

FOURTEENTH KERALA LEGISLATIVE ASSEMBLY

**COMMITTEE
ON
PUBLIC ACCOUNTS
(2019-2021)**

FIFTY NINETH REPORT
(Presented on 4th July, 2019)



**SECRETARIAT OF THE KERALA LEGISLATURE
THIRUVANANTHAPURAM
2019**



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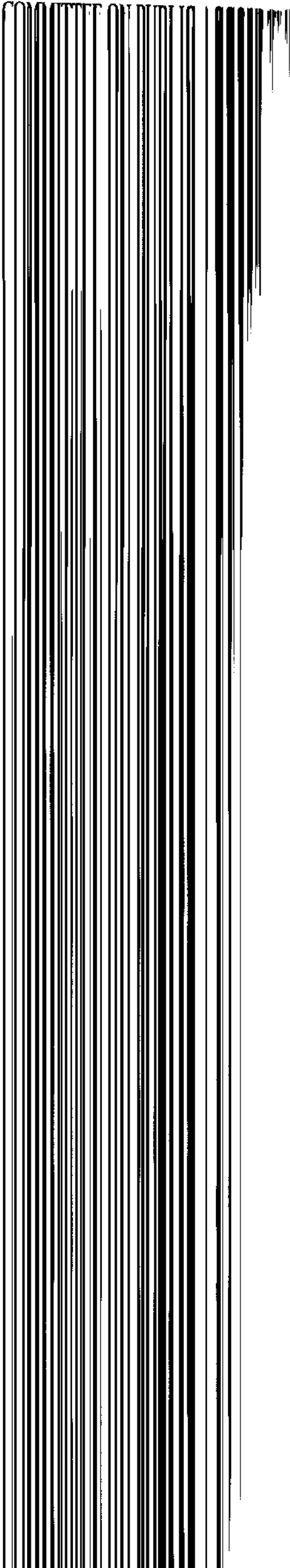
FIFTY NINETH REPORT

On

**Paragraphs relating to Taxes Department contained in the Report of the
Comptroller and Auditor General of India for the year ended
31st March, 2012 (Revenue Receipts)**

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COMMITTEE ON PUBLIC ACCOUNTS (2019-2021)

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Shri R. Venugopal, Deputy Secretary

Shri Chitra K.I., Under Secretary.

INTRODUCTION

I, the Chairman, Committee on Public Accounts, having been authorised by the Committee to present this Report, on their behalf present the 59th 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, 2012 (Revenue Receipts).

The Report of the Comptroller and Auditor General of India for the year ended 31st March, 2012 (Revenue Receipts) was laid on the Table of the House on 19th March, 2013.

The Committee considered and finalised this Report at the meeting held on 1st July, 2019.

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

Thiruvananthapuram,
1st July, 2019.

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

REPORT

TAXES DEPARTMENT

AUDIT PARAGRAPH

Other audit observations

Assessment records of sales tax/value added tax (VAT) in Commercial Taxes Department were scrutinised in Audit and found several cases of non-observance of provisions of the Acts/Rules, non/short levy of tax/penalty/ interest, incorrect determination / classification of turnover and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of assessing authorities (AA) are pointed out in audit each year, but not only the irregularities persist; these remain undetected till an audit is conducted. There is need for the Government to improve the internal control system including strengthening of the internal audit to ensure that such omissions are detected and rectified.

Non-observance of provisions of the Acts/Rules

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

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

It was noticed in Audit 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 ₹67.52 crore as mentioned in the paragraphs 2.13.1 to 2.13.15.2.

[Audit Paragraph 2.12 to 2.13 contained in the Report of C & AG of India for the year ended 31st March 2012 (R.R)]

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

1. Regarding the audit paragraphs 2.12-2.13, the Commissioner GST Department informed that there were 16 major paras consisting of 69 specific

cases, and out of which 50 paras were sustainable, 7 were partially sustainable and 12 were not sustainable. He then explained the initiatives taken by the department to enhance the efficiency of the officers. He informed that the department studied all audit paragraphs concerned with taxes department contained in C&AG Reports of 2015 onwards. The department had launched a systematic training to all officers in order to avoid repeated observations in future. He added that the specific cases were categorised and analysed based on tax/interest effect of above ₹ 1 crore, between ₹ 50 lakh - ₹ 1 crore, between ₹ 25 lakh - ₹ 50 lakh and below ₹ 25 lakh and action had been taken in all cases which were above ₹ 1 crore.

2. The Commissioner GST department further explained that in order to avoid repeated observations in audit reports, they compiled the circulars regarding clarifications and internal audit observations of last two years and distributed it among the field officers and uploaded in the website also. He added that in every year tax rate was being changed with the Finance Act and in some cases tax rates happened to be mistaken. In order to avoid this mistakes in future, a tax rate matrix of all commodities and work contracts of the previous five years had been created and uploaded in the website. To a query of the Committee, the Commissioner, GST department informed that in every year the matrix was updated with tax rates indicated against the respective commodity names along with the numbers assigned. He supplemented that it was necessary to improve the internal Audit wing to ensure that short levy due to omissions, non-observance of provisions of the Acts and Rules were detected and rectified.

3. Consequent to the frequent observations by the Comptroller and Auditor General to strengthen the department, instructions were given to Internal Audit team to find out more revenue growth centres among 180 circles. Strict instructions were also issued from time to time for assessing officers to go through the audit observations of both the C&AG and the internal audit.

4. The Committee enquired about the method of scrutiny of the department and the witness, Commissioner GST department informed that the self assessment submitted by a tax payer needed to be scrutinised. After the implementation of VAT, a dealer had to file the return by self assessment of tax. But unfortunately a few field officers could not scrutinise all the returns filed by

the tax payer. To a query about additional demand over the paid tax, the Commissioner informed that the limitation period for such demand was five years. But the limitation period could be extended provided certain study or C&AG audit necessitated so. The Committee opined that, taxes were received at the time of self assessment and on receiving the self assessed tax for two years, there would be a tendency to file the return with reduced turnover and lesser tax amounts. The Commissioner informed that almost 16000 out of 2.4 lakh dealers contributed 85% of tax amount and 6000 dealers contributed 10% revenue and in short 22000 dealers contributed 95% of the revenue. He added that since it was impractical to focus on all dealers, the department mainly paid attention on those persons who had made violations to a greater extend. He added that priority would given to scrutinise them by sending the history sheet of those persons to the District Commissioners.

5. To the queries about GST, the witness, Commissioner GST department informed that three important menu in GST software are registration, return filing and payment. Since these three modules were common to the whole country, it would be done by GST department of India. But the assessment of audit, legal cases and the monitoring system would be done by the State Governments. He added that some states had obtained sanction for GSTN (Goods and Service Tax Network) to prepare their backend module. Karnataka, Kerala, Tamil Nadu, Maharashtra, Andhrapradesh, Sikkim and Meghalaya already developed their own software for this. He continued that NIC was the system integrater in Kerala in addition to the software development team of the department and the system would be implemented in all places including Kerala by March 2018.

6. When the Committee enquired whether there was monitoring system, the witness replied in affirmative. The Committee then enquired whether there was profit or loss after the implementation of GST. The witness, Commissioner GST department informed that it was a very important issue which had been discussed in GST council and added that check posts were existed in the VAT period. But the GST council decided that there would be no need of check posts as India would become a single market. He added that the states like Kerala, Karnataka and West Bengal were demanded for continuing e-declaration system. e-way Bill system was approved in GST council. For transporting the goods through e-way Bill system, e-way Bill declaration must be needed. He added that while carrying goods the system could check the e-declaration status of a vehicle through mobile or RA finding scanner. He further informed that mobile squads were there in all states for random checking.

7. To the query of the Committee on how to assess business persons who had not registered, the Commissioner, GST Department informed that it could be found out by random checking and no provision in GST for physical checking and approval of each and every vehicle.

Comments

8. The Committee appreciated the strenuous efforts taken by Commercial Taxes Department for the fruitful settlement of audit observations and commented that it would be a model to other administrative departments as well.

VALUE ADDED TAX

Turnover escaped assessment

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

(CTO Special Circle,
Palakkad, Kottayam and I
Circle, Kottayam)

Cross verification of Audited Accounts attached with the VAT Returns furnished by four assessees for the period from 2005-06 to 2009-10 revealed that the assessee had depicted their turnover short by ₹ 45.96 crore. The returns filed by the dealers for the period from 2005-06 to 2008-09 were

accepted by the Department as self assessed without any verification. Accepting of incorrect returns resulted in short realisation of tax of ₹ 5.97 crore.

After this was pointed out in audit, the Government accepted the audit observation in two cases and created additional demand of ₹ 49.21 Lakh; their reply in the remaining cases has not been received (December 2012).

[Audit Paragraph 2.13.1.1 contained in the Report of C & AG of India for the year ended 31st March 2012 (R.R)].

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

9. While considering the audit observation about the incorrect acceptance of VAT returns filed by four* dealers resulted in short realisation of tax of

*M/s Kaiias Rubber Co Ltd., M/s St. Antony's Motors India Ltd., M/s Southern Ispat, SEPR Refractories India Ltd.

₹ 5.97 crore; the witness, Commissioner GST department deposed that in the case of M/s Kailas Rubber Co. Ltd., the audit findings were partially sustainable and the detailed reply in this regard had already been furnished.

10. Then an officer from the office of the Accountant General remarked that if the reply were submitted before finalising the audit report such observations could have been avoided.

11. The Committee accepted the explanation furnished by the department. It also accepted the remedial measures in the case of M/s St. Antonys Motors India Ltd., M/s Southern Ispat and M/s SEPR Refractories India Ltd. and directed the department to submit a statement regarding the realisation of additional demand in the last case.

Conclusion / Recommendation

12. Regarding the case of M/s SEPR Refractories India Ltd., the Committee directs the GST department to submit a statement regarding the realisation of additional demand.

[CTO (WC), Ernakulam]

Under Rule 10(2) of KVAT Rules 2005, in relation to works contract, where the transfer is not in the form of goods, the taxable turnover is arrived at after deducting labour and other charges specified therein from the contract receipts. If it is not ascertainable from the books of accounts of the dealer, the total turnover in respect of such works contract shall be computed after deducting labour and other charges at the percentage prescribed therein. Labour and other charges deductible in works contract involving installation of plant and machinery is 15 percent.

GR Engineering (P) Limited engaged in works contract had a contract receipt of ₹39.31 crore during 2008-09. As per annual return the dealers used goods obtained through local and interstate purchases and interstate stock transfer for ₹ 26.52 crore and did not file detailed account of labour and other charges. The taxable turnover after granting deduction of ₹ 5.90 crore aggregated ₹ 33.41 crore. The assessee however claimed deductions of ₹ 30.19 crore and assessed only ₹ 9.12 crore to tax. This resulted in short levy of tax, cess¹ and interest of ₹ 3.74 crore.

¹ Finance Act 2008 introduced cess at one percent on the tax payable under Section 6 and 8 of KVAT and Section 5 and 7 of KGST Act to fulfill commitment of the Government to provide and finance a comprehensive Social Security Scheme.

The matter was pointed out to the Department (March 2011) and reported to Government (February 2012). The Government stated (October 2012) that the assessment was completed (December 2011) under Section 25(1) disallowing the claim for exemption. Further report has not been received (December 2012).

• **[Office of the Assistant Commissioner (WC & LT), Ernakulam]**

M/s PC Thomas and company, an Engineering company had a total contract receipt of ₹ 10.66 crore during 2008-09 out of which ₹ 3.18 crore related to labour as per the accounts. Though the administrative, selling and other expenses, profit element etc. to the extent of supply of labour amounting to ₹ 76.22 lakh were only deductible from the contract receipt along with labour charges of ₹ 3.18 crore, the assessee availed deduction of ₹ 6.19 crore, the entire cost of establishment and other overhead charges and profit without limiting them to the extent they are relatable to the supply of labour and service. This resulted in short levy of tax, cess and interest of ₹ 26.56 lakh.

The matter was pointed out to the Department (March 2011) and reported to Government (February 2012); their reply has not been received (December 2012.)

[Audit Paragraph 2.13.1.2 contained in the Report of C & AG of India for the year ended 31st March 2012 (R.R)].

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

13. Regarding, M/s G.R. Engineering (P) Ltd. the Committee enquired whether any additional demand was created and if so, it was collected or not. The witness, Commissioner, GST department agreed to furnish a detailed statement regarding this collection.

14. Regarding M/s P.C. Thomas and Company, the Committee opined that the method adopted by the assessing authority for the preparation of annual return and accounts was not correct. An officer from the office of the Accountant General informed that direct expenses were deducted instead of exempting labour charges. The department informed that actual short levy is ₹1,58,292 and action would be taken to complete the assessment under section 25(1) to realize the above short levy. The Committee accepted the Government reply.

Conclusion/Recommendation

15. The Committee urges the GST department to furnish a detailed statement on the collection of additional demand if any, due from M/s. G.R. Engineering (P) Ltd., at the earliest.

• **(CTO, Special Circle II, Ernakulam)**

Explanation to Rule 10(2) (b) of KVAT Rules 2005 stipulates that no deductions shall be allowed out of the total contract amount for the supply and installation of any machinery equipment or any other system where the goods involved are assembled and installed and the labour employed for installation is only incidental to the supply of such goods.

It was judicially held² that if the major component of the end product is the material consumed in producing the chattel to be delivered and skill and labour are employed for converting the main components into the end products but the skill and labour are only incidentally used then the delivery of the end product by seller to the buyer will constitute a sale and not works contract.

M/s Blue Star Limited was an assessee engaged in trading as well as supply, erection, testing and commissioning of air conditioning system.

Since the dealer deals in the supply of air conditioners, erection and commissioning of air conditioners' is not works contract but a sale. But the assessee availed exemption for ₹ 9.44 crore and ₹ 4.36 crore towards labour and other charges for the years 2008-09 and 2009-10 which is actually, incidental to sale of air conditioners. Thus incorrect exemption resulted in short levy of tax amounting to ₹ 2.22 crore including interest.

This was pointed out to the Department (December 2011) and reported to Government (June 2012); their reply has not been received (December 2012).

• **(CTO, Special circle II, Ernakulam)**

M/s Kone Elevators India Pvt. Ltd. was an assessee who was dealing with supply and installation of elevators and escalators, annual maintenance contract etc. they claimed exemption of ₹ 6.25 crore towards installation of lift executed through

Kone Elevators (India) Pvt. Ltd. Vs. State of Andhra Pradesh [140 STC 22 (SC)]

sub contractors. As installation of lift is part of sale, deduction of labour element is not admissible. Moreover, as the work involves alone it is not liable to tax in the hands of sub contractor. It was noticed (November 2011) from the assessment records of the assessee that the assessing authority also did not disallow the exemption. This resulted in short levy of tax, cess interest of ₹ 93.17 lakh.

This was pointed out to the Department (November 2011) and reported to Government (June 2012); their reply has not been received (December 2012).

• [CTO (WC & LT) , Pathanamthitta]

Under Rule 10(2) (a) of KVAT Rules, in the case of works-contract where transfer of property take place not in the form of goods, taxable turnover is arrived at after deducting labour charges and other charges specified therein from the contract receipts. However, as per the proviso there under when the turnover arrived at after allowing the eligible deduction falls below the cost of goods transferred in the execution of works contract an amount equal to the cost of goods transferred in execution of contract, together with profit shall be taxable turnover in respect of such works contract.

Sri.K.N. Madhusoodhanan, a works contractor had a total works contract receipt of ₹ 22.82 crore during 2008-09. It was noticed (November 2010) from the annual accounts of the assessee that the admissible deductions¹ were only ₹9.47 crore. Thus the taxable turnover should have been ₹13.36 crore. However, the assessee claimed exemption of ₹ 12.99 crore to arrive at the taxable turnover of ₹9.84 crore on which output tax of ₹ 78.72 lakh was computed.

This resulted in escape of turnover of ₹ 3.52 crore and consequent short levy of tax and interest of ₹ 52.42 lakh.

After this was pointed out to the Department (November 2010) the assessing authority stated (December 2010) that notice had been issued to the dealer.

The matter was reported to the Government in April 2012 ; their reply has not been received (December 2012.)

3. Allowable deductions in this case being consumables, hire charges, sale expenses, testing and commissioning, transportation wages and salary.

• (CTO, Special Circle, Kollam)

Under explanation V to Section 2 (1ii) of KVAT Act, 2003, where a dealer receives in any return period any amount due to price variation in respect of any sale effected during the earlier return period, such amount shall be deemed to be turnover relating to return period in which such amount is received.

M/s United Electrical Industries Ltd., is a dealer in electrical goods. As per annual return filed for the year 2007-08, the assessee was assessed to tax of ₹24.78 crore. It was noticed that the dealer received an amount of ₹2.70 crore during 2007-08 towards price variation. This had to be included in the sales

turnover. But the assessee did not include this amount in the turnover of ₹24.78 crore conceded in the annual return. This resulted in short levy of tax of ₹40.77 lakh.

The matter was pointed out to the Department (April 2010) and reported to Government (June 2012); the Government stated that the assessee included in their accounts the increase in prices expected to be received during the year subjected to approval of Government and hence the amount was not assessed to tax. Reply is not correct since the amount has been recognised by the auditors and receipt has been shown clearly in the P & L account. Moreover the sales turnover as per annual accounts was arrived at including the price variation.

• (CTO Special Circle, Kottayam)

Under Section 25 of the KVAT Act, if for any reason, whole or any part of the turnover of business of a dealer had escaped assessment of tax in any year, assessing authority may proceed to determine to best of his judgement, the turnover which has escaped assessment to tax and assess tax payable on that turnover within five years from the last date of the year to which the return relates.

M/s. Lamy Agencies, Kottayam, a dealer in medicine had an interstate purchase/stock transfer of medicine for ₹ 10.39 crore during 2009-10 as per the extract of issue register of C/F forms submitted by the assessee to the Department. But the assessee disclosed interstate purchase/stock transfer of ₹5.60 crore only in the

annual return. The assessing authority did not detect the suppression of purchase turnover of ₹ 4.79 crore. This resulted in short levy of tax, cess and interest which works out to ₹ 40.32 Lakh.

After this was pointed out to the Department in August 2011, the Department stated (December 2011) that notice had been issued to deposit the escaped tax. Further report has not been received (December 2012)

The case was reported to the Government (February 2012); their reply has not been received (December 2012).

• **(CTO, Second circle, Kalamassery)**

M/s Mapsons & Co. Auto (P) Ltd. is a dealer in automobile spare parts, accessories and generators. They conceded a taxable turnover of ₹ 10.48 crore as per annual return for 2009-10 for which OPT was assessed.

It was noticed in Audit (April 2011) that the turnover of the dealer for 2009-10 based on copy of the Sales Register of assessee made available by the intelligence squad was ₹ 11.20 crore. No action was taken to assess the tax as required under Section 25. This resulted in short levy of tax, cess and interest of ₹ 8.12 lakh on the differential turnover of ₹ 72.06 lakh.

After this was pointed out in April 2011, the Department in December 2011 informed that the assessment was revised and demand notice issued for ₹ 37.15 lakh. Further report has not been received (December 2012).

The matter was reported (June 2012) to the Government; their reply has not been received (December 2012).

• **(CTO, Special Circle, Kottayam)**

As per entry 134 of List A annexed to III Schedule to KVAT Act, sales turnover of natural rubber latex of all qualities are taxable at the rate of four percent.

It was noticed (August 2011) from the audited accounts of M/s. Plantation Corporation of Kerala Ltd. for the year 2009-10 that the

Corporation received an amount of ₹ 3.29 crore as slaughter tapping income from rubber plantation and prior period income. However, the assessing authority did not assess the same to VAT. This resulted in short levy of tax, cess and interest amounting to ₹ 15.29 lakh.

After the matter was pointed out in August 2011 to the Department and reported to Government (February 2012); the Government stated (August 2012) that

assessment was finalized (October 2011) based on audit observation for which assessee filed appeal before DC (Appeal) Kottayam who stayed collection. Further remarks have not been received (December 2012).

• (CTO, III Circle, Thrissur)

Under KVAT Act, 2003 motor bodies built on chassis of motor vehicles are liable to be taxed at 12.5 percent. It was judicially held⁴ that construction of body on a vehicle is a contract of sale.

It was noticed (July 2011) from the assessment records of M/s PSN Industries (P) Ltd. that the assessee did not assess to tax an amount of ₹ 82.25 lakh received as

labour charges while completing the self assessment during 2009-10. Though labour charges are not deductible from receipts on bodies built on chassis of motor vehicles, the assessing officer did not levy tax on the amount. This resulted in short levy of tax, cess and interest of ₹ 11.84 lakh.

The matter was pointed out in August 2011 to the Department and reported to Government (November 2011). Further information has not been received (December 2012).

• (CTO, III circle, Thrissur)

It was noticed (July 2011) from the assessment records of M/s PSN Motors (P) Ltd. for 2008-09 that the assessee engaged in body building did not assess to tax an amount of ₹ 50.43 lakh received towards labour and ₹ 25 lakh being the value of iron and steel transferred, was assessed at four percent. Though cost of materials used and labour involved in body building of vehicles are to be included in the sales turnover of body built, the assessing officer did not levy tax on the above amount at the correct rate of 12.5 per cent. This resulted in short levy of tax, cess and interest of ₹ 9.70 lakh.

This was pointed out to the Department (July 2011) and reported to Government (November 2011). Their reply has not been received (December 2012).

4. Mckenzie's Ltd. Vs State of Maharashtra (SC)

• (CTO, I Circle, Alappuzha)

As per entry 110 of III Schedule to KVAT Act, safety matches are taxable at four percent. Handmade safety matches are exempted from tax under entry 24 of I Schedule to the Act.

M/s Royal Enterprises, Alappuzha is an assessee dealing with tobacco products, safety matches, cigarettes etc. The assessee filed annual return for the

year 2009-10 conceding total and taxable sales turnover of ₹ 32.67 crore and ₹ 30.76 crore respectively.

It was noticed (May 2011) from the annual return that the assessee claimed exemption on a turnover of ₹ 1.91 crore relating to machine made safety matches sold during 2009-10 as if it were handmade. Incorrect exemption availed resulted in turnover escaped assessment and consequent short levy of tax and interest of ₹ 8.63 lakh.

The matter was pointed out (May 2011) to the Department and reported (November 2011) to Government; Government stated (March 2012) that assessment was revised (December 2011) creating an additional demand of ₹ 9.17 lakh including interest. Further information has not been received (December 2012).

• (CTO, Chavakkad)

Under explanation III (i) to Section 2(iii) of KVAT Act 2003, the amount for which goods are sold shall include any sum charged for anything done by the dealer in respect of the goods sold at the time of, or before, the delivery thereof.

M/s Rajah Timber Company Chavakkad was a dealer in timber, furniture, fibre foam etc. It was noticed (December 2010) from the

assessment records for 2008-09 that the assessee self assessed to tax a sales turnover of ₹ 2.74 crore only. The sales turnover as per annual accounts for the year was ₹ 3.29 crore. Thus, turnover of ₹ 54.75 lakh escaped assessment. This resulted in short levy of tax, cess and interest of ₹ 7.56 lakh.

After this was pointed out in December 2010 to the Department and reported to Government (June 2012); the Government stated (September 2012) that turnover escaped was assessed to tax under Section 25(1) of KVAT Act (March 2011). Further report has not been received (December 2012).

• **[CTO, (WC & LT) , Mattancherry]**

M/s Anchor Structural, was a works contractor engaged in production and supply of electric post to KSEB. They disclosed taxable turnover of ₹ 5.72 crore and ₹ 5.49 crore for 2008-09 and 2009-10 respectively.

It was noticed (May 2011) from the assessment records that the assessee did not include in their taxable turnover the transportation charges of ₹ 1.53 crore received during 2008-09 and 2009-10 for delivery of poles at site. The escape of turnover from assessment resulted in short levy of tax, interest and cess of ₹ 7.27 lakh.

After the matter was pointed out (May 2011) to the Department and reported to Government (December 2011); Government stated (October 2012) that in light of the audit observation the assessments were completed (September 2011) under Section 25 of KVAT Act, Recovery report is awaited (December 2012).

• **[CTO (WC), Ernakulam]**

Section 8 (a) (i) of KVAT Act stipulates that any works contractor not being a dealer having CST registration or effecting first taxable sale in the State may, subject to payment of tax under Section 6 (2) of the Act, pay tax at the rate of two percent on the whole contract amount received during 2007-08. Those assessee's availing compounded rate are not eligible for any deductions. If tax due is not paid within the time prescribed, simple interest at the rate of 12 per cent annum is leviable under Section 31(5) of the Act.

M/s K.M. Elias Constructions (P) Ltd., Kakkanad was a works contractor. It was noticed (January 2010) from the assessment records that the assessee for the financial year 2007-08 had worked out

the taxable turnover as ₹ 5.47 crore against contract receipts of ₹ 7.62 crore. The balance ₹ 2.16 crore was availed as deductions. However, availing of deductions

from the contract amount was not allowed in the case of compounding as per provisions of KVAT Act. As a result, turnover of ₹ 2.16 crore escaped assessment. The consequent short levy of tax and interest worked out to ₹ 5.18 lakh.

The matter was pointed out to the Department (March 2010) and reported (June 2012) to Government; their reply has not been received (December 2012).

[CTO (Special Circle), Thiruvananthapuram]

Under KVAT Act 2003, turnover related to transfer of right to use is taxable at the rate of four per cent. Energy meters provided at customers premises for measuring electricity supplied collecting rental charges is transfer of right to use meters.

The chief Engineer (Distribution South) KSEB engaged in generation, transmission and distribution of electrical energy collected rental charges of energy

meters amounting to ₹ 835.63 crore during the period from 2005-06 to 2010-11. The meters installed in the premises of the consumer were owned by the Board. Board was collecting rental for the meters from the consumers and hence the supply of meters to consumers was transfer of right to use meters. The assessee did not include the above turnover in the taxable turnover when the tax was self assessed as revealed by the annual return. The assessing officer also did not assess the above turnover resulting in non levy of tax, cess and interest of ₹ 43.16 crore.

The matter was pointed out to the Department (between December 2010 and November 2011), the assessing authority stated (between August and December 2011) that meters are installed at consumers premises only to facilitate the KSEB to record the usage of electricity by the consumers who are not using them for any purpose and have no access at all. It was also stated that, meters are under the possession of the Board, the consumers have no right to use this meter and hence could not be classified as goods within the meaning of explanation V to Section 2(x)/iii) of KVAT Act. The reply is not correct as the transaction questioned by audit clearly comes under transfer of right to use in view of collection of rent from consumers and is rightly taxable at the rate of four percent.

Short levy of tax due to non-reckoning of turnover for assessment.

Explanation VII under Section 2 (1ii) of the KVAT Act 2003; stipulates that where a dealer sells any goods purchased by him at a price lower than that at which it was purchased and subsequently receives any amount from any person towards reimbursement of the balance price, the amount so received shall be deemed to be turnover in respect of such goods.

It was noticed between August 2009 and December 2011 that in seven offices, the subsidy/ discount received in 10 cases were not reckoned as turnover for assessing to tax for the period from 2006-07 to 2009-10. This resulted in short levy of tax

of ₹ 2.07 crore including cess and interest as detailed in the following table:

(₹ in lakh)

Sl. No.	Name of assessee Name of office	Discount/ Subsidy received year	Tax effect involved	Remarks
1	2	3	4	5
1	M/s Madras Fertilizers C.T.O, Spl. Circle II. Ernakulam	<u>3133</u> 2009-10	151	No reply was received from the Department/Government
2	AB Traders, C.T.O, Spl. Circle, Thiruvananthapuram	<u>52.88</u> 2008-09	7.88	No reply was received from the Department.
3	M. Abubeker C.T.O, Spl. Circle, Thiruvananthapuram	<u>27.08</u> 2008-09	4.03	The Department Issued a show cause notice to the dealer.

	2	3	4	5
4	<u>Koovalathara Traders,</u> C.T.O, Spl. Circle, Kollam.	<u>22.00</u> 2009-10	3.03	The Government accepted the case and revised the assessment. Progress made on recovery has not been received.
5	<u>West Cost Agencies,</u> C.T.O, Spl. Circle, Kollam	<u>36.59</u> 2009-10	5.04	No reply was received from the Department/Government
6	<u>M/s Pan Marketing,</u> C.T.O, Spl. Circle, Kottayam	<u>77.00</u> 2009-10	11.11	The Government stated that turnover in question related to credit note for interstate purchase. The reply is not in consonance with the accounts of the dealer where it is specified that ₹ 77 lakh was received on account of off take discount.
7	<u>M/s M & M Associates,</u> C.T.O, II Circle, Kollam	<u>64.94</u> 2006-07	10.31	The Department accepted the case and revised assessment against which assessee filed appeal which was disposed with directions to consider eligible IPT for which verification is pending.

1	2	3	4	5
8	<u>M/s Western IT Distributors,</u> C.T.O, IV Circle, Ernakulam	<u>143</u> 2009-10	7.13	<p>The Government accepted the case and assessment was revised demanding tax and interest of ₹ 4.49 lakh. Audit further noticed that the AA did not assess ₹ 57.93 lakh pointed out by audit stating that it related to cash discount which already had reflected in the purchase accounted. It is not correct as the account specifically shows cash discount, received in addition to the purchase value accounted.</p>
9	<u>M/s Peekay Cement,</u> C.T.O, Kodungalloor	<u>25.23</u> 2009-10	3.76	<p>The Government stated (November 2012) that on random checking sales price seems to be more than purchase price and hence there is no scope for assessing the turnover of discount received. Reply is not tenable since the random checking will not give the correct picture. The annual accounts shows that but for the discount received, sales would have been at a loss.</p>

1	2	<u>3</u>	4	5
0.10	M/s K.K. Seethi C.T.O, Kodugalloor	<u>23.72</u> 2009-10	3.53	The Government stated (November 2012) that on a random checking of the purchase and sales invoices it was found that sales price is more than purchase price and hence there is no scope for assessing the turnover in question. The reply is not correct as it is clear from the audited accounts of the assessee for the year that but for the discount/incentive received, the sale would be in loss and the discount which is in reimbursement nature is rightly assessable to tax.
TOTAL			206.82	

Audit Paragraph 2.13.1.3 to 2.13.2 contained in the Report of C & AG of India for the year ended 31st March 2012 (R.R)].

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

16. The Committee accepted the replies furnished by the government in the above cases.

Conclusion / Recommendation

17. No comments.

Short levy of tax due to misclassification of commodity

• (CTO (Special Circle), Thrissur)

Rice flour (puttupodi and the like) is taxable at four percent under entry 48(4) of schedule III to KVAT Act.

It was noticed (July 2011) from the annual returns filed by Manjilas Agro Foods(P) Ltd. That the sales turnover in respect of

rice products like puttupodi etc. amounting to ₹ 25.41 crore was taxed at one per cent during 2009-10 which included sales turnover of puttupodi of ₹ 24.81 crore taxable at the rate of four per cent. Application of incorrect rate of tax resulted in short levy of tax, cess and interest of ₹ 87.19 lakh.

The matter was pointed out to the Department (July 2011) and reported to Government in March 2012; their reply has not been received (December 2012).

[Audit Paragraph 2.13.3.1 contained in the Report of C & AG of India for the year ended 31st March 2012 (R.R)].

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

18. Regarding this para, the witness, Joint Commissioner, GST department informed that, during the year eventhough the company had sale of puttupodi, which was included in the rice product, it was not a local sale. She added that the Accountant General treated it as local sale and hence it was included in audit observations. Then, the Committee suggested to furnish a detailed reply at the earliest.

Conclusion / Recommendation

19. The Committee suggests the department to submit the concerned files to the AG to scrutinise the corrective measures taken by Government in the case of Manjilas Agro Foods (P) Ltd. The Committee also urges to furnish a detailed reply on short levy of tax due to misclassification of commodity and the present status of revenue collection from Manjilas Agro Foods (P) Ltd.,

(CTO, Special Circle II, Ernakulam)

Under KVAT Act, 2003, motor vehicles are taxable at 12.5 percent and used vehicles are taxable at 0.5 percent. Under Section 2(iiiA) of the Act, used motor vehicle means a motor vehicle purchased and registered under the provisions of the Motor Vehicles Act 1988 (Central Act 59 of 1988) and used for a minimum period of fifteen months subsequent to the registration.

M/s Rajasree Motors, a dealer in motor vehicles, motor vessels, used motor vehicles etc., had a sales turnover of ₹ 68.80 crore which included a sales turnover of ₹ 3.40 crore relating to used vehicles during the financial year.

It was noticed (November 2011) from the assessment records for 2009-10 of the assessee that they assessed to tax the sale value of six motor vehicles costing ₹ 1.59 crore at the rate of 0.5 per cent treating them as used vehicles. Since these vehicles were not used for a minimum period of 15 months subsequent to the registration, they could not be treated as used vehicles. Failure to assess these vehicles at 12.5 per cent resulted in short levy of tax, interest and cess of ₹ 22.77 lakh.

After this was pointed out (November 2011) in audit the assessing authority stated (November 2011) that the cars were used as demo cars and they had no value addition. The reply is not acceptable since tax at 0.5 per cent is not applicable to them for the reason that they would not fall under the definition of used cars. Further report has not been received (December 2012).

The matter was reported (June 2012) to Government; their reply has not been received (December 2012).

• **(CTO, Special Circle II, Ernakulam)**

M/s Indus motor Co. (P) Ltd, Kochi is a dealer in motor vehicles and motor vessels of all kinds. We noticed from the assessment records for the financial years 2008-09 and 2009-10 that a turnover of ₹ 76.56 lakh and ₹ 56.17 lakh were assessed at 0.5 percent being classified as 'used cars'. However, these vehicles were not coming under the category of used cars being vehicles less than 15 months old. This resulted in short levy of tax, cess and interest of ₹ 20.10 lakh.

This was pointed out to the Department (November 2011) and reported to government (March 2012); their reply has not been received (December 2012).

[Audit Paragraph 2.13.3.2 contained in the Report of C & AG of India for the year ended 31st March 2012 (R.R)].

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

20. The Committee accepted the reply furnished by the Government in the above case.

Conclusion / Recommendation

21. No comments.

(CTO, IV Circle, Thrissur)

Under KVAT Act, 2003 abrasives including grinding stones are taxable at the rate of 12.5 per cent and cotton waste is taxable at the rate of four per cent.

M/s Poothokkaran Agencies, Thrissur, a dealer in a abrasives, grinding wheels and waste cotton, had an aggregate turnover of

₹ 89.27 lakh for the years
2008-09 and 2009-10.

