

PUBLIC ACCOUNTS COMMITTEE

(2006-2008)

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ASSAM LEGISLATIVE ASSEMBLY.

HUNDRED AND SIXTEENTH REPORT

(TWELFTH ASSEMBLY)



सत्यमेव जयते

REPORT OF THE COMMITTEE ON PUBLIC ACCOUNTS
ON THE REPORTS OF THE COMPTROLLER AND
AUDITOR GENERAL OF INDIA (REVENUE RECEIPTS)
FOR THE YEAR 2001-2002 RELATING TO
THE FINANCE (TAXATION) DEPARTMENT,
GOVERNMENT OF ASSAM.

Presented To the House on 12-11-2007.

ASSAM LEGISLATIVE ASSEMBLY SECRETARIAT
DISPUR : GUWAHATI-6.

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(i)
COMPOSITION OF THE COMMITTEE

CHAIRMAN:

1. Shri Brindaban Goswami

MEMBERS:

1. Shri Sarat Borkotoky
2. Shri Rameswar Dhanowar
3. Shri Gobinda Chandra Langthasa
4. Shri Abdul Khaleque
5. Shri Rajib Lochan Pegu
6. Shri Phani Bhusan Choudhury
7. Smti Kamali Basumatary
8. Shri Parimal Sukla Baidya
9. Shri Jagat Sing Engti
10. Shri Anwarul Hoque
11. Shri Akon Bora
- * 12

SECRETARIAT:

1. Shri G.P.Das, Secretary
2. Shri B.Basumatari, O.S.D.
3. Shri K.Rahman, C.O.

* Shri Chandra Mohan Patowary, MLA & Member tendered his resignation being appointed the Leader of the Opposition, Assam Legislative Assembly.

(ii)

PREFATORY REMARKS

I, Shri Brindaban Goswami, Chairman, Committee on Public Accounts having been authorised to submit the Report on their behalf present this Hundred and Sixteenth 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 year 2001-2002 pertaining to the Finance (Taxation) Department, Government of Assam.

2. The Report of the Comptroller and Auditor General of India (R/R) for the year: 2001-2002 was laid before the House on 27th March 2003.

3. The Report as mentioned above relating to the Finance (Taxation) Department has been considered by the Committee in its meeting held on 6.7.2007.

4. The Committee has considered the draft report and finalized the same in its sitting held on 29-10-2007..

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 the Government would promptly implement the recommendations made in this report.

Dispur :
The 29th October, 2007.

BRINDABAN GOSWAMI
Chairman,
Committee on Public Accounts.

The Report
Finance (Taxation) Department
Non-levy of tax
(Audit para 2.2/ C & A.G/2001-02(R/R))

1.1 The audit has pointed out that under the Assam General Sales Tax Act, 1993, vide Explanation I below section 8 (i) (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 or 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 sales within the State and the rate of tax shall be specified in Schedule II for such items. Interest at the rate of 2 per cent for each month on the amount by which tax paid falls short of the tax payable is also payable by the dealer. Test check of assessment records of the Superintendent of Taxes, unit-A, Guwahati, revealed (April- July 2001) that a registered dealer (M/S I.B.P. Co-Guwahati,) engaged in the business of petroleum products sold goods valued at Rs. 5.55 crore and Rs. 7.90 crore during the years 1995-96 and 1997-98 the purchase price of which were Rs. 2.58 crore and Rs.3.23 crore respectively. As the resale price exceeded forty per cent of the original purchase price, the resale was therefore to be deemed as first point of sale within the State for the purpose of levy of tax. But the Assessing Officer while completing assessments (March 1999 and March 2001) did not levy tax on the ground that such sales were made out of the local purchase of tax paid goods. This resulted in non-levy of tax of Rs. 2.20 crore. In addition, interest amounting to Rs. 2.11 crore (calculated upto June 2001) was also leviable. On this being pointed out (July 2001) the department accepted (March 2002) the audit contention and levied tax and interest of Rs. 4.93 crore. Report on realization is awaited (December 2002).

1.2 The Department by their written replies has stated that the audit objection was based against exemption granted by the concerned assessing officer on the turnover derived by M/S I.B.P. Co. from resale of petroleum products purchased within Assam after sufferance of tax thereon. The assessing officer after receipt of the audit objection reassessed the dealer U/S.18(1) of the AGST Act, 1993 for the years 1995-96 and 1997-98 raising further respective demands of Rs.2.29 crores and Rs.2.64 crores. The dealer however went on appeal before the Deputy Commissioner of Taxes (Appeals) dismissed the appeal on 19.06.2006. The dealer has, however, went to the Hon'ble Assam Board of Revenue. The matter is lying for adjudication with it.

OBSERVATIONS/RECOMMENDATIONS

1.3 During the course of discussion the Committee comes to know that the dealer went to the Assam Board of Revenue and the matter is lying for adjudication with it. The Committee directed the department to pursue the matter with the Assam Board of revenue for early disposal. The Committee also resolved to make a request the Assam Board of Revenue for early disposal of the matter in the interest of Government.

Concealment of turnover
(Audit para 2.3/C & AG/2001-2002 R/R)

1.4 The audit has pointed out that under the Assam General Sales Tax Act, 1993, read with Central Sales Tax Act, 1956, 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 the relevant year make an assessment or re-assessment of the dealer. When a dealer conceal his turnover, he shall pay by way of penalty, in addition to tax and interest, a sum not exceeding one half time the amount of tax sought to be evaded. The test check of assessment records of the Superintendent of Taxes, Doomdooma, revealed (April 1999-July 2001) that taxable turnover in respect of 2 dealers for the assessment periods 1993-94 to 1996-97 were determined (between August 1995 and October 1999) by the Assessing Officers at Rs. 0.60 crore instead of Rs. 0.74 crore as shown in annual returns furnished by the assesseees. Thus, turnover aggregating Rs. 0.14 crore escaped assessment resulting in evasion of tax of Rs. 4.28 lakh including interest and penalty. The details are given in the table below :

Sl. No.	Name of the Unit Office	Name of the dealer	Name of the stock as on	Opening parches during period on	Closing stock as found on	Turnover assessed assessable	Turnover concealed	Turnover evaded	Tax Interest Rate of upto-	Maximum leviable penalty	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
1	Doom-dooma	A	Nil	21.24	5.27	15.97	8.99	6.98	0.84	0.40	1.26
		Electrical Goods	1 July 1993	1 July, 93 to 31 March 1997	31 March 1997				12 per cent	April 1999	
2.	-do-	B	13.48	62.51	17.90	58.09	51.17	6.92	0.55	0.40	0.83
		Hand Sprayer,	1 April 1994	1 April to 31 March 1997	31 March 1997				8 per cent	April 1999	
		Tea leaf Carry bag insecticide	1994	to 31 March 1997							
Total :			13.48	83.75	23.17	74.06	60.16	13.90	1.39	0.80	2.09

On this being pointed out the department accepted the audit observations and raised a demand of Rs.2.38 lakh. Report on realizations is awaited (December 2002).

1.5 The Department by their written replies as well as oral deposition has stated that the audit objection under the para was based on concealment of turnover chargeable to tax by two dealers under Doom Dooma Unit for the assessment periods 1993-94 to 1996-97. The quantum of escaped turnover involved in the audit objection was Rs. 0.14 crores and the recoverable amount of tax, interest and penalty therein was Rs. 4.28 lakhs. The case wise present position is explained below :-M/S, Bharat Bijulee-Bhander : The case was reassessed by the concerned Superintendent of Taxes in the light of the audit objection raising a demand of tax interest for Rs. 1,38,197/- for the year. The dealer, however, went on appeal before the Deputy Commissioner of Taxes (Appeals) Tinsukia who, upon consideration of the merit of the case, came to annul the reassessment order. The assessing officer again completed re-reassessment levying demand of Rs. 1,80,284/-. The Superintendent of Taxes (Recovery) has so far realized Rs. 8,000/- only. The balance amount is still under process of realization. M/S. K.P. Enterprise : After receipt of the audit objection, the concerned assessing officer revised the assessment of the dealer raising a total demand of Rs.1,34,375/-, Which has been realized.

OBSERVATIONS/RECOMMENDATIONS

1.6 During the course of examination the Committee observes that the position of realization is very poor. Only Rs. 8,000/- has been realized against Rs.1,80,284/-. The Committee recommends that responsibility should be fixed against the concerning recovery officer and steps should be taken for early recovery of outstanding amount. The Committee further recommends that the Commissioner, Taxes should issue a letter to all concerned to follow the Government order strictly in regard to discretionary power.

