluminium Industries Ltd., the assessing authority, Asst. Commissioner Special Circle, Alappuzha, did not assess tax on sales turnover of electrical goods for Rs.2.09 crores. The sales were effected to Railway and turnover was covered by declaration in Form D. As the concessional rate of tax on the basis of declaration in form D was withdrawn with effect from 1.4.07 the assessee was liable to pay tax @ 4% applicable to Railways. This resulted in short levy of tax and interest of Rs.10.52 lakhs.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

	(a)	Improvement in system and procedures, including internal controls.	Based on the audit objection the assessment was revised under Sub Rule 82 of Rule 6 of CST Rules, 1957. Accordingly the turnover covered by D Forms have been assessed to tax @ 12.5% with interest and the proceedings along with demand notice issued to the dealer. The dues are advised for Revenue Recovery.
	(b)	Recovery of overpayment pointed out by audit	
	(c)	Recovery of under assessment, short levy or other dues	--
	(d)	Modification in the schemes and programmes including financing pattern	--
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short / Non assessment of CST
	(c)	Paragraph No.	2.14.10.5
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	21.3.11
	(b)	Date of Department's Reply	25.6.11
III		Gist of Paragraph/Review	M/s.Aluminium Industries, Mannar is an assessee on the rolls of Asst.Commissioner (Asstt.), Special Circle, Alappuzha bearing TIN-32040269864C dealing in manufacture and distribution of electrical goods. The interstate sales turnover of electrical goods of Rs.19847059/- covered by 'C' form declarations was not assessed @ 3%. This resulted in short levy of tax and interest of Rs.7.50 lakhs.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

	(a)	Improvement in system and procedures, including internal controls.	Based on the audit objection the assessment is revised by assessing the turnover covered by 'C' form Ra.19847059/- @ 3%. Demand notice was communicated to the assessee and the dues are advised for Revenue Recovery.
	(b)	Recovery of overpayment pointed out by audit	
	(c)	Recovery of under assessment, short levy or other dues	--
	(d)	Modification in the schemes and programmes including financing pattern	--
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Incorrect computation of interest.
	(c)	Paragraph No.	2.14.10.6
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	6.6.11
	(b)	Date of Department's Reply	12.1.12
III		Gist of Paragraph/Review	In the office of the Asst. Commissioner, Special Circle, Mattancherry the Accountant General has noticed that while completing CST assessment for the year 95-96 of M/s.Hindustan Lever Ltd, the assessing authority levied interest on belated payment of tax due at the rate of 1% instead of correct rate of 23% for the period from November 1999 to December 2000, resulting in short levy of interest of Rs.5.49 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Incorrect carry forward of input tax.
	(c)	Paragraph No.	2.14.11(a)
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	24.3.11
	(b)	Date of Department's Reply	9.5.11
III		Gist of Paragraph/Review	In the office of the Asst. Commissioner, Special Circle, Malappuram the Accountant General has noticed that an assessee M/s.I.P.Ruby Latex Pvt.Ltd. included Rs.30.14 lakh stated to be due to him under KGST Act in the input tax credit claim for the year 05-06. After disallowing the incorrect input tax credit of Rs.30.14 lakh the assessee had to pay tax of Rs.12.55 lakh which was not demanded. This resulted in short levy of tax and interest of Rs.16.81 lakh.
	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support.	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary.	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	Based on the audit objection, assessment of the dealer for 05-06 under KVAT Act was completed and demand created as per order No.32100228955/05-06 dt.20.2.10 demanding tax of Rs.12,54,595/- and statutory interest u/s 31(5) of Rs.4,26,552/- and RRC has also been issued against the firm vide RRC No.16/10-11 dt.17.5.10. The amount is pending collection.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Incorrect carry forward of input tax.
	(c)	Paragraph No.	2.14.11(b)
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	24.3.11
	(b)	Date of Department's Reply	29.7.11
III		Gist of Paragraph/Review	While auditing the Office of the Asst. Commissioner, Special, Malappuram the Accountant General has noticed that the total input tax credit of an assessee M/s. Ruby Foam for 2005-06 included Rs. 8.46/- lakh being excess carry forward of credits from 2000-01 and 2001-02. The incorrect carry forward of credit against output tax resulted in short assessment of VAT and interest of Rs. 5.48/- lakh.
	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support.	
V	(a)	Does the Department agree with the Audit conclusions?	-
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	



VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>In the light of audit self assessment u/s. 21 of the KVAT Act was rejected and assessment completed u/s. 25 on 27.02.10 as under :-</p> <p>Taxable turnover determined Rs. 3,87,78,537  Tax due at 4 % Rs. 15,51,141</p> <p><u>Less Input Tax</u>  Input tax claimed to Rs. 1823608   Rs. 956411  Less disallowed Rs.857197)</p> <p>Less Special rebate Rs. 695003  Less Paid Rs. 261054  Excess adjustment to CST Rs. 361327  assmt. 05-06</p> <p>Hence the short levy pointed out, is made good and no amount is pending collection.</p>
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Misclassification of goods.
	(c)	Paragraph No.	2.14.12
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	28.2.11
	(b)	Date of Department's Reply	3.6.11
III		Gist of Paragraph/Review	M/s.ARK Tex,Thathamangalam, Chittur, office of the CTO, Chittur a dealer in readymade garments assessed taxable turnover of Rs.73621/- and Rs.83461/- and non taxable turnover of fabrics for Rs.1.06 crore and Rs.98.55 lakh in the annual returns for the years 06-07 and 07-08 respectively. In the audited accounts the assessee had disclosed the cost of goods manufactured as Rs.1.07 crore and Rs.92.69 lakh and the sale of finished goods as 1.10 crore and Rs.99.38 lakh for the years 06-07 and 07-08 respectively. As such the assessee is liable to pay tax on the sale of finished goods disclosed in the annual accounts. The assessing authority did not detect the misclassification of sale of finished (readymade) garments as fabrics, which resulted in short levy of tax and interest of Rs.10.06 lakh.

	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, please indicate areas of disagreement and also attach copies of relevant documents in support.	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary.	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>The assessee filed annual return disclosing total and taxable turnover of Rs.1,09,57,185/- and Rs.73621/- for the year 06-07 and Rs.99,38,451/- and Rs.83,451/- for the year 07-08 respectively by misclassifying sale of finished goods as fabrics.</p> <p>In the light of audit observation the Commercial Tax Officer, Chittur has assessed the escaped turnover for both years u/s 25(1) of KVAT Act as per order No.32090996362/06-07 dtd 29.9.09 and 320909963/07-08, dated 29.9.09 and created the following demand.</p> <table border="1" data-bbox="476 459 991 529"> <thead> <tr> <th>Year</th> <th>Tax</th> <th>Interest</th> <th>Total</th> </tr> </thead> <tbody> <tr> <td>2006-07</td> <td>432052</td> <td>185782</td> <td>617834</td> </tr> <tr> <td>2007-08</td> <td>394180</td> <td>122196</td> <td>516376</td> </tr> </tbody> </table> <p>The entire amount has been advised for action under RR Act vide NRC No.50/C/06-07 &amp; 07-08 on 21.10.10. The amount is still pending realization.</p> <p>In the meanwhile the assessee has filed appeal before the Asst.Commissioner (Appeals) against the above orders and appeals for both years had been dismissed vide order dated 29.7.10. Against this the assessee has filed appeal before the Sales Tax Appellate Tribunal, Additional Bench, Palakkad which has been partly allowed by the Hon'ble Tribunal. Accordingly, the orders were revised and the demand was reduced. The department, however, has proposed to file TRC in the matter. The demand outstanding at present is under revenue recovery.</p>	Year	Tax	Interest	Total	2006-07	432052	185782	617834	2007-08	394180	122196	516376
Year	Tax	Interest	Total											
2006-07	432052	185782	617834											
2007-08	394180	122196	516376											
(b)	Recovery of overpayment pointed out by audit													
(c)	Recovery of under assessment, short levy or other dues													
(d)	Modification in the schemes and programmes including financing pattern													

	(e) Review of similar cases/complete scheme/project in the light of findings of sample check by Audit Findings of sample check by Audit	
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**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Loss due to delay in collection of cheques.
	(c)	Paragraph No.	2.14.13
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	6.6.11
	(b)	Date of Department's Reply	30.3.12
III		Gist of Paragraph/Review	In the office of the Commercial Tax Officer, Manjeri the Accountant General noticed that M/s.Kerala Automobiles, a dealer in vehicles paid tax by way of cheques drawn on a bank at Kottayam, during the year 05-06. Delay of 18 to 95 days occurred in crediting the amounts to Government account. This resulted in loss of interest of Ra.8.66 lakh.
	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>The Asst. Commissioner, Malappuram has issued notice under section 25(1) of the KVAT Act 2003 to the dealer vide notice 32100468624/05-06 dtd 29.1.09 proposing to levy interest at Rs.12,40,468/- for delay in crediting the amount to the Government Treasury as the payments were made through outstation cheque issued by the dealer.</p> <p>Accordingly the assessment had been completed as per order No.32100468624/05-06 dtd 29.1.09 of the Asst. Commissioner, Special Circle, Malappuram creating an additional demand of Rs.12,40,468/-. The amount of Rs.12,40,468/- was advised for Revenue Recovery as per RRC No.5/09-10 dtd 22.8.09. The amount is still pending with the inapp. Asst. Commissioner, Manjeri for collection. Meanwhile the assessee has filed WP(c) No.21172/2009(N) against the imposition of interest amounting Rs.12,40,460/- and a per order No.WP(C)21172/2009(N) dtd 5.11.09 the Hon'ble High Court has stayed the collection of the above amount.</p>
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	

