

THIRTEENTH KERALA LEGISLATIVE ASSEMBLY

**COMMITTEE
ON
PUBLIC ACCOUNTS
(2014-2016)**

ONE HUNDRED AND ELEVENTH REPORT
(Presented on 18th February, 2016)



**SECRETARIAT OF THE KERALA LEGISLATURE
THIRUVANANTHAPURAM**

2016

**COMMITTEE
ON
PUBLIC ACCOUNTS
(2014-2016)**

ONE HUNDRED AND ELEVENTH REPORT

on

**Paragraphs relating to Taxes Department contained in the Report of
Comptroller and Auditor General of India
for the year ended 31 March, 2010
(Revenue Receipts)**

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INTRODUCTION

I, the Chairman, Committee on Public Accounts, having been authorised by the Committee to present this Report, on their behalf present the 111th Report on paragraphs relating Taxes Department contained in the Report of the Comptroller and Auditor General of India for the year ended 31 March, 2010 (Revenue Receipts).

The Report of the Comptroller and Auditor General of India for the year ended 31 March, 2010 (Revenue Receipts) was laid on the Table of the House on 28th June, 2011.

The Committee considered and finalised this Report at the meeting held on 15th February, 2016.

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

Thiruvananthapuram,
18th February, 2016.

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

REPORT

TAXES DEPARTMENT

AUDIT PARAGRAPH

TAX ON SALES, TRADE ETC.

Tax administration

Department of Commercial Taxes is under the control of the Principal Secretary, Taxes at the Government level and collection of tax under the KGST, KVAT and CST Acts is governed by the Commissioner of Commercial Taxes (CCT). Levy and collection is administered at grass root level by Commercial Tax Officers and Assistant Commissioners. Movement of goods into the territory of the State is regulated through check posts established at the border. Audit wing of the department conducts internal audit of KVAT returns and assessments under the KGST.

Trend of receipts

Actual receipts from tax on sales, trade etc. during the last five years (2005-06 to 2009-10) along with the budget estimates during the same period is exhibited in the following table and graph:

(Rupees in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts	Percentage of growth rate
2005-06	8,200.01	7,037.97	(-) 1,162.04	(-) 14.17	9,778.62	71.97	..
2006-07	7,930.38	8,563.31	(+) 633.93	(+) 7.98	11,941.82	71.71	21.67
2007-08	10,035.51	9,371.76	(-) 663.75	(-) 6.61	13,668.95	68.56	9.44
2008-09	10,616.39	11,377.13	(+) 760.74	(+) 7.17	15,990.18	71.15	21.39
2009-10	12,733.94	12,770.89	(+) 36.95	(+) 0.29	17,625.02	72.46	12.25

We noticed that the growth rate of tax on sales, trade etc. declined during 2007-08 and 2009-10, compared to 2006-07 and 2008-09.

Assessee profile

The number of dealers registered as at the end of 2008-09 and 2009-10 are shown below:

2008-09	159207
2009-10	159665

The increase in the number of dealers during 2009-10 was marginal. The VAT collection from 50 top dealers in the State was ₹ 1566 crore which is 21.50 per cent of the total collection. Out of the total dealers, 23818 dealers constituting 14.92 per cent were paying tax at 0.5 per cent under the category of presumptive tax payers.

The assessment in respect of five major assesseees of KGST are pending from 2004-05 onwards and hence we could not audit these files and ensure the correctness of the returns filed. This implies that approximately 40 per cent of revenue generated from commercial taxes (KVAT + KGST) could not be audited by us every year due to delay in completion of assessment.

Receipt of VAT per assessee

The receipt of VAT and sales tax per assessee during 2009-10 was ₹ 7.79 lakh which was higher than the previous year's receipt of ₹ 7.15 lakh by ₹ 0.64 lakh.

[Audit Paragraph 2.4 contained in the Report of the C & AG of India for the year ended 31 March, 2010 (Revenue Receipts).]

Notes received from Government on the above Audit Paragraph is included as Appendix II.

When noticed that during 2009-10 the receipt of VAT and sales tax per assessee was 0.64 lakh more than that of the previous year's receipt, the Committee evaluated it as a positive trend and directed the department to add the latest position of receipt per assessee in the report.

Arrears in sales tax assessment

The department furnished the position of arrears under sales tax which is as shown below:

(Number of cases)

Opening balance	14254
Addition during 2009-10 including remanded cases	4345
Total	18599
No. of assessments completed	9332
Arrear cases 8048	
Current cases 1095	
Remanded cases 189	
Closing balance	9267

Department completed 9332 assessments under the KGST. We noticed that there was practically no revenue collection due to completion of the above assessments.

We recommend the Government to undertake a detailed review of these completed assessments.

Cost of collection

The gross collection of revenue receipts under the head, tax on sales, trade etc., expenditure incurred on collection and the percentage of expenditure to gross collection during 2005-06 to 2009-10 along with the all India average percentage of expenditure on collection to gross collection for relevant years are mentioned below:

Year	Collection	Expenditure on collection of revenue	Percentage of expenditure to gross collection	All India average percentage
	(Rupees in crore)			
2005-06	7037.97	60.96	0.87	0.91
2006-07	8563.31	78.21	0.91	0.82
2007-08	9371.76	89.75	0.96	0.83
2008-09	11377.13	102.59	0.90	0.88
2009-10	12770.89	126.01	0.99	Not available

We noticed that the expenditure on collection was higher than the all India average except in the year 2005-06.

We recommend the Government to examine the reasons for such high costs of collection and take corrective measures.

Analysis of collection

Tax revenue collected on tax on sales, trade etc. during last two years as recorded in the books of the Accountant General (A&E) Kerala is given below:

(Rupees in crore)

Revenue head	2008-09	2009-10
Sales Tax	5881.97	5212.92
VAT	5035.19	7235.26
CST	425.38	292.94

The above table indicates that during 2009-10 collection of sales tax decreased by ₹ 669.05 crore and VAT collection increased by ₹ 2200.07 crore. Tax collection from the KGST was ₹ 5212.92 crore as per the finance account prepared by the Accountant General (A&E). However, our analysis of the details furnished by assessing authorities reveal that five major dealers alone had paid ₹ 5249.61 crore during 2009-10. As per the data collected from the department, the collection of sales tax and VAT during 2009-10 are ₹ 6249.59 crore and ₹ 6950.60 crore respectively which implies misclassification of receipts. We recommend immediate action to reconcile the differences. The entire collection under sales tax and under VAT represents voluntary payments by dealers.

IMPACT OF AUDIT

Revenue impact

During the last four years, we pointed out non/short levy, underassessment/loss of revenue, incorrect exemption, application of incorrect rate of tax etc., with revenue implication of ₹ 1448.26 crore in 5195 paragraphs.

Of these, the department/Government accepted audit observations involving ₹ 647.99 crore and had since recovered ₹ 15.46 crore. The details are shown in the following table:

(Rupees in crore)

Year of Audit Report	Paragraphs included		Paragraphs accepted		Amount recovered	
	No.	Amount	No.	Amount	No.	Amount
2005-06	954	50.37	558	6.29	48	0.42
2006-07	1004	309.17	179	250.50	108	3.18
2007-08	1055	334.37	299	241.50	181	2.46
2008-09 Vol. I	2181	459.11	341	32.77	203	9.40
2008-09 Vol. II	1	295.24	1	116.93
Total	5195	1448.26	1378	647.99	540	15.46

We noticed that the Government failed to recover even the amount it has accepted.

We recommend that the Government may revamp the recovery mechanism to ensure that at least the amount involved in accepted cases are promptly recovered.

Working of internal audit wing

The Internal Audit Wing (IAW) in the Commercial Taxes department was constituted in May 2009. The wing is headed by a Deputy Commissioner, three Assistant Commissioners and four Commercial Tax Officers. The IAW commenced functioning from 1st June, 2009. The department has not prepared a separate internal audit manual. IAW covered eight out of 14 districts during June 2009 to February 2010 and 262 audit paragraphs were raised by them. However, as the reports were not finalised, we are unable to make any comment about the effectiveness of their performance.

Results of audit

We test checked the records of 163 units relating to KGST and VAT. We detected underassessment of tax and other irregularities involving ₹ 1122.54 crore in 4451 cases which fall under the following categories:

Sl. No.	Categories	No. of cases	Amount (Rupees in crore)
A. Value Added Tax			
1	Turnover escaping assessment	791	92.57
2	Grant of irregular exemption	660	70.47
3	Application of incorrect rate of tax	342	28.05
4	Incorrect grant of concessional rate of tax	87	26.75
5	Grant of excess input tax credit	599	10.35
6	Non/short levy of interest	81	6.63
7	Other lapses	1491	327.05
8	Works contract	13	517.00
B. Kerala General Sales Tax			
9	Grant of irregular exemption	74	19.20
10	Turnover escaping assessment	102	8.24
11	Application of incorrect rate of tax	54	2.28
12	Non/short levy of interest	22	0.60
13	Other lapses	135	13.35
	Total	4451	1122.54

The department accepted underassessment and other deficiencies of ₹ 281.51 crore in 642 cases, of which 251 cases involving ₹ 276.55 crore were pointed out in audit during the year 2009-10 and the rest in earlier years. An amount of ₹ 5.02 crore was realised in 588 cases during the year 2009-10.

A few illustrative audit observations involving ₹ 463.59 crore are mentioned in the following paragraphs:

Audit observations

We scrutinised assessment records of sales tax/value added tax (VAT) in Commercial Taxes department 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.

[Audit Paragraphs 2.1 to 2.11 contained the Report of the Comptroller and Auditor General of India for the year ended 31 March, 2010 (Revenue Receipts).]

Notes received from Government on the above Audit Paragraph is included as Appendix II.

2. The Committee pointed out that Government of Kerala had imposed entry tax without the prior sanction of Government of India and that decision was challenged in the High Court and the Court declared it invalid. The Secretary, Taxes Department informed the Committee that the State Government had submitted an appeal against the High Court verdict, praying for a special appearance and the case has been pending. Then the Committee inquired whether the shortfall in tax collection had been assessed after the abolition of entry tax, the witness, Secretary, Taxes Department replied in the negative. In this regard the Committee evaluated that abolition of entry tax caused considerable loss to the exchequer especially in the construction field.

3. The Committee noticed the meagre increase in the number of tax assesseees during the year 2009-10 and enquired the present status. Then the witness, Secretary, Taxes Department apprised that there were 23 lakh tax assesseees of which 13000 were enroled last year. Strenuous efforts are being taken to expand

tax base under the amnesty scheme and also declaring a special scheme to register more personnel before 30th September this year. The Committee directed the Taxes Department to furnish a report in this regard.

4. When noticed that during 2009-10 the receipt of VAT and sales tax per assessee was 0.64 lakh more than that of the previous year's receipt, the Committee evaluated it as a positive trend and directed the department to add the latest position of receipt per assessee in the report.

5. When the Committee enquired about the arrears collected after the completion of KGST assessment, the witness, Joint Commissioner (ASI) put forth the statistics as ₹ 35.56 crore in 2009-10, ₹ 13.37crore in 2010-11, ₹ 121.16 crore in 2011-12, and ₹ 27.14 crore in 2012-13. He supplemented that the arrears for the financial year 2013-14 was not readily available and about ₹ 7.36 crore had been collected up to December 2013. Then the Committee directed the Taxes Department to submit a report regarding this.

6. When enquired the reason for the increase in cost of collection during the financial year 2007-08, the Secretary, Taxes Department submitted that the hike in administrative charges and expenditure incurred towards computerisation in the department, etc. reflected in the cost of collection. The Committee accepted the explanation.

7. The Committee was surprised to note that the tax collected from five dealers alone was higher than the amount earmarked by the department as total sales tax during the year 2009-10 and sought explanation. Then the witness, Joint Commissioner (ASI) apprised that the actual figure was ₹ 6118 crore but the Accountant General noted it as ₹ 5212 crore which might be due to misclassification or duplication. He informed that it was not reconciled yet and assured to furnish a clarification within one month. The Committee was not satisfied with the explanation and commented that the department should take misclassification of receipt as a serious issue. It reminded that it was caused by lack of timely reconciliation of department figure with that of treasury. The Committee directed the Taxes Department to take effective measures to avoid such discrepancies in future and also to furnish a report on how the reconciliation of difference in figures had been done.

8. When enquired about the measures taken to revamp the revenue recovery mechanism, the Secretary, Taxes Department informed that the District Collectors/Deputy Collectors were directed to reconcile the figures and a meeting was scheduled to be conducted on 20-5-2014 to review the RR procedures. He also informed the Committee that the District Collectors were assigned to recover ₹ 300 crore through recovery proceedings. The Department of Commercial Taxes recovered nearly ₹ 60 crore out of 120 crore, but the percentage of Revenue Recovery was only 4.5%. Then the Committee directed the Taxes Department to take immediate steps to recover the tax at least in accepted cases and enquired about the recovery done so far. The Secretary, Taxes Department replied that ₹ 15.46 crore had been recovered, but the Committee pointed out that the amount recovered was meagre and it includes the amount prior to 2005-06 also.

9. To a query of the Committee regarding RR cases stayed by Courts, the Secretary, Taxes Department apprised that the department has been reviewing such cases with the help of Advocate General giving priority to the case involve larger amounts. So the cases, which were found not collectable, were written off as per the decision of the Appellate Authority. If any District Collector finds that, in his district, the defaulter does not possess any movable or immovable property, he should report it to other District Collectors for verification of the same in their jurisdiction. The case could be reported as irrecoverable only after this due process. He supplemented that no case was disposed of so far as irrecoverable. Then the Committee decided to recommend that the Taxes Department should prepare a realistic account of the arrears pending recovery, after scrutinising the cases in due process at the earliest. It also urged the Taxes Department that the officials should act more vigilantly to speed up the actions to lift the High court stays. It expressed its anguish over the fact that the number of appeal stays is increasing year after year. The Committee directed the Taxes Department to furnish a report detailing the cases with duration of pendency and the agency before which the case is pending. The Committee urged the department to take necessary steps to settle the cases in a time bound manner.

10. The witness, Secretary, Taxes Department informed that strenuous efforts to realise the arrears were initiated especially in the cases involving larger amount.

He continued that review meetings were being conducted among District Collectors to monitor RR proceedings. The Deputy/Assistant Commissioner of land review the cases and after the first review meeting, collectable demands were classified as A, B & C taking into account of the collectibility, which is being updated at regular intervals. He added that a copy of the list prepared had been forwarded to the Advocate General. To a query of the Committee, he assured to review the cases stayed by Supreme Court also.

11. The Committee expressed its displeasure over the lethargic attitude of the Commercial Taxes Department in revenue recovery proceedings. Then the Secretary, Taxes Department informed that about 57% of the target could be achieved during the preceding year. Out of the demand, which had assigned to District Collector only 5% was collected. Then the Committee wanted the details of the cases under court stay for the current year and also for the previous year. Then the witness, Joint Commissioner (ASI), Commissionerate of Commercial Taxes deposed that the amount under court stay is not readily available. To a query of the Committee, the Secretary, Taxes Department informed that for availing departmental stay 30% of the assessment amount should be paid by defaulter. The Committee directed the Taxes Department to take earnest efforts to vacate the stay granted by different authorities and recover the amount due.

12. The Committee directed the Taxes Department to submit a report with department wise details of tax arrear categorizing the amount which could be recover or not. The Committee observed that even though the mistakes pointed out by the Audit were accepted by the Government, it still recur. So the Committee decided to recommend that departmental action should be initiated against the supervising officials who again commit mistakes of similar nature.

13. The Committee was surprised to note that during the year 2009-10 only ₹ 5.02 crore was realised in 588 cases out of 642 accepted cases involving ₹ 276.55 crore. The Committee urged the Taxes Department to furnish year-wise statement detailing the arrear to be collected and the arrear collected out of the cases accepted by department.

14. The Committee opined that internal audit wing in the Taxes Department would function independently if it would be headed by a senior officer from the Office of the Accountant General. The Committee decided to recommend that the internal audit wing in the Taxes Department should be strengthened and steps taken in this regard should be intimated to the Committee.

Conclusion/Recommendation

15. The Committee analyses that Government would incur heavy loss due to the abolition of entry tax, since Kerala is being a consumer state. So it recommends to check the feasibility of reintroducing entry tax in Kerala after complying all the procedures for doing so.

16. The Committee directs the Taxes Department to furnish a detailed report on the efforts taken to enhance the tax collection incorporating the details of latest position of receipt per assessee and also collection of arrears after completing KGST assessment.

17. The Committee was at a loss to note that the amount recovered towards arrear is meagre and directs to take necessary steps to recover tax at least in accepted cases.

18. The Committee demands the Taxes Department to submit a report with department-wise details of tax arrear categorising whether the amount is recoverable or not, to it at the earliest.

19. The Committee urges the Taxes Department to furnish year-wise statement detailing the arrear to be collected and the arrear collected out of the cases accepted by the department.

20. The Committee recommends that the internal audit wing in the Department should be strengthened and steps taken in this regard should be intimated to the Committee.

21. The Committee observes that even though the mistakes pointed out by the Audit regarding tax arrear were accepted by the department, it still

recur. The Committee admonishes the Taxes Department for the lackadaisical attitude in this regard and recommends that departmental action should be initiated against supervising officials who commit similar mistakes.

22. The Committee urges the Taxes Department to take earnest effort to vacate the stay granted by different authorities in a time bound manner and to recover the amount due.

AUDIT PARAGRAPH

Non-observance of provisions of Acts/Rules

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

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

We noticed that the AAs while finalising the assessment did not observe some of the provisions which resulted in non/short levy/non-realisation of tax/interest/penalty of ₹ 463.59 crore as mentioned in the paragraphs 2.12.1 to 2.12.20.

WORKS CONTRACT

Short levy due to turnover escaping assessment

(CTO Special Circle, Thiruvananthapuram; February 2010)

Rule 9 of the KVAT Rules provides that where in a works contract, the awarder supplies a portion of the goods involved in the execution of the works contract and deducts the value of the material from the payment made to the contractor, the turnover of the goods so supplied shall form part of the total turnover of the awarder as well as the contractor.

An assessee who is the awarder of various work contracts, supplied materials to the contractors for execution in the works contract. The value of materials so

supplied was deducted from the bill of the contractor. However, we found that the value of materials which was recovered from the bill of the contractor amounting to ₹ 1,871.61 crore supplied by the assessee for the years 2005-06 to 2008-09 was not subjected to tax by the assessee. This defect was not detected by the assessing authority which resulted in short levy of tax and interest of ₹ 274.24 crore.

We pointed out the matter to the department and reported to the Government in May 2010. We have not received any further information (December 2010). However, we noticed subsequently that the assessments were revised in May 2010 creating an additional demand of ₹ 284.53 crore.

(CTOs Works Contract, Ernakulam and Thrissur; November 2009 to January 2010)

Section 22 of the KVAT Act provides that where the return submitted by a dealer is with incorrect particulars, the assessing authority shall, after recording its reasons, reject the return with due notice to the dealer. The Act also stipulates that if any dealer files incorrect return and fails to file a fresh return, the assessing authority shall estimate the turnover of the return period and complete the assessment to the best of its judgement.

We verified the annual return with the annual accounts of nine assesseees in CTOs Works Contract, Ernakulam and Thrissur and found that the assesseees had returned considerably lesser turnover in their annual return than that disclosed in annual accounts. Further, the assesseees did not limit the exemption claimed to the eligible limits. These defects were not detected by the assessing authorities which resulted in short levy of tax and interest of ₹ 17.22 crore.

After we pointed out the defects, the assessing authority stated in one case* that the difference in turnover was due to the land value. The reply is not acceptable as the assessee had opted for compounding and hence tax is to be paid on the whole contract amount.

We pointed out the matter to the department and reported to the Government in May 2010. We have not received their replies (December 2010).

* M/s Yasoram Builders, Ernakulam.

• **(CTO Works Contract, Ernakulam; January 2010)**

An assessee executed works contract valued at ₹ 91.77 crore for the year 2006-07 on turnkey basis. However, the assessee disclosed a turnover of ₹ 10.93 crore as labour element in the annual return and claimed exemption on that turnover, resulting in underassessment of turnover of ₹ 80.84 crore. This mistake was not detected by the assessing authority which resulted in short levy of tax and interest of ₹ 13.34 crore.

We pointed out the matter to the Department and the Government in May 2010. We have not received their replies (December 2010).

(CTO Works Contract, Ernakulam; November 2009)

The proviso to KVAT Rule 10 (2) (a) provides that when the turnover arrived at after deducting 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 the execution of works contract with profit, if any, shall be the taxable turnover in respect of such works contract. Further, Section 6(1) (f) of the KVAT Act prescribes that the liability to pay tax shall be, in the case of transfer of goods involved in the execution of works contract, where the transfer is not in the form of goods, but in some other form at the rate of 12.5 per cent. Subsequently, it has been provided in the Act from April 2008 that the tax payable in respect of transfer of declared goods not in the form of goods but in some other form shall be at the rate prescribed under the respective schedules.

An assessee, engaged in works contract, claimed exemption under Rule 10 (2) (a) of the KVAT Rules from the total turnover of contract receipts and paid tax on the balance taxable turnover for the years 2007-08 and 2008-09. We found that the cost of goods transferred in the execution of works contract along with the profit element is considerably higher than the turnover that the assessee returned. As such, the assessee is liable to pay tax on the cost of goods transferred in the works contract instead of on the conceded taxable turnover. This defect was not detected by the assessing authorities which resulted in short levy of tax and interest of ₹ 16.91 crore.

After we pointed out the defect, the assessing authority stated (November 2009) that the cost of goods transferred to works contract includes goods purchased interstate which had already suffered tax and hence is eligible for exemption. The reply is not acceptable as the goods purchased interstate is used in the works contract at a different State and hence is exigible to tax. The High Court of Tamil Nadu had held* that the materials brought from outside the State and used in the execution of works contract within the State is exigible to tax in the State. We found that the assessing authority issued notice to the assessee in December 2009.

We reported the matter to the Department and to the Government in May 2010. We have not received their replies (December 2010).

[CTO (WC<), Thrissur; September 2009]

As per Section 8(a) (ii) of the KVAT Act, any works contractor having CST registration, may opt to pay tax at four per cent of the whole contract amount. Rule 9(1) (c) of the KVAT rules further provides that the total turnover of a dealer shall be the aggregate of contract amount received or receivable.

The taxable turnover of a works contract dealer paying compounded tax at the rate of four per cent for the year 2006-07 was determined by audit assessment wing as ₹ 10.49 crore even though the assessee had a contract receipt of ₹ 13.38 crore as per the certified accounts. This resulted in short levy of tax of ₹ 11.55 lakh.

We pointed out the case to the department in October 2009 and reported to the Government in April 2010. We have not received their replies (December 2010).

• [CTO (WC<), Thrissur; September 2009]

An assessee engaged in works contract conceded a total turnover of ₹ 2.23 crore in the annual return even though he had a contract receipt of ₹ 4.55 crore as per the certified P&L Account for the year 2007-08. This resulted in escape of turnover of ₹ 2.32 crore and consequent short levy of tax and interest of ₹ 10.78 lakh.

* JDP Associates Vs 'TNTST' and others 2004-05 (10) TNCTJ-165 Mad as cited in the AR(RR) for Tamil Nadu for the year ended 31st March, 2008 (Para 2.10.1.5).

We pointed out this case to the department in October 2009 and reported to the Government in April 2010. We have not received their replies (December 2010).

[CTO Special Circle, Thiruvananthapuram; January 2010]

The CCT had instructed that the assessing authorities should cross-check the details available in the returns filed by the assessee to ensure that there was no evasion of tax by the dealer.

An assessee who is engaged in the execution of Japan Bank for International Co-operation (JBIC) assisted Water Supply Scheme for Kerala Water Authority (KWA) opted for compounding and paid tax on ₹ 15.33 crore for 2007-08. We cross verified the payments made to the assessee with the records of JBIC available with KWA and noticed that the assessee was paid ₹ 17.12 crore. The discrepancy in turnover was not detected by the assessing authority which resulted in short levy of tax and interest of ₹ 8.60 lakh.

We pointed out the matter to the department and reported to the Government in May 2010. We have not received their replies (December 2010).

[CTO (Works Contract), Thiruvananthapuram; March 2009]

Where the return submitted under sub-section (1) of the Section 20 is not in the prescribed manner, the assessing authority shall reject the return as per the KVAT Act. The Act also stipulates that if any dealer fails to submit a fresh return, the assessing authority shall estimate the turnover of the return period and complete the assessment to the best of its judgment.

A dealer assessed tax for the year 2006-07 on a conceded turnover of ₹ 1.90 crore as per the annual return. However, we found on scrutiny of the assessment records that the audited accounts of the assessee revealed a turnover of ₹ 2.11 crore. This mistake was not detected by the AA which resulted in short levy of tax and interest of ₹ 3.36 lakh.

We pointed out the case to the department in March 2009 and reported to the Government in July 2009. The Government stated in January 2010 that the assessment had been revised creating an additional demand of ₹ 2.42 lakh towards tax and ₹ 82,000 towards interest. We have not received further information from the Government (December 2010).

[Audit Paragraphs 2.12 to 2.12.1 contained the Report of the Comptroller and Auditor General of India for the year ended 31 March, 2010 (Revenue Receipts).]

Notes received from Government on the above Audit Paragraph is included as Appendix II.

23. Regarding the audit paragraph, the Committee was informed that Rule 9 of the KVAT Rules provides that where in a works contract the awarder supplies a portion of the goods involved in the execution of the works contract and deducts the value of the material from the payment made to the contractor, the turnover of the goods so supplied shall form part of the total turnover of the purchaser as well as the contractor. But in a case KSEB, the assessee and awarder of various work contracts, supplied materials to the contractors for execution in the works contract and the value of materials so supplied was deducted from the bill of the contractor but the amount was not subjected to tax by the assessee. In this regard, the witness, Secretary, Taxes Department deposed that in that case the awarder, KSEB purchased the materials locally by paying tax and handed over the same to the labour contractor as per the agreement and no sale was involved in that case. He added that it was the practice followed by PWD, KSEB etc. and tax was calculated after deducting the cost of materials supplied. He submitted that in cases where materials were purchased locally for which no value addition involved, they should be exempted from the total turnover in the calculation of tax. At this point the official from the Office of the Accountant General interfered to inform that all purchases need not be local purchases and in some cases interstate purchase was noted. He supplemented that the case pointed out by Audit is not an individual case and the practice followed in those departments, for calculating tax would result in considerable revenue loss. So the Taxes Department should re-check the procedure. The Committee admitted the suggestion put forth by the Accountant General.

24. Regarding audit objection against M/s Yesoram builders, the Committee noticed that there was difference of opinion among the Office of the Accountant General and the Taxes Department. Audit's view was that the total turnover of assessee was inclusive of land value in cases of compounding VAT. The Taxes Department officials argued that the usage in section 8 of whole contract amount envisages only the turnover related with movable property and therefore value of land was liable to be excluded from the turnover of contract even if the assessee had opted payment of tax at the compounding rate for whole contract amount. The Committee opined that the matter require legal clarification and sought the opinion of Law Secretary in this regard.

25. The Committee in its meeting on 17-6-2015 considered the report submitted by Taxes Department in consultation with the Law Department, as per the direction in the meeting held on 30-7-2014. The Committee approved the Department's stand that the land value which included in the work contract could not be levied under VAT.

26. Regarding the Audit Paragraph, the Committee enquired the circumstances under which labour exemption of ₹ 9 crore was granted to M/s Nagpul Builders, Ernakulam instead of the initially proposed ₹ 6 crore. Then the witness, Joint Commissioner (ASI), Commissionerate of Commercial Taxes apprised that as per accounts of the Company, total contract receipt was ₹ 12.99 crore and taxable turnover was ₹ 7.40 crore. Accordingly labour exemption was ₹ 5.99 crore, which was evident in the P & L Account. He added that since when mismatch was noted in figures in P & L Account and Form 13A, the firm had filed revised 13A. The Committee accepted the explanation of the department in the case of the M/s Nagpul Builders for the years 2006-07.

27. Then the Committee remarked that in rest of the cases the land value was excluded from the total turnover for assessing tax, which led to audit objection. The Committee sought the opinion of the Secretary, Law Department in this regard. Then the Secretary, Law Department informed that Audit's point of view was prima facie sustainable since section 8 of the Kerala Value Added Tax Act provide that compounding means full contract amount. So tax could be imposed

for the aggregate value without considering whether it include movable or immovable property. Though the Secretary, Taxes Department defended by citing a judgement of the Karnataka High Court, the Committee opined that in the judgement it was also stated that the Government is empowered to realise tax from the total turnover including land value if the contract is composite. The official from the office of the Accountant General pointed out that the Supreme Court itself accepted the notification of Maharashtra Government that tax should be calculated for the aggregate amount in the compounding cases also. The Committee remarked that if the department wishes to exclude the land value from the whole contract amount, necessary amendment in the Act should be made. The Committee opined that since the items that had to be excluded from the contract amount in compounding cases was not specified in the Act, it would not be justifiable to exempt the land value from the total turnover of the assessee. It directed the Taxes Department to provide all details regarding these cases to the Law Department and urged the Law Department to furnish a report to it in this regard.

28. Regarding the case of M/s Sobha City, Ernakulam, the Joint Commissioner, (ASI), Commissionerate of Commercial Taxes explained that the objection raised by Audit was that the closing balance of stock value of goods i.e., ₹ 4547 lakh was not carried over to the succeeding year's opening balance. He added that major works of M/s Sobha City were executed through their sister concern M/s Sobha Developers, Thiruvananthapuram and this firm maintains the accounts related to works. He accepted the AG's observation that the balance amount were not carried over and opined that it was a technical defect, which could be corrected only after verifying the book of Accounts of M/s Sobha Developers for which they sought a period of one month. The Committee urged the Taxes Department to re-examine the books of accounts of M/s Sobha City and Sobha Developers at the earliest to settle the issue. It also urged the Taxes Department to furnish a report detailing the steps taken in this regard.

29. Regarding M/s Afcon Infrastructure Limited the Joint Commissioner informed that on detailed verification of the revised return filed by the company

the difference pointed out by AG was nullified. He detailed that the turnover difference pointed out by Audit was rectified as per the revised return statement. The Committee accepted the explanation.

30. Regarding Omega Elevators (I.t.d.), the witness, Joint Commissioner (ASI), Commissionerate of Commercial Taxes apprised that its registered office is situated at Ahmedabad and hence all India wise turnover was mentioned in the P & L Account. He continued that since it came under works contract they filed both 13 and 13A forms and therein it specified ₹ 2.84 crore as the segregate turnover for the State of Kerala. The Committee accepted the explanation.

Conclusions/Recommendations

31. The Committee evaluates that the prevailing practice of exempting the value of material supplied to the contractor by the awarder, for the calculation of tax is not tenable and exhorts that Taxes Department should re-check the procedure.

32. Regarding the case of M/s Sobha City the Committee directs the Taxes Department to take necessary steps to re-examine the books of accounts of M/s Sobha City and M/s Sobha Developers and settle errors if any found at the earliest. It urges the Taxes Department to furnish a report on the steps taken in this regard.

AUDIT PARAGRAPH

Short levy due to incorrect exemption

• (CTOs : *Special Circle II, Ernakulam and Works Contract Mattancherry; November 2009*)

The taxable turnover in relation to works contract in which transfer of property takes place not in the form of goods but in some other form shall be arrived at after deducting the amount in respect of labour charges etc., as per Rule 10(2)(a) of the KVAT Rules. Further, where the actual turnover in relation to works contract is not ascertainable from the books of accounts, the turnover shall be computed after deducting labour and other charges as given in the table below Rule 10(2) (b).

We noticed in CTOs, Special Circle II, Ernakulam and works contract Mattancherry that four dealers had assessed turnover in respect of works contract after deducting expenses much higher than that referred in the Table, even though the actual expenses in respect of labour and other charges were not ascertainable from their accounts. This mistake was not detected by the assessing authorities and rectified which resulted in short levy of tax and interest of ₹ 68.29 crore.

We reported the matter to the department and to the Government in May 2010. We have not received their replies (December 2010).

• **[CTO (WC<), Thiruvananthapuram; March 2009]**

An assessee, engaged in the business of interior decoration, incorrectly availed exemption of ₹ 3.13 crore and ₹ 3.82 crore from the total turnover for the years 2005-06 and 2006-07, instead of availing exemption in respect of labour and other charges at the specified rate of 25 per cent, as these items were not separately ascertainable from the accounts. This resulted in short levy of tax of ₹ 47.34 lakh.

We pointed out this defect to the department in April 2009 and reported to the Government in July, 2009. We have not received their replies (December 2010).

(CTO Special Circle II, Ernakulam; November 2009)

Section 5(1) of the CST Act stipulates that a sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India, only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.

An assessee claimed sale of ships as export sales. As per the terms and conditions, the ships/vessels are delivered at the Shipyard at Cochin and the title, risk, ownership etc over the vessel were transferred to the buyer and the buyer takes possession of the vessel immediately upon delivery. Hence, the sale falls within the definition of sale under KVAT Act. Since none of the conditions stipulated in the CST Act is fulfilled in this transaction, the exemption amounting to ₹ 1,148.09 crore for the period from 2005-06 to 2008-09 given is not in order resulting in short levy of tax and interest of ₹ 54.70 crore.

We reported the matter to the department and to the Government in May 2010. We have not received their replies (December 2010).

(CTOs: Special Circle II, Ernakulam and Works Contract, Ernakulam; November and December 2009)

Section 10 of the KVAT Act provides for deduction of tax from every payment, including advance payment to any works contractor in relation to any works contract awarded. The Act also stipulates that for the above purpose, the contractor may produce a liability certificate in relation to such works contract from the assessing authorities showing the tax liability or tax remittance, as the case may be, of the contractor in relation to the work and the amount to be deducted from the contract amount is 10 per cent in the case of unregistered contractor.

We observed in CTOs Special Circle II, Ernakulam and Works Contract, Ernakulam that four assesseees awarded subcontracts valued at ₹ 267.22 crore and claimed exemption for the same. The exemption claimed is not allowable as the condition that liability certificate in relation to such works contract from the assessing authorities showing the tax liability or tax remittance has not been fulfilled. The assessing authorities did not detect this mistake, which resulted in short levy of tax and interest of ₹ 32.74 crore.

We pointed out the matter to the department and reported to the Government in May 2010. We have not received their replies (December 2010).

(CTO, Works Contract, Ernakulam; January 2010)

Section 22 of the KVAT Act stipulates that, where the return submitted is with incorrect particulars, the assessing authorities shall, after recording its reasons, reject the return with due notice to the dealer. The Act also provides that if any dealer files incorrect return and fails to file a fresh return, the assessing authority shall estimate the turnover of the return period and complete the assessment to the best of its judgement.

An assessee who is engaged in works contract disclosed for the year 2008-09, a total turnover of works contract of ₹ 87.16 crore. However, the assessee returned

a taxable turnover of ₹ 2.45 crore after claiming exemption for ₹ 84.71 crore (i.e. 97.19 per cent) on the contention that he received payment of ₹ 2.45 crore only for that year. We found that the assessee had received payment amounting to ₹ 60.70 crore from the awarders of contract. As such the assessee is liable to pay tax at least on the contract amount received of ₹ 60.70 crore after allowing deductions as per Rule 10(2) (b) of the KVAT Rules, as the element of labour and other charges are not separately ascertainable from the records. This defect was not detected by the assessing authority which resulted in short levy of tax and interest of ₹ 6.70 crore.

We reported the matter to the department and to the Government in May 2010. We have not received their replies (December 2010).

(CTO Works Contract, Mattancherry; November 2009)

The whole of the contract amount in respect of works contract referred in Section 8 shall not include amount paid to subcontractors for the execution of the portion of works contract if the subcontractor is a registered dealer liable to tax under sub-section (1) or (1A) of Section 6 and the contractor claiming deduction in respect of such amount furnishes a certificate in the prescribed manner.

A dealer who had opted to pay tax at the compounded rates claimed deduction in respect of subcontract awarded for the years 2006-07 to 2008-09. We found that the subcontract was purely labour contract and hence the subcontractors were not liable to tax. Further we found that the materials for the works were issued by the awarder and hence the liability rests with the awarder itself. The incorrect claim of exemption had resulted in short levy of tax and interest of ₹ 1.56 crore.

We pointed out the matter to the department and reported to the Government in May 2010. We have not received their replies (December 2010).

(CTO Works Contract, Thiruvananthapuram; March 2009)

Rule 9 of the KVAT Rules provides that in a works contract in which the transfer of property takes place not as goods but in some other form, the taxable amount shall be the whole amount payable to the dealer for carrying out such contract less the labour charges not incurred in relation to the goods involved in the works contract and other charges. Further, interest at 12 per cent per annum is leviable for default in payment of tax within the due date.

An assessee engaged in works contract for the year 2006-07, availed exemption of ₹ 1.52 crore towards labour and other charges as per the annual return against an eligible exemption of ₹ 1.25 crore on the total turnover of ₹ 2.68 crore as disclosed in the P&L Accounts. This resulted in short levy of tax and interest of ₹ 4.20 lakh.

We pointed out the matter to the department in April 2009 and reported to the Government in July 2009. The Government stated in November 2009 that the assessment was revised and an additional demand of ₹ 4.88 lakh was created. We have not received a report on recovery (December 2010).

[Audit Paragraph 2.12.2 contained the Report of the Comptroller and Auditor General of India for the year ended 31 March, 2010 (Revenue Receipts).]

Notes received from Government on the above Audit Paragraph is included as Appendix II.

33. In the case of M/s Leighton Contractors, the department was of the opinion that since all the contract works awarded were labour contract, it is not liable to pay tax. In this regard the official from the office of the Accountant General interfered to inform that as per clause 14 of the agreement ₹ 2.14 crore was shown as total CIF value of imported items. The witness, Joint Commissioner (ASI), Commissionerate of Commercial Taxes opined that the labour contract awarded to them is not liable to tax and the materials were supplied by

Cochin Refineries. On verifying the records, the Committee understood that clause 14 of the agreement specified that ₹ 2.14 crore of imported material is incorporated in the works contract and hence it is liable to tax and directed the Taxes Department to take rectifying measures in this regard and furnish a report. The Secretary, Taxes Department agreed to do so.

34. To a query of the Committee about M/s Infra Housing (P) Ltd., the witness, Joint Commissioner (ASI), Commissionerate of Commercial Taxes informed that the firm had not filed the 20E/20H form, since there was not a subcontract. If the Principal contractor compounds his turnover, the subcontractor under him need not pay tax, as the tax is being paid for the whole amount of contract. Then the official from the Office of the Accountant General brought the attention of the Committee over the fact that the assessee had not claimed deduction for the subcontractors' turnover, but claimed ITC on the basis of invoices submitted by subcontractors against payment effected and availed more ITC than admissible. He continued that from the documents, it could not be ascertained whether goods mentioned in the ITC for the works was compounded or not and details of tax paid thereon. The Joint Commissioner submitted that the issue put forth by Audit regarding subcontract was not sustainable and admitted that latter point was correct. The Committee accepted the explanation and directed to re-examine and rectify the error occurred.

35. To a query regarding the short levy of tax, the Secretary, Taxes Department apprised that engineering portion of ₹ 4.70 crore, supply portion of ₹ 37 crore and construction portion of ₹ 18.90 crore together constituted the total receipt of ₹ 60.70 crore. The exemption granted in the supply portion as transfer of goods was challenged by the Audit. But it was a deemed sale in the course of interstate trade under the Central Sales Tax Act and the State Government had no power to levy tax on such goods. The Committee was informed that if the awarder transferred the goods, it would be exempted from tax and if the transfer occurred in the name of the contractor himself, it would be liable to tax. The Committee urged the Taxes Department to ascertain whether good transfer was carried out by the awarder or the contractor and to take appropriate action to rectify the mistakes, if any, noticed on scrutiny.

36. The Committee accepted the notes furnished by the Taxes Department regarding short levy of tax and interest of ₹ 4.2 lakh, CTO, Thiruvananthapuram, without further discussion.

Conclusion/Recommendation

37. The Committee opines that since an amount of ₹ 2.14 crore, the total CIF value of imported materials was incorporated in the works contract in the case of M/s Leighton Contractors, it was taxable. So it demands that the Taxes Department should examine the matter and furnish a report in this regard.

38. Regarding the audit objection on the exemption granted in the supply portion lead to a short levy of ₹ 6.70 crore, the Committee recommends to ascertain whether good transfer was carried out by the awarder or the contractor and to take appropriate action to rectify the mistakes, if any, noticed on scrutiny.

AUDIT PARAGRAPH

Application of incorrect rate of tax

(CTOs, Works Contract, Ernakulam and Mattancherry; November 2009)

Section 6(1) (f) of KVAT Act as amended from 1st July, 2006, stipulates that in the case of transfer of goods involved in execution of works contract, where the transfer is not in the form of goods, but in some other form, tax is leviable at the rate of 12.5 per cent and when transfer is in the form of goods, tax is leviable at the rates prescribed under the respective schedule. Further, Rule 10(2) (a) of KVAT Rules prescribes that in relation to works contract in which transfer of property takes place not in the form of goods but in some other form, the taxable turnover in respect of the transfer of property involved in the execution of works contract shall be arrived at after deducting labour and other charges from the total amount received or receivable by the dealer for the execution of the works contract.

In case of two contractors who were engaged in works contract for the years 2006-07 and 2007-08, where transfer of property took place not in the form of

goods but in some other form, the taxable turnover was arrived at after deducting expenses much higher than that allowable under the Rule. Further, tax was assessed at various rates ranging from 4 to 20 per cent, instead of at the correct rate of 12.5 per cent. The assessing authorities did not detect these mistakes which resulted in short levy of tax and interest of ₹ 9.21 crore.

We pointed out the matter to the department and reported to the Government in May 2010. We have not received their replies (December 2010).

(Three CTOs* : April 2008)

Section 7(5) of the CST Act stipulates that a registered dealer may apply in the prescribed manner not later than six months before the end of a year to the authority which granted his certificate for cancellation of such registration, and the authority shall unless the dealer is liable to pay tax under this Act, cancel the registration accordingly and where he does so, the cancellation shall take effect from the end of the year. The rate of tax for the year 2008-09 as per Section 8(a) (i) of the KVAT Act for a dealer without CST registration was at the rate of three per cent and as per Section 8(a) (ii) of the KVAT Act, for a dealer with CST registration, was eight per cent.

We observed in CTOs works contract, Ernakulam, Kozhikkode and Thiruvananthapuram, that 18 dealers had applied for cancellation of CST registration in April, 2008 and the assessing authorities granted permission to cancel the CST registration in April, 2008 itself. This allowed the dealers to pay tax at reduced rate for the year 2008-09 in violation of the provisions of the Act, resulting in short levy of tax of ₹ 4.66 crore.

After we pointed out the matter, the assessing authority stated that the provisions contained in Section 6(5) of the KVAT Act enables the dealer to cancel the registration and opt to pay tax under Section 6(5) in that year itself. The reply is not tenable as Section 6(5) relates to presumptive tax and is not relevant to the case. Further, explanation 2 under Section 8 enables dealers who had opted for cancellation of CST registration prior to 31 March, 2008 for payment of tax under Section 8.

* CTOs: Works Contract, Ernakulam, Kozhikkode and Thiruvananthapuram.

We pointed out the matter to the department and reported to the Government in May 2010. We have not received their replies (December 2010).

[Three* CTOs (WC & LT); July 2009 to September 2009]

Any works contractor not registered under the CST Act may opt to pay tax at two per cent of the whole contract amount as per Section 8(a) of the KVAT Act. The works contractor, not falling under the above clause may pay tax at four per cent.

Three assesseees in works contract having CST registration opted to pay compounded tax for the years 2005-06 and 2007-08 on the contract receipt of ₹ 6.63 crore at the rate of two per cent instead of at four per cent. This resulted in short levy of tax and interest of ₹ 13.31 lakh.

After we pointed out the cases in August 2009 and October 2009, the department stated in December 2009 and January 2010 that in one† case action was initiated to realise the short levy and in another‡ case assessment had been completed in November 2009 creating an additional demand of ₹ 2.35 lakh. Reports on recovery have not been received (December 2010).

We reported the cases to the Government between December 2009 and February 2010. We have not received their replies (December 2010).

