

COMMITTEE ON PUBLIC ACCOUNTS

HUNDRED AND EIGHTH REPORT

2003 - 2006

(ELEVENTH ASSEMBLY)



सत्यमेव जयते

REPORT OF THE COMMITTEE ON PUBLIC ACCOUNTS
ON THE REPORT OF THE COMPTROLLER AND
AUDITOR GENERAL OF INDIA FOR THE
YEAR 2000 - 2001

(REVENUE RECEIPTS)

RELATING TO FINANCE (TAXATION) DEPARTMENT
GOVERNMENT OF ASSAM

Presented before the House on 8th February, 2006

Assam Legislative Assembly Secretariat,
Dispur, Guwahati-6.

CONTENTS

	<u>Pages</u>
1. Composition of the Committee	(i)
2. Prefatory Remarks	(ii)
3. Report	1 - 55

(i)

**COMPOSITION OF THE COMMITTEE
(2003 - 2006)**

Chairperson :

1. Smti. Pramila Rani Brahma

Members :

2. Shri Dilip Kumar Saikia
3. Dr. Zoi Nath Sarma
4. Shri Gautam Bora
5. Shri Ajit Singh
6. Shri Bidya Singh Engleng
7. Shri Dilder Rezza
8. Shri Gopi Nath Das
9. Shri Dharamsing Teron
10. Shri Biswajit Daimary
11. Shri Bimolangshu Roy
12. Shri Chandan Kumar Sarkar
13. Shri Sarat Saikia

Secretariat :

1. Shri G. P. Das, Secretary
2. Shri S. Deka, Joint Secretary
3. Shri B. Basumatary, Deputy Secretary
4. Shri Khalilur Rahman, Committee Officer

(ii)

PREFATORY REMARKS

I, Smti.Pramila Rani Brahma, Chairperson of the Committee on Public Accounts having been authorised to submit the Report on their behalf, present this Hundred and Eighth Report of the Committee on Public Accounts on the Audit paras contained in the Reports of the Comptroller and Auditor General of India (R/R) for the years 2000-2001 pertaining to Finance (Taxation) Department, Government of Assam.

2. The Report of the Comptroller and Auditor General of India (R/R) for the years 2000-2001 was laid to the House on 1.3.2002.

3. The Report as mentioned above relating to the Finance (Taxation) Department have been considered by the Committee in its meetings held on 8.9.04, 9.9.04, 20.9.04, 21.9.04, 1.10.04, 15.10.04 and 2.9.05.

4. The Committee has considered the Draft Report and finalised the same in its sitting held on 01-02-2006.

5. The Committee has appreciated the valuable assistance rendered by the Principal Accountant General (Audit), Assam and his Junior Officers and Staff during the examination of the Department.

6. The Committee thanks to the Departmental witnesses for their kind co-operation and offers appreciation to the officers and staff dealing with the Committee on Public Accounts, Assam Legislative Assembly Secretariat for their strenuous and sincere services rendered to the Committee.

7. The Committee earnestly hopes that Government would promptly implement the recommendations made in this Report.

Dispur :
The 1st February, 2006.

SMTI. PRAMILA RANI BRAHMA,
Chairperson,
Committee on Public Accounts.

CHAPTER-I
Finance (Taxation) Department
Trend of collection
(Audit para 2.2.5/CAG/2000-01 R/R)

1.1 The audit has pointed out that Budget estimates and actual collection during the years 1995-96 to 1999-2000 are given below :

Year	Budget estimates	Actuals	Variation Increase(+) Shortfall (-)	Percentage of variation
(Rupees in cores)				
1995-96	560.00	464.05	(-) 95.95	(-) 17
1996-97	575.00	517.41	(-) 58.95	(-) 10
1997-98	586.77	507.66	(-) 79.11	(-) 13
1998-99	706.85	550.40	(-) 156.45	(-) 22
1999-2000	780.01	742.32	(-) 37.69	(-) 5

It would be seen from the above that the shortfall in collection varied from 5 to 22 per cent during 1995-96 to 1999-2000. The shortfall was mainly attributed by the department to fixation of estimate on higher side. Since the variation was wide between budget estimates and actual collections, the department needs to conduct its budgetary exercise on a more realistic basis.

1.2 The department by their written replies has stated that the shortfall in collection of revenue during 1997-98 amounting to Rs. 9.75 crores was mainly due to merger of collection of sales tax on liquor with the State Excise Department with effect from 01.04.97. During the year 1996-97 an amount of tax of Rs. 37.24 crores was realised on Liquor by the Taxation Department. Had there been the collection of revenue of liquor by the Taxation Department during the 1997-98, the collection of revenue during 1997-98 would have been around Rs. 545.00 crore.

OBSERVATIONS/RECOMMENDATIONS

1.3 The Committee observes that the shortfall in collection varied from 5 to 22 per cent during the year 1995-96 to 1999-2000. The shortfall was mainly attributed by the Department in fixation of estimate on higher side. Since the variation was wide between budget estimate and actual collection, the Department needs to conduct its budgetary exercise on a more realistic basis. With this observation the Committee decided to drop the para.

**Position of arrears/correctness of arrears
(Audit para 2.2.6(A) & (B)/CAG/2000-01 R/R)**

2.1 Audit has pointed out that (a) (i) the arrears pending collection as on 31 March 2000 as stated by the Commissioner of Taxes was Rs.162.18 crore. The various stages at which these were pending and their percentage to the total sales tax receipts are given below :

Year	Arrears pending collection at the end of the year					Total	(Rupees in crores)	
	With the assessing officers	in appeal	in re-vision	in High Court and Supreme Court	in certificate proceedings		Sales tax receipt.	Percentage of arrears to total receipts. (Col.7 to Col.8)
1	2	3	4	5	6	7	8	9
1995-96	57.47	3.58	14.51	3.64	22.97	102.17	464.05	22
1996-97	76.54	8.07	12.59	19.45	43.45	160.11	517.41	31
1997-98	39.05	13.32	3.80	38.77	43.63	138.57	507.66	27
1998-99	36.73	22.91	9.34	38.67	41.39	149.04	550.40	27
1999-2000	39.84	22.70	4.71	41.18	53.75	162.18	742.32	22

The trend of accumulation of arrears has been constantly increasing since 1995-96. It increased by 58.74 per cent upto 1999-2000 as compared to 1995-96. It would also be seen from the above that the percentage of arrears to the sales tax receipt ranged from 22 to 31 at the end of each financial year. Effective steps are required to be taken by the department to dispose of appeal cases and pursue court cases effectively so that the number of pending cases is brought down and arrears are reduced.

(ii) Year-wise analysis of balance outstanding as on 31 March 2000 is given below :

	Year	(Rupees in crore) Amount
Upto	1994-95	20.81
	1995-96	13.02
	1996-97	24.51
	1997-98	22.09
	1998-99	40.40
	1999-2000	41.35
	Total	162.18

(B) Correctness of arrears

(i) As per information furnished to Audit by the Commission of Taxes, the amount involved in certificate proceedings as on 31 March 2000 was Rs.53.75 crore in 12171 cases. But test check of the records of 7 (out of 16) Superintendents of Taxes (Recovery) revealed that the amount pending in certificate proceedings stood at Rs. 90.09 crore in 9895 cases which is more than the figure (financial) shown by the Commissioner of Taxes in respect of sales tax for the State as a whole. This proves that there has been lack of co-ordination and monitoring in watching the extent of arrears realisable from the defaulters.

(ii) As reported by the Law Branch of the Commissionerate, revenue involving Rs.9.18 crore was pending disposal in the Hon'ble Gauhati High Court and Hon'ble Supreme Court at the end of 31 March 2000. However, as per information furnished by the Monitoring Branch, Rs.41.18 crore were stated to have been pending disposal on that date. Similarly, as per Monitoring Branch, revision cases involving Rs.4.71 crore were pending as on 31 March 2000, whereas as per reports of the Law Branch, Rs.5.77 crore were pending for disposal. Thus, it is evident that there was no co-ordination between the different branches of the Commissionerate and maintenance of records was inaccurate.

2.2 The Department by their written replies as well as oral deposition has stated that the Department is fully aware of the pressing need for reducing the arrears and has been taking following measures in this regard.

(i) The Recovery officers have been directed to attach properties of the defaulters for realisation of the dues. They have also been instructed to detain quite a few of such defaulters in Civil Jail as per applicable provisions of the Bengal Public Demands Recovery Act, so as to create effective deterrence against persistent non-payment of certificate dues.

(ii) As regards arrears involved in litigation under courts and other for a steps have been taken for speedy and timely disposal of these cases which will go a long way in liquidating the dues.

(iii) Regarding irrecoverable arrear amounts, the assessing officers have been instructed to submit write-off proposals for such arrears. But due to the ever increasing pressure of task for collection of current taxes, desirable progress in processing such cases of write-off have not been attained. This has resulted in continuous carrying forward of an enormous backing of bad debt culminating in an inflated figure of arrear dues.

(iv) Special arrear collection drives have been organized from time to time for realisation of arrear dues.

(B) (i) Correctness of arrears

The figures submitted to the Accountant General by the Commissioner of Taxes reflected the total number of cases alongwith amounts involved lying with Superintendent of Taxes (recovery) of 16 recovery officers but those excluded the amounts stayed in Appeal, Revision, High Courts, Supreme Court, Assam Board of Revenue etc. on the other hand, the figures submitted by the 7 (seven) Superintendents of Taxes (recovery) to Accountant General (Audit) were inclusive of the number of cases and amount stayed in Appeal, Revision, High Court, Supreme Court, Assam Board of Revenue etc. Now, after reconciliation of the figures with the 7 (seven) Superintendent of Taxes (recovery), the position of arrears of these offices, involved under different authorities are found as hereunder.

<u>Total No. of cases</u>	<u>No. of cases</u>	<u>Amount involved (Rs. in crores)</u>
1) Total no. of cases and amounts involved as 31.03.2000	9964	90.74
2) Out of item (1)		
a) No. and amount of cases involved in appeal cases	167	22.17
b) No. and amount of cases involved in Revision cases	42	1.20
c) No. and amount of cases involved in High Court cases	73	9.18
d) No. and amount of cases involved in Supreme Court cases	4	1.11
e) No. and amount of cases involved in Assam Board of Revenue	4	0.11
f) No. and amount of cases involved to Assessing Officer	272	1.49
g) No. and amount of cases involved referred to Collector	104	6.47
3) Sub total (a to g)	662	41.73
4) No. and amount of cases with Supdt. of Taxes, recovery (1.3)	9302	49.01

(B) (ii) The position of arrear amount lying under different authorities had been worked out by the Monitoring Branch on the basis of the annual arrear collection statements furnished by the Unit Officer at the end of the financial year and as such the figure reported by the Monitoring Branch is correct. On the other hand, the Law Branch had furnished the figure to Audit as per calender year 1999 in which an amount of Rs. 33.07crores against BRPL involved in Supreme Court case was not included in it. As regards difference pointed out in figure of amounts involved under revision cases, it is stated that the Law Branch quoted the figure of Rs. 5.77 crores representing amounts involved under all the taxation Acts whereas the Monitoring Branch quoted figures involved under Sales Tax Acts only.

OBSERVATIONS/RECOMMENDATIONS

2.3.1 The Committee observes that so many cases are pending in the Hon'ble Supreme Court and High Court for a long time. The Department has not taken effective measures to recover the arrear pending collection. The Committee, therefore recommends that the department should take effective steps to dispose of the appeal cases and pursue the Court cases effectively so that the number of pending cases is brought down and arrears are reduced. Action taken may be intimated to the Committee within 30 days from the date of presentation of this report before the House.

2.3.2 The Committee heard the deposition of the departmental representatives and observes that there was no co-ordination and monitoring in watching the extent of arrears realisable from the defaulters. As per Monitoring Branch, revision cases involving Rs. 4.71 crore were pending as on 31st March, 2000 but as per report of the Law Branch Rs. 5.77 were pending for disposal. Thus it is evident that there was no co-ordination amongst the different branches of the Commissionerate and maintainance of records was inaccurate. The Committee, therefore recommends that there should be co-ordination amongst the officers of the Commissionerate so that arrears could be realised expeditiously.