**Action taken Notes on Ch AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to mistake in computation.
	(c)	Paragraph No.	2.14.14.1
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	18.4.11
	(b)	Date of Department's Reply	2.7.11
III		Gist of Paragraph/Review	In Special Circle, Kottayam M/s.St.Mary's Rubber (P) Ltd, incorrectly computed 4% tax on sales turnover of Rs.20.87 crore as Rs.76.57 lakh instead of as Rs.83.50 lakh during the period 06-07. Besides, the assessee availed an excess input tax credit of Rs.1.25 lakh. This resulted in short levy of tax of Rs.8.18 lakh.
	(a)	Does the Department agree with the facts and figures included in the paragraph?	Partially sustainable
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	Detailed report furnished in column VI(a)
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	



VI

## Remedial action taken

(a)

Improvement in system and procedures, including internal controls.

In the audit it was pointed out that M/s. St. Mary's Rubber (P) Ltd. engaged in the business of Rubber incorrectly computed 4% tax on sales turnover of rubber and the details are as shown below:

Sales turnover centrifuged latex, skim etc.	Ra. 20,87,46,949/-
VAT 4%	Ra. 83,49,879/-
Less VAT assessed	Ra. 76,56,814/-
Short levy	Ra. 6,93,064/-

On verification of the audit report, the assessee effected total sale of centrifuged latex, Skim, Crepe and Crump waste amounting to Ra. 20,87,46,949/-. The item wise details of local sale effected are as shown below.

	Item	Value	Tax
(i)	Centrifuged latex	17,48,36,103	63,00,381
(ii)	Skim and crepe	3,28,11,750	13,12,470
(iii)	Crump Waste	10,99,096	43,963
	Total	20,87,46,949	76,56,814

The short levy pointed out in audit is on the sale of centrifuged latex.

Sales of centrifuged latex	Ra. 17,48,36,103.00
Tax at 4%	Ra. 69,93,444.00
Tax paid	Ra. 63,00,381.00
Balance	Ra. 6,93,063.00

Quantitative statement attached to 13 & 13A for the year ending 31<sup>st</sup> March 2007 revealed the following facts in respect of sale of centrifuged latex.

	Quantity	Amount
Normal latex	278.400	26,448/-
Centrifuged latex	1429814.400	15,74,83,144/-
Form No. 43 sale of centrifuged latex	162028.800	1,73,26,511/-
Total	1592120	17,48,36,103/-

			<p>Hence it is clear that the assessee effected 0% Form 43 sales worth Rs. 1,73,26,511/- during the year, but failed to show the Form No. 43 sales as exempted sales in the Annual return filed.</p> <p>Regarding excess IPT claim, in the absence of concrete evidence from assessee's part, the assessment was completed disallowing the excess IPT availed by the assessee vide order dtd 10.1.12 of the Asst. Commissioner, Special Circle, Kottayam, creating an additional demand of Rs. 1.25 lakhs.</p>
	(b)	Recovery of overpayment pointed out by audit	
	(c)	Recovery of under assessment, short levy or other dues	--
	(d)	Modification in the schemes and programmes including financing pattern	--
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to mistake in computation.
	(c)	Paragraph No.	2.14.14.2
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	18.4.11
	(b)	Date of Department's Reply	23.6.11
III		Gist of Paragraph/Review	M/s. Bank of Novascotia is an assessee company on the rolls of Asst. Commissioner, Special Circle-III, Ernakulam. The objection raised in audit, is that the assessing authority incorrectly calculated the Social Security Cess at 0.1% on the tax of Rs.6.99 crores. The short levy worked out to Rs.6.98 lakh.
	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	The self assessment in respect of the above assessee the year 08-09 was reopened u/s 25(1) of the KVAT fixing the total and taxable turnover Rs.69,03,35,749/- with tax effect of Rs.6,99,03,35 on 31.7.09. While completing the assessment, social security cess at 1% on the above tax v erroneously calculated at Rs.69,903.36 instead correct figure of Rs.6,99,033/-. As this is an er- apparent on the face of the record the same has be rectified u/a 66(1) of KVAT Act on 25.4.11 and the an has been served on the dealer on 11.5.11. Meanwh the assessee company challenged the order u/s 25(1) the Act before Deputy Commissioner (Appeal Ernakulam and the Deputy Commissioner (Appeal) turn has granted stay for the collection of demand l the said year on condition that they remit 50% of t disputed amount and furnish security for the balan- vide order No.KVATA 2712/09 dt.2.12.09. The assees has complied with the directions contained in the o- order. The due amount advised for RR Rs.8,79,120 has been fully collected vide chalan No.3 dtd.29.3.12.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar stages/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	