(CTO Works Contract, Thiruvananthapuram; March 2009)

Section 8(a) of the KVAT Act prescribes that any works contractor, other than those engaged in the installation of plant and machinery may, opt to pay tax at four per cent of the whole contract amount. The Act further stipulates that in the case of transfer of goods involved in execution of works contract, where the transfer is not in the form of goods, but in some other form, the rate of tax applicable is 12.5 per cent. Further, under Rule 9 of the KVAT Rules, deduction admissible towards labour and other charges in respect of contract receipts for installation of plant and machinery is at the rate of 15 per cent. Interest is also leviable at the prescribed rates as specified under the Act for default in payment of tax within the due dates.

An assessee who executed the works contract of supply and installation of medical gas system, with vacuum plant and suction unit with regulator, in various

* Alappuzha, Kottayam and Malappuram.

† CTO (WC & LT), Kottayam.

‡ CTO (WC & LT), Malappuram.

hospitals, incorrectly assessed tax at the compounded rate of four per cent on the gross contract receipts of ₹ 39.92 lakh for the year 2006-07 instead of assessing the contract receipts at the rate of 12.5 per cent after deducting 15 per cent towards labour and other charges. This resulted in short levy of tax and interest of ₹ 3.25 lakh.

We pointed out the matter to the department in April 2009 and reported to the Government in July 2009. The Government stated in November 2009 that the assessment was revised with an additional demand of ₹ 3.32 lakh. We have not received further report on the recovery (December 2010).

[Audit Paragraph 2.12.3 contained in the Report of the Comptroller and Auditor General of India for the year ended 31 March, 2010 (Revenue Receipts).]

Notes received from Government on the above Audit Paragraph is included as Appendix II.

39. Regarding the short levy of tax and interest of ₹ 9.21 crore, the Secretary, Taxes Department apprised that the cases are still pending before the court.

40. When enquired whether the short levy was collected, the witness, Secretary, Taxes Department informed that out of the two cases pointed out by Audit, Revenue Recovery Proceedings was initiated in one case. In the case of Southern Investments its CST Registration was cancelled with effect from 31-3-2008 and so the firm was not liable to pay tax as per section 8(A) (2) for the year 2008-09.

41. Regarding the case of M/s Neelatt Constructions, the Secretary, Taxes Department submitted that the firm had filed return and paid ₹ 3 lakh. When enquired the reason for the difference in the amount pointed out by Audit and amount realised as short levied, the Secretary, Taxes Department apprised that the department had collected ₹ 3,06,616 as short levied amount with interest as against audit objection of ₹ 3,00,000. The Committee accepted the explanation.

Conclusion/Recommendation

42. The Committee directs the Taxes Department to furnish a report detailing the present status of the case of short levy of ₹ 9.21 crore at the earliest.

AUDIT PARAGRAPH

Short levy due to incorrect classification

(Three CTOs : November 2009 to January 2010)*

The Supreme Court had held [M/s Kone Elevator (India) Ltd. Vs State of Andhra Pradesh in 140 STC 22 (SC)] that sale, erection and commissioning of a lift is sale and not works contract. In addition to output tax leviable at appropriate rates, cess at the rate of one per cent is leviable on the output tax payable from 2008-09.

We noticed that five assesseees in CTOs Special Circle II, Ernakulam, Works Contract, Ernakulam and Works Contract, Thiruvananthapuram incorrectly assessed the turnover for sale, erection and commissioning of lifts for the years 2005-06 to 2008-09 as works contract and claimed exemption in relation to the turnover on labour charges incurred. We noticed that the assessing authorities did not detect this mistake which resulted in short levy of tax and interest of ₹ 11.24 crore.

After we pointed out these mistakes the assessing authorities stated that the Supreme Court decision pointed out in audit had been challenged by the dealer and had been referred to the constitution bench of the Supreme Court. The reply is not acceptable as the decision of the Supreme Court is still valid as it has not been stayed by the Court. Moreover, the court order produced by the assessee does not prevent the assessing authorities from making any assessments in this regard but only restricts them from taking any coercive steps to recover tax.

* CTOs: Special Circle II, Ernakulam, Works Contract, Ernakulam and Works Contract, Thiruvananthapuram.

We pointed out the matter to the department and reported to the Government in May, 2010. We have not received their replies (December 2010).

[Audit Paragraph 2.12.4 contained in the Report of the Comptroller and Auditor General of India for the year ended 31 March, 2010 (Revenue Receipts).]

Notes received from Government on the above Audit Paragraph is included as Appendix II.

43. To a query, the Secretary, Taxes Department informed that Accountant General's objection was based on a former Supreme Court's verdict that sale, erection and commissioning of a lift is sale. In a recent judgement the Supreme Court held it as works contract. So the cases are not standing.

Conclusion/Recommendation

No comments.

AUDIT PARAGRAPH

Short levy due to incorrect computation of tax

[CTO (WC<), Kozhikkode; May 2010]

Section 8(a) (ii) of the KVAT Act prescribes that, any works contractor having CST registration may opt to pay tax at four per cent on the whole contract amount.

An assessee who had opted to pay compounded tax was having total contract receipt of ₹ 20.58 crore. He paid tax of ₹ 73.50 lakh instead of ₹ 82.31 lakh. This resulted in short levy of tax of ₹ 8.81 lakh.

After we pointed out the case to the department in June 2009, the department stated in November 2009 that notice had been issued to the dealer. We have not received further report on the recovery (December 2010).

We reported the matter to the Government in January 2010. We have not received their reply (December 2010).

VALUE ADDED TAX**Short levy due to excess availing input tax credit****(CTO, Special Circle II, Ernakulam; November 2009)**

Where any goods purchased in the State are subsequently sent outside the State or used in the manufacture of goods and the same are sent outside the State otherwise than by way of sale in the course of interstate trade or export or where the sale in the course of interstate trade is exempted from tax, input tax credit shall be limited to the amount of input tax paid in excess of the rate specified under the CST Act on the purchase turnover of such goods sent outside the State as per the proviso to section 11(3) of KVAT Act. The rate of tax applicable under the CST Act was three per cent during 2007-08. Section 11 (7) of the Act further stipulates that, if goods in respect of which input tax credit has been availed are subsequently used, fully or partly, for purposes in relation to which no input tax credit is allowable under the section, the input tax credit availed of in respect of such goods shall be reversed.

An assessee stock transferred raw materials valued at ₹ 3.44 crore and 90.30 per cent of their finished products for the year 2007-08. However, while limiting input tax credit to that extent by assessing reverse tax, it was assessed as ₹ 24.05 crore instead of ₹ 27.32 crore. This resulted in short levy of tax and interest of ₹ 3.85 crore.

We pointed out the mistake to the department in December 2009 and reported to the Government in June 2010. We have not received their replies (December 2010)

(CTO, Special Circle II, Ernakulam; November 2009)

Input tax credit (ITC) shall not be allowed to any amount illegally collected by way of tax as per proviso to Section 11(3) of the KVAT Act.

A dealer availed ITC of ₹ 35.75 crore on local purchases of goods valued at ₹ 828.35 crore as against the eligible claim of ₹ 33.13 crore for the year 2007-08 which was not detected by the assessing officer. This resulted in short levy of tax and interest of ₹ 3.11 crore.

We pointed out the mistake to the department in December 2009 and reported to the Government in May 2010. We have not received their replies (December 2010).

(IAC, Kattappana; November 2009)

A dealer availed input tax credit of ₹ 2.60 crore for the years 2005-06 to 2007-08 against the eligible credit of ₹ 2.57 crore due to mistake in computation which was not detected by the assessing officer. This resulted in short levy of tax and interest of ₹ 4.53 lakh.

We pointed out the mistake to the department in January 2010 and reported to the Government in May 2010. We have not received their replies (December 2010).

(CTO, Special Circle, Malappuram; March 2009)

During 2005-06 and 2006-07, the rate of tax under the CST Act was four per cent.

A dealer who effected interstate stock transfer of ayurvedic products for ₹ 16.38 crore and ₹ 19.02 crore during 2005-06 and 2006-07 respectively, claimed the entire input tax credit without limiting it to tax paid in excess of four per cent on stock transfer outside the State which was not detected by the assessing officer. This resulted in short levy of tax and interest of ₹ 41.69 lakh.

We pointed out the mistake to the department in April 2009 and reported to the Government in December 2009. We have not received their replies (December 2010).

(CTO, Special Circle, Mattancherry at Aluva; September 2009)

Input tax credit shall not be allowed as per Section 11(5) of the KVAT Act for the purchase of goods which are used in the manufacture, processing or packing of goods specified in the first schedule to the Act. Coconut oil and coconut oil cake are included in first schedule with effect from 1st May, 2007.

A dealer who used copra purchased by him for manufacture of coconut oil and coconut oil cake for the year 2007-08 availed input tax credit of ₹ 8.41 lakh for the month of May and June 2007 on the purchase turnover of copra. This resulted in excess availing of ITC of ₹ 8.41 lakh and consequent short levy of tax and interest of ₹ 9.92 lakh.

We pointed out the mistake to the department in October 2009 and reported to the Government in May 2010. We have not received their replies (December 2010).

• **(CTO, Special Circle, Kasaragod; August 2009)**

A dealer claimed input tax credit for the entire purchase turnover of cashew nut for the year 2007-08. Even though 35.15 per cent of the total sales turnover relates to consignment and stock transfer, the input tax credit availed corresponding to this turnover was not deducted and the assessing officer had not detected this mistake. This resulted in short levy of tax of ₹ 6.69 lakh.

After we pointed out the mistake to the department in September 2009; the department stated in December 2009 that notice had been issued to the assessee. We have not received further reply from the department (December 2010).

We reported the defect to the Government in May 2010. We have not received their reply (December 2010).

[Audit Paragraphs 2.12.5 to 2.12.6 contained in the Report of the Comptroller and Auditor General of India for the year ended 31 March, 2010 (Revenue Receipts).]

Notes received from Government on the above Audit Paragraphs included as Appendix II.

Conclusion/Recommendation

No remarks.

AUDIT PARAGRAPH

Application of incorrect rate of tax

(19* CTOs; August 2008 to November 2009)

The KVAT Act provides that batteries and parts thereof, petroleum bitumen (up to 30th June, 2006), lead oxide, mansion polish, harpic, lizol, biscuits of all varieties and pickles sold under a brand name, speakers etc., handloom

* AIT & CTO Alappuzha, Special Circles: I Ernakulam, II Ernakulam, Kasaragod and Palakkad CTOs: Chalakudy, First Circle Changanacherry, Chittur, First Circle Kannur, Third Circle Kannur, Koothuparamba, First Circle Kozhikkode, Second Circle Kozhikkode, Fourth Circle Kozhikkode, Manjeri, Neyyattinkara, Payyannur, First Circle Thiruvananthapuram and Second Circle Thiruvananthapuram.

cotton tapes, medicated toothpowder and toothpaste, epoxy powder, supari, black and red oxide, dettol, detergents, doors, windows and their frames and thresholds for doors of aluminium and plastic, prickly heat powder and similar medicated body powder, adhesive tape and cosmetics are taxable at the rate of 12.5 per cent and branded soft drinks excluding soda and refrigerators and their spare parts are taxable at the rate of 20 per cent from July 2006 to March 2007. The Act also stipulates that expeller variety of sesame oil cake and frozen marine products are taxable at the rate of four per cent. The Act further prescribes that where sale is to or by military, air force or NCC canteen and canteen stores department, the tax payable shall be at half the rate applicable to such goods as per proviso to Section 6(1) of the KVAT Act. The High Court of Kerala had held that Nycil prickly heat powder is medicated talcum powder and not a drug or medicine and that, purchase of vehicles through CSD is not eligible for the concessional rate of tax as motor vehicles are sold not to CSD but to defence personnel. Further, interest at 12 per cent per annum is leviable for default in payment of taxes within the due dates.

We found during scrutiny of the records of 19 offices that 24 dealers had applied incorrect rate of tax on various commodities having a total taxable turnover of ₹ 23.66 crore. In spite of the specific provisions in the Act, these mistakes were not detected by the AAs which resulted in short levy of tax and interest of ₹ 2.40 crore as detailed below:

Sl. No.	Assessment circles Month of Audit	Commodity Assessment year	Rate applicable Rate applied	Turnover (₹)	Short levy (₹)
1	2	3	4	5	6
1	CTO, Special Circle, Palakkad, March 2009	Battery 2005-06 and 2006-07	12.5 4	6.69 crore	72.34 lakh
After we pointed out the case to the department in May 2009, the department stated in June 2009 that notice under Section 25 (1) had been issued in June 2009. We reported the defect to the Government in February 2010. We have not received their reply (December 2010).					

1	2	3	4	5	6
2	CTO, Special Circle, Kasaragod, August 2009	Petroleum bitumen 2005-06 and 2006-07	12.5 4	2.69 crore	31.45 lakh
After we pointed out the case in September 2009, the department stated in December 2009 that the assessment had been revised based on audit observation. We reported the matter to the Government in March 2010. We have not received their reply (December 2010).					
3	CTO, Special Circle II, Ernakulam, March 2009	Motor Vehicles 2005-06 and 2006-07	12.5 6.25	1.61 crore	12.89 lakh
We pointed out the mistake to the department in April 2009 and reported to the Government in May 2010. We have not received their replies (December 2010).					
4	CTO, First Circle, Changanacherry, December 2008	Lead Oxide 2005-06 and 2006-07	12.5 4	1.21 crore	12.87 lakh
We pointed out the case to the department in January 2009 and reported to the Government in February 2010. We have not received their replies (December 2010).					
5	CTO, Special Circle I, Ernakulam, April 2009	Nycil prickly heat powder 2005-06	12.5 4	1.07 crore	12.42 lakh
We pointed out the mistake to the department in May 2009 and reported to the Government in May 2010. We have not received their replies (December 2010).					

1	2	3	4	5	6
6	AIT & CTO, Alappuzha, June 2009	Cotton tape 2005-06 and 2006-07	12.5 0	97.87 lakh	12.23 lakh
After we pointed out the case in July 2009, the department stated in September 2009 that the assessments were revised. Report on recovery has not been received. We reported the case to the Government in January 2010. We have not received their reply (December 2010).					
7	CTO, Chittur, August 2009	Medicated tooth powder and toothpaste 2005-06 to 2007-08	12.5 4	78.06 lakh	8.90 lakh
We pointed out the case to the department in September 2009 and reported to the Government in March 2010. We have not received their replies (December 2010).					
8	CTO, Second Circle, Thiruvananthapuram, February 2009	Branded Soft drinks 2006-07	20 12.5	75.10 lakh	6.87 lakh
After we pointed out the case, the department stated in October 2009 that the assessment had been revised in September 2009. We reported the matter to the Government in March 2010. We have not received their reply (December 2010).					
9	CTO, First Circle, Kannur, August 2009	Epoxy powder 2005-06 to 2007-08	12.5 4	76.67 lakh	6.52 lakh
After we pointed out the case in September 2009, the department stated in November 2009 that notice had been issued to the assessee. We reported the matter to the Government in February 2010. We have not received their reply (December 2010).					

1	2	3	4	5	6
10	CTO, Fourth Circle, Kozhikkode, November 2009	Doors, windows and their frames and thresholds for doors of aluminium, plastics etc. 2007-08	12.5 4	57.76 lakh	5.89 lakh
We pointed out the case to the department in December 2009 and reported to the Government in February 2010. We have not received their replies (December 2010).					
11	CTO, First Circle, Changanacherry, December 2008	Mansion polish, harpic, lizol, shoe polish & brasso 2005-06 and 2006-07	12.5 4	51.97 lakh	5.81 lakh
We pointed out the case to the department in January 2009 and reported to the Government in February 2010. We have not received their replies (December 2010).					
12	CTO, Second Circle, Kozhikkode, June 2009	Adhesive Tape 2005-06 to 2007-08	12.5 4	56.27 lakh	5.55 lakh
We pointed out the mistake to the department in July 2009 and reported to the Government in May 2010. We have not received their replies (December 2010).					
13	CTO, Second Circle, Thiruvananthapuram, February 2009	Biscuits sold under brand name 2005-06 and 2006-07	12.5 4	53.91 lakh 5.34 lakh	
After we pointed out the case in March 2009, the department stated in October 2009 that the assessments for the years have been revised. We reported the matter to the Government in March 2010. We have not received their reply (December 2010).					

1	2	3	4	5	6
14	CTO, Neyyattinkara, December 2008	Expeller variety of sesame oil cake 2005-06 to 2006-07	4 0	97.43 lakh	4.85 lakh
	We pointed out the mistake to the department in January 2009 and reported to the Government in November 2009. We have not received their replies (December 2010).				
15	CTO, Koothuparamba, June 2009	Supari (Betel nut) 2005-06	12.5 4	40.88 lakh	4.83 lakh
	After we pointed out the case in July 2009, the department stated in September 2009 that notice had been issued to the assessee. We have not received further information. We reported the matter to the Government in January 2010. We have not received their reply (December 2010).				
16	CTO, Third Circle, Kannur, June 2009	Oxides 2005-06	12.5 4	33.98 lakh	3.98 lakh
	After we pointed out the case in July 2009, the department stated in August 2009 that notice had been issued to the assessee. After we reported the case to the Government, we have not received their reply (December 2010).				
17	CTO, First Circle, Kozhikkode, August 2009	Dettol 2007-08	12.5 4	50.92 lakh	3.82 lakh
	After we pointed out the defect to the department in September 2009 and reported to the Government in February 2010, we have not received their replies (December 2010).				
18	CTO, Payyannur, August 2009	Cosmetics 2005-06	12.5 0	21.31 lakh	3.73 lakh
	After we pointed out the mistake to the department in October 2009 the department stated in February 2010 that assessment was revised u/s 25(1) and tax determined as 2.72 lakh. We have not received further report on recovery from the department (December 2010). We reported the mistake to the Government in May 2010. We have not received their replies (December 2010).				

1	2	3	4	5	6
19	CTO, Manjeri, August 2008	Pickles sold under a brand name 2005-06 and 2006-07	12.5 4	43.61 lakh	3.71 lakh
	After we pointed out the case to the department in October 2008 and reported to the Government in December 2008, the Government stated in November 2009 that the assessments were revised in May 2009 and an additional demand of ₹ 3.71 lakh created. We have not received further report on recovery (December 2010).				
20	CTO, First Circle, Thiruvananthapuram, January 2009	Speakers 2005-06	12.5 4	29.31 lakh	3.31 lakh
	After we pointed out the case to the department in March 2009 and reported to the Government in July 2009, the Government stated in October 2009 that assessment had been reopened under Section 25 of the Act and additional demand created was demanded from the dealer. We have not received further report on recovery (December 2010).				
21	CTO, Special Circle II, Ernakulam, October 2009	Frozen Marine products 2007-08	4 0	67.19 lakh	3.17 lakh
	We pointed out the mistake to the department in December 2009 and reported to the Government in May 2010. We have not received their replies (December 2010).				
22	CTO, First Circle, Thiruvananthapuram, January 2009	Refrigerator and spares 2006-07	20 12.5	32.29 lakh	2.93 lakh
	We pointed out the mistake to the department in March 2009 and reported to the Government in July 2009. The Government stated in October 2009 that the assessment had been revised in May 2009 and balance tax and interest of ₹ 4.72 lakh demanded out of which the assessee had remitted an amount of ₹ 80,000. We have not received further report on recovery of balance amount (December 2010).				

1	2	3	4	5	6
23	CTO, Chalakudy, March 2009	Batteries and detergents 2006-07	12.5 4	28.07 lakh	2.93 lakh
	We pointed out the case to the department in March 2009 and reported to the Government in December 2009. We have not received their replies (December 2010).				
24	CTO, Special Circle I, Ernakulam, March 2009	Motor Vehicles 2005-06 and 2006-07	12.5 6.25	46.89 lakh	2.93 lakh
	After we pointed out the mistake in March 2009, the assessing authority stated that the assessee had sold the goods to CSD and all the sale bills were raised in the name of CSD. The reply is not correct in view of the judicial pronouncement as vehicles are sold in the names of personnel and not in the name of CSDs as CSDs cannot take registration in their name. We pointed out the mistake to the department in May 2009 and reported to the Government in May 2010. We have not received their replies (December 2010).				

(CTO, Special Circle, Mattancherry at Aluva; September 2009)

High Court of Kerala had held (MP Agencies Vs State of Kerala reported in 18 KTR 82) that ujala supreme and ujala stiff and shine are not industrial raw materials coming under list A of third schedule to the KVAT Act but are commodities taxable at 12.5 per cent under the Act. Further, sales to canteen stores department are taxable at half the rate applicable under proviso to Section 6(1) of the KVAT Act.

A dealer assessed tax for the year 2007-08 on the sales turnover of ujala supreme valued at ₹ 2.36 crore at the rate of four per cent and the sales turnover of ujala stiff and shine valued at ₹ 9.43 lakh to canteen stores department at two per cent instead of at the correct rate of 12.5 per cent and 6.25 per cent respectively. This resulted in short levy of tax and interest of ₹ 23.94 lakh.

We pointed out the mistake to the department in October 2009 and reported to the Government in May 2010. We have not received their replies (December 2010).

[Audit Paragraph 2.12.7 contained in the Report of the Comptroller and Auditor General of India for the year ended 31 March, 2010 (Revenue Receipts).]

Notes received from Government on the above Audit Paragraph is included as Appendix II.

44. Regarding the cases mentioned in the audit paragraph, the Joint Commissioner (ASI), Commissionerate of Commercial Taxes informed that assessment for the year 2005-06 had been completed and levied tax accordingly. But the assessment for the year 2006-07 has to be completed.

45. To a query the witness, Joint Commissioner (ASI), Commissionerate of Commercial Taxes informed that stay has not been vacated. He reiterated the departments stand that since the product 'Dantha Davana Choornam' is medicated dental powder, it should be included in the Schedule V(A). But the Company argues that the product is an ayurvedic medicine so only 4% tax is applicable. The Committee reprimanded the officials appeared before the Committee without studying the case in detail. The Committee remarked that the case of KP Namboodiris Dantha Davana Choornam was settled in the year 2010 itself taking into account that the product was manufactured with Ayurvedic Drug Licence and so their argument was substantial.

46. When the Committee was informed that the commodity, PVC profile was taxable at the rate 4% only and there was no loss of revenue, the official from the Office of the Accountant General interfered to inform about the common practice of transporting PVC door unit earmarked as PVC profile to save tax. The companies claim that labourer make door using the PVC profile according to the need of the customer. So the material could not be considered as door. Then the Committee directed the Taxes Department to look into the matter and to take necessary steps to curtail tax evasion.

47. The Committee enquired the reason for the collection of ₹ 33 thousand as against the short levied amount of ₹ 5.34 lakh pointed out by Audit. The witness, Joint Commissioner (ASI), Commissionerate of Commercial Taxes submitted that if the commodity is a branded item, tax would be levied at the rate of 12.5% otherwise the rate is 4% only. In this case the major portion of product purchased and sold by the dealer were unbranded so paid the tax at 4% rate and only negligible amount was paid at the rate of 12.5% for the branded item. The Committee accepted the explanation.

48. Regarding the audit objection the department's contention was that in the Malabar region dry arecanut is known as supari and it is taxable only at the rate of 4%. Then the official from the Office of the Accountant General stated that it was not evident whether it was purchased locally or not. The Committee opined that the name 'new supari' might be a branded item and directed the Taxes Department to verify the case and report to it.

49. To a query the Joint Commissioner (ASI), Commissionerate of Commercial Taxes informed the Committee that the STAI, Ernakulam had granted stay against the order of the appellate authority.

50. When enquired about the amount collected so far, the witness, Joint Commissioner (ASI), Commissioner of Commercial Taxes apprised that the total assessment of ₹ 3.86 lakh was later modified on appeal as ₹ 1.2 lakh and intimated to Revenue Recovery Authority.

51. Regarding the audit paragraph, the Joint Commissioner (ASI), Commissionerate of Commercial Taxes deposed that assessment had been revised. The appeal filed in this regard was disposed since the item was fresh and it was not liable to tax. When informed that the Audit was referred about an item once exported and returned back due to some reasons, the Committee emphasized that since the item was returned exported item, it might be frozen and directed the Taxes Department to take necessary steps to reassess the case.

52. To a query of the Committee regarding the sales to Canteen Stores Department the witness Joint Commissioner (ASI), Commissionerate of Commercial Taxes replied that ₹ 2,79,000 as tax and an amount of ₹ 1,34,027 as interest is to be realised and Revenue Recovery proceedings had been initiated to recover the amount.

53. The Committee was informed that the case reported at CTO, Special Circle, Mattancherry was still pending before the Court.

Conclusion/Recommendation

54. The Committee observes that traders followed the practice of transporting PVC door units under the classification of PVC profile and thereby escaped from paying tax at the required rate. The Committee views it not tenable and recommends that Taxes Department should take necessary steps to curtail such kind of tax evasion.

55. With regard to the tax realisation at 4% for the branded item 'new supari', the Committee demands that Taxes Department should re-examine the case and report.

56. The Committee was astonished to note that the item categorised as fresh, was once exported and returned and reprimands the Taxes Department for the slothful attitude commenting that they should conduct physical verification of items while inputting tax rather than relying on the statements filed by the clients. It exhorts the Taxes Department to reassess the case at the earliest.

57. The Committee urges the Taxes Department to furnish the present status of the RR proceedings taken against Canteen Stores Department.

AUDIT PARAGRAPH

Short levy due to excess availing of special rebate

(CTO, Special Circle, Ernakulam; March 2009)

Where the goods in respect of which tax under Section 6(2) of the Act has been paid, are sent outside the State or used in the manufacture of goods

and the same are sent outside the State, otherwise than by way of sale in the course of interstate trade or export or where the sale in the course of interstate trade is exempted from tax, the special rebate under this section shall be limited to the amount of such tax paid in excess of four per cent as per proviso to Section 12 of KVAT Act.

An assessee who effected interstate stock transfer of gold ornaments valued at ₹ 151.04 crore for the year 2006-07 availed special rebate for the entire purchase instead of limiting it to the eligible limit. This resulted in short levy of tax and interest of ₹ 1.67 crore.

We pointed out the mistake to the department in May 2009 and reported to the Government in June 2010. We have not received their replies (December 2010).

• [CTO, Special Circle (produce), Mattancherry; July 2009]

An assessee effected interstate stock transfer of tea manufactured by him valued at ₹ 29.88 crore during 2006-07. However, the assessee did not limit special rebate to that extent. This resulted in short levy of tax and interest of ₹ 5.96 lakh.

We pointed out the mistake to the department in August 2009 and reported to the Government in June 2010. We have not received their replies (December 2010).

(CTO, Special Circle II, Ernakulam; November 2009)

As per Section 12 (1) (a) of the KVAT Act, in calculating the net tax payable, special rebate equal to the tax paid under Section 6(2) of the KVAT Act shall be deducted.

An assessee who had not disclosed purchases from unregistered dealers, availed special rebate of ₹ 7.46 lakh for the year 2007-08. This resulted in short levy of tax and interest of ₹ 8.87 lakh.

We pointed out the mistake to the department in December 2009 and reported to the Government in May 2010. We have not received their replies (December 2010).

• (CTO, Special Circle, Kasaragod; August 2009)

A dealer claimed special rebate relating to the purchase tax paid during the year 2006-07 valued at ₹ 6.49 lakh for the year 2007-08. However, the assessee had already claimed the entire special rebate for the year 2006-07 in that year itself which was not detected by the assessing officer. This resulted in short levy of tax of ₹ 6.49 lakh.

After we pointed out the defect to the department in September 2009, the department stated in December 2009 that notice had been issued to the assessee. We have not received further report on recovery (December 2010).

We reported the mistake to the Government in May 2010. We have not received their reply (December 2010).

[Audit Paragraph 2.12.8 contained in the Report of the Comptroller and Auditor General of India for the year ended 31 March, 2010 (Revenue Receipts).]

Notes received from Government on the above Audit Paragraph is included as Appendix II.

58. The witness, Joint Commissioner (ASI), Commissionerate of Commercial Taxes informed the Committee that the stay had been vacated and reassessed the case. On verification it was found that AG's figure was not correct and the amount short levied was only ₹ 85,94,300. He submitted that the variation was occurred since 50% of the input was disallowed. The firms claimed that 50% of the high value costumes and ornaments from showrooms outside the state were returned back to them for re-polishing the same, and they send back the items after re-polishing. He informed that the AG's observation that fifty per cent of the items were locally purchased was correct.

59. When enquired how the balance of entry tax was adjusted, the Joint Commissioner (ASI), Commissionerate of Commercial Taxes deposed that since the purchase tax due on 31-3-2007 and the special rebate admissible were the same, there was no difference in the amount.

Conclusion/Recommendation

No comments.

AUDIT PARAGRAPH

Short levy of output tax

(CTO, Special Circle I, Ernakulam; May 2009)

Where any dealer detects any omission or mistake in the annual return submitted by him with reference to the audited figure, he shall file revised annual return rectifying the mistake or omission along with the audit certificate as per Section 42(2) of the KVAT Act. Where, as a result of such revision, the tax liability increases, the revised return shall be accompanied by proof of payment of tax, interest due thereon and penal interest, calculated at twice the rate of interest.

A dealer availed input tax credit of ₹ 32.97 lakh on purchase for the year 2006-07 valued at ₹ 3.97 crore. However, as per the certified accounts, the purchases from the VAT dealers were valued at ₹ 15.06 lakh. In spite of this, no action was taken by the assessing officer to get the return revised or to disallow the excess input tax credit and realise the differential tax. This resulted in short levy of tax, interest and penal interest of ₹ 53.61 lakh.

We pointed out the mistake to the department in May 2009 and reported to the Government in May 2010. We have not received their replies (December 2010).

(CTO, Special Circle I, Ernakulam; April 2009)

A dealer assessed output tax on sales turnover of ₹ 112.37 crore as conceded in the return for the year 2006-07, even though local sale as per the certified accounts for that year was ₹ 113.37 crore. However, no action was taken to revise the return and pay differential tax. This resulted in short levy of tax, interest and penal interest of ₹ 24.05 lakh.

We pointed out the mistake to the department in May 2009 and reported to the Government in May 2010. We have not received their replies (December 2010).

(CTO, Special Circle, Mattancherry at Aluva; September 2009)

A dealer in steel availed input tax credit of ₹ 57.06 lakh for the year 2007-08 on the purchase turnover of ₹ 14.19 crore as conceded in the annual return. However, as per the certified accounts, the assessee was eligible for an input tax credit of ₹ 49.30 lakh only on the purchase turnover of ₹ 12.26 crore. This resulted in short levy of tax, interest and penal interest of ₹ 11.73 lakh.

We pointed out the mistake to the department in October 2009 and reported to the Government in May 2010. We have not received their replies (December 2010).

[CTO, Special Circle (produce), Mattancherry; June 2009]

A dealer failed to assess tax on DEPB licence for the years 2005-06 to 2007-08, valued at ₹ 1.57 crore. Even though this fact was available in the audited accounts, the AA failed to detect it and levy tax during scrutiny of the return. This resulted in short levy of tax, interest and penal interest of ₹ 10.55 lakh.

After we pointed out the mistake the assessing officer stated in July 2009 that the assessee remitted ₹ 6.30 lakh in July 2009 of which ₹ 1.42 lakh was adjusted against interest and the balance against tax (December 2010).

We reported the mistake to the Government in May 2010. We have not received their reply (December 2010).

(CTO, Special Circle II, Ernakulam; March 2009)

A dealer availed input tax credit of ₹ 51.55 lakh for the year 2006-07 on the local purchases valued at ₹ 7.23 crore. However, the certified accounts revealed a local purchase turnover of ₹ 6.04 crore only which was not detected by the assessing officer and the excess claim disallowed. This resulted in short levy of tax, interest and penal interest of ₹ 8.03 lakh.

We pointed out the mistake to the department in April 2009 and reported to the Government in May 2010. We have not received their replies (December 2010).

[Audit Paragraph 2.12.9 contained in the Report of the Comptroller and Auditor General of India for the year ended 31 March, 2010 (Revenue Receipts).]

Notes received from Government on the above Audit Paragraph is included as Appendix II.

60. Regarding a case in CTO, Special Circle, Ernakulam, the witness, Joint Commissioner (ASI), Commissionerate of Commercial Taxes informed the Committee that the department admits the observation by audit. He continued that one third out of the total amount of additional amount to the tune of ₹ 20,42,240 and ₹ 8,94,586 interest thereon had been realised.

61. An official from the Office of the Accountant General informed the Committee that had the variation in CENVAT is proportionate both in sale and purchase; audit objection could have been dispensed with. Then the Joint Commissioner (ASI), Commissionerate of Commercial Taxes remarked that from the report furnished from the sub offices, it seems in the P & L accounts both had different rates.

Conclusion/Recommendation

No comments.

AUDIT PARAGRAPH

Short levy due to incorrect allowance of discount

(CTO, Special Circle, Mattancherry; January 2009)

Explanation III (ii) under Section 2(lii) of the KVAT Act stipulates that 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.

An assessee incorrectly excluded from the turnover, discount amounting to ₹ 12.37 crore and ₹ 1.17 crore for the years 2005-06 and 2006-07 respectively which were not shown in the invoices raised by the dealer. This resulted in short levy of tax of ₹ 54.18 lakh.

We pointed out the matter to the department in February 2009 and reported to the Government in April 2010. We have not received their replies (December 2010).

• **(CTO, Special Circle I, Ernakulam; November 2009)**

A dealer collected tax on the entire invoice price for the years 2005-06 and 2006-07 and subsequently allowed discount through credit notes and excluded the discount from taxable turnover which was not detected by the assessing officer and the discount thus claimed was not disallowed. This resulted in short levy of tax of ₹ 39.66 lakh.

We pointed out the mistake to the department in March 2010 and reported to the Government in May 2010. We have not received their replies (December 2010).

(CTO, Nedumkandam; May 2009)

Input tax credit shall not be available in respect of the tax paid on the turnover subsequently allowed as discount as per proviso to Section 11(3) of the KVAT Act.

A dealer in cement and Asbestos Cement sheet received an amount of ₹ 24.83 lakh for the years 2006-07 and 2007-08 as discount subsequent to sale, but availed input tax credit on the entire purchase turnover instead of limiting it to that extent. This resulted in excess availing of input tax credit of ₹ 3.10 lakh.

After we pointed out the mistake to the department in June 2009 and reported it to the Government in January 2010, the Government stated in March 2010 that notice had been issued to the dealer to revise the assessment. We have not received their further reply (December 2010).

Short levy due to incorrect computation

(CTO, special Circle II, Ernakulam; November 2009)

Where the return submitted is with incorrect particulars, the assessing officer shall, after recording reasons, reject the return with due notice to the dealer, as per Section 22 of the KVAT Act. The AA shall estimate the turnover of return period and complete the assessment to the best of its judgement.

A dealer incorrectly computed the tax eligible for set off for the year 2007-08 as ₹ 43.33 crore instead of as ₹ 42.98 crore. However, the return was not rejected by the assessing authority. This resulted in short levy of tax and interest of ₹ 41.65 lakh.

We pointed out the mistake to the department in December 2009 and reported to the Government in May 2010. We have not received their replies (December 2010).

(CTO, Special Circle I, Ernakulam; March 2009)

Gold, silver and platinum ornaments are taxable at the rate of one per cent up to 30th June, 2006 and thereafter at the rate of four per cent as per schedules II and III to the KVAT Act.

A dealer assessed output tax on the sales turnover of gold ornaments valued at ₹ 343.63 crore for the year 2006-07 as ₹ 10.50 crore instead of ₹ 10.64 crore which was not detected by the assessing officer. This resulted in short levy of tax and interest of ₹ 17.18 lakh.

We pointed out the mistake to the department in May 2009 and reported to the Government in May 2010. We have not received their replies (December 2010).

(CTO, Tirur; April 2009)

Section 8(f) of the KVAT Act stipulates that a dealer in ornaments of gold, who has commenced business during the period from 1st October, 2006 to 28th February, 2007, may opt to pay tax for that year at one hundred and

fifty per cent of average monthly tax. Further, the compounded tax payable for the year 2007-08 by a dealer who exercised option for compounding under this clause between 1st December, 2006 and 15th March, 2007 shall be one hundred and fifteen per cent of the compounded tax fixed for the year 2006-07 or tax collected as per accounts, whichever is higher. Section 22(2) of the Act further stipulates that a dealer whose return is rejected may file a fresh return curing the defects together with proof of payment of tax and interest on the tax payable at the rate of 12 per cent per annum for the period from the due date of filing of return till the date of filing of fresh return.

The compounded tax for the year 2006-07 of a dealer in gold ornaments who commenced business on 18th February, 2007, was fixed incorrectly by the AA due to reckoning of turnover from the period 18th February, 2007 to 28th February, 2007 as the turnover for one month instead of taking this turnover as that for 11 days and accordingly arriving at the turnover for one month. This resulted in short assessment of tax and interest of ₹ 10.12 lakh for the year 2006-07 and 2007-08.

We pointed out the case to the department in June 2009 and reported to the Government in November 2009. The Government stated in February 2010 that the self assessment returns filed by the dealer had been revised based on the audit objection creating an additional demand of ₹ 8.91 lakh towards tax and ₹ 1.47 lakh towards interest and advised for revenue recovery. We have not received further report on recovery (December 2010).

(CTO, Special Circle I, Ernakulam; April 2009)

Interstate sales turnover not covered by declaration in Form C is taxable at the rate of 10 per cent or at the rate applicable to the sale or purchase of such goods inside the State, whichever is higher as per Section 8(2) (b) of the CST Act.

A dealer self assessed tax on the interstate sales turnover of ₹ 1 crore as disclosed in the annual return, even though the certified accounts reflected an interstate sales turnover of ₹ 2 crore. This resulted in short levy of tax of ₹ 10.07 lakh.

We pointed out the mistake to the department in April 2009 and reported to the Government in May 2010. We have not received their replies (December 2010).

Short levy due to turnover escaping assessment

(CTO, Special Circle, Palakkad; February 2010)

Sale price includes excise duty also as per Section 2 (xlv) of the KVAT Act.

A manufacturer and dealer in tread rubber, did not assess the turnover relating to excise duty and cess amounting to ₹ 12.08 crore collected for the year 2006-07. This resulted in short levy of tax and interest of ₹ 64.76 lakh.

We pointed out the mistake to the department in April 2010 and reported to the Government in May 2010. We have not received their replies (December 2010).

(IAC, Kattappana; November 2009)

Transfer of right to use any goods for any purpose, whether or not for a specified period, is liable to tax at four per cent at all points of such transfer as per Section 6(1) (c) of the KVAT Act. High Court of Kerala had held [M/s Kreem Foods Private Limited Vs State of Kerala reported in (2009) 24 VST 333] that royalty received in transfer of right to use trade mark is liable to tax at the rate of four per cent.

A dealer in hawai chappals, umbrella and school bags received royalty valued at ₹ 1.36 crore for the years 2005-06 to 2007-08 in respect of transfer of right to use their trade mark, which was not assessed to tax. This resulted in short levy of tax and interest of ₹ 7.27 lakh.

We pointed out the mistake to the department in January 2010 and reported to the Government in May 2010. We have not received their replies (December 2010).

Short levy due to application of incorrect rate of input tax credit

Collection of tax at a rate higher than that applicable to such goods is illegal and no input tax credit shall be allowed to any amount illegally collected by way of tax as per proviso to sub Section 3 of Section 11 read with Section 30(3) (a) (ii) of the KVAT Act.

We found in the scrutiny of records in six offices* that six assesseees availed input tax credit for the year 2005-06 to 2007-08 at incorrect rates of tax on the purchase turnover of various commodities valued at ₹ 4.41 crore. This resulted in short levy of tax and interest of ₹ 44.61 lakh as detailed below:

Sl. No.	Assessment circles Month of audit	Commodity Assessment year	Rate of tax claimed Rate of tax eligible	Turnover (₹)	Short levy (₹)
1	2	3	4	5	6
1	CTO, Spl. Circle I, Kozhikkode; September 2009	Pacemaker, stents 2005-06 and 2006-07	12.5 4	1.33 crore	14.79 lakh
<p>After we pointed out the case in September 2009, the assessing authority stated in October 2009 that notice had been issued to the assessee. We have not received further report on recovery (December 2010).</p> <p>We pointed out the case to the department in December 2009 and to the Government in April 2010. We have not received their replies (December 2010).</p>					
2	CTO Spl. Circle II, Kozhikkode; January 2009	Plastic compound 2006-07	12.5 4	1.07 crore	11 lakh
<p>We pointed out the case to the department in March 2009 and reported to the Government in January 2010. We have not received their replies (December 2010).</p>					
3	CTO, Spl. Circle, Malappuram; February 2009	Eva compound (Plastic compound) 2006-07	12.5 4	94.92 lakh	9.84 lakh
<p>We pointed out the matter to the department in April 2009 and reported to the Government in December 2009. We have not received their replies (December 2010).</p>					

* CTOS: Special Circle I and Special Circle II, Kozhikkode, Special Circle Malappuram, Special Circle Mattanchery, Second Circle Kottayam and Attingal.

1	2	3	4	5	6
4	CTO, Second circle, Kottayam; May 2009	Rubber wood 2006-07 and 2007-08	12.5 4	52.40 lakh	4.45 lakh
	We pointed out the matter to the department in June 2009 and reported to the Government in November 2009. We have not received their replies (December 2010).				
5	CTO, Special circle, Mattancherry; January 2009	Flax seed oil/ linseed oil 2005-06 and 2006-07	12.5 4	26.87 lakh	2.28 lakh
	We pointed out the matter to the department in February 2009 and reported to the Government in April 2010. We have not received their replies (December 2010).				
6	CTO, Attingal; September 2008	Sodium silicate 2005-06	12.5 4	26.50 lakh	2.25 lakh
	After we pointed out the matter in October 2008, the department stated in November 2009 that the excess input tax claim was demanded in February 2009. We have not received further report on recovery (December 2010). We pointed out the matter to the Government in April 2010. We have not received their reply (December 2010).				

Non-levy of reverse tax

• (CTO, Special Circle, Malappuram; March 2009)

If goods in respect of which input tax credit has been availed are subsequently used, fully or partly, for purposes in relation to which no input tax credit is allowable under the section, the input tax credit availed of in respect of such goods shall be reversed and reverse tax shall be deemed to be an amount due under Section 11(7) of the KVAT Act.

A dealer had effected free sale of medicine for ₹ 3.51 crore and ₹ 4.05 crore during 2005-06 and 2006-07 respectively and exempted sale to special economic zone for ₹ 62.04 lakh in 2006-07. However, proportionate input tax and special rebate in respect to the above has not been assessed as reverse tax.

This resulted in short levy of tax and interest of ₹ 15.06 lakh. We pointed out the mistake to the department in April 2009 and reported to the Government in May 2010. We have not received their replies (December 2010).

• **(CTO, Tirurangadi; October 2009)**

An assessee who had shown a purchase of ₹ 20.65 lakh as per the certified accounts of 2006-07, conceded a reverse tax of ₹ 17,743 only instead of ₹ 2.35 lakh. This resulted in short levy of tax, interest and penal interest of ₹ 4.14 lakh.

We pointed out the matter to the department in November 2009 and reported to the Government in May 2010. We have not received their replies (December 2010).

Short levy due to excess grant of input tax credit

(CTO, Second Circle, Kottayam; May 2009)

As per Section 11 (3) of the KVAT Act where any goods purchased in the State are subsequently sent outside the State or used in the manufacture of goods and the same are sent outside the State otherwise than by way of sale in the course of interstate trade or export or where the sale in the course of interstate trade is exempted from tax, input tax credit shall be limited to the amount of input tax paid in excess of the rate specified under the CST Act. The rate of tax applicable under the CST Act was four per cent during 2006-07 and three per cent during 2007-08.

An assessee claimed input tax credit for the entire purchases for the years 2006-07 and 2007-08, even though 53 per cent of the goods manufactured were sent outside the State otherwise than by way of sale. The input tax credit availed corresponding to the stock transfer was not disallowed. This resulted in short levy of tax of ₹ 11.88 lakh.

We pointed out the matter to the department in June 2009 and reported to the Government in November 2009. We have not received their replies (December 2010).

(CTO, Special Circle I, Kozhikkode; September 2009)

A dealer claimed input tax credit for the entire purchases for the year 2007-08, even though 8.40 per cent of the total sales turnover relates to consignment sale. The input tax credit availed corresponding to this turnover was not disallowed. This resulted in short levy of tax and interest of ₹ 3.82 lakh.

After we pointed out the case in September 2009, the assessing authority stated that notice was issued to the dealer. We have not received a report on recovery (December 2010).

