

CHAPTER 2 - SALES TAX/VALUE ADDED TAX**2.1 Results of audit**

Test check of the records relating to sales tax/value added tax (VAT), conducted during the year 2008-09 revealed under assessment/short payment/loss of revenue and other irregularities involving Rs. 1,945.20 crore in 2,106 cases, which fall under the following categories:

(Rupees in crore)

Sl. No.	Categories	No. of cases	Amount
1.	Review of “Assessment, levy and collection of tax on works contract.”	1	688.30
2.	Review of “Transition from Delhi Sales Tax to Delhi Value Added Tax”	1	312.79
3.	Irregular claim of exemption/ concessional rate of tax on statutory forms	603	493.17
4.	Concealment of sale/purchase/stock	31	173.91
5.	Excess claim of deduction on stock transfer	4	21.04
6.	Others	1,466	255.99
Total		2,106	1,945.20

During the year 2008-09, the department accepted under assessments etc., of Rs. 30.53 crore involved in 81 cases of which 74 cases involving of Rs. 11.90 crore have been pointed out in audit during 2008-09 and the rest in earlier years. The department recovered Rs. 14.46 lakh in 36 cases during the year 2008-09. The Review of “**Assessment levy and collection of tax on works contract**” involving Rs. 688.30 crore, “**Transition from Delhi Sales Tax to Delhi Value Added Tax**” involving Rs. 312.79 crore and a few illustrative audit observations involving Rs. 705.37 crore are discussed in the succeeding paragraphs.

2.2 Review of “Assessment, levy and collection of tax on Works Contract”

Highlights

- Failure of the department to institute a system of inter-departmental cross verification of database of dealers resulted in non-realisation of revenue of Rs. 437.40 crore from unregistered works contractors and short payment tax of Rs. 92.49 crore due to concealment of turnover of Rs. 282.40 crore by registered works contractors.

(Paragraphs 2.2.7 and 2.2.8)

- Absence of an effective system of monitoring of receipt and maintenance of the records of the contractees resulted in non-detection of cases of the unregistered dealers and non-levy of penalty of Rs. 7.83 crore on the contractees who did not furnish Forms XII-A/DVAT-48.

(Paragraph 2.2.9)

- In violation of the provisions of the Acts, the department allowed credit of Rs. 111.24 crore towards claim of payment of tax without verifying the *challans*.

(Paragraph 2.2.10)

- Failure of the Assessing Authority (AA) to detect the suppression of the works contract turnover led to non-realisation of revenue of Rs. 9.72 crore.

(Paragraph 2.2.12)

- Irregular allowance of deduction on account of tax deducted at source without furnishing original copy of Form IX/DVAT-43 resulted in non-realisation of revenue of Rs. 11.36 crore.

(Paragraph 2.2.14.1)

- Failure of the AA to detect purchase on the strength of the Forms C by the dealers opting for composition of tax resulted in non-realisation of revenue of Rs. 1.19 crore.

(Paragraph 2.2.15)

2.2.1 Introduction

The Works Contract is defined as an agreement for carrying out for cash or for deferred payment or for valuable consideration, the building construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, repair or commissioning of any moveable or immovable property” under Section 2(1) (u) of the Delhi Sales Tax on Works Contract (DSTWC) Act 1999 and Section 2(1) (zo) of the Delhi Value Added Tax (DVAT) Act 2004.

All the provisions of the Delhi Sales Tax (DST) Act 1975 in relation to assessment, re-assessment, collection and enforcement of payment of tax including penalty and interest are applicable to the DSTWC Act 1999.

According to the provisions of the DSTWC Act 1999, every dealer engaged in the execution of works contracts in the State of Delhi and whose turnover of sales/purchases during a year exceeds Rs. 5 lakh is liable to obtain a certificate of registration and make payment of tax at the prescribed rates.

The erstwhile DSTWC Act 1999 alongwith the DST Act 1975 has been merged into the DVAT Act 2004 with effect from 1st April 2005. In the DVAT Act 2004, the taxable quantum for registration of a dealer has been increased to Rs. 10 lakh.

Both the Acts provide for payment of tax by way of composition also as a percentage of the entire turnover as notified from time to time.

2.2.2 Organisational set up

The Commissioner of Trade & Taxes is responsible for the administration of the Acts and Rules in the department. The Commissioner is assisted by four Additional Commissioners and 16 Joint/Deputy Commissioners. There are 10 zones, one special zone (dealing exclusively with works contractors) and one key customer services (KCS) unit, each headed by a Joint/Deputy Commissioner and 107 Wards headed by Value Added Tax Officers (VATOs).

2.2.3 Audit objectives

The audit appraisal was undertaken to ascertain whether:

- assessments were completed and tax due was correctly levied and collected in accordance with the provisions of the applicable Acts and Rules on works contract;
- exemptions of tax/deductions from turnover claimed by the dealers and allowed by the Assessing Authorities had been correctly worked out;
- the conditions for opting for the composition scheme(s) were complied with; and
- an effective system of internal control existed in the department to ensure proper assessment, levy and collection of tax in respect of works contract transactions so as to prevent leakage of revenue.

2.2.4 Audit coverage

There are 10 Zones, one Key Customer Service Unit and a special zone in the Department of Trade & Taxes (DTT). The audit coverage entailed a check of records of all the works contractors having a gross turnover of more than rupees one crore during the years 2003-04, 2004-05, 2005-06 and 2006-07 registered in the special zone (exclusively dealing with works contract cases) and Key Customer Service unit (major source of revenue collection of DTT). Out of the 10 Zones, three¹ zones were selected on the basis of the tax collection for the year 2007-08. One zone each was selected from the zones having tax collection of less than Rs. 160 crore, more than Rs.160 crore but

¹ Zones 4, 8 & 9.

less than Rs. 320 crore and zones having collection of more than Rs.320 crore. Thirty *per cent* (560 out of total 1,867) of the works contractors having gross turnover of more than rupees one crore registered in these three zones were selected for test check by random sampling method through IDEA package. The audit of selected five zones of the DTT was conducted between January to May 2009.

2.2.5 Audit methodology

The audit methodology for the performance review included:

- i) Cross-verification of the records of DTT with the data collected from other departments/undertakings viz. Income Tax, Delhi Development Authority (DDA), Municipal Corporation of Delhi (MCD), Delhi Jal Board (DJB), Public Works Department (PWD), Service Tax etc., to unearth un-registered operators and cases of concealment of turnover;
- ii) analysis of the mechanism in place to verify challans from the bank scrolls before affording credit of payment of tax and TDS to the contractors and to reconcile admitted payments with the treasury/bank records;
- iii) study of the arrears of revenue and assessments relating to the works contract transactions;
- iv) scrutiny of assessment records/returns in the selected zones; and
- v) examination of the eligibility of the dealers opting for composition scheme(s) as per the conditions prescribed.

2.2.6 Acknowledgement

The Indian Audit and Accounts Department acknowledges the co-operation of the DTT in providing the necessary information and records for audit. An entry conference was held with the Department on 14 January 2009 in which the audit objective, scope, methodology and the selection was explained. The draft review report was forwarded to the Government and the Department in June 2009. The exit conference was held on 22 October 2009 in which the results of audit and the recommendations were discussed with the Principal Secretary (Finance), Government of NCT of Delhi and Commissioner, DTT. The replies of the Government and the department received during the exit conference and at other points of time have been appropriately incorporated in the respective paragraphs.

Audit findings

The review revealed many system and compliance deficiencies. These have been discussed in the succeeding paragraphs.

System deficiencies

2.2.7 Non-detection of unregistered works contractors

Inter-departmental cross-verification of database, if conducted regularly and in a systematic manner, can assist in detecting un-registered dealers, widening of

the tax base and in augmenting the revenue. **Audit observed that the DTT had not installed any system of cross-verification of the database of the dealers registered in other departments and undertakings of the Union and State Governments with the database of the dealers registered in the DTT to detect cases of the dealers not registered with the DTT.**

The DTT issued instructions in December 2000 in respect of the DST and January 2006 in respect of DVAT for conducting surveys to identify the entities i.e. the dealers who were not registered even though they had become eligible for registration as per DST/DVAT Act. Despite these instructions, no steps were taken to unearth the unregistered works contractors by inter-departmental cross verification. Also, the department did not provide data to audit regarding the unregistered dealers/works contractors unearthed, or of those eligible or of those who had applied for registration or were granted registration certificate (RC) as a result of market survey, in any of the five selected zones of the DTT.

Failure of the department to institute inter-departmental cross verification for registration of the works contractors resulted in loss of revenue to the State which cannot be quantified in the absence of data. However, Audit on its own could detect 322 cases of unregistered contractors through cross verification of records of DTT with the records of Department of Income Tax (Range 38) and DDA, as discussed in the succeeding paragraphs.

2.2.7.1 Non-registration of the contractors resulting in non-levy of tax

Under the provisions of the DSTWC Act 1999 every dealer engaged in the execution of a works contract in the State of Delhi and whose turnover of sales/purchases during a year exceeds Rs. 5 lakh is liable to obtain a certificate of registration and make payment of tax at the prescribed rates. In the DVAT Act 2004, the taxable quantum for registration for a dealer has been increased to Rs. 10 lakh. Failure in registration and payment of tax attracts interest and penalty at prescribed rates.

Cross verification of the records of the DTT with the data collected by Audit from the Department of Income Tax and the DDA revealed that 118 works contractors were liable to pay tax of Rs. 122.63 crore on a taxable turnover of Rs. 981.07² crore and 204 works contractors were liable to pay tax of Rs. 30.38 crore on a minimum turnover of Rs. 257.21³ crore for the period from 2003-04 to 2006-07. None of these works contractors were, however, found registered with the DTT and hence could not be assessed. Failure to

² The total turnover has been collected by audit from the records of Department of Income Tax. Figure of taxable turnover of Rs. 981.07 crore has been arrived at after allowing Rs. 327.02 crore (at 25 *per cent*) towards labour & service charges from the total turnover of Rs. 1, 308.09 crore.

³ The total turnover was not available in the records (as collected by audit from the records of Department of Income Tax). Thus, total turnover of Rs. 342.94 has been worked out by taking the element of contractors' profit and overheads of Rs. 51.44 crore at 15 *per cent* as per CPWD Manual. An amount of Rs. 85.73 crore (at 25 *per cent*) towards labour & service charges has been deducted from the total turnover of Rs. 342.94 crore to arrive at the total taxable turnover.

register the contractors by conducting a cross verification has resulted in non-assessment of 322 works contractors and consequently also resulted in non-realisation of revenue of Rs. 153.01 crore. Besides, interest of Rs. 68.22 crore and penalty of Rs. 216.17 crore were also leviable for evasion of tax.

After the cases were pointed out, the department furnished reply in August 2009 in respect of 223 (91+132) cases involving Rs. 367.04 crore, out of which, department accepted 26 cases (12+14) involving Rs. 76.77 crore as unregistered works contractors. Report on recovery and also action taken by the department against these defaulters has not been intimated (December 2009).

The replies in rest of the 197 (79 + 118) cases involving Rs. 290.27 crore are not tenable as mentioned below:

Sl. No.	Number of cases	Reply of the Department	Reasons for the reply being untenable
1.	5 (4+1)	Dealer/firm is registered with the same name and at the given address	In three cases the given Trader Identification Number (TIN) pertained to some other firm, in one case the TIN was not given and in one case the dealer/firm concerned got registered w.e.f. 2007-08 onwards only.
2.	58 (21+37)	Dealer/firm is registered with different name or at different address or with different name at different address	Department failed to furnish the documents to establish that firms concerned were the same as pointed out by audit having the same Permanent Account Number (PAN).
3.	112 (44+68)	The dealer/firm was not found functioning, not traceable and premise found locked.	The department failed to take any other step besides one field visit of the VAT Inspector to know the whereabouts of the dealer/firm by conducting more field visits or getting in touch with the Income Tax department.
4.	7 (0+7)	The dealer/firm refused to furnish any information on field visit.	The department failed to enforce the provisions of the Act.
5.	15 (10+5)	The dealer/firm was registered in other State or not liable to pay tax under DSTWC/DVAT Acts.	The reply of the department is not supported by any documentary evidence.
	197 (79+118)		

Reply in the remaining 99 (27 + 72) cases involving Rs. 70.36 crore has not been received (December 2009).

