CHAPTER II: TAXES ON SALES, TRADE ETC.

2.1 Results of audit

Test check of the records relating to assessments and refunds of sales tax/value added tax (VAT) in Excise and Taxation Department, conducted during the year 2008-09, revealed irregularities in assessment, levy and collection of tax involving Rs. 208.32 crore in 863 cases, which broadly fall under the following categories:

(Rupees in crore)

Sr. No.	Category	Number of cases	Amount
1.	**Recovery of sales tax/VAT in arrears (A review)**	1	38.23
2.	Underassessment of turnover under Central Sales Tax Act (CST Act)	117	48.67
3.	Application of incorrect rates of tax	112	25.97
4.	Non-levy of penalty	37	19.92
5.	Incorrect computation of turnover	36	10.76
6.	Non-levy of interest	44	2.69
7.	Other irregularities	516	62.08
Total		**863**	**208.32**

During the year 2008-09, the department accepted underassessments of turnover under CST Act, application of incorrect rates of tax, non-levy of penalty/interest, incorrect computation of turnover etc. of Rs. 8.48 crore involved in 106 cases of which 67 cases involving Rs. 7.14 crore had been pointed out during 2008-09 and the remaining in the earlier years. The department recovered Rs. 81.07 lakh in 61 cases during the year 2008-09, of which 39 cases involving Rs. 52.33 lakh related to the year 2008-09 and the balance to the earlier years.

A review of **"Recovery of sales tax/VAT in arrears'"** involving Rs. 38.23 crore and a few illustrative audit observations involving Rs. 5.48 crore are mentioned in the succeeding paragraphs.

2.2 Review of Recovery of sales tax/VAT in arrears

2.2.1 Highlights

- The outstanding arrears increased from Rs. 440.49 crore to Rs. 1,591.87 crore (361 *per cent*) over the period from April 2003 to March 2008. The pace of recovery was very slow against the mounting arrears.

(Paragraph 2.2.7)

- No time limit has been prescribed for attachment and disposal of attached property, and for issue of revenue recovery certificate against defaulting dealer under the Haryana General Sales Tax /Haryana Value Added Tax Act. This led to accumulation of arrears of Rs. 8.10 crore.

(Paragraph 2.2.8)

- Lack of co-ordination between departmental authorities to take effective action to recover the dues led to accumulation of arrears of Rs. 12.68 crore.

(Paragraph 2.2.9.2)

- Rs. 10.84 crore could not be recovered due to lack of provisions in Haryana Value Added Tax Act regarding entertainment of appeals on pre-payment of additional demands in dispute.

(Paragraph 2.2.10)

- Collection of Rs. 152.40 crore was held up due to non-vacation of stay orders or non-disposal of appeals by first appellate authority.

(Paragraph 2.2.13)

2.2.2 Introduction

The assessment, levy and collection of sales tax in Haryana was governed under the Haryana General Sales Tax Act, 1973 (HGST Act) and the rules framed thereunder upto 31 March 2003 and thereafter under the Haryana Value Added Tax Act, 2003 (HVAT Act) and the rules framed thereunder. Besides, Central Sales Tax Act, 1956 (CST Act) and the rules made thereunder are in operation for inter-State sales (ISS). After making final assessment, a tax demand notice (TDN) is served on the dealer for the payment of assessed demand, if any, specifying the time (not exceeding 30 days) by which demand shall be payable. For delayed/non-payment of tax due, interest and penalty are also leviable at the prescribed rates under the provisions of Acts/Rules. Thus, amount of tax, interest and penalty which remains unpaid constitute arrears of sales tax/VAT. If the dues are not paid by the dealer within time specified in the TDN or the extended period, the assessing authority (AA) may apply to the Collector to issue revenue recovery certificate (RRC), and take all legal steps such as attachment of property/assets and detention of the dealer, if necessary, for recovery of dues as arrears of land revenue under the Punjab Land Revenue Act, 1887 (PLR Act) as applicable to Haryana.

2.2.3 Organisational set up

At the Government level, Financial Commissioner and Principal Secretary, Excise and Taxation Department (FCET) is responsible for the administration of sales tax laws in the State. At the department level, the overall control and supervision of the sales tax organisation is vested with the Excise and Taxation Commissioner Haryana (ETC). The ETC is assisted by Additional Excise and Taxation Commissioners (AETCs), Joint Excise and Taxation Commissioners (JETCs), Deputy Excise and Taxation Commissioners (Sales Tax) {(DETCs (ST)} and allied staff at headquarters. He is assisted by JETCs at range level (four ranges)[1], 22 offices of DETCs at district level and Excise and Taxation Officers (ETOs), Taxation Inspectors and other allied staff in the administration of the HGST/HVAT/CST Acts/Rules in the Department. ETOs have been vested with the powers of Assistant Collectors, Grade I and DETCs as Collectors under section 27 of the PLR Act for effecting recoveries of tax, interest and penalty imposed under the Acts but remaining unpaid by due date(s) as arrears of land revenue.

2.2.4 Audit objectives

The review was conducted with a view to ascertain:

- whether adequate provisions in the Acts/Rules exist for recovery of arrears;
- whether extent of compliance of procedure/codal provisions and executive instructions ensure timely collection of arrears;
- the efficiency and effectiveness of the State machinery in collection of arrears; and
- whether adequate internal control mechanism exists for prompt realisation of arrears of revenue.

2.2.5 Scope of audit and methodology

The review covered the period from 2003-04 to 2007-08 and was conducted from May 2008 to March 2009 with reference to the records relating to arrears of sales tax/VAT available in the offices of 13 DETCs.[2] Out of these, 12 DETCs were sampled statistically after stratifying the districts on the basis of tax arrears to ensure a representative (optimum) coverage as per details given below:

Number of DETC	Name of District	Tax arrears ranged between
Two	Faridabad (East) and Faridabad (West)	Exceeding Rs. 300 crore
Two	Ambala and Panipat	Rs. 100 crore and Rs. 300 crore
Four	Bhiwani, Jagadhari, Karnal and Sonipat	Rs. 25 crore and Rs. 100 crore

[1] Ambala, Faridabad, Hisar and Rohtak.
[2] Ambala, Bhiwani, Faridabad (East), Faridabad (West), Fatehabad, Jagadhari, Jhajjar, Jind, Kaithal, Karnal, Panchkula, Panipat and Sonipat.

Number of DETC	Name of District	Tax arrears ranged between
Four	Jhajjar, Jind, Kaithal and Panchkula	Less than Rs. 25 crore

An additional district Fatehabad was included in the scope of review on the suggestion made by the department during entry conference.

2.2.6 Acknowledgement

The Indian Audit and Accounts Department acknowledges the co-operation of the Department in providing necessary information and records for audit. An entry conference was held in December 2008 and attended by the FCET, ETC and AETC. The audit objectives, methodology and selection of districts were discussed. The draft review report was forwarded to the Government and the department in June 2009 and was discussed in the exit conference held on 13 July 2009. The Financial Commissioner and Principal Secretary, Excise and Taxation Department (FCET) represented the Government, while the ETC and two AETCs represented the department. However, the department has sent reply to the audit observations on 17 July 2009. The response of the Government and department to the audit observations have been appropriately incorporated in the respective paragraphs.

A review of 'Recovery of Sales tax/VAT in arrears' was conducted by audit. The review revealed a number of system and compliance deficiencies which are discussed in the following paragraphs.

