

**THIRTEENTH KERALA LEGISLATIVE ASSEMBLY**

**COMMITTEE  
ON  
PUBLIC ACCOUNTS  
(2011-2014)**

**FOURTEENTH REPORT**

(Presented on 26th June, 2012)



SECRETARIAT OF THE KERALA LEGISLATURE  
THIRUVANANTHAPURAM  
2012

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PUBLIC ACCOUNTS  
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**FOURTEENTH REPORT**

**On**

**Paragraphs relating to Taxes Department contained  
in the Report of the Comptroller and Auditor  
General of India for the year ended  
31st March, 2009 (Civil)**

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„ M. Abdul Raffi, Additional Secretary

„ T. Manoharan Nair, Deputy Secretary

Smt. M. R. Maheswari, Under Secretary.

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\*Resigned on 29th March 2012.

## INTRODUCTION

I, the Chairman, Committee on Public Accounts, having been authorised by the Committee to present this Report on their behalf present the Fourteenth Report on Paragraphs relating to Taxes Department contained in the Report of the Comptroller and Auditor General of India for the year ended 31st March, 2009 (Civil).

The Report of the Comptroller and Auditor General of India for the year ended 31st March, 2009 (Civil) was laid on the Table of the House on 25th March, 2010.

The Committee considered and finalised this Report at the meeting held on 28th March, 2012.

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

Thiruvananthapuram,  
26th June, 2012.

DR. T. M. THOMAS ISAAC,  
*Chairman,*  
*Committee on Public Accounts.*

## REPORT

### TAXES DEPARTMENT

#### AUDIT PARAGRAPH

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

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

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

*It was noticed that the AAs while finalising the assessment did not observe some of the provisions which resulted in non/short levy/non-realisation of tax/interest/penalty of ₹ 14.22 crore as mentioned in the paragraphs 2.4.1 to 2.4.11.*

#### **Non/short levy of tax due to grant of irregular exemption**

Under the Central Sales Tax (CST) Act, 1956, sale or purchase of goods shall be deemed to take place in the course of inter-state trade or commerce if the sale or purchase occasions the movement of goods from one State to another. Every dealer shall be liable to pay tax on all such sales effected by him in the course of inter-state trade or commerce. By a notification issued under the Act, the Government have exempted inter-state sales turnover of rubber from tax, provided that tax has been levied under the Kerala General Sales Tax (KGST) Act, 1963 on the purchase turnover.

During scrutiny of records of the Inspecting Assistant Commissioner (IAC), Kattapana in June 2008, it was noticed that while finalising the assessment of a dealer in centrifuged latex and cream rubber for the year 2002-03, the AA irregularly exempted the inter-state sales turnover of ₹ 15.90 crore related to centrifuged latex and cream rubber even though tax had not been levied on the purchase turnover. This resulted in non-levy of tax of ₹ 2.01 crore.

After the case was reported to the department in July 2008 and Government in August 2008, the Government stated in March 2009 that notice had been issued to revise the assessment. Further report has not been received (September 2009).

By a notification issued in November 1993 under the KGST Act, Government have exempted SSI units from payment of tax on sales turnover of goods manufactured by them subject to certain conditions. Further, as per the Act, spectacles, glasses, goggles, rough blank lenses, framed attachments, parts and accessories thereof are taxable at the rate of eight per cent. It was judicially held\* by the High Court of Andhra Pradesh that sale of lens and frames separately or as spectacles after lenses were put in the frames, makes no difference as all are included in the same entry.

During scrutiny of the records in Commercial Tax Office (CTO), third circle, Thiruvananthapuram between March 2007 and March 2008, it was noticed that a dealer registered as a small scale industry unit was allowed sales tax exemption for the years 2000-01 to 2004-05. As per the registration certificate, he was a wholesaler supplying lens/spectacles etc., to its branches and not a manufacturer. Further, as per the court decision conversion of optical blanks to lenses or fixing of lens into framed attachments would not tantamount to manufacture. Hence the exemption granted to the dealer as SSI unit was irregular. This resulted in short levy of tax of ₹ 70.34 lakh.

After the case was pointed out to the department between May 2007 and April 2008 and reported to the Government in February 2008, the Government stated in May 2008 that the exemption granted was in order as the unit was registered as an SSI unit and goods produced by them were eligible for exemption and the dealer had manufactured spectacles as evidenced by the sales effected to 'Kalluvelil Opticals', Amburi. However, on further verification, it was found that there is no dealer as 'Kalluvelil Opticals' at Amburi. As manufacture of lenses and spectacles by a wholesale dealer was not possible and the legislature had intended to levy tax on optical blanks, lenses, frames and spectacles under a single entry, the reply was not correct. Further reply has not been received (September 2009).

Under the KGST Act, note book was taxable at the rate of four per cent, five per cent and eight per cent with effect from April 1992 to December 1999, January 2000 to 30th December 2001 and from 31st December 2001 onwards respectively. As per the explanation thereunder, where tax is levied on note books, the tax, if any, paid on the purchase of paper out of which note book is manufactured shall be deducted. Under the amended provision of section 23(3A) of the Act effective from 1st April 2004, where any dealer has failed to include

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\* State of AP Vs Deccan optical and allied industries in 98 STC 114 (AP).

any turnover or taxable turnover of his business or to pay the tax due thereon, or where any turnover or tax due has escaped assessment, interest shall accrue on the tax due on the turnover with effect from such date on which the tax would have fallen due. Interest due on the taxable turnover is calculated at the rate of one per cent per month.

During scrutiny of records in CTO, Kunnankulam between January 2008 and January 2009, it was noticed that while finalising the assessments of 16 dealers, sales turnover of note books manufactured were irregularly exempted resulting in short levy of tax and interest of ₹ 65.07 lakh as mentioned below:

<i>Sl. No.</i>	<i>No. of dealers</i>	<i>Assessment year</i>	<i>Turnover exempted (Rupees in crore)</i>	<i>Tax effect (Rupees in lakh)</i>
1	1	1994-95 to 2001-02	10.28	35.39
2	15	2004-05	7.91	29.68
Total			18.19	65.07

After the case was reported to the department between February 2008 and February 2009 and Government between August 2008 and April 2009, the Government stated in December 2008 that it was judicially held\* that paper and note book were one and the same and hence exemption granted was in order. The reply was not correct as the decision related to the assessment years 1985-86 to 1988-89, when there was no specific entry for note book in the Act. Further reply has not been received (September 2009).

By a notification issued under the KGST Act, in November 1993, the Government have exempted levy of tax on sale of industrial input, plant and machinery etc., to industrial units in Cochin Export Processing Zone (CEPZ). The notification does not provide for exemption of tax on purchase by units in CEPZ. Rubber is taxable at the point of last purchase in the state. By another notification issued in November 1993, Government have reduced the rate of tax payable, by rubber based industrial units, on the purchase of rubber for use in the manufacture of rubber products within the State to five per cent from 1st April 1994 and by a subsequent notification issued in December 1999 Government have fixed the rate as six per cent from 1st April, 2000.

\* M/s Kunnankulam book company Vs State of Kerala in the Honourable High Court of Kerala-9 KTR 400.



During scrutiny of the records in CTOs Second circle, Kalamassery and Special circle III, Ernakulam during May 2008 and June 2008, it was noticed that while finalising the assessments of one industrial unit in CEPZ, for the years 1997-98 and 1998-99 and another unit in the Cochin Special Economic Zone (CSEZ) for the years 2002-03 and 2003-04, the AAs incorrectly exempted the purchase turnover of rubber, valued at ₹ 3.92 crore, used in the manufacture of rubber gloves. This resulted in short levy of tax of ₹ 23.31 lakh.

After the case was reported to the department in June 2008 and Government in September 2008, the Government stated in April 2009 that as per the notification\*, exemption is available for tax payable under the Act for industrial undertakings in the CEPZ. However, the fact remains that the assessee had claimed exemption on the purchase turnover of rubber, whereas the exemption is available only for the sale to the industrial units in CEPZ i.e., the seller of industrial raw materials to the industrial unit in CEPZ shall alone be eligible for exemption. Further, the Government have exempted the purchase tax from 1st July, 2003 only vide another notification†, from which it is clear that the purchase turnover of industrial units in CEPZ was not eligible for exemption up to June 2003.

By a clarification issued by the CCT, computer paper is taxable at eight per cent under entry 106 (ii) of first schedule to the KGST Act.

During scrutiny of records in CTO, Chalakkudy in February 2008, it was noticed that while finalising the assessments of a dealer engaged in the manufacture of computer stationery for the years 2002-03 and 2003-04, the AA incorrectly exempted the sales turnover of computer stationery (paper product), valued at ₹ 2.13 crore, treating it as second sales. This resulted in short levy of tax of ₹ 19.32 lakh.

After the case was reported to the department in March 2008 and Government in August 2008, the Government stated in March 2009 that as per the decision of the Sales Tax Appellate Tribunal (STAT), the assessee was eligible for exemption as the dealer was purchasing paper and other raw materials and converting it after printing into computer stationery and no manufacturing process was involved. However, the fact remains that the SSI exemption on manufacture of computer paper acquired in 1996-97 got exhausted during 1999-2000 and from 2000-01 onwards the assessee was claiming the sales as second sales of paper.

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\* SRO 1727/93 dated 3rd November, 1993.

† SRO 151/2004.

Under the KGST Act, oil palm kernels are taxable at the rate of eight per cent under entry 177 of schedule I.

During scrutiny of records in CTO, special circle, Kottayam, in November 2007, it was noticed that while finalising the GST and CST assessments of an assessee for the year 2004-05, the AA irregularly exempted the local sales turnover of oil palm kernel of ₹ 64.34 lakh and inter-state sales turnover of ₹ 41.85 lakh treating them as fruits. This was not correct, as oil palm kernel is not a fruit. The grant of incorrect exemption resulted in short levy of tax of ₹ 10.10 lakh.

After the case was pointed out, the AA replied in January 2009 that the case would be examined. Further reply has not been received (September 2009).

The matter was reported to the department in February 2009 and Government in April 2009; their reply has not been received (September 2009).

Under section 7 of the KGST Act, a contractor in works other than civil works, may opt to pay tax on the whole amount of contract at the rate of seventy per cent of the rates shown in the fourth schedule if the contract amount exceeds ₹ 50 lakh and at the rate of five per cent on the whole amount of contract if the contract amount does not exceed ₹ 50 lakh.

During scrutiny of records in CTO, fourth circle, Ernakulam in July 2008, it was noticed that the assessment of a dealer, who had opted for payment of tax under section 7 in respect of aluminium joinery works for the year 2002-03 was finalised in November 2007. The turnover in respect of each contract was less than ₹ 50 lakh. However, the AA irregularly exempted the turnover of ₹ 1.11 crore relating to aluminium joinery work and ₹ 3.61 lakh relating to labour charges respectively from the total contract receipt of ₹ 1.56 crore. The balance turnover of ₹ 40.83 lakh was assessed at the rate of two per cent instead of correct rate of five per cent. This resulted in short levy of tax of ₹ 8.02 lakh including Additional Sales Tax (AST).

After the case was pointed out, the AA stated in July 2008 that the case would be examined. Further development in the matter has not been reported (September 2009).

The matter was reported to the department in October 2008 and Government in December 2008; their reply has not been received (September 2009).