Turnover escaping assessment**(Audit para 2.4(A)/C &AG/2001-2002)**

1.7 The audit has pointed out that under the Assam General Sales Tax Act, 1993, read with Central Sales Tax Act, 1956, if upon any information which has come into his possession, the Assessing Officer has reasons to believe that any part of the turnover of a dealer in respect of any period has escaped assessment to tax, he may, within eight years from the date of the relevant year make a re-assessment of the dealer. If a dealer fails to pay the full amount of tax payable by him by the due date, he is liable to pay simple interest at the rate of two per cent for each month, on the amount by which tax paid falls short of the tax payable. (A) In 3 sales tax unit offices, the taxable turnover for the assessment periods 1995-96 and 1996-97 in respect of 11 manufacturing dealers was determined (March 1999 and June 2001) by the Assessing Officers at Rs.54.60 crore. Cross verification by audit of assessment records of the dealers vis-à-vis value of excisable goods cleared, obtained from the Central Excise Department revealed (between April 2000 and June 2001) that taxable turnover aggregating Rs.13.33 crore escaped assessment. This resulted in short levy of tax of Rs. 2.95 crore including interest. On this being pointed out (December 2000 and June 2001) the department accepted audit observation in 3 cases and raised a demand of Rs. 16.80 lakh in 2 cases. Final reply in the remaining cases is awaited (December 2002).

1.8 The department by their written replies as well as oral deposition has stated that the audit objection was based on turnover escaping assessment in respect of 11 manufacturing dealers under 3 sales tax units. The total involved turnover in all these cases is Rs. 13.33 crores having a tax, interest effect of Rs. 2.95 crores. The case wise position is mentioned below :- The Superintendent of Taxes, Jorhat, after receipt of the audit objection, rectified the assessment of M/s. Geeta Veneer Product and levied demand of Rs. 28,30,565/- and M/s. Shiva Veneer Mill raising total demand of Tax and interest at Rs.7,91,130/-. In respect of M/s. Geeta veneer an amount of Rs.37,000/- has so far been realized. In respect of M/S.Shiva Veneer Rs.90,000/- has been realized. The cases relating to Superintendent of Taxes, Tinsukia were M/s. Merinoply and Chemicals and M/s. Pioneer Tinsukia Seasoners. The books of accounts and the statutory Declaration Forms viz., 'F', 'H' and 'C' Forms were thoroughly verified by the Supdt.of Taxes, Tinsukia during the assessment year 1995-96 and 1996-97 under the A.G.S.T. Act,1993 and in the assessment orders

made under both the A.G.S.T. Act and C.S.T. Act it was found that the turnover determined were more than those of the cleared excisable value as pointed out by Audit. In regard to remaining 7 cases, 6 belong to Superintendent of Taxes, Tinsukia Units and 1 belong to Superintendent of Taxes, Guwahati Unit-B. In the following cases, the Superintendent of Taxes, Tinsukia has reported after re-verification of records that there was no concealment of taxable turnover :- 1. M/S Bazaloni Tea Estate, 2. M/S Bora Tea (P)Ltd., 3. M/S Betjan Tea Estate, 4. M/S Murari Tea Industries, 5. M/S Feroz Tea Co (P) Ltd., As regards, M/S. Binode Engineering Works, Tinsukia, the Superintendent of Taxes, Tinsukia has already completed the assessments and realized the tax. The remaining case relating to M/S. Arihant Business (P) Ltd under the Superintendent of Taxes, Guwahati Unit-B, the Superintendent of Taxes has completed the assessments as per Audit observation and the amounts there from are still in the process of realization.

OBSERVATIONS/RECOMMENDATIONS

1.9 The Committee during the course of discussion observes that the amount of tax pointed out in audit have not been realize. The Committee, therefore, recommends that steps should be taken for realization of tax and a report showing the latest position be submitted to the Committee within 30 days from the date of presentation of this report before the House.

Turnover escaping assessment

(Audit para 2.4(B)/C & AG/2001-2002)

1.10 The Commissioner of Taxes, Assam vide his Circular No.116 of 1987 instructed all the Superintendent of Taxes to obtain a detailed report from the area Inspector of Taxes regarding business activities in respect of a dealer who applied voluntarily for registration before granting him a registration certificate. Test check of assessment records (between April 2000 and June 2000) of the Superintendent of Taxes, Tinsukia revealed that the tax liability of a dealer engaged in business of tea was fixed from 1st April 1995. But as per a report furnished by inspector of taxes to the Assessing Officer, the dealer had commenced his business on 15th November 1994 and transacted sales of Rs.48.08 lakh upto 31 March 1995. Thus an amount of Rs. 48.08 lakhs escaped assessment having a tax liability of Rs. 9.68 lakh including interest of Rs. 5.36 lakh. On this being pointed out (December 2000) the department stated (May 2002) that the dealer effected the first sale on 11 July 1995. The reply is not tenable as the report of the Area Inspector of Taxes clearly indicated that the first sale was effected on 15 November 1994.

1.11 M/S. B.D.Udyog, Supdt. of Taxes, Tinsukia On verification of books of accounts and relevant documents of the dealer, it was found that the dealer's first sales of taxable goods under the A.G.S.T. Act and C.S.T. Act were effected on 02.08.95 and 11.07.95 respectively. The report submitted by the area Inspector of Taxes was not based on sufficient materials and as such the date of liability fixed on the dealer is the date, which was determined by the Supdt. of Taxes on documentary evidence.

OBSERVATIONS/RECOMMENDATIONS

1.12 After threadbare discussion the Committee recommends that the Commissioner of Taxes should collect a detailed report from the concerned area inspector and Superintendent of Taxes and submit the same to the Committee within 30 days from the date of presentation of this report before the House.

Turnover escaping assessment

(Audit para 2.4(C)/C & AG/2001-2002)

1.13 Test check of assessment records of the Superintendent of Taxes, Unit-B, Guwahati revealed (between April and July 2001) that while finalizing (October 2000) the assessment for the period 1997-98 sales valued at Rs.42.74 lakh was exempted from payment treating these as stock transfer. However, cross verification of the assessment records of the dealers with the records of the transferee revealed that the dealer had not received such stock. Thus, the dealer's claim for exemption thereon was not correct. This resulted in evasion of tax of Rs.6.09 lakh including interest of Rs.2.67 lakh. Besides, for concealment of turnover, penalty of Rs. 5.13 lakh was also leviable

1.14 The audit observed that the dealer M/S Godrej Soaps Ltd. during the assessment year 1997-98 received the stock worth Rs. 42,73,692/- locally from M/S. Godrej Hi-Care Ltd., Guwahati. But such receipt was not incorporated in his books of accounts leading to evasion of tax and penalty to be imposed thereon. The matter was re-examined and it was found that M/s. Godrej Soaps Ltd. appointed M/s. Godrej Hi-Care as his consignment agent for marketing of the products of M/S. Godrej Soaps Ltd. The said agreement was terminated by mutual consent on 15.07.97 consequent upon which the unsold stock lying with M/s. Godrej Hi-Care Ltd. was transferred back to M/s. Godrej Soaps Ltd. The receipt of stock declared by M/s. Godrej Soaps Ltd. in his annual return stood at Rs. 4,86,00,863/-. This total stock receipts was inclusive of the stock of Rs./42,73,692/- which the dealer did not show in the return separately due to inadvertence. Since the dealer M/S. Godrej Soaps Ltd. duly accounted for the stock received back from Godrej Hi-care Ltd., there is no concealment of turnover in the instant case.

OBSERVATIONS/RECOMMENDATIONS

1.15 The Committee satisfied with the submission of departmental witnesses and decided to drop the para.

Turnover escaping assessment**(Audit para 2.4(D)/C & AG/2001-2002)**

1.16 Under the Central Sales Tax Act, 1956 and the Rules made thereunder, where a dealer transfers any goods to any place of his business or agent or principal in any other State, he is not liable to pay tax in respect of such goods provided the transfer is supported by declaration in Form-F obtained from the transferee or other evidence of despatch of the goods. Otherwise, tax is payable at the rate of 100 per cent or the rate of tax applicable on such goods under the State Act, whichever is higher. Test check of assessment records of the Superintendent of Taxes, Karimganj, revealed (November 1999) that a dealer engaged in manufacture and sale of tea disclosed in his annual return, stock transfer of 1.77 lakh kgs. of tea valued at Rs.62.38 lakh for the period 1993-94. Of these, 1.09 lakh kgs.valued at Rs. 37.02 lakh supported by 'F' form was brought to assessment (January 1999). The balance quantity of 0.68 lakh kgs. valued at Rs. 25.35 lakh not supported by form 'F' or other evidence of despatch was not brought to assessment (January 1999). The balance quantity of 0.68 lakh kgs.valued at Rs. 25.35 lakh not supported by form 'F' or other evidence of despatch was not brought to assessment. This resulted in non -levy of tax of Rs. 5.94 lakh including interest of Rs. 3.40 lakh. On this being pointed out (February 2000), the department stated (September 2001) that the assessment was revised (July 2001) raising a demand of Rs. 6.85 lakh including interest of Rs. 4.31 lakh. Report on realisation has not been received (December 2002).