It was noticed (July 2011) from the assessment records that though abrasives and grinding wheels are taxable at 12.5 per cent and cotton waste at four per cent the assessee applied four per cent on the entire turnover. This resulted in a short levy of ₹ 9.02 lakh as shown below:

Year	Turnover of abrasives, grinding wheels	Rate applicable per cent	Rate applied per cent	Short levy at differential rate of 8.5 per cent	Tax at 4 per cent	Interest	Total
2008-09	27.60	12.5	4	2.35	0.02	0.62	2.99
2009-10	61.67	12.5	4	5.24	0.05	0.74	6.04
Total	89.27						9.02

The matter was pointed out to the Department (July 2011) and reported to Government (February 2012); further report has not been received (December 2012).

[Audit paragraph 2.13.3.3 contained in the Report of C&AG of India for the year ended 31st March 2012(R.R)]

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

22. Based on Accountant General's submission that they had not scrutinised the corrective measures taken by Government due to lack of file, documents and supplementary evidences the Committee directed the department to submit all the documents concerned in connection with the audit observations in the above case to the AG at the earliest.

23. The Committee also directs the department to furnish the details of present status of revenue collection in the above case which were accepted and already settled by the department. But the department failed to furnish it till date.

Conclusion / Recommendation

24. The committee suggests the department to submit the concerned files to the AG to scrutinise the corrective measures taken by Government in the case of M/s Poothokaran Agencies. The committee also directs the department to furnish the details of present status of revenue collection in this case.

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

- (CTO, Special Circle II, Ernakulam)

Under KVAT Act Dietary Supplement and branded confectionary are items taxable at 12.5 per cent.

M/s Daehsan Trading India (P) Ltd. An assessee exclusively dealing with the products of the holding company (DXN) filed annual return disclosing the total and taxable turnover as ₹ 15.01 crore for the financial year 2009-10.

It was noticed (November 2011) from the assessment records that out of the total turnover, ₹ 6.34 crore was assessed at four per cent in the guise of unbranded

confectionery and medicines. However, these products are actually branded products or dietary supplements like Ganocelium (GL), Reishi Gano (RG), Spirulla-300, taxable at 12.5 per cent. This resulted in short levy of tax including cess and interest of ₹ 64.19 lakh.

After this was pointed out (November 2011) in audit, the assessing authority issued notice under Section 25(1) to revise the assessment (December 2011).

The matter was reported to Government (July 2012); their reply has not been received (December 2012).

[CTO (WC & LT), Kottayam]

As per Section 6(1) (f) of KVAT Act, in the case of transfer of goods in the execution of works contract, where the transfer is not in the form of goods, but in some other form tax is to be levied at the rate of 12.5 percent and when the transfer is in the form of goods at the rates prescribed under the respective schedules. Turnover relating to foundation work copper etc, are taxable at 12.5 percent.

M/s Thalupula Engineering Company was a works contractor engaged in Railway electrification work. The KVAT assessment for 2007-08 of the assessee was finalised fixing total and taxable turnover as

₹ 6.91 crore, of which ₹ 2.88 crore related to transfer value of foundation work and copper which were taxable at 12.5 per cent.

It was noticed that the assessing authority finalised the assessment applying four per cent on aggregate turnover of ₹ 6.91 crore including ₹ 2.88 crore taxable at 12.5 per cent. This resulted in short levy of tax, cess and interest of ₹ 31.62 lakh.

After this was pointed out to the Department (September 2010) and reported to the Government (February 2012) the Government accepted (November 2012) the audit observation and stated that assessment was finalised (March 2012). Recovery report has not been received (December 2012).

• [CTO (WC & LT), Ernakulam]

Under Section 8 (a) of the KVAT Act, 2003 as it stood during 2008-09, compounded tax payable by works contractors having CST registration was eight per cent of the whole contract amount and otherwise rate of compounded tax was three per cent. For the year 2008-09, works contractors who are registered under CST Act or importers are not eligible to opt compounded tax at three percent on contract works which commenced in that year but can opt only compounded tax at eight percent. It was further stipulated that in respect of works which commenced prior to 1 April 2008 and remaining partly unexecuted on 1 April 2008 compounded tax payable during 2008-09 was at the rate of four per cent for those having CST registration and two per cent for others which was in force prior to April 2008. Under Section 7(5) of the CST Act, to cancel CST registration from a financial year, application for cancellation is to be filed not later than six months before the end of preceding year.

It was noticed (March 2011) from the annual return as well as audited accounts of GR Tech Services (P) Ltd. that during 2008-09, the dealer conceded compounded works contract turnover of ₹ 9.21 crore, out of which ₹3.20 crore related to new

contracts taken up during the year, and which was assessed to tax at the rate of three per cent on the strength of application filed (April 2008) for cancelling CST registration. Though the application filed in April for cancelling CST registration was not in order, the assessing authority accepted the same. This resulted in short levy of tax, cess and interest of ₹ 19.69 lakh at the differential rate of five per cent.

The case was pointed out to the Department (May 2011), the Department accepted the audit observation and stated (October 2011) that action would be taken to complete the assessment under Section 25(1). Further report was not received (December 2012).

The case was reported to Government (March 2012), their reply has not been received (December 2012).

• [CTO (WC & LT), Kollam]

It was noticed (March 2011) that two assessee^s registered under CST Act and had inter-state purchases during the year paid tax at compounded rate of three per cent instead of the correct rate of eight per cent on a turnover of ₹ 85.57 lakh and ₹ 31.51 lakh for the year 2008-09. This resulted in short levy of tax, cess and interest of ₹ 7.24 lakh.

After the case was reported (May 2012), the Government stated (September 2012) that the assessments were revised between June and July 2011 creating additional demand which was subsequently advised for collection under RR and pending before revenue authorities. Further reply has not been received (December 2012).

• [CTO (WC & LT), Pathanamthitta]

M/s. AVS projects and Constructions (P) Ltd., a works contractor having CST registration had a taxable turnover of ₹ 9.48 crore during 2008-09.

It was noticed (November 2010) from the assessment records that the assessee had contract receipts of ₹ 5.71 crore during 2008-09 pertaining to partly unexecuted work of 2007-08. This was assessed to tax at two percent during 2008-09 instead of at four per cent. This resulted in short levy of tax, cess and interest of ₹ 13.61 lakh.

After the case was pointed out to the Department (November 2010) the Department stated (January 2011) that notice had since been issued to the assessee. Further reply has not been received (December 2012).

• [CTO (WC & LT), Alappuzha]

Section 8(a) of KVAT Act provides that any works contractor executing contract works awarded by Government of Kerala, Kerala water authority or local authorities in which transfer of material is not in the form of goods but in some other form, shall be liable to pay tax at the rate of four percent on the whole contract amount received during 2008-09.

Shri. K. Bhaskaran was a Government contractor and also registered under CST Act. It was noticed (August 2010) from the annual return of the assessee, that he assessed his contract receipts of ₹ 5.52 crore at the rate of three per cent instead of at the correct rate of four per cent during 2008-09. This resulted in short levy of tax, cess and

interest of ₹ 6.42 lakh.

The matter was pointed out (August 2010) to the Department and reported to Government (June 2012). The Government stated (September 2012) that the assessment was revised (January 2011) creating additional demand of ₹ 6.81 lakh which is pending collection under RR. Recovery report has not been received (December 2012).

[Audit paragraphs 2.13.4.1 to 2.13.4.4 contained in the Report of C&AG of India for the year ended 31st March 2012(R.R)]

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

25. The Committee accepted the replies furnished by the Government in the above cases.

Conclusion/Recommendation

26. No comments

Short levy of tax due to incorrect claim of input tax credit/ special rebate not disallowed.

(CTO, Special Circle , Alappuzha, Malapuram and Kollam)

As provided in Section 11(3)/12(1) of the KVAT Act if goods in respect of which input tax is paid is used in manufacture of goods and the same are sent outside the State otherwise than by way of interstate trade, input tax credit/special rebate shall be limited to amount of tax paid/due in excess of four per cent on the purchase turnover of such goods sent outside the State. Further, under Rule 12A of KVAT Rules where taxable goods are used for both taxable and non-taxable transaction, the input tax credit/special rebate to which the dealer has become entitled to shall be apportioned between the taxable and exempted transactions on the basis of the ratio of taxable and exempted turnover. The portion of the input tax credit allowable to exempted sale or transaction shall be disallowed.

It was noticed in Audit between May 2010 and June 2011 in three Special circles, that the AA did not disallow IPT/special rebate to the extent it was to be actually disallowed. This resulted in short levy of ₹1.41 crore as shown in the following table:

(in lakh)

Sl. No.	Name of the assessee Name of Office	Reason for disallowance of IPT/Special rebate.	Turn over questioned by Audit	Year	Tax effect involved
1.	<u>M/s. Highland produce Company Ltd., CTO, Spl. circle, Alappuzha.</u>	Taxable and non-taxable transactions.	1918	2008-09	55.10
		interstate stock transfer.	963	2009-10	44.36
2.	<u>M/s Arya Vaidyasala, Kottakkal</u> CTO, Spl Circle, Malappuram	Irregular Exemption availed on IPTC related to non-taxable commodity.	5207	2009-10	20.96
3.	<u>M/s Alliance Grain Products (P) Ltd.</u> CTO, Spl. Circle, Kollam	Taxable and non-taxable transactions	Difference between IPT disallowed and entitled	2005-06 to 2008-09	3.04
4.	<u>M/s Midland Rubber and Produce Company, CTO Spl. Circle, Alappuzha</u>	Interstate stock transfer	58.20	2008-09	2.94
			158	2009-10	7.22
5.	<u>M/s Rajagiri Rubber and Produce Company, CTO Spl. Circle, Alappuzha</u>	Interstate stock transfer	489	2009-10	8.15
TOTAL					141.77

After this was reported, the Government accepted the observation in one case and revised the assessment. Reply in the remaining cases have not been received (December 2012).

[Audit paragraph 2.13.5.1 contained the Report of C&AG of India for the year ended 31st March 2012 C.R.R]

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

27. The committee accepted the replies furnished by the Government in the above cases except 2.13.5.1(2) and 2.13.5.1(5)

28. Based on Accountant General's submission that they had not scrutinised the corrective measures taken by Govt. due to lack of file, documents and supplementary evidences the committee directed the department to submit all the documents concerned in connection with the audit observations in 2.13.5.1(2) and 2.13.5.1(5) to the AG at the earliest.

Conclusion/Recommendation

29. The Committee suggests to submit the files to Accountant General on the case of allowing input tax credit/Special rebate to M/s Aryavaidya Sala Kottakkal (2.13.5.1(2) and M/s Rajagiri Rubber and Produce Company (2.13.5.1(5)). The committee also directs the department to furnish the details of present status of revenue collection in those cases.

• (CTO, Special Circle , Alappuzha)

Under a notification⁶ issued (July 2008), Government exempted from payment of CST the interstate sale of rubber subject to condition that the rubber so sold have suffered tax under KVAT Act 2003. Where the goods in respect of which purchase tax has been paid or where input tax credit have been availed are sent outside the State and such sale is exempted from tax, the IPT/special rebate shall be limited to the amount of such tax paid in excess of four per cent.

The Rajagiri Rubber & Produce Co. Ltd, a dealer of arecanut, coffee, rubber etc. claimed exemption on interstate sale turnover of natural rubber for ₹ 2.78 crore during the year 2009-10. We noticed (July 2011) that the assessee availed input tax credit/special rebate of ₹ 12.86 lakh on local purchases including the

tax exempted interstate trade. At the time of accepting the returns the AA did not limit input tax credit/special rebate availed to tax paid in excess of four per cent on purchase turnover corresponding to exempted interstate sales turnover resulted in short levy of tax, cess and interest of ₹ 11.63 lakh.

This was pointed out to the Department (July 2011) and reported to Government (February 2012); their reply has not been received (December 2012).

• **(CTO, Ponkunnam)**

M/s Kollamkulam Agencies Pvt. Ltd. was a dealer of rubber latex, rubber products, chemicals etc. Their sales and purchase turnover during 2009-10 was ₹ 7.59 crore and ₹ 6.84 crore respectively.

It was noticed (August 2011) from the annual accounts and annual return for 2009-10 that they availed exemption from payment of CST on interstate sales turnover of rubber of ₹ 0.85 crore which was 11.21 per cent of the sales turnover. Though they availed input tax credit/special rebate on the entire purchase value of rubber of ₹ 6.84 crore, the assessing authority did not reverse proportionate input tax credit/special rebate corresponding to the interstate sales for which exemption was availed. This resulted in short levy of tax, interest and cess of ₹ 3.64 lakh.

After the case was pointed out (August 2011) to the Department and reported to Government (February 2012); the Government stated (October 2012) that assessment was completed under Section 25(1) of KVAT Act 2013 (March 2012), creating an additional demand of ₹ 4.73 lakh. Further remarks have not been received (December 2012).

[Audit Paragraph 2.13.5.2 contained in the Report of C & AG of India for the year ended 31st March 2012 (R.R)].

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

30. The Committee accepted the replies furnished by the Government in the above cases.

Conclusion / Recommendation

31. No comments.

• (CTO, Special Circle , Palakkad)

Section 12 of KVAT Act provides that purchase tax paid under section 6(2) of the Act can be deducted as special rebate while calculating the net tax payable.

It was noticed (January 2011) from the annual return of M/s MPS Steel Castings (P) Ltd. for the year 2008-09 that the dealer deducted from tax payable an amount of ₹ 8.22 lakh as special rebate.

Though as per the return that the assessee had not paid any tax on purchase, the assessing authority did not disallow the incorrect claim resulting in short levy of tax of ₹ 9.86 lakh including interest.

After the matter was pointed out to the Department (January 2011) and reported to the Government (February 2012), Government stated (September 2012) that the credit claimed by the dealer related to the entry tax paid them and not on purchase under Section 6(2). The reply is not correct as the assessee had not made any interstate purchase during the year which attracts payment of entry tax. Further the claim of payment of advance tax has not been supported by any documentary evidence.

[Audit Paragraph 2.13.5.3 contained in the Report of C & AG of India for the year ended 31st March 2012 (R.R)].

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

32. Based on Accountant General's submission that they had not scrutinised the corrective measures taken by Govt. due to lack of file, documents and supplementary evidences the committee directed the department to submit all the documents concerned in connection with the audit observations in the above case to the AG at the earliest.

Conclusion/Recommendation

33. The committee suggests the department to submit the files to the AG to scrutinise the corrective measures taken by Government in the case of allowing special rebate to M/s MPS Steel Castings (P) Ltd. The committee also directs to furnish the details of present status of revenue collection.

• (CTO, First Circle, Kottayam)

Under proviso (2) below Section 11(3) of the KVAT Act, 2003 where any goods purchased in the State are subsequently sold at subsidised price, the input tax allowable under sub section(3) in respect of such goods shall not exceed the output tax payable on such goods.

Supply Co. District Depot, Kottayam is a public sector company that deals in pulses, spices, consumer goods, vegetables etc. The goods purchased are classified as maveli and non-maveli items. Maveli items viz., pulses and spices are sold

at subsidised prices and non-maveli goods sold at normal prices.

It was noticed (May 2010) from the assessment records of the assessee that they availed ITC of ₹ 19.31 lakh on sale of Maveli goods (pulses and spices) from April 2008 to November 2008. Since the maveli goods were sold at a lower price; the output tax on subsidised value of these goods amounted to ₹ 14.53 lakh only. In such cases to avoid tax loss; the assessing authority should limit the input tax credit upto the output tax payable on the sale of the goods. However, the assessing authority did not do so. This resulted in short levy of tax and interest of ₹ 5.35 lakh.

After this was pointed out to government (May 2011), the Government replied (May 2012) that the assessment for 2008-09 was revised based on the audit remarks creating a demand of ₹ 7.17 lakh. Further remarks have not been received (December 2012).

• (CTO, II Circle, Mattancherry)

Under Section 6(2) of KVAT Act 2003, every dealer who purchases taxable goods from any person other than a registered dealer shall pay tax on the purchase turnover of goods at the rates specified under sub Section (1) of the Act. As per proviso below Section 12(1) of the Act, if goods purchased in the State as above are sent outside the State or used in manufacture of goods and the same are sent outside the State otherwise than by way of sale in the course of interstate trade or export, special rebate shall be limited to tax paid in excess of four percent of purchase turnover of such goods.

M/s Innovative Foods, Ltd., was a dealer in meat, fish and chicken during 2009-10. The assessee returned a sales turnover and stock transfer of chicken for ₹ 0.90 crore and ₹ 4.81 crore respectively.

It was noticed(December 2011) that the above turnover was against the total returned purchase turnover of chicken of ₹28.66 lakh. Though, purchase from unregistered dealers was clear from the return, the assessing authority did not assess the tax relating to undisclosed purchase corresponding to interstate stock transfer, resulting in short levy of tax, cess and interest of ₹ 23.12 lakh.

This was pointed out to the Department (December 2011) and reported to Government (March 2012). Government accepted (August 2012) and revised the assessment raising a demand of ₹ 42 lakh, collection particulars of which have not been received (December 2012).

• **(CTO, Special Circle, Alappuzha)**

M/s Accelerated freeze drying company Ltd., a dealer in fruits, vegetables, meat, pepper etc., purchased pepper locally for an amount of ₹ 1.48 crore from unregistered dealers during 2008-09. But they did not remit the purchase tax in respect of the turnover which resulted in availing special rebate of entire purchase tax due. Since they had interstate stock transfer of pepper for an amount of ₹ 1.60 crore, special rebate up to four percent on purchase turnover of pepper corresponding to turnover of pepper stock transferred should have been disallowed. Inadmissible special rebate works out to ₹ 3.19 lakh.

This was pointed out to the Department (May 2010) and reported to Government (June 2012); their reply has not been received (December 2012).

[Audit Paragraph 2.13.5.4 and 2.13.5.5 contained in the Report of C & AG of India for the year ended 31st March 2012 (R.R)].

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

34. The Committee accepted the replies furnished by the Government.

Conclusion/Recommendation

35. No Comments

(CTO (WC & LT, Kollam)

Under Section 8(a) (ii) of the KVAT Act 2003, as it stood prior to April 2008, works contractors who are importers or having CST registration could opt to pay compounded tax of four percent. But works contractors engaged in contracts relating to supply and installation of plant and machinery, were not eligible to pay tax at compounded rates.

M/s Raghavendra Automation (P) Ltd. was a dealer engaged in design, manufacture, supply, installation and commissioning of Auto LPG dispensing station as turnkey projects.

For installation of plant and machinery, deduction of 15 per cent is admissible towards labour and other charges. After giving allowable deduction, balance turnover is taxable at

12.5 per cent. However, we noticed (January 2010) from the assessment records that the assessing authority applied the incorrect rate of four per cent on ₹ 2.32 crore and ₹ 2.22 crore being the contract receipts for the years 2006-07 and 2007-08 respectively. This is not correct as contractors undertaking supply and installation of plant and machinery are not eligible to opt for payment of compounded tax under the Act. This resulted in short levy of tax and interest of ₹ 37.91 lakh.

After this was pointed out (February 2010) to the Department and reported to Government (June 2012); Government stated (December 2012) that the AA assessed the escaped turnover and additional demand was created for the works contract

receipts other than that was proved to be related to interstate.

[Audit Paragraph 2.13.6.1 contained in the Report of C & AG of India for the year ended 31st March 2012 (R.R)].

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

36. Based on Accountant General's submission that they had not scrutinised the corrective measures taken by Government due to lack of file, documents and supplementary evidences the Committee directed the department to submit all the documents concerned in connection with the audit observations in the above case to the AG at the earliest.

37. The Committee also directs the department to furnish the details of present status of revenue collection in the above case which were accepted and already settled by the department. But the department failed to furnish it till date.

Conclusion / Recommendation

38. The committee suggests the department to submit concerned files to the AG to scrutinise the corrective measures taken by Government in the case of M/s Raghavendra Automobile (P) Ltd. The committee also directs the department to furnish the details of present status of revenue collection.

• **(CTO, Kothamangalam)**

As per Section 8(b) of KVAT Act, 2003 any dealer producing granite metals with the aid of mechanised crushing machine can opt to pay compounded tax at rates specified on the basis of size of the crushing machine. Rate of compounded tax for crusher unit of jaw size (size II) and cone crusher was ₹ 1.50 lakh and ₹ 10 lakh per annum respectively.

M/s Ever-one Properties India Pvt. Ltd. Is an assessee producing granite metals using crushing machines, we noticed (December 2011) from the assessment records of the assessee that the assessee owns two

crushers- one cone crusher and one size II crusher. For the year 2009-10, they paid tax and cess of ₹ 1.52 lakh only, for one crushing unit of size II. Failure to demand tax on the cone crusher resulted in short levy of tax, cess and interest of ₹ 12.02 lakh.

After the matter was pointed out to the Department (December 2011) and reported to Government (March 2012); Government stated (October 2012) that assessment was completed (June 2012) under Section 25(1) of KVAT Act and recovery steps initiated. However, a report on recovery has not been received (December 2012).

• (CTO Special Circle , Kollam)

Under Section 8(c) (ii) of KVAT Act as it stood prior to 1 April 2008, bar attached hotel other than that of and above three star club and heritage hotel can opt to pay tax on cooked food and beverages prepared by it, at compounded rate. The rate shall be higher of following:

- (a) 12.5 per cent tax on 15 per cent of the turnover of foreign liquor estimated under Section 7 of the KGST or
 (b) 115 per cent of the tax paid or payable in respect of the higher turnover for the previous consecutive three years, preceding the year to which the option relates.
 From 1 April 2008, dealers who paid compounded tax during previous year shall pay tax at 115 percent of compounded tax paid.

Hotel Revathy, a bar attached hotel which opted for payment of compounded tax on cooked food prepared by it, paid compounded tax of ₹ 2.21 lakh for 2007-08. But tax liability due under KVAT Act for that year was

₹ 5.03 lakh⁷. Since the tax liability of such cases was dependant on the liability of 2007-08, corresponding shortage occurred in compounded tax fixed for 2008-09 and 2009-10. This resulted in short levy of tax and interest of ₹ 11.27 lakh as shown below:

(₹ in lakh)

Year	Compounded tax due	Tax paid	Balance tax	Tax	Interest	Short tax
2007-08	5.03	2.21	2.82		0.93	3.75
2008-09	5.79	2.76	3.02	0.03	0.64	3.69
2009-10	6.65	3.18	3.48	0.03	0.32	3.83
					Total	11.27

7 The assessee had not paid compounded tax during 2006-07 and paid tax under Section 8(c) of KVAT Act during 2007-08.
 Purchase tax of liquor (2006-07) : ₹ 1,91,66,755
 Sale turnover u/s 7 of KGST Act : ₹ 2,68,33,457
 Turnover of cooked food for fixing compounded tax for 2007-08: ₹ 40,25,019 (15% of ₹ 2.68 crore.)
 Compounded tax fixed : ₹ 5,03,127 (12.5% of ₹ 40,25,019)

The matter was pointed out to the Department (February 2011) and reported the matter to Government (February 2012), the Government stated (October 2012) that the assessment was revised (August 2012) and additional demand of ₹ 14.31 lakh was made. However, a report on recovery has not been received (December 2012).

• (CTO Perambra)

Under Section 8(f) of the KVAT Act, as it stood between 1 July 2006 and 31st March 2008, dealer in ornaments and wares or articles of gold, silver or platinum group metals may opt to pay compounded tax at 200 per cent of the highest tax payable by him under KVAT Act or KGST Act for a period of 12 months during any of the three preceding years. As per explanation 1 to that Section, if the dealer had not transacted business for any period during any such preceding years, the tax payable for the twelve months shall be calculated proportionately on the basis of tax payable for the period during which such dealer had transacted business. Further, where the dealer had paid compounded tax for the previous year the tax payable for the succeeding year shall be one hundred and fifteen per cent of such tax paid during the previous year,

M/s Diya Gold palace Jewellers (Perambra) a dealer in jewellery opted for paying the tax at compounded rate under Section 8(f) of KVAT Act, 2003. The compounded tax for 2006-07 was fixed at ₹ 1.50 lakh considering tax of ₹ 0.75 lakh

paid during 2004-05 as the highest.

It was noticed (February 2011) that the assessment was incorrect. Since the assessee started business from November 2003, the proportionate tax for 12 months period for 2003-04 amounted to ₹ 1.77 lakh⁸. Hence the compounded tax for 2006-07 should have been ₹ 3.53 lakh. Incorrect fixation of compounded tax affected the subsequent years leading to a total short levy of tax amounting to ₹ 9.30 lakh for three financial years 2006-09 as shown below:

-
- 8 Tax payable for 2003-04 = Tax due from 13 November 2003 to March 2004 = ₹ 67,586 x 366/140 = ₹ 1,76,684.
 Compounded tax for 2006-07 = ₹ 1,76,684 x 200% = ₹ 3,53,368 (Highest tax being that for 2003-04).
 Compounded tax for 2007-08 and 2008-09 = 115% of tax due for previous years.

Financial Year	Expected	Actual	Shortfall of Tax Interest upto 01.2011
2006-07	1.50	3.53	2.03 0.91
2007-08	1.72	4.07	2.35 0.78
2008-09	2.00	4.67	2.67 0.56
Total			9.30

The matter was reported to Department (February 2011) and to Government (February 2012). Government stated (September 2012) that the assessments were revised and additional demand of ₹ 10.25 lakh was created since the point raised in audit was sustainable. Further report has not been received (December 2012).

• [CTO (WC & LT), Kottayam]

Under KVAT Act, 2003 as existed prior to April 2008, works contract relating to supply and installation of plant and machinery were not eligible for compounding and attracted tax at the rate of 12.5 percent as per Section 6(1) (f) of KVAT Act 2003. Further, for the year 2008-09 for works commenced prior to 1 April 2008, work contractors are required to pay tax at the rate as it existed prior to 1 April 2008.

M/s Barnett Associates, an assessee engaged in sales and supply of installation of pump set and allied electrical contracts with Kerala Water Authority had a contract receipt (2008-09) of ₹ 48.22 lakh, related to ongoing works of 2007-08. Though it was assessable at 12.5 per cent it was assessed to tax at four per cent. Application of

incorrect rate of tax resulted in short levy of tax cess and interest of ₹ 4.80 lakh.

After the matter was pointed out (September 2010), in audit, the Department stated (July 2011) that action had been initiated to realise the tax.

The matter was reported to Government (June 2012); their reply has not been received (December 2012).

Incorrect filing of returns

(CTO Special Circle II ,Ernakulam)

Section 42(2) of KVAT Act 2003, provides that where any dealer detects any omission or mistake in the annual return submitted by him with reference to the audited figures, he shall file along with audited certificate, revised annual return rectifying the mistake or omission and if the tax liability increases, he shall also file proof of payment of such tax, interest due thereon the penal interest.

M/s. India Techs Ltd. a dealer in Bulldozers, earth movers, escalators etc. had a sales turnover of ₹ 99.31 crore for the financial year 2008-09. We noticed (December 2011) from their assessment records that the assessee availed tax credit of ₹ 6.50 lakh towards sales return which is not supported by figures as per certified accounts. However output tax is assessed only at net sales and hence, availing tax credit again on

sales return is incorrect. This resulted in short levy of tax, cess and interest of ₹ 8.52 lakh.

The matter was pointed out to the Department (December 2011) and reported to the Government (June 2012); their reply has not been received (December 2012).

[Audit Paragraph 2.13.6.2 to 2.13.7(a) contained in the Report of C & AG of India for the year ended 31st March 2012 (R.R.)].

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

39. The committee accepted the replies furnished by the Government.

Conclusion/Recommendation

40. No comments

• (CTO Special Circle III , Ernakulam)

During 2009-10 and FACT¹⁶ Limited purchased furnace oil for ₹ 162.27 crore on which input tax credit admissible at 12.5 per cent was ₹ 20.08 crore. Against this the assessee incorrectly disclosed a purchased turnover of ₹ 162.75 crore in annual return on which ₹ 20.34 crore was availed as input tax credit. This resulted

in short levy of tax, cess and interest of ₹ 7.35 lakh.

The case was pointed out to the Department (December 2011) and reported to the Government in March 2012; their reply has not been received (December 2012.)

[Audit Paragraph 2.13.7(b) contained in the Report of C & AG of India for the year ended 31st March 2012 (R.R.)].

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

41. Based on Accountant General's submission that they had not scrutinised the corrective measures taken by Government due to lack of file, documents and supplementary evidences the Committee directed the department to submit all the documents concerned in connection with the audit observations in the above case to the AG at the earliest.

Conclusion/Recommendation

42. The committee suggests the department to submit the concerned files to the AG to scrutinise the corrective measures taken by Government in the case of incorrect filing of returns by FACT Ltd. The committee also directs the department to furnish the details of the present status of revenue collection.

Non-Resident Surcharge

(CTO Special Circle II , Brnakulam)

Under Section 3(1A) of the Kerala surcharge on Taxes Act 1957, the tax payable under sub sections (1) and (2) of Section 6 of the Kerala Value Added Tax Act 2003, other than declared goods as defined in Section 14 of the CST Act shall in the case of national or multinational companies functioning in the State as retail chains or direct marketing chains who import not less than 50 per cent of their stock from outside the State or country and not less than 75 per cent of whose sales are retail business and whose total turnover exceeds five crore rupees per annum but excluding such class of dealers of certain commodities, be increased by a surcharge of 10 per cent. Under notification issued in August 2008 Government exempted certain dealers who exclusively deals with certain commodities which includes readymade garments.

M/s Fab
India
Overseas (P)
Ltd., the
assessee is a
shopping
mall with a
net work of
more than 50
shops all
over the
country. The
items dealt
with by the

assessee are readymade garments, flooring materials, furniture, gift articles, cosmetics

etc. The assessee effected entire purchases from outside the State and by way of interstate stock transfers. Being a retail chain dealer the entire sales was effected to customers (retails sales) within the State.

It was noticed (November 2011) in Audit from the assessment records that though the assessee was liable to pay surcharge, the assessing authority did not assess surcharge at the rate of 10 per cent on ₹ 50.68 lakh and ₹ 67.58 lakh being the tax payable under VAT for the years 2008-09 and 2009-10 respectively. This resulted in non levy of surcharge and interest of ₹ 14.56 lakh.

After this was pointed out in November 2011 the assessing authority replied (November 2011) that the dealer mainly dealt with readymade garments which was exempted from surcharge vide notification⁹ issued (August 2008) by Government. Further it was stated that exclusively means primarily and hence the assessee is entitled for exemption under the notification. The reply is not correct as the said notification extends exemption to those dealers who exclusively deal with certain commodities which includes readymade garments. But in this case the dealer sold goods valued at ₹ 13.72 crore out of which ₹ 10.84 crore related to readymade garments. The remaining sale related to goods like electrical goods, cosmetics, flooring materials, jewellery etc., from which it clear that the assessee was not an exclusive dealer of readymade garments and hence liable to pay surcharge.

of tax due to acceptances in form 'C'.

(CTO Second Circle , Perumbavoor)

Under section 8(2) (b) of the CST Act, the tax payable on interstate sales by a dealer, in the case of goods other than declared goods, shall be calculated at the rate of 10 Percent or the rate applicable to the sale or purchase of such goods inside the State, Whichever is higher.

M/s Amala ply wood was a manufacture cum dealer in plywood and block board. The assessing authority assessed central sales tax at reduced rate of four per cent on taxable turnover of ₹ 69.30 lakh and ₹ 99.61 lakh respectively

for the years 2003-04 and 2004-05 accepting the declarations in form 'C' received

from Tamil Nadu dealers. We noticed (November 2009) that the declarations covering an aggregate turnover of ₹ 70.21 lakh¹⁰ were apparently not genuine as the name of the issuing office in the stamp affixed in the form C was not of an existing office in Tamil Nadu. Acceptance of bogus declaration Forms resulted in short levy of tax and interest of ₹ 11.07 lakh.

After the matter was pointed out (July 2010) to the Department and reported to Government (July 2012), the Government accepted (November 2012) the audit observation and stated that assessments were completed rejecting bogus 'C' form declarations and assessing turnover at higher rate of 12.5 percent. Further they stated that Department initiated R.R. action against the dealer. Further remarks have not been received (December 2012).

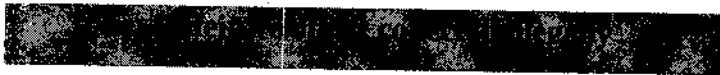
[Audit Paragraph 2.13.8 and 2.13.9 contained in the Report of C & AG of India for the year ended 31st March 2012 (R.R.)].

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

43. The Committee accepted the replies furnished by the Government.

Conclusion/ Recommendation

44. No comments



(CTO, Thirurangadi)

Under section 72(1) where any persons collects any sum by way of tax or purporting to be by way of tax in contravention of provisions of KVAT Act, he shall in addition to forfeiture of such illegal collection, be liable to pay penalty not exceeding ₹ 5,000.

M/s Ecowood was a dealer in timber. They conceded sales turnover of timber of ₹ 12.44 crore on which VAT including cess leviable was ₹ 15.70 lakh during 2008-09.

10 ₹ 32.67 lakh (2003-04) and ₹ 37.54 lakh (2004-05).

Against this the firm collected ₹ 23.53 lakh.

It was noticed (December 2010) from the annual returns and profit and loss accounts that the assessing authority, did not forfeit to Government tax collection of ₹ 7.83 lakh effected by the assessee. Further the assessing authority refunded excess input tax credit of ₹ 7.98 lakh claimed by the assessee without adjusting excess collection of tax. Non-forfeiture of tax, interest and penalty amounts to ₹ 9.37 lakh.

After this was pointed out (December 2010) to the Department and reported to Government, Government stated (November 2012) that the observation was a result of error on the part of the auditor and by mistake, they have entered output tax receivable in the balance sheet instead of VAT refundable. The reply is not correct as the AA completed assessment (March 2011) after examining the returns and the balance sheet, besides the balance sheets were certified by the chartered accounts, as such the matter needs detailed investigation.

[Audit Paragraph 2.13.10 contained in the Report of C & AG of India for the year ended 31st March 2012 (R.R.).]

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

45. Based on Accountant General's submission that they had not scrutinised the corrective measures taken by Government due to lack of file, documents and supplementary evidences the Committee directed the department to submit all the documents concerned in connection with the audit observations in the above case to the AG at the earliest.

