

Chapter-II Taxes/VAT on Sales, Trade etc.

2.1 Tax administration

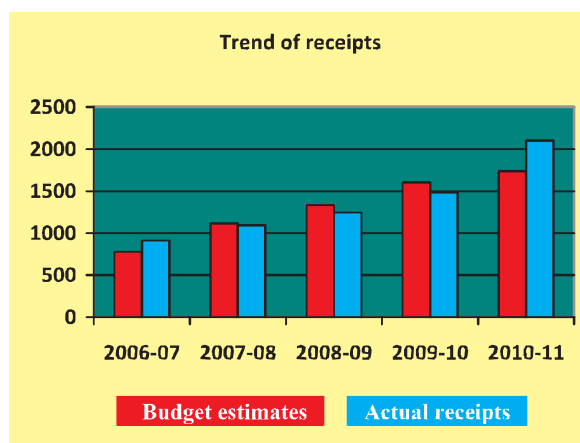
Sales Tax/Value Added Tax laws and rules framed thereunder are administered at the Government level by the Principal Secretary (Excise and Taxation). The Excise and Taxation Commissioner (ETC) is the head of the Excise and Taxation Department who is assisted by one Additional ETC, one Joint ETC, eight Deputy ETC, 14 Assistant Excise and Taxation Commissioners (AETCs) and 69 Excise and Taxation Officers (ETOs). They are assisted by Excise and Taxation Inspectors and other allied staff for administering the relevant tax laws and rules.

2.2 Trend of receipts

Actual receipts from Sales tax/VAT during the last five years 2006-07 to 2010-11 along with the total tax receipts during the same period is exhibited in the following table and graph:

(₹ in crore)

Year	Budget estimates	Actual receipts	Variation excess (+)/shortfall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual Sales tax/VAT receipts vis-à-vis total tax receipts
2006-07	780.00	914.45	134.45	17	1,656.38	55
2007-08	1,115.00	1,092.16	(-) 22.84	(-) 2	1,958.18	56
2008-09	1,336.81	1,246.31	(-) 90.50	(-) 7	2,242.49	56
2009-10	1,604.17	1,487.40	(-) 116.77	(-) 7	2,574.52	58
2010-11	1,741.18	2,101.10	359.92	21	3,642.38	58



It would be seen from the above that the variation between the budget estimates and the actual receipts was 17 per cent during 2006-07, which came down to the level of (-) two to (-) seven per cent during the period 2007-08 to 2009-10 and subsequently rose to 21 per cent during 2010-11.

2.3 Arrears in assessment

The number of cases pending assessment at the beginning of the years, becoming due during the year, disposed during the year and pending at the end of each year during the period 2006-07 to 2010-11 as furnished by the Excise and Taxation Department in respect of the taxes/VAT on sales, trade etc., are as mentioned below:

Year	Opening balance	Cases which become due for assessment during the year	Total assessments due	Cases disposed during the year	Cases remaining at the end of the year	Percentage of disposal (col. 5 to 4)
1.	2.	3.	4.	5.	6.	7.
2006-07	1,01,179	32,832	1,34,011	61,251	72,760	46
2007-08	72,760	36,675	1,09,435	45,361	64,074	41
2008-09	64,074	38,760	1,02,834	32,592	70,242	30
VAT	38,319	49,452	87,771	24,581	63,190	
2009-10	70,242	26,736	96,978	39,710	57,268	71
VAT	63,190	76,911	1,40,101	1,28,310	11,791	
2010-11	57,268	25,092	82,360	35,579	46,781	26
VAT	11,791	1,58,703	1,70,494	31,043	1,39,451	

We noticed that the percentage of disposal which ranged between 30 and 71 per cent during the period 2006-07 to 2009-10 has decreased to the level of 26 per cent in 2010-11.

The Government needs to continuously monitor the work of the assessing authorities to bring down the percentage of pending assessments in the interest of revenue.

2.3.1 Action plan of the department to liquidate the pending assessments

In order to reduce the pendency of assessments especially under the Himachal Pradesh VAT Act, 2005, the Department has proposed the following action plan:-

- (i) All pending cases under Himachal Pradesh General Sales Tax Act, 1968 would be cleared by 31.12.2011.
- (ii) The pendency of assessment up to the year 2007-2008 would be cleared by 31.3.2012.

These directions have already been issued to all AETCs of the districts and ETO, Kinnaur.

2.3.2 Position of arrears

Year	Opening balance of arrears	Additions during the year	Collection by the end of the year	Balance Arrears
2006-07	10,021.34	2,060.37	2,151.85	9,939.86
2007-08	9,939.86	3,954.90	2,555.83	11,328.93
2008-09	11,328.93	3,287.14	2,577.59	12,038.48
2009-10	12,038.48	17,243.76	20,130.71	9,151.53
2010-11	9,151.53	18,197.28	11,076.47	16,272.35

(₹ in lakh)

The above table shows that the arrears of revenue in respect of taxes/VAT on sales, trade etc. sharply increased in 2010-11.

The Government may consider taking suitable steps for collection of arrears in a time bound manner.

2.4 Cost of collection

The gross collection of taxes/VAT on sales, trade etc. revenue receipts, expenditure incurred on collection and percentage of such expenditure to gross collection during the years 2006-07 to 2010-11 along with the relevant all India average percentage of expenditure on collection to gross collection of the preceding years were as follows:

(₹ in crore)

Head of revenue	Year	Collection	Expenditure on collection	Percentage of expenditure to gross collection	All India average percentage of expenditure on collection for the preceding year
Taxes/VAT on sales, trade etc.	2006-07	914.45	10.33	1.13	0.91
	2007-08	1,092.16	11.35	1.04	0.82
	2008-09	1,246.31	12.88	1.03	0.83
	2009-10	1,487.40	15.06	1.01	0.88
	2010-11	2,101.10	21.85	1.04	0.96

Source: Finance Accounts

The above table indicates that the percentage of expenditure on collection was more than the all India average percentage for all the years during 2006-07 to 2010-11.

The Government needs to take appropriate measures to bring down the cost of collection.

2.5 Internal Audit

The Excise and Taxation Department introduced internal audit system for checking the records relating to sales tax. For this purpose, the Commissioner issued instructions in February 1987, which provided annual audit of all units within 20 days from the completion of the financial year and furnishing of first annotated replies by concerned units within two months from issuance of audit findings.

The Internal Audit Wing (IAW) attached to the office of the Commissioner consists of only two Section Officers. Neither was internal audit of any unit conducted nor pending IRs and paras cleared by the Wing during the last three years as mentioned below:

Sl. No.	Year	No. of units required to be audited	No. of units audited by IAW	No. of units pending for audit by IAW	No. of IRs and paras pending at the beginning of the year		No. of IRs settled during the year		No. of IRs and paras outstanding at the end of year	
					IR	Para	IR	Para	IR	Para
1	2007-08	11	0	11	94	731	-	-	94	731
2	2008-09	11	0	11	94	731	-	-	94	731
3	2009-10	11	0	11	94	731	-	-	94	731

Source: Excise and Taxation Commissioner

The above figures shows that the internal audit system prevailing in the Department was not providing reasonable assurance on the adequacy of safeguards against evasion of tax.

The Department attributed (December 2010) short fall in conducting internal audit to shortage of staff. The fact remains that the Department had not taken any steps to strength the internal audit wing to ensure strict compliance with the provision of the Act and the Rules by various wings and to prevent leakage of revenue.