1.17 M/s. Rangajan Tea Plantation (P) Ltd, Supdt. Of Taxes, Karimganj- Upon receipt of the audit objections, the concerned assessing officer i.e. the Superintendent of Taxes, Karimganj straightway proceeded against the dealers M/S. Rangajan Tea Plantation Industries (P) Ltd. A/C M/s. Goombira Tea Estate and levied demand of Rs.6,84,850/- under the CST Act., 1956 for the period ending 31.03.94 as pointed out by the Audit. However, the dealer did not accept the aforesaid assessment and went on appeal before the appellate authority i.e. the Deputy Commissioner of Taxes, Silchar Zone. The latter authority after considering exhaustively the merits of the case came to find that the dealer duly possessed the required evidences including 'F' Forms in support of disposal of tea valued at Rs.12,93,083.00 by way of stock transfer not amounting to sale

within the meaning of Section 6A of the Central Sales Tax Act, 1956. The dealer had not been able to file these 'F' Forms at the time of original assessment due to the fact that such 'F' Forms had not been received by him upto that time. Under the circumstances, no short levy of tax actually did take place on count of turnover escaping assessment as commented by the Audit.

OBSERVATIONS/RECOMMENDATIONS

1.18 During the course of discussion the Committee informed by the department that most of the Company's have their office at Kolkata, they had not been able to file 'F' form at the time of original assessment due to the fact that such 'F' form had not been received by them up to that time. Now, 'F' form is furnished to them. The Committee satisfied with the submission and recommends that latest position may be intimated to the Committee within one month from the date of presentation of this report before the House.

Turnover escaping assessment**(Audit para 2.4(E)/C & AG/2001-2002)**

1.19 Under the Assam General Sales Tax Act, 1993 and Rules framed thereunder, a registered dealer may purchase goods from another registered dealer free of tax or at concessional rate of tax by utilizing AGST declaration Form-A, for either re-sale in the State or for packing of such goods for re-sale. The price of goods which are purchased after furnishing declaration Forms and used by the dealer for purpose other than those specified in such declaration shall be included in his taxable turnover. Test check of assessment records of the Superintendent of Taxes, Tinsukia, revealed (between April and June 2000) that a dealer purchased goods valued at Rs. 14.62 lakh against the declaration Form – A. However, instead of utilizing the goods for resale or for packing goods, the dealer made inter-State sales of these goods for the year 1996-97. This resulted in turnover escaping assessment and under assessment of tax of Rs.1.03 lakh including interest (upto June 2000). On this being pointed out (December 2000) the department stated (May 2002) that the dealer has been reassessed and served demand notice for payment of tax. Report on realization is awaited (December 2002).

1.20 M/s. Denny and Benny, Supdt. Of Taxes, Tinsukia- initially, although demand of Rs. 1,41,400/- of tax and interest was levied and arrear certificate was sent to Superintendent of Taxes (Recovery) for recover, the assessment was later on set aside by the Deputy Commissioner of Taxes (Appeals) on 28.12.2005. The fresh assessment proceeding is in progress.

OBSERVATIONS/RECOMMENDATIONS

1.21 The department informed the Committee that fresh assessment is being done and will be completed within two months. The Committee, therefore, recommends that the latest position recovery of tax may be intimated to the Committee within two months from the date of presentation of this report before the House.

Non levy/short levy of interest

(Audit para 2.5/C & AG/200102/R/R)

1.22 The audit has pointed out that under the provisions of the Assam, Finance (Sales Tax) Act, 1956 (effective upto 30 June 1993) and the Assam General Sales Tax Act, 1993 (effective from 1 July 1993), if a dealer fails to pay the full amount of tax by the 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 thereafter. Test check of the assessment records of Sales Tax unit offices (Guwahati Unit-A, Unit -B and Bongaigaon) revealed (between February 2000 and December 2001) that the assessing officers while finalizing the assessments of 12 dealers (between September 1998 and March 2001) to 14 cases either failed to levy or levied short the interest amounting Rs. 1.23 crore. On this being pointed out (between February 2000 and March 2002) the department stated (between July 2001 and June 2002) that a demand of Rs. 1.26 crore has been raised (June - July 2000) against the dealers. Report on realization is awaited (December 2002).

1.23 The department by their written replies as well as oral deposition has stated that the audit objection was raised against non-levy/short levy of interest in 14 cases comprising 12 dealers of Guwahati Unit-A, Guwahati Unit-B and Bongaigaon, while finalizing assessments between September, 1998 and March, 2001. The case-wise position is explained below :-
Guwahati Unit-A (i) M/s. Savitri Enterprise- After receipt of the audit objection, the concerned assessing officer levied further interest to the tune of Rs.2,20,444/-. The demand has reportedly been realized through the following treasury challans.

Challan No. 23185 dated 15.12.2001	-	Rs. 25,000/-
Challan No. 22450 dated 08.11.2001	-	Rs. 20,444/-
Challan No. 13 dated 22.03.2001	-	Rs1,75,000/-
Total	-	Rs.2,20,444/-

(ii)M/s. Hotel Belleview- After receipt of the audit objection, the concerned assessing officer levied further interests as shown below :-

<u>Assessment year</u>	<u>Interest levied</u>
1997-98	- Rs. 1,78,922/-
1998-99	- Rs. 1,22,814/-

Out of total demand of Rs. 11,19,303/- tax/interest for these two years, an amount of Rs.4,50,000/- has so far been realized. The amounts, are however, still under process of realization by Superintendent of Taxes (Recovery), Guwahati. (iii) M/s. Gramophone Co. India Ltd.- The concerned assessing officer, after receipt of audit objection levied further interest of Rs.45,478/- for the year 1998-99 against the dealer. The amount was realized in full vide challan dated 29.08.2001. (iv) M/s. Alembic Chemical Works Ltd. – The concerned assessing officer, after receipt of audit objection, levied a further demand of Rs.1,53,735/-. Out of this, Rs 35,402/- was paid by the dealer directly in to Government treasury vide challan dated 13.09.2001. As regards remaining recoverable amount of Rs. 1,18,333/-, the same would be adjusted as set off from refundable amount of Rs.1,18,333/- deposited in excess by the dealer during the years 1997-98 and 1999-2000. (v) M/s. I.O.C. Ltd.- The original assessment for the year 1996-97 was completed under the Central Sales Tax Act, 1956 prior to the amendment brought in the Finance Act, 2000 imposing interest on delayed payments under the CST Act, 1956. However, interest to the tune of Rs. 12,42,502/- was levied after amendment of the Central sales Tax Act, 1956 and realized vide challan dated 06.12.2001. (vi) M/s. Candid Drugs – After receipt of the audit objection, interest to the tune of Rs.77,802/- was levied for the year 31.03.97 under the CST Act, 1956 and was also realized vide challan No.24 dated 26.12.2001.(vii) M/s. Assam Tea Brokers – After receipt of the audit objection, interest to the tune of Rs.20,03,443/- was levied against the dealer for the year 1996-97. The amount has been fully realized. Guwahati Unit – B (i) M/s. Ess Ess. Enterprise- After receipt of the audit objection, the assessing officer levied following amounts of interest.

<u>Year</u>		<u>Amount</u>
1998-1999	-	Rs. 1,04,866/-
1999-2000	-	Rs. 1,00,715/-
<hr/>		
Total	-	Rs. 2,05,581/-

The amounts have been realized through following treasury challans.

Challan No.107 dated 22.03.2002	-	Rs. 50,000/-
Challan dated 29.08.2001	-	Rs. 30,000/-
Challan dated 10.01.2002	-	Rs. 50,000/-
Challan dated 15.10.2001	-	Rs. 25,000/-
Challan dated 21.09.2001	-	Rs. 25,000/-
Challan dated 12.11.2001	-	Rs. 25,000/-
<hr/>		
Total	-	Rs. 2,05,000/-

(ii) M/s. Sarawgi Trading – After receipt of the audit objection, the concerned assessing officer revised the assessment for the year 1996-97 under CST Act, 1956 and levied further interest of Rs.1,36,800/-. The amount, is however, is still under process of realization by Superintendent of Taxes (Recovery), Guwahati. (iii) M/s. Proctor and Gamble (Godrej) Ltd. – After scrutiny of the case records of above dealer, the audit observed that there was short levy of interest of Rs.16,98,069/- under the AGST Act, 1993 and Rs. 79,442/- under the CST Act, 1956 for lapse on the part of assessing officer to levy further interest while sending the arrear certificate to Recovery Officer. In this contest, it is submitted that against the demand raised by the assessing officer under the AGST Act, 1993 the dealer has preferred appeal petition. The appellate authority vide order dated 23.08.2004 set side the assessment order and directed fresh assessment. Accordingly, fresh assessment was completed and no tax was found assessable. As regards levy of interest under the CST Act, 1956 is concerned, it is submitted that the assessment order has already been rectified and demand notice has also been served on the dealer. The dealer has paid the interest of Rs.2,71,038/- vide challan No.136 dated 13.06.2002. (iv) M/s. Dugar Tea Industries – The concerned assessing officer revised the assessment after receipt of the audit objection and levied interest amounting to Rs.41,60,936/- against the dealer. The amounts were under process of realization by Superintendent of Taxes (Recovery), Guwahati. The dealer went on appeal to Deputy Commissioner, Kamrup, which has requisitioned the original case record. Bongaigaon Unit – (i) M/s A.N.Instruments – The concerned assessing

officer revised the assessment after receipt of the audit objection and levied further interest to the tune of Rs.64,138/-. The amounts have been realized.