In the interest of revenue, the Government may consider directing the DTT to detect the unregistered works contractors by cross verification of records and the results of such an exercise may be closely monitored at appropriately higher levels.

2.2.8 Suppression of turnover

Under the DVAT Act, a person who furnishes a return under the Act, which is false, misleading or deceptive in a material particular, or omits from it any matter or thing without which the return is false, misleading, or deceptive in a material particular, shall be liable to pay, by way of penalty, a sum of ten

thousand rupees or the amount of tax deficiency, whichever is greater. In addition, interest on tax computed at the rate of fifteen *per cent* per annum on daily basis is also payable.

Cross verification of the records with the data collected from the Department of Income Tax and DDA revealed that in 35 cases the turnover was shown as Rs. 6.24 crore by the works contractors in their returns, filed during the years 2005-06 and 2006-07 as against the turnover amounting to Rs. 288.64 crore as shown in the records of the above said departments. Audit observed that the DTT had not installed any system to verify the correctness of the turnover declared by the dealers registered with the DTT. This resulted in concealment of turnover of Rs. 282.40 crore with consequent short payment of tax of Rs. 34.84 crore. Besides, interest of Rs. 12.89 crore and penalty of Rs. 44.76 crore were also leviable for evasion of tax.

The department accepted (October 2009) the facts and stated that they had deputed an officer especially to compile data of the works contractors and the sub-contractors registered, with other departments.

2.2.9 Cross verification within the department (Form DVAT-48/XII-A)

Under the provisions of the DSTWC and the DVAT Act, every person (contractee) responsible for deducting tax at source is required to furnish a TDS annual return in the Form XII-A/DVAT-48 within a period of ninety⁴/twenty eight days from the end of the year in which tax has been deducted.

In Form XII-A/DVAT-48 return the contractee intimates the department, the details of the work contractors engaged, gross value of their contract, amount paid to them during the year etc. **Audit observed that no system existed in the DTT to use these information to cross verify the correctness of turnover etc., furnished by the contractors in Form DVAT-16/17 and detect cases of the unregistered dealers.** Audit could detect 13 cases of unregistered work contractors through cross verification of these annual returns with the records of DTT and cases of non-submission of the returns by the contractees, which are discussed in the succeeding paragraphs.

2.2.9.1 Non-registration of the contractors resulting in non-levy of tax

Under the provisions of the DVAT Act, if the Commissioner is satisfied that any person who has been liable to pay tax under this Act in respect of any period(s), has failed to get himself registered, the Commissioner may for reasons to be recorded in writing, assess to the best of his judgment the amount of net tax due for such tax period(s) and all subsequent tax periods.

Test check of the 14 Forms DVAT-48 of the five selected zones made available to Audit for the years 2005-06 and 2006-07 revealed that 13 works

⁴ In DST regime, contractees were/are required to furnish the TDS annual return in Form XII- within ninety days and in DVAT regime in Form DVAT-48 within twenty eight days from the end of year in which tax has been deducted.

contractors were liable to pay tax on a turnover of Rs. 4.75 crore. None of these works contractors were registered with the DTT and assessed. Failure to register the contractors resulted in non-realisation of revenue of Rs. 59.37 lakh. Besides, interest of Rs. 18.62 lakh and penalty of Rs. 64.72 lakh were also leviable for evasion of tax.

2.2.9.2 Non-levy of penalty on non-submission of Form XIAA/DVAT-48

Under the provisions of the DSTWC and the DVAT Act, if a person responsible for making deduction of tax at source fails to furnish the TDS annual return in the form XII-A/DVAT-48 within the prescribed period, he is liable to pay, by way of penalty, a sum of twenty thousand rupees.

Audit observed that no system existed in the department for effectively monitoring the receipt and maintenance of this annual return and levying penalty on the defaulting contractees. Out of a total of 803 contractees registered in the five⁵ selected zones, the department could make available only 14 DVAT-48 Forms of 13 contractees for the years 2005-06 and 2006-07. In the remaining 3,198 cases of 790 contractees, the Assessing Authority neither furnished the Forms XII-A/DVAT-48 nor levied the prescribed penalty on the contractees for non-submission of the Forms XII-A/DVAT-48. This failure on the part of the Department resulted in non-levy of the penalty of Rs. 6.40 crore.

The State/Central Government Departments like CPWD, PWD, DJB, MCD are the premier agencies which engage contractors for execution of various infrastructure and construction projects in Delhi. When DTT failed to furnish the requisite Forms XII-A/DVAT-48, Audit called for the Forms XII-A/DVAT-48 from five selected units of each of these Departments. The exercise revealed that these selected units were not maintaining/furnishing the annual return in the prescribed format to the DTT.

The department accepted (October 2009) the fact during the exit conference and assured to ensure timely receipt of the said annual returns and utilise them for the purpose of intra departmental cross verification.

The Government may consider directing the department to implement the audit recommendation, as accepted by it during the exit conference.

2.2.10 Allowance of credit without verifying *challans*

Under the provisions of the Act, the dealers are required to deposit the tax and other payments due in form V/ST-12/DVAT-20/CST *Challan* in the notified banks. The banks on receipt of the amount issue Parts C and D of the *challan* to the dealers as proof of payment and forward Parts A and B to the RBI alongwith the bank scroll. The RBI in turn forwards the hard copies of Part B to the DTT alongwith the hard copies of the bank scroll. The notified bank branches also forward the soft copy of the bank scroll to the DTT.

The Collection/EDP branch prepares a monthly/annual statement showing ward-wise figures of collection during and up to a particular month. This

⁵ Zones 4, 8 9, KCS & Spl. zone.

statement is prepared on the basis of data made available by the banks to the DTT. Scrutiny of three such statements showing position up to March 2006, March 2007 and March 2008 revealed that the total tax collection included amounts pertaining to missing Bank/Branch bundles of Part B of *challans* as per details given below:

(Rupees in crore)

Year ending	Missing Bank bundles	Missing Branch bundles	Missing <i>challans</i>	Total
(1)	(2)	(3)	(4)	(5=2+3+4)
2005-06	19.43	19.90	10.52	49.85
2006-07	14.56	25.78	4.89	45.23
2007-08	15.65	0.51	0.00	16.16
Total	49.64	46.19	15.41	111.24

The name, registration number and other necessary details of the dealers and the basis, on which the credit for payment of Rs. 111.24 crore was allowed, were not available with the department. Audit could not ascertain whether the dealers were asked to furnish Part C or D of *challans* supported by a certificate from the concerned bank and an affidavit from such dealer, as per the provisions of the DSTWC Act and the DVAT Act.

Test check of the records indicated that in nine cases of four⁶ wards relating to the assessment years 2005-06 to 2006-07 AA allowed the credit of the amount of payment of tax, interest or penalty to the works contractors against the part C of the *challans* and failed to detect that actual payment as per part B, as recorded in the bank scroll, was less than what was claimed by the works contractors. This resulted in excess allowance of credit for payment of tax of Rs. 2.36 crore. Besides, interest of Rs. 83.86 lakh and penalty of Rs. 2.91 crore were also recoverable.

After the cases were pointed out, the department stated (July 2009) that in two cases involving Rs. 43.96 lakh, the dealers had furnished copy of the bank statement in the first case and copy of payment voucher in the second case.

The reply is not tenable as Part C of the *challan* is to be verified with entries in the tax scroll based on the part B only and in the absence of entry in the tax scroll, a certificate from the concerned bank and an affidavit from the dealer were to be obtained as per the requirement of the Act. Further, the department also failed to furnish the said certificates and affidavits.

The department agreed (October 2009) during the exit conference to review the working of the collection branch.

The department may be directed to review the working of the collection branch and to allow credit of payment of tax etc. only after verification.

2.2.11 Weak internal control

Every department is required to institute appropriate internal controls for its efficient and cost effective functioning. The internal controls also help in

⁶ Ward Nos. 30, KCS-I, KCS-III & Spl. zone.

creation of reliable financial and management information systems and for adequate safeguard against non/short collection or evasion of taxes. The internal controls instituted need to be reviewed and updated from time to time to keep them effective.

2.2.11.1 Working of the enforcement branch

The DTT has an enforcement branch under the charge of the Deputy Commissioner (Enforcement). The main function of the branch is to detect evasion of tax by conducting surveys, searches and seizures of the dealers in Delhi. To streamline the work relating to assessment of the dealers surveyed by the enforcement branch including searches and seizures, DC (E) has to first assess whether the case is required to be assessed by the enforcement branch itself or whether it should be transferred to the concerned ward. The enforcement branch/concerned ward has to ensure that the cases of evasion of tax detected during searches and seizures are immediately scrutinised and assessed so that the quantum of evasion is determined and realised promptly.

The DTT had not fixed any ward-wise targets of the dealers, selected for search/survey by the enforcement branch up to the year 2008-09. During the period 2003-04 to 2008-09, the enforcement branch did not conduct any search/survey in respect of any registered/un-registered works contractor. Audit further observed that the special zone created to deal with the cases pertaining to the works contractors also had not conducted any enforcement survey.

The department assured during the exit conference (October 2009) that works contractors would be covered in the surveys and searches of the enforcement branch.

2.2.11.2 Internal audit

The DTT has an internal audit cell (IAC) under the charge of the Joint Commissioner (Audit). This cell was to conduct test check of cases of the assessment years 2003-04 and 2004-05 as per the approved action plan and in accordance with the criteria decided by the steering committee so as to ensure adherence to the provisions of the Act and Rules as well as the departmental instructions issued from time to time. In addition, the Directorate of Audit under the Finance Department is entrusted with the internal audit of all the offices/departments of the Government of NCT of Delhi including the DTT.

It was noticed that the department had not prepared any plan for checking of the cases for the assessment years 2003-04 to 2006-07. In the absence of the internal audit, the management had no means of knowing the areas of malfunctioning of the systems and did not, therefore, have the opportunity of taking remedial action at the appropriate time. Further, the Directorate of Audit of the Finance Department has also not conducted the internal audit of the DTT during the period under review.

The Government may consider taking immediate remedial measures for effective functioning of the internal audit cell of the department. The Government may also direct the Directorate of Audit to take up the internal audit of DTT.

Compliance deficiencies

2.2.12 Suppression and non-assessment of turnover

2.2.12.1 Under the provisions of the DVAT Act and the Rules made thereunder, turnover of sales means the aggregate of the amount of sale price received or receivable by a dealer/contractor in respect of the execution of any works contract whether executed fully or partly during any period.

A person who furnishes a return under the DVAT Act, which is false, misleading, or deceptive in a material particular or omits from it any matter or thing without which the return is false, misleading in a material particular, shall be liable to pay, by way of penalty, a sum of Rs. 10,000 or the amount of tax deficiency, whichever, is greater. In addition, interest at 15 *per cent* per annum is also recoverable.

Test check of the records indicated that in nine cases of two⁷ wards relating to assessment years 2005-06 and 2006-07, the turnover of the dealers as per the form DVAT-43 amounted to Rs. 127.37 crore. After adjusting the element of output tax of Rs. 14.15 crore (at 12.5 *per cent*) and allowing deduction towards labour and services of Rs. 28.31 crore (at 25 *per cent*) the taxable turnover worked out to Rs. 84.91 crore. These dealers, however, disclosed taxable turnover of Rs. 55.57 crore only in the DVAT – 16 returns. The AA failed to scrutinise the returns and detect the suppression of works contract turnover of Rs. 29.35 crore. This resulted in short levy of tax of Rs. 3.67 crore. Besides, interest of Rs. 1.41 crore and penalty of Rs. 3.67 crore was also recoverable.

After the cases were pointed out, the department stated (July 2009) in one case involving tax of Rs. 2.08 crore that the taxable turnover declared in DVAT – 16 returns was calculated after considering the eligible deductions available under DVAT. The reply is not tenable because against the taxable turnover of Rs. 10.79 crore, the dealer had declared only Rs. 3.60 crore in DVAT-16 return. Further, the dealer had not mentioned details of works executed through sub-contractors in the DVAT-16 return.