Survey

(Audit para 2.2.7/CAG/2000-01 R/R)

3.1 Audit had pointed out that the Inspectors of Taxes are required to undertake regular and systematic survey of all the shops and business premises in their respective areas. For this purpose each Inspector of Taxes is required to maintain a survey register in the prescribed format. The Government of Assam, Finance (Taxation) Department, in their office memoranda dated February 1995 and May 1995 has prescribed monthly norms of survey of at least 75 registered dealers by each Inspector of Taxes within his area and submit a report in this regard to his Senior Superintendent/Superintendent of Taxes within 10 days of the succeeding month, who in turn submit the same to the respective Zonal Deputy Commissioner of Taxes (DCT) within the first fortnight of the succeeding month. The DCT is to submit the report to the Commissioner of Taxes, within the second fortnight of the succeeding month for scrutiny. (a) During the course of review it was noticed that in 33 circles (Guwahati Units 'A', 'B', 'C', and 'D') out of 117 circles, against 74700 surveys required to be conducted by 83 Inspectors during 1997-98 to 1999-2000, only 12353 surveys were conducted. Thus, there was a shortfall of 62347 surveys (83.46 per cent). No action was taken by the Senior Superintendent/Superintendent of Taxes to get the surveys conducted as per prescribed norms.

3.2. The Department by their written replies as well as oral deposition has stated that the matter of survey works in the Department is taken up very seriously and regular survey in the month of April and May every year is carried out maintaining a survey register in prescribed format by each Inspector of Taxes in the Department. On review, it was found that the monthly norm of survey of 75 dealers by an Inspector of Taxes is not possible due to his heavy engagement in other works, such as vigilance and enforcement works, inquiries, collection of information etc. Further, such piece meal survey is not found effective. As such, this system was discontinued and instead, intensive and extensive field survey had been adopted from the year 1997-98. Under this programme, an Inspector of Taxes is to complete the survey of his allotted area within a stipulated period of time fixed by the Department every year in the month of April and May. As a result of such field survey, the number of registered dealers in the State under "Sales Tax" increased from 32.318 in the year 1996-97 to about 40.231 in the year 2000-2001. (a) Intensive and extensive

survey had been adopted from the year 1997-98. Under this programme, an Inspector of Taxes is to complete the survey of his allotted area within a stipulated period of time fixed by the Department every year in the month of April and May. As a result of such field survey, the number of registered dealers in the State under the 'sales tax' (AGST and registered dealers in the CST) increased from 32.318 in the year 1996-97 to about 57.034 in the year 2002-2003 (upto February). During the current financial year 2002-03 an intensive survey was carried out w.e.f. 1-5-2002 to 30-6-2002. During the period of survey, list of trade licence holders from Municipal Corporation/Municipal Boards/Town Committees/ Gaon Panchayat etc. were collected by the Unit Offices and the particulars of such trade licence holders were verified during the course of survey and liable dealers under various Act were identified by Inspector of Taxes. After observing all necessary formalities 4675 numbers of dealers under AGST Act, 1993 and 1380 No. of dealers under CST Act, 1956 have been newly registered upto the end of February, 2003. Besides, some new dealers/ assesses under other Acts also identified for registration during the period of intensive and extensive survey. In case of survey under CST Act, 1956, it may be stated that there has been a remarkable increase in the number of registered dealers during the year 2001-2002 which may be due to inclusion of dealers registered under Section 7(2) of CST Act, 1956 which were previously excluded by some of the Units while reporting the figure to the Apex Office.

OBSERVATIONS/RECOMMENDATIONS

3.3. The Committee observes that the survey officers did not move to survey their allotted areas within stipulated period of time fixed by the department. This is only due to the negligence of officers. It is also observed that monthly norms for survey of 75 dealers by an Inspector of Taxes was not followed. Therefore, the Committee recommends that the Inspector of Taxes should undertake regular and systematic survey of all the shops and business premises in their respective areas and should maintain a survey register in the prescribed format so that such shortfall should not recur in future.

Delay/non-Finalisation of assessments**(Audit para 2.2.8/CAG/2000-01 R/R)**

4.1 Audit has pointed out that under the provisions of State Sales Tax Laws, every dealer was required to file six-monthly return upto 30 June 1993, and thereafter monthly statement of turnover and annual return within 1 month/2 months of the closure of the relevant month/year respectively supported by a receipt of full payment of tax due on the basis of statement/return. Test check of 4 unit office revealed that 8 registered dealers had closed their business and left the State between October 1992 and May 1997. Of these, the assessment of 7 dealers were completed (between January 1995 and March 1980 after the dealers had closed their business while in case of the other dealer the assessment was not completed till the date of audit (December 2000). It would be seen that the closure and disappearance of the dealers came to the knowledge of the department after the lapse of a period of 12 months to 53 months. Had the department been move vigilant, Rs. 4.10 crore could have been realized in time.

4.2. The Department by their written replies as well as oral deposition has stated that the observation of the Audit is that a sum of Rs. 4.10 crores in cases of 8 (eight) dealers became difficult to realise due to delay/non-finalization of assessments. It is to be mentioned that the assessments were completed within the prescribed time frame of the Governing Acts and the Rules made thereunder. Assessment being quassi-judicial proceedings, requires to be preceded by a host of eventualities like completion of hearings, conducting of elaborate inquiries into the facts of each particular cases providing reasonable opportunities to the assessee etc. All such details consume some time before assessments can be finalized against the liable dealers. In quite a few cases like M/S Nilesh Paper Bag Industries, Dibrugarh, M/S. Mayur Iron & Steel Co, the situation posed some real difficulty on the face of the fact that they had obtained preliminary documents for getting Industrial Sales Tax concession by the designated authority of the Government. However, the assessments in all the cases were duly completed within the prescribed time frame by the concerned assessing officers. When the dealers failed to clear the demands raised against them upon assessments, arrear certificates were forwarded to the respective Superintendent of Taxes (Recovery) for necessary realisation of the dues as arrear of land revenue. The Superintendent of Taxes (Recovery) have been trying to recover the

dues by applying all the enforceable measures as provided in the Bengal Public Demand Recovery Act, 1913 and Assam Land Revenue Regulations, 1886. It may also be mentioned that the Department also duly undertook the exercise of fixing responsibility on the involved erring officials for their lapses. However, it was seen after examination of their replies that delay if any, had occurred due to the difficult circumstances and complexities of the individual cases.

OBSERVATIONS/RECOMMENDATIONS

4.3. Considering the written replies and oral deposition of the departmental representatives, the Committee observes that the concerned assessing officers could not finalise the assessment in proper time for which due tax could not be realised from the dealers and the dealers become untraced. It is a gross irregularities on the part of the concerned officers. The Committee expresses its deep concern and recommends that the dealers should be traced out and steps should be taken to realise the taxes due from them. The concerned officer who are at fault should be brought into book and action should be taken against such officers. Action taken in this regard should be intimated to the Committee within 3 months from the date of presentation this report before the House.

Non-issue/delay in issue of Arrear certificate**(Audit para 2.2.9./CAG/2000-01 R/R)**

5.1. Audit has pointed out that the Assam General Sales Tax Act, 1993 provides that all arrears of tax, penalty, interest due from any dealer shall be recoverable as arrears of land revenue and for this purpose the Assessing Officer is required to send requisition/ arrear certificate to the Certificate/Bakijai Officer for effecting recovery from the defaulters. The Commissioner of Taxes issued (July 1997) instructions that the demands which remained unrealised for a period of three months should be sent to Bakijai Officers for realization of demand through Bakijai process. (i) Scrutiny of records of 10 unit officers revealed that in 5701 cases demands for Rs. 6.40 crore assessed between March 1990 and March 2000, remained unrealised till December 2000. The Assessing Officers neither realized the dues nor issued arrear certificates to the Bakijai Officers for effecting recovery from the defaulters. As a result, revenue of Rs.6.40 crore remained unrealised for periods ranging from 9 months to 130 months reckoned from the periods of assessments.

(ii) In Tinsukia Unit arrear certificates in respect of 29 dealers, involving Rs. 25.00 lakh assessed between 1990-91 and 1997-98, were issued between March 1998 and August 2000 after a delay of 32 to 118 months but no amount was recovered from the defaulters till the date of audit (November 2000). (iii) An arrear certificate was issued (December 1997) from Guwahati Unit 'A' to Recovery Officer, Guwahati for Rs. 1604 instead of Rs.2.09 lakh resulting in short raising of demand of Rs.2.08 lakh.

5.2. The Department by their written replies has stated that the Assessing Officer of the concerned units made their all out efforts to realise their arrear as far as practicable at their levels by issuing notices besides issue of Demand Notices and by constant persuasion with the defaulters and in the process some delay takes place while issuing Arrear Certificates to the Bakijai Officer for effecting recovery from the defaulters. However, the matter is taken seriously with the officers of the Taxation Department in the periodic Review meeting and they are directed to take prompt action issuing in arrear certificate to the Superintendent of Taxes (Recovery).

OBSERVATIONS/ RECOMMENDATIONS

5.3. The Committee observes that the assessing officers have not followed the notices and guidelines issued by the Commissioner of Taxes. It is also observed that the officers did not refer the cases to the Bakijai Officer timely for taking appropriate action against the defaulters. The Committee expresses its displeasure and recommends that all the cases should be referred to the Bakijai Officer for taking legal action for recovery from the defaulters. The erring officers should be brought into book and responsibility should be fixed and action taken report should be submitted to the Committee within 3 months from the date of presentation of this report before the House.

Non/Short-inclusion of upto date interest and penalty in the arrear certificate

(Audit para 2.2.10/CAG/2000-01 R/R)

6.1. Audit has pointed out that under the General Sales Tax Laws of the State, if a dealer fails to pay the full amount of tax due on the basis of demand by the due date indicated in the demand notice, he shall pay simple interest at the rate of 2 per cent for each month on the amount remaining unpaid till the full amount of assessed tax is paid. Failure to pay, without reasonable cause, the demand tax within the time allowed also attracts penalty not exceeding the amount of tax remaining unpaid. The interest and penalty are required to be included in the arrear certificates. Test check of 5 unit offices revealed that the Assessing Officers issued 26 arrear certificates to the concerned Recovery Officers between January 1995 and December 1999, assessed between April 1990 and March 1999, without inclusion of interest upto the date of issue of arrear certificates, even though the dealers failed to make payment within the specified dates mentioned in the demand notices. This resulted in short inclusion of interest of Rs. 1.78 crore. Besides the Assessing Officers issued 70 arrear certificates between January 1995 and October 2000 without imposition of penalty of Rs. 6.22 crore (maximum). Thus, there was short inclusion of demand of Rs. 8.00 crore in arrear certificates.

6.2. The Department by their written replies as well as oral deposition has stated that six officers are involved in this para as below :

1. Superintendent of Tax, Tinsukia, M/S. H. L. & Sons. Senior Superintendent of Taxes has informed that a revised Arrear Certificate has been issued after levying upto date interest on the demanded dues.

2. Superintendent of Taxes, Guwahati Unit-A, M/S North Eastern Essential Oil.

The dealer did not possess authorization certificate till the date of assessment as on 31.7.95. The Assessing Officer levied tax on the turnover of sales and subsequently forwarded Arrear Certificate to Supdt. of Taxes (Recovery) for realisation of the dues. Later on authorization certificate has been granted. Accordingly dealer's liability to pay tax during the relevant period stands at nil.

3. Superintendent of Taxes, Guwahati Unit-B, M/S Kamrup Paper Mill Ltd. Senior Supdt. of Taxes informed that interest was not levied for delayed payment in pursuance of judgment of the Hon'ble Supreme Court of India delivered on 16.7.97 in Civil Appeal No.2156-67 of 1993 filed by M/S India Corpon. Ltd. Vs- State of Assam holding therein that interest cannot be charged under the Central Sales Tax Act, 1956 as there was no substantive provision in the Central Act requiring payment of interest on Central Sales Tax. However, following an amendment of the Central Sales Tax Act, 1956 incorporating substantive provision for levy of interest (giving retrospective effect therein) upto date interest amounting to Rs. 13,16,436/- has been levied accordingly and revised Arrear Certificate has been issued by the Senior Supdt. of Taxes, Guwahati Unit-B. Further, interest has been levied and fresh Arrear Certificate issued in the light of audit objection. (4) Supdt. of Taxes, Guwahati Unit-D, M/S STATFED. Further interest amounting to Rs. 11,26,879/- has been levied and Demand Notice issued, Fresh Arrear Certificate has been issued accordingly. (5) Supdt. of Taxes, Nagaon, District Manager, F.C.I. Nagaon. The Dealer preferred revision petition to the Commissioner of Taxes against the orders of assessments of the year 1994-95 and 1995-96 under the AGST Act. The Revisional Authority after hearing the revision petition set aside the original assessment order holding that the dealer was not liable to pay tax during the period. As such, fresh assessment was completed raising a 'nil' demand. Hence, the question of non-levy of interest does not arise at all in this case. As regards penalty it may be stated that the imposition of penalty is a quasi-judicial matter, Penalty is imposed in extremely bad cases. It is not imposed by the assessing officer simply because it is lawful to do so. While imposing the penalty, the officer is required to ascertain that the default in payment of tax is not due to any reasonable cause. before imposing penalty, the financial position of the dealer, his ability to comply with the provision of the Act etc. are taken into consideration. In case of STATFED, for instance, the STATFED is a sick concern. If penalty were imposed on STATFED, it would have a server blow to its existence. Further, the element of interest remains indeterminate till full realisation of the principal amounts of taxes. That is, actually recoverable amount of interest can be finally determined only after the assessee has paid up the principal amounts of taxes. The Department issued show cause notice against the concerned officers. However, since the shortcomings in performances were found to be of general nature, the

Department has taken steps for bring in improvisation correction in the system as a whole in this regard.