By a notification issued in June 2007 under the KGST Act, the Government have made a reduction in the rate of tax payable by Khadi and Village Industries units recognised by the Kerala Khadi and Village Industries Board and the Khadi and Village Commission of India to four per cent if the annual turnover of the unit exceeds ₹ 50 lakh. The rate was effective during the period from 1st April, 2000 to 31st March, 2004.

During scrutiny of records in CTO, Chathannoor in August 2008, it was noticed that, while finalising the assessment of a Khadi and Village Industries Unit having an annual turnover exceeding ₹ 50 lakh for the year 2003-04, the AA irregularly exempted the entire sales turnover of ₹ 1.50 crore. This resulted in non-levy of tax of ₹ 6.69 lakh.

After the case was reported to the department in October 2008 and Government in February 2009, the Government stated in June 2009 that the assessment had been revised and tax and interest demanded. The report on recovery has not been received (September 2009).

Under the KGST Act, 'taxable turnover' means the turnover on which a dealer shall be liable to pay tax after making the prescribed deductions from the total turnover. Under Section 5 (2C) (c) of the Act, manufacturer of distillery, brewery or winery or other manufactory established under Abkari Act, 1977, is liable to pay turnover tax at five per cent on the sales turnover of liquor.

During scrutiny of records in CTO, special circle II, Kozhikode in January 2008, it was noticed that while finalising the assessment of a dealer, engaged in manufacture and sale of Indian made foreign liquor for the year 2004-05, the AA incorrectly allowed exemption of ₹ 1.03 crore, relating to prompt payment discount, on the assessment of turnover tax. This resulted in short levy of turnover tax of ₹ 5.14 lakh.

After the case was reported to the department in February 2008 and Government in August 2008, the Government stated in April 2009 that as per the contract, two per cent discount is allowable and hence it was deducted from the total turnover and taxable turnover was arrived at accordingly. The reply was not correct as the assessee himself had disclosed the total turnover as taxable and turnover tax on the total turnover was paid accordingly. However, while finalising the assessment the AA had incorrectly given two per cent discount on the turnover, which was shown as selling expenses in the P&L accounts, and turnover tax was short demanded resulting in excess credit to the assessee.

### Short levy due to application of incorrect rate of tax

Under the KGST Act, rate of tax depends on the nature of sale, point of sale and also on the kind of commodity.

Scrutiny of records revealed that while finalising the assessment, the AAs levied tax at incorrect rates resulting in short levy of tax of ₹ 2.90 crore as mentioned below

<i>Sl. No.</i>	<i>Assessment circle Assessment year</i>	<i>Commodity/ contract</i>	<i>Rate applicable/ Rate applied</i>	<i>Turnover (₹)</i>	<i>Short levy (₹)</i>
(1)	(2)	(3)	(4)	(5)	(6)
1	CTO, Spl. circle, Palakkad 2002-03 to 2004-05	Goods manufactured by large and medium scale industry (CST assessment)	$\frac{4}{2}$	84.66 crore	1.69 crore

The matter was pointed out to the department and reported to the Government in April 2009; their reply has not been received (September 2009).

2	CTO, Works Contract and Luxury Tax (WC & LT), Ernakulam 2001-02 to 2003-04	Electrical contract	$\frac{12}{8}$	16.49 crore	74.05 lakh
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After the case was pointed out, the AA stated in January 2008, that supply of shunt capacitor, lightning arresters etc. would not come under entry 6 but under the residuary entry 22. The reply was not correct as the contract, according to the work order, included design, manufacture, testing, supply cum erection including all associated works and commissioning of 110 KV class current transformer and CT mounting structure, current transformers, voltage transformers and the indoor control panel duly forming cable ducts etc., and hence can only be considered under entry 6 of schedule-IV to the Act taxable at 12 per cent.

The matter was reported to the department in March 2008 and Government in August 2008; their reply has not been received (September 2009).

(1)	(2)	(3)	(4)	(5)	(6)
3	AIT and CTO, Kuthiyathodu 2001-02 to 2004-05	Biscuits	<sup>12</sup> / <sub>8</sub>	2.79 crore	12.66 lakh
<p>After the case was reported to the department in February 2008 and Government in August 2008, the Government stated in December 2008 that the assessments were revised and short levy demanded. The report on recovery has not been received (September 2009).</p>					
4	CTO, Spl. circle, Mattancherry 2004-05	Coconut oil (CST assessment)	<sup>3</sup> / <sub>2</sub>	8.36 crore	10.95 lakh
<p>After the case was pointed out, the AA stated in December 2008 that the assessee being a manufacturer of coconut oil, the interstate sales turnover was eligible for the concessional rate of two per cent available under the KGST Act. The reply was not correct as the sale being an interstate sale the rate of tax is three per cent.</p> <p>The matter was reported to the department in February 2009 and Government in April 2009; their reply has not been received (September 2009).</p>					
5	CTO, Ettumanur 2003-04	Rubber products (CST assessment without C form)	<sup>12</sup> / <sub>10</sub>	1.82 crore	5.52 lakh
<p>After the case was pointed out, the AA stated in December 2008 that the matter would be examined. Further reply has not been received (September 2009).</p> <p>The matter was reported to the department in January 2009 and Government in February 2009; their reply has not been received (September 2009).</p>					
6	CTO, Spl. circle I, Ernakulam 2001-02	White oats	<sup>12</sup> / <sub>4</sub>	59.25 lakh	5.23 lakh
<p>After the case was pointed out in April 2008, the department stated in November 2008 that the assessment records were submitted to the Deputy Commissioner for <i>suo motu</i> revision and on receipt of the same the assessment would be revised. Further developments have not been reported (September 2009).</p>					

(1)	(2)	(3)	(4)	(5)	(6)
	The matter was reported to the Government in August 2008; their reply has not been received (September 2009).				
7	CTO, Spl. circle III, Ernakulam 2000-01 to 2004-05	Interior contract work	$8.4/5$	1.13 crore	4.19 lakh
	After the case was pointed out in May 2008, the AA stated in June 2008 that the case would be examined. Further development has not been reported (September 2009).				
	The matter was reported to the Government in September 2008; their reply has not been received (September 2009).				
8	CTO, Spl. circle I, Ernakulam 2000-01	Yeast	$12/8$	96.33 lakh	3.85 lakh
	After the case was pointed out in April 2008, the department stated in November 2008 that the assessment was completed on the basis of a decision existing at the time of the assessment and action has been initiated to re-open the assessment. Further development has not been reported (September 2009).				
	The matter was reported to the Government in December 2008; their reply has not been received (September 2009).				
9	CTO, Spl. circle I, Ernakulam 2001-02	Heart brand flavours	$25/12$	17.39 lakh	2.49 lakh
	After the case was pointed out in April 2008, the department stated in November 2008 that the assessment records were submitted to the Deputy Commissioner for <i>suo motu</i> revision and on receipt of the same the assessment would be revised under Section 34 of the Act. Further development has not been reported (September 2009).				
	The matter was reported to the Government in August 2008; their reply has not been received (September 2009).				
10	CTO, second circle, Thrissur. 2004-05	Packing materials (interstate sales to unregistered dealers)	$10/4$	41.78 lakh	2.41 lakh

(1)	(2)	(3)	(4)	(5)	(6)
					After the case was reported to the department in October 2008 and Government in December 2008, the Government stated in June 2009 that the assessment had been revised based on the audit objection. However, the appeal of the assessee was accepted and the department was planning to file second appeal against it. Further development has not been reported (September 2009).

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

Under the KGST Act, where any dealer has failed to include any turnover in the return filed by him, or any turnover has escaped assessment or if the tax is not paid by him within the time prescribed, the dealer shall pay interest at the rate of one per cent per month for the first three months and at the rate of two per cent per month for subsequent months of delay. Further any tax or any other amount due or demanded is paid by the dealer, the payment so made shall be appropriated first towards interest accrued on such tax or other amount under sub-section 3 of Section 23 on such date of payment and the balance available shall be appropriated towards principal outstanding. Under the Act, tax leviable on goods is to be enhanced by Additional Sales Tax (AST) at the rate of 15 per cent.

During scrutiny of records in CTO, special circle II, Kozhikode in January 2008, it was noticed that while finalising the assessments of a dealer for the years 2002-03 and 2003-04, the AA incorrectly appropriated the amount paid by the assessee towards tax due instead of first appropriating it towards interest. This resulted in short levy of tax and interest of ₹ 1.35 crore.

After the case was pointed out, the department stated in March 2008 that notice has been issued to revise the assessments. Further development has not been reported (September 2009).

The matter was reported to the Government in August 2008; their reply has not been received (September 2009).

During scrutiny of records in CTO, Payyannur in January 2008, it was noticed that while finalising the assessments of a dealer for the year 2003-04 and 2004-05, the AA failed to levy AST, interest on the tax conceded but not paid in time and to appropriate the amount paid subsequently towards interest. This resulted in short levy of tax and interest of ₹ 6.11 lakh.

After the case was pointed out, the department stated in October 2008 that the assessments were revised. However, levy of interest on admitted tax and

appropriation of payment towards interest were not seen done in the revised assessments also. Further development has not been reported (September 2009).

The matter was reported to the Government in April 2009; their reply has not been received (September 2009).

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

Under the KGST Act, 'taxable turnover' means the turnover on which a dealer is liable to pay tax after making the prescribed deductions from the total turnover. As per section 59(4) of the KGST Act, goods which were liable to tax at the point of last purchase in the State and are held as closing stock on the date preceding the date of coming into force of the Kerala Value Added Tax (KVAT) Act, 2003, shall be deemed to have acquired the quality of last purchase in the State on such date and tax is to be levied at the rate of four per cent. Under the KGST Act, where any dealer has failed to include any turnover in any return filed by him or any turnover has escaped assessment, interest shall accrue on the tax due on such turnover with effect from such date on which the tax would have fallen due for payment had the dealer included it in the return relating to the period to which such turnover related. The interest payable shall be at the rate of one per cent per month.

- During scrutiny of records in CTO, WC & LT, Ernakulam in January 2009, it was noticed that while finalising the assessment of an assessee for the year 2004-05, the value of the closing stock of raw rubber for ₹ 5.23 crore was not assessed to tax. This resulted in short levy of tax of ₹ 21.55 lakh.

After the case was pointed out, the AA stated in February 2009 that the matter would be examined. Further reply has not been received (September 2009).

The matter was reported to the department in March 2009 and Government in April 2009; their reply has not been received (September 2009).

- During scrutiny of the records in CTO, special circle (produce), Mattancherry in May 2008, it was noticed that while finalising the assessments of 14 dealers for 2004-05, closing stock value of goods taxable at the last purchase point was not assessed to tax. This resulted in non-levy of tax of ₹ 11.70 lakh.

After the case was pointed out, the AA stated in May 2008 that action would be taken to revise the assessments. Further development has not been reported (September 2009).



The matter was reported to the department in July 2008 and Government in September 2008; their reply has not been received (September 2009).

- During scrutiny of records in CTO, special circle, Alappuzha in April 2008, it was noticed that while finalising the assessment of a dealer in sea food and spices for the year 2004-05, the AA did not include the closing stock as on 31st March, 2005 of pepper valued at ₹ 1.94 crore in the total turnover. This resulted in non-levy of tax of ₹ 7.76 lakh.