Challan dated 18.01.2002	-	Rs. 4,138/-
Challan dated 11.04.2003	-	Rs.10,000/-
Challan dated 04.02.2003	-	Rs.23,673/-
Cheque No. 819832 dated 23.05.2003-		Rs. 26,327/-
Total		Rs. 64,138/-

OBSERVATIONS/RECOMMENDATIONS

1.24 During the course of discussion the Committee observes that the Superintendent of Taxes (Recovery) Guwahati could not realize the interest amounting to Rs. 1,36,800/- from the dealer M/s Sarawgi Trading. The Committee, therefore, recommends that steps should be taken by the department to be recovered early. Further, the Committee also recommends that the Deputy Commissioner, Kamrup should take steps for early disposal of Bakijai case of M/s Durga Tea Industries for realization of levied interest amounting to Rs.41,60,936/= and submit a report to the Committee within 2 months from the date of presentation of this report before the House.

Incorrect grant of exemption**(Audit para 2.6(A)/C &AG/2001-02 (R/R)**

1.25 The audit has pointed out that under the Central Sales Tax Act, 1956, where a dealer transfers 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. However, if it is established that it is a sale in course of inter-State trade or commerce, tax is leviable at the rate of four per-cent if such sale is supported by prescribed declaration form, other-wise tax is leviable at the normal rate of ten per cent or the rate of tax applicable under the State Act, whichever is higher. If a dealer makes any incorrect claim for exemption from payment of tax, he shall pay by way of penalty, in addition to tax and interest a sum not exceeding one and one half time the amount of tax sought to be evaded. (A) Test-check of assessment records of the Superintendent of taxes, Nagaon, revealed (January – February 2000) that inter-State sale turnover of Rs.19.48 lakh for the period 1998-99 in respect of a tea dealer was allowed exemption from payment of tax on the ground of stock transfer claimed by the dealer. However, scrutiny of records revealed that the goods were actually sold in the course of inter-State trade or commerce. This incorrect exemption resulted in under assessment of tax of Rs. 2.34 lakh including interest of Rs. 0.39 lakh (upto February 2000). Besides, penalty of Rs. 2.93 lakh was also leviable. On this being pointed out (January 2000) the department accepted (November 2000) the audit objection and revised the assessment. However, report on realization has not been received (December 2002).

1.26 The department by their written replies has stated that the audit objection under the constituent sub-paras was raised against incorrect grant of exemption while finalizing the concerned assessment cases mentioned in the sub-paras. The case-wise position is explained below :-
(A) M/s. Sri Krishna Tea Co. (p) Ltd. (M/s.Amsoi T.E.) Superintendent of Taxes, Nagaon – The dealer was re-assessed in the light of audit objection on a turnover of Rs.18,62,564/- for the assessment year 1998-99 under the C.S.T. Act. Raising demand of Rs.2,50,773/-. Being aggrieved on the

assessment order, the dealer preferred appeal. The appeal was disposed of by the Deputy Commissioner of Taxes (Appeals), Nagaon who in his order dated 08.04.2003 quashed the assessment orders and restored the original assessment order. As such, there was no under assessment of tax.

OBSERVATIONS/RECOMMENDATIONS

1.27. The Committee heard the deposition from the departmental witnesses and suggested that the officers should be so contious in the time of assessment so that there should be no chance for dealer to go for appeal.

Incorrect grant of exemption

(Audit para 2.6(B)/C&AG/2001-02 (R/R))

1.28 Test-check of assessment records of the Superintendent of Taxes, Tangla revealed (February-March 2000) that a dealer dealing in tea was exempted (June 1999) from payment of tax on the total turnover of Rs. 1.68 crore for the assessment period 1996-97 on the ground that the transactions were supported by declarations in Form 'F'. Scrutiny of the records disclosed that stock transfer valuing Rs. 63.21 lakh were not supported by Form 'F'. This resulted in under assessment of tax of Rs. 6.32 lakh. On this being pointed out (March 2000), the department stated (September 2001) that the assessment had been rectified and a notice of demand for Rs. 9.11 lakh (including interest of Rs. 2.95 lakh). Report on realization is awaited (December 2002).

1.29 M/s. Borongajuli T.E. Superintendent of Taxes, Tangla – Initially, the assessing authority revised the assessment for the year 1996-1997 in the light of audit objection. The dealer, however, went on appeal before the Deputy Commissioner of Taxes (Appeals), Guwahati. The Deputy Commissioner of Taxes (Appeals) set aside the revised assessment and directed fresh assessment. The concerned Assessing Officer duly completed the fresh assessment on 23.06.2003 but without granting the exemption claim of the dealer. The dealer again went on before the Revisional Authority being aggrieved by the assessment. The Revisional Authority being aggrieved by the assessment. The Revisional Authority vide his order dated 10.05.2004 directed again fresh assessment after hearing the dealer fully. On completion of the consequential assessment order following the revisional order, no demand was found recoverable, since the dealer now could produce all relevant documents and statutory forms.

OBSERVATIONS/RECOMMENDATIONS

1.30 The department informed the Committee that the Deputy Commissioner of Taxes (appeal) set aside the revised assessment and directed fresh assessment. The Committee directed the department to intimate the latest position after completion of fresh assessment.

Incorrect grant of exemption

(Audit para 2.6(C)/C&AG/2001-02 (R/R)

1.31 Under the provisions of the Act, the sale of other goods (other than the goods mentioned in the schedules I, II, IV and V) is taxable at the point of last sale in the State at the rate of 8 per cent. Dates (Pind Khajur) is not a fresh fruit but a preserved fruit and taxable at the rate of 8 per cent at the last point of sale. Test check of assessment records of the Superintendent of Taxes, Guwahati, Unit-A revealed (April - July 2001) that the Assessing Officer while completing assessments in respect of 2 dealers allowed (between August 1997, and March 2001) exemption on the sale of 'Dates' (Pind Khajur) valued at Rs.97.64 lakh during the assessment periods between 1996-97 and 1998-99 treating the item 'Dates' as exempted goods. This incorrect grant of exemption resulted in non-levy of tax of Rs.14.33 lakh including interest of Rs.6.52 lakh.

1.32 (1) M/s. Chowthmall Bhawarlal, (2) M/s. Dudheri Brothers, Supdt. Of Taxes, Guwahati Unit-A-The Supdt. Of Taxes did not impose tax on sales of wet date on the basis of an appellate judgment dated 08.10.90 where in the item was treated as fresh fruit. The Superintendent of Taxes subsequently has taken step for re-opening of the cases and the cases were referred to the Deputy Commissioner of Taxes, Guwahati Zone-A for suo-moto revision. After passing of the suo-moto revisional order, the concerned assessing officer started proceeding for finalizing the reassessment. However, in the later assessment of 1999-2000, the Deputy Commissioner of Taxes (Appeals) instructed to obtain clarification from Ministry of Food Processing, Government of India. Hence, all the assessment cases will be disposed after obtaining clarification of the union Ministry.

OBSERVATIONS/RECOMMENDATIONS

1.33 During the course of discussion the Committee was informed by the department that the Deputy Commissioner of Taxes (appeal) instructed to obtain Clarification from the Ministry of Food Processing, whether it will fresh food or dry food. After obtaining clarification from the Government of India, assessment will be made. The Committee, therefore, recommends that latest position after assessment may be intimated to the Committee.

Incorrect grant of exemption**(Audit para 2.6(D)/C&AG/2001-02 (R/R)**

1.34 Under the Assam Industries (Sales Tax Concession) Scheme, 1995, certain eligible industrial units are exempted from payment of tax on the sale of their finished products from the date of commencement of commercial production. Eligibility certificates are issued to the industries by the Industry Department on recommendation of the District Level Committee of which Deputy Commissioner of Taxes of the area is a member. The Commissioner of Taxes, Assam, clarified (March 1996) that industries engaged in conversion of rolled paper of bigger size into plain paper of different smaller sizes are not eligible for exemption and the taxation department should not agree to the issuance of such certificates in District Level Committee. Test check of assessment records of 2 sales tax units Guwahati Unit- A&B revealed (November- December 1999 and July 2001) that sale of foolscap paper, duplicating paper, carbon sheets of Rs.4.40 crore for the period from 1996-97 to 1998-99 (assessed between December 1997 and March 2000) in respect of three dealers was exempted from payment of tax. This paper was obtained by converting paper rolls/carbon rolls of bigger sizes into paper/sheet of smaller sizes. Thus incorrect grant of exemption resulted on-levy of tax of Rs.60.57 lakh including interest.