2.6 Impact of audit

During the last five years (including the current year's report), we have pointed out 45 paragraphs of non/short levy, non/short realisation, underassessment/loss of revenue, incorrect exemption, concealments/suppression of turnover, application of incorrect rate of tax, incorrect computation etc., with revenue implication of ₹ 138.02 crore. Of these, the Department/Government had accepted/partially accepted audit observations in 24 paragraphs involving ₹ 4.24 crore and had since recovered ₹ 89.18 lakh in 16 paragraphs. The details are shown in the following table:

Year of Audit Report	(₹ in lakh)					
	Paragraphs included		Paragraphs accepted		Amount recovered	
	No.	Amount	No.	Amount	No.	Amount
2006-07	7	278.00	7	76.16	3	16.61
2007-08	14	6,824.00	6	159.17	5	40.02
2008-09	10	3,152.00	5	104.20	4	21.78
2009-10	08	3,406.00	4	75.84	2	7.29
2010-11	06	142.42	2	8.19	2	3.48
Total	45	13,802.42	24	423.56	16	89.18

This is indicative of the fact that the Department had not been able to enforce prompt recovery even in accepted cases.

The Government may consider introducing a mechanism for ensuring recovery against accepted cases in a time bound manner.

2.7 Results of audit

In 2010-11, test check of the records of 10 units relating to VAT/sales tax assessments and other records revealed underassessment of tax and other irregularities involving ₹ 87.34 crore in 202 cases, which fall under the following categories:

Sr. No.	Categories	(₹ in crore)	
		Number of cases	Amount
1.	Utilisation of declaration forms in Inter State Trade (A Performance Review)	01	65.81
2.	Underassessment of tax	55	16.88
3.	Irregular/incorrect/excess allowance of ITC	98	2.20
4.	Evasion of tax due to suppression of sales/purchases	07	0.17
5.	Other irregularities	41	2.28
Total		202	87.34

During the course of the year, the Department accepted underassessment and other deficiencies of ₹ 1.95 crore in 51 cases which were pointed out in audit

during the earlier years. An amount of ₹ 1.56 lakh was realised in one case during the year 2010-11.

A review of **“Utilisation of declaration forms in Inter-State Trade”** with financial impact of ₹ 65.81 crore and few illustrative cases involving ₹ 3.19 crore are mentioned in the following paragraphs:

2.8 Performance Review on “Utilisation of declaration forms in Inter-State Trade”

The Central Sales Tax (CST) Act, 1956 and the rules framed thereunder provide for concessional rate of tax in respect of inter-state sales of goods and exemption from tax in respect of branch transfers and export sales. These concessions/exemptions are subject to furnishing of declarations in the prescribed forms viz ‘C’, ‘F’ and ‘E-I/II’ etc. Failure to furnish the declarations or submission of defective or incomplete declaration forms will make the transactions liable to tax as applicable to sale in the appropriate State.

We conducted cross verification of declaration forms used in inter-state trade to check the genuineness of these declarations. The information collected was verified with the Commercial/Sales Tax Departments of other States and we found various irregularities as mentioned below.

Highlights

- Concealment of interstate purchase of ₹ 7.82 crore resulted in evasion of tax of ₹ 1.77 crore.
(Paragraph 2.8.12.1)
- Irregular grant of exemption of tax on sales without submission of declaration in form ‘C’ resulted in non-levy of tax of ₹ 11.05 crore.
(Paragraph 2.8.12.2)
- Incorrect grant of concessional rate of tax on sales against defective/invalid ‘C’ forms resulted in short levy of tax ₹ 12.14 crore including interest.
(Paragraph 2.8.13)
- Incorrect allowance of exemption of tax on invalid ‘F’ forms resulted in short realisation of tax of ₹ 6.24 crore.
(Paragraph 2.8.14)
- Incorrect allowance of exemption on transfer of goods to places not mentioned in registration certificate resulted in underassessment of tax of ₹ 4.73 crore.
(Paragraph 2.8.16)
- Incorrect allowance of exemption of tax on incomplete ‘F’ forms resulted in non-levy of tax of ₹ 27.77 crore.
(Paragraph 2.8.17)

2.8.1 Introduction

Central Sales Tax (CST) is an indirect tax levied by the Central Government for interstate sales and is collected by the State Government from where the movement of the goods commenced. Under the Central Sales Tax Act (CST Act), 1956 registered dealers are eligible to certain concessions and exemptions of tax on inter State transactions on submission of prescribed declarations in Forms ‘C’ and ‘F’.

Under the provisions of CST Act, every dealer, who in the course of inter State trade or commerce, sells to a registered dealer, goods of the classes specified in the certificate of registration of the purchasing dealer, shall be liable to pay tax at the concessional rate of four *per cent* (three *per cent* with effect from 1st April 2007 and two *per cent* 1st June 2008) of his turnover provided such sales are supported by declarations in form 'C'.

Under Section 6A of CST (Amendment) Act 1972, transfer of goods not by way of sales by a registered dealer to any other place of business outside the State or to his agent or principal in other States is exempt from tax on production of declaration in form 'F', duly filled in and signed by the principal officer of the other place of his business outside the State or his agent or principal as the case may be, along with evidence of dispatch of such goods. Filing of declarations in form 'F' was made mandatory with effect from May 2002. Failure to furnish the declarations or submission of defective or incomplete declaration form will make the transaction liable to tax applicable to sale of goods in the appropriate State.

2.8.2 Form 'C'

Under the provisions of the CST Act, every dealer, who in the course of inter State trade or commerce, sells to a registered dealer, goods of the classes, specified in the certificate of registration of the purchasing dealer, shall be liable to pay tax at the concessional rate of four per cent (two *per cent* w.e.f. 01.06.2008) of such turnover provided such sales are supported by declarations in form 'C'.

2.8.3 Form 'F'

Under section 6A of CST (Amendment) Act, 1972, transfer of goods not by reason of sales by a registered dealer to any other place of his business outside the State or to his agent or principal in other States is exempt from tax on production of declaration in form 'F' duly filled in and signed by the principal officer of the other place of business or his agent or principal as the case may be, along with evidence of dispatch of such goods. Filing of declarations in form 'F' was not mandatory upto May 2002. However, the Act, provided for the assessing authority to make such enquiries as he deemed necessary to satisfy himself on bonafides of the transfer such as sale patties, dispatch particulars, way bill etc.

2.8.4 Organisational set up

The Principal Secretary (Excise and Taxation) is the administrative head at the Government level. The Excise and Taxation Commissioner (ETC) is the head of the Excise and Taxation Department who is empowered with the task of superintendence and administration of various fiscal measures in addition to quasi-judicial function as appellate and revisional authority under various Excise and Taxation laws. He is assisted by three additional ETCs, one Joint ETC, six deputy ETCs, 14 Assistant Excise and Taxation Commissioners (AETCs) and 69 Excise and Taxation Officers (ETOs). They are assisted by Excise and Taxation Inspectors and other allied staff for administering the relevant tax laws and rules.

2.8.5 Audit Objectives

We conducted the review with a view to ascertain whether:

- there exists a foolproof system for custody and issue of the declaration forms;
- exemption/concession of tax granted by the assessing authorities was supported by the original declaration forms;
- there is a system for ascertaining genuineness of the forms for preventing evasion of tax;
- there is a system of uploading the particulars of forms in the TINXSYS website and the data available therein is utilised for verifying the correctness of the forms;
- appropriate steps were taken on receipt and detection of fake, invalid and defective forms; and
- there exists an effective and adequate internal control mechanism.