Conclusion/ Recommendation

46. The committee suggests the department to submit the concerned files to the AG to scrutinise the corrective measures taken by Government in the case of M/s Ecowood.

The committee also directs the department to furnish the details of present status of revenue collection from M/s Ecowood.

Short levy of tax due to suppression of turnover

(AIT & CTO, Kuthiathode)

Section 25 of the KVAT Act empowers the Assessing Authority to assess tax payable on any turnover which has escaped assessment to tax within five years from last date of the year to which return relates.

We noticed (May 2011) from the annual return for 2009-10 filed by M/s Thohoor Tyres and Oils that it availed input tax

credit of ₹ 1.98 lakh relating to purchase of furnace oil for ₹ 15.86 lakh. It was also not depicted in the closing stock, the assessee neither resold nor used it for manufacture of taxable goods. The AA however, did not disallow the claim resulting in short levy of tax, cess and interest of ₹ 2.47 lakh.

This was pointed out to the Department (May 2011) and reported to Government (February 2012); their reply has not been received (December 2012).

Short levy of tax due to incorrect computation of turnover

(CTO (WC & LT), Kollam)

Under Rule 10(2) (a) of KVAT Rules, 2005, labour and other specified charges for execution of work and profit to the extent it is related to supply of labour can be deducted from total turnover for arriving taxable turnover. If after the deduction towards labour and other charges the taxable turnover falls below the cost of goods transferred in the execution of works contract, an amount equal to the cost of goods transferred in the execution of works contract together with profit, if any, shall be taxable turnover in respect of such works contract.

Lumens electrosystems, an assessee, was undertaking electrical contracts assessable under works contract in KVAT. We noticed from the assessment records for the years 2006-07 and 2007-08 that the assessee had worked out taxable turnover as ₹ 37.08 lakh and ₹ 47.70

lakh respectively. As a result turnover of ₹ 6.33 lakh and ₹ 11.40 lakh¹¹ escaped

11 Difference between the cost of material transferred in works contract and the taxable turnover disclosed by the assessee after availing the deductions.

from assessment as per provision of KVAT Act. This resulted in short levy of tax and interest of ₹ 2.76 lakh as shown below:

	Excess Demand deducted by the assessor	Excess amount under KVAT Act	Turnover assessed	Short Levy of tax including interest
2006-07	37.08	43.41	633	1.85
2007-08	47.70	59.10	11.40	1.71
Total				3.56

(₹ in lakh)

After this pointed out this to the Department (January 2010) and reported to Government (July 2012); Government stated that the assessment was completed (October 2010) for the respective years creating additional demand of ₹1.37 lakh and ₹ 1.81 lakh and the arrears is under R.R. action. Further remarks have not been received (December 2012).

• (AIT & CTO , Alathur)

Under Section 5(2) (C) of the KGST Act, bar attached hotels are liable to pay turnover tax at 10 per cent of turnover of foreign liquor sold by them. However, under Section 7 of KGST Act as amended vide Finance Act 2006 bar hotels not being a star hotel of and above three star hotel situated in panchayat areas may, at its option pay turnover tax (a) at one hundred and thirty five per cent of purchase value of liquor, or (b) at one hundred and fifteen per cent of highest turnover tax payable by it as conceded in the return or accounts or the turnover tax paid for any of the previous consecutive three years whichever is higher, from July 2006.

M/s Savitha bar, a bar attached hotel situated in Panchayat area was liable to pay turnover tax. The assessing authority applied (March 2011) the lower rate

and underassessed the tax liability for the financial year 2006-07 resulting in a short levy of ₹ 2.63 lakh due to incorrect calculation as shown below:

(₹ in lakh)

Turnover tax paid for 2005-06	19.53
Turnover tax actually payable for 2006-07 (135% of the tax paid for 2005-06)	22.44
Turnover tax assessed and paid for 2006-07 (10% on 135% of purchase turnover for current year)	19.82
Short levy of turnover tax for 2006-07	2.63

This was pointed out (July 2011) to the Department and reported (February 2012) to Government, Government stated (September 2012) that the dealer opted out of the compounding scheme. The reply is not correct, as the assessing authority has completed assessment under compounding scheme (March 2011) after considering the reply furnished by the assessee for the notice issued in February 2011.

(CTO Special circle, Thiruvananthapuram)

Under Rule 18(4) and (5) of KGST Rules 1963, scrutiny of the accounts is mandatory before finalising assessment. Under section 17(3) of KGST Act, if the return submitted by the dealer appears to be incorrect or incomplete, the assessing authority shall assess the dealer to the best of its judgement.

M/s Kerala Auto mobiles Limited was a dealer in three wheelers and spares. We noticed (February 2011) from the assessment order that against a total turnover of ₹ 48.34 crore, the assessing

authority finalised (June 2009) their assessment for 2004-05 accepting the total and taxable turnover of ₹ 47.43 crore and ₹ 38.49 crore respectively as conceded in return. The reason for accepting the reduced amount was not explained. This

resulted in escape of turnover of ₹ 91.08 lakh and consequent short levy of tax of ₹ 21.24 lakh including AST and interest.

This was pointed out to the Department (February 2011) and reported to Government (March 2012); their reply has not been received (December 2012).

(CTO, Special circle, Kottayam)

Under Section 5(1) of KGST Act, dealers whose total turnover exceeds Rupees two lakh are liable to pay tax on the taxable turnover of the year. It was judicially held¹² that excise duty forms part of the turnover of the seller.

M/s Midas Precured Treads (P) Ltd. is a manufacturer of tread rubber. We noticed (October 2008) that while finalising (June 2007) the KGST

assessments for 2003-04 and 2004-05 of the assessee, the assessing authority did not include excise duty in the turnover. This resulted in short levy of tax, AST and interest to the tune of ₹ 12.74 lakh as follows: **(₹ in lakh)**

2003-04				4.71
2004-05			3.82	3.82
Total				8.53
Interest				
Total short levy				12.74

12. MC Dowell Co. Ltd Vs Commercial Tax Officer (1985) 59 STC 277 (SC)

After this being pointed out (October 2008) the Department stated in April 2009 that they submitted the case to Commissioner of Commercial Taxes to obtain

permission to reopen it under Section 17(D) of the Act. Further report has not been received (December 2012).

Short levy due to incorrect exemption allowed

(CTO, Special circle II, Ernakulam)

By a notification¹³ issued in December 1999 under KGST Act, 1963, Government exempted from payment of tax the turnover of sale of raw material, plant and machinery, spares, tools and consumables other than petroleum products to 100 per cent Export Oriented Units. High speed diesel (HSD) was taxable at the rate of 24 per cent under KGST Act read with another notification¹⁴ issued by Government in December 1999.

M/s Bharat Petroleum Corporation Ltd., is a dealer in Petroleum products like Petrol, HSD, Diesel etc. The assessing authority finalised (March 2010) the assessment of

the assessee for 2003-04 fixing the total and taxable turnover as ₹ 4,779.30 crore and ₹ 1,431.76 crore respectively.

It was noticed (November 2010) in Audit from the assessment records for the year 2003-04 that the assessing authority did not levy tax on a turnover of ₹ 1.07 crore relating to sales of HSD to 100 percent Export Oriented Units. This resulted in short levy of tax of ₹ 48.49 lakh, including interest.

The matter was pointed out (November 2010) in audit and the Department accepted the audit observation and stated (May 2011) that action would be taken to make good the short levy.

The matter was reported to Government (June 2012); their reply has not been received (December 2012).

13. SRO 1090/99 (Schedule III, item 7).

14. SRO 1091/99 (Schedule I, Sl. No. 28 (i)).

(CTO, Special Circle, Kottayam)

Under entry 150(i) of I Schedule to KGST Act, 1963 tea including green tea leaves taxable at the rate of eight per cent. By a notification¹⁵ issued in December 1999 Government exempted from tax, the turnover of green tea leaves produced by cultivators and sold to tea factories, subject to the condition that the processed tea is taxed either under KGST Act 1963 or CST Act 1956.

It was noticed (October 2008) in Audit from the annual returns of Kerala forest Development Corporation Ltd., that while completing the assessments for the years 2003-04 and 2004-05, the assessing officer

exempted sales turnover of green tea leaves for ₹ 35.21 lakh and ₹ 58.35 lakh respectively, accepting the declaration of a purchaser tea factory situated outside the State. Incorrect exemption allowed resulted in short levy of tax, AST and interest of ₹ 12.78 lakh.

After this was pointed out in audit (October 2008), the assessing officer stated (April 2009) that the CCT was requested to accord sanction for re-opening the case. We have not received further report from them (December 2012).

The matter was reported to the Government in May 2009; their reply has not been received (December 2012).

[Audit Paragraphs 2.13.11 to 2.13.15.2 contained in the Report of C & AG of India for the year ended 31st March 2012 (R.R.).]

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

47. The Committee accepted the replies furnished by the department.

48. The Commissioner GST department remarked that nearly 70% of the cases were accepted and the rest of the cases would be reconciled after furnishing detailed replies.

49. Then an officer from AG intervened and commented that in certain cases the details which found to be absent in the assessment file during audit were later submitted by the assessment officers through 'Books of Accounts' and were approved on subsequent verification as well. But in certain other cases, no such documents or supplementary evidence had been submitted by the authorities, and therefore the action taken on these cases were not scrutinised.

50. The Deputy Accountant General then requested the department to take necessary action to settle the pending cases at the earliest.

Conclusion

51. No comments.

Thiruvananthapuram,
1st July 2019.

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

APPENDIX I

SUMMARY OF MAIN CONCLUSION/RECOMMENDATIONS

Sl. No.	Para No.	Department Concerned	Conclusion/Recommendations
1.	12	Taxes Department	Regarding the case of M/s SEPR Refractories India Ltd., the Committee directs the GST department to submit a statement regarding the realisation of additional demand
2.	15	Taxes Department	The Committee urges the GST department to furnish a detailed statement on the collection of additional demand if any, due from M/s. G.R. Engineering (P) Ltd., at the earliest
3.	19	Taxes Department	The Committee suggests the department to submit the concerned files to the AG to scrutinise the corrective measures taken by Government in the case of Manjilas Agro Foods (P) Ltd. The Committee also urges to furnish a detailed reply on short levy of tax due to misclassification of commodity and the present status of revenue collection from Manjilas Agro Foods (P) Ltd.
4.	24	Taxes Department	The committee suggests the department to submit the concerned files to the AG to scrutinise the corrective measures taken by Government in the case of M/s Poothokaran Agencies. The committee also directs the department to furnish the details of present status of revenue collection in this case

5.	29	Taxes Department	The Committee suggests to submit the files to Accountant General on the case of allowing input tax credit/Special rebate to M/s Aryavaidya Sala Kottakkal (2.13.5.1(2) and M/s Rajagiri Rubber and Produce Company (2.13.5.1(5)). The committee also directs the department to furnish the details of present status of revenue collection in those cases
6.	33	Taxes Department	The committee suggests the department to submit the files to the AG to scrutinise the corrective measures taken by Government in the case of allowing special rebate to M/s MPS Steel Castings (P) Ltd. The committee also directs to furnish the details of present status of revenue collection
7.	38	Taxes Department	The committee suggests the department to submit concerned files to the AG to scrutinise the corrective measures taken by Government in the case of M/s Raghavendra Automobile (P) Ltd. The committee also directs the department to furnish the details of present status of revenue collection
8.	42	Taxes Department	The committee suggests the department to submit the concerned files to the AG to scrutinise the corrective measures taken by Government in the case of incorrect filing of returns by FACT Ltd. The committee also directs the department to furnish the details of the present status of revenue collection

9.	46	Taxes Department	<p>The committee suggests the department to submit the concerned files to the AG to scrutinise the corrective measures taken by Government in the case of M/s Ecowood</p> <p>The committee also directs the department to furnish the details of present status of revenue collection from M/s Ecowood.</p>
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Appendix - II
Notes Furnished by the
Government

Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Other audit observations
	(c)	Paragraph No.	2.12
	(d)	Report No. and Year	C& AG report ended 31.3.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	There is need for the Govt. to improve the internal control system including strengthening of the internal audit to ensure that short levy due to omissions non observance of provisions Act and Rules short levy of tax, interest, penalty, incorrect determination of classification of turnover etc. are detected and rectified.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	The Govt. is favourably considering the proposal restoration of the Audit Assessment Wing in the pl of internal audit wing with a view to strengthen process of audit. Strict instructions are issued fr time to time to the assessing officers to go through audit observations before attempting to return scruti imposition of penalty and completing assessment. department has launched a systematic training to officers and decided for the revival of audit assessm wing with a view to minimize the audit observation the AG.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	

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

Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Non observance of provisions of Acts/Rules
	(c)	Paragraph No.	2.13
	(d)	Report No. and Year	C& AG report ended 31.3.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	It was noticed in audit that the assessing authorities while finalizing the assessment did not observe some of the provisions which resulted in non/short levy /non realization of tax/interest/penalty worth Rs.67.52 crores.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	Observation of AG relates to the period 2011-12. The short levy involved amounts to Rs.67.52 crore spread over paragraphs 2.13.1 to 2.13.15.2 with respect to the short levy pointed out by the reports are submitted herewith on paras 2.13.1 to 2.13.15.2.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

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

Action taken by the Department on Audit Reports

(A) Department											
(B) Subject/Title of the Paragraph											
(C) Paragraph No.											
(D) Report No. and Year											
(E) Date of receipt of the Draft Para/Review in the Department											
(F) Date of Department's Reply											
III. Gist of Paragraph/Review	<p>Overseas companies of Multitech Accounts attached with the ITR Returns furnished by them, have not deducted their turnover amount from the turnover. The returns filed by the assessee for the period from 2005-06 to 2008-09 were accepted by the department as such assessed without any verification of computing of incorrect returns resulting in undue realisation of tax of tax of Rs. 11.30 crore.</p> <table border="1" data-bbox="481 816 958 1338"> <thead> <tr> <th data-bbox="481 816 714 839">Dealer Name</th> <th data-bbox="714 816 958 839">Short Levy</th> </tr> </thead> <tbody> <tr> <td data-bbox="481 839 714 990">1. M/s. S. S. S. R. Enterprises Ltd. Circle: Bangalore Circle (2005-06)</td> <td data-bbox="714 839 958 990">Rs. 11.30 lakh</td> </tr> <tr> <td data-bbox="481 990 714 1141">2. M/s. Antony's Motors India Ltd. Special Circle: Bangalore (2005-06 and 2006-07)</td> <td data-bbox="714 990 958 1141">Rs. 6.52 lakhs</td> </tr> <tr> <td data-bbox="481 1141 714 1239">3. M/s. Southern Paper Ltd. (2005-06)</td> <td data-bbox="714 1141 958 1239">Rs. 37.74 lakh</td> </tr> <tr> <td data-bbox="481 1239 714 1338">4. M/s. SPS Refractories India Ltd. (2008-09)</td> <td data-bbox="714 1239 958 1338">Rs. 5.41 crores.</td> </tr> </tbody> </table>	Dealer Name	Short Levy	1. M/s. S. S. S. R. Enterprises Ltd. Circle: Bangalore Circle (2005-06)	Rs. 11.30 lakh	2. M/s. Antony's Motors India Ltd. Special Circle: Bangalore (2005-06 and 2006-07)	Rs. 6.52 lakhs	3. M/s. Southern Paper Ltd. (2005-06)	Rs. 37.74 lakh	4. M/s. SPS Refractories India Ltd. (2008-09)	Rs. 5.41 crores.
Dealer Name	Short Levy										
1. M/s. S. S. S. R. Enterprises Ltd. Circle: Bangalore Circle (2005-06)	Rs. 11.30 lakh										
2. M/s. Antony's Motors India Ltd. Special Circle: Bangalore (2005-06 and 2006-07)	Rs. 6.52 lakhs										
3. M/s. Southern Paper Ltd. (2005-06)	Rs. 37.74 lakh										
4. M/s. SPS Refractories India Ltd. (2008-09)	Rs. 5.41 crores.										

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

Remedial Action taken

Improvement in the system and procedures including financial controls.

As per the number of the 2009-10 report, the dealer has pointed out the following:

(a) The dealer has stated that the dealer has disclosed the details of inventory number and value of inventory. The dealer has also disclosed the details of the quantity of rubber sold during the period. The dealer has also disclosed the details of the quantity of rubber sold during the period. The dealer has also disclosed the details of the quantity of rubber sold during the period.

(b) As per the details of the accounts, the quantity of rubber sold during the period is Rs. 1,13,475/-. The dealer has also disclosed the details of the quantity of rubber sold during the period.

(c) The dealer has stated that the sale of pepper and other commodities for Rs. 1,13,475/- is not disclosed in the accounts.

(d) As per the details of the accounts, during the period, the dealer has received an income from the sale of rubber for Rs. 1,13,475/-. The dealer has also disclosed the details of the quantity of rubber sold during the period.

Books of accounts of the dealer were verified and found that the audited annual accounts included income from both the Kuttikal Estate and Munakuvam (Kottayam District) and Pasai Estate (Kollam District) Kuttikal Estate, Kanyakumari District, Tamil Nadu. The return submitted by the dealer only the turnover of Kuttikal Estate. The sales turnover of latex for Rs. 1,13,475/- relates to Kuttikal Estate, Munakuvam and Rs. 2,16,57,178/- relates of their sale of Pasai Estate, Tamil Nadu. In the case of cess, the dealer had sold 160402 kg Rubber from Kuttikal Estate. The value of the rubber disclosed in the books of accounts includes cess and 1% cue on cess had also been omitted. Balance 216543 kg rubber relates to the sale of Pasai Estate, Tamil Nadu. Regarding the case of gum produce on verification, it is found that the dealer had received Rs. 2,16,57,178/- from sale of coconut tree and sale of pepper and cloves Rs. 91,880/- relating to the Pasai Estate. The sale of other goods and services amounting Rs. 21,000/- relates to other branch at Rajahmundry. It is detailed verified and found that there is no revenue loss or evasion and the dealer pointed out in

2. The sales return No. 239 dated

12/07/08

regarding undisclosed sales of Rs. 9.44 crore and the sales turnover of Rs. 37.74 crore. In view of the above conclusion, the sales turnover furnished in the returns and annual report of the company for the year 2007-08 is as follows:

The sales turnover of the company for the year 2007-08 (from 25/04/2008) reporting a turnover of Rs. 26,25,89,358 including the turnover of goods for Rs. 22,55,77,969 and turnover under section 6 of the Act of Rs. 3,70,12,389. The company also filed audit report for Form 23A on 31/12/2008 in which the declared total sales turnover of Rs. 26,25,89,358 is shown as with the annual turnover.

The sales turnover of the company for the year 2007-08 (from 25/04/2008) reporting a turnover of Rs. 26,25,89,358 including the turnover of goods for Rs. 22,55,77,969 and turnover under section 6 of the Act of Rs. 3,70,12,389. The company also filed audit report for Form 23A on 31/12/2008 in which the declared total sales turnover of Rs. 26,25,89,358 is shown as with the annual turnover.

The sales turnover of the company for the year 2007-08 (from 25/04/2008) reporting a turnover of Rs. 26,25,89,358 including the turnover of goods for Rs. 22,55,77,969 and turnover under section 6 of the Act of Rs. 3,70,12,389. The company also filed audit report for Form 23A on 31/12/2008 in which the declared total sales turnover of Rs. 26,25,89,358 is shown as with the annual turnover.

a) Sales of finished goods / Rs	22,55,77,969
b) Trading sales of steel products / Rs	13,13,28,657
Total / Rs	35,69,06,626
Turnover already reported / Rs	26,25,44,388
Balance / Rs	9,43,62,268

This is not at all correct. The turnover reported of Rs. 26,25,44,388/- is arrived after adding Central Excise duty and cess to the turnover of Rs. 22,55,77,969/-. The turnover under trading of sales of steel products represents the sales effected at Mumbai Branch of the company.

Verification of the copies of the records furnished by the company revealed that the company do own a branch at Mumbai having separate TIN & CST as 27870646993. The Company claimed that the difference is the sales turnover effected at Mumbai branch which did not find place in returns and Form

13 & 13A filed under KVAT Act, but furnished in the Annual Report by the company.

Regarding the alleged escapement pointed out by the Accountant General, this turnover having relation with the business transaction assessed Office, Palakkad. As per the available records such as annual return, audit report etc. the Head Office at Palakkad had not made any interstate transactions & including stock transfer etc. so audit objection is not sustainable.

(4) M/s. SEPR Refractories India Ltd. 2008-09

M/s. SEPR Refractories India Ltd. was the manufacturer of Saint Gobain Glass. During the financial year 2008-09 there was an omission in annual return with reference to audited figure, the assessee was required to file revised annual return along with the audited statement and liable to pay tax due on the differential turnover. The suppressed turnover was Rs. 35.71 crores, the short levy of tax, cess and interest of Rs. 5.41 crores.

Based on the audit observation, the order to make good the turnover escaped assessment during the year 2008-09 was completed on 25/11/2015 vide Order No. 32090256494 dated 02/09/2015 creating an additional demand as follows:-

Tax due	Rs. 4,64,87,910.00
Interest due	Rs. 3,62,60,570.00
Total	Rs. 8,27,48,480.00

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

Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaped assessment
	(c)	Paragraph No.	2.13.1.2 (a)
	(d)	Report No. and Year	C&AG Report ended 31.03.12
I	(a)	Date of receipt of the Draft Para/Review in the Department	06.05.2013
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	M/s.G.R Engineering (P) Ltd, is an assessee on the rolls of the Assistant Commissioner (WC) Ernakulam engaged in Works contract. The audit objection is that the assessee having a contract receipt of Rs.39.31 crores during the year 2008-09, availed exemption of Rs.30.19 crores against allowance of exemption of Rs.5.90 crores, resulting in short levy of tax cess and interest of Rs.3.74 crores.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Partly
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	Details in VI (a)
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action Taken

	(a)	Improvement in system and procedures, including internal controls.	<p><u>M/s.G.R Engineering (P) Ltd 2008-09, Assistant Commissioner (WC) Ernakulam.</u></p> <p>The taxable turnover estimated by the Accountant General is Rs.33,41,53,441/-. The taxable turnover conceded by the dealer is Rs.9,12,52,531.00 Balance turnover is Rs.3,13,40,897/-. The audit has estimated and calculated tax @ 12.5% on the entire taxable turnover. It is incorrect. As per accounts, there is declared goods turnover amounting to Rs.4,53,31,724.00 which is taxable @ 4%.</p> <p>As per annual return and accounts the assessee has claimed exemption amounting to Rs.30,18,69,164.00. The details of exemption claimed other than labour expense is as follows.</p> <ol style="list-style-type: none"> 1) Advance billing (Mobilization Advance) Rs.14,46,31,521.00 2) Sales in transit turnover Rs. 5,86,95,000.00 3) Sub contract turnover Rs. 3,90,79,336.00 <p>Though the above items have been included in the exemption column and claimed exemption, it is not covered under the exemption envisaged under Rule 10 (2) (a) of KVAT Rules.</p> <p>After deducting the above exemption from the total exemption claim of Rs.30,18,69,164/- the balance claim of labour exemption is permissible under Rule 10 (2) (a).</p> <p>But the assessee has not proved the claim of exemption of advance billing. Sales in transit and sub contract. Therefore assessment under Sec: 25 (1) was completed on 31.12.2011 disallowing the above claim of exemption. The taxable turnover fixed is Rs.42,61,18,852.00 In this situation since the assessee has claimed exemption on advance Billing (Mobilization advance) sale in transit and sub contract but not proved with documentary evidence, no suppression of turnover of tax is involved and</p>
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		<p>hence no penalty can be imposed.</p> <p>In the absence of documentary evidence to prove the claim of sale in transit, sub contract turnover and mobilization advance, the claim of exemption was disallowed and completed assessment under Sec:25 (1) of KVAT Act 2003.].</p>
	(b)	Recovery of overpayment pointed out by audit
	(c)	Recovery of under assessment, short levy or other dues
	(d)	Modification in the schemes and programmes including financing pattern
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit



ISAAC ITTY
 Additional Secretary
 Taxes Department
 Govt. Secretariat, Tvpm

Action taken Notes on C&AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaped assessment
	(c)	Paragraph No.	2.13.1.2 (b)
	(d)	Report No. and Year	C&AG Report ended 31.03.12
II	(a)	Date of receipt of the Draft Para/Review in the Department	06.05.2013 /
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	M/s.P.C. Thomas & Company for the year 2008-09, claimed and availed exemption of Rs.6,19,26,219/- against Rs.3,94,04,864/-, allowable due to deduction of entire cost of establishment and overhead charges of the dealer instead of limiting it to the extent it relates to the supply of labour and services. This resulted in short levy of tax, cess and interest of Rs.26,56,082.00
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Partly
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	Details in VI (a)
V	(a)	Does the Department agree with the Audit conclusions?	—
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI Remedial action Taken

(a)

Improvement in system and procedures, including internal controls.

Ms.P.C.Thomas and Company 2008-09CTO(WC) Ernakulam.

In the light of audit the assessing authority verified the annual return and accounts and the following details are disclosed.

Amount of Closing Working in Progress.	Rs.	3,84,27,000/-
Amount of opening working in progress.	Rs.	4,87,55,380/-
Amount of total material purchased.	Rs.	3,17,8,277/-

From the above trading details the total and taxable turnover worked out which is shown below.

Total contract receipt	Rs.	10,66,24,201.00
Add closing WIP.	Rs.	3,84,27,000.00
Total	Rs.	14,50,51,201.00
Less Opening WIP	Rs.	4,87,55,380.00
Net turnover	Rs.	9,62,95,821.00
Expenses:		
1) Materials.	Rs.	3,84,73,856.00
2) D. expenses..	Rs.	3,17,82,277.00
Total	Rs.	7,02,56,135.00

Gross Profit (9,62,95,821 - 7,02,56,135)	Rs.	2,60,39,686.00
Gross Profit %	Rs.	37%.


Since material labour ratio is 54.77% and 45.23% of gross profit is earmarked for labour.

Total Turnover.	Rs.	9,62,95,821.00
Less Labour	Rs.	3,17,82,277.00
Gross Profit related to labour	Rs.	1,17,77,750.00
Overhead expenses related to labour	Rs.	1,17,77,750.00
Taxable turnover.	Rs.	5,27,35,794.00

Since the value of steel purchased as per accounts is Rs. 72,82,113/- its transfer value is to be assessed at 4%. Transfer value has to be estimated by adding gross profit @ 37% to the purchase value.

1a.4% taxable (72,82,113 + 37%)	Rs.	99,76,495.00
125% - items	Rs.	40,27,59,299.00
Tax due @ 4%	Rs.	3,99,060.00
Tax due @ 12.5%	Rs.	53,44,912.00
Total	Rs.	57,43,972.00

			<p>Cess due @ 1% Rs. 57,440.00 Total Rs. 58,01,412.00</p> <p>The total OPT conceded as per annual return is Rs. 56,43,120.00</p> <p>Difference Rs. 1,58,492.00</p> <p>The actual short levy is Rs. 1,58,292/-. Action will be taken to complete the assessment under section 25(1) to realize the above short levy.</p>
	(b)	Recovery of overpayment pointed out by audit	—
	(c)	Recovery of under assessment, short levy or other dues	—
	(d)	Modification in the schemes and programmes including financing pattern	—
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	—


ISAAC ITTY
Additional Secretary
Taxes Department
Govt. Secretariat, Tvpm


Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaped assessment
	(c)	Paragraph No.	2.13:1.3 (a)
	(d)	Report No. and Year	C&AG Report ended 31.03.12
II	(a)	Date of receipt of the Draft Para/Review in the Department	06.05.2013
	(b)	Date of Department's Reply	---
III		Gist of Paragraph/Review	M/s.Blue Star Ltd. engaged in landing as well as supply erection, testing & commissioning of air conditioning system. As per Rules, erection and commissioning of airconditioners can not be treated as works contract but is a sale. Therefore labour and other charges shall not be deducted from the total turnover. But the assessee availed exemption for Rs.9.44 crores and Rs.4.36 crores towards labour and other charges for the years 2008-09 and 2009-10 respectively treating "erection and commissioning of air conditioners" as works contract. Short levy of tax due to incorrect exemption resulted in short levy of tax amounting to Rs.2.22 crore including interest.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes

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

VI Remedial action Taken

(a)	Improvement in system and procedures, including internal controls.	<p><u>M/s. Blue Star Ltd. 2008-09, 2009-10</u> Commercial Tax Officer, Special Circle II, Ekm</p> <p>In the light of audit, the assessment were revised for both years on 02.04.2013 by creating an additional demand of Rs.1,22,26,336/- for 2008-09 and Rs.45,70,236/- for 2009-10.</p>
(b)	Recovery of overpayment pointed out by audit	-
(c)	Recovery of under assessment, short levy or other dues	-
(d)	Modification in the schemes and programmes including financing pattern	-
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	-


ISAAC ITTY
Additional Secretary
Taxes Department
Govt. Secretariat, Tvprg


Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaped assessment
	(c)	Paragraph No.	2.13.1.3 (b)
	(d)	Report No. and Year	C&AG Report ended 31.03.12
II	(a)	Date of receipt of the Draft Para/Review in the Department	06.05.2013
	(b)	Date of Department's Reply	—
III		Gist of Paragraph/Review	M/s.KONE Elevators India Pvt. Ltd, dealing with supply and installation of elevators and escalators, annual maintenance contract etc. had claimed exemption of Rs.6.25 crore towards installation of lift executed through sub contractors. As installation of lift is part of sale, deduction of labour element is not admissible. Moreover, as the work involves labour alone it is not liable to tax in the hands of sub contractor. The Accountant General (A) noticed (November 2011) from the assessment records of the assessee that the assessing authority did not disallow the exemption. This resulted in short levy of tax, cess and interest of Rs.93.17 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes

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

VI Remedial action Taken

(a)	Improvement in system and procedures, including internal controls.	<p>M/s.KONE Elevators India Pvt. Ltd, Commercial Tax Officer, Special Circle II, Ekm. <u>2009-10</u></p> <p>In the light of audit the assessing authority has completed the assessment u/s 25 as per order No.3207036/1244/09-10 dtd 18.03.13 considering the contention raised in audit enquiry report and created an additional demand of Rs.181,01,336.00. Meanwhile the assessee appealed before Hon'ble High Court of Kerala and obtained a conditional stay as per interim order No.WP (C) No.9981/13 (W) dtd 09.04.13.</p>
(b)	Recovery of overpayment pointed out by audit	-
(c)	Recovery of under assessment, short levy or other dues	-
(d)	Modification in the schemes and programmes including financing pattern	-
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	-


ISAAC ITTY
 Additional Secretary
 Taxes Department
 Govt. Secretariat, Tvpm

TAKEN NOTES ON C & AG'S REPORTS

		COMMERCIAL TAXES
	iew	Turnover escaped assessment
		2.13.1.4
		C & AG report for the year ended 31.3.2012
	raft Para / ent	
	teply	
III	Gist of Paragraph/Review	Sri. K.N. Madusoodhanan, a works contractor had a total works contract receipt of Rs. 22.82 crore during 2008-09. It was noticed from the annual accounts of the assessee that the admissible deduction were only Rs. 9.47 crore. Thus the taxable turnover should have been Rs. 13.36 crore. However, the assessee claimed exemption of Rs. 12.99 crore to arrive at the taxable turnover of Rs. 9.84 crore on which output tax of Rs. 78.72 lakh was computed. This resulted in escape of turnover of Rs. 3.52 crore and consequent short levy of tax and interest of Rs. 52.42 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support
V	(a)	Does the Department agree with the Audit conclusions?
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary

REMEDIAL ACTION TAKEN

VI	(a)	Improvement in system and including controls, internal procedures.	<p>Sri. K.N. Madusudhanan Panickers Associates (CTO, WC, Pathanamthitta) - 2008-09</p> <p>Assessing authority issued notice U/Sec. 25 of the KVAT Act for the year 2008-09. In reply to the pre-assessment notice the assessee stated that he had made various representation before the Hon'ble Chief Minister, Hon'ble Finance Minister and Commissioner of Commercial Taxes regarding the difficulties faced by him in filing his VAT returns online, availing of credit for VAT paid on capital goods, advance tax paid and other technical issues involved in bifurcation of taxable turnover of different rates. The software was partially modified to provide the taxable turnover into different cases applicable as per statute. The rest of the grievance are remaining un redressed. Based on their representation the CCT in letter No. C4-40011/12/CT dated 22.10.2013 directed the assessing authority to enter Rs. 8,15,092/- as ITC credit on capital goods in respect of the above dealer in KVATIS and interact ITMC to update the claim and keep further action in this file in abeyance including assessment till any further communication is received from that office. Assessing authority forwarded the remittance details to ITMC to get it correct.</p> <p>The Assistant Commissioner (ITMC), reported that the input tax claim on capital goods upto Rs. 5 lakh is availed by the dealer himself and those above Rs. 5 lakh has to be entered in KVATIS through the role of the section clerk of the assessing office. The dealer will be able to avail the credit in the monthly returns only after the entries are made in KVATIS. Since action is to be done by the assessing authority the matter has been informed to the Deputy Commissioner over E-mail dated 04.02.2015. Accordingly it has been given direction to the CTO(WC), Pathanamthitta to complete the assessment to make good the short levy pointed out by the Accountant General as per law after getting advance tax adjusted and return revised by the dealer.</p> <p>In the light of the above the assessing authority verified the books of accounts and the excess deductions availed by the works contractor under Rule 10(2)(a) has been disallowed by the assessing authority and completed the assessment on 31.10.2015</p>
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			creating an additional demand of Rs. 31,85,927/- and interest of Rs. 19,11,556/- (from 11/9 to 10/15- 60%).
(b)	Recovery of overpayment pointed out by audit	of	NA
(c)	Recovery of under assessment, short levy or other dues	under	NA
(d)	Modification in the schemes and programmes including financing pattern	and	NA
(e)	Review of similar cases / complete scheme / project in the light of findings of sample check by audit	findings of sample check by audit.	NA

Geetha L

GEETHA. L
 Additional Secretary
 Taxes Department
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 Thiruvananthapuram

	(a) Department				
	(b) Sub-Department				
	(c) Division				
	(d) Sub-Division				
	(e) Office				
	(f) Post Office				
	(g) Branch				
	(h) Sub-Branch				
	(i) Section				
	(j) Sub-Section				
	(k) Unit				
	(l) Sub-Unit				
	(m) Post Office				
	(n) Branch				
	(o) Sub-Branch				
	(p) Section				
	(q) Sub-Section				
	(r) Unit				
	(s) Sub-Unit				
	(t) Post Office				
	(u) Branch				
	(v) Sub-Branch				
	(w) Section				
	(x) Sub-Section				
	(y) Unit				
	(z) Sub-Unit				

VI

Remedial action taken

(a)	Improvement in system and procedures including internal controls.	<p>The assessee company, M/s. United Electricals, is a public sector undertaking doing business in manufacturing of the electrical meters and its accessories and are mainly supplied to the Kerala State Electricity Board on the basis of tender purchase order. Such sale company is a public sector unit purchase orders are subject to the final approval by the Government of Kerala.</p>
		<p>The total turnover for the year 2007-08 shown in the annual return and in the Profit & Loss Account is different. The net sale shown in the Profit & Loss Account included a sum of Rs. 2,69,57,560/- claimed by the assessee towards price variation. As per explanation V to Section 2 (iii) of KVAF Act while a dealer receives any amount due to price variation in respect of any sale effected during the earlier return period sale amount shall be deemed to be turnover relating to return period in which sale amount is received. As such the amount would form part of the turnover. Hence short levy due to the above defects worked out to Rs. 40,76,598/-.</p>
		<p>In order to set right the above defects, the Assistant Commissioner, Special Kollam had verified the books of the assessee with the alleged point raised by the Assistant General, which revealed</p>

the following.