We reported the matter to the department in October 2009 and to the Government in April 2010. We have not received their replies (December 2010).

Incorrect computation of presumptive tax**(CTO, Second Circle, Thiruvananthapuram; February 2009)**

As per Section 6(5) of the KVAT Act, a dealer whose total turnover for a year is below ₹ 50 lakh, may pay presumptive tax at the rate of half per cent of the turnover of taxable goods instead of paying tax under sub-section(1) of Section 6. However, as per Rule 17(31) of the KVAT Rules, where a dealer who has opted for payment of presumptive tax is likely to become ineligible for the payment of such tax, such dealer shall intimate the facts to the registering authority and he shall be liable for payment of tax in accordance with the provisions of sub-section (1) and (2) of Section 6 from the day following the day on which he has become ineligible.

A dealer irregularly paid presumptive tax for the entire sales turnover of ₹ 77.20 lakh for the year 2006-07 instead of paying presumptive tax for the turnover up to ₹ 50 lakh and at the specified rate for the balance turnover of ₹ 27.20 lakh. This resulted in short levy of tax of ₹ 4.45 lakh.

After we pointed out the matter in March 2009, the department stated in October 2009 that the assessment was revised with an additional demand of ₹ 4.45 lakh and the assessee had paid an amount of ₹ 94,976.

After we reported the matter to the Government in March 2010, we have not received their replies (December 2010).

SALES TAX**Short levy of tax due to incorrect exemption****(CTO, Special Circle II, Ernakulam; November 2009)**

Tea sold under brand name registered under the Trade and Merchandise Marks Act, 1958 is liable to be taxed at the rate of eight per cent as per Section 5 (1) of the KGST Act. However, the tax payable on branded tea under this item shall be reduced by the amount of tax paid on unbranded tea in the State.

An assessing officer finalised the assessments of a dealer engaged in public distribution of provision, consumables etc., for the years 2001-02 to 2004-05 in December 2008, exempting the sales turnover of tea sold under the brand name 'Sabari' valued at ₹ 72.92 crore. This mistake resulted in short levy of tax of ₹ 2.39 crore.

After we pointed out the mistake in November 2009, the assessing officer stated that Section 5 (2) of the Act specifically excludes manufactured tea from requirement of treating sale by brand name holder, as first sale in the State. The reply is not tenable as tea manufactured and sold under brand name is specifically excluded from Section 5(2) and hence is governed by Section 5(1) of the Act.

We pointed out the matter to the department in December 2009 and reported to the Government in May 2010. We have not received their replies (December 2010).

(CTO, Haripad; March 2009)

Where a sale of any goods in the course of interstate trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods to the Government/registered dealer shall be exempted from tax under Section 6(2) of the CST Act.

The AA finalised the assessment of a dealer in paper for the year 2004-05, exempting the sales turnover of paper to Government Departments for an amount

of ₹ 2.94 crore treating it as sale in transit. However, we found that the sales to the Government Department were not effected during the movement of goods from one State to another. This resulted in short levy of tax of ₹ 13.39 lakh.

After we pointed out the matter to the department in April 2009, the department stated in January 2010 that permission of the CCT to reopen the assessment had been requested. We have not received further reply (December 2010).

After we reported the matter to the Government in November 2009, we have not received their reply (December 2010).

Application of incorrect rate of tax

(CTO, Special Circle, Palakkad; February 2009)

Tax payable by a dealer on the interstate sales turnover of declared goods, not supported by declaration in Form C shall be calculated at twice the rate applicable to the sale or purchase of such goods inside the State as per Section 8(2) (a) of the CST Act. The rate of tax applicable on the sale of cotton yarn was two per cent plus AST at 15 per cent as per the KGST Act.

A dealer in cotton yarn disclosed the interstate sales turnover of cotton yarn not covered by Form 'C' valued at ₹ 6.32 crore and ₹ 1.36 crore for the years 2002-03 and 2003-04 respectively in his annual returns. However, the AA finalised the assessments applying the incorrect rate of tax at two per cent and one per cent respectively instead of four per cent plus AST. This mistake resulted in short levy of tax of ₹ 21.33 lakh.

After we pointed out the mistake in May 2009, the department stated in August 2009 that the assessment would be reopened after obtaining permission from the Commissioner of Commercial Taxes. We reported the case to the Government in February 2010. We have not received their replies (December 2010).

(CTO, Special Circle, Kannur; September 2009)

Umbrella and parts thereof, oil palm kernels and water are taxable at the rate of eight per cent as per Schedule I to the KGST Act.

An assessing officer finalised the assessment in January 2009, of a dealer in umbrella etc. for the years 2003-04 and 2004-05 assessing the sales turnover of umbrella valued at ₹ 1.37 crore at the rate of four per cent instead of at the correct rate of eight per cent. This resulted in short levy of tax and interest of ₹ 7.35 lakh.

We pointed out the matter to the department in October 2009 and reported to the Government in May 2010. We have not received their replies (December 2010).

• (CTO, Special Circle, Kottayam; November 2008)

An assessing officer finalised the assessment of a dealer for the year 2002-03 assessing the sales turnover of oil palm kernels for ₹ 59.28 lakh at the rate of four per cent instead of at the correct rate of eight per cent. This resulted in short levy of tax of ₹ 2.73 lakh.

We pointed out the matter to the department in February 2009 and reported to the Government in September 2009. We have not received their replies (December 2010).

•(CTO, Special Circle, Mattancherry; December 2008)

The assessing officer finalised the assessments of a manufacturer for the years 2003-04 and 2004-05, levying tax on the turnover of water purchased from unregistered dealers at the rate of five per cent instead of at the correct rate of eight per cent. This mistake resulted in short levy of tax of ₹ 2.30 lakh.

We pointed out the mistake to the department in February 2009 and reported to the Government in May 2010. We have not received their replies (December 2010).

(CTO, Special Circle, Mattancherry at Aluva; December 2008)

Interstate sales turnover not covered by declaration in Form C is taxable at the rate of 10 per cent or at the rate applicable to the sale or purchase of such goods inside the State, whichever is higher as per Section 8 (2) (b) of the CST Act. Spices oil and essences are liable to be taxed at 12 per cent plus AST as per Schedule I to the KGST Act.

The fast track team* finalised the CST assessment of a dealer for the year 2004-05 in November 2007, incorrectly assessing the interstate sales turnover of spices oil and essence not covered by declaration in Form C at the rate of 10 per cent instead of at the correct rate of 12 per cent plus AST. This resulted in short levy of tax of ₹ 2.68 lakh.

We pointed out the mistake to the department in February 2009 and reported to the Government in May 2010. We have not received their replies (December 2010).

Short levy due to incorrect computation

(CTO, Special Circle, Kannur; September 2009)

The assessing officer shall check all calculations and credits given in an assessment as per the instruction issued by the erstwhile Board of Revenue.

An assessing officer finalised the assessment of a dealer in rubber for the years 2002-03 to 2004-05 in September and October 2008 and incorrectly computed the purchase turnover of latex used in the conversion of field latex to centrifuged latex, valued as ₹ 2.71 crore instead of ₹ 4.02 crore. This resulted in short levy of tax and interest of ₹ 28.16 lakh.

We pointed out the mistake to the department in October 2009 and reported to the Government in May 2010. We have not received their replies (December 2010)

* A team of assessing officers constituted by the CCT under section 17(D) of the KGST Act.

Turnover escaping assessment

(CTO, Special Circle, Kottayam; November 2008)

Scrap rubber is taxable at 12 per cent as per Schedule I to the KGST Act. However, tax at six per cent is leviable on rubber purchased by rubber based industrial units in the State.

The fast track authorities finalised the assessments of two dealers engaged in the manufacture and sale of rubber products for the years 2003-04 and 2004-05 in May 2007. We noticed that they did not levy tax on the intrastate purchase turnover of scrap rubber valued at ₹ 97.13 lakh. This resulted in short levy of tax of ₹ 6.70 lakh.

We pointed out the matter to the department in February 2009 and reported to the Government in July 2009. The Government stated in November 2009 that the assessments were revised in October 2009.

[Audit Paragraphs 2.12.10 to 2.12.20 contained in the Report of the Comptroller and Auditor General of India for the year ended 31 March, 2010 (Revenue Receipts).]

Notes received from Government on the above Audit Paragraph is included as Appendix II.

62. The Secretary, Taxes Department submitted that the case in which short levy of ₹ 39.66 lakh in the CTO, Special Circle, Mattancherry is pending before the Hon'ble Supreme Court.

63. Regarding the 'Short levy of tax and interest of ₹ 41.65 lakh in CTO, Special Circle II, Ernakulam, the Secretary, Taxes Department submitted that the appeal filed in this regard was pending before the Court.

64. To a query of the Committee, the Secretary, Taxes Department informed that the assesment in respect of M/s Joy Alukkas was modified and collected an amount of ₹ 71,92,452.

65. Regarding the case in CTO, Tirur, the Secretary, Taxes Department deposed that the dealer had remitted 30% amount of the total demand and the appeal in this regard was still pending.

66. To a query of the Committee the Secretary, Taxes Department informed that the case of the manufacturer and dealer in tread rubber in CTO, Special Circle, Palakkad was also pending for last six months and he added that since the dealer enclosed excise duty as other income and hence interest accrued. The Committee directed the department to verify the matter and prepare revised assessment urgently.

67. Regarding the audit paragraph, 'Short levy due to excess grant of input tax credit' the official from the Office of the Accountant General invited the attention of the Committee over the fact that the reply of the Department was not in conformity with the clarification of CCT dated 30-8-2013. The Committee observed that the dealer had availed input tax illegally and directed the department to revise the assessment.

68. The Secretary informed that the appeal in this regard was pending.

69. To a query of the Committee the Deputy Commissioner (General), Commercial Taxes Department submitted that Scrap rubber is taxable at 12 per cent as per Schedule I to the K.G.S.T. Act. However tax at 6 per cent was levied on the rubber purchased by rubber based industrial units in the State. Hence the above case was re-examined and demanded for additional tax. Against this, the assessee obtain order that the item purchased was Hawaii waste powder which is taxable at 1st sale point and the assessee had been paid tax for the purchase. The Committee accepted the explanation.

Conclusion/Recommendation

70. The Committee directs the Taxes Department to reassess the case of the manufacturer and dealer in tread rubber in CTO, Special Circle, Palakkad.

71. The Committee demands that a report detailing the present status of the pending cases should be made available to it at the earliest.

Thiruvananthapuram,
18th February, 2016.

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

APPENDIX I

SUMMARY OF MAIN CONCLUSION/RECOMMENDATION

Sl. No.	Para No.	Department concerned	Conclusion/Recommendation
1	2	3	4
1	15	Taxes	The Committee analyses that Government would incur heavy loss due to the abolition of entry tax, since Kerala is being a consumer state. So it recommends to check the feasibility of reintroducing entry tax in Kerala after complying all the procedures for doing so.
2	16	„	The Committee directs the Taxes Department to furnish a detailed report on the efforts taken to enhance the tax collection incorporating the details of latest position of receipt per assessee and also collection of arrears after completing KGST assessment.
3	17	„	The Committee was at a loss to note that the amount recovered towards arrear is meagre and directs to take necessary steps to recover tax at least in accepted cases.
4	18	„	The Committee demands the Taxes Department to submit a report with department-wise details of tax arrear categorising whether the amount is recoverable or not, to it at the earliest.
5	19	„	The Committee urges the Taxes Department to furnish year-wise statement detailing the arrear to be collected and the arrear collected out of the cases accepted by the department.
6	20	„	The Committee recommends that the internal audit wing in the Department should be strengthened and steps taken in this regard should be intimated to the Committee.

1	2	3	4
7	21	Taxes	The Committee observes that even though the mistakes pointed out by the Audit regarding tax arrear were accepted by the department, it still recur. The Committee admonishes the Taxes Department for the lackadaisical attitude in this regard and recommends that departmental action should be initiated against supervising officials who commit similar mistakes.
8	22	„	The Committee urges the Taxes Department to take earnest effort to vacate the stay granted by different authorities in a time bound manner and to recover the amount due.
9	31	„	The Committee evaluates that the prevailing practice of exempting the value of material supplied to the contractor by the awardee, for the calculation of tax is not tenable and exhorts that Taxes Department should re-check the procedure.
10	32	„	Regarding the case of M/s Sobha City the Committee directs the Taxes Department to take necessary steps to re-examine the books of accounts of M/s Sobha City and M/s Sobha Developers and settle errors if any found at the earliest. It urges the Taxes Department to furnish a report on the steps taken in this regard.
11	37	„	The Committee opines that since an amount of ₹ 2.14 crore, the total CIF value of imported materials was incorporated in the works contract in the case of M/s Leighton Contractors, it was taxable. So it demands that the Taxes Department should examine the matter and furnish a report in this regard.

1	2	3	4
12	38	Taxes	Regarding the audit objection on the exemption granted in the supply portion lead to a short levy of ₹ 6.70 crore, the Committee recommends to ascertain whether good transfer was carried out by the awarder or the contractor and to take appropriate action to rectify the mistakes, if any, noticed on scrutiny.
13	42	„	The Committee directs the Taxes Department to furnish a report detailing the present status of the case of short levy of ₹ 9.21 crore at the earliest.
14	54	„	The Committee observes that traders followed the practice of transporting PVC door units under the classification of PVC profile and thereby escaped from paying tax at the required rate. The Committee views it not tenable and recommends that Taxes Department should take necessary steps to curtail such kind of tax evasion.
15	55	„	With regard to the tax realisation at 4% for the branded item 'new supari', the Committee demands that Taxes Department should re-examine the case and report.
16	56	„	The Committee was astonished to note that the item categorised as fresh, was once exported and returned and reprimands the Taxes Department for the slothful attitude commenting that they should conduct physical verification of items while inputting tax rather than relying on the statements filed by the clients. It exhorts the Taxes Department to reassess the case at the earliest.

1	2	3	4
17	57	Taxes	The Committee urges the Taxes Department to furnish the present status of the RR proceedings taken against Canteen Stores Department.
18	70	„	The Committee directs the Taxes Department to reassess the case of the manufacturer and dealer in tread rubber in CTO, Special Circle, Palakkad.
19	71	„	The Committee demands that a report detailing the present status of the pending cases should be made available to it at the earliest.

APPENDIX II

NOTES RECEIVED FROM GOVERNMENT

Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to Turnover escaping assessment. .
	(c)	Paragraph No.	2.12.1.1
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	22.6.10
	(b)	Date of Department's Reply	28.8.10
III		Gist of Paragraph/Review	KSEB an assessee who is the awarder of various work contracts, supplied materials to the contractors for execution in the works contract. The value of materials so supplied was deducted from the bill of the contractor. However it was found that the value of materials amounting to Rs.1871.61 crore supplied by the assessee for the year 05-06 to 08-09 was not subjected to tax by the assessee. This defect was not detected by the assessing authority which resulted in short levy of tax and interest of Rs.274.24 crore.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	The materials supplied to the contractors are calculated at the purchase cost i.e., at the cost of acquisition of materials. Hence the OPT due on the materials supplied to the contractors will be exactly the same amount of IPT eligible for credit. There is no element of profit in the supply of goods to contractors. The entire purchase

			bills had been verified by the assessing authority in this regard, and found that the dealer is eligible for IPT towards local purchases.
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

Remedial action taken

(a)

Improvement in system and procedures, including internal controls.

The assessment for the four years were completed under section 25 of the KVAT Act 2003 creating additional demand as per Proceedings dated 14.5.10 as shown below.

No	Year	Tax and interest due to addl. demand created	Paid	Balance
1	2005-06	366582540	Nil	366582540
2	2006-07	445427758	Nil	445427758
3	2007-08	655171875	Nil	655171875
4	2008-09	1378120891	Nil	1378120891

In response to the Proceedings dated 14.5.10, the KSEB approached the Hon'ble High Court of Kerala. The Hon'ble High Court of Kerala set aside the four assessment vide judgment in WP(c)No.17470 of 2010(G) dated 7th June 2010 with direction to produce the books of accounts and other materials on record before the assessing authority within two months to finalise the assessment. Notice has been issued by the assessing authority to the assessee to produce the books of accounts in order to finalize the final assessment in accordance with Law as directed by the Hon'ble High Court.

Accordingly, the dealer/assessee had produced the books of account and connected records before the assessing authority and filed detailed reply on the objection raised by the Audit in this regard.

The Accountant General (Audit) had pointed out that the assessee had effected purchase of materials and equipments required for capital and maintenance works to the tune of Rs.1,871.61 crores for the period from 2005-06 to 2008-09. But these purchases are not made by the assessee alone. Purchases mentioned in the Audit Report was the total purchases made by the officers within the jurisdiction of the Chief Engineer (Distribution South) and the Chief Engineer (Distribution North). Therefore the Audit based on the

entire purchases is prima facie not correct.

The argument of the Audit is that the value of materials supplied by the KSEB were included in the total value of works and the value of materials so supplied was deducted by the awarder from the bills of the contractors, but the turnover had not reflected in the total turnover of KSEB. Factually this is not correct.

The assessee i.e. KSEB has its own staff; certain works relating to transmission and distribution are carried out by them. Rest of the works related to generation, distribution and transmission are given as labour contract. Ownership of goods used in the works remain with KSEB prior to execution of work and subsequent to it. As there is no transfer of property in goods used in execution of works, there is no sale or deemed sale by KSEB to the contractor and vice versa. Therefore there is no tax liability.

Liability to tax as provided in Rule 9(2H) of the KVAT Rules arises only in cases where the cost of materials are supplied by the KSEB and that is deducted from the payments made to the contractors. Here the contracts are all purely labour contracts. In cases where materials are supplied by the KSEB, the total contract amount is fixed excluding the value of materials supplied by KSEB in the tender.


Rule 9 of the KVAT Rules do not create any charge by itself. Charging section in the KVAT Act do not provide any liability to tax on the material purchases for "own use".

Also the other fact of the case of KSEB is that, materials such as cement, steel, Asbestos etc are purchased by KSEB after paying tax from VAT dealers within the State. The suppliers are issuing invoices in Form No.8/8A and therefore the assessee is eligible for input tax credit in respect of the tax paid by them on the purchase of materials supplied to the contractors.

The total value of materials purchased from local registered dealers sum as follows:

		<u>Materials supplied to contractors</u>
2005-06	Rs.7 crores	1.39 crores
2006-07	Rs.6.03 "	1.69 "
2007-08	Rs.3.50 "	1.30 "
2008-09	Rs.9.15 "	2.26 "

			<p>It may also be noted that the materials supplied to the contractors are calculated at the purchase cost i.e., at the cost of acquisition of materials. Hence the OPT due on the materials supplied to the contractors will be exactly the same amount of IPT eligible for credit. There is no element of profit in the supply of goods to contractors. The entire purchase bills had been verified by the assessing authority in this regard, and found that the dealer is eligible for IPT towards local purchases. Hence, there was no escapement of turnover as alleged in the audit.</p>
	(b)	Recovery of overpayment pointed out by audit	
	(c)	Recovery of under assessment, short levy or other dues	
	(d)	Modification in the schemes and programmes including financing pattern	
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	


S. PADMANABHA PILLAI
 Additional Secretary,
 Taxes Department,
 Govt. Secretariat
 Thiruvananthapuram.

Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to Turnover escaping assessment.
	(c)	Paragraph No.	2.12.1.2
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	21.5.10
	(b)	Date of Department's Reply	15.12.11
III		Gist of Paragraph/Review	The annual return with the annual accounts of nine assesseees in CTOs Works Contract, Ernakulam and Thrissur were verified and found that the assesseees had returned considerably lesser turnover in their annual return than that disclosed in annual accounts. Further, the assesseees did not limit the exemption claimed to the eligible limits. These defects were not detected by the assessing authorities which resulted in short levy of tax and interest of Rs.17.22 crore.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	Detailed report furnished in column VI(a)
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>I. <u>M/s. Nagpual Builders Ernakulam 06-07</u></p> <p>The audit objection is, while verifying the annual return with the annual accounts it was found that the assessee had returned considerable lesser turnover in their annual return than disclosed in annual accounts. Further the assessee did not limit the exemption claimed, to the eligible limits</p> <p>In the light of audit, notice u/s 25 (1) of the KVAT Act was issued to the dealer for the year 2006-07 incorporating the defects pointed out in the Audit enquiry. On receipt of the notice, the dealer filed revised audit report in 13 & 13A with explanation that total contract receipt received up to the previous year has been wrongly shown as receipts during the year. Since there is no provision under the KVAT act to accept revised Audit Report the same was rejected. Aggrieved by the same, the dealer filed WP (c) before the Hon'ble High Court of Kerala and in the judgment in WP (c) No. 1092/2010 dated 13-1-2210 the Hon'ble High Court directed to consider the revised Audit Report filed by the dealer</p> <p><u>M/s. Nagpual Builders - 07-08</u></p> <p>The Audit Enquiry is that as per annual return filed for the year 2007-08 the total contract receipt is disclosed as Rs. 13,03, 16,080/- whereas as per Form 13, 13A it is shown as Rs. 30, 36,29, 429/- The difference is 17.33 crores. Moreover the labour exemption claimed is excessive.</p> <p>When this aspect was brought to the notice of the assessee, the dealer replied that the amount shown in the Audit Report i.e Rs. 30,36, 29, 429/- is inclusive of the turnover up to 31.03.2007 amounting to Rs. 17.33, 13, 349/- i.e including the turnover for 2005-06 and it was a clerical mistake</p> <table data-bbox="418 972 996 1043"><tr><td>Turnover up to 31.03.2007</td><td>Rs. 17,33,13,349.00</td></tr><tr><td>Turnover during the year 2007-08</td><td><u>Rs.13,03, 16,080.00</u></td></tr><tr><td>Total</td><td>Rs.30,36,29,429.00</td></tr></table> <p>The assessee has revised Form 13,13 A showing the correct receipt for the year 2007-08. As per the revised Form 13,13A Part V, item No. 12 Total contract receipt during the year is Rs. 13,03,16,080/-. The Hon'ble High Court of Kerala in judgment in WP (c) No. 1092/2010 dated 13-01-2010 has directed to consider the revised Audit Report.</p>	Turnover up to 31.03.2007	Rs. 17,33,13,349.00	Turnover during the year 2007-08	<u>Rs.13,03, 16,080.00</u>	Total	Rs.30,36,29,429.00
Turnover up to 31.03.2007	Rs. 17,33,13,349.00							
Turnover during the year 2007-08	<u>Rs.13,03, 16,080.00</u>							
Total	Rs.30,36,29,429.00							

The contention of the assessee is correct. It is only a clerical mistake. Instead of writing the contract amount during the year, the cumulative receipt up to 31-03-2008 is mentioned in the Audit Report. Thus instead of Rs. 13,03,16,080/- the cumulative receipt of Rs. 30,36,29,429/- was written.

It is to be noted that along with the original Form 13,13A Profit & Loss account has also been filed by the assessee on 31-10-2008. In the Profit & Loss Account (Schedule I) the turnover is shown Rs. 13,03,16,080/- which is the correct turnover. The actual receipt during the year is only Rs. 13,03,16,080/-. The assessee revised the Audit Report on 25-11-2009 and has furnished copy of revised Audit report. The Hon'ble High Court of Kerala in WP (c) No. 1092/2010 also has directed to consider the revised Audit Report.

Regarding the labour expenses, the assessee has complete accounts regarding labour and other expenses incurred for the work. As per Rule 10 (2) (a) Labour charges for the execution of work, charge for planning and designing and architect fee, charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract, cost of consumables, cost of establishment and overhead charges, profit earned by the dealer to the extent it is relatable to supply of labour and services will have to be deducted for arriving the taxable turnover from the contract value. These expenses are duly supported by books of accounts. The labour expenses claimed (Rs. 7,32,97, 929/-) is supported with book of accounts.

As per the proviso to rule 10 2(b) where transfer value is not ascertainable from the books of accounts of the dealer or where the dealer has not maintained any account the taxable turnover shall be computed after deducting labour and other charges at 25 % of the contract. This provision is not applicable in this case since the assessee is maintaining regular books of accounts and transfer value is ascertainable and all the deductions are properly supported by accounts.

In the circumstances, the Audit Objection is not sustainable.

2. Yasoram Builders Ernakulam - 06-07
- Yasoram Builders Ernakulam - 07-08
3. Southan Investments - 05-06
- Southern investments - 06-07
- M/s. southern investments 07-08

I. M/s. Yasoram Builders

2006-07	67958230	29435492	37922738
2007-08	81016062	37690295	43325767

II. M/s. Southern Investments

Year	Total receipt including land value, as per audited report	Taxable turnover as per annual return (Excluding Land value)	Difference (Land Value)
2005-06	251739007	201867850	49871157
2006-07	305968936	226996657	78972279
2007-08	362589662	294011667	65577995

The Subject matter of above 5 cases are one and the same.

The Accountant General considered the total receipt, which was inclusive of land value, as the total turnover of the assessee for charging tax at the compounding rate u/s 8 and hence thereby resulted in the audit objections.

Land is an immovable property. Sale of immovable properties are not covered under the Sale of Goods Act, and VAT is not leviable on the sale of immovable properties. Without a transfer of property in goods being involved there could be no levy of VAT in relation to Works contract. In the case of execution of Works Contract, tax is leviable on the basis of taxable turnover. Payment of tax at the compounded rate u/s 8 is to be paid on the whole amount of contract. Total contract amount envisaged the total turnover. As per section 2, the turnover is defined as the aggregate turnover in all goods of a dealer at all places of business in the state whether or not the whole or any portion of such turnover is liable to tax Turnover means the aggregate amount for which goods are either bought or sold or distributed by a dealer either directly or through another, whether for cash or for deferred payment. Thus it is clear that the total turnover is related to goods or movable property and value of immovable property is not included in the definition of turnover. The usage in section 8 of whole contract amount envisages only the turnover related with movable property. Immovable property is absolutely outside the ambit of turnover. Hence the value of land included by the Contractor in his balance sheet cannot form part of the turnover, and will not

come in the category of whole contract amount received or receivable.

The land value received from prospective buyers for which copies of sale deed have been executed with Sub - Registry Office, separate agreements are executed for sale of undivided share of land.

Therefore value of land is liable to be excluded from the turnover of contract even if the assessee had opted payment of tax at the compounding rate u/s 8 for whole contract amount. In the circumstances, the audit objections raised in the above 5 cases are incorrect, and therefore, not sustainable

4. M/s. Infra Housing (P) Limited - TIN 32072071634/2006-07

During the financial year 2006-07 the assessee had adopted the percentage method to recognize revenue and costs as per the guidelines issued by Institute of Chartered Accountants of India (ICAI). During the previous year the method adopted was completion method under which revenue and costs were shown in the statement of profit and loss only of those projects which were completed during the respective years. Since the percentage of completion method was introduced for the first time during financial year 2006-07 the revenue was recognized on a cumulative basis ie from the starting of the project upto 31st March 2007. This revenue recognized was shown as Contract Receipts in the statement of profit and loss of the Company But the receipts from clients have been subject to KVAT as and when it was received during the previous years.

Details of project wise receipts

Name of the Project	Receipts up to 01-04-06	Receipts during the year 2006-07	Total receipts upto 31-03-07
Infra airport Square	51776894	904380	50872514
Infra Meadows	81258759	5260009	86518768
Infra Hillock III	55094111	252477	55346588
Infra Hamlin	28768590	20584899	49353489
Infra Gallant	51273128	7665142	59438270
Infra Splendour	49714205	44116204	93830409
Infra Foreshore	11247836	36847879	48095715
Infra Vantage	0	90276976	90276976

Infra Aspire	0	2318810	2318810
Total	329833523	206418016	536051539

Revenue recognized as per percentage method as per statement of profit and loss account during the year 2006-07.

Name of the project	Revenue recognized upto 01-04-06 as per % method	Land value recognized during 2006-07 as per % method	Contract value recognized during 2006-07 as per % method	Total revenue recognized upto 31-03-07 as per % method
Infra Gallant	0	7283440	57644352	64927792
Infra Hamlin	0	9349258	36301835	45651093
Infra Splendour	0	17519700	66242930	83762630
Infra Foreshore	0	19003920	15618353	34622273
Infra Meadows	0	13829270	93946261	107775531
Total	0	66985588	269753731	336739319

The receipts from clients has been taxed accordingly as and when it was realized These receipts doesn't have any nexus to the revenue recognized as per the audited profit and loss account during the year 2006-07 under the percentage method as per guidelines issued in Accounting Standard - 7 issued by the Institute of Chartered Accountants of India (ICAI). Therefore receipts during the financial year 2006-07 has been fully subject to tax and there has been no escapement of turnover or short levy of tax.

M/s. Infra Housing (P) Ltd - TIN - 32072071634/2007-08

During the financial year 2007-08, the assessee had paid VAT under the assessment method @ 12.5% on projects that were started after 01-04-2005. In case of those projects started before 01-04-2005 VAT was computed under compounding method @ 4% under Section 8 (a) (iii).

During the financial year 2007-08, there were 9 ongoing projects and 1 project was started during the year. The total value from all units for these 9 projects amounted to Rs.95,68,95,126/-. But this consists of land value and contract value ie

Total value : Total land value +
Total contract value

The details of the total contract value from clients can be ascertained from the table provided below

Sl. No.	Name of the project	Land value	Land development	Contract value
1	Infra Gallant	7283440	-	59311051
2	Infra Meadows	13724856	23295384	67975200
3	Infra Hamlin	9680466	-	56404271
4	Infra Hillock - III	3514859	-	55671911
5	Infra Splendour	14945250	-	117048590
6	Infra Foreshore	18137730	-	76919020
7	Infra Airport square	1519076	-	51461749
8	Infra Aspire	14043808	-	91087722
9	Infra Vantage	16538148	-	247821892
	Total	99387833	23295384	823101406

Addl. Land value	Addl. Land development	Extra work amount	Total
6	7	8	9
-	-	846740	67441231
104414	95586	8601396	113256838
-	-	-	66084737
-	-	1402365	60589135
-	-	0	131993840
-	-	0	95056750
-	-	0	5290825
-	-	0	105131530
-	-	0	264360240
104414	95586	10910503	956895126

The total value shown in column no. 9 would be due only on the completion of each project. However the amounts from clients of each project is subject to tax as and when it is realized.

From this table it is clear that the total land value from all the projects and additional land value from Project Infra Meadows does not incur any VAT liability as it confers to sale of immovable property.

Total land value = (3) + (6)
 exempted = 99387833 + 104414
 = 99492247

Therefore VAT liability arises only on the contract value and extra work amount from all the projects and land development and additional land development value from Project Infra Meadows

Hence the total VAT liability is subject to the total contract value from clients which can be arrived at as follows

Total contract value = (4) + (5) + (7) + (8)
 = 823101406 + 23295384 +
 95586 + 10910503 =
 857402879

In the audit observation the amount taken cumulatively from the commencement of projects, is inclusive of land value of Rs. 9,93,87,833/-. The actual receipt during the year 2007-08 is Rs. 17,53,53,460/-

Therefore the details provided by the assessee in Form 13 & 13A is correct and the turnover reported should be taxed accordingly. There has been no escapement of turnover or short levy of tax in accordance with the statements filed by the assessee in Form 13 & 13A for the financial year 2007-08

5. Koroth Gulf (P) Limited - 07-08

The audit objection is while verifying the annual return with the annual accounts it was found that the assessee had returned considerably lesser turnover in their annual return than disclosed in annual accounts. Further the assessee did not limit the exemption claimed, to the eligible limits.

M/s. Korath Gulf Link Builder Pvt Ltd., is a builder remitting tax under compounding method u/s 8 a (1) of KVAT Act. Total receipt of books of accounts is inclusive of cost of land and 10 % deposit held for the forth coming registration fee Electricity meter deposit, water connection deposit for Kerala Water authority, Residence association member deposit, charges for KSEB OYEC- HT & CT installation deposit etc, which are deductions as per law and it is not construction cost taxable under KVAT Act. The land is an immovable property. Hence

the transfer value of the above is not taxable under KVAT Act.

6. Sobha city, Trs (2008-09)

M/s. Sobha City, Puzhakkal Thrissur is an assessee on the rolls of the Commercial Tax Officer (Works Contract), Thrissur bearing KVAT Registration No. 32081654002. While auditing, the AG's Audit Part has pointed out that M/s. Sobha City had returned considerably lesser turnover in their annual return than that disclosed in the annual accounts. Further, they did not limit the exemption claimed to the eligible limits and this has resulted in the escapement of turnover amounting to Rs. 45.47 Crore with tax effect of Rs. 4.26 Crore along with interest of Rs. 0.34 Crore

On verification of the accounts and Form No. 13A for the year 2007-08, it was seen that the total cost of works contract on going (closing balance) was Rs. 45,47,36,568/-. But as per the accounts filed by the assessee for the year 2008-09 the cost of ongoing works is shown as nil. To rectify the defect, notice U/s 25 (1) was given to the assessee proposing to assess the escaped turnover. The assessee has filed a reply to the notice stating as follows -

"Sobha City Puzhakkal, Thrissur are developers of the project at Puzhakkal, Thrissur and are not involved in construction activity. The entire construction activity is sub contracted to M/s. Sobha Developers, Trivandrum who are the registered dealers on the rolls of Commercial Tax Officer (WC), Thiruvananthapuram with TIN 32011311565C and the assessee standing in the status of the awardee is claiming to have been deducting the tax from the payments made to Sobha Developers Limited & remitting the same to the Government

As regards the turnover shown as ongoing contract of Rs. 45,47,36,568/- the project commenced in the year 2007-08 and during that year agreements were entered in respect of 60 villas / flats. The total agreement received during the year 2007-08 was Rs. 70,23,544/-. This amount was deducted from gross contract amounts of Rs. 46,17,60,112 and the balance amount of Rs. 45,47,36,568/- was shown as the amount of ongoing contract as on 31-03-2008. Compounded VAT of Rs. 2,80,942/- @ 4% is also claimed to have been paid on Rs. 70,23,544/-

The assessee has also stated that M/s. Sobha Developers Limited, Thiruvananthapuram has paid tax to the tune of Rs. 55,79,612/- for the sub contract amount during 2008-09".

7. Afcon Infrastructure Limited - 06-07

Afcon Infrastructure Ltd is an assessee on the rolls of the Assistant Commissioner, WC/LT, Ernakulam having TIN 32072033204/06-07

The dealer filed annual return for the year 2006-07 declaring a total and taxable turnover of Rs. 32807289.26 and Rs. 1159132.26 respectively. Subsequently they filed Audit report in Form 13 & 13A and Final account for the year 06-07 and filed revised return having a total and taxable turnover of Rs. 74500060.00 and Rs. 4027835.00. As per the revised return filed, the net tax due was Rs. 291498.00 after taking input tax credit of Rs. 80363.00. The case of the audit is that as per the Final accounts, the following tax liability is on the dealer

Total contract receipt	: Rs.	74036207.00
Less: turnover of back to back work	: Rs.	31567107.00

		Rs.	42469100.00
Add Profit on back to back work	: Rs.	1262684.00	
Add closing working progress	: Rs.	98256300.00	
Less Opening working progress	: Rs.	98256300.00	

Total turnover	: Rs.	43731784.00
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Less deductions as per Rule 10(2) (a)

a. Labour charges	Rs.	1822342.00
b. Charges for planning & designing	Rs.	579401.00
c. Hire charges	Rs.	315332.00
d. Consumable used	Rs.	138478.00
e. Cost of establishment	Rs.	5223069.00
f. Profit in relation to labour of Services	Rs. 27360624	Rs. 35439246.00

Taxable turnover	Rs.	8292538.00
Tax due @ 12.5%	Rs.	1036567.00
Tax paid	Rs.	67559.00
Short levy	Rs.	969008.00

The short levy worked out, by the audit is not correct. The dealer has sub contracted work for Rs. 3465872.00 during the year which was not deducted from the total turnover. Also there was a claim of input tax credit for Rs. 80363.00. The accounts were checked in the light of the audit objection and it was found that there was some variation in the cost of establishment and overhead charges related to labour and service and the profit on labour and services. The assessment was therefore revised on 09-07-2010 as detailed below:

Receipt from ongoing work		
Vypeen - Rs. 4,24,69,100.00		
Sea Wall - Rs. 3,15,67,107.00		Rs. 7,40,36,207.00
Less receipt from sea wall and Vypeen being		
Sub contracted 3,03,04,423+34,65,872		Rs. 3,37,70,295.00
Balance		Rs. 4,02,65,912.00
Add closing work in progress		Rs. 9,82,56,300.00
Less opening work in progress		Rs. 13,85,22,212.00
		Rs. 9,82,56,300.00
Balance		Rs. 4,02,65,912.00
Less		
Consumables		Rs. 1,38,478.00
Hire charges		Rs. 3,15,332.00
Charges for planning and designing	}	Rs. 5,79,401.00
Labour charges		Rs. 18,22,342.00
Cost of establishment and overhead charges of the dealer related to labour and service	}	Rs. 48,81,631.78
		Rs. 77,37,184.78
Profit earned by the Dealer to the extent relatable to supply Of labour and service	}	Rs. 2,83,95,468.00
		Rs. 3,61,32,652.78
Taxable turnover under works contract		Rs. 41,33,259.22
Add: Scrap sale		Rs. 4,63,853.00
Total taxable turnover		Rs. 45,97,112.22
Rounded to		Rs. 45,97,110.00
Break up		
Tax due @ 4% on Rs. 4,63,850.00	Rs.	18,554.00
Tax due @ 4% on Rs. 12,47,100.00	Rs.	49,884.00
Tax due @ 12.5% on Rs. 28,86,160.00	Rs.	3,60,770.00
Total tax due	Rs.	4,29,208.00
Less input paid	Rs.	80,363.00
Balance tax due	Rs.	3,48,845.00
Interest due upto 12/09 @ 33%	Rs.	1,15,120.00

Total tax due	Rs. 4,68,965.00
Tax paid (115120+176378)	Rs. 2,91,498.00
Balance	Rs. 1,72,467.00
Interest upto 7/10	Rs. 12,073.00
Total balance due	Rs. 1,84,540.00

As per the revised return filed, the net tax due was Rs. 2,91,498 which was paid as per chalan No. 184 dated 08-1-10. The balance tax and interest as per the revised order was Rs. 1,84,540/- which was paid as per Chalan No. 156 dated 15-09-2010.

8. Omega Elevator Ernakulam - 07-08

The assessee, Kumar. M. Desai, Omega Elevators, is a dealer engaged in the business of Supply, Installation, testing and commissioning of lifts. The head office of the firm situated in Ahmedabad in Gujarat. They have all India business and effected sale in different states of India

The all India turnover as per the (Consolidated Profit & Loss Account is Rs. 4,36,00,640/- The Accountant General, estimated turnover of Kerala, by deducting sales in the State of Gujarat Rs. 4,24,97,812/- Maharashtra, Rs. 8,60,03,232/- sale in the other States Rs. 10,64,38,778/-. The turnover of Kerala is included in the sale in the other States. But the Accountant General taken it as Rs. 20,10,66, 519, which, includes other receipts such as octroi receipts, purchase goods returns, export sales etc related to other States and head office.

The tax estimation of escaped turnover is totally wrong. The branch in Kerala have only stock transfer of lifts, lift parts amounting Rs. 1,98,83, 251/- Sale conceded in Form 13 & 13A is only Rs. 2,84, 41, 501/- and it is evident from contract receipts details filed. In the light of the above, the estimation of escaped turnover of Rs. 17.25 crores is against facts as it includes sales in other States

9. (a) Cheloor Property Tsr - 06-07

The annual return and 13 & 13A filed by M/s. Cheloor Property Development. Projects Limited, Punnamm shows that the dealer had received only Rs. 10,48,98,968/- as receipts during 2006-07 and they paid compounded tax for the above receipts. In the Profit and Loss Account the assessee conceded Rs. 13,37,85,975/- as income from sales. This turnover includes the total sale receipts of their completed

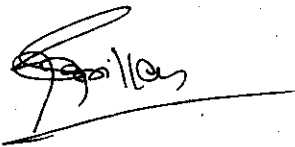
projects. For the sales of their completed projects, the company had already received advances in the earlier years and also paid tax for the advances received in the previous years. Thus the total sale amount of the completed projects included in the Profit and Loss Accounts. As such there occurred difference in receipts and income.

A notice under section 25 (1) was issued to M/s. Cheloor Property Development Projects to assess the turnover of R. 13,37,85,975/- and inviting their objections. The assessee filed reply and stated that they were paying tax on receipt basis and this includes advance amounts received before completion of the projects. The advance received is taken to the credit of the Profit and Loss account only on completion of the entire project. A copy of the re-conciliation statement of income was also furnished by the dealer for reference. As the assessee had already paid the tax due for the advances received for the completed projects and advances were included in the Profit and Loss Account as income, there will be no escape of turnover or tax for the year 2006-07.

(b) Cheloor property Tsr - 07-08

The annual return and 13 & 13A filed by M/s. Cheloor Property Development Projects Limited., Pankunnam, Thrissur shows that the dealer had received only Rs. 16,99,85,213/- as receipts during 2007-08 and they had paid tax at compounded rate for the above receipts. In the profit and loss account the assessee had conceded Rs 18,17,98,183/- as income from sales. This turnover includes the total receipts of this completed projects. For the sale of their completed projects, the company had already received advances in the earlier years and also paid tax for the advances received in the previous years. Thus the total sale amount of the completed projects was included in the profit and loss account. As such there was difference in receipt and income. The Commercial Tax Officer (WC) issued a notice under section 25 (1) to the assessee proposing to assess the turnover of Rs. 18,17,98,183/- To this the assessee had filed reply stating that they used to pay tax on receipt basis and this including advance amounts received before the completion of the projects. The advance received is taken to the credit side of the profit and loss account only on completion of the entire project. Since the assessee had already paid the tax due for the advances received for the completed projects and advances were included in the profit and loss accounts as income, there is no escape of turnover or tax for the year 2007-08.