After the case was reported to the department in July 2008 and Government in August 2008, the Government stated in December 2008 that the stock held by the assessee as on 31st March, 2005 is the stock in the course of export in order to fulfil the export order and hence not taxable at the point of last purchase under the KGST Act. The reply was not correct as section 59(4) does not provide for exemption in such circumstances. Moreover, exemption under section 5(3) of the CST Act would be available only after actual export of the goods and the dealer would get the refund of tax paid. If exemption was granted on the closing stock on the plea of sale in the course of export and export was not effected, the turnover would escape assessment.

- During scrutiny of records in AIT & CTO, Nedumkandam in March 2008, it was noticed that while finalising the assessments of five dealers in pepper for the year 2004-05, the AA did not include the closing stock as on 31st March, 2005 of pepper valued at ₹ 1.64 crore in the total turnover. This resulted in non-levy of tax of ₹ 6.58 lakh.

After the case was reported to the department in April 2008 and Government in August 2008, the Government stated in March 2009 that in all the cases assessments were revised. A report on recovery has not been received (September 2009).

- During scrutiny of records in the CTO, Chathannoor in August 2008, it was noticed that while finalising the assessment of a dealer engaged in the business of timber, for the year 2003-04, the AA though levied tax on the suppressed turnover of ₹ 94.08 lakh, did not levy interest under section 23(3A) on the tax due on the suppressed turnover. Non-levy of interest worked out to ₹ 5.76 lakh.

After the case was reported to the department in August 2008 and Government in December 2008, the Government stated in June 2009 that the assessment had been revised and entire amount demanded. The report on recovery has not been received (September 2009).

- During scrutiny of records in CTO, special circle, Kottayam, in November 2008, it was noticed that the assessment of a dealer in rubber for the year 2004-05 was originally completed in November 2007 and was revised under Section 19 of the KGST Act in February 2008 to assess the closing stock of rubber held on 31st March, 2005. The assessee was engaged in the sales of rubber collected from their own estate and rubber purchased from other dealers. While revising the assessment, the closing stock was determined at ₹ 31.11 lakh instead of ₹ 1.04 crore. This resulted in short levy of ₹ 4.47 lakh by way of tax and interest.

After the case was pointed out, the AA stated in January 2009 that the case would be examined. Further report has not been received (September 2009).

The matter was reported to the department in February 2009 and Government in April 2009; their reply has not been received (September 2009).

- During scrutiny of records in CTO, special circle, Palakkad in March 2008, it was noticed that while completing the assessment of a dealer for the year 2004-05, although additional demand of ₹ 18.11 lakh was created on the basis of suppression detected, interest due on the additional demand created was not levied. This resulted in non-levy of interest of ₹ 4.16 lakh.

After the case was pointed out in March 2008, the AA issued notice to levy interest. Further development has not been reported (September 2009).

The matter was reported to the department in May 2008 and Government in August 2008; their reply has not been received (September 2009).

- During scrutiny of records in the office of the IAC, Kattapana in June 2008, it was noticed that while finalising the assessment of a dealer for the year 2004-05, the AA though levied tax on the suppressed turnover of ₹ 65.16 lakh relating to rubber cess, did not levy interest under section 23(3A) on the tax due on the suppressed turnover. Non-levy of interest worked out to ₹ 3.13 lakh.

After the case was pointed out, the Government stated in December 2008 that notice had been issued to rectify the mistake. Further report on the matter has not been received (September 2009).

- During scrutiny of records in CTO, second circle, Palakkad in March 2008, it was noticed that while completing the assessment of a dealer in rubber for the year 2004-05, the closing stock of rubber valued at ₹ 65.35 lakh was not assessed to tax. This resulted in short levy of tax of ₹ 2.61 lakh.

After the case was pointed out, the AA stated in April 2008 that notice had been issued to revise the assessment. Further report on recovery has not been received (September 2009).

The matter was reported to the department in May 2008 and Government in August 2008; their reply has not been received (September 2009).

Under the KGST Act, if goods liable to tax under the Act are purchased in circumstances in which no tax is payable and used in the manufacture of other goods for sale or disposed off otherwise than by way of sale, the turnover relating to such purchase is liable to tax. By a notification issued under the Act, Government have reduced the rate of tax payable on the purchase turnover of ayurvedic herbs, firewood and other articles for consumption or use in the manufacture of ayurvedic medicines to four per cent.

During scrutiny of records in CTO, fourth circle, Kozhikode in August 2008, it was noticed that while finalising the assessments of a dealer for the years 2002-03 and 2003-04, the purchase turnover was incorrectly estimated at 50 per cent of intra state sales turnover only instead of the total sales turnover. Non-inclusion of inter-state sales turnover valued at ₹ 5.26 crore and forming part of the total turnover, in estimating the total purchase turnover, resulted in short levy of tax of ₹ 11.92 lakh.

After the case was pointed out, the AA stated (August 2008) that 50 per cent of the local sales was only a criterion adopted to arrive at the purchase turnover as no material evidence was available before the AA and it was estimated based on the total local sales effected for both the years. The reply was not correct as while arriving at such a criterion, the AA was bound to consider the total sales turnover, as the purchase was for the total production.

The matter was reported to the department in October 2008 and Government in January 2009; their reply has not been received (September 2009).

Under the KGST Act, as it stood prior to 1st April, 2004, the taxable turnover of a dealer in respect of transfer of property involved in the execution of works contract shall be arrived at after deducting labour charges and cost of establishment and profit earned to the extent it is relatable to the supply of labour.

During scrutiny of records in CTO, WC and LT, Thrissur in August 2007, it was noticed that while finalising the assessments of two dealers for 2001-02 and 2002-03, exemption of ₹ 40.78 lakh on account of labour, inter-state

purchase, river sand etc., was granted irregularly, thereby incorrectly computing the taxable turnover as ₹ 1.02 crore instead of ₹ 1.43 crore. This resulted in short levy of tax of ₹ 4.08 lakh.

After the cases were reported to the department in September 2007 and Government in August 2008, the Government stated in April 2009 that the assessments were revised and revenue recovery certificate issued for collection of arrear. A report on recovery has not been received (September 2009).

#### **Non/short levy due to incorrect computation**

Under the KGST Rules, after making final assessment, the AA shall, examine whether any and if so, what amount is due from the dealer towards the final assessment after deducting any tax already paid. Instructions in this regard have been issued by the erstwhile Board of Revenue (Taxes) laying down departmental procedures for verifying and checking all calculations and credits given in an assessment order.

- During scrutiny of records in CTO, Payyannur in January 2008, it was noticed that while finalising the assessments of two dealers for the year 2004-05, the AA erroneously computed the tax due in one case as ₹ 94,525 against ₹ 9,42,526 and in the other case tax due was worked out as ₹ 2.58 lakh against ₹ 3 lakh. This resulted in short levy of tax of ₹ 8.90 lakh.

After the case was pointed out, the department stated in October 2008 that the assessment had been revised in one case and in the other case it would be examined. Report on recovery in the first case and further development in the other case have not been received (September 2009).

The matter was reported to the Government in September 2008; their reply has not been received (September 2009).

- During scrutiny of records in CTO, second circle, Kollam in June 2008, it was noticed that while finalising the assessments of a dealer in vehicles, the sales turnover of spares for 2003-04 and 2004-05 was assessed to tax on a turnover of ₹ 45.66 lakh and ₹ 41.79 lakh respectively instead of ₹ 63.41 lakh and ₹ 68.57 lakh respectively. This resulted in short levy of tax and AST of ₹ 4.04 lakh.

After the case was pointed out, the department stated in November 2008 that the assessment for the year 2003-04 was revised and notice issued to revise the assessment for the year 2004-05. Further report has not been received (September 2009).

The matter was reported to the Government in September 2008; their reply has not been received (September 2009).

- During scrutiny of records in CTO, special circle, Thrissur in April 2008, it was noticed that while finalising the assessments of a dealer in pharmaceuticals for the years 2002-03 to 2004-05, the AA arrived at the balance tax due for the three years as ₹ 3.32 lakh. However, after setting off an excess credit of ₹ 1.01 lakh for the year 2001-02 against the balance tax due for the years 2002-03 to 2004-05, the AA arrived at the balance tax due as 'Nil'. This resulted in short levy of tax and interest of ₹ 2.84 lakh.

After the case was pointed out, the Government stated in December 2008 that the assessments were revised. A report on recovery has not been received (September 2009).

- During scrutiny of records in CTO, second circle, Palakkad in March 2008, it was noticed that while finalising the assessment of a dealer engaged in manufacture and sale of cotton yarn for the year 2004-05, the AA incorrectly computed tax due on the taxable turnover of ₹ 1.36 crore as ₹ 31,000 instead of ₹ 3.12 lakh. This resulted in short levy of tax of ₹ 2.81 lakh.

After the case was pointed out, the Government stated in December 2008 that the mistake had been rectified and revenue recovery certificate issued for realisation of arrears. A report on recovery has not been received (September 2009).

Under the KGST Act, any dealer in gold or silver ornaments or wares, may at his option instead of paying tax on his taxable turnover at the rates shown in the schedule to the Act, pay compounded tax at two hundred per cent of tax payable by him as conceded in the return or accounts or the tax paid for the immediate preceding year whichever is higher. Further, if an assessee paying tax in accordance with the provisions of section 7(1) (a) of the Act opens a new branch during a year, such branch shall be treated as an independent place of business and these provisions shall also apply to it.

During scrutiny of records in CTO, special circle I, Ernakulam in February 2008, it was noticed that while finalising the assessment for the year 2003-04, of a dealer in jewellery of gold who was paying tax under the KGST Act for his principal place of business and had not opted for compounding, the AA incorrectly allowed the assessee to pay compounded tax for their newly opened branches. This resulted in short levy of tax of ₹ 22.66 lakh.

After the case was reported to the department in April 2008 and Government in August 2008, the Government stated in July 2009 that the assessment had been set aside for fresh disposal. Further report on the matter has not been received (September 2009).

#### **Non/short levy in fast track assessments**

Under the KGST Act, a fast track method of completion of assessment was introduced vide Kerala Finance Act 2007, whereby all KGST assessments up to 2004-05 were to be completed by a team of officers. Under the provisions of the Act, no assessment completed by the teams shall be reopened unless there is fresh receipt of material pertaining to tax evasion and in other case the assessment may be reopened with the prior permission of CCT.