The total local sales and interstate sales for the year 2007-08 is Rs.24,78,38,437/-. But in the Profit & Loss Account total sale is entered as Rs.38,84,12,099/-. In the statement filed along with return an amount of Rs. 2,69,52,580/- is adopted as additional value of goods receivable anticipated subject to final approval by the Government of Kerala and the Kerala State Electricity Board. During the year 2007-08 several supplies made to the KSEB the company charged additional price as a further value of goods supplied during the year and the proposal was made to Government for sanction. After examining this claim the Government approved it with slight modification. Based on the Government order the company issued supplementary invoices and realized the amount. The entire amount thus received in subsequent years.

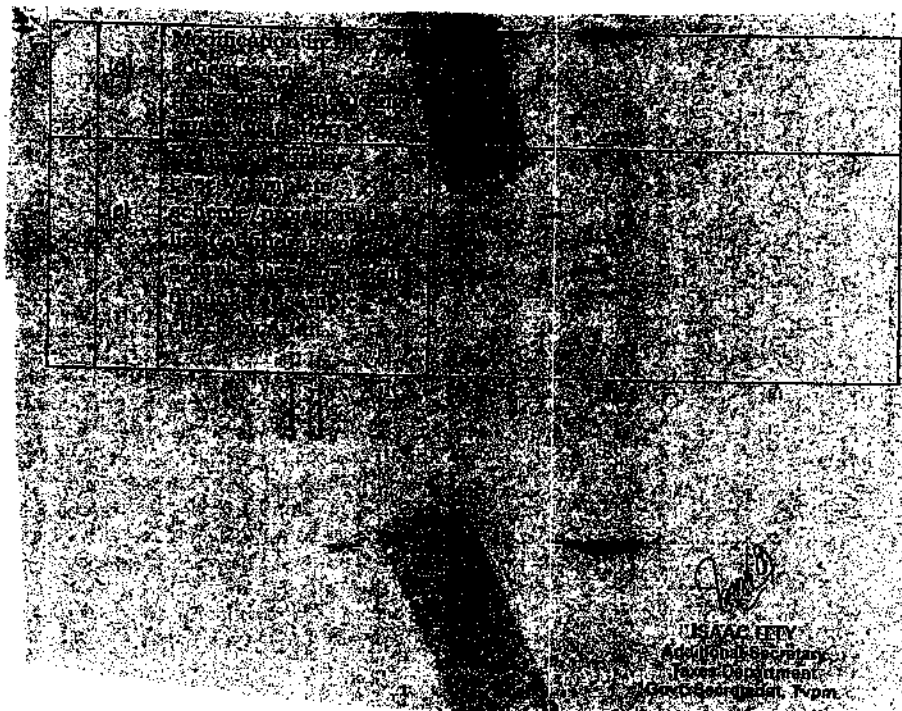
So out of Rs.2,69,52,580/- shown as value receivable, the final settlement was made only on 01/04/09 and 18/03/09 and paid the bill amount. The company recognized an amount of Rs.2.70 crores as revenue due to reckoning of sales of KWH meters at an enhanced price during the year.

From the above facts and evidence it is ascertained that the amount of Rs.2,69,52,580/- shown as price variation, expected for the sales effected during the

year the claim of the company was got approved by the Government Order in GO (MS) No. 3/9/PD, dated 19/01/09 and after that the company revised the respective invoices. The price increase expected for the year was not raised by any invoice in that regard. Then their respective invoices were raised by the Government and the buyers paid the amount only later during March 2009 & April 2009 and the company included those receipts in the year concerned and paid the tax. Copy of the supplementary invoices and the return filed during the respective months also reveal the above facts. Assessing the turnover on which tax already collected and paid will be harassment and against the concept of taxation. Thus for the amount of Rs. 2,69,52,560/- which was expected sale value on basic price for the year 2007-08, the company actually received total amount of Rs. 3,03,87,347/- which included of excise duty and tax due Rs. 37,98,419/- paid subsequently. So there is no liability to pay tax on the same amount again.

(b) Recovery of overpayment pointed out by audit

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



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VI - Remission taken

<p>(a) Improvement in system and procedure including internal control</p>	<p>M/s. [Name] (C Circle, Kottayam) M/s. [Name] (C Circle, Kottayam) as per assessee in the rolls of Asst. Commissioner, Kottayam. M/s. [Name] (C Circle, Kottayam) engaged in the trading of [Name] in the year 2009-10. The assessee has engaged agents of [Name] for the purpose of [Name]. The audit after verification of form No. VC Register [Name] set out Bal forms maintained by the assessee for the year 2009-10 revealed short levy of tax as shown below:</p> <p>Medicine received amount in Form No. VI Register - Rs. 40,38,59,379 Consignment stock transferred - Rs. 5,89,84,514 Suppression of purchase value of MRP value of [Name] turnover 2008-09 as conceded in the return - Rs. 4,78,65,865 Tax due at 30% - Rs. 9,98,00,329 Less due at 10% - Rs. 39,92,013 Short levy pointed out by Asst. Commissioner, Kottayam - Rs. 40,31,933</p> <p>Based on the above details the assessing authority verified the Register against Form No. VI Register (44) and Form No. 10 (44) of Rule 11 of the CST Rule, 1957 maintained by the assessee which revealed the following details:</p> <p>Total stock transfer effected during the year 2009-10 - Rs. 11,03,53,070 Form No. F pending issue for the assessment year related 2008-09 - Rs. 2,74,513 Total Form No. F to be issued for the year 2009-10 - Rs. 11,06,27,583 Less: Credit note - Rs. 45,60,297 Form No. F not issued - Rs. 14,04,651 Balance Form No. F to be issued - Rs. 79,64,938 Actual Form No. F issued - Rs. 10,26,62,645</p> <p>Verification of the stock register therefore reveals that the assessee firm (C) Value Form: against the stock transfer (in) to the tune of Rs. 11,03,53,070. The observation by the actual stock transfer effected by the assessee comes to Rs. 10,26,62,645. It is not found correct on verification. The actual stock transfer of medicines effected by the assessee during the year 2009-10 comes to Rs. 11,03,53,070/- only.</p> <p>On scrutiny of Form No. 13A, it is found that stock transfer for assessment year disclosed for the year ended 31-03-2014 is Rs. 7,25,16,725/- as shown below:</p> <p>Total - Rs. 1,65,91,344/- Less - Rs. 5,54,62,514/-</p>
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But verification of the books of accounts revealed the following:

Stock Transfer (In) - Rs. 11,03,53,070
 Add: Interstate purchase (against 'C' Form) - Rs. 5,74,000
 Total - Rs. 11,09,27,070

Less:
 Purchase return - Rs. 2,32,29,070
 Free sales - Rs. 1,41,44,805
 Rate difference - Rs. 1,75,16,681 - Rs. 5,48,90,556
 Balance - Rs. 5,60,36,514

Less:
 Own interstate purchase - Rs. 5,74,000
 Net receipt of stock transfer - Rs. 5,54,62,514

The above details such as purchase return, sales return, free issue, rate difference etc. were not disclosed in Part 'C' of Form no. 13A. The columns are provided only for opening stock, goods received, sales, sales tax collected, tax paid and closing stock, so the assessee has disclosed the net sales in Part 'C' of Form No. 13A.


But for further verification of Annual Return filed by the assessee for the year 2009-10 in Part A3 (particulars of turnover of dealer in medicine paying tax u/s 8), the consignment stock transfer for sale was disclosed as Rs. 1,42,06,21,799/- at MRP value as detailed below:

Particulars of sales	Cost of goods	MRP value	Tax effect
Stock transfer for sale value	6,75,36,373	9,66,49,455	38,65,978
Free issue	1,41,44,805	1,95,86,464	7,83,458
Rate difference	1,75,16,681	2,50,62,113	10,02,485
Total MRP value on stock transfer		14,12,98,034	5,65,192
Head office sale	588929	7,64,143	30,566
Total MRP value & tax disclosed in the annual return and accounts		14,20,62,177	56,82,487

Verification of free issues revealed that during the year, the assessee firm has effected free supply of medicine for Rs. 1,41,44,805/-. The entire such supply is supported by proper tax invoices, with zero value. Moreover, it is seen that in all cases, the MRP value has been shown and VAT at 4% along with social security cess at 1% has been realized. In the case of rate difference, the assessee has adopted the same method as that in the case of rate difference. But the claim of disposal of goods by way of rate difference amounting to Rs. 1,75,16,681/- was not supported for the sufficient proof for Rs. 42,531/- So the

		<p>turnover of Rs.42,531/- was assessed at 4% estimating MRP value at 208.5%. In another case of claim of purchase return (i.e. stock transfer out) for Rs.2,32,29,870/-, the assessee did not produce Form No.F for turnover of Rs.19,59,630/-. So, the assessing authority completed the assessment @ 4% estimating the MRP value at 208.5%.</p> <p>In the above fact and circumstances, the assessing authority detected escaped turnover of Rs.20,02,161/- (i.e., Rs.19,59,630 /- + Rs.42,531/-) and the same was assessed to tax at 4% on MRP value disclosed by the assessee at Rs. 41,74,505/- creating an additional demand of Rs.1,66,980/- and accordingly revising the assessment on 07-05-2013.</p> <p>Aggrieved by the above order, the assessee preferred appeal before the Deputy Commissioner (Appeals), Kottayam and obtained a valid stay, on condition of payment of Rs. 46,548,/- being 20% of the disputed tax and furnishing security for the balance amount.</p> <p>The assessment Order No. 32050594282/09-10 dated 07/05/2013 of the Asst. Commissioner, Special Circle, Kottayam has been modified by Deputy Commissioner (Appeals) as per Order No. KVAT 2126/2014 dtd. 16.06.2014. According to the appellate order, the Deputy Commissioner (Appeals) directed the assessing authority to verify the documents like LR copies, Debit Note, Credit Note, Road Permit etc. once again and ascertain the Check Post seal and the certificate issued by the competent authority from outside state to prove the goods have been received by the principal, exemption subject to proof of evidence and revise the assessment order accordingly. Secondly, the rate difference claimed Rs. 42531.00 is relating to the principal company M/s. Shine Pharmaceuticals, is not supported with any proof of evidence. Therefore, the assessment to that extent is upheld. Thirdly the Deputy Commissioner (Appeals) concluded that there was no suppression of sales alleged by the assessing authority. The MRP value is estimated at 208% is unsustainable. The assessment order has to be revised as per the above appellate order.</p>
(b)	Recovery of overpayment pointed out by audit.	The 07/05 has no No. K.
(c)	Recovery of under assessment, short levy or other dues	appeals the as. Debit Debit comp. receiv. and re. dist.
(d)	Modification in the schemes and	appeals the as. Debit Debit comp. receiv. and re. dist.

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


ISAAC ITTY
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Taxes Department
Govt. Secretariat, Tvpm

Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaped assessment
	(c)	Paragraph No.	2.13.1.6 (b)
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	06.05.2013
	(b)	Date of Department's Reply	—
III		Gist of Paragraph/Review	It was noticed by the AG from the assessment records of M/s.Mapsons and Co. that the turnover of the dealer for 2009 – 2010 based on copy of the sales register made available by the Intelligence Squad comes to Rs. 11.20 crore whereas they conceded a taxable turnover of 10.46 crore only. Failure to take action under Section 25 resulted in short levy of tax, cess and interest of Rs. 8.12 lakh
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	Details furnished in VI (a)
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI Remedial action Taken

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

M/s. Mapsons & Co. Auto (P) Ltd. 2009-10

On scrutiny of the assessment records, it was revealed that the Intelligence Squad No. V., Emakulam inspected the business place of the assessee on 06/02/2010 and recovered Interalia sales register from the assessee for the period from 01/04/2009 to 05/02/2010. As per the sales register, the total sales effected by the assessee upto 01/2010 is Rs. 9,70,95,821.00. As per the monthly returns for the months 02/2010 & 03/2010 the assessee returned the total turnover as Rs. 81,84,940.00 and 67,17,420.00 respectively. Hence the total turnover for the years 2009 - 2010 accordingly would work out to Rs. 11,20,08,181.00. Against this the total turnover filed by the assessee in the annual return is Rs. 10,47,87,764.00 only.

As per the above Local Audit Report the sales turnover and OPT collected by the dealer is as shown below.

Month/year	Sales as per return	Sales as per ISA	OPT as per return	Cess	Total sales including tax	Sales as per register
April	3161232.41	2804680.56	332179.00	2914.32	3089031.35	3089031.35
May	6527172.72	627172.72	737095.00	7369.13	7271633.64	7271633.64
June	10020866.40	10020866.27	813308.00	7904.81	10842004.00	10842004.00
July	15797863.17	15797863.18	1582688.70	15664.61	17396821.00	17396821.00
Augu.	9838639.90	9840978.20	808364.30	7837.78	10458790.20	10458790.20
Sept.	6078968.40	6078968.20	480282.81	4668.60	6561915.00	6561915.00
Octo.	6677859.11	6677859.08	688347.71	6603.34	7350813.40	7350813.40
Novy.	11233705.22	11233705.22	696096.32	3287.26	11829867.00	11829867.00
Dec	10047034.61	10047034.04	766869.28	7082.34	10810996.45	10810996.45
Jan 10	10674243.86	10674243.87	689202.95	6799.77	11380250.00	11380250.00
Upto Janu	68866404.40	68300290.33	7653218.17	70148.84	87065821.04	87065821.04
Feb	8194040.48	8194040.47	698110.62	6881.81	8889982.00	8889982.00
Mar	6717420.05	6717420.05	396889.31	4116.94	7118021.20	7118021.20
Total	14912360.53	14912360.82	1066000.13	11048.75	16018003.00	16018003.20

It is submitted that in the Audit enquiry report the turnover was taken to the tune of Rs. 9,70,95,821.00 for the period from 01/04/2009 to 31/01/2010 which includes tax which can be deducted from the column No. 7 of the above schedule. Then the audit officer opted the turnover for the months of February 2010 and March 2010 as Rs. 81,94,940.48 and Rs. 87,17,420.00 respectively from the monthly return filed by the assessee since the sales register for the above months were not available in the assessment records. Hence, the total sales turnover comes to Rs. 11,20,08,181.00 (9,70,95,821 (Total sales including tax) + 81,94,940 + 87,17,420 (sales as per return for the month of February 2010 and March 2010 respectively))

In this score it may be noted that the audit party has reckoned the turnover of the dealer from 04/2009 to 01/2010 including tax and cess, total of which comes to 9,70,95,821.00. Out of this the actual turnover of the dealer is Rs. 8,88,55,404.00 only and balance Rs. 72,40,417 represents VAT and Cess.

But the sales turnover taken by the audit officer for the month of February 2010 and March 2010 were excluding tax. That can be ascertained from column No. 2 of the schedule

As per the annual return filed by the assessee for the period 2009 - 2010 turnover conceded was for Rs. 10,47,87,760.00 which was excluding tax. As evidenced from column 2 of the schedule the turnover escaped Rs. 72,40,417.00 shown in Draft Para was the difference between the sales turnover conceded by the dealer i.e. Rs. 10,47,87,760.00 and the figure worked out by the audit officer i.e. Rs. 11,20,08,181 (11,20,08,181 - 10,47,87,760 = 72,40,424). The turnover upto January 2010 conceded by the dealer as per return without tax element is Rs. 8,88,55,404/-.

Turnover for the month upto January 2010 reckoned by the audit officer except February 2010, March 2011 is Rs. 9,70,95,821.00. The difference is Rs. 72,40,417.00 (9,70,95,821.00 - 8,98,55,404 = 72,40,417.00). In the above explained circumstances there is no turnover escape and no revenue loss there off.

The assessment for the period 2009 - 2010 was

		<p>completed as per order No.32071327255/09-10 dated 29/08/2011 by the assessing authority in which turnover fixed was for Rs. 10,47,67,760.00. The same has been served on the assessee on 31/08/2011.</p> <p>Considering the defects like turnover escapement and non-levy of S.C and demand amount was advised for RR on 29.09.11. The dealer filed appeal against the assessment order. As per order No.KVAT-739/12 dtd 27.03.12, the appellate authority allowed stay on condition to remit 1/3 rd of the demand before 31.03.2012. But the dealer has not fulfilled the stay- condition. An amount of Rs:2,06,172/- was collected from the bank account by the Inspecting Asst. Commissioner, Ernakulam.</p>
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	


ISAAC ITTY
 Additional Secretary,
 Taxes Department
 Govt. Secretariat, Tvpm

Action taken Notes on C&AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaped assessment
	(c)	Paragraph No.	2.13.1.7
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	06.05.2013
	(b)	Date of Department's Reply	-
III		Gist of Paragraph/Review	It was noticed that the assessee has received prior period income of 27,59,833/- and slaughter tapping income of 3,01,58,583/- during 2009-10 and did not assess tax on the same. Escape of these turnover for assessment resulted in short levy of tax, cess and interest amounting to 1529380/-
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI Remedial action-Taken

(a)	Improvement in system and procedures, including internal controls.	<p><u>M/s. Plantation Corporation of Kerala Ltd: 09-10</u> Based on the audit's point of view the assessment was completed U/s 25 (1) of the KVAT Act 2003 vide order No.32050283422/09-10, dated 31.10.2011, creating an additional demand of Rs.22,23,197/-. The assessee filed appeal before the Deputy Commissioner (Appeals), Kottayam and the Deputy Commissioner (Appeals) vide order No.KVATA 3251/2011 dated 02.12.11 stayed the collection till the disposal of the appeal on condition that the assessee remits-30% of the balance amount due amounting to Rs.23,23,197/- and furnish adequate security for the balance amount. Thus the assessee remitted Rs.696951/- and filed adequate security for the balance amount.</p>
(b)	Recovery of overpayment pointed out by audit	-
(c)	Recovery of under assessment, short levy or other dues	-
(d)	Modification in the schemes and programmes including financing pattern	-
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	-


ISAAC ITTY
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Action taken Notes on C & AG's Reports

	(a)	Department	COMMERCIAL TAXES
	b	Subject / Title of the Review Paragraph	Short levy due to turn over escaped assessment
	c	Paragraph No	2.13.1.8 (a)
	d	Report No. and year	C & AG Report for the year ended 31.03.2012
II	a	Date of receipt of the Draft Para / Review in the Department	25.05.2012
	b	Date of Department's reply	07.01.2014
III		Gist of Paragraph / Review	In Commercial Tax Officer, III Circle, Thrissur noticed from the assessment records of M/s. PSN Industries (P) Ltd that the assessee did not assess to tax an amount of Rs. 82.25 lakh received as labour charges while completing the self assessment during 2009-10. Though labour charges are not deductible from receipts on bodies built on Chassis of Motor Vehicles, the assessing officer did not levy tax on the amount. This resulted in short levy of tax, cess and interest of Rs. 11.84 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph ?	Yes
	(b)	If not, please indicate areas of disagreement and also attach copies of relevant documents in supports	
V	(a)	Does the Department agree with the Audit conclusions.	Yes
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial Action Taken


a	Improvement in system and procedures including internal controls	<p>In pursuance of the audit objection, the assessing authority revised the assessment under section 25(A) of KVAT Act, 2003 as per Order No. 32080747432/2009-10 dated 17.09.2014. The tax liability is shown below: Tax due Rs. 10,28,117.25 Interest due Rs. 5,24,340/- Appeal has been filed against the assessment order.</p> <p>Appeal was filed against the assessment order before the Assistant Commissioner (Appeals), Commercial Taxes, Thrissur and a conditional stay order as per Order No. KVATA 489/2014 dated 08.10.2014 was issued to the assessee. As per the direction in the order M/s. PSN Industries Pvt. Limited has paid Rs. 4,70,000/- as per Cheque No. 073929 dated 07.11.2014, and furnished security bond in form 6A for the balance amount for the year 2009-10. The appeal is still pending before AC (A).</p>
b	Recovery of overpayment pointed out by audit	
c	Recovery of under assessment, short levy or other dues	
d	Modification in the schemes and programmes including financing pattern	
e	Review of similar cases / complete scheme / project in the light of findings of sample check by Audit findings of sample check by audit	

Action taken Notes on Controller & Auditor General's Reports

		COMMERCIAL TAXES
	(a) Department	
	(b) Subject/Title of the Review Paragraph	Short levy due to turnover escaped assessment.
	(c) Paragraph No.	2. 13.1.8 (b)
	(d) Report No. And Year	C & AG report for the year ended 31.3.2012.
II	(a) Date of receipt of the Draft Para/Review in the Department	25.5.2012
	(b) Date of Department's Reply	10.11.2014
III	Gist of Paragraph/Review	In Commercial Tax Office, 3 rd Circle, Thrissur noticed (July 2011) from the assessment records of M/s.PSN Motors(P) Ltd for 2008-09 that the assessee engaged in body building did not assess to tax an amount of Rs.50.43 lakh received towards labour and Rs.25 lakh being the value of iron and steel transferred was assessed of four percent. Though cost of materials used and labours involved in body building of vehicles are to be included in the sales turnover of body built, the assessing officer did not levy tax on the above amount at the correct rate of 12.5 percent. This resulted in short levy of tax, less and interest of Rs.9.70 lakh.
IV	(a) Does the Department agree with the facts and figures include in the paragraph ?	Yes
	(b) If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a) Does the Department agree with the Audit conclusions ?	Yes
	(b) If not, Please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary.	

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>In pursuance of the audit observation, the assessing authority revised the assessment U/s 25(A) of KVAT/Act, 2003 as per order No.32080721232/08-09 dated 17.9.2014. The tax liability was fixed as shown below.</p> <p>Tax due - Rs.6,30,344/- Interest due - Rs.3,46,689/-</p> <p>The demand notice has been served upon the assessee. The assessee filed appeal against the assessment order before the Assistant Commissioner (Appeals), Thrissur and the appellate authority granted conditional stay as per Order No. KVATA 490/2014 dated 08.10.2014. As per the directions the assessee fulfilled the stay conditions by remitting Rs. 3,00,000/- vide chalan No. 214/17.11.2014 and furnishing security bond in Form No 6A for the balance amount of Rs. 7,00,000/-.</p>
(b)	Recovery of overpayment pointed out by audit and	
(c)	Recovery of under assessment, short levy or other dues.	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit.	


ISAAC ITTY
 Additional Secretary
 Taxes Department
 Govt. Secretariat, Trvnm

Action taken Notes on C&AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaped assessment
	(c)	Paragraph No.	2.13.1.9
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	06.05.2013
	(b)	Date of Department's Reply	--
III		Gist of Paragraph/Review	M/s.Royal Enterprises, Alappuzha, claimed exemption on turnover Rs.1.91 crores relating to machine made safety matches sold during 2009-10 as if it were handmade. Incorrect exemption availed resulted in turnover escaped assessment and consequent short levy of tax and interest of Rs.8.63 lakhs.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action Taken

	(a)	Improvement in system and procedures, including internal controls.	<p><u>M/s. Royal Enterprises, Alleppey 2009-10</u> In the light of audit, notice under section 25(1) of the Act issued to the assessee proposing to reject the exemption they have already availed on account of safety matches. In response to this notice the assessee filed the following objections:-</p> <p>Since the objection filed by the assessee was not sustainable as per the fact and figures the assessment already proposed was confirmed as per Order No.32040550675/2009-10 dated 16.12.2011 by creating an additional demand of Rs.916587/- towards tax and interest.</p> <p>The assessee has filed appeal against the said order before the Deputy Commissioner (Appeals), Kollam and has obtained conditional stay order till disposal of appeal. In compliance with the said order the dealer had remitted Rs. One lakh vide chalan No.561 dated 30.4.2012 at the District Treasury, Alappuzha.</p>
	(b)	Recovery of overpayment pointed out by audit	-
	(c)	Recovery of under assessment, short levy or other dues	-
	(d)	Modification in the schemes and programmes including financing pattern	-
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	-


ISAAC ITTY
 Additional Secretary
 Taxes Department

Action taken Notes on C&AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaped assessment
	(c)	Paragraph No.	2.13.1.10(a)
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	--
III		Gist of Paragraph/Review	M/s.Rajah Timber Company, Chavakad for 08-09 self assessed to tax a sales turnover of Rs.2.74 crore only. The sales turnover as per annual accounts was Rs.3.29 crore. Though carpentry and painting charges were not included in the sales turnover by the assessed, the assessing authority did not assess tax turnover of Rs.54.75 lakh escaped from assessment. This resulted in short levy of tax, cess and interest of Rs.7.56 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI Remedial action Taken

(a)	Improvement in system and procedures, including internal controls.	<u>M/s.Rajsh Timber Company, Chevakkad 08-09</u> The assessing authority had rectified the mistake by completing the assessment u/s 25(1) of the KVAT Act on 22.3.11 demanding tax of Rs.507995/- along with an interest of Rs.132079/-. The matter was reported to the Accountant General along with the revised assessment order. Since the amount was not collected, steps to recover the arrears under Revenue Recovery were taken. The dealer went in appeal before the Asst.Commr.(Appeals), Thrissur and the appellate authority as per order dtd.8.3.12 has remanded the case for fresh disposal according to law after granting a reasonable and effective opportunity of being heard to the dealer. The dealer has already remitted an amount of Rs.213360/- in compliance of the stay order of the appellate authority.
(b)	Recovery of overpayment pointed out by audit.	-
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	-

Isaac Itty
 ISAAC ITTY
 Additional Revenue Officer


Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaped assessment
	(c)	Paragraph No.	2.13.1.10 (b)
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	06.05.2013
	(b)	Date of Department's Reply	-
III		Gist of Paragraph/Review	The assessee did not include the taxable turnover the transportation charges of 153 crore received during 2008-09 and 09-10 for delivery of poles at site. The escape of turnover from assessment resulted in short levy of tax interest and cess 7.27 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action Taken

(a)	Improvement in system and procedures, including internal controls.	<p><u>M/s.Anchor Structural 2008-09, 2009-10</u></p> <p>In the light of audit the assessment, for the years 2008-09 and 2009-10 was completed U/s 25 of KVAT Act by the assessing authority on 30.09.2011. Subsequently, the assessee M/s.Anchor Structural filed appeal against the order before the DC (A) Erkm. The Deputy Commissioner (A) in the appellate order in KVATA 3449/11 and 3451/11 dtd 14.02.12, granted condition at stay of collection till the disposal of appeal. As per the direction of the stay order the assessee remitted 1/3 of the amount due i.e, Rs.74664/- vide chalan no.S-06 dtd 28.03.12 for 2008-09 and Rs.103880/- vide Cheq No.S-07 dtd 28.03.12 for 09-10 and had furnished scrutiny bond for balance amount. The appeal is still pending.</p>
(b)	Recovery of overpayment pointed out by audit	-
(c)	Recovery of under assessment, short levy or other dues	-
(d)	Modification in the schemes and programmes including financing pattern	-
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	-


ISAAC ITTY
 Additional Secretary
 Tax & Department
 Govt. Secretariat, Typm

Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaped assessment
	(c)	Paragraph No.	2.13.1.11
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	06.05.2013.
	(b)	Date of Department's Reply	-
III		Gist of Paragraph/Review	M/s. K.M. Elias Construction (P) Ltd., Kakkannad had worked out the taxable turnover as Rs. 5.47 crore against contract receipts of Rs. 7.62 crore. The balance Rs. 2.16 crore was availed as deductions. However, availing of deductions from the contract amount was not allowed in the case of compounding as per provisions of KVAT Act. As a result turnover of Rs. 2.16 crore escaped assessment. The consequent short levy of tax and interest worked out to Rs. 5.18 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No.
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	Details furnished in VI (a)
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action Taken

(a)

Improvement in system and procedures, including internal controls.

M/s. K.M. Elias-Construction (P) Ltd., 2007-08

The contract receipt shown in the Profit and Loss Account Rs. 7,62,35,974.00 is the income certified for the income tax purpose as per the Audit Standards, it is the income recognized under percentage of completion method vide accounting standard referred in section 211 (3)(C) of Companies Act 1956. This has no relation with the contract receipt received. The actual contract receipt during the year was Rs. 8,97,61,757.00.

The turnover relating to labour works is Rs. 1,50,92,705.


The assessee has 3 labour works during the year 2007-08 and its turnover is Rs. 1,50,92,705/-. This has been declared in the annual return in Form No. 10 D filed during the year 2007-08. In the annual return filed, it is mentioned as exemption towards labour contract.

Contract for supply of labour and services is not works contract since the supply of materials are not involved in the execution of works. Under KVAT Act tax liability is only on works contract and not on labour contracts.

The amount relating to labour contract does not form even part of total turnover of the dealer. As per Rule 9(4) of KVAT Rules, if a dealer under take both labour contract and works contract covered by distinct and separate work orders and agreements, his liability to pay tax at compounded rates is only on contract amount relating to works contract. The amount representing to labour contract cannot be included in turnover for the purpose of levy of tax under section 8 of the Act.

Verification of copies of work orders of M/s. Minva Heritage - Rs. 1,47,96,481/- Pooja Tower - Rs. 1,10,000.00, West Fort - Rs. 50,000.00 revealed that the work involved only supply of labour. They are labour contracts and receipts from them cannot be included in the turnover for the purpose of tax compounding. Works contract and labour contracts are two different types contracts. Rule 9(4) of KVAT Rules separates labour contracts from works contract when it expressly states that contract wherein no transfer of property in goods is involved shall not be deemed to be part of total turnover.