1.35 Incorrect Grant of Exemption – In this para 3 (three) cases, 1 under Superintendent of Taxes, Guwahati Unit-A and 2 under Superintendent of Taxes, Guwahati Unit-b are involved. The dealers are- M/s. B.R. Business Forms, M/s. Amit Paper Udyog and M/s. Kamal Industries. The Committee for grant of the eligibility certificate have been constituted by the Government of Assam termed as “District Level Committee” “Udyog Sahayak Committee” and “State Level Udyog Shayak Committee”. The said Committees after due scrutiny of facts and materials and examination, of priority of suitability to get the exemption of tax under different category recommend the industrial unit as eligible to get exemption of tax on the purchase of raw materials and sale of finished products. Such recommendation is covered by the certificate of eligibility under the scheme. Moreover, it has probably escaped the notice of the Audit that such paper cutting into different sizes from roll paper has been made non-eligible for any exemption of tax only in 1997 scheme framed by government Notification No. FTX.65/97/115 dated 20.09.97 with effect

from 01.04.97 implying thereby that, the said paper cutting from roll paper was eligible for exemption of tax under the 1995 scheme. Hence, the Audit objection raising the issue that such paper cutting from roll paper is not an industrial unit is not tenable by facts and reasons and there is no legal ground to cancel the certificate of Authorisation vis-à-vis the authority provided for exemption of tax. The certificate of authorization was granted to the said unit on the basis of the certificate of eligibility after due application of mind and no room for any dispute was there.

OBSERVATIONS/RECOMMENDATIONS

1.36 The Committee heard the deposition from the departmental representatives and recommends that if any of audit objection raised, the department should give reply immediately to the AG. So that such situation may not be recurred in future.

**Incorrect grant of exemption
(Audit para 2.6(E)/C&AG/2001-02 (R/R))**

1.37 Under the Assam Industries (Sales Tax Concession) Scheme, 1995, "tea" shall be excluded from the raw material entitled to the benefits of tax exemption under the scheme and cannot be purchased by a dealer free of tax. Test check of assessment records of 2 sales tax units (Unit-A, Guwahati and Karimganj) revealed (between April 2001 and November 2001) that sale turnover of Rs.57.78 lakh relating to the four years 1996-97 to 1999-2000 in respect of four dealers of tea was incorrectly exempted by the assessing officer (between April 1999 and February 2001) from levy of tax on the ground that such sales were exempted under the scheme. This error resulted in short realization of Government revenue of Rs.8.00 lakh. On this being pointed out (July 2001) the department stated (June 2002) that assessment would be revised in 2 cases. No reply has been received in the remaining cases. Further course of action is awaited (December 2002).

1.38 The para involves one dealer of Karimganj Unit, namely M/S Mahabir Enterprise and three dealers of Guwahati Unit-A, namely, (i) M/S Sekhani Tea Industry (ii) M/S. Pioji Tea Co and (iii) M/S Bengani Tea Co. The case wise updated reply is as hereunder. M/S Mahabir Enterprise, Karimganj Unit :- As per governing provisions of the AGST Act, 1993, the assessing authority is statutorily bound to allow exemption on turnover derived from sales of goods against valid form VII within the meaning of Section 9 (4) of the same Act. In the present case, it transpired that the dealer M/s. Mahabir Enterprise, Karimganj unit sold the goods to M/S. Bhawani Tea Industries, Guwahati, who has been authorized by the Hon'ble Gauhati High Court to purchase tea as raw materials by utilizing declaration in form VII as per Industrial Policy of 1991 of the State Government in an interim order dated 09.04.97 in civil Rule No.1619 of 1997. The Tax Department on its part have already submitted the para-wise comments and is pursuing prompt hearing of the above named Civil Rule through its standing Counsel. In any view of the matter, if the Department wins the case, the involved tax amount can be recovered from the purchasing dealer

namely M/s. Bhawani Tea Industries and not from the selling dealer, namely M/s. Mahabir Enterprise. M/s. Sekhani Tea Industry, M/s. Pioji Tea Co. and M/s. Bengani Tea Co., all dealers under Guwahati Unit-A. In the case of M/s. Sekhani Tea Industry and M/s. Pioji Tea Co., it was found that they sold entire tea to M/s. Bhawani Tea Industries, Guwahati against valid Form-VII, who had been authorized to purchase tea free of tax in pursuance of the Hon'ble Gauhati High court's interim order dated 04.04.97 in the Civil Rule No. 1619 of 1997. The position is same as stated in the case of M/s. Mahabir Enterprise, Karimganj above. As regards case of M/s. Bengani Tea Co. the dealer was found to have sold tea against From VII to the following purchasing industrial Units.

1.M/s. Bhawani Tea Industries- Rs. 2,60,093/-

2.M/s. Three Leaves India Ltd.- Rs. 1,01,055/-

As regards M/s. Bhawani Tea Industries, the position is same stated in the foregoing cases above. As regards M/s. Three leaves India Ltd, the assessing Unit namely, Guwahati Unit-D exercising jurisdiction over it has been instructed to recover the involved tax amount from him if judicially not otherwise required.

OBSERVATIONS/RECOMMENDATIONS

1.39 Since the case is subjudice in the Hon'ble High Court, the Committee, therefore, recommends that the latest position may be intimated to the Committee after disposal of the matter in the Hon'ble High Court.

Incorrect allowance of deduction

(Audit para 2.7(I)/C & AG/2001-2002(R/R))

1.40 The audit has pointed out that under the State Sales Tax Laws read with Central Sales Tax Act, 1956, while determining taxable turnover the Tax included in the gross turnover is to be deducted according to the formula prescribed. No such deduction is admissible where the turnover is exclusive of tax. (i) During the course of audit of the Superintendent of Taxes, Unit-B, Guwahati, it was noticed (April-July 2001) that two dealers were erroneously allowed deduction of Rs.33,72 lakh from their turnover though the turnover of the dealers were exclusive of tax. This resulted in short levy of tax of Rs.4.54 lakh including interest of Rs.1.02 lakh.

1.41 The department by their written replies has stated that the audit objection raised in the constituent Sub-paras was against incorrect allowance of deduction to the concerned dealers mentioned therein. The case-wise position is explained below :- (i) (A) M/s. Videocon International Ltd. Supdt. of Taxes, Guwahati Unit-B- In the original assessment orders the despatch of goods outside the State not supported by 'F' forms for the goods worth Rs.25.60 lakhs was treated as sales and assessed to tax treating the transaction as sales to other than registered dealers under the C.S.T. Act, 1956. Thereafter the dealer preferred appeal before the Deputy Commissioner of Taxes (Appeals), Guwahati. Deputy Commissioner of Taxes (Appeals) vide his order dated 30.03.02 set aside the assessment order and directed the Superintendent of Taxes to make fresh assessment orders after allowing the dealer reasonable time to submit relevant 'F' forms. Accordingly, the Superintendent of Taxes made fresh assessment order wherein all the despatches during the relevant assessment years were allowed as stock transfer duly supported by "F" forms which the dealer produced before the Superintendent of Taxes before completion of the re-assessment orders. (B) M/s. Dugar Tea Industries Ltd. In the instant case, it is found the assessments were completed summarily for the assessments periods from 30.09.88 to 30.06.93 under the A.S.T. Act, 1947 (since repealed). The total turnover of

each period was determined on the consideration received by the dealer on the sale of goods prior to the period of completion of assessments. In the case while determining the net turnover of the dealer and finding out the tax payable the formula under section 8(3)(vi) of the A.G.S.T. Act, 1993 was applied.

OBSERVATIONS/RECOMMENDATIONS

1.42 The Committee is satisfied with the submission of departmental representatives and decided to drop the para.

Incorrect allowance of deduction

(Audit para 2.7(II)/C & AG/2001-2002(R/R))

1.43 (ii) Test check of assessment records of the Superintendent of Taxes, Unit-A, Guwhati revealed (between April and July 2001) that while finalizing the assessment of 2 works contract dealers, the Assessing Officer deducted Rs. 1.29 crore being tax element instead of Rs.0.22 crore embedded in the turnover. This resulted in excess deduction of Rs. 1.06 crore having a tax effect of Rs.8.50 lakh. Besides, interest of Rs. 5.50 lakh could have been levied. This resulted in short realization revenue of Rs. 14.00 lakh. On this being pointed out (July 2001) the department stated (June 2002) that the assessment of the dealers was revised and tax and interest as pointed out by audit was revised. However, report on realization is awaited (December 2002)

1.44 (ii) 1) M/s. Mech Tech Pvt. Ltd., 2) M/s. Mech technic India (P) Ltd., Supdt. Of Taxes, Guwahati Unit-A- The recovery proceeding of the amount of arrear dues has been stayed by the honorable Assam Board of Revenue vide its order dated 6.1.2004 and remanded the cases to the D.C.T. (Appeals). Then, fresh assessments after giving the dealers full opportunity of hearing were ordered by the Appellate Authority. The Assessing officer accordingly completed the fresh assessments whereupon no tax liability was found .