The deficiencies noticed in three CTOs while finalising fast track assessments were as mentioned below:

<i>Sl. No.</i>	<i>Assessment circle Year of assessment</i>	<i>Nature of objection</i>	<i>Turn over (₹)</i>	<i>Tax effect (₹)</i>
(1)	(2)	(3)	(4)	(5)
1.	CTO, Spl. circle (Produce), Mattancherry 2001-02 to 2004-05	Taxable turnover pertaining to electrical contract exceeding ₹ 50 lakh was assessed to tax at the rate of five per cent instead of at the correct rate of 5.6 per cent.	14.24 crore	9.82 lakh
	2002-03 to 2004-05	While finalising the assessments of a dealer in foreign liquor, surcharge was not levied on the total tax due for the three years.	48.16 lakh	4.82 lakh
	2002-03 to 2004-05	While finalising the assessments of a dealer in foreign liquor, the tax collected on the sale of imported spirit and wine was omitted from the levy of turnover tax.	48.15 lakh	4.82 lakh
	2001-02	The AA incorrectly exempted the sales turnover of tea, claimed by the assessee as export sales, not covered by declaration in form H and other supporting documents, and thus taxable at 10 per cent.	37.93 lakh	3.79 lakh

(1)	(2)	(3)	(4)	(5)
2003-04	Tax due on sale of rubber was incorrectly computed as ₹ 4.75 crore instead of ₹ 4.79 crore.			3.65 lakh
2001-02 to 2004-05	The AA incorrectly applied the rate of 10 per cent instead of the correct rate of 11 per cent plus AST, on the inter state sales turnover of rubber not covered by declaration in form C.	1.05 crore		2.77 lakh
2001-02	The AA incorrectly appropriated the remittances amounting to ₹ 7.25 lakh paid by the assessee during the months of October 2003 and March 2007 towards tax due instead of first appropriating it towards interest. As a result, instead of granting credit of ₹ 1.43 crore, the assessee was allowed an incorrect credit of ₹ 1.46 crore.			2.69 lakh

After the cases were pointed out, the AA stated in June 2008 that the assessments were revised and short levy made good. It was however, noticed that the assessments were completed under the fast track scheme. Revision of assessment could be made only with the prior permission of CCT and hence the assessments revised at the lower level would be null and void. The matter was reported to the department in July 2008 and Government in September 2008; their reply has not been received (September 2009).

2	IAC, Kattappana 2003-04 and 2004-05	The AA failed to levy tax on the purchase turnover of raw materials purchased from unregistered dealers for the manufacture of ayurvedic soaps, even though the assessee had returned it as taxable.	76.85 lakh	3.54 lakh
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(1)	(2)	(3)	(4)	(5)
				After the case was reported to the department in July 2008 and Government in August 2008, the Government stated in April 2009 that as the assessments were completed under fast track scheme, the AA had requested the permission of CCT to revise the assessments. Further development in the matter has not been reported (September 2009).

- |    |   |  |            |           |
|----|---|--|------------|-----------|
| 3. | CTO,<br>Special Circle III,<br>Ernakulam<br>2003-04 and 2004-05 | The AA incorrectly levied tax on the sales turnover of water purifier at the rate of eight per cent instead of at the correct rate of 12 per cent. | 51.45 lakh | 2.35 lakh |
|----|---|--|------------|-----------|

After the case was pointed out, the AA stated in June 2008 that detailed reply would be furnished immediately. Further reply has not been received (September 2009). The matter was reported to the department in July 2008 and Government in September 2008; their reply has not been received (September 2009).

#### **Non-levy of additional sales tax**

Under the CST Act, inter state sale of goods, other than declared goods, if not supported by declaration in form C, is liable to tax at the rate of 10 per cent or at the rate applicable to the sale or purchase of such goods under the KGST Act, whichever is higher. Under the KGST Act, tax leviable on goods is to be enhanced by additional sales tax at the rate of 15 per cent.

During scrutiny of records in CTO, fourth circle, Kozhikode in August 2008, it was noticed that while finalising the assessments of a dealer in fairness oil and ayurvedic soap for the year 2002-03 to 2004-05, the AA levied tax at the rate applicable under the KGST Act i.e., 20 and 12 per cent respectively, on the inter-state sales turnover of goods, not covered by form C but omitted to enhance the tax by additional sales tax leviable under the KGST Act. This resulted in short levy of tax of ₹ 14.03 lakh.

After the case was pointed out, the department did not furnish any specific reply (September 2009).

The matter was reported to the Government in January 2009; their reply has not been received (September 2009).

During scrutiny of records in CTO, special circle I, Kozhikode in November 2008, it was noticed that while finalising the assessment of a dealer in jewellery of gold for the year 2004-05, tax at compounded rate was fixed at ₹ 40.69 lakh. But AST leviable at 15 per cent on the tax was not levied. This resulted in non-levy of AST of ₹ 6.10 lakh.



After the case was reported to the department in January 2009 and Government in March 2009, the Government stated in July 2009, that AST was included in the compounded tax determined. The reply was not tenable, as under Section 5D of the KGST Act, tax payable should be increased by an additional sales tax at the rate of 15 per cent. Besides, the High Court of Kerala in its judgment\* has held that additional tax was also leviable on compounded tax.

#### **Non-levy of tax due to misuse of Form 18 declaration**

Under Section 5(3) of the KGST Act, tax payable by a dealer in respect of any sale of industrial raw materials, component parts, containers or packing materials which are liable to tax at a rate higher than three per cent when sold to any industrial unit for use in the manufacture of finished products inside the State for sale or for packing of the finished products inside the State for sale shall be three per cent, provided declarations in form 18 are filed. Under sub-clause (ii) of the above section and under section 45A (1) (f) of the Act, where any dealer after purchasing any goods by furnishing form 18 declarations, fails to make use of the goods for the purpose for which it was furnished, shall be liable to pay the tax that would have been payable by him, had the declaration not been furnished less tax, if any, paid by him and penalty not exceeding double the amount of tax sought to be evaded. The dealer is also liable to pay interest on the tax evaded.

During scrutiny of records in CTO, special circle, Kollam in August 2006, it was noticed that a dealer in aluminium/stainless steel utensils, pressure cooker etc., had purchased zinc using form 18 declarations which was not used inside the State for the manufacture of finished products but was used only as a consumable in the galvanization process of electrical line materials, on behalf of Kerala State Electricity Board, during 2000-01 to 2002-03. The AA however, did not levy tax on the aforesaid item. This resulted in a short levy of tax, interest and penalty of ₹ 13.73 lakh.

After the case was pointed out, the department revised the assessments in December 2008 creating an additional demand of ₹ 16.76 lakh by way of tax, interest and penalty. A report on recovery has not been received (September 2009).

The matter was reported to the Government in April 2009; their reply has not been received (September 2009).

#### **Non-forfeiture of tax**

Under the KGST Act, any sum collected by any person by way of tax in contravention of Section 22 of the Act shall be liable to be forfeited to the Government by an order issued by the AA.

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\* M/s Bhima Jewellery Vs. The Assistant Commissioner (Assessment) and ANR in KTR 80.

During scrutiny of records in CTO, special circle I, Ernakulam in March 2008, it was noticed that while finalising the assessment of a dealer in drugs for the year 2002-03, the AA levied tax on the turnover of ₹ 41.63 lakh at the rate of eight per cent even though the assessee had collected tax and returned it as taxable at the rate of 12.5 per cent. However, the excess tax collected was not forfeited to Government. This resulted in non-forfeiture of tax of ₹ 2.15 lakh.

After the case was pointed out, the department stated in November 2008 that report would be furnished separately. Further development has not been received (September 2009).

The matter was reported to the Government in August 2008; their reply has not been received (September 2009).

#### **Non/short raising of demand**

The KGST Rules and the instructions issued in February 1992 by the erstwhile Board of Revenue (Taxes), lay down departmental procedures for verifying and checking of all calculations and credits in an assessment order as well as in issuing demand notice and revenue recovery certificate.

During scrutiny of records in CTO, second circle, Thiruvananthapuram in March 2008, it was noticed that while reopening the assessments, completed under section 17(4) of the KGST Act, of a dealer, on detection of suppressed turnover for the years 2001-02 and 2002-03, the AA levied tax, interest and penalty of ₹ 55.72 lakh for the years 2001-02 and 2002-03 and demand notice was issued for that amount. But RRC was issued for ₹ 40.73 lakh only leaving a balance of ₹ 14.99 lakh. This has resulted in short demand of ₹ 14.99 lakh in the revenue recovery certificate issued.

After the case was reported to the department in April 2008 and Government in August 2008, the Government stated in December 2008 that the mistake has been rectified and the short demand has been advised for revenue recovery. A report on recovery has not been received (September 2009).

During scrutiny of records in the CTO, WC and LT, Ernakulam in January 2008, it was noticed that while finalising the assessment of a dealer in works contract for the year 2002-03, the AA exempted the turnover of works contract valued at ₹ 76.49 lakh executed on sub-contract basis as the turnover was assessed on the principal contractor. However, credit for tax paid on this turnover was afforded both to the principal contractor as well as to the assessee. This resulted in incorrect grant of credit of ₹ 7.39 lakh.

After the case was reported to the department in March 2008 and Government in July 2008, the Government stated in December 2008 that the

assessment had been revised withdrawing the credit and the balance dues was advised for revenue recovery. A report on recovery has not been received (September 2009).

### Value Added Tax

#### Misclassification of goods

During scrutiny of records in nine CTOs\* between August 2008 and January 2009, it was noticed that in 15 cases the dealers misclassified the goods and tax was paid at rates ranging between zero and four per cent instead of four and 12.5 per cent as mentioned below:

Sl. No	Name of Office Returned year	Commodity	Rate applicable/ Rate applied	Turnover (₹)	Short levy of tax and interest (₹ in lakh)
(1)	(2)	(3)	(4)	(5)	(6)
1	Special circle, Thiruvananthapuram 2005-06 and 2006-07	Modem	<sup>12.5</sup> / <sub>4</sub>	4.93 crore	52.73

After the case was pointed out in January 2009, the department revised the assessments in February 2009, levying tax and interest as pointed out in audit. A report on recovery has not been received (September 2009).

2006-07	Set top box	<sup>12.5</sup> / <sub>4</sub>	62.98 lakh	7.82
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After the case was pointed out in January 2009, the department revised the assessment in March 2009 levying tax on set top boxes at 12.5 per cent along with interest. A report on recovery has not been received (September 2009).

2005-06 and 2006-07	Pigments and preparation based on iron oxide	<sup>12.5</sup> / <sub>4</sub>	71.17 lakh	7.60
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After the case was pointed out in December 2008, the AA stated in December 2008 that the matter would be examined. Further report has not been received (September 2009).

2005-06	Rubber trees	<sup>12.5</sup> / <sub>4</sub>	31.02 lakh	3.48
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After the case was pointed out, the AA stated in December 2008, that the case would be examined. Further reply has not been received (September 2009).

\* Cherthala, Karunagappally, first circle Kollam, Kunnankulam, Manjeri, Punalur, Nedumangad, spl. circle Thiruvananthapuram and second circle Thrissur.

(1)	(2)	(3)	(4)	(5)	(6)
2	CTO, Kunnamkulam 2005-06 2006-07	Harpic and Lizol Dettol	<sup>12.5</sup> / <sub>4</sub>  <sup>4</sup> / <sub>0</sub>	1.17 crore  54.78 lakh	21.49
	After the case was pointed out, the AA stated in January 2009 that the case would be examined. Further reply has not been received (September 2009).				
	2005-06 and 2006-07	Ayurvedic tooth powder	<sup>12.5</sup> / <sub>4</sub>	47.34 lakh	5.00
	After the case was pointed out, the department stated in June 2009 that notice had been issued to revise the assessment. Further development has not been reported (September 2009).				
	2005-06 and 2006-07	Harpic	<sup>12.5</sup> / <sub>4</sub>	31.50 lakh	3.40
	After the case was pointed out, the AA stated in January 2009 that the case would be examined. Further reply has not been received (September 2009).				
	2006-07	Vicks	<sup>12.5</sup> / <sub>0</sub>	22.05 lakh	3.34
	After the case was pointed out, the AA stated in January 2009 that the case would be examined. Further reply has not been received (September 2009).				
3	Second circle, Thrissur 2006-07	PVC doors and frames	<sup>12.5</sup> / <sub>4</sub>	95.01 lakh	8.08
	After the case was reported to the department in October 2008 and Government in January 2009, the Government stated in July 2009, that the PVC profiles were taxable at four per cent vide clarification of the CCT. The reply was not correct as the entry 99(1)(i)(iii) relates to pipes, channels, profiles made of plastic/PVC, while, doors, windows, ventilators, partitions made of any material including plastic were included in residuary schedule taxable at the rate of 12.5 per cent.				
4	CTO, Cherthala 2005-06	Mosquito repellent, Harpic, Lizol etc.	<sup>12.5</sup> / <sub>4</sub>	42.99 lakh	4.65
	After the case was pointed out, the AA stated in December 2008 that the matter would be examined. Further reply has not been received (September 2009).				