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



S. PADMANABHA PILLAI
Additional Secretary,
Taxes Department,
Govt. Secretariat
Thiruvananthapuram.

Action taken Notes on C& AG's Reports


	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaping assessment.
	(c)	Paragraph No.	2.12.1.3
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	25.6.10
	(b)	Date of Department's Reply	23.11.10
III		Gist of Paragraph/Review	<p>In the Commercial Tax Office (WC), Ernakulam, during the scrutiny of assessments records for the year 07-08 and 08-09 it was noticed that the assessee M/s.IVRCL Infrastructure & Projects Ltd. claimed exemption under Rule 10(2)A of the Act from the total turnover of contract receipts and paid tax on the balance taxable turnover for the years 07-08 and 08-09. The audit note specified that the cost of goods transferred in the execution of works contract along with the profit element is considerably higher than the taxable turnover that the assessee returned. As such the assessee is liable to pay tax on the cost of goods transferred in the works contract instead of on the total contract receipts. This defect was not detected by the assessing authority which resulted in short levy of tax and interest of Rs.16.91 crore.</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.	The assessment made for the 1 st quarter of the year 2007-08 was remanded in appeal for fresh disposal. Subsequently, the assessment for the years 2007-08 and 2008-09 were completed afresh and demand notice issued for the year 2007-08.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	



S PADMANABHA PILLAI
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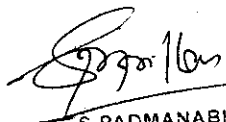
Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to excess availing of Input Tax credit.
	(c)	Paragraph No.	2.12.6.2(b)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	7.1.10
	(b)	Date of Department's Reply	8.7.10
III		Gist of Paragraph/Review	During the scrutiny of assessment records it was noticed that M/s.CPMC Ltd., a dealer in pesticides, fertilizers, sprayers etc. availed input tax credit of Rs.2.60 crore for the years 05-06 to 07-08 against the eligible credit of Rs.2.57 crore. This resulted short levy of tax and interest of Rs.4.53 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>Based on the audit observations, the assessments for the year 2005-06, 2006-07 and 2007-08 in respect of M/s.Cardamom Processing and Marketing Co-Operative Society Ltd., were revised under section 25(1) of KVAT Act creating additional demand as under.</p> <table border="1" data-bbox="536 322 945 424"> <thead> <tr> <th>Year</th><th>Addl.demand</th><th>Interest</th></tr> </thead> <tbody> <tr> <td>2005-06</td><td>120664</td><td>60332</td></tr> <tr> <td>2006-07</td><td>119538</td><td>45424</td></tr> <tr> <td>2007-08</td><td>103871</td><td>27006</td></tr> </tbody> </table> <p>Aggrieved by these orders, the assessee filed appeal before the Deputy Commissioner (Appeals), Ernakulam and as per order No.KVAT 2463, 2464 and 2465/10 dated 31.12.10, Deputy Commissioner (Appeals), Ernakulam has remanded the assessment for the year 2005-06 to 2007-08 for fresh disposal.</p>	Year	Addl.demand	Interest	2005-06	120664	60332	2006-07	119538	45424	2007-08	103871	27006
Year	Addl.demand	Interest												
2005-06	120664	60332												
2006-07	119538	45424												
2007-08	103871	27006												
(b)	Recovery of overpayment pointed out by audit													
(c)	Recovery of under assessment, short levy or other dues	--												
(d)	Modification in the schemes and programmes including financing pattern	--												
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--												


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Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to excess availing of Input Tax.
	(c)	Paragraph No.	2.12.6.3
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	12.5.10
	(b)	Date of Department's Reply	29.9.10
III		Gist of Paragraph/Review	In Asst. Commissioner, Spl. Circle, Malappuram it is noticed that an assessee M/s. Aryavaidyaasala, Kottakkal, Malappuram effected interstate stock transfer of ayurvedic products for Rs.16.38 crore and Rs.19.02 crore during 2005-06 and 2006-07 respectively and claimed the entire input tax credit without limiting it to tax paid in excess of four per cent on stock transfer outside the state. This resulted in short levy of tax and interest of Rs.41.69 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.	Notice under section 25(1) of the KVAT Act was issued on 1.1.2010, proposing to disallow the Input tax. On receipt of the notice the assessee has remitted Rs 15,53,163/- with interest of Rs.7,14,455/- for the year 2005-06. They have also remitted Rs.12,14,191/- for the year 2006-07.			
		Amount (Rs.)	Chalan No.	Date	Name of treasury
		15,53,163	298	12.3.2009	Dist.Treasury, Malappuram
		7,14,455	434	17.3.2009	-do-
		12,14,191	435	17.3.2009	-do-
(b)	Recovery of overpayment pointed out by audit				
(c)	Recovery of under assessment, short levy or other dues	--			
(d)	Modification in the schemes and programmes including financing pattern	--			
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit				


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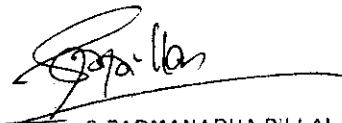
Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to excess availing of special rebate.
	(c)	Paragraph No.	2.12.8.1(a)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	14.6.10
	(b)	Date of Department's Reply	10.12.10
III		Gist of Paragraph/Review	In Commercial Tax Officer, Special Circle-I, Ernakulam, during the scrutiny of assessment records it was noticed that assessee M/s.Joy Alukkas Traders (India) Ltd. who effected interstate stock transfer of gold ornaments valued at Rs.151.04 crore for the year 06-07 availed special rebate for the entire purchase instead of limiting it to the eligible limit which resulted in short levy of tax and interest of Rs.1.67 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.	The accounts of the assessee were verified and input tax special rebate liable to be disallowed is disallowed as per order dated 24.3.10. Tax additionally demanded as per assessment order is Rs.2,93,68,045/- and interest Rs.1,27,72,382/- Revenue Recovery Certificate has already been issued. The assessee has filed appeal before the Deputy Commissioner (Appeals), Ernakulam and has obtained conditional stay. The appeal is still pending disposal before the Deputy Commissioner (Appeals), Ernakulam.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--



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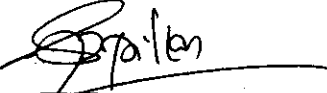
Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to excess availing of special rebate.
	(c)	Paragraph No.	2.12.8.1(b)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	10.4.10
	(b)	Date of Department's Reply	11.10.10
III		Gist of Paragraph/Review	In the Special Circle (Produce), Mattancherry, M/s.Harrison Malayalam Ltd. has effected interstate stock transfer of tea, manufactured by them valued at Rs.29.88 crore during 2006-07. The assessee availed special rebate on such goods so stock transferred in contravention of the provisions of section 12(1) of KVAT Act 2003. The excess special rebate availed comes to Rs.5.96 lakhs.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>The assessee effected purchase of tea u/s 6(2) from unregistered dealers and subsequently stock transferred to outside the state. The availing of special rebate is irregular and against the provisions of the KVAT Act 2003.</p> <p>Accordingly the Asst. Commissioner has issued notice to the assessee and they have remitted back the excess special rebate with interest and settlement fee. The exact amount availed by the assessee is Rs.7,87,004/- The details of remittance are as follows.</p> <table><tr><td>Special rebate availed in excess</td><td>Rs.787004</td></tr><tr><td>Interest due upto 31.7.2010</td><td>Rs.283321</td></tr><tr><td>Settlement fee</td><td><u>Rs.566643</u></td></tr><tr><td>Total</td><td>Rs.1636968</td></tr></table> <p>The entire amount has been paid on 9.7.10 vide cheque No.233545 and encashed on 17.7.10 vide chalan No.S.99.</p>	Special rebate availed in excess	Rs.787004	Interest due upto 31.7.2010	Rs.283321	Settlement fee	<u>Rs.566643</u>	Total	Rs.1636968
Special rebate availed in excess	Rs.787004									
Interest due upto 31.7.2010	Rs.283321									
Settlement fee	<u>Rs.566643</u>									
Total	Rs.1636968									
(b)	Recovery of overpayment pointed out by audit									
(c)	Recovery of under assessment, short levy or other dues	--								
(d)	Modification in the schemes and programmes including financing pattern	--								
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--								


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Action taken Notes on C& AG's Reports

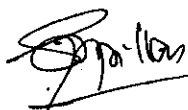
	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to excess availing of special rebate.
	(c)	Paragraph No.	2.12.8.2(b)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	26.5.10
	(b)	Date of Department's Reply	11.10.10
III		Gist of Paragraph/Review	A dealer in cashew nut and kernal M/s. KSA Kamath & Sons claimed special rebate relating to the purchase tax paid under section 6(2) during the year 2006-07 valued as 6.49 lakh for the year 2007-08. However the assessee had already claimed the entire special rebate for the year 06-07. Thus the excess allowance of special rebate resulted in short levy of tax Rs.6,48,922/-.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	The special rebate availed by the dealer during the year 2007-08 is in order and therefore there is no excess allowance of special rebate.
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

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Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>The Accountant General's findings are that as the assessee claimed entire special rebate for the purchase tax under section 6(2) for the year 2006-07 during in that year itself and therefore no special rebate is available on 2006-07 to adjust towards 2007-08 assessment year.</p> <p>The Asst. Commissioner (Assmt.), Spl. Circle, Kasargod has verified the accounts of the dealer with reference to the audited statements filed by the dealer for the year 2006-07 and 2007-08. The special rebate claimed by the dealer during 2006-07 was in respect of the purchase tax due for the year 2005-06 which amounts Rs.7,39,388/- which was remitted as per chalan No.154 dated 31.7.2006 and not the purchase tax due for the year 2006-07. The purchase tax due for March 2007 is Rs.6,48,922/- which had been paid as per chalan No.106 dated 30.4.2007 i.e., special rebate admissible only in 2007-08.</p> <p>The factual position of 6(2) purchase due for 2006-07 are explained below.</p> <table border="0"> <tr> <td>Total 6(2) purchase tax 2006-07</td> <td>Rs.1921101</td> </tr> <tr> <td>Purchase tax due for 05-06 remitted</td> <td>Rs. 739388</td> </tr> <tr> <td>in 31.7.06 (as per chalan No.154/31.7.06)</td> <td></td> </tr> <tr> <td>purchase tax due for 3/07 remitted on 30.4.07</td> <td></td> </tr> <tr> <td>Special rebate admissible in 07-08 as per the provision</td> <td>Rs. 648922</td> </tr> <tr> <td>Total special rebate admissible</td> <td>Rs.2011567</td> </tr> <tr> <td>Total special rebate claimed by the dealer during 2006-07</td> <td>Rs.2011567</td> </tr> </table> <p>Hence the special rebate availed by the dealer during the year 07-08 is in order and therefore there is no excess allowance of special rebate.</p>	Total 6(2) purchase tax 2006-07	Rs.1921101	Purchase tax due for 05-06 remitted	Rs. 739388	in 31.7.06 (as per chalan No.154/31.7.06)		purchase tax due for 3/07 remitted on 30.4.07		Special rebate admissible in 07-08 as per the provision	Rs. 648922	Total special rebate admissible	Rs.2011567	Total special rebate claimed by the dealer during 2006-07	Rs.2011567
Total 6(2) purchase tax 2006-07	Rs.1921101															
Purchase tax due for 05-06 remitted	Rs. 739388															
in 31.7.06 (as per chalan No.154/31.7.06)																
purchase tax due for 3/07 remitted on 30.4.07																
Special rebate admissible in 07-08 as per the provision	Rs. 648922															
Total special rebate admissible	Rs.2011567															
Total special rebate claimed by the dealer during 2006-07	Rs.2011567															
(b)	Recovery of overpayment pointed out by audit															

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



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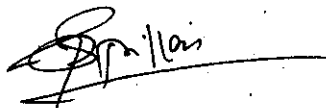
Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of Output Tax.
	(c)	Paragraph No.	2.12.9(3)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	4.6.10
	(b)	Date of Department's Reply	19.10.10
III		Gist of Paragraph/Review	During the scrutiny of records in the Asst. Commissioner, Special Circle, Mattancherry at Aluva in September 2009 noticed that M/s. Jaishankar Steels has availed input tax credit of Rs.57.06 lakh for the year 07-08 on a purchase turnover of Rs.14.19 crore as conceded in the annual return. However as per Form 13A and Profit and Loss Accounts, the assessee is eligible for an input tax credit of Rs.49.30 lakh only on the purchase turnover of Rs.12.26 crores. This resulted in short levy of tax, interest and penal interest of Rs.11.73 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	As per the Form 13 the purchase value is inclusive of Excise Duty element and no excess IPT availed in this case on that amount.
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	In the annual return, the aggregate of purchase value + CENVAT element was shown as purchase value of Rs.14,19,01,315/-. The CENVAT and cess on CENVAT was not included in the Profit & Loss accounts. Thus the purchase value was shown as Rs.12,25,95,267/- in the Profit & Loss accounts. In the annual return the dealer have shown their total purchases as Rs.14,19,01,315/- which includes the price and CENVAT. As per the definition in the KVAT Act the purchase cost will include central excise duty element. Hence the difference between the total purchase value of the return and accounts. As per the Form 13 the purchase value is inclusive of Excise Duty element and hence no excess IPT availed in this case.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--



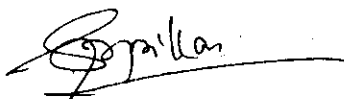
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Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of Output Tax.
	(c)	Paragraph No.	2.12.9.4
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	30.7.10
III		Gist of Paragraph/Review	In Commercial Tax Office, Special Circle (produce), Mattancherry, the Accountant General has noticed in June 2009 that M/s.Freeze Engineering Industries, an assessee failed to assess tax on DEPB license for the years 2005-06 to 2007-08, valued at Rs.1.57 crore. This resulted in short levy of tax, interest and penal interest of Rs.10.55 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 Audi 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.Freeze Engineering Industries filed profit and loss account for the years 2005-06 to 07-08 and disclosed receipt by way of DEPB sales. But the assessee omitted to include this turnover in the returns filed. Subsequently this fact has been intimated to the dealer and they remitted Rs.6,29,826/- on 27.08.09. Out of this an amount of Rs.1,41,879/- has been adjusted towards interest. The dealer remitted this amount also with further interest due as per D.D.No.493792 dated 26.3.2010 for Rs.1,54,648/-. The assessee has already declared DEPB sales in the Profit & Loss Account for the years 2005-06 to 2007-08. Thus the short levy in this case has been made good.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--



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Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to incorrect allowance of discount.
	(c)	Paragraph No.	2.12.10.1(a)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	29.4.10
	(b)	Date of Department's Reply	20.11.10
III		Gist of Paragraph/Review	M/s. Philips Carbon Black Ltd. an assessee incorrectly excluded the turnover in respect of discount amounting to Rs. 12.37 crore and Rs. 1.17 crore for the years 2005-06 and 2006-07 respectively which were not shown in the invoices raised by the dealer. This resulted in short levy of tax of Rs. 54.18 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action taken/

(a)	Improvement in system and procedures, including internal controls.	<p>The dealer had incorrectly excluded the turnover in respect of discount allowed subsequent to sale and short levy to the tune of Rs. 54.17 lakhs occurred. Subsequently the assessment for both years 2005-06 and 2006-07 have been completed by the Assistant Commissioner on 16-09-2010.</p> <p>An amount of Rs.79,50,568/- and Rs.14,70,588/- was demanded for the years 2005-06 and 2006-07 respectively and same is under revenue recovery proceedings now.</p> <p>The assessee challenged the orders before the Hon'ble High Court in WP(c)No.2611/11 and as per order dated 28.1.11, the "RR proceedings were ordered to be kept in abeyance for a period of six weeks from the date of order, to facilitate the petitioner to take appropriate steps to challenge the orders in appropriate proceedings". An SLP @ No.7359/11 has been filed before the Hon'ble Supreme Court by 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/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--


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Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to incorrect allowance of discount.
	(c)	Paragraph No.	2.12.10.(2)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	2.12.10
	(b)	Date of Department's Reply	8.7.10
III		Gist of Paragraph/Review	In Commercial Tax Office, Nedumkandam, during the scrutiny of records it was noticed that a dealer in cement and A.C. sheet received an amount of Rs.24.83 Lakh for the years 2006-07 and 2007-08 as discount subsequent to sale, but availed input tax credit on the entire purchase turnover instead of limiting it to that extent. This resulted in excess availing of input tax credit of Rs.3.10 Lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	Sri Joseph, Augustine, M/s. Kerala Trading Company, Nedunkandam is an assessee on the rolls of the Commercial Tax Office, Nedunkandam bearing TIN 32060844235 dealing with cement and AC sheets. On further scrutiny of the assessment records it is revealed from the Profit and Loss Accounts that the assessee received discount during the years 2006-07 and 2007-08 an amount of Rs.1736708/- and Rs.764624/- respectively. But the assessee availed entire amount as Input Tax credit claim for both years. This is against provisions to Section 11(3) of the KVAT Act 2003. In the circumstances, the assessments for the years 2006-07 and 2007-08 were revised on 08.02.2010 by including the escaped turnover specified in the audit objection. An amount of Rs.296621/- and Rs.138526/- was additionally assessed as tax and interest for the years 2006-07 and 2007-08. Assessment along with demand notice was served on 17.02.2010. But the assessee has not remitted the amount. Hence it was advised to be collected by Inspecting Assistant Commissioner, Idukki through 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	--



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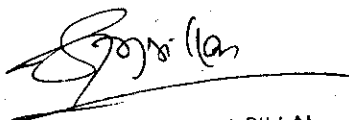
Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to incorrect computation.
	(c)	Paragraph No.	2.12.11.2
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	22.5.10
	(b)	Date of Department's Reply	23.7.10
III		Gist of Paragraph/Review	In Commercial Tax office, Special Circle-I, Ernakulam, during the scrutiny of assessment records of M/s.Joy Alukkas Traders (India)(P) Ltd., it was noticed that assessee assessed output tax on the sales turnover of gold ornaments valued at Rs.343.63 crore for the year 2006-07 on Rs.10.50 crore instead of 10.64 crore. This resulted in a short levy of tax and interest of Rs.17.18 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.Jay Alukkas Traders (India) (P) Ltd., Ernakulam is an assessee on the rolls of the Asst.Commissioner, Special Circle-I, Ernakulam bearing TIN No.32070242395. Verification of returns and accounts revealed that the assessee has not shown sales return during the first few months in the returns filed. Difference in remittance of tax has occurred due to this aspect. Allowable sales return has been allowed. Verification revealed short remittance of Rs.2,51,448/- for which assessment is done. As per the assessment order dated 24.3.10, tax demanded is Rs.2,93,68,045/- and interest Rs.1,27,72,382/- for which RRC has already been issued. The Hon'ble High Court as per order dated 8.4.10 in WP(c)No.12438/10, directed the Deputy Commissioner (Appeals), Ernakulam to hear stay petition and pass orders thereon and stayed coercive steps till that time. Stay condition is fulfilled, and the assessee has paid Rs. 70,23,405 as per chalan No. 2477 dated 31.8.10 and Rs. Rs. 70,23,405 as per chalan No.234/ dated 9.02.10 out of total demand Rs. 4.21 Crore as per assessment order dated 24.3.10.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--



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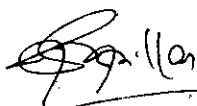
Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to incorrect computation.
	(c)	Paragraph No.	2.12.11(3)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	22.4.10
	(b)	Date of Department's Reply	11.10.10
III		Gist of Paragraph/Review	In Commercial Tax Office, Tirur in April 2009, the Accountant General (Audit) has noticed that compounded tax for the year 2006-07 of M/s.Malabar Gold Jewels (P) Ltd., a dealer in gold ornaments who commenced business in 18 February 2007, was fixed incorrectly due to reckoning of turnover from the period 18 February 2007 to 28 February 2007 as the turnover for one month. This resulted in short assessment of tax and interest of Rs.10.12 lakh for the year 2006-07 and 2007-08.
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	

V2

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>The compounding assessments for the years 2006-07 and 2007-08 were revised after giving opportunity to the dealer to raise objection if any. Accordingly an amount of Rs.891354/- (Rs.112830/- and Rs.778524/- for the years 2006-07 and 2007-08 respectively) was demanded from the dealer with interest.</p> <p>As the dealer failed to remit the amount, the Revenue Recovery steps was taken against the dealer vide RRC No.16/09-10 dated, 14.10.09. Consequently, the dealer obtained conditional stay order from the Deputy Commissioner (Appeals), Ernakulam against the revised assessment order.</p> <p>The dealer has remitted 30% of the total demand as detailed below and submitted security in the form of Bank Guarantee for the remaining amount.</p> <table border="1" data-bbox="481 520 947 632"> <thead> <tr> <th>Year</th><th>Amount</th><th>Chalan No. Date</th></tr> </thead> <tbody> <tr> <td>2006-07</td><td>Rs. 42988/-</td><td>330/17.12.09</td></tr> <tr> <td>2006-07</td><td>Rs. 3224/-</td><td>54/21.12.09</td></tr> <tr> <td>2007-08</td><td>Rs. 268591/-</td><td>329/17.12.09</td></tr> <tr> <td>2007-08</td><td>Rs. 20144/-</td><td>55/21.12.09</td></tr> </tbody> </table> <p>The case is still pending before the Deputy Commissioner (Appeals), Ernakulam.</p>	Year	Amount	Chalan No. Date	2006-07	Rs. 42988/-	330/17.12.09	2006-07	Rs. 3224/-	54/21.12.09	2007-08	Rs. 268591/-	329/17.12.09	2007-08	Rs. 20144/-	55/21.12.09
Year	Amount	Chalan No. Date															
2006-07	Rs. 42988/-	330/17.12.09															
2006-07	Rs. 3224/-	54/21.12.09															
2007-08	Rs. 268591/-	329/17.12.09															
2007-08	Rs. 20144/-	55/21.12.09															
(b)	Recovery of overpayment pointed out by audit																
(c)	Recovery of under assessment, short levy or other dues																
(d)	Modification in the schemes and programmes including financing pattern																
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit																



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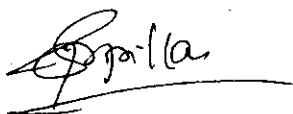
Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to incorrect computation.
	(c)	Paragraph No.	2.12.11(4)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	4.6.10
	(b)	Date of Department's Reply	30.7.10
III		Gist of Paragraph/Review	In Commercial Tax Officer, Special Circle-I, Ernakulam, during the scrutiny of assessment records of M/s.L.G.Electronics India, it was noticed that the dealer self assessed tax on the inter state sales turnover of Rs.100.43 lakh as disclosed in the annual return, even though the certified accounts reflected an inter state sales turnover of Rs.201.10 lakh. This resulted in short levy of tax of Rs.10.07 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>M/s. L.G. Electronics India, Cochin is an assessee on the rolls of Commercial Tax Officer, Special Circle-I, Ernakulam bearing TIN - 32070227095.</p> <p>The CST assessment for 2006-07 is completed on 16.2.10 fixing interstate sales at Rs.2,40,71,550/- as against the conceded turnover of Rs. 1,00,43,434.62 only and this figure tally with return filed. CST collection as per return and accounts is Rs.4,01,738/- only which is tallying with turnover conceded in return. Minor mistakes found on verification of accounts.</p> <p>The assessee had filed explanation for the difference between return and audit report and revised audit report filed correcting the turnover on interstate sales as Rs.1,00,43,434.62. The auditor has filed explanation for the difference as error occurred while downloading datas from ERP system. In order to protect the interest of revenue, contentions were rejected and assessment completed adopting the turnover conceded in first audit report in respect of interstate sales. CST balance demanded comes to Rs.27,31,467/- and interest Rs.11,19,900/- RRC already issued.</p> <p>The Hon'ble High Court of Kerala stayed the collection on remitting 1/3rd of demand as per WP(C) No. 17717 of 2010 (L). The assessee has remitted Rs. 5010890/- (KVAT) as per chalan No. 1409 dated 29-06-2010 and Rs. 901384 (CST) as per chalan No. 1398 dated 29.6.10.</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	--



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Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaping assessment.
	(c)	Paragraph No.	2.12.12.1
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	4.6.10
	(b)	Date of Department's Reply	2.7.11
III		Gist of Paragraph/Review	In Commercial Tax Office, Special Circle, Palakkad in February 2010, it was noticed that M/s. Elgi Tread (India)(P) Ltd., a manufacturer and dealer in tread rubber, did not assess the turnover relating to excise duty and cess amounting to Rs. 12.08 crore collected for the year 2006 - 07. This resulted in short levy of tax and interest of Rs. 64.76 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	The dealer had conceded Sales Turnover including excise duty and the whole turnover was assessed and hence the audit observation is not sustainable.
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action taken

(a)

Improvement in system and procedures, including internal controls.

The Annual Return was verified with reference to Statements of Accounts and Books of Accounts of the dealer and observed as follows:

Turnover conceded as per Annual Return

Local sales	(Rs.)
12.5%	19,18,894.72
4%	2,19,61,378.75
0%	47,526.50
Total	2,39,27,799.97
<u>Interstate Sales</u>	
Sales to Nepal - 0%	1,16,47,434.92
Sales to Nepal - 12.5%	32,092.48
Sales to Nepal - 4%	1,08,721.75
Tread Rubber - 12.5%	23,327.20
Tread Rubber - 4%	22,27,28,989.75
Total	23,45,40,566.10
(Total mistake found in return is shown as Rs. 22,28,93,131.18. Correct turnover shown in accounts)	
Export Sales	7,39,96,604.00
Interstate stock transfer	62,24,54,917.13
Total turnover conceded	95,49,19,887.20
The figure is tallied with Audited Accounts	
Excise duty & Cess collection accrued as per Schedule III	12,08,21,667.00

The audit itself pointed out that the excise duty and Cess amounting to Rs. 12,08,21,667.00 was not assessed including the turnover reported.

On verification of the Books of Accounts, the dealer have accounted excise duty as under:

Transaction	Rate	Basic Value	Excise Duty & Cess	Taxable turnover
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			Local Sales	12.5%	19,18,894.72	0	19,18,894.72
				4%	1,88,76,522.77	30,84,855.98	2,19,61,378.75
				0%	47,526.50	0	47,526.50
			Total				2,39,27,799.97
			Interstate Sales	12.5%	27,590.00	4,502.48	32,092.48
				12.5%	20,054.34	3,272.86	23,327.20
				4%	1,04,147.25	4,574.50	1,08,721.75
				4%	19,09,50,530.24	3,17,78,459.51	22,27,28,989.75
			Total				22,28,93,131.18
			Export Sales Nepal	0%	1,00,10,547.48	16,36,887.28	1,16,47,434.92
				0%	7,39,96,604.00	0	7,39,96,604.00
			Branch Transfer	0%	53,81,45,802.74	8,43,09,114.39	62,24,54,917.13
			Total				95,49,19,887.20

From the above it is clear that the dealer had conceded Sales Turnover including excise duty and the whole turnover was assessed and hence the audit observation is not sustainable.

(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--

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

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the-Review Paragraph	Non levy of reverse tax.
	(c)	Paragraph No.	2.12.14(a)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/ Review in the Department	15.8.10
	(b)	Date of Department's Reply	18.8.11
III		Gist of Paragraph/Review	During scrutiny of records in Assistant Commissioner (A), Special Circle, Malappuram in March 2009, it was noticed that M/s.Aryavaidyasala, Kottakkal, an assessee, had effected free sale of medicine for Rs. 3.51 crore and Rs. 4.05 crore during 2005-06 and 2006-07 respectively and exempted sale to special economic zone for Rs.62.04 lakh in 2006-07. However, proportionate input tax and special rebate in respect to the above has not been assessed as reverse tax. This resulted in short levy of tax and interest of Rs.15.06 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Partially sustainable.
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	Detailed report furnished in column VI(a)

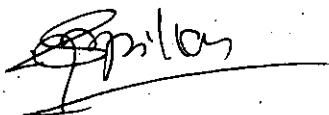
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>On receipt of the Audit objections the Assistant Commissioner (KVAT), Special Circle, Malappuram has issued notice under section 25(1) of the KVAT Act 2003 to the dealer vide Notice No.32100224275/2005-06 dated 01.01.10 proposing to disallow the proportionate input tax credit and special rebate of Rs.3,65,118/- on the free issue of medicines. On receipt of the notice M/s.Arya Vaidya Sala, Kottakkal has remitted Rs.3,75,659.00 with interest as per Chalan No.298 dated 19.03.2010 for the year 05-06.</p> <p>The total input tax to be disallowed for the year 2005-06 as per accounts is Rs.3,65,118.00 whereas as per observation of the Accountant General, Thiruvananthapuram was Rs.5,84,135.00 which seems to be not correct.</p> <p>For the year 2006-07 the total sales turnover of M/s.Aryavaidyasala, Kottakkal, was Rs. 1,02,68,52,856.66 out of Rs. 4,04,66,983.99 was free sales, i.e. 3.93% of the total sales was free sales. The assessee has already reversed Rs. 5,30,160.42 proportionate on free issue as per their annual return for 2006-07. Hence there is no short levy in this case.</p> <p>Regarding Form I sale, of Rs. 62,04,000.00 this sales is to a unit in Special Economic Zone at Kandla in Gujarat State. When goods are sold under Form I to a unit outside Kerala, it is interstate sale exempted from payment of tax. According to third proviso to section 11(3) of the KVAT Act "where any goods purchased in the state are subsequently sent to outside the state or used in the manufacture of goods and the same are sent outside the state other than by way of sale in the course of interstate trade or export or where the sale in the course of interstate trade are exempted from tax, input tax credit under this section shall be limited to the amount of input tax paid (in excess of four per cent) on the purchase turnover of such goods sent outside the state". The provision specifically mentions that the restriction is not applicable to - (i) interstate sale; (ii) Exports; & (iii) interstate sale exempted from payment of tax.</p> <p>In the circumstances, explained above there will be no short levy in this case.</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	--



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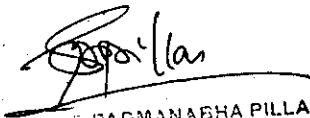
Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Non levy of reverse tax.
	(c)	Paragraph No.	2.12.14(b)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	4-6-10
	(b)	Date of Department's Reply	7-8-10
III		Gist of Paragraph/Review	In Commercial Tax Office, Tirurangadi, the Accountant General has noticed in October 2009 that an assessee who had a purchase return of Rs.20.65 lakh as per the certified accounts of 2006-07, conceded a reverse tax of Rs.17,743/- only instead of Rs.2.35 lakh. This resulted in short levy of tax, interest and penal interest of Rs. 4.14 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action taken

	(a)	Improvement in system and procedures, including internal controls.	The escaped assessment in respect of M/s.Prince Agencies for the year 2006-07 has been completed as per order No.32100622332 dated 16.7.2010 with balance of Rs.2,63,789/- interest of Rs.97,600/- penalty Rs.1,95,200/-. The collection of above amount was stayed by the Deputy Commissioner (Appeals), Ernakulam vide KVATA No.3054/10 dated 13.9.2010 with direction to pay 30% of the arrear within two weeks of receipt of stay order and furnish adequate security for balance amount. The dealer remitted Rs.1,68,200/- on 4.10.2010 and furnished Bank Guarantee; for balance amount on 4.10.2010. The above appeal is pending before the Deputy Commissioner (Appeals), Ernakulam.
	(b)	Recovery of overpayment pointed out by audit	
	(c)	Recovery of under assessment, short levy or other dues	--
	(d)	Modification in the schemes and programmes including financing pattern	--
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit.	--


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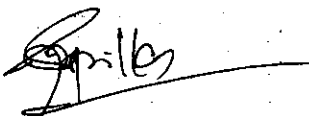
Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to excess grant of input tax credit.
	(c)	Paragraph No.	2.12.15(1)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	22.9.10
	(b)	Date of Department's Reply	9.6.10
III		Gist of Paragraph/Review	During scrutiny of records in Commercial Tax Office, 2 nd Circle, Kottayam, it was noticed that an assessee M/s.Coods Agro (P) Ltd. claimed input tax credit for the entire purchase for the years 2006-07 and 2007-08. Even though 53% of the goods manufactured were sent outside the state otherwise than by way of sale, the input tax credit availed corresponding to the stock transfer was not disallowed. This resulted in short levy of tax of Rs.11.88 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>In the defect pointed out, the Audit is of the version that the entire raw materials for the production of Copper Sulphate were purchased from local registered dealers and hence the input tax credit availed by the assessee corresponding to the stock transfer should have been disallowed. But on verification of the assessment records and statements filed, it is clear that the purchase turnover of raw materials include import and interstate purchases and for which input tax have not claimed by the assessee.</p> <p>In the circumstances, the input tax credit to be disallowed was calculated and worked out as follows.</p> <table><tr><td>Total IPT disallowed and demanded</td><td></td><td></td></tr><tr><td></td><td>for 06-07</td><td>Rs. 142083</td></tr><tr><td>-do-</td><td>for 07-08</td><td><u>Rs.346076</u></td></tr><tr><td></td><td>Grand Total</td><td><u>Rs.488159</u></td></tr></table> <p>The assessments for the years 06-07 and 07-08 were thus completed under section 25(1) of the KVAT Act 2003 and the amount due was advised for RR; the recovery proceedings initiated by the state is stayed by the Hon'ble Tribunal, Ernakulam until further orders.</p>	Total IPT disallowed and demanded				for 06-07	Rs. 142083	-do-	for 07-08	<u>Rs.346076</u>		Grand Total	<u>Rs.488159</u>
Total IPT disallowed and demanded															
	for 06-07	Rs. 142083													
-do-	for 07-08	<u>Rs.346076</u>													
	Grand Total	<u>Rs.488159</u>													
	(b)	Recovery of overpayment pointed out by audit													
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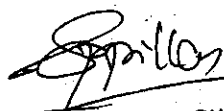
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Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to excess grant of input tax credit.
	(c)	Paragraph No.	2.12.15(2)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	29.4.10
	(b)	Date of Department's Reply	15.7.10
III		Gist of Paragraph/Review	In Commercial Tax Office, Special Circle -I, Kozhikode in September 2009 it was noticed that M/s. K.V.N. Impex, Meenchanda, Kozhikode a dealer claimed input tax credit for the entire purchases for the year 2007-08. Even though 8.40 per cent of the total sales turnover relates to consignment sale, the input tax credit availed corresponding to this turnover was not disallowed. This resulted in short levy of tax and interest of Rs. 3.82 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>The assessment for the year 2007-08 of the above case has been revised by the Assessing authority on 19.02.10 after disallowing the input Tax claim on consignment sale.</p> <p>M/s.KVN Impex was liable to pay balance tax and interest as under and has paid the dues for the year 2007-08 as follows:-</p> <table><tr><th>Sl. No</th><th>Chalan No. & Date</th><th>Encashed Date</th><th>Tax (Rs.)</th><th>Interest (Rs.)</th><th>Total (Rs.)</th></tr><tr><td>1</td><td>417/ 28-4-10</td><td>20-05-2010</td><td>92065</td><td>107935</td><td>200000</td></tr><tr><td>2</td><td>304/ 3-6-10</td><td>26-06-2010</td><td>200000</td><td>---</td><td>200000</td></tr><tr><td>3</td><td>183/ 29-6-10</td><td>20-07-2010</td><td>31742</td><td>99300</td><td>131042</td></tr><tr><td colspan="2">Total</td><td></td><td></td><td></td><td>531042</td></tr></table>	Sl. No	Chalan No. & Date	Encashed Date	Tax (Rs.)	Interest (Rs.)	Total (Rs.)	1	417/ 28-4-10	20-05-2010	92065	107935	200000	2	304/ 3-6-10	26-06-2010	200000	---	200000	3	183/ 29-6-10	20-07-2010	31742	99300	131042	Total					531042
Sl. No	Chalan No. & Date	Encashed Date	Tax (Rs.)	Interest (Rs.)	Total (Rs.)																											
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(c)	Recovery of under assessment, short levy or other dues	--																														
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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	--																														


S. PADMANABHA PILLAI
 Additional Secretary,
 Taxes Department,
 Govt. Secretariat,
 Thiruvananthapuram.

Action taken Notes on C& AG's Reports

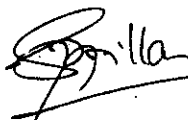
	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to incorrect computation.
	(c)	Paragraph No.	2.12.19
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	4.6.10
	(b)	Date of Department's Reply	2.9.10
III		Gist of Paragraph/Review	While finalizing the assessment of M/s. The Cannanore District Co-operative Rubber & Agrl. Marketing Society Ltd, a dealer in rubber for the years 2002-03 to 2004-05 in September 2008 and October 2008, the assessing authority failed to assess purchase tax on a portion of purchase turnover of latex used in the conversion of field latex to centrifuged latex, valued at Rs. 1.31 crore. This resulted in short levy of tax and interest of Rs. 28.16 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	M/s. Cannanore District Co-op. Rubber & Agricultural Marketing Society is a dealer purchasing Field Latex, Converting it into Centrifuged Latex and sold it interstate mainly and a small portion locally in Form 25. The assessee in this case purchased Field Latex from unregistered growers and

			<p>converted the same into Centrifuged Latex, Crepe rubber etc. and selling the same locally and interstate. On interstate sales they remit tax on the purchase value of Field Latex in advance. On interstate sale of Cenex, they are liable to pay tax on the purchase value, in addition to CST on the sale value. As they are purchasing Field Latex, the purchase value in this case is that of Field Latex and as such there is no escapement of turnover involved in these cases.</p>
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	M/s. Cannahore District Co-op. Rubber & Agricultural Marketing Society is a dealer purchasing Field Latex, Converting it into Centrifuged Latex and sold it interstate mainly and a small portion locally in Form 25. The assessee in this case purchased Field Latex from unregistered growers and converted the same into Centrifuged Latex, Crepe rubber etc. and selling the same locally and interstate. On interstate sales they remit tax on the purchase value of Field Latex in advance. On interstate sale of Cenex, they are liable to pay tax on the purchase value, in addition to CST on the sale value. As they are purchasing Field Latex, the purchase value in this case is that of Field Latex and as such there is no escapement of turnover involved in these cases.
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--



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Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Turnover escaping assessment
	(c)	Paragraph No.	2.12.20(a)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	20.2.10
	(b)	Date of Department's Reply	13.4.10
III		Gist of Paragraph/Review	In the Commercial Tax Office, Special Circle, Kottayam it was noticed that while finalizing the assessments of a dealer, M/s. Arakkathara Rubbers, engaged in the manufacture and sale of rubber products for the years 2003-04 and 2004-05 in May 2007, the fast track authorities did not levy tax due on the intrastate purchase turnover of scrap rubber valued at Rs. 45.82 lakh. This resulted in short levy of tax of Rs. 3.16 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	The assessments were revised by creating additional demands Rs.1,12,954/- and Rs.2,03,176 for 03-04 and 04-05 respectively. The assessee filed appeal against the order and the Deputy Commissioner (Appeals), Kottayam, in his order STA No.982/09 & 983/09

			dated 15.12.2009 has set aside the assessment orders u/s 19, clarifying that the item purchased in both years were Hawai Waste powder and not scrap rubber and the assessee has paid tax for the purchases.
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action taken

	(a)	Improvement in system and procedures; including internal controls.	The assessments was revised by creating additional demands Rs.1,12,954/- and Rs.2,03,176 for 03-04 and 04-05 respectively. The assessee filed appeal against the order and the Deputy Commissioner (Appeals), Kottayam, in his order STA No.982/09 & 983/09 dated 15.12.2009 has set aside the assessment orders u/s 19, clarifying that the item purchased in both years were Hawaii Waste powder and not scrap rubber and the assessee has paid tax for the purchases.
	(b)	Recovery of overpayment pointed out by audit	
	(c)	Recovery of under assessment, short levy or other dues	--
	(d)	Modification in the schemes and programmes including financing pattern	--
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--



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Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Turnover escaping assessment
	(c)	Paragraph No.	2.12.20(b)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	24.12.10
	(b)	Date of Department's Reply	17.4.10
III		Gist of Paragraph/Review	In the Special Circle, Kottayam while finalizing the assessment for the year 03-04 and 04-05 of an assessee M/s. Sahrudaya Rubber Industries, engaged in the manufacture and sale of rubber products, the purchase turnover of scrap rubber from the local rubber dealers (shown in the accounts as 'waste') for Rs.16,02,663/- in 2003-04 and for Rs.35,27,926/- in 2004-05 was not reckoned for assessment. This resulted in the short levy of Rs.3,54,010 @ 6.9%.
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	Assessment u/s 19 completed creating an additional demand Rs.110584/- and interest Rs.87361/- and Rs.133885/- respectively for the years 2003-04 and 2004-05 as per order dated 24.10.09. The assessee filed appeal against these orders before the appellate authority. The appellate authority has set aside the orders dated 15.12.09, clarifying that the item is not scrap rubber but Hawaii Waste powder which is a first sale

			point item, taxable at the 1 st sale point. And the tax has been collected from the assessee at the first sale point.
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.	Assessment u/s 19 completed creating an additional demand Rs.110584/- and interest Rs.87361/- and Rs.133885/- respectively for the years 2003-04 and 2004-05 as per order dated 24.10.09. The assessee filed appeal against these orders before the appellate authority. The appellate authority has set aside the orders dated 15.12.09, clarifying that the item is not scrap rubber but Hawaii Waste powder which is a first sale point item, taxable at the 1 st sale point. And the tax has been collected from the assessee at the first sale point.
	(b)	Recovery of overpayment pointed out by audit	
	(c)	Recovery of under assessment, short levy or other dues	--
	(d)	Modification in the schemes and programmes including financing pattern	--
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--



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Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to incorrect exemption.
	(c)	Paragraph No.	2.12.2.1(a)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	30.6.2010
	(b)	Date of Department's Reply	1.3.12
III		Gist of Paragraph/Review	In CTOs, Special Circle-II, Ernakulam and works contract, Mattancherry four dealers had assessed turnover in respect of works contract after deducting expenses much higher than that referred in the Table, even though the actual expenses in respect of labour and other charges were not ascertainable from their accounts. This mistake was not detected by the assessing authorities and rectified which resulted in short levy of tax and interest of Rs.68.29 crore.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	4 cases included in this para 3 cases sustainable and 1 case not sustainable.
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	Detailed report furnished in column VI(a)
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

V)

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>The Accountant General had noticed that the following 4 dealers, i.e:</p> <ul style="list-style-type: none"> (i) M/s. Larson and Toubro Ltd (ii) Cochin Shipyard Ltd (iii) M/s. Paulose George and Constructions Company (P) Ltd (iv) Kunnel Engineers and contractors (P) Ltd <p>2008-09 had assessed turnover in respect of works contract after deducting expenses much higher than that referred in the table, even though the actual expenses in respect of labour and other charges were not ascertainable from their accounts.</p> <p><u>1. Larson and Toubro 2005-06 to 2008-09</u> <u>2005-06</u> The assessment for the year 2005-06 has already been completed by Audit Wing. The dealer has paid Rs.1,23,32,695/- and challenged the assessment order before Hon'ble High Court as Revision No.WP(C) No.36248/07 and the same is pending disposal.</p> <p><u>2006-07</u> Notice issued to verify the Accounts and Assessment will be completed shortly</p> <p><u>2007-08</u> Assessment for the year has been completed u/s 25(1) on 24.12.2009 on the basis of audit objection. The assessment was set aside by the Honourable High Court vide judgment No.WP(C).4206/10 dated 19.02.2010. Notice issued to the assessee to produce the books of accounts for detailed verification. Final reply will be submitted shortly after completion of fresh assessment.</p> <p><u>2008-09</u> Notice issued to verify the accounts and assessment will be completed shortly.</p> <p><u>2. Cochin Shipyard 2005-06 to 2007-08</u> The Cochin Shipyard Ltd is an assessee on the rolls of Assistant Commissioner (Assmt.), Special Circle-II.</p>
-----	--	--

Ernakulam who is engaged in the business of ship repair falling under works contract. In the annual return for the year 2005-06 to 2007-08 the assessee had claimed exemption for which detailed account have not been produced. As per Rule 10(2)(b) of KVAT Act where the actual turnover in relation to a Works Contract in which the transfer of goods taken place not in the form of goods but in some other form, is not ascertainable from the books of accounts of the dealer or when the dealer has not maintained any account, the total turnover in respect of such Works Contract shall be computed after deducting labour and other charges as envisaged in table under Rule 10(2)(b), which in this case was 25%. Scrutiny of the return for the period from 2005-06 to 2007-08 revealed that Cochin Shipyard Ltd had claimed exemption much higher than that referred in the table. Hence the audit objection is sustainable. The assessment for the year 2005-06 and 2007-08 has been completed u/s 25(1) on the basis of audit objection vide proceedings dated 15.09.2011 and 01.07.2011 respectively and has made good the short levy as pointed out. The assessment for the year 2006-07 has to be reopened u/s 25(1) and notice has been issued to make good the short levy.

3. Paulose George and Constructions Company (P) Ltd
2005-06, 2007-08, 2008-09

The Accountant General(A) pointed out that the dealer had assessed turnover in respect of Works Contract after deducting expenses much higher than that referred in table in Rule 10(2)(b). For the year 2005-06 the Accountant General had pointed out the defect based on the annual return and audited statement filed. Whereas the final assessment of the dealer for the year 2005-06 had already been completed on 11-1-08 after verification of books of accounts. Audit Team has not taken into account this assessment while pointing out the objection. The question of allowing exemption as per Rule 10 arises only in the absence of books of accounts. In this case books of accounts have been verified and labour charge of Rs.5,44,95,420.25 has been allowed by the assessing authority. Hence the audit objection is not sustainable and hence may be dropped.

For the year 2007-08 the Accountant General has pointed out that as per Profit & Loss Account it is revealed that exemption envisaged as per Rule 10(2)(9) amounts to over Rs.1425, 45,190 as detailed below.

Labour charges	Rs. 87285894/-
Diesel & consumables	Rs. 21172600/-
Hiring charges of machinery	Rs. 25932582/-
Transportation	Rs. 241900/-
Estt-charges related to labour and services	Rs. 7912214/-
Total	Rs.14.25,45,190/-

But in the annual returns of the dealer the exemption amount is shown as Rs.18,86,47,983/-

On verification of the assessment records it is found that the assessee had filed revised return on 31-12-08 and the Accountant General has not taken the figures in the revised return. As per the revised return the exemption is shown as Rs. 19,01,50,194/-

As per the revised return the total turnover for the year 2007-08 is Rs.20,33,97,864/-, exemption is Rs.19,01,50,194/- and taxable turnover is Rs.13247670/-. The bifurcation of exempted turnover is as furnished below

Hire charges of Machinery	Rs.28047358
Interest of hire purchase of machinery	Rs. 1308000
Transportation of machinery	Rs. 278534
	Rs.29633892

Add

Labour charge	Rs.89831391	
Diesel and Consumables	Rs.17714086	Rs.160511625
Profit @49.25% on the above	52966147	
Total exemption is		Rs.190145517

and the difference is only Rs.4677/-

As per the P & L Account material purchase is Rs.8875902.44 and profit is 49.24% as such taxable turnover will be Rs.13247285/-.