		<p>After the 46th amendment to the Constitution of India, the State has the power only to levy tax on supply (sale) of goods. But since a division of the composite contract is made possible, it is now open to the state to levy tax on the portion that relates to supply of goods. Taking this opportunity, transfer of property in goods involved in the execution of works contract is deemed to be in sale as per definition Clause 2 of the KVAT Act.</p>
(b)	Recovery of overpayment pointed out by audit	--
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--


ISAAC ITTY
 Additional Secretary
 Taxes Department
 Govt. Secretariat, Trivani

Action taken Notes on C & AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/ Title of the Review Paragraph	Turn over escaped assessment
	(c)	Paragraph No.	2.13.1.12.
	(d)	Report No. and Year	C & AG report for the year ended March 2012
II	(a)	Date of receipt of the Draft Para / Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph / Review	The Chief Engineer (Distribution South) KSEB engaged in generation, transmission and distribution of electrical energy collected rental charges of energy meters amounting to Rs. 835.63 crore during the period from 2005-06 to 2010-11. The meters installed in the premises of the consumer were owned by the Board. Board was collecting rental for the meters from the consumers and hence the supply of meters to consumers were transfer of right to use meters. The assessee did not include the above turnover in the taxable turnover when the tax was self assessed as revealed by the annual return. The assessing officer also did not assess the above turnover resulting in non levy of tax cess and interest of Rs. 43.16 crore.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph ?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions ?	
	(b)	If not, Please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI - Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>M/s. Kerala State Electricity Board 2005-06 to 2010-11 (Spl, Typm)</p> <p>Assessment completed on the basis of AG's objection regarding receipt of meter rent and in the case of works contract executed materials supplied by the KSEB to the contractor for the execution of works contract were included in the total value of works and the value of materials so supplied was deducted from bill after subjecting the total value to the works contact tax. However the value of materials supplied by the KSEB to the contractor were not seen included in the total turnover of the KSEB.</p> <p>Verified the above objections and assessment completed for the years 2005-06 to 2008-09. Addl demand created</p> <table border="1" data-bbox="362 597 994 990"> <thead> <tr> <th>Year</th> <th>Order No. & date</th> <th>Tax</th> <th>Interest</th> <th>Total</th> </tr> </thead> <tbody> <tr> <td>2005-06</td> <td>32010103675/ 2005-06 dtd (Spl, 30.06.2015)</td> <td>2,17,21,074</td> <td>2,41,10,392</td> <td>4,58,31,466</td> </tr> <tr> <td>2006-07</td> <td>32010103675/ 06-07 dtd Resig. 14.07.2015</td> <td>2,34,47,566</td> <td>2,32,13,090</td> <td>4,66,60,656</td> </tr> <tr> <td>2007-08</td> <td>32010103675/ 2007-08 dtd works 14.07.2015</td> <td>2,32,92,680</td> <td>2,02,64,632</td> <td>4,35,57,312</td> </tr> <tr> <td>2008-09</td> <td>32010103675/ 08-09 dtd works 14.07.2015</td> <td>2,53,14,316</td> <td>1,89,85,734</td> <td>4,43,00,050</td> </tr> </tbody> </table> <p>KSEB.</p> <p>For the years 2009-10, 2010-11 and 2011-12 notice U/s 25(1) was issued to the dealer. The assessment will be completed soon on receiving the reply from the dealer.</p>	Year	Order No. & date	Tax	Interest	Total	2005-06	32010103675/ 2005-06 dtd (Spl, 30.06.2015)	2,17,21,074	2,41,10,392	4,58,31,466	2006-07	32010103675/ 06-07 dtd Resig. 14.07.2015	2,34,47,566	2,32,13,090	4,66,60,656	2007-08	32010103675/ 2007-08 dtd works 14.07.2015	2,32,92,680	2,02,64,632	4,35,57,312	2008-09	32010103675/ 08-09 dtd works 14.07.2015	2,53,14,316	1,89,85,734	4,43,00,050
Year	Order No. & date	Tax	Interest	Total																							
2005-06	32010103675/ 2005-06 dtd (Spl, 30.06.2015)	2,17,21,074	2,41,10,392	4,58,31,466																							
2006-07	32010103675/ 06-07 dtd Resig. 14.07.2015	2,34,47,566	2,32,13,090	4,66,60,656																							
2007-08	32010103675/ 2007-08 dtd works 14.07.2015	2,32,92,680	2,02,64,632	4,35,57,312																							
2008-09	32010103675/ 08-09 dtd works 14.07.2015	2,53,14,316	1,89,85,734	4,43,00,050																							
(b)	Recovery of overpayment pointed out by audit	<p>2005-06</p>																									
(c)	Recovery of under assessment, short levy or other dues	<p>2006-07</p> <p>2007-08</p> <p>2008-09</p>																									
(d)	Modification in																										

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



ISAAC ITTY
Additional Secretary
Taxes Department
Govt. Secretariat, Tvpm

Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of tax due to non-reckoning of turnover for assessment
	(c)	Paragraph No.	2.13.2 (1)
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	06.05.2013
	(b)	Date of Department's Reply	—
III		Gist of Paragraph/Review	It was noticed between August 2009 and December 2011 that in 7 offices, the subsidy/discount received in 10 cases were not reckoned as turnover for assessing to tax for the period from 06-07 to 09-10. This resulted in short levy of tax of Rs.2.07 crore including cess and interest.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI Remedial action Taken

(a)	Improvement in system and procedures, including internal controls.	<u>M/s. Madras Fertilizers - 2009-10.</u> In the light of audit the assessment was completed u/s. 25 as per Order No. 32070373762/09-10 dated 28.02.2013 considering all the contention raised in the audit objection and thus a demand of Rs. 1,70,88,248/- was created. Meanwhile, the assessee appealed before the Hon'ble High Court prayed for interim stay as per order No. WP(C) 8835/2013 dated 27.03.2013. Stating that there would be stay of recovery of tax until further orders.
(b)	Recovery of overpayment pointed out by audit	-
(c)	Recovery of under assessment, short levy or other dues	-
(d)	Modification in the schemes and programmes including financing pattern	-
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	-


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 Taxes Department
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Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of tax due to non-reckoning of turnover for assessment
	(c)	Paragraph No.	2.13.2 (2)
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	06.05.2013
	(b)	Date of Department's Reply	—
III		Gist of Paragraph/Review	It was noticed between August 2009 and December 2011 that in 7 offices, the subsidy/discount received in 10 cases were not reckoned as turnover for assessing to tax for the period from 08-07 to 09-10. This resulted in short levy of tax of Rs.2.07 crore including cess and interest.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action Taken

(a)	Improvement in system and procedures, including internal controls.	<p><u>AB Traders – 2008-09 Spl.Cle. Typm</u></p> <p>The Hon'ble Court in K.K. Agencies case in WP (C) No.8931/08/ dated 3.4.2008. In this case, the Hon'ble High Court had held that the Commissioner's Circular applies not only to the case related to the year 2005-06 but subsequent years and that if the petitioner produces certificate from the supplier stating that the supplier has not claimed any deduction in turnover on credit note issued to the dealer with supplier's registration number for the assessing authority. In the instant case, the assessee had obtained and furnished declaration issued by the supplier of cement i.e., Madras Cement Ltd. The declaration is in terms of the Circular No. 41/07 issued by the Commissioner of Commercial Taxes, Trivandrum.</p> <p>The decision reported in 18 KTR 329 (Ker) cited by the audit party is in a case where the dealer is effecting first sale of goods within the State. Here in the instant case, the assessee is a second seller of cement. The purchase bill and sales bill had been verified and it is found that the purchase value is less than the sale value conceded. Here the dealer had received a sum of Rs. 58,01,678/- towards discount from the suppliers. Thus the purchase cost of the goods had reduced to that much amount which was received by the assessee from the suppliers. As such, the purchase cost of cement has reduced at the hands of the assessee. Therefore the objection of the audit party that the assessee had effected sale at a price lower than the purchase price is not sustainable.</p> <p>The assessment had been completed by admitting the declaration produced by the assessee. This is in conformity with the decision of the Hon'ble High Court and in conformity with the Circular No. 41/07 dated 18.9.2007. This was also incorporated in the KVAT Act 2003 vide amended proviso to Section 11 (3) of the Act.</p> <p>The supplier had issued declaration to the effect that it had not availed input tax in respect of the discount allowed to the assessee and that they will not claim any refund of tax already paid. Hence there is no short levy.</p>
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	(b)	Recovery of overpayment pointed out by audit	-
	(c)	Recovery of under assessment, short levy or other dues	-
	(d)	Modification in the schemes and programmes including financing pattern	-
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	-



ISAAC ITTY
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 Taxes Department
 Govt. Secretariat, Typm


Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of tax due to non-reckoning of turnover for assessment
	(c)	Paragraph No.	2.13.2 (3)
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	06.05.2013
	(b)	Date of Department's Reply	--
III		Gist of Paragraph/Review	It was noticed between August 2009 and December 2011 that in 7 offices, the subsidy/discount received in 10 cases were not reckoned as turnover for assessing to tax for the period from 08-07 to 09-10. This resulted in short levy of tax of Rs.2.07 crore including cess and interest.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI Remedial action Taken

(a)	Improvement in system and procedures, including internal controls.	<p><u>M.Abubacker, Cement Dealer, 2007-08, Commercial Tax Office, Special Circle, Thiruvananthapuram</u></p> <p>The Hon'ble High Court had held that the Commissioner's Circular applies not only to the case related to the year 2005-06 but subsequent years and that if the petitioner produces certificate from the supplier stating that the supplier has not claimed any deduction in turnover on credit note issued to the dealer with supplier's registration number for the assessing authority. In the instant case, the assessee had obtained and furnished declaration issued by the supplier of cement i.e., Madras Cement Ltd. The declaration is in terms of the Circular No. 41/07 issued by the Commissioner of Commercial Taxes, Thiruvananthapuram.</p> <p>The decision reported in 18 KTR 329 (Kar) cited by the audit party is in a case where the dealer is effecting first sale of goods within the State. Here in the instant case, the assessee is a second seller of cement. The purchase bill and sales bill had been verified and it is found that the purchase value is less than the sale value conceded. Here the dealer had received a sum of Rs. 27,07,840/- towards discount from the suppliers. Thus the purchase cost of the goods had reduced to that much amount which was received by the assessee from the suppliers. As such, the purchase cost of cement has reduced at the hands of the assessee. Therefore the objection of the audit party that the assessee had effected sale at a price lower than the purchase price is not sustainable.</p> <p>The assessment had been completed by admitting the declaration produced by the assessee. This is in conformity with the decision of the Hon'ble High Court and in conformity with the Circular No. 41/07 dated 18.9.2007. This was also incorporated in the KVAT Act 2003 vide amended proviso to Section 11 (3) of the Act.</p> <p>The supplier had issued declaration to the effect that it had not availed input tax in respect of the discount allowed to the assessee and that they will not claim any refund of tax already paid.</p>
(b)	Recovery of overpayment pointed out by audit	-

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


ISAAC ITTY
Additional Secretary
Taxes Department
Govt. Secretariat, Typm

Action taken Notes on C&AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of tax due to non-reckoning of turnover for assessment
	(c)	Paragraph No.	2.13.2 (4)
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	06.05.2013
	(b)	Date of Department's Reply	—
III		Gist of Paragraph/Review	It was noticed between August 2008 and December 2011 that in 7 offices, the subsidy/discount received in 10 cases were not reckoned as turnover for assessing to tax for the period from 08-07 to 08-10. This resulted in short levy of tax of Rs.2.07 crore including cess and interest.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	—
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI Remedial action Taken

(a)	Improvement in system and procedures, including internal controls.	<p><u>M/s. Koovalathara Traders, 2008-09, Commercial Tax Officer, Special Circle, Kollam.</u></p> <p>The Hon'ble High Court in 18.KTR 329 (KER) 2010 held that the entire amount received through credit notes, where the sales turnover is less than the purchase turnover is only recoupment of additional sale price of the goods sold. In view of the above stated decision Rs. 22,00,355/- received as incentive and price difference would form part of the sales turnover, short levy worked out tax Rs. 2,77,794/- and interest Rs. 58,337/-.</p> <p>On verification of profit and loss account for the year 2008-09 it is found that the dealer had received an amount of Rs. 22,00,335.17 as incentives and price difference. But the assessee has not produced any credit notes or any evidence to prove the claim on which incentives are received through credit notes. As per the provisions of the KVAT Act 2003 any incentive or price difference received from the supplier through credit notes can be allowed if it is shown separately in the invoice and the buyer pays only the amount reduced by such incentives/price difference. Therefore the turnover Rs. 22,00,335.17 claimed as incentive/price difference has been disallowed and corresponding input tax of Rs. 2,75,044.39 has been reversed with cess 1% and interest 21% vide order date 24.12.2011. The same is under RR vide RRC.No. 22/12-13. The collection particulars will be intimated at the earliest.</p>
(b)	Recovery of overpayment pointed out by audit	-
(c)	Recovery of under assessment, short levy or other dues	-
(d)	Modification in the schemes and programmes including financing pattern	-
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	-



 ISAAC ITTY
 Additional Secretary

Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of tax due to non-reckoning of turnover for Assessment
	(c)	Paragraph No.	2.13.2 (5)
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
ii	(a)	Date of receipt of the Draft Para/Review in the Department	06.05.2013
	(b)	Date of Department's Reply	-
iii		Gist of Paragraph/Review	It was noticed between August 2009 and December 2011 that in 7 offices, the subsidy/discount received in 10 cases were not reckoned as turnover for assessing to tax for the period from 06-07 to 09-10. This resulted in short levy of tax of Rs.2.07 crore including cess and interest.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI Remedial action Taken

(a)	Improvement in system and procedures, including internal controls.	<u>M/s. West Cost Agencies – 2009-10, AC, Spl Circle, Kollam</u> In the light of Audit the assessment has been revised demanding tax & interest of Rs.1006821/- vide order No.32020887135/08-09 dated 18.09.12 of the Assistant Commissioner, Special Circle, Kollam and the same is pending for collection.
(b)	Recovery of overpayment pointed out by audit	-
(c)	Recovery of under assessment, short levy or other dues	-
(d)	Modification in the schemes and programmes including financing pattern	-
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	-


ISAAC ITTY
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 Taxes Department
 Govt. Secretariat, Trpm

Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of tax due to non-reckoning of turnover for assessment
	(c)	Paragraph No.	2.13.2 (6)
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	06.05.2013
	(b)	Date of Department's Reply	—
III		Gist of Paragraph/Review	M/s.Pan Marketing was an assessee dealing with sales of tiles, sanitary ware, modular kitchen etc. The assessee conceded a sales turnover of Rs.17.77 crores both the annual return and P&L account. It was noticed (July 2011) that the assessee had sold goods valued Rs.17.89 crore for Rs.17.77 crore at a loss of Rs.12.05 lakhs. The assessee did not assess to tax the amount of 0.77 crore subsequently received. This resulted in short levy of tax, cess and interest of Rs.11.11 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

Remedial action Taken :

(a)	Improvement in system and procedures, including internal controls.	<p><u>M/s.PAN Marketing 2009-10.</u></p> <p>M/s.Pan Marketing, Athirampuzha, is registered dealer on the rolls of the office of the Assistant Commissioner, Special circle, Kottayam, dealing in tiles, marbles etc, with TIN 32050274455. The assessee filed annual return for the year 2009-10 reporting a total and taxable turnover of Rs.17,92,08,375.55.</p> <p>Out of the above, there was sales return of Rs.15,02,303.86 for which credit was also availed by the assessee and hence the net sales turnover is Rs.17,77,06,071.14. This turnover related to sales effected out of purchase value of goods Rs.17,89,11,338.00 as shown below:</p> <table style="margin-left: 40px;"> <tr> <td>Opening stock</td> <td>: Rs. 49229751.00</td> </tr> <tr> <td>Purchase (including freight etc)</td> <td>: Rs.177749785.00</td> </tr> <tr> <td>Total</td> <td>: Rs.226979536.00</td> </tr> <tr> <td>Less: closing stock</td> <td>: Rs. 48088198.00</td> </tr> <tr> <td>Purchase value of goods sold</td> <td>: Rs.178911338.00</td> </tr> </table> <p>Thus the sales effected was at a price lower than that at which it was purchased. As per profit and loss account, the assessee had received Rs.7718480.00 towards discount etc. Since the sales effected was at a price lower than at which it was received, the discount received is taxable as defined in explanation VII to Sec: 2(ii) of the KVAT Act. But the assessee had failed to include the same as turnover.</p> <p>In order to make good the short levy pointed out in audit, the assessment was completed vide order No.320501274455/2009-10 dtd 30.11.2012 and the escaped turnover of Rs.7718480/- was assessed to tax @ 12.5% along with SS Cess @ 1%.</p> <p>The demand created is advised for collection under RR.</p>	Opening stock	: Rs. 49229751.00	Purchase (including freight etc)	: Rs.177749785.00	Total	: Rs.226979536.00	Less: closing stock	: Rs. 48088198.00	Purchase value of goods sold	: Rs.178911338.00
Opening stock	: Rs. 49229751.00											
Purchase (including freight etc)	: Rs.177749785.00											
Total	: Rs.226979536.00											
Less: closing stock	: Rs. 48088198.00											
Purchase value of goods sold	: Rs.178911338.00											
(b)	Recovery of overpayment pointed out by audit	-										
(c)	Recovery of under assessment, short levy or other dues	-										

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



ISAAC ITTY
Additional Secretary
Taxes Department
Govt. Secretariat, Tvpm

Action taken Notes on C&AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of tax due to non-reckoning of turnover for assessment
	(c)	Paragraph No.	2.13.2 (7)
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	08.05.2013
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	M/s.M&M Associates a dealer in mosquito coils and repellents purchased goods for Rs.2.95 crore and sold the same for Rs.2.38 crore at a loss of Rs.0.57 crore. It was noticed from the assessment records that the assessee received Rs.64.94 lakh subsequently from the supplier by way of schemes and allowances. This was not included in the turnover while assessing tax. This resulted in escape of turnover and subsequent short levy of tax and interest of Rs.10.31 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	—
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

Y)

Remedial action Taken

(a)	Improvement in system and procedures, including internal controls.	<p>M/s.M&M Associates – 2006-07</p> <p>The assessee was in receipt of Rs.64,94,428/- towards "scheme and allowance" and no proof produced to prove the claim. Analysis of trade result showed misclassification/sales suppression and the schemes and allowance are therefore sales turnover misclassified.</p> <p>Based on the above observation the assessment in respect of M/s. M&M Associates, Kadappakkada was originally completed by proceedings No.32020783255/06-07 dated 08/01/2010 by fixing a taxable turnover of Rs.16342160.00 and a total tax due @ Rs.1174240/- giving an IPT credit of Rs.583681/- and balance tax payable with interest @ Rs.818458/- was demanded. Later by order dated 16.03.2010 the taxable turnover was re-fixed @ Rs.16522160/- and tax with interest @ Rs.641841/-. Against the 1st order-mentioned above, the assessee filed appeal and the Appellate authority (Deputy Commissioner (A) Kollam) vide order No.KVAT (A) 161/10 dated 26.03.2011 has directed to modify the appeals considering the following</p> <ol style="list-style-type: none"> 1. Directed the appellant to produce the declaration before the assessing authority and assessing authority is directed to verify the declaration as per Circular No.41/07 and allow the benefit if the declarations are in order. 2. To allow IPT for the purchase from registered dealers <p>The contention of the assessee was that part of the discount received is by credit note by way trade promotional activities and no IPT was claimed on the same. Part of the discount is from Tata Tele service and have paid tax of Rs.101457.00 on 14.07.2007 itself.</p> <p>In order to set right the audit objection, the assessment in respect of the above dealer has been modified in the light of the order of the Deputy Commissioner (Appeals), Kollam and created a demand of Rs. 2,95,978/- as tax and Rs.159,588/- as interest on 12-3-2013 by the Commercial Tax Officer, 2nd Circle, Kollam.</p>
	payment dit	-
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	(d)	Modification in the schemes and programmes including financing pattern	--
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--


ISAAC ITTY
Additional Secretary
Taxes Department
Govt. Secretariat, Tvpm

Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of tax due to non-reckoning of turnover for assessment
	(c)	Paragraph No.	2.13.2 (8)
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	08.05.2013
	(b)	Date of Department's Reply	16.04.2013
III		Gist of Paragraph/Review	During the scrutiny of assessment records of Western Distributors it was noticed that their sales turnover for the year 2009 - 2010 was only Rs. 30.33 crore whereas cost of goods sold by them was Rs. 30.85 crore. Thus goods were sold at a price lower than purchase price and was in receipt of discount and incentive of Rs. 1.43 crore. However the assessing Officer failed to include this as turnover. Failure to assess to tax the discount and incentive of Rs. 1.43 crore received during the year, resulted short levy of tax, cess and interest of Rs. 7.13 lakh
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	yes
	(b)	If not, Please Indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action Taken

(a)	Improvement in system and procedures, including internal controls.	<p><u>M/s. Western FT Distributors CTO, 4th C/o, Ekra.</u> Cash discount received by the assessee for Rs. 57,93,075/- is received through the purchase bills. In the returns they have shown only net purchase value after cash discount. Assessee claimed IPT only on the net purchase. As a matter of accounting practice assessee accounted the amount before discount in the purchase account and cash discount is accounted under the head "Cash discount received".</p> <p>As per Explanation III to Section 2 (H) Any discount on the price allowed in respect of any sale where such discount is shown separately in the tax invoice and the buyer pays only the amount reduced by such discount or any amount refunded in respect of goods returned by customers shall not be included in the turnover.</p> <p>Hence the cash discount received by the assessee through invoices has to be deducted while taking the purchase value. Assessee had accounted it in the return as per this Rule and claimed IPT for net amount. But in the Audited Statement as a matter of accounting practice followed by them total purchase value is shown in the Debit Side and total discount is shown in the Credit Side. This turnover is not the amount received in addition to the purchase value accounted.</p> <p>Hence the turnover of Rs. 59.73 lakh is not assessable as per Law.</p>
(b)	Recovery of overpayment pointed out by audit	-
(c)	Recovery of under assessment, short levy or other dues	-
(d)	Modification in the schemes and programmes including financing pattern	-
(e)	Review of similar cases/completes scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	-

[Signature]
ISAAC ITTY
Additional Secretary

ACTION TAKEN NOTES ON C & AG'S REPORTS

	(a) Department	COMMERCIAL TAXES
I	(b) Subject/Title of the Review	Short levy of tax due to non-reckoning of turnover for assessment
	(c) Paragraph No.	2.13.2(9)
	(d) Report No. & Year	C & AG report for the year ended March 2012
II	(a) 1. Date of receipt of the Draft Para/Review in the Department	
	(b) Date of Department's Reply	
III	Gist of the Paragraph/Review	M/s. Peekay Cement (2009-10) CTO Kundungalbor The subsidy/discount received were not reckoned as turnover for assessing to tax for the period Short levy Rs. 3.76 lakhs
IV	(a) Does the Department agree with the facts and figures included in the paragraph?	
	(b) If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a) Does the Department agree with the Audit conclusions?	
	(b) If not, please indicate specific areas of disagreement with reasons for disagreement with reasons for disagreement and also attach copies of relevant documents where necessary.	

REMEDIAL ACTION TAKEN

(a)	Improvement in system and procedures, including internal control	<p>M/s. Peekay Cement (2009-10) C/O Koundangabor</p> <p>Based on audit observation assessment was completed vide order dated 25.05.2013 with an additional demand of Rs. 433206 including interest. Revenue recovery was initiated against the dealer. Aggrieved by this the assessee approached Honourable High Court of Kerala. The Honourable High Court directed the Assistant Commissioner (Appeals), Commercial Taxes, Thrissur to consider the petitions with notice to the petitioner within a period of one month. The dealer paid 30% of the demand i.e. Rs. 129962/- as per conditions of stay order by Assistant Commissioner (Appeals), Thrissur. AC(A) allowed the appeal filed by the dealer. Against which IAC, Irinjakkuda filed second appeal before the Sales Tax Appellate Tribunal, Ernakulam on 25.11.2014 and the case is still pending before the STAT, Ernakulam.</p>
(b)	Recovery of overpayment pointed out by Audit	
(c)	Recovery of under Assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit	


ISAAC ITTY
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 Govt. Secretariat, Trpam

ACTION TAKEN NOTES ON C & AG'S REPORTS

	(a)	Department	COMMERCIAL TAXES
I	(b)	Subject/Title of the Review	Short levy of tax due to non-reckoning of turnover for assessment
	(c)	Paragraph No.	2.13.2(10)
	(d)	Report No. & Year	C & AG report for the year ended March 2012
II	(a)	1. Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of the Paragraph/Review	M/s. K. K. Seethi (2009-10) CTO Kondungalloor The subsidy/discount received were not reckoned as turnover for assessing to tax for the year 2009-10. Short Levy Rs. 3.53 lakhs.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement with reasons for disagreement and also attach copies of relevant documents where necessary.	

VI

REMEDIAL ACTION TAKEN

(a)	Improvement in system and procedures, including internal control	M/s. K. K. Seethi (2009-10) CTO Koodungalloor Based on audit observation assessment for the year 2009,10 was completed vide order dated 03.01.2013 creating an additional demand of Rs. 371265/-. The assessment order was duly served to the dealer. RR action was initiated against the dealer on 13.03.2013. the dealer paid 30% of the demand vide Chalan No. 90 dated 23.05.2013 as per Government stay. The appeal is pending for disposal before the DC(A), Ernakulam.
(b)	Recovery of overpayment pointed out by Audit	
(c)	Recovery of under Assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit	



ISAAC ITTY
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Taxes Department
Govt. Secretariat, Tvpm

Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of tax due misclassification of commodity
	(c)	Paragraph No.	2.13.3.1
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	31.05.2012
	(b)	Date of Department's Reply	22.12.2012
III		Gist of Paragraph/Review	It was noticed from the annual returns filed by Manjilas Agro Foods (P) Limited that the sales turnover in respect of rice products like puttupodi etc. amounting to Rs. 25.41 crore was taxed at one per cent during 2009-10 which included sales turnover of 24.81 crore taxable at the rate of four per cent. Application of incorrect rate of tax resulted in short levy of tax, cess and interest of Rs 87.19 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	Details as in VI (a)
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action Taken

(a)

Improvement in system and procedures, including internal controls.

Maniata Agro Foods (P) Ltd/ 2009-10, Commercial Tax Office, Special Circle, Thrissur.

In the light of audit, notice under Section 25 of the Act have been issued on 27.07.2012. The assessee in turn filed reply date 08.08.2012 stating that as per the Circular No. 48/2008 issued by the Commissioner of Commercial Taxes, Thiruvananthapuram all the commodities numbering more than 7500 are grouped into 313 groups which begin with abrasives and grinding wheels and end with cooked food for supply in airlines/ Shipping. As per this classification, under one group name all commodities of the same genus are grouped together to which a group ID number is allotted and schedule No. under the KVAT Act under which it falls is also given. E-filing of return can be done only by selecting the group name given for each commodity in Circular No. 48/2008. The dealer cannot file e-return if he feeds the specific commodity name into the website unless it is specifically in the annexure to the Circular No.48/2008 Serial No. 215 of the annexure in which the group name given is rice products and the name of schedule under which it comes is given as schedule II. Taxable items given under entry No. 6 & 7 of schedule II are rice other than paddy, puffed rice, parched and beaten rice, broken rice and wheat including broken wheat respectively.

The turnover of Rs. 25,41,15,303/- included in the return under local sales of rice beaten rice and wheat and it did not contain sales of Puttupodi and the like which are also rice products. The relevant group name given for including the sales of rice products like Puttupodi and the like for the purpose of e-filing of return is "Flours of all kinds" under group ID No. 90309, serial No. 308 tax rate being 4%. The assessee claimed that they were perfectly justified in growing the sales turnover of rice beaten rice and as per Circular No 48/2008.

It is further explained that as per Circular No. 48/2008 there is a group namely "rice other than PDS" as serial No. 213 under group ID No. 90214 for showing the sales of rice taxable at 1%. They have also stated that this fact was understood only by the middle of the year and then they included the sale of rice taxable at 1% under "rice other than PDS" and the turnover of Rs. 32,81,06,529/- shown in the return is the sales of taxable

rice. There was no specific group name other than rice products for showing the sales of beaten rice & therefore sales turnover of beaten rice could only be shown under sales of rice products in the return.

The assessee has also stated that the sale of rice products of Rs. 25,41,15,903.00 shown in the return taxable @ 1% included only the sales of rice beaten rice and wheat which are taxable only at 1%. During the year they had not effected any sales of rice products such as 'Puttupodi and the like' locally. They have purchases puttupodi from their sister concerns after paying tax and sold interstate after paying the appropriate rate of tax.

The explanation of the dealer was examined with reference to the returns and audited accounts and found convincing. E-filing facility was launched in the Department from 01-01-2009 onwards. It is a fact that dealers were experiencing difficulties in selecting commodities for e-filing from the list of then existing 7500 commodities grouped into 313 groups.

As per Circular No. 48/2008, Rice and Rice products were brought under the commodity group with ID as under :-

- | | | |
|------------------------|-------------------------|---------|
| 1) Rice :- | (i) Rice other than PDS | : 90214 |
| | (ii) Rice PDS | : 90215 |
| 2) Rice Products | | : 90216 |
| 3) Flours of all kinds | | : 90309 |

Rice flour including puttu podi and the like were specifically coming under Entry of 48 of III Schedule to the KVAT Act taxable @ 4% during the relevant assessment year. Hence puttu podi will come under ID 90309.

Rice products coming under III Schedule to the KVAT Act i.e., broken rice puffed rice, parched & beaten rice are taxable @ 1% and will come under ID 90216.


Since, the commodity groups and the respective schedules are clearly specified in the circular, chances for misclassification are rare.

Random verification of the sale bills revealed that sales turnover conceded @ 1% is rice, beaten rice, Broken rice, wheat broken wheat etc.

Therefore there is no short levy as observed.

(b) Recovery of overpayment pointed out by audit

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


ISAAC ITTY
 Additional Secretary
 Taxes Department
 Govt. Secretariat, Tvm

Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES.
	(b)	Subject/Title of the Review Paragraph	Short levy of tax due misclassification of commodity
	(c)	Paragraph No.	2.13.3.2 (b)
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	17.07.2012
	(b)	Date of Department's Reply	24.12.2012
III		Gist of Paragraph/Review	In the scrutiny of the assessment records in respect of M/s.Indus Motors (P) Ltd for the financial years 2008-09, 2009-10, it was noticed that the assessing authority assessed a turnover of Rs.76.56 lakh and Rs.56.17 lakh at 0.5 per cent being classified as 'used cars'. However, these vehicles were not coming under the category of used cars being vehicles less than 15 months old. This resulted in short levy of tax, cess and interest of Rs.20.10 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement, attach copies of relevant documents in support.	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement and also attach relevant documents where necessary	

VI Remedial action Taken

(a)	Improvement in system and procedures, including internal controls.	<p><u>Manikya Agro Foods (P) Ltd/ 2009-10. Commercial Tax Office, Special Circle, Thrissur.</u></p> <p>In the light of audit notice under Section 25 of the Act have been issued on 27.07.2012. The assessee in turn filed reply date 08.08.2012 stating that as per the Circular No. 48/2008 issued by the Commissioner of Commercial Taxes, Thiruvananthapuram all the commodities numbering more than 7500 are grouped into 313 groups which begin with abrasives and grinding wheels and end with cooked food for supply in airlines/ Shipping. As per this classification, under one group name all commodities of the same genus are grouped together to which a group ID number is allotted and schedule No. under the KVAT Act under which it falls is also given. E-filing of return can be done only by selecting the group name given for each commodity in Circular No. 48/2008. The dealer cannot file e-return if he feeds the specific commodity name into the website unless it is specifically in the annexure to the Circular No.48/2008 Serial No. 215 of the annexure in which the group name given is rice products and the name of schedule under which it comes is given as schedule II. Taxable items given under entry No. 8 & 7 of schedule II are rice other than paddy, puffed rice, perched and beaten rice, broken rice and wheat including broken wheat respectively.</p> <p>The turnover of Rs. 25,41,15,303/- included in the return under local sales of rice beaten rice and wheat and it did not contain sales of Puttupodi and the like which are also rice products. The relevant group name given for including the sales of rice products like Puttupodi and the like for the purpose of e-filing of return is "Flours of all kinds" under group ID No. 90309, serial No. 308 tax rate being 4%. The assessee claimed that they were perfectly justified in showing the sales turnover of rice beaten rice and as per Circular No 48/2008.</p> <p>It is further explained that as per Circular No. 48/2008 there is a group namely 'rice other than PDS' as serial No. 213 under group ID No. 90214 for showing the sales of rice taxable at 1%. They have also stated that this fact was understood only by the middle of the year and then they included the sale of rice taxable at 1% under "rice other than PDS" and the turnover of Rs. 32,61,06,529/- shown in the return is the sales of taxable</p>
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rice. There was no specific group name other than rice products for showing the sales of beaten rice and therefore sales turnover of beaten rice could only be shown under sales of rice products in the return.

The assessee has also stated that the sale of rice products of Rs. 25,41,15,303.00 shown in the return taxable @ 1% included only the sales of rice beaten rice and wheat which are taxable only at 1%. During the year they had not effected any sales of rice products such as 'Puttupodi and the like' locally. They have purchases puttupodi from their sister concerns after paying tax and sold interstate after paying the appropriate rate of tax.

The explanation of the dealer was examined with reference to the returns and audited accounts and found convincing. E-filing facility was launched in the Department from 01-01-2009 onwards. It is a fact that dealers were experiencing difficulties in selecting commodities for e-filing from the list of then existing 7500 commodities grouped into 313 groups.

As per Circular No. 48/2008, Rice and Rice products were brought under the commodity group with ID as under :-

- | | | |
|------------------------|-------------------------|---------|
| 1) Rice :- | (i) Rice other than PDS | : 90214 |
| | (ii) Rice PDS | : 90215 |
| 2) Rice Products | | : 90216 |
| 3) Flours of all kinds | | : 90309 |

Rice flour including puttupodi and the like were specifically coming under Entry of 48 of III Schedule to the KVAT Act taxable @ 4% during the relevant assessment year. Hence puttupodi will come under ID 90309.

Rice products coming under IInd Schedule to the KVAT Act i.e., broken rice puffed rice, parched & beaten rice are taxable @ 1% and will come under ID 90216.


Since, the commodity groups and the respective schedules are clearly specified in the circular, chances for misclassification are rare.

Random verification of the sale bills revealed that sales turnover conceded @ 1% is rice, beaten rice, Broken rice, wheat broken wheat etc.

Therefore there is no short levy as observed.

(b) Recovery of overpayment pointed out by audit

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


ISAAC ITTY
Additional Secretary
Taxes Department
Govt. Secretariat, Tvpm

Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of tax due misclassification of commodity
	(c)	Paragraph No.	2.13.3.2 (a)
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	11.10.2012
	(b)	Date of Department's Reply	29.11.2012
III		Gist of Paragraph/Review	It was noticed from the assessment records for 2009-10 of the assessee M/s. Rajaarae Motors that they assessed to tax the sale value of six motor vehicles costing Rs. 1.59 crore at the rate of 0.5 per cent treating them as used vehicles. Since these vehicles were not used for a minimum period of 15 months subsequent to the registration, they could not be treated as used vehicles. Failure to assess these vehicles at 12.5 per cent, resulted in short levy of tax, interest and cess of Rs. 22.77 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI Remedial action Taken

(a)	Improvement in system and procedures, including internal controls.	<u>M/s. Rajasree Motors - 2009-10, Special Circle II, Emakulam</u> In the light of the audit the assessment for the year 2009-10 revised under section 25 (1) and make good the loss of revenue as observed in the audit and created an additional demand of Rs. 1,14,28,881/. Out of which the assessee paid 1/3 rd of the total demand i.e. Rs. 38,09,627/- balance payment is stayed by the Deputy Commissioner (Appeals), Emakulam till the disposal of the appeal.
(b)	Recovery of overpayment pointed out by audit	-
(c)	Recovery of under assessment, short levy or other dues	-
(d)	Modification in the schemes and programmes including financing pattern	-
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	-


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 Taxes Department
 Govt. Secretariat, Trpvn

Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES.
	(b)	Subject/Title of the Review Paragraph	Short levy of tax due misclassification of commodity
	(c)	Paragraph No.	2.13.3.2 (b)
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	17.07.2012
	(b)	Date of Department's Reply	24.12.2012
III		Gist of Paragraph/Review	In the scrutiny of the assessment records in respect of M/s.Indus Motors (P) Ltd for the financial years 2008-09, 2009-10, it was noticed that the assessing authority assessed a turnover of Rs.76.56 lakh and Rs.56.17 lakh at 0.5 per cent being classified as 'used cars'. However, these vehicles were not coming under the category of used cars being vehicles less than 15 months old. This resulted in short levy of tax, cess and interest of Rs.20.10 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement attach copies of relevant documents in support.	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement and also attach relevant documents where necessary	

VI Remedial action Taken

(a)	Improvement in system and procedures, including internal controls.	<p>Indus Motors Co. (P) Ltd. 2008-09, 2009-10 Commercial Tax Office, Special Circle-II, Emakulam In the light of the audit the assessments were revised u/s. 25 (1) of KVAT Act on 01.09.2012 and make good the loss of revenue as observed in the audit.</p> <p style="text-align: center;"><u>2008-09</u></p> <table border="0"> <tr> <td>Taxable Turn over conceded</td> <td style="text-align: right;">7,87,48,11,585</td> </tr> <tr> <td>Turnover in which tax rate is misclassified.</td> <td style="text-align: right;">7,65,600</td> </tr> <tr> <td>Tax due at the differential rate of 12 %</td> <td style="text-align: right;">9,18,720</td> </tr> <tr> <td>Cess 1%</td> <td style="text-align: right;">9,187</td> </tr> <tr> <td>Total</td> <td style="text-align: right;">9,27,907</td> </tr> <tr> <td>Interest</td> <td style="text-align: right;">1,67,023</td> </tr> </table> <p style="text-align: center;"><u>2009-10</u></p> <table border="0"> <tr> <td>Taxable Turn over conceded</td> <td style="text-align: right;">10,48,48,33,144</td> </tr> <tr> <td>Turnover in which tax rate is misclassified.</td> <td style="text-align: right;">58,17,000</td> </tr> <tr> <td>Tax due at the differential rate of 12 %</td> <td style="text-align: right;">6,74,040</td> </tr> <tr> <td>Cess 1%</td> <td style="text-align: right;">6,740</td> </tr> <tr> <td>Total</td> <td style="text-align: right;">8,80,780/-</td> </tr> <tr> <td>Interest</td> <td style="text-align: right;">2,04,234</td> </tr> </table> <p>The assessee had paid an amount of Rs. 26,00,000 vide Ch. No. 37/21.03.2013 on all total dues.</p>	Taxable Turn over conceded	7,87,48,11,585	Turnover in which tax rate is misclassified.	7,65,600	Tax due at the differential rate of 12 %	9,18,720	Cess 1%	9,187	Total	9,27,907	Interest	1,67,023	Taxable Turn over conceded	10,48,48,33,144	Turnover in which tax rate is misclassified.	58,17,000	Tax due at the differential rate of 12 %	6,74,040	Cess 1%	6,740	Total	8,80,780/-	Interest	2,04,234
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(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--																								

[Signature]
ISAAC ITTY
 Additional Examiner

ACTION TAKEN NOTES ON C & AG'S REPORTS

	(a) Department	COMMERCIAL TAXES
I	(b) Subject/Title of the Review	Short levy of tax due to misclassification of commodity
	(c) Paragraph No.	2.13.3.3
	(d) Report No. & Year	C & AG report for the year ended March 2012
II	(a) Date of receipt of the Draft Para/Review in the Department	
	(b) Date of Department's Reply	
III	Gist of the Paragraph/Review	M/s. Poothokkaran Agencies, Thrissur a dealer in abrasive, grinding wheels and waste cotton, had an aggregate turnover of Rs. 89.27 lakh for the year 2008-09 and 2009-10. It was noticed from the assessment records that though abrasives and grinding wheels are taxable at 12.5 per cent and cotton waste four per cent the assessee applied four percent on the entire turnover. The resulted in a short levy of Rs. 9.02 lakh.
IV	(a) Does the Department agree with the facts and figures included in the paragraph?	
	(b) If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a) Does the Department agree with the Audit conclusions?	
	(b) If not, please indicate specific areas of disagreement with reasons for disagreement with reasons for disagreement and also attach copies of relevant documents where necessary.	