2.2.12.2 All the provisions of the DST Act 1975 relating to assessment, re-assessment, collection and enforcement of payment of tax including levy of penalty and interest were applicable to the DSTWC Act 1999. Under the DST Act, if AA is not satisfied with the correctness of the returns furnished by the dealer for making the assessment, he should issue a notice thereby requiring the dealer to appear on the date specified therein and produce necessary evidences such as books of accounts, sale/purchase vouchers etc., in support of his returns. After considering the evidence produced by the assessee, the AA should assess the amount of tax due from the dealer.

Test check of the records indicated that in one case of one⁸ ward relating to assessment years 2003-04 and 2004-05 AA, while finalising the assessments, overlooked assessment of a taxable turnover of Rs. 2.92 crore. This resulted in non-levy of tax of Rs. 23.38 lakh. Besides, interest of Rs. 16.83 lakh and penalty of Rs. 58.45 lakh were also recoverable.

⁷ Ward Nos. KCS-II & Spl. zone.

⁸ Ward No. Spl. zone.

2.2.13 Irregular allowance of deduction

2.2.13.1 Under provisions of the DSTWC Act 1999 and the DVAT Act 2004 and Rules made thereunder, in case of turnover arising from the execution of the works contract, the amount representing the taxable turnover shall exclude the charges towards labour and services etc., subject to the dealer's maintaining proper records evidencing payment of charges towards labour and services etc., to the satisfaction of the Commissioner. If the amount of the labour and services is not ascertainable from the accounts of the dealer, it should be deducted at the percentage prescribed.

Test check of the records indicated that in eight cases of two⁹ wards relating to the assessment years 2004-05 to 2006-07 AA failed to detect that the dealer had claimed exemption from turnover of sales on account of the labour and services of Rs. 55.42 crore. Since the dealer failed to furnish separate account for material and labour and services (mandatory for such deduction) the correct allowable deduction at 25 per cent worked out to Rs. 28.72 crore. Thus, dealers were allowed excess exemption of Rs. 26.70 crore. This resulted in short levy of tax of Rs. 3.34 crore. Besides, interest of Rs. 1.36 crore and penalty of Rs. 4.72 crore were also recoverable.

After the cases were pointed out, the department stated (August 2009) in one case involving Rs. 21.29 lakh that the gross turnover of the dealer declared in the DVAT returns included output VAT. This was seen by Audit to be factually incorrect from the supporting documents.

2.2.13.2 Under provisions of the DSTWC Act 1999 and the DVAT Act 2004 and Rules made thereunder, in determining the taxable turnover of the sales of a dealer liable to tax the cost of consumables such as water, electricity, fuel etc., used in the execution of the works contract, which loses its existence in the course of execution of a works contract shall be deducted from the total turnover of the dealer.

Test check of the records indicated that in one case of one¹⁰ ward relating to assessment year 2003-04 the dealer claimed exemption from turnover of sales on account of consumables of Rs. 1.56 crore which included items like construction chemicals, bearings etc., of Rs. 1.04 crore. AA failed to detect that the dealer deducted these ineligible items from his total turnover. This resulted in short levy of tax of Rs. 8.31 lakh. Besides, interest of Rs. 7.48 lakh and penalty of Rs. 20.78 lakh were also recoverable.

After the cases were pointed out, the department stated in July 2009 that the items plywood, timber, construction chemicals, bearings and variable items cost were pure consumables in which no property was transferred to the contractee during the execution of the works contract. Reply of the department is not tenable as plywood, timber and bearings are items, which do not lose their existence during the course of execution of the works contract. Further, the department failed to furnish the items included in construction chemicals and variable items.

⁹ Ward No. KCS-I & Spl. zone.

¹⁰ Ward No. Spl. zone.

2.2.14 Irregular claim of tax deducted at source

2.2.14.1 Under the provisions of the DSTWC Act 1999 and the DVAT Act 2004 and Rules made thereunder, any person, not being an individual or HUF, who is responsible for making payment to any dealer/contractor for discharge of any liability on account of valuable consideration payable for the transfer of property in goods in pursuance of the works contract. For value exceeding rupees twenty thousand (shall at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by any other mode, whichever is earlier) deduct tax thereon at the rate of two *per cent* and furnish to the contractor from whose bills or invoices such deduction is made, a certificate in Form DVAT-43 in original in respect of the amount deducted, the rate at which it has been deducted and the details of deposit into the Government treasury.

Test check of the records indicated that in twenty three cases of four¹¹ wards relating to assessment years 2003-04 to 2006-07 AA failed to detect that the dealer claimed deduction on account of the TDS without furnishing in original the TDS certificates in the form DVAT-43 or on production of photocopies of the same. This resulted in short levy of tax of Rs. 4.79 crore. Besides, interest of Rs. 1.87 crore and penalty of Rs. 4.72 crore were also recoverable.

After the cases were pointed out, the department furnished reply in July 2009 in respect of the eight cases involving Rs. 1.75 crore. The replies were not tenable as mentioned below:

Sl. No.	TIN	Ward	Reply of the Department	Audit remarks
1	07230257153	Spl. Zone	The dealer filed original TDS certificates alongwith DVAT-16 returns. Photocopy of the TDS certificates are enclosed.	The department failed to furnish the TDS certificates in original filed by the dealer or certificate from the contractees that the TDS was deducted by them alongwith Form V/DVAT-20.
2	07680025124	-do-		
3	07132009125	-do-		
4	07970082437	-do-		
5	07452011374	-do-		
6	07940015184	-do-		
7	07332006687	101		
8	07052000051	Spl. Zone	The dealer did not file the original TDS certificates alongwith the DVAT-16 returns. Photocopy of the TDS certificates are enclosed.	The dealer had claimed the deduction of the TDS without furnishing the TDS certificates in support. Further, the TDS certificates furnished by him to the department now are photocopies and not in original as required.

2.2.14.2 Under the provisions of the DVAT Act and Rules made thereunder, any deduction on account of the TDS made and credited into the appropriate Government treasury shall be treated as payment of tax on behalf of the person from whose bills or invoices the deduction has been made, and the person shall claim the adjustment towards the payment of output tax of the amount so

¹¹ Ward Nos. KCS-II, KCS-VI, 101 and Spl. zone.

deducted in his return for the tax period in which certificate in the form DVAT 43 of such deduction was issued to him.

Test check of the records indicated that in eight cases of three¹² wards relating to assessment years 2005-06 to 2006-07 AA failed to detect that the dealers had not claimed the adjustment within the tax period but had delayed by 1 to 15 months in claiming the adjustment of the amount of the TDS towards the payment of output tax. This resulted in irregular allowance of claim of tax of Rs. 17.69 lakh by the department to the dealer. Besides, interest of Rs. 5.69 lakh and penalty of Rs. 19.78 lakh were also recoverable from the dealer.

After the cases were pointed out, the department stated in July 2009 in respect of five cases involving Rs. 13 lakh that TDS certificates were actually received by the dealer on a much later date than the date of issue as mentioned on the TDS certificates. The department failed to furnish the dates of actual receipt of TDS certificates by the dealer alongwith certificate from the contractee. In their absence the claim of the dealer is not allowable.

2.2.14.3 As per Section 36A of the DVAT Act 2004 read with Rule 59 of the DVAT Rules 2005, any person, not being an individual or HUF, who is responsible for making payment to any dealer/contractor for discharge of any liability on account of valuable consideration payable for the transfer of property in goods in pursuance of works contract, for value exceeding Rupees twenty thousand, shall at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by any other mode, whichever is earlier, deduct tax thereon at the rate of two *per cent*. A contractor with respect to the contracts other than the private contracts, may make an application to the contractee authorising him to deduct tax at the rate of four *per cent* towards the tax payable instead of two *per cent*.

Test check of the records indicated that in twelve cases of one¹³ ward relating to the assessment years 2004-05 to 2006-07 the person (contractee) who is responsible for making payment to any dealer for discharge of any liability on account of valuable consideration payable for the transfer of property in goods in pursuance of a works contract had, while making payments, deducted TDS at a lower rate than the prescribed rate of two/four *per cent*. This resulted in short payment of tax of Rs. 0.82 lakh. Besides, interest of Rs. 0.41 lakh and penalty of Rs. 0.39 lakh were also leviable.

2.2.14.4 Under the provisions of the DSTWC and the DVAT Act, the amount of tax deducted at source shall be deposited into the appropriate Government treasury by the person making such deduction before the expiry of fifteen days following the month in which such deduction is made.

Test check of the records indicated that in 53 cases the person (contractee) who is responsible for making payment to any dealer for discharge of any liability on account of valuable consideration payable for the transfer of property in goods in pursuance of a works contract deducted the TDS amounting to Rs. 1.48 crore from the bills of contractors but deposited it into the appropriate Government treasury after expiry of 15 days following the month in which deduction was made. The Assessing Authority failed to detect

¹² Ward No. KCS-I, KCS-VI & Spl. zone.

¹³ Ward No. Spl. zone.

this delay. This resulted in non-levy of penalty of Rs. 1.92 lakh. Besides, interest of Rs. 1.40 lakh for delay in deposit was also recoverable.

2.2.15 Irregular benefit of composition

2.2.15.1 Under the provisions of the DSTWC Act 1999 and Rules made thereunder, a dealer may elect to pay tax by way of composition at the rate of four *per cent* of his total amount of contract or the total aggregate value of the contracts received or receivable towards execution of works contract. However, any dealer who makes inter-state purchase of the material used in the execution of works contract, on central statutory forms, shall not be entitled to opt for composition of tax.

Test check of the records indicated that in five cases of one¹⁴ ward relating to the assessment years 2003-04 and 2004-05 AA failed to detect that dealers made purchase on Forms C and as such were not eligible to opt for composition of tax. This resulted in short levy of tax of Rs. 27.66 lakh. Besides, interest of Rs. 22.07 lakh and penalty of Rs. 69.14 lakh were also recoverable.

After the cases were pointed out, the department furnished reply in September 2009 in respect of three cases involving Rs. 50.08 lakh. These were not tenable as mentioned below:

Sl. No.	TIN	Ward	Reply of the Department	Audit remarks
1	07912000645	Spl. zone	The dealer has never made any purchases against Form C under the DSTWC Act as the dealer was not registered under the DSTWC Act and as such he cannot be issued any Form C whatsoever.	The dealer was registered under the DSTWC Act with registration No. WCT/84/352000645/1299 and was also assessed under the DSTWC Act for the year 2004-05. Further, as per the utilisation account for the year 2004-05 the dealer had made purchase against the form C.
2	07770241724 (Two years)	Spl. zone	The dealer was registered under both the DST and the DSTWC Acts. The dealer had separate nature of work under DSTWC Act and goods purchased against Form C were used for making Glow sign boards only.	Under the DSTWC Act the dealer is executing works contracts of the nature of boards & hoardings etc. He purchased electrical goods, iron & steel, flex, vinyl etc., on Form C which are used in the making of boards & hoardings.

2.2.15.2 Under the provisions of the DVAT Act and Rules made thereunder, every registered dealer engaged *exclusively* in works contract of the nature of civil construction shall be eligible to pay tax at the rate of two and a half *per cent* of the entire turnover if he opts for composition of tax, provided during the period for which composition is opted, he makes all the purchases and the sales within Delhi only and does not claim benefit of input tax credit on his local purchases.

¹⁴ Ward No. Spl. zone.

Test check of the records of ward 98 indicated that in one case relating to the assessment years 2005-06 and 2006-07 AA failed to detect that the dealer was not entitled to opt for composition of tax as he was not exclusively engaged in the works contract. Further, he claimed input tax credit on his purchases made within the State of Delhi. This resulted in short levy of tax of Rs. 0.71 lakh. Besides, interest of Rs. 0.22 lakh and penalty of Rs. 0.77 lakh were also recoverable.