Accountant General at the time of audit did not take into account the profit on labour portion. When this aspect is considered there arise no short levy of tax. So the audit objection is not sustainable.

For the year 2008-09 the Accountant General has pointed out that the dealer has not produced any documentary evidences for claiming exemption under Rule 10 which is 80% of total contract receipt.

The dealer has filed revised return for the year 2008-09 even before the audit. As per the revised return the turnover is as detailed below.

Total turnover	Rs.18,63,59,480.71
Exemption	Rs.12,88,36,513.19
Compounded turnover	Rs. 99,56,292.00

		<p>Work relating to Cochin Export Processing Zone Rs.88,52,647.55</p> <p>Further the assessee has produced a certificate from the BPCL (Bharath Petroleum Corporation Ltd) that regarding 6 works in which material worth Rs.19,71,78,539/- had been issued free of cost which has not been included in the turnover of the contract receipt by the assessee.</p> <p>Out of the above material supplied, 2 major works comes to Rs.93302778/-. When all these facts are considered the exemption claimed by the assessee comes to only 44.49% as detailed below.</p> <p>1.Total turnover :Rs.186359450.71 2.Compounded work turnover :Rs. 9956292.00 3.Non compounded work turnover:Rs.176403158.71 (1-2) 4.Total exemption claimed :Rs.128836513.19 % of exemption claimed : 73% 5.Actual non compounded work :Rs.269705936.71 turnover by adding material supplied by BPCL Rs.93302778/- 6.Final figure of exemption :Rs.119983865.33 claimed after deducting work done in Cochin Export Processing Zone (Rs.8852647/-) 7.% of exemption to total turnover : 44.49% related to non compounded work</p> <p>(4)<u>Kunne Engineers and contractors (P) Ltd 2008-09</u></p> <p>The actual expenses in respect of labour charges and other charges were not ascertainable from the books of account of the dealer. The Honourable High Court of Kerala in WP(C) No.14239/08 had permitted the dealers to pay tax at the pre amended rate and had directed the department to accept such payment subject to the result of writ petition. The writ petition has not been disposed of till date. Regarding the objection relating to claiming of exemption as per Rule 10 this can be verified at the time of revision of assessment. Verification of books of accounts & completion of assessment can be done only after the disposal of WPC.</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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 Director, Audit
 Department of Revenue
 Government of India

Action taken Notes on C& AG's Reports

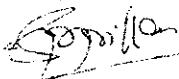
	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.3.1
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/ Review in the Department	29.6.2010
	(b)	Date of Department's Reply	1.8.11
III		Gist of Paragraph/Review	The audit objection is that in two Commercial Tax Officers in respect of two contractors who engaged in the works contract for the year 06-07 and 07-08 where transfer of property took place not in the form of goods but in some other form, the taxable turnover was arrived at in violation of the provisions of the Rule and the taxable Turnover incorrectly arrived at was assessed at various rates ranging from 4% to 20%, instead at the correct rate of 12.5%. This resulted in short levy of tax and interest Rs.9.21 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>1. <u>M/s. Kunnel Engineers and Constructions (P) Ltd., 06-07 and 07-08 Commercial Tax Office (Works Contract), Mattancherry.</u></p> <p>M/s. Kunnel Engineers & Contractors Ltd. Kochi were engaged in the contract of Civil work and filing returns during the period of 06-07 to 07-08 paying tax at the material rate. The Accountant General has objected to this stating the reason that as per section 6(1) (f) of KVAT Act amended from 1.7.06, stipulates that in the case of transfer of goods involved in execution of works contract, where the transfer is not in the form of goods, but in some other form, tax is leviable at the rate of 12% and when transfer is in the form of goods at the rates prescribed under the respective schedule. Further as per rule 10 (2) (a) of KVAT Rules where the transfer of property takes place in some other form, the taxable turnover shall be arrived at after deducting labour and other charges from the total amount received or receivable by the dealer for the execution of the works contract.</p> <p>The commercial Tax Officer (WC) has reported that further action based on the audit objection has not taken since the Hon'ble High Court of Kerala is in WP(C) No.14239/08 dated 13.5.08 directed to collect the tax from the dealer at material rate i.e. pre amended rate subject to result of writ petition. The writ petition has not been disposed of yet. Hence the assessments for the years 06-07 and 07-08 have not been revised. The Commercial Tax Officer has also stated that the dealer is filing returns as per the court direction and for the years 06-07 & 07-08 tax at pre amended rate has been collected.</p> <p>2. <u>M/s. IVRCL Infrastructure and Projects Ltd., Kakkannad, 06-07 Commercial Tax Office (Works Contract), Ernakulam.</u></p>
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		<p>M/s. IVRCL Infrastructure & Projects Ltd. is a Public Limited Company engaged in business of construction and commissioning of Water Projects, Roads, Bridges and other Infrastructural facilities for Government and Private Parties.</p> <p>Section 6(1) of KVAT Act as amended from 1.7.2006 stipulates that in the case of transfer of goods involved in execution of work contract, where the transfer is not in the form of goods but in some other form, tax is leviable at the rate of 12.5% excluding declared goods. The assessment was revised as per Order No.32072019974/2006-07 dated 13.9.2010 and the taxable turnover refixed as Rs.34,94,48,070/-. Aggrieved by this order the company filed writ petition before the Honourable High Court of Kerala. The same is pending before the Honourable Court of Kerala. (WPC 34961/2010). Interim stay granted for the collection of tax.</p>
	(b)	Recovery of overpayment pointed out by audit
	(c)	Recovery of under assessment, short levy or other dues
	(d)	Modification in the schemes and programmes including financing pattern
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit



Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.3.2
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	30.6.2010
	(b)	Date of Department's Reply	22.2.12
III		Gist of Paragraph/Review	In CTOs, Works Contract, Emakulam, Kozhikkode and Thiruvananthapuram, that 18 dealers had applied for cancellation of CST registration in April 2008 and the assessing authorities granted permission to cancel the CST registration in April 2008 itself. This allowed the dealers to pay tax at reduced rate for the year 2008-09 in violation of the provisions of the Act, resulting in short levy of tax of Rs.4.66 crore.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Total 18 cases included in this para—wherein 13 cases sustainable and 5 cases not sustainable.
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	Detailed report furnished in column VI a
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

Remedial action taken

(a)

Improvement in system and procedures, including internal controls.

Works Contract, Ernakulam

1. Yasoram Builders - 2008-09
2. Southern Investments - 2008-09

The audit team observed that M/s.Yasoram Builders and Southern Investments dealers in the rolls of Works Contract had applied for cancellation of CST registration in April 2008 and the assessing authority granted permission to cancel the CST registration in April 2008 itself. This allowed the dealers to pay tax at reduced rate for the year 2008-09 in violation of the provisions of the Act, resulting in short levy of tax of Rs.0.52 Crores as follows.

Name	Year	Date of cancellation of CST	Short levy of tax	Interest
Yasoram Builders	2008-09	09.05.2008	0.11	0.01
Southern Investments	2008-09	Assessee possessing valid CST	0.38	0.02

Action u/s.25(1) of the KVAT Act 2003 has already initiated against M/s.Yasoram Builders in order to realize the short levy pointed out in the audit note.

As regards M/s.Southern Investments (P) Ltd., according to the entries in the registration certificate as well as in the system, the CST registration of the dealer is cancelled with effect from 31.03.2008. Hence, tax @ 8% u/s. 8(a) (ii) for the year 2008-09 is not applicable in this case.

Works Contract, Mattancherry

3. M/s.Poulose George Construction Co. - 2008-09

The audit query is that during the year the dealer had paid tax under section 6(1) (f) and also under section 8 of the Act. But in relation to the following works, in respect of which the dealer had paid tax under section 8, tax was paid only @ 4%.

(i) Corporation of Cochin
MO J2/15379/2008
Dated 27.11.2008 : Rs. 99,56,292.00

(ii) EDAC Engineers Ltd.,
No.EDAC/KRL/500/45/
08-09/LO1/601
dt. 17.09.2008 : Rs. 72,18,709.00

As per the Audit Query, in the case of both these two cases, the rate of tax applicable was 8% during 2008-09, since the dealer was having CST registration.

In the case of the 1st contract, i.e. the work awarded by the Corporation of Cochin, the dealer had opted for payment of compounded tax under section 8 of the Act. As per sub-clause (ii) of clause (a) of section 8, as it stood during the year 2008-09, in the case of contractors having CST registration, the rate of compounded tax was 8%. But as per the 1st proviso to clause (a), in the case of works contracts awarded by Government of Kerala, Kerala Water Authority or Local Authorities, the rate of compounded tax shall be only four per cent of the whole contract amount. In view of the above proviso, the tax paid by the dealer @ 4% of the contract awarded by the Cochin Corporation is in accordance with law.

As far as the 2nd contract is concerned, the contracts entered into between the dealer and EDAC Engineers Ltd. fell under the following two heads:

(i) Civil Works : Rs. 17,50,87,814
(ii) Structural works : Rs. 72,18,709

In the case of civil works, the contractor has already conceded and paid tax @ 12.5% in respect of goods transferred in the execution of works contract. But in the case of the 2nd category, i.e. structural work, the goods transferred in the execution of the contract is only declared goods. As per the 9th proviso to sub section (1) of section 6 of the Act, the tax payable under clause (b), in respect of transfer of declared goods not in the form of goods but in some other form, shall be at the rate prescribed under the respective schedules. In

Gannon Dunkerley & Co. Vs. State of Rajasthan (1993) 88 STC 204 (S.C.), after elaborately analyzing the constitutional provisions, the Hon'ble Supreme Court had, inter alia, laid down the following principles with regard to the levy of tax on the goods transferred in the execution of works contracts:

"(1) In exercise of its legislative power to impose tax on sale or purchase of goods under entry 54 of the State List read with Article 366 (29-A)(b), the State Legislature while imposing a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract is not competent to impose a tax on such a transfer (deemed sale) which constitutes a sale in the course of inter-state trade or commerce or a sale outside the State or a sale in the course of import or export.

(2) The provisions of section 3,4,5 and section 14 and 15 of the Central Sales Tax Act, 1956 are applicable to a transfer of property in goods involved in the execution of a works contract covered by Article 366 (29-A) (b).

(8) While fixing the rate of tax it is permissible to fix a uniform rate of tax for the various goods involved in the execution of a works contract which rate may be different from the rates of tax fixed in respect of sales or purchase of those goods as a separate article".

It therefore flows from the above decision of the Hon'ble Supreme Court that while it is permissible for the States to levy a uniform rate of tax for all the goods transferred in the execution of Works Contract, it is subject to Section 15 of the CST Act where declared goods are involved in the execution of such Works Contract. So the levy of Tax on declared goods at a rate more than what is permitted by Section 15 of the CST Act is unconstitutional and illegal. So in the light of the Judgment the Turnover of iron and steel cannot be taxed at a rate more than 4%. Further while disposing of a batch of Writ Petitions and Writ Appeals filed challenging the Amendment made in Clause (f) Section 6 of the Act by the Kerala Finance Act, 2006, the Hon'ble High Court of Kerala has held on 23.11.2009 (W.P.(C) No.11332/07, W.P.(C) No.11093/07 and other cases) that the Amendment made is subject to Section 15 of the CST Act and that declared goods transferred in the execution of Works Contract will attract tax only @ 4%. as such the rate of 4% at which the contractor

has paid tax in respect of the structural contract fully in accordance with law.

Works Contract, Thiruvananthapuram

1. B. Jaya Prakash, Presto Builders	2008-09
2. M/s. Concord Builders	2008-09
3. M/s. Sun Projects	2008-09
4. A.R. Projects	2008-09
5. M/s. Alka Ventures	2008-09
6. M/s. Beacon Projects	2008-09
7. Midas	2008-09
8. P. Vadivelu Balaji	2008-09

The audit objection involved in these cases is whether the above builders are entitled to get the benefit or reduced rate of tax @ 3% availed for the year 2008-09 by voluntarily cancelling the registration under the CST Act 1956 with effect from 1.4.2008.

Based on the Audit the self assessment made by the above dealers (1) to (7) mentioned above were revised. While revising the self assessment under section 25(1) of the KVAT Act, 2003, they have filed reply and requested to verify the rate of tax as per the 5th proviso to clause (a) of section 8 of the KVAT Act 2003 as incorporated in the Finance Act, 2009. Verification of the assessment records it is seen that the entire contract were executed prior to 1.4.2008 and which remains partly unexecuted as on 1st April 2008. So the contractor shall pay tax at the rate as it existed prior to 1st April 2008 i.e., at the rate of only 4%.

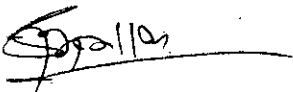
In the light of the proviso incorporated in the Finance Act, 2009 the assessment were completed adopting tax @ 4% and created an additional demand for Rs.36,38,492/- with interest. An amount of Rs.12,48,134/- is collected. The balance amount is pending collection.

The assessment in respect of the assessee Sri. Vadivelu, Stee Balaji Decorators, Pattom, Thiruvananthapuram for the year 2008-09 was completed on 23.12.2011 and creating additional demand of Rs.1,15,878/- including interest.

Works Contract, Kozhikode

The assessment of the four cases has already been completed as per the audit objection in the draft para and additional demand created as follows:

			<p>1.M/s.PVS Navaratna 08-09 Additional Demand - Rs.18,68,696/-</p> <p>2.M/s.Hilite Builders (P) Ltd. 08-09 Additional demand Rs.15,20,400/-</p> <p>3.M/s.Hilite Project & Construction (P) Ltd. 08-09 - Rs.49,09,430/-</p> <p>4.M/s.PVS Apartments - 08-09 - Rs. 61,04,955/-</p> <p>The assessment of M/s.Seiken Properties and Developers (P) Ltd. 07-08, T. Asokan 08-09 and M/s.Kerala Transport Co. 08-09 has not been revised since they have surrendered their CST registration within the prescribed time limit.</p>
	(b)	Recovery of overpayment pointed out by audit	--
	(c)	Recovery of under assessment, short levy or other dues	--
	(d)	Modification in the schemes and programmes including financing pattern	--
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--


 S. PADMANABHA PILLAI
 Assistant Commissioner,
 Income Tax Department,
 Tirunelveli.
 Tirunelveli.

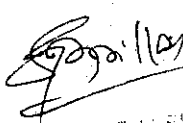
Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to incorrect classification
	(c)	Paragraph No.	2.12.4
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	Five assesseees in CTOs, Special Circle-II, Ernakulam, Works Contract, Ernakulam and Works Contract, Thiruvananthapuram incorrectly assessed the turnover for sale, erection and commissioning of lifts for the years 2005-06 to 2008-09 as works contract and claimed exemption in relation to the turnover on labour charges incurred, which resulted in short levy of tax and interest of Rs.11.24 crore.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	--
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

Remedial action taken

	(a)	Improvement in system and procedures, including internal controls.	<p>This para refers to 5 cases.</p> <p>(1) <u>M/s. Johnson Lifts (P) Ltd (06-07 to 08-09)</u> The self assessments for the years 2005-06 to 2008-09 were revised and issued demand notices. The Hon'ble High Court granted interior stay. In the light of stay order the recovery proceedings kept in abeyance.</p> <p>(2) <u>M/s. Infra India Elevators (05-06 to 08-09)</u> The assessment was completed for the years 2005-06 to 2008-09 and demand created as under.</p> <table><tr><td>2005-06</td><td>: Rs.1,19,767</td></tr><tr><td>2006-07</td><td>: Rs.4,69,759</td></tr><tr><td>2007-08</td><td>: Rs.11,75,747</td></tr><tr><td>2008-09</td><td>: Rs.3,06,065</td></tr></table> <p>(3) <u>M/s. Omega Elevators (2008-09)</u> The assessment was completed and demand created and RRC issued.</p> <p>(4) <u>M/s. Kone Elevators (2005-06 to 2008-09)</u> Action is being taken to re-open the assessment u/s 25(1) of KVAT Act.</p> <p>(5) <u>M/s. Qtis Elevator Co. India Ltd. Tyvm</u> The assessments in respect of the assessee for the year 05-06, 06-07, 07-08 and 08-09 have already been revised on 9.12.10 and the following additional demand have been created.</p> <table><tr><th>Year</th><th>VAT</th><th>Interest</th><th>Total</th></tr><tr><td>2005-06</td><td>9145997</td><td>5121758</td><td>14267755</td></tr><tr><td>2006-07</td><td>14939122</td><td>6573214</td><td>21512336</td></tr><tr><td>2007-08</td><td>14810839</td><td>4739468</td><td>19550307</td></tr><tr><td>2008-09</td><td>18235813</td><td>8023758</td><td>26259571</td></tr><tr><td colspan="3">Total</td><td>81589969</td></tr></table> <p>No coercive steps for collection can be initiated in view of the direction in WP(C)No.232 & 528/2005 of the Supreme Court of India.</p>	2005-06	: Rs.1,19,767	2006-07	: Rs.4,69,759	2007-08	: Rs.11,75,747	2008-09	: Rs.3,06,065	Year	VAT	Interest	Total	2005-06	9145997	5121758	14267755	2006-07	14939122	6573214	21512336	2007-08	14810839	4739468	19550307	2008-09	18235813	8023758	26259571	Total			81589969
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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	--


 S. PADMANABHAN PILLAI
 Assistant Secretary,
 Tamil Nadu Sahitya Akademi,
 Chennai-600 006.

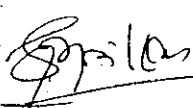
Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to incorrect exemption
	(c)	Paragraph No.	2.12.17.1
	(d)	Report No. and Year	C& AG report ended 31.3.2010
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 assessing officer finalized the assessments of a dealer engaged in public distribution of provision, consumables etc., for the years 2001-02 to 2004-05 in December 2008, exempting the sales turnover of tea sold under the brand name "Sabari" valued at Rs.72.92 crore. This mistake resulted in short levy of tax of Rs.2.39 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.	M/s.Kerala Civil Supplies Corporation has sold Tea under brand name "Sabari" which is registered under Trade and merchandise marks Act and the point of sale is as specified in Schedule-I In the circumstances, the audit enquiry is sustainable. The assessment already completed as per order No.23040117/04-05/dated 31.12.2008 was by Fast Track Team and hence action is being taken to revise the assessment after getting sanction from the Commissioner of Commercial Taxes for the same.
(b)	Recovery of overpayment pointed out by audit	--
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--


 S. PADMANABHA CHULAI
 Assistant Secretary,
 Government of India,
 Department of Revenue.

Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaping assessment.
	(c)	Paragraph No.	2.12.1.2(b)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	22.6.10
	(b)	Date of Department's Reply	30.11.10
III		Gist of Paragraph/Review	In Commercial Tax Officer (WC), Ernakulam, during scrutiny of records it is noticed that the assessee M/s.Bharath Heavy Electricals Ltd., executed works contract valued at Rs.91.77 crore for the year 06-07 on turnkey basis. However, the assessee returned Rs.10.93 crore being labour element in the annual return and claimed exemption on the turnover, resulting in under assessment of turnover of Rs.80.84 crore. The mistake was not detected by the assessing authority which resulted in short levy of tax and interest of Rs.13.34 crore.
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	BHEL is executing the following contract with M/s.Kerala State Electricity Board which has two price breakup. 1. Supply of power plant equipment from various manufacturing units of BHEL (Rs.66.1467 crores) 2. Erection testing and

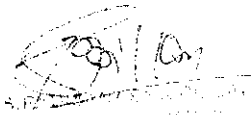
		255	<p>commissioning of power plant by BHEL/Power sector/southern Region (Rs.9.20 crores)</p> <p>The materials to be supplied under the above contract are despatched by manufacturing units of BHEL who send equipments as interstate sales on submission of 'C' form by M/s.KSEB. The goods are consigned to M/s.KSEB directly by various manufacturing units of BHEL situated outside the State of Kerala.</p> <p>As far as erection, testing and commissioning work is concerned, it is purely labour oriented and hence exemption is claimed by M/s.BHEL in their returns.</p> <p>In view of the above, amount involved in the works contract is only erection, testing and commissioning work of Rs.9.20 crores which is purely labour and hence exempted from tax.</p> <p>The same is the case with BHEL contract with Kochi Refineries Ltd for revamping of existing compressor for CEMP phase 1 and the work is purely labour and hence exempted from tax.</p>
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>BHEL/Power Sector/Southern Region at Kuttiyadi is registered under both KGST and CST and has been submitting sales tax returns regularly wherein the complete data relating to the turnover is being furnished.</p> <p>In regard to the nature of contract under execution of Kuttiyadi BHEL is executing the following contract with M/s.Kerala State Electricity Board which has two price breakups.</p> <ol style="list-style-type: none"> 1. Supply of power plant equipment from various manufacturing units of BHEL (Rs.66.1467 crores) 2. Erection testing and commissioning of power plant by BHEL/Power sector/southern Region (Rs.9.20 crores) <p>The materials to be supplied under the above contract are despatched by manufacturing units of BHEL who send equipments as interstate sales on submission of 'C' form by M/s.KSEB. The goods are consigned to M/s.KSEB directly by various manufacturing units of BHEL situated outside the State of Kerala.</p> <p>As may be seen from the above, the supplies made by manufacturing units of M/s.BHEL have to be necessarily governed under CST Act. as the units supplied contracted goods to the specified customer i.e. KSEB Kuttiyadi AES, Kakkayam.</p> <p>Needless to mention that the taxation would arise at the place from where the equipments commenced the journey and no other states can impose tax on those supplies. It is also clear that inter state nature of supplies are not in the purview of KGST Act in as-much-as the goods have already suffered tax in the state from where the goods commenced the journey.</p> <p>As far as erection, testing and commissioning work is concerned, it is purely labour oriented and hence exemption is claimed by M/s.BHEL in their returns.</p> <p>In view of the above, amount involved in the works contract is only erection, testing and commissioning work of Rs.9.20 crores which is purely labour and hence exempted from tax.</p> <p>The same is the case with BHEL contract with Kochi</p>
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			Refineries Ltd for revamping of existing compressor for CEMP phase 1 and the work is purely labour and hence exempted from tax.
	(b)	Recovery of overpayment pointed out by audit	--
	(c)	Recovery of under assessment, short levy or other dues	--
	(d)	Modification in the schemes and programmes including financing pattern	--
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--


 A. J. ...
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Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaping assessment.
	(c)	Paragraph No.	2.12.1.4(a)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	4-5-10
	(b)	Date of Department's Reply	27.10.10
III		Gist of Paragraph/Review	In Commercial Tax Officer (WC<), Thrissur the Accountant General noticed in September 2009 that the taxable turnover for the year 06-07 of M/s.Chelloor Property Development Projects Ltd. Poonkunnam a works contract dealer paying compounded tax at the rate of four per cent was determined by audit assessment wing as Rs.10.49 crore even though the assessee had a contract receipt of Rs.13.38 crore as per the certified accounts. This resulted in short levy of tax of Rs.11.55 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	Notice under section 25(1) was issued to the assessee to assess the turnover of Rs.133785975/-. To this, the assessee filed reply stating that he used to pay tax on receipt basis and this includes advance amounts received before completion of the projects. The advance received is taken on the credit side of the Profit and Loss Account only on completion of the

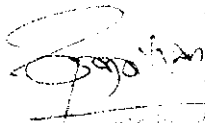
			entire projects. As the assessee has already paid tax due for the advances received for the completed projects advances were included in the Profit and Loss Account as income, there is no escape of turnover or tax for the year 2006-07.
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>The annual return as well as Form 13 and 13A filed by M/s.Chellloor Property Development Projects Ltd. shows that the dealer had received only Rs.104898968/- as receipts during 06-07 and they had paid tax at compounded rates for the above receipts. In the Profit and Loss account, the assessee had conceded Rs.133785975/- as income from sales. This turnover includes the total sale receipts of their completed projects. For the sale of their completed projects, the company had already received advances in the earlier years and paid tax for the advances received in previous years. Thus the total sale amount of the completed projects has been included in the profit and loss account. As such, there occurred difference in receipts and income.</p> <p>Notice under section 25(1) was issued to the assessee to assess the turnover of Rs.133785975/- To this, the assessee filed reply stating that he used to pay tax on receipt basis and this includes advance amounts received before completion of the projects. The advance received is taken on the credit side of the Profit and Loss Account only on completion of the entire projects. As the assessee has already paid tax due for the advances received for the completed projects advances were included in the Profit and Loss Account as income, there is no escape of turnover or tax for the year 2006-07.</p>
(b)	Recovery of overpayment pointed out by audit	--
(c)	Recovery of under assessment, short levy or other dues	--

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


 S. PANDIT
 Asst. Secy.
 (Adm.)
 10/11/2004
 Finance Deptt.

Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaping assessment.
	(c)	Paragraph No.	2.12.1.4(b)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	4-5-10
	(b)	Date of Department's Reply	8.7.10
III		Gist of Paragraph/Review	In Commercial Tax Officer (WC<), Thrissur, it is noticed in 9/09 that, M/s.Alukkas Builders, Thrissur, an assessee engaged in works contract conceded a total turnover of Rs.2.23 crore only in the annual return even though he had a contract receipt of Rs.4.55 crore as per the certified P&L account for the year 07-08. This resulted in escape of turnover of Rs.2.32 crore and consequent short levy of tax and interest of Rs.10.78 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	The construction revenue recognized in the P& L account was, Rs.4.55 crore, i.e. the cost estimated for the work and receipts for the year 07-08 was only Rs.2.23 crores. The estimated revenue and estimated cost for the respective year is calculated in accordance to the percentage completion method and shown in the P&L account and the revenue recognized is not the actual contract receipts. Verification also

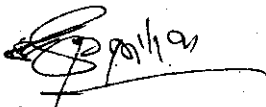
			revealed that the total receipts for the year is only Rs.2.23 crores and the dealer had not received any other amounts for the contracts. Therefore there is no escape of turnover or short levy of tax.
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>As per the observation in the audit, notice under section 25(1) of KVAT Act was issued to the dealer on 31.12.2009. There upon the assessee had produced the books of accounts and filed objections and clarifications stating that they had received only 2.23 crores as works contract receipt and the estimated revenue and estimated cost for the year 07-08 was calculated in accordance with the "percentage completion method" as shown in the P&L account.</p> <p>Verification of the books of accounts and statements filed by the dealer revealed that the construction revenue recognized was Rs.4.55 crores but contract receipts for the year 07-08 was only 2.23 crores.</p> <p>The construction revenue recognized in the P& L account was Rs.4.55 crore, i.e. the cost estimated for the work and receipts for the year 07-08 was only Rs.2.23 crores. The estimated revenue and estimated cost for the respective year is calculated in accordance to the percentage completion method and shown in the P&L account and the revenue recognized is not the actual contract receipts. Verification also revealed that the total receipts for the year is only Rs.2.23 crores and the dealer had not received any other amounts for the contracts.</p> <p>Therefore there is no escape of turnover or short levy of tax.</p>
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	

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


 S. PADMANABHA PILLAI
 Additional Secy. (Inv.),
 Tax Department,
 Govt. Secretariat,
 Thiruvananthapuram.

Action taken Notes on C& AG's Reports

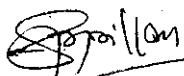
	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to incorrect exemption.
	(c)	Paragraph No.	2.12.2.1(b)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/ Review in the Department	11-5-10
	(b)	Date of Department's Reply	18.6.10
III		Gist of Paragraph/Review	During scrutiny of records in Commercial Tax Office (WC), Thiruvananthapuram it was noticed in March 2009 that an assessee M/s.Narsi and Associates, Kulathoor engaged in the business of interior decoration incorrectly availed exemption of Rs.3.13 crore and Rs.3.82 crore on the total turnover for the years 05-06 and 06-07, instead of availing exemption in respect of labour and other charges at the specified rate of 25%, as labour and other charges were not separately ascertainable from the accounts. This resulted in short levy of tax Rs.47.34 lakh at the applicable tax rate of 12.5%.
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	On verification of accounts it is seen that the assessee contractor maintained all the books of accounts. The project undertaken by them is a labour oriented one. Documentary evidences produced shows that almost all the payments were effected by the contractor through cheques. During the period, the contractor has not opted for compounding. Hence schedule rate of tax adopted by them is in order.
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>On verification of accounts it is seen that the assessee contractor maintained all the books of accounts. The project undertaken by them is a labour oriented one. Documentary evidences produced shows that almost all the payments were effected by the contractor through cheques. During the period, the contractor has not opted for compounding. Hence schedule rate of tax adopted by them is in order.</p> <p>In Works contract, cost of goods transferred in the execution of works contract together with profit shall be the taxable turnover. Cost of goods means the price of goods together with all the expenses incurred by the contractor in bringing the goods to the work site.</p> <p>Rule 10(2)(b) of the KVAT Rules is applicable in case where the dealer has not maintained any accounts. In this case the dealer was maintaining pucca books of accounts. Verified and found that each and every purchases and other transactions were duly supported by proper invoices and vouchers. No discrepancy noticed in the maintenance of books of accounts. No reason to discredit them.</p> <p>"What is assessed in this case is the transfer value of the goods at the time of incorporation of the goods into the work by the contractor as pointed out in the audit. It may please be seen that the total purchase value of the goods involved in this case is Rs.33172262/- whereas, the transfer value of the materials in the works incorporated is arrived at Rs.36489488/-. Thus it can be seen that the difference in the transfer value of materials in the work incorporated comes to Rs.3317226/- which is more than the total purchase value of the</p>
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			goods involved in the works. There is no escapement of turnover of works contract amount received. Hence the self assessment made by the dealer is in order".
	(b)	Recovery of overpayment pointed out by audit	--
	(c)	Recovery of under assessment, short levy or other dues	--
	(d)	Modification in the schemes and programmes including financing pattern	--
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--


 S. PADMANABHA PILLAI
 Additional Secretary,
 Tax and Customs
 Govt. Secretariat,
 Thiruvananthapuram

Action taken Notes on C& AG's Reports

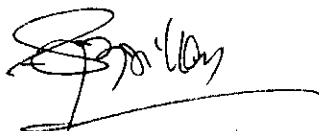
	(d)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to incorrect exemption.
	(c)	Paragraph No.	2.12.2.5
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	24-6-10
	(b)	Date of Department's Reply	9.12.11
III		Gist of Paragraph/Review	In Commercial Tax Officer (WC), Mattancherry, M/s.KMC Constructions Ltd., South Chalakudy a dealer claimed deduction in respect of sub contract awarded for the years 2006-07 to 2008-09. The Accountant General (Audit) has observed that the sub contract was purely labour contract and hence the sub contractors were not liable to tax and that the materials for the works were issued by the awarder and hence the liability rests with the awarder itself. The incorrect claim of exemption had resulted in short levy of tax and interest of Rs.1.56 crore.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	

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

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>The AG's observation is based on the deduction allowed towards sub contract amount classified as pure labour contract. In tune with the above observation the alleged short levy of tax has been made good by invoking Section 25(1) for the year 06-07. The assessment order passed by the Asst. Commissioner (WC) has been interfered by the Deputy Commissioner (A), Ernakulam as per order date 21.6.10. The above order contains elaborate discussions on the averments of the assessee and the findings. Since the said order appeared to be untenable second appeal has been filed against the same before the Hon'ble Tribunal. The second appeal is pending disposal.</p> <p>As per the appellate order the disallowance towards sub contract amount is not in order and hence the same has been directed to be deleted. Some other grounds raised by the assessee has been directed to be considered, by the Deputy Commissioner (Appeals). Since the State has a strong case to reverse the order of the appellate authority, the re-assessment in accordance with the directions of the Deputy Commissioner (Appeals) may not be beneficial to the revenue. In the above circumstances, modification of the assessment for 2007-08, 2008-09 can be made based on the outcome of the appeal pending before the Tribunal.</p>
(b)	Recovery of overpayment pointed out by audit	--
(c)	Recovery of under assessment, short levy or other dues	--

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



S. PADMANABHAN
 Assistant Secretary
 Income Tax Department
 Govt. Secretariat
 Thiruvananthapuram

Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to excess availing of Input Tax credit.
	(c)	Paragraph No.	2.12.6(1)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	14-6-10
	(b)	Date of Department's Reply	19.10.10
III		Gist of Paragraph/Review	In Commercial Tax Office, Special Circle-II, Ernakulam, during the scrutiny of assessment records of M/s.Appollo Tyres Ltd it was noticed that, the assessee stock transferred raw materials valued at Rs.3.44 crore and Rs.90.30 percent of their finished products for the year 07-08. However, while limiting input tax credit to that extent by reverse tax, it was assessed as Rs.24.05 crore instead of Rs.27.32 crore which resulted in short levy of tax and interest of Rs.3.85 crore.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	The assessee in his self assessment worked out the reverse tax as Rs.240495310/-. But as per the statistics available in form 13 & 13A filed by the assessee the reverse tax due is only Rs.23,23,74,629/-. Hence there is

			no short levy as pointed out in audit.
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>The dealer while filing monthly and annual return during 07-08 has made self assessment and worked out the reverse tax at Rs.24,04,95,310/-.</p> <p>The details are given below:</p> <ol style="list-style-type: none"> 1. Local purchase value from VAT dealers Rs.8937172968 2. Purchase from VAT dealer, but by mistake it is shown as purchase from registered dealer other than VAT dealer <u>Rs. 775655640</u> Rs.9712828608 3. Less value of goods (Raw rubber) stock transferred out, as such Rs.3440482916 4. Balance value of goods used in the manufacture of goods Rs.6272345692 <p>But the value of local purchase of goods from local registered dealers as per Form 13, 13A and its enclosed statement is Rs.99330.24 lakhs.</p> <p>Less stock transfer of raw rubber Rs.34404.82 lakhs</p> <p>Balance Rs. 64925.41 lakhs</p> <p>Value of goods used for sales/dispatch Rs.171169.79 lakhs</p> <p>Value of goods sold/dispached as Rs.215473.35 lakhs per annual return</p> <p>i.e</p> <ol style="list-style-type: none"> 1. Local sales Rs. 5363.97 lakhs 2. Interstate sales Rs.44490.95 lakhs 3. Export Rs.13711.14 lakhs 4. Stock transfer (out) <u>Rs.151907.29 lakhs</u> Rs.215473.35 lakhs <p>Out of total stock transfer out value, Rs.265277009/- is local stock transfer out and balance Rs.151907.29 lakhs is the interstate stock transfer out as per annual return.</p> <p>In arriving the share of stock transfer (interstate) from the total dispatch of goods, the total sales value/despatch value has to be considered and not the actual cost of the goods despatched. The company vide letter dated 4.8.2010 has</p>
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stated that stock transfer value is inclusive of GP and Excise duty paid. The total excise duty paid is Rs.222 crore and it is sale value. The audit party had considered the actual cost of the goods sold/dispached instead of sale value. The actual cost of goods sold/dispached is Rs.17118875725/- whereas the sale value/dispatch value is Rs.21547335000/-

Thus the percentage of local purchase of goods used for the manufacture and stock transfer out is as follows.

$$\frac{1519029000 \times 100}{21547335000} + 70.48\%$$

$$21547335000$$

The percentage worked out at cost of goods sold and cost of goods stock transferred also reveal the same percentage.

The percentage worked out by the audit party is 90.30% which is incorrect. ITC availed raw material used in the manufacture of goods stock transferred.

ie. 70.49% of Rs.6,49,25,41,000/- is Rs.4,57,65,92,151/-

In respect of ITC availed on raw materials used in the manufacture of goods stock transferred and reverse tax 3%.

3% of Rs.4576592151

Reverse tax Rs. 137297765

Reverse tax of raw rubber purchased and stock transferred.

Value Rs.3440482916

3% Rs. 103214487

Total reverse tax (103214487+137297765)=Rs.240512252/-

The dealer had conceded reverse tax amounting to Rs.240485310/-

Hence there is no short levy as pointed out by the Accountant General except Rs.16942/-

Further it is to be noted that the calculation and workings adopted by the Accountant General is considered,

that the value of goods for sale is Rs.17118975725

less value of goods stock transferred Rs.15456006009

Balance value of goods for sale Rs. 1680969720

The local and interstate sales and exports conceded by the dealer as per annual return and form 13, 13A is as follows.

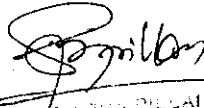
1. Local sale Rs. 536397645

2. Interstate sales Rs.4449095439

3. Export Rs.1371114915

Total Rs. 6356607999

			<p>It means that the cost of goods sold is Rs.1660969720/-. The sales turnover is Rs.6356607999/- Gross profit is Rs.4695638279/- ie; 283% which is unrealistic and unfounded.</p> <p>The reverse tax due, worked out above based on the statistics available in Form 13, 13A is Rs.232374629/- where as the assessee in his self assessment, the reverse tax is worked out to Rs.240495310/-.</p>
	(b)	Recovery of overpayment pointed out by audit	--
	(c)	Recovery of under assessment, short levy or other dues	--
	(d)	Modification in the schemes and programmes including financing pattern	--
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--


 S. SRINIVASAN, ICAI
 Chartered Accountant
 100, 101, 102, 103
 The above is the return

Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to excess availing of Input tax credit.
	(c)	Paragraph No.	2.12.6(2)(a)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	4-6-10
	(b)	Date of Department's Reply	24.9.10
III		Gist of Paragraph/Review	In Commercial Tax Office, Special Circle-II, Ernakulam, during the scrutiny of assessment records of M/s.Appollo Tyres for 2007-08. It was noticed that an assessee availed input tax credit of Rs.35.75 crore on local purchases of goods valued at Rs.828.35 crore as against the eligible claim of Rs.33.13 crore. This resulted in short levy of tax and interest of Rs.3.11 crore.
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 per annual return for the year 2007-08, the 4% taxable purchase amount is shown as Rs.8,28,34,51,679/-. Another purchase turnover of Rs.77,56,55,639/- is shown in the next column value of local purchase from registered dealer

			other than VAT dealer. It is a mistake. The purchase is from local registered dealers. By mistake it is included in the adjoining column other than VAT dealer.
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.	As per annual return for the year 2007-08, the 4% taxable purchase amount is shown as Rs.8,28,34,51,679/-. Another purchase turnover of Rs.77,56,55,639/- is shown in the next column value of local purchase from registered dealer other than VAT dealer. It is a mistake. The purchase is from local registered dealers. By mistake it is included in the adjoining column other than VAT dealer. This mistake was reflected in the relevant monthly return for 2/2008 also. Verified the purchase bills relating to the month of February, 2008 and found that the purchase of 4% goods amounting to Rs.77,56,55,639/- has been effected from local registered dealers on payment of VAT at 4%. When the above purchase is included in the 4% VAT dealer category the total 4% purchase is Rs.9,05,91,07,318/-. It's input tax due is Rs.36,23,64,292/-. But the dealer has claimed input tax only for Rs.35,74,87,121/-. Hence there is no short levy.
(b)	Recovery of overpayment pointed out by audit	--
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

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Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.7.1(1)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	22-2-10
	(b)	Date of Department's Reply	27.3.10
III		Gist of Paragraph/Review	During scrutiny of the records in Special Circle, Palakkad, it was noticed that M/s. ITI Ltd. Kanjikode manufacturer and dealer in Electronic Switch Equipment for telephone Exchange and VRLA Battery assessed out put tax on the sales turnover of battery for the year 2005-06 and 2006-07 valued at Rs.6.69 crore at the rate four percent instead of at the correct of 12.5%. This resulted in short levy of tax and interest of Rs.72.34 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	M/s. ITI, Kanjikode has filed revised annual return for the year 2005-06 on 25.11.2009 and final return for 06-07 on 10.1.08. As per the returns they have not effected any separate sales of battery during

			the years within the State of Kerala. The Asst. Commissioner has verified the sale bills for the period and found that no separate sales of battery were effected during the years within the state by the Company. Hence the defect pointed out in the audit is not sustainable.
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	M/s. ITI, Kanjikode has filed revised annual return for the year 2005-06 on 25.11.2009 and final return for 06-07 on 10.1.08. As per the returns they have not effected any separate sales of battery during the years within the State of Kerala. The Asst.Commissioner has verified the sale bills for the period and found that no separate sales of battery were effected during the years within the state by the Company. Hence the defect pointed out in the audit is not sustainable.
(b)	Recovery of overpayment pointed out by audit	--
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

[Signature]
 S. RADHAKRISHNAN IYER
 Joint Secretary,
 Govt. Secretariat,
 Thiruvananthapuram.

Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.7.1(2)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	25-4-10
	(b)	Date of Department's Reply	17.2.11
III		Gist of Paragraph/Review	In Commercial Tax Officer, Special Circle, Kasargode in August 2009, it was noticed that a dealer in petroleum bitumen M/s.Manglore Refinery & Petro Chemicals (P) Ltd. assessed output tax on petroleum bitumen valued at Rs.2.69 crore for the years 05-06 and 06-07 at 4% instead of at the correct rate of 12.5%. This resulted in short levy of tax and interest of Rs.31.45 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 per Finance Act 2010, rate of tax of petroleum bitumen has been reduced to 4% with retrospective effect from 1.4.05 as per the note inserted (Finance Act 2010) in serial No.15A below the entries against it in column (2) & (3) in the 3 rd schedule and the audit is not sustainable.

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

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>The audit observations are seems to be correct in this case at the time of audit. Hence in the light of audit findings the assessing authority revised the assessments in question on 19.10.09 and short levy demanded.</p> <p>As per Finance Act 2010, rate of tax of petroleum bitumen has been reduced to 4% with retrospective effect from 1.4.05 as per the note inserted (Finance Act 2010) in serial No.15A below the entries against it in column (2) & (3) in the 3rd schedule and the audit 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	--

Signature

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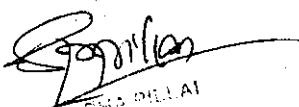
Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.7.1(6)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	7-1-10
	(b)	Date of Department's Reply	11.10.10
III		Gist of Paragraph/Review	In the office of the AIT & CTO, Alapuzha during the years 2005-06 and 2006-07 on audit found that a manufacturer and dealer in cotton tape exempted a sales turnover of cotton tape for Rs.97.87 lakh treating the commodity as textile fabrics. This resulted in short remittance of output tax to the tune of Rs.12.23 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	The goods sold by the dealer are cotton tapes coming under entry 51 of the 1 st schedule to KVAT Act 2003.
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>In the light of audit assessment have been completed under section 25 considering the observation of Accountant General as per which total tax with interest due for the years 2005-06 and 2006-07 were Rs.8,79,180.50 and Rs.8,14,850 respectively and demand notice were issued. Aggrieved by this order the dealer went in appeal before the Deputy Commissioner (Appeals), Kollam. The Deputy Commissioner (Appeal) as per order No.KVATA 281/09 dated 14.12.2009 and KVATA 282/09 dated 14.12.2009 has set-aside the assessment order for the year 2005-06 and 2006-07 and directed the assessing authority to complete the assessment afresh according to law, with direction to verify the relevant purchase bills in order to ascertain whether the goods purchased and sold were handloom fabric or cotton tape and whether it will come under Sl.No.51 of the 1st schedule to the KVAT Act. The assessing authority examined the entire purchase bills and a specimen of cotton tape. On scrutiny of the bills and specimen it is ascertained that cotton tape which are coming under entry 51 of the 1st schedule purchase and mistakenly the turnover was reported as handloom cloth. The purchase and sold items are duly cotton tape coming under entry 51 of the 1st schedule.</p> <p>The assessing authority therefore has completed the assessment afresh. As per the fresh assessment there is a demand of Rs.1067/- for the year 05-06. No demand is outstanding against the assessee for the year 06-07. The assessee has remitted the amount of Rs.1067/- as per chalan no.647 dated 8.2.2011 for the year 2005-06.</p>
(b)	Recovery of overpayment pointed out by audit	--
(c)	Recovery of under assessment, short levy or other dues	--

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


 S. P. ANAND
 Additional Secretary
 Department of
 Revenue
 Government of India

Action taken Notes on C& AG's Reports

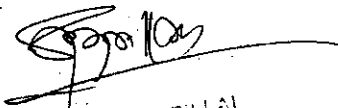
	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.7.1(8)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	6-4-10
	(b)	Date of Department's Reply	18.6.10
III		Gist of Paragraph/Review	During scrutiny of records in CTO, 2 nd Circle, Trivandrum in February 2009, it was noticed that a dealer M/s.Thampuran Enterprises assessed output tax on the sales turnover of branded soft drinks valued at Rs.75.10 lakh for the period from 1.7.06 to 31.3.07 at the rate of 12.5% instead of at the correct rate of 20%. This resulted in short levy of tax and interest of Rs.6.87 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 per sec.6(1) (a) aerated branded soft drinks having HSN 2202.10 alone was taxable @ 20%. But, the commodity sold by the assessee being fresh fruit juice was taxable @ 12.5% falling under entry No.71 (4) of SRO 82/06 as stood then with HSN 2202.90.20.
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>In the light of the audit objection the assessing authority issued notice proposing to revise the self assessment made, as to assess the turnover at 20%; but the assessee did not respond to the proposal. The assessing authority therefore revised the assessment for the year exparte assessing the turnover @ 20%. Against the revised order the dealer filed appeal and in appeal the appellate authority remanded the assessment for fresh disposal after ascertaining the commodity dealt with by the dealer vide his order No.KVATA 347/09 dtd 9.3.10. Accordingly the assessing authority verified the purchase invoices produced by the dealer and convinced that what was purchased was fresh fruit juice and not branded aerated soft drinks. The entire purchases of fruit juice was from Maa Fruits India (P) Ltd. and they had charged VAT at 12.5% only being fruit juice. Further it has been specifically mentioned in the label of the product as "Maa Mango Fresh fruits Juice" and the ingredients are water, Mango, pulp, sugar etc. From this, it is very clear that it is nothing but fresh fruit juice and not aerated soft drinks. As per sec.6(1) (a) aerated branded soft drinks having HSN 2202.10 alone was taxable @ 20%. But, the commodity sold by the assessee being fresh fruit juice was taxable @ 12.5% falling under entry No.71 (4) of SRO 82/06 as stood then with HSN 2202.90.20. Therefore, the self assessment made by the dealer was in order.</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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 Tamil Nadu Government,
 P. O. Secretariat,
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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 application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.7.1(9)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	29-4-10
	(b)	Date of Department's Reply	17.5.10
III		Gist of Paragraph/Review	In Commercial Tax Office, First Circle, Kannur during the years 2005-06, 2006-07 and 2007-08 Sri.T.Arunkumar, Solar Associates, Kannur a dealer in epoxy powder self assessed output tax on a sales turnover of epoxy powder for Rs.76.67 lakh at the rate of 4% instead of at 12.5%. This resulted in short levy of output tax of Rs.6.52 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	Epoxy Powder will come under HSN Code 3907, since the expression "Primary Forms" applies to powder also. Hence it is clear that the commodity, epoxy powder is an item coming under item No.118(7)III schedule—List A - Industrial input and packing materials, classified under sl.no.66 of III schedule taxable @4%.