OBSERVATIONS/RECOMMENDATIONS

1.45 The Committee heard the deposition of the departmental witnesses and suggested the department to furnish a copy of the assessment to A.G.

Incorrect allowance of deduction**(Audit para 2.7(III)/C & AG/2001-2002(R/R)**

1.46 The audit has pointed out that (iii) Under Section 8(3)(iv) read with Rule 14 of the Assam General Sales Tax Act., 1993, every works contractor is required to pay tax at the rate of 8 per cent on his taxable turnover arrived at after deduction of turnover of declared goods, labour charges, freight and transportation charges etc. The item 'paper' is not specified in the list of declared goods. Test check of assessment records of the Superintendent of Taxes, Unit-A, Guwahati revealed (between April and July 2001) that the Assessing Officer while determining taxable turnover in respect of 2 (two) works contractors engaged in printing works allowed (April 1999 and March 2001) deduction of Rs. 94.44 lakh being the value of 'Paper' utilized in the contract works from the turnover of Rs. 1.58 crore pertaining to the periods 1997-98 to 1999-2000 treating 'paper' as declared goods. Since 'paper' is not an item specified in the list of declared goods, the deduction allowed was incorrect. This resulted in under assessment of tax of Rs. 11.55 lakh including interest of Rs. 4.15 lakh. On this being pointed out (July 2001) the department stated (June 2002) that the assessment of the dealers was revised and tax and interest as pointed out by audit was levied. However, report on realization is awaited (December 2002).

1.47 (III) 1) M/s. Hidustan OFF Set, 2) M/s. Advance Printers, Supdt. Of Taxes, Guwahati Unit-A- The revised assessments completed following audit objection were rectified again in view of the judgment of the Hon'ble Gauhati High Court in the case of All Assam Press Owners Association, Writ Petition (Civil) 4309/1994 wherein the High Court ruled that the job work of printing press is not liable for imposition of sales tax. The resultant assessment disclosed liability at nil for the years 1997-1998 and 1998-1999.

OBSERVATIONS/RECOMMENDATIONS

1.48 The Committee directed the departmental representatives to furnish a copy of the High Court's order to A.G.

Evasion of Tax
(Audit para 2.8/C & AG/2001-02 (R/R))

1.49 The audit has pointed out that under the Assam General Sales Tax Act, 1993, a dealer can purchase goods free of tax or at concessional rate of tax by utilizing declaration in form 'A' for the purpose of re-sale in the State. As per entry 15 of the schedule- IV attached to the Act, tea is taxable at the rate of 6 per cent at the last point of sale in the State. Additional tax at the rate of ten per-cent of the tax payable is also leviable. Test-check of assessment records of Superintendent of Taxes, Bongaigaon, vis-a vis records of the Unit-A, Guwahati, revealed that dealer 'X' of Bongaigaon purchased Tea valued Rs. 1.09 crore from another dealer but concealed the same. This resulted in evasion of tax of Rs. 10.79 lakh including interest of Rs. 2.81 lakh. On this being pointed out (September 2001) the department accepted (March 2002) the audit contention and levied tax including additional tax, interest and penalty of Rs. 11.85 lakh. The dealer paid tax of Rs. 4.00 lakh (October 2001, June 2002). Report on realization of the balance amount is awaited (December 2002).

1.50 The department by their written replies has stated that the audit objection raised in the para is in respect of perceived evasion of tax in the case of M/S.Shankar General Stores, Bongaigaon Unit. After receipt of the audit objection, the concerned assessment order was rectified raising a total demand of Rs.11,91,629/- for the year 1999-2000. Out of this, an amount of Rs. 4,37,365/- was realized by the assessing officer at his own end. Further, Superintendent of Taxes (Recovery), Goalpara has realized an amount of Rs. 3,28,865/-. The balance is still under process of realization. But the balance demand is still under process of realization by the Supdt.of Taxes (Recovery), Goalpara.

OBSERVATIONS/RECOMMENDATIONS

1.51 The Committee heard the deposition of the departmental witnesses and recommends that steps should be taken by the department for recovery of balance amount and intimate the same to the Committee.

**Non-levy of penalty for misuse of 'C' form
(Audit para 2.9/C & AG/2001-02 R/R)**

1.52 The audit has pointed out that under the Central Sales Tax Act, 1956, if any registered dealer, falsely represents when purchasing any class of goods that the goods purchased are covered by his certificate of registration or after purchasing goods for any purpose specified in the certificate of registration fails without reasonable excuse, to make use of the goods for any such purpose, the registration authority may impose penalty not exceeding one and a half time of the tax, which would have been levied at the general rate in respect of sale to him of the goods. Test check of assessment records of 3 sales tax offices revealed (June 2000, August 2000, July 2001) that 3 registered dealers engaged in the business of manufacture and sale of petroleum product and tea, purchases goods valued at Rs. 1.11 crore from other State against declaration in Form-'C', even though these goods were not used for manufacture of petroleum product and tea. Therefore, the purchases so made by the dealers attracted levy of penalty of Rs. 16.50 lakhs, which was not levied. On this being pointed out (June 2000 and August 2001) the department accepted the audit objection (June 2002) and imposed penalty of Rs. 16.50 lakh against the dealers. Report on realization is awaited (December 2002).

1.53 The department by their written replies has stated that the audit objection was raised against non-levy of penalty for mis-use of 'C' form in cases of three registered dealers under Guwahati Unit-A, Hojai and Tinsukia. The case-wise position is explained below :- In this para 3 cases are involved 1(one) dealer each under the Superintendent of Taxes, Guwahati Unit-A, Tinsukia and hojai. (1) M/s. I.O.C. Ltd., of Taxes, Guwahati Unit-A- The Superintendent of Taxes imposed penalty on the dealer amounting to Rs. 12.80 lakhs under section 10 (A) of the C.S.T. Act. Being aggrieved, the dealer filed Revision Petition before the Commissioner of Taxes, Assam who vide his order dated 01.07.2002 set aside the penalty as the dealer purchased goods covered by his registration certificate. (2) M/s. Bazaloni Tea Estate, Supdt. Of Taxes, Tinsukia- Penalty was imposed at an amount of Rs.1.25 lakhs on the dealer for misuse of 'C' form. However the dealer has preferred

appeal before the Deputy Commissioner of Taxes (Appeals), Tinsukia, who has held that no penalty is imposable in the instant case.(3) M/s. Kundoli Tea Estate, Supdt. of Taxes, Hojai – Penalty of an amount of Rs.1.93 lakh was imposed on the dealer under section 10(A) of the C.S.T.Act. The amount has been fully realized vide Challan No.53 dated 05.09.2006.

OBSERVATIONS/RECOMMENDATIONS

1.54 The Committee satisfied with the submission of departmental witnesses and pleased to drop the para.

Non-levy of additional Tax**(Audit para 2.10/C & AG/2001-2002(R/R))**

1.55 The audit has pointed out and that under the provision of Assam General Sales Tax Act, 1993, every dealer who is liable to pay tax under this Act shall pay additional tax with effect from June 1998 at the rate of ten percent of the tax payable by him. Interest at the rate of two per cent for each month on the amount by which tax paid falls short of tax payable was leviable. Test check of assessment records of sales tax unit offices revealed (April-August 2001) that in 13 cases additional tax of Rs.11.10 lakh including interest of Rs.3.97 lakh was not levied. On this being pointed out (April-August 2001) the department accepted (June 2002) the audit objection and levied additional tax and interest of Rs. 0.85 lakh in respect of 3 (three) dealers of Unit-B, Guwahati. Replies in respect of other dealers have not been received (December 2002)

1.56 The department by their written replies has stated that the audit objection in the para comprised the matter of non-levy of additional tax in 13 cases under Guwahati Unit-B and Golaghat Unit, of this 9 cases relates to Golaghat Unit and 4 cases to Guwahati Unit B- The office-wise position is explained below :- Superintendent of Taxes, Golaghat – Out of total amount of additional tax amounting to Rs.8,34712/- in all the 9 cases, an amount of Rs.4,92,873/- has been realized and the balance amount is in the process of realisation. Supdt. of Taxes, Guwahati unit-B- A total amount of additional tax of Rs. 99,488/- including interest was levied in all the 4 cases which all the dealer paid in full.