2.2.7 Trend of revenue and arrears

The sales tax/VAT revenue pending collection as intimated by the ETC in August 2008 and revenue actually realised during the years 2003-04 to 2007-08 are mentioned in the following table:

(Rupees in crore)

Year	Arrears at the beginning of the year	Arrears added during the year	Total	Collection of demand during the year	Arrears at the end of the year	Percentage of collection to total tax arrears
(1)	(2)	(3)	(4) (2+3)	(5)	(6) (4-5)	(7) (5 to 4)
2003-04	440.49	484.30	924.79	207.40	717.39	22.43
2004-05	717.39	449.64	1,167.03	257.99	909.04	22.10
2005-06	909.04	453.20	1,362.24	220.09	1,142.15	16.16
2006-07	1,142.15	448.92	1,591.07	322.57	1,268.50	20.27
2007-08	1,268.50	971.52	2,240.02	648.15	1,591.87	28.94

Audit observed that:

- The pace of recovery process was very slow in comparison to the mounting arrears. The percentage of collection to total sales tax/VAT arrears ranged between 16 and 29 *per cent*. The department could

recover an average only 22 *per cent* during the period 2003-04 to 2007-08.

- Amount of arrears increased from Rs. 440.49 crore as on 1 April 2003 to Rs. 1,591.87 crore (361 *per cent)* as on 31 March 2008.

Revenue raised vis-a-vis recovery of arrears

(Rupees in crore)

Year	Sales tax/VAT receipts	Amount of arrears recovered	Percentage of collection of arrears to sales tax/VAT receipts
(1)	**(2)**	**(3)**	**(4) (3 to 2)**
2003-04	3,838.00	207.40	5.40
2004-05	4,760.91	257.99	5.42
2005-06	5,604.45	220.09	3.93
2006-07	6,853.24	322.57	4.71
2007-08	7,720.98	648.15	8.39

- The percentage of collection of arrears to sales tax/VAT realised, ranged between four and eight *per cent*.

(Rupees in crore)

Year	Arrears at the end of the year	Amount of arrears more than five years old	Amount of arrears less than five years old	Percentage of arrears for more than five years to arrears at the end of the year
(1)	**(2)**	**(3)**	**(4) (2 - 3)**	**(5) (3 to 2)**
2003-04	717.39	161.04	556.35	22.45
2004-05	909.04	160.78	748.26	17.69
2005-06	1,142.15	191.47	950.68	16.76
2006-07	1,268.50	283.40	985.10	22.34
2007-08	1,591.87	296.68	1,295.19	18.64

- Out of total arrears of Rs. 1,591.87 crore, arrears of Rs. 296.68 crore (19 *per cent*) were outstanding for more than five years.

- Percentage of arrears for more than five years old to arrears at the end of the year ranged between 17 and 22 *per cent*.

Substantial accumulation of arrears of sales tax/VAT shows that the Department did not deal with the problem vigorously. Effective steps for collecting sales tax/VAT arrears may be taken to augment Government revenue.

Audit findings

System deficiencies

2.2.8 Non-fixation of time limit

Under the provisions of PLR Act, in cases where arrears are to be recovered as arrears of land revenue, action to attach movable/immovable property could be initiated by DETC. He is required to apply to ETC who is competent to accord sanction for sale/auction of attached property to adjust the sale proceeds against the tax dues.

Amount of tax, interest and penalty remaining unpaid by the dealer after the due date in pursuance to the TDN is recoverable in accordance with the provisions of the Revenue Recovery Act, 1890 (RR Act). When the AA cannot recover the dues from the defaulter due to closure of his business and transfer to other place within or outside the State, the DETC is required to send the RRC to the DETC-cum-Collector (Collector)/revenue authority {Deputy Commissioner (DC)} of the district concerned within or outside the State respectively for recovery of dues as arrears of land revenue.

Audit observed that no time limit has been prescribed for attachment and disposal of attached property and for issue of RRC against defaulting dealer under the HGST/HVAT Act.

Due to non-fixation of time limit for disposal of attached property and issue of RRCs, arrears of Rs. 8.10 crore could not be recovered as discussed in the following paragraphs:

2.2.8.1 Disposal of attached property

Test check of the records of three[3] offices of DETC revealed that warrants of attachment of property were issued in respect of six dealers for the recovery of arrears amounting to Rs. 3.84 crore between February 1994 and March 2005. Out of these, five cases were sent to the ETC for according sanction for sale/disposal of properties between May 2003 and January 2008, who accorded sanction in three cases (except two cases one each Jagadhari and Jhajjar) between July 2003 and December 2004. Thus, there was delay on the part of DETC which ranged between 13 and 181 months as detailed below:

Name of DETC	Number of cases	Date of attachment of property	Date of cases sent to ETC	Delay on the part of DETC to send cases to ETC (months)	Amount of dues (Rupees in lakh)
Jagadhari	3	February 1994 to October 2002	September 2004 to May 2007 (one case not sent)	22 to 181	63.53

[3] Jagadhari, Jhajjar and Kaithal.

Name of DETC	Number of cases	Date of attachment of property	Date of cases sent to ETC	Delay on the part of DETC to send cases to ETC (months)	Amount of dues (Rupees in lakh)
Jhajjar	2	February 1999 to March 2005	May 2003 to January 2008	33 to 50	241.99
Kaithal	1	June 2003	August 2004	13	78.35
Total	**6**				**383.87**

Absence of provision of fixation of time limit regarding attachment and disposal of attached property and lack of effective follow up action resulted in accumulation of arrears of Rs. 3.84 crore.

During the exit conference, the department admitted the facts and stated that the matter would be pursued with the Government.

2.2.8.2 Issue of recovery certificates

Test check of the records of seven[4] offices of DETC revealed that the AAs finalised the assessments in respect of 14 dealers for the assessment years (AYs) between 1994-95 and 2003-04 and raised additional demands of Rs. 4.26 crore between January 2001 and June 2007. Since these dealers failed to deposit the tax within time specified/extended period of the issue of TDNs, the AAs had declared the recovery of dues to be recovered as arrears of land revenue. The AAs were required to initiate recovery proceedings and apply to DETC of the district for issuing RRC to the Collector/DC concerned within or outside the State.

- In respect of seven dealers (additional demands of Rs. 3.24 crore created between January 2001 and February 2005), three[5] DETCs had issued RRCs after the lapse of period ranging from nine to 54 months.
- In respect of seven dealers (additional demands of Rs. 1.02 crore created between March 2001 and June 2007), five[6] DETCs had not issued RRCs even after the lapse of period ranging from 15 to 60 months.

Non-fixation of a time limit for initiating the recovery proceedings led to laxity in pursuing the outstanding Government dues. In the absence of any time limit specified for issue of RRCs under the Acts/Rules/executive instructions, the AAs took very long period to initiate and finalise recovery proceedings, due to which the arrears remained unrealised resulting in blockage of revenue of Rs. 4.26 crore due to the Government.

After the case was pointed out, the department stated that no time limit could be prescribed for issue of RRC as it took time to enquire about the whereabouts of the defaulting dealer and immovable property owned by him. However, during the exit conference, the department admitted the facts and stated that the matter would be pursued with the Government.

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4. Faridabad (West), Fatehabad, Jhajjar, Kaithal, Panchkula, Panipat and Sonipat.
5 Faridabad (West), Fatehabad and Panipat.
6 Faridabad (West), Jhajjar, Kaithal, Panchkula and Sonipat.

2.2.9 Non-recovery of inter-district and inter-State arrears due to lack of co-ordination between the departmental officers and revenue authorities

When a defaulter does not own any movable/immoveable property in a district or within the State and enquiries show that he has properties in other districts/States, the AA should apply to DETC giving full details of the defaulter, his address, arrears due for recovery and action taken, if any, for collection duly enclosing a certificate that the arrears are not recoverable within his jurisdiction or in the State. On receipt of report, DETC will send RRC to the Collector of the district concerned within the State or to the DCs of other States, where the defaulter owns property or has shifted his business etc., for enforcing collections. The Collector of the district where property of the defaulter is situated is required to recover the amount as if it were an arrear of land revenue which has accrued in his own district.