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

Remedial action taken

	(a)	Improvement in system and procedures, including internal controls.	<p>Accountant General in the audit observed that epoxy powder is used as a paint for protective coating. It is not classified in any of the schedule to Act or in the notified list of goods under SRO 82/06. Hence the item rightly come under 103 and is taxable @ 12.5% is totally incorrect.</p> <p>As per the Rules of interpretation of commodities under KVAT Act it was stated that commodities in the schedule are allotted with code No. developed by the international customs organization i.e. HSN Code developed by the Customs Tariff Act and those commodities which are given with HSN Code No. should be given the same meaning as given in Customs Tariff Act.</p> <p>As per the above Rule the commodity - Epoxy powder is classified under items No.118(7) of the third schedule list A - Industrial Input and packing material under HSN Code No.3907 which includes the item - Polyacetals, other polyethers, and epoxide resins in primary forms etc. As per Chapter 39 of the Customs Tariff Act, in heading 3901 to 3914 the expression of primary forms applies only in the following forms.</p> <ul style="list-style-type: none"> a) Liquid and Pastes including dispersion (emulsion and suspension) and solution b) Block of irregular shapes, humps, powder (including moulding powder), granules..... <p>So Epoxy Powder will come under HSN Code 3907, since the expression "Primary Forms" applies to powder also. Hence it is clear that the commodity, epoxy powder is an item coming under item No.118(7)III schedule—List A - Industrial input and packing materials, classified under sl.no.66 of III schedule taxable @4%. Therefore the observation of Accountant General (Audit) that Epoxy powder is not classified in any of the schedule is incorrect.</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	--


 S. PADMANABHA PILLAI
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 Thiruvananthapuram.

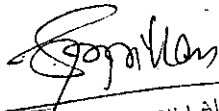
Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.7.1(11)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	20-2-12
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	In the office of the Commercial Tax Officer, 1 st Circle, Changanassery, it was noticed that a dealer assessed output tax on the sales turnover of mansion polish, harpic, lizol, shoe polish and brasso valued at Rs.51.97 lakh for the years 2005-06 and 2006-07 at the rate of four per cent instead of at the correct rate of 12.5 percent. This resulted in short levy of tax and interest of Rs.5.81 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.M.G.M.Agencies is a distributor for Reckitt Benkiser Products. On verification of the books of accounts of the above dealer for the years 2005-06 and 2006-07, the item mansion polish is already assessed to tax @ 12.5% for the year 2005-06 and 2006-07. The VAT Act was implemented from the year 2005-06. Due to unawareness, the dealer had shown all commodities in single entry @ 12.5%. The Supplier Co. M/s.Reckitt Benkiser remitted an amount of Rs.2,16,099.12 and Rs.2,49,720.75 by cheque for the year 2005-06 and 2006-07 respectively being the differential rate of tax @ 8.5% with the assessing authority. The dealer M/s. MGM Agencies filed revised annual return and adjusted an amount of Rs.11,237.15 as VAT for 2005-06 against input tax claim. The Commercial Tax Officer, Changanassery has verified the copy of 8A bills and the invoice and statements filed by the Supplier Co. regarding payment of differential rate of tax. There is, therefore, no short levy of tax as per section 11(5)2 of the KVAT Act.
(b)	Recovery of overpayment pointed out by audit	--
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--


 S. PADMANABHA PILLAI
 Assistant Secretary,
 Tax and Customs,
 Changanassery,
 Thiruvananthapuram.

Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.7.1(13)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	6-4-10
	(b)	Date of Department's Reply	18.6.10
III		Gist of Paragraph/Review	In Commercial Tax Office, Second Circle, Trivandrum in February 2009, it was noticed that a dealer M/s.A.B.Agency assessed output tax on the sales turnover of biscuits sold under a brand name valued at Rs.19.08 lakh for the year 2005-06 and Rs.34.83 lakh for the year 06-07 at 4% instead of at the correct rate of 12.5%. This resulted in short levy of tax and interest of Rs.5.34 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Partially sustainable.
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	In the light of order No.KVATA 237/09 and 238/09 dt.3.1.10 of Deputy Commissioner (Appeals), Trivandrum the assessing authority verified the purchase and sale invoices and found that most of the items comes under 4% rate of tax.

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

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	Based on the audit observation the assessing authority revised the assessments for the years 2005-06 and 06-07. Against the revised assessment orders the dealer preferred appeal and in appeal the appellate authority as per order dt.3.1.10 remanded the revised assessment for fresh disposal after verifying purchase and sale invoices of the dealer. Accordingly the assessing authority verified the accounts of the dealer with reference to the purchase and sale invoices and found that the dealer had purchase and sales of unbranded confectionery, agarbathy and pickles also and modified the assessments for the years 2005-06 and 2006-07 with a tax and interest balance of Rs.2499/- for the year 2005-06 and Rs.30593/- for the year 2006-07 and collected vide chalan Nos.1101 dt. 22.5.10 and 1110 dt.22.5.10.
(b)	Recovery of overpayment pointed out by audit	--
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

S. Padmanabha Pillai

S. PADMANABHA PILLAI
 ADDITIONAL CHIEF
 TAX OFFICER
 TIRUPUR

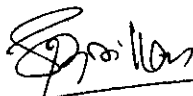
Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.7.1(14)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	S-l-lt
	(b)	Date of Department's Reply	16.10.10
III		Gist of Paragraph/Review	In Commercial Tax Office, Neyyattinkara Sri.V.J.Simon claimed irregular exemption on the sales turnover of expeller variety of oil cake, amounting Rs.9743311/- for the year 2005-06 and 2006-07 and the assessing authority allowed the claim and resulted in short levy of tax and interest of Rs.484878/-.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action taken

	(a)	Improvement in system and procedures, including internal controls.	<p>The assessments for the years were completed u/s 25 of the KVAT on 1.4.09.</p> <p><u>2005-06</u> : Taxable turnover Rs.3224565 Tax due Rs. 128983 (with interest of Rs.47724/-)</p> <p><u>2006-07</u> : Taxable turnover Rs.4281995 Tax due Rs. 171280 (with interest of Rs.42820/-)</p> <p>The entire amount is remitted.</p>
	(b)	Recovery of overpayment pointed out by audit	--
	(c)	Recovery of under assessment, short levy or other dues	--
	(d)	Modification in the schemes and programmes including financing pattern	--
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--



S. PADMANABHA PILLAI
 Joint Director, T. & E.
 Department,
 Government of Karnataka,
 Bangalore.

Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.7.1(16)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	15-1-10
	(b)	Date of Department's Reply	13.6.10
III		Gist of Paragraph/Review	In Commercial Tax Office, 3 rd Circle, Kannur, during the year 2005-06 M/s.Kansa Traders a dealer in paint and oxides self assessed output tax on a sales turnover of oxides for Rs.33.93 lakh at the rate of 4% instead of at 12.5%. This resulted in short levy of output and interest of Rs.3.98 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	Government have decided to reduce the rate of tax of these commodities to 4% with effects from 1.4.05 by making amendments in the 3 rd schedule to KVAT Act 2003 by Notification G.O.(P) No.26/09/TD dated 2.2.10 and published as SRO No.122/2010 (Kerala Gazette extraordinary dtd 5.2.2010)

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>Red oxides and black oxides are nothing but pigment of iron oxides and therefore would fall under HSN 2821-10-10 and is covered under serial no.82(1) of the 3rd schedule. Government have also notified a list of goods coming under 12.5% category as per SRO 82/06. However the commodities in question ie. Red oxides and black oxides are not covered by any specific entry under the above list of goods. Therefore the determination of rate of tax of Red Oxides and black oxides or yellow oxide had resulted in numerous disputes. To settle those disputes Government have decided to reduce the rate of tax of these commodities to 4% with effect from 1.4.05 by making amendments in the 3rd schedule to KVAT Act 2003 by Notification G.O.(P) No.26/09/TD dated 2.2.10 and published as SRO No.122/2010 (Kerala Gazette extraordinary dtd 5.2.2010).</p> <p>As per the above SRO Iron Oxide including Iron oxide pigments of all colour shades, commonly called Red oxide, black oxide, yellow oxide etc. are taxable @ 4% with effect from 1.4.2005.</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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S. Padmanabha Pillai
 S. PADMANABHA PILLAI
 Additional Secretary,
 Tamil Nadu Sahasra
 Krishi Yojana, Chennai.
 Thiruvananthapuram.

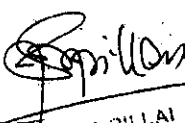
Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.7.1(20)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	6-4-12
	(b)	Date of Department's Reply	26.6.10
III		Gist of Paragraph/Review	In Commercial Tax Officer, First Circle, Trivandrum M/s.Setron Electronics (P) Ltd., assessed output tax @ 4% in the sales turnover of speaker as against the correct rate of 12.5%. As per the self assessment made for the year 05-06 the dealer had conceded output tax @4% on the sales turnover of speaker Rs.29.31 lakh resulting in short levy of tax and interest Rs.3.31 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	

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	The assessment of the dealer for the period of 2005-06 was completed under section 25 of KVAT Act, 2003 demanding tax and interest of Rs.302984 out of which dealer has paid Rs.125000/-. After adjusting the excess paid for previous years for Rs.123244/- the balance amount works out to Rs.54740/- which was paid vide chalan No.71 dtd. 25.10.11 and no amount is 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 scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--


S. PANKAJ CHA PILLAI
 Additional Secretary,
 Transport Department,
 Government Secretariat,
 Thiruvananthapuram.

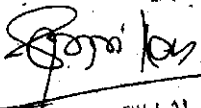
Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.7.1(22)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	20-2-10
	(b)	Date of Department's Reply	8.4.10
III		Gist of Paragraph/Review	In Commercial Tax Office, First Circle, Thiruvananthapuram M/s.Hitech Solutions a dealer assessed the entire sales turnover of spare and accessories of refrigerators for Rs.42,87,876/- at the rate of 12.5% instead at 20% w.e.f. 1.7.06. This resulted in a short payment of tax and interest of Rs.2.93 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.	As the audit objection was in order, the assessment of the dealer for the year 2006-07 was re-opened and completed assessment u/s 25 of the KVAT Act on 14.5.09, levying tax @ 20%. Balance tax due Rs.377639/- and interest Rs. 94410/- was demanded. The assessee has remitted the entire amount as under: Rs.80,000/- chalan No.1742 dated 24.8.09. Rs.80,000/- chalan No.391 dated 10.9.09. Rs.80,000/- chalan No.777 dated 24.9.09. Rs.80,000/- chalan No.275 dated 23.10.09. Rs.80,000/- chalan No.906 dated 26.11.09. Rs.83,649/- chalan No.995 dated 7.1.10. Rs.4,83,649/-
(b)	Recovery of overpayment pointed out by audit	--
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--


S. PADMANABHA PILLAI
 Joint Secretary,
 Tax and Audit,
 Govt. Secretariat,
 Thiruvananthapuram.

Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of output tax.
	(c)	Paragraph No.	2.12.9(1)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	4-6-10
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	In the Commercial Tax, Special Circle-I, Ernakulam, during the scrutiny of records it was noticed that M/s.Voltas Limited a dealer in air conditioners, stabilizers, forklift spares etc. availed input tax credit of Rs.32.97 lakh on purchase for the year 2006-07 valued at Rs.3.97 crores. However as per certified accounts, the dealer had effected purchases valued at Rs.15.06 lakh only from VAT dealers. Inspite of this no action was taken to revise the return, disallow the excess input tax credit and realize the differential tax which resulted in short levy of tax, interest and penal interest of Rs.53.61 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No

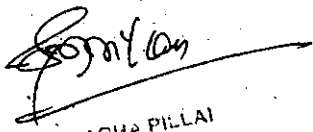
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	There was no provision in the Form 13A statement of accounts to report the purchase corresponding to the execution of Works Contract. The assessee had reported the actual local purchase including the purchase corresponding to the execution of Works Contract as well as the goods purchased for trading. Separate accounts were maintained by them for the execution of works contract. Hence there is no irregularity seen in this case.
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action taken

	(a)	Improvement in system and procedures, including internal controls.	<p>The books of accounts for the year 2006-07 were called for and verified by the assessing authority with respect to the annual return and Form 13A statement of accounts. The reported local purchase as per the annual return was the total local purchase meant for sale as well as for executing works contract. The local purchase declared in Form 13A statement of accounts was the goods meant for trading only.</p> <p>The local purchase of goods corresponding to the execution of works contract was not included in the declared local purchases as per the Form 13A since the stipulated column in Form 13A was for trading results only. In the absence of a separate column/provision in the Form 13A for declaring the local purchases meant for execution of works contract that part of the purchase effected for execution of works contract was excluded from reporting under the head of Part III, "Trading result". This doesn't mean that the assessee had availed excess input tax by filing the monthly and annual returns.</p> <p>There was no provision in the Form 13A statement of accounts to report the purchase corresponding to the execution of Works Contract. The assessee had reported the actual local purchase including the purchase corresponding to the execution of Works Contract as well as the goods purchased for trading. Separate accounts were maintained by them for the execution of works contract. Hence there is no irregularity seen in this case.</p>
	(b)	Recovery of overpayment pointed out by audit	--
	(c)	Recovery of under assessment, short levy or other dues	--

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


S PADMANABHA PILLAI
 Additional Secretary,
 Taxes Department,
 Govt. Secretariat,
 Thiruvananthapuram.

Action taken Notes on C& AG's Reports

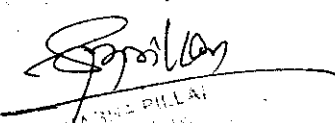
I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to incorrect allowance of discount.
	(c)	Paragraph No.	2.12.10.1(b)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	4-6-10
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	In Commercial Tax Office, Special Circle-I, Ernakulam, during scrutiny of assessment records it was noticed that a dealer in motor vehicle who collected tax on the entire invoice price for the years 2005-06 and 2006-07 and subsequently allowed discount through credit notes excluded the discount from taxable turnover which resulted in short levy of tax of Rs.39.66 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)	<p>Improvement in system and procedures, including internal controls.</p>	<p>M/s.Ashok Leyland is an assessee on the rolls of Asst.Commissioner, Special Circle-I, Ernakulam bearing TIN No.32070200174. The final assessment of M/s.Ashok Leyland Ltd. for the year 2005-06 had already been completed vide order dated 30.6.2007 of the Asst. Commissioner (AA), Ernakulam and thereafter they filed appeal before the Deputy Commissioner (Appeals), Ernakulam. They remitted Rs.22,00,000/- and the balance is under stay.</p> <p>For the year 2006-07, the Asst. Commissioner, Special Circle-I, Ernakulam has issued notice u/s 23 of KVAT Act.</p> <p>M/s.Ashok Leyland disclosed the following trade results for the year 2006-07.</p> <table><tr><td>Total turnover</td><td>: Rs.2,06,96,23,824</td></tr><tr><td>Exempted turnover</td><td>: Rs. 15,66,25,687</td></tr><tr><td>Taxable turnover</td><td>: Rs.1,91,31,98,138</td></tr><tr><td>Output tax due</td><td>: Rs. 23,80,33,672</td></tr></table> <p>A subsequent scrutiny of the records revealed that, the exempted turnover related to trade discount allowed to the retail dealers for trade promotion and target achievements, interstate sales turnover and interstate branch transfers. Out of the exempted turnover, Rs.3,56,76,910/- for the year 2006-07, relates to trade discount allowed to the retailers for trade promotion.</p> <p>A notice has been issued on the assessee on the above and they filed a detailed reply that they are not liable to pay tax on discount received citing various cases. The verification of the relevant documents produced revealed that the discounts were allowed subsequent on the issuance of sale invoices and they are taxable. Orders has been issued accordingly and the dealer remitted the balance tax due as shown below.</p>	Total turnover	: Rs.2,06,96,23,824	Exempted turnover	: Rs. 15,66,25,687	Taxable turnover	: Rs.1,91,31,98,138	Output tax due	: Rs. 23,80,33,672
Total turnover	: Rs.2,06,96,23,824										
Exempted turnover	: Rs. 15,66,25,687										
Taxable turnover	: Rs.1,91,31,98,138										
Output tax due	: Rs. 23,80,33,672										

			Total tax demand : Rs.21,05,237
			Interest : <u>Rs. 3,97,386</u>
			Total : Rs.25,02,623
			Amount remitted vide cheque No. : Rs.18,33,561
			002331/16.9.10
			Excess carried forward from 04-05 : Rs. 6,69,062
			Balance to be paid : NIL
	(b)	Recovery of overpayment pointed out by audit	--
	(c)	Recovery of under assessment, short levy or other dues	--
	(d)	Modification in the schemes and programmes including financing pattern	--
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--


 S. PARAMASAMI PILLAI
 Additional Secretary,
 Tax Department,
 Govt. Secretariat,
 Thiruvananthapuram.

Action taken Notes on C& AG's Reports

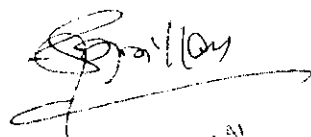
I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to incorrect computation.
	(c)	Paragraph No.	2.12.11(1)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	4-6-10
	(b)	Date of Department's Reply	11.10.10
III		Gist of Paragraph/Review	In Commercial Tax Office, Special Circle-II, Ernakulam, during scrutiny of assessment records of M/s.Appollo Tyres Ltd. for the year 2007-08 it was noticed that, the assessee incorrectly computed the tax eligible for set off as Rs.43.33 crore instead of Rs.42.98 crore. The return was not rejected by the assessing authority which resulted in short levy of tax and interest of Rs.41.65 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	The assessee has filed revised annual return on 31.12.2008. There is no excess Input tax claimed by the dealer during 07-08 as per revised annual return.
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>The assessee has filed revised annual return on 31.12.2008. As per the revised annual return the assessee has availed input tax set off against CST for Rs.12,81,64,970/-. The CST paid during 07-08 is Rs.94,19,914/- totaling Rs.13,75,84,889/-, which is the CST due for the year 2007-08. In the original annual return, full amount of CST set off has not been availed by the assessee. The input tax set off availed against CST as per original annual return is Rs.10,94,32,700/-. There is no excess IPT claim by the dealer during 2007-08 as per revised annual return.</p> <p>The input tax and out put tax worked out as per annual return is as under:</p> <p><u>Tax due</u></p> <p>Out put tax due : Rs. 65997378</p> <p>Reverse tax : <u>Rs.240495309</u></p> <p>Total : Rs.305992687</p> <p><u>Tax at credit:</u></p> <p>Excess IPT credit brought forward from</p> <p>Previous return period : Rs. 2378917</p> <p>IPT paid : Rs.426635300</p> <p>Special rebate : Rs. 745693</p> <p>IFT on capital goods : Rs. 624</p> <p>IPT on credit note : <u>Rs. 50848</u></p> <p>Total : Rs. 429811382</p> <p>Net tax creditable as returned : Rs. 127317978</p> <p>Actual net tax creditable : Rs. 123818693</p> <p>Excess tax credit : Rs. 3499283</p>
(b)	Recovery of overpayment pointed out by audit	--

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



S. PRASAD
 Director
 Audit
 10/10/2010

Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to incorrect exemption.
	(c)	Paragraph No.	2.12.2.2
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	25-6-10
	(b)	Date of Department's Reply	24.6.11
III		Gist of Paragraph/Review	In the office of the Asst. Commissioner, Special Circle-II, Ernakulam, during the scrutiny of assessment records it was noticed that the assessee claimed sale of ships as export sales. As per the terms and conditions the ships/vessels are delivered at the yard at Cochin and the title, risk, ownership etc over the vessel were transferred to the buyer and the buyer takes possession of the vessel immediately upon delivery. Hence the sale falls within the definition of sale under KVAT Act. Since none of the conditions stipulated in the CST Act 1956 is fulfilled in the transaction, the exemption amounting to Rs.1148.09 crore for the period from 05-06 to 08-09 given is not in order resulting in short levy of tax and interest of Rs.54.70 crore.

IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also, attach copies of relevant documents in support	The sales of the vessels occasioned the export and is deemed to have taken place in the course of export. Such sales are not liable to sales tax either under KVAT Act or under CST Act. Further, by virtue of the provisions of section 5(1) of the CST Act, the sale which occasioned an export of the goods outside the territory of India is deemed to be a sale, which takes place in the course of export of goods out of territory of India. The sales effected by the Cochin Shipyard Ltd. to the foreign buyers are clearly sales in the course of export and hence beyond the purview of taxation under KVAT Act 2003.
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.Cochin Shipyard Ltd. has entered into agreement with foreign buyers for construction and delivery of platform supply vessels. Pursuant to the contract signed, the shipyard has constructed and delivered vessels to the foreign buyers. The entire consideration has been received by the assessee in foreign currency. The major portion of the materials required for the construction of the vessels are imported and are under customs bond. The construction of the vessels is done in the Customs Bonded Area of the yard. The ship has been exported, by filing shipping bill with the customs authorities, which carry necessary endorsement by the customs authorities showing the net export order. The ships sail directly to the foreign countries and are registered in the Flag State of their respective countries. This would clearly indicate that the sales of the vessels occasioned the export and is deemed to have taken place in the course of export. Such sales are not liable to sales tax either under KVAT Act or under CST Act. Further, by virtue of the provisions of section 5(1) of the CST Act, the sale which occasioned an export of the goods outside the territory of India is deemed to be a sale, which takes place in the course of export of goods out of territory of India. As such on account of the peculiar features of transactions indicated above the sales effected by the Cochin Shipyard Ltd. to the foreign buyers are clearly sales in the course of export and hence beyond the purview of taxation under KVAT Act 2003.</p> <p>It may be noted that the intention of the Legislature as seen from section 5 of the CST Act is to take away all kinds sales taxes in relation of the export effected from our country. This was done, the federal structure of India, that sales shall not tress pass into the federal field of International Trade. Even if the sale is in the State before the commencement of the journey, the sale is nevertheless, in the course of export and it is erroneous to say that the sales in the course of means only those sales in which property passes during the</p>
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		<p>actual movement, became, to put it that way would rob the exemption of its usefulness i.e. exemption of state levy.</p> <p>In the case of export:</p> <ol style="list-style-type: none"> 1) There is a common intention of both the buyer and the seller to export. 2) There is an obligation to export and 3) There is actual export. <p>These facts are true in the case of the construction and delivery of vessels by Cochin Shipyard Ltd. to the foreign buyers.</p> <p>In the above discussed circumstances, the ships built and delivered by Cochin Shipyard Ltd. to various foreign buyers will not attract KVAT.</p>
(b)	Recovery of overpayment pointed out by audit	--
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--

S. S. S. S.
 Sd/-
 Director
 Finance
 Government of India
 New Delhi

Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to incorrect exemption.
	(c)	Paragraph No.	2.12.2.4
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	27-6-10
	(b)	Date of Department's Reply	11.11.10
III		Gist of Paragraph/Review	In Commercial Tax Officer (WC), Ernakulam, during the scrutiny of assessment records it was noticed that the assessee M/s. Technip K.T. India engaged in works contract returned a total turnover of works contract for Rs.87.16 crore for the year 08-09. However, the assessee returned a taxable turnover of Rs.2.45 crore after claiming exemption for Rs.84.71 crore it is found that the assessee is liable to pay tax at least on the contract amount received of Rs.60.70 crore after allowing deduction as per Rule 10(2)(b) of the KVAT Act, as the element of labour and other charges are not separately ascertainable from the records. The defect was not detected by the assessing authority which resulted in short levy of tax and interest of Rs.6.70 crore.

IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	<p>The assessee has entered in to contract with Bharat Petroleum Corporation Limited for execution of works contract. Accordingly the dealer purchased goods from outside the state in the course of interstate trade. The goods used in the works contract were to be procured only from those manufactures who were approved by the awarders as per the terms of contracts. Such vendors were all situated outside the state. The goods were despatched against their invoices. The goods were ordered, manufactured, imported, used as per the aforesaid terms of contract. The terms of the contract clearly show that at the time of movement of goods lien of the awarder was created on the goods and it was known that the goods were being brought for use in the works contract. Thus such transactions are clearly covered by section 3 of the CST Act and hence not assessable to tax under the KVAT Act.</p>
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

(a)

Improvement in system and procedures, including internal controls.

The assessee M/s. Technip.K.T. India is engaged in works contract. During the year 08-09 the assessee has obtained 20E certificate for Rs.60.60 crore as expected receipts for the six months from October to March 2009. The total contract amount of the two ongoing projects are Rs.864091188 + 1066606810 totaling Rs.1930697998. The projects have 3 portions (1)supply (2)Engineering and (3)Constructions. The contract amount of construction portion of the two projects comes to Rs.871564833/- which is mentioned in the Annual Return. The break up of the expected receipt of 60.60 crores for the portions of the two project of the contract is given below.

	Engg.	Supply	Construction	Total
Project-I	240 lakhs	1750 lakhs	760 lakhs	2750 lakhs
Project-II	230 lakhs	1950 lakhs	1130 lakhs	3310 lakhs
Total	470 lakhs	3700 lakhs	1890 lakhs	6060 lakhs

The break up of construction portion is as follows:

Gross amount	1890 lakhs
Less labour	567 lakhs
Taxable turnover	1323 lakhs
Tax due @ 12.5% +cess	167.02 lakhs

The assessee has paid the amount.

The supply portion is claimed exemption as interstate sales from the respective state and goods moved into the State of Kerala for execution of the works contract as part of the terms of agreement. The engineering portion is service and amenable to service tax.

In order to execute the above contract the assessee purchased materials from outside the state. As per the terms of the contract the goods have to be procured by the assessee according to the specification stated in the work order. The goods have been purchased from vendors approved by the awarder. They are located outside the state only. As per the terms of the contract the goods have to be according to the relevant standard and should have the respective certificate. Further in

Bharat Petroleum Corporation Ltd. work, as per the terms of contract the contractor have to produce an undertaking with the manufacturer of materials and specials, regarding their willingness to supply the materials required for this contract. The invoice is raised by the vendors on the assessee at Kerala address. The invoices specifically state the delivery address as the work sites.

From the above it is clear that the goods have been imported/moved from outside the state specifically for the purpose of the contract and the movement has inextricable link with the ultimate sale in the course of execution of the contract.

The claim of exemption on the material supply is on the following grounds.

- (a) The transfer of goods is a sale in the course of interstate trade under section 3(a) hence the state does not have a power to levy tax on sales transaction.

or

- (b) The appropriation of the goods to the contract occurs outside the state. Hence the sales has taken place outside the state as per section 4(2) of the CST Act. The section provided that a sale or purchase of goods shall be deemed to have taken place in the course of interstate trade or commerce if it.

(I) occasion the movement of goods from one state to another or

(II) is effected by a transfer of the documents of title to the goods during their movements from one state to another.

Therefore (a) the agreement of sale must have an express or implied stipulation for moving the goods from one state, to another or the movement should be an incident or an integral part of sale, the actual sale taking place in either of the state.

(b) the goods must actually move from one state to the other and

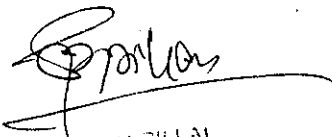
(c) The property over the goods may pass from the seller to the buyer in either of the state or during the transit.

Only a transaction of sale connected with the movement of goods can be regarded as interstate sales. The movement and the sale must have a reasonable direct link. Such movement can be stipulated in the contract of sale specifically or it may be contemplated by the parties as an implied term of contract. The concept of sale itself is an intangible one, where there is no transfer of property in the goods, there is no sale and mere movement cannot be the subject matter of the transaction nor can be mere agreement to sell be taxed. The sale should have occasioned the movement or the movement should have been incidental to the sale. The movement of the goods must be incidental to the contract there being no possibility of diversion of goods for any other purpose.

In the present case the goods are procured as per the specification in the purchase order, and only from approved vendors stated therein. By virtue of the stipulation in the order and the terms of agreement, the materials are to be procured only from the approved vendors. They are situated outside the state. Therefore the sale (deemed sale) of goods has caused the movement of the said goods from outside the state. Hence the deemed sale is a sale in the course of interstate trade falling under section 3(a) of the CST Act.

The assessee has entered in to contract with Bharat Petroleum Corporation Limited for execution of works contract. Accordingly the dealer purchased goods from outside the state in the course of interstate trade. The goods used in the works contract were to be procured only from those manufacturers who were approved by the awarders as per the terms of contracts. Such vendors were all situated outside the state. The goods were despatched against their invoices. The goods were ordered, manufactured, imported, used as per the aforesaid terms of contract. The terms of the contract clearly show that at the time of movement of goods lien of the awarder was created on the goods and it was known that the goods were being brought for use in the works contract. Thus such transactions are clearly covered by section 3 of the CST Act and hence not assessable to tax under the KVAT Act.

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


 S. P. NARAYANA PILLAI
 Assistant Secretary,
 Department of Revenue,
 Government of Tamil Nadu,
 Chennai-600 006.

Action taken Notes on C& AG's Reports

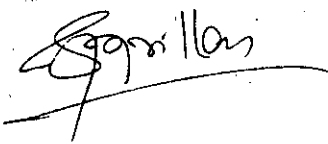
	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to incorrect computation of tax.
	(c)	Paragraph No.	2.12.5
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	5-5-10
	(b)	Date of Department's Reply	1.7.10
III		Gist of Paragraph/Review	In Commercial Tax Office (WC<) Kozhikkode, it was noticed in May 2009 that M/s.Uralungal Labour Contract Co-operative Society, Vatakara, an assessee who had opted to pay compounded tax and having total contract receipt of Rs.20.68 crore, paid tax of Rs.73.50 lakh only instead of Rs.82.31 lakh. This resulted in short levy of tax of Rs.8.82 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	The assessee is not liable to pay tax @4% on the gross amount as pointed out by the Accountant General. The gross contract amount represents ongoing contract receipt and current contract receipt. On going contract receipt is liable to be assessed at 2.3% (KGST Act) current contract amount is liable to be assessed @ 4% being a CST dealer. Thus, there is no short levy of tax as pointed by the Accountant General.

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

VI

Remedial action taken

	(a)	Improvement in system and procedures, including internal controls.	The assessee is not liable to pay tax @4% on the gross amount as pointed out by the Accountant General. The gross contract amount represents ongoing contract receipt and current contract receipt. On going contract receipt is liable to be assessed at 2.3% (KGST Act) current contract amount is liable to be assessed @ 4% being a CST dealer. Thus, there is no short levy of tax as pointed by the Accountant General.
	(b)	Recovery of overpayment pointed out by audit	--
	(c)	Recovery of under assessment, short levy or other dues	--
	(d)	Modification in the schemes and programmes including financing pattern	--
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--


 S. PADMANATHA BELLAI
 Assistant Secretary,
 Income Tax Department,
 Bangalore

Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to excess availing of Input tax credit.
	(c)	Paragraph No.	2.12.6.4(a)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	4-6-10
	(b)	Date of Department's Reply	25.10.10
III		Gist of Paragraph/Review	In Special Circle, Mattancherry at Aluva M/s.Mezhukkattil Mills has availed input tax credit of Rs.8.41 lakh for the month of May and June 2007 for the purchase of Copra. The copra purchased has been used in the manufacture of C.N.oil and C.N.oil cake. Both these commodities are first schedule items, the availing of ITC is incorrect resulting in short levy of tax and interest Rs.9.92 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	By Finance Act 2007 notified on 28.7.07 the C.N.Oil and C.N.Oil cake have been included in the 1 st schedule of KVAT Act giving retrospective effect from 1.5.07. By virtue of clause of the Kerala Finance Act 2007 the collection of output tax and claim of input tax credit by the dealer have to be treated as legally valid and hence is in order. The validation clause 8 of the Act is reproduced. <u>8. Validation</u> :- Not withstanding any thing contained in Kerala

			<p>provisional collection of revenue Act 1985 or in the KVAT Act, 2003 (30 of 2004), during the period from 1.4.07 to the date of publication of this Act, during which the declared provision as contained in the Finance Bill, 2007 (Bill No.84 of the 12th Kerala Legislative Assembly) was in force, any tax collected by the first seller by virtue of Clause (h) of section 8 proposed to be inserted by item (d) of sub clause (2) of clause 7 of the said bill shall be deemed to have been validly collected under the said Act, and the subsequent dealers covered under the said provisions shall be entitled for the exemptions as envisaged in the said clause of the said bill.</p> <p>The audit is not sustainable.</p>
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>By Finance Act 2007 notified on 28.7.07 the C.N.Oil and C.N.Oil cake have been included in the 1st schedule of KVAT Act giving retrospective effect from 1.5.07. By virtue of clause of the Kerala Finance Act 2007 the collection of output tax and claim of input tax credit by the dealer have to be treated as legally valid and hence is in order. The validation clause 8 of the Act is reproduced:</p> <p><u>8. Validation</u> :- Notwithstanding any thing contained in Kerala provisional collection of revenue Act 1985 or in the KVAT Act, 2003 (30 of 2004), during the period from 1.4.07 to the date of publication of this Act, during which the declared provision as contained in the Finance Bill, 2007 (Bill No.84 of the 12th Kerala Legislative Assembly) was in force, any tax collected by the first seller by virtue of Clause (h) of section 8 proposed to be inserted by item (d) of sub clause (2) of clause 7 of the said bill shall be deemed to have been validly collected under the said Act, and the subsequent dealers covered under the said provisions shall be entitled for the exemptions as envisaged in the said clause of the said bill.</p> <p>The audit is not sustainable.</p>
(b)	Recovery of overpayment pointed out by audit	--
(c)	Recovery of under assessment, short levy or other dues	--

Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to excess availing of Input tax credit.
	(c)	Paragraph No.	2.12.6.4(b)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	26-5-10
	(b)	Date of Department's Reply	16.9.10
III		Gist of Paragraph/Review	During scrutiny of records in Asst. Commissioner, Special Circle, Kasargod, it was noticed that M/s.K.S.A.Kamath & Sons, a dealer in cashew nut and kernel claimed input tax credit for the entire purchase for the year 07-08. Even though 35.15% of the total sales turnover related to consignment and stock transfer, the input tax availed corresponding to this turnover of Rs.70980850/- was not disallowed resulted in short levy of tax of Rs.6.69 lakhs.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

Remedial action taken

(a)

Improvement in system and procedures, including internal controls.

The Accountant General worked out the short levy for 2007-08 as detailed below:

	(Rs.)
Total turnover including interstate Sales & exports	201926520
Consignment transfer & stock transfer	70980850
Ratio	35.15%
Input tax for special rebate allowed	1665794+
	873565
Total	2539359
Input tax/special rebate to be disallowed	2539359x¼
	669439

In the light of the audit observation, a notice was issued on the assessee. In reply to the notice, the dealer has pointed out certain discrepancies in turnover and input tax with reference to the annual return and audited statement.

The above said position were verified with reference to the accounts and audited statement. Accordingly, the assessment for the year was revised as under on 29.6.2010.

	(Rs.)
Total turnover including interstate & export	201428140
Taxable turnover	3846766
Consignment transfer & branch stock transfer	70477214
Ratio of non taxable sales	34.99%
Total IPT paid u/s 6(1)	1782420
Total IPT allowed on local purchase u/s 6(2)	1522487
Total IPT allowed	3304907
Position of IPT as non-taxable sales	1156387
IPT credit excess allowed	867290
IPT at the end of March	3304907
CST adjusted	931838
Excess input tax refund	1685519
VAT collected	160645

			<u>Balance sheet</u> <u>as at 30.6.2018</u> <u>Rs.</u> <u>(in Lakhs)</u> Demand drawn on the balance tax due for 07-08 Rs 790.46 Interest due of Rs.91960/- has been issued on the date on 30.6.2018 Balance tax collected as per challan no.165 and is 7.10.
(b)	Recovery of overpayment pointed out by audit	-	
(c)	Recovery of under assessment, short levy or other dues	--	
(d)	Modification in the schemes and programmes including financing pattern.	--	
(e)	Review of similar cases / complete scheme / project in the light of findings of sample check by Audit; findings of sample check by Audit	--	

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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 due to excess availing of special rebate.
	(c)	Paragraph No.	2.12.8.2(a)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	4-5-10
	(b)	Date of Department's Reply	22.9.10
III		Gist of Paragraph/Review	In Commercial Tax Office, Special Circle-II, Ernakulam, during the scrutiny of assessment records of M/s.Appollo Tyres for 07-08 it was noticed that an assessee who had not disclosed purchase turnover from unregistered dealers, availed special rebate of Rs.7.46 lakh. This resulted in short levy of tax and interest of Rs.8.87 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	The special rebate claimed is for the input tax credit claim on the Entry tax paid for the purchase of capital goods.
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of output tax.
	(c)	Paragraph No.	2.12.9(2)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	4.6.10
	(b)	Date of Department's Reply	26.10.10
III		Gist of Paragraph/Review	In Commercial Tax Office, Special Circle-1, Ernakulam, during the scrutiny of assessment records of M/s.Godrej and Boyce Manufacturing Company Ltd., it was noticed that a dealer in refrigerator and air conditioner etc assessed out put tax on sales turnover of Rs.112.37 crore as conceded in the return for the year 06-07, even though local sale as per certified accounts for the same year was Rs.113.37 crore. However no action was seen taken to revise the return. This result in short levy of Rs.24.05 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. Godrej and Boyce Manufacturing Company Ltd. is an assessee on the rolls of the Commercial Tax Officer, Special Circle-I, Ernakulam dealt with refrigerator, washing machine etc.</p> <p>During the year the assessee company received Rs.1228185/- towards labour charges. The contention of the assessee company is that, the amount was realized after issuing labour bills on service calls which is purely labour charges in nature and there is no element of involvement of goods to attract any tax liability. Therefore the company claimed exemption on the above turnover. The dealer company also produced the invoices.</p> <p>The Asst. Commissioner (Assmt.) has verified the invoices and found that the majority of the bills produced for verification is purely in the nature of labour charges received and there is no element of involvement of goods to attract any tax liability. Considering this fact, exemption claimed towards labour charges is limited to 50% of the total labour charges received. Accordingly 50% of the total labour charges received was assessed to tax and the dealer company paid the tax with interest.</p> <p>As far as AMC is concerned the assessee company claimed exemption being the amount received towards "protection plan". The contention of the company is that protection plan is the extended warrantee scheme at the instance of the customer which is optimal at the instance of the customers. Protection plan is a protection given to the customer for a certain period which is collected separately raising bills, at that time there is no involvement of labour and materials. When a situation warranting replacement of goods taken place they will raise 71P serial bill separately and pay appropriate tax.</p> <p>The Asst. Commissioner (Assmt.), Special Circle-I, Ernakulam has verified this aspect. During the year the assessee company had received Rs.2368380/- towards Protection plan. The material element warranting</p>
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		replacement of goods is very meagre in nature. As per Rule 9(2)(c) of the KVAT Rules, 2005 in relation to AMC where the turnover of goods are not ascertainable the taxable turnover shall be 50% of the contract amount. Therefore the 50% of the amount received towards AMC/Protection plan is assessed to tax. The balance tax and interest Rs.7,36,193/- has fully paid vide cheque No.015718 dtd.3.8.10 and balance CST due and interest for Rs.3,51,244/- has fully paid vide cheque No.015719 dtd.3.8.10.
(b)	Recovery of overpayment pointed out by audit	--
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--



Signature of the Officer in Charge

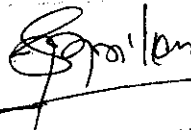
Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of output tax.
	(c)	Paragraph No.	2.12.9.5
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	4.6.10
	(b)	Date of Department's Reply	25.6.2011
III		Gist of Paragraph/Review	In the Commercial Tax office, Special Circle-II, Ernakulam, during scrutiny of records in respect of M/s.Jose Electrical Sales Corporation, Ernakulam for the year 06-07 it was noticed that the dealer availed input tax credit of Rs.51.55 lakhs, on the local purchases valued at Rs.7.23 crores. From the audit report it is revealed that the local purchase amounted to Rs.6.04 crores only. This discrepancy resulted in short levy of Rs.8.03 lakhs towards tax, interest and penal 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.	The books of accounts for the year 06-07 were called for and verified by the assessing authority with respect to the annual return and audited report in Form 13A and rectified the mistake vide order dtd 30.10.2009 creating additional demand of Rs.636770 (Tax Rs.475202/- Interest Rs.161568/-) and the dealer has paid the balance tax due with interest as detailed below.			
		Sl.No.	Amount (Rs.)	Chalan No.	Date
		1	160000	572	4.1.10
		2	160000	215	29.3.10
		3	160000	1346	31.3.10
		4	156770	29	21.5.10
		Total	636770		
(b)	Recovery of overpayment pointed out by audit	--			
(c)	Recovery of under assessment, short levy or other dues	--			
(d)	Modification in the schemes and programmes including financing pattern	--			
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--			


 S. PATMANABHA PILLAI
 Assistant Secretary,
 Tax Department,
 Tiruvananthapuram.

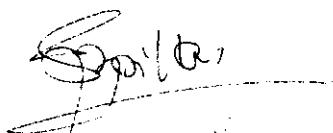
Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to turnover escaping assessment.
	(c)	Paragraph No.	2.12.12.2
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	4-6-10
	(b)	Date of Department's Reply	29.7.2010
III		Gist of Paragraph/Review	M/s. Lunar Rubbers, a dealer in hawai chappals, umbrella and school bags received royalty valued at Rs.1.36 crore for the years 05-06 to 07-08 in respect of transfer of right to use their trade mark, which was not assessed to tax. This resulted in short levy of tax and interest of Rs.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.	Based on the audit observations assessment u/s.25(1) of the KVAT Act was completed for the years 2005-06 to 2007-08 and remitted the entire amount as under:					
			Demand			Collection particulars		
			Year	Tax	Interest	Tax	Interest	Chelan No./date
			05-06	204716	102358	204716	102358	583/ 6.10.10
			06-07	258854	98365	258854	98365	585/- 6.10.10
			07-08	79909	20776	79909	20776	587/ 6.10.10
	(b)	Recovery of overpayment pointed out by audit	--					
	(c)	Recovery of under assessment, short levy or other dues	--					
	(d)	Modification in the schemes and programmes including financing pattern	--					
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--					



Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to application of incorrect rate of input tax credit
	(c)	Paragraph No.	2.12.13(4)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	28-4-10
	(b)	Date of Department's Reply	19.10.10
III		Gist of Paragraph/Review	In Commercial Tax Office, 2 nd Circle, Kottayam revealed that M/s.Continental Wood Products an assessee claimed input tax credit at the rate of 12.5% on the purchase of 4% taxable goods during 06-07 and 07-08. This resulted in short levy of tax of Rs.4.45 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	Verification of the assessment records for the years 06-07 and 07-08 clearly revealed that the assessee had mentioned the purchases of 12.5% of taxable items and 4% taxable items specifically in all the returns filed along with the purchase statement. There is no specific provision in the KVAT Act to limit the input tax paid as per the purchase bills for the goods which are used for the manufacture of another commodity except that

			<p>sent for outside the state. As per entry 174 on list A of the Third Schedule, the rate of tax leviable on the products ie packing materials of all kinds is only @4% as per the statute.</p> <p>In the above circumstances, there is no irregular claims of excess input tax credit @ 12.5% on 4% taxable goods. So the question of illegal collection of tax forfeited to Government does not arise in this case.</p>
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>The assessee, M/s. Continental Wood Products, Pannimattom, Palom are the manufactures of Rubber wood packing materials like pallets, crates etc meant for the exporters. Their main customer is ITC Chennai, Paper exporter who uses only good finish pallets, ie pallets made with planed and dried Rubber Wood planks and surface with plywood pieces. Their major Raw materials to make quality cases are Rubber wood, plywood, nails and consumables etc and the manufacturing process are given under in brief. Sawing of Rubber Wood, the sawn planks cut into the required sizes, planks are to be planed to get smooth finish, drying the planks in chamber to reduce moisture content, fabricate the pallet frame with planks, cutting the plywood purchased in the required sizes nails the cut size plywood on the surface area of the pallet where the place in which product for export are to be kept finishing the whole area of pallets with buffing machine in order to get smooth finishing of the pallet. The item sold by the assessee are Rubber wood packing materials, hence the major raw materials used in the finished packing cases are rubber wood only and the plywood is used in a lesser quantity. Rubber wood are buying from unregistered dealers and registered dealers by suffering VAT @ 4%, plywood and nail from VAT dealers by suffering VAT @ 12.5% respectively. They are making packing cases mainly with Rubber wood and plywood in a lesser quantity only for the approved drawing of ITC. The assessee has been clearly indicated by the customer (ITC Chennai) that plywood has to be nailed on the surface side of the pallet as they need a clean and plain surface where they keep their material (paper) in order to avoid any kind of damages in transit. The assessee's major share of sales is interstate and those are for ITC only and billing to them were made @ 4% or @ 3% against C forms as per the rate prevailed.</p>
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The assessee had collected and submitted the C forms pertains to the interstate sales effected and 21 J too from the VAT dealer from whom the purchase of plywood and nails were made. Sub section (1) of section II provides that any registered dealers liable to tax under sub section (1) of section 6 shall be eligible for input tax. The condition to allow input tax as per sub section 9 of section II is that any dealer who claims input tax in respect of any purchase shall keep the original tax invoices for such purchases, wherein the input tax has been separately charged. The assessing authority has verified all the purchase bills of the assessee for the years 06-07 and 07-08 and found that the assessee had purchased plywood from VAT dealers @ 12.5% for an amount of Rs.1741020/- for the year 06-07 and claimed input tax Rs.217624/- for that year and Rs.3499274/- for 07-08 and claimed input tax Rs.437413/- for the year 07-08 respectively in addition to the purchases of rubber wood logs. The goods purchased i.e. plywood and rubber wood logs are not sold as such. The goods purchased paying tax at higher rate i.e. 12.5% are used for the manufacture of packing materials which are taxable @4% as per the statute. The assessee who claimed the input tax at higher rate, had paid the tax as per that noted in the purchase invoices available with him and declaration in 21 J to prove the remittance of tax by the whole seller was also filed. Verification of the assessment records for the years 06-07 and 07-08 clearly revealed that the assessee had mentioned the purchases of 12.5% of taxable items and 4% taxable items specifically in all the returns filed along with the purchase statement. There is no specific provision in the KVAT Act to limit the input tax paid as per the purchase bills for the goods which are used for the manufacture of another commodity except that sent for outside the state. As per entry 174 on list A of the Third Schedule, the rate of tax leviable on the products ie packing materials of all kinds is only @4% as per the statute.