OBSERVATIONS/RECOMMENDATIONS

6.3. The Committee observes that the Assessing Officer issued arrear certificates to the concerned recovery officers of the units without inclusion of interest and without imposition of penalty which causes loss of huge amount of money of the Government exchequer. However, after pointing out the omission it was rectified accordingly. But the Committee is on doubt that there was unholy nexus between some officers and dealers. The Committee therefore recommends that the officers involved in this matter should be brought into book and action should be initiated against them. Action taken report may be submitted to the Committee within 60 days from the date of presentation of this report before the House.

Non-deduction/non-deposit of Tax deducted at source (TDS)

(Audit Para 2.2.11/CAG/2000-01 R/R)

7.1 Audit has pointed out that under the taxation laws of the State and Rules made thereunder every Government Department/Undertaking Corporation, etc., while making payment to the suppliers/work contractors, is required to deduct tax from the bills at the rate(s) specified in the schedules attached to the Act and to deposit the same within 10 days from the expiry of each calendar month and also to issue a certificate of tax deduction (TDC) to the dealer concerned within 7 days from the date of deposit of the amount together with attested copy of the challan -

(i) The data regarding amount receivable by the taxation department from different Government Departments/Undertakings/Corporations etc. on account of tax deducted at source but not deposited, though called for, could not be furnished by the Commissioner of Taxes due to non-maintenance of such records and for this purpose no return was prescribed. However, in course of review, particulars of 10 unit offices were obtained which are as under :

(Rupees in crore)						
Year	Opening Balance	Addition	Total	Amount deposited realized	Balance at the close of the year	Percentage of deposit
1995-96	12.74	1.88	14.62	0.41	14.21	2.79
1996-97	14.21	2.86	17.07	1.05	16.02	6.15
1997-98	16.02	3.05	19.06	0.36	18.71	1.88
1998-99	18.71	3.23	21.94	0.95	20.99	4.33
1999-2000	20.99	4.22	25.21	0.09	25.11	0.37

It would be seen from above that un-eposited tax amount had increased to Rs. 25.11 crore from Rs. 12.74 crore in 5 years indicating failure of the department to get the amount deposited in Government accounts.

(ii) During the course of review it was noticed that there were irregularities like non-deduction of tax at source, deduction of tax and utilisation of the same towards pay and allowances, etc. as indicated in

the table below :

(Rupees in crore)

Sl. No.	Name of the DDO/Dealer	Period of Account	Nature of irregularities	Tax involved
1	Managing Director, Assam State Development Corporation for Scheduled Castes Ltd., Dispur	April 1999 to December 1999	Purchased taxable goods valued at Rs. 1.42 crore but tax amounting to Rs. 0.10 crore not deducted at source from the suppliers' bills.	0.10
2	Managing Director, Assam Agro Industries Development Corporation, Guwahati.	1978-79 to 1999-2000	Tax of Rs. 3.71 crore deducted but only Rs. 1.66 crore deposited. Balance amount of Rs. 2.05 crore utilized irregularly towards pay and allowances etc. of the staff.	2.05
Total :				2.15

7.2 The Department by their written replies as well as oral deposition has stated that particulars of tax deducted at source in respect of 15 unit offices were furnished to audit on 03.03.2001. Necessary steps for initiating penal action/prosecution are being taken against the D.D.Os. who have failed to deduct tax at source or failed to deposit after deduction. It is however, stated here that most of the D.D.Os deduct and deposit the tax regularly. Tax deducted at source is actually deposited by the departments concerned, but due to fact that the dealers are from all over the state and tax is deposited in a single consolidated challan, sometimes tax, though deducted at source, remain unadjusted due to non-availability of challans. In absence of individual challan it is not always possible to adjust the challan in the assessment, but subsequently however, on persuasion with the D.D.Os and concerned dealers, the amount shown as unpaid, is credited in the dealers account. The Managing Director, Assam Agro Industries Development Corporation, Guwahati deducted tax amounting to Rs. 2,05,21,570/- during the period from 1978-79 to 1999-2000, but did not deposit the same into Government account. It is stated

by the D.D.O. that the firm is sick one and utilized the tax deducted at source towards pay and allowances of the employees because of financial crisis. But the D.D.O. has been moving the Government in the Agricultural Department for placing fund for Rs. 2,05,21,570/- for payment of the Sales Tax dues. The Supdt. of taxes has been instructed to pursue the matter and initiate penal action against the D.D.O. if the amount is not deposited at an early date. The Managing Director, Assam State Development corporation for Scheduled caste Ltd. Dispur did not deduct tax at source amounting to Rs. 0.10 crores during the period from April, 1999 to December, 1999. The matter has been pursued by the Superintendent of Taxes, Guwahati Unit-C. The D.D.O. has given an undertaking that he will realise the pending amount of tax from the current bills of the suppliers alongwith the current amount of taxes. The Superintendent of taxes has been instructed to pursue the matter vigorously so that the tax is realised at an early date. He has also been instructed to collect a list of the suppliers and take urgent steps for realisation of the dues from them, if not deposited already, besides initiating penal action against the D.D.O. concerned.

OBSERVATIONS/RECOMMENDATIONS

7.3 The Committee observes that the tax deducted at source from the suppliers/contractors had been utilised as payment of salaries of the employees of the corporations without prior approval of the Government instead of depositing the deducted amount in the Government exchequer. The Committee directs the department to pursue the matter to the concerned DDOs to deposit the amount deducted at source to the Government exchequer so that such lapses should not recur in future. With this observation, the Committee decided to drop the para.

Arrears pending collection with Bakijji Officer

(Audit para 2.2.12/CAG/2000-01 R/R)

8.1(A) Audit has pointed out that no norms for disposal of certificate cases or targets for recovery of arrears during a given period were fixed by the department. As per particular furnished by the Commissioner of Taxes, the collections made by the Bakijai Officers during the period from 1995-96 to 1999-2000 are tabulated below :

(Rupees in crore)								
Year	Opening balance	Arrear certificate received	Total Proceeding closed for other reasons	Total amount recover-able	Collec- tion made settled	Balance at the end of the year	Perce- nage(Col. 7 to 6)	Settle- ment of cases.
	<u>AMOUNT</u> No. of cases	<u>AMOUNT</u> No. of cases	<u>AMOUNT</u> No. of cases	<u>AMOUNT</u> No. of cases	<u>AMOUNT</u> No. of cases	<u>AMOUNT</u> No. of cases	<u>AMOUNT</u> No. of cases	<u>AMOUNT</u> No. of cases
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1995-96	16.80	8.44	25.24	0.10	25.14	0.60	24.54	2.39
	8565	1108	9673	141	9532	384	9148	4.03
1996-97	24.54	22.82	47.36	1.13	46.23	1.08	45.15	2.34
	9148	1334	10482	39	10443	449	9994	4.30
1997-98	45.15	2.71	47.46	1.08	46.38	1.39	44.99	2.97
	9994	1593	11587	82	11505	408	11097	3.54
1998-99	45.39	7.39	52.78	1.46	51.32	1.44	49.88	2.81
	11097	2041	13138	455	12683	806	11877	6.35
1999-2000	49.88	8.09	57.97	0.64	57.33	1.37	55.96	2.39
	11877	1205	13082	199	12883	616	12267	4.78

As would be seen from above rate of recovery was very low and varied between 2.34 and 2.97 per cent and 3.54 and 6.35 per cent respectively in terms of financial and settlement of cases. (B) Under the provisions of the Assam Land Revenue regulation, 1886 read with the Bengal Public Demand Recovery Act. 1913, any sum recoverable as arrears of land revenue can be recovered by adopting any one or more of the following processes.

(i) By serving write of demand.

(ii) By attachment and sale of movable/immovable property.

(iii) By arrest and detention etc.

Test check of the records of 5 Recovery Offices revealed that in 182 Bakijai cases involving Rs. 30.23 crore, instituted between February 1990 and February 2000, Rs. 17.00 lakh could be realized and balance amount of Rs. 30.06 crore remained unrealised. Age-wise pendency the cases is shown below :

(Rupees in crore)

Cases pending (after institution of bakijai proceeding) for more than

<u>1 year</u>		<u>3 years</u>		<u>5 years</u>		<u>10 years</u>	
No.	Amount	No.	Amount	No.	Amount	No.	Amount
15	0.08	59	21.25	28	3.82	80	4.91

Thus, due to failure of the Bakijai Officers to take coercive measures like arrest and detention, attachment of movable and immovable properties, revenue amounting to Rs. 30.06 crore remained unrealised even after a lapse of 20 months to 130 months (December 2000). (C) The Assessing Officer is required to send requisition to the Bakijai Officer giving full particulars of defaulters like complete address, particulars of assets etc. in arrear certificate for realization of arrear dues. Test check of records in 2 Recovery Offices (Guwahati and Nagaon) revealed (December 2000) that 580 numbers of certificate proposals amounting to Rs. 4.42 crore referred/returned to unit offices between July 1994 and August 2000 with a request to furnish complete address, particulars of assets of the defaulters followed by remainders (November 1999 and January 2000). However, the information was not received by the concerned Recovery Offices till the date of audit (December 2000). Thus, due to lack of co-ordination between Unit Offices and Recovery Offices, revenue amounting to Rs. 4.42 crore remained unrealised even after lapse of 4 months to 78 months.

8.2 The Department by their written replies as well as oral deposition has stated that in order to maximise the collection of arrear dues, various measures viz. Arrear Collection Fortnight, Arrear Collection Special Drives accompanied by Senior Officers of the Department, prosecution of habitual defaulters, attachment of movable properties etc. are being taken by the Bakijai Officers. The Bakijai Officers face problem in exercising powers as quite a long period is taken to invest powers under the Assam Land and Revenue Regulation, 1886 and also under the Bengal

Public Demand Recovery Act, 1913, Bakijai Officers are invested with such powers by name. As a result whenever there is transfer of an officer, question of fresh investiture of powers arises. The Department issued show cause notices against the concerned officers found prima facie negligent in the matter. However, upon examination of the submissions made by them, it was found that the shortcoming in performances was largely of general nature. The Department has therefore, initiated steps for bringing in improvisation, correction etc. in the system as a whole.

OBSERVATIONS/RECOMMENDATIONS

8.3.1 During the course of discussion the Committee observed that the collection made by the Bakijai Officers during the period 1995-96 to 1999-2000 was very low. A large number of cases remained unsettled for a long time before the Hon'ble Supreme Court and High Court and the Bakijai Officers failed to take corrective measures against the defaulters. The Committee further observes that recovery could be made from the defaulters by adopting attachment and sale of movable/inmovable property, arrest and detention etc. but no such steps had been taken by the officers. The Committee also observes that there was no co-ordination between the Recovery Officers and Unit Officers for which revenue amounting to Rs. 4.42 crore remained unrealised.

8.3.2 The Committee, therefore recommends that to maximise the collection of arrear dues special drives should be made by the department. Steps should be taken for early settlement of the dispute cases pending before the Hon'ble Supreme Court and Hon'ble High Court. The Committee also recommends that action should be taken against the defaulting officers and submit a report to the Committee within 30 days from the date of presentation this report before the House.