(1)	(2)	(3)	(4)	(5)	(6)
5	CTO, Punalur 2005-06 and 2006-07	Expeller variety of Ground nut and coconut oil cake	<sup>4</sup> / <sub>0</sub>	98.29 lakh	3.93
After the case was reported to the Government in January 2009, the Government stated in June 2009 that the assessment had been revised. A report on recovery has not been received (September 2009).					
6	CTO, Nedumangad 2005-06 and 2006-07	Expeller variety of Gingilly oil cake	<sup>4</sup> / <sub>0</sub>	74.91 lakh	3.00
After the case was pointed out, the Government stated in January 2009 that the escaped turnover was brought to assessment creating an additional demand of ₹ 3 lakh. A report on recovery has not been received (September 2009).					
7	CTO, Manjeri 2005-06 and 2006-07	Warranty replacement charges of vehicles	<sup>12.5</sup> / <sub>0</sub>	21.62 lakh	2.70
After the case was pointed out, the AA stated in August 2008 that the case would be examined. Further reply has not been received (September 2009).					
8	CTO, Karunagappally 2005-06	Coconut oil cake	<sup>4</sup> / <sub>0</sub>	46.72 lakh	2.39
After the case was pointed out, the department stated in January 2009 that the assessment was revised, creating an additional demand of ₹ 1.94 lakh and interest of ₹ 0.56 lakh. A report on recovery has not been received (September 2009).					

The cases were reported to the Government in April 2009; their reply has not been received in respect of cases other than the three cases\* mentioned in the table (September 2009).

#### **Miscellaneous observations**

##### *Non/short levy of output tax*

Under the KVAT Act, in the case of transfer of goods involved in the execution of works contract, where transfer is not in the form of goods, but in

\* CTO Nedumangad, Punalur and second circle Thrissur.

some other form, the contractor shall pay tax at the rates applicable to the goods used in the work up to 30 June 2006 and at 12.5 per cent thereafter irrespective of the nature of goods.

During scrutiny of records in CTO, WC & LT, Ernakulam in February 2009, it was noticed that while scrutinising the self assessment of a contractor who transferred goods in some other form for the year 2006-07 was incorrectly assessed to tax on the goods so transferred at the rate applicable to the goods instead of 12.5 per cent from July 2006. Besides this, output tax was also assessed for a turnover less than that revealed in the accounts. This resulted in short assessment of tax of ₹ 85.55 lakh.

After the case was pointed out, the AA stated in February 2009 that the case would be examined. Further reply has not been received (September 2009).

The matter was reported to the department in March 2009 and Government in April 2009; their reply has not been received (September 2009).

Under the KVAT Act, any discount allowed after the sale is over by issuing credit notes, which is not reflected in the invoice, shall not be exempted from the turnover.

During scrutiny of records in CTO, special circle I, Kozhikode in November 2008, it was noticed that a dealer in cement during 2005-06 excluded from his turnover, trade discount of ₹ 2.16 crore allowed through credit notes subsequent to sale which were not reflected in the sales invoice. Failure to take action to get the defect rectified resulted in short levy of output tax and interest of ₹ 35.12 lakh.

After the case was pointed out, the AA stated in December 2008 that notice had been issued. Further reply has not been received (September 2009).

The matter was reported to the department in January 2009 and Government in April 2009; their reply has not been received (September 2009).

Instructions issued by the erstwhile Board of Revenue (Taxes) lay down departmental procedures for verifying and checking all calculations and credits given in an assessment order.

During scrutiny of records in CTO, special circle, Thiruvananthapuram in December 2008, it was noticed that a dealer in cooked food, soda/soft drinks and ice cream for the year 2006-07, assessed output tax on sales turnover of the above items for ₹ 15.54 crore as conceded in the return instead of at the actual sale of ₹ 15.75 crore disclosed in the certified annual accounts. Short levy of output tax and interest on the differential turnover of ₹ 21.49 lakh works out to ₹ 3.60 lakh.

After the case was pointed out, the AA stated in December 2008 that the matter would be examined. Further report has not been received (September 2009).

The matter was reported to the department in January 2009 and Government in April 2009; their reply has not been received (September 2009).

#### **Excess/incorrect allowance of input tax**

Under the KVAT Act, input tax credit on stock transfer of goods outside the state is not permitted. However, in such cases input tax paid in excess of four per cent can be refunded while input tax of four per cent already allowed shall be assessed as reverse tax.

- During scrutiny of records in CTO, special circle I, Kozhikode in December 2008, a dealer in palmolein/palm oil availed input tax credit of ₹ 1.33 crore on entire purchase of palmolein/palm oil and Duty Entitlement Pass Book (DEPB) licenses during 2005-06. The dealer did not assess input tax proportionate to the turnover of consignment sale of palm oil as reverse tax. Failure to take action to get the defect rectified resulted in short levy of output tax and interest of ₹ 45.53 lakh.

After the case was pointed out, the AA stated in December 2008 that notice was issued. Further report has not been received (September 2009).

The matter was reported to the department in January 2009 and Government in April 2009; their reply has not been received (September 2009).

- During scrutiny of records in CTO, special circle, Kannur in December 2008, it was noticed that an assessee engaged in manufacture and sale of furniture/treated rubber wood, transferred products valued at ₹ 5.40 crore to outside the State otherwise than by way of sale during the years 2005-06 and 2006-07. However, the assessee availed input tax credit on the entire tax paid, on purchase of raw materials, instead of limiting it to tax paid in excess of four per cent. This resulted in excess input tax credit of ₹ 9.20 lakh. Even after adjusting the excess input tax credit of ₹ 6.21 lakh, tax due but not demanded worked out to ₹ 2.98 lakh.

After the case was pointed out, the AA stated in December 2008 that since the assessee had availed of input tax credit fully, reverse tax under Section 11(7) and other tax liability would be ascertained after gathering details. Further developments have not been reported (September 2009).

The matter was reported to the department in January 2009 and Government in April 2009; their reply has not been received (September 2009).

Under the KVAT Act, no input tax credit shall be allowed for the purchases of goods which are used in the manufacture, processing or packing of goods specified in the First or Fourth Schedule. Under the KVAT Rules, if taxable goods are used partly in relation to taxable and exempted transaction, input tax/special rebate should be apportioned in the ratio of taxable and exempted turnover and input tax pertaining to exempted turnover should be disallowed.

- During scrutiny of the records in CTO, special circle I, Kozhikode in November and December 2008, it was seen that three assessees engaged in the manufacture and sale of wheat and wheat products during 2005-06 and 2006-07, availed entire input tax credit on tax paid on purchase of wheat, though input tax credit proportionate to turnover of wheat bran included in Schedule-I as well as consignment sale of wheat products were to be disallowed. Failure to get the defects rectified resulted in grant of excess input tax credit and interest of ₹ 15.32 lakh.

After the case was pointed out, the AA stated between November 2008 and December 2008 that in one case an amount of ₹ 8.12 lakh has been collected and notice issued in respect of the other two cases. Further development has not been reported (September 2009).

The matter was reported to the department in January 2009 and Government in April 2009; their reply has not been received (September 2009).

- During scrutiny of records in CTO, special circle, Kannur in December 2008, it was noticed that input tax on raw materials to be disallowed on non-taxable sale of coir product and consignment sale of fibre foam mattress was incorrectly arrived at by a manufacturer at ₹ 2.61 lakh and ₹ 3.48 lakh instead of ₹ 6.28 lakh and ₹ 7.40 lakh for the years 2005-06 and 2006-07. Failure to rectify the defects resulted in short levy of tax and interest of ₹ 9.55 lakh.

After the case was pointed out, it was stated in December 2008 that the case would be examined. Further report has not been furnished (September 2009).

The matter was reported to the department in January 2009 and Government in April 2009; their reply has not been received (September 2009).

Under the KVAT Act, no input tax credit shall be allowed for the purchases from a dealer paying compounded tax under the Act. During scrutiny of records in CTO, special circle I, Kozhikode in November 2008, it was noticed that during the year 2006-07, a dealer in medicine who opted for payment of compounded tax availed input tax credit of ₹ 4.03 lakh for purchases aggregating ₹ 31.32 lakh from dealers who had also opted for payment of tax under



compounding. No action was taken to disallow the input tax credit. This resulted in short levy of tax of ₹ 4.03 lakh.

After the case was pointed out, the AA stated in November 2008 that notice had been issued. Further report has not been received (September 2009).

The matter was reported to the department in January 2009 and Government in April 2009; their reply has not been received (September 2009).

Under the KVAT Act, a dealer can avail input tax credit of tax paid on the purchases made by him.

During scrutiny of records in CTO, special circle I, Kozhikode in November 2008, it was noticed that a dealer in cement in his return for 2005-06 claimed input tax credit of ₹ 3.91 lakh against advance payment of KGST for 2004-05 and special rebate of ₹ 3.22 lakh which actually pertained to provision for discount, which were not allowable under the Act. The omission to rectify the defects resulted in granting of excess input tax credit of ₹ 7.13 lakh.

After the case was pointed out in November 2008, the AA issued notice to rectify the defect. Further report has not been received (September 2009).

The matter was reported to the department in January 2009 and Government in April 2009; their reply has not been received (September 2009).

#### **Turnover escaping assessment**

Under the KVAT Act, if any part of the turnover of business of a dealer escaped assessment to tax, the AA can proceed to determine to best of his judgment, turnover which has escaped assessment to tax and where any dealer has failed to include any turnover of his business in any return filed or any turnover or tax has escaped assessment, interest shall accrue on the tax due on such turnover or tax with effect from such date on which the tax would have fallen due for payment. The defaulter shall pay simple interest at the rate of 12 per cent per annum on the tax or other amount defaulted. Further, accessories of motor vehicles are taxable at the rate of 12.5 per cent and used vehicles at the rate of four per cent. It has been judicially held\* by the Apex Court that payment received by the assessee from the manufacturer, on account of replacement of defective parts as a result of the warranty agreement between manufacturer and customer, is sale of goods and liable to tax.

During scrutiny of records in CTO, special circle, Thiruvananthapuram in November 2008, it was noticed that a dealer claimed exemption for an amount of ₹ 1.67 crore towards labour charges during the year 2005-06 but failed to include

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\* M/s Mohd. Ekram Khan & Sons Vs. Commissioner of Trade tax of UP in 12 KTR 572 (SC).

the sales turnover on account of warranty claims estimated at 50 per cent of the warranty charge in respect of replacement of defective parts valued at ₹ 87.89 lakh in the taxable turnover. This resulted in short levy of tax and interest of ₹ 14. 61 lakh.