2.2.9.1 Test check of the records of 11 offices[7] of DETC revealed that the AAs finalised the assessments for the AYs between 1988-89 and 2004-05 and created additional demands of Rs. 19.96 crore between March 1993 and March 2008. Enquiries revealed that all the dealers had closed down and shifted their business, and their properties (including residential) outside the State. DETC had sent RRCs to the DCs of the concerned States between September 2001 and July 2008. Out of Rs. 19.96 crore, DETCs had furnished incorrect address or insufficient details of defaulters in three cases involving Rs. 3.69 crore. The arrears of Rs. 19.96 crore remained uncollected due to: (i) lack of co-ordination of departmental authorities with DCs of other States; (ii) improper/non-response from the DCs of other States, and (iii) furnishing of incorrect/insufficient details of defaulters to the DCs of other States.

During the exit conference, the department stated that DETCs had been directed to look after their arrears even if RRCs sent to other States. It would be their responsibility to pursue these cases to recover the arrears.

2.2.9.2 Test check of the records of eight[8] offices of DETC revealed that RRCs for collection of Rs. 12.68 crore pertaining to 15 defaulters were sent to the Collectors of the concerned districts within the State between January 2003 and July 2008 where the properties of the defaulters were situated. But even after a lapse of nine to 75 months, arrears of Rs.12.68 crore remained uncollected either due to lack of response from the departmental officers in other districts or due to lack of concerted efforts and co-ordination among the officers of the department.

During the exit conference, the department stated that in respect of inter-district arrears, the Collector-cum-DETC of the concerned district would pursue the matter regarding recovery of arrears in the case where the defaulter had shifted to other districts within the State. However, the DETCs were being directed to take extra care in such cases and to have a cross co-ordination with the revenue authorities.

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[7] Ambala, Bhiwani, Faridabad (East), Faridabad (West), Fatehabad, Jhajjar, Jind, Kaithal, Karnal, Panchkula and Sonipat.

[8] Bhiwani, Faridabad (East), Fatehabad, Jhajjar, Jind, Kaithal, Karnal and Sonipat.

2.2.10 Absence of provisions under HVAT Act to entertain appeals only on pre-payment of additional demands in dispute

Under the HGST Act, no appeal shall be entertained unless it is filed within 60 days from the date of the order appealed against and the appellate authority is satisfied that the amount of tax assessed, penalty and interest, if any, recoverable from the person has been paid. It is further provided that the said authority, if satisfied that the person is unable to pay the whole amount of tax assessed or the penalty imposed/interest due, he may, if the amount of tax and interest admitted by the appellant to be due has been paid, entertain the appeal and may stay the recovery of the balance amount subject to furnishing of a bank guarantee/adequate security to the satisfaction of the appellate authority. In this way, the dealer preferring appeal could be forced to make payment of additional demands in dispute and the department could recover arrears of tax to a large extent before the appeals could be entertained. But there is no such condition under the HVAT Act to force the payment of additional demand by the appellant before entertaining any appeal by the appellate authority. In the absence of such condition in the HVAT Act to entertain appeal only on payment of additional demand in dispute, recovery of arrears remain blocked till the appeal is decided or stay is vacated.

Test check of the records of seven[9] offices of DETC revealed that assessments of 20 dealers for the AYs between 2003-04 and 2006-07 were finalised and additional demands of Rs. 10.84 crore were raised between November 2005 and December 2007. All the dealers preferred appeals before the appellate authorities within the prescribed period and were dismissed/rejected by JETCs (Appeals) between November 2006 and February 2009. In the absence of any condition of pre-payment of additional demand in dispute before entertaining the appeal by the appellate authority, the department could not recover the additional demands of Rs. 10.84 crore.

During the exit conference, the department stated that the proposal for inserting a suitable amendment in the HVAT Act for pre-payment of additional demand on the lines of a similar provision under the HGST Act was sent to the Government for approval which was not acceded to by the Government. However, an amendment was made in Section 33 of HVAT Act in March 2009 where the appellate authority shall ensure before entertaining the appeal that the appellant had furnished a bank guarantee or adequate security to the satisfaction of the AA, in the manner, as may be prescribed, for the amount in the dispute.

2.2.11 Absence of provision regarding allowances of instalments in payment of arrears due

The HGST/HVAT Act is silent on the number of instalments which can be fixed for the recovery of dues from the defaulting dealer in case the dealer requests for making payment in instalments. As per instructions issued under the Punjab General Sales Tax Act by ETC in December 1971, if any dealer requests for instalments, his request should not be granted straight away but

[9] Ambala, Bhiwani, Faridabad (East), Faridabad (West), Fatehabad, Jagadhari and Jhajjar.

his past history should be examined and if he is a habitual extension seeker, he should be discouraged as far as possible and if his circumstances are such that he is really not in a position to make the payment of tax due in lump sum, he should be allowed to make payment of dues in instalments against adequate security to the satisfaction of the AA or bank guarantee failing which the recovery proceedings under the PLR Act shall be started against the defaulting dealer.

Test check of records of five[10] offices of DETC revealed that the AAs finalised the assessments of six dealers for the AYs between 1992-93 and 2001-02 (including an inspection case of February 2004) and created additional demands of Rs. 1.37 crore between March 1998 and September 2005. TDNs were issued against these dealers but they had not paid the dues and requested for making payment of arrears in instalments. DETCs did not obtain adequate security or bank guarantees in five out of six cases and in the case of Kaithal dealer, surety of Rs. 6 lakh against arrears of Rs. 6.33 lakh was given by a dealer. Orders for payment of dues in instalments were passed by DETCs between February 2001 and January 2008 directing the dealers to pay monthly instalments ranging between Rs. 5,000 and Rs. 15,000 which would take considerable period ranging from 64 to 1,237 months to clear the demand of tax only. Besides, interest would also accrue on the outstanding balance of above dues which would also take considerable time to be recovered in instalments. In the absence of any provisions prescribing maximum number of instalments, DETCs had given undue benefit to the dealers due to fixation of unrealistic instalments. Three dealers paid instalments of Rs. 8.34 lakh out of Rs. 54.11 lakh between February 2001 and January 2008 and stopped paying instalments after February 2007 and January 2008. The department recovered Rs. 11.66 lakh and balance amount of Rs. 1.25 crore was recoverable as of March 2008. A few illustrative cases are mentioned below:

Name of DETC	Period and date of assessment (s) (between)	Amount of tax (Rupees in lakh)	Date of order	Monthly Instalment/ number of instalment	Nature of observation
Karnal	2000-01 and 2001-02 (September 1995)	61.87	June 2007	Rs. 5,000 1,237	Recovered Rs. 1.47 lakh in 30 (out of 1,237) instalments upto October 2008.
Kaithal	1994-95 to 1997-98 (December 2001and November 2002)	21.56	April 2001	Rs. 8,000 (Rs. 10,000 proposed by the dealer) 431	The dealer closed down business and registration certificate was cancelled in September 1998. The dealer made payments of Rs. 3 lakh in 38 (out of 431) instalments upto February 2007 and did not make payment thereafter.

[10] Ambala, Jind, Kaithal, Karnal and Panipat.

Name of DETC	Period and date of assessment (s) (between)	Amount of tax (Rupees in lakh)	Date of order	Monthly Instalment/ number of instalment	Nature of observation
	1995-96 to 1999-2000 (March 1998 and October 2001)	6.33 (out of 7.17)	January 2007	Rs. 10,000 64	The dealer paid Rs. 1.10 lakh in 11 (out of 64) instalments upto January 2008 and stopped making payment. Thereafter the department had not initiated action to recover the dues from the defaulting dealer/surety.
Jind	1992-93 and 1993-94 (March 2000)	25.38	February 2001	Rs. 8,000 317	The dealer deposited Rs. 4.24 lakh in 53 (out of 317) instalments upto January 2008 and filed case in civil court in February 2008 against cancellation of instalment due to non-payment of instalment regularly.

During the exit conference, the department admitted the facts and agreed to streamline the process of recovery.

2.2.12 Internal audit

Internal audit is a means for an organisation to assure itself that the prescribed systems are functioning reasonably well. The internal audit parties are required to conduct cent *per cent* audit of all the assessment cases finalised, examining inter alia assessment orders, issue of TDNs, collection of dues and verification of deposit in the treasury.