2.8.6 Scope and methodology

The scope of the review was limited to 'C' and 'F' forms. We conducted the review in five⁴ out of 11 AETC offices during November 2010 to January 2011, covering assessments completed during the period from 2007-08 to 2009-10, where exemptions/concessions were granted under the CST Act.

The review was conducted in three phases. In the first phase, we collected information from the assessment records, the details of 429 'C' forms and 155 'F' forms issued by the assessing authorities (AAs) of 25 States/UTs against which the dealers of the State had availed concession/exemption of tax on submission of the same before the AAs concerned. In the second phase, these details were sent to the concerned States for cross verification with reference to the records maintained by the AAs of these 25 States/UTs, who had issued such forms, in order to ascertain the genuineness of those forms as well as the correctness of the value of goods. Similarly, we also received the details of 1,211 'C' forms and 203 'F' forms from 21 States and in the third phase of the review, we cross verified the same with reference to the records of the Deputy CCTs/Assistant CCTs of 11 circles of the State. Besides, the review also covered the audit observations made on assessments under the Act completed during the period from April to October 2010 in six other Ranges and seven circles.

2.8.7 Acknowledgement

We acknowledge the co-operation of the Excise and Taxation Department in providing necessary information and records for audit. An entry conference was held in February 2011 with the Principal Secretary (Excise and Taxation)-Government of Himachal Pradesh wherein audit objectives, scope of audit and audit criteria were discussed. The draft review was forwarded to the Department and the Government in September 2011. The exit conference was

⁴ Baddi, Barotiwala and Nalagarh (BBN), Bilaspur, Hamirpur, Mandi and Sirmour

held on 28 October 2011 with the Principal Secretary (Excise and Taxation). The replies and Departmental views have been appropriately incorporated in the relevant paragraphs.

2.8.8 Trend of revenue

The percentage of receipts of CST to the total revenue receipts under the head “0040-Taxes/VAT on sales, trade etc.” for the years 2006-07 to 2010-11 are given below:

(₹ in crore)

Years	Receipts from		Total receipts under Taxes/VAT on Sales, trade etc.	Percentage of CST to total receipts from taxes/VAT on sales, trade etc.
	VAT/Sales Tax	CST		
(1)	(2)	(3)	(4)	(5)
2006-07	821.16	93.29	914.45	10
2007-08	978.98	113.18	1,092.16	10
2008-09	1,106.99	139.32	1,246.31	11
2009-10	1,288.11	199.29	1,487.40	13
2010-11	1,805.30	295.80	2,101.10	16

Source: Finance Accounts for the years 2006-07 to 2010-11

Thus receipts under CST showed an increasing trend in all the years and its share increased by 2.22 per cent and 0.69 per cent to total revenue during the years 2009-10 and 2010-11 respectively.

System deficiencies**2.8.9 Printing and custody of declaration forms**

Rule 15.1 and 15.2 of the Himachal Pradesh Financial Rules (HPFR), 1971 (Volume-1) provides that all purchases of stores for use in public service should be regulated in strict conformity with the stores rules and must be made in the most economical manner and in accordance with the definite requirements of public service. Further, the Departmental officers entrusted with the care, use or consumption of stores are responsible for maintaining correct records and preparing correct returns in respect of the stores entrusted to them. Rules 15.8, 15.9, 15.13 and 15.17 of HPFR 1971, provide that the Head of an office or any officer entrusted with stores should take special care for arranging for their safe custody, for protecting them from loss, damage or deterioration. For securing this object, it is important that all quantities received in or issued from stores entered in the stock account strictly as per the rules and in the order of occurrence on dates the transactions take place. A reliable list, inventory or account of all stores in the custody of Government servant should be maintained in a form prescribed by the Head of the Department (HoD). A physical verification of all stores should be made at least once in every year under the rules prescribed by the HoD.

As per procedure, the declaration forms are got printed by the Commissionerate from the State Government press and supplied to the divisions for distribution amongst the circle offices under their jurisdiction for further distribution to registered dealers. The receipt and issue of declaration forms are required to be accounted for in separate registers and day to day balance is worked out to check the existing stock after issuing forms to the district offices.

The details of 'C' forms printed, issued and lying in store at the end of the years 2007-08 to 2010-11 are given below:

Sl. No.	Year	Opening balance of 'C' forms in stock as on 1 st April	Number of 'C' forms	Total	Total number of 'C' forms issued to district offices	Balance at the close of the year
1	2007-08	18,000	5,00,000	5,18,000	2,74,000	2,44,000
2	2008-09	2,44,000	5,00,000	7,44,000	3,49,000	3,95,000
3	2009-10	3,95,000	5,00,000	8,95,000	3,58,000	5,37,000
4	2010-11	5,37,000	Nil	5,37,000	4,69,000	68,000

Source: Information furnished by Commissionerate office

The Department got five lakh 'C' forms printed each year during the period 2007-08 to 2009-10 resulting in huge balances of declaration forms lying unused at the close of the year.

As regards 'F' forms, the Commissionerate office intimated (January 2011) that out of 50,000 forms, 12,000 forms were issued during the period of review leaving a balance of 38,000 forms at the end of the year 2009-10.

The Department may assess the requirement of declaration forms on a realistic basis to avoid accumulation of stock of unused forms.

2.8.10 Maintenance of accounts of receipts and use of declaration forms

The receipt and issue of declaration forms are required to be accounted for in separate registers and day to day balance is worked out to check the existing stock after issuing forms to the district offices.

2.8.10.1 Improper maintenance of stock and issue register

Our scrutiny of records maintained at the Commissionerate revealed that the stock and issue register of the declaration forms 'C' and 'F' was not maintained properly. We noticed that the declaration forms received from the Printing and Stationery Department were not accounted for in the Stock and Issue register and balances at the end of day were not worked out. The declaration forms were not issued in chronological order and the register was never submitted to the higher authorities, in the absence of which safe custody and proper accounting of declaration forms could not be ensured. We also noticed that during the period 2007-2010, the Department did not conduct physical verification of the 'C' and 'F' forms. Thus vital internal control checks for minimising the risk of misuse of cash value documents like forms 'C' and 'F' were not being exercised.

After we pointed this out, the Department stated (December 2011) that instructions had been issued to the concerned officials by the ETC for safe custody and proper account of declaration forms.

2.8.10.2 Receipt and issue by divisions/circles

The receipt and issue of the aforesaid declaration forms are accounted for in separate stock registers by the division and circle offices indicating receipt and issue of various declaration forms. When the forms are issued to the dealer, the signature of the dealer as token of receipt is to be obtained in the register. Declaration forms are issued to registered dealers by circle offices to enable them to issue it to another registered dealers for purposes specified in their registration certificate in order to avail exemption from levy of tax or to pay tax at concessional rate.

Our scrutiny of the stock and issue registers of two test checked districts⁵ revealed the following discrepancies:

Sl. No.	Date of issue of 'C' forms	Name of the dealer to whom issued	Serial No. of 'C' forms	No. of forms	Deficiencies found
1	10.05.2007	M/s Tirlak & Sons Brewery and Distillery, Kala Amb	1091601 to 1091630	30	Five 'C' forms bearing No. 1091601 to 1091605 were again issued to M/s Saitech Pharmaceuticals, Kala Amb on 11 May 2007.
2	27.8.2007	Excise and Taxation Officer, Paonta Sahib	1001351 to 1001650	300	Of these 182 'C' forms were again issued to different firms ⁶ in August 2007.