**Action taken Notes on C&AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to incorrect compounding.
	(c)	Paragraph No.	2.14.15.1(a)
	(d)	Report No. and Year	C&AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	18.4.11
	(b)	Date of Department's Reply	6.9.11
III		Gist of Paragraph/Review	in the Office of the Assistant Commissioner (Asamt.), Special Circle-II, Kozhikode the Accountant General has noticed that M/s. Appolo Gold, Vadakara a dealer in jewellery remitted compounded tax of Rs. 9.21 lakh for the year 2008-09 being 150 per cent of the tax for 2006-07. The tax for 2006-07 was revised to Rs. 10.96 lakh in January 2010. However, the compounded tax for 2008-09 was not correspondingly revised, which resulted in short levy of tax of Rs. 7.30 lakh.
	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	The audit objection was raised on the best judgment order dtd. 6.1.2010 based on the offence detected in inspection. As per the said order tax for 06-07 was revised as Rs. 10,96,215/-. The assessee company has preferred an appeal before the Deputy Commissioner (Appeals), Kozhikode in which the appellate authority modified the order dtd. 6.1.10 granting certain relief. In view of the appellate order the assessing authority has modified the order for 06-07 on 11.2.2011 fixing a VAT liability of Rs. 7,30,465.00. It is true that the compounded tax liability for the year 08-09 is at 150% of the tax liability of 06-07. The loss of Revenue worked out by the Audit Wing is based on the order dt. 6.1.2010. The original compounding order for the year 2008-09 was re-opened and revised as per order dtd. 16.2.2011 based on the modified order for the year 2006-07 dtd. 11.2.2011. So the actual loss of Revenue for the year 08-09 including cess is only Rs. 1,76,231.00 which was adjusted from the excess payment for the year 06-07. Hence there is no loss of Revenue.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to incorrect compounding.
	(c)	Paragraph No.	2.14.15.1(b)
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para./Review in the Department	24.3.11
	(b)	Date of Department's Reply	6.5.11
III		Gist of Paragraph/Review	While auditing the office of the Assistant Commissioner, Special Circle, Kannur, the Accountant General has noticed that M/s. Kunkhikannan Jewellery, a dealer in jewellery was permitted to pay compounded tax of Rs. 1.52 crore for the year 2008-09 instead of Rs. 1.58 crore. Incorrect determination of compounded tax resulted in short levy of tax of Rs. 6.09 lakh.
	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	In this case, the assessment in respect of the dealer for the year 2008-09 had been revised incorporating the defect noticed in audit enquiry, as per order No. 32120254102/08-09 dated: 20-09-2010 of the Asst. Commissioner(KVAT),Special Circle, Kannur. The assessee was liable to pay a balance amount of Rs. 6,08,738/- (tax) and Rs.1,03,485/- (Interest). Consequent to the failure on the part of the assessee in remitting the amount in time the same has been advised for Revenue Recovery action before the inspecting Asst. Commissioner, Commercial Taxes, Kannur. The assessee remitted the amount of Rs. 7,12,223/- (Tax + Interest) as per chalan NO: 173 dated 25-01-2011 and Rs. 85,470/- (Balance of interest + Collection charge) as per chalan No. 176 dated: 25-01-2011 before the Inspecting Assistant Commissioner, Commercial Taxes, Kannur. At present the entire dues have been cleared.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	