Test check of records of eight[11] offices of DETC revealed that the ETOs had overstated arrears of Rs. 5.90 crore in eight cases due to inclusion of arrears in both 'net recoverable' and 'recovery to be written off', or due to not including the effect of demands reduced as a result of rectification order/finalisation of remand cases etc. and understated arrears of Rs. 5.75 crore in 13 cases due to non-inclusion of unrealised demands or difference in actual arrears and arrears relating to assessments for the AYs 1993-94 to 2006-07 finalised between December 1997 and August 2007 in the 'Arrears Statement' as of 31 March 2008. DETCs and ETC could not detect such irregularities at the time of consolidation/compilation of arrears, but had Internal Audit Wing (IAW) been set up in the department for conducting the audit of sales tax/VAT cases and other related records, such irregularities could be detected and got rectified by them. Thus, in the absence of internal audit, the department had no means of knowing the areas where systems were deficient and did not, therefore, have the opportunity of taking remedial action. Arrears of Rs. 5.90 crore and Rs. 5.75 crore were overstated and understated and could not be detected due to non-existence of proper internal control/IAW.

[11] Ambala, Faridabad (East), Faridabad (West), Jhajjar, Kaithal, Karnal, Panchkula and Sonipat.

After the case was pointed out, the department stated (July 2009) that the department had set up an internal audit system for control and supervision of expenditure as well as receipts. The department had one Chief Accounts Officer, five Accounts Officers and eleven Section Officers. The internal audit parties conducted periodical audit of accounts/expenditure of each and every district. But no audit of assessments of sales tax cases had been conducted by internal audit parties so far. So far as the audit of the assessment work done by various taxing authorities (AETO, ETO, DETC) was concerned, it was done by dedicated revising/revisional authorities (RAs) i.e. DETC (Inspection), DETC (ST) of the district and JETC (Range). In addition to these RAs posted in the field, the department had an AETC at the head office vested with the powers of RA. In case any assessment order passed by an AA was found to be illegal or improper, suo motu action was taken by the RA and the order was revised to that extent. The fact, however remains that the internal audit is a management tool for assessing efficient functioning of the department and plugging leakage of revenue. The role of the internal audit is quite different from that of a RA. Thus, in the absence of internal audit in sales tax department, the department had no means of knowing the areas where systems were deficient and did not, therefore, have opportunity of taking remedial action. Moreover, the irregularities discussed in this review are indicators of ineffective internal control mechanism as none of the irregularities (including understated and overstated arrears) pointed out by statutory audit were detected by the departmental/RAs.

During the exit conference the department assured to pursue the matter regarding audit of assessment cases with the Government to strengthen IAW.

Compliance deficiencies

2.2.13 Disposal of appeal cases by JETCs

The JETC (Appeals) at the range level is the first appellate authority who hears appeals against orders passed by the AAs raising the demand and issue any orders for recovery of the disputed demands. However, as per instructions issued by the ETC in March 1984 under HGST Act, it is to be ensured that the appeal cases, in which revenue of more than Rs. 5,000 is involved and stay of recovery of disputed demands have been granted, are decided within three months of the grant of stay.

The information collected from JETCs Faridabad and Rohtak in respect of five[12] offices of DETC revealed that JETCs (Appeals) had granted stay of recovery of dues amounting to Rs. 152.40 crore in 457 cases during the period between April 2003 and December 2007. JETCs (Appeals) had neither decided nor vacated stay orders in these cases till 31 March 2008. Thus, collection of revenue of Rs. 152.40 crore remained locked due to stay orders granted in 457 cases by the JETCs (Appeals). Out of these cases, recovery of Rs. 91.77 crore (60 *per cent*) was locked up in appeals in 138 cases for more than one to four years.

[12] Faridabad (East), Faridabad (West), Jhajjar, Panipat and Sonipat.

During the exit conference, the department stated that as per ETC instructions (March 1984), appeal cases were to be decided within three months of grant of stay by JETCs but no time limit had been prescribed in the Act. However, the Appellant Authority was being advised to decide the cases involving stay within a time frame of six months.

2.2.14 Non-declaration of arrears under Punjab Land Revenue Act

Under Section 34 of HGST Act and Section 26 of HVAT Act, the amount of tax, interest and penalty, which remains unpaid after the due date, shall be recoverable as arrears of land revenue under the PLR Act.

Test check of records of eight[13] offices of DETC revealed that AAs finalised the assessments in respect of 13 dealers for the AYs 1991-92 to 2005-06 between January 2000 and March 2008 and raised additional demand of Rs. 5.15 crore. Since these dealers failed to deposit the tax within the specified period/extended period of the issue of TDNs, the AAs were required to declare the recovery of dues as arrears of land revenue under the Act ibid but the same had not been declared till March 2009. Non-declaration of arrears under the PLR Act resulted in non-realisation of accumulated arrears of Rs. 5.15 crore.

During the exit conference, the department stated that there was acute shortage of AAs which affects the efficiency. The department admitted the facts and assured to pursue these cases vigorously.

2.2.15 Failure to initiate follow up action for recovery of arrears within the district

On declaration of arrears under PLR Act, summons are issued to the defaulter and if the defaulter does not appear within 10 days a writ of demands is to be issued by revenue officer on or after the day following than in which an arrear of land revenue accrues. Further several steps viz. issue of arrest warrant and detention, issue of distress warrants and attachment of property of the defaulter are to be taken by the DETC for recovery of dues.

Test check of records of four[14] offices of DETC revealed that AA declared arrears of Rs. 3.38 crore as arrears of land revenue in six cases under their jurisdiction between January 2004 and November 2007. Out of six cases, the AAs had not even issued writ of demand in two cases involving arrears of Rs. 1.81 crore. In the remaining four cases, the AAs issued summons between August 2005 and November 2007 but no follow up action was taken to recover the arrears. As a result, these proceedings continue to linger on for long period thereby jeopardising the recoveries of Rs. 3.38 crore.

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[13] Faridabad (East), Faridabad (West), Jagadhari, Jhajjar, Kaithal, Panchkula, Panipat and Sonipat

[14] Ambala, Jagadhari, Kaithal and Sonipat.

During the exit conference, the department stated that there was acute shortage of AAs which affects the efficiency. The department admitted the facts and assured to pursue these cases vigorously.

2.2.16 Disposal of immovable property during the currency of recovery of arrears

Under the HGST Act, where, during the pendency of any proceedings under this Act, any person liable to pay any tax/other dues creates a charge on or transfers, any immovable property belonging to him in favour of any other person with intention to defrauding any tax or other dues, any such charge or transfer shall be void as against any claim in respect of any tax or other dues payable by such person as a result of the completion of the said proceedings.

Test check of the records of five[15] offices of DETC revealed that the AAs finalised the assessments of 11 dealers for the AYs between 1987-88 and 2002-03 and created additional demands of Rs. 7.55 crore between June 1995 and July 2006. All the dealers had closed down their business and had sold/disposed off their assets, land and properties or plant and machinery between 1999-2000 and 2005-06 i.e., during the pendency of recovery proceedings. In two cases involving Rs. 31.08 lakh, the revenue authorities allowed the transfer of the properties despite prior intimation to them for not allowing such transfers. In the case of one dealer of Karnal, the AA finalised the assessments for the AYs 1996-97 to 1999-2000 between September 2001 and February 2003 and requested the Tehsildar, Karnal in November 2007 for not allowing the dealer to transfer of property though the dealer had already disposed off the property during the year 2005-06. The AAs had not taken any action to get the disposal of immovable/movable properties declared null and void under the Act. Failure on the part of AAs to raise demands in time and to initiate action under the Act resulted in accumulation of arrears to the extent of Rs. 7.55 crore.