After the case was pointed out, the AA stated in December 2008 that the assessment had been revised and balance tax demanded. A report on recovery has not been received (September 2009).

The matter was reported to the department in January 2009 and Government in March 2009; their reply has not been received (September 2009).

During scrutiny of records in CTO, special circle, Thiruvananthapuram in November 2008, it was noticed that during the year 2005-06, a dealer in automobiles, did not include the sales turnover on account of 'Offer-Accessories' valued at ₹ 37.69 lakh and income derived from exchange of old vehicles valued at ₹ 4.23 lakh, in the taxable turnover. This resulted in short levy of tax and interest of ₹ 6.49 lakh.

After the case was pointed out, the AA stated in December 2008 that the assessment had been revised rectifying the mistake. Report on recovery has not been received (September 2009).

The matter was reported to the department in January 2009 and reported to the Government in March 2009; their reply has not been received (September 2009).

[Paragraph 2.4 contained in the Report of the Comptroller and Auditor General of India for the year ended 31st March, 2009 Volume-I (Revenue Receipts)].

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

The Committee asked about the loss of ₹ 2.01 crore occurred due to the exemptions of integrated sales turnover of ₹ 15.90 crore granted to Centrifuged Latex in the case of M/s. Kuttiyanikkal Rubbers (P) Ltd., Mundakkayam.

2. The Secretary, Taxes Department replied that exemptions were actually granted to the tune of ₹ 2.32 crore and ₹ 1.30 crore has been collected. The remaining amount is yet to be collected. To the Committee's enquiry the witness explained that the amount of ₹ 1.30 crore already collected was adjusted in the advance payment received in 2002-03, and disciplinary action had been initiated against the concerned officer. The witness, Commissioner, Commercial Taxes Department further detailed that the District Collector, Idukki was directed to

initiate revenue recovery proceedings against the defaulter. The Committee strictly demanded to recover that amount from the defaulter and directed to make available a copy of revenue recovery proceedings to the Committee.

3. The Committee asked about the reason for the Sales Tax exemption of ₹ 70.34 lakh given to M/s Rose India Exporters and Importers, Thiruvananthapuram by considering them as a Small Scale Industrial Unit.

4. The Secretary, Taxes Department replied that the classifications of industrial unit were decided by the Industries Department and since they were the concerned authority, no interference is done by the Sales Tax Department. The Sales Tax exemption is granted to the firm because it was being treated as an SSI unit by the Industries Department.

5. The Committee questioned whether the Sales Tax Department has the responsibility to verify the correctness of steps taken by the Industries Department. Then the Secretary, Taxes Department replied that if any anomaly was found, it would be taken up with the Industries Department. The Commissioner, Commercial Taxes Department pointed out the court order which clarified that the judgment on the exemption granted by the Department of Industries and Commerce could not be switched over by the Taxes Department.

6. The Committee again asked whether the assembling of lens and frames for the making of spectacles, goggles, glasses, framed attachments etc., come under the term 'Manufacturing' and enquired whether SSI Registration is given to manufacturing units or shops. The Commissioner, Commercial Taxes replied that SSI Registration was given to the factory which grinds the lenses to a specified vision power and shape with the aid of machines and then supplied to the retailers. But the High Court of Andhra Pradesh made a judgment that grinding cannot be considered as manufacturing. The Commissioner, Commercial Taxes Department further explained that taxes should not be levied after SSI registration had been given. On the Committee's enquiry whether the subsidy, earlier given by Government to SSI units, was given to this company, the Secretary, Taxes Department answered in the affirmative.

7. The Committee doubtfully opined that a firm named 'Kalluvellil Optical', which actually does not exist, had been given the dealership for effecting the sales of spectacles. To this, the Commissioner, Commercial Taxes Department clarified that the company named Kalluvellil Optical at Amburi had functioned only for three months and the purchase of materials had been effected during that period. The Committee directed that a consensus should be reached between Industries Department and Sales Taxes Department. As per the judgment No. 513 of the Hon'ble High Court of Kerala regarding various Taxes cases

of 1991, Taxes Department should accept the licenses once issued by the Industries Department. The Committee recommended that both departments should take a clear stand regarding such cases in future.

8. The Committee enquired the reason for the exemption of tax of ₹ 10.28 crore to a notebook dealer during the period from 1994-95 to 2001-02 which resulted in a loss of ₹ 35.39 lakh and exemption of ₹ 7.91 crore to 15 notebook dealers in 2004-05 which incurred a loss of ₹ 29.68 lakh thereby making a total loss of ₹ 65.07 lakh. The Secretary, Taxes Department replied that as per the Judgment of the Hon'ble High Court, converting of paper into notebook does not involve manufacturing element. This decision had been taken into consideration in the assessments years 1985-86 to 1988-89 when there was no specific entry for Notebook in the KGST Act. The Committee opined that the decision was taken in 1979 and to overcome the entry 94 (ii), 106 (ii) was inserted through an amendment in 1992. The Committee also opined that if the provision in the Act has retrospective effect, the same can be applied to this entry also.

9. About the issue of whether notebook making is manufacturing or not, the Commissioner, Commercial Taxes Department further clarified that since exercise book is a collection of sheets of paper stitched together by a piece of string or pins or pins of stapler, it cannot be considered as a distinct commodity. The Commissioner, Commercial Taxes Department cited the example of a litigation between Kunnankulan Book Company V/s. State of Kerala in which the Hon'ble High Court ordered that since the conversion of paper into books did not involve a manufacturing process, the company was not liable to pay tax. To this, the Committee stated that its earlier observation that conversion of paper into books is a manufacturing process was because the first decision had not been brought to the notice of the Committee at the time of consideration of the audit para. But in the light of the new judgment, the company was liable to pay tax. The Secretary, Commercial Taxes Department replied that it is not clear whether the second judgment had retrospective effect. But the Committee interpreted that the second judgement might have a retrospective effect. After hearing the opinion of Commissioner, Commercial Taxes Department that the limitation period had been over, the Committee, directed the department to consult the matter with the Law Department and to recover the amount from the officers responsible after seeking explanation from them. The Secretary, Taxes Department agreed to take up the matter.

10. The Committee criticised at the improper exemption of purchase turnover of rubber, valued at ₹ 3.92 crore which resulted in shortage of tax of ₹ 23.31 lakh and demanded explanation for the exemption granted for the period 2000-2009. The Commissioner, Commercial Taxes Department clarified that tax

exemption was correct if the industrial unit is export oriented and it comes under Cochin Export Processing Zone. Therefore Tax on purchase would not be applicable to M/s. Asma Rubber Products (P) Ltd. which is under CEPZ and M/s. Sanrea Health-care (P) Ltd. which is a 100% export oriented unit. The Committee again raised its doubt regarding the exemption and the Senior Audit Officer of the Office of the Accountant General replied that the audit objection occurred due to misinterpreted word in the first notification. To overcome that argument, a second notification was issued by including exemption granting to purchase from 2000.

11. The Committee asked the reason for the denial of tax exemption to purchase effected in 1997-98 and 1998-99 when it was granted in 2000. The Secretary, Taxes Department opined that the audit objection was for two years. But the Committee again made it clear that the Hon'ble Court will issue judgment in favour of the companies if they wish to approach the Court.

12. The Committee again asked how exemption could be granted through a notification, when there was no provision in the KGST Act. Even though the Commissioner, Taxes Department cited an SRO, which permits tax exemption on the sale of industrial inputs to industrial undertakings in the Cochin Export Processing Zone, the Committee further queried about the provision in the KGST Act which permits exemption of purchase tax. The Secretary, Taxes Department replied that section 10 of KGST Act was a blanket power for giving exemption.

13. The Committee agreed with the reply of the Secretary, Taxes Department and again insisted that since tax exemption was valid from the year 2000, the tax for the years 1997-98 and 1998-99 should be collected.

14. The Secretary, Taxes Department submitted that in the SRO issued in 1987 exemptions were granted to industrial undertaking in the Cochin Export Processing Zone. But the Committee retorted that this case belonged to 2003-04 financial year and enquired why this matter was not pointed out at the time of issue of the SRO in 1987. The Committee was not satisfied with the reply of the witness and stated that this was a clear case of discrimination by taking special interest in a particular company. The Committee also expressed its disapproval after knowing that the exemption was not granted to other companies during 1997-98 and 1998-99.

15. The Committee severely criticised granting of sales tax exemption to M/s. Essen Print Forms (P) Ltd., Koratty in 2002 and 2003 resulting in the loss of ₹ 19.32 lakh to Government due to the consideration of the sale of Computer papers as second sale. The Committee demanded an explanation regarding the matter and the Secretary, Taxes Department replied that since the Company sells the Computer forms in branded covers, the Deputy Commissioner, Taxes

Department who was a judicial officer did not consider it as manufacturing. Hence the product was not taxed. The Commissioner, Commercial Taxes Department further submitted that even the Sales Tax Appellate Tribunal ordered that the branded sale of computer papers does not come under the classification of manufacturing. At this juncture, the Committee viewed that the granting of tax exemption to the company by considering it as SSI unit was also highly improper. The Secretary, Taxes Department said that the responsibility was with the Industries Department. The Committee again asked about the difference in the rate of tax levied between first selling and second selling. To this, the Secretary, Taxes Department replied that there was no tax liability for second selling.

16. The Committee sternly remarked that necessary amendment should be brought in to KGST Act for preventing such impropriety and enquired whether Tax exemption is provided in VAT during second selling. The Secretary, Taxes Department submitted that after VAT is implemented, tax is liable in each and every stage.

17. The Committee enquired about the present position of the loss of ₹ 10.10 lakh due to the incorrect exemption of Tax granted to the Plantation Corporation of Kerala, Kottayam and the Commissioner, Commercial Taxes Department replied that the amount was collected from them.

18. Regarding the case of M/s. Sherbrooke Aluminium Products, Kochi the Committee harshly viewed that ₹ 1.11 crore relating to aluminium joinery work and ₹ 3.61 lakh relating to labour charges were irregularly exempted from the total contract receipt of ₹ 1.56 crore. The Committee also blamed the incorrect assessment of balance turnover at the rate of two per cent instead of the actual rate of five per cent, which resulted in a short levy of ₹ 8.02 lakh including AST.

19. The Secretary, Taxes Department submitted that reassessment was done and the money was collected. He also submitted that as per the provision in the works contract, re-taxing should not be done in the case of articles already taxed.

20. The Committee again expressed its doubt regarding the reason for granting tax exemption to the unit which had opted compounding when there was no provision for under assessment as pointed out by the Comptroller and Auditor General of India. The Secretary, Taxes Department replied that in the Kerala General Sales Tax Act, it is clear that goods for which taxes already suffered have to be set aside. The Committee enquired about the position in pre-VAT period and the witness replied that goods for which taxes already levied were exempted during that period. The Committee agreed with the points of the Accountant General regarding the irregular exemption and directed that suitable disciplinary action should be taken against those responsible and corresponding

amount should be collected.

21. No remarks were made by the Committee regarding the case of M/s. Golden Soap Industries, Umayanalloor.

22. The Committee did not seriously take the case of exemption of 2% tax and that amount was shown as selling expenditure instead of discount in profit and loss account by M/s. Vengalipara Distilleries, Kozhikode.