Locking up of revenue due to delay in disposing of the appeal/ revision cases

(Audit para 2.2.13/CAG 2000-01 R/R)

9.1 Audit has pointed out that the taxation laws of the State do not prescribe any time limit for admitting/disposing appeal/revision cases by the appellate/revisional authorities. However, Commissioner of Taxes issued instructions (January 1997) to the appellate/revisional authorities to dispose of the appeal/revision petitions within 3 (three) months from the date of filing. Every DCT (Appeal) is required to submit fortnightly statement to the CT showing the disposal and pendency of appeal cases.

(A) Number of appeal cases at the beginning of the year, cases added and disposed of during the year and number of cases pending disposal at the end of each year together with amount involved during the last five years ending 31 March 2000 as reported by the CT are given below :

Year	Opening balance of cases under appeal		Additional during the year		Total		Disposal during the year		Closing balance		Percentage of disposal	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount	in terms of cases	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
1995-96	771	3.29	344	1.95	1115	5.23	488	1.66	627	3.58	43.77	31.73
1996-97	627	3.58	310	9.42	937	12.99	363	4.93	574	8.07	38.74	37.95
1997-98	574	8.07	451	32.53	1025	40.59	484	27.28	541	13.32	47.22	67.20
1998-99	541	13.32	348	49.06	889	62.37	484	39.46	405	22.91	54.44	63.26
1999-2000	405	22.91	351	1.93	756	24.84	276	2.15	480	22.70	36.51	8.66

Although the Appellate Authorities could dispose of on an average only 44.13 per cent (in terms of number) and 41.68 per cent (in terms of revenue) of the appeal cases every year, no remedial measures were taken to improve the position.

(a) Age-wise pendency of appeal cases at the end of March 2000 could not be furnished by the department. However age-wise analysis in respect of 3 appellate authorities as done by audit is given below :

	<u>Pendency period</u>	<u>No. of cases</u>	<u>Amount involved</u>
(i)	7 months to 59 months	320	8.84
(ii)	60 months to 93 months	82	0.75
	Above 93 months	50	0.03
	Total :	452	9.62

(b) In DCT (Appeal), Guwahati, 25 appeal cases involving Rs. 0.44 crore though dismissed by the appellate authority in favour of Department between September 1991 and September 2000 but no action was taken to recover the amount till date (February 2001).

(c) As reported by the Law Branch of the Commissionerate, 825 cases involving Rs. 8.96 crore were pending disposal in Hon'ble Gauhati High Court at the end of March 2000, of which 199 cases involving Rs. 1.75 crore have been pending for more than 5 years and in Hon'ble Supreme Court another 10 cases involving Rs. 0.22 crore were pending at the end of December 2000. Thus, due to non-adherence to executive instructions/lack of co-ordination/non-initiation of action to vacate the stay orders, revenue of Rs. 19.24 crore remained unrealized for periods ranging from 5 months to 114 months till the date of audit (February 2001).

(B) Test check of the records of the Commissioner of Taxes revealed that despite instructions of January 1997, 18 revision petitions involving Rs. 0.77 crore filed between May 1999 and March 2000, were pending disposal even after a lapse of 11 months to 22 months reckoned from the dates of filing the revision petitions (February 2001).

9.2 The Department by their written replies as well as oral deposition has stated that disposal of Appeal and Revision cases normally takes time as before disposal of such cases, reasonable opportunity of hearing has to be allowed to the petitioners. For this, several notices with time gap of minimum one month are issued. Moreover, in certain cases, the petitioners pray for adjournment of hearings on various grounds. Frequent change of officers at the appellate level at Guwahati, Tinsukia and Jorhat also affected the regular disposal of Appeal cases during the relevant time. However, the Appellate and revisional officers have been instructed to dispose of pending cases expeditiously. As regards the cases pending in the High Court, the Commissioner of Taxes is in constant touch with the Advocate General/Senior Government Advocate in the High Court. An

officer of the rank of Superintendent of Taxes has also been keeping constant liaison with the Government Advocates in High Court. Senior Officer like Additional Commissioner of Taxes and Joint Commissioner of Taxes are regularly meeting the Government Advocate in the matter of submission of para-wise comments/instruction/filing of counter affidavits for ensuring speedy disposal of the pending cases.

OBSERVATIONS/RECOMMENDATIONS

9.3 During the course of examination the departmental representatives deposed that due to frequent transfer of Officers of the Department so many cases are remained pending in the Hon'ble Supreme Court and Hon'ble High Court for disposal. The Committee, therefore, recommends that no officers should be transferred to any other places till the disposal of the cases. The tax officials should not be engaged in election duty and any other works. The Department should take remedial measures for speedy disposal of pending cases.

9.3.2 The Committee observes that due to non-adherence to executive instructions/lack of co-ordination/non-initiation of action to vacate the stay orders, revenue of Rs. 19.24 crore remained unrealised for a long period. The Committee, therefore, recommends that the amount should be realised as soon as possible by filling up the vacant posts and increasing the posts of officers, by taking approval from the SLC.

9.3.3 The Committee observes that the revisional authorities failed to adhere to the instructions issued by the Commissioner of Taxes to dispose of the petitions within 3 months from the date of filing. The Committee, therefore, recommends that measures should be taken by the Department for speedy disposal of pending cases and amount should be realised and deposited to the Government exchequer. Action taken in these regard should be intimated to the Committee within 30 days from the date of presentation of this report before the House.

Non- levy of Tax
(Audit para 2.3/CAG/2000-01 R/R)

10.1 Audit has pointed out that under the Assam General Sales Tax Act, 1993 vide Explanation 1 below section 8 (1) (a) read with Rule 12 of the Assam General Sales Tax Rules, 1993, where a person sells a substantial part of the goods manufactured by him to another person for resale as distribution of selling agent and the price charged on resale exceeds forty per cent of the original sale or purchase price, the resale of such goods by such person shall be deemed as first point of sale within the State and the rates of tax shall be as specified in Schedule II for such items. Test check of assessment records of the Superintendent of Taxes, Guwahati Unit 'A' revealed (July October 1999) that the Assessing Officer, while finalizing the assessment of M/S. Hindustan Petroleum Corporation (dealing in Petroleum Products) for the assessment year 1995-96, allowed (March 1999) deduction of Rs.40.74 crore from his taxable turnover of Rs.46.06 crore on the ground that such sales were made out of the local purchases of tax-paid goods. Since resale price exceeded forty per cent of the Original purchase price disclosed, the deduction allowed was not admissible and resulted in non-levy of tax of Rs. 4.89 crore.

10.2. The Department by their written replies has stated that the issue raised by the Audit was very contentions and in fact a Court case before the Hon'ble Gauhati High Court in Indian Oil Corporation vs. State of Assam having some crucial relevancy in the whole matter had been already pending before the Gauhati High Court during the incipient stage of the Audit objection giving rise to a case for keeping the consideration of the re-assessment proceeding in the light of audit observation in abeyance. However, the re-assessment under section 18 (1) of the Assam General Sales Tax Act, 1993 was completed on 08,23. 2002 after completion of statutory requirements like allowances of reasonable time and opportunity to the concerned dealer raising the following demand.

Tax	-	Rs. 6,67,99,695/-
Interest	-	Rs.10,28,20,967/-
		Rs.16,96,20,662/-

However, the matter being contentious as pointed out earlier, dealer went on appeal against the aforesaid re-assessment on the points raised by the Audit. The appellate authority vide order dated 30.06.2004 allowed

the appeal holding that the provision to explanation 1 to Section 8 (1) (a) of the Assam General Sales Tax Act, 1993 is not applicable in this case as pointed out by Audit. The para was discussed by the Hon'ble Committee on 18,06,2003.

OBSERVATIONS/RECOMMENDATIONS

10.3 The Committee observes that generally the audit objection is prepared by the A. G. on the basis of the specific replies received from the Department. Therefore, the Committee recommends that the A. G. and the Government sit together and discuss with regard to the important draft paras and take steps to dispose of the paras.

**Loss due to lack of Co-ordination between Apex)Office
and the unit Office.**

(Audit Para 2.4/CAG/2000-2001 R/R)

11.1. Audit has pointed out that test a check of the records of the Commissioner of Taxes (CT), Assam revealed (December, 2000) that against a demand of assessed tax of Rs.1.27 crore for the period from 1st July, 1993 to 31st August 1993, the Hon'ble Gauhati High Court stayed (April, 1994) realization of taxes with a direction to complete assessments for subsequent periods but restrained the assessing authority from realizing taxes till finalisation of a petition filed by M/S Vikash Agency registered under Sales Tax unit of Guwahati 'C'. Accordingly, the assesment for the period from 1st September, 1993 to 31st March, 1994 was completed (March, 1997) with a tax liability of Rs.3.48 crore. The writ petition was dismissed on 7th August, 1997 and the verdict was communicated to Commissioner of Taxes, Assam on 9th September, 1997. But the CT failed to communicate (till December, 2000) the verdict of the Hon'ble Gauhati High Court to the Assessing Officer for realization of taxes resulting in loss of revenue amounting to Rs.4.75 crore as the dealer became untraceable an absence vide report (February, 1998) of Area Inspector of Taxes attached to Superintendent of Taxes, Guwahati Unit 'C'.

11.2. The Department by their written reply has stated that the dealer dealt in lottery tickets and was registered under the Assam General Sales Tax Act, 1993 on 26th August, 1993 by the Superintendent of Taxes, Guwahati Unit-C fixing liability with effect from 1.7.93. The Superintendent of Taxes completed provisional assessment summarily for July and August, 1993 raising a demand of Rs. 1,27,30,891/- since the dealer had failed to file valid returns or to pay the due amount of taxes in spite of repeated notice issued by him. He also issued an Arrear Certificate to the Superintendent of Taxes (Revery), Guwahati for realisation of the aforesaid dues of Rs.1,27,30,891/- as an arrear of land revenue as per provisions of law. Meanwhile, the dealer filed a writ petition in the Hon'ble Gauhati High Court vide Civil Rule No. 1474/94 challenging the raised demand. The Hon'ble Gauhati High Court by an interim order, dated 13.4.94 stayed the realisation of the assessed tax and allowed the Department to complete the assessment pending if any out restrained the Department from realisation of any tax till final disposal of the case. During the pendency of the case in the High Court, the

Superintendent of taxes although completed the assessment for the period from September, 1993 to March, 1994 raising a further demand of Rs.3,48,21,488/- but could not initiate recovery proceeding in view of the subsisting stay order of the Hon'ble High Court. The Court finally dispose the case vide its judgment and order, date 7.8.97 by dismissing the writ petition. But the crux of the matter lies in the fact that the dealer had closed down his business and had become traceless in September, 1994 itself, a time a long before the eventual disposal of the case by the Hon'ble High Court. The fact that the business of the dealer had ceased to exist and that the dealer had himself become tracless since September, 1994 is clearly demonstrated by the field reports dated 31.3.95 and 22.9.97 available on the records of the case. The observation of the Audit that the dealer become tracless and absconding only after judgment of the Hon'ble Gauhati High Court had been pronounced, would thus appear factually incorrect. The para in question was discussed at some length on the meeting of the Hon'ble Public Accounts Committee taking place on 18.6.03 where in it was observed that lapse on the part of the concerned officer in communicating the judgement of the Court to the concerned unit should be found out. The concerned senior officer, the Additional Commissioner of Taxes was asked to explain as to why there was delay in communicating the judgement of the Court to the concerned Superintendent of Taxes. The Addl. Commissioner of Taxes clarified that although the Additional Senior Government Advocate gave the information of the Court judgement of 8.9.97 copy of the judgment was not provided alongwith the communication. The certified copy of the judgement could not be obtained for a long time either from the Assistant Registrar of the Gauhati High Court who was requested to provide the same vide letter, dated 11.11.97 or from the Additional Senior Government Advocate. The Certificate copy of the judgement could be obtained only on 13.2.2001 after the department had applied for the same independently.

OBSERVATIONS/RECOMMENDATIONS

11.3. The Committee observes that there being a specific column for permanent address in the registration form, then how could the authority register the firm without mentioning the permanent address. Further, the Committee also observes that the case was disposed of in the year 1997 by the Hon'ble High Court, but the copy of the Judgement was collected by the department in 2001, that too in such a case where there is an involment of Rs.4.75 crore, thereby giving chance to the dealer to be untraced.

11.3.1. The Committee, therefore, recommends that the department should investigate the matter and untraced dealer should be traced out and the due taxes should be realized from the dealer. The Committee also recommends that the erring officials should be brought into book and responsibility should be fixed and action should be taken against the defaulting officials because of whom the dealers firm could be registered without mentioning the permanent address. Action taken report may be submitted to the Committee within 60 days from the date of presentation of this report before the House.