OBSERVATIONS/RECOMMENDATIONS

1.57 The Committee heard the deposition of departmental representatives and recommends that steps should be taken by the department for realisation of balance amount.

Non-registration of dealer

(Audit para 2.11(A)/C & AG /2001-02 (R/R))

1.58 The audit has pointed out that (A) Under the Assam General Sales Tax Act, 1993 and Rules made there under, every dealer liable to pay tax shall get himself registered with the Assessing Officer and shall possess a certificate of registration. The Act also empowers the Assessing Officers to register a dealer if in his opinion, the dealer is liable to registration but has failed to apply for the same. If a dealer being liable to pay tax, fails to get himself registered, he shall, in addition to any tax or interest payable by him, pay penalty not exceeding the amount of the assessed tax. Cross verification by audit of records of the Superintendent of Taxes, Tinsukia, with the records of the Central Excise Department (Tinsukia) revealed (between April 2000 and June 2000) that 7 manufacturer dealers under the jurisdiction of the Tinsukia unit manufactured and sold steel fabrication, truss grill, trunk, gates, G.I. wire fencing, machineries, mechanical appliances, storage tank, wire netting, ice-cream etc, valued at Rs. 48.46 lakh during the periods from 1993-94 to 1998-99 but neither applied for registration nor the Assessing Officers registered them. Thus, non registration of the dealers resulted in evasion of tax of Rs. 3.88 lakh. In addition to tax, interest of Rs. 3.25 lakh and penalty not exceeding Rs. 3.88 lakh were leviable. The department accepted (June 2002) the audit contention and levied tax, interest and penalty as pointed out in audit Report on realization is awaited (December 2002).

1.59 The department by their written replies has stated that (a) the audit objection in the constituent sub-para was against non-registration of 7 dealers under Tinsukia Unit and 1 dealer under Guwahati Unit-B. The position is explained office-wise as shown bellow :- Supdt. of Taxes, Tinsukia- All the 7 (seven) dealers were registered under the A.G.S.T. Act realizing requisite security from the dealer before granting registration and dealers have also been assessed. As regards, the realisation of the dues, it is stated that only one dealer paid amount of Rs.46,000/- only out of Rs.68,000/- due and for the balance amount in this case and in other 6(six) cases no realization has yet been made.

OBSERVATIONS/RECOMMENDATIONS

1.60 The Committee directed the department to take steps for realization of outstanding amount.

Non-registration of dealer

(Audit para 2.11(B)/C & AG /2001-02 (R/R))

1.61 No dealer, liable to pay tax under the Assam General Sales Tax Act, 1993 and Central Sales Tax Act, 1956, shall carry on business in taxable goods unless he has been registered as a dealer and possesses a certificate of registration. Under the taxation laws of the State, supari is taxable at the rate of 8 per cent at the point of last purchase inside the State. Further, for inter-state sales of Supari, not covered by the prescribed declaration as provided in the Central Sales Tax Act, 1956, tax is leviable at the rate of 10 per cent. Test check of records of the Superintendent of Taxes, Unit-B, Guwahati vis-à-vis records of the Boxirhat check post revealed (between April and July 2001) that an unregistered dealer under the jurisdiction of Unit-B sold supari valued at Rs.45.02 lakh during the period between 16 April and 25 April 1998 in the course of inter-State trade or commerce without payment of tax of Rs.8.10 lakh. However Rs.4.54 lakh was collected at the check post. No action was taken by the department to register the dealer and collect the tax due. Thus, due to non-registration of the dealer, revenue amounting to Rs. 3.56 lakh was forgone.

1.62 Non-registration of dealer – The dealer could not be registered as yet as no such dealer namely, M/s. Durga Prasad Sarma could be traced out in the address shown at S.R.C.B. Road, Fancy Bazar, Guwahati as found on local enquiry made by the area Inspector of Taxes. It may be a fact that the purchasers of Supari from outside the State use to purchase Supari in Assam and take the commodity to their places outside the State by paying requisite tax at the exist check gates in Damra and Boxirhat in the form of security and in such cases it is difficult to locate such dealers in Assam. In the instant case, although the adequate security commensurate to Tax on the value of goods was realized in Boxirhat Check post, the dealer could not be registered due to the reason stated above.

OBSERVATIONS/RECOMMENDATIONS

1.63 The department informed the Committee that due to non-availability of address, the dealer could not be registered. The Committee directed the department to trace out the dealer and to register.

Short levy of tax due to incorrect determination of turnover

(Audit para 2.12/C & AG/2001-2002(R/R)

1.64 The audit has pointed out that under the provision of AGST Act, 1993, tax payable by a dealer engaged in the execution of works contract of the nature of "Supplying and fitting of electrical goods, supply and installation of electrical equipment including transformers is 8 per cent (with effect from May 1997) on his taxable turnover and maximum allowable deduction towards labour and other charges is 10 per cent of the gross turnover. Test check of assessment records of the Superintendent of Taxes, Jorhat revealed (May- June 2001) that a dealer engaged in the execution of works contract of the nature of supplying and fitting of electrical goods, supply and installation of electrical equipments including transformer was assessed (February 2000) to tax for the year 1998-99 allowing deduction of 20 per cent (Rs. 78.24 lakh) towards labour and other charges from the turnover of Rs. 3.91 crore instead of correct rate of 10 per cent. This resulted in excess deduction of taxable turnover of Rs. 39.12 lakh and consequential short levy of tax of Rs. 3.13 lakh. In addition, interest of Rs. 1.56 lakh was also leviable. On this being pointed out (June 2001) the department stated (March 2002) that the dealer executed labour oriented job and no transfer of property was involved in the works contract. It was also stated that the materials required for the contract work were supplied by the contractee organization. The reply is not tenable since the tax payable was determined by the Assessing Officer after verification of books of accounts and the dealer also paid tax as such the work was not hundred per cent job oriented work. The maximum deduction admissible towards labour charges was 10 per cent of the turnover instead of 20 per cent allowed by the Assessing Officer.

1.65 The department by their written replies has stated that the audit objection was raised on the ground of short-levy of tax due incorrect determination of turnover while finalizing assessment of the case of M/S. K.E.C. International, Supdt. of Taxes, Jorhat for the year 1998-99. The explanation is given below :- M/s. K.E.C. International, Supdt. of Taxes, Jorhat - The contract work performed by the dealer was for erection of Transmission. Tower lines and was an erection contract only. The works under agreement were :

- (a) Detailed survey,
- (b) Foundation of Tower Fittings,
- (c) Erection of Tower and their extension,
- (d) Track welding of bolt and nuts,
- (e) Earthing of Towers.
- (f) Fixing of insulator string,
- (a) Stringing of conductors and earth-wire their accessories.
- (b) Successful completion of testing and commissioning.
- (c) Successful completion of testing and commissioning.

From the above it is seen that contractor performed two types of works contracts-one is Civil Works and the other is Electrical Works. The dealer performed the works contract of erection of the following transmission lines under the power grid Corporation of India Ltd. During the period of assessment in question.(a) 200 KV. D/C Kapili Misa Transmission Line. (b) 400 KV Rawta Bongaigaon Transmission Line. Total value of the works received during this period was Rs.3,91,20,124.00. From available information and documents it appears that out of this amount Rs.1,08,25,285.84 is related to Civil Works and Rs.2,82,94,839.00 is related to Electrical Works. Detail is as under :

KAPILI Misa Line

Foundation	Rs. 35,50,964.00
Stringing	Rs.58,03,377.00
Survey	Rs. 577.50

Tower Erections

Earthing & others Rs. 49,15,861.50

Total Rs. 1,42,70,780.00

Rawta Bongaigaon Line

Foundation Rs. 72,74,321.80

Stringing Rs.1,22,17,437.18

Tower Erection

Earthing etc. Rs. 53,57,585.95

Total Rs.2,48,49,344.97

Total amount received against

Foundation in work Rs. 1,08,25,285.84

Total amount received against

Erection of Tower Line,

Stringing, Earthing etc. Rs. 2,82,94,839.00

A scrutiny of the relevant portion of the work orders and the certificate vide No.nesh/csh/01/400 DATED 05.06.2002 ISSUED BY power Grid Corporation regarding materials, letter dated 20.11.2001 from K.E.C. international Ltd. and the statement of Bills submitted by the dealer revealed that major part of the contract works performed were labour contract having no involvement of transfer of property in goods as the materials used in the works are the property of the Power Grid Corporation before their use, thus, it appears that the goods used in major portion of the works were supplied by