In the above circumstances, there is no irregular claims of excess input tax credit @ 12.5% on 4% taxable goods. So the question of illegal collection of tax forfeited to Government does not arise in this case.

Action taken Notes on C& AG's Reports

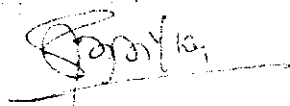
	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to application of incorrect rate of input tax credit
	(c)	Paragraph No.	2.12.13(6)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	2.3.2010
	(b)	Date of Department's Reply	26.6.10
III		Gist of Paragraph/Review	In Commercial Tax Office, Attingal in September 2008, it was noticed that an assessee M/s. N.C.Chemicals, Attingal claimed input tax credit for the year 05-06 at the incorrect rate of 12.5% on the purchase of sodium silicate which was actually taxable at 4%. This resulted in short levy of tax of Rs.2.25 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	The audit objection for the year 05-06 was the excess input tax availed by the dealer @12.5% instead @ 4% for the purchase of sodium silicate which being an item comes under Sl.No.139 of list A (Industrial inputs and packing materials) attached to the Schedule III of the KVAT Act 2003. Consequent to the audit objection,

			assessment was revised vide order No.32011179704/05-06 dtd 20.2.09. Aggrieved by the order, dealer preferred an appeal before the Deputy Commissioner (Appeal) Thiruvananthapuram who in turn vide order No.KVATA No.7/09 dtd 28.1.10 allowed the appeal on the ground that the respective item will come under entry 4% as per Act 39 of 2005 on the basis of ordinance No.15/2005 and got the assent of Governor only on 19.8.05. The appellant has purchased and sold goods at the rate of 12.5% upto 18.8.05 so he is eligible for input tax at that rate. The assessee purchased and paid tax @ 4% and also sold at 4% from 19.8.05 and is eligible for input at that rate.
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	The audit objection for the year 05-06 was the excess input tax availed by the dealer @12.5% instead @ 4% for the purchase of sodium silicate which being an item comes under Sl.No.139 of list A (Industrial inputs and packing materials) attached to the Schedule III of the KVAT Act 2003. Consequent to the audit objection, assessment was revised vide order No.320/1179704/05-06 dtd 20.2.09. Aggrieved by the order, dealer preferred an appeal before the Deputy Commissioner (Appeal) Thiruvananthapuram who in turn vide order No.KVATA No.7/09 dtd 28.1.10 allowed the appeal on the ground that the respective item will come under entry 4% as per Act 39 of 2005 on the basis of ordinance No.15/2005 and got the assent of Governor only on 19.8.05. The appellant has purchased and sold goods at the rate of 12.5% upto 18.8.05 so he is eligible for input tax at that rate. The assessee purchased and paid tax @ 4% and also sold at 4% from 19.8.05 and is eligible for input at that rate.
(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	--



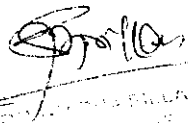
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Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.18.2(b)
	(d)	Report No. and Year	C& AG. report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	15-5-10
	(b)	Date of Department's Reply	
III		Gist of Paragraph/Review	In the Special Circle Office, Kottayam, it was noticed that while finalizing the assessment of M/s.Plantation Corporation for the year 02-03 the sales turnover of Oil Palm Kernels for Rs.59.28 lakh was assessed to tax @ 4% instead of. @ 8% which resulted in short levy of tax of Rs.2.73 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	--
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	The original assessment for the year 2002-03 was completed on 28.3.2007 assessing the sales turnover of Oil Palm Kernels for Rs.59,27,984/- @ 4% treating it as 'Oil seeds' as per entry No.1 in the second schedule to KGST Act 1963. As per Accountant General's observation the sales of Oil Palm Kernels come under entry 177 of first schedule; the turnover to be taxed @8%. In the circumstances, the assessment was revised u/s 19 vide order dtd.16.10.2009 and short levy due to differential rate of tax Rs.2,72,688/- was demanded. The assessee paid the amount along with interest vide chalan No.9 dtd.24.3.2010.
(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 due to turnover escaping assessment.
	(c)	Paragraph No.	2.12.1.5
	(d)	Report No. and Year	C& AG report ended 31.3.10
II	(a)	Date of receipt of the Draft Para/Review in the Department	25.6.2010
	(b)	Date of Department's Reply	2.8.2010
III		Gist of Paragraph/Review	M/s.Electro Steel Casting Ltd., Thiruvananthapuram an assessee who is engaged in the execution of Japan Bank for International Co-operation (JBIC) assisted water supply scheme for Kerala Water Authority (KWA) opted for compounding and paid tax on Rs.15.33 crore for 2007-08. The Accountant General cross verified the payments made to the assessee with the records of JBIC available with KWA and noticed that the assessee was paid Rs.17.12 crore. The discrepancy in turnover was not detected by the assessing authority which resulted in short levy of tax and interest of Rs.8.60 lakh.

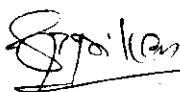
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	<p>The amount paid by the assessee is for damages and not towards the value of goods transferred in the course of execution of the contract. The assessee have received contract amount of Rs.1,86,61,940/- against RAB 01 in May 2007 and shown this amount in the first quarterly return filed for the financial year 2007-08. But Kerala Water Authority has shown this payment on 30.3.2007 i.e. in the year 2006-07 in their books of account. On verification of accounts it is clear that the contract amount above mentioned can be accounted as the contract amount received during the financial year 2007-08.</p>
V	(a)	Does the Department agree with the Audit conclusions?	—
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	—

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>Based on the audit objection Notice under section 25 of the KVAT Act 2003 were issued to the assessee proposed to assess the turnover escaped. Details of amount disbursed to M/s. Electro Steel Castings Ltd. for the year 2007-08 by Kerala Water Authority were examined and cross verified the payments made to the assessee with the records of JBIC. The assessee is executing contract works as per the letter dated 25.3.2010 stated that it is a contract with Kerala Water Authority for the execution of KWS project with financial assistance from JBIC now called JICA having the contract value Rs.1,04,15,00,000/- The tax is paid under the compound scheme which is deducted by KWA for every payment from the party and remitted this amount by way of tax.</p> <p>In order to find out the total cost of implementation of this project KWA is including the payments furnished by them for the damages/compensations to the Government departments/Organizations in this project account for the accounting purposes. The amount paid by the assessee is for damages and not towards the value of goods transferred in the course of execution of the contract. The assessee have received contract amount of Rs.1,86,81,940/- against RAB 01 in May 2007 and shown this amount in the first quarterly return filed for the financial year 2007-08. But Kerala Water Authority has shown this payment on 30.3.2007 i.e. in the year 2006-07 in their books of account. On verification of accounts it is clear that the contract amount above mentioned can be accounted as the contract amount received during the financial year 2007-08.</p>
(b)	Recovery of overpayment pointed out by audit	—

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



S. PAUMAN, M.A., B.L. AL
 Assistant Secretary,
 Census Department,
 Govt. Secretariat,
 Chandigarh.

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 escaping assessment.
	(c)	Paragraph No.	2.12.1.6
	(d)	Report No. and Year	C& AG report ended 31.3.10
II	(a)	Date of receipt of the Draft Para/Review in the Department	23.4.2010
	(b)	Date of Department's Reply	30.6.2011
III		Gist of Paragraph/Review	M/s.Nazeer Electricals, Kazhakootam a dealer assessed tax for the year 2006-07 on a conceded turnover of Rs.1.90 crore as per the annual return. However, on scrutiny of the assessment records the audited accounts of the assessee revealed a turnover of Rs.2.11 crore. This mistake was not detected by the AA which resulted in short levy of tax and interest of Rs.3.36 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No

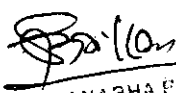
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	The assessee produced all vouchers and bills regarding the claim of labour. Verification revealed, the same is in tune with the revised audited statement.
V	(a)	Does the Department agree with the Audit conclusions?	—
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	—

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>The revised assessment in respect of M/s.Nazeer Electricals, Bangalore was completed on 5.11.2009 fixing a total taxable contract receipt of Rs.1,85,93,298/- as against the conceded taxable contract receipt Rs.1,86,80,268/- Tax and interest additionally credited in this case is Rs.2,41,634/- and Rs.82,156/- respectively. The assessee has remitted the amount under protest as per chalan No.580 dated 30.12.2009 and filed appeal against the revised assessment order before the Deputy Commissioner (Appeals), Thiruvananthapuram.</p> <p>The main contention raised by the assessee before the appellate authority is that the assessing authority has not considered their contention regarding the circumstances lead to them by filing revised audited statement along with revised return for the year. The claim of the assessee is that they have missed to add certain labour vouchers in their accounts since the same was left in their work site. These facts were reported by the assessee through their reply to the pre-assessment notice. But assessing authority rejected the claim and finalized based on original audited statement.</p> <p>The Appellate authority's direction in this case is to produce the entire labour vouchers and other charges before the assessing authority. Accordingly notice was issued to the assessee directing to produce his accounts as per notice dated 9.11.2010. The assessee produced all vouchers and bills regarding the claim of labour. Verification revealed, the same is in tune with the revised audited statement. Hence the claim is admitted.</p> <p>In the circumstances stated above, it is informed that there is no loss of revenue involved in this case.</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	-


S. PADMANABHA PILLAI
 Additional Secretary,
 Taxes Department,
 Govt. Secretariat,
 Thiruvananthapuram.

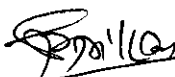
Action taken Notes on C& AG's Reports

I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to incorrect exemption
	(c)	Paragraph No.	2.12.2.6
	(d)	Report No. and Year	C& AG report ended 31.3.10
II	(a)	Date of receipt of the Draft Para/Review in the Department	6.4.2010
	(b)	Date of Department's Reply	24.5.2010
III		Gist of Paragraph/Review	Sri.S.Thartius Engineering Contractor an assessee engaged in works contract for the year 2006-07, availed exemption of Rs.1.52 crore towards labour and other charges against an eligible exemption of Rs.1.25 crore. This resulted in short levy of tax and interest of Rs.4.20 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.	The Assessment in respect of Sri.S.Thartius Engineering Contractor, Tuticorin for the year 2006-07 has been completed u/s 25 of the KVAT Act 2003 creating an additional demand of Rs.4.88 lakh with interest and served on him. The Contractor has requested to adjust the additional demand for 2006-07 with the excess tax paid of Rs.6,34,069/- during the assessment year 2008-09 and also remitted the balance amount of Rs.5890/- vide chalan No.132 dated 7.1.2009. Thus the contractor has remitted the total amount with interest as pointed out in the audit that is Rs.6,39,959/-.
	(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

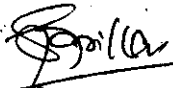
I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax
	(c)	Paragraph.No.	2.12.3.4
	(d)	Report No. and Year	C& AG report ended 31.3.10
II	(a)	Date of receipt of the Draft Para/Review in the Department	23.4.2010
	(b)	Date of Department's Reply	—
III		Gist of Paragraph/Review	M/s.Benson Medical Equipments India Pvt. Ltd. an assessee who executed the works contract of supply and installation of medical gas system with vaccum plant and suction unit with regulator in various hospitals, incorrectly assessed tax at the compounded rate of four per cent on the gross contract receipts of Rs.39,92,186/- for the year 2006-07 instead of assessing the contract receipt at the rate of 12.5 per cent after deducting fifteen per cent towards labour and other charges. This resulted in short levy of tax and interest of Rs.3.25 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes

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

VI

Remedial action taken

	(a)	Improvement in system and procedures, including internal controls.	<p>The assessment in respect of M/s.Benson Medical Equipments India (P) Ltd. for the year 05-06 and 06-07 were revised creating an additional demand with interest as under.</p> <table border="1"> <thead> <tr> <th>Year</th><th>VAT</th><th>Interest</th><th>Total</th></tr> </thead> <tbody> <tr> <td>2005-06</td><td>Rs.2,39,072</td><td>Rs.93,238</td><td>Rs.3,32,310</td></tr> <tr> <td>2006-07</td><td>Rs.2,41,430</td><td>Rs.65,186</td><td>Rs.3,06,616</td></tr> </tbody> </table> <p>The entire amount is remitted as per DD dt.6.4.2010 (Chalan No.287/17.4.10).</p>	Year	VAT	Interest	Total	2005-06	Rs.2,39,072	Rs.93,238	Rs.3,32,310	2006-07	Rs.2,41,430	Rs.65,186	Rs.3,06,616
Year	VAT	Interest	Total												
2005-06	Rs.2,39,072	Rs.93,238	Rs.3,32,310												
2006-07	Rs.2,41,430	Rs.65,186	Rs.3,06,616												
	(b)	Recovery of overpayment pointed out by audit	—												
	(c)	Recovery of under assessment, short levy or other dues	—												
	(d)	Modification in the schemes and programmes including financing pattern	—												
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	—												


 S. PADMANABHA PILLAI
 Additional Secretary,
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 Govt. Secretariat,
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Action taken Notes on C& AG's Reports

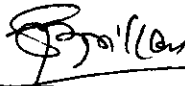
I	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Incorrect computation of presumptive tax.
	(c)	Paragraph No.	2.12.16
	(d)	Report No. and Year	C& AG report ended 31.3.10
II	(a)	Date of receipt of the Draft Para/Review in the Department	6.4.2010
	(b)	Date of Department's Reply	28.6.2010
III		Gist of Paragraph/Review	A dealer M/s.Subash Paint House, Thirumala (2 nd Circle, Trivandrum) irregularly paid presumptive tax for the entire sales turnover of Rs.77.20 lakh for the year 2006-07 instead of paying presumptive tax for the turnover up to Rs.50 lakh and at the specified rate for the balance turnover of Rs.27.20 lakh. This resulted in short levy of tax of Rs.4.45 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes

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

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	The dealer irregularly paid presumptive tax for the entire turnover instead of paying presumptive tax for the turnover upto Rs.50 lakhs and at the specified rate for the balance turnover. As the self assessment made by the dealer was irregular the assessing authority had revised the self assessment made by the dealer for the year 2006-07 and demanded an amount of Rs.445200/- towards tax and Rs.124856/- towards interest as per order dtd.22.8.2009. The dealer paid Rs.94976/- and also preferred appeal against the revised assessment order and in appeal the appellate authority vide his KVATA No. 137/09 dtd.19.10.2009 directed the assessing authority to verify the accounts and ascertain the volume of goods under 4%, 12.5% and 20% and assess at the appropriate rate giving eligible input tax credit from 22.1.07 onwards. Accordingly, the assessing authority has verified the accounts and modified the assessment creating an additional tax and interest of Rs.99034/- which has been collected vide chalan Nos.538 dtd.1.1.2010 and 47 dtd.13.1.2010.
(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 Luxury Tax
	(c)	Paragraph No.	7.11
	(d)	Report No. and Year	C& AG report ended 31.3.10
II	(a)	Date of receipt of the Draft Para/Review in the Department	-
	(b)	Date of Department's Reply	18.6.10
III		Gist of Paragraph/Review	In. Commercial Tax Office (LT), Thiruvananthapuram in March 2009, it was noticed that while finalizing the assessments of an assessee M/s.Taj Green Cove Resort, Kovalam engaged in hotel business for the year 2004-05 and 2005-06, the assessing authority failed to include the income relating to foreign exchange gain amounting to Rs.44.68 lakh during the year 2004-05 and other service income and accommodation charges valued at Rs.34.72 lakh for the years 2004-06 and 2005-06 in the taxable turnover. This resulted in short levy of tax of Rs.11.51 lakh.

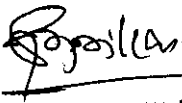
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas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

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>The audit objection is that the following income from other services and amenities provided to the guest has not been considered for levy of Luxury Tax.</p> <p>1.Foreign Exchange gain Rs.4467790/- 2004-05 Short levy of Rs.670169/-</p> <p>2.Other service income Rs.1071032/- 2004-05 Short levy of Rs.160655/- Other amenities income Rs.1592172/- Short levy of Rs.238826/- 160655+238826=399481</p> <p>3.Banquet and conference Hall Accommodation 2005-06 Rs.809214/- Short levy Rs.80921/-</p> <p>Based on the audit objection the books of accounts for the year 2004-05 and 2005-06 were again called for. But the assessee did not produce the same. Therefore the assessment for the year 2004-05 and 2005-06 were revised on experts under section 5(5) of the Kerala Tax on Luxuries Act, 1976 creating the following additional demand.</p> <p>2004-05 : Rs.830824 (670169+160655) 2005-06 : Rs.360208 (238826+80921+40461)</p> <p>The additional demand created were advised for RR as per RRC Number 33/2009-10 dtd.17.6.2009.</p> <p>The assessee has remitted the following amount as detailed below.</p> <table border="1" data-bbox="456 1025 980 1165"> <thead> <tr> <th>Year</th><th>Chalan No./date</th><th>Amount</th></tr> </thead> <tbody> <tr> <td>2004-06</td><td>119/10.11.2010</td><td>Rs.2,50,000</td></tr> <tr> <td>2005-06</td><td>120/10.11.2010</td><td>Rs.2,50,000</td></tr> <tr> <td colspan="2">TOTAL</td><td>Rs.5,00,000</td></tr> </tbody> </table> <p>Balance amount is pending under RR.</p>	Year	Chalan No./date	Amount	2004-06	119/10.11.2010	Rs.2,50,000	2005-06	120/10.11.2010	Rs.2,50,000	TOTAL		Rs.5,00,000
Year	Chalan No./date	Amount												
2004-06	119/10.11.2010	Rs.2,50,000												
2005-06	120/10.11.2010	Rs.2,50,000												
TOTAL		Rs.5,00,000												

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


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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 incorrect exemption.
	(c)	Paragraph No.	2.12.2.3
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	25.6.2010
	(b)	Date of Department's Reply	1.3.11
III		Gist of Paragraph/Review	While scrutiny of records in two offices four assesseees awarded sub-contracts valued at Rs. 267.22 crore and claimed exemption for the same. The exemption claimed is not allowable as the liability u/s 10 has not been fulfilled. The assessing authority did not detect this mistake which resulted in short levy of tax and interest of Rs. 32.74 crore.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	3 cases not sustainable partially correct in one case.
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	Detailed report furnished in column 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	

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>(1) <u>M/s. IVRCL Infrastructure and Projects Ltd.</u></p> <p>M/s. IVRCL. Ltd. is a public Ltd., company engaged in the construction business. The audit objection is that, company claimed sub-contract payment for the year 2005-06 to 2008-09. The exemption claimed is not allowable as the liability under section 10 has not been fulfilled.</p> <p>The audit objection is not sustainable. The sub contract payments are supported by contract agreement and other details.</p> <ol style="list-style-type: none"> 1) SMS Paryavaran Ltd. 2) Bheemanani Builders India Pvt. Ltd., Kannur. 3) BESL Infra Project Ltd. <p>The payments are effected through cheque and TDS has been deducted on the payments, for which non-deduction certificate was not produced. In respect of Bheemanani Builders, the company have deducted TDS of Rs., 4,45,939/- under section 10 of KVAT Act (during 2006-07) and same has been remitted with the Commercial Tax Officer at Kannur. M/s. BESL Infra Project furnished Form 20 E from assessing authority for non-deduction of tax and Form 20 H. Hence the sub-contractors turnover is allowable deduction in this case. The audit objection is against the liability u/s 10. It is against facts of the case. According to the clarification of the Commissioner of Commercial Taxes, if the sub-Contractor is a registered dealer under KVAT Act and furnishes 20 H to the Principal Contractor, such turnover can be deducted from the principal contractors turnover irrespective of the fact that whether the sub-contractor is a compounded dealer or a regular tax payer.</p> <p>(2) <u>M/s. Leighton Contractors.</u></p> <p>The agreement of Leighton Contractors India Ltd, with M/s. Kochi Refineries Ltd. is of labour in nature. The materials for the work have been supplied by the Kochi Refineries Ltd. free of cost. A small portion of the contract is supply of some special materials. Labour being the dominant factor the assessee company is eligible for all the expenses having the characterise of labour. Supply of material incidental to the labour are consumable, like welding Rod, gas etc. some materials have supplied by the awardee for which they have remitted tax of about Rs. 119126/-. The audit observation is based on Form 13 A. In the work contract part of the Form 13 A it is specifically mentioned that all the contract work awarded are labour contract and hence not liable to any tax at source. But audit</p>
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party had not considered this clause and agreement of Kochi Refineries Limited. The work for installation, testing and commissioning of single point moving system and 48 inch offshore pipeline for crude oil receipt. As per clause of 25 of the agreement, the Kochi Refinery will issue material free of cost - the pipe line 48 inch and other accessories.

In the above circumstances the contract awarded by the assessee M/s. Leighton Contractors India Pvt. Ltd. is only labour contract. No material transfer is involved in the above case. Hence they are not liable to deduct tax at source.

(3) M/s. Infra Housing (P) Ltd. The audit objection is that the dealer awarded sub-contracts and claimed exemption for the same. The exemption claimed is not allowable as the liability U/s 10 has not been fulfilled. This resulted in short levy of tax and interest of Rs. 1,40,77,970/- as detailed below.

Year	Subcontract amount	Short levy of tax (Rs.)	Interest (Rs.)
2005-06	2,17,75,567	21,77,557	9,14,574
2006-07	4,44,26,316	44,42,632	13,32,790
2007-08	4,41,56,077	44,15,608	7,94,809

The sub-contract during the period 2005-06 is as under.

1. Kunnel Engineers & Contractors (P) Ltd. - 24180116 - TIN - 32151065995.

2006-07

1. Kunnel Engineers & Contractors (P) Ltd. - 32151065995
2. Cemex Projects Pvt. Ltd. - 32072072905

2007-08

1. Kunnel Engineers & Contractors Ltd. - 32151065995
2. Cemex Projects Pvt. Ltd. - 32072072905
3. Biju K. Abraham
4. Unic Foundations
5. Kone Elevators
6. Johnson Lift Pvt. Ltd. - 32072087992

The 20E certificate is issued to the dealer to produce before the awardee/Principal Contractors for non-deduction of TDS. In this case the principal contractor not obtained 20E certificate from the sub-contractors. The sub-contracts are projects continued from KGST regime. If the Principal contractors compounds his turnover, the sub-contractor under him need not pay tax as the said sub-contractors turnover is also included in the principal contractors turnover, as the tax is being paid on the whole amount of contract.

In the case of assessment for the year 2005-06 to 2007-08, M/s. Infra Housing (P) Ltd. had effected payment to sub-contractors and the sub-contractors turnover not excluded from taxable turnover for the respective years. The assessee had claimed only amount of VAT charged in the sub-contractors invoice who are registered dealers. The company had followed the method of claiming input tax credit on the basis of invoice submitted by the sub-contractors against the payment effected. Since these payment were not excluded, the question of providing form 20H is not mandatory in this case. Input tax claimed only on the basis of invoice issued by the registered contractors, who have included the turnover in the respective returns. In some cases, the sub-contract works is purely labour contracts. The assessment for 2005-06 and 2007-08 is completed without giving exemption on sub contract amount. Input tax credit was allowed on registered contractors invoice. This is more beneficial to the revenue when compared to total exemption on subcontract against 20H. In work contract tax payment can be three types. Voluntary payment by the contractor, collection and payment, deduction and payment by awarder/Principal contractor. TDS deduction in this case would tantamount to double taxation.

(4) M/s. Kirloskar Brothers Ltd is an assessee on the rolls of the Assistant Commissioner, Special Circle II, Ernakulam with TIN 320703 36281 is engaged in the business of Monoblock Pumps, Motors, etc. and is doing Works Contract.

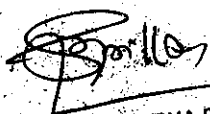
During the period 2009-10, the Account General Audit observed that, the assessee awarded subcontracts and claimed exemption for the same. The claim of exemption is not allowable since the liability u/s. 10 has not been fulfilled, which resulted short levy of tax and interest of Rs.18.55 crores as detailed below.

Year	Sub Contracts Amount	Short levy of Tax	Interest
2007-08	1572370568	157237057	28302670

In the light of audit objection, the accounts of the dealer were called for and verified which reveals the following:-

- 1) The company was awarded the contract of JBIC Assisted Kerala Water Supply Project - Contract Package - I. Intake Works, Raw Water Pumping main and water Treatment Plant Meenad and Pattuvam Scheme and Cherthala by the Kerala Water Authority under Aid from Japan International Banking Corporation.
- 2) It is an ongoing project.
- 3) The Subcontractors are registered dealers.

		<p>4) The Sub Contractors have filed Form 20 H declaration..</p> <p>Considering all the points raised out in the audit, the accounts of the dealer was verified and the assessment has been completed by the assessing authority vide order dated 04.03.2010. Additional demand of Rs.8,73,246/- and interest Rs.2,09,579/- was created, for which the dealer has filed appeal before the Deputy Commissioner (Appeals), 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	--


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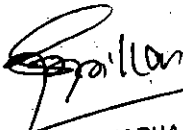
	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.3.3
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	29.4.10, 6.4.10, 28.4.10
	(b)	Date of Department's Reply	17.5.10, 30.4.10, 1.11.10
III		Gist of Paragraph/Review	Three assessees in works contract having CST registration opted to pay compounded tax for the years 05-06 and 07-08 on the contract receipt of Rs.6.63 crore at the rate of 2% instead of at 4%. This resulted in short levy of tax and interest of Rs.13.31 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	

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>1) <u>V.P.Sulfikar (2007-08)</u> In Commercial Tax Officer (WC), Malappuram, the Accountant General has noticed that Shri. V.P.Sulfikar, Edavana, Malappuram an assessee having CST registration was permitted to pay compounded tax at the rate of two percent for the year 07-08 instead of @ 4%. This resulted in short levy of tax and interest of Rs. 2.44 lakh. The assessment for the year 07-08 has been completed as per order dt. 11.11.09 assessing the turnover @ 4%. The balance tax due for the year Rs. 2,34,976/- has been demanded with interest of Rs. 46,995/-. The entire amount was paid by the assessee vide chalan No. 373, dated 12.03.10 at District Treasury, Malappuram.</p> <p>2) <u>P.F.John, FWD Contractor, Alappuzha</u> In Commercial Tax Officer (WC & LT), Alappuzha, during the year 2007-08 a CPWD Contractor holding CST registration self assessed out put tax on a contract receipt of Rs.1.33 crore at the rate of 2% instead of at 4%. This resulted in short levy of tax and interest of Rs.3.08 lakh. Based on the audit observation, the assessing authority had issued notice directing to pay the differential tax and the assessee has remitted tax with interest Rs.3,08,285/- vide chalan no.234 dtd.26.10.09.</p> <p>3) <u>M/s.Neejattu Constructions (2005-06)</u> In Commercial Tax Officer (WC), Kottayam, it was noticed that the assessee having CST registration opted to pay tax at compounded rate of 2% instead of 4% on the contract receipt of Rs.31441971.00 for the assessment year 2005-06 resulting in a short levy of tax of Rs.6.94 lakh and interest of Rs.2.84 lakh. The assessing authority issued notice u/s 25 (1) of the KVAT Act 2003 and the proposal was confirmed by proceedings dated 22.3.10. Demand notice was issued to the assessee to realize the amount due. Revenue Recovery Certificate was issued on 7.7.10 and the</p>
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			recovery proceedings were stayed by the Deputy Commissioner (Appeals), Kollam till disposal of appeal on conditional payment of Rs.3 lakhs. The assessee has remitted Rs.3 lakh as per chalan No.184/21.7.10 & 154/23.7.10.
	(b)	Recovery of overpayment pointed out by audit	--
	(c)	Recovery of under assessment, short levy or other dues	--
	(d)	Modification in the schemes and programmes including financing pattern	--
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	


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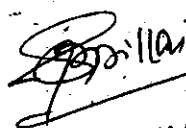
Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.7.1(3)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	4.6.2010
	(b)	Date of Department's Reply	16.1.12
III		Gist of Paragraph/Review	In Special Circle-II, Ernakulam, it was noticed in March 2009 that two dealers in motor vehicles assessed tax on the sale of motor vehicles to defence personnel through military canteen and CSD for Rs.1.61 crore during 2005-06 and 2006-07 at half the rate of tax. This resulted in short levy of tax and interest of Rs.12.89 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	--
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	The assessment in respect of M/s.MGF Motors Ltd., for the year 2005-06 has already been completed levying tax @ 12.5%, for non-production of supporting declarations; on the entire turnover except the sales turnover of used cars which was levied @4%. Regarding the year 2006-07 steps have been taken to revise the assessment u/s 25 based on the audit objections. In the case of Muthoot Motors Ltd., assessment for both the years 2005-06 and 2006-07 have been revised u/s 25 levying differential rate of 6.25% tax on the sales turnover of Rs.42,98,343 and Rs.5,56,463 respectively and made good the short levy. The assessee has paid the full tax.
(b)	Recovery of overpayment pointed out by audit	--
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--


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Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.7.1(4)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	22.2.2010
	(b)	Date of Department's Reply	30.12.10
III		Gist of Paragraph/Review	In the Commercial Tax Officer, 1 st Circle, Changanassery it was noticed that a dealer M/s. Super Pigments, Changanassery, engaged in the manufacture and sales of lead oxide, assessed output tax on the sales turnover of lead oxide valued at Rs. 121.33 lakh for the year 2005-06 and 2006-07 at the rate of four <i>per cent</i> instead of at the correct rate of 12.5 <i>per cent</i> . This resulted in short levy of tax and interest of Rs. 12.87 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	--
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	Based on audit the assessment for 2005-06 and 2006-07 completed as per order dtd.27.3.11. The amount is pending collection under RR. Further, the appeal filed by the dealer in this case is also pending disposal.
(b)	Recovery of overpayment pointed out by audit	--
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--


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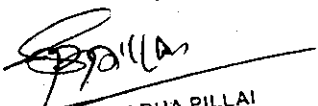
Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.7.1(5)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/ Review in the Department	4.6.2010
	(b)	Date of Department's Reply	16.9.10
III		Gist of Paragraph/Review	In Commercial Tax Officer, Special Circle-I, Ernakulam, during the scrutiny of assessment records in respect of M/s.Heinz India (P) Ltd. it was noticed that assessee assessed sales turnover of Nycil prickly heat powder valued at Rs.1.07 crore for the year 2005-06 @ 4% instead of @ 12.5%. This resulted in short levy of tax and interest of Rs.12.42 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	---
V	(a)	Does the Department agree with the Audit conclusions?	---
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	The assessment has been completed as per order dtd.30.8.10. The dealer has fully paid the balance tax due as follows. Tax Rs.11,25,654 Interest Rs. 1,23,822 Vide cheque No.222787 & 222788 dtd.13.9.11.
(b)	Recovery of overpayment pointed out by audit	--
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--


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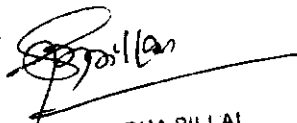
Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.7.1(7)
	(d)	Report No. and Year	C& AG report ended 31.3.2010.
II	(a)	Date of receipt of the Draft Para/Review in the Department	4.5.2010
	(b)	Date of Department's Reply	6.7.10
III		Gist of Paragraph/Review	During scrutiny of records in Commercial Tax Officer, Chittur in August 2009 it was noticed that M/s.K.P.N.Products, Chittur a dealer assessed sales turnover of medicated tooth powder for the years 2005-06 to 2007-08 valued at Rs. 78.06 lakh at the rate of four <i>per cent</i> instead of at the correct rate of 12.5 <i>per cent</i> . This resulted in short levy of tax and interest of Rs. 8.90 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	--
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action taken

	(a)	Improvement in system and procedures, including internal controls.	<p>The Commercial Tax Officer, Chittur has revised the assessment U/s. 25 (1) of the KVAT Act as per Order No. 32090960722/05-06, 06-07 and 07-08 dated 20.02.2010 and created additional demand as below.</p> <table border="1" data-bbox="599 355 1009 488"> <thead> <tr> <th>Assessment Year</th> <th>Tax due</th> <th>Interest</th> </tr> </thead> <tbody> <tr> <td>2005-06</td> <td>4,78,000</td> <td>2,29,440</td> </tr> <tr> <td>2006-07</td> <td>1,08,465</td> <td>39,047</td> </tr> <tr> <td>2007-08</td> <td>77,007</td> <td>18,482</td> </tr> </tbody> </table> <p>Assessment order with demand notice had been served to the assessee on 18.03.2010 and the amount is advised for RR. An amount of Rs.96000/- is remitted under RR vide chalan No.344/4.8.10. Government granted stay for the balance amount vide order No.15419/B2/10/TD dt.9.7.10.</p>	Assessment Year	Tax due	Interest	2005-06	4,78,000	2,29,440	2006-07	1,08,465	39,047	2007-08	77,007	18,482
Assessment Year	Tax due	Interest													
2005-06	4,78,000	2,29,440													
2006-07	1,08,465	39,047													
2007-08	77,007	18,482													
	(b)	Recovery of overpayment pointed out by audit	--												
	(c)	Recovery of under assessment, short levy or other dues	--												
	(d)	Modification in the schemes and programmes including financing pattern	--												
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--												


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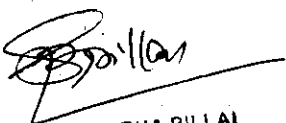
Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.7.1(10)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	4.5.2010
	(b)	Date of Department's Reply	21.8.10
III		Gist of Paragraph/Review	In Commercial Tax Office, IV Circle, Kozhikode during the year 2007-08 an assessee M. Jaffer, City Aluminium and Fibre Doors self assessed out put tax on a sales turnover of aluminium/plastic doors/its parts for Rs. 57.76 lakh at the rate of four per cent instead of at 12.5 per cent. This resulted in short levy of tax and interest of Rs. 5.89 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	The correct name of commodity purchased and sold are PVC profile and aluminium channel instead of Aluminium doors which attracts tax @ 4% only.
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 correct name of commodity purchased and sold are PVC profile and aluminium channel instead of Aluminium doors which attracts tax @ 4% only. The Commercial Tax Officer has also verified the books of account and conducted physical verification of the goods dealt at the business place of the dealer and confirmed that the commodity purchased are fibre doors and aluminium channel and parts for making aluminium doors and sold the same to the customers and the customers are making door on their requirements with the help of labourers. Hence there is no loss of revenue as stated in the audit report.
(b)		Recovery of overpayment pointed out by audit	--
(c)		Recovery of under assessment, short levy or other dues	--
(d)		Modification in the schemes and programmes including financing pattern	--
(e)		Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--


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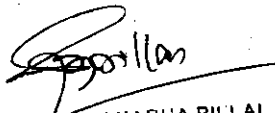
Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.7.1(12)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	15.5.2010
	(b)	Date of Department's Reply	9.6.10
III		Gist of Paragraph/Review	In Commercial Tax Office, II Circle, Kozhikode during the years 2005-06, 2006-07 and 2007-08 M/s. Solar Marketing System, Kozhikode a dealer in automobile glass and adhesive tape self assessed output tax on a sales turnover of adhesive tape for Rs. 56.27 lakh at the rate of four percent instead of at 12.5 per cent. This resulted in short levy of tax and interest of Rs. 5.55 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes (Partially sustainable)
	(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.	During the year 2005-06 the audit is completely sustainable. For the year 2006-07 the audit has observed that the Turnover of adhesive tape is Rs. 7,31,727/- as against the actual amount of Rs. 1,09,621/-. So also the Turnover of adhesive tape as per audit for the year 2007-08 is Rs. 47,63,817 instead of Rs. 5,11,660/- only. The turnover of adhesive tape adopted in the audit report during the year 2006-07 and 2007-08, including the turnover of Aluminium composit for Rs. 6,22,106/- and Rs. 42,52,157/- which is taxable @ 4% only. Considering the above, the assessing authority has revised the assessment Under Section 25 (1). The assessee had paid the entire arrear as follows.			
		Year	Tax	Interest	Chalan No.& Date
		2005-06	9315	5496	97/29.4.10
		2006-07	18944	8904	181/18.5.10
		2007-08	2237	16748	129/24.6.10
(b)	Recovery of overpayment pointed out by audit	--			
(c)	Recovery of under assessment, short levy or other dues	--			
(d)	Modification in the schemes and programmes including financing pattern	--			
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--			


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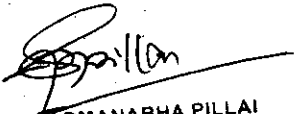
Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.7.1(15)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	29.4.2010
	(b)	Date of Department's Reply	17.5.10
III		Gist of Paragraph/Review	In Commercial Tax Office, Koothuparamba in June 2009 it was noticed that M/s.Kunnothu Traders, Uliyil a dealer in supari, self assessed output tax on the sales turnover valued at Rs.40.88 lakh for the year 2005-06 at the rate of four percent instead of at the correct rate of 12.5 per cent. This resulted in short levy of tax and interest of Rs.4.83 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	The commodity dealt by the assessee is not a manufactured product but raw and dried Arecanut. Inquiry revealed that the assessee is only a dealer in Arecanut. He was purchasing Arecanut from Agriculturist locally. Many of the dealers in Malabar area are using the term "New Supari" for Arecanut.
V	(a)	Does the Department agree with the Audit conclusions?	"
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>The assessee in this case is an Arecanut dealer (Hill produce dealer). It is true that the name of the commodity was written as "New Supari" instead of Arecanut in the 'Delivery Note'. The commodity dealt by the assessee is not a manufactured product but raw and dried Arecanut. Inquiry revealed that the assessee is only a dealer in Arecanut. He was purchasing Arecanut from Agriculturist locally. Many of the dealers in Malabar area are using the term "New Supari" for Arecanut.</p> <p>Verification of previous years records revealed that he is dealing only in dried arecanut and he was not dealing in manufactured Arecanut. Entry 75(2) of the IV Schedule deals with manufactured products only.</p> <p>Hence the short levy pointed out by the Accountant General (Audit) on the basis of mis-interpretation of the word 'New Supari' which is colloquially used for Arecanut in that locality is legally not sustainable and therefore no revision of assessment is needed in this case.</p>
(b)	Recovery of overpayment pointed out by audit	--
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--


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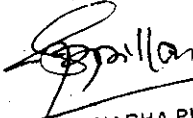
Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.7.1(17)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	29.4.2010
	(b)	Date of Department's Reply	9.6.10
III		Gist of Paragraph/Review	In Commercial Tax Officer, 1 st Circle, Kozhikode, it was noticed in August 2009 that a dealer M/s. Excell Trading Agencies assessed out put tax on the sales turnover of dettol valued at Rs. 50.92 lakh for the year 2007-08 at the rate of four per cent instead of at the correct rate of 12.5 per cent. This resulted in short levy of tax of Rs. 3.82 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>The Commercial Tax Officer, 1st Circle, Kozhikode has revised the assessment for the year 2007-08 in respect of M/s. Excel Trading Agency since the audit is sustainable. He has created an additional demand of Rs. 7,55,264/- as tax, Rs. 1,78,970/- as interest and Rs. 10,000/- as penalty. The revised order and the demand notice were served by the assessing authority on 23.03.2010 and arrears advised for Revenue Recovery.</p> <p>Thereafter the dealer preferred an appeal before Deputy Commissioner (Appeals), Kozhikode and the appellate authority has directed to modify the assessment. The dealer filed second appeal against the order of Deputy Commissioner (Appeals) and the STAT, Ernakulam has granted 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	--


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Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.7.1(18)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	26.5.2010
	(b)	Date of Department's Reply	7.8.10
III		Gist of Paragraph/Review	In Commercial Tax Office, Payyannur in August 2009, the Accountant General has noticed that an assessee, C.H.Abdulla & Sons assessed the turnover of Triveni face pack, a cosmetic valued at Rs.21.31 lakh at the rate of zero percent instead of at the correct rate of 12.5%. This resulted in short levy of tax and interest of Rs.3.73 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	On the basis of audit observation, the Commercial Tax Officer, Payyannur has completed the assessment to the best judgment for the year 2005-06 in respect of the above dealer on 2.2.10, demanded tax and interest of Rs.3.86 lakhs. (Tax Rs.2,68,690 + Interest Rs.1,18,224) The demand notice was served on the dealer on 17.2.10 and thereafter advised for RR. As per VATA 598/10 dt.22.1.11 the Deputy Commissioner (Appeals)-II, Kozhikkode has remanded the assessment for fresh disposal. Accordingly, assessment has been completed on 18.1.2012 refixing the tax and interest at Rs.80,414/- and Rs.60,403/- respectively. The modified demand is intimated to the RR 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	--


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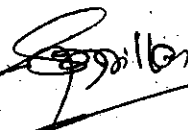
Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.7.1(19)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	22.2.2010
	(b)	Date of Department's Reply	25.3.10
III		Gist of Paragraph/Review	In the Commercial Tax Officer, Manjeri, it was noticed that M/s. AMS Spices and Food Products (P) Ltd. for 2005-06 and 2006-07, a dealer selling pickles assessed Output tax on the sales turnover of Rs. 43.61 lakh @ four percent instead of the correct rate of 12.5 percent. Short levy of tax worked out to Rs. 3.71 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	The pickles manufactured by the assessee, has not been registered under the Trade Mark Act 1999. Hence the rate of tax applicable is only 4% vide Entry 49 of Schedule III to the KVAT Act.
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

VI

Remedial action taken

	(a)	Improvement in system and procedures, including internal controls.	The assessment was completed U/s 25 of KVAT Act 2003 on 03.03.09 and created an additional demand of Rs. 1,19,520/- for 2005-06 and Rs. 2,51,197/- for the year 06-07, in view of the Audit. The collection of additional demand created has been stayed by the Honourable High Court of Kerala as per Order No. WP (C) No. 29528/05 dtd. 16.10.09. The product, "Super Nova Pickles", manufactured by the assessee has not been registered under Trade Mark Act, 1999. Subsequently, the assessments were modified adopting tax @ 4% in pursuance of the order of the Deputy Commissioner (Appeals), Ernakulam in KVATA.2238/09 and 2239/09 dated 1.3.2011.
	(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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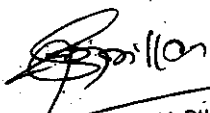
	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.7.1(21)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	4.6.2010
	(b)	Date of Department's Reply	21.1.11
III		Gist of Paragraph/Review.	In Commercial Tax Office, Special Circle - II, Ernakulam, during scrutiny of assessment records it was noticed that, M/s.Premier Sea Foods (Exim), a dealer in Marine product assessed tax for the year 07-08 on the sales turnover of frozen marine products valued at Rs. 67.19 lakhs at the rate of zero percent instead of at the rate of 4% which resulted in short levy of tax and interest of Rs. 3.17 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. Premier Sea Food (Exim) is an assessee on the rolls of Asst. Commissioner, Special - II, Ernakulam bearing TIN No. 32071156435. The assessee filed annual return for the year 2007-08 declaring a total and exempted turnover of Rs. 32,08,86,169/-. On further verification of revised annual return and Form 13 & 13A filed by the assessee certain irregularities noticed. Though the assessee dealt with mainly marine product, out of the total turnover the dealer declared a turnover of Rs. 6718900 is frozen marine product but assessee availed exemption for the entire turnover. It is noted that as per entry 84 of 3rd schedule of KVAT Act 2003 all frozen marine products attract tax @ 4%.</p> <p>The audit objection pointed out by the Accountant General is sustainable. On subsequent verification of revised annual return it was revealed that there was no supporting evidence to the export sale and consignment sale of DEPB income. Hence the assessment reopened u/s 25(1) of the KVAT Act and completed the assessment u/s 25(1) of the Act by fixing a taxable turnover of Rs. 1,57,79,920/- vide proceedings dated 28.2.10. As a result, an amount of Rs. 7,75,372/- including interest was created by way of demand and demand notice issued to the assessee. It is inclusive of the tax of Rs. 268,756/- which was pointed out by the Accountant General's Office. Against this proceeding, the assessee filed appeal. The Deputy Commissioner (A) vide Order KVATA 1787/10 dated 04.06.2010 directed the assessee to remit 25% of the amount due and furnish security bond for the balance amount. In this regard the assessee remitted an amount of Rs. 1,94,093/- and furnished the security bond. Thus the stay condition complied by the assessee.</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	--


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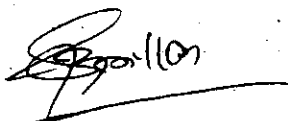
	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.7.1(23)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	4.5.2010
	(b)	Date of Department's Reply	3.3.10
III		Gist of Paragraph/Review	In the Commercial Tax Office, Chalakkudy during the year 2006-07 Sri. C.O. Xavier, Chalakkudy Marketing Agencies, a dealer in battery, detergent, gingely oil etc self assessed output tax on a sales turnover of batteries and detergents for Rs. 28.07 lakh at the rate of four percent instead of at the correct rate of 12.5 per cent. This resulted in short levy of out put tax and interest of Rs. 2.93 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	The assessing authority verified the book of accounts and is convinced that the assessee started business in detergents and battery from 1.11.06 only and the total sales of this items during the year is only for Rs.183195.82 for which the assessee had conceded and paid tax @ 12.5% though mistakenly noted as sunflower oil and biscuits in the annual return.