⁵ Mandi and Sirmour

⁶ 30 'C' forms to M/s SF Operation Circle, HPSEB, Nahan bearing No. 1001351 to 1001380; Two 'C' forms to M/s Daleep Singh, Contractor bearing No. 1001381 and 1001382; 50 'C' forms to M/s Suruchi Industry, Dhakan Wali bearing No. 1001383 to 1001432 and 50 'C' forms to M/s Sidwal Refrigency, Kala Amb bearing No. 1001433 to 1001482

After we pointed this out, the Department stated (December 2011) that out of 689 'C' forms, 688 forms were issued by the AETC and one form was cancelled. However, instructions had been issued to field offices for safe custody and proper account of declaration forms.

2.8.10.3 We noticed (January 2011) in AETC Mandi that out of 689 'C' forms which were initially not found traceable in the issue register, 688 forms were reported to have been issued to the dealers between 1 February and 8 February 2011 despite the fact that these forms were destroyed by termites and were not fit to be issued to dealers. However, of these, one form 'C' bearing Sr. No. 08872275 was neither found issued to any dealer nor traceable in the records.

This clearly indicates that the office did not have proper arrangements in place to keep the forms in safe custody. Rule 6 (10) of CST (HP) Rules 1970 provides that the Commissioner may declare the declarations form 'C' and 'F' of a particular series, design and colour as obsolete and invalid with effect from such date as may be specified in the notification. Contrary to these provisions, the Department, instead of getting these forms cancelled from the higher authorities, issued these forms to the dealers.

After we pointed this out, the Department stated (December 2011) that in case of Shimla; out of 10 utilisation certificates of form 'C', 5 had been submitted by 2 dealers. Out of 18 utilisation certificates of form 'F', 7 had been submitted by one dealer. Efforts were being made to collect the remaining utilisation certificates by all the AETC's.

2.8.10.4 Acceptance of incomplete utilisation certificates

Every registered dealer to whom any declaration form is issued by the appropriate authority shall maintain a complete account of each such form. The dealer has to furnish a utilisation certificate to the competent authority showing the name of the dealer to whom the form has been issued, bill number and date and description of goods with value.

We noticed (January 2011) from the records of AETC Mandi that the AA accepted utilisation certificates of 55 'C' forms from five dealers involving inter state purchase of ₹ 1.27 crore in which description of goods purchased were not mentioned and issued fresh declaration forms in violation of the provision of the Rules.

2.8.10.5 Samples of current and obsolete declaration forms of other States not kept by the Department

We observed that the Department did not keep a sample of the colour, design and format of the forms prevailing in different States for comparison in order to identify fake or forged declaration forms. As such there was a risk of non/short levy of tax due to acceptance of invalid, obsolete and forged forms.

After we pointed this out, the Department stated (December 2011) that the suggestion of audit would be kept in view. It was also informed that the majority of states are now moving towards issue of declaration forms online.

The Department may consider uploading samples of valid declaration forms from other States on the departmental website for reference in case of doubt.

2.8.10.6 Database of concession and exemptions

Under the CST Act, registered dealers are eligible to certain concessions and exemptions of tax on interstate transactions on submission of prescribed declaration in form 'C' and 'F'. The State Government grants these incentives to dealers subject to certain terms and conditions and revenue is foregone in the process. A database of revenue foregone in concessions and exemptions is essential so that the Department is vigilant about the charge offices as well as the commodities where the dealers prefer claims of concessions and exemptions in large numbers.

We noticed that the ETC office had not maintained a database of the exemptions and concessions allowed to the dealers by obtaining information from the subordinate district offices. In absence of such database, the Department could not quantify the amount of revenue foregone due to concessions and exemptions allowed from time to time nor was it possible for the

Department or the audit to carry out a systematic study of the concessions and exemptions.

After we pointed this out, the Department stated (December 2011) that the department was making efforts to upload the necessary data in the system which may take some time.

The Government may consider putting in place a system for maintaining a database of the concessions and exemptions of CST and the revenue foregone on this account.

2.8.10.7 Tax Information Exchange System

Tax Information Exchange System (TINXSYS) is a centralised exchange of all interstate dealers spread across the various States and Union territories of India. TINXSYS is an exchange authored by the Empowered Committee of State Finance Ministers (EC) as a repository of interstate transactions taking place among various States and Union Territories. The website was designed to help the Commercial Tax Departments of various States and Union Territories to effectively monitor the interstate trade. TINXSYS can be used by any dealer to verify the counter party interstate dealer in any other State. Apart from dealer verification, Commercial Tax Department officials use TINXSYS for verification of central statutory forms issued by other state Commercial Tax Departments and submitted to them by the dealers in support of their claim for concessions. TINXSYS also provides MIS and Business Intelligence Reports to the Commercial Tax Department to monitor interstate trade movements and enables the EC to monitor the trends in interstate trade.

Information gathered from the five test checked districts⁷ revealed that four AAs out of five units were not using the TINXSYS for cross verification of interstate trade or commerce while finalising assessments of the dealers. We noticed that there exists a system of uploading the details of utilisation of declaration forms in the TINXSYS website but the same were not being uploaded. Status of use of TINXSYS in the above test checked districts is given below:

Sl. No.	Name of the District	Reply of the Department regarding uploading/cross verification of the data of declaration forms through TINXSYS
1.	AETC Baddi	Uploading and verification of 'C' and 'F' forms had not been done.
2.	AETC Bilaspur	Data was uploaded in excel sheet provided by the Headquarters instead of TINXSYS.
3.	AETC Mandi	Efforts were stated to have been made to upload the data on TINXSYS but due to shortage of staff and computer hardware it has been reported that much progress had not been made in this behalf.
4.	AETC Sirmour	'C' and 'F' forms had been uploaded upto 31.03.2010 but verification was done at random only.
5.	AETC Hamirpur	This practice is shortly to be under taken after installation of online system.

The TINXSYS data availability for the year 2011 for Himachal Pradesh showed that the dealers' data was last uploaded on 30.6.2009. 5,47,523 'C' forms were shown as issued up to 4.7.2009, but utilisation details of only 8,653 forms were shown upto 29.06.2009. As regards 'F' forms, 14,413 forms were shown issued upto 19.2.2009 but the data of utilisation of these forms had not been given by the State till November 2011. Thus, data has not been uploaded after July 2009 thereby depriving other States of facility of checking up the veracity of forms issued by Himachal Pradesh.

Further, during cross verification of data of 'C' and 'F' forms, we noticed that out of 1,211 'C' and 203 'F' forms received from 25 states including Union

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BBN, Bilaspur, Mandi, Hamirpur and Sirmour

Territories, the details of 1,071 'C' and 156 'F' forms were not available in TINXSYS.

After we pointed this out, the Department stated (December 2011) that due to very minimal computerisation in department, the TINXSYS could not be utilised by the department in effective manner. The department was uploading the data in the TINXSYS manually and it was very difficult for the department to upload the data manually in the absence of staff and hardware. e-issuing of statutory forms would be started soon and uploading to TINXSYS will be automatic.