23. The Committee blamed at the indifferent attitude of the department in assessing the tax which resulted in a loss of ₹ 2.90 crore in 10 different assessment circles.

24. In the case of M/s. Elgitread India (P) Ltd., Palakkad the Committee asked about the action in the incidence of a loss of ₹ 1.69 crore due to short levy of 2% tax on the turnover of ₹ 84.66 crore instead of levying 4% tax.

25. The Commissioner, Commercial Taxes Department explained that this was due to the confusion in the SROs issued. In the earlier SRO No. 1713/93, 2% concession was granted to medium and large scale units. The present SRO is based on the SRO issued later. The Committee asked about the entry in the original Act and the Commissioner, Commercial Taxes Department replied that it was considered under medium and large scale industries pertaining to tax reduction. The Committee enquired whether any provision is included in VAT which equally empowers the Government to sanction exemptions and to give notification as prescribed in the section 10 of KGST Act. The Committee again enquired about the action initiated to reopen the assessment. The Commissioner, Commercial Taxes Department explained that the two SROs issued previously were set aside and another SRO was issued in 2004 which states that levy of 2% tax is legal.

26. The Committee enquired about the present position of the loss of ₹ 74.05 lakh by levying tax at the rate of 8% instead of 12% in the turnover of ₹ 16.49 crore in respect of M/s. Asca Brown Boveri Ltd., Kochi. The Commissioner, Commercial Taxes Department explained that as per the IV<sup>th</sup> schedule of KGST Act the works are slotted to Electrical Contracts and the tax levied is usually 8%. Since the contractor has done the generator work of less than one third of his total turnover, he will not come under the entry tax of 12% for generator work but he will come for the common electrical works in 8%. The Committee enquired whether the Generator Work constitute only 1/3<sup>rd</sup> of the total contract. The Commissioner replied that the contractor was liable to pay tax for the major portion of the contract. The Committee made no comments regarding the short levy of ₹ 12.66 lakh in the turnover of ₹ 2.79 crore of a company named M/s. Gokulam Enterprises, Thuravoor.

27. The Committee awfully viewed that a loss of ₹ 10.95 lakh had occurred by levying 2% tax instead of 3% in the total turnover of ₹ 8.36 crore of M/s. M.K Oil Industries, Aluva. To this, the Secretary, Taxes Department replied that as per the SRO No. 1091/99, the rate of tax was 2%. But the Committee again contradicted that 2% is not the general rate of tax as per the Government Order dated 14-7-2009. The senior Audit Officer, Office of the Accountant General, also added that General tax exemption has not been provided and the scheduled rate is 3%. The Commissioner, Commercial Taxes Department indicated a Government notification in which tax related to oil mills had been reduced to 2%. Also the tax under KGST is 2% whereas the tax in CST is 3%.

28. The Committee enquired about the revision of assessment of tax in the case of M/s. Southern Agro Trades and Service (P) Ltd., Ettumanoor and the Commissioner, Commercial Taxes Department replied that the amount had been collected.

29. The Committee made no comments on the short levy of ₹ 5.23 lakh in the turnover of ₹ 59.25 lakh in the case of M/s. Thomson Paper Products, Ernakulam which manufactured White Oats.

30. Also in the case of M/s. Excel Wood Industries, Kochi the Committee did not make any remark on the short levy of ₹ 4.19 lakh in the turnover of ₹ 1.13 crore related to interior contract work.

31. Regarding the audit finding at CTO Special Circle I, Ernakulam 2000-01, the Committee asked about the current position of the case in which ₹ 3.85 lakh had been lost by levying only 8% tax instead of 12% on the turnover of ₹ 96.33 lakh of M/s. Sri.Vasavi Soft Drinks (P) Ltd. The Commissioner, Commercial Taxes Department replied that the case was reassessed and had been sent for revenue recovery.

32. The Committee made no comments regarding the loss of ₹ 2.49 lakh incurred by M/s. Thomson Paper Products, Ernakulam and the loss of ₹ 2.41 lakh incurred by M/s. KV Industries, Ollur.

33. Regarding the case of M/s. United Distilleries, Vegalippara the Committee expressed its disapproval over the incorrect appropriation of the amount paid by the dealer for the years 2002-03 and 2003-04 towards tax instead of first appropriating it towards interest, which resulted in a short levy of tax and interest of ₹ 1.35 crore. While the Committee asked about the direction in the judgement of the Hon'ble High Court in this matter the Additional Secretary, Legislature Secretariat informed the Committee members that the Hon'ble High Court has quashed the demand of interest for all the period and directed the assessing authority to complete fresh adjudication after issuing notice containing



proposals and giving opportunities to the petitioners to file reply. The Hon'ble High Court directed to recalculate the interest payable for delay in payment of turnover tax at the end of the month in which the Hon'ble supreme Court pronounced judgement till the date of payment. The Commissioner, Commercial Taxes Department replied that the judgement of the Hon'ble High Court coincides with that of the Apex Court. The Committee agreed with the judgement of the Hon'ble Supreme Court in this case.

34. The Committee enquired about the present position of the case of M/s. Vysakh International Hotel, Payyanoor in which assessing authority failed to levy AST, interest on tax conceded but not paid in time and to appropriate the amount paid subsequently towards interest. This caused a short levy of tax and interest of ₹ 6.11 lakh. The Commissioner, Commercial Taxes Department submitted that the amount was collected under Amnesty Scheme which was started in 2007-08. The witness further submitted that out of ₹ 6.11 lakh, ₹ 3.65 lakh had been remitted. The Committee demanded the details regarding the amount collected, the amount which would have been collected, and the amount exempted by Government under Amnesty Scheme. The Commissioner agreed with the direction of the Committee.

35. The Committee severely criticised the short levy of tax of ₹ 21.55 lakh out of the value of the closing stock of raw rubber for ₹ 5.23 crore of M/s. Pottakkattu Rubbers, Ernakulam for the year 2004-05. The Commissioner, Commercial Taxes Department replied that it was a transition period from KGST to Value Added Tax and tax could have been paid within the purchase point of 31-3-2005. The Committee again asked the reason for the non-liability on KGST since the turnover tax was paid on Value Added Tax. The Commissioner, Commercial Taxes Department replied that the tax might be assessed in KGST and its input tax credit could be claimed through Value Added Tax. But the senior Audit Officer, Office of the Accountant General opined that there was no such option and hence the technical objection exists. The Committee opined that since there was no revenue loss, the technical objection need not be taken seriously.

36. To the Committee's question regarding the reason for the short levy of ₹ 11.92 lakh occurred due to the incorrect estimation of purchase turnover of M/s. Chakkola Ayurvedic, Vengoli as 50% of intra-state sales turnover instead of total sales turnover of ₹ 5.26 crore, the Commissioner, Commercial Taxes Department replied that the case was sent for revenue recovery procedure.

37. In case of M/s. Kayas Electricals & M/s. Thrissur Builders (P) Ltd., the Committee enquired whether the short levied amount of ₹ 4.08 lakh had been recovered and the Commissioner, Commercial Taxes Department replied in the

affirmative.

38. On the Committee's enquiry about the recovery of ₹ 8.90 lakh from M/s. Vysakh International Hotels (P) Ltd., Payyannoor and M/s. Pulinjome Trades, Payyannur the Commissioner, Commercial Taxes Department replied in the affirmative.

39. Regarding the case of M/s. Omraj Auto Agency, Kollam the Committee asked whether the balance amount, after remitting ₹ 2.35 lakh in Amnesty Scheme out of ₹ 4.04 lakh to be paid in Additional Sales Tax, has been collected. The Commissioner, Commercial Taxes Department replied in the affirmative.

40. In the case of M/s. Jay Jay Mills, Kanjikode, the Commissioner, Commercial Taxes Department replied that due to a technical error occurred in the computer, tax assessment was done at an amount of ₹ 31,000 instead of the actual amount of ₹ 3.12 lakh and the error had been rectified.

41. In the case of short levy of ₹ 11.18 lakh from the dealer in jewellery of gold and regarding Non/Short levy in fast track assessments in 7 cases, the Commissioner, Commercial Taxes Department informed that the entire amount had been collected and thus cases were ratified.

42. The Committee made no comments on the non levy of Additional Sales Tax found in CTO, Special Circle I and IV circle, Kozhikode.

43. In the case of M/s. AI-Steel Industries, the Committee enquired about the receipt of balance amount after the assessee had opted for payment under amnesty scheme and paid ₹ 5.09 lakh. The Commissioner, Commercial Taxes Department replied that the entire amount had been remitted under amnesty scheme.

44. To the Committee's question regarding the non-forfeiture of tax of ₹ 2.15 lakh due to the incorrect application of rate of tax at 8% instead of 12.5% on the turnover of ₹ 41.63 lakh, of M/s. Ranbaxy Laboratories the Commissioner Commercial Taxes Department replied that the entire amount has been forfeited to Government and the arrears are cleared under amnesty scheme.

45. The Committee enquired about the incorrect exception of turnover of works contract valued at ₹ 76.49 lakh which resulted in incorrect grant of credit of ₹ 7.39 lakh related to M/s. Punj Loyd Insulations (P) Ltd. and the Commissioner, Commercial Taxes Department replied that revenue recovery procedure have been initiated.

46. The Committee blamed the misclassification of goods in 15 cases in which tax was paid at rates ranging from 0 to 4 per cent instead of 4 to 12.5%. The Committee then enquired about the steps taken to recover the amount

of ₹ 52.73 lakh from M/s. Asianet-Satellite Communications (Pvt.) Ltd. The Commissioner, Commercial Taxes Department submitted that the assessment was being revised on the basis of audit objection and advised for Revenue Recovery proceedings. According to the DC (Appeals)'s verdict on the appeal filed by the company, modem was taxable at 4% and Set Top Box was taxable at 12.5% as per HSN code.

47. The Senior Audit Officer, Office of the Accountant General clarified that modem is included in the category of IT products. For Set Top Box, ₹ 7.82 lakh should be remitted at the rate of 4%.

48. The Commissioner, Commercial Taxes Department also submitted that grouping of these items are done as per the HSN code and these cases are under the consideration of the appeal court.

49. The Committee made no comments regarding the case of M/s. Travancore Rubber & Tea Company Limited.

50. The Committee enquired about the present position of under assessment of tax @ 4% instead of 12.5% for products such as Harpic, Lisol and non-levy of tax for Dettol which would otherwise have been taxed @ 4%. The Commissioner, Commercial Taxes Department submitted that the assessment of tax has been revised and Revenue Recovery action had been initiated. The Hon'ble High Court had issued stay orders when the dealer approached the Hon'ble High Court.

51. Also in the case of M/s. Milka Agencies, the Commissioner, Commercial Taxes Department submitted that the assessment had been revised. But in the case of M/s. V. A Johnson, the Commissioner, replied that the dealer had filed appeal in the Hon'ble High Court. And the appeal had been disposed of by the DC (appeals) who had then sent the case to the Assessing Authority for verification of debit notes. The Committee reminded that before filing the appeal a certain percentage of the amount should be remitted.

52. In the case of M/s. A.C. Stationery Mart, Wadakkanchery, the witness submitted that the stay order of the Hon'ble High Court still exists.