REMEDIAL ACTION TAKEN

(a) Improvement in system and procedures, including internal control

M/s. Poothokkaran Agencies (2008-09 & 200-10), Special Circle, Thrissur.

Annual return filed by the dealer for the year 2008-09 and 2009-10 have been verified. Dealer has conceded the turnover of abrasives and grinding wheels at the 12.5% category in the annual returns for the both the years. The turnover of abrasives and grinding wheels conceded by the dealer @12.5% in the annual return is as follows.


Year	Local sale @ 12.5%	Interstate sale @ 12.5%	Total
2008-09	45172720	5427595	50600315
2009-10	45899738	21578110	67477848

During the year 2009-10 the interstate purchase of 4% taxable goods that is nut, bolt, rails, water treatment chemicals and wood cutting blade etc. of Rs. 64,36,841/- was wrongly shown as Rs. 1,78,060/- in the returns. Assessing authority verified books of accounts which revealed the following trade result.

	4%	12.5%	Total
Opening Stock	1,79,753	1,13,92,674	1,15,72,427
Purchase (Local)	4,95,159	44,33,861	49,29,020.09
Interstate purchase including import purchase	64,36,842	5,96,61,108	6,60,97,950
Total	71,11,754	7,54,87,643	8,25,99,397.26
Less Closing Stock	14,88,400	1,23,63,840	1,38,52,240
Cost of goods sold	56,23,354	6,31,23,803	6,87,47,157
Sales	63,23,186	6,76,86,026	7,40,09,212
Gross Profit	6,99,832	45,62,223	52,62,055

From the above it is clear that there is no misclassification of different tax rate in sales.

		So AG's observation that the assessee applied 4% on the entire turnover is not correct.
(b)	Recovery of overpayment pointed out by Audit	
(c)	Recovery of under Assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit	


ISAAC ITTY
 Additional Secretary
 Taxes Department
 Govt. Secretariat, Tvpm

Action taken Notes on C& AG's Reports

I	(a)	Department _____	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of tax due to application of incorrect rate of tax.
	(c)	Paragraph No.	2.13.4.1
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	12.07.2012
	(b)	Date of Department's Reply	22.12.13
III		Gist of Paragraph/Review	It was noticed from the assessment records of M/s. Daashan Trading (P) Ltd that out of the total turnover, Rs.6.34 crore was assessed at four percent as unbranded confectionery and medicines. However, these products are actually branded products or dietary supplements taxable at 12.6 per cent. This resulted in short levy of tax including cess and interest of Rs.64.19 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI Remedial action Taken

(a)	Improvement in system and procedures, including internal controls.	<p><u>M/s. Daehsan Trading (P) Ltd. 2007-08. Special Circle II, Ernakulam</u></p> <p>M/s. Daehsan Trading Pvt Ltd. is an assessee on the rolls of Assistant Commissioner (Asamt) Special Circle-II, Ernakulam, dealing with the products namely Ganocellum, Reishi Ganocspirula and co-cozhi. As per assessment records for the years 2009-10, the assessee company assessed Rs.6,33,67,088.00 @ 4% being sales turnover of unbranded confectionery and medicine. In view of the audit objection, the assessment has been revised under Sec: 25 (1) of KVAT Act as per order dated 31.03.12. The short levy pointed out by the audit is made good creating additional demand of Rs.5870707/- (Tax) Rs.1938473/- (SC), Rs.2108478/- (Interest)</p>
(b)	Recovery of overpayment pointed out by audit	-
(c)	Recovery of under assessment, short levy or other dues	-
(d)	Modification in the schemes and programmes including financing pattern	-
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	-



ISAAC ITTY
 Additional Secretary
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 Govt. Secretariat, Trpvn

Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of tax due to application of incorrect rate of tax.
	(c)	Paragraph No.	2.13.4.2
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	30.06.12
	(b)	Date of Department's Reply	31.10.12
III		Gist of Paragraph/Review	The audit objection in this case is that in the Office of the Commercial Tax officer (WC & LT), Kottayam during the scrutiny of assessment records it was noticed that the assessment for the year 2007-08 of an assessee, M/s.Thaluputa Engineering Company, was a works contractors engaged in Railway electrification work was finalised finding total and taxable turnover as Rs.6.91 crore, of which Rs.2.88 crore related to transfer value of foundation work and copper which were taxable at 12.5 percent. The assessing authority finalized the assessment applying four per cent on aggregate turnover of Rs.6.91 crore including Rs.2.88 crore taxable at 12.5%. This resulted in short levy of tax, cess and interest of Rs.31.62 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI Remedial action Taken.

(a)	Improvement in system and procedures, including internal controls.	M/s Thalupula Engineering Company is a registered contractor on the rolls of the office of the Commercial Tax Officer(WC), Kottayam engaged in Railway Electrification work. As the returns filed were not found to be not acceptable the assessment for the year 2007-08 was completed on 31.7.2008 as per order No.32051696152C/07-08 dt.31.7.2008 demanded Rs.38,24,264/- as tax. The assessee filed appeal against the above assessment order. The Deputy Commissioner (Appeals), Kollam as per order No.KVATA 422/2008 dt.12.1.10 has set aside the impugned assessment and remanded the case to the Assessing authority to complete the assessment for 07-08 afresh. At the time of audit on 16.8.2010 to 8.9.2010, the order dt.31.7.2008 has already been setaside. On the date of Audit there was no order of assessment. The assessment for the year 2007-08 was completed afresh w/s 25(1) of the KVAT Act 2003 as per order No.32051696152/2007-08 dt.12.3.2012 creating an additional demand of Rs.49,94,170/- towards Tax and Rs.22,06,260/- towards interest. The assessee filed appeal before the Deputy Commissioner (Appeals), Kottayam. As per KVATA No.1473 & 1474/2012 dt.11.10.2012 of DC(Appeals) Kottayam the appeal has been dismissed. The demand created is advised for collection under Revenue Recovery.
(b)	Recovery of overpayment pointed out by audit	-
(c)	Recovery of under assessment, short levy or other dues	-
(d)	Modification in the schemes and programmes including financing pattern	-
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	-


 ISAAC ITTY
 Additional Secretary
 Taxes Department

Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of tax due to application of incorrect rate of tax.
	(c)	Paragraph No.	2.13.4.3 (b) (1) & (2)
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	03.05.2012
	(b)	Date of Department's Reply	06.08.2012
III		Gist of Paragraph/Review	The objection raised during the audit of Commercial Tax Office (WC & LT), Kollam was that two assesses registered under CST Act and had inter-state purchases during the year paid tax at compounded rate of three per cent instead of the correct rate of eight per cent on a turnover of Rs.85.57 lakh and Rs.31.51 lakh for the year 2008-09. This resulted in short levy of tax, cess and interest of Rs.7.24 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action Taken

(a)	Improvement in system and procedures, including internal controls.	<p><u>Shylendra Gopal, Kollam - 2008-09:</u> In order to set right the audit objection, the assessment in respect of the above dealer was completed under section 25(1) of the KVAT Act, and tax at differential rate of tax @ 5 % of the work contract amount was levied and an amount of Rs. 5,47,725/- being tax and interest was demanded. The same was advised for collection under Revenue Recovery vide RRC No. 21/11-12 Dated 23-7-2011 which is still pending before the Revenue Recovery authorities for collection.</p> <p><u>2. M/s. Venus Builders, Kollam - 2008-09:</u> In order to set right the audit objection, the assessment in respect of the above dealer was completed under section 25(1) of the KVAT Act and levied tax at differential rate of tax @ 5% of the work contract amount and demanded tax and interest of Rs.205,405/- which is under Revenue Recovery vide RRC No. 54/11-12 dated 28-11-2011 for collection.</p>
(b)	Recovery of overpayment pointed out by audit	-
(c)	Recovery of prior assessment, short levy or other dues	-
(d)	Modification in the schemes and programmes including financing pattern	-
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	-


ISAAC ITTY
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 Taxes Department
 Govt. Secretariat, Tvm

Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of tax due to application of incorrect rate of tax.
	(c)	Paragraph No.	2.13.4.3 (c)
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	It was noticed (November 2010) from the assessment records that the assessee had contract receipt of ₹ 5.71 crore during 2008-09 pertaining to partly unexecuted work of 2007-08. This assessed to tax at two per cent during 2008-09 instead of at four percent. This resulted in short levy of tax, cess and interest of ₹ 13.61 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

Remedial action Taken

(a)	improvement in system and procedures, including internal controls.	<p><u>M/s AVS Projects & Constructions (P) Ltd. 2008-09.</u> <u>Commercial Tax Office, (WC & LT) Pathanamthitta</u></p> <p>The assessment was completed under section 25 of KVAT Act 2003 vide order No.32270790307/2008-09 dtd 28.09.2012 fixing balance tax due as Rs.11,84,742/- and interest due as Rs.440762.00.</p> <p>The assessee challenged the order in appeal before the Deputy Commissioner (Appeals) Kollam in KVATA 1748/12. The authority was pleased to allow the appeal and found that the assessee is eligible to compound at 2%. This matter was remanded for considering the points suggested by the authority.</p> <p>The defect pointed out by the Accountant General was that the dealer had CST Registration during the year 2007-08 and the rate applicable to the works compounded in the year 2007-08 and continued in the year 2008-09 is at 4%. But the dealer self assessed the turnover @ 2%. During the year 2007-08 mere holding a registration under CST Act was sufficient to fix the compounding rate at 4%.</p> <p>The contention of the dealer that they did not make any interstate purchase during year 07-08 or 08-09. They had cancelled their CST Registration with effect from 17.10.07 and that they are eligible to compound their entire work at 3% as provided under explanation 2 to clause (a) of Sec (B). Further the dealer contended that mere holding of CST Registration does not compel him to remit tax in excess of 2%.</p> <p>In view of the order of the Deputy Commissioner (Appeals) Kollam in KVATA (PTA) 1748/12, the defect pointed out by the Accountant General can be cured only after obtaining a favourable order from the Hon'ble Tribunal on (Appeal).</p>
(b)	Recovery of overpayment pointed out by audit	

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


ISAAC ITTY
Additional Secretary
Taxes Department
Govt. Secretariat, Tvpm

ACTION TAKEN NOTES ON C & AG'S REPORTS

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Turnover escaped assessment
	(c)	Paragraph No.	2.13.4.3(a)
	(d)	Report No. and Year	C & AG report for the year ended 31.3.2012
II	(a)	Date of receipt of the Draft Para / Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	It was noticed from the annual return as well as audited accounts of GR Tech Service (P) Ltd. that during 2008-09, the dealer conceded compounded works contract turnover of Rs. 9.21 crore, out of which Rs. 3.20 crore related to new contracts taken up during the year, and which was assessed to tax at the rate of three percent on the strength of application filed (April 2008) for cancelling CST registration. Though the application filed in April for cancelling CST registration was not in order, the assessing authority accepted the same. This resulted in short levy of tax, cess and interest of Rs. 19.69 lakh at the differential rate of five per cent.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Partly
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	No
V	(a)	Does the Department agree with the Audit conclusions?	Partly
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	NA

REMEDIAL ACTION TAKEN


		<p>M/s. G R Tech Service (Pvt.) Ltd. / 2008-09 CTO(WC & LT), Ernakulam</p> <p>The assessment for the year 2008-09 in respect of M/s. GR Tech Services Pvt. Ltd. has been completed vide order No. 32072021054/2008-09 dated 25.06.2012.</p> <p>For the year 2008-09, the compounded tax rate for those having CST Registration works 8% and in respect of the works which commenced prior to 1st April 2008 and remaining partly unexecuted on 01.04.2008, the compounding tax payable during 2008-09 was at 4%. Based on the above the assessment was completed @ 8% and 4% for the new work and ongoing work respectively as per the above mentioned order creating an additional demand of Rs. 28,44,001.00 and interest.</p> <p>Against the above order the assessee went in appeal to the Deputy Commissioner (Appeals) and obtained stay from the appellate authority and remitted Rs. 8,50,000.00 in order to fulfill the stay condition. The appeal is disposed in favour of the deponents. Department filed 2nd appeal before the Tribunal and the case is pending before the Appellate Tribunal now.</p>
(a)	Improvement in system and procedures, including internal controls.	
(b)	Recovery of overpayment pointed out by audit	--
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases / complete scheme / project in the light of findings of sample check by audit findings of sample check by audit.	--

Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of tax due to application of incorrect rate of tax.
	(c)	Paragraph No.	2.13.4.4
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	18/18/12
	(b)	Date of Department's Reply	23.08.12
III		Gist of Paragraph/Review	It was pointed out that the contract receipt of the assessee was assessed at 3% instead of the correct rate of 4% as provided U/s 8 (a) of the KVAT Act, 2003, resulting short levy of tax of Rs.552374/- and interest due thereon.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support.	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

V Remedial action Taken

(a)	improvement in system and procedures, including internal controls.	<p><u>K.Bhaskaran, 2008-09, Commercial Tax Office, (WC & LT), Alleppey</u></p> <p>In the light of the audit the assessment was completed U/s 25 of the KVAT Act vide order dated, 12.01.2011 of the CTO (WC) demanding tax and interest of Rs.657895/- & Rs.122737/- respectively.</p> <p>The assessment was challenged in appeal by the assessee and the Deputy Commissioner (Appeal) Kollam vide order No.KVATA 135/2011 dated 12.08.2011 has dismissed the appeal.</p> <p>The arrears are under RR and the dealer has remitted Rs.2 lakhs vide Chalan No. 201 dated 26.06.2012.</p>
(b)	Recovery of overpayment pointed out by audit	---
(c)	Recovery of under assessment, short levy or other dues	---
(d)	Modification in the schemes and programmes including financing pattern	---
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	---


ISAAC ITTY
 Additional Secretary
 Taxes Department
 Govt. Secretariat, Trp

Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of tax due to incorrect claim of Input Tax credit/Special rebate not disallowed.
	(c)	Paragraph No.	2.13.5.1 (1)
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	05.07.2012
	(b)	Date of Department's Reply	24.12.12
III		Gist of Paragraph/Review	It was noticed in Audit between May 2010 and June 2011 in 3 special circles, that the AA did not disallow IPT/special rebate to the extent it was to be actually disallowed. This resulted in short levy of Rs.1.41 crore.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI. Remedial action Taken

(a)	Improvement in system and procedures, including internal controls.	<p><u>M/s. Highland Produce Co. Ltd 2008-09, Commercial Tax Office, Special Circle, Alleppy.</u></p> <p>In the light of audit the assessment under section 25 was completed on 06.07.2011 and rectified as per order dated 05.08.2011. Now as per the draft para percentage of stock transfer was changed from 52.50% to 55.34%. So the assessment was rectified under section 66 as per order dated 18.10.2012. Details of additional demand created given below:</p> <table border="1" data-bbox="442 523 966 608"> <thead> <tr> <th>Order Date</th> <th>Tax (Rs)</th> <th>Interest (Rs)</th> <th>TOTAL</th> </tr> </thead> <tbody> <tr> <td>06.08.11</td> <td>4372824.00</td> <td>1226663.00</td> <td>5599487.00</td> </tr> <tr> <td>18.10.12</td> <td>361044.00</td> <td>183846.00</td> <td>544890.00</td> </tr> <tr> <td>TOTAL</td> <td>4733868.00</td> <td>1390732.00</td> <td>6144600.00</td> </tr> </tbody> </table> <p>The demand as per order dated 06.08.2011 is fully collected. The demand as per order dated 18.10.2012 is pending for collection.</p>	Order Date	Tax (Rs)	Interest (Rs)	TOTAL	06.08.11	4372824.00	1226663.00	5599487.00	18.10.12	361044.00	183846.00	544890.00	TOTAL	4733868.00	1390732.00	6144600.00
Order Date	Tax (Rs)	Interest (Rs)	TOTAL															
06.08.11	4372824.00	1226663.00	5599487.00															
18.10.12	361044.00	183846.00	544890.00															
TOTAL	4733868.00	1390732.00	6144600.00															
(b)	Recovery of overpayment pointed out by audit	-																
(c)	Recovery of under assessment, short levy or other dues	-																
(d)	Modification in the schemes and programmes including financing pattern	-																
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	-																


ISAAC ITTY
 Additional Secretary
 Taxes Department
 Govt. Secretariat, Tvpm

Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of tax due to incorrect claim of Input Tax credit/Special rebate not disallowed.
	(c)	Paragraph No.	2.13.5.1 (1)
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	05.07.2012
	(b)	Date of Department's Reply	24.12.12
III		Gist of Paragraph/Review	It was noticed in Audit between May 2010 and June 2011 in 3 special circles, that the AA did not disallow IPT/special rebate to the extent it was to be actually disallowed. This resulted in short levy of Rs.1.41 crore.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action Taken

(a)	Improvement in system and procedures, including internal controls.	<p><u>M/s. Aryavaidya Sala Kottakkal (2009-10) AC., Spl. Cir. Malappuram</u></p> <p>M/s. Aryavaidya Sala Kottakkal for the year 2009-10 had furnished all the details of items purchased every month along with monthly returns. The dealer had been taken credit only against the purchase of raw materials for manufacture and sale of medicines. Ineligible credit proportionate to free issued to poor patients and also on stock transfer to outside Kerala branches was reversed during the year itself.</p> <p>The figure taken in the case of stock transfer in audit para is gross amount where as the sales considered is at net value. This has resulted in higher percentage which is not correct. The gross value of sale is Rs.16093.83 lakhs and the net value is Rs.279761116.15, which comes 20.08% of the total value of goods sold for 2009-10. The assessee has reversed 20.08% of the input tax credit on the stock transfer value of Rs.27976116/-, which is in accordance with law. Hence there is no short levy in this case.</p> <p>The amount of free issue is Rs.50133676/-. This work out to 3.59% to total turnover. The assessee has reversed @ 4% towards free issue, which is also in accordance with law.</p> <p>As per the rules, the reverse tax on items taxable 12.5% is required only after limiting the tax to 4%. But in the audit proposal the reverse tax had been calculated @ 12.5% instead of limiting it to 4%. The assessee has reversed the tax due as insisted on the rules.</p> <p>During the year 2009-10, the assessee has claimed exemption for the following amounts.</p> <p><u>(a). Local sale.</u></p> <table data-bbox="457 945 909 1156"> <tr><td>Export turnover</td><td>Rs. 3,35,36,219-47</td></tr> <tr><td>Interstate sales (Less ST)</td><td>Rs. 6,03,80,579-89</td></tr> <tr><td>Interstate ST Collection</td><td>Rs. 12,53,359-13</td></tr> <tr><td>KVAT Collection</td><td>Rs. 3,82,38,133-49</td></tr> <tr><td>Cess Collection</td><td>Rs. 3,80,027-91</td></tr> <tr><td>Sales returns</td><td>Rs. 50.48</td></tr> <tr><td>Postage Kerala</td><td>Rs. 10,451-00</td></tr> <tr><td>Freight Kerala</td><td>Rs. 6,658-25</td></tr> <tr><td>TOTAL</td><td>Rs. 3,38,05,479-80</td></tr> </table> <p><u>(b). Interstate Sales</u></p> <table data-bbox="484 1179 909 1300"> <tr><td>Postage</td><td>Rs. 5,83,493-00</td></tr> <tr><td>Freight</td><td>Rs. 51,121-00</td></tr> <tr><td>GST Collection</td><td>Rs. 13,82,513-41</td></tr> <tr><td>Sales returns</td><td>Rs. 12,029-12</td></tr> <tr><td>TOTAL</td><td>Rs. 20,29,156-53</td></tr> </table> <p>Hence there is no short levy as pointed out.</p>	Export turnover	Rs. 3,35,36,219-47	Interstate sales (Less ST)	Rs. 6,03,80,579-89	Interstate ST Collection	Rs. 12,53,359-13	KVAT Collection	Rs. 3,82,38,133-49	Cess Collection	Rs. 3,80,027-91	Sales returns	Rs. 50.48	Postage Kerala	Rs. 10,451-00	Freight Kerala	Rs. 6,658-25	TOTAL	Rs. 3,38,05,479-80	Postage	Rs. 5,83,493-00	Freight	Rs. 51,121-00	GST Collection	Rs. 13,82,513-41	Sales returns	Rs. 12,029-12	TOTAL	Rs. 20,29,156-53
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(b)	Recovery of overpayment pointed out by audit	-
c)	Recovery of under assessment, short levy or other dues	-
(d)	Modification in the schemes and programmes including financing pattern	-
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	-


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 Additional Secretary
 Taxes Department
 Govt. Secretariat, Typm

Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of tax due to incorrect claim of Input Tax credit/Special rebate not disallowed.
	(c)	Paragraph No.	2.13.5.1 (3)
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	07.07.2012
	(b)	Date of Department's Reply	03.08.2012
III		Gist of Paragraph/Review	It was noticed from the assessment records of M/s. Alliance Grain Products (P) Ltd (an assessee who is a manufacturer and dealer of wheat products which included both taxable and non-taxable products) that they availed the IPT/special rebate on entire purchase turnover without reversing the IPT credit/special rebate availed proportionate to non-taxable transactions during the years 05-06 to 08-09 through the assessee had both taxable and non-taxable transactions during the years. This resulted in short levy of tax and interest of Rs.3.04 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

Remedial action Taken

(a)	Improvement in system and procedures, including internal controls.	<p>M/s. Alliance Granite Products, 2005-06 to 2008-09, Special Circle, Kollam</p> <p>In the light of audit the assessment for the year 05-06, 06-07 and 08-09 revised by disallowing the claim of input and special rebate availed in excess vide order dated 01.03.2012.</p> <p>Year wise details of input tax/special rebate disallowed in the above said order is as detailed below:</p> <table border="1" data-bbox="437 435 926 586"> <thead> <tr> <th>Year</th> <th>ITC/Spl Rebate</th> <th>Interest</th> </tr> </thead> <tbody> <tr> <td>2005-06</td> <td>Rs.54605.00</td> <td>Rs.31068.00</td> </tr> <tr> <td>2006-07</td> <td>Rs.41805.00</td> <td>Rs.18722.00</td> </tr> <tr> <td>2007-08</td> <td>Rs.71074.00</td> <td>Rs.23454.00</td> </tr> <tr> <td>2008-09</td> <td>Rs.54762.00</td> <td>Rs.11500.00</td> </tr> <tr> <td>Total</td> <td>Rs.221946.00</td> <td>Rs.4744.00</td> </tr> </tbody> </table> <p>The same was advised for Revenue recovery. The assessee has remitted Rs.88832/- and Rs.66979/- vide cheque No.090210 dated 19.07.12 and No.838733 dated 17.08.12 respectively.</p>	Year	ITC/Spl Rebate	Interest	2005-06	Rs.54605.00	Rs.31068.00	2006-07	Rs.41805.00	Rs.18722.00	2007-08	Rs.71074.00	Rs.23454.00	2008-09	Rs.54762.00	Rs.11500.00	Total	Rs.221946.00	Rs.4744.00
Year	ITC/Spl Rebate	Interest																		
2005-06	Rs.54605.00	Rs.31068.00																		
2006-07	Rs.41805.00	Rs.18722.00																		
2007-08	Rs.71074.00	Rs.23454.00																		
2008-09	Rs.54762.00	Rs.11500.00																		
Total	Rs.221946.00	Rs.4744.00																		
(b)	Recovery of overpayment pointed out by audit	-																		
(c)	Recovery of under assessment, short levy or other dues	-																		
(d)	Modification in the schemes and programmes including financing system	-																		
(e)	Review of similar cases/compleat schema/project in the light of findings of sample check by Audit findings of sample check by Audit	-																		


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Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of tax due to incorrect claim of Input Tax credit/Special rebate not disallowed.
	(c)	Paragraph No.	2.13.5.1 (4)
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	17.07.2012
	(b)	Date of Department's Reply...	09.04.13
III		Gist of Paragraph/Review	M/s. Midland Rubber and Produce Co., an assessee in Commercial Tax Office, Special Circle, Alappuzha made stock transfer of tea outside the State for Rs. 5.64 crore during the year 2008-09. The stock transfer included own tea as well as purchased tea for Rs. 58.20 lakh. Assessee availed input tax credit at the rate of four per cent for the purchase of Rs. 58.20 lakh. However, as per KVAT, the assessee is eligible for only input tax above four per cent. This resulted in short levy of tax, cess and interest of Rs. 2.94 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI Remedial action Taken

(a)	Improvement in system and procedures, including internal controls.	<p><u>M/s. Midland Rubber and Produce Co. 2008-09.</u> <u>Assistant Commissioner, Special Circle, Alleppey</u></p> <p>M/s. Midland Rubber and Produce Co. Ltd. is a public limited company on the rolls of Asst. Commissioner (Asstt.), Special Circle, Alappuzha. The Company is engaged in the manufacturing and Trading of Tea, Cardamom, Pepper and Rubber. As the audit objection is found to be sustainable assessment u/s. 25 of KVAT Act 2003 is completed as per order dated 21.11.12 incorporating certain other defects also and an amount of Rs. 9,85,514/- is demanded.</p>
(b)	Recovery of overpayment pointed out by audit	-
(c)	Recovery of under assessment, short levy or other dues	-
(d)	Modification in the schemes and programmes including financing pattern	-
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	-

[Signature]

ISAAC ITTY
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ACTION TAKEN NOTES ON C & AG'S REPORTS

	(a)	Department	COMMERCIAL TAXES
I	(b)	Subject/Title of the Review	Short levy of tax due to incorrect action of input tax credit/Special rebate not disallowed.
	(c)	Paragraph No.	2.13.5.1(5)
	(d)	Report No. & Year	C & AG report for the year ended March 2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department Reply	
III		Gist of the Paragraph/Review	M/s. Ragiri Rubber and Produce Co. (2009-10) Special Circle, Alappuzha. It was noticed in audit between May 2010 and June 2011 in Special Circle, Alappuzha that the assessing authority did not disallow IPT/Special Rebate to the extent it was to be actually disallowed. (Proportionate to interstate stock transfer). This resulted in short levy of Rs. 8.15 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement with reasons for disagreement and also attach copies of relevant documents where necessary.	

REMEDIAL ACTION TAKEN

(a)	Improvement in system and procedures, including internal control	<p>M/s. Ragiri Rubber and Produce Co. (2009-10) Special Circle, Alappuzha .</p> <p>On the basis of audit observation, assesment for the year 2009-10 has been completed undr Section 25 of the KVAT Act, 2003 creating additional demand of Rs. 24.27 lakhs vide order dated 01..09..2012. Out of this amount Rs. 10,00,000/- has been remitted vide chalan No. 826/31..03..2012 and Rs. 5,00,000/- has been remitted vide chalan No. 15/6..10..2012. The balance amount was stayed by Deputy Commissioner(Appeals), Kollam vide order No. KVATA (ALPY) No. 1537/12 dated 12..12..2012 on condition of remitting 40% of the balance amount due within 2 weeks. The dealer fulfilled the condition by remitting Rs. 5,70,705/- vide chalan No. 341 dated 19..01..2013. The Deputy Commissioner(Appeals), Kollam as per Order KVATA(ALPY) 1537/12 dated 13..10..2014 has directed to modify the original assessment with the following directions.</p> <ol style="list-style-type: none"> 1. Verify the records in respect of tea produced from own Green Tea leaves and delete the own productions from the computation of reverse tax 6(2) 2. As far the SRO 804/08 exemption, it is directed to disallow exemption under CST and not disturb the KVAT Assessment. 3. To verify whether the assessee collected tax @ 12.5% on firewood purchase and if so collected tax shall be forfeited. <p>The assessee produced records and evidences which was examined and decided as under:</p> <p>Point 1.</p> <p>The assessee produced agricultural income tax assessment order, purchase register for Green tea leaves, Register showing Green tea leaves yield from own estate, production register sale bills, stock transfer advice, details of stock transfer. Examined the records and found the following:</p> <ol style="list-style-type: none"> 1. The assessee company produced manufactured tea from own green tea leaves 329664 Kgs and from brought green tea leaves 719139 Kgs. 2. Own green tea leaves used for manufacture of black tea attracts no tax under Section
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		<p>6(2)</p> <p>3. Out of the branch transfer of 601870 Kgs. 271770 Kgs alone was from tea produced from green tea leaves purchased.</p> <p>4. Purchase cost of green tea leave corresponding to branch transfer of 271770 Kgs of manufactured tea as per accounts is Rs. 1,63,06,199.43; and tax due @ 4% including 1% cess comes only rupees 658770.46 which is reversed.</p> <p><u>Point 2.</u></p> <p>The notification SRO 804/08 was issued under CST Act. The assessee enjoyed exemption on interstate sale of 199308 Kgs. As directed by the Deputy Commissioner (Appeals), exemption claimed under CST Act is denied and special rebate/IPT relates to rubber purchase as per return is allowed.</p> <p><u>Point 3.</u></p> <p>Firewood was purchased from unregistered dealers which was mistakenly conceded as taxable under Section 6(2) @ 12.5%. there was no collection but remittance. Firewood purchase is subjected to tax only @ 4%.</p> <p>In the circumstances, the original assessment was modified as per order No. 32040287515/09-10 dated 30.03.2015. On modification no arrears are outstanding against the dealer.</p>
(b)	Recovery of overpayment pointed out by Audit	
(c)	Recovery of under Assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit	


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ACTION TAKEN NOTES ON C & AG'S REPORTS

	(a)	Department	COMMERCIAL TAXES
I	(b)	Subject/Title of the Review	Short levy of tax due to incorrect action of input tax credit/Special rebate not disallowed.
	(c)	Paragraph No.	2.13.5.2(a)
	(d)	Report No. & Year	C & AG report for the year ended March 2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of the Paragraph/Review	<p>M/s. Rajagiri Rubber and Produce Co. (2009-10) Special Circle, Alappuzha.</p> <p>The Rajagiri Rubber & Produce Co. Ltd a dealer of arecanut, coffee, rubber etc claimed exemption on interstate sale turnover of natural rubber for Rs. 2.78 crore during the year 2009-10. The Assessee availed input tax credit/special rebate of Rs. 12.86 lakh on local purchases including the tax exempted interstate trade. At the time of accepting the returns the assessing authority did not limit input tax credit/special rebate availed to tax paid in excess of four per cent on purchase turnover corresponding to exempted interstate sales turnover resulted in short levy of tax, cess and interest of Rs. 11.63 lakh.</p>
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement with reasons for disagreement and also attach copies of relevant documents where necessary.	