Short-levy of tax due to non-inclusion of Excise Duty in sale price**(Audit Para 2.5/CAG/2000-2001 R/R)**

12.1. Audit has pointed out that under Section 2 (34) (d) of the Assam General Sales Tax Act, 1993, read with 'Explanation' below the said section, 'Sale Price' means the amount received or receivable by a dealer as valuable consideration including excise duty for the sale of goods before the buyer obtains delivery thereof irrespective of whether such excise duty was paid by the buyer or the seller. Test check of the assessment records of the Superintendent of Taxes, Guwahati Unit 'A', revealed (July-October, 1999) that taxable turnover relating to return periods 1993-94, 1994-95 and 1996-97 in respect of M/S. Eastern Enterprise India Made Foreign Liquor (IMFL) dealer was determined (April, 1998 and June, 1998) at Rs. 16.72 crore after allowing deduction of Rs. 4.86 crore though excise duty of Rs.4.86 crore paid by the dealer was includable in the taxable turnover of the dealer. This resulted in short-levy of tax of Rs.1.62 crore.

12.2. The Department by their written reply as well as oral deposition has stated that the assessments were originally completed by including the amounts of payable excise duty in the assessable turnovers. Thereafter, the same had to be revised as per judgement of the Appellate Authority excluding the quantum of excise duty from the total turnover alongwith same other allowances. In the later sequence of events when the assessing officer proceeded again for reassessment of the dealer after receipt of the Audit objection the dealer went to the Hon'ble Gauhati High Court challenging the notice served by the Superintendent of Taxes and that matter is still pending before the latter authority. Apart from it the suomoto to revision proceeding initiated by the Commissioner of Taxes to revise the reassessment order coming in to being in the wake of the appellate authority's judgement alongwith the latter order itself has also been brought to challenge neither the Hon'ble Gauhati high Court. The Department has effectively countered the attempt of the dealer to obtain any interim injunction in his favour in the Hon'ble Court who has happened to concluded the hearing in the case and hence the final judgement by it is likely to be delivered soon and action will be taken accordingly on the dealer. The para was discussed by the Hon'ble Committee on 18.6.2003.

OBSERVATIONS/RECOMMENDATIONS

12.3. The departmental witnesses have informed the Committee that the matter is pending with the Hon'ble High Court. Therefore, the Committee suggests the department that the same may be intimated to the Committee after disposal of the matter in the Hon'ble High Court.

Incorrect grant of exemption from levy of Tax

(Audit para 2.6/CAG/2000-2001 R/R)

13.1. Audit has pointed out that Under the Central Sales Tax Act., 1956, where a dealer transfers any goods to any other place of his business or to his agent or principal in any other State, he is not liable to pay tax in respect of such goods, provided he can prove that the movement of goods from his State to the other State was not occasioned as a result of sale. For this purpose, the dealer may furnish to the assessing authority (i) a declaration in the prescribed form 'F' duly filed in and signed by the consignee or recipient of the goods in the other State and (ii) evidence of despatch of goods. Test check of the assessment records of the Superintendents of Taxes, Guwahati Unit 'A' and Dhubri revealed (July-December, 1999) that 2 dealers dealing in iron and steel and tea claimed and were incorrectly allowed (March, 1998) by the assessing authorities a deduction of Rs.441.30 lakh from their taxable turnover on account of branch transfers which were neither supported by Form "F" nor any proof of despatch of the goods. This resulted in under assessment of tax of Rs.79.83 lakh as detailed below :

(Rupees in lakh)

Sl. No.	Name of the dealer	Assessment Year/date of assessment	Total turnover exempted	Tax involved	Interest (Upto)	Total	Action taken by the Deptt.
1.	M/S Steel Authority of India Limited, Guwahati.	1994-95 30th March, 1998	418.28	33.46	42.83 (August, 2000)	76.29	The department levied (September, 2000) tax and interest (Rs.76.29 lakh) Report of realization is awaited.
2.	M/S Chapar Tea Estate, Chapar	1997-98 31st March, 1998	23.02	2.30	1.24 (January, 2000)	3.54	The department levied (August, 2000) tax (Rs.2.30 lakh) Report of realization is awaited.
Total		-	441.30	35.76	44.07	79.83	

13.2. The Department by their written reply has state that -

- (i) The Audit objection related to matter of stock transfer of goods within the meaning of section 6 A of the Central Sales Tax Act, 1956. The furnishing of 'F' form by the transfer or after obtaining the same from the transferee as a proof of the claimed stock transfer was not madatory during the relevant period as per exiting statutory provision Still, after receipt of the Audit objection, the assessing officer reopened the case and levied tax and interest on the exempted turnover under dispute. The dealer, however, went on appeal against this and the appellate authority upon consideration of the entire gamut of facts pertaining to the case, came to set aside the reassessment order and ordered fresh assessment on the basis of books of accounts and other evidences to be produced by the dealer. The order of the appellate authority is in the process of implementation. The para was discussed by the Hon'ble Committee on 18.6.2003.
- (ii) The case was re-assessed in the light of audit objection rasing demand of Rs.3,54,102/- including interest of Rs.1,24,102/- although the matter objected to by the Audit took the character of only some technical and peripheral deficiency. However, the dealer did not choose to litigate further and came to pay the entire dues in the subsequent course of events.

OBSERVATIONS/RECOMMENDATIONS

13.3. Considering the submission of the departmental representatives, the Committee directs the department to examine the matter of making under assessment of Rs.79.83 lakh as the department has admitted and to submit a report to the Committee within 60 days from the date of presentation of this report before the House.

Concealment of turnover

(Audit para 2.7/CAG/2000-2001 R/R)

14.1. Audit has pointed out that under the taxation laws of the State*, if a dealer has concealed, or failed to disclose fully and truly, the particulars of his turnover, the Assessing Officer may within eight years from the date of relevant year make an assessment or re-assessment of the dealer. When a dealer conceals his turnover, he shall pay by way of penalty, in addition to tax, a sum not exceeding one and one half times the amount of tax sought to be evaded. Interest at the prescribed rates/varying from 12 to 24 per cent per annum upto 30 June, 1993 and at the rate of 2 per cent for each month thereafter on the amount by which tax falls short of the tax payable is also payable for default in payment of tax due.

(A) Cross verification of the records of certain dealers registered in different unit offices of Sales Tax department with the records of other department/other units of Sales Tax department revealed (July - December, 1999) that dealers did not disclose purchases made by them by utilizing declaration forms or otherwise by them. The non-disclosure resulted in concealment of turnover of Rs.117.92 lakh having a tax effect of Rs.48.44 lakh including interest and penalty as detailed below :

Sl. No.	Name of the Unit	Description of goods	Assessment period.	Turn over concealed	Rate of tax	Tax evaded.	Interest leviable up to.	Maximum penalty leviable	Action taken by the Department.
1	2	3	4	5	6	7	8	9	10
			Date of assessment					(Rupees in lakh)	
1.	Superintendent of Taxes, Diphu	IMFL	31st march 1997 24th June, 1998.	15.92	50%	7.96	4.30 (July, 1999)	11.94	No response received from the Department and Government
2.	Superintendent of Taxes, Ghy. Unit 'A'	Nutrela chunks, Packet foods, Blades, etc.	1994-95, 27th March, 1998.	27.03	8%	2.16	0.24 (July, 2000)	3.24	The Assessing Officer rectified (August, 2000) the mistake and adjusted Rs.0.30 lakh and issued (August, 2000) a notice of demand for Rs.2.10 lakh. Report on further realization is awaited.

1	2	3	4	5	6	7	8	9	10
3.	Superintendent of Taxes, and Ghy. Unit 'A'	Galvanised and Corrugated sheets	1996-97 June, 1997	21.42	4%	0.86	0.65 (August, 2000)	1.29	The Assessing Officer rectified (April, 2000) the mistake and referred (September, 2000) the case to Recovery Officer, Ghy. Report on realization has not been received.
4.	Superintendent of Taxes, and Dhubri.	Split bamboo and Chatai	<u>Q.E.</u> 30th September 1997. 31st October, 1997. <u>Q.E.</u> 31st March, 1998 10th August, 1998 <u>Q.E.</u> 30th September, 1998 12th May, 1999.	17.31	10%	1.73	0.80 (January, 2000)	2.60	On this being pointed out (February, 2000). The Department stated (May, 2000) that the dealer was rightly assessed on the basis of the despatched particulars received from the office of the Superintendent of Taxes . Boxirhat Check Post. The reply is not tenable as the figures collected by audit do not corroborate the figures supplied by the department. No reply has been received from the Government.
5.	Superintendent of Tax, Tangla.	Paper	31st March, 1995 10th September, 1997.	36.24	8%	2.90	3.42 (March, 2000)	4.35	No response received from the Department/ Government.
Total				117.92		15.61	9.41	23.42	

(B) Test check of the assessment records of the Superintendent of Taxes, Guwahati Unit 'C', revealed (April, -June, 1998) that gross turnover in respect of a medicine dealer for the assessment periods ending March, 1992 and March, 1993 was determined (October, 1995) by the Assessing Officer at Rs.66.08 lakh. Cross verification of assessment records of the dealer with the records of the Animal Husbandry Department, Government of Assam, revealed (May, 1998) that the dealer had supplied medicine valued at Rs.637.48 lakh during the period from April, 1991 to March, 1993. The dealer had thus concealed a turnover of Rs. 571.40 lakh and evaded tax of Rs. 22.85 lakh. On this being pointed out in audit (August, 1998), the department stated (September, 2000) that the dealer was reassessed (December, 1998) and tax of Rs.22.85 lakh was levied. In addition, interest of Rs.38.02 lakh was charged. On his failure to pay the demanded tax, the case was sent (March, 1999) to the Superintendent of Taxes (Recovery) for effecting recovery. Report on realisation is awaited (October, 2001).

14.2. The Department by their written reply has stated that -

(A) 1. The case was re-assessed at a taxable turnover of Rs.2,09,41,878/- and tax was assessed at Rs.69,80,626/-. The dealer already paid an amount of Rs.59,64,353/- and there was a demand tax of Rs.34,01,510/- including interest of Rs.13,85,237/- and penalty of Rs.10,00,000/-. Being aggrieved by the assessment order completed under Section 87(I) of the Assam General Sales Tax Act, 1993, the dealer preferred appeal before the Deputy Commissioner of Taxes (Appeals) Nagaon, who by his order dated 11.4.2003 quashed the rectified assessment order dated 16.1.01 and restored the original assessment order dated 24.6.98. However, again in the later sequence of events, the Revisional Authority, has revised the above mentioned appellate order and has asked the Superintendent of Taxes, Diphu to make a fresh assessment order invoking his power under Section 18 (I) of the Act instead of Section 37(I). Action by the Superintendent of Taxes, Diphu on the revision order is in progress. The para was discussed by the hon'ble Committee on 18.6.2003.

(A) 2. The Superintendent of Taxes, Guwahati Unit-A failed to realise the arrear dues of Rs.2.10 lakhs and as such he issued arrear certificate to the Supdt. of Taxes (Recovery, Guwahati on 3.5.2001. Being aggrieved, the dealer preferred appeal before the Deputy Commissioner

of Taxes (Appeal), Guwahati, who stayed the realisation of the demand vide his order dated, 12.9.2001. The para was discussed by the Hon'ble Committee on 18.6.2003 (A) 3. It is stated that the Superintendent of Taxes (Recovery) Guwahati, has not been able to realise the arrear dues from the dealer inspite of his best efforts to do so and he has been directed to recover the arrear dues at the earliest possible time. The Superintendent of Taxes (Recovery) Guwahati has contacted the official liquidator of the Bombay High Court, who is custodian of the assets of the dealer for the time being, for realisation of our State dues. The para was discussed by the Hon'ble Committee on 18.6.2003 (A) 4. As per records available in the Forest Department, there were 768 trucks of splitted bamboo and chatai during the year, 1997-98 and 1998-99, belonging to two dealers viz Jahannuddin S.K and one Sri Jahariddin S.K. Both the dealers were registered dealers and they were correctly assessed during the aforesaid years and Taxes were realised. The para was discussed by the Hon'ble Committee on 18.6.2003(A) 5. The assessment was rectified and a demand of Rs. 4.26 lakhs was raised on the dealer. The case was referred to the Superintendent of Taxes (Recovery), Mangaldoi for realisation of the arrear dues. An amount of Rs.9,000/- has been realised so far. The para was discussed by the Hon'ble Committee on 18.6.2003. Para 2.7-(B) The dealer was reassessed in the light of Audit Objection. Being aggrieved, the dealer preferred appeal before the Revisional Authority. The Revisional Authority vide order dated 14.3.2001 set aside the assessment order and directed the Superintendent of Taxes to make reassessment after allowing the dealer and opportunity of being heard. Action is being taken by the Unit to dispose of the case in the light of the revision order and on its subsequent follow up action.