2.2.16 Short levy of tax

Under the provisions of the DSTWC Act 1999, the return of turnover of the sub-contractor shall be accompanied with a declaration in the Form VI-A issued by the contractee to the effect that the tax has been deducted at source if the said sub-contractor had claimed exemption from payment of tax in its return.

Test check of the records indicated that in two cases of one¹⁵ ward relating to the assessment years 2004-05 and 2005-06 AA allowed benefit of tax to the dealers (sub-contractors) either in excess of what was admissible against the form VI-A or without obtaining the Form VI-A in support of the claim. This resulted in short levy of tax of Rs. 20.77 lakh. Besides, interest of Rs. 9.87 lakh and penalty of Rs. 34.28 lakh were also recoverable.

2.2.17 Conclusion

The review revealed a number of deficiencies in the system of tax assessment and collection. The department had not established any mechanism of cross verification of the inter-departmental database of dealers resulting in non-realisation of the revenue from the unregistered dealers. Absence of cross-verification also led to concealment of turnover and avoidance of tax. There was no effective system of monitoring the receipts and maintenance of records of the contractees. Though a return indicating the details of the works executed by contractors for the contractees were prescribed, these were either not received or wherever received, the information available in it was not utilised to verify the correctness of the turnover. The credit of payment of tax to the works contractors was given without verifying the *challans* from banks scrolls.

The department had not evolved an effective system of internal control for proper assessment, levy and collection of tax and accordingly, failed to detect tax evasion and suppression. The enforcement wing of the department had not conducted any search/survey in respect of any registered/unregistered works contractors. The internal audit wing of the Finance Department had not conducted any audit during the review period. No plans were framed by the internal audit wing for checking the cases relating to the assessment years 2003-04 to 2006-07. Besides, audit noticed suppression of works contract turnover, irregular grant of deduction on account of tax deducted at source that resulted in non-realisation of the revenue.

¹⁵ Ward No. Spl. zone.

2.2.18 Summary of recommendations

The State Government may consider acting on the following recommendations in the interest of revenue:

- directing the department to a devise a system of cross verification of records to detect the unregistered works contractors and monitoring the results of such an exercise at appropriate levels;
- issuing directions to the department that the working of the collection branch be reviewed and credit of payment of tax be allowed only after verification; and
- taking immediate remedial measures for effective functioning of the internal control system including internal audit cell and enforcement branch of the department.

2.3 Review of “Transition from the Delhi Sales Tax to the Delhi Value Added Tax”

Highlights

- Inadequate input and validation controls in the system resulted in inconsistent and incomplete database. In-efficient change management resulted in less charging of tax amounting to Rs. 3.33 crore.
(Paragraph 2.3.8)
- Deficient business rule mapping resulted in excess tax credit claims to the tune of Rs. 93.85 crore.
(Paragraph 2.3.8)
- Failure of the department to maintain the complete record of the returns and annual accounts filed by the dealers in their assessment folders resulted in non-verification of quantum of tax payable by the dealers and correctness of the ITC claimed.
(Paragraph 2.3.10.3)
- Non-provision for submission of the annual returns in the DVAT Act resulted in leaving ample scope for the dealers to evade tax by suppression of sales and purchases and excess claim of the ITC on purchase.
(Paragraph 2.3.11)
- Absence of requirement to deposit the disputed amount of tax while filing objections resulted in increased numbers of objections being filed.
(Paragraph 2.3.14)

2.3.1 Introduction

With a view to making the tax structure simple and more transparent, the Government of India, Ministry of Finance, constituted an Empowered Committee of State Finance Ministers. The State level Empowered Committee through several rounds of discussion worked out the design of the Value Added Tax (VAT) and decided (January 2002) to implement the VAT system in all the states with a common basic design. As VAT is a State subject, the states were given freedom to make appropriate variations in their State level laws.

The Government of Delhi repealed the Delhi Sales Tax Act, 1975, the Delhi Sales Tax on Works Contract Act, 1999 and the Delhi Sales Tax on Right to Use Goods Act, 2002 and enacted the Delhi Value Added Tax Act, 2004 (DVAT Act, 2004) for implementation with effect from 1 April 2005. A dealer who is registered under the repealed Act and who continues to be so registered on the day immediately before 1 April 2005 and was liable to pay the tax was deemed to be registered under the DVAT Act.

Value Added Tax is a tax on value addition. It is a multi-point tax, which is levied at every stage of sale. It is collected at the stage of manufacture/resale and contemplates rebating of the tax paid on the inputs and purchases, thereby providing revenue to the government on value addition at every stage.

The transitional process from Delhi sales tax to Delhi VAT was reviewed in audit which revealed a number of deficiencies as discussed in the succeeding paragraphs:

2.3.2 Organisational set up

The receipts from the VAT are administered by the Commissioner of Department of Trades and Taxes (DTT) assisted by four Additional Commissioners. There are ten zones each headed by the Joint Commissioners/Deputy Commissioners who work under the Additional Commissioners and supervise the work of the Value Added Tax Officers (VATOs) and the Assistant Value Added Tax Officers (AVATOs) and the Inspectors working in the wards under their control. Delhi has been divided into 107 wards headed by the VATOs.

2.3.3 Audit objectives

The review was conducted to ascertain whether:

- planning for implementation and transition from the DST Act to the DVAT Act was effected timely and efficiently;
- organisational structure was adequate and effective;
- the provisions of the DVAT Act and the Rules made thereunder were adequate and enforced properly to safeguard the revenue of the state; and
- an internal control mechanism existed in the department and was adequate and effective to prevent leakage of revenue.

2.3.4 Scope and methodology of audit

The review was conducted between June and August 2009 in 13 wards from six out of the ten zones covering the period from 2005-06 to 2007-08 i.e., tax period from April 2005 to March 2008. The review has been prepared on the basis of information furnished by the selected wards, various reports/data compiled and published by the DTT.¹⁶ The functioning of the DVAT system was also studied and data analysis was done using the IDEA package. The wards were selected by adopting statistical sampling technique (Probability Proportional to Size method). The details of the statistical sampling technique is explained at Annexure I.

2.3.5 Acknowledgment

The Indian Audit and Accounts Department acknowledges the cooperation of the DTT in providing necessary information and records for audit. In the entry conference held with the Joint Commissioner (Audit), DTT on 22 June 2009, the department was apprised of the audit objectives, scope and methodology of audit. The draft review report was forwarded to the Government and the Department in September 2009. An exit conference was held on 22 October 2009 in which the results of audit and the recommendations were discussed with the Principal Secretary (Finance), Government of NCT of Delhi and

¹⁶ EDP and Research and Statistics Branch.

Commissioner, DTT. The replies of the Government received during the exit conference and at other points of time have been incorporated in the respective paragraphs.

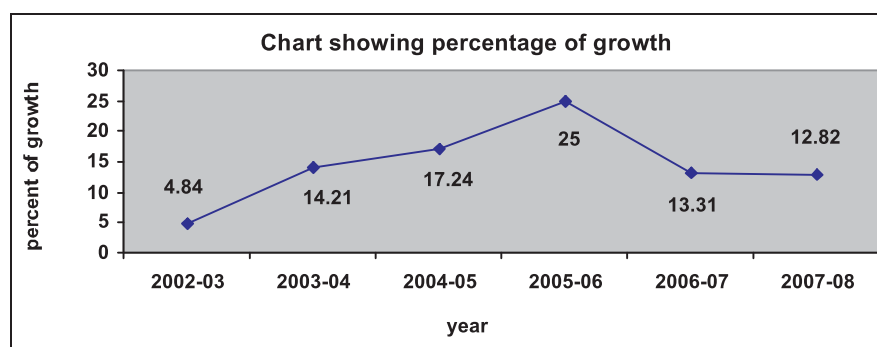
Audit findings

2.3.6 Trend of revenue

The actual/net collection in respect of the revenue receipts of the DTT and percentage of growth to actual collection during the years 2002-03 to 2007-08 are as under:

(Rupees in crore)

Year	Actual collection	Percentage of growth	Year	Actual collection	Percentage of growth
2002-03	3,883.17	4.84 ¹⁷	2005-06	6,500.56	25
2003-04	4,435.07	14.21	2006-07	7,365.79	13.31
2004-05	5,199.93	17.24	2007-08	8,310.49	12.82
Average		12.10			17.04



It is evident from the above table and chart that the average growth rate during 2002-03 to 2004-05 was 12.10 *per cent* while the average growth rate for 2005-06 to 2007-08 was 17.04 *per cent*. Thus, the average growth rate in the post VAT period registered an increase of 4.94 *per cent*. In the post VAT regime the growth over the previous year was the highest at 25 *per cent* in 2005-06. In the two subsequent years this rate tapered down to around 13 *per cent*.

2.3.7 Preparedness and transitional process

2.3.7.1 Creation of awareness among the stakeholders

The Public Relations Branch of the DTT created awareness among the stakeholders through advertisement in the newspapers, electronic media and their website. It also organised *melas*, VAT awareness campaigns, issued the DVAT guide, compact discs and free acknowledgment cards *etc.*, from time to time.

¹⁷ Actual collection during 2001-02 was Rs. 3,704.01 crore.

2.3.7.2 Creation of manuals and training of the staff

The DTT had prepared its own working manual based on the DVAT Act and Rules containing the guidelines/instructions in simple terms for easy comprehension of the staff members.

The normal tenure of the personnel (AVATOs and above) of the DTT is about three years and the process of transfer of the existing staff at the executive level to other departments and new people joining the department is a regular feature. This scenario makes it expedient for the DTT to have sufficient infrastructure in place to conduct training/orientation programmes on a regular basis for their existing staff as well as the new entrants to enhance their professional knowledge and skills.

Audit scrutiny revealed that there was no separate training cell and no guidelines/annual plan were prepared for holding training/orientation programmes on a regular basis. Audit also observed that the department got a grant of Rs. 9.50 lakh during the period 2005-06 to 2007-08 for conducting training, of which Rs. 2.73 lakh remained unutilised.

The DTT stated (October 2009) that training was given to all the new officers who joined the department and a training kit was also given to the trainee officers including the VAT manual. However, the department failed to furnish the data on training imparted to its personnel during the years 2003-04 to 2007-08.

The department assured (October 2009) during the exit conference that a training cell would be set up to impart training.

2.3.7.3 Staff management

Staff management is a key factor for smooth and efficient working of a department. It was seen that there were staff shortages during the last 3 years in various cadres as detailed below:

Year	Group	Sanctioned strength	Person in position	Shortage	Percentage of shortage	No. of dealers
2005-06	A	33	30	03	9.10	1,77,295
	B	333	299	34	10.21	
	C	<u>1,019</u>	<u>649</u>	<u>370</u>	<u>36.31</u>	
	Total	1,385	978	407	29.39	
2006-07	A	33	30	03	9.10	1,91,353
	B	333	262	71	21.32	
	C	<u>1,019</u>	<u>570</u>	<u>449</u>	<u>44.06</u>	
	Total	1,385	862	523	37.76	
2007-08	A	31	26	05	16.13	2,02,433
	B	332	267	65	19.58	
	C	<u>975</u>	<u>528</u>	<u>447</u>	<u>45.85</u>	
	Total	1,338	821	517	38.64	

In the DST regime the dealer was required to submit quarterly returns in a year whereas in the DVAT regime a monthly dealer is required to submit 12 returns, which is three times more than in the DST regime besides increase in the number of dealers. The department had not reviewed its staff deployment according to the enhanced workload. The shortage of staff ranged from 36 per cent to 46 per cent in the group C who is mainly responsible for timely

documentation of the returns to ensure correctness of the revenue. The shortage in the group A category had also increased from 9 per cent to 16 per cent and in the group B category from 10 per cent to 20 per cent. In the background of the increased workload, e-governance becomes extremely important for documentation and analysis.

The Government may consider more emphasis on e-governance and training of staff.

2.3.8 DVAT system

The department implemented an application namely 'DVAT System' to facilitate the capturing of tax related data under the DVAT Act 2004, assist in better tax administration and compliance, introduce dealer friendly e-governance and reduce transaction cost and time.