During the exit conference, the department stated that normally a dealer cannot dispose off his immovable property during currency of recovery of arrears but some dealers had managed to dispose off their assets clandestinely and in such cases the AAs came to know about the sale only after it had been completed by the dealers. However, the recovery proceeding in each case continued. The facts remains that failure on the part of AA to raise demands in time and to initiate action under the Act led to accumulation of arrears.

2.2.17 Conclusion

Commercial tax/sales tax receipts contribute major tax revenue of the State. An increasing trend in the arrears position had been noticed during all the years since introduction of HVAT Act. The collection of dues pending remained doubtful since statutory audit detected overstated and understated arrears of Rs. 5.90 crore and Rs. 5.75 crore in eight DETC offices only. Effective and meaningful follow up action to recover the arrears was not

[15] Fatehabad: 1, Jind: 1, Karnal: 3, Panipat: 4 and Sonipat: 2.

taken. Despite specific provisions in the Act/Rules and several departmental instructions issued from time to time the authority could not implement the same in many cases resulting in failure of the system in regard to prompt assessment and collection of revenue. No step was also taken to make required amendments in the HVAT Act/Rules to enable the department to become more effective to recover the dues promptly inspite of deficiencies being pointed out by audit under HGST Act/Rules. As a result, these proceedings lingered on for long periods thereby jeopardising recoveries of huge amounts due to non-pursuance or lack of monitoring of recovery proceedings.

The Government has introduced in August 2008 a scheme of incentive/cash award upto five *per cent* of the amount recoverable for providing information in case of arrears not under dispute or liquidation and where it is not possible to find the whereabouts of defaulters or their properties. During the period August 2008 to March 2009, an arrear of Rs. 25 lakh was recovered due to this scheme and no cash award/incentive had been paid under this scheme upto March 2009.

2.2.18 Recommendations

The Government may consider taking the following steps for proper and effective collection of arrears of sales tax/VAT:

- strengthening Internal Audit Wing to ensure timely detection and correction of errors in assessment, levy and collection of sales tax/VAT revenue;
- evolving a suitable mechanism for the collection of dues by closely monitoring their initiation and completion of recovery proceedings;
- prescribing a time limit for (i) initiating recovery proceedings for attachment and disposal of attached property, (ii) the issue of RRC and adherence to such time limit should be closely monitored to avoid pendency of revenue collection;
- evolving a suitable mechanism to ensure proper co-ordination between the departmental officers within the State to facilitate early realisation of the arrears locked up under revenue recovery proceedings; and
- fixing target for the collection of arrears and closely monitoring the performance of both the AAs and the Collectors against such targets.

2.3 Other Audit observations

Scrutiny of assessment records of sales tax/value added tax (VAT) in Excise and Taxation Department revealed several cases of non-observance of provisions of Acts/Rules, non/short levy of tax/penalty/interest, incorrect determination/ classification/turnover and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Such omissions on the part of Assessing Authorities (AAs) are pointed out in audit each year, but not only the irregularities persist; these remain undetected till an audit is conducted. There is need for the Government to improve the internal control system including strengthening of internal audit.

2.4 Non-observance of the provisions of Acts/Rules

The HGST/HVAT/CST Acts and Rules provide for:-

(i) levy of tax/interest/penalty at the prescribed rate;

(ii) allowed exemption of tax to new industries under HGST Act who opt for deferment of tax under HVAT Act on fulfillment of prescribed conditions;

(iii) exemption of tax on ISS subject to submission of the prescribed declaration/certificates; and

(iv) allowance of input tax credit (ITC) as admissible.

The AAs, while finalising the assessments, did not observe some of the rules in cases mentioned in the paragraph 2.4.1 to 2.4.7. This resulted in non/short levy/non-realisation of tax/interest/penalties of Rs. 3.68 crore.

2.4.1 Non-levy of penalty

Under Section 7 (3) of the HVAT Act, where goods taxable are sold by one dealer to another dealer, tax is leviable at a lower rate if the purchasing dealer furnishes a declaration in form VAT-DI certifying that the goods are meant for use in the manufacture of goods for sale. Further, if an authorised dealer after purchasing any goods for any of the purposes specified in various clauses fails to make use of the goods for any such purpose, the AA may impose upon him by way of penalty under Section 7 (5) of the HVAT Act a sum not exceeding one and a half times the tax which would have been levied additionally. However, no penalty would be imposed if the dealer voluntarily pays the tax which would have been levied additionally when he failed to make use of the goods purchased for the specified purposes.

During test check of the assessment records of the office of DETC (ST), Panipat in August 2008, it was noticed that 64 dealers purchased rags valued as Rs. 58.21 crore during the years 2004-05 and 2005-06 at concessional rate of tax against declaration in forms VAT-DI for use in the manufacture of goods. Out of which, these dealers sold rags valued as Rs. 22.11 crore to other dealers at concessional rate of tax and also failed to pay the tax which would have been levied additionally. The AA, while finalising the assessments between April 2007 and March 2008, omitted to levy tax at the general rates

applicable to rags being unclassified goods. This resulted in non-levy of VAT of Rs. 1.33 crore besides maximum penalty of Rs. 1.99 crore.

After the cases were pointed out in August 2008, the AA stated in October 2008 that the cases had been sent to the DETC-cum-Revisional Authority (RA), Panipat for taking suo motu action in September 2008. Further report has not been received (August 2009).

The matter was pointed out to the ETC, Excise and Taxation Department in December 2008 and reported to the Government in March and May 2009; their reply has not been received (August 2009).

2.4.2 Underassessment of value added tax due to application of incorrect rate

2.4.2.1 Under Section 7 of the HVAT Act, VAT on tyres and tubes is leviable at the rate of 10 *per cent* from 1 April to 7 July 2003 and eight *per cent* from 8 July 2003 to 30 June 2005.

During test check of the assessment records of the office of DETC (ST), Ambala Cantonment in November 2007 and December 2008, it was noticed that four dealers sold tyres and tubes valued as Rs. 20.94 crore (1 April to 7 July 2003: Rs. 1.48 crore; 8 July 2003 to 30 June 2005: Rs. 19.46 crore). The AAs, while finalising the assessments between October 2005 and October 2007, levied tax at the rate of four *per cent* instead of 10 *per cent* on sales upto 7 July 2003 and at eight *per cent* from 8 July 2003 to 30 June 2005. Application of incorrect rate of tax resulted in underassessment of tax of Rs. 86.70 lakh.

After the cases were pointed out in November 2007 and December 2008, the AAs stated in March 2009 that the cases had been sent to the RA for taking suo motu action in December 2008. Further report has not been received (August 2009).

2.4.2.2 Under the HVAT Act, tax is leviable at the rates specified in Schedules 'A' to 'G' of the Act depending upon the classification of goods. The State Government did not specify dryer felts under any schedule of the HVAT Act upto 30 June 2005. As per the Haryana Government notification dated 30 June 2005 issued under the HVAT Act, dryer felts are taxable as specified commodity (Sr. No. 26) under Schedule 'C' at the rate of four *per cent* from 1 July 2005. Thus, dryer felts, being non-specified item in any schedule, is leviable to tax at the rate of 10 *per cent* during the period April 2003 to June 2005.

During test check of the assessment records of the office of DETC (ST), Faridabad (West) in August 2008, it was noticed that a dealer sold dryer felts valued as Rs. 1.10 crore during the year 2004-05 under the HVAT Act. The AA, while finalising the assessment in March 2008, levied tax at the rate of four *per cent* instead of the correct rate of 10 *per cent*. Application of incorrect rate of tax resulted in underassessment of VAT of Rs. 6.59 lakh.

After the case was pointed out in August 2008, the DETC (ST) stated in January 2009 that the quantum of liability of tax at 10 *per cent* on dryer felts

in respect of case for the year 2003-04 was already in revision before the RA. Audit observed that the AA repeated the same irregularity in the same case in the next year assessment and submitted the same reply. Final reply has not been received (August 2009).