2.8.10.8 Cross verification of 'C' & 'F' forms

We noticed that the Department had not prescribed any system of selecting transactions for cross verification of declaration forms submitted by the dealers for claiming exemptions/concessions and has also not prescribed a check list of points to be seen prior to acceptance and ascertaining the genuineness of declaration forms.

During the course of review, information was called for from six AETCs⁸ regarding cross verification of 'C' and 'F' forms from the issuing states. Out of six, three AETCs furnished nil information. This shows that claims of interstate transactions were admitted on the basis of declarations furnished by the dealers and no further verification of forms was made by the AAs before finalising the assessments. The other AETCs did not furnish any reply.

Absence of cross-verification led to acceptance of invalid/defective forms resulting in irregular exemptions and concessions as highlighted in the preceding paragraphs.

2.8.11 Enforcement measures

We noticed the following deficiencies from the information collected (September 2011) from the Commissionerate office:

- There was no system in place to blacklist the dealers who had been found to be utilising invalid/fake declaration forms in the past and circulation of the details of such dealers among various units and States.
- A system to monitor such dealers regularly to watch any further mischief did not exist.
- An investigation wing for checking inter-state transactions did not exist in the Department.

The Department may consider strengthening enforcement measures to detect cases of invalid/fake declaration forms.

We carried out cross verification of 1,670 'C' forms and 359 'F' forms pertaining to 25 States including Union Territory.

⁸ BBN, Kangra, Mandi, Sirmour, Solan and Una

The results of cross verification are discussed in the succeeding paragraphs.

2.8.11.1 Incorrect grant of concessions/exemptions on fake 'C' forms

Section 8 of the CST Act read with Rule 12 of the CST (R&T) Rules, provides that every dealer, who in the course of interstate trade or commerce, sells to a registered dealer, goods of the classes, specified in the certificate of registration of the purchasing dealer, shall be liable to pay tax at the concessional rate of four per cent (three *per cent* w.e.f. 1st April 2007 and two *per cent* 1st June 2008) of such turnover provided such sales are supported by declaration in form 'C'. Otherwise, tax is leviable at the rate of 10 *per cent* or at the rate applicable under the State Act, whichever is higher upto March 2007 and at the rate applicable in the State with effect from 1st April 2007. Besides, interest at the prescribed rates is also leviable on the unpaid amount of tax.

Cross verification revealed that four 'C' forms involving interstate sales of ₹ 36.81 lakh used by four dealers, were found fake as the dealers involved in these transactions were either non-existent or the forms were not issued to them by the AAs of the concerned States⁹. The assessments for the years 2004-05 to 2006-07 of these dealers were framed between February 2009 and December 2009 allowing grant of concession of tax of ₹ 1.64 lakh. Besides, interest amounting to ₹ 1.55 lakh and minimum penalty of ₹ 41,000 was also leviable.

After we pointed this out, the Department stated (December 2011) that the AETC, Sirmour had been asked to take immediate action in the matter. The audit would be informed of the progress in due course of time.

2.8.11.2 Misutilisation of 'C' forms

In two districts¹⁰, two dealers availed concessional rate of tax on sale of ₹ 93.13 lakh against two 'C' forms. The assessments for the years 2005-06 and 2007-08 of these dealers were framed between October 2008 and February 2010. Cross verification of these forms with the assessment records of the concerned issuing dealers in their States¹¹ revealed that these 'C' forms were issued to another dealer and not to the dealers who availed concessions on interstate sales. This resulted in incorrect grant of concession of tax amounting to ₹ 7.05 lakh besides, interest of ₹ 6.16 lakh and minimum penalty of ₹ 1.76 lakh were also leviable on the tax.

⁹ Chandigarh, Haryana, Madhya Pradesh and Utter Pradesh

¹⁰ Solan (Baddi) and Sirmour at Nahan

¹¹ Delhi, Meghalaya and Punjab

2.8.11.3 Misutilisation of 'F' forms

Section 6-A of the CST Act, read with Rule 12(5) of the CST (R&T) Rules, provides that exemption of tax to a registered dealer is granted in case of branch transfer/consignment sale, provided they are supported by a declaration in form 'F'.

In two districts¹², two dealers availed exemptions on transfer of stock valuing ₹ 67.67 lakh against four 'F' forms. The assessments of these assesseees were framed between July 2009 and March 2010. On cross verification of these forms with the assessment records of the concerned issuing dealers in their States¹³ we noticed that these 'F' forms were issued to another dealer and not to

the dealers who availed exemption on transfer of stock. This resulted in incorrect grant of exemption of tax to the tune of ₹ 5.74 lakh besides, interest of ₹ 4.93 lakh and minimum penalty of ₹ 1.43 lakh were also leviable.

After we pointed this out, the Department stated (December 2011) that the cases of the dealers were under process.

2.8.11.4 Excess exemption of tax allowed by inflating the transaction figures in 'C' forms

On cross verification of four 'C' forms of selling dealers with the records of four purchasing dealers of three States¹⁴, assessed between October 2008 and July 2010, we noticed that as against purchase of ₹ 4.34 crore shown by the purchasing dealers in their utilisation certificates submitted to the assessing authorities of the concerned states (Delhi, Meghalaya and Uttarakhand) the dealers claimed and were allowed exemption of ₹ 55.26 lakh on the strength of 'C' forms. In the absence of any mechanism of cross verification of the genuineness of the transactions, the AAs could not detect the irregularity committed by the dealers. This resulted in excess exemption of tax of ₹ 6.26 lakh. Besides, interest of ₹ 5.94 lakh and minimum penalty of ₹ 1.57 lakh was also leviable.

After we pointed this out, the Department stated (December 2011) that the cases of the dealers were under process.

2.8.11.5 Suppression of Sales

In two States¹⁵ in the cases of two dealers assessed for the years 2005-06 and 2006-07 between January 2010 and July 2010 by the AETC Nahan, we noticed that the dealers had taken less value of the inter-State sales by ₹ 43.86 lakh i.e. total sales of ₹ 2.03 crore shown in 'C' forms by the purchasing dealers was taken at ₹ 2.47 crore. The suppression of ₹ 43.86 lakh could not be detected during assessment proceedings by the AAs which resulted in evasion of tax by ₹ 5.48 lakh besides, interest of ₹ 5.15 lakh and minimum penalty of ₹ 1.37 lakh.

¹² Solan (Baddi) and Sirmour at Nahan

¹³ Punjab and Meghalaya

¹⁴ Delhi, Meghalaya and Uttarakhand

¹⁵ Delhi and Uttarakhand

After we pointed this out in audit, the Department stated (December 2011) that the cases of the dealers (Sirmour) were under process.

2.8.12 Misuse of declaration forms by purchasing dealers

In two AETCs¹⁶ verification of data relating to 'C' forms of other States¹⁷ revealed that during 2005-06 to 2007-08, in four cases inter-State sale of goods worth ₹ 1.43 crore was made on which tax concession of ₹ 9.03 lakh had been availed by the selling dealers. We noticed in cross check of assessment files and utilisation statements of the purchasing dealers that 'C' forms used in the above purchases were issued to other selling dealers and not to the dealers from whom the goods were actually purchased. Thus, the 'C' forms were misutilised by the purchasing dealers for concealment of interstate purchases of ₹ 1.43 crore involving tax effect of ₹ 9.03 lakh. Besides, interest of ₹ 7.17 lakh and minimum penalty of ₹ 2.26 lakh was also leviable.