The audit of the DVAT system revealed the following deficiencies:

- The department did not implement the Public Key Infrastructure¹⁸ and the Short Message Service¹⁹. This resulted in submission of the hard copy of the return which the dealers had already submitted online or manual submission. Thus, the core objective of the computerisation remained largely unachieved.
- The website was not bilingual as envisaged and information like circulars, determination orders, return defaulters' list etc., available in the web page were not being updated periodically. The date of cancellation in respect of cancelled dealers was not available. During the period 2005-06 to 2007-08 the department cancelled the registration certificate of 1012 dealers but dealer-wise record of the cancelled dealers was not made available for scrutiny for verifying the correctness of the dues.
- The website was not user friendly and the dealers were required to re-enter the data which they had already submitted earlier viz. information related to interstate sales and tax adjustment submitted in the form DVAT 16 while submitting form 1 for the Central Sales Tax (CST). This resulted in inconsistencies in the database.
- As the application lacked input controls, database analysis threw up many instances of incomplete data and duplicate data. In the absence of the validation controls, data analysis revealed several instances of inconsistencies in the data, which would render the data unusable as shown in Annexure 'II'.
- Manual intervention from the backend was another cause for making the database inconsistent. There was a case where the refund order amount was more than the refund amount allowed. In three cases the refund allowed was more than the refund amount claimed during refund processing. In 107 cases the refund amount as per the refund order was

¹⁸ The Public Key Infrastructure (PKI) is a framework for creating a secure method for exchanging information over Internet.

¹⁹ Short message service is a form of text messaging on mobile phones.

more than the refund amount processed. In 7,087 cases the refund amount processed was more than the refund amount claimed by the dealer.

- Many modules/subprograms like, Objection & Appeal, Enforcement & Raid, Goods Movement, Library Information, File Movement, Penalty & Offence were being used partially. The activities relating to 'seizure and release of goods/vehicles' were being handled manually. This resulted in dependence on manual system while generating reports relating to these activities which defeated the objectives of computerisation.
- The department was also not ensuring updating of application to incorporate new provisions. The Government allowed reduced rate of tax @ 2% in respect of certain goods sold in the course of interstate trade which were subsequently withdrawn with effect from 07 September 2006. As the department had no mechanism to effect such changes in the application, the dealers were allowed to apply tax at previous lower rate. The rate of tax was applied incorrectly in 1,977 cases (228 cases of 2006-07 and 1,749 cases of 2007-08) resulting in short levy of tax of Rs. 3.33 crore.

Non-mapping of important business rules was yet another deficiency in the application, which resulted in loss of revenue as discussed in the following paragraphs:

- A dealer can claim for refund if his input tax credit exceeds output tax credit or he can opt for its adjustment against the CST payable or carry forward to the next periodic return. In the absence of mapping of such a rule in the system, excess tax credit was claimed against the CST payable amounting to Rs. 79.79 crore in 2,035 cases. In 5,065 cases excess tax credit of Rs. 14.06 crore was claimed as carry forward in the next periodic return.
- The copies of *challans* through which the tax amounts were paid by the dealers in an authorised bank were given to the department along with the return. The bank remitted this amount in the Government account, which is intimated to the department through the bank scrolls. Both these amounts should match. However this rule was not incorporated in the application. It was observed that the tax amount claimed as paid by the dealers in the return was more than the tax amount intimated by the bank. This resulted in short levy of tax amounting to Rs. 201.69 crore in 18,631 cases.
- A dealer can give surety for another dealer and his gross turnover during the year should never fall below such amount of surety given. As this rule was not incorporated in the system, the gross turnover of 2,900 dealers during the year 2008-09 was less than the surety given by them.
- As the frequency of submission of the returns is based on the gross turnover of the dealers, increase/decrease in turnover results in change in the frequency. It was found that there was no provision in the system to maintain history of the dealers in respect of the change of return frequency.

The department stated (October 2009) that the provisions in the software had been made to maintain return-wise database as well as history of the dealers in respect of change of frequency w.e.f. 22 July 2009.

The delayed action to identify the IT requirements affected the implementation of the system and resulted in non-utilisation of the system to its optimum level.

The department may consider analysing its IT needs in advance and pursue the requirements for successful implementation of e-governance to enable the department to derive the benefits of computerisation.

2.3.9 Registration of the new dealers

The DTT issued instructions²⁰ to all the zones/wards for conducting suitable surveys of the unregistered dealers. As per the instructions, the VATIs besides attending to other duties assigned to them, were expected to identify at least 5 such unregistered dealers in their respective wards every week and take necessary action required for their registration under the guidance of their ward-in-charge. They were also required to submit weekly reports to their respective zonal JC/DC. The position of the unregistered dealers required to be detected and actually detected by the department is as under:

Year	No. of wards	No. of weeks	No. of dealers to be detected @ 5 dealers per week	No. of dealers to be detected by wards	No. of dealers detected	Shortage	Percentage of shortage
2005-06	107	52	260	27,820	115	27,705	99.59
2006-07	107	52	260	27,820	47	27,773	99.83
2007-08	107	52	260	27,820	45	27,775	99.84

From the above table it is evident that there was shortfall ranging from 99.59 per cent to 99.84 per cent during the period 2005-06 to 2007-08. As such the basic idea of the unregistered dealers bringing under the tax net was defeated.

Deficiencies in the Act and the Rules

The review revealed a number of deficiencies in the provisions of the DVAT Act and rules. Some of the important deficiencies are discussed below:

2.3.10 Returns

2.3.10.1 Shortcomings in the form DVAT-16

Under section 26 of the DVAT Act and Rule 28(1) of the DVAT Rules, every dealer shall furnish return in the form DVAT-16 for each tax period showing all his purchases and sales including interstate purchases, sales and stock transfers, during the tax period.

²⁰ Circular no. 43 of 2005-06 read with letter no. F 6(25)/ policy-III/VAT/2005/1228 dated 10.01.2006.

A scrutiny of the form DVAT-16 revealed the following shortcomings:

- There is no column in the form DVAT-16 showing the different rates of tax, i.e., 1 per cent, 4 per cent, 12.5 per cent, and 20 per cent at which the purchase was made to justify the ITC claimed by the dealer.
- There is no column showing exempted purchases as a result of which the exempted sale made by the dealer could not be correlated.
- There is no provision in the annexure to the form DVAT-16 to indicate the amounts of the trading stock held by a dealer either at the time of granting the registration certificate or on its cancellation. Further, there was no column to indicate the amount of those purchased goods that were subsequently returned, lost or destroyed and sales that were cancelled or were transferred to the other states or utilised for purposes for which no input tax credit was admissible.
- No column in the return form for calculation of proportionate ITC by the dealer in case of both taxable and exempted goods, which resulted in the amount of ITC claimed by a dealer remaining unreconciled.

In the absence of the above provisions, the exact amount of increase/decrease in the output tax and increase/decrease in tax credit could not be ascertained.

The DTT accepted the audit observations during the exit conference (October 2009) and assured that due care would be taken to modify the DVAT-16 form as per these observations.

2.3.10.2 Absence of a provision for watching the utilisation certificates in respect of statutory forms issued to the dealers

Under the DST regime the dealer was required to submit the utilisation certificate of all statutory forms issued at the time of assessment, whereas in the absence of a similar provision in DVAT Act, the dealers are not submitting the utilisation certificates regularly in respect of the statutory forms issued to them. During the course of audit, it was noticed that the DTT had issued 13,45,166 statutory forms during the period 2005-06 to 2007-08 out of which utilisation certificates in respect of 10,95,999 statutory forms were still outstanding as on 31 March 2008.

The Government should make a provision in the rules for periodical submission of account of utilisation of the statutory forms by the dealers to rule out the possibility of misuse of the statutory forms.

2.3.10.3 Non-availability of records in the assessment folders

Under the DST Act 1974 a dealer was required to submit the returns quarterly in the form ST-1 and form I for the DST and the CST respectively in the concerned ward. Returns and annual accounts were kept in the assessment folder of the dealer.

• Non-availability of the returns

Consequent upon the implementation of the DVAT Act, the department has established the front office, which is responsible for receiving the returns submitted by the dealers and entering data of the returns in the front office

portion of the software on the same day and send them to the concerned ward. Test check of the assessment records of 860 dealers of 12 wards²¹ for the years 2005-06 to 2007-08 revealed that out of 1,596 returns, 362 returns (23 per cent) in respect of 147 dealers were not found in the assessment folders though they were recorded in the front office. Thus, the VATI was not able to ensure that these returns reached their respective wards correctly. It was also possible that these returns might not have been segregated properly to their respective folders in their concerned wards.

• **Non-availability of the annual audited accounts**

As per section 49 of the DVAT Act 2004, if in respect of any particular year the Gross Turn Over (GTO) of a dealer exceeds Rs. 40 lakh or such other amount as may be prescribed then such dealer shall get his accounts audited by an accountant within a period of nine months from the end of that financial year and obtain within that period a report of audit from the accountant. Test check of the assessment records of 16 wards²² for the year 2005-06 to 2007-08 revealed that annual audited accounts of 288 dealers (28 per cent) out of 1,018 dealers were not found in their assessment folders. As the annual audited accounts were not kept in the respective folders of the dealers, no meaningful scrutiny could be conducted by audit.

2.3.10.4 Scrutiny of the returns

Scrutiny of the returns on a regular basis is very important and essential to keep a check on the activities of the dealers. As per the instructions²³ issued by the department, all returns having GTO more than Rs. 5 crore, 50 per cent of returns with GTO ranging between Rs. 2 crore to Rs. 5 crore and 25 per cent of returns with GTO ranging between Rs. 1 crore to Rs. 2 crore and 2 per cent of returns with GTO below Rs. 1 crore are required to be checked by the departmental authorities.

The position of the returns scrutinised and default/penalty assessments done during the year 2006-07 and 2007-08 is as under:

Years	Number of returns due for scrutiny	Number of returns scrutinised	Percentage	Default assessments (u/s 32)	Percentage	Penalty assessments (u/s 33)	Percentage
2006-07	3,36,572	563	0.17	276	0.082	4,658	1.38
2007-08	3,75,656	NA	-	16,913	4.5	23,998	6.38

From the above table it is evident that the percentage of returns scrutinised, default assessments and penalty assessments during the above period was less than 7 per cent. The VATOs/AVATOs of the DTT failed to carry out the prescribed percentages of scrutiny of the returns as per the departmental instructions.

Test check of the records by Audit revealed that the following instances of revenue loss could have been minimised had the required and proper scrutiny been done.

²¹ Ward No. 41, 45, 62, 64, 71, 72, 77, 80, 82, 84, 96, 99.

²² Ward No. 34, 35, 41, 45, 62, 64, 71, 72, 77, 80, 82, 84, 96, 99, 102, 104.

²³ Circular No. 9 of 2005-06 read with letter no. VAT/Policy – II/2005/824, dated 23 June 2005.

• **Excess claim of the input tax credit**

In 12 wards²⁴ of the DTT in 14 cases the dealers claimed input tax credit of Rs. 3.88 crore in the years 2006-07 and 2007-08 on the purchase of tradable goods as against allowable credit of Rs. 2.75 crore. This resulted in excess claim of the input tax credit of Rs. 1.13 crore with consequent short payment of tax by a like amount. Besides, interest of Rs. 46.94 lakh and penalty of Rs. 1.18 crore were also leviable. The department stated (October 2009) that the demand of Rs. 11.77 lakh had been raised in one case.

• **Non-verification of capital assets for claim of ITC**

The departmental instructions require that whenever ITC claim exceeds Rs. 20,000 the VATI of the ward concerned should conduct physical verification of the assets, within 3 weeks of filing of returns by the dealer. Test check of the records of eight wards during the years 2005-06 to 2007-08 revealed that in 17 cases the dealers claimed ITC on purchase of capital goods amounting to Rs. 13.03 lakh but physical verification reports of the assets purchased were not on record.