OBSERVATIONS/RECOMMENDATIONS

14.3. The Committee observes that out of Rs.4.26 lakh the Department have recovered an amount of Rs.9,000/- only. The Committee suggests the department that vigorous action should be taken by the department for early realisation of due taxes.

14.3.1. The Committee observes that this is a case of lapses on the part of the departmental officials. The Committee directs the department that steps should be taken by the department to realise the due tax with interest from the dealers and deposit the same to the Government exchequer. Action taken in this regard may be intimated to the Committee within 60 days from the date of presentation of this report before the House.

Non-registration of dealer

(Audit para 2.8/CAG/2000-2001 R/R)

15.1. Audit has pointed out that (A) Under the Central Sales Tax Act, 1956, every dealer making inter-State sale of goods is to get himself registered. Further the Act provides that inter-State sale of goods other than declare goods to registered dealers, if supported by prescribed declaration forms are taxable at the concessional rate of 4 per cent, otherwise tax is payable at the normal rate of 10 percent. As per Government Notification No. FTX-127/86/Pt./11/8, dated 12th June, 1998, no tax on supari under the Central Sales Tax shall be payable. Test check of the records of 3 Sales Tax Unit offices revealed (between July, 1998 and June 2000) that 13 dealers made inter-State sale of goods valued at Rs.460.96 lakh without payment of tax of Rs.57.93 lakh as detailed below :

(Rupis in lakh)

Sl. No.	Name of the unit	Assessment year/date of assessment	Nature of goods	Taxable turnover	Tax Payable	Tax paid payable	Nature of observation
1.	Superintendent of Taxes, Mangaldoi.	<u>1997-98</u> <u>Nil</u> <u>1998-99</u> (upto May, <u>1998</u>) <u>Nil</u>	Supari	231.65	23.16	<u>Nil</u> 23.16	Two Supari dealers registered under AGST Act, 1993 made inter State sales of Rs.231.65 lakh without payment of Central Sales Tax of Rs.23.16 lakh.
2.	Superintendent of Taxes, Dhubri/Boxirhat Check Post.	<u>1994-95</u> (January 1995 to March <u>1995</u>) <u>Nil</u> <u>1995-96</u> <u>Nil</u> <u>1996-97</u> (December <u>1996</u> to February <u>1997</u>) <u>Nil</u>	-do-	106.09	19.09	<u>Nil</u> 19.09	6 unregistered dealers sold 46 consignments of Supari valued at Rs. 106.09 lakh on which neither tax under Central Sales Tax Act, 1956, nor under AGST Act, 1993 was levied.
3.	Superintendent of Taxes, Damra Check Post/ Guwahati Unit 'B'	<u>1997-98</u> (November 1997 to March <u>1998</u>) <u>Nil</u>	-do-	123.22	22.18	<u>6.50</u> 15.68	5 unregistered dealers sold 28 consignments of Supari valued at Rs. 123.22 lakh having a tax effect of Rs 22.18 lakh, however, only Rs. 6.50 lakh were collected at the Check post
Total-				460.96	64.43	<u>6.50</u> 57.93	

On this being pointed out (April 1998/November 1999/June 2000) the department stated in respect of the dealers at Sl. No. 2 that they could not be traced at the given addresses as the dealers had furnished fictitious local addresses. The above matter was referred to the Department/Government in April 1998/November 1999/June 2000/July 2000. The matter was followed up with reminder to the Secretary in July 2001. However, inspite of such efforts, no reply was received from the Government (October 2001). (B) No dealer, liable to pay tax under the Assam General Sales Tax Act, 1993, shall carry on business in taxable goods unless he has been registered and possesses a certificate of registration. Every person liable to get himself registered shall submit an application for registration within 60 days from the date of commencement of Rules (1 July 1993) if he was carrying on business on such date in the event of default in making application, the Assessing Officers shall serve the dealer with a notice to apply for registration and register him. Sales Tax declaration forms under the State Taxation Act are issued to dealer to enable them to make inter-State purchases free of tax for re-sale within the State. Test check of the assessment records of the Superintendent of Taxes, Guwahati Unit 'A', revealed (between July 1999 and October 1999) that M/s Ansool Trading Co. Guwahati, a dealer registered under the Assam Sales Tax Act, 1947 (since repealed) and the Central Sales Tax Act, 1956, had neither applied for registration under the Assam Central Sales Tax Act, 1993 (effective from 1 July 1993) nor the Assessing Officer had registered him compulsorily as required under the provisions of the Act *ibid*. However, cross verification by audit of assessment records of said dealer with the records of a registered dealer M/s. Naranarayan Agency under the Karimganj Sales Tax unit revealed (July to October 1999) that M/s Ansool Trading Co., purchased "Paper" valued at Rs. 57.08 lakh free of tax by utilizing 9 declaration forms issued to him in November 1990 from M/s. Naranarayan Agency, Karimganj during the period from 1 July 1993 to 31 March 1994. On this being pointed out (February 2000) in audit, the department stated (November 2000) that since the dealer had closed his business and became untraceable, the assessment proceeding could not be initiated. Thus due to lack of initiation of timely action by the Assessing Officer, Government had to incur loss of revenue to the tune of Rs. 4.57 lakh.

15.2 The Department by their written reply has stated that (A) the para involves 13 dealers in all i.e., 2 under the Superintendent of Taxes, Mangaldoi, 5 under the Superintendent of Taxes, Guwahati Unit-B and 6

under the Superintendent of Taxes, Dhubri. In the instant cases, since the adequate securities covering the entire liability on the respective truck load of supari have been realised by the intercepting Checkgate authorities, there was no loss of Government revenue. In fact, realising the veracious and contentions dimensions of issues arising from double taxation on supari on technicalities, the Government issued Notification No. FTX. 127/86/Pt-II/8, dated 12-06-98 providing zero rate of taxes on inter-state sales of supari under the Central Sales Tax Act, 1956. Of course, pursuant to subsequent amendment of section 8(5) of the Central Sale Tax Act, 1956 w.e.f. 13-5-2002, such exemption would be available to a dealer only against valid 'C' forms obtained from the purchasing dealers. The para was discussed by the Hon'ble Committee on 18.6.2003.

(B) The dealer was assessed and demand of Rs. 1.20 lakh was raised against the dealer in the wake of the Audit Objection. The dues are under process of realisation by the concerned Superintendent of Taxes (Recovery).

OBSERVATIONS/RECOMMENDATIONS

15.3 The Committee observes that the department could not trace out at the given addresses as the dealers had furnished fictitious addresses for which due tax could not be realised by the department. Further, the Committee also observes that due to lack of initiation of timely action by the Assessing Officer, Government had to incur loss of revenue to the tune of Rs. 4.57 lakh. The Committee, therefore recommends that the Government should take effective measures to realise the due taxes from the dealers and should be more cautious so that no fictitious address could be given by the dealer at the time of registration.

CHORT-LEVY/NON-LEVY OF INTEREST

(Audit para 2.9/CAG/2000-01 R/R)

16.1 Audit has pointed out that under the Sales Tax laws of the State, if a dealer fails to pay the full amount of tax payable by him, by due date, he is liable to pay simple interest at the prescribed rates varying from 12 to 24 per cent per annum (Upto 30 June 1993) and at the rate of 2 per cent for each month (From 01 July, 1993). On the amount by which tax paid falls short of the tax payable. Test check of records of 4* Sales Tax unit offices revealed that while finalising the assessments of 10 cases (between March 1999 and June 1999) the assessing authorities levied interest of Rs. 83.75 lakh instead of Rs. 114.33 lakh on delay/non-payment of admitted tax this resulted in short levy of interest of Rs. 30.58 lakh. On this being pointed out the department levied interest of Rs. 23.39 lakh in 5 cases. The report on its recovery and action in other cases has not been received (October 2001).

16.2 The Department by their written reply has stated that interests have been levied in 8 (eight) out of 10 cases and an amount of Rs. 1,03,442/- have already been realised in 3 (three) cases as yet and the balance amounts are in the process of realisation under the concerned Supdt. of Taxes (Recovery). In case of the dealer. M/s Bhavani Tea Co. the case was referred to Deputy Commissioner of Taxes, Sivsagar for initiating suo-moto revision as per governing statutory provisions in the other case viz, M/s. Mendierates, registered under Guwahati Unit-A interest was not leviable at all since the sales were actually made to Government Department and tax was deducted at source.

OBSERVATIONS/RECOMMENDATIONS

16.3 The Committee directs the department to realise the entire tax from the dealers expeditely. Regarding M/s Brahmaputra Iron & Steel Co. and M/s. Sarda Veneer Mill, Jorhat appropriate measures should be taken by the department to realise the levied tax and interest and to deposit the same in the Government exchequer. Action taken by the department may be intimated to the Committee within 60 days from the date of presentation of this report before the House.

Incorrect grant of exemption**(Audit para 2.10/CAG/2000-01 R/R)**

17.1 Audit has pointed out that (A) Under the Assam industries (Sales Tax Concession) Scheme 1995 'Tea' shall be excluded from the raw materials entitled to the benefits of tax exemption and cannot be purchased by a dealer free of tax. Test check of the assessment records of 4 Sales tax unit offices revealed (Between October 1999 and June 2000) that sale of tea amounting to Rs. 143.45 lakh in respect of 4 dealers was incorrectly exempted from levy of tax on the ground that such sales were covered by industrial sales tax declaration forms. This mistake resulted in short levy of tax of Rs. 17.24 lakh including interest of Rs. 6.18 lakh. On this being pointed out the department levied (June 2000) tax of Rs. 1.05 lakh and interest of Rs. 0.58 lakh. Action taken in respect of the other cases is awaited. The above matter was referred to Government in February 2000/April 2000/July 2000. No response was received.

(B) Under the Assam Industries (Sales Tax Concession) Scheme, 1995, a certain class of new industrial units shall not be required to pay tax for a period of seven years on the sale of finished products manufactured by them subject to fulfillment of conditions as laid down in that scheme. To avail of such exemption, the intending industrial unit shall have to obtain a certificate of authorisation from the concerned Sales Tax Unit Office on the basis of eligibility certificate issued by the Industries Department, Government of Assam, showing the eligibility for tax exemption. As per entry 50 of Schedule-II of the AGST Act, 1993, tax on Marble 'Tiles', is leviable at the rate of 14 per cent. Test check of the assessment records of the Superintendent of Taxes, Gueahati Unit 'D' revealed (between October 1999 and December 1999) that the Assessing Officer, on the strength of eligibility certificate issued (April 1996) by the Industries Department, granted (June 1997) certificate of authorisation to a dealer and followed (March 1999 and April 1999) exemption of a gross turnover of Rs. 87.34 lakh on sale of finished products of Marble Sinks, Flower Pots and Marble Tiles manufactured by using raw materials (Marble Slabs) relating to the assessment years 1995-96 to 1997-98. Further scrutiny revealed that sale of 'Marble Tiles' amounting to Rs. 71.03 lakh was exempted retrospectively effect from 13 January 1994 without any eligibility certificate. This incorrect exemption resulted in non-levy of Tax of Rs.9.94 lakh. On this being pointed out in audit (April 2000), the department revised the assessment orders (December

2000) imposing Tax of Rs.8.90 lakh and interest of Rs. 7.84 lakh (calculated upto November 2000). Report on realisation is awaited (October 2001).