**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to incorrect compounding.
	(c)	Paragraph No.	2.14.15.2
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	21.3.11
	(b)	Date of Department's Reply	6.7.11
III		Gist of Paragraph/Review	In Commercial Tax Officer (WC), Thiruvananthapuram M/s. General Electrical Corporation engaged in electrical works during 07-08 opted to pay tax at the compounded rate of 4% instead of assessing tax u/s 6(1). This resulted in short levy of tax to the tune of Rs.5.52 lakh.
	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	Based on the audit observation the assessment in respect of General Electrical Corporation, Karamana for 07-08 has been revised creating an additional demand of Tax Rs.4,49,007/- and interest Rs.1,30,212/- (Total Rs.5,79,219/-) and the amount is pending collection under RR.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Turnover escaping assessment.
	(c)	Paragraph No.	2.14.18.2
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/ Review in the Department	6.6.11
	(b)	Date of Department's Reply	31.12.11
III		Gist of Paragraph/Review	In the office of the Asst. Commissioner, Special Circle, Mattancherry at Aluva the Accountant General has noticed that while finalizing the assessments of a dealer M/s.Toys Tyre and Treads Pvt. Ltd. for the years from 00-01 to 02-03, the assessing authority failed to assess tax on sales turnover of DEPB for Rs.41.29 lakh resulting in short levy of tax, AST and interest of Ra.8.27 lakh.
	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	The objection raised by the Accountant General is sustainable and the sales turnover of DEPB is assessed as pointed out in audit and the demanded tax on DEPB sale was remitted under Amnesty Scheme as follows:-				
		Year	Tax	Interest	Total	
		00-01	85157	14818	99975	197/20.10.11
		01-02	157188	23578	180766	200/20.10.11
		02-03	115237	14520	129757	211/20.10.11
		03-04	209604	21380	230984	213/20.10.11
		04-05	147950	11540	159490	236/20.10.11
Total	715136	85636	800972			
(b)	Recovery of overpayment pointed out by audit					
(c)	Recovery of under assessment, short levy or other dues	--				
(d)	Modification in the schemes and programmes including financing pattern	--				
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--				

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Incorrect compounding.
	(c)	Paragraph No.	2.14.20
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/ Review in the Department	6.6.11
	(b)	Date of Department's Reply	30.8.11
III		Gist of Paragraph/Review	In Commercial Tax Office, Second Circle, Mattancherry, Hotel Amruth, Thoppumpady, a bar attached hotel in municipal corporation area, was assessed to compounded tax during 2006-07 and 2007-08 on the basis of 140 per cent of purchase value of liquor, even though 115 per cent of tax paid/payable for the proceeding years were higher. Incorrect determination of compounded tax resulted in short levy of Rs. 19.39 lakh.
	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	-
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>The assessing authority completed the final assessment of the dealer for the year 2006-07 and 2007-08 vide Orders dated 04-09-2009 adopting Turnover Tax @ 10% of 140% of the purchase turnover of the dealer for the respective years. The audit team raised objection that as per the amendment to Section 7 of the KGST Act 1963 vide Finance Act 2006, the assessing authority should have adopted the Turnover @ 115% of the highest Turnover Tax paid for any of the preceding three years or @ 140% of the purchase turnover whichever is higher. Incorrect determination of compounded tax resulted in short levy of Rs. 160150/- and Rs.1779263 for 2006-07 and 2007-08 respectively.</p> <p>In this case the assessing authority had issued notice under section 19(1) to the dealer for the years 2006-07 and 2007-08 for making good the short levy pointed out in audit and thus the assessments for the year 2006-07 and 2007-08 were completed vide Order dated 19-04-2011 raising a demand of Rs. 160150/- and Rs. 1784269/- with interest respectively as proposed in the said notice. Action for collecting the amount has been initiated by issuing RRC. The Deputy Commissioner (A) Ernakulam vide order dtd. 28.12.11 has stayed the collection of disputed tax for the years 05-06 to 09-10 till the disposal of appeals on condition that the petitioner shall remit 50% of the amount due for each year and furnish security for the balance amount before the assessing authority within 2 weeks from the date of receipt of the order. Against this order, the dealer filed writ petition before the Hon'ble High Court of Kerala. The Hon'ble High Court vide WP(C) No.1444 of 2012 dtd. 10.2.12 has directed the petitioner to pay the amount due in two equal monthly instalments, the 1<sup>st</sup> instalment on or before 28.2.12 and the 2<sup>nd</sup> instalment on or before 31.3.12. The dealer complied the court order by remitting Rs.20 lakhs vide chalan S 155 dtd.14.2.12 and Rs.17,06,900/- vide chalan S 304 dtd.20.3.12 and furnishing security in Form 6 Bond for the balance amount of Rs.37,06,889/-.</p>
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	(b)	Recovery of overpayment pointed out by audit	
	(c)	Recovery of under assessment, short levy or other dues	--
	(d)	Modification in the schemes and programmes including financing pattern	--
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Incorrect grant of exemption.
	(c)	Paragraph No.	2.14.22
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	6.6.11
	(b)	Date of Department's Reply	3.9.11
III		Gist of Paragraph/Review	In the office of the Asst. Commissioner, Special Circle, Mattancherry at Aluva it is noticed that the assessing authority has failed to assess Additional Sales Tax from July 2003 in respect of M/s. Exon Mobile Lubricants (P) Ltd., though the same was mentioned in the assessment order dated 28.10.10. This resulted in short levy of Rs. 12.99/- lakh.
	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	