• **Application of incorrect rate of tax**

The DVAT Act specifies tax rates payable by a dealer in respect of the goods or classes of goods mentioned in the various schedules appended to the Act. If any person furnishes incorrect returns, the Commissioner may assess or reassess the amount of tax due for a tax period. Test check of the records of six wards²⁵ revealed that in eight cases relating to the years 2006-07 and 2007-08, the dealers paid tax on sale valued at Rs. 56.91 crore at lower rates than those prescribed. The assessing authority did not scrutinise the returns of the dealers to ascertain the correctness of rate at which tax was paid. This resulted in short payment of tax of Rs. 3.18 crore. Besides, interest of Rs. 90.46 lakh and penalty of Rs. 3.65 crore were also leviable.

After the cases were pointed out, the department in October 2009 furnished replies in two cases involving Rs. 84.97 lakh, these were not tenable as mentioned below:

Sl. No.	Ward No.	Reply of the Department	Reasons for the reply not being tenable
1.	41	The firm deals in copper wire which is covered in entry no. 28 of IIIrd schedule and taxable @ 4 per cent. Thus, the firm has applied the correct rate of tax.	The firm is dealing in copper wires which are taxable @ 12.5 per cent as determined by the VAT Commissioner on 20 October, 2005.
2.	41	The dealer is dealing in PVC leather cloth, PVC coated fabrics and rexine. These items are taxable @ 4 per cent. There is no incorrect application of rate of tax.	The Commissioner on 31 October, 2006 has determined that cotton coated fabrics do not find any place in any schedule of the Act and are, therefore, taxable @ 12.5 per cent.

²⁴ Ward Nos. 2,4,6,36,40,57,64,71,85,89,94 and Spl. Zone.

²⁵ Ward Nos. 4, 41, 43, 64, 66 & 67.

• **Short payment of tax**

In six wards²⁶ of the DTT, it was seen that in seven cases the dealers incorrectly computed their tax liability aggregating to Rs. 14.51 crore during the year 2006-07 as against the correct amount of Rs. 15.42 crore. This resulted in short payment of tax of Rs. 91.15 lakh. Besides, interest of Rs. 34.07 lakh and penalty of Rs. 1.16 crore were also leviable.

• **Non-payment of tax on sale of capital assets**

Under the DVAT Act, sale of the capital assets is a part of the business of the dealer and, therefore, taxable at the prescribed rate. Test check of the records of eight wards²⁷ revealed that in ten cases the dealers sold the capital assets for Rs. 4.01 crore during the year 2006-07. However, they paid no tax on the above sale. The assessing authority did not scrutinise the returns and annual accounts of the dealers to ascertain the sale of assets and levy tax on it. This resulted in non-payment of tax of Rs. 36.24 lakh. Besides, interest of Rs. 11.38 lakh and penalty of Rs. 39.50 lakh were also leviable.

• **Non-submission of return of commodity wise taxable turnover and tax**

Test check of the records of seven²⁸ wards for the year 2007-08 revealed that out of 241 dealers, 117 dealers had not filed commodity wise taxable turnover and tax alongwith their DVAT-16 returns. In the absence of such return the authenticity of commodity wise tax paid by the dealers could not be verified in audit.

2.3.11 Non-existence of provisions for submission of certain evidence

Under the DVAT Act and Rules there is no provision for furnishing of high sea sales and export related documents alongwith the DVAT-16 returns/DVAT-51 (reconciliation statement), in support of the high sea sales exemption and export turnover claimed by the dealers. This left ample scope for the dealers to evade tax.

The DVAT Act or the Rules made thereunder do not provide for furnishing of the annual returns by the dealers or for furnishing of the documents such as statement of opening and closing stock, statement of purchases and sales, statement showing the details of declaration forms received and utilised etc., alongwith the returns in respect of the transactions carried out by them during a financial year. During the test check of the records it was noticed that the dealers are submitting consolidated annual accounts under Section 49 of the DVAT Act instead of the annual accounts related to the unit for which the dealer is filing the return. The correctness of the purchases and sales shown in the monthly or quarterly return in relation to the opening and closing stock pertaining to a particular accounting period was not ascertainable by the assessing authorities. Non-existence of any provisions in the Act or Rules for furnishing of trading account left ample scope for the dealers to evade tax by suppression of sale and for excess claim of ITC on purchase etc.

²⁶ Ward Nos. 29, 67, 70, 71, 94 and K C S II.

²⁷ Ward Nos. 1, 2, 69, 70, 89, 93, 104 and KCS II.

²⁸ Ward Nos. 41, 45, 71, 72, 77, 84 and 99.

While agreeing with the audit observations the department stated during the exit conference (October 2009) that the scrutiny would be increased.

The Government may consider increasing the percentage of scrutiny of the returns to maximise the revenue.

2.3.12 Filing of the reconciliation returns in DVAT- 51

Under Rule 4 of CST (Delhi) Rules 2005, every dealer effecting sale or branch transfer in the course of inter-state trade or commerce or in the course of export shall furnish a reconciliation return with the prescribed statutory forms in Form DVAT-51 within three months after the end of each quarter.

Test check of the records revealed that the DTT had extended the dates for submission of statutory forms from time to time. This extension is against the spirit and provisions of the Act and also delays the process of assessment under the CST Act. The department had no mechanism to work out the quantum of revenue foregone on account of non-submission of statutory forms during the assessment years 2005-06 to 2007-08 due to exemption of tax/allowance of concessional rate of tax.

During the DST regime every dealer was required to submit the statutory forms²⁹ within a year at the time of assessment to avail the exemption/concession of tax. In case the dealer failed to submit the forms, he was liable to pay tax and interest on account of short/non-submission of statutory forms.

In the DVAT regime there is a deemed/self-assessment and the dealers are not required to submit the statutory forms with the DVAT-16 return. During the test check it was noticed that taking advantage of the said provision, the dealers were applying for extension of time to the assessing authority. As per instructions³⁰ issued by the DTT the statutory forms filed after the last date/extended date of submitting such forms can be considered at the time of framing the assessment provided the dealer has applied for extension of time on or before the due date of filing of such forms. The application for extension should normally be filed alongwith the reconciliation return in the form DVAT-51 of the relevant quarter and the facts should have been mentioned clearly on the form DVAT-51 also. Mention was also made in the Report of the Comptroller and Auditor General of India for the year ended 31 March 2008 regarding failure of the assessing authority to scrutinise the returns and the reconciliation statement in the form DVAT-51 to ascertain the receipt of statutory forms that resulted in short payment of tax of Rs.634.86 crore.

As the department has not done the assessment of all the dealers, the amount of revenue blocked on account of the pendency of statutory forms in respect of those dealers whose assessment have not been completed, can not be quantified.

The DTT stated (October 2009) that the forms could be accepted even at the appellate stage and afterwards. The reply of the department is not tenable as

²⁹ Local Sale ST-I, ST-35, ST-49, and 'C', 'C & E-I/E-II', 'F', 'H', 'I', 'J' for Inter State Sale

³⁰ Circular No.13 for 2007-08 read with letter no. F 6(49)/policy I/VAT/2007-08/718-26 dated 30 January 2008.

the period in which the reconciliation statement is to be submitted is laid down in Rule 4 of the CST Rules.

The Government may consider taking effective steps for submission of the forms and reconciliation statements in time.

2.3.13 Tax audit

The VAT audit cell neither prepares any audit plan for conducting audit work nor does the department set any targets for them. The cases referred by the zonal JCs/DCs are also taken up by the VAT audit branch.

The VAT Audit cell had conducted audit of 158 units during 2006-07 and 243 units during 2007-08 respectively as detailed below:

Year	Number of dealers registered with the department	VAT audit conducted	Percentage of dealers audited
2005-06	1,77,295	Nil	-
2006-07	1,91,353	158	0.082
2007-08	2,02,433	243	0.120

It can be seen that the coverage of dealers by the VAT audit was almost negligible. The DTT stated (July 2008) that no targets were fixed by the Steering Committee³¹ for the years 2005-06 to 2007-08.

The DTT also stated (October 2009) that the cases were selected as per the criteria fixed by the Steering Committee and were allotted to the officers strictly as per the above criteria.

The department stated during the exit conference (October 2009) that maximum pending cases would be taken up by the department through chartered accountants under the supervision of its officials.

The Government may consider setting up a system to cover more dealers under the VAT Audit.

2.3.14 Acceptance and disposal of the appeal cases

As per the provision of section 43(5) of the DST Act, 1975, no appeal against an order of assessment with or without penalty or against an order imposing the penalty shall be entertained by an appellate authority unless such appeal is accompanied by a satisfactory proof of the payment of tax with or without penalty or, as the case may be, of the payment of the penalty in respect of which the appeal has been preferred. Provided that the appellate authority may, if it thinks fit, for reasons to be recorded in writing, entertain an appeal against such order without payment of tax and penalty or on payment of such smaller sum.

Under section 74 of the DVAT Act, any person/dealer who is aggrieved with any order of assessment or any order relating to registration, cancellation of registration, amendment or any other order passed by any VATO/AVATO

³¹ There is a steering committee under the chairmanship of the Commissioner with all Additional Commissioners and Joint Commissioners of the Audit Branch as members of the committee. The steering committee meets at regular intervals to consider and select the criteria for picking up the cases to be audited.

(Assessing Authority) or any other order under this Act can seek remedy before DC/JC/Additional Commissioner by filing an objection.

The year wise position of the objections filed, disposed off, pending is shown below:

(Rupees in crore)					
Year	Opening balance	Receipt	Disposal	Pending	Amount of revenue
2005-06	-	2,061	1,485	576	19.20
2006-07	576	1,998	1,698	876	81.51
2007-08	876	3,393	2,663	1,606	73.70

Audit observed that due to lack of provision in the DVAT Act regarding depositing of the disputed amount of tax, the number of cases has risen from 2,061 to 3,393 during the period 2005-06 to 2007-08 i.e. a 65 per cent increase. This resulted in blocking of revenue amounting to Rs. 73.70 crore.

The department accepted the audit observation during the exit conference (October 2009) and stated that the assessing authority would exercise his discretion appropriately.

The Government may consider fixing a certain amount of disputed amount of tax to be deposited by the dealer before filing an objection.

2.3.15 Enforcement branch/VAT fraud task force

Enforcement Branch works under the Deputy Commissioner (Enforcement) (DC (E)). The main function of the branch is to detect evasion of sales tax by conducting surveys, searches and seizures. The enforcement branch has to ensure that the cases of evasion of tax detected during the searches and seizures are immediately scrutinised and assessed so that the quantum of evasion is determined and realised promptly.

The responsibility of the enforcement branch has increased to detect the cases of evasion of tax, which are likely in the DVAT Act regime where self-assessment is the norm.

No targets of wards/circles to be selected/covered for searches during the relevant years were fixed by the department during the period under report i.e. year 2007-08. However, the enforcement branch conducted the following searches and seizures during the period 2005-06 to 2007-08:

Sl. No.	Assessment year	No. of registered dealers	Number of searches & seizures	percentage of searches & seizures
1.	2005-06	1,77,295	815	0.46
2.	2006-07	1,91,353	987	0.51
3.	2007-08	2,02,433	1,081	0.53

Thus, the percentage of surveys and seizures conducted by the department with reference to the dealers was below 1 per cent which was insufficient to check evasion of tax. The department stated (July 2009) that it had now submitted a proposal in 2008-09 to fix the target of covering 1 per cent of the dealers in each ward in each year.

Audit also observed that the enforcement branch did not maintain any records relating to shortcomings/deficiencies/evasion of tax assessed by the jurisdictional VATO. The results of such searches and seizures conducted were also not on record. Non-maintenance of the records for follow-up of the evasion cases defeated the purpose of detection of evasion of taxes by the enforcement branch.

2.3.16 Internal audit

The DTT has an Internal Audit Cell (IAC) under the charge of the Joint Commissioner (Audit). This cell was to conduct test check of cases of the assessment as per the approved action plan and in accordance with the criteria decided by the steering committee so as to ensure adherence to the provisions of the Act and Rules as well as departmental instructions issued from time to time. In addition, the Directorate of Audit under the Finance Department is entrusted with the internal audit of all offices/departments of the Government.