After we pointed this out in audit, the Department stated (December 2011) that all the cases of the AETCs were under process.

2.8.12.1 Concealment of inter-State purchases

In 17 cases, cross verification of records viz. assessment files and utilisation statements of purchasing dealers of Himachal Pradesh with selling dealers of other States revealed that sales amounting to ₹ 10.18 crore were shown in the accounts of selling dealers i.e. in declaration forms 'C'. However, the purchasing dealers had accounted for purchases of ₹ 2.36 crore only. In the absence of any provision of cross verification of genuineness of transactions, the AA could not detect the irregularity. This resulted in concealment of inter-State purchases amounting to ₹ 7.82 crore and thus resulted in evasion of tax amounting to ₹ 77 lakh besides, interest of ₹ 80.50 lakh and minimum penalty of ₹ 19.25 lakh was also leviable on it.

After we pointed this out, the AETC Nahan stated (August 2011) that action would be taken against the defaulters/dealers as per provisions of the Act/rules. Final reports on action taken have not been received (December 2011).

¹⁶ BBN and Solan

¹⁷ Gujarat, J&K and MP

2.8.12.2 Irregular exemption of tax without submission of declaration form 'C'

Under the provisions of the CST Act, industrial units eligible for exemption under the Himachal Pradesh Sales Tax Concessions Scheme may claim exemption from payment of tax on their interstate sales provided that the sales are made to registered dealer and supported by declaration in form 'C'. The production of form 'C' has been made mandatory with effect from 11 May 2002.

Our scrutiny of assessment records of AETCs, Mandi and Sirmour revealed that while finalising (between February 2007 and November 2010) assessments for the years 2003-04 to 2006-07 of four industrial units, which were exempted from payment of tax within the State under Himachal

Pradesh Sales Tax/VAT concession scheme to industrial units were allowed exemption from payment of tax on interstate sale valued at ₹ 53.03 crore though the transactions were not supported with 'C' forms as required under the CST Act. Thus, allowance of exemption without declaration forms was irregular and resulted in non-levy of tax of ₹ 11.05 crore including interest of ₹ 4.75 crore.

2.8.13 Invalid and defective 'C' forms

The 'C' form is issued by a purchasing dealer in two copies. The copy marked 'original' is enclosed by the selling dealer with his return and the copy marked 'duplicate' is retained by purchasing dealer in his records. It has been judicially held¹⁹ that production of original 'C' form for claiming concessional rate of tax is mandatory to prevent the form being misused for the commission of fraud and collusion with a view to evade payment of tax.

Our test check the records of six AETCs¹⁸ and ETO Kinnaur (between May 2010 and March 2011) revealed that while finalising the assessments of 53 dealers between May 2007 and July 2010 for the period 2004-05 to 2008-09, the AAs irregularly allowed concessional rate of tax on interstate sales

valued at ₹ 159.92 crore on the basis of invalid/defective 'C' forms. This resulted in short levy of tax of ₹ 12.14 crore including interest of ₹ 4.66 crore as detailed in **Annexure-II**.

¹⁸ BBN, Kangra, Mandi, Shimla, Sirmour, Solan and Una

¹⁹ Commissioner Sales Tax versus M/s Prabhu Dayal Prem Narayan (1988) 71 STC (SC) and M/s Delhi Automobiles Private Limited versus Commissioner of Sales Tax (1997) 104 STC 75 (SC)

2.8.14 Single declaration in form 'F' covering transactions for more than one calendar month

Under the CST Act, when any dealer claims exemption from payment of tax in respect of goods by reason of transfer of such goods to any other place of his business outside the State, he may furnish to the AA, a declaration in form 'F' duly filled in and signed by the transferee along with evidence of dispatch of such goods. If the dealer fails to furnish such declaration, then the movement of goods shall be deemed for all purposes to have been occasioned as a result of sale. As per Rule 12(3) of CST (R&T) Rules 1957, one 'F' form is to cover the transactions of only one calendar month.

Our scrutiny of records of four AETCs²⁰ between May 2010 and January 2011 revealed that the AAs while finalising assessments between August 2008 and July 2010 in respect of 11 dealers for the assessment years 2004-05 to 2008-09, allowed exemption of tax on transfers of stock worth ₹ 31.35 crore against 33 'F' forms. Since the 'F' forms furnished by the dealers contained transactions covering more than one calendar month, transactions

beyond one month in each form were not covered by valid declaration and thus liable to be taxed as interstate sales. This resulted in non-levy of tax of ₹ 6.24 crore including interest of ₹ 1.97 crore.

2.8.15 Allowance of stock transfer on duplicate 'F' forms

In two AETC Offices²¹, our scrutiny of records between October and November 2010 revealed that while finalising assessments of seven dealers from March 2007 to December 2009 for the assessment years 2004-05 to 2006-07, the AAs allowed deduction from interstate sale on account of stock transfers amounting to ₹ 6.73 crore against declaration in duplicate form 'F'. The irregular allowance of exemption of tax on duplicate forms resulted in non-levy of tax of ₹ 1.29 crore including interest of ₹ 50 lakh.

2.8.16 Incorrect allowance of exemption on transfer of goods to places not included in registration certificate

Under the CST Act and Rules made thereunder, a dealer seeking registration is required to specify in the application for registration, the list of places of business in other States along with address of every such place and particulars of registration under the CST Act. Further, in case of stock transfer to consignment agents, copies of agreement are required to be furnished by the dealer for claiming exemption.

We test checked the records of AETCs, BBN and Sirmour (between October 2010 and November 2010) and noticed that three dealers were assessed for the years 2004-05 to 2008-09 between March 2007 and July 2010. Our scrutiny revealed that the AAs while framing the

²⁰ BBN, Mandi, Sirmour and Solan

²¹ BBN and Sirmour

assessments allowed exemption on transfer of goods worth ₹ 80.72 crore made to branches/consignment agents, though the places to which branch transfers were made had not been included in the registration certificate of the dealers. This irregular exemption resulted in non-levy of tax of ₹ 4.73 crore including interest of ₹ 1.46 crore.

2.8.17 Exemption of tax on incomplete 'F' Forms

Under the CST Act and rules framed thereunder, declaration in form 'F' complete in all respect i.e. bearing registration number, date of issue by the transferee, transport details etc. should be furnished to avail exemption from levy of tax on account of the branch transfer.

We test checked the records of two AETCs²² between May 2010 and October 2010 and noticed that in two cases²³, two dealers availed exemption on stock transfer worth ₹ 127.51 crore on the basis of incomplete 'F' Form. Our scrutiny revealed that required details such as name and address of the selling dealer and RC number; number and date of railway receipt or

postal receipt or goods receipt with trip sheet of lorry or any other document indicating the means of transport or date on which the delivery was taken by the transferee had not mentioned. In one case²⁴, the dealer erased and rewrote the months and address of the transferor shown in the 'F' forms with ball pen by using correction fluid so as to cover the transactions made during the year 2008-09

In the absence of above details, these forms were *prima-facie* liable to be rejected and stock transfers of ₹ 127.51 crore taxed as per the provisions of the Act. Improper scrutiny of these forms by the AAs resulted in non-levy of tax of ₹ 27.77 crore including interest of ₹ 11.85 crore.