VI

**Remedial action taken**

	(a) Improvement in system and procedures, including internal controls.	The assessment of the dealer has been revised on 6.06.11 by rectifying the defect pointed out by the Accountant General. Additional Sales Tax (AST) of Rs. 28,28,394/- has been demanded. The amount is under RR at Haryana State.
	(b) Recovery of overpayment pointed out by audit	
	(c) Recovery of under assessment, short levy or other dues	--
	(d) Modification in the schemes and programmes including financing pattern	--
	(e) Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.14.23.1
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	6.6.11
	(b)	Date of Department's Reply	20.7.11
III		Gist of Paragraph/Review	In Commercial Tax Officer, First Circle, Mattancherry, while finalising the assessment of a dealer M/s. Calcutta Tarpaulin Co., Kochi for the years 2003-04 and 2004-05, the assessing authority assessed sales turnover of HDPE Sheets used for covering autorikshaws, jeeps etc. at four per cent treating it as packing materials against the correct rate of 12 per cent. Application of incorrect rate of tax resulted in short levy of tax and interest of Rs. 12.13 lakh.
	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	In the light of audit the assessment for the years 03-04 and 04-05 has been revised by the Fast Track assessment team III, Commercial Taxes, Mattancherry as per order No.24111662/03-04 and 04-05 dated 15.10.10 by assessing the escaped turnover at the correct rate of 12%. The revised order has been served to the assessee. Revenue Recovery proceedings has also been initiated against the assessee to realize the amount. The assessee moved the Hon'ble High Court of Kerala and as per Order in WP(C)No.33495/10 dated 25.1.2011, the Hon'ble Court has stayed the recovery proceedings for '2' weeks. Further as per order dated 17.2.2011 the High Court has ordered that interim stay will continue.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.14.23.2
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	18.4.11
	(b)	Date of Department's Reply	22.7.11
III		Gist of Paragraph/Review	In Asst. Commissioner(Assmt), Special Circle.III, Ernakulam during scrutiny of record it was noticed that the turnover assessed @ 4% in respect of M/s. Cannon Technologies is inclusive of the Sales Turnover of Nonstick Cookware and Utensils amount to Rs. 37,95,342/- and Rs. 36,33,420/- respectively for the years 2003-04 and 2004-05. The application of incorrect rate of tax resulted in short levy of tax Rs. 6,83,436/- and interest of Rs. 4,86,728/-
	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	In the light of audit the assessment for the years 2003-04 and 2004-05 were re-opened u/a. 17D (2) (d) of the Act in order to rectify the short levy due to application of incorrect rate of tax vide order dated 26.2.2011. In the revised order sales turnover of nonstick Cook ware and utensils Rs. 37,95,342/- and Rs. 36,33,420/- for the year 03-04 & 04-05 respectively is assessed to tax. The balance ST and AST due Rs. 3,49,171/- with interest Rs. 3,21,238/- up to 2/2011 for the year 2003-04 and ST & AST of Rs. 10,25,691/- with interest of Rs. 7,28,241 up to 2/2011 for the year 2004-05 were advised for Revenue Recovery before District Collector, Ernakulam and collection is awaited.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.14.23.3
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	18.4.11
	(b)	Date of Department's Reply	3.9.11
III		Gist of Paragraph/Review	In the Office of Assistant Commissioner (Assmt), Special Circle III, Ernakulam, during scrutiny of records in respect of M/s.Canon Technologies for the year 04-05 it was noticed that turnover assessed at the rate of eight per cent, included sales turnover of 'Canon Kinetiser (Hot Plate)' of Rs. 1.50 crore. Application of incorrect rate of tax resulted in short levy of tax Rs.6.91 lakh and interest of Rs.4.22 lakh (total Rs.11.13 lakh).
	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary.	

VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	In the light of audit the assessment for the year 2004-05 was re-opened u/s 17D (2)(d) of the Act and assessment completed applying the correct rate of tax vide order dated 26.02.2011.  The balance ST and AST of Rs. 10,25,691 with interest of Rs. 7,28,241 up to 2/2011 for the year 2004-05 was advised for Revenue Recovery before District Collector, Ernakulam and awaiting for collection.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.14.23.4
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	18.6.11
	(b)	Date of Department's Reply	2.8.11
III		Gist of Paragraph/Review	In CTO, 1 <sup>st</sup> Circle, Kollam while completing the assessments of a dealer, M/s. A to Z Footwear for the years 2003-04 and 2004-05 tax was assessed at the rate of eight per cent instead of at 12 per cent on the turnover of Rs. 21.18 lakh and Rs. 25.42 lakh respectively. This resulted in short levy of Rs. 3.67 lakh.
	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	



VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	The assessments were re-opened as per order dtd: 29.6.2011, u/s 17D(2)d by taking into all the aspects as pointed out in audit and the assessment orders were served to the dealer through registered post. The demand created for the year 2003-04 is Rs. 534439/- (ST Rs. 282772 + Int. Rs. 251667/-) and for the year 2004-05 is Rs. 578724/- (ST Rs. 350742 + Int. Rs.227982). The entire amount has already been advised for collection through RR.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of turnover tax.
	(c)	Paragraph No.	2.14.24
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	18.6.11
	(b)	Date of Department's Reply	25.7.11
III		Gist of Paragraph/Review	Scrutiny of records in the Commercial Tax Officer, Kottarakkara revealed, while completing the assessment of M/s. Ganga Bar, Puthoor, Kottarakkara, a dealer of foreign liquor in a bar hotel for the year 2004-05, on the best judgement basis, the assessing officer assessed tax of Rs. 13.42 lakh on escaped turnover. Against this tax assessed, the assessing authority gave credit of Rs. 11.30 lakh being tax paid on the turnover already conceded by the assessee. This resulted in short levy of Rs. 11.30 lakh.
	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>In the light of audit, assessment completed u/s 19 of KGST Act as under:</p> <p><b>TOT Assessment</b></p> <table border="1" data-bbox="492 335 963 408"> <tr> <td>10% on Rs. 21253170.00</td> <td>Ra. 2125317</td> </tr> <tr> <td>Less paid (excess adjusted)</td> <td>Ra. 1129463</td> </tr> <tr> <td>Balance</td> <td>Ra. 995854</td> </tr> </table> <p>While re-opening the assessment the defects of non-deduction of exemption for second sales proved and wrong levy of AST assessment were also rectified. Hence short levy actually amounts to Rs. 9.96 lakhs only.</p> <p>Now the demand is under RR. The dealer has filed appeal before the Hon'ble Tribunal and the appeal is pending for disposal.</p>	10% on Rs. 21253170.00	Ra. 2125317	Less paid (excess adjusted)	Ra. 1129463	Balance	Ra. 995854
10% on Rs. 21253170.00	Ra. 2125317							
Less paid (excess adjusted)	Ra. 1129463							
Balance	Ra. 995854							
(b)	Recovery of overpayment pointed out by audit							
(c)	Recovery of under assessment, short levy or other dues	—						
(d)	Modification in the schemes and programmes including financing pattern	—						
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	—						

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of tax and interest due to non-appropriation of payment.
	(c)	Paragraph No.	2.14.25
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	5.3.11
	(b)	Date of Department's Reply	8.7.11
III		Gist of Paragraph/Review	In the Assistant Commissioner, Special Circle, Palakkad while finalising the assessment (August 2007) of a dealer M/s. Marico Industries, Kanjikode for the year 02-03, it was incorrectly appropriated the amount paid by the assessee towards tax due instead of appropriating it first towards interest. This resulted in short levy of tax and interest of Rs. 9.34 lakh.
	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V.	(a)	Does the Department agree with the Audit conclusions?	-
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

## Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>In the light of Audit objection the original assessment has been revised as per order dtd. 24-03-2010 creating an additional demand of Rs. 14,51,372.00. Against this order, the assessee filed an application for rectification of certain omissions of payment of credit of tax occurred in the order, which was verified and rectified as per order No. 31010844/02-03 dtd. 26-05-2011 as under.</p> <table border="0"> <tr> <td>Tax due as per original order</td> <td>Rs. 12349301</td> </tr> <tr> <td>Tax paid in due time</td> <td>Rs. 10562023</td> </tr> <tr> <td>Add excess payment adjusted from CST assessment, which was paid to KGST mistakenly credited to CST assessment</td> <td>Rs. 790299</td> </tr> <tr> <td><b>Total</b></td> <td><b>Rs. 11352322</b></td> </tr> <tr> <td>Balance liable to be paid</td> <td>Rs. 996979</td> </tr> <tr> <td>Interest up to finalization of asamt.</td> <td>Rs. 707855</td> </tr> </table> <p>Given credit towards the interest payment from Rs. 1142715 as per chalan No. 188 dtd. 28.07.07, to have given credit Rs. 707855</p> <table border="0"> <tr> <td>Balance to have to be given credit to tax (Rs. 1142715 - Rs. 707855)</td> <td>Rs. 434860</td> </tr> <tr> <td>Tax due (Rs. 996979 - Rs. 434860)</td> <td>Rs. 562119</td> </tr> <tr> <td>Interest w.e.f. 8/07 to 5/11(43%)</td> <td>Rs. 241711</td> </tr> <tr> <td>Arrears to be paid</td> <td>Rs. 803830</td> </tr> </table> <p>The demand created for the year 02-03 was Rs.8,03,830 (Tax Rs.5,62,119+Interest Rs.2,41,711) and the same has been advised for RR. In pursuance to the recovery proceedings, the dealer filed a request to adjust the excess payment of Rs.9,66,515/- for the year 99-00 towards the demand for the year 02-03. Hence as per proceedings No.31010844/02-03 dated 22.10.11, the balance tax of Rs.5,62,119/- for the year 02-03 has been adjusted from the excess payment Rs.9,66,515/- for 99-00 and there is no liability to remit interest. After the adjustment, there is no arrears outstanding against the dealer for the year 02-03.</p>	Tax due as per original order	Rs. 12349301	Tax paid in due time	Rs. 10562023	Add excess payment adjusted from CST assessment, which was paid to KGST mistakenly credited to CST assessment	Rs. 790299	<b>Total</b>	<b>Rs. 11352322</b>	Balance liable to be paid	Rs. 996979	Interest up to finalization of asamt.	Rs. 707855	Balance to have to be given credit to tax (Rs. 1142715 - Rs. 707855)	Rs. 434860	Tax due (Rs. 996979 - Rs. 434860)	Rs. 562119	Interest w.e.f. 8/07 to 5/11(43%)	Rs. 241711	Arrears to be paid	Rs. 803830
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(b)	Recovery of overpayment pointed out by audit																					

(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	7.8
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	18.6.11
	(b)	Date of Department's Reply	22.2.12
III		Gist of Paragraph/Review	In the Office of the Commercial Tax Officer, Luxury Tax, Thiruvananthapuram it was noticed that while completing the luxury tax assessment of a hotel M/s.Lagoona Davina Retreats, Pachalloor for the year 2006-07 charging rent exceeding Rs. 500/- per room, luxury tax on the turnover of Rs. 1.02 crore for the period from July 2006 to March 2007 was assessed to tax at 10 per cent instead of at the correct rate of 15 per cent. This resulted in short levy of Rs. 5.11 lakh.
	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	The assessment in respect of M/s. Lagoona Davina Retreats, Pachalloor for the year 2006-07 was revised and proceedings were issued fixing a taxable turnover of Rs. 1,36,35,000/- with a tax demand of Rs. 15,96,196/- vide order No. LT 290/06-07 dtd. 17.01.12
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--



**Action taken Notes on C& AG's Reports**

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Incorrect computation of tax.
	(c)	Paragraph No.	7.9
	(d)	Report No. and Year	C& AG report ended 31.3.2011
II	(a)	Date of receipt of the Draft Para/Review in the Department	17.5.11
	(b)	Date of Department's Reply	11.10.11
III		Gist of Paragraph/Review	In Commercial Tax Office (LT), Thiruvananthapuram the Accountant General(A) noticed that luxury tax of a hotel M/s. Hotel Neptune, Kovalam on a turnover of Rs. 28.03 lakh was wrongly assessed (October 2008) as Rs. 28,027 instead of Rs. 2.80 lakh. This resulted in short levy of Rs. 2.52 lakhs.
	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

**Remedial action taken**

(a)	Improvement in system and procedures, including internal controls.	The assessment in respect of M/s. Hotel Neptune, Kovalam for the year 2006-07 has been modified, as per proceedings No. LT- 139/06-07 dated 12-08-11 after rectifying the errors crept in the previous order. Demand notice has been issued against the fresh demand of Rs. 2,80,270/- and is pending collection under RR.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	-
(d)	Modification in the schemes and programmes including financing pattern	-
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	-

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