Scrutiny of the functioning of the IAC revealed that the department has not chalked out any annual audit plan for checking of the cases for the assessment years 2005-06 to 2007-08. In total absence of internal audit, the management had no means of knowing the areas of malfunctioning of systems and did not, therefore, have the opportunity of taking remedial action at the appropriate time. Further, the Directorate of Audit of the Finance Department has also not conducted the internal audit of the DTT during the period under review.

On this being pointed out by audit, the DTT stated that it had submitted an action plan in October 2009 for the IAC for 2009-10 deciding the criteria for selection of the cases to be scrutinised in the IAC for the assessment years 2005-06 and 2006-07.

2.3.17 Conclusion

Analysis of the transitional process from sales tax to VAT revealed various deficiencies in the process and lacunae in the DVAT Act and Rules. Even after expiry of four years after the implementation of the DVAT Act, the DTT is yet to streamline its training activities. Deficiencies in the process of computerisation like non-mapping of the business rules, partial usage of the modules, manual intervention etc., resulted in non-achievement of full benefits. Due to the deficiencies in the returns form DVAT-16 and absence of the provisions for submission of the utilisation of statutory forms, it was not possible to ascertain the exact amount of output/input tax and misutilisation of statutory forms, which may lead to evasion of tax. Abnormally low percentage of scrutiny of returns/tax audit left enough scope for leakage of revenue as test check conducted by audit revealed many cases of non/short realisation/loss of revenue. Internal control in the department was weak as evidenced from the above and coupled with inadequate coverage by the IAC, the department could not take action on deficiencies some of which have been pointed out in this review.

2.3.18 Summary of recommendations

The State Government may consider implementing the recommendations noted under the paragraphs included in the review with special attention to the following:

- more emphasis on e-governance and training of the staff;
- make a provision in the rules for periodical submission on account of utilisation of the statutory forms by the dealers to rule out the possibility of misuse of the statutory forms;
- bringing the maximum number of the dealers under regular assessment as scrutiny of the returns did not ensure maximisation of revenue in terms of the dealers and checks exercised; and
- fixing a certain amount to be deposited by the dealer before filing an objection.

2.4 Other audit observations

Scrutiny of assessment records of value added tax (VAT) indicated several cases of claim of concession/exemption without production of prescribed statutory forms/or on defective statutory forms, concealment of sale/purchase/stock, excess claim of deduction, irregular claim of exemption etc., which resulted in short levy of tax of Rs. 705.37 crore as mentioned in the succeeding paragraphs. These cases are illustrative and are based on 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 do the irregularities persist; they remain undetected till an audit is conducted. There is need for the Government to improve the internal control system so that occurrence of such cases can be avoided, detected and corrected.

2.5 Irregular claim of exemption/concessional rate of tax on statutory forms

Section 6-A of the CST Act and Rule 9 of the CST Rules provide that in case any dealer claims that he is not liable to pay tax under this Act in respect of any goods on the ground that the movement of such goods from one state to another was occasioned by transfer of such goods by him to any other place of his business or to his branch or to his agent or principal as the case may be and not by reason of sale, the burden of proving it shall be on that dealer. For this purpose, he may furnish a declaration in form 'F' signed by the principal officer of the other place of business or his agent or principal as the case may be.

Further, under the CST Act sale of goods by one registered dealer may be allowed at the concessional rate of tax of four *per cent* if the dealer furnishes a declaration in form 'C' covering all the transactions of sales. Where sale of any goods 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 (sale in transit) to the Government or to a registered dealer shall be exempt from tax. However, the exemption is subject to production of a certificate in form 'E - I' or 'E - II' duly signed by the registered dealer from whom the goods were purchased and declaration in form 'C' obtained from the buyer. In the case of export sale or sale made to unit situated in Special Economic Zone, exemption is admissible subject to the furnishing of the form 'H' or the form 'I', as the case may be.

The DTT has prescribed the due date of filing of the statutory forms for claim of exemption as 30th April 2007 in respect of sales made in the first, second and third quarters and 15th March 2008 in respect of transactions made in the fourth quarter of the year 2006-07. Transactions not supported by proper statutory forms attract tax at eight *per cent* in case of declared goods, and at 10 *per cent* or at the rate applicable in the state whichever is higher in case of goods other than declared goods and interest at prescribed rates.

2.5.1 Test check of the records of 45 wards³² during April 2008 to March 2009 indicated that in 159 cases, the dealers claimed exemption on transaction of Rs. 2,179.97 crore during the assessment year 2006-07 on account of branch transfer/consignment sale. However, these dealers failed to furnish the statutory form 'F' by the dates prescribed by the department. The assessing authority also failed to scrutinise the returns and detect non-submission of the form 'F' which resulted in irregular exemption of tax of Rs. 234.17 crore. Besides, interest of Rs. 65.95 crore was also leviable.

After the cases were pointed out, the department stated (October 2009) that total demand of Rs. 2.39 crore has been raised in seven cases. In two cases involving Rs. 51.95 lakh notice has been issued to the dealers. Further report and reply on the remaining cases has not been received. The matter was reported to the Government in June 2009, their reply has not been received (December 2009).

2.5.2 Test check of the records of 66 wards³³ during April 2008 to March 2009 indicated that in 344 cases, the dealers claimed concessional rate of tax on inter-state sale³⁴ of Rs. 1658.49 crore made during the year 2006-07 without furnishing valid statutory form 'C' by the due date. The assessing authority failed to scrutinise the returns and detect non-submission of form 'C' which resulted in short payment of tax of Rs. 114.48 crore. Besides, interest of Rs. 31.79 crore was also leviable.

After the cases were pointed out, the department stated (October 2009) that total demand of Rs. 2.81 crore had been raised in 23 cases. In two cases involving Rs. 28.77 lakh notice has been issued to the dealers. Further report and reply on the remaining cases has not been received (December 2009). The matter was reported to the Government (June 2009), their reply has not been received (December 2009).

2.5.3 Test check of the records of 36 wards³⁵ during April 2008 to March 2009 indicated that in 61 cases the dealers claimed exemption of tax on transit sales³⁴ of Rs. 319.59 crore made during the year 2006-07 without furnishing valid statutory forms by the due date. Further, in 11 of the above cases the dealers furnished only form 'C' against the transit sale of Rs. 18.82 crore but did not pay tax at the concessional rate of four *per cent*. The assessing authority failed to scrutinise the returns and detect non-submission of form 'E-I' and non-payment of tax. This resulted in short payment of tax of Rs. 32.82 crore. Besides, interest of Rs. 8.87 crore was also leviable.

³² Ward Nos. 1, 2, 4, 5, 7, 8, 14, 15, 28, 33, 35, 36, 38, 40, 46, 50, 51, 55, 60, 61, 62, 63, 64, 66, 67, 69, 70, 71, 74, 79, 80, 84, 86, 89, 92, 93, 94, 95, 99, 100, 101, 102, KCS II, KCS IV and Spl zone.

³³ Ward Nos. 1, 2, 4, 5, 6, 7, 10, 11, 13, 14, 15, 16, 17, 18, 21, 23, 25, 28, 33, 35, 36, 37, 38, 39, 40, 43, 46, 48, 49, 50, 51, 53, 55, 57, 60, 62, 63, 64, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 77, 79, 84, 85, 86, 89, 92, 93, 94, 95, 99, 100, 101, 102, 104, KCS II, KCS IV & Spl zone.

³⁴ A sale which occasions the movement of goods from one state to another or is effected by transfer of documents of title to such goods during the movement of goods from one state to another is called 'inter-state sale'. Whereas any subsequent sale during such movement effected by a transfer of documents of title to such goods is called 'transit sale'.

³⁵ Ward Nos. 2, 4, 5, 6, 7, 8, 9, 11, 14, 15, 21, 23, 25, 28, 33, 37, 39, 40, 43, 50, 55, 60, 62, 64, 68, 73, 93, 94, 99, 100, 101, 102, 104, KCS II, KCS IV and Spl. Zone.

After the cases were pointed out, the department stated (October 2009) that total demand of Rs. 4.44 crore had been raised in five cases. Further report and reply on the remaining cases has not been received (December 2009). The matter was reported to the Government (June 2009); their reply has not been received (December 2009).

2.5.4 Test check of the records of 17 wards³⁶ during April 2008 to March 2009 indicated that in 27 cases, the dealers claimed exemption of tax on interstate sale of Rs. 19.81 crore made during the year 2006-07 without furnishing the form 'H' by the due date. The failure of the assessing authority to scrutinise returns and the reconciliation statements in DVAT 51 to ascertain the receipt of the statutory forms resulted in short payment of tax of Rs. 2.16 crore. Besides, interest of Rs. 56.52 lakh was also leviable.

After the cases were pointed out, the department stated (October 2009) that total demand of Rs. 48.41 lakh had been raised in four cases. Further report and reply on the remaining cases has not been received. The matter was reported to the Government in June 2009, their reply has not been received (December 2009).

2.5.5 Test check of the records of six wards³⁷ conducted during April 2008 to March 2009 revealed that in nine cases, the dealers claimed exemption of tax on interstate sale of Rs. 9.76 crore made during the year 2006-07 without furnishing the form 'I' by the due date. The failure of the assessing authority to scrutinise returns and the reconciliation statements in DVAT 51 to ascertain the receipt of the statutory forms resulted in short payment of tax of Rs. 1.06 crore. Besides, interest of Rs. 28.49 lakh was also leviable.

The matter was reported to the department and the Government in June 2009, their reply has not been received. (December 2009).

2.5.6 Test check of the records of three wards³⁸ of DTT conducted during April 2008 to March 2009 indicated that in three cases dealers claimed concessional rate of tax on interstate sale/exemption on branch transfer of Rs. 10.31 crore in the year 2006-07. Such claims were not supported by the valid statutory forms or transactions mentioned in the forms related to the previous year as mentioned below:

(Rupees in lakh)

Sl. No.	Name of the Dealer	TIN No.	Ward No.	Period (Quarter wise)	Amount of defective form 'C'/'F'	Tax payable	Interest (@ 15% P.A)	Total tax effect	Nature of defect
1	M/s. Chaudhary Skin Trading Company	7480005543	33	I to III	717.76	57.42	17.98	75.40	Transactions mentioned in the Form 'C' relate to previous year 2005-06
2.	M/s. Tulsi	7890165901	99	III	25.75	2.58	0.81	3.38	Form 'F' is not signed by the authorised person
				IV	4.26	0.43	0.08	0.50	
3.	M/s. Hewlett Packard India Sales Pvt. Ltd.	7100219540	KCS-II	III	283.71	17.02	5.33	22.35	duplicate form 'C' submitted
	Total				1,031.48	77.44	24.20	101.64	

³⁶ Ward Nos. 3, 4, 5, 13, 25, 37, 55, 63, 66, 67, 69, 71, 92, 94, 95, 101 and KCS II.

³⁷ Ward Nos. 16, 35, 69, 80, 104 and KCS II.

³⁸ Ward Nos. 33, 99 and KCS II.

The assessing authority did not scrutinise the statutory forms submitted by the dealers and ascertain the correctness of claim of concessional rate of tax on interstate sale/exemption on branch transfer, made by the dealers in their returns. This resulted in short payment of tax of Rs. 77.44 lakh. Besides, interest of Rs. 24.20 lakh was also leviable.

The matter was reported to the department and the Government in June 2009, their reply has not been received (December 2009).

2.6 Concealment of sale/purchase/stock

Under the DVAT Act, a person who furnishes a return which is false, misleading, or deceptive in a material particular or omits from it any matter or thing without which the return is false, misleading in a material particular, shall be liable to pay, by way of penalty, a sum of Rs. 10,000 or the amount of tax deficiency, whichever is greater. In addition, interest on tax computed at the rate of 15 *per cent* per annum on daily basis is also leviable.

2.6.1 Test check of the records of three wards³⁹ during April 2008 to March 2009 indicated that in four cases the closing stock as per details given in the returns filed by the dealers during the year 2006-07, amounted to Rs. 879.51 crore, as against Rs. 267.05 crore disclosed in the annual audited accounts. This resulted in concealment of closing stock of Rs. 612.46 crore with consequent short payment of tax of Rs. 71.26 crore. Besides, interest of Rs. 22.37 crore and penalty of Rs. 71.26 crore were also leviable.