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>Sri. C.O. Xavier, Chalakudy Marketing Agencies, Chalakudy is an assessee borne on the rolls of Commercial Tax Officer, Chalakudy and a dealer in battery, detergent, coconut oil, cake gingely oil, etc. When the defect was pointed out, the assessing authority has called for and re-examined the assessment records and books of accounts of the dealer. On verification, it is found that the assessee has started business in detergents and battery from 01.11.2006 and the total purchase and sales of this items during the year is only for Rs. 1,97,976.87 and Rs. 1,83,195.82 respectively.</p> <p>In the annual return, the dealer had declared a turnover of Rs. 1,83,195.57 as 12.5% taxable turnover and this relates to the sales turnover of battery and detergents. But while preparing the return, the above turnover was returned as sales turnover of sunflower oil and biscuits. This aspect is clear from the return and enclosures and Profit and Loss Account filed by the dealer for the year and there is no revenue loss in the case.</p>
(b)	Recovery of overpayment pointed out by audit	--
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	---

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

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.7.1(24)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	4.6.2010
	(b)	Date of Department's Reply	23.11.10
III		Gist of Paragraph/Review	In the Commercial Tax Officer, Special Circle-I, Ernakulam, during scrutiny of records it was noticed that a dealer in motor cycles and mopeds M/s.T.V.S. Motors Co. Ltd. assessed tax on the sale of vehicle to individuals through military canteens and canteen store Department for Rs.12.13 lakh and Rs.34.76 lakh during 05-06 and 06-07 at half the rate of tax which resulted in short levy of tax of Rs.2.93 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.TVS Motors Co. Ltd. is an assessee on the rolls of office of the Asst.Commissioner, Special Circle-I, Ernakulam bearing TIN No.32070263455.</p> <p>The final assessment in this case was completed under section 25(1) of KVAT Act as per order dated 7.6.2008. The sales to Canteen Stores Department by the assessee is assessed @ 12.5% as against the conceded rate of 6.25%. The demand as per the revised order dated 6.2.10 is Rs.279645 and Rs.1,34,027 as tax and interest respectively. This amount is under RR (RRC No.A2-31/10-11 dated 14.9.10)</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	


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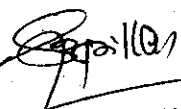
Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.7.2
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	4.6.2010
	(b)	Date of Department's Reply	30.6.2011
III		Gist of Paragraph/Review	In Commercial Tax Office, Special circle, Mattancherry at Aluva the Accountant General has noticed in September 2009 that M/s. Quilon Trading Company, a dealer assessed tax for the year 2007-08 on the sales turnover of Ujala Supreme valued at Rs. 2.36 crore at the rate of four percent and the sales turnover of Ujala stiff and shine valued at Rs. 9.43 lakh to canteen stores department at two percent instead of at the correct rate of 12.5 percent and 6.25% respectively. This resulted in short levy of tax and interest of Rs. 23.94 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.	In accordance with the audit, the assessment is completed as per Order No. 32150720812/07-08 dated 13.05.11 creating Addl. Demand of Rs. 20,46,469/- and interest Rs. 8,18,588/- and the demand is under RR. Which is stayed by the Hon'ble Court in WPC.6602/11 till disposal of the case pending consideration on the issue with various Courts.
(b)	Recovery of overpayment pointed out by audit	--
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--


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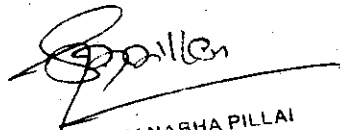
Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to application of incorrect rate of Input Tax credit.
	(c)	Paragraph No.	2.12.13(1)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	29.4.2010
	(b)	Date of Department's Reply	1.7.10
III		Gist of Paragraph/Review	In Commercial Tax Office, Special Circle- 1, Kozhikode it was noticed that an assessee M/s.MIMS Ltd. availed input tax credit for the years 2005-06 and 2006-07 at the incorrect rate of 12.5 percent on the purchase turnover of pacemaker, stents etc., for Rs. 132.65 lakh which was actually taxable at four percent. This resulted in short levy of tax and interest of Rs. 14.79 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>The assessment in respect of M/s. Malabar Institute of Medical Science Ltd., Govindapuram, Calicut for the year 2005-06 was completed vide order dtd. 14.5.2010 and the assessment was modified in pursuance to VATA 642/10 dtd. 19.7.2010 of Deputy Commissioner (Appeals), Kozhikode demanding tax for Rs. 59,803/- (Rupees Fifty nine thousand eight hundred and three only) and interest for Rs. 2,05,035/- (Two lakhs five thousand and thirty five only). The dealer remitted the said amount vide chalan No. 320 dtd. 19.10.2010.</p> <p>The assessment in respect of MIMS for the year 2006-07 was completed vide order dtd. 11.10.2010 and modified in pursuance to VATA 643/10 dtd. 19.07.2010 of Deputy Commissioner (Appeals), Kozhikode demanding tax for Rs. 78,819/- (Rupees Seventy eight thousand eight hundred and nineteen only) and interest for Rs. 4,12,118/- (Rupees four lakhs twelve thousand one hundred and eighteen only). The dealer remitted the said amount vide chalan No. 322/19.10.10.</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	
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Action taken Notes on C& AG's Reports

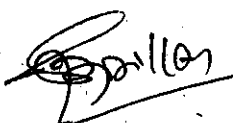
	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to application rate of Input Tax credit.
	(c)	Paragraph No.	2.12.13(2)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	6.5.2010
	(b)	Date of Department's Reply	6.7.10
III		Gist of Paragraph/Review	In Commercial Tax Officer, Special Circle-II, Kozhikode it was noticed in January 2009 that M/s.Veekesy Polymers (P) Ltd., a manufacturer and dealer in plastic footwear availed input tax credit for the year 2006-07 at 12.5% on the purchase turnover of plastic compounded valued at Rs.1.07 crore which was actually taxable at the rate of 4%. This resulted in short levy of tax and interest of Rs.11 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	M/s.Veekay Polymers Pvt. Ltd. had paid tax 12.5% to their sister concern viz Dimesco Footcare India Pvt. Ltd., Malappuram and they inturn paid the same to Govt. and that there is no revenue loss to the state and on this ground the Govt. as per G.O.(MS)No.38/11/TD dt. 28.2.11 had passed orders whereby there is no demand draft at present.

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

VI.

Remedial action taken

	(a)	Improvement in system and procedures, including internal controls.	<p>The audit objection raised is that the assessee has availed ITC for the year 06-07 at 12.5% on the purchase turnover of plastic compound valued at 1.07 crore which was actually taxable at the rate of 4%. Now the assessment for the year 06-07 has been completed disallowing the excess ITC availed on plastic compound of Rs.9,09,326/- and penal interest also levied. ...</p> <p>M/s.Veekesey Polymers Pvt.Ltd. had paid tax 12.5% to their sister concern viz, Dimesco Footcare India Pvt.Ltd., MLPM and they in turn paid the same to Govt. and that there is no revenue loss to the state. Government have therefore cancelled the action of the assessing authority in having raised demand to recover the excess Input tax credit amounting to Rs.9,09,326 availed by the dealer for the year 06-07 as a special case.</p>
	(b)	Recovery of overpayment pointed out by audit	--
	(c)	Recovery of under assessment, short levy or other dues	--
	(d)	Modification in the schemes and programmes including financing pattern	--
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--


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Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to application of incorrect rate of Input Tax credit.
	(c)	Paragraph No.	2.12.13(3)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	6.5.2010
	(b)	Date of Department's Reply	18.6.2010
III		Gist of Paragraph/Review	In Assistant Commissioner, Special Circle, Malappuram, the Accountant General has noticed that an assessee M/s. Diadora Shoes Pvt. Ltd. claimed Input tax credit for the year 06-07 at the rate of 12.5% on the purchase turnover of "Eva Compound (Plastic Compound)" for Rs. 94.92 lakh which was actually taxable at the rate of 4%, resulted a short levy of Rs. 9.84 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	The assessee had paid tax 12.5% to their sister concern viz Dimesco Footwear India Pvt. Ltd., Malappuram and they in turn paid the same to Government and that there is no revenue loss to the state and on the above ground the Government, Order dated 18.6.2010 had passed orders whereby there is no demand at present.

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

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>The assessee claimed Input Tax Credit for the year 06-07 @ 12.5% on the purchase turnover of Eva Compound on Rs. 94.92 lakh. The same is a plastic compound ie polymer of ethylene in primary form and actually taxable at 4% which resulted in excess credit of Rs. 8,06,804/-</p> <p>The assessment was revised u/s 25(1) of KVAT Act on 16.09.09 and additional demand created Rs. 17,74,973/- including interest and settlement fee.</p> <p>M/s.Diadora Shoes Pvt. Ltd. had paid tax 12.5% to their sister concern viz, Dimesco Footwear India Pvt.Ltd., MLPM and they in turn paid the same to Govt. and that there is no revenue loss to the state. Hence Government have cancelled the action of the assessing authority in having raised demand to recover the excess Input tax credit amounting to Rs.806805/- availed by M/s.Diadora Shoes Pvt. Limited for the year 06-07 as a special case as per G.O (MS)155/2010/TD dt.18.6.10.</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	--

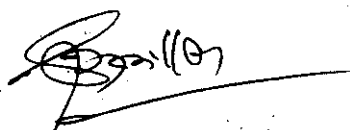

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Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy due to application of incorrect rate of Input Tax credit.
	(c)	Paragraph No.	2.12.13(5)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	29.4.2010
	(b)	Date of Department's Reply	9.6.10
III		Gist of Paragraph/Review	In Commercial Tax Office, Special Circle, Mattancherry in January 2009, it was noticed that M/s.Live Long Nutracanticals Ltd., Aluva, an assessee availed input tax credit for the years 05-06 and 06-07 at the rate of 12.5% on the purchase of Flax seed Oil/Linseed Oil for Rs.26.87 lakh which was actually taxable at the rate of 4%. This resulted in short levy of tax of Rs.2.28 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	The Commodity dealt with by the assessee company is double boiled Linseed oil and Blown Linseed oil which is taxable at 12.5% (item No.74 in the list of 12.5% item of goods).
V	(a)	Does the Department agree with the Audit conclusions?	--
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary	

Remedial action taken

	(a)	Improvement in system and procedures, including internal controls.	The item of goods purchased by the assessee is the vitamin 'E' added to the processed and purified essence oil of flax seed/linseed, not flax seed oil/linseed oil as pointed out by the Accountant General. This commodity has been grouped and coded as 90086 under the heading essences, essential oil & spice oils. The Commodity dealt with by the assessee company is double-boiled Linseed oil and Blown Linseed oil which is taxable at 12.5% (item No.74 in the list of 12.5% item of goods).
	(b)	Recovery of overpayment pointed out by audit	--
	(c)	Recovery of under assessment, short levy or other dues	--
	(d)	Modification in the schemes and programmes including financing pattern	--
	(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--



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Action taken Notes on C& AG's Reports

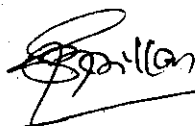
	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Short levy of tax due to incorrect exemption.
	(c)	Paragraph No.	2.12.17.2
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	6.5.2010
	(b)	Date of Department's Reply	16.6.10
III		Gist of Paragraph/Review	In the office of the Commercial Tax Officer, Haripad. While finalising the assessment of M/s. V.S.K. Exports a dealer in paper for the year 2004-05, sale of paper to Government departments for an amount of Rs. 2.94 Crore were exempted treating the sales as E1 sales. As the purchase order was placed well in advance of the E1 purchase it is evident that sale was not effected during the movement of goods from one state to another. The exemption granted under provisions of Sec. 6(2) of CST Act is irregular. This resulted in short levy of tax amounting to Rs. 13.39 Lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	

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

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	The assessment was revised under section 19 of the Act as per the order no. 13191965/2004-05 dated 30.03.2010.
(b)	Recovery of overpayment pointed out by audit	--
(c)	Recovery of under assessment, short levy or other dues	--
(d)	Modification in the schemes and programmes including financing pattern	--
(e)	Review of similar cases/complete scheme/project in the light of findings of sample check by Audit findings of sample check by Audit	--



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Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.18.1
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	4.6.2010
	(b)	Date of Department's Reply	29.7.10
III		Gist of Paragraph/Review	During scrutiny of records in Assistant Commissioner, Special Circle, Palakkad the Accountant General noticed that while finalising the assessments of M/s. Precot Mills (P) Ltd, Khanjikode, a dealer in cotton yarn, whose interstate sales turnover of cotton yarn not supported by declaration in Form C was valued at Rs. 6.32 Crore and Rs. 1.36 crore for the years 2002-03 and 2003-04 respectively, the assessing authority incorrectly applied the rate of tax at two percent and one per cent respectively instead of four per cent. This resulted in short levy of tax of Rs. 21.33 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	

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

VI

Remedial action taken

	(a)	Improvement in system and procedures, including internal controls.	<p>The CST assessment for the year 02-03 was completed afresh as per the audit view and the assessee paid the entire balance amount in amnesty i.e., Rs.1263161/- towards CST and Rs.126316/- towards interest.</p> <p>The CST assessment for the year 03-04 also completed afresh as per proceedings dated 14.9.11 of the Asst.Commissioner (Assmt.), Special Circle, Palakkad and the additional demand created Rs.2,72,784/- (CST) and Rs.24,005/- (interest) was paid by the assessee in amnesty on 29.09.2011.</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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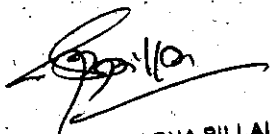
	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.18.2(a)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	4.6.2010
	(b)	Date of Department's Reply	13.1.11
III		Gist of Paragraph/Review	During the scrutiny of assessment records in the office of the Asst. Commissioner (KVAT), Special Circle, Kannur by the Accountant General, it was noticed that while finalising the assessment of M/s.Kerala Dinesh Beedi Workers Central Co-op.Society Ltd., Kannur for the years 03-04 and 04-05 the assessing authority assessed the sales turnover of Umbrella valued Rs.1,36,52,480/- at the rate of 4% instead of the correct rate of 8% resulting in short levy of 7.35 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	

VI

Remedial action taken

(a)	Improvement in system and procedures, including internal controls.	<p>In order to rectify the defect pointed out by the Accountant General (Audit) the assessment for the years 03-04 and 04-05 was revised, on 11.10.10. In the light of the audit observation of the Accountant General (Audit), Trivandrum, the turnover of Rs.77,16,890/- and Rs.59,35,590/- for the years 03-04 & 04-05 respectively have been included in the 8% category and an amount of Rs.3,54,977/- (Rs.3,08,676/- (Tax) + Rs.46,301/- (AST) with interest of Rs.3,23,029/- and Rs.2,73,038/- (Rs.2,37,424/- (Tax) + Rs.35,614/- (AST) with interest of Rs.1,91,127/- for the years, 03-04 & 04-05 respectively have been demanded.</p> <p>The tax and interest outstanding for the years 03-04 is Rs.3,54,977/- (Tax) and Rs.3,23,029/- (interest) and for the year 04-05 is Rs.2,73,038/- (Tax) and Rs.1,97,127/- (interest). The assessee preferred Amnesty Scheme. Since the assessee is a co-operative firm they are eligible to remit 50% of the tax amount with complete waiver of the interest. Besides the assessee remitted an amount of Rs.2,59,054/- in excess for the year 1999-00. So after deducting an amount of Rs.2,59,054/- from the amount to be paid as per the Amnesty Scheme, i.e. Rs.3,14,008/- the assessee is liable to remit an amount of Rs.54,954/-. The assessee remitted the above as per chalan No.241 dated 30.12.2010.</p>
(b)	Recovery of overpayment pointed out by audit	
(c)	Recovery of under assessment, short levy or other dues	
(d)	Modification in the schemes and programmes including financing pattern	

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

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.18.2(c)
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	4-6-10
	(b)	Date of Department's Reply	21.7.11
III		Gist of Paragraph/Review	In Commercial Tax Officer, Special Circle, Mattancherry the Accountant General has noticed that in December 2008, while finalizing the assessments of M/s.Hindustan Lever Ltd., a manufacturer for the year 2003-04 and 2004-05, tax on the turnover of water purchased from unregistered dealers was assessed to tax at the rate of five per cent instead of at the correct rate of eight per cent. This resulted in short levy of tax of Rs. 2.30 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	Yes
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	
V	(a)	Does the Department agree with the Audit conclusions?	
	(b)	If not, please indicate specific areas of disagreement with reasons for disagreement and also attach copies of relevant documents where necessary.	

VI

Remedial action taken

	(a)	Improvement in system and procedures, including internal controls.	The assessment for the years 03-04 & 04-05 has been completed on 12.05.2011 creating an additional demand of tax and AST Rs.1,07,963/- for the year 03-04 and Rs.1,73,385/- for the year 04-05. While finalizing the revised order the rate of tax of water has been assessed @ 8% and the short levy pointed out by the Accountant General has been demanded.
	(b)	Recovery of overpayment pointed out by audit	
	(c)	Recovery of under assessment, short levy or other dues	
	(d)	Modification in the schemes and programmes including financing pattern	
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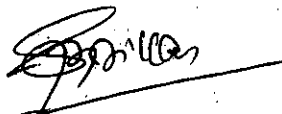
Action taken Notes on C& AG's Reports

	(a)	Department	COMMERCIAL TAXES
	(b)	Subject/Title of the Review Paragraph	Application of incorrect rate of tax.
	(c)	Paragraph No.	2.12.18.3
	(d)	Report No. and Year	C& AG report ended 31.3.2010
II	(a)	Date of receipt of the Draft Para/Review in the Department	26.5.2010
	(b)	Date of Department's Reply	22.9.10
III		Gist of Paragraph/Review	While finalizing the CST assessment of a dealer M/s.Kancor Flavour and Extracts Ltd., Special Circle, Mattancherry for the year 2004-05 in November 2007, the fast track team incorrectly assessed the interstate sales turnover of spices oil and essence not covered by declaration in Form C at the rate of 10 per cent instead of at the correct rate of 12 per cent plus AST. This resulted in short levy of tax of Rs.2.68 lakh.
IV	(a)	Does the Department agree with the facts and figures included in the paragraph?	No
	(b)	If not, Please indicate areas of disagreement and also attach copies of relevant documents in support	The item manufactured by the assessee Spice Oil, Spice Essence, Oleo resin are coming under Entry 177 of the KGST Act and the rate of tax is 8%. Thus the rate of tax adopted by the Fast Track team is correct.
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.	Item manufactured by the assessee Spice Oil, Spice Essence, Oleo resin are coming under Entry 177 of the KGST Act and the rate of tax is 8%. Thus the rate of tax adopted by the Fast Track team is correct. In the meantime the assessee filed appeal against the order issued by the Fast Track team before the Tribunal and the Tribunal vide order in T.A.No.5/08&6/08 dated 27-06-2009 has allowed the appeal filed by the assessee and directed the Assessing Authority to verify the statutory declarations and allow concessional rate of tax if found admissible as per law. Accordingly, the Assistant Commissioner has modified the order on 02.07.2010. As per the modified order the TO determined in respect of interstate sales turnover not supported by the forms is reduced and the tax paid by the assessee is in excess.
	(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	---
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പബ്ലിക് അക്കൗണ്ട്സ് കമ്മിറ്റി (2014-16)-യുടെ 15.05.2014-ലെ യോഗത്തിൽ സമിതി ആവശ്യപ്പെട്ട റവന്യൂ കുടിശ്ശിക സംബന്ധിച്ച സ്റ്റേറ്റ്മെന്റ്

പ്രസിദ്ധപ്പെടുത്തിയ വിവരങ്ങൾ

(രൂപ കോടിയിൽ)


ആകെ റവന്യൂ കുടിശ്ശിക		6595.79
ഗവൺമെന്റ് സ്റ്റേറ്റ്	9.63	
കോടതി സ്റ്റേറ്റ്	122.96	
അപ്പീൽ സ്റ്റേറ്റ്	37.58	
ആകെ സ്റ്റേറ്റ്		170.07
RR നടപടി സ്വീകരിക്കുവാനുള്ളത്		461.97
അപ്പേലേറ്റ്/ കോടതി ഉത്തരവുകൾ നടപ്പാക്കുക വഴി തടിക്കിഴിക്കുവാനുള്ളത്		65.18
ബാക്കി RR നടപടികൾ വിധേയമായത്		5698.57
ഗവൺമെന്റ് സ്റ്റേറ്റ്	205.15	
കോടതി സ്റ്റേറ്റ്	1127.07	
അപ്പീൽ സ്റ്റേറ്റ്	1631.80	
ആകെ സ്റ്റേറ്റ്		2964.02
കളക്ടറുടെ അപ്പോ എന്ന് കണ്ട് ജില്ലാ കളക്ടർ തിരിച്ചയച്ചത്		983.28
അപ്പേലേറ്റ്/ കോടതി ഉത്തരവുകൾ നടപ്പാക്കുക വഴി തടിക്കിഴിക്കുവാനുള്ളത്		626.91
പിൻപെട്ടുകൊടുക്കുന്ന തുക		1114.35
ഏപ്രിൽ മാസം പിൻപെടുത്തൽ		9.19
വികിരണ പദ്ധതി		1105.16

റവന്യൂ റിക്കവറി പ്രകാരമുള്ള കുടിശ്ശിക റവന്യൂ അധികാരി മുൻപാകെ

റവന്യൂ കുടിശ്ശിക		3082.87
ഗവൺമെന്റ് സ്റ്റേ	161.60	
കോടതി സ്റ്റേ	557.73	
അപ്പീൽ സ്റ്റേ	365.03	
ആകെ സ്റ്റേ		1084.36
പിരിച്ചെടുക്കാൻ കഴിയാത്തതിനാൽ റിക്വസിഷൻ അധികാരികൾക്ക് തിരിച്ചയച്ചത്		993.29
ബാക്കി തുക		1006.21
ഏപ്രിൽ മാസം പിരിച്ചെടുത്തത്		2.61
ഇനി പിരിച്ചെടുക്കാനുള്ള തുക		1003.60

റവന്യൂ റിക്കവറി പ്രകാരമുള്ള കുടിശ്ശിക വാണിജ്യ നികുതി വകുപ്പിലെ ഐ.എ.സി മുൻപാകെ

റവന്യൂ കുടിശ്ശിക		2614.70
ഗവൺമെന്റ് സ്റ്റേ	43.55	
കോടതി സ്റ്റേ	556.34	
അപ്പീൽ സ്റ്റേ	1261.36	
ആകെ സ്റ്റേ		1879.66
അപ്പേൽ/ കോടതി ഉത്തരവ് നടപ്പാക്കുക വഴി തട്ടിക്കിഴിക്കുവാനുള്ളത്		626.91
ബാക്കി തുക		108.91
ഏപ്രിൽ മാസം പിരിച്ചെടുത്തത്		6.59
ഇനി പിരിച്ചെടുക്കാനുള്ള തുക		101.55


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പി.ഡി. ബുക്കിംഗ് കമ്മിറ്റി (2014-2016) യു.ഡി. 28.05.2014 ലെ യോഗത്തിൽ സാങ്കേതിക ആവശ്യപ്പെട്ട വില്പന നികുതി അസംബിൾക്ക് കൈമാറേണ്ട സംബന്ധിച്ചും കോടതിയിൽ ട്രസ്റ്റ് അനുവദിച്ചത് സംബന്ധിച്ചും തയ്യാറാക്കിയ അധിക വിവര ട്രസ്റ്റിന്റെ

വാണിജ്യ നികുതി വകുപ്പ്

Addl. Details required by the PAC during the meeting held on 28.5.2014

Collection from Addl. Demand created from KGST assessments (pre-Post-Period) Completed between 2009-10 to 2013-14(Rs In Crore)

Dist	2009-10	2010-11	2011-12	2012-13	2013-14
TVM	1.55	6.16	102.19	1.66	6.21
KLM	0.28	0.16	0.00	0.50	1.49
PTA	0.10	0.00	0.05	0.28	0.27
ALP	0.34	0.00	0.22	0.67	3.04
KTM	0.32	1.15	0.16	3.73	3.01
IDKY	0.26	0.22	0.01	0.02	0.20
EKM	21.19	0.06	17.49	16.46	6.19
MTY	1.83	4.26	0.66	0.89	2.82
TSR	0.81	0.95	0.20	1.80	15.90
PGT	0.17	0.00	0.00	0.09	0.57
MPM	0.09	0.02	0.02	0.16	0.19
KKD	8.20	0.26	0.11	0.43	0.65
WYD	0.15	0.09	0.04	0.46	0.02
KNR	0.19	0.00	0.00	0.00	0.06
KSD	0.07	0.30	0.00	0.00	0.03
TOTAL	35.55	13.37	121.17	27.15	40.64

Sheet 1

Addl. details required by PAC during the meeting held on 28-5-2014**II. Details of Stay before Courts as on 01.04.2013.**

Amount of stay granted by court (Rs in Crore)					
Sl. No.	District/Office	High Court on cases still pending before the High Court	Supreme Court & Others	Cases disposed by the court with direction to dispose the appeals by DC (Appeals) in which stay is continuing	Total
1	Deputy Commissioner, Typm	59.6	8.16	0.05	68.39
2	Deputy Commissioner, (I) Typm	38.31	0	0	53.75
3	Deputy Commissioner, Kollam	5.78	6.15	0	13.69
4	Deputy Commissioner, Pathanamthitta	0.07	0	0.18	5.27
5	Deputy Commissioner, Alappuzha	6.16	0	0	13.93
6	Deputy Commissioner, Kottayam	3.05	0.96	0.03	6.35
7	Deputy Commissioner, Idukki	13.1	0	0.02	17.79
8	Deputy Commissioner, Ernakulam	145.08	470.92	0	722.19
9	Deputy Commissioner (I), Ernakulam	37.88	0	0	38.15
10	Deputy Commissioner, Mattancherry	14.94	13	0.37	36.07
11	Deputy Commissioner, Thrissur	28.86	3.12	0.28	62.18
12	Deputy Commissioner, Palakkad	46.37	0	0	163.43
13	Deputy Commissioner, Malappuram	4.98	0.62	0	209.8
14	Deputy Commissioner, Kozhikode	10.96	4.67	0	4.09
15	Deputy Commissioner, (I) Kozhikode	1.66	0	0	3.55
16	Deputy Commissioner, Wayanad	0.06	0	0	2.24
17	Deputy Commissioner, Kannur	0.65	0	0	0.39
18	Deputy Commissioner, Kasargod	8.02	0	0	0.21
Total		425.63	506.6	0.93	357.36
					1290.51

**Addl. details required by the PAC during the meeting held
on 28.5.2014**

III. STAY BY COURTS AS ON 01.04.2014 (RS. IN CRORES)

District	Supreme Court	High court	Other courts	High court stay with direction to dispose the cases by appellate authorities	Total
TVM	8.31	4.34	65.86	2.25	80.76
KLM	4.90	6.55	0	0	11.45
PTA	0	1.24	0.20	0.65	2.09
ALP	0	5.25	0	7.90	13.15
KTM	0.35	5.15	0	0	5.50
IDU	0	0.86	0	0	0.86
EKM	470.92	106.27	139.18	187.76	904.13
MTY	7.13	18.47	0.02	13.76	39.38
TCR	13.16	20.74	0.31	11.69	45.90
PKD	3.82	67.62	0	6.86	78.30
MPM	0.55	4.19	0.04	9.65	14.43
KKD	8.30	21.83	1.05	0	31.18
WYD	0	0.22	0	0	0.22
KNR	0	4.25	0.30	0.80	5.35
KSD	0	8.43	0	0	8.43
DC(I) EKM	0	8.90	0	0	8.90
TOTAL	517.44	284.31	206.96	241.32	1250.03

IV . Addl.details required by PAC ,during the meeting held on 28-5-14
KGST Assessment pending as on 1-4-2005 (Pre.VAT period)

Dist	Assmt pending
TVM	8842
KLM	9999
PTA	3504
ALP	8207
KTM	9699
IDKY	1256
EKM	32263
MTY	10472
TSR	12718
PGT	4711
MPM	11530
KKD	14945
WYD	3879
KNR	9966
KSD	3208
TOTAL	145199

Details of KGST Assessments (Pre VAT period completed from 2005-06 to 2013-14)

Dist	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	Total
TVM	1801	1254	1753	3174	339	247	51	69	114	8842
KLM	4402	3069	1141	989	279	76	12	2	29	9995
PTA	923	837	830	645	133	14	1	0	1	3304
ALP	3609	2076	924	873	236	376	91	18	4	8207
KTM	4373	4030	767	410	89	14	6	7	2	9698
ICKY	627	376	130	34	30	9	0	21	29	1256
EKM	6548	6013	9513	6652	2080	1135	54	166	89	32256
MTY	2820	3074	2503	1678	296	86	3	2	10	10472
TSR	4400	5025	1903	647	350	359	11	0	0	12655
PGT	1525	835	1164	772	407	0	4	2	0	4709
WPM	2801	4808	3632	54	9	5	14	1	6	11530
KKD	4047	4551	3184	2234	539	367	11	0	0	14933
WYD	1608	1896	171	188	16	0	0	0	0	3879
KNR	3354	3381	1373	1858	0	0	0	0	0	9566
KSD	1504	859	776	59	0	0	0	0	0	3208
TOTAL	44442	42254	29824	20267	4809	2688	298	268	284	145154

Actual Demand created from KGST Assessment (Both Pre-VAT period and VAT period) from 2005-06 to 2013-14 (Rs in Lakhs)

District	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
TVA	1665.82	628.05	618.4	321.9	4713.3	8226.25	538.45	315.12	
KLM	2350.95	1143.53	384.07	443.86	288.57	77.68	34.32	47.1	980.21
PTA	175.72	257.15	320.35	347.69	1371.03	12.66	2.18	0	128.1
ALP	28.88	24.29	11.73	3.68	26.21	3.76	1.37	0.36	0.05
KTM	8546.49	8474.71	3580.02	178.78	223.42	118.07	3.15	0.91	0.14
IDKY	231.37	226.91	158.57	35.66	102.21	143.89	0	0.63	59.04
EKM	10996.18	857625.02	5361.56	5114.25	96910.72	8799.56	82643.05	63600.36	3383.72
MTY	918.92	1033.27	858.62	1425.87	1047.53	152.23	15.73	0.14	89.39
TSR	614.13	8134.74	297.39	737.16	3465.14	217.4	104.93	0	0
PGT	59	4724.17	265.19	144.37	2123.45	0	154.47	0	0
MPM	285.18	886.9	125.95	248.08	104.15	3.67	60.54	30.33	5.47
KKD	637.57	1634.6	264.37	462.83	5034.89	1.67	0	0	0
WYD	738.71	124.48	3.71	8.59	34.54	0	0	0	0
KNR	574.49	657.18	23.52	225.3	63.96	0	0	0	0
KSD	273.61	6667	5912.96	119.3	844.09	0	0	0	0
TOTAL	28447	890242	18166.41	9817.32	116353.2	18359.84	83558.19	63952.66	4657.67

Sir Please Note

Actual demand created from the KGST assessment pertaining to Pre-Vat period alone is not readily available from the districts

Collection from: Addl Demand from KGST Assessment (Both Pre-VAT period and VAT period) from 2005-06 to 2013-14 (Rs in Lakhs)

Dist	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
TVM	204.81	43.13	33.07	95.95	155.00	618.00	10219.00	1.86	621.00
ALW	291.61	221.16	181.23	104.57	28.00	16.00	0.00	156.00	149.00
PTA	170.62	114.16	54.64	151.15	10.00	0.00	5.00	50.00	27.00
ALP	7.16	10.8	2.38	0.63	34.00	0.00	22.00	28.00	300.00
KTR	512.84	698.44	182.32	151.15	32.00	115.00	18.00	67.00	307.00
ICKY	42.72	189.06	30.3	13.02	26.00	22.00	1.00	373.00	20.00
EKM	793.5	3395.33	1216.97	969.18	2119.00	8.00	1749.00	2.00	610.00
WITY	645.69	816.55	701.92	1389.29	183.00	428.00	66.00	1646.00	282.00
TSR	111.65	1311.86	201.26	96.29	81.00	95.00	20.00	89.00	1580.00
POT	54.35	146.4	37.25	38.62	17.00	0.00	0.00	180.00	57.00
MPM	194.69	86.68	112.5	194.18	9.00	2.00	2.00	9.00	19.00
KKD	106.41	589.43	160.03	208.05	820.00	26.00	11.00	16.00	65.00
WYD	0.31	2.78	3.15	103.76	15.00	9.00	4.00	43.00	8.00
KNR	140.32	295.58	16.58	44.36	19.00	0.00	0.00	46.00	6.00
KSD	28.39	55.38	24.76	2.04	7.00	0.00	0.00	0.00	3.00
TOTAL	3305.07	7956.74	2938.36	3562.21	3555.00	1337	12117	2716.66	4064

Sir Please Note

Collection from Addl demand created from the KGST assessment pertaining to Pre-Vat period alone is not readily available from the districts

KGST Assessment Pre-VAT period pending as on 31-3-14

Dist	Assmt pending
TVM	0
KLM	0
PTA	0
ALP	0
KTM	1
IDKY	0
EKM	7
MTY	0
TSR	23
PGT	2
MPM	0
KKD	12
IWYD	0
KNR	0
KSD	0
TOTAL	45

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**30.05.2014-ൽ നടന്ന പബ്ലിക് അക്കൗണ്ട്സ് കമ്മിറ്റി മീറ്റിംഗിൽ
സമിതി ആവശ്യപ്പെട്ട "വർക്ക് കോൺട്രാക്റ്റിൽ ഉൾപ്പെട്ട
ഭൂവിലയുടെ നികുതി" എന്ന വിഷയം സംബന്ധിച്ച് നിയമവകുപ്പ്
സെക്രട്ടറിയുടെ അഭിപ്രായം തേടിയശേഷം സമർപ്പിക്കുന്ന
റിപ്പോർട്ട്**

കംപ് ട്രോളർ ആന്റ് ഓഡിറ്റർ ജനറൽ ഓഫ് ഇന്ത്യയുടെ 2009-10 സാമ്പത്തിക വർഷത്തിലെ റിപ്പോർട്ട് ചർച്ച ചെയ്യുന്നതിനായി 30.05.2014-ൽ പബ്ലിക് അക്കൗണ്ട്സ് കമ്മിറ്റി യോഗം ചേരുകയുണ്ടായി. തദവസരത്തിൽ "വർക്ക് കോൺട്രാക്ട്" സംബന്ധിച്ച ആഡിറ്റ് ഖണ്ഡികകൾ പരിശോധിച്ചു വേളയിൽ, "വർക്ക് കോൺട്രാക്റ്റിൽ ഉൾപ്പെട്ട ഭൂവില മൂല്യവർദ്ധിത നികുതിയുടെ പരിധിയിൽ വരുന്നില്ല" എന്ന നികുതി വകുപ്പിന്റെ നിലപാട് നിയമ വകുപ്പ് സെക്രട്ടറി പരിശോധിച്ച് വിശദമായ റിപ്പോർട്ട് സമർപ്പിക്കുവാൻ സമിതി ആവശ്യപ്പെട്ടിരുന്നു. ആയതിൻപ്രകാരം ശേൽ വിഷയം നിയമവകുപ്പ് സെക്രട്ടറിയുടെ പരിശോധനയ്ക്കും അഭിപ്രായത്തിനുമായി സമർപ്പിച്ചിരുന്നു. പ്രസ്തുത വിഷയം സംബന്ധിച്ച് നിയമവകുപ്പ് സെക്രട്ടറി നല്ലിരു അഭിപ്രായം ചുവടെ ചേർക്കുന്നു.

"2003-ലെ കേരള മൂല്യവർദ്ധിത നികുതി നിയമത്തിലെ ആമുഖം പ്രകാരം, കേരള സംസ്ഥാനത്ത് സാധനങ്ങൾ വിൽക്കുകയോ വാങ്ങുകയോ ചെയ്യുമ്പോൾ ഇവയുടെ മേൽ നികുതി ഈടാക്കുന്നത് ഏകീകരിക്കേണ്ടതും ഭേദഗതി ചെയ്യേണ്ടതും ആവശ്യമായതിനാലാണ് പ്രസ്തുത നിയമം നിലവിൽ വന്നത്. പ്രസ്തുത ആക്ടിൽ goods-നെ വകുപ്പ് 2(XX)-ൽ ഇപ്രകാരമാണ് നിർവ്വചിച്ചിരിക്കുന്നത്.

"goods" means all kinds of movable property (other than news paper, actionable claims, electricity, stocks and shares and securities) and includes live stock, all material, commodities and articles and every kind of property (whether as goods or in some other form) involved in the execution of a work contract, and all growing crops, grass or things attached to, or forming part of the land which are agreed to be severed before sale or under the contract of sale".

പ്രസ്തുത നിയമത്തിലെ 10(2)-ൽ turn over കണക്കാക്കുമ്പോൾ ഒഴിവാക്കേണ്ട സംഗതികളിൽ ലാൻഡ് വാല്യൂ ഒഴിവാക്കി കാണുന്നില്ല.

Tax on sale or purchase of goods-ന്റെ scope വർദ്ധിപ്പിക്കുക എന്ന ലക്ഷ്യത്തോടെ ഭരണഘടനയുടെ 266-ാം അനുച്ഛേദത്തോട് 29A എന്ന clause 46-ാം ഭരണഘടനാ ഭേദഗതി വഴി കൂട്ടി ചേർക്കുകയുണ്ടായി. ഭരണഘടനയുടെ Article 366 (29A) (b) ഇപ്രകാരമാണ്.

"(29-A) tax on the sale or purchase of goods" includes-

- (a)
 (b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

പ്രസ്തുത Article 366(12)-ൽ goods-നെ ഇപ്രകാരം നിർവ്വചിച്ചിരിക്കുന്നു. "Goods" includes all material, commodities and articles." പ്രസ്തുത നിർവ്വചനത്തിൽ immovable property ഉൾപ്പെടുന്നില്ല. മേൽ പ്രസ്താവിച്ച വകുപ്പുകൾ പ്രകാരം materials-ന്റെ വിലയുടെ മേൽ നികുതി ചുമത്താവുന്നതാണെന്ന് കാണാം. ആയതിൽ immovable property ഉൾപ്പെടുന്നില്ല എന്നു കാണാവുന്നതാണ്. M/S. Larson & Toubro Limited & Anr Vs. State of Karnataka (2014 1 SCC 708) എന്ന കേസിൽ ബഹു. സുപ്രീം കോടതി ഇപ്രകാരം കൂടി നിരീക്ഷിച്ചിട്ടുണ്ട്.

"Taxing the sale of goods element in a works contract under Article 366(29-A)(b) read with entry 54 List II is permissible even after incorporation of goods, provided tax is directed to the value of goods and does not purport to tax the transfer of immovable property"

മേൽ പ്രസ്താവിച്ച കാരണങ്ങളാൽ works contract-ൽ ഉൾപ്പെടുന്ന ഭൂവിലയ്ക്ക് മൂല്യ വർദ്ധിത നികുതി നിയമപ്രകാരം നികുതി ബാധ്യത വരില്ല എന്നാണ് ഈ വകുപ്പിന്റെ അഭിപ്രായം".

നിയമവകുപ്പ് സെക്രട്ടറി നല്കിയ മേൽ അഭിപ്രായം ബഹു. പബ്ലിക് അക്കൗണ്ടന്റ് കമ്മിറ്റിയുടെ പരിഗണനയ്ക്കായി സമർപ്പിക്കുന്നു.

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സെക്രട്ടറി

പബ്ലിക് അക്കൗണ്ടന്റ് കമ്മിറ്റി

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