2.8.18 Conclusion

There were several system deficiencies that affected the efficiency and effectiveness of the assessment and collection of CST revenue. A reliable database of revenue foregone on account of exemptions which is a pre-requisite for informed decision making was absent. The Department did not keep samples of current and obsolete declaration forms of other States. There was no system for cross verification of declaration forms submitted by the dealers of other States for claiming concessions and exemptions of tax on account of interstate sale. In the absence of guidelines and a prescribed check list of points to be seen prior to acceptance of declaration forms, the AAs accepted declaration forms which were *prima-facie* defective. The internal control mechanism within the Department was weak as evident by the non-maintenance of stock register of declaration forms and defective/improper maintenance of issue register.

²² Shimla and Solan

²³ Shimla and Solan

²⁴ Shimla

Though TINXSYS system is available with the Department, the same was rarely used for cross verification and progress of uploading the data relating to 'C' and 'F' forms was also negligible.

2.8.1 Recommendations

The Government may consider:

- **assessing the requirement of declaration form on a realistic basis to avoid balances of unused forms;**
- **uploading samples of valid declaration forms from other States on the departmental website for reference in case of doubt;**
- **putting in place a system for maintaining a database of the concessions and exemptions of CST and the revenue foregone on this account;**
- **strengthening enforcement measures to detect the cases of invalid/ fake declaration forms;**
- **maintaining the computerised database of declaration forms issued and utilised to keep track on the pending utilisation statements; and**
- **prescribe check lists for scrutiny of genuineness of declaration forms.**

2.9 Other Audit observations

Scrutiny of the assessment records of sales tax/value added tax (VAT) revealed several cases of non-observance of provisions of Acts/Rules, non/short levy of tax/interest, wrong deduction of material cost, excess/incorrect allowance of input tax credit and incorrect application of rate of tax etc. as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test check carried out in audit. Every year we point out such omissions on the part of Assessing Authorities (AAs), but not only do the irregularities persist, these also remain undetected till an audit is conducted. There is need for the Government to improve the internal control system including strengthening of the internal audit.

2.10 Non-observance of provisions of the Acts/Rules

The Himachal Pradesh General Sales Tax (HPGST)/Himachal Pradesh Value Added Tax (HPVAT) Act and rules provide for:

- (i) levy of tax and interest at the prescribed rate;
- (ii) correct determination of turnover.

The AAs while finalising the assessments did not observe some of the above provisions in some cases as mentioned in the paragraphs 2.11 to 2.18. This resulted in non/short levy/non-realisation of tax/interest of ₹3.19 crore.

2.11 Incorrect allowance of input tax credit (ITC)

Nine AETCs²⁵

Under section 11 (3) of the HPVAT Act 2005, ITC shall be allowed to the extent of the amount of input tax paid by the purchasing dealer on the purchase of taxable goods made by him in the State, from a registered dealer. As per notification of May 2007, the amount of input tax credit shall be admissible to a dealer on the purchase value of the goods sold by him during the tax period.

We noticed that no provision has been incorporated in the annual returns to establish quantum of sales made from tax paid purchases to regulate adjustment of ITC. We noticed between May 2010 and January 2011 from the trading and profit and loss accounts of 44 dealers available in the assessment files that during 2007-08 and 2008-09 the

purchase value of the stock in hand was ₹ 22.39 crore and ₹ 4.17 crore respectively. ITC was not admissible to the dealers on closing stock of ₹ 9.66 crore²⁶ remaining unsold in respect of purchases made within the State during

²⁵ Baddi, Barotiwala and Nalagarh: one dealer: ₹ 2.80 lakh; Bilaspur: nine dealers: ₹ 14.75 lakh; Hamirpur: one dealer: ₹ 2.15 lakh; Kangra: two dealers: ₹ 15.63 lakh; Mandi: 11 dealers: ₹ 18.20 lakh; Sirmour: three dealers: ₹ 7.72 lakh; Shimla: two dealers: ₹ 4.41 lakh; Solan: seven dealers: ₹ 31.75 lakh and Una: eight dealers: ₹ 20.70 lakh

²⁶ Local tax paid purchases involved in the closing stock has been worked out in the ratio of local tax paid purchases to total purchases multiplied by closing stock. This amount has further been apportioned tax rate wise in the same ratio as was of local tax paid purchases.

these years. Our scrutiny revealed that the AAs while finalising (between January 2009 and November 2010) assessments of these dealers for 2007-08 and 2008-09, erroneously allowed ITC on the entire local purchases of ₹ 74.03 crore instead of allowing it on proportionate basis on the turnover of purchases actually sold by them during the tax period. This resulted in excess allowance of ITC of ₹ 86.69 lakh. The dealers are liable to pay interest of ₹ 31.42 lakh on incorrect benefit of ITC passed on to them.

After we pointed out the cases between May 2010 and January 2011, the AETC Bilaspur intimated (March 2011) that cases of five dealers, out of nine had been reassessed and additional demand of ₹ 5.82 lakh created, out of this ₹ 1.56 lakh was recovered. Further report on recovery and reply of the remaining AETCs have not been received (December 2011).

We reported the matter to the Department and the Government between July 2010 and February 2011. We have not received their replies (December 2011).

The Government may consider incorporating a provision in the annual returns to establish quantum of sales made from tax paid purchases to regulate adjustment of ITC.

2.12 Incorrect deduction of cost of material

Five AETCs²⁷ (16 contractors)

The HPGST/HPVAT Act provide that sale includes transfer of property in goods involved in execution of works contracts. As per ETC's instructions of December 2008 if the material is partly or wholly supplied by the contractee and value thereof is set off against the payment of contractors, the value of the material so supplied shall not be deducted from the Gross Turnover (GTO) for the purpose of assessment of tax. If a dealer fails to pay the tax due by the prescribed date, he becomes liable to pay interest at the rate of one *per cent* on the tax due for a period of one month and at the rate of one and a half *per cent* per month thereafter, till the default continues.

We noticed between August 2010 and January 2011 from the assessment records that the AAs while finalising (between April 2009 to March 2010) the assessments of 16 contractors for the years falling between 2003-04 and 2008-09, allowed deduction of ₹ 8.47 crore from the GTO on account of material supplied by the Departments to them for the execution of the

Departmental works. The deduction allowed was irregular as supply of the material by the Departments to the contractors tantamount to sale. This resulted in underassessment of the tax of ₹ 44.69 lakh on which interest of ₹ 22.81 lakh was also leviable. The details are given in **Annexure-III**.

We reported the matter to the Department and the Government between November 2010 and February 2011. We have not received their replies (December 2011).

²⁷ Hamirpur: Three contractors; Mandi: One contractor; Sirmour: One contractor; Shimla: Six contractors and Una: Five contractors.

2.13 Excess allowance of input tax credit (ITC)

Two AETCs²⁸

Under the HPVAT Act, ITC is allowed to the extent of the amount of input tax paid by the purchasing dealer on the purchase of taxable goods made by him in the State, from a registered dealer. As per rule 22 of HPVAT Rules, the ITC in respect of branch transfers shall be availed only to the extent by which the amount paid in the State exceeds four per cent.

We noticed between May 2010 and November 2010 from the trading accounts, annual returns and assessment orders that during the years 2005-06 to 2008-09, two dealers had made purchases valued at ₹ 239.60 crore after paying input tax of ₹ 9.78 crore. The dealers had made branch transfers of ₹ 22.87 crore out of gross turnover of ₹ 294.66 crore. The dealers were not entitled to ITC of ₹ 6.35 lakh²⁹ on the branch transfers as the rate of tax paid goods involved in the branch transfer was four per cent.