17.2. The Department by their written reply has stated that (A) (1) the audit objection this case was that the dealer purchased tea from M/S. Radha Tea Co. of Jorhat to the tune of Rs. 16.68 lakhs against Form-VII and since black tea is not raw materials to be used in the industry, exemption allowed on sale of packet Tea by the dealer was irregular. In the instant case, the dealer is the holder of Authorisation Certificate of Tea packing Industries and therefore, all the products of the industry was exempted from payment of tax as the same was not charged in the sale bill. (A)(2) This dealer actually sold tea to the above dealer as mentioned in para 2.10 (A)(1). The dealer was assessed and tax was levied at Rs. 1,63,308/-. The dealer failed to deposit the demand and as such the case was referred to Supdt. of Taxes (Recovery) for realisation. The dealer then filed Writ Petition before the Hon'ble Gauhati High Court and the Hon'ble Court stayed the realisation of demand vide order dated 16.10.2001 and the matter is thus sub-judice. (A)(3) The dealer was assessed under Section 18(1) of the A.G.S.T. Act, 1993 on 21.6.2002. Being aggrieved, the dealer preferred to move the Hon'ble Gauhati High Court and the Hon'ble Court had admitted the Writ Petition of the dealer in the case No. 1275/2003. The Hon'ble Court in its interim order debarred the Supdt. of Taxes to realise the demand taxes.

(A)(4) The dealer was assessed in pursuance of suo-moto revision order of the Deputy Commissioner of Taxes, Guwahati Zone-A and the demand notice was served on the dealer. The dealer than moved the Hon'ble Gauhati High Court and the Hon'ble High Court in the order dated 25-1-2002 stayed the realisation proceeding in the case. (B) The dealer was re-assessed in the light of audit objection and demand notice was issued on the dealer. Thereafter, the dealer moved the Hon'ble Gauhati High Court. In the judgement dated 4.5.2001 (interim) stayed the realisation of the demand and the matter is sub-judice.

OBSERVATIONS/RECOMMENDATIONS

17.3 The Committee observes that if the assessing officers had done their duty in time and assessed accordingly it would not have happened. The Committee, therefore, recommends that the department should take measures to realise all the pending cases except the cases laying in the High Court. Since the para is under sub-judice, the department should take steps for speedy settlement of the cases as soon as possible. Action taken in this regard may be intimated to the Committee within 60 days from the date of presentation of this report before the House.

Short-levy of tax due to incorrect application of rate of tax.**(Audit para 2.11/CAG/2000-01 R/R).**

18.1 Audit has pointed out that as per entry 22 of the Schedule-II of the Assam General Sales Tax Act, 1993, tax on 'Hair Oil' is leviable at the rate of 8 per cent. Test check of the assessment records of the Superintendent of Taxes, Guwahati Unit 'B' revealed (November 1999/ December 1999) that taxable turnover of Rs. 304.48 lakh in respect of a dealer dealing in 'Hair Oil' for the period from 1994-95 to 1998-99 was assessed between June 1995 to June 1999 at the rate of 4 per cent instead of the correct rate of 8 per cent. This resulted in short levy of tax amounting to Rs. 12.18 lakh. The dealer is also liable to pay interest of Rs. 7.80 lakh (calculated up to December 1999).

18.2 The Department by their written reply has stated that the dealer is a seller of "Bonphool Oil" which was imported from Calcutta and paid tax @ 4% as the item was medicinal product. The manufacturers of such oil, a type of medicine/tonic is covered by Drugs Licence issued under the Drugs & Cosmetic Acts, 1940. The receipt of or renewal of Licence also shows that it is Governed by the Drug Control Rules. The Pollution Control Board also issue Enviromental Certificate treating such Ayurvedic Bonphool Oil as medicine. Bonphool Oil is therefore a medicinal. In the instant case, the commodity is an Ayurvedic Medicine (Bonphool Oil) used as Medicine Oil which was taxable @ 4% at the time and not as Hair Oil covered by entry 22 of Schedule-II of the A.G.S.T. Act, 1993.

OBSERVATIONS/RECOMMENDATIONS

18.3 After threadbare discussion and basic on the judgement of the Hon'ble Supreme Court the Committee has been pleased to drop the para.

Excess allowance of credit of Tax
(Audit para 2.12/CAG/2000-01 R/R)

19.1 Audit has pointed out that under the Assam General Sales Tax Act, 1993 read with Central Sales Tax Act, 1956, every registered dealer is required to submit a copy of treasury challan as a token of full payment of tax paid on his taxable turnover along with the monthly statement/annual return of turnover. Test check of the assessment records of the Superintendent of Taxes, Diphu revealed (August 1999) that a dealer, deposited of tax of Rs. 2.28 crore under the AGST Act and Rs. 52.26 lakh under the CST Act during the assessment period ending 31 March 1996, however, the Assessing Officer allowed (March 1998) credit of Rs. 2.29 crore and Rs. 53.87 lakh under the AGST Act and the CST Act respectively against the amount deposited. This resulted in excess allowance of credit and consequent short demand of tax of Rs. 2.24 lakh and Rs. 3.44 lakh including interest.

19.2 The Department by their written reply has stated that the assessments were rectified both under the A.G.S.T. Act, 1993 and C.S.T. Act, 1956 and an amount of Rs. 6,50,792/- including interest of Rs. 5,40,738/- was raised on the dealer under the A.G.S.T. Act, 1993. The dealer deposited Rs. 1,10,054/- on 19.06.2002 and the balance amount of Rs. 5,40,738/- being the interest is yet to be paid and the case is under the Supdt. of Taxes (Recovery), Nagaon for realisation. Under the C.S.T. Act, 1956 an amount of Rs. 2.10 lakh was raised on the dealer who paid the amount in full.

OBSERVATIONS/RECOMMENDATIONS

19.3 The Committee heard the deposition of the departmental representatives and recommends that the department should take steps to realise the arrear taxes and intimate the same to the Committee within 3 months from the date of presentation of this report before the House.

Incorrect acceptance of declaration form

(Audit para 2.13/CAG/2000-01 R/R)

20.1 Audit has pointed out that under the provisions of the Central Sales Tax Act, 1956 and Rules made thereunder, tax is leviable at the concessional rate of 4 per cent on inter-state sales to a registered dealers provided such sales are supported by valid declaration(s) in Form 'C' issued by the purchasing registered dealer. Test check of the assessment records of the Superintendent of Taxes, Guwahati Unit 'D' revealed (between April 1998 and December 1999) that the inter-State sales of Rs. 39.73 lakh relating to the period from 1994-95 to 1996-97 in respect of three registered dealers were assessed to tax (between March 1996 and March 1999) at the concessional rate of 4 percent through the transactions recorded in Form 'C' produced by the dealers took place after the dates certified by the purchasing dealers. The incorrect acceptance of declaration forms resulted in short-levy of tax of Rs. 2.34 lakh at the differential rate 10 per cent leviable less 4 per cent levied and collected. On this being pointed out in audit, the department stated (August 1999) that the assessments were rectified (July 1999) and a demand for Rs.1.09 lakh was raised in case of two dealers Report on realisation is awaited.

20.2. The department by their written reply has stated that 1. The dealer was re-assessed in the light of audit objections and tax was levied @ 10% on the turnover of sales worth Rs.9,56,954/-which were not covered by 'C' Forms of declaration. Thereafter, the dealer preferred appeal before the Deputy Commissioner of Taxes (Appeals), Guwahati. The Deputy Commissioner of Taxes (Appeals) vide his order dated 17.5.2000 set aside the assessment order and directed the Supdt. of Taxes to make fresh assessment order after allowing the dealer to submit fresh correct 'C' form. Subsequently, the Supdt. of Taxes revised the assessment order wherein turnover worth Rs. 2,09,32,640/-was assessed at 4% after accepting the 'C' forms and Rs.34,840/-was assessed @10% for non-production of 'C' form for the assessment year 1995-96. The dealer paid the demand. 2. The dealer was assessed in the light of audit objection raising additional demand of Rs.58,468/-during the assessment year 1996-97. The amount is in the process of realisation under Supdt. of Taxes (Recovery), Guwahati. 3. The Supdt. of Taxes, Guwahati Unit-D after audit objection referred the case to the Deputy Commissioner of Taxes, Guwahati Zone-C for suo-moto revision for the assessment. year 1994-95

and 1995-96 under the C.S.T. Act, 1956. Subsequently, the suo-moto revision order of the Deputy Commissioner of Taxes, Guwahati Zone-C dated 22.11.2000 for the aforesaid assessment year was challenged by the dealer before the Hon'ble Assam Board of Revenue. The Hon'ble Assam Board of Revenue in the judgement dated 29.11.2001 set aside the suo-mpto revision order and directed Deputy Commissioner of Taxes, Guwahati Zone-C for disposal of the cases afresh after allowing opportunity of being heard to the Appellant. Thereafter, the Deputy Commissioner of Taxes, Guwahati Zone-C passed fresh order as per direction of the Assam Board of Revenue on 28-1-2003 and directed the Supdt. of Taxes to assess the dealer's liability afresh by taking cognizance of all evidences to be submitted by the dealer to substantiate his claim of rates under Section 8 (1) (b) of the C.S.T. Act, 1956. Accordingly, the Supdt. of Taxes re-assessed the dealer accepting fresh valid 'C' forms worth Rs.73,64,557/- during the assessment year 1994-95 and Rs.86,69,139/- during the assessment year 1995-96 and assessed the dealer @4% on these turnover. The balance amount of Rs.52,453/- and Rs.1,29,823/- respectively for the assessment year 1994-95 and 1995-96 where assessed at 10% in absence of 'C' forms. Additional demand of Rs.2,228/- during the assessment year 1994-95 and Rs. 1,900/- during the assessment year 1995-96 were raised on the dealer and the dealer paid the demanded dues in full.

OBSERVATIONS/RECOMMENDATIONS

20.3 The Committee is satisfied with the submission of the departmental representatives and has been pleased to drop the para.

Short-levy of tax due to incorrect allowance of deduction

(Audit para 2.14/(CAG)/2000-01/R/R)

21.1. The audit has pointed out that under section 8(3)(ii) of the Assam General Sales Tax Act, 1993, deduction from the gross turnover is allowable provided such taxable turnover has been subjected to tax in the State. Test check of assessment records of the Superintendent of Taxes, Guwahati Unit 'A', revealed (July 1999-October, 1999) that a dealer was allowed exemption from payment of tax on sale of locally purchased goods valued at Rs.22.47 lakh for the assessment year 1995-96. However, it was noticed that the goods valued at Rs.22.47 lakh were sold from the stock of finished goods manufactured by him which were neither tax paid nor were exempted from payment of tax. This resulted in short-levy of tax of Rs.1.67 lakh. On this being pointed out in audit (July 1999-October, 1999), the department revised the assessment and raised (December, 1999) a demand of Rs.3.10 lakh including interest.

21.2 The Department by their written reply has stated that the assessment order was rectified raising additional demand of Rs.3.10 lakhs on the dealer. Since the dealer failed to pay the demanded tax, the case was referred to the Supdt. of Taxes (Recovery), Guwahati who is taking action to realise the arrear dues. The amount is yet to be realised.

OBSERVATIONS/RECOMMENDATIONS

21.3 The Committee observes that the department failed to realise the tax from the dealer after reassessed as the dealer is untraced. The Committee, therefore, recommends that the department should made all efforts to trace out the dealer and to recover the tax. Action taken in this regard may be intimated to the Committee with a copy to the Principal A.G. (Audit), Assam within 90 days from the date of presentation of this report before the House.

Incorrect grant of exemption on export of goods

(Audit para 2.15/(CAG)/2000-01 (R/R))

22.1. The audit has pointed out that under the CST Act, 1956 and rules made thereunder, where a dealer claims, that he is not liable to pay tax under this Act in respect of sale of goods on the ground that the sale is in the course of export out of the territory of India, he may in support of his claim furnish to the assessing authority a certificate in Form 'H' duly filled in and signed by the exporter along with evidence of export of such goods viz, bill of lading, aim consignment note, etc. In case of inter-State sales of goods, other than declared goods and goods not covered by declaration in Form 'C' tax is payable at the rate of 10 per cent or at the rate of tax applicable under the State Act, whichever is higher. Test check of assessment records of the Superintendent of Taxes, Dibrugarh, revealed (July 1999-August 1999) that the claim of exemption of a dealer was allowed (March, 1998) by assessing authority on his export sales of goods (tea) valued at Rs.10.62 lakh without production of Form 'H' and any other evidence of export during the period 1995-96. The resulted in non-levy of tax of Rs.1.06 lakh.

22.2 The Department by their written reply has stated that in the instant case, the dealer produced before the Supdt. of Taxes, Dibrugarh necessary certificates from the Supdt. of Customs, Sukhiapokhri, Darzeeling and of Custom's Department at Poshupati Nagar Custom's Office, Nepal in support of his claim of export of tea to outside India territory. On going through these records, it was found that the relevant consignments of tea were actually transported to outside the India territory and as such, the dealer's claim was found acceptable. In this regard, it is stated that the matter was intimated to Audit and on receipt of the same the objection was dropped by Audit as informed vide their Memo No.RAW/ST/7-20/99-2000/590-92 dated 19.06.2001 as reported by the concerned Supdt. of Taxes.