2.4.2.3 As per the clarification issued on 19 May 2004 under the HVAT Act, SW pipes[16] are exigible to tax at the rate of 12 *per cent* under entry 29 "Sanitary goods and fittings including sewerage pipes".

During test check of the assessment records of the office of DETC (ST), Jind in August 2008, it was noticed that a dealer sold SW pipes valued as Rs. 2.19 crore during the year 2004-05. The AA, while finalising the assessment in February 2008, levied tax at the rate of 10 *per cent* treating the goods as unclassified item instead of the correct rate of 12 *per cent*. Application of incorrect rate of tax resulted in underassessment of VAT of Rs. 4.37 lakh.

After the case was pointed out in August 2008, the AA stated in September 2008 that the VAT on SW pipes at that relevant time was 10 *per cent* and tax was rightly calculated. The reply of the AA is not in consonance with the clarification issued in the case of same assessee by the Government in May 2004.

The matter was pointed out to the ETC, Excise and Taxation Department in October 2008 and February 2009 and reported to the Government in February and May 2009; their reply has not been received (August 2009).

2.4.3 Underassessment of tax due to allowing of excess benefit of deferment

Under Section 61 (2) (d) (iii) of the HVAT Act, an industrial unit availing the benefit of deferment of payment of tax, whether by change over under the provisions of the Act or otherwise, may, in lieu of making payment of the deferred tax after five years, pay half the amount of the deferred tax upfront along with the returns and on making payment in this manner, the tax due according to the returns shall be deemed to have been paid in full. If the tax calculated is more than the input tax, the difference of the two shall be the tax payable. Further, Section 14 (6) of the HVAT Act inter alia lays down that if a dealer fails to make payment of tax, he shall be liable to pay in addition to the tax payable by him, simple interest at one and a half *per cent* per month if the payment is made within ninety days, and at three *per cent* per month if the default continues beyond ninety days for the whole period, from the last date specified for the payment of tax to the date he makes the payment.

During test check of the assessment records of the office of ETO, Bahadurgarh in July 2007, it was noticed that a dealer, availing the benefit of capital

[16] Stone ware pipes (SW pipes) are generally used in laying sewer line (sewerage line). Hence, the rate of tax applicable to SW pipes which are pre-dominantly used as sewerage pipes will be covered by entry No. 29 "Sanitary goods and fittings including sewerage pipes".

subsidy of Rs. 8.58 crore for the period 5 February 2003 to 4 February 2008, had opted to pay 50 *per cent* of the tax in lieu of deferment of payment of tax under the HVAT Act/Rules. The assessee had made sale of goods valued as Rs. 59.18 crore involving tax of Rs. 2.44 crore[17] during the year 2003-04. After adjusting ITC of Rs. 62.30 lakh paid on purchase of goods (Rs. 15.58 crore), the balance tax payable was Rs. 1.81 crore[18]. The dealer was entitled to exemption of 50 *per cent* of deferred tax amounting to Rs. 87 lakh[19]. The AA, while finalising the assessment in November 2006, allowed 50 *per cent* of total tax liability i.e. Rs. 1.22 crore instead of admissible amount of Rs. 87 lakh. This resulted in excess deferment of tax of Rs. 34.81 lakh[20]. Additionally, interest amounting to Rs. 34.41 lakh[21] was also leviable on default in tax demand of Rs. 31 lakh for the period from November 2003 to November 2006.

After the case was pointed out in July 2007, the DETC, Jhajjar admitted the audit observation and stated in December 2008 that the JETC (Range)-cum-RA, Gurgaon had created additional demand of Rs. 16.59 lakh (Tax: Rs. 6.81 lakh; interest: Rs. 9.78 lakh) under HVAT Act in March 2008 and did not raise demand of tax under CST Act though he had calculated additional tax demand of Rs. 24.23 lakh and interest of Rs. 35.87 lakh under CST Act in the annexure attached with the revision order. The case was referred to the ETC in January 2009 for re-examination for taking suitable action in the matter. Further progress has not been received (August 2009).

The matter was pointed out to the ETC, Excise and Taxation Department in September 2007 and January 2009 and reported to the Government in March 2009; their reply has not been received (August 2009).

2.4.4 Non-levy of interest

2.4.4.1 The instructions issued by the ETC under the HGST Act in September 1993 stipulates that it is the duty of every AA to finalise penal proceedings alongwith the assessment and if, for any reason, the penal action is kept pending that should be initiated immediately after the assessment is finalised and must be completed within six months of the assessment.

During test check of the assessment records of the office of DETC (ST), Gurgaon (East) in December 2008, it was noticed that the AA finalised the assessment for the year 2004-05 in March 2008 and created an additional demand of Rs. 26.23 lakh but action to levy interest/penal action was to be taken separately as stated in the assessment order. However, no such proceedings were initiated even after a lapse of nine months. This resulted in non-levy of interest of Rs. 29.34 lakh.

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17 Rs. 2,28,98,168 (Rs. 57,24,54,200X 4/100) +Rs. 14,65,057 {Rs. 1,83,13,211 (sale without C forms under CST Act)X8/100}= Rs. 2,43,63,225

18 Rs. 1.74 crore + Rs. 7.33 lakh.

19 Rs. 1,74,00,250 ÷ 2 = Rs. 87,00,125

20 Tax payable: Rs. 31.00 lakh (Rs. 87.00 lakh – tax paid Rs. 56.00 lakh) + Tax on inter State sales without ‘C’ form: Rs. 7.32 lakh – Tax demand as per assessment order: Rs. 3.51 lakh= Rs. 34.81 lakh.

21 Rs. 31,00,125 X 3 X 37 months/100 = Rs. 34.41 lakh.

After the case was pointed out in December 2008, the AA stated in February 2009 that a show cause notice had been issued to the dealer for levy of interest. Final reply has not been received (August 2009).

2.4.4.2 Under Section 9 (2) of the CST Act read with Section 14 (6) of the HVAT Act, if a dealer fails to make the payment of tax due as per return filed by him or in the manner prescribed, he shall be liable to pay, in addition to the tax payable by him, simple interest at one and a half *per cent* per month if the payment is made within ninety days, and at three *per cent* per month for the whole of the period if the default continues beyond ninety days, from the last date specified for the payment of tax to the date he makes payment.

During test check of the assessment records of the offices of DETC (ST), Panchkula and Panipat in April and August 2008, it was noticed that a dealer of Panchkula deposited tax of Rs. 29.09 lakh out of Rs. 42.99 lakh due along with the returns under CST Act during the year 2004-05 and a dealer of Panipat claimed refund of Rs. 13.11 lakh as against Rs. 10.32 lakh admissible under HVAT Act during the year 2003-04. The AAs, while finalising the assessments in June 2007, created additional demand of tax aggregating to Rs. 16.69 lakh but omitted to levy interest for non-payment of tax along with the returns. This resulted in non-levy of interest amounting to Rs. 15.86 lakh for the period between August 2004 and June 2007.

After the cases were pointed out in April and August 2008, DETCs (ST), Panchkula and Panipat stated in December 2008 that interest of Rs. 12.90 lakh had been levied by the ETO, Panchkula in July 2008 and the case of Panipat dealer was under examination. A report on recovery and action taken in the case of Panipat has not been received (August 2009).

2.4.4.3 During test check of the assessment records of the office of DETC (ST), Jind in August 2008, it was noticed that the dealer deposited tax amounting to Rs. 2.23 crore (2004-05: Rs. 2.18 crore; April 2007: Rs. 5.23 lakh). The AA, while finalising the assessment for the year 2004-05 in February 2008, allowed adjustment of tax of Rs. 2.23 crore and did not levy interest on late deposit of tax of Rs. 5.23 lakh deposited on 1 April 2007. This resulted in non-levy of interest of Rs. 4.55 lakh for the period from November 2004 to March 2007.

After the case was pointed out in August 2008, the AA stated in August 2008 that tax was paid according to returns. However, as per the record from Demand and Collection Register (DCR), the dealer deposited tax of Rs. 5.23 lakh in April 2007.