The matter was reported to the department and the Government in June 2009, their reply has not been received (December 2009).

2.6.2 Test check of the records of five wards⁴⁰ during April 2008 to March 2009 indicated that in five cases relating to the year 2006-07, the dealers included purchase of trading goods of Rs. 77.82 crore only in their returns as against Rs. 79.57 crore disclosed in the annual audited accounts. This resulted in short account of purchases amounting to Rs. 1.75 crore with consequent short payment of tax of Rs. 13.54 lakh. Besides, interest of Rs. 4.25 lakh and penalty of Rs. 13.54 lakh were also leviable.

The matter was reported to the department and the Government in June 2009, their reply has not been received (December 2009).

2.6.3 Test check of the records of 16 wards⁴¹ during April 2008 to March 2009 indicated that in 22 cases the sale turnover was shown as Rs 327.04 crore by the dealers in their returns, filed during the year 2006-07 as against actual sale of Rs. 366.13 crore disclosed in the annual audited accounts. This resulted in concealment of sale of Rs. 39.09 crore with consequent short payment of tax of Rs. 3.80 crore. Besides, interest of Rs. 1.11 crore and penalty of Rs. 3.80 crore were also leviable.

After the cases were pointed out, the department stated (October 2009) that demand of Rs. 70.32 lakh has been raised in one case. Further report and reply on the remaining cases has not been received (December 2009). The matter

³⁹ Ward Nos. 100, 104 & KCS-II.

⁴⁰ Ward Nos. 14, 70, 75, 89, and KCS II.

⁴¹ Wards Nos. 4, 6, 7, 15, 23, 25, 36, 39, 57, 61, 62, 71, 77, 86, 102, KCS-IV.

was reported to the Government (June 2009), their reply has not been received (December 2009).

2.7 Excess claim of deduction on stock transfer

Under the DVAT Act, a person who furnishes a return under the Act, which is false, misleading, or deceptive in a material particular or omits from it any matter or thing without which the return is false, misleading in a material particular, shall be liable to pay, by way of penalty, a sum of Rs. 10,000 or the amount of tax deficiency, whichever is greater. In addition, interest on tax at the rate of 15 per cent per annum computed on daily basis is also leviable.

Test check of the records of two wards⁴² of DTT during April 2008 to March 2009 indicated that in four cases the dealers mentioned stock transfer amounting to Rs. 258.21 crore in the quarterly reconciliation statements filed in DVAT-51 in 2006-07. However, in the returns filed for the same periods, an amount of Rs. 344.61 crore was claimed. This resulted in excess claim of deduction on account of stock transfer of Rs. 86.40 crore with consequent short payment of tax of Rs. 9.09 crore treating it as interstate sale without statutory forms. Besides, interest of Rs. 2.86 crore and penalty of Rs. 9.09 crore were also leviable.

The matter was reported to the department and the Government (June 2009), their reply has not been received (December 2009).

2.8 Incorrect claim of exemption on form 'F' containing multiple month transactions

Under Section 6-A of the CST Act read with Rule 12(5) of the CST (R&T) Rules, declaration in form 'F' may cover transfer of goods effected during a period of one calendar month by a dealer to any other place of his business or to his agent or principal outside the state as the case may be. Otherwise, the transactions are to be treated as interstate sale without forms and taxed accordingly.

Test check of the records of 11 wards⁴³ of DTT during April 2008 to March 2009 indicated that in 15 cases relating to the assessment year 2006-07, the dealers claimed exemption of tax on account of branch transfer/consignment sales of Rs. 88.35 crore on the basis of form 'F' which covered transactions beyond one calendar month and was thus, liable to be treated as interstate sale not supported by valid declarations. This resulted in short realisation of tax of Rs. 8.90 crore. Besides, interest of Rs. 2.74 crore was also leviable.

The matter was reported to the department and the Government in June 2009, their reply has not been received (December 2009).

2.9 Short-levy/non-recovery of interest on delayed remittance of Government revenue

As per instructions in vogue, where the collecting branch and focal point branch are in the same city/agglomeration, the settlement of transaction with

⁴² Wards Nos. 89 and KCS-II.

⁴³ Ward Nos. 2, 49, 57, 60, 63, 65, 67, 80, 89, KCS II & KCS V.

Central Accounts Section (CAS), RBI, Nagpur is required to be completed within T+3⁴⁴ working days. Total amount, which has not been remitted in time and the penalty due along with the details of the individual cases, is to be intimated by concerned Ministry/Department to the head office of the bank concerned on a quarterly basis by the 15th of the following month. The period of delay for this purpose will be counted from the date of receipt of the collection at the receiving branch (actual realisation of money in the bank) till they are reported to RBI, CAS, Nagpur for credit to the Government. The interest/penalty on delayed remittance shall be charged at Bank rate plus two *per cent*. The bank rate as notified by Reserve Bank of India remained at six *per cent* for the period 2003-04 to 2006-07.

2.9.1 Test check of the records of DTT and Pay and Accounts Office-21 between January 2009 and June 2009 indicated that during the period 2003-04 to 2006-07 the notified banks of DTT remitted the amount of tax, interest or penalty into RBI after a delay of more than 5 days. The PAO-21 levied a penal interest of Rs. 1.61 crore on the defaulting banks for delay in remittance of government revenues during the period 2003-04 to 2005-06 as against leviable amount of Rs. 2.77 crore. This resulted in short levy of interest of Rs. 1.16 crore.

The matter was pointed out to the department and the Government in June 2009, their reply has not been received (December 2009).

2.9.2 Test check of the records of DTT and Pay and Accounts Office-21 between January 2009 and May 2009 indicated that during the period from 2003-04 to 2006-07, the notified banks of DTT remitted the amount of tax, interest or penalty into RBI after a delay of more than 5 days. The PAO-21 raised the demand of Rs. 2.90 crore against the defaulting banks for delayed remittance. However, up to May 2009 recovery of Rs. 0.47 crore only had been effected from these defaulting banks. This resulted in non-recovery of demand of Rs. 2.43 crore.

The matter was pointed out to the department and the Government (June 2009), their reply has not been received (December 2009).

2.10 Irregular claim of exemption of tax on branch transfer/consignment sale to places not mentioned in the RC

Sub-section (1) of Section 7 of the CST Act stipulates that every dealer has to declare his places of business in other States at the time of seeking registration. Further, Sub-section (1) of Section 6-A read with Rule 12(5) of the CST (R&T) Rules provides that a declaration in form 'F' has to be submitted for transfer of goods to the other place of business or to his agent or principal. Otherwise, the transactions are to be treated as interstate sale and taxed accordingly. The dealer shall also be liable to pay simple interest at 15 *per cent* per annum computed on a daily basis under Section 42 of the DVAT Act.

⁴⁴ As per notification dated 10.10.2006, the permissible period for remittance of Government revenues with retrospective effect would not include the put through date at RBI for calculating Transaction date + 3 working days.

Test check of the records of three wards⁴⁵ conducted during the period from April 2008 to March 2009 indicated that in three cases the dealers claimed exemption on the basis of form 'F' on stock transfer amounting to Rs. 10.93 crore to places other than those specified in the registration certificate (RC). As the stock was not transferred to the declared branches, claim of exemption was irregular. The assessing authority did not scrutinise the forms and the RC to verify the correctness of the claim. This resulted in irregular claim of exemption of Rs. 10.93 crore with consequent short payment of tax of Rs. 1.09 crore. Besides, interest of Rs. 27.50 lakh was also leviable.

The matter was reported to the department and the Government (June 2009), their reply has not been received (December 2009).

2.11 Non-reversal of input tax credit

Under Section 10(3) of the DVAT Act, 2004 read with Rules 6 and 7 of DVAT Rule, 2005, the input tax credit claimed on purchase made locally is required to be reduced at the prescribed percentage of rate of tax leviable on such goods which was transferred from Delhi, other than by way of sale, to a branch of the registered dealer or to a consignment agent. Non-reversal of input tax credit attracts penalty at the rate of one *per cent* of tax deficiency per week or Rs. 100 per week for the period of default, whichever is higher and interest at prescribed rate.

Test check of the records of three wards⁴⁶ conducted during April 2008 to March 2009 indicated that in three cases the dealers claimed exemption on stock transfer of goods worth Rs. 3.15 crore during the assessment year 2006-07, which were purchased locally. However, input tax credit availed on them was not reversed. This resulted in short payment of tax of Rs. 12.60 lakh. Besides, interest of Rs. 5.01 lakh and penalty of Rs. 17.37 lakh were also leviable.

The matter was reported to the department and the Government (June 2009), their reply has not been received (December 2009).

2.12 Incorrect carry forward of tax credit

Under the DVAT Act, 2004, an amount paid by a person in excess of the amount due from him can be carried forward to the next tax period as a tax credit under certain circumstances or at the option of the person. Incorrect/excess carry forward of tax credit attracts penalty at the rate of one *per cent* per week or Rs. 100 per week for the period of default whichever is greater. The dealer shall also be liable to pay simple interest at the rate of 15 *per cent* per annum computed on daily basis.

Test check of the records of ward no. 60 during April 2008 to March 2009 indicated in one case that the dealer brought forward tax credit of Rs. 6.26 lakh in his return, for the first quarter of the year 2006-07 although net tax credit of Rs. 1.75 lakh only was available to be carried forward from previous tax period. This resulted in incorrect carry forward of tax credit of Rs. 4.51 lakh with consequent short payment of tax by the like amount. Besides, interest of Rs. 2.04 lakh and penalty of Rs. 7.08 lakh were also leviable.

⁴⁵ Ward Nos. 33, 49 and KCS-II.

⁴⁶ Ward Nos. 60, 100 and 101.

The matter was reported to the department and the Government (June 2009), their reply has not been received (December 2009).

2.13 Irregular claim of reduction of tax/increase of refund through revised return

Section 28 of the DVAT Act and Rule 29 made thereunder stipulates that, if, within four years of the making of an assessment, any person discovers a mistake or error in any of the returns filed by him under this Act and he has as a result of the mistake or error paid more tax than was due under this Act, he may lodge an objection against the assessment in the manner and subject to the conditions stipulated under Section 74 of the Act. Incorrect claim attracts penalty at the rate of one *per cent* of tax deficiency per week or Rs. 100 per week for the period of default, whichever is higher and interest at prescribed rates.

Test check of the records of ward no 44 conducted between April 2008 to March 2009 for the assessment year 2006-07 indicated that in one case the dealer worked out tax payable as Rs. 11,900 in the original return filed for the month of July 2006. The return was revised subsequently on 12th January 2007 and refund of Rs. 4.32 lakh was claimed without going in for objection in accordance with the Section 74 of the Act, which was irregular. The assessing authority did not scrutinise the returns of the dealer to disallow claim of reduction of tax demand/claim of refund made by the dealer in the revised return. This resulted in incorrect claim of reduction of tax/claim of refund of Rs. 4.44 lakh with consequent short payment of tax by the like amount. Besides, interest of Rs. 1.59 lakh and penalty of Rs. 5.50 lakh were also leviable.

After the case was pointed out, the department stated in October 2009 that demand of Rs. 11.53 lakh has been raised. Further report on the recovery of the amount has not been received (December 2009).

The matter was reported to the Government (June 2009), their reply has not been received (December 2009).

2.14 Non-payment of interest

Under Section 3(4) of the DVAT Act, the dealer is liable to pay net tax within twenty eight days of the conclusion of dealer's tax period. Delays in payment of tax attract interest at the rate of 15 *per cent* per annum computed on daily basis for the period of default.

Test check of the records of ward 79 during April 2008 to March 2009 indicated that in one case the dealer deposited tax of Rs. 38.42 lakh for the monthly tax periods of the assessment year 2006-07 after the due dates. However, the dealer did not pay interest for the delays ranging from 89 to 481 days. The assessing authority also did not scrutinise the returns to detect the non-payment of interest. This resulted in non-realisation of interest of Rs. 4.48 lakh.

The matter was reported to the department and the Government (June 2009), their reply has not been received (December 2009).