the contractee. However, the materials, viz., sand, etc. used in the Civil portion (Foundation) of the works contract were supplied by the Contractor. As per provision of section 8(e) of the A.G.S.T. Act, 1993, tax on works contract will be leviable only when transfer of property in goods is involved. But, here in this case transfer of property is involved only in case of a part of the works performed. As per para IV of the judgment No.202/73 STC 370 (SC) AIR 1989 SC 1371/1989 (2) SCC 645 of the "Hon'ble Supreme Court of India; in the case of Builders Association of India and others Vs. Union of India" price of goods supplied by the contractee for the purpose of executing works contract cannot be treated as part of taxable turnover". Now in the instant case, most of the materials were supplied by the contractee. As such, the value of the materials cannot be included in the taxable turnover. From available documents in the case recods of the dealer it is seen that "the dealer mainly engaged in works contract by supplying and fitting of Electrical goods, supply and installation of Electrical equipments including transformer and other Civil Works and Scrapas Iron". So, the dealer performed Civil Works also during this period. From verification of the relevant documents, the Civil Works is found to be related to foundation work for erection of Tower line. The assessing officer mentioned about the works performed in the language of the Act (Sch. VI) in his assessment. But the Audit while preparing the objection, ignored the Civil Works and raised the objection taking the works performed to be Electrical works only. Civil Works, where the allowable deduction was 20% was not taken into consideration. However, in the instant case, the materials for the Electrical work were supplied by the contractor as implied and evident from relevant portion of work orders, certificate issued by the Power Grid Corporation regarding ownership of materials used in the works contract, as discussed above and hence, the value of works i.e. Rs. 2,82,94,839.00 received against Electrical works performed during the period cannot be included in taxable turnover. From the above, it is seen that the actual taxable turnover during the period should be Rs. 1,08,25,285.84 (being the value of Civil portion of the works, where transfer of property actually took place) and not Rs. 3,91,20,124.00 as the materials for the works performed for Rs. 2,82,94,839.00 were supplied by the contractee and no transfer of property was involved against the work of this value. But, here in this case, the assessing officer assessed tax, raised demand against the entire value of works including the value (Rs.2,82,94,839.00) received for the Electrical works. In fact, no tax needed to be levied on Rs. 2,82,94,839.00 as per provisions of the

A.G.S.T. Act and also in the light of the judgment (as referred) of the Apex Court. Keeping in view, the nature of works performed and the involvement of materials used in the works (as discussed above) the dealer should have got 100% exemption instead of 20% against labour charge on the amount of Rs. 2,82,94,839/- as there involved no transfer of property in goods in the works performed for this value. But the dealer claimed only 20% deduction in place of 100% against labour charge for this amount (Rs.2,82,94,839/-) also in his return which was supported by his books of accounts and hence was allowed by the assessing authority.

OBSERVATIONS/RECOMMENDATIONS

1.66 The Committee satisfied with the departmental reply and pleased to drop the para.

Short levy of Tax due to application of Lower rate of Tax

(Audit para 2.13/C & AG/2001-02 (R/R))

1.67 The audit has pointed out that as per the Assam General Sales Tax Act 1993, the items vegetable ghee and vegetable oil are taxable at the rate of 8 per cent at the point of first sale in the State to an unregistered dealer. Test check of assessment records of the Superintendent of Taxes, Tinsukia revealed (April 2000-June 2000) that a registered dealer purchased vegetable ghee/vegetable oil for Rs.61.42 lakh from outside the State of Assam and sold it for Rs. 62.23 lakh to unregistered dealer during the year 1998-99. However, the Assessing Officer levied (January 2000) tax at the rate of 4 per cent instead of 8 per cent. This resulted in short levy of tax of Rs.2.39 lakh. In addition, interest of Rs.0.62 lakh (calculated upto May 2000) was also leviable. On this being pointed out (June 2000) the department stated (April 2002) that the dealer purchased goods from within the State but in the annual return it was wrongly mentioned that the goods were purchased from outside the State. The reply of the department is not tenable since the dealer purchased the goods from outside the State as per utilization statement of road permits furnished by the dealer.

1.68 The department by their written replies has stated that the audit objection was raised on the ground of short levy of tax due to application of lower rate of tax in case of M/s. Mamata trading Co., Tinsukia Unit while finalizing assessment of the year 1998-99. The explanation rendered by the concerned assessing officer is as shown below :- In connection with the objection raised by the Audit the books of accounts and documents for the year 1998-99 under the A.G.S.T. Act. 1993 were verified. On verification of books of accounts and documents etc. it was found that the dealer purchased vegetable ghee for Rs. 61,42,468.00 from locally (within the State). But the same were shown wrongly in the annual return under the column of goods purchased from outside the State through oversight which should have been entered in the column of goods purchased within the State. The facts were supported by necessary documents i.e. Bill, Callan, "A" Form etc. The assessment was completed as per provision of the Act and the dealer paid tax @ 4% under Schedule-IV of the Act and the same were realized accordingly.

OBSERVATIONS/RECOMMENDATIONS

1.69 The Committee heard the submission of the departmental witness and recommends to verify the matter early and to intimate the same to the Committee.

Incorrect application of rate of tax

Audit para 4.7/C & AG/2001-2002/(R/R)

1.70 The audit has pointed out that under the Assam Taxation (on specified lands) Act, 1990, every tea estate owner is liable to pay tax on the quantity of green tea leaves produced in the estate where the aggregate area of Specified Land exceeds forty hectares. The rate of tax is payable as specified from time to time. Test check of assessment records of 2 sales tax unit offices revealed (February 2001- September 2001) that in 3 cases where the area of land exceeded forty hectares, tax of Rs.2.26 lakhs was short levied during 1997 and 1998 due to incorrect application of rate of tax by the concerned Assessing Officers. On this being pointed out (February 2001 & August-2001), the Superintendent of Taxes, Sibsagar stated (May, 2002) that assessments have been revised and amount has been realized. However, reply from the Superintendent of Taxes, Goalpara has not yet been received (December 2002).

1.71 The deapartment by their written replies has stated that the audit objection was raised against incorrect application of rate of tax while finalizing assessments in 3 cases comprising Goalpara Unit and Sibsagar Unit under the Assam Taxation (On Specified Lands) Act, 1990 for the years 1997 and 1998. The office-wise present position of the cases are as described below :- Sibsagar Unit - (i) Bhuyankhat Tea Estate - The concerned assessing officer revised the assessment after receipt of the audit objection and levied further demand of Rs.37,986/- comprising Rs. 34,659/- tax and Rs.3,327/- interest. The amount was also realized vide challan No.18 dated 06.05.2002 for Rs. 37,986/-. (ii) Bamunpukhuri Tea Estate - The concerned assessing officer revised the assessment after receipt of the audit objection and levied further demand of Rs. 57,703/-. The said demand was also realized vide challan No.06 dated 09.11.2001. Goalpara Unit - (i) M/s. Simlitola Tea Estate - After receipt of the audit objection, the concerned assessing officer revised the assessment of the assessee tea garden for the years 1997 and 1998 and levied the following demand.

<u>Year</u>	<u>Demand</u>
1997	- Rs. 1,25,198/-
1998	- Rs. 22,935/-

But the amounts are still under process of realisation by Superintendent of Taxes (Recovery), Goalpara.

OBSERATIONS/RECOMMENDATIONS

1.72 The Committee is satisfied that the department has realized the tax and interest from Bhuyankhat and Bamun Pukhuri Tea Estate. Regarding Simlitula Tea Estate, the Committee recommends that steps should be taken for realization of tax and interest and intimate the same to the Committee.

Non-realisation of Professional Tax and interest**(Audit para 4.8/C & AG/2001-2002/(R/R))**

1.73 The audit has pointed out that under the Assam Professions, Trades, Callings and Employments Taxation Act. 1947, every person, who carries on a trade, or who follows a profession or calling, or who is in employment, within the State is liable to pay for each financial year a tax at the prescribed rates. Further, as amended from April 1992, if a non-Government employer or an enrolled person fails to pay tax within due date, he shall be liable to pay simple interest at two per cent of the amount due for each month or part thereof for the period for which the tax remains unpaid. Test check of the assessment records of the Superintendent of Taxes, Sibsagar revealed (September 2001) that in 4 cases professional tax of Rs.0.80 lakh for the period from 1989-90 to 2000-01 and interest of Rs.0.68 lakh for delay in payment/non-payment of tax ranging from 10 months to 106 months though leviable was not levied. This resulted in non-realisation of Government revenue of Rs.1.48 lakh.

1.74 The department by their written replies as well as oral deposition has stated that in this para 4 tea estates viz., (1) M/s. Borbam Tea Estate, (2) M/s. Amguri Tea Estate, (3) M/s. Borshila Tea Estate and (4) M/s. Singloo (India) Tea Co. are involved. In all the cases, total amount of tax of Rs.69,645/- and interest of Rs.6,223/- were levied and all the Assesses paid their demand dues accordingly.

OBSERVATIONS/RECOMMENDATIONS

1.75 The Committee is satisfied with reply of the departmental witness and pleased to drop the para.