VI

REMEDIAL ACTION TAKEN

(a)	Improvement in system and procedures, including internal control	<p>M/s. Regirl Rubber and Produce Co. (2009-10) Special Circle, Alappuzha .</p> <p>On the basis of audit observation, assessment for the year 2009-10 has been completed under Section 25 of the KVAT Act, 2003 creating additional demand of Rs. 24.27 lakhs vide order dated 01.09.2012. Out of this amount Rs. 10,00,000/- has been remitted vide chalan No. 326/31.03.2012 and Rs. 5,00,000/- has been remitted vide chalan No. 15/6.10.2012. the balance amount was stayed by Deputy Commissioner(Appeals), Kollam vide order No. KVATA (ALPY) No. 1537/12 dated 12.12.2012 on condition of remitting 40% of the balance amount due within 2 weeks. The dealer fulfilled the condition by remitting Rs. 5,70,705/- vide chalan No. 341 dated 19.01.2013. The Deputy Commissioner(Appeals), Kollam as per Order KVATA(ALPY) 1537/12 dated 13.10.2014 has directed to modify the original assessment.</p> <p>As directed by the Deputy Commissioner(Appeals), Kollam, exemption claimed under CST Act is denied and special rebate/IPT relates to rubber purchase as per return is allowed. The original assessment was modified as per order No. 32040287515/09-10 dated 30.03.2015. On modification no arrears are outstanding against the dealer.</p>
(b)	Recovery of overpayment pointed out by Audit	
(c)	Recovery of under Assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit	

Action taken Notes on C& AG's Reports

I	(a) Department	COMMERCIAL TAXES
	(b) Subject/Title of the Review Paragraph	Short levy of tax due to incorrect claim of input tax credit special rebate not disallowed.
	(c) Paragraph No.	2.13.5.2 (b)
	(d) Report No. and Year	C&AG Report ended 31.03.2012
II	(a) Date of receipt of the Draft Para/Review in the Department	07/07/2012
	(b) Date of Department's Reply	20.09.2012
III	Gist of Paragraph/Review	It was noticed (August 2011) from the annual accounts and annual return for 2009-10 that they availed exemption from payment of CST on Interstate sales turnover of rubber of ₹ 6.84 crore, the assessing authority did not reverse proportionate input tax credit/special rebate corresponding to the interstate sales for which exemption was availed. This resulted in short levy of tax, interest and cess of ₹ 3.84 lakh.
IV	(a) Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b) If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a) Does the Department agree with the Audit conclusions?	
	(b) If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI Remedial action Taken

(a)	Improvement in system and procedures, including internal controls.	<p>M/s.Kolankulam Agencies (P) Ltd., Kanjirappally is a regd. Dealer in the office of the Commercial Tax Officer, Ponkunnam with TIN 32050816615. As per the Profit and Loss account and Annual return for the year 2009-10, the assessee had effected interstate sales for Rs.85,00,406.00 as exempted sales of Rubber latex and availed input tax credit for Rs.1688264.00 and special rebate of Rs.321625.00. On further verification it was noticed that the dealer have claimed full special rebate paid by the dealer for the year 2009-10 without considering 0% interstate sale effected and thus claimed special rebate. Hence the assessment was completed U/s 25 (1) of the KVAT Act 2003 fixing the output tax and social security cess due as Rs.172303.00 as per order No.32050816615 dated 26.11.2011.</p> <p>The assessment was subsequently rectified U/s 66 & 25 of the KVAT Act 2003 on 17.03.2012 as detailed below:</p> <p style="text-align: center;">OPT Payable = Rs.388316.00 SSC Payable = Rs. 3593.00 Interest due = Rs. 81,050.00</p> <p>Assessment order and Demand Notice served on 19.03.2012.</p> <p>Against the order, the assessee went in appeal and stay granted on condition that, they remit 25% of the balance amount demanded. The assessee has remitted Rs.1,00,000/- as per chalan No. 101 dated 01-09-12 and the rest amount is under stay till the disposal of appeal.</p>
(b)	Recovery of overpayment pointed out by audit	--
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern.	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

(Signature)

ISAAC ITTY
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Taxes Department
Govt. Secretariat

Action taken Notes on C & AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/ Title of the Review Paragraph	Short levy of tax due to incorrect claim of input tax credit
	(c)	Paragraph No.	2.13.5.3/ special rebate not disallowed
	(d)	Report No. and Year	C & AG report for the year ended March 2012
II	(a)	Date of receipt of the Draft Para / Review in the Department	29.06.2012
	(b)	Date of Department's Reply	
III		Gist of Paragraph / Review	It was noticed from the annual return of M/s. MPS Steel Castings (P) Ltd. for the year 2008-09 that the dealer deducted from tax payable on amount of Rs. 8.22 lakh as special rebate. Though as per the return that the assessee had not paid any tax on purchase, the assessing authority did not disallow the incorrect claim resulting in short levy of tax of Rs. 9.86 lakh including interest.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph ?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions ?	
	(b)	If not, Please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI - Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>M/s. MPS Steel Castings (P) Ltd. (2008-09) Special Circle, Kakkanaad</p> <p>During 2006-07 the dealer applied for input tax credit for Rs. 49,31,402/- being the entry tax paid by them for the purchase of capital goods from outside the state. The assessing authority allowed input tax credit to the tune of Rs. 41,64,368/- only disallowing Rs. 7,67,034/- for various reasons vide order dated 1.11.2006 and allowing the dealer to avail the balance amount in 36 equal monthly installments. The disallowance was challenged in appeal and is remanded vide order No. TA 168, 169/08 dtd 29.12.2008, for fresh consideration after recording the reasons for rejection of the claim and entering a finding on the merits, with specific reference to the objections stated in the reply notice, after giving the dealer an opportunity of being heard.</p> <p>In the meantime, the dealer claimed @ Rs. 1,36,983/- per month as special rebate U/s 12 of the Act being the entry tax paid by them. They continued to claim a s such upto June 2008 as under:</p> <table data-bbox="441 718 899 824"> <tr> <td>2006-07</td> <td>@ Rs. 1,36,983 * 12</td> <td>Rs. 16,43,796</td> </tr> <tr> <td>2007-08</td> <td>@ Rs. 1,36,983 * 12</td> <td>Rs. 16,43,796</td> </tr> <tr> <td>2008-09</td> <td>@ Rs. 1,36,983 * 6</td> <td>Rs. 8,21,898</td> </tr> <tr> <td></td> <td>Total</td> <td>Rs. 41,09,490</td> </tr> </table> <p>Thus the dealer filed the annual return for 2008-09 showing a special rebate of Rs. 8,21,898/-. As per section 12(1)(b) of the act, in calculating the net tax payable by a dealer for a return period, there shall be deducted from the tax payable for the return period, the tax paid U/s. 3 of the tax on Entry of Goods into Local Areas Act, on the import of any goods other than those included in the IVth schedule. Since the claim is allowable and is within the limit of total amount admissible as per order dated 1.11.2006 of Rs. 41,64,368/-.</p> <p>The dealer claimed special rebate U/s. 12(b) being the entry tax paid by them and not U/s 12(a) as tax on purchase U/s. 6(2). Hence there is no incorrect claim of input tax or special rebate and short levy in this case.</p>	2006-07	@ Rs. 1,36,983 * 12	Rs. 16,43,796	2007-08	@ Rs. 1,36,983 * 12	Rs. 16,43,796	2008-09	@ Rs. 1,36,983 * 6	Rs. 8,21,898		Total	Rs. 41,09,490
2006-07	@ Rs. 1,36,983 * 12	Rs. 16,43,796												
2007-08	@ Rs. 1,36,983 * 12	Rs. 16,43,796												
2008-09	@ Rs. 1,36,983 * 6	Rs. 8,21,898												
	Total	Rs. 41,09,490												

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



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Action taken Notes on C&AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of tax due to incorrect claim of input tax credit special rebate not disallowed.
	(c)	Paragraph No.	2.13.6.4
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	07/07/2012
	(b)	Date of Department's Reply	02.04.2013
III		Gist of Paragraph/Review	Supply Co., District Depot, Kottayam availed ITC of Rs.19.31 lakh on sale of Maveli goods (pulses and spices) from April 2008 to Nov. 2008. Since the Maveli goods were sold at a lower price; the OPT on subsidized value of these goods amounted to Rs.14.83 lakh only. In such cases to avoid tax loss; the assessing authority should limit the input tax credit upto the output tax payable on the sale of the goods. However, the assessing authority did not do so. This resulted in short levy of tax and interest of Rs.5.35 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

(a)

Improvement in system and procedures, including internal controls.

Supply Co., District Depot, Kottayam, is an assessee on the rolls of Commercial Tax Office, First Circle, Kottayam with TIN 32050542205. The assessee is a dealer in pulses, spices, consumer goods, vegetables etc. The goods purchased are classified as maveli goods and non maveli goods. Maveli goods pulses and spices sold at subsidized price depending on price fluctuations in open market and non maveli goods at higher price. On verification of books of accounts it is revealed that purchases of maveli goods coming under 4% taxable items are sold in a subsidized price and claiming excess ITC by selling goods. The Month wise details are furnished below.

Month	Purchase Price of 4% Items	Sales of 4% Items	ITC availed	OPT Claimed	Excess ITC
04/08	7608276	3769450	307374	151662	155462
05/08	4872160	3967499	194714	159881	24833
06/08	4031827	3568280	181609	144158	17451
07/08	6487065	6316660	280182	214794	46388
08/08	10289319	7550188	412383	303462	188901
09/08	6956625	5192829	278973	208185	70788
10/08	3007934	2450961	120912	98558	22354
11/08	5112527	4278633	205097	171580	33517
12/08	5922691	5613784	237702	226228	11474
01/09	2459440	2905117	98337	116204	---
02/09	2899717	3119395	168967	142972	15995
03/09	4013579	3718972	180728	148831	11897
Total (except 1/09)	60780000	48534590	2488621	1970531	518090

During 1/09 no excess IPT claimed.


The details given below shows that IPT claimed come to Rs. 24,88,621/- OPT worked out on subsidized value of goods was Rs. 19,70,531/- under proviso (2) sub section (c) of section 11 of the KVAT Act 2003, where any goods purchased in the state are subsequently sold at subsidized price the IPT allowed under the sub section in respect of such goods shall not exceed the OPT payable on such goods. As per the above proviso, ITC on maveli goods (4% of goods) sold at subsidized price should have been limited to OPT payable. Failure to do so make short payment of tax of Rs. 5,18,090/-. The assessment is revised without giving credit to excess IPT claimed. As per assessment order No. 32050542205/08-09 dated 17-08-2011 and additional demand of Rs. 5,39,301/- with interest Rs. 1,51,000/- created. RRC was issued against the dealer on 04-11-09.

Later on verification it is seen that a mistake was occurred while calculating the interest and hence the assessment was revised on 12-01-2012 and the revised demand is as follows.

VAT - Rs. 5,39,301.00
 Interest - Rs. 1,77,989.00
 Total - Rs. 7,17,270.00

RRC issued to Revenue Recovery authorities on 02.03.2013 and the Government stayed the revenue recovery proceedings till the disposal of appeal.

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


ISAAC ITTY
 Additional Secretary
 Taxes Department
 Govt. Secretariat, Tvpm

Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph.	Short levy of tax due to incorrect claim of input tax credit special rebate not disallowed.
	(c)	Paragraph No.	2.13.5.6 (a)
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department.	13.06.12
	(b)	Date of Department's Reply	07.09.12
III		Gist of Paragraph/Review	It was noticed from the annual return of the Innovative Foods Ltd, for the year 09-10, that the assessee sold and stock transferred interstate chicken worth Rs.89.74 lakhs and Rs.4.81 crore respectively against the total returned purchase turnover of chicken of Rs.28.66 lakh. Through, purchase from unregistered dealers was clear from the return, the assessing authority did not assess the tax relating to under closed purchase corresponding to interstate stock transfer, resulting in short of tax, cess and interest of Rs.23.12 lakh
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI Remedial action Taken

(a)	Improvement in system and procedures, including internal controls.	<p><u>M/s. Innovative Foods Ltd. 2009-10. Commercial Tax Office, 2nd Circle, Mattancherry</u></p> <p>As per proviso to section 12, read with Rule 12A, the assessee is liable to pay tax under sec: 6(2) for the portion of chicken purchases from unregistered dealers and transferee outside the state otherwise than by way of sale, special rebate is limited to the tax paid in excess of 4% is, 4% purchase tax is to be assessed on stock transfer turnover of Rs.48080315/-</p> <p>Accordingly the assessment was completed under sec: 26 (1) of KVAT Act on 29.02.2012 by the Commercial Tax Officer, II circle, Mattancherry creating an additional demand of Rs.4200582/- including the purchase tax under sec: 6 (2) of chicken meat with interest.</p> <p>The dealer has filed appeal before the Deputy Commissioner (A) against this escaped assessment. The Deputy Commissioner (A) has granted conditional stay for the collection until the disposal of appeal vide order No.KVATA 1363/12 dated 04.05.2012 and the dealer has remitted Rs.1050148/- and furnished security bond for balance amount in compliance of the stay order. The appeal is pending before the Deputy Commissioner (A) Ernakulam.</p>
(b)	Recovery of overpayment pointed out by audit	-
(c)	Recovery of under assessment, short levy or other dues	-
(d)	Modification in the schemes and programmes including financing pattern	-
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	-


ISAAC ITTY
 Additional Secretary
 Taxes Department
 Govt. Secretariat, Typm

Action taken Notes on Comptroller & Auditor General's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of tax due to availing of special rebate incorrectly
	(c)	Paragraph No.	2.13.5.5(b)
	(d)	Report No. And Year	C & AG report for the year ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	29.04.2012
	(b)	Date of Department Reply	08.04.2013
III		Gist of Paragraph/Review	M/s. Accelerated Freeze drying Co. Ltd, a dealer in fruits, vegetables, meat, pepper etc, purchased pepper for an amount of Rs.1.48 crore from unregistered dealers during 2008-09. But they did not remit the purchase tax in respect of the turnover which resulted in availing special rebate of entire purchase tax due. Since they had interstate stock transfer of pepper for an amount of Rs.1.60 crore, special rebate upto 4% on purchase turnover of pepper corresponding to turnover of pepper stock transferred should have been disallowed. Inadmissible special rebate works out to Rs.3.19 lakh.
IV	(a)	Does the Department agree with the facts and figures include in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, Please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary.	

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	M/s. Accelrated Preeze drying Co. Ltd. is a registered dealer on the rolls of Assistant Commissioner (Assessment), Special Circle, Alappuzha. On the basis of audit observation assessment for the year 2008-09 was completed U/s 25 vide Order dated 02.02.2013 incorporating another defect of availing of excess IPT of Rs. 43,759/- and created an additional demand of Rs. 4.32 lakhs and interest Rs.2.06 lakhs. Against this order, the dealer preferred appeal and as per appellate order No.STA(Ap) 308/13, dated 18.07.2013 DC (Appeals-II), CT, Kollam, directed that the proviso to section 11 & 12 of the KVAT Act shall be limited to the turnover of stock transfer proved by the company and refix the reverse tax liability. Since stock transfer had not been proved by the company and such entire amount was assessed to tax, IPT reversed is withdrawn and the assessment is modified accordingly. Thus the demand is reduced as tax due Rs. 1,25,568/- and interest due Rs. 35,902/- Rs. 1,13,079/- is collected under RR. Balance amount is pending for collection.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues.	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit	

Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of compounded tax
	(c)	Paragraph No.	2.13.6.1
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	27.06.12
	(b)	Date of Department's Reply	28.11.12
III		Gist of Paragraph/Review	<p>M/s.Raghavendra Automation (P) Ltd was a dealer engaged in design, manufacture, supply, installation and commissioning of Auto LPG dispensing station as turnkey projects.</p> <p>For installation of plant and machinery, deduction of 15 per cent is admissible towards labour and other charges. After giving allowable deduction, balance turnover is taxable at 12.5 per cent. However, the audit party noticed from the assessment records that the assessing authority applied the incorrect rate of four per cent on ` 2.32 crore and ` 2.22 crore being the contract receipts for the years 2006-07 and 2007-08 respectively. This is not correct as contractors undertaking supply and installation of plant and machinery are not eligible to opt payment of compounded tax under the Act. This resulted in short levy of tax and interest of Rs. 37.91 lakh.</p>
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action Taken

(a)

Improvement in system and procedures, including internal controls.

M/s. Rajshree Automation (P) Ltd. Commercial Tax Office (WC & LTD), Kollam, 2006-07 & 07-08

The assessee is a works contractor engaged in the installation and commissioning of Auto LPG Dispensing station. For the year 2005-06 to 2007-08 the assessee had opted for compounding and paid tax at the compounded rate of 4% u/s 8(a) i. It was pointed out in audit that the work undertaken by the dealer fall within the negative list specified in Section 8(a) (ii) contracts relating to supply and installation of plant and machinery and hence not eligible for compounding and hence was to be assessable u/s 8(1) (f) of the KVAT Act 2003. This has resulted in short levy as follows:

YEAR	TAX	INTEREST	TOTAL
2005-06	2802830.00	---	2802830.00
2006-07	1532980.00	505883.00	2038863.00
2007-08	1472681.00	309263.00	1781944.00

The books of accounts of the dealer for the year 2005-06 to 2007-08 were called for and verified by the assessing authority and escaped turnover assessment was completed by the Commercial Tax Officer (WC) Kollam. The assessee proved with evidence that the major portion of the work done by the assessee is interstate works contract. There is inextricable link between the interstate and import purchase by the assessee and the contract and hence outside the purview of KVAT Act, 2003. Hence assessment was completed giving exemption to the interstate works contract proved.

Additional demand created for each of the year and collection details are as follows:-

YEAR	TAX	INTEREST	COLLN	CHELLAY No. & DATE
05-06	91588	54953	91588	744/11.8.11 & 54953 748/11.8.11
06-07	98542	47300	98542	754/11.8.11 & 47300 758/11.8.11
07-08	72036	25933	72036	762/11.8.11 & 25933 766/11.8.11

The additional demand created had been remitted by the dealer and no arrears are outstanding.

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




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 Additional Secretary
 Taxes Department
 Govt. Secretariat, Tvpam

Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of compounded tax
	(c)	Paragraph No.	2.13.6.2
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	12.07.2012
	(b)	Date of Department's Reply	19.09.2012
III		Dist of Paragraph/Review	M/s.Ever-one properties India Pvt. Ltd is an assessee producing granite metals using crushing machines. While auditing the Accountant General has noticed from the assessment records of the assessee that the assessee owns two crushers – one cone crusher and one size II crusher. For the year 09-10, they paid tax and cess of Rs.1.52 lakh only, for one crushing unit of size II. Failure to demand tax on the cone crusher resulted in short levy of tax, cess, and interest of Rs.12.02 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI Remedial action Taken

(a)	Improvement in system and procedures, including internal controls.	<p>M/s.Ever-one Properties India Ltd, had opted to pay tax at compounded rates for the year 2009-10 as per Sec: 8 (b) of the KVAT Act by disclosing one secondary crusher and the compounding tax fixed was Rs.1,51,500/- including Cess. But as per annual return filed for the 2009-10, the dealer disclosed two Secondary Crushing Machines i.e. one Corn Crusher and one Secondary Crusher having Jaw Size-II. But as per order dated 13.08.09 permission to pay tax of Rs.151500/- at compounded rate was granted to one Secondary Crusher Size-II only. Based on the revised return for the period from 01.10.09 to 31.12.09 and annual return filed by the dealer, compound tax due on one Cone Crusher was not demanded. The omission to assess the Cone Crusher has resulted a short levy of tax and interest of Rs.12,72,800/-</p> <p>In accordance with the audit, the assessment for the year 09-10 was completed under section 25 (f) of the KVAT Act demanding tax and interest as above as per order dated 07.08.2012. Recovery steps are initiated and the assessed paid Rs.290375/- as per chalan No.213 dtd.7.8.12.</p>
(b)	Recovery of overpayment pointed out by audit	-
(c)	Recovery of under assessment, short levy or other dues	-
(d)	Modification in the schemes and programmes including financing pattern	-
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	-



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 Taxes Department
 Govt. Secretariat, Tvpm

Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of compounded Tax
	(c)	Paragraph No.	2.13.8.3
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	05.07.12
	(b)	Date of Department's Reply	08.10.12
III		Gist of Paragraph/Review	Hotel Revathy, a bar attached hotel which opted for payment of compounded tax on cooked food prepared by it, paid compounded tax of ₹ 2.21 lakh for 2007-08. But tax liability due under KVAT Act for that year was ₹ 5.03 lakh. Since the tax liability of such cases was dependant on the liability of 07-08 corresponding shortage occurred in compounded tax fixed for 2008-09 and 2009-10. This resulted in short levy of tax and interest of Rs.11.27 lakh:
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI Remedial action Taken

(a)	Improvement in system and procedures, including internal controls.	<u>M/s. Hotel Revathy 2007-08</u> <u>Commercial Tax Office, Special Circle, Kollam.</u>						
		In order to set right the short levy assessment has already been revised on 10/8/2012 and the year wise details of demand created are as shown below.						
		Year	Total	Tax paid	Balance	Cess	Interest	Short levy
		07-08	503127	221107	282020	-	146650	428670
		08-09	578666+ 58229 838825	276390	380435	6388	148721	513524
		09-10	665385+ 57028 722413	347642	374871	7224	106884	489079
			Total					1431273
(b)	Recovery of overpayment pointed out by audit	-						
(c)	Recovery of under assessment, short levy or other dues	-						
(d)	Modification in the schemes and programmes including financing pattern	-						
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	-						


 ISAAC ITTY
 Additional Secretary
 Taxes Department
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Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of compounded Tax
	(c)	Paragraph No.	2.13.6.4
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	16.07.12
	(b)	Date of Department's Reply	07.09.12
III		Gist of Paragraph/Review	M/s.Divya Gold place Jewellers (Perambra) a dealer in jewellery opted for paying the tax at compounded rate under Section 8 (f) of KVAT Act, 2003. The compounded tax for 2006-07 was fixed at Rs.1.50 lakh considering tax of Rs.0.75 lakh paid during 2004-05 as the highest. The assessment was found to be incorrect. Since the assessee started business from November 2003, the proportionate tax for 12 months period for 2003-04 amounted to Rs.1.77 lakh. Hence the compounded tax for 2006-07 should have been Rs.3.53 lakh. Incorrect fixation of compounded tax affected the subsequent years leading to a total short levy of tax amounting to Rs.9.30 lakh for three financial years 2006-09.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI Remedial action Taken

(a)	Improvement in system and procedures, including internal controls.	<p>M/s Diya Gold Palace Jewellery (P) Ltd. (08-07 to 08-09) Commercial Tax Office, Perambra.</p> <p>The assessment in respect of M/s Diya Gold Palce, Perambra for the assessment year 2006-07, 2007-08 and 2008-09 were revised as per the office order dt. 28-10-11 and 27-03-12 fixing a VAT & interest due for Rs. 10,25,130/- Rs. 3,13,830/- for 2006-07 Rs. 3,44,270/- for 2007-08 and Rs. 3,67,230/- for 2008-09]. The dealer had paid 1/3 of the above demand as detailed below and furnished security for the balance amount in obedience to the stay order issued by the DC(A) Kozhikode.</p> <table border="1" data-bbox="503 401 1049 502"> <thead> <tr> <th>Year & Date</th> <th>Amount</th> <th>Chalan No.</th> </tr> </thead> <tbody> <tr> <td>2008-07</td> <td>1,05,000/-</td> <td>180/23-02-12</td> </tr> <tr> <td>2007-08</td> <td>1,15,000/-</td> <td>168/09-08-12</td> </tr> <tr> <td>2008-09</td> <td>1,25,000/-</td> <td>160/09-08-12.</td> </tr> </tbody> </table> <p>Subsequently the appeal for the year 2008-07 dismissed by the Deputy Commissioner(Appeal) Kozhikode as per order dt. 12-12-12 with an observation that the interest levied upto 28-10-2011 is to be deleted. In the light of the above appellate order the assessing authority has revised the assessment order and a total demand of Rs. 2,19,381/- has been created for the year 2008-07 as per order dt. 08-02-2013. The dealer has remitted the balance amount of Rs. 1,14,441/- in RR. They remitted Rs. 50,000/- on 08-03-2013 and Rs. 75,413 on 27-03-2013 for the year 08-07.</p> <p>The appeal filed by the dealer for the year 2007-08 and 2008-09 are also dismissed by the Deputy Commissioner(Appeal),Kozhikode as per order No. KVATA 410/12,411/12, 412/12,413/12 dt. 30-01-2013 (Order received on 11-04-13). Hence the balance amount including interest up to date is being collected in RR by the Inspg.Asst. Commr., Commercial Taxes, Kozhikode.</p>	Year & Date	Amount	Chalan No.	2008-07	1,05,000/-	180/23-02-12	2007-08	1,15,000/-	168/09-08-12	2008-09	1,25,000/-	160/09-08-12.
Year & Date	Amount	Chalan No.												
2008-07	1,05,000/-	180/23-02-12												
2007-08	1,15,000/-	168/09-08-12												
2008-09	1,25,000/-	160/09-08-12.												
(b)	Recovery of overpayment pointed out by audit	-												
(c)	Recovery of under assessment, short levy or other dues	-												
(d)	Modification in the schemes and programmes including financing pattern	-												
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	-												

Action taken on the Report of the Audit Officer

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject title of the Report Paragraph	Short levy of compounded Tax
	(c)	Paragraph No.	2-13 C.F.
	(d)	Report No. and Year	C&AF report ended 31.03.2012
II	(a)	Date of receipt of the Report Paragraph in the Department	08.02.12
	(b)	Date of Department Reply	22.12.12
III		List of Paragraph/Report	M/S. Easys Associates, an assessee engaged in sales and supply of electricals, oil pump set and allied electricals contracts with Kerala Water Authority. It has a contract receipt (2006-08) of Rs. 22 lakh related to ongoing works of 2007-08. Though it was assessed at 12.5% it was assessed to tax at 100% percent. Application of incorrect rate of tax resulted in short levy of Rs. 22 lakh and interest of Rs. 4.80 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate nature of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Revenue

<p>(a)</p>	<p>Improvement in system and procedure include internal control.</p>	<p>... Associates, is a works contract for the business of supply and installation of pump sets and allied machinery for the Water Supply Department, Municipal Corporation, Bangalore. The assessee is registered under the KVAT Act, 2003. He has opted for short levy of tax @ 12.5% as per clause (a) of section 3 of the KVAT Act, 2003. The assessee has disclosed that the assessee has done works @ 4% for Rs. 3253160 being contracts of minor works and the balance for Rs. 3253160 @ 8% being new contract. Hence the total value of installation of plant and machinery for Rs. 3253160 would attract tax @ 4% for Rs. 1301264 being works being labour charges as per clause (b) of KVAT Rules. Short levy of tax @ 12.5% on the said report Rs. 409841, Rs. 409841 @ 12.5% respectively.</p> <p>Subsequently, the assessees demanding Remission of the tax assessed for the year 2008-09 and notified u/s 25(1) of the KVAT Act 2003 was issued and called for objection if any. The assessee filed objection and in the objections the assessee contended that the supply and installation of pump sets are not coming under the taxable list category u/s 3 (a) (ii) of the Act as the dictionary meaning of "plant" is "the machinery and accessories used for industrial purposes". The work contract undertaken by us for the Municipal Corporation Water Authority is only for drinking water supply and not for any industrial purpose. The objection of the assessee was rejected.</p>
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		and ... 25. It was completed ... 27/11/08-09 ... demand of ... interest ... was advised for ...
(b)	Recovery of irregularities pointed out by audit	
(c)	Recovery of under assessment; short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	

[Handwritten Signature]
ISAAC ITTY
 Additional Secretary
 Tax Department
 Govt. Secretariat, Typpu

I		Department	TAXES
	(b)	Subject/Title of the Return	Short levy on correct filing of
	(c)	Filing date	
	(d)	Return No. and Date	Returned on 04.09.2012
II	(a)	Date of receipt of Return/View of the Return	
	(b)	Date of Departmental	
III		List of Paragraphs	<p>1. The assessee is a dealer in the business of assessment of land in the State of India. The assessee has been carrying on the business of earth moving and other civil works since 1950. The assessee is engaged in the business of earth moving and other civil works for the assessment year 2011-12. The assessee has filed a return of income for the assessment year 2011-12 on 04.09.2012. The assessee has reported a total income of Rs. 6.52 lakh in the return, which is not correct. The assessee has not reported the correct income. The assessee's income tax is Rs. 6.52 lakh. The assessee has not reported the correct income. The assessee's income tax is Rs. 6.52 lakh. The assessee has not reported the correct income. The assessee's income tax is Rs. 6.52 lakh.</p>
IV	(a)	Does the Department have any objection regarding the facts?	Yes
	(b)	If not, reasons for the objection and a list of relevant documents submitted.	
V	(a)	Does the Department have any objection regarding the law?	
	(b)	If not, reasons for the objection and a list of relevant documents submitted.	

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>1. The assessee is a dealer in Commercial Tax Office - 2nd Division, Bangalore.</p> <p>2. The assessee has paid the output tax for the sales of goods and services for the year 2008-09. During the year, the assessee has a credit of Rs. 6,50,113/- towards the output tax. The credit is not shown separately in the accounts and the output tax is assessed only at net sales and the assessee has tax credit towards sales return and output tax.</p> <p>3. The assessee has not been assessed in respect of output tax for the year 2008-09 on 30.06.2012 and has not paid the output tax. They had paid an amount of Rs. 4,28,200/- (Vid. Ch. No. 6310/28.09.2012) on 18.08.2012.</p>
(b)	Recovery of overpayment pointed out by audit.	
(c)	Recovery of under assessment, short levy or other dues.	
(d)	Modification in the schemes and programmes including financing pattern.	
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit.	


ISAAC ITTY
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 Govt. Secretariat, Tvm

Action taken on Audit Report

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review/Para/Paragraph	Short levy due to non-filing of returns
	(c)	Paragraph No.	2, 3, 7 & 8
	(d)	Report No. and Year	C&A Report dated 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	31.05.12
	(b)	Date of Department's Reply	7.11.2012
III		Gist of Paragraph/Review	During scrutiny of assessment records, it was noticed that FACT Limited who purchased service oil for Rs. 163.27 crore during 2009-10, had availed input tax of Rs.20.34 crore instead of Rs.20.28 crore resulting in short levy of tax, cess and interest of Rs. 7.30 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, please indicate areas of disagreement and also attach copies of relevant documents in support	As details furnished in-IV (a)
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action Taken

(a)

Improvement in system and procedures, including internal controls.

The Finance Department on the rolls of the Assistant Commissioner, Special Circle-III, Emakulam. The Accounts Department has reported out that during the year 2009-10, the assessee availed IPT of Rs. 11,231/- in respect of the purchase of furnace oil. The assessing authority submitted the following reply:


The said figure is incorrect and unsustainable. The assessable value as stated by auditors is absolutely wrong. Not purchase value of furnace oil purchased locally is not Rs. 25,316.17/- as worked out by auditors. During the year, the assessee purchased furnace oil from Bharat Petroleum Corporation Ltd, Cochin for Rs. 1,62,40,000/- which is supported by original tax invoice of BPCL. The purchase list showing invoice No. Date, Item, VAT paid etc, is given as annexure to this reply.

The value as per annual return e-filed on 16.5.2011 is correctly mentioned as Rs. 20,75,48,707/- with IPT credit of Rs. 20,34,43,047.20. These materials were available in the e-return filed and hence uploaded. This has been verified with original tax invoice issued by BPCL. While these materials were available on record the auditors have made out a working sheet picking certain figures from the annual report of the company published exclusively for the information of general management. This is taken by auditors from the caption "Power & Fuel consumption" published by the company in Form 26 for disclosure of particulars with respect to conservation of energy 2009-10 in the 86th annual report. Even total of it comes to Rs. 25,316.17 lakhs. It is to be understood that energy value is calculated by the company considering so many factors i.e. Purchase value of local furnace oil, as well as imported, cost incurred for excise duty, pervat, VAT paid etc. It is absolutely wrong to take the figure for calculation of value of furnace oil for the purpose of arriving at the IPT Credit.

IPT is availed on the basis of original tax invoices. In this case the assessee has availed the IPT credit through monthly return against actual purchases and on the strength of original tax invoices, which cannot be correlated to other information given in the annual report published for general information.

So the short levy worked out on the basis of data given in the schedule of power and fuel consumption is wrong.

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


ISAAC ITTY
Additional Secretary
Taxation Department
Govt. Secretariat, Typo

Action taken Notes on C & AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/ Title of the Review Paragraph	Non levy of surcharge
	(c)	Paragraph No.	2.13.8.
	(d)	Report No. and Year	C & AG report for the year ended March 2013
II	(a)	Date of receipt of the Draft Para / Review in the Department	20.07.2012
	(b)	Date of Department's Reply	
III		Gist of Paragraph / Review	M/s. Fab India Overseas (P) Ltd, the assessee is a shopping mall with a network of more than 50 shops all over the country. The items dealt with by the assessee are readymade garments, flooring materials, furniture, gift articles, cosmetics etc. The assessee effected entire purchases from outside the state and by way of interstate stock transfer. Being a retail chain dealer the entire sales was effected to customers (retail sales) within the state. It was noticed in Audit from the assessment records that though the assessee was liable to pay surcharge, the assessing authority did not assess surcharge at the rate of 10% on Rs. 50.68 lakh and Rs. 67.58 lakh being the tax payable under VAT for the years 2008-09 and 2009-10 respectively. This resulted in non levy of surcharge and interest of Rs. 14.56 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, Please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI - Remedial action taken


(a)	Improvement in system and procedures, including internal controls.	<p>M/s. Fab India Overseas (P) Ltd. 2008-09 and 2009-10 (Spl.II, Ernakulam)</p> <p>M/s. Fab India Overseas (P) Ltd an assessee on the rolls of the Assistant Commissioner (Assmt.) , Spl.II, Ekm bearing TIN 32071831874 being a national company functioning in the state as a retail chain and not as an exclusive dealer in any of the exempted goods was liable to pay surcharge on Rs. 50.68 lakh and Rs. 67.58 lakh being the tax payable under VAT for the years 2008-09 & 2009-10 respectively. Accordingly the assessment was revised U/s. 25(1) of the Act on 29.06.2012 as under :</p> <p>2008-09</p> <table border="0"> <tr> <td>Taxable turn over fixed</td> <td>-</td> <td>Rs. 1,03,33,974</td> </tr> <tr> <td>Tax due</td> <td>-</td> <td>Rs. 50,68,285</td> </tr> <tr> <td>Surcharge due</td> <td>-</td> <td>Rs. 5,06,829</td> </tr> <tr> <td>Interest due on Rs. 5,06,829 w.e.f. 04/08</td> <td>-</td> <td>Rs. 2,23,658</td> </tr> <tr> <td>Total due</td> <td>-</td> <td>Rs. 7,30,487</td> </tr> </table> <p>2009-10</p> <table border="0"> <tr> <td>Taxable turn over fixed</td> <td>-</td> <td>Rs. 1,38,55,929</td> </tr> <tr> <td>Tax due</td> <td>-</td> <td>Rs. 68,13,908</td> </tr> <tr> <td>Surcharge due</td> <td>-</td> <td>Rs. 6,81,390</td> </tr> <tr> <td>Interest due on Rs. 5,06,829 w.e.f. 04/08/09</td> <td>-</td> <td>Rs. 1,76,355</td> </tr> <tr> <td>Total due</td> <td>-</td> <td>Rs. 8,57,745</td> </tr> </table> <p>Subsequently the dealer has filed Writ Petition No. WP (C) No. 22192/12 against the revised assessment and obtained conditional stay on remitting an amount of Rs. 7,00,000 within 2 weeks. The assessee has remitted the amount (Rs. 7 lakh) as per the court order WP (C) is still pending for disposal.</p>	Taxable turn over fixed	-	Rs. 1,03,33,974	Tax due	-	Rs. 50,68,285	Surcharge due	-	Rs. 5,06,829	Interest due on Rs. 5,06,829 w.e.f. 04/08	-	Rs. 2,23,658	Total due	-	Rs. 7,30,487	Taxable turn over fixed	-	Rs. 1,38,55,929	Tax due	-	Rs. 68,13,908	Surcharge due	-	Rs. 6,81,390	Interest due on Rs. 5,06,829 w.e.f. 04/08/09	-	Rs. 1,76,355	Total due	-	Rs. 8,57,745
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(b)	Recovery of overpayment pointed out by audit	<p>Wage Gratuity Leave Pay</p>																														
(c)	Recovery of under assessment, short levy or other dues	<p>Surcharge under 2008- 2009- 10 Taxable turn over</p>																														
(d)	Modification in the schemes and programmes including	<p>Surcharge Interest Total</p>																														

	financing pattern	
(e)	Review of	

COMMERCIAL TAXES



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



ISAAC ITTY
Additional Secretary
Taxes Department
Govt. Secretariat, Tvpm

ACTION TAKEN ON CASE REPORTS

I	(a) Department	COMMERCIAL TAXES
	(b) Sub-division of the Revised Paragraphs	Short levy of tax due to acceptance of bogus declaration.
	(c) Paragraph No.	2/134
	(d) Report No. and Year	CGAG Report ended 31.03.2012
II	(a) Date of receipt of the Draft Para/Revision report (Date)	22/03/12
	(b) Date of Departmental order	22/11/12
III	Gist of Paragraph/Revision	M/s. Jeeva Plywood, a manufacturer cum dealer in Dindoor and Block board, assessed Central Sales Tax at reduced rate of four percent on taxable turnover of Rs.69.30 lakh and Rs.99.81 lakh respectively for the years 2003-04 and 2004-05 availing the declarations in form 'C' issued from Tamil Nadu. The declarations covering an aggregate turnover of Rs.70.27 lakh were found to be apparently not genuine as the name of the issuing office in the said affixed in the form 'C' was not of an existing office in Tamil Nadu. Failure to declare these forms and to assess the turnover covered by them to tax under KGST Act at the rate of 12 percent and 15 percent ACT resulted in short levy of tax and interest of Rs.11.07 lakh.
IV	(a) Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b) If not, please indicate specific discrepancies and also attach copies of relevant documents in support.	
V	(a) Does the Department agree with the conclusions?	
	(b) If not, please indicate specific areas of discrepancy with reasons for discrepancy and also attach copies of relevant documents where necessary.	