The matter was pointed out to the ETC, Excise and Taxation Department in June 2008 and April 2009 and reported to the Government in January and May 2009; their reply has not been received (August 2009).

2.4.5 Non-levy of value added tax

As per the notification issued on 1 April 2003 under the HVAT Act, VAT on sweets and toffees is leviable at the rate of 12 *per cent*.

During test check of the assessment records of the office of DETC (ST), Sirsa in July 2007, it was noticed that a dealer sold sweets and toffees valued as Rs. 39.06 lakh during the year 2004-05 and claimed tax free sales. The AA, while finalising the assessment in May 2006, allowed the deductions as tax free sales. This resulted in non-levy of VAT of Rs. 4.69 lakh.

After the case was pointed out in July 2007, the DETC (ST), Sirsa stated in January 2009 that an additional demand of Rs. 4.48 lakh (after adjusting ITC of Rs. 20,900) had been created by the RA in September 2008 and directed the AA to take action to levy interest under the Act. DETC (ST) Sirsa further stated in May 2009 that a sum of Rs. 1.55 lakh had been recovered in April 2009 and efforts were being made to recover the balance amount. A report on recovery of balance amount and action taken to levy interest has not been received (August 2009).

The matter was pointed out to the ETC, Excise and Taxation Department in February 2009 and reported to the Government in April 2009; their reply has not been received (August 2009).

2.4.6 Incorrect allowing of input tax credit

2.4.6.1 Under Section 8(1) of the HVAT Act and the rules framed thereunder, claim of input tax can be allowed to the purchasing dealer only when the tax has been deposited by the selling dealer. As per direction issued by the JETC (Range) Faridabad in March 2008, claim of input tax in respect of purchases made from dealer 'A' was admissible at nil during AY 2004-05.

During test check of the assessment records of the office of DETC (ST), Jind in July 2008, it was noticed that a dealer purchased cold rolled (CR)/hot rolled (HR) coils valued as Rs. 1.09 crore from dealer 'A' of Faridabad during the year 2004-05 and claimed ITC of Rs. 4.34 lakh. The AA, while finalising the assessment in March 2008, allowed ITC of Rs. 4.34 lakh despite the specific direction of JETC (Range) Faridabad issued on 11 March 2008 for allowing ITC at nil of purchases made from dealer 'A'. Failure on the part of AA to take action as per direction of JETC (Range) resulted in non-raising of demand and incorrect allowing of ITC of Rs. 4.34 lakh.

After the case was pointed out in July 2008, the AA stated in August 2008 that ITC was allowed on the basis of tax invoice/VAT C-4 and necessary verification of purchases from the dealer pointed out by audit would be sought. The facts remains that the AA did not comply with the direction of the JETC (Range) of March 2008 before finalising the assessment. Further report has not been received (August 2009).

2.4.6.2 Under Section 8 of the HVAT Act, input tax in respect of any goods purchased by a VAT dealer shall be the amount of tax paid to the State on the sale of such goods to him. Provided that where the goods purchased in the State are used or disposed of partly in the circumstances mentioned in

Schedule E[22] and partly otherwise, the input tax in respect of such goods is computed pro rata. No ITC on goods which are disposed of otherwise than by way of sale is admissible.

During test check of the assessment records of the office of DETC (ST), Jind in March 2008, it was noticed that the dealer transferred purchased goods valued as Rs. 4.28 crore out of gross turnover of Rs. 4.84 crore to their branches outside the State otherwise than by way of sale and sold goods valued as Rs. 55.73 lakh after making payment of tax of Rs. 2.24 lakh during the year 2003-04. The AA, while finalising the assessment for the year 2003-04 in August 2006, erroneously allowed ITC of Rs. 4.89 lakh and failed to reverse ITC of Rs. 4.33 lakh on pro rata basis on the value of goods sent on consignment. This resulted in excess allowing of ITC of Rs. 4.33 lakh.

After the case was pointed out in March 2008, DETC (ST), Jind stated in June 2008 and March 2009 that the RA created additional demand of Rs. 4.33 lakh in July 2008 and directed the AA to take action to levy interest under the Act within two months. The dealer deposited Rs. 10,000 and TDN had been issued to the dealer to deposit the balance amount. A report on balance recovery of tax and action to levy interest has not been received (August 2009).

The matter was pointed out to the ETC, Excise and Taxation Department in April and October 2008 and reported to the Government in January 2009; their reply has not been received (August 2009).

2.4.7 Short/non-recovery of lump sum tax on works contract and penalty

As per Haryana Government notification dated 7 April 2003 issued under HVAT Act, a contractee shall, deduct from the payment made to a contractor for execution of a works contract in the State involving transfer of goods (whether as goods or in some other form), tax in advance calculated at the rate of four *per cent* of the amount paid. Further, if a dealer fails to pay the whole or any part of tax, he shall be liable to pay penalty, in addition to the amount of tax, a sum equal to the amount of tax so assessed.

During test check of the assessment records of the office of DETC (ST), Jagadhari in January 2008, it was noticed that a works contractor received payment of Rs. 1.19 crore for execution of the works contract during the period 2004-05. However, the contractee, while making payment to the contractor, incorrectly deducted tax at the rate of two *per cent*. The AA, while finalising the assessment in November 2006, erroneously levied tax at the rate of two *per cent* instead of four *per cent*. This resulted in short levy of tax of Rs. 2.37 lakh. Additionally, penalty of Rs. 2.37 lakh was also leviable.

After the case was pointed out in January 2008, the ETO, Yamunanagar re-assessed the case and created an additional demand of tax of Rs. 2.37 lakh in January 2008 which was deposited by the contractee in February 2008. Further ETO, Yamunanagar levied penalty of Rs. 2.37 lakh in October 2008.

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[22] Schedule E includes list of goods/items on which no ITC is available.

A report on recovery of penalty has not been received (August 2009).

The matter was pointed out to the ETC, Excise and Taxation Department in February 2008 and reported to the Government in January 2009; their reply has not been received (August 2009).

2.5 Incorrect determination of classification/turnover

The HVAT Act/Rules provide for:-

(i) disclosure of actual turnover by the dealer in the returns;

(ii) accurate determination of classification of goods by the AAs at the time of assessment; and

(iii) accurate determination of turnover by the AAs at the time of assessment.

The AAs, while finalising the assessments, in cases mentioned in the paragraph 2.5.1 to 2.5.3, did not observe some the above provisions which resulted in short levy/underassessment of tax of Rs. 1.75 crore .

2.5.1 Short levy of tax due to incorrect classification

2.5.1.1 Under Section 7 (1) (a) (iv) of the HVAT Act, tax is leviable at the rates specified in Schedules 'A' to 'G' of the Act depending upon the classification of goods. Mosquito mats/coils and other mosquito repellents were taxable as specified commodity under Schedule 'C' at the rate of 10 *per cent* from 11 December 2002 to 31 March 2003 under the HGST Act. The State Government did not specify this commodity under any schedule of the HVAT Act with effect from 1 April 2003. It has judicially been held[23] in August 1998 that mosquito coil/mat cannot be treated as insecticide and is commonly known as repellent and taxable as such. Mosquito mats/coils and other mosquito repellents, being non-specified item in any schedule, are leviable to tax at the general rate of 10 *per cent* upto 30 June 2005 and 12.5 *per cent* thereafter.

During test check of the assessment records of the offices of DETC (ST), Ambala Cantonment and Kurukshetra between January and December 2008, it was noticed that two dealers made sales of mosquito mats/coils valued as Rs. 12.58 crore during the years between 2003-04 and 2005-06. The AAs, while finalising the assessments between February 2007 and March 2008, levied tax at the rate of four *per cent* treating the goods as insecticides instead of the correct rate of 10/12.5 *per cent*. Incorrect classification resulted in short levy of tax of Rs. 76.67 lakh.