OBSERVATIONS/RECOMMENDATIONS

22.3 During the course of discussion the department has informed the Committee that the matter was intimated to the Audit and on receipt of the same the objection was dropped by the Audit. Considering the views of the P.A.C. the Committee has been pleased to dorp the para.

Non-submission/delay in submission of returns

(Audit para 4.3/(CAG)2000-2001 R/R)

23.1. Audit has pointed out that section 10 of the Assam Tax on Luxuries (Hotels and Lodging Houses) Act, 1989 read with Rule 5 of the Rules framed thereunder provides that every registered hotelier shall submit to the concerned Assessing Officer, a return of tax in respect of each quarterly period ending on the 30 June, 30 September, 31 December and 31 March every year within a period of 20 days from the end of the quarter to which it relates. Further, Section 18(5) (C) and 18 (6) of the Act provides that hoteliers failing to submit the return within the due date. Without sufficient cause, shall on conviction be punished with a daily fine of not less than rupees one hundred during the period of the continuance of the offence. (a) Test check of the records of the 4 Sales Tax unit offices (Guwahati 'B', Golaghat, Dibrugarh and Tinsukia) revealed (December 2000) that 4 hoteliers failed to submit their returns of turnover for the period from September, 1989 to December, 1997. However, the assessing authorities failed to initiate action for imposing proceedings though none of the assesses had given any reason for non-filing of the return. A minimum fine of Rs.64.46 lakh could had been levied. (b) Scrutiny of records of 4 Sales Tax unit offices (Guwahati 'C', Guwahati 'D', Tinsukia and Golaghat) revealed (December, 2000) that 16 hoteliers submitted returns delayed by 3 days to 2465 days but no fine was imposed by the Assessing Officers for delay in submission of returns. A minimum fine of Rs.94.75 lakh could had been imposed.

23.2 The Department by their written reply has stated that in this para 4 unit offices viz., Superintendent of Taxes, Golaghat, Dibrugarh, Tinsukia and Guwahati Unit-B are involved.

Superintendent of Taxes, Golaghat - In this unit total fine amounting to Rs.28.18 lakh was imposed on two Hotels viz., Wild Grass Resort (Assam) Pvt. Ltd., Kaziranga and M/S. Nambar Guest House, Golaghat, since, the hoteliers failed to pay the demand arrear certificate issued to Superintendent of Taxes (Recovery), Golaghat. The amount is yet to be recovered. In respect of the three hotels viz., Aranaya, Banani and Banashree which are registered under the name of the Deputy Director of Tourism, Government of Assam, Kaziranga National Park, assessment were completed and penalty was also imposed. The Tourism Department is yet to pay the demand dues. The case was referred to Superintendent of Taxes (Recovery), Jorhat for realisation.

Superintendent of Taxes, Guwahati Unit B - Under this unit in respect of the hotel M/S. Hotel Samrat, assessment had been completed upto the assessment year 1994-95 on the basis of information collected from local enquiry. As revealed from local enquiry report it is found that the hotel did not run due to financial

hardship and want of customers and as a result the hotel had to be sold in auction. Considering the financial hardship as well as the condition of the hotel, the assessing officer probably abstained from imposing penalty for non-submission of return.

Superintendent of Taxes, Dibrugarh - For non-submission of return, proceeding under section 8(5) (a) and section 18(b) was initiated in respect of hotel M/S. East End, Dibrugarh and the case was compounded at Rs.5,000/-. The owner of the hotel paid the composition money on 01.11.2001.

Superintendent of Taxes, Tinsukia - The Hotelier M/S. Hotel Place submitted return and paid tax upto 31-03-96 and then from 01-04-96 to 31.03.98 though the hotelier paid tax, he did not submit return. The assessments were completed upto the year 1997-98 and demand notices were served on the hotelier. The hotelier paid Rs.3,02,379/- the tax assessed for all the years. On information collected from local enquiry it revealed that the hotelier was forced to shut down the business w.e.f. April, 1998 due to unprecedented financial hardship. Considering the financial hardship, the assessing Officer probably did not resort to penal provision on the hotelier. In respect of the Hotel President, it is a fact that the hotelier did not submit return in time. The Superintendent of Taxes assessed the hotelier at an amount of Rs.82,807/- during the assessment period from 01.04.96 to 31.03.2000 and the hotelier paid the entire dues. In this case also, the Superintendent of Taxes did not impose penalty for delayed submission of return.

Superintendent of Taxes, Guwahati Unit C and Unit -D - The hoteliers falling under the jurisdiction of Superintendent of Taxes, Guwahati Unit -C and Unit -D submitted delayed returns as pointed out by Audit and it is a fact that in none of the cases action was found to have been taken to impose fine on the hotelier for delayed submission of returns.

OBSERVATIONS/RECOMMENDATIONS

23.3. The Committee observes that the assessing officers failed to initiate action against the hoteliers who did not submit their returns of turnover for the period from September, 1989 to December, 1997. The Committee opines that section 18 (5) and 18 (6) of the Act provides that convicted person be punished under judicial process. The Committee, therefore, recommends that the undisposed matters should be referred to the L.R. for his views for penalising the erring hoteliers. Action taken by the department may be intimated to the Committee within 30 days from the date of presentation of this report before the House.

23.3.1 The Committee heard the deposition of the departmental representatives and recommends that the department should take initiative and efforts to realise all the taxes which are pending and penalty including fine may also be collected. Action taken by the department may be intimated to the Committee within 30 days from the date of presentation of this report before the House including repletion of cases which have been completed and taxes recovered.

Hotels/lodging houses not brought under Tax net

(Audit para 4.4/(CAG)2000-01 R/R)

24.1. The audit has pointed out that under the Assam Tax on Luxuries (Hotels and Lodging Houses) Act, 1989, no hotelier, liable to pay tax, shall provide accommodation by way of business unless he possesses a valid certificate of registration. The Act also provides that whoever carries on business without being registered shall pay by way of penalty a daily fine of not less than rupees one hundred during the period of the continuance of the offence. (i) Test check of the records of the office of the Superintendent of Taxes, Guwahati 'A' and Golaghat, revealed (January, 2001) that out of 4 Government Tourist Lodges only one tourist lodge (Guwahati) was registered fixing tax liability from 1 January, 1990 though as per Tourist Department, Government of Assam, the lodge had been functioning since 1989. The other three lodges (Golaghat) had been carrying on business since 1995 without registration. Failure of the department to register the lodges resulted in non-realisation of tax of Rs. 11.47 lakh (calculated upto March 2000). (ii) Test check of the records of 3 Sales Tax unit offices (Guwahati 'A' Guwahati 'D' and Sibsagar) further revealed (February 2001) that three hotels carried on business since April, 1995 without any registration, resulting in non-realisation of tax of Rs. 2.22 lakh (calculated upto March, 2000). Besides, penalty of Rs. 5.49 lakh was also leviable.

24.2 The Department by their written reply has stated that as discussed in para 4.3 in respect of Superintendent of Taxes, Golaghat, it mentioned that the 3 hoteliers viz. Arannya, Banani and Banashree were registered in the name of the Deputy Director of Tourism, Kaziranga National Park. The penalty being the discretionary on the part of the assessing officer depending on the facts and circumstances of the cases is not imposed in these cases.

Superintendent of Taxes, Sivasagar - In the unit of hotelier namely, M/s Hotel Priya was registered w.e.f. 01.10.98 and prior to the as found on local enquiry the room charge realised in each of the 36 single and double seated room was below the taxable limit. The hotel was let out to the ONGC employees at a fix rate w.e.f. 28.05.95 as per the agreement made with ONGC and the agreement was terminated w.e.f. 01.10.98. The hotelier has been paying tax w.e.f. 01.10.98.

Superintendent of Taxes, Guwahati Unit A - Under this unit, the audit objection related to Tourist lodge, Guwahati under the control of Director, Tourism Department, Assam. On verification of records of the Tourism Department it was found that the room rent per bed per night was fixed at Rs. 80/- w.e.f. 01.04.88 and rate was enhanced to Rs. 85/- only w.e.f. 01.07.94. Hence, it appears that the lodging house was not found liable to pay tax under Assam Taxation on Luxuries

(Hotels and Lodging Houses) Act, 1989 upto 31.12.98. However, steps was taken to assess the dealer for the remaining periods summarily as the dealer failed to submit return inspite of repeated notice.

Superintendent of Taxes, Guwahati Unit D - Under this unit, the hotelier, M/s. Hotel Shiva was registered under the Assam Taxation Luxuries (Hotel and Lodging) Houses, 1989 w.e.f. 01.04.95.

OBSERVATIONS/RECOMMENDATIONS

24.3 During the course of discussion the departmental representatives deposed that assessment have been completed and the case is now with the Superintendent of Taxes, Jorhat under Bakijai proceedings for recovery. The Committee has decided to drop the para with a instruction that recovery should be made expeditely.

**Non-levy of tax under the Assam Professions,
Trades, Callings and Employment Taxation Act**

(Audit para 4.7/(CAG)2000-01 R/R)

25.1. The audit has pointed out that under the Assam Professions, Trades, Calling and Employment Taxation (Amendment) Act, 1992 (effective from April, 1992) as amended from time to time, every person liable to pay tax (other than a person earning salary of wages, in respect of whom the tax is payable by his employer), shall obtain a certificate of enrolment from the concerned assessing authority. The Act further provides that in case of default, simple interest at two per cent of the amount of tax due for each month of part thereof is payable for the period for which the tax remains unpaid. (i) As per entry 11 of the Schedule of the Act *ibid*, holder of permit of a bus or truck is liable to pay tax at the pay tax at the prescribed rates. Test check of assessment records of the Superintendent of Taxes, Tinsukia, revealed (January 1999-March 1999) that in respect of 64 holders of permits (Bus or Truck), no enrolment certificates were issued by the Assessing Officer and consequently, professional tax amounting to Rs.2.40 lakh (Including interest of Rs.1.08 lakh calculated upto 31 March, 1999) relating to the assessment years 1992-93 to 1997-98, was neither levied nor realised. (ii) As per entry 10 (a) of the Schedule of the Act *ibid*, the employers of residential hotels are liable to pay tax of Rs.1500 per annum upto 31 March, 1998 and Rs.22.50 per annum thereafter. Test check of assessment records of the Superintendent of Taxes, Dibrugarh, revealed (July 1999 - August 1999) that no enrolment certificates were issued to 4 employers of residential hotels by the Assessing Officer and consequently no professional tax was paid by them. In addition 2 employers paid tax belatedly (one upto 1996-97 and the other upto 1998-99). This resulted in non-levy of tax of Rs.1.14 lakh (including interest of 0.53 lakh calculated upto 31 August, 1999) relating to the years 1992-93 to 1998-99. On this being pointed out in audit (October 1999) the department stated (May 2000) that Rs.2651 has since been realized from one employer of residential hotel. Report on action taken in respect of others is still awaited (October 2001). (iii) As per Entry 6 of the Schedule to the Act *ibid*, the dealers are liable to pay tax at the prescribed rates on the basis of their gross sales turn over relating to the relevant financial year. Test check of assessment records of the Superintendent of Taxes, Guwahati Unit 'D', revealed (October 1999-December 1999) that no enrolment certificates were issued to 8 dealers by the Assessing Officer though in some cases taxes were paid partly by them. While in other 2 cases, no interest was levied for delayed payment of tax. This resulted in non-levy of tax of Rs.1.10 lakh (including interest of Rs.0.41 lakh calculated upto 31.12.1999) relating to the assessment year 1990-91 to 1999-2000 relevant to the financial years 1989-90 to 1998-99.

25.2 The Department by their written replies has stated that as regards non-levy of tax under this Act in respect of three Unit Offices viz., Tinsukia, Dibrugarh and Guwahati Unit -D, in all the cases, assessments were made on the concerned assesees and demands including interest were raised on assesses. In respect of the demand has already been realised and the balance amount is in the process of realisation. The recovery proceeding as regards the assessee under the Superintendent of Taxes, Tinsukia is in progress.

OBSERVATIONS/RECOMMENDATIONS

25.3 The Committee is satisfied with the submission of the departmental witnesses and has been pleased to drop the para.