VI Remedial action Taken

		<p>MS/Amal/Imp/03-04 & 04-05, CTO, 2nd Circle Palakkad</p> <p>The dealer had filed final assessment under CST for the years 2003-04 and 2004-05 in respect of above dealer, but officer had assessed at the reduced rate of 4% on the taxable turnover of Rs.69,29,906.00 and Rs.89,61,200.00 and Rs.37,63,856/- were covered by bogus declaration forms. The declaration forms covering the turnover of Rs.10,21,047.00 were apparently not genuine as the name of issuing office in the seal affixed is not of any office in Palakkad.</p> <p>So the final assessment completed under CST for the years 2003-04 and 2004-05 were reopened under Section 17 (b) of CGST Act of 2011 and completed by the same officer in the bogus 'C' Form produced by the dealer. The total tax dues of the above years will come to Rs.18,21,000.00 including interest.</p> <p>When the writ was brought to notice, the assessing officer reopened the assessment for 2003-04 and 2004-05 under 17 (b) of the CGST. The assessment were completed by selecting the bogus 'C' form, declarations original and the turnover is assessed at the higher rate of 12% and accordingly the total tax and interest dues comes to Rs.5,30,000/- for 2003-04 and Rs.6,44,522/- for 2004-05. Since the dealer failed to remit the dues the amounts were advised for collection under RR to IAC, Muvattupuzha on 21.8.11. But the Hon'ble High Court of Kerala in WP(C) No.17652/11(F) dtd.30.10.2012 has issued an interim stay for revenue recovery of above amounts until further orders.</p>
(b)	Recovery of overpayment pointed out by audit	-
(c)	Recovery of under assessment, short levy or other dues	-
(d)	Modification in the schemes and programmes including financing pattern	-
(e)	Review of similar cases/complex scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	-


ISAAC ITTY
 Additional Secretary
 Taxes Department
 Govt. Secretariat, Tvpm

ACTION TAKEN NOTES ON C & AG'S REPORTS

	(a)	Department	COMMERCIAL TAXES
I	(b)	Subject/Title of the Review	Non forfeiture of tax collected illegally
	(c)	Paragraph No.	2.13.10
	(d)	Report No. & Year	C & AG report for the year ended March 2012
II	(a)	1. Date of receipt of the Draft Para/Review by the Department	
	(b)	Date of Department Reply	
III		Gist of the Paragraph Review	M/s. Ecowood was a dealer in timber. They conceded sales turnover of timber of Rs. 12.44 crore on which VAT including Cess leviable was Rs. 15.70 lakhs during 2008-09. Against this the firm collected Rs. 23.53 lakhs. It was noticed from the annual returns and profit and loss accounts that the assessing authority did not forfeit to government Tax collection of Rs. 7.83 lakhs effected by the assessee. Further the assessing authority refunded excess input tax credit of Rs. 7.98 lakhs claimed by the assessee without adjusting excess collection of tax. Non-forfeiture of tax, interest and penalty amounts to Rs. 9.37 lakhs.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement with reasons for disagreement and also attach copies of relevant documents where necessary.	

REMEDIAL ACTION TAKEN

(a)	Improvement in system and procedures, including internal control	<p>M/s. EcoWood (2008-090 CTO, Thirurangadi)</p> <p>Based on audit objection assessment in respect of Sri. P.P. Noushad, EcoWood, Venniyur was completed as per the provisions laid down in section 72 of the KVAT Act, 2003 vide order dated 09.02.2011.</p> <table border="0"> <tr> <td>Total tax collection as per accounts</td> <td>Rs. 2343179/-</td> </tr> <tr> <td>Less OPT</td> <td>Rs. 1570191/-</td> </tr> <tr> <td>Illegal collection</td> <td>Rs. 782988/-</td> </tr> <tr> <td>Interest due</td> <td>Rs. 156598/-</td> </tr> </table> <p>Against the order the dealer went in appeal before the Assistant Commissioner(Appeals), Palakkad. The Assistant Commissioner(Appeals), Palakkad in KVAT Appeal No. 1300/11 dated 06.12.2011 upon examination of the books of accounts of the dealer cancelled the order passed by the Commercial Tax Officer observing that there is no illegal collection of tax as pointed out by the assessing authority.</p> <p>It is also revealed from the assessment records that the Auditor, Kutty & Associates, Calicut has filed a letter dated 23.02.2011 along with profit and loss Accounts and Balance sheet for the year 31.03.2008 and 31.03.2009 in which he has stated that it was an innocuous error on the part of the Auditor that by mistake they have entered output tax receivable in the Balance sheet for the year ending March 2009 of M/s. EcoWood, Venniyur instead of VAT refundable. They have also filed rectified audited financial statements.</p> <p>In the circumstances, the audit objection is not sustainable in law and there is no loss of revenue as pointed out by the Audit.</p>	Total tax collection as per accounts	Rs. 2343179/-	Less OPT	Rs. 1570191/-	Illegal collection	Rs. 782988/-	Interest due	Rs. 156598/-
Total tax collection as per accounts	Rs. 2343179/-									
Less OPT	Rs. 1570191/-									
Illegal collection	Rs. 782988/-									
Interest due	Rs. 156598/-									
(b)	Recovery of overpayment pointed out by Audit									
(c)	Recovery of under Assessment, short levy or other dues									
(d)	Modification in the schemes and programmes including financing pattern									
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit									

Action taken on C&AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of tax due to suppression of turnover.
	(c)	Paragraph No.	2.13.11
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	31.05.2012
	(b)	Date of Department's Reply	31.12.12
III		Gist of Paragraph/Review	It was noticed from the annual return for 2009-10 filed by M/s.Thohoor Tyres that it availed input tax credit of Rs.1.98 lakh relating to purchase of furnace oil for Rs.15.88 lakh. Though the assessee neither resold, used for manufacture of taxable goods nor kept in closing stock, the Assessing Authority did not disallow the claim resulting in short levy of tax, cess and interest of Rs.2.47 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	Details furnished in VI (a)
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

ACTION TAKEN NOTES ON C & AG'S REPORTS

	(a)	Department	COMMERCIAL TAXES				
I	(b)	Subject/Title of the Para/Review	Short levy of tax due to incorrect computation of turnover				
	(c)	Paragraph No.	2.13.12				
	(d)	Report No. & Year	G & AG report for the year ended March 2012				
II	(a)	1. Date of receipt of the Draft Para/Review in the Department					
	(b)	Date of Departmental Reply					
III		Gist of the Paragraph/Review	Lumens ElectroSystems, an assessee was undertaking electrical contracts assessable under works contract in KVAT. It is noticed from the assessment records for the years 2006-07 and 2007-08 that the assessee had worked out taxable turnover as Rs. 37.08 lakhs and Rs. 47.70 lakhs respectively. As a result turnover of Rs. 6.33 lakhs and Rs. 11.40 lakhs escaped from assessment as per provisions of KVAT Act. This resulted in short levy of tax and interest of Rs. 2.76 lakh as shown below:				
			Financial Year	Taxable turnover disclosed by the assessee	Taxable amount under KVAT Act	Turnover escaped assessment	Short levy of tax including interest
			2006-07	37.08	43.41	6.33	1.05
			2007-08	47.70	59.10	11.40	1.71
							2.76
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?					
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support					
V	(a)	Does the Department agree with the Audit conclusions?					
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement with reasons for disagreement and also attach copies of relevant documents where necessary.					

REMEDIAL ACTION TAKEN

(a)	Improvement in system and procedures, including internal control	<p>Lumens Electro Systems 2006-07 and 2007-08 Shri. P. Balagopal, Lumens Electro Systems, Kollam had filed annual return for the years 2006-07 and 2007-08 as follows:</p> <table border="1" data-bbox="484 306 906 455"> <thead> <tr> <th>Year</th> <th>Gross Contract Receipt</th> <th>Exemption</th> <th>Taxable contract receipt</th> </tr> </thead> <tbody> <tr> <td>2006-07</td> <td>4940164</td> <td>1232410</td> <td>3707744</td> </tr> <tr> <td>2007-08</td> <td>6814327</td> <td>2044298</td> <td>4770029</td> </tr> </tbody> </table> <p>The assessee is a trader and contractor of electrical goods. While on audit it was found that there was incorrect grant of exemption for the assessment years 2006-07 and 2007-08. As per proviso to Rule 10(2)(a) of KVAT Rules, 2005, if deduction towards labour and other charges falls below cost of goods transferred in the execution of works contract amount paid equal to cost of goods transferred in the execution of works contract together with profit if any, shall be the taxable turnover in respect of the goods. The materials used for contract works is worked out by the audit as Rs. 4341022/- and Rs. 5910364 respectively for the years 2006-07 and 2007-08.</p> <p>As the material cost is above the taxable contract receipt there is irregular claim of exemption and the excess claim resulted in short levy of tax and interest of Rs. 275541/-.</p> <p>The books of accounts of the assessee were called for verification vide Form 17 notice dated 19.11.2009. The assessee produced the books on 1.12.2009. On verification of books of accounts it was found that the exemption claimed for both the years is irregular and the assessment was completed as per Rule 10(2)(a) fixing the taxable contract receipt as Rs. 4517652/- and Rs. 6013774/- respectively for the years 2006-07 and 2007-08. There is no reason to resort to the proviso of Rule 10(2)(a). An additional demand of Rs. 136644/- and Rs. 181474/- was created and demanded with interest respect for the above said period.</p> <p>Aggrieved by the order the assessee preferred appeal and stay petition before the Deputy Commissioner (Appeals), Kollam in KVATA 1078 & 1079/2010. The appellate authority has disposed the case vide order No.</p>	Year	Gross Contract Receipt	Exemption	Taxable contract receipt	2006-07	4940164	1232410	3707744	2007-08	6814327	2044298	4770029
Year	Gross Contract Receipt	Exemption	Taxable contract receipt											
2006-07	4940164	1232410	3707744											
2007-08	6814327	2044298	4770029											

		<p>1078 & 1079/10 dated 20.03.2012. Accordingly the assessment for the year 2006-07 & 2007-08 is modified after giving effect to the appellate authority's direction as to allow proportional exemption owing to salary, bonus and freight paid. This has relation to execution of works contract. After modification the additional demand reduced to Rs. 50,771/- and Rs. 64,544/- as tax and interest respectively for the years 2006-07 and 2007-08. the same was advised for collection under RR before the IAC, Kollam vide RRC No. 15/10-11. the assessee remitted the arrears for the year 2006-07 and 2007-08 as detailed below:</p> <table border="1"> <thead> <tr> <th>Year</th> <th>VAT</th> <th>Interest</th> <th>Total</th> <th>Interest</th> </tr> </thead> <tbody> <tr> <td>2006-07</td> <td>30958</td> <td>19183</td> <td>50771</td> <td>146/27.11.12</td> </tr> <tr> <td>2007-08</td> <td>42467</td> <td>22082</td> <td>64549</td> <td>146/27.11.12</td> </tr> </tbody> </table> <p>At present no arrears are outstanding against the assessee.</p>	Year	VAT	Interest	Total	Interest	2006-07	30958	19183	50771	146/27.11.12	2007-08	42467	22082	64549	146/27.11.12
Year	VAT	Interest	Total	Interest													
2006-07	30958	19183	50771	146/27.11.12													
2007-08	42467	22082	64549	146/27.11.12													
(b)	Recovery of overpayment pointed out by Audit																
(c)	Recovery of under Assessment, short levy or other dues																
(d)	Modification in the schemes and programmes including financing pattern.																
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit																


ISAAC ITTY
 Additional Secretary
 Taxes Department
 Govt. Secretariat, Tvpm

Action taken Notes on C & AG's Reports

	(a)	Department	COMMERCIAL TAXES														
	(b)	Subject/ Title of the Review Paragraph	Short levy of Turn over tax														
	(c)	Paragraph No.	2.13.13														
	(d)	Report No. and Year	C & AG report for the year ended March 2012														
II	(a)	Date of receipt of the Draft Para / Review in the Department															
	(b)	Date of Department's Reply															
III	(b)	Glist of Paragraph / Review	<p>M/s. Savitha Bar, a bar attached hotel situated in panchayath area was liable to pay turnover tax. The assessing authority applied the lower rate and under assessed the tax liability for the financial year 2006-07 resulting in a short levy of Rs. 2.63 lakh due to incorrect calculation as shown below:</p> <table style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th></th> <th style="text-align: right;">(Rs. in lakh)</th> </tr> </thead> <tbody> <tr> <td>Turnover tax paid for 2005-06</td> <td style="text-align: right;">- 19.53</td> </tr> <tr> <td>Turnover tax actually payable for 2006-07</td> <td style="text-align: right;">- 22.45</td> </tr> <tr> <td>(115% of the tax paid for 2005-06)</td> <td></td> </tr> <tr> <td>Turn over tax assessed and paid for 2006-07</td> <td></td> </tr> <tr> <td>(10% on 135% of purchase turnover for current year)</td> <td style="text-align: right;">) - 19.82</td> </tr> <tr> <td>Short levy</td> <td style="text-align: right;">- 2.63</td> </tr> </tbody> </table>		(Rs. in lakh)	Turnover tax paid for 2005-06	- 19.53	Turnover tax actually payable for 2006-07	- 22.45	(115% of the tax paid for 2005-06)		Turn over tax assessed and paid for 2006-07		(10% on 135% of purchase turnover for current year)) - 19.82	Short levy	- 2.63
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IV	(a)	Does the Department agree with the facts and figures included in the paragraph?															
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support															
V	(a)	Does the Department agree with the Audit conclusions?															
	(b)	If not, Please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary															

VI - Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>M/s. Savitha Bar</p> <p>The assessee applied for permission to pay compounded tax under section 7 of the KGST Act for the year 2006-07 on 15.05.2006. After filing the returns for April and May 2006 and remitting turnover tax and filed a letter requesting for the withdrawal of compounding application already filed. As per the circular instructions issued in 44/2006 dated 27.11.2006 [C1- 520/2006] by the Commissioner of Commercial Taxes the dealers may opt for this new compounding system in accordance with the amended provisions effective from 1.7.2006 by filing fresh option.</p> <p>In this case, the dealer, withdraw the option to pay compounded tax, the assessment completed under section 17(3) of the KGST Act by fixing the turnover on best judgment is valid according to law. Hence the audit observation that the dealer should have been assessed as a compounded dealer @ 115 % of the tax paid for 2005-06 is not sustainable.</p>
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases/ complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	

Action taken Notes on C& AG's Reports

I	(a) Department	COMMERCIAL TAXES
	(b) Subject/Title of the Review Paragraph	Short levy of tax due to turnover escaped assessment
	(c) Paragraph No.	2.13.14.1
	(d) Report No. and Year	C & AG Report for the year ended 31.03.2012
II	(a) Date of receipt of the Draft Para/Review in the Department	06.07.2012
	(b) Date of Department's Reply	05.05.2014
III	Gist of Paragraph/Review	M/s. Kerala Automobiles Ltd. Was a dealer in three wheelers and spares. The Audit on February 2011 noticed that as against the total Turnover of Rs. 48.34 crore, the assessing authority finalised their assessment for the year 2004-05 accepting the total and taxable turnover of Rs. 47.43 crore and Rs. 38.49 crore respectively as conceded in the return. The reason for accepting the reduced amount was not explained. This resulted in escape of turnover of Rs. 91.08 lakh and consequent short levy of tax of Rs. 21.24 lakh including AST and interest.
IV	(a) Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b) If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a) Does the Department agree with the Audit conclusions?	Yes
	(b) If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

Remedial action Taken

(a)	Improvement in system and procedures, including internal controls.	<p>The assessment in respect of M/s. Kerala Automobiles Ltd., both under KGST and CST for the year 2004-05 was again completed by the Fast Track Team creating a demand of Rs. 28,16,544/- on 15.04.2013. Subsequently the assessee obtained stay from the Hon'ble High Court upon the condition to pay 50% of the tax without interest. In the meantime due to financial stringency, the assessee company again obtained an extension of time upto 31.08.2013. The dealer remitted the stipulated amount in the stay order Rs. 7,14,859/- vide cheque No. SB/XY 0890307/11.10.2013 for KGST and Rs. 1,92,005/- vide Cheque No. SB/XY 0890309/10.10.2013 for CST.</p> <p>The assessee company opted amnesty scheme to settle the dues outstanding against them. They paid the entire amount in four equal instalments and hence no dues outstanding against the assessee.</p>
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	

(e)	Review of similar cases/complaints scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	
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ISAAG ITTY
Additional Secretary
Taxes Department
Govt. Secretariat, Tvpam

Action Items from CAG's Report

I	(a) Department	COMMERCIAL TAXES
	(b) Short Title of the Report	Short title of the report to turnover tax
	(c) Date of Issue	19/02/2012
	(d) Report Cover Year	FY 2011-12 ended 31/03/2012
II	(a) Date of report to the CAG	
	(b) Date of submission of report	
III	List of Paragraph/Review	It was observed (October 2008) that while computing the KGST assessment for 03-04 and 04-05 of M/s. M/s. Tread Rubber, a manufacturer of tread rubber the assessing authority did not include the turnover of Rs. 153 lakhs and Rs. 122 lakhs respectively in the turnover. This resulted in short levy of Rs. 1.274 lakh.
IV	(a) Does the Department agree with the facts and figures included in the paragraph?	No
	(b) If 'No', the significant aspects of the paragraph and also a brief copy of the paragraph is given.	Details furnished in IV (a)
V	(a) Does the Department agree with the observations?	
	(b) If 'No', the significant aspects of the observations and also a brief copy of the observations is given.	

VI

Remedial action taken

(a)

Improvements in system and procedure, including internal controls.

The assessee has taken the necessary steps for the sanction of the accounts of the assessee for the year 2003-04. The accounts have been prepared and notice under section 138 has been issued and the assessee has submitted the completed books of accounts for the year 2003-04. The same with reference to the objections raised and statements filed by the assessee are produced.

Reply to the notice of the Assessing Officer is taken by the audit team. The amount of duty paid by the assessee and not by the assessee's during 2003-04 at the rate of 10% duty paid was Rs. 40,66,220/- and in 2005 was Rs. 35,04,234/- while, was amount of duty paid by the audit team as Rs. 41,52,023/- and Rs. 35,04,234/- respectively.

On detailed verification of the accounts, bills, returns etc. the following are noticed.

1. Sales invoices issued by the assessee is inclusive of excise duty, which can be seen from the sales invoices raised by the assessee at the time when bills were effected.
2. The assessee company engaged in sale of their own product and other raw materials waste etc., they are liable to pay excise duty only on the part of their own product.
3. The assessee company has branches and production centres all over India and they have branch accounts on All India basis. Sales branches are trading, Profit and Loss accounts include local, interstate, Export sales of their own materials waste etc., including branches in the state of Kerala and outside the state of all over India, out of which they are liable to pay tax and duties in the state of Kerala for the portion of their own materials waste (local and interstate) sales to Kerala state.

VERIFICATION RESULT

Total turnover Rs. 89391665.65

as per accounts including

excise duty

Less: Excise Rs. 4066320.00

duty paid

Total turnover Rs. 85325345.65

excluding excise duty

This is correctly shown in the profit & Loss accounts towards sales for 2003-04. Out of the total sales turnover for the year 2003-04, following are the turnover of sales effected from the state (Local Sales Turnover plus interstate sales turnover) in respect of finished goods as per "Annexure to 50E":

Interstate sales:-

PCTR (Pre-cured Rubber) 4% Rs. 1500888.31

Tread Rubber) 4%

PCTR 12% Rs. 810308.18

PCTR 15.11% Rs. 428486.89

Tyre Flap 4% Rs. 30021.60

Tyre Flap 12% Rs. 6800.00

Cushion Gum 13.8% Rs. 7057.60

Rs. 2783562.58

Local Sales PCTR 8% Rs. 14141.15

Tyre Flap 8% Rs. 287745.01

This turnover is reported as such in the annual return for 2003-04. Moreover, verification of monthly returns with respect to sales invoices of finished goods, revealed that turnover reported is inclusive of excise duty.

For Eg for 4/03 total of interstate Rs. 52468.60

sale bills of PCTR- 4%

Inclusive of excise duty 12% Rs. 24804.53

This figure is correctly reported in the monthly return for 4/03

2004-05

Total sales turnover Rs. 82342487.21

Less: accounts including excise duty

Rs. 3564234.00

Total sales Rs. 78778253.21

excluding excise duty

		<p>This is correctly shown in profit and loss accounts towards sales for 2004-05.</p> <p>Out of the above total sales turnover for the year 2004-05, following are the turnover of sales effected from the state in respect of finished goods as per "Annexure to 50B"</p> <p>Interstate sales :- PCTR 4% Rs. 880509.34 PCTR 13.8% Rs. 18375304.11 Butyl Crushing Rs. 4003.08 bag 4% Total Rs. 19259816.53 Local sales Rs. 27488.28 PCTR 8%</p> <p>This turnover is reported as such in annual return for 2004-05</p> <p>Moreover, verification of monthly returns with respect of sales invoices of finished goods revealed that the turnover reported is inclusive of excise duty</p> <p>For Eg. For 4/04- Total of interstate sale bills of PCTR inclusive Rs. 65045.70 - of excise duty 4%</p> <p>This turnover is reported correctly in the monthly return for 4/04</p> <p>Hence the turnover disclosed by the assessee Company in the return is inclusive of excise duty and paid tax accordingly in schedule 12 forming part of profit and Loss accounts, excise duty is deducted only to arrive the net sales turnover and that turnover is disclosed towards sales on the face of profit and loss account. But in annual return and 50A & 50B the turnover disclosed is inclusive of excise duty and the same has been considered for the purpose of assessment also. On verification of assessment records with supporting evidences, it is seen that there is no short levy of tax. Hence the defect pointed out is not sustainable.</p>
(b)	Recovery of overpayment pointed out by audit	-
(c)	Recovery of under assessment, short levy or other dues	-
(d)	Modification in the scheme and programmes including financing pattern	-

(e)	Review of similar cases complete. scheme project in the light of findings of sample check by Audit findings of sample check by Audit	
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ISAAC ITTY
Additional Secretary
Taxation Department
Govt. Secretariat, Panaji

Action taken/Not taken by the Department in response to CAG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of tax due to incorrect exemption allowed
	(c)	Paragraph No.	213/102
	(d)	Report No. and Year	C&AG Report ended 31.03.2012
II	(a)	Date of receipt of the Draft Para/Review in the Department	7.06.2012
	(b)	Date of Department's Reply	19.03.2013
III		Gist of Paragraph/Review	During last scrutiny of assessment records of Kerala Forest Development Corporation Ltd. It was noticed that while completing the assessments for the years 2003-04 and 2004-05, the assessing officer exempted sales turnover of green tea leaves for Rs.35.21 lakh and Rs.58.35 lakh respectively, accepting the declaration of a purchaser tea factory situated outside the State. Incorrect exemption allowed resulted in short levy of tax, AST and interest of Rs.12.75 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support.	
V	(a)	Does the Department agree with the Audit conclusions?	—
	(b)	If not, please indicate areas of disagreement with reasons and also attach copies of relevant documents where necessary	

VI

Remedial action Taken

(a)	Improvement in system and procedures, including internal controls.	<p><u>KFDC, CTO, Spl. Circle, Kottayam (03-04 & 04-05)</u></p> <p>The original assessments in respect of KFDC Ltd for the years 2003-04 & 2004-05 were completed on 14.9.2007 under Section 17D of the KGST Act 1983 by fixing a total and taxable sales turnover of Rs.8,28,71,382/- and Rs.7,15,54,994/- for 2003-04 and Rs.4,78,66,078/- and Rs.3,70,24,401/- for the year 2004-05 respectively.</p> <p>Assessee disclosed a sales turnover of Green Tea Leaves for Rs.35,21,491/- for 2003-04 and Rs.68,34,764/- for 2004-05 and claimed exemption on the strength of the notification in of SRO No.1727/93 and SRO No.1090/99. While finalizing the assessment, the assessing authority admitted the claim of exemption.</p> <p>Under the said notification tax payable on the turnover of sale of green tea leaves by the cultivators to tea factories for the manufacture of tea is exempted on condition that the manufactured tea is liable to tax either under KGST Act or under CST Act. For getting the exemption, the assessee has also to produce necessary certificate in Annexure-I obtained from the tea factory.</p> <p>In the case of KFDC Ltd., they had sold tea leaves to factory in Gudalur of Tamilnadu, the sale of manufactured tea would have been effected in Tamil Nadu and the turnover would have been suffered under TNGST Act.</p> <p>During the audit, Accountant General pointed out the above irregularity on completion of assessment under Section 17 D of KGST Act and detected a short levy of tax and interest for both the years at Rs.6,60,775/-.</p> <p>Subsequently on getting permission from CCT assessment for the year 2003-04 and 2004-05 were completed under Section 19 (1) of the KGST Act 1983 on 27-2010 by disallowing the exemption claimed on the sales turnover of Green tea leaves on the strength of SRO.</p> <p>Assessee KFDC Ltd filed appeal against the assessment order dated 27.02.2010 and the appellate authority upheld the escaped assessment completed under Section 19 (1) of KGST Act for both the years as per Order/No.KVATA 798 & 799 dated 22.3.2011. Entire demand with interest are advised under RR and being in progress.</p>
(b)	Recovery of overpayment pointed out by audit	-

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


ISAAC JETTY
 Additional Secretary
 Taxes Department
 Govt. Secretariat, Tvpm

ACTION TAKEN NOTES ON C & AG'S REPORTS

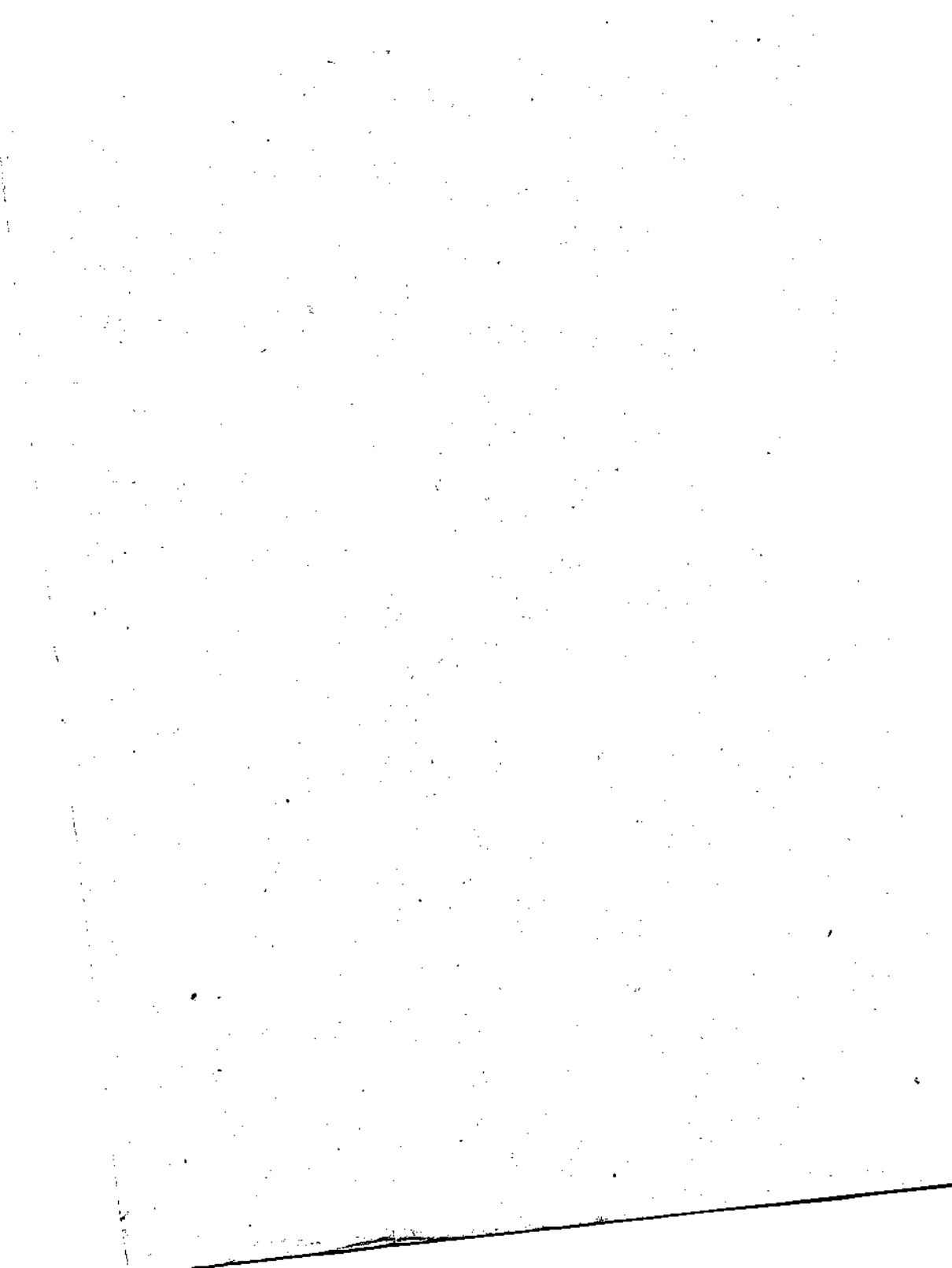
I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to incorrect exemption allowed
	(c)	Paragraph No.	2.13.15.1
	(d)	Report No. and Year	C & AG report for the year ended 31.3.2012
II	(a)	Date of receipt of the Draft Para / Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	<p>M/s. Bharat Petroleum Corporation Ltd. is a dealer in petroleum products like Petrol, HSD, Diesel etc. The assessing authority finalized (March 2010) the assessment of the assessee for 2003-04 fixing the total and taxable turnover as Rs. 4,779.30 crore and Rs. 1,431.76 crore respectively.</p> <p>It was noticed (November 2010) in Audit from the assessment records for the year 2003-04 that the assessing authority did not levy tax on turnover of Rs. 1.07 crore relating to sales of HSD to 100 per cent Export Oriented Units. This resulted in short levy of tax of Rs. 48.49 lakh, including interest.</p>
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	NA
V	(a)	Does the Department agree with the Audit conclusions?	Yes
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	NA

REMEDIAL ACTION TAKEN

71 (a)	Improvement in system and procedures, including internal controls.	<p>M/s. Bharat Petroleum Corporation Ltd. (2003-04)</p> <p>The final assessment of M/s. BPCL, Kochi for the year 2003-04 was completed on 26.03.2010. The Accountant General while auditing the file observed that sales turnover of HSD effected to M/s. DC Mills Pvt. Ltd., Alappy for Rs. 81,24,100/- and to M/s. HIC ABF Special Food Pvt. Ltd., Panampilly Nagar, Kochi for Rs. 26,21,836/- were given exemption as per SRO 1090/99 Schedule III, Item 7. It is irregular. The Accountant General observed that sales turnover of raw material, plant and machinery, spares, tools and consumables in relation thereto other than petroleum products sold to 100 percentage, EOU were eligible for exemption as per SRO 1090/99 Schedule II, Item 7. Here the product sold is HSD(Petroleum Products) and therefore, the exemption allowed was irregular.</p> <p>The BPCL Company is of the opinion that the exemption availed is as per SRO 1090/99 Schedule III, Serial No. 2 which stipulates that turnover of sale of industrial inputs, plant and machinery including components, spares, tools and consumables in relation thereto sold to industrial undertakings in the CSEZ are eligible for tax exemption. The customers were 100% EOU under the control of the CSEZ Commissioner and hence are eligible for exemption as per Schedule III item 2 SRO 1090/99.</p> <p>The original assessment dated 26.03.2010 was set aside by the Deputy Commissioner, Ernakulam vide order No. CI-671/2013 dated 25.05.2013 under suomoto revision as per sec. 35 of KGST Act 1963. The company M/s. BPCL has filed appeal before the Hon'ble STAT, Ernakulam. Mean while the assessing authority has issued pre-assessment notice U/Sec. 17(3) for completion of assessment for the year 2013-14 on 26.08.2013. The company filed reply on 06.09.2013. The STAT Ernakulam vide order No. TA. 57/2013 dated 30.08.2013 has stayed the operation of revisional order passed by the Deputy Commissioner, Ernakulam on 25.05.2013.</p>
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		<p>... proceedings there by the ... with further orders. ... been not pleted ... stay by the STATE Encl. 11am.</p>
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	
(e)	Review of similar cases, complete scheme / project in the light of findings of sample check by audit, findings of sample check by audit.	

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