53. In the case of M/s. High Tech Sales Corporation, Thrissur, the Commissioner, Commercial Taxes Department said that Revenue Recovery action has been initiated in this case and in the case of M/s. Classic Marketing, Cherthala, the witness explained that the dealer had already remitted ₹ 2,50,000 and a conditional stay was granted by the Appellate tribunal.

54. On the Committee's question about the case of M/s. Shenoj Trades, Punalur, the Commissioner, Commercial Taxes Department submitted that the tax assessment had been completed and there is no loss of revenue in this case. Also

no tax had been levied in the case of expeller variety of groundnut and Coconut Oil Cakes. At this point, the Committee asked whether the 0% tax was reached after reassessment. The Commissioner, Commercial Taxes Department replied that the 0% tax was arrived when the dealer produced documents in support of his claim and the reassessment had been done by the DC (Appeals).

55. The Commissioner, Commercial Taxes Department also added that reassessments are usually done when the audit personnel point out any mistakes.

56. The Commissioner, Commercial Taxes Department further submitted that the assessments have been revised in the case of M/s. Achind Agencies and M/s. Kerala Automobiles. The Committee made no comments regarding the case of M/s. Aiswarya Store.

57. In the case M/s. Cheriyan Varkey construction Company (P) Ltd., the Committee found that the Hon'ble High Court had granted an interim stay.

58. The Committee made no comments in the case of M/s. Grasim Industries (P) Ltd.

59. The Committee severely blamed the incorrect assessment of out put tax on the sales turnover of a dealer in cooked food, Soda/Soft drinks and ice cream for the year 2006-07 for ₹ 15.54 crore instead of the actual sale of ₹ 15.75 crore which resulted in a short levy of ₹ 3.60 lakh. The Commissioner, Commercial Taxes Department explained that turnover of a restaurant established in New Delhi of Kerala Tourism Development Corporation had not been included in the return filed by them. Instead it was shown in profit and loss account. The Committee opined that the sales tax related to this turnover have to be remitted in New Delhi itself.

60. The Committee doubtfully viewed the incorrect assessment of input tax relating to M/s. Parisons Food (P) Ltd. for the turnover of consignment sale of Palmolein/ Palm Oil which resulted in short levy of out put tax and interest of ₹ 45.53 lakh and the Commissioner, Commercial Taxes Department clarified that the failure to detect the errors were not purposeful.

61. The Committee made no remarks regarding the case of M/s. Andaman Timber Industries.

62. In the case of M/s. Yenkey Rollers Flour Mills, M/s. Parrisons Roller Flour Mills and M/s. Khenks Flour Mills the Committee strongly rebuked the failure of the department to take action against the officer who did not rectify the defects which resulted in the grant of excess input tax credit and interest of ₹ 15.32 lakh. The Committee enquired whether necessary steps had been taken by the department to inspect and find out any mistake in the quarterly/monthly

review meetings conducted by the Internal Audit Wing. The Commissioner, Commercial Taxes Department submitted that all transactions above ₹ 2 lakh are audited compulsorily. Since the entire audit system have been computerised, manual inspection in the subordinate offices was not being done. Also a data mining team working in the Commissionerate inspects the returns on random basis online.

63. The Secretary, Taxes Department added that consequent on the introduction of computerisation, mistakes could be found out easily by cross checking the returns.

64. Regarding M/s. Sulfux Mattress Co., Kannur the Committee felt utterly dissatisfied with the incorrect assessment of input tax on raw materials for fibre foam mattress and coir products for ₹ 2.61 lakh and ₹ 3.48 lakh instead of ₹ 6.28 lakh and ₹ 7.40 lakh for the year 2005-06 and 2006-07. This resulted in a short levy of tax and interest of ₹ 9.55 lakh. The Commissioner, Commercial Taxes Department replied that the assessment had been revised and in appeal the dealer was granted 50% conditional stay by the DC (Appeals) after remitting half of the amount.

65. The Committee anxiously enquired the reason for the short levy of tax of ₹ 4.03 lakh in connection with the purchase of medicines amounting to ₹ 31.32 lakh from M/s. Bangalore Antibiotics and Anti biological (P) Ltd. who had opted for compounding tax. The Commissioner, Commercial Taxes Department submitted that compounding of tax was done on MRP basis and input tax credit is not applicable to them. Hence that was an error.

66. In case of M/s. Grasim Industries (P) Ltd., the Committee asked the witness to explain the action taken to realise the arrear amount of ₹ 3.21 lakh after the company remitted ₹ 3.91 lakh. The Commissioner, Commercial Taxes Department explained that the amount of ₹ 3.91 lakh was excess advance tax and ₹ 3.21 lakh was a provision for discount which were disallowed.

67. In the case M/s. Hilton Motors., the Committee enquired about the short levy of tax and interest of ₹ 14.61 lakh due to the failure in including the sales turnover on account of warranty claims estimated at 50 per cent of the warranty charge in respect of replacement of defective parts valued at ₹ 87.89 lakh in the taxable turnover. The Commissioner, Commercial Taxes Department submitted that after the remittance of ₹ 8.54 lakh the assessee filed appeal for the balance amount due based on the order issued by the Deputy Commissioner for modification of assessment. The witness further submitted that the amount could be collected since the assessment was finalised.

**Conclusion/Recommendation**

68. Regarding the short levy of ₹ 2.32 crore occurred due to the grant of irregular exemption to M/s. Kuttiyanikkal Rubbers (P) Ltd., Mundakkayam, the Committee recommends to initiate Revenue Recovery proceedings against the defaulter and directs that a copy of the Revenue Recovery proceedings should be made available to the Committee.

69. The Committee expresses its dissatisfaction towards the reply furnished by the Taxes Department that tax exemption was granted to M/s. Rose India Exporters and Importers, Thiruvananthapuram, because of it was licensed as an SSI unit and Taxes Department could not review the registration given by Industries Department. The Committee recommends that there should be a consensus between the Taxes and Industries Departments to avoid loss of revenue to Government in future.

70. In the case of exemption of tax of ₹ 65.07 lakh to notebook dealers during the period 1994-95 to 2001-02 and 2004-05, the Committee considered that the judgement of the Hon'ble High Court which states that the conversion of paper into notebook with the help of machine did not involve a manufacturing element and opines that in the light of the new judgement the company was liable to pay tax. The Committee directs the department to consult the matter with the Law Department to ascertain whether the judgement made in 2008 had retrospective effect and recommends to recover the amount due from the officers responsible for the non-levy of tax, after seeking explanation from them.

71. The Committee knows that the Government vide a notification on April 2009, had exempted 100% Export Oriented Units from paying tax for the purchase of industrial raw materials, which was given retrospective effect from January 2000. The Committee opines that granting of exemption retrospectively shows the discrimination on the part of the department. The Committee insists that since the tax exemption was valid only from the year 2000, the tax for the years 1997-98 and 1998-99 should be collected.

72. While examining the case of M/s. Sherbrooke Aluminium Products, Kochi, the Committee reprehends the incorrect assessment of balance turnover at the rate of 2% instead of 5% and recommends that the amount short levied should be recovered from the firm and disciplinary action should be initiated against the responsible officers.

73. The Committee notices that ₹ 3.65 lakh had been paid by M/s. Vysakh International Hotel, Payyannur and many other firms had been cleared the dues under the Amnesty Scheme. The Committee demands the

department to furnish the details regarding the amount due for collection, amount collected and the amount exempted by Government under the Amnesty Scheme during the period from 2007-08 to 31<sup>st</sup> March, 2010.

74. Knowing that in the case of M/s. V. A. Johnson, appeal had been filed in the High Court and assessment had been revised accordingly, the Committee likes to remind the department that a certain percentage of tax should be remitted before filing the appeal.

75. Regarding the failure of inclusion of sales turnover on account of warranty claims in the taxable turnover in respect M/s. Hilton Motors, the Committee urges the department to inform the present position of the appeal and to furnish details of recovery of balance amount at the earliest.

Thiruvananthapuram,  
26th June, 2012.

DR. T. M. THOMAS ISAAC,  
*Chairman,*  
*Committee on Public Accounts.*

## APPENDIX I

## Summary of Main Conclusion/Recommendation

<i>Sl. Paragraph No.</i>		<i>Department concerned</i>	<i>Conclusions/Recommendations</i>
(1)	(2)	(3)	(4)
1	68	Taxes	Regarding the short levy of ₹ 2.32 crore occurred due to the grant of irregular exemption to M/s. Kuttiyanikkal Rubbers (P) Ltd., Mundakkayam, the Committee recommends to initiate Revenue Recovery proceedings against the defaulter and directs that a copy of the revenue recovery proceedings should be made available to the Committee.
2	69	Taxes/Industries	The Committee expresses its dissatisfaction towards the reply furnished by the Taxes Department that tax exemption was granted to M/s. Rose India Exporters and Importers, Thiruvananthapuram, because of it was licensed as an SSI unit and Taxes Department could not review the registration given by Industries Department. The Committee recommends that there should be a consensus between the Taxes and Industries Departments to avoid loss of revenue to Government in future.
3	70	Taxes	In the case of exemption of tax of ₹ 65.07 lakh to notebook dealers during the period 1994-95 to 2001-02 and 2004-05, the Committee considered that the judgement of the Hon'ble High Court which states that the conversion of paper into notebook with the help of machine did not involve a



(1)	(2)	(3)	(4)
			<p>manufacturing element and opines that in the light of the new judgement the company was liable to pay tax. The Committee directs the department to consult the matter with the Law Department to ascertain whether the judgement made in 2008 had retrospective effect and recommends to recover the amount due from the officers responsible for the non-levy of tax, after seeking explanation from them.</p>
4	71	Taxes	<p>The Committee knows that the Government vide a notification on April 2009, had exempted 100% Export Oriented Units from paying tax for the purchase of industrial raw materials, which was given retrospective effect from January 2000. The Committee opines that granting of exemption retrospectively shows the discrimination on the part of the department. The Committee insists that since the tax exemption was valid only from the year 2000, the tax for the years 1997-98 and 1998-99 should be collected.</p>
5	72	„	<p>While examining the case of M/s. Sherbrooke Aluminium Products, Kochi, the Committee reprehends the incorrect assessment of balance turnover at the rate of 2% instead of 5% and recommends that the amount short levied should be recovered from the firm and disciplinary action should be initiated against the responsible officers.</p>
6	73	„	<p>The Committee notices that ₹ 3.65 lakh had been paid by M/s. Vysakh International Hotel, Payyannur and</p>

(1)	(2)	(3)	(4)
			<p>many other firms had been cleared the dues under the Amnesty Scheme. The Committee demands the department to furnish the details regarding the amount due for collection, amount collected and the amount exempted by Government under the Amnesty Scheme during the period from 2007-08 to 31<sup>st</sup> March, 2010.</p>
7	74	Taxes	<p>Knowing that in the case of M/s. V. A. Johnson, appeal had been filed in the High Court and assessment had been revised accordingly, the Committee likes to remind the department that a certain percentage of tax should be remitted before filing the appeal.</p>
8	75	„	<p>Regarding the failure of inclusion of sales turnover on account of warranty claims in the taxable turnover in respect M/s. Hilton Motors, the Committee urges the department to inform the present position of the appeal and to furnish details of recovery of balance amount at the earliest.</p>