However, the AAs while finalising (between April 2009 and January 2010) the assessments of these dealers allowed the same. This resulted in excess allowance of ITC of ₹ 9.18 lakh including interest of ₹ 2.83 lakh.

We reported the matter to the Department and the Government between July 2010 and January 2011. We have not received their replies (December 2011).

2.14 Incorrect determination of turnover

AETC Kangra

As per Section 2(v) (iv) of the HPVAT Act, sale includes transfer of the right to use any goods for any purpose for cash, deferred payment or other valuable consideration.

2.14.1 We noticed between June 2010 and August 2010 from the trading accounts that four dealers received hire charges of ₹ 35.87 lakh on account of machinery for the period 2005-06 to 2008-09. But the dealers did not include the amount of hire charges in their respective returns and did not pay any tax on it. The AAs while finalising the assessments

of these dealers between June 2009 and March 2010 did not detect the mistake though the details of such charges were available in the trading accounts. This resulted in short levy of tax of ₹ 6.21 lakh including interest of ₹ 1.73 lakh.

We reported the matter to the Department and the Government in September 2010. We have not received their replies (December 2011).

²⁸ Sirmour: One dealer: ₹ 4.43 lakh and Solan: One dealer: ₹ 4.75 lakh.

²⁹ The inadmissible amount of ITC worked out on the basis of branch transfer divided by gross turnover multiplied by ITC claimed.

Five AETCs³⁰

As per Section 2(v) of the HPVAT Act, sale means any transfer of property in goods for cash or for deferred payment or for any other valuable consideration other than a mortgage, hypothecation, charge or pledge. It has been judicially held³¹ that freight or delivery charges incurred by the selling dealer in making the goods available to the purchaser at the place of sale are includible in sale price.

2.14.2 We noticed between June 2010 and November 2010 from the assessment records that the AAs, while finalising (between December 2007 and March 2010) the assessments of eight dealers for the period 2005-06 to 2008-09, did not levy tax on freight charges of ₹ 2.53 crore received by them. Non-inclusion of the freight charges in the turnover had resulted in underassessment of tax of ₹ 47.34 lakh including interest of ₹ 15.77 lakh.

We reported the matter to the Department and the Government between September 2010 and January 2011. We have not received their replies (December 2011).

2.15 Non/short levy of interest**Two AETCs³²**

Under HPGST/HPVAT Act, if a dealer fails to pay the tax due by the prescribed date, he becomes liable to pay interest at the rate of one *per cent* on the tax due for a period of one month and at the rate of one and a half *per cent* per month thereafter, till the default continues.

We noticed between August 2010 and January 2011 from the assessment records that the AAs, while finalising the assessments of 13 dealers between March 2009 and January 2010, for the years falling between 1999-2000 and 2008-09, created tax demands of ₹ 19.71 lakh. We further observed that in the case of 12 dealers of Shimla district, the AAs did not levy interest of ₹ 2.35 lakh on the tax demands of ₹ 13.10 lakh created against

them while in the case of Bilaspur district, the AA incorrectly levied interest of ₹ 8.16 lakh instead of ₹ 9.47 lakh on the tax demand of ₹ 6.61 lakh. This resulted in non-realisation of Government revenue of ₹ 3.66 lakh.

After we reported the matter to the Department and the Government (November 2010 and February 2011), the Department intimated (August 2011) that in case of AETC Shimla, the cases had been reassessed and additional demand of ₹ 1.92 lakh created and recovered. Further report on recovery and reply of the Government had not been received (December 2011).

³⁰ BBN: One: ₹ 3.36 lakh; Kangra: Four: ₹ 16.74 lakh; Shimla: One: ₹ 10.28 lakh; Sirmour: One: ₹ 7.32 lakh and Una: One: ₹ 9.64 lakh

³¹ Supreme Court Judgment in the case of 'Black Diamond Beverages v/s Commercial Tax Officer (1997) 107 STC 219 (SC); AIR 1997 SC 3550; 1998 (1) SCC 458

³² Bilaspur and Shimla

2.16 Short levy of purchase tax

AETC Una

As per the HPVAT Act if a dealer purchases any taxable good from any source, on the purchase of which no tax has been paid and dispatches such goods or the goods manufactured there from for consumption or sale outside the State to his branch or commission agent he is liable to pay tax on the purchase value of such goods. *Khairwood* is taxable at the general rate of 12.5 per cent with effect from April 2005.

We noticed in October 2010 from assessment records that three dealers had purchased *khairwood* valued at ₹ 34.67 lakh during the years 2005-06 and 2006-07 and manufactured *katha* there from. As the dealers dispatched the goods manufactured from the *khairwood* valued at ₹ 1.26 crore for sale outside the State to their branches against 'F' forms, they were liable to pay purchase tax on the purchase value of *khairwood*. However, the AAs while finalising (between July 2008 and February

2010) the assessments of these dealers incorrectly levied tax at the rate of eight per cent instead of 12.5 per cent. This resulted in short levy of tax of ₹ 2.71 lakh including interest of ₹ 1.15 lakh.

We reported the matter to the Department and the Government in November 2010. We have not received their replies (December 2011).

2.17 Irregular allowance of exemption by transfer of documents during interstate sale against Form 'E-I'

Under the provisions of the CST Act, any subsequent sale of goods during their movement from one State to another effected by a transfer of documents of title to such goods to a registered dealer, shall be exempted from levy of tax provided such sale is supported by a declaration in form 'E-I' duly filled by the selling dealer along with form 'C'.

Our test check of records of AETCs Mandi and Sirmour between October 2010 and January 2011 revealed that the AAs while finalising (between August 2008 and December 2009) the assessments of three dealers for the period 2005-06 and 2007-08, exempted turnover of ₹ 70.12 lakh from payment of tax as goods sold in transit. Our scrutiny disclosed that the sale was not

supported by declaration in form 'C' and thus, exemption allowed by the AAs without these forms was incorrect. This resulted in non-levy of tax of ₹ 5.07 lakh including interest of ₹ 1.76 lakh.

We reported the matter to the Department and the Government in August 2011. We have not received their replies (December 2011).

2.18 Deleting of condition of annual turnover for availing exemption of tax retrospectively on inter state sale

The Excise and Taxation Department, Government of Himachal Pradesh vide notification dated February 2002 had allowed exemption on manufacture of tractors by a unit for a period of five years from the date of its commencing commercial production. The conditions for availing exemption was that the dealer should have annual turnover of at least ₹ 200 crore after three years from the commencement of production. The said condition was deleted vide HP Government notification dated January 2010.

We test checked the records of AETC, BBN between October and November 2010 and noticed that one industrial unit did not fulfill the condition of annual turnover of ₹ 200 crore for availing exemption in the course of inter-state trade. The dealer did not deposit the tax for the year 2004-05 on inter-state sale. The Government vide notification dated January 2010 deleted the condition as laid down by earlier notification dated February 2002. Delay in finalisation of assessment of the dealer for the year 2004-05 and deleting the condition of annual turnover

prescribed for availing exemption of tax, resulted in undue benefit to the dealer and loss of revenue amounting to ₹ 1.77 crore calculated at the rate of one *per cent* including interest of ₹ 88 lakh on annual turnover of ₹ 88.96 crore.

We reported the matter to the Department and the Government in August 2011. We have not received their replies (December 2011).