After the cases were pointed out between January and December 2008, the AAs stated between August and December 2008 that the cases had been sent to the RA Kurukshetra and DETC (Inspection) Ambala Cantonment for taking suo motu action in July and December 2008. The ETC stated in May 2009 that the RA had created additional demand of Rs. 30.05 lakh in respect of Kurukshetra dealer. Further report has not been received (August 2009).

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[23] M/s Sonic Electrochem and another Vs. Sales Tax Officer and others {(1998) 12 PHT 215 (Supreme Court)}.

2.5.1.2 As per the notification issued on 1 April 2003 under the HVAT Act, VAT on all kinds of cooking appliances, cooking ranges, microwave and grills etc. was leviable at the rate of 12 *per cent* for the period from 1 April 2003 to 30 June 2005 and thereafter at the rate of four *per cent* under Schedule 'C' of the Act.

During test check of the assessment records of the office of DETC (ST), Ambala in December 2007, it was noticed that a dealer sold pressure cookers valued as Rs. 3.11 crore during the years 2003-04 and 2004-05. The AA, while finalising the assessment in November 2005 and September 2006, levied tax at the rate of four *per cent* instead of the correct rate of 12 *per cent*. Application of incorrect rate of tax resulted in underassessment of VAT of Rs. 24.85 lakh.

After the case was pointed out in December 2007, the DETC Ambala stated in March 2009 that the case had been sent to RA for suo motu action in March 2009. Further report has not been received (August 2009).

The matter was pointed out to the ETC, Excise and Taxation Department in March 2008 and February 2009 and reported to the Government between January and April 2009; their reply has not been received (August 2009).

2.5.2 Underassessment of tax due to inadmissible deduction from gross turnover

Under section 2 (ze) (ii) of the HVAT Act, the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, where such transfer, is for cash, deferred payment or other valuable consideration, and such transfer shall be deemed to be a sale of those goods by the person making the transfer. Further, section 14 (6) of the Act inter alia lays down that if a dealer fails to make payment of tax, he shall be liable to pay in addition to the tax payable by him, simple interest at one and a half *per cent* per month if the payment is made within ninety days, and at three *per cent* per month if the default continues beyond ninety days for the whole period, from the last date specified for the payment of tax to the date he makes the payment.

2.5.2.1 During test check of the assessment records of the office of DETC (ST), Panipat in September 2008, it was noticed that the dealer company (contractor) was engaged in building construction and did not opt for lump sum payment of tax. The contractee supplied material valued at Rs. 1.55 crore to the contractor for use in the execution of works and the cost was recovered from contractor through works bills. The dealer had not claimed any ITC. The AA, while finalising the assessments of the dealer in December 2007 and March 2008, omitted to levy tax on deemed sale of material valued as Rs. 1.55 crore and allowed other miscellaneous deduction of Rs. 48.24 lakh from the gross turnover. This resulted in underassessment of tax of Rs. 21.89 lakh due to inadmissible allowing of deduction.

After the cases were pointed out in September 2008, the ETO, Panipat stated in October 2008 that the material supplied by the contractee was transferred to him by the contractor in the execution of works contract by theory of

accretion. The reply of the ETO is not in consonance with the provisions of HVAT Act as tax was leviable at every successive stage and deemed sale was also taxable in the hands of the contractor. Further reply has not been received (August 2009).

2.5.2.2 During test check of the assessment records of the office of DETC (ST), Sonipat in February and March 2008, it was noticed that the dealer company (contractor) was engaged in building construction and did not opt for lump sum payment of tax. A corporation of Panchkula (contractee) supplied steel bars/flats, cement and sand etc. valued as Rs. 1.92 crore to the contractor during the year 2003-04. The AA, while finalising the assessment in March 2007, allowed deduction of Rs. 1.92 crore from the gross turnover of Rs. 3.38 crore for the tax paid cement and steel supplied by the contractee to the contractor for use in the project and the cost recovered from the contractor through works bills. This resulted in underassessment of tax of Rs. 15.91 lakh due to inadmissible allowing of deduction. Additionally, interest amounting to Rs. 16.71 lakh was also leviable for non-payment of tax.

After the case was pointed out in February and March 2008, the DETC, Sonipat stated in March 2009 that the RA created an additional demand of Rs. 14.94 lakh in March 2009. A report on recovery has not been received (August 2009).

The matter was pointed out to the ETC, Excise and Taxation Department in April and December 2008 and reported to the Government in February and April 2009; their reply has not been received (August 2009).

2.5.3 Incorrect allowing of deduction

Under entry 51 of Schedule 'B' appended to the HVAT Act, all varieties of cotton, woollen or silken textiles including rayon, artificial silk or nylon but not including such carpets, druggets, woollen durrees, cotton floor durrees, rugs and all varieties of dryer felts on which additional excise duty in lieu of sales tax is not levied are tax free goods. Thus cotton, woollen or silken textiles including rayon, artificial silk or nylon shall be covered under entry 51 only when additional excise duty is leviable on these goods.

During test check of the assessment records of the office of DETC (ST), Faridabad (West) in May 2008, it was noticed that a dealer sold imported fabrics valued as Rs. 1.41 crore during the year 2005-06 and claimed tax free sales. The AA, while finalising the assessment in July 2007 allowed the deduction as tax free sales. Since no additional excise duty was levied on fabric imported by the dealer from Singapore, the same was not covered under Schedule 'B' (exempted from levy of VAT). Incorrect allowing of deduction resulted in non-levy of VAT of Rs. 17.56 lakh. Additionally, interest for non-payment of tax was also leviable.

After the case was pointed out in May 2008, the DETC (ST), Faridabad stated in January 2009 that demand of Rs. 38 lakh (including interest) had been created. A report on recovery has not been received (August 2009).

The matter was pointed out to the ETC, Excise and Taxation Department in December 2008 and reported to the Government in April 2009; their reply has not been received (August 2009).

2.6 Evasion of tax due to misuse of declaration form 'F'

The AAs, while finalising the assessments, did not cross verify declaration of forms F with Tax Information Exchange System[24], as required in the ETC instructions dated 14 March 2006, resulting in short levy of tax of Rs. 6.79 lakh.

Under Section 38 of the HVAT Act, if a dealer has maintained false or incorrect accounts or documents with a view to suppress his sales or purchases, imports into the State, exports out of the State or stock of goods, or has concealed any particulars in respect thereof or has furnished or produced any account, return, document or information which is false or incorrect in any material particular, such authority may direct him to pay by way of penalty, in addition to the tax to which he is assessed or liable to be assessed, a sum thrice the amount of tax which would have been avoided. Under Section 6A of the CST Act, transfer of goods from one State to another place of business in another State is exempt from levy of tax on production of 'F' forms and if any dealer fails to prove to the satisfaction of the AA claim of transfer of goods, then the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale.

During test check of the assessment records of the office of DETC (ST), Jind in September 2008, it was noticed that a dealer claimed deduction of consignment sale of goods valued as Rs. 84.89 lakh against declaration in forms 'F'. The AA, while finalising the assessment in February 2008, allowed the deduction. Cross verification of records by audit with other States 'Tax Information Exchange System' in September 2008 revealed that the dealer had suppressed his sales and submitted fake declaration forms since these forms 'F' were not issued to the consignee by the department and were originally issued to a firm of New Delhi. Failure on the part of AA to scrutinise the claim and cross verify the transactions as required in the ETC instructions dated 14 March 2006 resulted in incorrect allowing of deduction which consequently led to evasion of tax of Rs. 6.79 lakh. Additionally, penalty of Rs. 20.37 lakh was also leviable for evasion of tax.

After the case was pointed out in September 2008, the AA stated in February 2009 that the case had been sent to the DETC (ST), Jind for taking suo motu action.

The matter was pointed out to the ETC, Excise and Taxation Department in December 2008 and reported to the Government in March 2009; their reply has not been received (August 2009).

[24] A website to serve as repository of inter-state transactions.